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**PREM 19/669**

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### Cabinet / Cabinet Committee Documents

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The documents listed above, which were enclosed on this file, have been removed and destroyed. Such documents are the responsibility of the Cabinet Office. When released they are available in the appropriate CAB (CABINET OFFICE) CLASSES.

Signed [Signature]  
Date 20 June 2013

PREM Records Team
Mr. Whitmore

I doubt if the attached wire adds as much as the M. Mr. on Aug. The Queen already knows, but it may prove of some help as an Aide Memoire.

Mr. 9/2
CANADA BILL

(Aide Memoire)

The Canada Bill as introduced in the House on 22 December is in the form requested by the Canadian Government. It contains both English and French texts. Schedule (Annexe) A is the French version of the first four Clauses of the Bill. Annexe B is the French version of Schedule B which contains the Constitution Act 1982. Clause 3 of the Bill declares that the French version of the Act has the same authority in Canada as the English version.

In practice any amendment to the Bill would not be in compliance with the Canadian Government's request which the Bill contains. However, amendments to previous Canada Bills have been debated (though not made) so that the Bill is likely to be amendable in theory at least. This raises the problem of how to cope with the French text, since attempts to discuss and amend it could lead to endless Points of Order and prevent orderly consideration of the Bill.

In order to prevent this it would be necessary for the Speaker to rule that English is the language of the House and that he will be willing to select amendments only to the English text (even if these are not accompanied by a French translation). The next question is whether this ruling would suffice or whether further steps need to be taken procedurally before Second Reading in order to control the situation. Discussions on the nature of these steps are in hand.
CONFIDENTIAL

FM OTTAWA 082215Z FEB 1982

TO PRIORITY FCO

TELEGRAM NUMBER 69 OF 08 FEBRUARY

YOUR TELNO 51: CANADA BILL

1. AS YOU WILL KNOW, SIR ANTHONY KERSHAW DISCLOSED THE REASON FOR THE DELAY IN AN INTERVIEW WITH CBC RADIO ON 4 FEBRUARY. HE SAID THEN THAT USE OF GAEIC OR WELSH WAS NOT PERMITTED IN PARLIAMENT AND THAT THERE WERE DIFFICULTIES ABOUT INCLUDING ANY PART OF THE BILL IN FRENCH. THE INTERVIEW WAS HEARD BY A NUMBER OF PEOPLE HERE AND THE NEWS HAS GOT ROUND IN POLITICAL CIRCLES, INCLUDING SOME OF THE PROVINCIAL PREMERS WHO WERE HERE FOR THE ECONOMIC CONFERENCE LAST WEEK, BUT THE CANADIAN JOURNALISTS IN LONDON HAVE SO FAR FAILED TO SPOT IT AND THE STORY HAS NOT THEREFORE BEEN CARRIED ON TELEVISION OR IN THE PRESS. THE MEDIA HAS BEEN WHOLLY TAKEN UP WITH THE FIRST MINISTERS' CONFERENCE ON THE ECONOMY AND THE CONSTITUTION HAS DROPPED OUT OF PUBLIC CONSCIOUSNESS.

2. I SAW MR MC MURTRY, ATTORNEY GENERAL OF ONTARIO, ON FRIDAY. HE WAS, WITH MR CHRETIEN AND MR ROMANOW OF SASKATCHEWAN, ONE OF THE ARCHITECTS OF THE CONSTITUTIONAL COMPROMISE LAST NOVEMBER, AND IS A SHREWD POLITICIAN. HE SAID THAT OBJECTIVELY THERE WAS REALLY NO HURRY ABOUT THE PASSAGE OF THE CANADA BILL. IT WAS PURELY MR TRUDEAU WHO WAS OBSESSED WITH A SENSE OF URGENCY, THOUGH HE CONCEDED THERE WAS SOME SUBSTANCE IN THE QUEBEC COURT ASPECT. THERE IS SOME TRUTH IN THIS. CANADIAN IMPATIENCE IS VERY MUCH PERSONAL IMPATIENCE BY MR TRUDEAU, BUT HE IS THE PRIME MINISTER. IT IS DIFFICULT TO JUDGE HOW SOLIDLY BASED HIS ANXIETIES ABOUT QUEBEC ARE. IT SHOULD BE OBVIOUS TO QUEBECERS THAT THE FEDERAL GOVERNMENT DOES NOT ACCEPT THE ARGUMENT THAT QUEBEC HAS A VETO. IF THEY DID THEY WOULD NOT HAVE SENT FORWARD THE REQUEST. BUT I CAN SEE THAT TO HAVE TO MAKE THIS POINT EXPLICITLY IN COURT MAY DO MR TRUDEAU'S IMAGE SOME HARM IN QUEBEC. I THINK THEREFORE THAT THERE IS SUBSTANCE IN HIS CASE BUT NOT PERHAPS AS MUCH AS HE MAKES OUT.

3. I HAVE MYSELF MADE REPEATEDLY HERE THE LORD PRESIDENT'S POINT ABOUT THE NEED TO AVOID GIVING MPS AT WESTMINSTER ANY FEELING THAT THEY WERE BEING RAILROADED AND HAVE EXPLAINED THAT IF THEY ARE RUSHED THEY MAY TURN MULISH AND TAKE MORE AND NOT LESS TIME TO PASS THE BILL.

CONFIDENTIAL
4. I am sure that we should aim to pass the Bill as quickly as possible but I do not think that Ministers need regard the 15 March deadline as a matter of life and death.

MORAN
SECOND READING OF THE CANADA BILL

The Prime Minister saw your letter of 5 February over the weekend and has noted that the Lord Privy Seal believes that there is no need for her to send a message to the Prime Minister of Canada at this stage.

I am copying this letter to David Heyhoe (Lord President's Office), Murdo Maclean (Chief Whip's Office) and David Wright (Cabinet Office).

A. K. C. Wood, Esq.,
Lord Privy Seal's Office.
SECOND READING OF THE CANADA BILL

In the light of the decision not to proceed to Second Reading next week you asked for advice on the desirability of a message from the Prime Minister to Mr Trudeau.

The Lord Privy Seal saw the Canadian High Commissioner this morning and explained in outline the problem which had arisen. I enclose a copy of our telegram to Ottawa recording the discussion from which you will see that the Canadians, although underlining their desire for rapid progress, took the delay very much in their stride. Mrs Wadds is returning to Ottawa this afternoon and will be able to explain the situation in person.

In the light of this, and given that the Prime Minister would not be in a position to add anything of substance to what we have already said to the Canadians, the Lord Privy Seal believes that there is no need for a Prime Ministerial message at this stage. We have, however, asked the High Commissioner in Ottawa to keep the idea of a message from Mrs Thatcher in mind and to advise us if he thinks one would be helpful.

I am copying the letter and its enclosure to David Heyhoe (Lord President's Office), Murdo MacLean (Chief Whips Office) and David Wright (Cabinet Office).

Yours,

Adam

A K C Wood
APS/Lord Privy Seal

A J Coles Esq
10 Downing Street
London SW1
SECOND READING OF THE CANADA BILL

1. The Canadian High Commissioner, accompanied by Messrs Haggan and Gagnier, called on the Lord Privy Seal at 9.30 this morning. Mr Atkins opened the meeting by reassuring Mrs Waddles that the Government was as determined as ever to get the Canada Bill through Parliament as rapidly as possible. He was well aware of Canadian concern for speedy progress. This was in British interests just as much as theirs. But paradoxically it was concern for the rapid passage of the Bill which had caused the Government not to proceed to Second Reading next week.

2. The Government had become aware in the past week or so that a number of MPs were planning to use the Bill as an opportunity to make political mischief with the Government's Legislative timetable. These members were not concerned with the Canada Bill as such or, for example, with the status of the Indians.
3. A particular difficulty lay in the fact that, except in the case of a bill to give effect to an international treaty, it was almost unprecedented for the House of Commons to consider a Bill in both English and French. Indeed, they had not done so since 1484. This left endless scope for procedural delays unconnected with the merits of the bill. The Government expected there would be argument on the bill and this was the purpose of the debate. But they were now faced with the prospect of deliberate disruptive tactics. They were accordingly trying urgently to find an acceptable way round the problem.

The LPS could not say when exactly they would be able to proceed but if they could make an announcement next Thursday they would certainly do so. The sooner the better.

4. Mr Atkins concluded by again stressing that if the handling of the Bill went awry the result would be further delay. The Government, and he believed most Members of the House, were determined that this should not happen.

5. The following are the principal points from the subsequent discussion. Asked whether he expected to have first a procedural debate and a vote on procedure, the LPS said that he did not know. The Government hoped to work out a way forward early next week. A procedural debate was a possibility but they might be able to go forward without one.

6. Mr Haggan pointed out that the Bill itself was drafted in English only and that the part of the schedule which was in French would have no legal application except in Canada. The LPS agreed but said that technically the schedules were part of the Bill. His experience as a Government Whip accorded with the advice he was now given that if Second Reading debate started before the procedural point on language had been disposed of, he might never get to deliver his opening speech because of a
1. barrage of points of order. In response to further questions
the LPS declined to be drawn on exactly what form the way
forward might take. This was a matter for the Lord President
He reminded the High Commissioner that we had told her at the
beginning of last year that the Speaker of the House of Commons
had informed us in confidence that he would be obliged to treat
the Canada Bill like any other and that he could not rule that
all amendments would be out of order. Amendments could therefore
be tabled although the Government would ensure they they were
not passed.

2. Pressed to give some indication of the likely timetable
the LPS said only that once round the procedural problem the
Government would press on as quickly as possible. Stressing
that it was only his personal guess, he said that members who
wanted to raise questions on the substance of the bill, e.g.
in connection with the Indians and Quebec, would probably
have their say and then let the Bill proceed. Asked about
the mechanics of the various stages the LPS said that once the
Second Reading had taken place the Government hoped to move
very quickly to the remaining stages. There would normally
be a delay of a week or two before the Lords considered a bill
passed by the Commons but there was no requirement for this.
In the present case, although he could not of course commit the
Upper House, he knew the Leader of the Lords was as aware of
the urgency as he was.

3. The LPS said he believed the opposition front bench took
the same view of the Canada Bill as the Government. The problem
was that they were not in control of all their members.

4. Mr Haggan confirmed that Mr Healey had told him the previous
day that the Shadow Cabinet was solidly in support of the Bill
and would actively discourage Labour party members from filibustering. Nor would the Labour party see any problem about
shortening as far as possible, delays between the stages in
Parliament. Mr Callaghan had spoken to Mr Haggan in similar terms later in the day.

9. The LPS put to Mrs Wadds that if the present difficulty became a matter of public debate and if for example unflattering comments appeared in the Canadian press about the British Parliament, this would be liable to hinder the passage of the Bill. He urged Mrs Wadds to do anything she could to prevent this happening. Mr Haggan said that while the Canadian Government could not control the press, there would be "no loose talk". He pointedly added, however, that Mr Trudeau's reaction could not be controlled.

10. Mr Haggan reiterated the crucial importance of 15 March. Although "Canada would survive" if this deadline were not met, it would create a good deal of embarrassment and political difficulties in Canada. The LPS assured the Canadians that he was very well aware of this. He was simply unable to give them an end date for the passage of the Bill, but he had certainly not forgotten the importance of that date to them. He again reaffirmed, as he had done at several points during the meeting, the British Government's desire to complete the business as effectively and quickly as possible. Mr Haggan, relaying the belief in Canada that Second Reading was imminent, said that the High Commission would do their best to discourage press representatives and "Ministers who wanted to be seen in London during the Second Reading" from coming to London immediately.

11. It was agreed that in response to press enquiries we would say only that the LPS had invited Mrs Wadds to call for a discussion about the Canada Bill, as had taken place from time to time.

12. Mrs Wadds is returning to Ottawa today. Mr Haggan told us that Mr Kirby will visit London at the beginning of next week en route to an international law meeting in Geneva.
13. The interview went very smoothly. The Canadians seemed surprisingly relaxed and understanding of our problems. They said they in London would certainly not harass us, although they indicated that feeling in Ottawa was more volatile.

CARRINGTON

NNNN

NNNN ends telegram
From the Private Secretary

SIR ROBERT ARMSTRONG

CANADA CONSTITUTION BILL

Thank you for your minute of 4 February reporting your conversation with Mr. Pitfield on 3 February. The Prime Minister has taken note of its contents.

I am copying this minute to David Heyhoe (Lord President's Office), Michael Arthur (Lord Privy Seal's Office), Murdo Maclean (Chief Whip's Office) and Jim Nursaw (Law Officers' Department).

5 February 1982
As agreed at the Prime Minister's meetings yesterday afternoon, I spoke to Mr Pitfield, the Secretary of the Canadian Cabinet, on the telephone at 11.00 pm yesterday evening.

2. I said that it had not proved possible to give the Canada Bill its Second Reading this week, and in the Lord President's business statement the following day there would be no date for Second Reading in the week beginning 8 February either. Ministers were keen to make progress with the Bill, but we had run into unforeseen procedural snags as a result of the unprecedented nature of the Bill. I did not feel able to go into more details about these snags on the telephone. We hoped that the Lord President might be in a position to say something next week about progress on the Bill.

3. Mr Pitfield said that he would try to find a moment when his Prime Minister was in a relatively peaceable mood, and would then convey this news to him. He looked forward to hearing further about the snags that had been encountered.

4. As we had learned that Lord Moran was due to see Monsieur Chretien that evening I also spoke to Lord Moran, and told him what I had said to Mr Pitfield.

5. I understand that later in the night the Canadian High Commission were roused by Ottawa and asked whether they could find out any more about these matters. No doubt these inquiries will be pursued during the day.

6. No doubt thought is being given to what the Canadian Government can be told, in confidence, about the reasons for the delay in making progress.

I am sending copies of this minute to the Private Secretaries to the Lord President, the Lord Privy Seal and the Chief Whip and to the Legal Secretary to the Law Officers.

ROBERT ARMSTRONG

4 February 1982
CONFIDENTIAL

TELEGRAM NUMBER 65 OF 4 FEBRUARY.

CANADA BILL: DELAY OF SECOND READING

1. I WAS MOST GRATEFUL FOR THE INFORMATION GIVEN ME ON THE TELEPHONE YESTERDAY BY DAY AND SIR ROBERT ARMSTRONG BEFORE MY DINNER FOR THE MINISTER OF JUSTICE.

2. M. CHRETIEN ARRIVED IN EBULLIENT MOOD SAYING THAT HE WAS LOOKING FORWARD TO GOING TO LONDON NEXT WEEK, AS SUGGESTED BY MR PYM, TO JOIN IN CELEBRATING THE PASSING OF THE SECOND READING. HE DID NOT NOW PROPOSE TO TAKE PROVINCIAL REPRESENTATIVES WITH HIM.

3. AFTER DINNER I BROKE THE NEWS TO HIM THAT THERE WOULD BE NO SECOND READING NEXT WEEK BECAUSE OF UNEXPECTED PROCEDURAL DIFFICULTIES. HE EXPRESSED GREAT DISAPPOINTMENT AND SAID THAT MR TRUDEAU WOULD BE UPSET, AND HE REVERTED TO THE PROBLEM OF THE QUEBEC COURT CASE. HE WONDERED WHETHER IT HAD BEEN RIGHT TO LEAVE THE PRESENTATION OF THE CANADIAN CASE TO BUREAUCRATS AND WHETHER IT OUGHT NOT TO HAVE BEEN HANDLED AT THE POLITICAL LEVEL (I SUSPECT THAT HE DOES NOT LOVE MR PITFIELD). I SAID THAT THE DIFFICULTY WAS, I UNDERSTOOD, AN INTERNAL TECHNICAL PARLIAMENTARY ONE ON WHICH NO CANADIAN COULD HELP, BUT I STRESSED THAT BRITISH MINISTERS WERE DOING THEIR UTMOST TO SECURE EARLY PASSAGE OF THE BILL, WISHED TO SEE IT COMPLETED AS SOON AS POSSIBLE, AND WERE WELL AWARE OF THE CANADIAN GOVERNMENT'S POLITICAL PROBLEMS, WHICH I HAVE REPORTED FULLY, AND OF THEIR ANXIETY FOR SPEED.

4. M. CHRETIEN TOOK ALL THIS SURPRISINGLY WELL AND SHOWED UNDERSTANDING OF OUR PROBLEMS. I PROMISED TO KEEP HIM INFORMED OF DEVELOPMENTS.

5. I SAID THAT THOUGH I HAD AS YET NO DETAILS I IMAGINED THAT THE PROCEDURAL PROBLEMS MIGHT HAVE BEEN BROUGHT UP BY THE OPPOSITION. HE SAID THAT HE MIGHT CONSIDER HAVING A WORD WITH MR HEALEY WHOM HE LOOKS ON AS AN OLD FRIEND.

6. TODAY'S TELEVISION AND RADIO REPORT THAT AN ANNOUNCEMENT SHOULD BE MADE IN LONDON TODAY AND THAT THE SECOND READING WILL BE NEXT WEEK. WHEN IT BECOMES CLEAR THAT THIS IS NOT SO, YOU AND WE MAY RECEIVE A FLOOD OF CANADIAN PRESS ENQUIRIES. AS I TOLD DAY THIS MORNING WE SHOULD LIKE EARLY GUIDANCE ON HOW TO DEAL WITH THESE. YOU WILL REALISE THAT ANYTHING SAID TO THE CANADIAN GOVERNMENT MAY BE LEAKED HERE. TODAY'S
CONFIDENTIAL

PRESS CLAIMS (PRESUMABLY ON THE BASIS OF FEDERAL GOVERNMENT BRIEFING) THAT THE QUEEN AND PRINCE PHILIP WILL NOW ARRIVE HERE ON 27 FEBRUARY AND THAT THE QUEEN WILL PROCLAIM THE CONSTITUTION ON 1 MARCH. THIS DOES NOT ACCORD WITH THE INFORMATION GIVEN TO ME BY DU BOULAY IN HIS LETTER OF 19 JANUARY AND MORE RECENTLY ON THE TELEPHONE. I ASSUME THAT THE LIKELY DATES FOR HER MAJESTY'S VISIT ARE STILL 20-23 MARCH, BUT SHOULD BE GRATEFUL FOR EARLIEST INFORMATION IF IN FACT EARLIER DATES ARE CONTEMPLATED.

7 I SHOULD ALSO BE GRATEFUL FOR DETAILS OF WHAT IS PLANNED FOR M. CHRETIEN'S VISIT WHEN THE DATE FOR THE SECOND READING IS SETTLED. THE CONSUL IN HALIFAX SAYS THAT THE PREMIER OF NEWFOUNDLAND, MR PECKFORD, HOPES TO WATCH THE DEBATE. SOME OTHER PREMIERS MAY ALSO CONCEIVABLY WANT TO GO.

8 I CANNOT RULE OUT THE POSSIBILITY THAT MR TRUDEAU MAY ORDER M. CHRETIEN TO GO TO LONDON IMMEDIATELY TO INVESTIGATE AND SORT OUT THE NEW DELAY (CF. PARA 4 OF YOUR TEL. NO. 19), BUT M. CHRETIEN AT LEAST KNOWS THAT THIS IS NOT LIKELY TO SERVE ANY USEFUL PURPOSE.

9 SINCE CANADA IS AN OFFICIALLY BILINGUAL COUNTRY AND THE LANGUAGE ISSUE IS A POLITICALLY SENSITIVE ONE, ESPECIALLY IN QUEBEC, ANY DISCLOSURE OR LEAK IN LONDON OF THE NATURE OF THE PROCEDURAL DIFFICULTIES IS LIKELY TO CAUSE INTENSE INTEREST HERE. IT WOULD BE HELPFUL IF WE COULD BE WARNED IF THIS LOOKS LIKE COMING OUT INTO THE OPEN.

MORAN

CANADIAN CONSTITUTION LIMITED
NAD
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P & CD
PDCF
PARLIAMENTARY UNIT
NEWS D
INFORMATION D
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PS/MR HURD
PS/LORD TREFURNE
PS/PUS
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PS/LORD PRESIDENT
MR BALLENGE TREASURY SOLICITORS
MR B STEEL, LAW OFFICERS' DEPT
PS/HOME SECRETARY

[COPYIES SENT TO NO 10 DOWNING ST]
From the Private Secretary

3 February, 1982.

Dear David

Canada

The Prime Minister held two discussions this afternoon about the next steps on the Canada Bill.

At the first of these, the following were present: the Lord President, the Lord Privy Seal, the Chancellor of the Duchy of Lancaster, the Attorney General, the Chief Whip, Sir Robert Armstrong and the First Parliamentary Counsel. The Lord President outlined possible difficulties which could arise at Second Reading stage. He put forward a handling proposal which he had discussed with a number of colleagues present at the meeting.

After some discussion of the advantages of proceeding in the way proposed, and alternatives, the Prime Minister asked that the Lord President should now bring the Home Secretary into the consultations, and should report his reaction to her as soon as possible. It would not be possible to initiate consultations with the Opposition until the Government had further refined its view of the best way forward.

Later, the Prime Minister resumed discussion with the Home Secretary, the Lord President and Sir Robert Armstrong. The Home Secretary said that, in the face of the various potential procedural problems, he judged that the Lord President's proposal offered the least unattractive way forward. The Prime Minister therefore agreed that the Lord President should now share his ideas with one or two influential Government back benchers, and refine the text of the necessary Motion, with a view to discussing matters with the Shadow Leader of the House on Monday, 8 February. This would allow the Shadow Cabinet to be informed on Wednesday, 10 February, and further steps might be taken on 11 February. Meanwhile, Sir Robert Armstrong should speak to Mr. Pitfield tonight, confirming that the Government had not found it possible to proceed with the Bill this week, and were now considering procedural problems connected with the two languages, which might prevent further progress next week.

The Prime Minister did not return to the question of contacts with Mr. Healey, but these should now presumably await the outcome of the Lord President's planned discussion with Mr. Silkin, given the
prominence of procedural questions at this stage. If matters follow the timetable which the Lord President has in mind at present, it might be appropriate for Mr. Healey to be seen late on Monday next, or on Tuesday.

I am sending copies of this letter to the Private Secretaries to those present at today's meetings. I should be grateful if recipients could ensure that knowledge of these conversations is kept to a minimum.

Yours ever

Mike Pattison

David Heyhoe, Esq.,
Lord President's Office.
Canadian Constitution

The Prime Minister saw your minute of 29 January in which you sought authority to make certain points to Mr. Pitfield about the procedure for the Second Reading of the Canada Bill.

While she expressed the view that the sooner the Bill went through, the better pleased she would be, there have, as you are aware, been subsequent developments which have made the line you propose to take with Mr. Pitfield inappropriate. The matter was further discussed at an ad hoc Ministerial meeting today, a record of which will be circulated shortly.

I am sending copies of this minute to Mr. Fall and Mr. Fuller (Foreign and Commonwealth Office), Mr. Heyhoe (Lord President's Office), Mr. Maclean (Chief Whip's Office), Mr. Pownall (Chancellor of the Duchy's Office, House of Lords) and Mr. Nursaw (Law Officers' Department).

3 February 1982
MR COLES

CANADA

We agreed that it would be helpful if I let you have a short note setting out the issues for discussion at the meeting on this subject this afternoon.

You have seen already Sir Robert Armstrong's minute of 29 January reporting his telephone conversation with Mr Pitfield; the Lord Privy Seal's minute of 1 February setting out the arguments for proceeding now to Second Reading; and Henry Steel's letter to me of 2 February giving the Attorney General's view on what might be said in the House about the legal position.

The points for decision now are:

(a) When to proceed to Second Reading
(b) What to say to the Canadians
(c) How to handle the Opposition

Among these the prime decision is of course when to proceed to Second Reading. There are three general areas which bear on this, namely international considerations, the legal position, and the Parliamentary situation. The international considerations clearly require us to move to Second Reading at the first opportunity and I believe that, subject to the Prime Minister's views, there is now

.../..
no legal impediment to doing so. This leaves the Parliamentary situation on which the position is as follows.

We know from private discussion with the House authorities that a number of Members have asked the Chair for a ruling on whether the Bill is amendable and whether the French parts of it are amendable in French. These Members claim that, if the Bill is to be properly considered in all its aspects, the House should be allowed to amend the French part of it as well as the English. The view of the House authorities is that, like any other Bill, the Canada Bill is amendable, however undesirable it would be if the Bill was actually amended. They also take the view that if amendments to the French parts of the Bill were omitted the scope for Points of Order, mischief and delay would be such that the Bill would not pass into legislation this Session.

If it is accepted - as the political arguments clearly indicate - that the option of removing the French parts of the text is not open to us, it then becomes necessary to devise Procedural means of surmounting the problem. To this end the Lord President and the Chief Whip have held urgent discussions with the House authorities yesterday and this morning. As a result of these, the position has been reached whereby a ruling might be given from the Chair that only amendments to the English text would be selected. However, it would also be necessary to effect similar safeguards to cover the proceedings in Committee, which might be done by means of a Procedural Motion to the effect that the question on the French parts of the Bill be put forthwith.

There would undoubtedly be a row in the House if this particular avenue for mischief is blocked off in the way described above. The
Lord President's view is, therefore, that there might be a three hour Debate on the Procedural Motion after the Speaker has made his ruling and before Second Reading. The effect of this would be to enable those Members who so wish / to let off steam; but would also make clear the rules of the game before the start and leave the field unencumbered by these Procedural points at the time of Second Reading.

I am sending a copy of this minute to the offices of those who will be attending the meeting this afternoon. Could I please stress the importance of preserving the confidentiality of this note.

D.H.
3 February 1982
With the Compliments of the Assistant Legal Secretary

H. STEEL

Attorney General’s Chambers,
Law Officers’ Department,
Royal Courts of Justice,
Strand. W.C.2A 2LL

01 405 7641 Extn. 3229
2 February, 1982

Dear [Name],

CANADA BILL

1. At yesterday afternoon's meeting the Attorney-General promised to give further thought to the exact formula which could be used in assuring the House that there was no impropriety in proceeding with the Bill despite the pending litigation. Having looked again at the exact circumstances of the 1949 Newfoundland precedent - and these were indeed rather special - and in the light of an informal discussion which I had with the Clerk to the Table Office, the Attorney-General now considers that it would not be advisable for him to use the formula which he originally had in mind, ie that "he is satisfied that the outstanding cases have no reasonable prospect of success". He does not regard himself as technically precluded (ie by the rules of order relating to matters that are sub judice) from saying that, but he has now come round to the Chief Whip's view that his doing so would be counter-productive in that it would excite a whole string of questions and points of order and might also irritate some of the judges by whom the cases in question are due to be heard.

2. Accordingly, the Attorney-General has now devised an alternative formula which should equally serve our purposes but which should not give rise to these problems. This formula, expressed in the terms which would be appropriate if the Attorney-General himself were addressing the House, is as follows:

/"I

CONFIDENTIAL
"I have carefully considered all the issues raised by the respective plaintiffs or applicants in the various cases touching on the Canadian Constitution that are now pending, at one stage or another, before the courts in this country and in Canada. Having regard, among other things, to the nature of those issues, to the way in which they have been presented to the courts and to what the courts themselves, both in this country and in Canada, have already said on the matter, I am satisfied that it is in no way improper for Parliament to proceed with this Bill without further delay and in particular without waiting for these cases — or any others that ingenuity may devise — to be disposed of by the courts."

3. This is as far as the Attorney-General considers that he can go in public, although his advice to colleagues remains that there is no reasonable prospect of success for the plaintiffs in any of the cases pending in the English courts. If the statement is to be used by some other Minister, it must be on the basis that this is the speaker's understanding of how the Attorney-General will advise the House if asked and not how he has in fact advised colleagues. The Attorney-General attaches considerable importance to this distinction being preserved since he does not wish to weaken in any way the convention that the advice given by the Law Officers to their colleagues is not normally disclosed. The Attorney-General hopes that it is also understood that neither he himself nor any other Minister using this formula can allow himself to go beyond it or to be drawn on its implications. To an intelligent listener the implications should in fact be clear enough, namely, that the Attorney-General does indeed consider that the litigation stands no chance of success.

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4. You will see that the first sentence of the suggested passage refers to litigation pending in Canada as well as in this country. The reference to Canadian litigation is a reference to the proceedings before the Supreme Court of Quebec. The Attorney-General has said that he would like to be briefed (at least in outline) about that case and about any other current cases before the Canadian courts. I assume that we can look to the FCO Legal Advisers for this.

5. I am copying this letter to the Private Secretaries to the Prime Minister, the Lord Privy Seal, the Lord Chancellor, the Chancellor of the Duchy of Lancaster and the Chief Whip and also to Sir Ian Sinclair (FCO).

H. STEEL

D Heyhoe Esq
Private Secretary to
The Lord President of the Council
Privy Council Office
London SW1
The Lord Privy Seal hopes to see Mr Healey at 1730 hrs today (Mr Healey is on his way back from Copenhagen). I have asked that if the meeting takes place as planned we should be given an immediate oral report on the outcome.

I understand that the Lord President may wish to speak to Mr Silkin at about the same time.

I have agreed with Mr Heyhoe and Mr Wright that in these circumstances there is little point in a meeting between the Prime Minister and the Lord President at 1530 hrs today. Since there is little prospect of a meeting during the evening (the Prime Minister's programme is full), I have suggested that the Lord President should think in terms of sending the Prime Minister a minute tonight setting out his views on Parliamentary handling and what should be said to the Canadians.

I have also agreed with Mr Wright, who is consulting Sir Robert Armstrong, that if the latter feels he must speak to Mr Pitfield today he could say that it will be clear to him that we have not been able to meet the Canadian request to hold the second reading this week, that the idea of the second reading taking place next week is being sympathetically considered and that he (Sir Robert Armstrong) hopes to ring Mr Pitfield again tomorrow on this point.

2 February, 1982
LORD PRESIDENT OF THE COUNCIL

SECOND READING OF THE CANADA BILL

1. You will know that the Court of Appeal unanimously rejected the claim of the Alberta Indians that the British Government still retained obligations towards them.

2. The Court refused the applicants leave to appeal to the House of Lords. It is open to them within the next 28 days to petition the Appeals Committee of the House of Lords to be heard, and we expect them to do this. However, the FCO Legal Adviser considers that such a petition is unlikely to succeed.

3. In terms of Anglo-Canadian relations there is every reason to proceed as fast as is reasonably possible. We are under strong pressure from the Canadian Government not to delay the Second Reading. In his letter of 13 January to the Prime Minister, Mr. Trudeau specifically asks if Royal Assent could be given to the Canada Bill by 15 March when the Quebec Court of Appeal begins to hear the case filed by the Province of Quebec in which they claim to have a veto over the constitutional proposals. While it may be very difficult to meet this request, there would be advantage in at least having made substantial progress by that date. Furthermore, the British Government has undertaken to proceed as rapidly as is feasible.

4. Against this background my view is that we should proceed to Second Reading, and make the announcement on Thursday next, for the following reasons:

(i) The decision of the Court of Appeal was unanimous in holding that any obligations to the Indians were now Canada's and that the British courts therefore had no jurisdiction;

(ii) The Court of Appeal refused the Indians leave to appeal;

(iii) The Foreign Affairs Committee (FAC) in its First Report concluded that Indian rights and interests were among the many topics connected with the welfare of Canada and its peoples which could not rightly be made the subject of deliberation by the UK Parliament in dealing with a request for amendment or patriation of the BNA Acts. They confirmed this view in their Third Report;

(iv)
(iv) In relation to Quebec the Third Report of the FAC published on 18 January confirmed the views expressed in the First Report and concluded that "We consider that it would be proper for the UK Parliament to enact the proposals, notwithstanding that they will directly affect the powers of the Canadian provinces and are dissented from by one of these provinces, Quebec";

(v) The agreement of nine out of the ten provinces amply meets the test imposed by the Supreme Court of Canada as to a substantial measure of provincial consent for Canadian legal and constitutional purposes;

(vi) Indian groups from British Columbia and Saskatchewan have taken the first steps to initiate further legal proceedings in this country. It is not impossible that still further groups may seek to do so. A decision to await the outcome of all further litigation would delay matters indefinitely; and, subject to the views of the Attorney-General, the proceedings instituted by the Indian groups from British Columbia and Saskatchewan stand no reasonable prospect of success in the courts.

