

CONFIDENTIAL

October 29, 1975

MEMORANDUM FOR MR. R.G. ROBERTSON

cc: Mr. F.A.G. Carter
Mr. P. Jodouin
Mrs. B.J. Reed

The Patriation Exercise:
A Tally of the Points Raised by Mr. Chouinard
and the Reactions of the Prime Minister

1. Points Raised by Mr. Chouinard

On October 8th, 1975, Mr. Chouinard conveyed to you, by telephone, the reactions of Mr. Bourassa to the draft Form for a Proclamation. He made the following comments:

- a) Mr. Bourassa was "très enthousiaste".
- b) The draft should be modified so that it is clear that the amending formula applies to the Proclamation as well as to the other documents that constitute "The Constitution of Canada".
- c) Reference to social policy should be included in the Part (now Article 39) on Federal-Provincial Agreements.
- d) A provision to limit the federal exercise of the spending power should be added to the proclamation.
- e) One should consider the question of a reference to the courts of the Proclamation with particular attention to constitutional guarantee of the French language and culture to be honoured by the Government and Parliament of Canada.

Spoke to
Chouinard re
30/x/75.

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On October 15th, 1975, Mr. Chouinard had another telephone conversation with you, following the special meeting of the Quebec Cabinet at which the question of patriation was discussed. He made the following comments:

- a) The Cabinet was "pas très enthousiaste" in large measure because it was felt that the patriation exercise would cause problems concerning Bill 22 and related matters.
- b) There was a generally held view that it would be important to try, if possible, to resolve the question of communications before proceeding with patriation.
- c) Without renouncing the idea of proceeding on patriation, Mr. Bourassa was now "un peu moins enthousiaste".
- d) Mr. Bourassa raised the possibility of working out an agreement on communications that would demonstrate the force of the Part on Federal-Provincial Agreements.
- e) Mr. Bourassa again raised the possibility of including limits on the spending power of the Government and Parliament of Canada in the package.
- f) Mr. Chouinard would like to have a copy of the spending power proposals and the record of positions taken and the final disposition.

You transmitted these comments to the Prime Minister (save Mr. Chouinard's last request and I do not find a written comment on communications) and he made the following comments:

*P. H. v. M. Bourassa
spoke again by
telephone on
Oct. 16.*

- a) Making sure that the Proclamation itself is covered by the amending formula was not raised by Mr. Bourassa, but the Prime Minister agrees that this should be done.

N.B.: Article 7 of the last draft of the Form for Proclamation does in fact stipulate that the Proclamation will become a part of the Constitution of Canada.

- b) Initially, the Prime Minister felt that inclusion of social policy in the Article on Federal-Provincial Agreements should be kept as a last concession, but he now feels that it should be included with the provision that this is the very last modification that will be countenanced.

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- c) Mr. Bourassa had raised the question of the spending power with the Prime Minister who rejected it as a matter to consider prior to patriation, although he would not exclude discussion of it after patriation had been accomplished.
- d) The Prime Minister initially was not very optimistic about the chances of a court reference being settled in a matter of a few months and concurred in your assessment that it would be a mistake to have a reference. His subsequent preoccupations with timing and the danger of last minute concessions being engineered by the Quebec media would add further doubt to the wisdom of a court reference.
- e) The Prime Minister did not comment upon the Quebec request for a prior agreement in the field of communications before proceeding with patriation, but his desire to move ahead and to stop further requests from Quebec prior to patriation would lead one to suspect that his reaction to this would not be favourable. In any event, of the three items that have been specifically mentioned under the heading Federal-Provincial Agreements, mutually satisfactory agreements have been reached in social policy and immigration. This should be evidence enough that it may be possible to reach mutually satisfactory agreements in the third area, communications.

disagree.

In addition, the Prime Minister raised several other points:

- a) Why was such a long period included in the provisions of Article 16 (2) concerning the nomination procedures for Supreme Court Justices? Barbara Reed is checking this.
- b) He feels that the last three lines of Article 37 (guiding principals) would be binding. After careful scrutiny, Barbara Reed and I are of the opinion that it might be possible to lend a stronger meaning to the last three lines than we might have intended.
- c) Bargaining with Quebec shall now cease.

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- d) The final text should now be submitted to Quebec and, if Quebec commits itself, a submission should be made to Cabinet. Subsequently, the proposal could be presented to the other First Ministers for approval; if they balk at the special provisions for the French language and culture, Mr. Bourassa could be invited to sell the package since he has long protested that his fellow First Ministers support him in these matters. If Quebec commitment is not forthcoming, unilateral action should be contemplated: Mr. Bourassa and his Cabinet are aware of this.



James Ross Hurley