

c.c.: Hon. M. Lalonde
Hon. M. Lang
Hon. M. Reid
Mr. Pitfield
Mr. Coutts
Mr. Massé
Mr. Telliér
Mr. Gwyn
Mr. de M. Marchand
Mr. Tassé
Mr. Strayer
Miss Macdonald

Secret

February 12th, 1979.

MEMORANDUM FOR THE PRIME MINISTER

A possible resolution in the House of Commons
on the constitution

Since the Conference I have been giving further thought to the options for action on the constitution that I analyzed in my memorandum to you of January 29th. I remain of the view that the possibilities identified as B(2) and B(4) are the best of the options then put forward. One or the other of these courses was implied by you in your press conference of February 6th when you undertook to meet with the Premiers once more before taking any action on areas that do not come under Section 91(1).

Option B(2) called for a "successor Bill" plus joint addresses to be introduced in the House of Commons, but not for passage. Option B(4) called for moving to dissolution without the introduction of any measure. I did not, on January 29th, consider an in-between course but I have since discussed with Jim Coutts the possibility of introducing a resolution on the constitution - either for passage or simply for some appropriate amount of debate. I think there could be a good deal of merit in such a course. It would have many of the advantages of option B(2), in focussing public and Parliamentary attention on the constitutional issue and in giving precision to the mandate being sought, but without the disadvantages that the great detail of a "successor Bill" and a Joint Address would present.

Attached is a first draft of a possible resolution. It is designed:

- (a) To direct attention to the quite positive results that have been achieved over the last three months in getting, for the first time, a high degree of consensus among governments on several areas of changes in the distribution of powers;
- (b) To secure a Parliamentary declaration on the importance of early change in the constitution, comparable to the agreement of the Premiers at the Conference of October 30th-November 1st, and to make part of it a declaration in favour of a Charter of Rights, including linguistic rights; and
- (c) To draw attention to 52 years of failure to achieve unanimity on a formula for amendment and "patriation" of the constitution.

On the basis of the above, the resolution would call on the House to agree that you should meet with the Premiers again on the matters that have been under discussion and you should thereafter introduce a "successor Bill" plus a Joint Address. In paragraph 2 of the resolution you would be seeking a mandate to include in the Joint Address "a fair and reasonable" formula for amendment of the constitution on the basis of which "patriation" could occur. Paragraph 3 would indicate that this would not be the end of the road: work toward "full and complete renewal of the constitution of Canada" would continue. These provisions, if approved, would give clear indication that neither the country nor the government need be frustrated by the search for unanimity forever. If Parliament did not pass the resolution, it could become the basis for asking a mandate from the people in the course of the election.

Looking at this "option" in the same way as I did at options B(2) and B(4) in my memorandum of January 29th, it seems to me to have nearly all the "advantages" indicated on pages 4 and 5 (which related to both B(1) and B(2)) except the second last. It would not make clear that the government would not be running on Bill C-60. On the other hand, it would avoid nearly all the "disadvantages" on page 5 except the last. The resolution and the intention it indicates could be attacked, to some degree, as a new demonstration of "unilateralism" and it is conceivable that the P.Q. could seize on it as an

3. Secret

issue for an election. I am sceptical whether either risk is serious or important, but you will want to consider that.

As compared with option B(4), it has all the advantages except the slightly higher risk of the charge of "unilateralism" and of a P.Q. election. On the other hand, it would avoid the disadvantage of not making clear the kind of mandate being sought in the election.

Altogether, I think the possibility of proceeding with a resolution has the best combination of advantages and the least significant disadvantages of all the courses that are available.

If you think this "resolution" course should be investigated further, I would think it ought to be discussed at a very early point with Messrs. Lalonde, Lang and Reid plus Mr. MacEachen to decide just what the form of a resolution should be and how it ought to be handled.

Before taking a decision on this I think you should see the attached copy of a very thoughtful memorandum of February 5th by George Anderson. His cautions and concerns merit careful consideration. On the whole I think the course he recommends it too restrained. I am not at all certain that endless discussion with no, or almost no, action will either embarrass Mr. Lévesque or encourage the federalist side in Quebec. It is quite possible that it would rather demonstrate that the Lévesque thesis is right: that federalism is incapable of reforming itself. However, it is a good memorandum and should be carefully weighed.

You will want to consider how and when this whole matter should be pursued.

R.G.R.