5. Against these arguments for going ahead there is the outside chance that any application made to the Appeals Committee of the House of Lords for leave to appeal to the House of Lords would be granted. Since the appellants could decide to wait the full 28 days before even applying to the Appeals Committee and given the legal advice that the application would be likely to fail I do not think that we would be justified in delaying merely against that eventuality. Discreet soundings indicate that the earliest that a petition to appeal to the House of Lords could be heard is 22 February, and that the end of March is a more likely date. In my view the prospect of delay of this order strengthens the case for proceeding now with Second Reading. If an application for leave to appeal were, contrary to expectations, granted, we could consider the possibility of deferring the next stage in the Parliamentary procedure.

6. You will know that apart from some backbench opposition to the Bill on both sides of the House in Opposition leadership has expressed the view that we should not proceed with legislation until all possibilities of appeal (implicitly in the Alberta case) have been exhausted. That was of course before the decisive judgement of the Court of Appeal. If colleagues agree that we should go ahead with Second Reading, it would however clearly be desirable at an early stage for one of us to have a word privately with Denis Healey.
7. I am copying this minute to the Prime Minister, Lord Chancellor, Chancellor of the Duchy of Lancaster, Chief Whip and Attorney-General.

1 February 1982

PS I have just seen a copy of Sir Robert Armstrong's minute of 29 January regarding his telephone conversation with Mr Pitfield. I do not think this alters any of the points above but it serves to show the strength of pressure the Canadians are bringing to bear on us to make progress.
Canadian Constitution

Within hours of the unanimous judgment handed down by the Appeal Court yesterday in the Albertan Indians' case the Canadian Government have been in touch to find out when we will be arranging for the Second Reading of the Canada Bill, and to urge that we arrange for it this coming week - rearranging business in the House if need be. The Canadian Secretary of the Cabinet, Mr. Michael Pitfield, telephoned me about this yesterday evening, I also received a call yesterday afternoon from the Canadian High Commissioner's special counsellor for the constitution, Mr. Reeves Haggan.

2. Both Mr. Pitfield and Mr. Haggan expressed satisfaction with the unanimous judgment, particularly for its clarity and lack of ambiguity. The absence of the defence counsel, Mr. Louis Blom-Cooper, in court yesterday meant that the question of an appeal to the House of Lords was not raised, but an application for leave to appeal to the House of Lords was made and refused today.

3. The Canadians will now be looking to the earliest possible Second Reading of the Bill. They hope that this need not be held up either to await the outcome of an application by the Alberta Indians to the Appeals Committee of the House of Lords, or to allow the case which is being brought in the Chancery Division by the British Columbia, Manitoba and Ontario Indians to take its course. I have explained to both Mr. Pitfield and Mr. Haggan that, before a decision can be taken on the date of Second Reading, the Government will have to examine the judgment, and assess its effect on feeling in the House. In the light of these factors, the Business Managers will have to decide how they think they can best assure the Bill of a smooth passage through its Second Reading. I have also pointed out that the business of the House for next week has already been agreed with the Opposition and announced in the House. This would seem to point to the week of 8th February as the earliest possible timing for the Bill's Second Reading.
4. Both Mr. Pitfield and Mr. Haggan have asked if it would be possible for exceptional measures to be taken to include the Second Reading in next week's business. Mr. Pitfield said that there were four reasons why the Canadian Government hoped that, even though business had been announced, it might still be possible for the Second Reading of the Bill to take place next week. These were:

(a) President Reagan's economic policies and United States interest rates were causing such trouble for the Canadian economy that the Canadian Government were likely to summon a National Economic Conference at the end of February. The NEP was likely to resist, and to seek to persuade the trade unions to resist, an invitation to participate in such a Conference. The Federal Government were expecting acute difficulties in the Canadian Parliament, and would like to have the Constitution Bill well and truly out of the way before they were faced with these problems in late February or early March.

(b) For symbolic reasons, the Canadians would like to mark Canadian Flag Day (formerly Heritage Day) on 15th February with the patriation of the Constitution.

(c) The Canadian Government remained very keen that The Queen should visit Canada for the formal patriation of the Constitution. They knew that The Queen would be free to visit Canada for this purpose on 15th February. Thereafter a visit by The Queen might be more difficult.

(d) It was crucial for internal constitutional reasons (the relationship between the Federal Government and the Provinces) that patriation should take place before the Quebec Court case on the right of veto of the Quebec Government. This was due to begin on 15th March. It might be very difficult to find a time after 15th February, but before the Quebec case began, when patriation could take place and when The Queen would be able to visit Canada.
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5. Mr. Pitfield explained that for all the reasons, the Canadians hoped that it might be possible to avoid delay and arrange for the Second Reading next week. I emphasised that this would be most exceptional, that Parliamentary time was already committed to Bills which had a tight timetable and that the Business Managers had always believed that the Bill was likely to have a smoother passage if there were no attempt to rush it. I thought it virtually impossible to complete the Bill in time for The Queen to visit Ottawa for a patriation proclamation on 15th February. But I undertook to convey the Canadians' wish to both the Prime Minister and the Lord President so that they could be considered. I said that I would let Mr. Pitfield know the British Government's views as soon as possible.

6. I have learnt from the Palace that, if (as they accept) the proclamation ceremony cannot be held on 15th February, The Queen and the Duke of Edinburgh could not conveniently go to Canada before 22nd March.

7. I do not suppose that there can be any question of changing next week's Parliamentary business, and I do not think it reasonable of the Canadians to ask for that. But I can see their reasons for hoping that the proceedings at Westminster will be complete before the Quebec case in the Supreme Court of Canada begins on 15th March. I wonder whether I might be authorised to say to Mr. Pitfield:

(1) It is not now possible, and would not help progress on the Canada Bill, to change next week's business and rush Second Reading next week.

(2) The present intention is to take Second Reading early in the week beginning 8th February, and to complete remaining stages in the House of Commons as soon as possible thereafter.

(3) It will not be possible to complete the passage of the Bill in time for a proclamation in Canada on 15th February.

(4) We obviously cannot commit ourselves at this stage to a definite or precise prediction on the Bill's progress at Westminster; we have to see how Second Reading goes. But we see the desirability, from the Canadian point of view, of getting the Bill through all its stages here if possible, or at least as far advanced as possible, by 15th March when the Quebec case comes before the Supreme Court of Canada, and our aim will be to complete the Bill with those considera-
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tions very much in mind, and as quickly as is consistent with its smooth passage.

(5) My understanding is that, if Westminster can complete the Bill by the middle of March, that would be consistent with The Queen's availability to come to Canada (though that is of course nothing to do with the British Government).

8. I am sending copies of this minute to Mr. Fall and Mr. Gomersall (Foreign and Commonwealth Office), Mr. Heyhoe (Lord President's Office), Mr. Maclean (Chief Whip's Office), Mr. Pownall (Chancellor of the Duchy's Office, House of Lords) and Mr. Nursaw (Law Officers' Department).

[Handwritten note]

[Signature]

Robert Armstrong

29th January 1982

[Handwritten note]

This was not acted upon because the situation changed. See later.
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UNCLASSIFIED

GRS 732
UNCLASSIFIED

FM PG 281930Z JANUARY 1982
TO IMMEDIATE OTTAWA
TELEGRAM NUMBER 34 OF 28 JAN
MIPT

EX PARTE INDIAN ASSOCIATION OF ALBERTA

1. THIS MORNING THE COURT OF APPEAL, COMPOSED OF DENNING MR,
KERR LJ AND MAY LJ, UNANIMOUSLY REFUSED THE INDIAN ASSOCIATION’S
APPLICATION FOR A DECLARATION THAT OBLIGATIONS UNDER THE INDIAN
TREATIES AND THE ROYAL PROCLAMATION OF 1763 WERE OWED, OR WERE
STILL OWED, BY HMG IN THE UK. THE GROUNDS OF THE THREE JUDGMENTS
DIFFERED IN DETAIL.

2. DENNING MR’S VIEW WAS THAT OBLIGATIONS UNDER THE TREATIES
AND UNDER THE ROYAL PROCLAMATION WERE OWED BY HMG IN THE UK AT
LEAST UNTIL THE TIME OF THE BALFOUR DECLARATION IN 1926, NOT-
WITHSTANDING THE TRANSFER OF EXECUTIVE AND LEGISLATIVE POWER BY
VIRTUE OF THE BRITISH NORTH AMERICA ACT 1867 AND IN PARTICULAR
SECTION 91(24) WHICH RELATES TO INDIANS AND LAND RESERVED FOR
INDIANS. HE HELD THAT THE TRANSFER WAS CONFIRMED BY THE STATUTE
OF WESTMINSTER 1931. HE CONCLUDED THAT IT WAS NOT PERMISSIBLE TO
BRING AN ACTION IN THE UK ON OBLIGATIONS WHICH WERE NOW OBLIGATIONS
OF CANADA. EVEN IF CANADA WAS NOT COMPLETELY INDEPENDENT
BECAUSE OF THE RESIDUAL POWER TO AMEND THE BRITISH NORTH
AMERICA ACT CONTAINED IN SECTION 7 OF THE STATUTE OF WESTMINSTER,
THE CANADA BILL, WHICH WAS DESIGNED TO GIVE COMPLETE INDEPENDENCE
TO CANADA, DID CONTAIN SAFEGUARDS FOR THE STILL SUBSISTING
OBLIGATIONS TOWARDS CANADIAN INDIANS WHICH SHOULD BE HONOURED
‘AS LONG AS THE SUN RISES AND RIVER FLOWS’.

3. KERR LJ, WITH WHOSE JUDGMENT MAY LJ’S JUDGMENT BROADLY
COINCIDED, SAID THAT THE QUESTIONS RAISED BY THE APPLICANTS
RELATED NOT JUST TO ALBERTA, NEW BRUNSWICK AND NOVA SCOTIA, BUT
APPLIED THROUGHOUT CANADA AND THE IMPORTANT ISSUES WERE THE
PATTERN OF THE TREATIES AND THE 1763 PROCLAMATION. HE SAID THAT
ALL SIDES ACCEPTED THE BINDING EFFECT OF THESE INSTRUMENTS AND

/THAT

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THAT THE OBJECT OF THE PROCEEDINGS WAS THEREFORE PRINCIPALLY POLITICAL. NEVERTHELESS, THE PARTIES WERE READY TO HAVE DETERMINED THE QUESTION WHERE THE RECOGNISED OBLIGATIONS RESIDED. HE SAID THAT IT WAS SETTLED THAT ALL RIGHTS AND OBLIGATIONS OF THE CROWN CAN ONLY ARISE IN RESPECT OF GOVERNMENT IN A PARTICULAR TERRITORY. HE APPROVED THE VIEW THAT THERE COULD BE SAID TO HAVE BEEN LOCAL ADMINISTRATIONS HAVING OBLIGATIONS TOWARDS INDIANS EVEN BEFORE THE 1867 ACT, BUT SUBSEQUENT DEVELOPMENTS PUT THE ISSUE BEYOND DOUBT. SPECIFICALLY, THE BRITISH NORTH AMERICA ACT TRANSFERRED RESPONSIBILITY FOR EVERY ASPECT OF INTERNAL GOVERNMENT TO CANADA. MAY LJ SUPPLEMENTED THESE LINES OF ARGUMENT, SAYING THAT THERE WAS A FUNDAMENTAL MISUNDERSTANDING OF THE CONSTITUTIONAL POSITION: THE CROWN WAS NO LONGER INDIVISIBLE AND SINCE WE WERE CONCERNED WITH A CONSTITUTIONAL MONARCHY, THE REFERENCE TO THE CROWN IN RIGHT OF A PARTICULAR TERRITORY WAS IN FACT A REFERENCE TO THE GOVERNMENT OF THAT TERRITORY. HE TOOK THAT SEPARATE GOVERNMENT IN CANADA HAD BEEN RECOGNISED RELATIVELY EARLY, BUT THAT THE ISSUE WAS IN ANY EVENT SETTLED BY THE 1867 ACT. HE WENT ON TO SAY THAT IN HIS VIEW, THE UK COURTS HAD NO POWER TO ADJUDICATE ON OR INTERFERE IN CANADIAN AFFAIRS. ENFORCEMENT OF INDIAN RIGHTS COULD ONLY BE WITHIN CANADA AND THE MERITS HAD BEEN DEALT WITH IN EFFECT ONLY SO THAT THE INDIANS COULD FEEL THAT THEY HAD HAD THEIR DAY IN COURT. IN SUMMARY, THE COURT DECIDED TWO TO ONE THAT RESPONSIBILITIES FOR INDIAN RIGHTS UNDER THE PROCLAMATION AND THE SUBSEQUENT TREATIES WERE CANADIAN OBLIGATIONS AT THE LATEST WITH THE BRITISH NORTH AMERICA ACT 1867, OR ALTERNATIVELY, ACCORDING TO DENNING M WITH THE STATUTE OF WESTMINSTER 1931. THE COURT CONCLUDED UNANIMOUSLY THAT ANY REMEDIES IN RELATION TO THESE OBLIGATIONS WHICH WERE NOW CANADA'S, MUST BE SOUGHT IN THE CANADIAN COURTS. DENNING MR'S JUDGMENT GAVE SOME CONSIDERATION TO THE CANADA BILL, FINDING THAT INDIAN RIGHTS WERE IN FACT SAFEGUARDED.

CONCLUSION

4. THIS JUDGEMENT DOES NOT DISPOSE OF THE APPLICATION BY MANUEL ET AL IN THE CHANCERY DIVISION WHICH RAISES ISSUES ABOUT

/CONSENT
CONSENT OF VARIOUS PARTIES IN CANADA TO REQUESTS FOR PATRIOTISM. COUNSEL FOR MANUEL ET AL MADE IT CLEAR THAT HIS CLIENTS INTENDED TO PURSUE THEIR OWN REMEDIES, NOTWITHSTANDING THE DECISION OF THE COURT OF APPEAL. INDEED, THEIR ACTION IS MORE AKIN TO A REPLAY OF THE CASE BEFORE THE CANADIAN SUPREME COURT LAST YEAR. NEVERTHELESS, PASSAGES IN ALL THREE JUDGMENTS IN THE ALBERTA CASE TO THE EFFECT THAT CANADIAN OBLIGATIONS CAN BE LITIGATED ONLY IN CANADA SHOULD BE HELPFUL IN DEALING WITH THE CHANCELLOR ACTION.

CARRINGTON

CANADIAN CONSTITUTION LIMITED
MAD
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PS
PS/PS
PS (MR. LUCE)
PS (MR. HURI)
PS (LORD TREPHERRNE)
PS/PUS
SIR E. YOUD
MR. DAY
MR. URE
LORD N. G. LEMMOI
CABINET OFFICE

COPIES TO:
SIR R. SINCLAIR
MR. FREELAND
DR. PARRY

PS/CHANCELLOR OF THE DUCY OF LANCAS TER
PS/ LORD CHANCELLOR HOUSE OF LORDS
PS/ LORD PRESIDENT
MR. H. STEEL, LAW OFFICERS' DEPT
PS/HOME SECRETARY

MR. BAINEY, TSO 8015

COPIES SENT TO
NO. 10 DOWNING STREET
THE PRIME MINISTER

PRIME MINISTER'S PERSONAL MESSAGE

SERIAL No. T 15/82

25 January 1982

Dear Pierre,

Thank you for your letter of 13 January in which you expressed concern at the possibility of further delays in the passage of the Canada Bill through the United Kingdom Parliament.

I fully appreciate the difficulties which you describe. As you know, I am equally anxious for a speedy passage of the Bill. However, the Indian cause has attracted some support at Westminster and I have no doubt that, had we proceeded with Second Reading before the courts had considered the Alberta case, we would have aroused substantial opposition to the Bill. We expect to know the decision of the Court of Appeal in the very near future and in the light of that we shall be considering urgently how best to proceed in Parliament. We certainly have no wish to delay matters and I assure you that we shall have very much in mind the points made in your letter and in other recent exchanges between our Governments.

As regards Quebec you will have seen my reply to the letter from Mr. Levesque to which you refer.

I agree that we must continue to keep closely in touch about all this.

Prime Minster

Canada Bill

Mr. Trudeau wrote on 13 February.

2. The judgement in the Alberta Indian case is likely to be delivered tomorrow (Tuesday) or Wednesday.

3. I am inclined to think it would be better to get a reply up before we know the terms of the judgement. Otherwise, the matter may have to be considerably more complicated. If you agree you may wish to sign the attached.

A. F. C. 25/1
Thank you for your letter of 18 December and for your generous remarks about my part in the process of patriating the Canadian Constitution. As you know, we are not yet over the final hurdles here (and I shall be replying shortly to your further letter on this), but I do assure you that we are determined to press ahead as speedily as possible. We shall all be very pleased when Canada's Constitution is finally home. As you say we shall then be able to pay more attention to the many other aspects of relations between Canada and Britain.

It is kind of you to invite me to visit Canada. In principle I should be delighted to do so. I am afraid that there is very little space in my diary for 1982 and I had to decide some time ago that it was unlikely that I should be able to add to existing travel plans for this year. Can I suggest that I get in touch with you in due course to discuss the possibility of a visit either at the turn of the year or rather later in 1983. I very much want to take up your kind invitation but cannot yet see my way clear on dates.

(sgd) M T

The Right Honourable Pierre Elliott Trudeau, P.C., M.P.
25 January 1982

Canada

Thank you for your letter of 20 January suggesting a draft reply from the Prime Minister to Mr. Trudeau's letter of 18 December inviting her to visit Canada.

The Prime Minister decided to reply in slightly more non-committal terms than was suggested in your letter. I enclose a copy of her reply and should be grateful if you would arrange for its onward delivery. In that connection, may I point out that the Canadian High Commissioner, in forwarding Mr. Trudeau's letter of 11 January, stated that she looked forward to receipt of the Prime Minister's reply. You may therefore care to inform her of its contents.

AJC

R.M.J. Lyne, Esq.,
Foreign and Commonwealth Office.
PRIME MINISTER

VISIT TO CANADA?

Please see the attached FCO advice on your response to Mr. Trudeau's recent letter inviting you to visit Canada.

The FCO are keen that you should make a fairly firm commitment to visit Canada some time in 1983. I think there are good reasons for a visit some time. During the discussion of the Constitutional issue, other aspects of our relations with Canada have had to take second place. But I doubt whether you will wish to make any firm commitment about 1983 now. It may be that an opportunity will arise for a visit to Washington, which could be combined with a short visit to Canada. But it will be easier to consider this later this year.

If you agree you may care to sign the attached reply to Mr. Trudeau which welcomes the idea of a visit either at the turn of the year or rather later in 1983 but avoids any firm commitment.

22 January 1982
Letter from Mr Trudeau

With your letter of 15 January you enclosed a letter to the Prime Minister from Mr Trudeau.

We were initially inclined to recommend that a reply to Mr Trudeau should be delayed until after the delivery of the judgement of the Court of Appeal in the Alberta Indians case. However the judgement is not now expected until next week and it will not be possible for Ministers then to make an instant decision on the handling of the Second Reading of the Canada Bill. In any case we cannot anticipate the Ministerial decision. If Second Reading goes ahead immediately Mr Trudeau's present concerns will largely disappear. If, however, Ministers decide to delay Second Reading a more elaborate explanation will have to be given to the Canadians.

On reflection therefore it seems better to send a holding reply in advance of the Court's judgement. Mr Trudeau's concern about Quebec is a real one but we think it best to do no more at this stage than indicate that we have taken the point on board. I attach a draft which incorporates suggestions made by the Lord President.

At the end of his letter Mr Trudeau refers to an undertaking allegedly given by Mr Pym to Mrs Waddes that we would consult with the Canadians about how to proceed following the court of Appeal's ruling. Mr Pym did not in fact make such a commitment although he did undertake (in their conversation on 12 January) to keep the Canadians informed of our thinking. We have made this clear to the High Commission here and do not recommend raising the point in the Prime Minister's reply. We should in any case need to inform the Canadian High Commission in advance of any public announcement, if it were decided not to proceed promptly with Second Reading in the light of the Court of Appeal's ruling.

The draft reply has the approval of the Lord Privy Seal, but has not yet been seen by Lord Carrington. If the Foreign and Commonwealth Secretary has any additional comments I shall let you know on Monday morning.

I am copying this letter and enclosure to David Heyhoe (Lord President's Office), Michael Collon (Lord Chancellor's Office), Henry Steel (Law Officers' Department) and David Wright (Cabinet Office).

(R M J Lyne)

A J Coles Esq
10 Downing St

Private Secretary
CONFIDENTIAL

FM OTTAWA 217352 JAN 82
TO PRIORITY FCO
TELEGRAM NUMBER 36 OF 21 JANUARY

YOUR TELNO 19: CANADA BILL

1. MANY THANKS. I TOLD MICHAEL KIRBY LAST NIGHT HOW MATTERS STOOD. I STRESSED ALL THAT WE WERE DOING TO SECURE SWIFT PASSAGE OF THE BILL BUT REMINDED HIM OF THE LORD PRESIDENT'S VIEW THAT ANY ATTEMPT TO RAILROAD IT THROUGH MIGHT MAKE MPS MULISH AND PROLONG DEBATE. HE SAID HE UNDERSTOOD THIS. I SAID THAT THE POSSIBLE FLYING VISIT BY M. CHRETIEN DID NOT SEEM A VERY GOOD IDEA AS IT WOULD PROBABLY ATTRACT PUBLICITY AND PROMOTE SPECULATION THAT SOME CRISIS HAD ARisen. NOR DID IT SEEM NECESSARY. HMG WERE FULLY AWARE OF THE CANADIAN ANXIETY FOR SPEED AND WE WOULD KEEP THEM INFORMED.

2. KIRBY SAID THAT THE IDEA OF THE CHRETIEN VISIT WAS MR TRUDEAU'S AND HAD EMERGED AT A MEETING OF TRUDEAU, PETFIELD AND HIMSELF. IT WAS NOT M. CHRETIEN'S. HE HAD ONLY BEEN TOLD ABOUT IT (BY KIRBY) YESTERDAY AFTERNOON. KIRBY SAID THAT TRUDEAU WAS DESPERATELY ANXIOUS TO GET THE CANADA BILL THROUGH BEFORE 15 MARCH. IF NOT IT WOULD BE NECESSARY FOR THE FEDERAL GOVERNMENT TO ARGUE IN THE SUPERIOR COURT OF QUEBEC THAT QUEBEC DID NOT HAVE A VETO. THEY BELIEVED THIS WAS RIGHT, BUT TO ARGUE IN THIS SENSE WOULD BE TO RUN COUNTER TO THE LIBERAL PARTY'S ENTIRE PHILOSOPHY FOR THE LAST HUNDRED YEARS AND TO MR TRUDEAU'S OWN POLITICAL LIFE-WORK. IT WOULD BE PROFOUNDLY DAMAGING AND DIVISIVE IN QUEBEC, HENCE MR TRUDEAU'S CONCERN.

3. I SAID THAT WE RECOGNISED MR TRUDEAU'S ANXIETIES BUT BRITISH MINISTERS WERE FULLY AWARE OF THEM. AFTER MY LUNCHEON WITH MR TRUDEAU ON 3 DECEMBER (AT WHICH KIRBY WAS PRESENT) I HAD REPORTED HIS CONCERN. MR PITFIELD HAD EMPHASISED IT TO SIR ROBERT ARMSTRONG ON 5 JANUARY SAYING THAT MR TRUDEAU HAD WONDERED WHETHER TO SPEAK DIRECT TO THE PRIME MINISTER BUT HAD DECIDED AGAINST DOING SO; HE KNEW SHE WOULD UNDERSTAND HIS POSITION AND KNEW SHE HAD PLENTY OF OTHER THINGS TO THINK ABOUT. NEVERTHELESS MR TRUDEAU HAD WRITTEN TO MRS THATCHER ON 13 JANUARY. MRS WADDS HAD SEEN THE LORD PRESIDENT ON 12 JANUARY. I SAID THAT SPEAKING PERSONALLY I THOUGHT THAT THE CANADIANS WERE RESKING CAUSING IRRITATION BY HAMMERING AWAY AT BRITISH MINISTERS IN THIS WAY. I SUGGESTED THAT KIRBY SHOULD ADVISE CANADIAN MINISTERS TO BE PATIENT AND LEAVE MATTERS IN THE HANDS OF BRITISH MINISTERS, WHO WERE REALLY DOING THEIR UTMOST.

CONFIDENTIAL / 4. KIRBY
4. Kirby said that he would put these points to Mr. Trudeau, but thought it best to do so only after the judgement by the Court of Appeal. I said that after the judgement British Ministers would probably need a day or two to consider the legal and political implications and decide what to do about the second reading.

5. I told Kirby that I was surprised that someone concerned with organising the ceremonial for the patriation had apparently briefed the press here, saying that though the timing might slip, the National Arts Centre had been booked for 14 and 15 February. Since the last they had heard from HMG had been Mr. Pym's word to M. Chretien that the whole process might be complete by March or April, this seemed odd. Kirby said that he was very sorry about these press reports. What had been said had not been authorised and Canadian Ministers now realized that mid-February was not realistic. He was investigating.

6. What Kirby says confirms that Mr. Trudeau's concern is, as always, with Quebec, which is far more important to him than any other part of Canada. He is engaged in an all-out struggle with M. Levesque (my Telno 689 and Telno 20 saving) and clearly thinks that to oppose the (mythical) concept of the Quebec veto will do him enormous harm in Quebec, by suggesting that Quebec is simply a province quote comme les autres unquote while Levesque will make the much more attractive case that it has a special status as the home of one of the two founding peoples of Canada. Half the Liberal Party's MPs represent Quebec constituencies. If the party loses ground there to the Parti Quebecois in the federal context, its grip on power in Ottawa might be destroyed. Hence Mr. Trudeau's passionate desire to secure early patriation which he thinks would overtake the veto judgement. We clearly need to take into account how important this is to Mr. Trudeau both personally and in party political terms even though our Governmental and Parliamentary handling of the Canada bill can hardly be determined by this single consideration.
7. ONCE THE JUDGEMENT IS DELIVERED KIRBY AND PITFIELD WILL CONFER WITH TRUDEAU AND WE MUST, I FEAR, EXPECT RENEWED PRESSURE. I THINK IT WOULD THEREFORE BE USEFUL IF I COULD BE AUTHORIZED TO TELL MR TRUDEAU OR HIS ADVISERS AT THE EARLIEST POSSIBLE MOMENT AFTER THE JUDGEMENT WHAT HMG PROPOSE ABOUT THE HANDLING OF THE BILL AND THE LIKELY TIMETABLE SO FAR AS WE CAN JUDGE THAT. WE MAY NEED TO BE FIRM.

MORAN

[this telegram was not advanced]
UNCLASSIFIED
FM OTTAWA 2116402 JAN 82
TO ROUTINE FCO
TELEGRAM NUMBER 37 OF 21 JANUARY

MY TELNO 25: CANADIAN CONSTITUTION: PRIME MINISTER'S LETTER
TO THE PREMIER OF QUEBEC

1. ON RECEIVING MRS THATCHER'S LETTER M. LEVESQUE AT ONCE
RELEASED IT TO THE PRESS AND ACCUSED MRS THATCHER QUOTE DE MANQUER
DE QUOTE FAIR PLAY QUOTE ENVERS LE QUEBEC QUOTE. HE CLAIMED
THAT HER ATTITUDE MIGHT HAVE SERIOUS CONSEQUENCES. HE ASSERTED
THAT HER ARGUMENT THAT THE CASE BEFORE THE QUEBEC SUPERIOR
COURT WAS AN INTERNAL CANADIAN AFFAIR DID NOT HOLD WATER BECAUSE
EVERYONE, INCLUDING THE BRITISH PARLIAMENT, HAD A WaitED WITH
INTEREST THE DECISION OF THE SUPREME COURT OF CANADA. QUEBEC
HAD ACTED IN GOOD FAITH WITH EVERYONE, INCLUDING SEVERAL BRITISH
MPs, BUT THE BRITISH GOVERNMENT HAD NOT SHOWN THE SAME SENSE OF
FAIR PLAY WITH QUEBEC BECAUSE IT FEARED UPSETTING ENGLISH SPEAKING
CANADA. HE HOPED THE BRITISH PARLIAMENT WOULD BE FAIRER TOWARDS
QUEBEC THAN MRS THATCHER. QUEBEC MEANWHILE WOULD CONTINUE TO
MAKE EVERY EFFORT TO PUT THEIR CASE IN LONDON WITH THOSE WHO
WERE SYMPATHETIC.

MORAN

[THIS TELEGRAM WAS NOT ADVANCED]
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PS/LORD CHANCELLOR HOUSE OF LORDS
PS/LORD PRESIDENT

MR H STEELE, LAW OFFICERS' DEPT
PS/HOME SECRETARY

MR BAILEY TREASURY SOLICITORS

MR DAY
MR URE

LORD N G LENNOX

CABINET OFFICE
Dear John,

Canada

Thank you for your letter of 12 January enclosing one from the Canadian High Commissioner, which in turn forwarded a letter dated 18 December 1981 from Mr Trudeau inviting the Prime Minister to visit Canada. You suggested that the Prime Minister would not wish to make a firm commitment at this stage.

There has been a virtual moratorium on ministerial visits to Canada since mid-1980 in order to avoid possible embarrassing involvement with the Constitution. The last British Prime Minister to make a bilateral visit to Canada was Mr Callaghan in 1976. After the strains of the last eighteen months, once patriation is achieved we shall want to take all opportunities to develop the positive potential of relations between Britain and Canada. Lord Moran has already expressed his support for more ministerial visits to this end and acceptance by the Prime Minister of Mr Trudeau's invitation would be the most impressive demonstration of our intentions.

We understand that there is little or no scope for the Prime Minister to accept further invitations for overseas visits in 1982 beyond those already planned. However, in view of the Prime Minister's sympathetic reaction to the idea of a visit in her telephone conversation with Mr Trudeau on 5 December, and given the other considerations outlined above, we hope that the Prime Minister would see her way to accepting the invitation in principle. We therefore recommend that she should reply to Mr Trudeau's invitation that she would welcome a visit to Canada in 1983. I attach a draft reply to Mr Trudeau in this sense.

In considering this invitation you may like to bear in mind that Lord Carrington has agreed in principle to visit Canada at the invitation of the Canadian Secretary for External Affairs, Mr MacGuigan. Assuming settlement of the constitutional question by then, we intend to propose that Lord Carrington should go to Canada for a few days in September en route to the UN General Assembly. We also intend to pursue the idea of a visit by Mr Luce earlier in the summer, again depending on the progress of patriation.

We shall be letting you have a separate draft reply as soon as possible to Mr Trudeau's latest letter to the Prime Minister dated 13 January, (on the assumption that you will wish to keep the questions of a visit and of the Constitution separate). But the present reply has been drafted with the second letter in mind.

Yours ever,

(R M J Lyne)
Private Secretary

A J Coles Esq
10 Downing St
Thank you for your letter of 18 December and for your kind words about my part in the process of patriating the Canadian Constitution. As you know, we are not yet over the final hurdles here (and I shall be replying shortly to your further letter on this), but I do assure you that we are determined to press ahead as speedily as possible. It will be an occasion of great pleasure to all of us here when Canada's Constitution is finally home. As you say in your letter, we shall then be able to devote more attention to the many other aspects of the relationship between Canada and Britain.

Your letter renews your invitation for me to visit Canada. I should be delighted to accept. I fear that because of the extent of my existing commitments for overseas travel in 1982, I have already had to draw a line as far as undertaking any new visits is concerned. May I suggest therefore that we think in terms of a visit in 1983? I hope this will be acceptable to you.
Prime Minister

Canada bill

you will wish to be aware of Trudeau's latest letter.

A.F.C. 15

T.A. 15
GRS 360

CONFIDENTIAL

FROM OTTAWA 158336Z JAN 82
TO PRIORITY FCO
TELEGRAM NUMBER 29 OF 15 JANUARY

MY TELNO 9: CANADA BILL; VISIT BY MR. STANLEY CLINTON DAVIS MP.

1. MR CLINTON DAVIS CAME TO SEE ME ON 14 JANUARY AT THE END OF HIS VISIT TO CANADA AS THE GUEST OF THE CANADIAN INDIANS. HIS TRIP INCLUDED VISITS TO INDIAN RESERVATIONS IN ALBERTA AND BRITISH COLUMBIA. HE CLEARLY SYMPATHISES WITH THE INDIANS, WHOSE SEVERELY DISADVANTAGED GROUP COMPARED WITH THE MAJORITY OF CANADIANS, BUT REALISES THE COMPLEXITY OF THE PROBLEM AND THE EFFORTS OF THE CANADIAN GOVERNMENT TO IMPROVE THE CONDITION OF THE NATIVE PEOPLES. HE ALSO RECOGNISES THAT BRITAIN HAS LONG CEASED TO HAVE ANY DIRECT RESPONSIBILITY FOR INDIANS IN CANADA, THOUGH HE SAYS THAT THIS WILL NOT DETER MANY OF HIS COLLEAGUES FROM CHAMPIONING THE INDIAN CAUSE. HIS STRONGEST IMPRESSION SEEMS TO HAVE BEEN THE PROFOUND MISTRUST BY INDIANS OF THE FEDERAL GOVERNMENT AND "WHITE MEN" IN GENERAL. THIS COLOURS DEALINGS BETWEEN INDIANS AND THE FEDERAL AUTHORITIES AT EVERY LEVEL.

