

September 17th, 1975

MEMORANDUM FOR MR. CARTER:

Mr. Gravelle
Mrs. Reed
Mr. Hurley

Possible modification of our drafts for the
"patriation" of the constitution

I had a long conversation on the telephone with Julien Chouinard this morning. He told me that the Prime Minister had, as he had intended, spoken to Mr. Bourassa either toward the end of last week or early this week. He had apparently re-iterated his firm determination to press ahead with the patriation of the constitution. Mr. Bourassa had told him that our drafts did not respond adequately to his requirements and he apparently referred to his statement at Mont Gabriel. The Prime Minister apparently urged him to have them worked on in Quebec and to see if they could not send their own texts or suggestions for revision to us. Pursuant to his conversation, Mr. Bourassa spoke to Chouinard and asked him to get in touch with me as soon as he saw any possibilities for discussion. Chouinard's call was pursuant to this.

Chouinard outlined to me the best possibilities that he could see, having in mind the constraints that are imposed by the intention not to get into constitutional amendment. He has not discussed these possibilities with Mr. Bourassa and has asked me to give him a reaction so that he can do so. His thoughts are as follows:

(a) Our paragraph 3 of Appendix No.1 could be made much stronger and more acceptable from the point of view of Quebec if three revisions could be worked into it:

- (i) By "singularizing" the French language (as we have done in the second "Whereas" paragraph at the beginning) rather than having the thing completely on the basis of the two official languages;

(ii) By adding "culture"; and

(iii) By adding "the negative aspect".

What Chouinard has in mind in (iii) does not go as far as the establishment of any "powers to prevent" by Quebec nor is he suggesting any specific mention of Quebec at all. What he has in mind is simply the negative aspect of what is stated in affirmative in paragraph 3 as it now stands. In other words, in addition to having the government and Parliament of Canada "guided" to ensure the preservation and full development" (of the French language and culture), there would be something to the effect that they should not act in any way that would have a "regressive" consequence for the French language and culture in Canada. (He spoke in terms of the government and Parliament not making any "geste, acte ou dispositions regressives".)

(b) While he is not at all certain, he thinks it is possible that Mr. Bourassa could have a defensible position on guarantees, "spirit" and on his specific mention of communications and immigration by the addition to our Appendix No. 1 of something about "ententes". Mr. Chouinard is well aware that there have been a number of agreements entered into with respect to immigration. Mr. Hurley mentioned these in his memorandum as being quite impressive and something that should be given permanence at some stage. Chouinard says that there is a new agreement under negotiation which goes even further and he thinks all of these could be used as demonstration of the kind of thing that would be possible and more definitely called for if some specific mention were made in Appendix No. 1.

What he has in mind is something that would probably go no further than to say the governments "peuvent entrer dans des ententes relatives à l'exercice de leurs pouvoirs" in relation to - either things in general or things mentioned specifically. He said he saw three possibilities:

- (i) To add to our Appendix No.1 a paragraph saying that the governments could enter into agreements concerning the exercise of their powers at large;
- (ii) To have such a provision plus an amendment of section 95 which would introduce this idea and add "communications" there;
- (iii) To have a provision as referred to in (i) plus the indication that this would be "notamment dans les domaines de l'agriculture, l'immigration et des communications".

(Chouinard would have "agriculture" mentioned on the logic that it is parallel with immigration in section 95 but also because it would be politically very attractive.)

I told Chouinard that alternative (ii) would be quite impossible. I said I had some concern about both the other options but that I thought they were well worth exploring. He said he doubted if the first option would satisfy Mr. Bourassa: the third one might have a chance.

Chouinard is well aware that the provision he is suggesting would not add anything in a strict legal sense and would not require the establishment of agreements. He thinks it would, however, provide a basis for arguing that such a provision gives for the first time a specific recognition to the idea that there ought to be agreements (which would be particularly attractive with three fields mentioned) and also that Quebec, because of this recognition, would have a constitutional right and obligation to intervene and to call for discussion and agreement if her interests appeared to be affected.

Mr.Chouinard says that there is to be a special two-day meeting of the Quebec Cabinet on October 8th and 9th and Mr. Bourassa has announced that, among other things, the constitutional question will then be discussed. He thinks it is very important that we should give him some reaction before that time if at all possible. I said I would give the matter immediate attention and try to talk to him again either tomorrow or Friday. In the meantime he wants this all to be guarded as especially confidential and for our eyes and ears only.

R.G.R.