

CONFIDENTIAL

August 23, 1978

MEMORANDUM FOR MR. ROBERTSON

The Communiqué on the Constitution  
issued at the close of the  
Premiers Conference at Regina,  
August 11, 1978

I have studied the Conference Communiqué and have read a number of press comments on the Conference in general. I have read the copies you sent me of your memorandum to the Prime Minister of August 11, and of your memorandum to the Minister of August 14. I have read, and return herewith, -- Marcel Massé's memorandum to you of August 17. I -- have noted, and return, your copy of the Prime Minister's comments made during a broadcast interview (Hamilton) on August 16. Lastly, I have read your note of August 18 and the accompanying article by Keith Spicer with much interest and amusement. (We have also had the opportunity on a couple of occasions to discuss another important note on which you were working.)

The complexities of all this are enough to boggle the mind - at least to boggle mine - and it is with much hesitation that I offer the various points and comments which I will try to set out below. Probably some of my reactions are conditioned by having been absent from the office - in the land of leprechauns - these last three weeks, and the mental process of re-integration is not yet complete. In any event, -

- (1) The Premiers have given the impression to everyone, intentionally or not, that the federal government cannot move unilaterally on any important constitutional change, even though legally within federal jurisdiction, without the consent of all the provinces. The fact that the Premiers said "should not"

rather than "cannot" or "must not", and the fact that the provinces cannot change federal jurisdiction no matter what they do or say, seem to have been lost on most of the press and on many members of the Joint Committee;

- (2) More serious, the Premiers have given the impression to everyone, intentionally or not, that they have rejected Bill C-60 across the board, with the press concluding, as do many members of the Joint Committee, that the Bill is, therefore, a dead letter;
- (3) The Premiers were taken off guard, when the Bill was first tabled, by its complexity and completeness. Many of them were intensely annoyed to see how far the federal government could go, on its own, to achieve important constitutional objectives. Heretofore, the federal objectives had always seemed to be an amending formula and patriation, with rights thrown in, and on the first two counts, the Premiers knew they could block action and this always gave them leverage for a "genuine" review of the distribution of powers. With Bill C-60, they saw the possibility of the federal government doing what it apparently thought was needed to woo Quebec, with no leverage whatever left to them on the question of powers;
- (4) The apparent federal downgrading of the amending formula and patriation was, therefore, a considerable shock for the Premiers, and the "pressure" on us to publish something on the subject was probably in the hope that it would, somehow, again be raised to its old level of importance. The issuance of a nonchalant federal booklet on the subject, which took no position, coupled with the casual public airing of ideas for bypassing provinces via referenda, was probably the ultimate salt in their collective wounds. There is probably not a single Premier today who has the slightest faith in the federal government participating in any meaningful review of the distribution of powers;

- (5) While the anglophone Premiers have taken a strong negative stand based on their assumptions concerning federal intentions, and this stand has appeared to place them in league with Premier Lévesque, there is nothing they have said which should surprise us, as their approach is entirely consistent with their search of many years standing for changes in the powers and the constant federal reaction that other constitutional issues are of greater priority;
- (6) Our arguments that constitutional progress must be demonstrated if Quebec is to stay in Confederation and that the federal government must go ahead alone wherever it can because progress is demonstrably impossible where other governments have to be involved, leaves the Premiers cold. Progress has not been achieved in the past, they believe, because the federal government does not consider changes in the powers necessary and is therefore unwilling to take part in meaningful discussions. While we may not like their argument, they are as logical in blaming us for no progress on powers as we are in blaming them for no progress on rights, or on patriation;
- (7) Our threat to act unilaterally, within a year, has added greatly to the bitterness. Despite all our attempts to explain the July 1979 deadline, this is seen as tied in some way to the next federal election and is therefore a red flag to the Premiers of other faiths, to be attacked at all cost. But that same date, for all Premiers, assuming the federal government really intends to act, represents the end of their leverage for a review of the distribution of powers, and that has to be viewed with alarm by any Premier worthy of the name;
- (8) Through all these comments, I retain the assumption that the federal objective is to achieve constitutional change that, by and large, will be supported by Canadians generally and that within that support, will be a considerable measure of agreement within the House of Commons and among the provincial governments.

Personally, I think anything less than that objective would be unworthy of any Canadian government. Moreover, I think that any move by the federal government which does not meet the last two criteria could only be justified on grounds that by no other means could the country be saved, and even with that proviso, if a clear majority of the Canadian people in the major regions of Canada was not in favour, then that action, however praiseworthy its objective, would be destructive of unity for years to come;

- (9) If the thoughts in (8) above are reasonable, then the government has a great deal of persuading to do, and it will also have to make some real compromises of its own. And, the higher will be the price in compromises, either on its own proposals, or on provincial proposals respecting the powers. My first conclusion, therefore, is that the government should not seek open confrontation, but should try to build on the positive aspects of the provincial response. This does not preclude making clear that the federal government believes it can, on some important items like the Supreme Court and the Senate, move on its own, but such a clarification should be married to a re-statement of intention to seek the greatest possible degree of support before acting in any important area;
- (10) My second conclusion is that something will have to be done to give the provinces more security respecting our intentions on the review of powers.

One way would be to give them a "hostage", for example, our agreement that action on patriation should not take place until agreement had been reached on an amending formula, and that the government would not press for action until a full three years had been devoted to the review of powers. Another possible "hostage" would be the Senate, assuming there is no way to reach early agreement on it in any event. Postponing action on the Senate would not

CONFIDENTIAL

preclude unilateral action later, if that were needed.

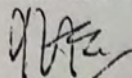
Another way would be to try to move early on a number of points which the provinces have made, some of which touch less directly upon the distribution of powers. Success on a few fronts might give the provinces some confidence in the process. Or, one could use a combination of both these ways.

A third way, perhaps of use at some point in the discussions, could be a postponement of even a few months in the July 1979 date. (Whether such cards would be played before or at the next Conference, or at some subsequent time, is not a subject for this memorandum.)

From all the above, you will see that I agree with much of Marcel Massé's analysis of the situation we face, as set out in the first two pages of his memorandum. I agree less, however, with the solutions he has suggested, and which are designed, in a sense, to get around or to crush the road-block the provinces represent. For my part, I think there is no way around that will not be destructive. Somehow, we have to find the way to melt it!

On another note, in everything we do, we will have to be certain that we understand the meaning and value of arguments that are put to us by others, and that we not become trapped in believing too heavily in our own propaganda. Much of what we have conceived has been chosen by a narrow margin over other, also valuable possibilities. We need not feel totally wedded, therefore, to all that has been done.


Because our planning for the Conference will depend so much on what we see as our objectives, and what we are ready to pay for their achievement, it would be most helpful to have your reactions to the thoughts I have expressed.



F.A.G. Carter

P.S. Since preparing the above, I have had a chance to read Claude Lemelin's memorandum of August 22, with which I am obviously in substantial agreement.

*It has done a most valuable piece of work -*

  
F.A.G.C.