2. MR CLINTON DAVIS SAID HE WOULD BE REPORTING TO MR. HEALEY ON HIS RETURN. HE COULD NOT ANTICIPATE THE DECISIONS THAT THE OPPOSITION WOULD TAKE ON ITS APPROACH TO SECOND READING, HOWEVER, HE WOULD NOT ADVISE HIS PARTY TO VOTE AGAINST THE BILL OR TO SEEK TO AMEND IT. HE THOUGHT THEY SHOULD PLAY A FULL PART IN THE COMMITTEE STAGE AND THAT THE PARTY LEADERS SHOULD TABLE "PROBING" AMENDMENTS WHICH COULD BE WITHDRAWN AFTER DISCUSSION. HOWEVER, SOME BACK-BENCHERS WOULD UNDOUBTEDLY TABLE AMENDMENTS WHICH THEY WOULD HOPE TO HAVE PUT TO THE VOTE. HE THOUGHT THAT THE CANADIAN AUTHORITIES SHOULD IN THEIR OWN INTERESTS TAKE STEPS TO GET THEIR SIDE OF THE STORY UNDERSTOOD BY MPS. HE EXPECTED MINISTERS TO TAKE THE LINE THAT THE INDIAN QUESTION IN CANADA WAS NOT OUR BUSINESS, AND HE PERSONALLY THOUGHT THIS LINE WAS REASONABLE. HE DID NOT CONSIDER THAT THE PARTY SHOULD FILLIBUSTER ON THE CANADA BILL BECAUSE OF THE
DAMAGING EFFECT ON UK/CANADA RELATIONS IF THE LABOUR PARTY SEEMED TO BE EXPLOITING THE BILL FOR DOMESTIC POLITICAL REASONS. HE EXPECTED TO SEE MR LUCE NEXT WEEK WHEN HE WILL NO DOUBT BE ABLE TO GIVE A FULL ACCOUNT OF HIS EXPERIENCES AND CONCLUSIONS.

3. THE VISIT HAS NOT YET ATTRACTION ANY PRESS COVERAGE, ALTHOUGH MR CLINTON DAVIS RECORDED A RADIO INTERVIEW TO BE BROADCAST DURING THE WEEKEND.

MORAN
Canada

I enclose a copy of a letter of 13 January from the Prime Minister of Canada expressing concern about the Government's decision to postpone the second reading of the Canada Bill until the Court of Appeal has given its judgment on the Alberta Indian case. I should be grateful for advice and a draft reply for the Prime Minister's signature.

I am copying this letter and enclosure to David Heyhoe (Lord President's Office), Michael Collon (Lord Chancellor's Office), Henry Steel (Law Officers' Department) and David Wright (Cabinet Office).

R.M.J. Lyne Esq
Foreign and Commonwealth Office.
My dear Margaret:

As you know, I have greatly appreciated your consistent support on the Constitution, and I have full confidence in your resolve to deal with the Canada Bill expeditiously. Naturally, I also recognize that you alone must decide how this commitment is to be met. However, given the importance of the Canada Bill to the people of Canada, I believe it is important that we keep one another fully informed of our thinking on all matters that might bear on its timely passage by Westminster. It is against this background that I feel compelled to express to you my concern with your Government's decision to postpone the scheduling of second reading of the Canada Bill until the Court of Appeal has given its judgement on the Alberta Indian case.

I understand that this decision was made to ensure the eventual easy passage of the Canada Bill. If the Court renders a favourable decision on January 18th or thereabouts, then little damage may have been done and it should be possible to give notice of second reading that week. (You will recall that Mr. Pym had earlier said that second reading would start in that week.)

.../2

The Right Honourable Margaret Thatcher,
Prime Minister of Great Britain,
10 Downing Street,
My concern is that the decision to delay the start of second reading until after the Court of Appeal rules on the Alberta Indian case provides a basis for demands for further delays in second reading. Opportunities before the courts abound: the Alberta case may be appealed to the Lords; as you know, British Columbia Indians have started proceedings in the Chancery Division; we anticipate that action of some kind will be initiated by Saskatchewan Indians; other Indian groups, including the Cree in Northern Quebec, may also institute proceedings. Indeed, there is no technical limit to the number of cases that could be brought in both Canada and the United Kingdom.

All this suggests that the decision to delay second reading until after the ruling on the Alberta Indian case is handed down is certain to lead to pressure at Westminster for repeated delays to await a series of judgements in a series of cases which will be carefully scheduled to maximize the delay in passage of the Canada Bill.

In Canada, the Government of Quebec will bring a reference to the Quebec Appeal Court on March 15th seeking a ruling on Quebec's claim to have a constitutional veto, a subject on which I understand Mr. Lévesque has written to you. This case will surely be appealed to the Supreme Court of Canada with proceedings likely to drag on into the fall of this year.

These proceedings, regardless of their outcome, will, unless the issue is settled expeditiously at Westminster, prolong and intensify the political problems in Quebec and throughout Canada. On the other hand, if royal assent could be given to the Canada Bill before the Quebec Court proceedings commence on March 15th, it is virtually certain that the Quebec Court would find the issue hypothetical and therefore not one requiring a ruling on their part.
If, in the Alberta Indian case, the Court of Appeal rules, as your officials expect, in favour of the Foreign and Commonwealth Office, I hope that your Government would take the position that since the Canadian Courts have dealt with the question of provincial consent and since no Canadian or British Court has recognized the validity of Indian claims to a special relationship with the British Crown, there is no argument for any further delay. You could then proceed very quickly to second reading.

If the Court of Appeal rules against the FCO position, the situation would raise profound questions about the British Government's obligations under the Indian treaties, about the manner of their discharge, and about the meaning of the Statute of Westminster, not just for Canada's sovereignty but for the sovereignty of Commonwealth countries more generally.

You will recall that the vast majority of Canadians now regard the constitutional issue as settled and they look to Britain for early, formal assent. There is a risk that further delay could give rise to controversy and misunderstanding in Canada over the British role in this process. Beyond that, there are the unthinkable consequences of the package coming unstuck in the United Kingdom, after its approval in Canada.

I hope that this letter has helped you to more fully understand my concern about the need to dispense with the Canada Bill expeditiously. In this regard, I particularly appreciate Mr. Pym's undertaking to High Commissioner Waddes on Monday that your Government will consult us after the decision of the Court of Appeal before making any further decision on the timing of second reading.

Yours sincerely, and

with personal regards,

[Signature]

25
A.F.C.
12 January 1982

Canada

You will recall (my letter of 4 December) that during his telephone conversation with the Prime Minister on 4 December, Mr. Trudeau invited Mrs. Thatcher to visit Canada.

I now enclose a letter of 11 January from the Canadian High Commissioner which in turn encloses a written invitation dated 18 December from the Canadian Prime Minister. I do not think the Prime Minister will wish to make a firm commitment at this stage to visit Canada, but I should be grateful for advice and a draft reply by the end of this week.

A J COLES

R. M. J. Lyne, Esq.,
Foreign and Commonwealth Office.
THE PRIME MINISTER

10 DOWNING STREET

12 January, 1982

Mr. Pierre Trudeau

Dear Pierre,

Thank you for your letter of 19 December in which you asked that the British Government should take no action on the Federal Resolution until Quebec had consented to it or until the opinion of the Canadian Courts was known on the question of Quebec's right of veto.

I have studied your request carefully. I was sorry to learn that the Province of Quebec was unable to agree with the Federal Government and the Governments of the other nine Provinces of Canada on 5 November. A Joint Address from both Houses of the Federal Parliament has now been submitted to Her Majesty. In accordance with established procedure the British Government are now asking Parliament here to pass a Bill which will give legal effect to the Address from the Canadian Parliament. Given the terms of the judgment of the Supreme Court of Canada on 28 September 1981 and the fact that an Address has been submitted to Her Majesty I am satisfied that the existence of further legal proceedings in Canada of the kind to which you refer is entirely a Canadian matter. I therefore do not think that it would be appropriate to suspend action on the Canada Bill in the way that your letter requests.

The Honourable Rene Levesque.
10 DOWNING STREET

From the Private Secretary

12 January 1982

PREMIER OF QUEBEC

Thank you for your letter of 7 January enclosing a revised draft for the Prime Minister to send to M. Levesque in response to his letter of 19 December.

I enclose a letter to M. Levesque which the Prime Minister has signed. Your draft was slightly amended following a further discussion with the Lord President.

I agree with the procedure you propose for forwarding the text (the last paragraph of your letter under reference). You also told me on the telephone that you would arrange for a copy of the correspondence to be given to the Canadian Prime Minister.

I am copying this letter, and its enclosure, to David Heyhoe (Lord President's Office), Michael Collon (Lord Chancellor's Office), David Wright (Cabinet Office) and Henry Steel (Law Officers' Department).

Roderic Lyne, Esq.,
Foreign and Commonwealth Office.
Privy Council Office,
Whitehall,
London, SW1A 2AT

With the Compliments
of the
Lord President of the Council
As you will know, the Canadian High Commissioner, Mrs Wadds, called on the Lord President this afternoon to talk about the future handling of the Canada Bill in the light of the decision to postpone Second Reading until after the Albertan Indians' case had been heard by the Court of Appeal. Mrs Wadds was accompanied by Reeves Haggan and Dan Gagnier from the High Commission.

The Lord President explained that he fully appreciated the reasons for Canadian concern. The Government was keen to make progress with the Bill, in accordance with the undertakings which it had already given, and the Bill had been published at the first opportunity. However, complications could be expected to arise as matters proceeded and these had to be dealt with as they emerged. The Albertan Indian case was just such an example. He was glad to report that, as a result of the efforts of the Government's legal advisers, the date of the hearing in the Court of Appeal had been brought forward to probably the end of this week. This was helpful, but no decision could be taken on the next Parliamentary step until the judgment by the Court of Appeal had been given.

In reply to a question from Mr Haggan about whether the Government would also need to await the outcome of any further appeal in the Albertan case to the House of Lords, the Lord President said that this depended entirely on the terms of the judgment by the Court of Appeal. It was in the British as much as the Canadian interest to delay as little as possible, but it was important to avoid
unnecessary controversy. Otherwise, the final outcome could well be made worse, as would undoubtedly have been the case if the Government had decided to proceed with Second Reading in advance of the Court of Appeal hearing and despite known Opposition views that it would be imprudent to do so. He could not anticipate the Court's decision, since a whole range of possible outcomes existed, but, for example, a judgment which was dismissive of the Indians' case would make it easier to proceed than one which was less clear. He fully understood Canadian fears that an unlimited number of similar court actions might lead to indefinite delay, but could at this stage only counsel patience and underline the need to choose the right moment to proceed.

Mrs Waddes thanked the Lord President for his account of the position and expressed confidence in his handling of the problem. She asked how the Canadians for their part could best help in present circumstances and accepted Mr Pym's advice that a low-key approach was needed. In conclusion, Mr Haggan mentioned for the record that the Government of Quebec was due to take its own case concerning its claimed historic right of veto on constitutional change to the Quebec Superior Court on 15 March.

I am sending copies of this letter to John Coles (No 10), Murdo Maclean (Chief Whip's Office) and to David Wright (Cabinet Office).

Yours etc,

David

D C R HEYHOE
Private Secretary
1 Grosvenor Square
London W1X 0AB
January 11, 1982

Dear Mr. Coles,

I have the pleasure of forwarding to Prime Minister Thatcher a letter from Prime Minister Trudeau dated December 18, 1981.

You will note that the letter in question reiterates Prime Minister Trudeau's invitation to Mrs. Thatcher to visit Ottawa and Canada at some time in 1982.

I look forward to receipt of the Prime Minister's reply.

Yours sincerely,

Jean Casselman Wadds,
High Commissioner

Mr. J.A. Coles,
Private Secretary,
10 Downing Street,
London
Dear Margaret,

During our telephone conversation last Friday, I expressed my deep gratitude for your support over the last year and a half. It has meant a great deal to me during the rather difficult times of the last several months that I have been able to count on your support, friendship and courage. We have shared a common view of what would be the proper course of action to be followed further to a request from the Canadian Parliament. The position taken by you and by your Government, both before and after the Supreme Court decision, was important in maintaining the credibility of my Government's strategy and, eventually, in producing the consensus which emerged on November 5. As I indicated on the telephone, I hope that the whole process can be completed in the near future but I recognize and completely agree that you must take full account of the constraints and requirements of your own Parliamentary process.

The Constitution has tended to overshadow other aspects of Canada/UK relations and I think it would be useful if we had an opportunity to exchange views on other matters of common concern and to further the close relations between our two countries. I would therefore like to reiterate in writing my invitation to you to pay an official visit to Ottawa and other parts of Canada some time in the New Year, if you might find the time. We could then repay a small part of our debt to you.

Yours sincerely, and with friendship,

[Signature]

The Right Honourable Margaret Thatcher, M.P.
Prime Minister of the United Kingdom
10 Downing Street
London
CONFIDENTIAL

FM OTTAWA 092315Z JAN 82
TO PRIORITY FCO
TELEGRAM NUMBER 9 OF 8 JANUARY

CANADA BILL

1. You should know that Mr Stanley Clinton Davis MP, who is here at the invitation of the Canadian Indians, saw the Minister of Justice this morning. He told him that he thought the second reading of the Canada Bill would not take place until March. He said that he personally thought it quite possible that Lord Denning might find in favour of the Indians and that the case would be appealed to the House of Lords. Mr Chrétien expresses dismay at the prospect of a substantial delay which he said could be extremely bad for Anglo-Canadian relations. He had been greatly concerned that the British courts had agreed to hear the Indians’ case and was worried that this would result in other Indian groups and Quebec launching court actions. Mr Chrétien was obviously very worried by what he was told by Mr Davis and I should not be surprised if we receive further expressions of concern from the Canadian authorities.

2. When he lunched with me afterwards Mr Davis said that he himself believed that the Canada Bill would pass unamended without too much difficulty but that inevitably some members on both sides, notably Mr Bruce George and Sir Bernard Braine would want to speak at considerable length and might well wish to introduce amendments. I told him that the Canadian authorities had in practice been responsible for the Indians for over 100 years, that they had an entire government department dealing with the problem (on which Mr Davis is calling this afternoon) and that they had earmarked dollars 4 billion to settle Indian land claims. I also said that though the situation of the Indian peoples was unsatisfactory in many respects it could by no stretch of the imagination be regarded as our problem, and I warned him that criticism of their Indian policies or indeed prolonged debate on the Canada Bill itself might be strongly resented as interference in their affairs by many Canadians. Mr Davis said that he and Mr Healey were well aware that it was quite impracticable for the UK to maintain that it still had any responsibility for Indian affairs but it was hopeless to try and persuade some members of the Labour Party of this, and if Mr Healey tried too hard to do this he would be accused of acting against Labour principles. He said that he thought
IT WOULD BE HELPFUL IF THE CANADIANS COULD PUBLICISE WHAT THEY WERE DOING FOR THE INDIANS. I HAD I THINK BEEN QUITE IMPRESSED BY WHAT MR CHRETIEN, WHO WAS FOR 6 YEARS MINISTER OF INDIAN AFFAIRS, HAD TOLD HIM ABOUT THIS AND BY THE FACT THAT MR CHRETIEN HIMSELF HAD AN ADOPTED INDIAN SON. WOULD YOU LIKE US TO PUT THIS SUGGESTION TO THE CANADIAN GOVERNMENT?

3. MR DAVIES STRUCK ME AS VERY BALANCED AND SENSIBLE. HE SPOKE HIGHLY OF MR LUCE.

MORAN
GRS 170

CONFIDENTIAL

PM OTTAWA 0623002 JAN 82
TO PRIORITY FCO
TELEGRAM NUMBER 5 OF 8 JANUARY

YOUR TELNO 4: CANADA BILL

1. I AM NOT SURPRISED ABOUT MR TRUDEAU'S CONCERN, WHICH I FORECAST IN MY TELNO 2. FORTUNATELY THE CANADIAN AUTHORITIES HAVE NOT YET MADE THEIR ANXIETY PUBLIC. A CLEARLY INSPIRED AND HELPFUL PIECE IN TODAY'S PRESS (COPY BY BAG) SAYS THAT "THE FEDERAL GOVERNMENT IS COMING TO THE CONCLUSION THAT THE CONSTITUTION PROBABLY WON'T BE HOME NEXT MONTH - AND PERHAPS NOT FOR SOME TIME AFTER THAT...." AND GOES ON TO SAY THAT BECAUSE OF THE CHALLENGE BY THE INDIANS IN THE BRITISH COLUMBIA "IT NOW SEEMS HIGHLY UNLIKELY THAT THE CONSTITUTIONAL PACKAGE WILL GET COMPLETE BRITISH APPROVAL BEFORE MARCH." IT ADDS THAT "THE QUESTION WOULD THEN BECOME WHETHER ANY OLD DAY WOULD DO TO BRING IT TO CANADA, OR WHETHER IT WOULD BE BETTER TO WAIT UNTIL A DATE OF MORE SIGNIFICANCE SUCH AS JULY 1, DOMINION DAY (OR AS THE GOVERNMENT CALLS IT, CANADA DAY)." THE REPORT ADDS THAT "OFFICIALS IN OTTAWA WILL NOT EVEN HINT AT A DATE FOR THE FEAR IT MIGHT SEEM THEY ARE SETTING DEADLINES FOR THE BRITISH".

2. PLEASE SEE MY IFT.

MORAN

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MR B STEEL, LAW OFFICERS' DEPT
PS/HOME SECRETARY

[COPIES SENT TO NO 10 DOWNING ST]

CONFIDENTIAL
ADVANCED

THIS TELEGRAM WAS NOT
Prime Minister
Quebec

You were not happy about our earlier draft of the reply to Leger's letter.

2. This is a revised text which makes the point more clearly that the legal proceedings in Canada are a Canadian matter and therefore no reason to halt our own parliamentary proceedings.

3. If you agree with the letter, the intention is that copies of the correspondence will be given to Trudeau.

A. F. C. P.
Dear John,

Premier of Quebec

You told me on Christmas Eve that the Prime Minister would like a more cautious answer for her to send to Mr Levesque, Premier of Quebec. I now submit a revised draft which takes into account comments by the Law Officers.

Further to the points made in my letter of 23 December, I should add that the proceedings brought by the Indians here raise different considerations from those involved in the legal proceedings to be brought by the Quebec Government in Canada. It is readily understandable that the British Government and Parliament should wish, before going ahead with the Bill, to heed the view of the British courts on proceedings here in which the Indians allege that (contrary, of course, to our own opinion) the British Government has obligations to them under our domestic law which the Bill would affect. However, the Quebec proceedings (which are widely acknowledged to be part of Mr Levesque's long-standing and the probably insoluble quarrel with Mr Trudeau) concern issues of Canadian constitutional law of the same kind as have already been considered by the Supreme Court and are a belated attempt to spin out the argument in Canada still further. The Quebec Court of Appeal is not due to start hearing Mr Levesque's case until mid-March. A judgment is expected in April but there is still the possibility that the case could then go to the Supreme Court of Canada whose decision might not be handed down until September.

We consider that serious harm would be done to Anglo/Canadian relations by delaying action here unnecessarily because of the unpredictable and prolonged proceedings in Quebec. The Prime Minister will recall that she told Mr Trudeau on the telephone on 4 December that the legal action being taken by the Quebec Government was a matter for Canada.

We would propose to telegraph the text of the Prime Minister's reply to Ottawa for our Consul-General in Montreal to hand over to Mr Levesque. The signed copy of the letter can follow by bag. This would be the proper procedure in dealing with a Provincial Government.

Yours ever,

Rodric Lynne

(R M J Lynne)
Private Secretary

A J Coles Esq
10 Downing Street
DSR 1*(Revised)

DRAFT: minute/letter/teleletter/despatch/notice

FROM:
Prime Minister

DEPARTMENT:

TEL. NO:

TYPE: Draft/Final 1+
Reference

TO:
M René Lévesque
Premier of Quebec

Your Reference

Copies to:

SUBJECT:

Thank you for your letter of 19 December in which you asked that the British Government should take no action on the Federal Resolution until Quebec had consented to it or until the opinion of the Canadian Courts was known on the question of Quebec’s right of veto.

I have studied your request carefully. I was sorry to learn that the Province of Quebec was unable to agree with the Federal Government and the Governments of the other nine Provinces of Canada on 5 November. A Joint Address from both Houses of the Federal Parliament has now been submitted to Her Majesty. In accordance with established procedure the British Government are now asking Parliament here to pass a Bill which will give legal effect to the Address from the Canadian Parliament. Given the terms of the judgment of the Supreme Court of Canada of 28 September 1981 and the fact that an Address has been submitted to Her Majesty I am satisfied that the existence of further legal proceedings in Canada of the kind to which you refer is entirely a
Canadian matter which cannot constitute an impediment to action by the British Government and Parliament. I therefore do not think that it would be appropriate to suspend action on the Canada Bill as you ask.
Canadian Constitution

Mr. Michael Pitfield, the Secretary of the Cabinet in Ottawa, rang up yesterday evening, and we had a long conversation on the subject of the handling of the coming stages of this problem.

2. Mr. Pitfield said that there had been plans for people to come over and see the Lord President later this week, but they had fallen through, and he was therefore ringing up on the instructions of his Prime Minister to register his Prime Minister's serious concern about the implications of the Government's decision to postpone the Second Reading of the Canada Bill in the House of Commons until after the Court of Appeal had heard the Indian case.

3. Mr. Pitfield asked whether we knew the date on which that case was to be heard. I said that the date was not yet finally fixed, but I understood that it would be during the second half of January or at any rate not later than the very early days of February.

4. Mr. Trudeau's concern, as reported by Mr. Pitfield, was that, as a result of the decision not to take the Second Reading until after the Court of Appeal hearing in the Indian case, the British Government would find itself drawn into a process of "Hansardisation". I understand that this denotes a process whereby one action creates a series of precedents which are then exploited to get a process bogged down in Parliament. Mr. Trudeau feared that, if we waited for the Court of Appeal hearing, and the Indians then appealed to the House of Lords - as he was sure they would, if they went down in the Court of Appeal - we should feel obliged to wait for the House of Lords hearing. Not only that; there were infinite possibilities for other legal delays. There were other interested groups in Canada who might seek to open proceedings in the British courts with a view to delaying the passage of the Bill in Parliament. Mr. Trudeau had been informed that the Quebec Government were planning to brief Counsel in the United Kingdom with a view to similar action. If the British Government delayed for the Indian case, the fear was
that they could find themselves drawn into an infinite process of waiting for one legal hearing after another. They might also come under pressure from the Quebec Government to delay proceedings on the Canada Bill in Parliament until the legal proceedings instituted by the Quebec Government in Canada were concluded.

5. The consequences of prolonged delay at Westminster would be very serious in Canada. It was not too much to say that future planning on the life of the present Federal Government was involved. Without going into detail on the telephone Mr. Pitfield said that he must leave me in no doubt about the serious consequences of delay in London and the increasing concern which his Prime Minister felt.

6. I said that before reacting to what Mr. Pitfield had said and expressing anything other than a tentative personal view - which would not in the circumstances be much use to him - I would wish to take time to find out how the possibilities of progress were seen and how the Lord President and the business managers in London now saw the prospects. The House of Commons was still in Recess and would be until 18th January and I did not know how far the business managers would be able in the meantime to form a view about the state of opinion in the House of Commons and the possibilities of progress on the Bill. I supposed that it was possible that, if the Court of Appeal hearing went against the Indians and they appealed to the House of Lords, the Government might think that it could proceed with the Bill on the understanding that its passage would not be completed until after the House of Lords hearing, which would obviously need to be brought forward as quickly as possible. Speaking personally, I thought that the Indian case would have more emotive effect at Westminster than the Quebec case. It might be that the Indian case could be regarded as something of a test case, so that, if the Indians failed in the courts, the Government would think that they had a basis on which to seek to persuade the House of Commons that it was right to proceed with the legislation notwithstanding the fact that other cases were being brought: particularly if it could be shown that the motive for bringing those cases was
essentially dilatory. It remained the Government's wish to proceed with the Bill as quickly as was consistent with getting it through successfully and reasonably smoothly; and on that British Ministers clearly had to be the judges.

7. I told Mr. Pitfield that I would report his Prime Minister's serious concern to the Prime Minister and her colleagues, and in particular to the Foreign and Commonwealth Secretary, the Lord President and the Lord Privy Seal. He said that Mr. Trudeau had wondered whether to speak direct to the Prime Minister but had decided against doing so: he knew that she would understand his position and he knew that she had plenty of other things to think about.

8. Mr. Pitfield asked when he could expect to hear from me again. I said that I should like to take two or three days to find out how these matters were now seen by the business managers and others over here, and I would get in touch with him again when I had a view which I was in a position to convey.

9. I am sending copies of this minute to the Private Secretaries to the Foreign and Commonwealth Secretary, the Lord President, the Lord Privy Seal and the Chief Whip.

[Signature]

Robert Armstrong
(directed by Sir R. Armstrong,
and signed on his behalf)

6th January 1982
CONFIDENTIAL

GRS 160

CONFIDENTIAL
FM OTTAWA 041525Z JAN 82
TO PRIORITY FCO
TELEGRAM NUMBER 2 OF 4 JANUARY

YOUR TELNO 475: CANADA BILL: ALBERTA INDIANS COURT CASE

1. I UNDERSTAND POSITION BUT HOPE YOU WILL BEAR IN MIND THAT
   IF, AS A RESULT OF INDIAN COURT ACTIONS, PASSAGE OF THE CANADA
   BILL IS SERIOUSLY DELAYED, MR TRUDEAU WILL BE EXASPERATED AND WE
   MAY AGAIN HAVE A DIFFICULT TIME WITH THE CANADIAN GOVERNMENT. YOU
   WILL RECALL THAT WHEN I LUNCHED WITH HIM ON 3 DECEMBER MR TRUDEAU
   WAS STILL ASKING IF IT WAS UNEVENTFUL THAT PASSAGE COULD BE ACHIEVED
   BEFORE CHRISTMAS AND HE CLEARLY HOPED THAT IT COULD BE BROUGHT
   HOME BY MID-FEBRUARY AT THE LATEST. HE WILL HAVE BEEN DISAPPOINTED
   BY WHAT THE LORD PRESIDENT AND THE CHIEF WHIP SAID TO MR CHRETIEN
   ABOUT THE WHOLE PROCESS PROBABLY TAKING UNTIL MARCH OR APRIL, BUT
   ANY QUESTION OF A MUCH LONGER DELAY, TO TAKE ACCOUNT OF AN APPEAL
   TO THE HOUSE OF LORDS, OR THE SASKATCHEWAN AND BRITISH COLUMBIAN
   CASES, OR ANY OTHERS, WOULD BE A SEVERE BLOW TO HIM.

MORAN

[COPIES SENT TO NO 10 DOWNING STREET]
CONFIDENTIAL

GRS 204
CONFIDENTIAL

FM FCO 311330Z DEC 81
TO PRIORITY OTTAWA
TELEGRAM NUMBER 475 OF 31 DECEMBER
CANADA BILL: ALBERTA INDIANS COURT ACTION
YOUR TEL NO 736

1. WE CANNOT EXPECT THAT THE ALBERTAN CASE WILL BE DISPOSED
OF AT THE NEXT HEARING BECAUSE, EVEN IF THE COURT OF APPEAL
DECIDES IN OUR FAVOUR, THE INDIAN ASSOCIATION OF ALBERTA MAY,
WITH THE LEAVE OF THAT COURT OR OF THE HOUSE OF LORDS, APPEAL
TO THE HOUSE OF LORDS. IF THE EVENTUAL DECISION GOES AGAINST
US, WE ARE INTO A NEW BALL GAME. MINISTERS WILL NOT WISH TO
MAKE ANY PREDICTIONS AT THIS STAGE AND WILL NOT GO BEYOND THEIR
DECISION TO REVIEW THE QUESTION OF SECOND READING ONCE THE
OUTCOME IN THE COURT OF APPEAL IN THE ALBERTA CASE IS KNOWN.

2. WE UNDERSTAND THAT THE INDIANS HAVE TAKEN HEART FROM THE
COURT OF APPEAL’S DECISION TO ALLOW THE ALBERTA HEARING AND
THIS MAY STIMULATE FURTHER ACTIONS AND/OR STIR UP THE BRITISH
COLUMBIAN AND SASKATCHEWAN PLANS. THE LAST TWO HAVE NOT YET
GONE FURTHER THAN, IN THE BRITISH COLUMBIA CASE, THE SERVICE
OF A WIT OF SUMMONS.

3. IF YOU ARE ASKED BY THE CANADIAN AUTHORITIES, YOU MAY DRAW
ON THIS TELEGRAM. WITH THE PRESS, YOU SHOULD STICK TO THE LINE
IN PARAGRAPH 3 OF MY TELEGRAM NUMBER 472 AND REFUSE TO BE DRAWN
FURTHER. THE LEAST SURFACE EXPOSED THE BETTER.

CARRINGTON

CANADIAN CONSTITUTION LIMITED
KAD
CCD
P & CD
PCDU
PARLIAMENTARY UNIT
NEWS D
INFORMATION D
PS
PS/LPS
PS/MR LUCE
PS/MR HURD
PS/LORD TREFARN\N
PS/PUS
SIR E YOUDE
MR DAY
MR URE
LORD N G LENNOX
CABINET OFFICE

COPIES TO:
SIR I SINCLAIR
MR FREELAND
MR H STEEL, LAW OFFICERS’ DEPT
PS/CHANCELLOR OF THE DUCY OF LANCASTER
PS/LORD CHANCELLOR HOUSE OF LORDS
PS/LORD PRESIDENT
PS/HOME SECRETARY
[COPIES SENT TO NO 10 DOWNING ST]

CONFIDENTIAL
CONFIDENTIAL

GRS 183

CONFIDENTIAL

F1: FC0 301530/ DEG 51
TO: IMMEDIATE OTTAWA

TELEGRAM NUMBER 473 OF 30 DECEMBER.

YOUR TELNO 741 AND 739: CONSTITUTION

1. THERE IS NO TRUTH IN THE REPORT THAT GEORGE ANDERSON HELPED IN DRAFTING THE PRIME MINISTER'S REPLY TO M LEVESQUE AND YOU ARE FREE TO DENY ANY SUCH STORY.

2. WE HAVE SEEN ANDERSON ONLY SOCIALLY. A POSSIBLE EXPLANATION OF THE DEA'S ASSERTION IS THAT WHEN NEWS OF THE LEVESQUE LETTER BECAME PUBLIC, THE HIGH COMMISSION HERE SUGGESTED TO US HOW WE MIGHT REPLY, AN OFFER WHICH WE POLITELY BUT FIRMLY DECLINED. IT MAY BE THAT THE DEA (WHOSE INITIATIVE THIS COULD WELL HAVE BEEN) THOUGHT ANDERSON WOULD BE INVOLVED IN THIS.

3. WE INTEND TO GIVE COPIES OF THE CORRESPONDENCE TO THE CANADIANS ONCE THE PRIME MINISTER HAD APPROVED AND SIGNED THE REPLY, WHICH AS YOU KNOW HAS NOT YET HAPPENED AND IS UNLIKELY TO UNTIL EARLY NEXT WEEK.

4. WE WILL TRY TO TELEGRAPH THE PROPOSED DRAFT REPLY TO YOU BEFORE SUBMITTING TO NO 10 (YOUR TELNO 739). OUR PRESENT THINKING IS THAT THERE WILL BE NO REASON WHY WE SHOULD RELEASE THE TEXT, ALTHOUGH OF COURSE LEVESQUE WILL UNDOUBTEDLY DO SO.

CARMINGTON

CANADIAN CONSTITUTION LIMITED

NAD
CDD
P & CD
PCCU
PARLIAMENTARY UNIT
NEWS D
INFORMATION D
PS
PS/IPS
PS/MR KUCZE
PS/MR HURD
PS/LORD REFARRNE
PS/FUS
SIR E. YOODE
MR DAY
MR URE
LORD H. G LENNOX
CABINET OFFICE

COPIES TO:

SIR I SINCLAIR
MR FREELAND
DR PARRY

PS/CHANCELLOR OF THE DUCHY OF LANCASTER

PS/LORD CHANCELLOR HOUSE OF LORDS
PS/LORD PRESIDENT

MR H STEEL, LAW OFFICERS' DEPT
PS/HOME SECRETARY

[COPIES SENT TO NO 10 DOWNING ST]

CONFIDENTIAL
23 December 1981

I am writing on behalf of the Prime Minister to thank you for your letter of 22 December, with which you enclosed a copy of one you had sent to Francis Pym about the Canada Bill.

I will, of course, place this before the Prime Minister at once.

MAP

Bruce George Esq MP
10 DOWNING STREET

I wonder if the reply is clear to you. We have already had to delay 2nd Reading.

Two letters for signature:

one to Mr. Trudeau, the other to the Prime Minister of Denmark.

2. This will attract your interest.

3. Revenge will not be

assumed by your reply - thank

I am sure that it is right.

3. You may wish to read the attached F/C/D. letter before signing.

A. F. Wals 23/12
Foreign and Commonwealth Office
London SW1A 2AH

23 December 1981

Dear John,

Letter from Mr Levesque

Thank you for your letter of 21 December enclosing a letter which the Prime Minister has received from the Premier of Quebec, requesting that the British Government should take no action on the Federal Resolution until Quebec has consented to it or until the opinion of the Canadian courts on the question of Quebec's right of veto is known.

Mr Levesque is in a difficult position as a result of having failed to agree with the other nine Provinces on 5 November. He will be using every means at his disposal to delay or prevent passage of the Bill through the United Kingdom Parliament. Indications are that, although there is likely to be some criticism voiced at Westminster about Quebec, there is not a significant lobby on their behalf. The Canadian Government are likely to be particularly incensed by this direct approach because they consider that Provincial Premiers only have access to the British Government through the Canadian High Commissioner here, and they may argue that Mrs Thatcher should not reply to Mr Levesque at all but should refer the matter to them.

However, after due consideration, Lord Carrington considers that a reply from the Prime Minister would be justified in this instance. But the reply should be fairly uncompromising, leaving Mr Levesque no grounds for hope that he will be able to hold up the process here, no reason for returning to the charge, and in no doubt that his problems are an internal Canadian matter in which he cannot involve the British Government. It would not be appropriate to enter into the substance of the arguments in Mr Levesque's letter.

Mr Levesque's position within the Parti Québécois is unsure. He has submitted himself to a referendum within the Party which will take place in February. We would not wish a reply from the Prime Minister to give him any cards to play in his campaign. In addition, his suggestion that we might hold up proceedings here until the Canadian courts have given their opinion on Quebec's right of veto could leave the whole matter open for months to come. Any comfort which the Prime Minister gave to Mr Levesque would only anger the Canadian Government.

/
The last paragraph of the draft reply will be important in order that Mr Levesque is aware that Mr Trudeau is in receipt of the correspondence so that he can deal with it politically in Canada.

I am sending copies of this letter to recipients of yours and to Henry Steel in the Law Officers Department.

Yours evr,

[Signature]

(R M J Lyne)
Private Secretary

A J Coles Esq
10 Downing St
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<td>Thank you for your letter of 19 December in which you ask that the British Government should take no action on the Federal resolution until Quebec has consented to it or until the opinion of the Canadian courts is known on the question of Quebec's right of veto.</td>
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I was of course aware that Quebec was unable to agree with the other nine Provinces of Canada on 5 November, but I do not consider that it would be right or proper for us to intervene in what is an internal Canadian matter. As you will be aware, the British Government's consistent position has been that, when we receive a request from the Federal Government and Parliament of Canada, we will act on that request as expeditiously as possible, and I must confirm to you that we intend to proceed in that manner. The Bill to give effect to the Canadian request received its First Reading in the House of Commons at Westminster on 22 December 1981.

I am sending copies of this correspondence to the Prime Minister of Canada.
10 DOWNING STREET

PRIME MINISTER

Francis Pym has had an exchange of correspondence with Bruce George MP, about the timing of the Canada Bill. As Mr. George copied his letter to you, you might like to see the exchange, attached.

23 December 1981
Privy Council Office,
Whitehall,
London, SW1A 2AT

With the Compliments
of the
Lord President of the Council
Dear Bruce,

Thank you for your letter of 22 December about the Canada Bill.

As you will have seen, the Second Reading of the Bill is not included in the Business for the week beginning 18 January, which I announced in the House today. The Government does hope to proceed soon after we come back but I have not yet named a day. I do of course note what you say.

I am sending a copy of this letter, as you did yours, to the Prime Minister and to the Foreign and Commonwealth Secretary.

With best wishes,

John

FRANCIS PYM

Bruce George Esq MP
House of Commons
LONDON SW1A OAA
Dear Prime Minister,

I enclose a copy of a letter sent to Francis Pym RE the patrration of the Canadian constitution.

Sincerely,

[Signature]

Bruce George
Rt. Hon. Francis Pym,
Leader of the House.

Dear Francis,

In the light of the decision in the Court of Appeal yesterday reversing the decision in the High Court by Justice Woolf (December 9th) in relation to Indians and the Canadian Constitution I urge you to consider postponing the Second Reading of the Canada Bill.

I understand Lord Denning has set aside the 1st and 2nd February and I believe it would assist the House if it had the benefit of the Court’s ruling.

I am sending a copy of this letter to the Prime Minister and Lord Carrington.

Best wishes,

Bruce
Canada

A

B I L L

To give effect to a request by the Senate and House of Commons of Canada.

Presented by
Mr. Humphrey Atkins

Support by
The Prime Minister, Mr. Secretary Whitelaw,
Mr. Chancellor of the Exchequer,
Mr. Francis Pym and Mr. Attorney General

Ordered by The House of Commons,
to be printed, 22nd December 1981

LONDON
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Parliamentary Press
£3.05 net

[Bill 43] (52584) 48/3
Government Chief Whip
12 Downing Street, London SW1

22 December 1981

During a private conversation with Denis Healey last night I raised the question of the Canada Bill.

Denis Healey told me that he understood that the Canadian Indians had submitted an appeal and he expressed the very strong view that it would be imprudent for the Government to proceed with the Bill until this appeal had been disposed of. He believed that there could well be an attempt to filibuster the Bill if it was proceeded with whilst the appeal was pending.

I mentioned the gist of this conversation to the Lord President this morning and he would be grateful if the Foreign and Commonwealth Office could provide a note on the issue of the appeal by lunch time today.

I am sending a copy of this letter to Adam Wood (Lord Privy Seal's office), Jim Nursaw (Law Officers Department), Mike Pattison (No 10) and to David Wright (Cabinet Office).

(M JACLEAN)

David Heyhoe Esq
Office of the Lord President of the Council
Canadian Constitution: Quebec

I enclose a letter which the Prime Minister has just received from the Prime Minister of Quebec requesting that HMG should take no action on the federal Resolution until Quebec has consented to it or until the opinion of the Canadian courts on the question of Quebec’s right of veto is known.

I should be grateful if you could let me have advice on the form and content of a reply. It seems desirable that a reply should be despatched before the Christmas holidays if possible. I should therefore be grateful if a draft could reach me by close of play on 23 December.

You will note from the penultimate paragraph of Monsieur Levesque's letter that he intends to release it for publication in a few days.

I am copying this letter and enclosure to David Heyhoe (Lord President's Office), Michael Collon (Lord Chancellor's Office) and David Wright (Sir Robert Armstrong’s Office).
Québec December the 19th, 1981

Right Honourable Prime Minister,

On behalf of the Government of Québec, I wish to inform the Government of the United Kingdom of our opposition to the joint Address of the Canadian Senate and House of Commons to her Majesty The Queen respecting the Constitution of Canada and to respectfully request that the Parliament of the United Kingdom postpone enactment of the proposed legislation.

The decision of the Government of Canada to submit the joint Address to Her Majesty raises a number of serious constitutional, legal and political questions which the Government of Québec deems it its duty and responsibility to draw to your urgent attention.

As you are well aware, the joint Address of the Canadian House of Commons and Senate has the support of nine provinces and of the Federal Government since, on November 5th last, they concluded an agreement to which the consent of my government was not given.

The Right Honourable Margaret Thatcher, P.C., M.P., Prime Minister of the United Kingdom, 10 Downing Street, London, S.W. 1, ENGLAND.
In our view, the agreement strikes at the very heart of the alliance of the French- and English-speaking peoples that gave substance to the Canadian Confederation of 1867. Never before in the history of the Canadian federation has the British Parliament been asked to diminish the historic rights and powers of Québec's legislature and government without their consent. The proposed legislation is an unprecedented attack on the capacity of North America's only French-speaking society to defend and promote its language and culture.

For these reasons, Québec not only refused to become a party to the agreement, but its National Assembly formally opposed the federal Resolution when it was introduced in the Canadian Parliament and subsequently exercised its traditional right of veto. The existence of that right having been questioned by the Prime Minister of Canada, the Government of Québec, with the unanimous support of the National Assembly has now referred the matter to the Québec Court of Appeal. If need be, an appeal to the Supreme Court of Canada is possible.

I respectfully submit that in a matter so vital to the interests of the people of Québec and indeed to the Canadian Federation as a whole, a Parliament traditionally deferent to the Rule of Law might wish to obtain the views of the Canadian courts before deciding what course to follow.

While we fully appreciate that the Canadian constitutional question is one that your Government and the Parliament of the United Kingdom are anxious to dispose of as quickly as possible, we are nonetheless convinced that the potentially serious consequences for Québec far outweigh any possible inconvenience to the rest of Canada were the joint Address not be enacted at this time.
Our disagreement with the federal Resolution stems from the process followed in Canada. We deplore also the continued failure to recognize the French-speaking population as an equal partner in the Canadian federation. But at this time, I would like to draw your attention to three specific objections we have to the constitutional proposal contained in the Canadian address.

1. The proposed amending formula endangers Québec's existing powers. The formula allows a province to opt out of an amendment that would reduce its legislative competence. However unlike the original formula presented on April 16th, 1981, by the eight provinces opposed to the federal package, a province preserving its own jurisdiction has no guarantee of receiving financial compensation for ensuing costs borne by the province rather than by the Federal Government—except in the fields of education and culture. Without financial compensation, Québécois would find themselves either doubly taxed to finance both a federal program in the other provinces and a comparable provincial program in Québec or forced to surrender vital jurisdictions to Ottawa to escape such an onerous double taxation.

2. The minority language education rights dispositions of the Constitution Act contained in the Address derogate from the exclusive provincial jurisdiction in education guaranteed by section 93 of the British North America Act, 1867. Acting in conformity with that exclusive authority, successive Québec Legislatures have adopted legislation promoting access to French-language schools in order to preserve the linguistic equilibrium of our society. The current address alters the criteria for admission to English schools in Québec and prevents Québec's National Assembly from taking remedial action in the future. The French-speaking people of Québec would never have consented to join the Confederation if they had realized that the English-speaking provincial governments and the federal Parliament would unite one day to reduce the capacity of our National Assembly to protect French culture in Québec.
3. The Charter of Rights and Freedoms contains a new and ill-defined kind of rights, the "mobility rights", which could very seriously limit Québec's ability to legislate to protect the traditions and interests of its own residents. By restricting the legislator's use of the criterion of "province of residence" in framing his laws, the "mobility rights" hit Québec particularly hard. As a matter of fact, as a province with different legal, religious and historical traditions from the rest of Canada and with its own particular social, political and economic context, Québec quite legitimately discriminates in its legislation to preserve and enhance its integrity as a culturally different society operating within the context of the dominant Anglophone culture of the continent.

I sincerely hope that you will understand that our objections to the Federal Resolution that has been sent to Great Britain are not based only on technicalities, but touch rather the general thrust of the resolution which aims at reducing the role of Québec within the Canadian Federation while denying Québec the means to defend the mother tongue and culture of its French population and to promote the interests of all of its citizens.

In our judgment, the Québec Government's opposition to the Canadian Address is endorsed by the majority of Québécois who, regardless of their political allegiance, consider the present situation as a most serious crisis, one that strikes at the very essence of our survival as a distinct society.

Notwithstanding the formal opposition of the legitimate Government of Québec, which had been returned to office April 13th, 1981, with 80 of the 122 seats in the National Assembly, the Government of Canada proceeded November 18th to submit its resolution to the House of Commons.
On November 24th, prior to adoption of the resolution by the House of Commons, a motion was introduced in the National Assembly and adopted, on December 1st, in the following terms:

"The National Assembly of Québec,

mindful of the right of the people of Québec to self-determination,

and exercising its historical right of being a full party to any change to the Constitution of Canada which would affect the rights and powers of Québec,

declares that it cannot accept the plan to patriate the Constitution unless it meets the following conditions:

1. It must be recognized that the two founding peoples of Canada are fundamentally equal and that Québec, by virtue of its language, culture and institutions, forms a distinct society within the Canadian federal system and has all the attributes of a distinct national community.

2. The constitutional amending formula a) must either maintain Québec's right of veto, or

b) be in keeping with the Constitutional Accord signed by Québec on April 16, 1981 whereby Québec would not be subject to any amendment which would diminish its powers or rights, and would be entitled, where necessary, to reasonable and obligatory compensation."
3. Given that a Charter of Human Rights and Freedoms is already operative in Québec, the Charter of Rights and Freedoms to be entrenched in the Canadian Constitution must limit itself to:

a) democratic rights;

b) use of French and English in federal government institutions and services;

c) equality between men and women, provided the National Assembly retains the power to legislate in matters under its jurisdiction;

d) fundamental freedoms provided the National Assembly retains the power to legislate in matters under its jurisdiction; and

e) English and French minority language guarantees in education, provided Québec is allowed to adhere voluntarily, considering that its power in this area must remain total and inalienable, and that its minority is already the most privileged in Canada.

4. Effect must be given to the provisions already prescribed in the federal proposal in respect of the right of the provinces to equalization and to better control over their natural resources.”

On November 25th, the Government of Québec adopted an order-in-council, herein enclosed, by which it formally exercised its right of veto. In the light of Ottawa’s determination to proceed despite Québec having exercised its veto, the Government of Québec has decided to refer this matter back to the courts.
The Supreme Court of Canada in its judgment of September 28th, 1981, ruled that the federal proposal diminished the powers of the provincial Legislatures against their will and that constitutional convention required the consent of the provinces to such amendments, although the nature or extent of provincial consent was not specified by the Court.

Québec has now returned to the courts to ask specifically whether or not the consent of Québec is required by constitutional convention. It has done so because every Québec Government since Confederation has defended Québec's right to veto any amendment altering the amending formula itself, ending the role of the British Parliament with respect to the Canadian constitution, or affecting the distribution of powers between the two orders of government, and until the adoption of the present address, this veto has always been respected.

Ironically, the federal Address confirms Québec's traditional veto by requiring unanimity for any future changes to the amending formula itself. Québec is quite reasonably asking that its historic veto power in this matter be respected now as it has been in the past and would be in the future under the federal proposal itself.

The reference to the courts, with the unanimous support of the National Assembly, provides clear evidence that the Government of Québec is determined to use all legitimate and democratic means that are available to safeguard rights which the Parliament of the United Kingdom and the Judicial Committee of the Privy Council have always scrupulously respected in the past.
At our request, the court has agreed to do its utmost to accelerate proceedings so that, following presentation of factums by the Governments of Québec and Canada, arguments can be heard in mid-March. Indications are that a judgment would be rendered about a month later. Should the case then be referred to the Supreme Court of Canada, a final decision could be anticipated within a similar time span, perhaps in September, 1982.

The British Government has already indicated that it considers it should be guided by decisions of the Canadian Courts on the Constitutional question. Such are the observations made by the Secretary of State for Foreign and Commonwealth Affairs on the "First Report from the Foreign Affairs Committee (session 1980-81)-British North America Acts: The Role of Parliament". As previously noted, the legal procedures in Canada have not yet been completed.

Canada has lived with the B.N.A. Act for almost 115 years. We respectfully submit, Madam Prime Minister, that, at best, the urgency of patriation is artificial.

We respectfully suggest that any precipitous action on the part of the Parliament of the United Kingdom would be widely interpreted here as an indication that in the views of the British Parliament, the historic assumption of Canada's cultural and linguistic duality is unfounded and that Québec, as the homeland of the French-speaking people of Canada, can be deprived with impunity of its rightful place within the federation.
We request, therefore, that the Federal resolution be set aside by your Government until Québec has consented to it or at the very least until you can take cognizance of the opinion of the courts on the very vital question of Québec's right of veto. In our view, that is the only course of action that would be consistent with the requirements of elementary justice, given the unique position of Québec as the principal homeland of a distinct French-speaking society in North America.

Because of the nature of this letter, I intend to release it for publication in a few days.

With the assurances of my high regard and best wishes, I remain,

Yours sincerely,

Prime Minister of Québec

Encl: Résolution
Décret
RÉSOLUTION

L’Assemblée nationale du Qué-
bec,

rappelant le droit du peuple qué-
bécois à disposer de lui-même,

et exerçant son droit historique
à être partie prenante et à consentir
à tout changement dans la constitu-
tion du Canada qui pourrait affecter
les droits et les pouvoirs du Québec,

décide qu’elle ne peut accepter
le projet de rapatriement de la consti-
tution sauf si celui-ci rencontre les
conditions suivantes:

1. on devra reconnaître que les
deux peuples qui ont fondé le Canada
sont foncièrement égaux et que le
Québec forme à l’intérieur de l’en-
semble fédéral canadien une société
distincte par la langue, la culture, les
institutions et qui possède tous les
attributs d’une communauté nationale
distincte;

2. le mode d’amendement de la
constitution
   a) ou bien devra maintenir au
   Québec son droit de veto,
   b) ou bien sera celui qui a été
   convenu dans l’Accord constitu-
   tionnel signé par le Québec le 16 avril
   1981 et confirmant le droit du Qué-
   bec de ne pas être assujetti à une
   modification qui diminuerait ses pou-
   voirs ou ses droits et de recevoir, le
cas échéant, une compensation rai-
   sonnable et obligatoire;

3. étant donné l’existence de la
Charte québécoise des droits et libé-
tés de la personne, la charte des
droits inscrite dans la constitution
canadienne ne devra inclure que:

The National Assembly of Qué-
bec,

mindful of the right of the people
of Québec to self-determination,

and exercising its historical right
of being a full party to any change to
the Constitution of Canada which
would affect the rights and powers of
Québec,

decides that it cannot accept
the plan to patriate the Constitution
unless it meets the following condi-
tions:

1. It must be recognized that the
two founding peoples of Canada are
fundamentally equal and that Qué-
bec, by virtue of its language, culture
and institutions, forms a distinct soci-
ety within the Canadian federal sys-
tem and has all the attributes of a
distinct national community.

2. The constitutional amending
formula
   (a) must either maintain Québec’s
   right of veto, or
   (b) be in keeping with the Constitu-
tional Accord signed by Québec
on April 16, 1981 whereby Québec
would not be subject to any amend-
ment which would diminish its powers
or rights, and would be entitled, where
necessary, to reasonable and obliga-
tory compensation.

3. Given that a Charter of Human
Rights and Freedoms is already op-
erative in Québec, the Charter of Rights
and Freedoms to be entrenched in
the Canadian Constitution must limit
itself to:
a) les droits démocratiques;
   b) l'usage du français et de l'anglais dans les institutions et les services du gouvernement fédéral;
   c) l'égalité entre les hommes et les femmes, pourvu que l'Assemblée nationale conserve le pouvoir de faire prévaloir ses lois dans les domaines de sa compétence;
   d) les libertés fondamentales, pourvu que l'Assemblée nationale conserve le pouvoir de faire prévaloir ses lois dans les domaines de sa compétence;
   e) les garanties quant à l'enseignement dans la langue des minorités anglaise ou française, pourvu que le Québec reste libre d'y adhérer volontairement, puisque sa compétence exclusive en cette matière doit demeurer totale et inaliénable et que la situation de sa minorité est déjà la plus privilégiée au Canada;

4. On donnera suite aux dispositions déjà prévues dans le projet du gouvernement fédéral concernant le droit des provinces à la péréquation et à un meilleur contrôle de leurs richesses naturelles.

(a) democratic rights;
(b) use of French and English in federal government institutions and services;
(c) equality between men and women, provided the National Assembly retains the power to legislate in matters under its jurisdiction;
(d) fundamental freedoms provided the National Assembly retains the power to legislate in matters under its jurisdiction; and

(e) English and French minority language guarantees in education, provided Québec is allowed to adhere voluntarily, considering that its power in this area must remain total and inalienable, and that its minority is already the most privileged in Canada.

4. Effect must be given to the provisions already prescribed in the federal proposal in respect of the right of the provinces to equalization and to better control over their natural resources.

COPIE CONFORME DE LA RÉSOLUTION ADOPTÉE PAR L'ASSEMBLÉE NATIONALE DU QUÉBEC LE 1er DÉCEMBRE 1981.

TRUE COPY OF THE RESOLUTION PASSED BY THE NATIONAL ASSEMBLY OF QUEBEC ON 1 DECEMBER 1981.

Signé à Québec ce dix-septième jour de décembre 1981.

Signed in Québec City on the seventeenth day of December 1981.

RENÉ BLONDIN
Secrétaire général de l'Assemblée nationale
CONCERNANT l'opposition du
Québec au projet de rapa-
triement et de modification
de la constitution canadienne

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ATTENDU QUE le gouvernement fédéral
a présenté à la Chambre des Communes, le 18
novembre 1981, une motion visant à rapatrier et
à modifier la constitution canadienne;

ATTENDU QUE cette motion, si on y
donnait suite, aurait pour effet de diminuer
substantiellement les pouvoirs et les droits du
Québec et de son Assemblée nationale sans son
consentement;

ATTENDU QU'il a toujours été reconnu
qu'aucune modification de cette nature ne
pouvait être effectuée sans le consentement du
Québec.

IL EST DÉCIDÉ, sur la proposition du
Premier ministre:

QUE le Québec oppose formellement son
veto à l'encontre de la résolution présentée à
la Chambre des Communes, le 18 novembre 1981, par
le ministre fédéral de la Justice.

QUE cette opposition soit officiellement
transmise au gouvernement fédéral et à celui
des autres provinces.

COPIE AUTHENTIQUE
LE GREFFIER DU
CONSEIL EXÉCUTIF

[Signature]
Québec December the 19th, 1981

Right Honourable Prime Minister,

On behalf of the Government of Québec, I wish to inform the Government of the United Kingdom of our opposition to the joint Address of the Canadian Senate and House of Commons to Her Majesty The Queen respecting the Constitution of Canada and to respectfully request that the Parliament of the United Kingdom postpone enactment of the proposed legislation.

The decision of the Government of Canada to submit the joint Address to Her Majesty raises a number of serious constitutional, legal and political questions which the Government of Québec deems it its duty and responsibility to draw to your urgent attention.

As you are well aware, the joint Address of the Canadian House of Commons and Senate has the support of nine provinces and of the Federal Government since, on November 5th last, they concluded an agreement to which the consent of my government was not given.

The Right Honourable Margaret Thatcher, P.C., M.P., Prime Minister of the United Kingdom,
10 Downing Street,
London, S.W. 1,
ENGLAND.
In our view, the agreement strikes at the very heart of the alliance of the French-and English-speaking peoples that gave substance to the Canadian Confederation of 1867. Never before in the history of the Canadian federation has the British Parliament been asked to diminish the historic rights and powers of Québec's legislature and government without their consent. The proposed legislation is an unprecedented attack on the capacity of North America's only French-speaking society to defend and promote its language and culture.

For these reasons, Québec not only refused to become a party to the agreement, but its National Assembly formally opposed the federal Resolution when it was introduced in the Canadian Parliament and subsequently exercised its traditional right of veto. The existence of that right having been questioned by the Prime Minister of Canada, the Government of Québec, with the unanimous support of the National Assembly has now referred the matter to the Québec Court of Appeal. If need be, an appeal to the Supreme Court of Canada is possible.

I respectfully submit that in a matter so vital to the interests of the people of Québec and indeed to the Canadian Federation as a whole, a Parliament traditionally deferent to the Rule of Law might wish to obtain the views of the Canadian courts before deciding what course to follow.

While we fully appreciate that the Canadian constitutional question is one that your Government and the Parliament of the United Kingdom are anxious to dispose of as quickly as possible, we are nonetheless convinced that the potentially serious consequences for Québec far outweigh any possible inconvenience to the rest of Canada were the joint Address not be enacted at this time.
Our disagreement with the federal Resolution stems from the process followed in Canada. We deplore also the continued failure to recognize the French-speaking population as an equal partner in the Canadian federation. But at this time, I would like to draw your attention to three specific objections we have to the constitutional proposal contained in the Canadian address.

1. The proposed amending formula endangers Québec's existing powers. The formula allows a province to opt out of an amendment that would reduce its legislative competence. However unlike the original formula presented on April 16th, 1981, by the eight provinces opposed to the federal package, a province preserving its own jurisdiction has no guarantee of receiving financial compensation for ensuing costs borne by the province rather than by the Federal Government - except in the fields of education and culture. Without financial compensation, Québécois would find themselves either doubly taxed to finance both a federal program in the other provinces and a comparable provincial program in Québec or forced to surrender vital jurisdictions to Ottawa to escape such an onerous double taxation.

2. The minority language education rights dispositions of the Constitution Act contained in the Address derogate from the exclusive provincial jurisdiction in education guaranteed by section 93 of the British North America Act, 1867. Acting in conformity with that exclusive authority, successive Québec Legislatures have adopted legislation promoting access to French-language schools in order to preserve the linguistic equilibrium of our society. The current address alters the criteria for admission to English schools in Québec and prevents Québec's National Assembly from taking remedial action in the future. The French-speaking people of Québec would never have consented to join the Confederation if they had realized that the English-speaking provincial governments and the federal Parliament would unite one day to reduce the capacity of our National Assembly to protect French culture in Québec.
3. The Charter of Rights and Freedoms contains a new and ill-defined kind of rights, the "mobility rights", which could very seriously limit Québec's ability to legislate to protect the traditions and interests of its own residents. By restricting the legislator's use of the criterion of "province of residence" in framing his laws, the "mobility rights" hit Québec particularly hard. As a matter of fact, as a province with different legal, religious and historical traditions from the rest of Canada and with its own particular social, political and economic context, Québec quite legitimately discriminates in its legislation to preserve and enhance its integrity as a culturally different society operating within the context of the dominant Anglophone culture of the continent.

I sincerely hope that you will understand that our objections to the Federal Resolution that has been sent to Great Britain are not based only on technicalities, but touch rather the general thrust of the resolution which aims at reducing the role of Québec within the Canadian Federation while denying Québec the means to defend the mother tongue and culture of its French population and to promote the interests of all of its citizens.

In our judgment, the Québec Government's opposition to the Canadian Address is endorsed by the majority of Québécois who, regardless of their political allegiance, consider the present situation as a most serious crisis, one that strikes at the very essence of our survival as a distinct society.

Notwithstanding the formal opposition of the legitimate Government of Québec, which had been returned to office April 13th, 1981, with 80 of the 122 seats in the National Assembly, the Government of Canada proceeded November 18th to submit its resolution to the House of Commons.
On November 24th, prior to adoption of the resolution by the House of Commons, a motion was introduced in the National Assembly and adopted, on December 1st, in the following terms:

"The National Assembly of Québec,

mindful of the right of the people of Québec to self-determination,

and exercising its historical right of being a full party to any change to the Constitution of Canada which would affect the rights and powers of Québec,

declares that it cannot accept the plan to patriate the Constitution unless it meets the following conditions:

1. It must be recognized that the two founding peoples of Canada are fundamentally equal and that Québec, by virtue of its language, culture and institutions, forms a distinct society within the Canadian federal system and has all the attributes of a distinct national community.

2. The constitutional amending formula a) must either maintain Québec's right of veto, or

b) be in keeping with the Constitutional Accord signed by Québec on April 16, 1981 whereby Québec would not be subject to any amendment which would diminish its powers or rights, and would be entitled, where necessary, to reasonable and obligatory compensation.
3. Given that a Charter of Human Rights and Freedoms is already operative in Québec, the Charter of Rights and Freedoms to be entrenched in the Canadian Constitution must limit itself to:

a) democratic rights;
b) use of French and English in federal government institutions and services;
c) equality between men and women, provided the National Assembly retains the power to legislate in matters under its jurisdiction;
d) fundamental freedoms provided the National Assembly retains the power to legislate in matters under its jurisdiction; and
e) English and French minority language guarantees in education, provided Québec is allowed to adhere voluntarily, considering that its power in this area must remain total and inalienable, and that its minority is already the most privileged in Canada.

4. Effect must be given to the provisions already prescribed in the federal proposal in respect of the right of the provinces to equalization and to better control over their natural resources."

On November 25th, the Government of Québec adopted an order-in-council, herein enclosed, by which it formally exercised its right of veto. In the light of Ottawa's determination to proceed despite Québec having exercised its veto, the Government of Québec has decided to refer this matter back to the courts.
The Supreme Court of Canada in its judgment of September 28th, 1981, ruled that the federal proposal diminished the powers of the provincial Legislatures against their will and that constitutional convention required the consent of the provinces to such amendments, although the nature or extent of provincial consent was not specified by the Court.

Québec has now returned to the courts to ask specifically whether or not the consent of Québec is required by constitutional convention. It has done so because every Québec Government since Confederation has defended Québec's right to veto any amendment altering the amending formula itself, ending the role of the British Parliament with respect to the Canadian constitution, or affecting the distribution of powers between the two orders of government, and until the adoption of the present address, this veto has always been respected.

Ironically, the federal Address confirms Québec's traditional veto by requiring unanimity for any future changes to the amending formula itself. Québec is quite reasonably asking that its historic veto power in this matter be respected now as it has been in the past and would be in the future under the federal proposal itself.

The reference to the courts, with the unanimous support of the National Assembly, provides clear evidence that the Government of Québec is determined to use all legitimate and democratic means that are available to safeguard rights which the Parliament of the United Kingdom and the Judicial Committee of the Privy Council have always scrupulously respected in the past.
At our request, the court has agreed to do its utmost to accelerate proceedings so that, following presentation of factums by the Governments of Québec and Canada, arguments can be heard in mid-March. Indications are that a judgment would be rendered about a month later. Should the case then be referred to the Supreme Court of Canada, a final decision could be anticipated within a similar time span, perhaps in September, 1982.

The British Government has already indicated that it considers it should be guided by decisions of the Canadian Courts on the Constitutional question. Such are the observations made by the Secretary of State for Foreign and Commonwealth Affairs on the "First Report from the Foreign Affairs Committee (session 1980-81)- British North America Acts: The Role of Parliament". As previously noted, the legal procedures in Canada have not yet been completed.

Canada has lived with the B.N.A. Act for almost 115 years. We respectfully submit, Madam Prime Minister, that, at best, the urgency of patriation is artificial.

We respectfully suggest that any precipitous action on the part of the Parliament of the United Kingdom would be widely interpreted here as an indication that in the views of the British Parliament, the historic assumption of Canada's cultural and linguistic duality is unfounded and that Québec, as the homeland of the French-speaking people of Canada, can be deprived with impunity of its rightful place within the federation.
We request, therefore, that the Federal resolution be set aside by your Government until Québec has consented to it or at the very least until you can take cognizance of the opinion of the courts on the very vital question of Québec's right of veto. In our view, that is the only course of action that would be consistent with the requirements of elementary justice, given the unique position of Québec as the principal homeland of a distinct French-speaking society in North America.

Because of the nature of this letter, I intend to release it for publication in a few days.

With the assurances of my high regard and best wishes, I remain,

Yours sincerely,

[Signature]

Prime Minister of Québec

Encl: Résolution
Décret
RÉSOLUTION

L’Assemblée nationale du Québec,

rappelant le droit du peuple québécois à disposer de lui-même,

et exerçant son droit historique à être partie prenante et à consentir à tout changement dans la constitution du Canada qui pourrait affecter les droits et les pouvoirs du Québec,

declare qu’elle ne peut accepter le projet de rapatriement de la constitution sauf si celui-ci rencontre les conditions suivantes:

1. on devra reconnaître que les deux peuples qui ont fondé le Canada sont foncièrement égaux et que le Québec forme à l’intérieur de l’ensemble fédéral canadien une société distincte par la langue, la culture, les institutions et qui possède tous les attributs d’une communauté nationale distincte;

2. le mode d’amendement de la constitution
   a) ou bien devra maintenir au Québec son droit de veto,
   b) ou bien sera celui qui a été convenu dans l’Accord constitutionnel signé par le Québec le 16 avril 1981 et confirmant le droit du Québec de ne pas être assujetti à une modification qui diminuerait ses pouvoirs ou ses droits et de recevoir, le cas échéant, une compensation raisonnable et obligatoire;

3. étant donné l’existence de la Charte québécoise des droits et libertés de la personne, la charte des droits inscrite dans la constitution canadienne ne devra inclure que:

The National Assembly of Québec,

mindful of the right of the people of Québec to self-determination,

and exercising its historical right of being a full party to any change to the Constitution of Canada which would affect the rights and powers of Québec,

declares that it cannot accept the plan to patriate the Constitution unless it meets the following conditions:

1. It must be recognized that the two founding peoples of Canada are fundamentally equal and that Québec, by virtue of its language, culture and institutions, forms a distinct society within the Canadian federal system and has all the attributes of a distinct national community.

2. The constitutional amending formula
   (a) must either maintain Québec’s right of veto, or
   (b) be in keeping with the Constitutional Accord signed by Québec on April 16, 1981 whereby Québec would not be subject to any amendment which would diminish its powers or rights, and would be entitled, where necessary, to reasonable and obligatory compensation.

3. Given that a Charter of Human Rights and Freedoms is already operative in Québec, the Charter of Rights and Freedoms to be entrenched in the Canadian Constitution must limit itself to:
a) les droits démocratiques;
b) l'usage du français et de l'anglais dans les institutions et les services du gouvernement fédéral;
c) l'égalité entre les hommes et les femmes, pourvu que l'Assemblée nationale conserve le pouvoir de faire prévaloir ses lois dans les domaines de sa compétence;
d) les libertés fondamentales, pourvu que l'Assemblée nationale conserve le pouvoir de faire prévaloir ses lois dans les domaines de sa compétence;
e) les garanties quant à l'enseignement dans la langue des minorités anglaise ou française, pourvu que le Québec reste libre d'y adhérer volontairement, puisque sa compétence exclusive en cette matière doit demeurer totale et inaliénable et que la situation de sa minorité est déjà la plus privilégiée au Canada;

4. on donnera suite aux dispositions déjà prévues dans le projet du gouvernement fédéral concernant le droit des provinces à la péréquation et à un meilleur contrôle de leurs richesses naturelles.

(a) democratic rights;
(b) use of French and English in federal government institutions and services;
(c) equality between men and women, provided the National Assembly retains the power to legislate in matters under its jurisdiction;
(d) fundamental freedoms provided the National Assembly retains the power to legislate in matters under its jurisdiction; and
(e) English and French minority language guarantees in education, provided Québec is allowed to adhere voluntarily, considering that its power in this area must remain total and inalienable, and that its minority is already the most privileged in Canada.

4. Effect must be given to the provisions already prescribed in the federal proposal in respect of the right of the provinces to equalization and to better control over their natural resources.

COPIE CONFORME DE LA RÉSOLUTION ADOPTÉE PAR L'ASSEMBLÉE NATIONALE DU QUÉBEC LE 1er DÉCEMBRE 1981.

Signé à Québec ce dix-septième jour de décembre 1981.

RENE BLONDIN
Secrétaire général de l'Assemblée nationale
DÉCRET
GOUVERNEMENT DU QUÉBEC

NUMÉRO 3214-81

CONCERNANT l'opposition du Québec au projet de rapatriement et de modification de la constitution canadienne

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ATTENDU QUE le gouvernement fédéral a présenté à la Chambre des Communes, le 18 novembre 1981, une motion visant à rapatrier et à modifier la constitution canadienne;

ATTENDU QUE cette motion, si on y donnait suite, aurait pour effet de diminuer substantiellement les pouvoirs et les droits du Québec et de son Assemblée nationale sans son consentement;

ATTENDU QU'il a toujours été reconnu qu'aucune modification de cette nature ne pouvait être effectuée sans le consentement du Québec.

IL EST DÉCIDÉ, sur la proposition du Premier ministre:

QUE le Québec oppose formellement son veto à l'encontre de la résolution présentée à la Chambre des Communes, le 18 novembre 1981, par le ministre fédéral de la Justice.

QUE cette opposition soit officiellement transmise au gouvernement fédéral et à celui des autres provinces.
Québec, le 19 décembre 1981

Madame la Première ministre,

Au nom du Gouvernement du Québec, je désire exprimer au Gouvernement du Royaume-Uni notre opposition à l'Adresse conjointe du Sénat et de la Chambre des communes du Canada à Sa Majesté la Reine concernant la constitution canadienne et demander respectueusement au Parlement du Royaume-Uni de retarder l'adoption de la loi proposée.

La décision du Gouvernement du Canada de soumettre l'Adresse conjointe à Sa Majesté soulève de sérieux problèmes constitutionnels, juridiques et politiques que le Gouvernement du Québec croit de son devoir et de sa responsabilité de porter à votre attention la plus immédiate.

Comme vous ne l'ignorez pas, l'Adresse conjointe de la Chambre des communes et du Sénat canadien recueille le soutien de neuf provinces et du gouvernement fédéral lesquels, le 5 novembre dernier, en sont venus à un accord, sans que le Gouvernement du Québec n'accepte d'y souscrire.

Madame Margaret Thatcher, C.P., M.P.,
Première ministre du Royaume-Uni,
10, Downing Street,
Londres, S.W. 1,
GRANDE-BRETAGNE.
A notre avis, cette entente frappe de plein fouet l'alliance des francophones et des anglophones qui a permis la création de la Confédération canadienne de 1867. Jamais auparavant, au cours de notre histoire, on avait demandé au Parlement britannique de restreindre sans leur consentement les droits et pouvoirs historiques de la législature et du Gouvernement du Québec. La loi projetée constitue une offensive sans précédent contre les pouvoirs permettant à la seule société d'expression française d'Amérique du Nord de défendre et promouvoir sa langue et sa culture.

Pour cette raison, non seulement le Québec a-t-il refusé de souscrire à cette entente, mais l'Assemblée nationale s'est formellement opposée à la résolution fédérale lorsqu'elle fut introduite devant le Parlement canadien; subsequemment, le Gouvernement du Québec a exercé son droit de veto traditionnel. Comme l'existence même de ce droit a été remise en doute par le Premier ministre du Canada, le Gouvernement du Québec, avec l'accord unanime de l'Assemblée nationale, a soumis la question à la Cour d'Appel du Québec. S'il y a lieu, l'affaire pourra ensuite être étudiée par la Cour suprême du Canada.

Puis-je faire valoir que dans une question aussi fondamentale pour les intérêts du peuple québécois et de la Fédération canadienne, un Parlement traditionnellement respectueux de la Règle de Droit voudra sans doute prendre connaissance de l'opinion des tribunaux avant de déterminer le cours de sa démarche.

Bien que nous comprenions que le Gouvernement et le Parlement du Royaume-Uni soient désireux de disposer aussi rapidement que possible de la question constitutionnelle canadienne, nous demeurons cependant convaincus que les conséquences qui pourrait alors subir le Québec sont beaucoup plus graves que les inconvenients qui pourraient éventuellement affecter le reste du Canada si vous ne donniez pas suite dès maintenant à l'Adresse canadienne.
Outre notre désaccord profond quant au processus même qui a été suivi au Canada et au refus obstiné de reconnaitre la population d'expression française comme partenaire égal dans la Confédération canadienne, nous aimerions attirer votre attention sur trois objections particulières que nous formulons à l'encontre des mesures constitutionnelles prévues dans l'Adresse canadienne.

1- La procédure d'amendement qui est proposée remet en cause les pouvoirs que le Québec détient déjà. En effet, cette procédure permet à une province d'exercer son droit de retrait à l'égard d'une modification constitutionnelle qui réduirait sa compétence législative. Cependant, contrairement à la procédure qui avait été initialement mise de l'avant le 16 avril 1981 par les huit provinces opposées au projet fédéral, l'exercice de ce droit ne comporte plus aucune garantie pour une province qui s'en prévaudrait, d'obtenir une compensation financière pour les coûts qu'elle aura à encourir en lieu et place du gouvernement fédéral, exception faite des domaines de l'éducation et de la culture. Sans compensation financière, les Québécois seraient exposés soit à être soumis à la double taxation pour financer à la fois un programme fédéral dans les autres provinces et un programme provincial au Québec, soit à être contraints d'abandonner à Ottawa des compétences législatives essentielles pour éviter une aussi lourde imposition.

2- Les dispositions de la Loi constitutionnelle concernant les droits à l'instruction dans la langue de la minorité prévues dans l'Adresse portent atteinte à la compétence provinciale exclusive sur l'éducation, garantie à l'article 93 de l'Acte de l'Amérique du Nord britannique de 1867. Agissant dans le cadre de cette compétence exclusive, les Législatures successives du Québec ont fait adopter des lois favorisant l'accès aux écoles françaises de façon à maintenir l'équilibre linguistique de notre société.
La présente Adresse modifie les critères d'admission aux écoles anglaises du Québec et empêche l'Assemblée nationale du Québec d'adopter des mesures correctrices à l'avenir. Les Québécois francophones n'auraient jamais accepté d'adhérer à la Confédération s'ils avaient su que les gouvernements provinciaux anglophones et le Parlement fédéral s'uniraient un jour pour restreindre les pouvoirs de notre Assemblée nationale de protéger la culture française au Québec.

3- La Charte des droits et libertés contient une nouvelle catégorie de droits mal définie, les "droits à la mobilité", qui pourraient limiter très sérieusement les pouvoirs du Québec de légiférer pour protéger les traditions et les intérêts de ses citoyens. En limitant la possibilité du législateur de recourir au critère de la province de résidence dans la rédaction de ses lois, ces "droits à la mobilité" frappent d'une façon particulièrement dure le Québec. En effet, notre province qui a des traditions juridiques, religieuses et historiques différentes du reste du Canada et qui vit dans un contexte social, politique et économique qui lui est propre, établit nécessairement dans ses lois des distinctions très légitimes qui ont pour but de protéger son intégrité en tant que société distincte, entourée d'une culture anglophone dominant tout le continent nord-américain.

Vous comprendrez, je n'en doute point, que notre opposition à la résolution fédérale qui vous est parvenue n'est pas fondée sur de simples objections d'ordre technique. Nous ne pouvons accepter cette résolution parce qu'elle réduit la place du Québec au sein de la Fédération canadienne et vise à restreindre les moyens que possède le Québec de défendre la langue maternelle et la culture de sa population française et, de façon plus générale, de promouvoir les intérêts de tous ses citoyens.

A notre avis, l'opposition du Gouvernement du Québec à l'Adresse canadienne est appuyée par la majorité des Québécois pour qui, et ce sans égard à leur allégeance politique, la situation actuelle constitue une crise des plus sévères qui touche au cœur même de notre existence comme société distinctive.
Hélas, malgré l'opposition formelle du Gouvernement légitime du Québec, réélu le 13 avril 1981 avec 80 des 122 sièges de l'Assemblée nationale, le Gouvernement du Canada a quand même soumis sa résolution à la Chambre des communes le 18 novembre dernier.

Le 24 novembre, avant l'adoption de la résolution par la Chambre des communes, une motion a été présentée à l'Assemblée nationale et adoptée, le 1er décembre, dans les termes suivants:

"L'Assemblée nationale du Québec,

rappelant le droit du peuple québécois à disposer de lui-même,

et exerçant son droit historique à être partie prenante et à consentir à tout changement dans la constitution du Canada qui pourrait affecter les droits et les pouvoirs du Québec,

déclare qu'elle ne peut accepter le projet de rapatriement de la constitution sauf si celui-ci rencontre les conditions suivantes:

1. on devra reconnaître que les deux peuples qui ont fondé le Canada sont fondamentalement égaux et que le Québec forme à l'intérieur de l'ensemble fédéral canadien une société distinctive par la langue, la culture, les institutions et qui possède tous les attributs d'une communauté nationale distinctive;
2. le mode d'amendement de la constitution
   a) ou bien devra maintenir au Québec son droit de veto,
   b) ou bien sera celui qui a été convenu dans l'Accord constitutionnel signé par le Québec le 16 avril 1981 et confirmant le droit du Québec de ne pas être assujetti à une modification qui diminuerait ses pouvoirs ou ses droits et de recevoir, le cas échéant, une compensation raisonnable et obligatoire;

3. étant donné l'existence de la Charte québécoise des droits et libertés de la personne, la charte des droits inscrite dans la constitution canadienne ne devra inclure que:
   a) les droits démocratiques;
   b) l'usage du français et de l'anglais dans les institutions et les services du gouvernement fédéral;
   c) l'égalité entre les hommes et les femmes, pourvu que l'Assemblée nationale conserve le pouvoir de faire prévaloir ses lois dans les domaines de sa compétence;
   d) les libertés fondamentales, pourvu que l'Assemblée nationale conserve le pouvoir de faire prévaloir ses lois dans les domaines de sa compétence;
   e) les garanties quant à l'enseignement dans la langue des minorités anglaise ou française, pourvu que le Québec reste libre d'y adhérer volontairement, puisque sa compétence exclusive en cette matière doit demeurer totale et inaliénable et que la situation de sa minorité est déjà la plus privilégiée au Canada;
4. on donnera suite aux dispositions déjà prévues dans le projet du gouvernement fédéral concernant le droit des provinces à la péréquation et à un meilleur contrôle de leurs richesses naturelles."

Le 25 novembre, le Gouvernement du Québec a adopté un décret, ci-annexé, par lequel il exerçait formellement son droit de veto. Devant la détermination d'Ottawa d'aller de l'avant malgré que le Québec ait signifié son veto, le Gouvernement du Québec a décidé de soumettre à nouveau la question aux tribunaux.

Dans son jugement du 28 septembre 1981, la Cour suprême du Canada avait conclu que la proposition fédérale diminuait sans leur accord les pouvoirs des législatures provinciales et que la convention constitutionnelle exigeait le consentement des provinces pour que de telles modifications aient lieu. Toutefois, la nature ou la portée du consentement provincial ne fut pas précisée par la Cour.

Le Québec est retourné devant les tribunaux afin de faire établir de façon précise si son consentement est nécessaire en vertu de cette convention constitutionnelle. Nous avons agi ainsi parce que depuis le début de la Confédération, tous les gouvernements du Québec ont défendu le droit de notre province d'opposer son veto à toute modification qui affecterait la formule d'amendement elle-même, qui mettrait fin au rôle du Parlement britannique en ce qui concerne la constitution canadienne ou qui porterait atteinte au partage des pouvoirs entre les deux ordres de gouvernement. Jusqu'à l'adoption de la présente Adresse, ce droit de veto a toujours respecté.

Assez ironiquement, l'Adresse fédérale confirme le droit de veto historique du Québec en exigeant l'accord unanime des provinces pour modifier ultérieurement le mode d'amendement de la constitution. Le Québec estime raisonnable de demander qu'on respecte dès maintenant son droit de veto à cet égard, droit qui fut respecté dans le passé et le serait dans l'avenir aux termes de la proposition fédérale elle-même.
Le recours aux tribunaux, avec l'appui unanime de l'Assemblée nationale, exprime sans équivoque la détermination du Québec de se servir de tous les moyens légaux et légitimes dont il dispose pour défendre des droits que le Parlement du Royaume-Uni et le Comité judiciaire du Conseil Privé ont toujours scrupuleusement respectés.

A notre demande, la Cour a accepté de faire l'impossible pour accélérer les procédures de façon que, dès après le dépôt des factums, la cause puisse être entendue à la mi-mars. Le jugement pourrait être rendu environ un mois plus tard. Si la cause était ensuite portée devant la Cour suprême du Canada, une décision finale pourrait être annoncée au terme d'une période semblable, soit possiblement en septembre 1982.


Depuis près de 115 ans maintenant, le Canada a vécu sous l'Acte de l'Amérique du Nord britannique. Nous vous soumettons respectueusement, madame la Première ministre, notre opinion à l'effet que l'urgence de ce rapatriement nous paraît pour le moins artificielle.

Vous me permettrez d'émettre l'avis que toute action hâtive du Parlement du Royaume-Uni serait largement interprétée ici comme une indication que la dualité culturelle et linguistique à laquelle le Canada s'est historiquement identifié est en fait sans fondement, aux yeux du Parlement britannique, puisque le Québec, foyer du fait français au Canada, peut être forcé impunément d'occuper une place encore plus étroite dans la Fédération.
En conséquence, nous demandons que les procédures concernant la résolution canadienne soient suspendues par votre Gouvernement jusqu'à ce que le Québec ait exprimé son consentement ou, tout au moins, jusqu'à ce que l'avis des tribunaux sur cette importante question du droit de veto du Québec soit porté à votre connaissance. À notre point de vue, c'est la seule attitude qui soit compatible avec les exigences élémentaires de la justice, compte tenu de la situation unique du Québec, principal foyer d'une collectivité distincte d'expression française en Amérique du Nord.

Vu la nature de la présente lettre, je me permettrai de la rendre publique dans quelques jours.

Veuillez agréer, madame la Première ministre, l'expression de mes sentiments les plus distingués.

[p. j. : Résolution
Décret]
CABINET OFFICE

With the compliments of
The Private Secretary to the
Secretary of the Cabinet

70 Whitehall, London SW1A 2AS
Telephone 01-233 8319

[Handwritten signature]

M.W. 21xii.

[Handwritten note]

To Sir.
CONFIDENTIAL

NOTE FOR THE RECORD

Ref. A06973

Canadian Constitution

Mr Michael Pitfield called Sir Robert Armstrong from Ottawa yesterday. He said that the Canadian Cabinet had been discussing arrangements for the patriation of the Canadian constitution following the passage of United Kingdom legislation. They had been planning for a Royal Visit to Canada on 15th February to mark the patriation. If a visit was to take place in February it would have to be in the middle of the month since any later would risk creating embarrassment because of the Quebec court case. Mr Pitfield knew that Mr Chretien had discussed this timing question when in London last week but Mr Pitfield confessed that he was unclear whether the British Government thought that patriation could be assured in time for a Royal Visit on 15th February or whether this was likely to be difficult.

2. Sir Robert Armstrong explained that the Canada Bill was to be introduced in the House of Commons in the week beginning 21st December and that the second reading would take place in the week beginning 18th January. Although we could be reasonably optimistic about the final outcome and passage of the Bill, the business managers were advised that it would be imprudent to try to cut corners or hurry the House of Commons in their handling of the Bill. In these circumstances, Sir Robert felt bound to confirm to Mr Pitfield what the Lord President had told Chretien, notably that it would be unwise to plan a Royal Visit for 15th February. If the Bill went through all its stages and procedures at a normal rate, it would be better to assume that Royal Assent might be arranged some time in March or even April. Sir Robert added, however, that he thought April would probably be on the pessimistic side.

Passage deleted and closed, 40 years, under
For Exemption. O. Hayland, 20 June 2013 A more precise judgement of the likely date when Royal Assent could be expected could probably best be made when the second reading was over.

1

CONFIDENTIAL
3. Mr Pitfield thanked Sir Robert Armstrong for this advice. He said that it helped him to have this confirmation of the Government's position. He thought that the longer things went on, the more difficult it could become for the Canadian Government, particularly with the impending Quebec court case. Matters could become particularly complicated if Royal Assent had not been obtained by the end of March.

4. I am sending copies of this note to John Coles (No 10), David Heyhoe (Lord President's Office) and Steven Gomersall (Lord Privy Seal's Office).

[Signature]

D J WRIGHT

18th December 1981
Jose Carlos Morales Morales  
President  
World Council of Indigenous Peoples-Secretariat  
University of Lethbridge  
Lethbridge  
Alberta  
Canada

DATE: 15 December 1981

Dear Mr. Morales,

I am writing on behalf of the Prime Minister to thank you for your telex of 24 November about the position of the Indian peoples of Canada under the Canadian Government's constitutional proposals.

We are indeed aware of the concern of the Canadian Indians and of many people on their behalf about the present Federal Government's constitutional proposals.

However, it is our view that any responsibilities formerly held by the British Government in relation to the native peoples of Canada became the responsibility of the Government of Canada with the attainment of independence, at the latest with the Statute of Westminster 1931. It follows therefore that we consider that any question of Indians' rights is something they can only pursue with the Government of Canada, or with the UN Commission on Human Rights.

Vivien Hughes  
North America Department

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Privy Council Office
Whitehall, London SW1A 2AP
10 December 1981

Dear Adam,

CANADA

As you know, Sir A Kershaw MP wrote to the Lord President earlier this week to ask if the Second Reading Debate on the Canada Bill could be deferred until the Foreign Affairs Committee had published a further and final Report on this subject. The Lord President had a word with Sir A Kershaw this morning and explained privately the Government's wish to introduce the Bill before Christmas and to proceed with Second Reading in the week beginning 18 January. Sir A Kershaw agreed, in view of this proposed timetable, to hasten the preparation of his Committee's Report so that it might appear before Second Reading.

The Lord President also had a conversation with Sir Bernard Braine MP, in which Sir Bernard indicated that he would argue against the Bill on the grounds that it was unconstitutional and infringed Aboriginal rights. He said that he had already asked the Indians to sign a petition setting out their grievances. This had been checked with the House authorities and declared to be in order. It was intended to present the petition, if possible, at about the time of First Reading of the Bill. He added that, quite separately, he had heard that Quebec also proposed to petition Parliament.

I am sending copies of this letter to Clive Whitmore, No 10, Murdo Maclean, Chief Whip's Office, and David Wright, Cabinet Office.

Yours sincerely,

D C R Heyhoe
Private Secretary

A Wood Esq
Private Secretary to the
Lord Privy Seal
Foreign and Commonwealth Office
London SW1
CONFIDENTIAL
10 Downing Street

From the Principal Private Secretary

10 December 1981

Dear David,

Canadian Constitution

I had a word with the Prime Minister this morning following the discussion in Cabinet of the proposed visit by The Queen to Canada in connection with the Patriation of the Canadian Constitution, and she has decided that we should now advise the Palace to abandon all idea of The Queen going to Ottawa for celebrations on 15 February.

I am sending copies of this letter to Brian Fall (Foreign and Commonwealth Office), Michael Pownall (Leader of the House of Lords's Office), Murdo Maclean (Chief Whip's Office) and David Wright (Cabinet Office).

Yours

[Signature]

David Heyhoe Esq.,
Lord President's Office.

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TELEGRAM NUMBER 458 OF 9 DECEMBER
CANADIAN CONSTITUTION. CALL ON THE LORD PRESIDENT BY THE
CANADIAN MINISTER OF JUSTICE.
1. MR CHRETIEN, ACCOMPANIED BY DR MICHAEL KIRBY, SECRETARY TO
THE CABINET FOR FEDERAL-PROVINCIAL RELATIONS, CALLED THIS MORNING
ON MR PYM. THE CHIEF WHIP, MR JOPLING, AND OFFICIALS FROM BOTH
SIDES WERE ALSO PRESENT.
TIMING IN UK PARLIAMENT
2. MR CHRETIEN WAS AT PAINS TO EMPHASISE THAT HIS GOVERNMENT HAD
NO DESIRE TO IMPOSE ANY DEADLINE ON THE UK PARLIAMENT, THOUGH HE
MADE A LOW KEY REFERENCE TO QUOTE A DATE IN MID-FEBRUARY (BY
WHICH THE CANADIANS MIGHT LIKE TO HAVE ACHIEVED PATRIATION). FROM
THE CANADIAN POINT OF VIEW, HOWEVER, THE SOONER THE BETTER. HE
UNDERSTOOD THAT WE HAD OUR MAVERICKS IN PARLIAMENT; BUT QUOTED
THE PREVAILING CANADIAN FEELING THAT, GIVEN THE NEW SITUATION,
THINGS SHOULD GO THROUGH OUR PARLIAMENT EASILY.
3. MR PYM SAID THAT MR CHRETIEN'S COMMENT ON THE SOONER THE
BETTER APPLIED TO THE UK ALSO. WE WERE RESOLVED TO GIVE THE MATTER
PRIORITY AND TO TAKE IT AS QUICKLY AS POSSIBLE.
ON THE OTHER HAND, ANY DEADLINES WOULD HAVE THE WORST POSSIBLE
RESULT AND ENCOURAGE DELAYING TACTICS BY THE OPPOSITION. IT WAS
THUS IMPORTANT THAT THE LEGISLATION SHOULD BE ALLOWED TO TAKE
ITS NATURAL COURSE AND THAT MPS SHOULD BE ALLOWED THEIR SAY. WE
THEREFORE PROPOSED TO INTRODUCE THE CANADA BILL BEFORE CHRISTMAS AND
TO GIVE IT A SECOND READING AFTER 18 JANUARY WHEN PARLIAMENT
RESUMED. THEREAFTER, INCLUDING THE
COMMITTEE STAGE AND A POSSIBLE THIRD READING IT WOULD TAKE A
FEW WEEKS IN THE COMMONS WHICH WOULD BE FOLLOWED BY 2 OR 3
WEEKS IN THE LORDS. THE WHOLE PROCESS SHOULD THUS BE
COMPLETED QUITE HAPPILY IN MARCH OR APRIL. HE WAS NOT ANXIOUS
ABOUT THE OUTCOME; BUT HE FEARED IT WOULD BE COUNTER-

CONFIDENTIAL / PRODUCTIVE
PRODUCTIVE TO ATTEMPT ANY DEVICE TO SPEED MATTERS ALONG, E.G.
BY STAGING SIMULTANEOUS DEBATES AT THE COMMONS AND THE LORDS.

4. THE CHIEF WHIP ALLUDED TO THE POSSIBILITY OF THE OPPORTUNITY
USING THE CANADA BILL TO DELAY THE GOVERNMENT'S LEGISLATIVE
PROGRAMME. HE NAMED SOME OF THOSE WHO COULD BE EXPECTED TO
MAKE TROUBLE AND SABOTAGE COULD HAPPEN. NOTHING COULD BE
MORE DANGEROUS THAN FOR MPS TO FEEL THERE WAS ANY KIND OF
TIME BLOCK.

FAC REPORTS

5. MR PYM TOLD MR CHRETIEN THAT THE GOVERNMENT REPLY TO THE
FAC REPORTS WOULD BE PUBLISHED ON FRIDAY 11 DECEMBER. HE NO
LONGER PLANNED A SEPARATE DEBATE ON THESE REPORTS: THIS WOULD
BE SUBSUMED INTO THE SECOND READING DEBATE.

CANADIAN VISITS TO THE UK

6. MR CHRETIEN SAID HE WAS UNDER PRESSURE FROM MINISTERS,
PROVINCIAL LEADERS AND OTHERS OVER POSSIBLE TRIPS TO THE UK,
NOW THAT THE ACTION WAS IN THIS COUNTRY. SOME SUCH VISITS
WOULD PROBABLY TAKE PLACE WILLY NILLILY BUT OTHERS COULD BE
CONTROLLED. MR PYM MADE IT CLEAR THAT HE HAD CONSIDERABLE
RESERVATIONS ON THIS. HE WAS FRIGHTENED THAT ACTIONS TAKEN,
WORDS SPOKEN AND VISITS MADE COULD MAKE THE PROCESS IN THE UK
TAKE LONGER. HE WOULD PERSONALLY WELCOME MR CHRETIEN WHO
MIGHT LIKE TO WITNESS A PART OF THE SECOND READING DEBATE FROM
THE GALLERY. BUT HE WOULD DISCOURAGE ANYTHING MUCH MORE IN THE
WAY OF VISITS AT THAT STAGE. THEREAFTER, WHEN HE KNEW THE
ATMOSPHERE FROM THE EARLIER PROCEEDINGS WE WOULD BE ABLE TO
DISCUSS WITH THE CANADIANS THE BEST MOMENT FOR CANADIAN
FEDERAL AND PROVINCIAL LEADERS TO COME OVER, PERHAPS AT SOME
CEREMONIAL MOMENT. IF WE WANTED EARLIER CANADIAN VISITS, WE WOULD
SAY SO.

MEDIA

7. MR PYM GENERALLY DISCOURAGED THE CANADIANS, PARTICULARLY
DURING VISITS TO THIS COUNTRY, FROM SPEAKING TO THE MEDIA ABOUT
THE PROCESS IN THE UK. HE (MR PYM) WAS AVOIDING DOING SO ON
THIS OCCASION.

CARRINGTON

CANADIAN CONSTITUTION LIMITED

COPY TO:

SIR I SINCLAIR
MR FREELAND
DR PARRY

PS/CHANCELLOR OF THE DUCHESS OF
LANCASTER

PS/LORD CHANCELLOR HOUSE OF LORDS

PS/LORD PRESIDENT

MR H STEEL, LAW OFFICERS' DEPT

PS/HOME SECRETARY

[COPIES SENT TO NO 10 DOWNING ST]
PRIME MINISTER

Parliamentary Affairs

I understand that Mr. Heseltine will want to report on progress in re-thinking the approach to controlling excessive rates rises: the Chief Whip will also wish to report on the Parliamentary prospects on this front.

The Canadian Constitution Repatriation issues now seem much easier, following a constructive meeting this morning between the Canadian Minister of Justice and Messrs. Pym and Jopling, but it might be helpful for the Lord President to mention his conclusions on handling.

The one questionmark over next week's business concerns the timing of the Northern Ireland Emergency Provisions (Continuance) Order. Mr. Prior is reported to be most unhappy about the timing proposed, Wednesday evening, but Business managers see no alternative. It would perhaps be better for this to be settled out of Cabinet, but Mr. Prior might raise it.

9 December, 1981.
THE CANADIAN CONSTITUTION: PRESS LINE

1. News Department here have been in touch with your Press Office about the line to take if questioned about the Canadian Constitution, now that the Resolution has arrived in this country. Until now, because the issue was still before the Canadian Parliament, News Department have said nothing about the legislative timetable here. I attach a copy of the text which has been agreed between ourselves and the Lord President.

2. We are, of course, telegraphing this text to our High Commission in Ottawa and specifically asking them not to go beyond it. We have received no reports from Ottawa about the line they have meanwhile been taking in response to any enquiries; but we have no reason to believe that they have gone publicly beyond the position set out in our text. Privately, Lord Moran has of course warned Mr Trudeau that he cannot safely assume that the legislation will go through in time for a deadline of 15 February for a visit by Her Majesty The Queen. But it seems to me that this is in line with the thinking in your letter of 8 December to David Heyhoe, and in particular with what the Prime Minister said to Mr Trudeau on the telephone.

3. We are all very conscious of the complexity and the delicacy of the position with regard to parliamentary timing as set out in your letter.

4. I am copying this letter to Philip Moore and Robert Armstrong.

Michael Palliser
THE CANADIAN CONSTITUTION

LINE TO TAKE

If asked, News Department will take the following line on the record:-

(a) As Mr Pym will be making clear to the Canadian Minister of Justice, Mr Chretien, this morning, HMG are delighted that the Resolution embodying the Canadian constitutional proposals arrived in the UK this morning.

(b) Mr Chretien (accompanied by the Secretary to the Cabinet for Federal-Provincial Relations, Dr Michael Kirby) will also be calling on the Lord Privy Seal later in the week.

(c) It is planned to publish the Government's reply to the Reports of the Foreign Affairs Committee of the House of Commons on the Canadian Constitution on Friday 11 December.

(d) On timing, we propose to keep to our undertakings to deal with the Canadian request in Parliament as rapidly as possible (see Mr Luce's reply to a PQ on 18 November). This is in line with what Mrs Thatcher told Mr Trudeau in Melbourne on 5 October.

(e) (If asked about Quebec) The position of Quebec and the degree of acceptability of the Canadian constitutional proposals in Canada are a matter for Canada.

(f) (The Indians) The view which has been taken by the British Government is that any responsibility for the aboriginal peoples of Canada formerly held by the British Government became the responsibility of the Government of Canada with the attainment of independence, at the latest with the Statute of Westminster 1931. We have therefore considered that the Indian peoples can pursue their claims only with the Government of Canada.

/Unattributably
Unattributably News Department will say:—

(a) On the parliamentary timetable, we cannot be drawn. The House business managers do not, as a matter of practice, decide on the timetable far in advance. Whilst we have undertaken to deal with the matter quickly, the rest of the Government's legislative programme has to be taken into account.

(b) We have delayed our reply to the FAC with their agreement while the Supreme Court arrived at its judgment and a new Federal-Provincial agreement was hammered out in Canada.

(c) (Indians, if raised) It is possible that some MPs may wish to raise in Parliament the position of the Indians. On this see (f).

(d) (If asked about Indian Court action) Proceedings in the UK Courts have been initiated. It would not be appropriate for us to comment further at this stage.

(e) (If asked if it would pass through Parliament) Parliament will decide that: but the Government's aim in introducing the Bill will clearly be to get it through.
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Dear Adam,

As you know, the Canadian Minister of Justice, Mr Chretien, called on the Lord President this morning. The Chief Whip was also present. Mr Chretien was accompanied by Dr Michael Kirby, Secretary to the Canadian Cabinet with responsibility for Federal-Provincial relations.

Mr Pym congratulated Mr Chretien on his part in achieving such a level of agreement in Canada. Matters were now manageable here. However, there were a lot of Westminster MP's who would want to have their say about the Bill. He could not therefore commit himself to any dead-line for the passage of the Bill, but the best chance of achieving smooth progress lay in letting the Bill take its natural course under the normal procedures. He hoped to introduce the Bill before Christmas. Second Reading would be soon after the House reassembled on 18 January, probably in that week. Thereafter we would have a clearer idea of what was involved. He was confident that, if things were allowed to take their natural pace, the Bill would emerge by March/April; it could be sooner, if all went well, but this was impossible to predict at this stage.

Mr Chretien said that, although the sooner the Bill was passed the better from the Canadian point of view, he had no wish to try and impose any dead-line. On the substance of the issue, 92 per cent of Members in the Canadian House of Commons had voted in favour of the Bill. The vote in the Senate yesterday had been closer (59 - 23) because the Government had effectively been asking them to abandon their right of veto. The controversy in Canada had now virtually disappeared. Only Quebec and Aboriginal rights

Adam Wood Esq
Private Secretary to the
Lord Privy Seal
Foreign and Commonwealth Office
remained as issues. On the latter there appeared to be much misunderstanding and the Government had a good story to tell. On the former, the Government had achieved "three-quarters" of an agreement, which was probably as much as had been possible.

In reply to a question from Dr Kirby, Mr Pym explained that it was not possible at this stage to predict the length of Second Reading, although it was likely to be extended. Members would want to air their points of view and must be allowed to do so. The length of time needed for subsequent stages was also unpredictable. It depend[ed] among other things on whether the Opposition chose to use the Bill to disrupt the rest of the Government's programme.

Mr Chretien said that he understood the position and was content. He asked whether it would be helpful or not for Canadian Ministers to visit London during the proceedings; there was naturally a strong wish on the part of many to do so. In reply, Mr Pym said that he had serious reservations about such visits. Any hint of pressure or lobbying would be positively counter-productive to the smooth progress of the Bill. Naturally, however, Mr Chretien himself or with a colleague would be most welcome if they wished to be present during Second Reading. Mr Chretien said that he well understood the need not to get involved. It might not be easy to deter all those who wished to come over from doing so, but it might help if he could suggest some sort of organised visit at the time of Royal Assent or possibly Third Reading in the Lords. Mr Pym said that this sounded perfectly possible and undertook to keep in touch about the possibilities once he had a better idea of the Bill's likely progress.

I am sending copies of this letter to Clive Whitmore (No 10), Murdo Maclean (Chief Whip's Office) and David Wright (Sir Robert Armstrong's office).

Yours ever,

David

D C R HEYHOE
Private Secretary
UNCLASSIFIED
DESK By 090900Z DEC
FM OTTAWA 092300Z DEC 81
TO IMMEDIATE FCO
TELEGRAM NUMBER 705 OF 8 DECEMBER

CONSTITUTION: SENATE VOTE

1. THE SENATE PASSED THE CONSTITUTIONAL RESOLUTION TODAY BY 59 VOTES TO 23. MOST OF THOSE VOTING AGAINST WERE CONSERVATIVES, INCLUDING SENATOR FLYNN, LEADER OF THE OFFICIAL OPPOSITION IN THE SENATE.

2. SEVEN AMENDMENTS WERE REJECTED, THE TEXT THEREFORE REMAINS THE SAME AS THAT PASSED BY THE HOUSE OF COMMONS.

MORAN

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MR H STEEL, LAW OFFICERS' DEPT
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With the Compliments
of
The Legal Secretary to the Lord Advocate
and
First Parliamentary Draftsman for Scotland
N. J. Adamson, C.B., Q.C.
8th December 1981

Lord Advocate Chambers,
Fielden House,
10 Great College Street,
London SW1P 3SL.
Telephone: Direct Line 01-212 8972
Switchboard 01-212 7676
CANADIAN CONSTITUTION

The Lord Advocate has seen the Lord Privy Seal's minute of 2nd December and the comments by the Lord Chancellor and the Attorney General on the draft reply to the Foreign Affairs Committee, and has no comments of substance. In the light of the comments by the Chancellor and the Attorney, you may however wish to consider the following minor amendments.

Page 5, paragraph 9. Some of the narrative in this paragraph is required, and it may be sufficient to omit the words from "the dissenting Provinces" in the first line to "the proposed request." in the sixth line.

Page 5, paragraph 10. The last sentence might be amended to read "The Resolution embodying the revised package of proposals has now been approved by both Houses of the Federal Parliament by large majorities." - on the assumption that this is true of the vote in the Senate.

Page 9, paragraph 9. The last line might be amended to read "a request by the Canadian Parliament for patriation."

Copied to the recipients of the Lord Privy Seal's minute.

N.J. Adamson
Canadian Constitution

The Prime Minister and the Lord President met this morning to discuss the latest position on the patriation of the Canadian Constitution.

The Prime Minister said that she had had to warn Mr. Trudeau when they had spoken on the telephone last Friday that it was her instinct that it would be wise to plan on the assumption that Parliament would have completed all the stages of the Canadian Constitution Bill in time for the Queen to visit Canada on 15 February for the celebrations to mark the patriation of the Constitution.

I was sure that the secret of getting the Bill through as quickly as possible was to take it at its natural pace. We must remember that the subject of the Canadian Constitution had never been debated in the House of Commons and we really did not know what we should find when the Bill had its second reading. We had in mind Wednesday 20 January for the second reading debate, and he was considering whether to set aside two days for it. If we allowed the second reading debate to go on as long as this, it might help shorten the Committee stage later. He was at present thinking of taking the remaining stages on 27/28 January, though he could not guarantee to complete all the stages in the Commons then. But even if the Commons did complete their consideration of the Bill on 28 January, the Lords would then need a further fortnight. The only way in which the process might possibly be shortened was by introducing a No. 2 Bill / in the Lords
in the Lords, but he was not at all sure about the wisdom of this course.

We should explore urgently every possibility of reducing the time needed for the passage of the Bill through both Houses, though she saw the strength of the Lord President's concern that any suggestion of external pressure on the Parliamentary timetable might increase opposition to the Bill and delay its passage. Instead of allocating two days for second reading, we might confine the debate to one day but let it run on until midnight. She would also be grateful if the Lord President could explore with the Chancellor of the Duchy of Lancaster and the Chief Whip (Lords) the possibility of introducing a No. 2 Bill in the Lords. He should let her know in the course of the day if he was able to make any progress in this direction.

I am sending copies of this letter to Brian Fall (Foreign and Commonwealth Office), Michael Pownall (Chancellor of the Duchy of Lancaster's Office), Murdo Maclean (Chief Whip's Office) and David Wright (Cabinet Office).

Passages denied and closed, 40 years, under FOI Exemption.

Chayland
20 June 2013

David Heyhoe, Esq.,
Lord President's Office.
WHITE PAPER: BRITISH NORTH AMERICA ACTS: THE ROLE OF PARLIAMENT: OBSERVATIONS BY THE SECRETARY OF STATE FOR FOREIGN AND COMMONWEALTH AFFAIRS

Thank you for your letter of 7 December.

John Coles has written to the Lord Privy Seal's Office confirming that the Prime Minister is content with the Report to be published. We have no objection to the timing you propose.

M. A. PATTISON

B. E. Bowley, Esq.,
Foreign and Commonwealth Office.
8 December 1981

CANADIAN CONSTITUTION: REPLY TO THE
FOREIGN AFFAIRS COMMITTEE

The Prime Minister has seen the revised
draft of the Government's reply to the first
report of the Foreign Affairs Committee on
the Canadian Constitution and agrees that
the report may be published.

A. J. COLES

A.K.C. Wood, Esq.,
Lord Privy Seal's Office.
Dear Mike,

WHITE PAPER: BRITISH NORTH AMERICA ACTS: THE ROLE OF PARLIAMENT: OBSERVATIONS BY THE SECRETARY OF STATE FOR FOREIGN AND COMMONWEALTH AFFAIRS

We propose to publish as a White Paper on Friday of this week, 11 December 1981, our reply to the First Report of the Foreign Affairs Committee, Session 1980/81, under the title "British North America Acts: The role of Parliament: Observations by the Secretary of State for Foreign and Commonwealth Affairs". A draft copy of this paper is being sent to the Prime Minister this evening for approval.

I understand that the Lord Privy Seal obtained clearance in principle for the Canada Bill at Cabinet on Thursday last, 3 December, and that provisional timings for the legislation were agreed.

I should be grateful if you, and those to whom I am copying this letter, would confirm that there is no objection to this publication or its timing.

Yours ever,

Brian Bowley
Parliamentary Clerk

cc: D C R Heyhoe Esq
Office of the Lord President of the Council and Leader of the House
70 Whitehall
SW1

P Moore Esq
Chief Whip's Office
12 Downing Street
SW1
Prime Minister

Canadian Constitution

Are you content that the government's reply to the Foreign Affairs Committee should now issue?

(As has been agreed by C)

and should go to the printer tomorrow)

Agreed

A.Y.C. 12/12
CONFIDENTIAL

Foreign and Commonwealth Office
London SW1A 2AH

7 December 1981

Dear John,

CANADIAN CONSTITUTION: REPLY TO THE FAC

When the Lord Privy Seal circulated to Members of OD on 2 December, the revised draft of our reply to the First Report of the FAC on the Canadian Constitution, Michael Alexander chose to delay putting this before the Prime Minister until we had received comments from other members of OD.

I now enclose our proposed reply, cleared with other members of OD, incorporating suggestions made by some of them. The aim is to publish it as soon as possible after parliamentary proceedings in Canada are at an end; the Senate are due to complete their consideration of the Canadian proposals tomorrow evening, 8 December. We should like to publish our reply on Friday, but to achieve this the final draft must be with the printers tomorrow afternoon.

I should be grateful if you would let me know if the Prime Minister has any comments.

Yours,

[Signature]

A K C Wood
APS/Lord Privy Seal

A J Coles Esq
No 10 Downing Street
Whitehall
FIRST REPORT FROM THE FOREIGN AFFAIRS COMMITTEE
SESSION 1980/81

BRITISH NORTH AMERICA ACTS: THE ROLE OF PARLIAMENT

OBSERVATIONS BY THE SECRETARY OF STATE FOR FOREIGN AND COMMONWEALTH AFFAIRS

Introduction
This paper is the Government's reply to the First Report from the Foreign Affairs Committee on the BNA Acts. It takes into account also the Committee's Second Report.

The Legal Background
1. The British North America Act 1867 is the basic Canadian constitutional instrument. That Act was an Act of the United Kingdom Parliament. In certain important respects, it can be amended only by Act of the United Kingdom Parliament. It has been so amended some 14 times. This anomalous situation whereby particular provisions of the constitution of one sovereign nation can be amended only by the legislature of another sovereign nation is preserved by Section 7 (1) of the Statute of Westminster 1931, under which Canada's complete independence was otherwise confirmed. The historical background is touched on in the Memorandum by the Foreign and Commonwealth Office to the Foreign Affairs Committee (147/79-80/FM; H. C. 42 II p.2) and generally in the First Report of the Foreign Affairs Committee itself.

The Reports
Its Supplementary Report (Second Report) was published on 15 April 1981. The Government believed that it would be appropriate to delay their response to the Committee's Reports while the matter was before the Courts in Canada and until the Canadian Parliament had completed its consideration of this issue.

3. The Committee's Reports had as their background an expected request from the Canadian Federal Parliament that a Bill be laid before the United Kingdom Parliament to amend the Canadian Constitution in a number of respects, notably by terminating the remaining responsibility of the United Kingdom Parliament for amendment of the Canadian Constitution and conferring the relevant powers of amendment on Canadian institutions and by providing for a Canadian Charter of Rights and Freedoms, thereby (to use the term which has gained a wide currency) 'patriating' the Canadian Constitution. At the time of the Committee's Reports, the Federal constitutional proposals were not accepted by a majority of the Provinces; but since the publication of the Reports, the Federal proposals have been substantially modified (see paragraph 4 below) and now enjoy the support of nine out of ten Provinces (see paragraph below). As a result, the Committee's Reports have, to a large extent, been overtaken. The Government is nonetheless deeply grateful to the Committee for their Reports.

Subsequent Events
4. Since the Reports were published the Canadian proposals have given rise to extensive public discussion on both sides of the

/Atlantic
Atlantic. The course of this debate has been influenced by two events in particular, namely the judgment of the Canadian Supreme Court of 28 September and more recently the announcement at the end of the Federal-Provincial Conference held in Ottawa between 2 and 5 November that the Federal Government and nine of the ten Provinces (that is, all except Quebec) had arrived at agreed proposals for the Federal Parliament to put to the United Kingdom Parliament as its request for constitutional amendment and patriation.

The Supreme Court Judgment

6. On 28 September 1981, the Canadian Supreme Court delivered a judgment on the constitutional propriety of the proposed Canadian patriation request as it then stood after consideration by the Canadian Parliament. This judgment was given on appeals from somewhat conflicting judgments of the Courts of Appeal of Manitoba, Quebec and Newfoundland. Essentially, three questions were before the Supreme Court:

(1) Would the proposed request, comprising patriation, coupled with an amending formula and a Charter of Rights affect Federal-Provincial relationships or Provincial powers;
(2) Was there a constitutional convention that the Provinces must agree before a request is made to amend the Canadian constitution; and
(3) Was Provincial agreement constitutionally required before such requests could be made?

The judges were unanimous that the answer to the first question was yes. They then chose to treat the second and third questions
together, but in two parts: first whether there was a legal requirement for Provincial assent and secondly whether constitutional convention imposed a corresponding requirement. These two aspects were considered in two separate opinions of the Supreme Court, upheld by differing majorities.

7. The Court concluded by a 7-2 majority that there was no rule of Canadian law requiring Provincial assent as a pre-condition for the Federal Parliament to request constitutional amendments affecting Federal-Provincial relationships. Specifically, constitutional conventions were not law and were not enforced by the courts. Further, as a matter of Canadian law, there was no provision in the British North America Acts or in the Statute of Westminster for taking into account the 'nature and character of Canadian federalism'. 'The law knows nothing of any requirement of Provincial consent, either to a resolution of the federal Houses or as a condition of the exercise of United Kingdom legislative power.' (p 49, printed text).

8. The central question considered in the second majority opinion was whether there existed a constitutional convention in Canada requiring Provincial assent to constitutional amendments affecting Federal-Provincial relationships. The court approached this question on the basis that

"'We are not asked to hold that a convention has in effect repealed a provision of the BNA Act ... Nor are we asked to enforce a convention. We are asked to recognise if it exists'" (p. 91)

In the event the Court found in the second majority opinion, by a 6-3 majority, that there was a constitutional convention as
to Provincial assent, although it was not prepared to quantify the required level of assent beyond saying that while unanimity was not necessary 'at least a substantial measure of Provincial consent' was required and agreement by two Provinces was clearly insufficient (p.106). It went on to hold that the agreement of the Provinces, 'no views being expressed as to its quantification' was constitutionally required and that the passage of the proposed package by the Canadian Parliament in the conventional without such agreement 'would be unconstitutional/sense' (p.109). Earlier in this majority opinion the Court had also stated that 'it should be borne in mind that, while they are not laws, some conventions may be more important than some laws ... The foregoing may perhaps be summarised in an equation: constitutional conventions plus constitutional law equal the total constitution of the country' (p.90). The Government believe that they should be guided by the majority decisions in each case both as to the legal position and as to the existence and scope of the convention.

The November Federal-Provincial Conference

9. Following the judgment, Mr Trudeau, the Canadian Prime Minister, invited the Provincial Premiers to meet him at a Conference which met in Ottawa from 2 to 5 November. It was announced on 5 November that the Federal Government and nine of the ten Provinces had agreed to a revised package of proposals which were to be recommended to the Federal Parliament by the Federal Government.

10. Since the Conference there have been further consultations on various aspects of the proposals, particularly as regards
implications for Quebec and for women's rights and the rights of the aboriginal peoples. The Resolution has now been approved by both Houses of the Federal Parliament.

**United Kingdom Consideration of a Canadian Request**

11. The Government note that the Canadian Supreme Court was at pains to make clear throughout its judgment of 28 September that it did not presume to pronounce upon the authority of the United Kingdom Parliament, or its practices and conventions, but was concerned only with Canadian aspects. Nevertheless, the judgment of the Supreme Court has clarified what is required within Canada, and this can be taken as a useful guide to our approach. As a result of the agreement on 5 November between the Canadian Federal Government and nine of the Provinces the difficulties which might be associated with Conclusions 4 to 6 and 8 to 10 of the Committee's First Report need no longer be addressed. Conclusion 12 relating to the existence of litigation in Canadian Courts does not fall to be considered.

12. Agreement by nine out of ten Provinces to the revised proposals now put forward appears to satisfy the test for Canadian purposes which is inherent in the view expressed by the Supreme Court and the Committee's own Conclusion 7, that there is no rule, principle or convention that the United Kingdom Parliament when requested to enact constitutional amendments directly affecting Canadian Federal-Provincial relations, should accede to that request only if it is concurred in by all the Provinces directly affected. The Government also agree with the finding of the Committee, in its discussion
of the considerations which led it to formulate Conclusion 7, that the objective of Section 7(1) of the Statute of Westminster '... was simply to maintain the status quo in relation to constitutional amendments. We cannot see in that status quo ... any evidence of a requirement ... of unanimous consent [of the Provinces]' (paragraph 99 of the Report).

13. The Government have no difficulty in principle with Conclusions 1 to 3, while not necessarily accepting in detail the reasoning on which they are based. The Government fully accept Conclusions 11(i) to (v) and in particular that the United Kingdom Parliament should not undertake any deliberation about the suitability for the peoples of Canada of requested constitutional proposals or enact amendments not consented to by the Canadian Government and Parliament or enact only part of the requested proposals: 'a partial package is a new package' (paragraph 122 of the First Report). In the view of the Government the United Kingdom is bound by the intra-Commonwealth convention, expressed in declaratory form in the third preambular paragraph of the Statute of Westminster 1931 that:

''it is in accord with the established constitutional position that no law hereafter made by the Parliament of the United Kingdom shall extend to any of the said Dominions as part of the Law of that Dominion otherwise than at the request and with the consent of that Dominion''.

Any amendment of the Canadian legislation would of course introduce an element which had not been 'requested and consented'
in this way and the Government therefore fully agree with the FAC conclusion above on this point.

14. The statements by Ministers of successive Governments that it would be in accordance with precedent for the Government to introduce, and for Parliament to enact, legislation on the basis of a Canadian request have been statements of fact: in every case where there has been a request from the Federal Parliament for amendment, the Government have introduced, and Parliament has enacted, legislation in accordance with it. While the Government accept that there is never an exact precedent for a particular constitutional amendment, the consistent practice has been to act in accordance with the request and consent of the Federal Parliament. The force of this consistent practice cannot be ignored. This does not mean the United Kingdom Parliament is under some legal obligation automatically to enact whatever Canadian proposals are put before it; but it does point overwhelmingly in the direction of acceding to an agreed request for patriation.

Indians, Inuit and other Native Peoples

15. The Government note that the Foreign Affairs Committee endorse the view that all relevant treaty obligations with the Indian peoples in so far as they still subsisted became the responsibility of the Government of Canada with the attainment of independence at the latest with the Statute of Westminster 1931. For their part the Government support the view of the Committee that "Indian rights and interests ... could not rightly be made the subject of deliberation by the United Kingdom Parliament in dealing with a request for [amendment]"
amendment or patriation of the BNA Acts'. The Government believe that any amendment of the provisions relating to aboriginal rights unless requested and consented to by the Canadian Government - as with any other amendments (see paragraph 13 above) - would constitute an act of interference in the internal affairs of Canada.

The Committee's Recommendation

16. The Committee recommended in its First Report (paragraph 15) that the Government should draw to the attention of the Government of Canada its view that the considerations set out in Chapters V to VIII of its Report supported the Committee's Conclusions; also that that view, together with the other considerations and conclusions in the Report, had been reported to the House. This recommendation was, carried out at the Foreign and Commonwealth Office at a meeting between the Canadian High Commissioner and an Under-Secretary at the Foreign and Commonwealth Office on the date of publication of the Report, ie 30 January 1981.
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SAVING TELEGRAM
CONFIDENTIAL

BY BAG

FROM OTTAWA

TO FOREIGN AND COMMONWEALTH OFFICE
TELNO 17 SAVING
4 DECEMBER 1981
CONFIDENTIAL

ADDRESSED TO FCO TELEGRAM NO 17 SAVING OF 4 DECEMBER 1981
REPEATED FOR INFORMATION TO WASHINGTON AND PARIS

MR TRUDEAU'S FUTURE

My impression following my luncheon with Mr Trudeau is that he does not repeat not intend to retire soon, despite a great deal of recent speculation to that effect. He clearly envisages a fight to the death with Mr Lévesque, and told me that this must be tackled now and not in 2 years' time. It seemed to me that he is determined to win this fight, to beat the separatists and break up their party. This is something only he might be able to do, and if, rather than simply bringing home the Constitution, would be the logical culmination of a political life spent in grappling with the problem of Quebec's relationship with Canada. So my guess is that he will stay on till that fight is substantially over. But I could be wrong.

2. In his press conference later the same day Trudeau was asked about the rumours of his early retirement and said he could be roped in to fight another election though he was not anxious to do this "but sometimes you can't resist a draft, can you?"

MORAN

[THIS TELEGRAM WAS NOT ADVANCED]
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SAVING TELEGRAM
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BY BAG

FROM OTTAWA

TO FOREIGN AND COMMONWEALTH OFFICE

TELNO 19 SAVING

4 DECEMBER 1981

CONFIDENTIAL

ADDRESS TO FCO TELEGRAM NO 19 SAVING OF 4 DECEMBER 1981

REPEATED SAVING TO WASHINGTON, UKDEL NATO, UKMIS NEW YORK
AND MOSCOW

CANADA: DISARMAMENT AND THE DETERRENT

When I lunched yesterday with the Prime Minister I asked him whether he still adhered to the policy of "suffocating" nuclear weapons he proposed at the UN in 1978 and whether this remained consistent with support for the policy of deterrence, which had kept the peace for 36 years.

2. Mr Trudeau said that he still thought his arguments valid and thought that no better ideas had been put forward. He was concerned to stop the threat of ever more fearsome weapons threatening the lives of our children. He said that there had been discussion on these lines at the recent Pugwash conference in Alberta. I thought it interesting that he was aware of the conference. In the discussion that followed I was struck by his underlying antagonism towards the Americans in general and the Reagan administration in particular. He dwelt on the heedless remarks they had made and only grudgingly conceded that President Reagan's offer of the zero option had been helpful. I told him it had been warmly welcomed by Mrs Thatcher and Chancellor Schmidt, and that HMG now thought it very important that the Americans should be firmly supported and the Russians pressed to make an adequate response.

3. In talking about the strategic balance Mr Trudeau said that he had recently had in his house Mr Cy Taylor (the political Deputy Under-Secretary in the DEA) and the Soviet Ambassador (whom I believe he sees regularly and who is a former director of agitprop in the Central Committee. Mr Yakovlev had, he said, cast doubt on the figures given by Mr Caspar Weinberger (whose name he could not remember - his Secretary had to remind him) on the strategic imbalance. Evidently Mr Trudeau was disposed to believe Mr Yakovlev rather than Mr Weinberger. He asked me how HMG assessed the position. I told him that we had no doubts that the balance had tilted sharply against the West. I gave him our figures on tanks, submarines and missiles to illustrate the size of the gap and pointed out that the Soviet

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SAVING TELEGRAM / Union
Union now had 7 times the number of subarmines that the Germans had in 1939. All this seemed to be news to Mr Trudeau. I think it may be a case of wilful ignorance. His myopia in this field contrasted sharply with his tough, knowledgeable and determined stance about a problem he does understand like Quebec. His Private Secretary, Fowler, was, however, well informed and spoke up helpfully during the discussion.

4. When the unilateralist policy of the Labour Party was brought up I said that the New Democratic Party had similar policies and advocated withdrawal from NATO. Curiously Trudeau was aware that this policy had been reaffirmed at the party's conference this summer. The three officials present were not. Trudeau said he thought the resolution had been passed against the wishes of the leadership.

5. FCO please pass Saving to Washington, UKDEL NATO, UKMIS New York and Moscow.

MORAN

[REPEATED AS REQUESTED]
[THIS TELEGRAM WAS NOT ADVANCED]
[COPIES SENT TO NO 10 DOWNING STREET]

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RR OTTAWA

GRS 130
CONFIDENTIAL
FM FO 0418002 DECEMBER 1931
TO ROUTINE OTTAWA
TELEGRAM NUMBER 444 OF 4 DECEMBER
CANADIAN INDIANS

1. YOU SHOULD STRICTLY ADHERE PUBLICLY AND IN ANY
DISCUSSION WITH THE CANADIANS TO THE LINE IN PARAGRAPH 2 OF MY
TELIGO 442. YOU MAY GO ON TO SAY THAT THIS IS A COMPLEX MATTER WHICH
WE ARE STUDYING.

2. YOU WILL WISH TO KNOW THAT THE QUESTION OF THE IMPACT ON
PARLIAMENTARY PROCEEDINGS OF THE COURT ACTION IN THIS COUNTRY
IS UNDER DISCUSSION BETWEEN OUR OWN LEGAL ADVISERS AND THE
ATTORNEY GENERAL. THE PRELIMINARY CONCLUSION IS THAT THE SUB
JUSTICE RULE WOULD NOT PREVENT CONSIDERATION OF THE CANADA BILL
BY PARLIAMENT IN THE EVENT OF COURT ACTION BY THE INDIANS IN
THIS COUNTRY, ALTHOUGH THERE MIGHT BE SOME QUESTION OF
POLITICAL PROPRIETY.

3. WE WILL KEEP YOU INFORMED.

CARRINGTON

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PS/LORD PRESIDENT
MR H STEEL, LAW OFFICERS' DEPT
PS/HOME SECRETARY

[Copies sent to No 10 Downing St]
Dear Michael,

Mr Trudeau's Telephone Call

I sent you copies of Lord Moran's telegrams reporting his conversation with Mr Trudeau on 3 December. In his telegram No. 686, Lord Moran mentions possible questions on Quebec and the Indians on which you may like advice.

If Mr Trudeau asks about the effect of court action by Quebec in this country, we suggest that the Prime Minister should simply say that this is entirely a matter for Canada; as she has always promised, if the Canadian Government send us their duly approved proposals, we will deal with them here.

The position on the Indians is trickier. The question has been under discussion between our own Legal Advisers and the Attorney General. The preliminary conclusion is that the sub judice rules would not prevent consideration of the Canada Bill by Parliament in the event of court action by the Indians in this country, although there might be some question of political propriety. Overall, therefore, it would probably be wiser for the Prime Minister to say (as did Lord Moran) that this is a complex matter which we are studying; we certainly hope that these possible actions will not result in delays in Parliament.

As far as the timing of parliamentary proceedings here is concerned, the Prime Minister may be aware of the Lord President's views set out in David Heyhoe's letter of 3 December (attached). She may also like to bear in mind our undertaking to give the Foreign Affairs Committee time to consider our reply to their Report before any Parliamentary debate. Our reply will probably not be published until the week beginning 14 December; given the ten days consideration we would like to allow the FAC, this would make it difficult to have a Second Reading before Christmas.

Yours ever,

(R M J Lyne)
Private Secretary

M O'D B Alexander Esq
10 Downing Street
CONFIDENTIAL

DESKEY 048002

FM OTTAWA 032072 DEC 81
TO IMMEDIATE FCO

TELEGRAM NUMBER 606 OF 3 DECEMBER

1. AS YOU WILL KNOW MR TRUDEAU IS SPEAKING TO THE PRIME MINISTER ON THE TELEPHONE TOMORROW AT 3.00PM LONDON TIME.

2. WHEN HE GAVE ME LUNCH TODAY HE SHOWED NO SIGN OF EUPHORIA ABOUT YESTERDAY’S VOTE IN THE HOUSE OF COMMONS AND SAID HE HAD SEEN TOO MANY SLIPS BETWEEN CUP AND LIP TO FEEL HAPPY UNTIL THE CONSTITUTION HAD GONE THROUGH ALL ITS STAGES IN CANADA AND THE UK AND BEEN PROCLAIMED HERE. HE WAS ENORMOUSLY GRATEFUL TO MRS THATCHER FOR THE ROBUST AND COURAGEOUS LINE SHE HAD ALL ALONG TAKEN. THE MELBOURNE STATEMENT HAD PLAYED AN IMPORTANT PART IN HIS NEGOTIATIONS WITH THE PROVINCES. BUT HE STILL THINKS IT EXTREMELY IMPORTANT TO HAVE IT PUT THROUGH IN THE SHORTEST POSSIBLE TIME. IT BECAME CLEAR THAT HE WANTS THIS IN ORDER TO DEPRIVE MR LEVESQUE OF A WEAPON IN THE ALL-OUT BATTLE FOR THE FUTURE OF QUEBEC WHICH HE IS ABOUT TO LAUNCH WITH A SPEECH IN MONTREAL ON SUNDAY WEEK.

3. WHEN HE SPEAKS TO MRS THATCHER HE WILL STRESS THE DANGERS OF A DELAY AT WESTMINSTER WHICH MIGHT ALLOW QUEBEC AND THE INDIANS TO MANUFACTURE DIFFICULTIES. HE WILL ASK IF IT IS REALLY UNTHINKABLE THAT PASSAGE THROUGH BOTH HOUSES AT WESTMINSTER MIGHT BE COMPLETED BEFORE CHRISTMAS. I TOLD HIM, IN ACCORDANCE WITH THE WORD I HAD VIA THE DEPARTMENT FROM THE LORD PRESIDENT’S OFFICE, THAT IT WOULD BE REASONABLE TO EXPECT A FIRST READING IN THE COMMONS THIS MONTH, BUT THAT IT WOULD I THOUGHT NOW BE QUITE IMPRACTICABLE FOR THE SECOND READING TO BE HELD BEFORE CHRISTMAS. I EXPECTED IT TO TAKE
THAT IT WOULD I THOUGHT NOW BE QUITE IMPRACTICABLE FOR THE SECOND READING TO BE HELD BEFORE CHRISTMAS. I EXPECTED IT TO TAKE PLACE SOME TIME AFTER THE HOUSE REASSEMBLED ON 18 JANUARY, WITH APPROPRIATE PRIORITY BEING GIVEN TO IT BY THE GOVERNMENT TO ENSURE NORMAL PASSAGE THROUGH BOTH HOUSES WITHOUT UNAVOIDABLE DELAY. IT EMERGED THAT MR TRUDEAU WOULD LIKE IT BACK BEFORE 15 FEBRUARY, WHICH IS THE DATE HE HAS IN MIND FOR PROCLAMATION BY THE QUEEN IN PARLIAMENT IN OTTAWA. I SAID THAT SPEAKING PERSONALLY IT SEEMED TO ME THAT THIS MIGHT BE POSSIBLE BUT WAS EXTREMELY TIGHT. I STRESSED THAT ANY PUBLIC TALK OF DEADLINES OR COMMITMENTS OR ANY PUBLIC PRESSURE WOULD BE COUNTER-PRODUCTIVE, TEND TO MAKE DOUBTERS MULISH AND MIGHT WELL MAKE PASSAGE SLOWER NOT FASTER. I WELCOMED YESTERDAY'S REMARKS BY MR CHRETIEN SAYING THAT NO DEADLINES WERE ENVISAGED. MR TRUDEAU PROFESSED NOT TO KNOW THAT MR CHRETIEN HAD SAID THIS.

4. MR TRUDEAU IS LIKELY TO RAISE ALSO ON THE TELEPHONE, AS HE DID WITH ME, THE QUESTIONS OF (A) WHETHER THE INITIATION OF COURT ACTION BY QUEBEC WOULD LEAD TO DELAY IN WESTMINSTER (I SAID THAT I HAD SEEN NO SUGGESTION THAT THIS WOULD BE THE CASE AND THAT MUCH WOULD PROBABLY DEPEND ON THE LINE THE CANADIAN GOVERNMENT TOOK ON THIS) AND (B) WHETHER LEGAL ACTION BY INDIANS IN THE UK WOULD CREATE A PROBLEM (I SPOKE VERY GUARDEDLY AND EMPHASISED THE DIFFICULTY OF PREDICTING THE TIMING, OUTCOME AND IMPLICATIONS OF THE COURT ACTIONS BUT SAID THAT WE WERE STUDYING THIS AND AT PRESENT HOPED THAT THESE ACTIONS WOULD NOT RESULT IN DELAYS IN PARLIAMENT.)

5. MR TRUDEAU CONCLUDED THIS PART OF OUR DISCUSSION BY SAYING THAT HE WOULD LIKE MRS THATCHER TO BE ALERTED TO THE FACT THAT HE WOULD PRESS HER STRONGLY FOR PASSAGE BEFORE CHRISTMAS BUT THAT IT WAS FOR HER TO DECIDE AND HE WOULD ACCEPT WHATEVER SHE DECIDED WITH A GOOD GRACE.

6. SUBSEQUENTLY WHEN DISCUSSING THE FUTURE COURSE OF CANADA/UK RELATIONS, MR TRUDEAU SAID THAT HE LOOKED FORWARD TO A RESUMPTION OF THE PATTERN OF ANNUAL PRIME MINISTERIAL VISITS IN ONE DIRECTION OR THE OTHER AND WOULD DURING TOMORROW'S CONVERSATION INVITE MRS THATCHER TO PAY AN EARLY VISIT TO CANADA.

MORAN
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CONFIDENTIAL

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MORAN

CANADIAN CONSTITUTION LIMITED

COPIES TO:

SIR I SINCLAIR
MR FREELAND { LEGAL ADVS.
DR PARRY

PS/CHANCELLOR OF THE DUCHESS OF LANCASTER
PS/LORD CHANCELLOR HOUSE OF LORDS
PS/LORD PRESIDENT
MR H STEEL, LAW OFFICERS’ DEPT
PS/HOME SECRETARY
[COPIES SENT TO NO 10 DOWNING ST]
You asked on the telephone yesterday for advice on how to reply to Ottawa telegram No 677 of 1 December in which Lord Moran asks for a line to take with Mr Trudeau, when he sees him at lunch today, about the probable timing and passage of the Canada Bill.

The Lord President would be content for Lord Moran, if asked, to make the following points:

(a) That it would be reasonable to expect First Reading of the Bill before Christmas.

(b) That Second Reading would take place after Parliament returns from the Christmas Recess on 18 January, but it is impossible at this stage to say exactly when.

(c) That the Bill will be given the appropriate priority to achieve its normal passage through both Houses without avoidable delay.

(d) That any pressure will inevitably make it take longer.

(e) That any suggestion of a particular deadline or commitment would be positively counter-productive.

I am copying this letter to David Wright and David Hilary in the Cabinet Office and to Murdo Maclean, Chief Whip's Office.

D C R HEYHOE
Private Secretary

Adam Wood Esq
Private Secretary to the
Lord Privy Seal
Foreign and Commonwealth Office
London SW1
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Date and sign: 20 June 2013

Wayland
IO DOWNING STREET

From the Private Secretary

4 December 1981

Canada

The Canadian Prime Minister telephoned the Prime Minister at 3 p.m. this afternoon. I enclose a copy of the record of conversation.

After the telephone call the Prime Minister commented that it was highly desirable to complete legislative action in Parliament as soon after the Christmas Recess as possible. She hoped that the Second Reading of the Bill might take place on 19 January and that the remaining stages could be completed with Royal Assent being received in the following week.

I am sending a copy of this letter to David Heyhoe (Lord President's Office), David Wright (Cabinet Office) and Murdo Maclean (Chief Whip's Office).

Roderic Lyne, Esq.,
Foreign and Commonwealth Office.

CONFIDENTIAL
Mr. Trudeau said that he wished to convey the good news about the Canadian Constitution. Nine and a half Provinces were now in line. The Senate would complete its consideration of the Resolution on the afternoon of 8 December. The Governor-General's Secretary would bring the Resolution to London that night and deliver it to the Palace on the morning of 9 December. The matter would then be in the hands of Her Majesty's Government. He wished to thank the Prime Minister for her steadfast help since June 1980. Her support had been of considerable assistance in producing a Resolution which met the criteria laid down by the Supreme Court.

The Prime Minister said that the Parliamentary calendar before Christmas was very full. The aim nevertheless was to have a First Reading of the Bill before the Christmas Recess and take the Second Reading after the Recess. It was best to follow normal procedures and avoid the appearance of pressure. There was already an Early Day Motion on the Order Paper which suggested that the passage of the Bill might not be entirely smooth. Mr. Trudeau said that he was very much in the Prime Minister's hands and would rely on her judgement. There were two arguments in favour of a quicker procedure. The Quebec Government would be as difficult as possible and would seek delay through the courts. Certain Indian leaders would also create difficulty. The longer the affair dragged on the greater the likelihood of difficulties with those at Westminster who had reservations. But if the Prime Minister was aware of the two complications he had mentioned, and still judged that it was not right to try to complete the process before Christmas, he would accept the situation. The Prime Minister reiterated that to apply pressure and to deny those interested in the Bill a proper opportunity to express their views would simply create trouble. After all, it had taken the Canadian Government much longer than they had originally expected to complete their own Parliamentary process. Mr. Trudeau said that his worry was that some Westminster MPs might mount the argument that Parliamentary action should wait until the various court proceedings were completed. If the Prime Minister was not concerned about that danger, he would entirely accept her judgement.
The Prime Minister commented that the legal action being taken by the Quebec Government was a matter for Canada. Our task was to handle the matter in the way best calculated to get the Resolution through Parliament.

Mr. Trudeau then asked whether discreet plans could be made for Her Majesty The Queen to visit Canada on 15 February (Flag Day) in connection with the celebration of the patriation of the Constitution. The Prime Minister said that it was difficult to give a precise answer until we had had the Second Reading of the Bill and heard the various arguments. Was there any fall-back date for a Royal visit? Mr. Trudeau said that alternative dates for the celebration were possible but he understood that they might not be convenient for The Queen. The Prime Minister said that her instinct was that a target date of 15 February would be rather tight from the Parliamentary point of view. She hoped she was wrong but there could be difficulties about meeting such a deadline. Mr. Trudeau commented that there could be some irritation in Canada about any undue delay. The Prime Minister said that she doubted whether such irritation would be justified. After all, at an earlier stage we had been expecting to receive the Canadian request nearly a year ago.

Mr. Trudeau said that he hoped that when the affair was concluded the Canadian Government would have an opportunity to show their gratitude to the Prime Minister by receiving her for an official visit. It was six years since a British Prime Minister had last paid an official visit. The Prime Minister replied that she would love to visit Canada when the matter had been resolved.
Dear Humphrey,

CANADIAN CONSTITUTION

Thank you for your minute of 2 December and the accompanying draft reply to the Foreign Affairs Committee. I have no comments to offer on the draft, although I am sympathetic to the suggestions for further simplification made by the Lord Chancellor. I am content therefore that the reply to the Committee should be published as soon as possible after the conclusion of the debate in the Canadian Parliament.

I am sending a copy of this letter to the recipients of your minute.

FRANCIS PYM

The Rt Hon Humphrey Atkins MP
Lord Privy Seal
Foreign and Commonwealth Office
London SW1
The Canadian Constitution

Thank you for your letter of 27th November, telling me that Mr. Trudeau is likely to ask the Prime Minister to agree that Royal Assent to the proposed Bill to patriate the Canadian Constitution should be something of a ceremony (i.e. given in the manner customary before the Royal Assent Act 1967 was passed) and that it should be televised so that it can be shown in Canada.

I doubt whether Ministers would be favourably disposed towards this idea. The ceremony of summoning the Commons by Black Rod to attend in the Lords for the Royal Assent to Bills has passed into disuse (save on the occasion of Prorogation), and its revival, even for the purpose of giving assent to a Canada Bill, would be controversial, and could give rise to resentment in the Commons which could lead to protests (or worse) in the House of Commons.

The idea of televising the formalities of Royal Assent being given without a Commission (even if Mr. Trudeau thought that worthwhile) is scarcely less unattractive. Nothing of the kind has ever been done for any of the numerous independence acts that have been passed, and indeed no Parliamentary occasion has ever been broadcast on television (the State Opening is in a category of its own). It would be a troublesome and embarrassing business to secure the necessary agreements, which might not in the event be forthcoming.

The Canadians will have their own ceremony when the Act is proclaimed in Ottawa; I think Ministers will expect them to rest content with that.

ROBERT ARMSTRONG

Sir Wilfrid Bourne, KCB, QC
3 December 1981

Dear Michael,

As I mentioned on the telephone yesterday, the Canadian High Commission have asked us whether it would be convenient for the Canadian Prime Minister to telephone the Prime Minister on completion of the parliamentary process over the constitution in Canada. A convenient time for Mr Trudeau would be during tomorrow afternoon, Friday 4 December, perhaps between 3 and 4 pm. Would the Prime Minister be prepared to take the call: and, if so, would this be a convenient time?

This telephone call would give the Prime Minister the opportunity of speaking to Mr Trudeau in suitably warm terms about his achievement in producing an agreement which is now blessed by nine out of the ten Provinces and which has just achieved an overwhelming majority (246 to 824 - see attached telegram no 684 from Ottawa) in the Canadian House of Commons. She will doubtless wish to add that the much more favourable situation in Canada will naturally facilitate matters in Parliament here, though the Indian issue seems certain to be raised.

Lord Carrington considers that such a telephone conversation would make it unnecessary for the Prime Minister to send Mr Trudeau any formal message of congratulation. I attach a copy of Ottawa telegram no 666 in which Lord Moran recommends against such a message. Lord Carrington agrees that the Quebec angle and Mr Trudeau’s own apparent attitude towards the compromise package would make a formal written message inadvisable. Lord Carrington has himself, in response to a message from the Canadian Minister for External Affairs, Mr MacGuigan, sent his congratulations (a copy of both messages is attached).

Unless you wish to deal directly with the Canadian High Commission over the call, we shall make the necessary arrangements as soon as we hear from you.

I am sending a copy of this letter to David Heyhoe in the Lord President’s Office.

Yours

(R M J Lyne)

M O’D B Alexander Esq
10 Downing Street
CONFIDENTIAL

Foreign and Commonwealth Office
London SW1A 2AH

3 December 1981

Dear Michael,

Canadian Constitution

Further to my earlier letter today, the Canadian High Commission have now told us of some of the points Mr Trudeau would make if he telephones the Prime Minister tomorrow afternoon. He will probably first inform her officially of the date when the Resolution will be delivered to London (ie probably Monday morning), and that it will be delivered immediately to the Palace by the Governor General's Secretary Mr Esmond Butler.

Mr Trudeau will also probably thank Mrs Thatcher for her patience and consideration during the past 15 months; he will explain what opposition remains in Canada to his proposals (Indians and Quebec) and what view he takes of that opposition. He will warn her that the Canadian media are about to descend on London en masse to concentrate on any possible difficulties here, and that there would therefore be advantage in completing the UK processes as quickly as possible.

Mr Trudeau will invite the Prime Minister to visit Canada and will mention that the last British Prime Minister to do so was Mr Callaghan in 1976. Lord Carrington has already accepted in principle an invitation from Mr MacGuigan to visit Canada next year, but with no commitment yet as to dates (he may go there en route to or from the United Nations General Assembly in September). It was already in our minds to propose that the Prime Minister should visit Canada in 1983. The Prime Minister may therefore wish to accept Mr Trudeau's invitation but say that she will have to examine her programme before she can consider dates.

Yours etc

(R M J Lyne)
Private Secretary

M O'D B Alexander Esq
10 Downing Street

CONFIDENTIAL
RESTRICTED
DESK 0406002
FM OTTAWA 0405502 DEC 81
TO IMMEDIATE FCDO
TELEGRAM NUMBER 691 OF 3 DECEMBER

1. MR TRUDEAU IS REPORTED AS SAYING AT A PRESS CONFERENCE THIS AFTERNOON THAT HE WOULD BE TALKING TO MRS THATCHER TOMORROW AND WOULD BE URGING SPEEDY ACTION ON THE CONSTITUTIONAL PACKAGE. HE APPARENTLY RECOGNISED HOWEVER, THAT PATRIATION BY CHRISTMAS MIGHT BE EXPECTING TOO MUCH AND SAID THAT PATRIATION EARLY IN THE NEW YEAR WOULD BE FINE.

2. HE GAVE NO INDICATION TO ME AT LUNCH TODAY THAT HE PROPOSED TO MAKE PUBLIC HIS CALL TO MRS THATCHER.

MORAN

NNNN
CONFIDENTIAL

DESKBY 040626Z
FM OTTAWA 032354Z DEC 81
TO IMMEDIATE FCO
TELEGRAM NUMBER 689 OF 3 DECEMBER

MY TELNO 684: CONSTITUTION

1. I WAS STRUCK BY THE FACT THAT MR TRUDEAU DID NOT WIND UP THE
DEBATE IN THE HOUSE OF COMMONS YESTERDAY AND REFUSED TO SAY ANYTHING
TO PRESS AND TELEVISION REPORTERS AFTERWARDS, LEAVING IT TO MR
CHRETIEN TO DO SO.

2. THIS SUGGESTS TO ME THAT, DESPITE THE GENERAL PRAISE FOR
HIS ACHIEVEMENT, MR TRUDEAU IS NOT HAPPY WITH THE OUTCOME, AND AT
LUNCHEON TODAY HE WAS THE REVERSE OF JUBILANT.

3. FIRSTLY, AS I POINTED OUT IN MY FIRST IMPRESSIONS DESPATCH,
"THE AIM OF HIS WHOLE POLITICAL LIFE HAS BEEN THE CREATION OF
A FRAMEWORK OF NATIONAL UNITY IN WHICH QUEBEC WILL REST CONTENT AND
FRENCH CANADIANS WILL FEEL AT HOME FROM COAST TO COAST". IN FACT
QUEBEC IS EXCLUDED FROM THE SETTLEMENT AND FLAGS ARE FLYING AT
HALF MAST IN THE PROVINCE OF QUEBEC. ALL QUEBECERS THAT I HAVE MET
ARE SAD THAT THINGS HAVE TURNED OUT IN THE WAY THEY HAVE AND MR
TRUDEAU IS OF COURSE A QUEBECKER. BUT AT LUNCH TODAY HE PUT ALL THE
BLAME FOR WHAT HAD HAPPENED (NOT UNREASONABLY) ON LEVESQUE AND
THE SEPARATISTS AND MADE IT CLEAR THAT HE IS ABOUT TO EMBARK ON A
MAJOR BATTLE WITH LEVESQUE FOR THE SOUL OF QUEBEC, A BATTLE HE
BELIEVES HE CAN WIN.

4. SECONDLY, HE HAS ACHIEVED A BROAD NATIONAL AGREEMENT WITH THE
4. Secondly, he has achieved a broad national agreement with the other provinces only by giving up a great deal that he considered important. He has not managed to increase the powers of the federal government at the expense of the provinces. On the contrary, people like Mr. Lougheed of Alberta have achieved all their objectives and maintained provincial powers substantially intact. Mr. Trudeau clearly thought it best to get the constitution back even on relatively unsatisfactory terms but he shows no signs of being very happy about it, and there are manifest difficulties in the present package.
CONSTITUTION

1. Kirby told me today that his latest estimate is that because of progressive Conservative tactics a Senate vote is now unlikely on Friday but more probable on Monday evening, in which case party carrying address will leave for London that night - 24 hours later than previously planned.
CONFIDENTIAL
DESK BY 0406002
PM OTTAWA 0322557 DEC 81
TO IMMEDIATE FCO
TELEGRAM NUMBER 687 OF 3 DECEMBER

MIFT: CONSTITUTION

1. At my luncheon with Mr. Trudeau today he gave me an indication of the Canadian government's plans for the Queen to proclaim the new constitution. Mr. Trudeau has in mind the date of 15 February for this (the anniversary of the adoption of the present Canadian flag) and Kirby who has been in touch with Sir Philip Moore subsequently told me that Her Majesty had tentatively agreed to come to Canada from 13-15 February. When I said that I did not think it would be safe to assume that the British Parliament would have passed legislation in time to meet such a deadline Mr. Trudeau said that if that were the case and the Queen were not then able to come until say April or May, he would prefer to have the constitution proclaimed without Her Majesty's presence since time was of the essence although he was clearly reluctant to contemplate such an eventuality.

2. At the luncheon Kirby said that he wondered whether knowledge that Her Majesty was planning a visit to Canada for the occasion on 15 February might act as an incentive for members of Parliament to deal with the matter expeditiously. I said at once that I was sure that HMG would be very strongly opposed to any suggestion that Her Majesty's plans should be used to put pressure to accelerate consideration in either house, though clearly it would be useful for both governments and the Palace to keep in close touch privately about administrative arrangements which could not very well be made at the last moment. Mr. Trudeau accepted this. Kirby subsequently
ABOUT ADMINISTRATIVE ARRANGEMENTS WHICH COULD NOT VERY WELL BE MADE AT THE LAST MOMENT, MR TRUDEAU ACCEPTED THIS. KIRBY SUBSEQUENTLY TOLD ME THAT HE HAD BEEN PROMPTED TO SPECULATE IN THIS BY A REPORT FROM CANADA HOUSE (REEVES HAGGAN) THAT HER MAJESTY'S TENTATIVE PLANS TO VISIT CANADA WERE LEAKING AS A RESULT OF PRINCE PHILIP'S CANCELLATION OF A TRIP WHICH CLASHED WITH THE DATES IN QUESTION.

Paragraph 3 deleted and closed, 40 years, under FoI Exemption.

Wayland
20 June 2013

MORAN

NNNN
With the Compliments of the
Assistant Legal Secretary

H. Steel

Attorney General’s Chambers,
Law Officers’ Department,
Royal Courts of Justice,
Strand. W.C.2A 2LL

01 405 7641 Extn. 3229
Our Ref: 14/2/198

3 December, 1981

Dear Stephen,

CANADIAN CONSTITUTION

Our copy of the Lord Privy Seal's minute of 2 December to the Lord President unfortunately did not arrive here in time for me to show it to the Attorney-General before he departed for New York, where he will be until the middle of next week. However, Martin Berthoud had warned me that it was coming and had told me that the draft enclosed with it would be substantially the same (as indeed it was) as an earlier draft which he had sent me about a week ago. I therefore showed that earlier draft to the Attorney-General and obtained his authority to report his comments on it as being, in effect, his comments on the draft circulated by the Lord Privy Seal.

2. With this explanation of why I am replying on the Attorney-General's behalf to the Lord Privy Seal's minute, I can report that the Attorney-General is content with the latest version of our draft reply to the Foreign Affairs Committee and has no comments of substance to make on it. There are, however, three purely drafting comments which you might wish to pass to the experts in North American Department, and to the Legal Advisers, for their consideration:

(a) In paragraph 12, second sentence, the phrase "the difficulties adverted to" is open to question. Conclusions 4-6 and 8-10 do not in fact "advert to" any difficulties: on the contrary, they are bluntly oblivious of them. It is we who have adverted to them. One way of getting round this would be to substitute "which might be associated with" for "adverted to in".

//

CONFIDENTIAL
(b) Paragraph 13, first sentence, is awkward in that what is initially described as a "test" is then spelled out as simply a proposition of fact about the absence of a particular rule, principle or convention. Our suggestion for dealing with this would be to replace the words "laid down by" in the third line by "which is inherent in the view expressed by".

(c) In paragraph 15, second sentence, the specific citation of sub-paragraphs (i) - (v) of Conclusion 11 creates the difficulty that those five sub-paragraphs go rather wider than the particular proposition which this paragraph of the draft is concerned with. On the other hand, there is obviously an advantage in recording our endorsement of all five sub-paragraphs and there would equally obviously be objections to endorsing the whole of Conclusion 11 including the final sentence. In these circumstances, we suggest that the best course might be simply to insert the words "and in particular" immediately after the reference to "Conclusions 11(i) - (v)".

3. I am sending a copy of this letter to the Private Secretary to the Lord President and to the Private Secretaries to all the other recipients of the Lord Privy Seal's minute.

H. STEEL

S J Gomersall Esq
Private Secretary to the Lord Privy Seal
Foreign and Commonwealth Office
London, SW1
3rd December, 1981

Stephen Gomersall Esq.,
Private Secretary to the
Lord Privy Seal,
Foreign & Commonwealth Office,
London,
SW1.

Dear Stephen,

Canadian Constitution

The Lord Chancellor has considered the draft reply to the First Report of the Foreign Affairs Committee which was circulated with the Lord Privy Seal's minute to the Lord President of the Council of 2nd December. The Lord Chancellor feels that, in the light of recent developments, the reply is perhaps unnecessarily complicated, and I attach a copy of the draft on which he has made a number of suggestions for simplification, together with some consequential amendments. The Lord Privy Seal may like to consider these when drawing up the final text of the Government's reply.

I am sending copies of this letter and of the Lord Chancellor's proposed amendments to the Private Secretaries of the recipients of the Lord Privy Seal's minute.

Yours sincerely,

M.H. Collon
UNCLASSIFIED

FM OTTAWA 022305Z DEC 81
TO IMMEDIATE FCO
TELEGRAM NUMBER 684 OF 2 DECEMBER

CANADIAN CONSTITUTION

1. THE FINAL VOTING ON AMENDMENTS AND THE CONSTITUTIONAL RESOLUTION ITSELF TOOK PLACE IN THE HOUSE OF COMMONS THIS AFTERNOON. ALL THREE AMENDMENTS WERE LOST. THEY WERE:

A) AN NDP SUBAMENDMENT PROVIDING FOR COMPENSATION FOR QUEBEC IN THE CASE OF OPTING OUT (34 TO 235)

B) A PROGRESSIVE CONSERVATIVE AMENDMENT PROVIDING FOR COMPENSATION FOR ALL PROVINCES IN THE CASE OF OPTING OUT (67 TO 174)

C) AN NDP AMENDMENT WHICH WOULD HAVE GIVEN THE ABORIGINAL PEOPLE IN THE YUKON AND NORTH-WEST TERRITORIES AN EFFECTIVE SAY IN FUTURE CONSTITUTIONAL CHANGES. (33 TO 236)

2. THE RESOLUTION WAS THEN PASSED BY 246 VOTES TO 24 -- 5 LIBERALS, 17 PROGRESSIVE CONSERVATIVES AND 2 NDP MEMBERS VOTED AGAINST. THERE WERE NO FINAL SPEECHES, BUT THE HOUSE SANG 'O CANADA'.

3. OUTSIDE THE HOUSE, MR CHRETIEN EXPRESSED THE VIEW THAT THERE WOULD BE NO GREAT DIFFICULTY AT WESTMINSTER BUT WAS CAREFUL TO AVOID SUGGESTING A DEADLINE OR A DATE BY WHICH HE THOUGHT THE CONSTITUTION WOULD BE IN CANADA.

4. MEANWHILE, THE QUEBEC GOVERNMENT HAS DECLARED THAT IT WILL GO
4. MEANWHILE, THE QUEBEC GOVERNMENT HAS DECLARED THAT IT WILL GO TO THE COURTS TO SETTLE THE QUESTION OF WHETHER IT HAS A LEGAL RIGHT OF VETO ON CONSTITUTIONAL CHANGE. MR TRUDEAU HAS NOW REPLIED TO MR LEVESQUE, SAYING THAT THE ALLEGED RIGHT OF VETO BY QUEBEC IS, IN HIS VIEW, "NOT SUBSTANTIATED EITHER BY LAW OR BY CONSTITUTIONAL CONVENTION". FULL TEXT BY BAG. MR CHRETIEN MADE IT CLEAR TODAY THAT ANY LEGAL ACTION BY QUEBEC WOULD NOT AFFECT THE PLAN TO SEND THE RESOLUTION TO LONDON. FLAGS ON PROVINCIAL GOVT. BUILDINGS ARE REPORTED TO HAVE BEEN FLOWN AT HALF-MAST IN QUEBEC TODAY.
CONFIDENTIAL

OO OTTAWA
GRS 193
CONFIDENTIAL
FM FCO 022000Z DEC 81
TO IMMEDIATE OTTAWA
TELEGRAM NUMBER 441 OF 2 DECEMBER
CANADIAN CONSTITUTION
SEE KIP

1. FOLLOWING IS TEXT OF MY MESSAGE TO MR MACGUIGAN DATED 27 NOVEMBER.

BEGIN

I WAS DELIGHTED TO RECEIVE YOUR KIND LETTER OF 10 NOVEMBER. I AM MOST GRATEFUL FOR THE INVITATION TO VISIT CANADA WHICH I ACCEPT WITH THE GREATEST PLEASURE. I AM STILL WORKING OUT PLANS FOR NEXT YEAR AND SHALL, IF I MAY, COME BACK TO YOU LATER ABOUT DATES.

YOUR BREAKTHROUGH ON THE CONSTITUTION IS, AS YOU SAY, VERY GOOD NEWS FOR US ALL. MANY CONGRATULATIONS. SUCCESS IS CLEARLY NOW WITHIN YOUR GRASP. AS I SAID AT THE CANADA CLUB HERE THE OTHER DAY, THE SPECTRE OF A MAJOR BILATERAL PROBLEM SEEMS TO HAVE BEEN REMOVED. WE PRAISE THE STATESMANSHIP OF THOSE WHO REMOVED IT AND HOPE THAT WE CAN ALL NOW CONCENTRATE ON DEVELOPING THE HOST OF INTERESTS WHICH BRITONS AND CANADIANS SHARE.

YOU RIGHTLY SAY THAT THE CLOSE TIES BETWEEN OUR TWO COUNTRIES WILL IN NO WAY BE LESSENED BY THE ENDING OF OUR CONSTITUTIONAL LINKS. I WOULD BE INCLINED TO GO EVEN FURTHER AND SUGGEST THAT THESE LINKS WILL BE ENHANCED BY THE REMOVAL OF THIS CONSTITUTIONAL ANOMALY.

WITH MY WARM GOOD WISHES.

ENDS

CARRINGTON

CANADIAN CONSTITUTION LIMITED
NAD
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PARLIAMENTARY UNIT
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INFORMATION D
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SIR E YOUNG
MR DAY
MR URE
LORD N G LENNOX
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DR PARRY

PS/CHANCELLOR OF THE DUCHY OF LANCASTER
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PS/LORD PRESIDENT
MR W STEEL, LAW OFFICERS' DEPT
PS/HOME SECRETARY

[COPIES SENT TO NO 10 DOWNING ST]
Lord President of the Council

CANADIAN CONSTITUTION

The Canadian Parliament is at present debating the new Resolution reflecting the agreement between the Federal and Provincial Governments on 5 November and the subsequent agreement to reinstate provisions relating to women's rights and the rights of the native peoples of Canada. The Canadian Government expect the debate to be concluded in their House of Commons by Wednesday and in the Senate by the end of this week. They plan to deliver the Resolution to The Queen on Monday morning, 7 December.

As you are aware, the Government still owe a reply to the First Report of the Foreign Affairs Committee. With the Committee's agreement, our response was delayed while the matter was under consideration by the Supreme Court of Canada and by the Canadian Parliament. We have however undertaken to publish our response as soon as possible after the conclusion of the proceedings in Canada. There is thus now some urgency.

I am therefore circulating herewith (not to L Committee) our draft response. It is a much simpler and shorter document than the earlier versions you have seen. This is possible because most of the anxieties of the FAC have been met by the Federal-Provincial agreement of 5 November. The draft now largely confines itself to the general question of the degree of provincial support required (no longer a problem), with the impropriety of the UK Parliament introducing any amendments to the Canadian proposals, and the requirement as we see it to enact the legislation requested by the Canadian Parliament. In view of the continuing difficulties over the Indians, we have also included a paragraph designed to bolster our contention that the UK Parliament should not involve themselves on the part of the Indians (we gather that the FAC remain of the same view).

Could you kindly let me know by the end of this week if you have comments or amendments on the draft? Subject to these, we propose to publish as soon as possible after the conclusion of the debate in the Canadian Parliament.

You will wish to know that we are naturally hoping to put the Canadian legislation itself to Parliament not too long after publication of our response to the FAC. Peter Carrington or I will probably mention this at Cabinet on 3 December. The precise timing is of course a matter for you.

I am sending a copy of this minute to all members of OD and L Committees; also, to the Chief Whip and the Attorney General.

2 December 1981
FIRST REPORT FROM THE FOREIGN AFFAIRS COMMITTEE

SESSION 1980/81

BRITISH NORTH AMERICA ACTS: THE ROLE OF PARLIAMENT

OBSERVATIONS BY THE SECRETARY OF STATE FOR FOREIGN AND COMMONWEALTH AFFAIRS

Introduction

This paper is the Government's reply to the First Report from the Foreign Affairs Committee on the BNA Acts. It takes into account also the Committee's Second Report.

The Legal Background

1. The British North America Act 1867 is the basic Canadian constitutional instrument. That Act was an Act of the United Kingdom Parliament. In certain important respects, it can be amended only by Act of the United Kingdom Parliament. It has been so amended some 14 times. This anomalous situation whereby particular provisions of the constitution of one sovereign nation can be amended only by the legislature of another sovereign nation is preserved by Section 7(1) of the Statute of Westminster 1931, under which Canada's complete independence was otherwise confirmed. The historical background is touched on in the Memorandum by the Foreign and Commonwealth Office to the Foreign Affairs Committee (147/79-80/FM; H. C. 42 II p.2) and generally in the First Report of the Foreign Affairs Committee itself.

The Reports

the most helpful course in this case would be to delay their response to the Committee's Reports while the matter was before the Courts in Canada and until the Canadian Parliament had completed its consideration of this issue.

3. The Committee's Reports have been of value to the Government in considering the expected request from the Canadian Federal Parliament that a Bill be laid before the United Kingdom Parliament to amend the Canadian Constitution in a number of respects, notably by terminating the remaining responsibility of the United Kingdom Parliament for amendment of the Canadian Constitution and conferring the relevant powers of amendment on Canadian institutions and by providing for a Canadian Charter of Rights and Freedoms, thereby (to use the term which has gained a wide currency) 'patriating' the Canadian Constitution.

4. The Reports had as their background an expected request from the Canadian Federal Parliament the substance of which was rejected by 8 out of 10 of the Canadian Provinces.

Subsequent Events

5. Since the Reports were published the Canadian proposals have given rise to extensive public discussion on both sides of the Atlantic. The course of this debate has been influenced by two events in particular, which have profoundly affected the nature and circumstances of the proposed Canadian request, namely the judgment of the Canadian Supreme Court of 28 September on references from the Courts of Appeal of Manitoba, Quebec and Newfoundland, and more
recently the announcement at the end of the Federal-Provincial Conference held in Ottawa between 2 and 5 November that the Federal Government and nine of the ten Provinces (that is, all except Quebec) had arrived at agreed proposals for the Federal Parliament to put to the United Kingdom Parliament as its request for constitutional amendment and patriation.

The Supreme Court Judgment

6. On 28 September 1981, the Canadian Supreme Court delivered a judgment on the constitutional propriety of the proposed Canadian patriation request as it then stood after consideration by the Canadian Parliament. This judgment was given on appeals from somewhat conflicting judgments of the Courts of Appeal of Manitoba, Quebec and Newfoundland. Essentially, three questions were before the Supreme Court:

(1) Would the package of patriation, amending formula and Charter of Rights affect Federal-Provincial relationships and respective powers;
(2) Was there a constitutional convention that the Provinces must agree before a request is made to amend the Canadian constitution; and
(3) Was Provincial agreement constitutionally required before such requests could be made?

The judges were unanimous that the answer to the first question was yes. They then chose to treat the second and third questions together, but in two parts: first whether there was a legal requirement for Provincial assent and secondly whether constitutional convention imposed a corresponding requirement. These two aspects
were considered in two separate opinions of the Supreme Court, upheld by differing majorities.

7. The Court concluded by a 7-2 majority that there was no rule of Canadian law requiring Provincial assent as a pre-condition for the Federal Parliament to request constitutional amendments affecting Federal-Provincial relationships. Specifically, constitutional conventions were not law and were not enforced by the courts. Further, as a matter of Canadian law, there was no provision in the British North America Acts or in the Statute of Westminster for taking into account the 'nature and character of Canadian federalism'. 'The law knows nothing of any requirement of Provincial consent, either to a resolution of the federal Houses or as a condition of the exercise of United Kingdom legislative power' (p. 49, printed text).

8. The central question considered in the second majority opinion was whether there existed a constitutional convention requiring Provincial assent to constitutional amendments affecting Federal-Provincial relationships. The court approached this question on the basis that

"We are not asked to hold that a convention has in effect repealed a provision of the B.N.A. Act ... Nor are we asked to enforce a convention. We are asked to recognise if it exists" (p. 91).

In the event the Court found in the second majority opinion, by a 6-3 majority, that there was a constitutional convention as to Provincial assent, although it was not prepared to quantify the required level of assent beyond saying that while unanimity was not necessary 'at least a substantial measure of Provincial consent' was required and agreement by two Provinces was clearly insufficient (p. 106). It went on to hold that the agreement of the Provinces, 'no views being expressed as to its quantification',
was constitutionally required and that the passage of the proposed package by the Canadian Parliament without such agreement 'would be unconstitutional in the conventional sense' (p.109). Earlier in this majority opinion the Court had also stated that 'it should be borne in mind that, while they are not laws, some conventions may be more important than some laws .... The foregoing may perhaps be summarised in an equation: constitutional conventions plus constitutional law equal the total constitution of the country'. (p.90)

The November Federal-Provincial Conference

9. Following the judgment, the dissenting Provinces asserted that the Supreme Court had vindicated their thesis that Provincial assent was constitutionally required before a request for patriation and amendment was presented to the United Kingdom Parliament. The Federal Government, on the other hand, stressed that the Supreme Court had upheld the legality of the proposed request. Mr Trudeau, the Canadian Prime Minister, invited the Provincial Premiers to meet him at a Conference which met in Ottawa from 2 to 5 November. It was announced on 5 November that the Federal Government and nine of the ten Provinces had agreed to a revised package of proposals which were to be recommended to the Federal Parliament by the Federal Government.

10. Since the Conference there have been further consultations on various aspects of the proposals, particularly as regards implications for Quebec and for women's rights and the rights of the aboriginal peoples. The Resolution has now been approved by both Houses of the Federal Parliament.
United Kingdom Consideration of a Canadian Request

11. The Government note that the Canadian Supreme Court was at pains to make clear throughout its judgment of 28 September that it did not presume to pronounce upon the authority of the United Kingdom Parliament, or its practices and conventions, but was concerned only with Canadian aspects. This approach accords with the Government's own view that the judgment does not affect the exercise by the United Kingdom Parliament of its own legal powers or the nature and scope of conventions applicable to the United Kingdom by virtue of its own practices or of intra-Commonwealth relations.

12. Nevertheless, the judgement of the Supreme Court has clarified what is required within Canada, and this can be taken as a useful guide to our approach. As a result of the agreement on 5 November between the Canadian Federal Government and nine of the Provinces the difficulties adverted to in Conclusions 4 to 6 and 8 to 10 of the Committee's First Report need no longer to be addressed. Conclusion 12 relating to the existence of litigation in Canadian Courts no longer falls to be considered.

13. Agreement by nine out of ten Provinces to the revised proposals now put forward appears to satisfy the test for Canadian purposes laid down by the Supreme Court and the Committee's own Conclusion 7, that there is no rule, principle or convention that the United Kingdom Parliament when requested to enact constitutional amendments directly affecting Canadian Federal-Provincial relations, should accede to that request only if it is concurred in by all the Provinces directly affected. The Government also agree with
The finding of the Committee, in its discussion of the considerations which led it to formulate Conclusion 7, that the objective of Section 7(1) of the Statute of Westminster '... was simply to maintain the status quo in relation to constitutional amendments. We cannot see in that status quo ... any evidence of a requirement ... of unanimous consent [of the Provinces]' (paragraph 99 of the Report).

14. Differing views can of course be taken on what was the nature of the status quo prior to the enactment of the Statute of Westminster. What seems clear, however, is that it has at no time been the practice of the United Kingdom Government or Parliament, in relation to requests for constitutional amendment either before or after the Statute of Westminster, to seek to apply some considered test or measure of the extent of Provincial concurrence. At the same time, the Government naturally accept that there has been no occasion in the past where there existed such widespread Provincial dissent as was the case when the First Report was produced. But they consider it particularly significant, given substantial Provincial concurrence to the present proposals, that there has in the past been no instance where the United Kingdom has declined to act on a Canadian request or has purported to examine whether or to what extent Provincial consent existed or was required.

15. The Government have no difficulty in principle with Conclusions 1 to 3, while not necessarily accepting in detail the reasoning on which they are based. The Government fully accept Conclusions 11(i) to (v), that the United Kingdom Parliament should not undertake any deliberation about the suitability for the peoples of Canada of requested
constitutional proposals or enact amendments not consented to by the Canadian Government and Parliament or enact only part of the requested proposals: "a partial package is a new package!" (para 122 of the First Report). In the view of the Government the United Kingdom is bound by the intra-Commonwealth convention, expressed in declaratory form in the third preambular paragraph to the Statute of Westminster 1931 that:

"it is in accord with the established constitutional position that no law hereafter made by the Parliament of the United Kingdom shall extend to any of the said Dominions as part of the Law of that Dominion otherwise than at the request and with the consent of that Dominion."

Any amendment of the Canadian legislation would of course introduce an element which had not been 'requested and consented' in this way and the Government therefore fully agree with the FAC conclusion above on this point.

16. The statements by Ministers of successive Governments that it would be in accordance with precedent for the Government to introduce, and for Parliament to enact, legislation on the basis of a Canadian request have been statements of fact: in every case where there has been a request from the Federal Parliament for amendment, the Government have introduced, and Parliament has enacted, legislation in accordance with it. While the Government accept that there is never an exact precedent for a particular constitutional amendment, the consistent practice has been to act in accordance with the request and consent of the Federal Parliament. The force
of this consistent practice cannot be ignored. This does not mean the United Kingdom Parliament is under some legal obligation automatically to enact whatever Canadian proposals are put before it; but it does point overwhelmingly in the direction of acceding to an agreed request for patriation.

Indians, Inuit and other Native Peoples

17. The Government note that the Foreign Affairs Committee endorse their view that all relevant treaty obligations with the Indian peoples in so far as they still subsisted became the responsibility of the Government of Canada with the attainment of independence at the latest with the Statute of Westminster 1931. For their part the Government support the view of the Committee that "Indian rights and interests ... could not rightly be made the subject of deliberation by the United Kingdom Parliament in dealing with a request for amendment or patriation of the BNA Acts". The Government believe that any amendment of the provisions relating to aboriginal rights unless requested and consented to by the Canadian Government - as with any other amendments (see paragraph 15 above) - would constitute an act of interference in the internal affairs of Canada.

The Committee's Recommendation

18. The Committee recommended in its First Report (paragraph 15) that the Government should draw to the attention of the Government of Canada its view that the considerations set out in Chapters V to VII of its Report supported the Committee's Conclusions; also that that view, together with the other considerations and conclusions in the Report, had been reported to the House. This recommendation was carried out at the Foreign and Commonwealth Office at a meeting between the Canadian High Commissioner and an Under-Secretary at the Foreign and Commonwealth Office on the date of publication of the Report, i.e. 30 January 1981.
I enclose a message which the Prime Minister has received from the President of the World Council of Indigenous Peoples about the patriation of the Canadian Constitution.

I should be grateful if you could arrange to reply to Mr. Morales on the Prime Minister's behalf and for a copy to be sent to us here for our records in due course.

R. M. J. Lyne, Esq.,
Foreign and Commonwealth Office.
27 November 1981

I was delighted to receive your kind letter of 10 November. I am most grateful for the invitation to visit Canada which I accept with the greatest pleasure. I am still working out plans for next year and shall, if I may, come back to you later about dates.

Your breakthrough on the Constitution is, as you say, very good news for us all. Many congratulations. Success is clearly now within your grasp. As I said at the Canada Club here the other day, the spectre of a major bilateral problem seems to have been removed. We praise the statesmanship of those who removed it and hope that we can all now concentrate on developing the host of interests which Britons and Canadians share.

You rightly say that the close ties between our two countries will in no way be lessened by the ending of our constitutional links. I would be inclined to go even further and suggest that these links will be enhanced by the removal of this constitutional anomaly.

With my warm good wishes.

(CARRINGTON)

The Honourable Mark MacGuigan
Dear Robin,

The Canadian Constitution

I have had advance warning (which may already have reached you) that Mr. Trudeau is likely to ask the Prime Minister to agree to the final stage (i.e. Royal Assent) of the proposed Bill to patriate the Canadian Constitution to be something of a ceremony and, for this purpose, that Royal Assent should be given in the old style, such as you saw just before Prorogation. What the Canadians want, apparently, is to televise the ceremony so that it can be shown in Canada.

I warned the representatives of the Canadian broadcasting organisations (who came to see me about this) that there were all sorts of problems which would have to be solved; this they readily understood. But my main purpose in writing is to give you warning that this request may come and come quite soon. What response should be made to it, if it does come, is very much a matter of political judgment on which I do not feel qualified to express an opinion.

Yours sincerely,

[Signature]

J.W. BOURNE

Sir Robert Armstrong, K.C.B., C.V.O.
CONFIDENTIAL

GRS 185

CONFIDENTIAL
FROM OTTAWA 2615512 NOV 81
TO PRIORITY FCO
TELEGRAM NUMBER 666 OF 26 NOVEMBER
SAVING MONTREAL

CONSTITUTION

1. NOW THAT WE DRAW CLOSE TO COMPLETION OF THE CANADIAN PHASE,
THE DEPARTMENT MAY BE CONSIDERING WHETHER TO RECOMMEND SOME
FORM OF CONGRATULATORY MESSAGE FROM THE PRIME MINISTER TO
MR. TRUDEAU.

2. I BELIEVE THAT WE WOULD HAVE LITTLE TO GAIN AND SOMETHING TO
LOSE BY SUCH A COURSE. WITH QUEBEC STILL BITTERLY OPPOSED TO THE
RESOLUTION, THE AGREEMENT REMAINS ESSENTIALLY THE CREATION OF
ANGLOPHONE CANADA. QUEBECCERS WOULD CERTAINLY RESIST A BRITISH
MESSAGE WHICH COULD BE PREJUDICIAL TO OUR COMMERCIAL INTERESTS
THERE AND MANY OTHER CANADIANS ARE APPREHENSIVE ABOUT THE EFFECT
OF QUEBEC'S ISOLATION ON THE FUTURE OF CANADA. IN THESE
CIRCUMSTANCES A MESSAGE AT THIS STAGE WOULD I BELIEVE BE
INAPPROPRIATE, ALTHOUGH IT COULD HAVE A POSITIVE EFFECT ON ANGLO-
CANADIAN RELATIONS AT THE GOVERNMENTAL LEVEL. IN MY VIEW THIS
WOULD BE SLIGHT AND TRANSIENT AND NOT SUCH AS TO OUTWEIGHT THE
RISKS. HOWEVER, HOWEVER RELIEVED AT THE OUTCOME, MR TRUDEAU
HIMSELF MUST HAVE MIXED FEELINGS AT THE EXTENT TO WHICH HE WAS
FORCED TO COMPROMISE TO ACHIEVE HIS CHARTER OF RIGHTS.

MORAN

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MR H STEEL, LAW OFFICERS' DEPT
PS/HOME SECRETARY

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FOR: THE DUTY CLERK, THE PRIVATE OFFICE 10 DOWNING STREET

FROM: NIC HALE, GOVERNMENT SERVICES CENTRE, BIRMINGHAM

THE FOLLOWING TEXT WAS RECEIVED OVERNIGHT:-

U OF L LIB LBG

24 NOVEMBER 1981
CAN I GET A MESSAGE TO PRIME MINISTER THATCHER THROUGH YOUR SERVICE.

U OF L LIB LBG

ATTN: PRIME MINISTER THATCHER GOVERNMENT OF THE UNITED KINGDOM PARLIAMENT OF THE UNITED KINGDOM LONDON, UNITED KINGDOM

FROM: JOSÉ CARLOS MORALES MORALES, PRESIDENT WORLD COUNCIL OF INDIGENOUS PEOPLES-SECRETARIAT UNIVERSITY OF LETHBRIDGE LETHBRIDGE, ALBERTA, CANADA

TEL: (403) 327-7255
TLX: 03-849357

RE: PATRIATION OF THE CANADIAN CONSTITUTION

THE WORLD COUNCIL OF INDIGENOUS PEOPLES, ON BEHALF OF ITS CONSTITUENCY OF MILLIONS OF PEOPLE, MUST IMPLORE THE GOVERNMENT OF THE UNITED KINGDOM TO INTERCEDE ON BEHALF OF THE INDIGENOUS NATIONS OF CANADA FOR WHOM IT HAS INTERNATIONAL TRUST RESPONSIBILITIES. IT IS IMPERATIVE THAT THE GOVERNMENT OF THE UNITED KINGDOM ENSURE THE RIGHTS OF INDIGENOUS PEOPLES TO FREELY DECIDE ON THE TERMS OF THEIR POLITICAL RELATIONS WITH THE GOVERNMENT OF CANADA. THE EXERCISE OF THE RIGHTS OF SELF-DETERMINATION OF INDIGENOUS NATIONS MUST NOT BE COMPROMISED. THEREFORE IT IS STRONGLY RECOMMENDED THAT THERE BE UN SUPERVISION TO ENSURE THAT MEMBERS OF THE INDIGENOUS NATIONS ARE PROPERLY POLLED ON THEIR POSITION RESPECTING THEIR FUTURE

GIVEN PRESENT UN INVESTIGATION OF INDIGENOUS PEOPLES SITUATIONS AND RIGHTS TO DETERMINE UN ACTIONS REQUIRED TO PROTECT THEIR COLLECTIVE RIGHTS, THE CANADIAN GOVERNMENTS ACTIONS TO DIMINISH OR ABROGATE INDIGENOUS RIGHTS IN CANADA CONSTITUTE A HIGHLY IMMORAL OBSTRUCTION OF POTENTIAL FUTURE JUSTICE FOR ALL INDIGENOUS PEOPLES IN THE WORLD. REFUSAL TO PROTECT THE RIGHTS AND INTERESTS OF THE INDIGENOUS PEOPLES OF CANADA MUST LEAD TO FURTHER UNDERMINING OF THE CREDIBILITY OF THE UN AS THE MECHANISM FOR FOSTERING WORLD PEACE AND DEVELOPMENT.

FURTHERMORE, ACTIONS OF THIS SORT BY APPARENTLY STABLE DEMOCRATIC AND HUMAN RIGHTS CONSCIOUS NATIONS JUSTIFIES THE ATROCITIES PERPETUATED AGAINST INDIGENOUS POPULATIONS BY TYRANNICAL DICTATORSHIPS SUCH AS THOSE IN CHILE, EL SALVADOR, GUATEMALA AND THE PHILIPPINES, TO MENTION ONLY A FEW.

FOR THE PAST DECADE THE CANADIAN GOVERNMENT HAS BEEN PERCEIVED IN THE WORLD AS THE MOST ENLIGHTENED IN ITS TREATMENT OF INDEPENDENT INDIGENOUS NATIONS. THIS, COMBINED WITH THE PRIME MINISTER'S APPARENT UNDERSTANDING OF THE EVILS OF NEO-COLONIALISM GAVE HOPE TO INDIGENOUS PEOPLES ALL OVER THE WORLD FOR CONTINUED ENLIGHTENED LEADERSHIP IN THE TREATMENT OF INDIGENOUS PEOPLES. CANADA WAS LOOKED UPON AS A NATION STATE WHICH WOULD ASSIST INDIGENOUS NATIONS UNDER ITS PROTECTION IN AN INNOVATIVE AND JUST MANNER TO FREE THEMSELVES FROM COLONIAL DOMINATION AND NEO-COLONIAL FORMS OF UNDER-DEVELOPMENT. INSTEAD CANADA HAS JOINED THE RANKS OF OTHER NATION-STATES WHO HAVE PUT RESOURCE EXPLOITATIONS ABOVE REAL DEVELOPMENT OF MANKIND. THIS KIND OF VIOLENCE AGAINST NATIONS OF PEOPLE HAS BEEN DEMONSTRATED TO NURTURE TERRORISM - THE ONLY RE COURSE FOR OPPRESSED AND DISPOSSESSED PEOPLES WHICH SEEMS TO RESULT IN ANY MEANINGFUL ATTENTION TO THEIR CRITICAL SITUATIONS.
RESTRICTED

FM OTTAWA 161731Z NOV 81
TO IMMEDIATE FCO
TELEGRAM NUMBER 647 OF 16 NOVEMBER

CONSTITUTION

1. BOTH MR TRUDEAU AND MR LEVESQUE MADE MAJOR SPEECHES IN QUEBEC OVER THE WEEKEND TO THEIR PARTY FAITHFUL.

2. IN QUEBEC CITY MR TRUDEAU SPOKE TO THE QUEBEC SECTION OF THE FEDERAL LIBERAL PARTY. WHILE EXUDING CONFIDENCE AND CHALLENGING MR LEVESQUE TO DARE TO HOLD A REFERENDUM OR ELECTION ON THE ISSUE OF OUTRIGHT SEPARATISM, HE OFFERED COMPROMISES ON THOSE AREAS OF DIFFICULTY WHICH MR LEVESQUE HAD IDENTIFIED IN THE CONSTITUTIONAL AGREEMENT. THE COMPROMISES OFFERED ARE SIMILAR TO THE SUGGESTIONS MADE BY THE PROVINCIAL LIBERAL LEADER MR RYAN (PARA 3 OF MY TELNO 631).

3. IN MONTREAL, MR LEVESQUE, SPEAKING TO A SPECIAL SESSION OF THE NATIONAL COUNCIL OF THE PARTI QUEBECOIS, DELIVERED A LENGTHY, EMOTIONAL AND BITTER CONDEMNATION OF THE "PLOT" BETWEEN MR TRUDEAU AND THE OTHER PROVINCIAL PREMIERS AND VOWED TO FIGHT THE CONSTITUTIONAL AGREEMENT BY ALL POSSIBLE MEANS (HE DID NOT CONFINE THE VOW TO LEGAL MEANS). HAVING Roused HIS AUDIENCE, MR LEVESQUE THEN INTERVENED TO SECURE THE DEFEAT OF A RESOLUTION CALLING FOR PRIORITY LEGISLATION ON QUEBEC'S RIGHT TO SELF-DETERMINATION. WHILE HE WAS ABSENT FROM THE MEETING A RESOLUTION WAS PASSED CALLING FOR THE NEXT ELECTION TO BE Fought ON THE ISSUE OF NATIONAL SOVEREIGNTY, BUT MR LEVESQUE MADE IT CLEAR THAT HE HAD NO INTENTION OF CALLING A SNAP ELECTION. HOWEVER THE COUNCIL OBTAINED FROM MR LEVESQUE AN ASSURANCE THAT THE TERMS OF THE DRAFT NATIONAL ASSEMBLY RESOLUTION WERE A NON-NegotIATABLE TABLE.

4. DESPITE THE ACID TONE OF WHAT MESSRS TRUDEAU AND LEVESQUE ARE SAYING, IT SEEMS TO ME THEY ARE BOTH LOOKING FOR SOME SORT OF COMPROMISE, MR LEVESQUE PERHAPS LESS ENTHUSIASTICALLY AND WITH LESS ROOM FOR MANOEUVRE THAN MR TRUDEAU. THE RESULTS OF A POLL TAKEN

RESTRICTED  /  FROM 9-11
FROM 9-11 NOVEMBER IN QUÉBEC PROVINCE WHICH APPEARED THIS WEEKEND WILL HAVE GIVEN BOTH MEN CAUSE FOR COMFORT AND DISCOMFORT. WHEN ASKED WHETHER OR NOT THEY WERE SATISFIED WITH THEIR PERFORMANCE AT THE CONSTITUTIONAL CONFERENCE, 47 PER CENT OF THE RESPONDENTS SAID THEY WERE SATISFIED WITH MR. TRUDEAU AND 44 PER CENT WITH MR. LEVESQUE: 42 PER CENT DISAGREED WITH THE QUÉBEC GOVERNMENT'S STAND (40 PER CENT AGREED), 37 PER CENT SAID THAT IF THERE WERE A REFERENDUM THEY WOULD FAVOUR SIGNING A CONSTITUTIONAL AGREEMENT BY QUÉBEC (34 PER CENT OPPOSED). HOWEVER 46 PER CENT OF FRANCOPHONES AND 59 PER CENT OF PEOPLE UNDER 25 AGREED WITH THE QUÉBEC GOVERNMENT'S STAND: 43 PER CENT OF FRANCOPHONES WERE AGAINST SIGNATURE OF THE AGREEMENT AND ONLY 31 PER CENT FOR. PERHAPS THE KEY FIGURE IS THAT 44 PER CENT OF THE RESPONDENTS BELIEVED THAT THE QUÉBEC GOVERNMENT SHOULD PURSUE NEGOTIATIONS WITH THE FEDERAL GOVERNMENT.
Mr Day

cc: PS
    PS/LPS
    PS/Mr Luce
    PS/Lord Trefgarne
    PS/PUS
    Sir A Acland
    Mr Freeland
    Dr Parry
    Mr Ure

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CANADIAN CONSTITUTION. FEDERAL-PROVINCIAL AGREEMENT

1. It may be useful to attempt to distill important elements of
the agreement between Mr Trudeau and nine out of ten of the Provincial
Premiers last week (all except Quebec). The changes mainly concern
the Amending Formula and the Charter of Rights and Freedoms.

AMENDING FORMULA

2. Mr Trudeau's proposals were based on the Victoria formula
(see Annex) which effectively gave the veto on constitutional
amendments to any Province with at least 25% of the population of
Canada, i.e. Quebec and Ontario. Under the new agreement, Mr Trudeau
accepted the Provinces' preferred amending formula, the Vancouver
Consensus (see Annex), under which no single Province can veto. The
essential elements of the Vancouver Consensus are:-

a) Amendments can be made through a resolution of the
Federal Parliament plus resolutions of the legislative
assemblies of two-thirds of the Provinces representing
at least 50% of the population of Canada.

b) Provinces can opt out of any amendment with which they
do not agree; but there is now to be a financial dis-
incentive, whereby if a Province opts out it will not
receive the financial benefit it would otherwise have
obtained from the Federal programme flowing from the
proposed amendment (e.g. a country-wide social welfare
programme).

c) The Vancouver formula involves dropping the provisions
for a referendum in the event of failure by the Provinces
and the Federal Government to agree on an amendment;
such a referendum would have given the Federal Government
the right to appeal to the Canadian people over the heads
of the legislatures in the event of deadlock.

d) The Senate veto which Mr Trudeau had added is now dropped.

/CHARTER
CHARTER OF RIGHTS AND FREEDOMS

3. There has been some dilution:

a) A so-called "notwithstanding clause" has been inserted which will enable the Provinces (and the Federal Government) when legislating to override particular rights built into the Charter in the recent draft, viz Fundamental Freedoms (e.g., freedom of conscience and religion), Legal Rights (liberty and security of the person etc) and Equality Rights (no discrimination based on race, colour, religion, sex etc). It is thought unlikely that Governments would lightly resort to this clause.

b) A Province with above average unemployment can now protect its citizens against the entrenched mobility right (whereby any Canadian can work in any Province). (Inserted for the benefit of Newfoundland where unemployment is high.)

The agreement itself is vague on the application of the controversial minority language education rights provision in the Charter, which was strongly opposed by Quebec (who do not want to be made to educate English-speakers in English in Quebec). At present it looks as though Mr Trudeau will insist on leaving the provision in the Charter untouched; if so, it will be difficult for him to get Quebec on board.

ABORIGINAL RIGHTS

4. Under the new agreement, the clauses in the original proposals recognising the rights of the aboriginal peoples of Canada are dropped. The clause providing for a constitutional conference aimed at identifying and defining native rights is retained, it being asserted that this is an important safeguard. The Indians and others have already reacted severely and are continuing their lobbying activities in London. Reinstatement of an aboriginal clause in the package is a possibility.

QUEBEC

5. The indications are that Mr Trudeau will try hard to get Quebec alongside. A major stumbling block is the apparent difficulty that Mr Levesque (of the Parti Quebecois) will have in reconciling his separatist views and political advantage with agreement on the constitution with Mr Trudeau. Less important probably (though still significant) are some of the PQ's specific objections, such as the general complaint that the Charter diminishes provincial powers and the unacceptability of the language provisions. Mr Levesque has made it clear that lobbying of British MP's in London by the Quebec Government will continue.
TIMING

6. There are many imponderables. Mr Trudeau has spoken of weeks or months needed to convince Quebec; but he may well want to move faster and might conclude that too much delay would lead to objections from other Provinces and the unravelling of the agreement. The New Democratic Party seem well on board; but the Progressive Conservatives have been harping on the desirability of converting Quebec and the role of the Canadian Parliament and this could cause delay. The original agreement whereby total parliamentary debate would last no more than three days is a dead letter now that the original package is to be revised.

7. The earliest the proposals could go to the Canadian Parliament is the week beginning 16 November; but considerable further delay is on the cards.

MR TRUDEAU

8. Mr Trudeau has made substantial concessions; but retained much of his original proposals, including the Charter of Rights and Freedoms. It seems likely that the Supreme Court judgment came as a blow to him and induced some change of mind; also, that he may always have been prepared to give some ground, but played a good game of poker, only revealing his hand at the last.

M S Berthoud
North America Department

11 November 1981
PROPOSED AMENDING FORMULAE

Best Efforts Draft, the Vancouver Consensus, 1980

The legal draft based on the Vancouver consensus provided a number of ways of amending the Constitution.

The basic method would require

i. resolutions of the Senate and House of Commons

ii. resolutions of the Legislative Assemblies of two-thirds of the provinces representing at least 50 per cent of the population of Canada

This amending formula would be required to amend only certain constitutional matters of general application.

a) the office of the Queen, of the Governor-General and of the Lieutenant-Governor

b) the requirement for yearly sessions of the Parliament of Canada and the legislatures of the provinces

c) the maximum period fixed by the Constitution of Canada for the duration of the House of Commons and the Legislative Assemblies

d) the powers of the Senate and provincial representation in it

e) proportionate representation in the House of Commons

f) the use of the English or French language.

However, any other amendment made in this way which affected

a) the powers of the legislature of a province to make laws

b) the rights or privileges granted or secured by the Constitution of Canada to the legislature or the government of a province

c) the assets or property of a province, or

d) the natural resources of a province

would have no effect in any province whose Legislative Assembly had expressed its dissent in a resolution, until that Assembly withdrew its dissent and approved the amendment.

Amendments which applied to one or more but not all of the provinces could also be made if resolutions were passed in favour of the amendment by the Senate, the House of Commons and the Legislative Assemblies of each province to which the amendments would apply.

Resolutions of the House of Commons, the Senate and the Legislative Assemblies of all the provinces would be required to change the basic method described above.

In all amending procedures, when the Senate had not passed a resolution in favour of an amendment within ninety days of its approval by the House of Commons, Senate approval would not be required if the House of Commons again approved the amendment.

(Source: Legal Texts forming Appendices to CCMC Reports to First Ministers, Document 800-14/661, Ottawa, September 8-12, pp. 1-4)

The Victoria Formula

At Victoria, B.C., in 1971, all governments agreed on an amending formula, thereafter known as "the Victoria Formula". Under this formula, any amendment may be made by resolution of the House of Commons and the Senate, plus resolutions of the legislative assemblies of at least a majority of provinces that include:

a) any province that has or at any time has had at least 25 per cent of the population (Quebec and Ontario),

b) at least two Atlantic provinces,

c) at least two western provinces whose combined populations according to the last general census form at least 50 per cent of the population of the western regions.

Certain matters could be changed only by the use of this formula and they broadly correspond to those matters of general application listed in the Vancouver formula.

(Source: Constitutional Conference Proceedings, Victoria, B.C. June 14, 1971, Appendix B, p. 63)
CONSTITUTION

1. MR LEVESQUE'S SPEECH AT THE OPENING OF THE NATIONAL ASSEMBLY YESTERDAY CONTAINED THE EXPECTED VITRIOL AND BIASED REHEARSAL OF THE HISTORY OF QUEBEC'S ATTEMPTS TO ASSERT ITS POSITION IN CONFEDERATION. HE DID NOT HAVE MUCH TO REPORT IN THE WAY OF CONCRETE DECISIONS. HE SAID THAT THE FOLLOWING IMMEDIATE MEASURES WOULD BE UNDERTAKEN:

(A) QUEBEC WOULD BOYCOTT ALL FEDERAL/PROVINCIAL AND INTERPROVINCIAL MEETINGS EXCEPT THOSE ON ECONOMIC AND FINANCIAL MATTERS;

(B) THE NATIONAL ASSEMBLY WOULD BE CALLED UPON TO REAFFIRM THE EXISTENCE OF A DISTINCT NATIONAL SOCIETY IN QUEBEC;

(C) EFFORTS WOULD BE MADE TO INFORM THOSE IN OTHER COUNTRIES SYMPATHETIC TO THE QUEBEC CAUSE OF THE WAY THAT QUEBEC HAD BEEN TREATED AND MEASURES TAKEN TO COUNTERACT THE "BRAIN WASHING" OF QUEBECERS BY FEDERAL PROPAGANDA;

(D) QUEBEC WOULD CONTINUE TO EXPLAIN ITS POSITION TO BRITISH PARLIAMENTARIANS.

THese measures, particularly (A) above presumably constitute the minimum requirement to keep the parti quebecois radicals in line. There is to be a cabinet meeting during the week and a meeting of the national executive of the party at the weekend. There is a distinct possibility that Mr Levesque will be obliged to agree to further action, eg a reference to the Supreme Court or a referendum.

2. IN DEALING WITH THE SUGGESTION THAT FURTHER DEMANDS BE MADE TO NEGOTIATE WITH OTTAWA, MR LEVESQUE WAS EXTREMELY NEGATIVE, LAYING DOWN THE UNLIKELY PRE-CONDITION THAT OTTAWA RENOUNCE EVERYTHING IN THE AGREEMENT WHICH DETRACTED FROM THE PROVINCE'S RIGHTS. THE DEGREE OF BITTERNESS WHICH MR LEVESQUE HAS FELT TOWARDS MR TRUDEAU PARTICULARLY AND THE FEDERAL GOVERNMENT GENERALLY HAS BEEN HEIGHTENED CONSIDERABLY AS A RESULT OF THE CONFERENCE - NOT LEAST BECAUSE WITH THE BENEFIT OF HINDSIGHT IT IS PLAINT THAT HE PLAYED HIS CARDS BADLY BY AGREEING QUICKLY TO MR TRUDEAU'S COMPROMISE WHEN HE KNEW IT TO BE UNACCEPTABLE TO SOME AT LEAST OF HIS COLLEAGUES. MR BLAKENEY HAS SPELT OUT IN A TV INTERVIEW THAT MR LEVESQUE HAD NO CAUSE WHATSOEVER FOR
FEELING BETRAYED: ALL THE SIGNATORIES OF THE APRIL ACCORD HAD SPECIFICALLY AGREED THAT IT WAS A DEVICE TO RAILROAD THE TRUDEAU EXPRESS AND BRING THE FEDERAL GOVERNMENT TO THE NEGOTIATING TABLE. ONCE THERE THE SIGNATORIES WOULD BE FREE TO PURSUE THEIR SEPARATE INTERESTS. WHATEVER THE BACKGROUND, IT SEEMS UNLIKELY THAT MR LEVESQUE WILL BE DISPOSED OR FEEL ABLE POLITICALLY TO ENGAGE THE FEDERAL GOVERNMENT IN NEGOTIATION IN THE SHORT TERM.


4. I SAW BOTH MR LEVESQUE AND MR RYAN AT THE LIEUTENANT GOVERNOR’S RECEPTION FOLLOWING THE OPENING OF THE NATIONAL ASSEMBLY. MR LEVESQUE SEEMED IF ANYTHING SAD ABOUT THE SITUATION, ALMOST CRESTFALLEN. HE WAS PERFECTLY FRIENDLY TO ME. HE SAID THAT THE QUEBEC AGENT-GENERAL HAD BEEN KEPT BACK IN QUEBEC TO DISCUSS WHAT TO DO NEXT. HE DID NOT GIVE THE IMPRESSION THAT HE EXPECTED WESTMINSTER TO DO ANYTHING OTHER THAN TO PASS THE LEGISLATION CLEARLY TOO HE DID NOT EXPECT MR CLARK TO DO MUCH IN THE HOUSE OF COMMONS IN OTTAWA. MR RYAN WAS EXTREMELY PREOCCUPIED AS WELL HE MIGHT BE WITH HIS POLITICAL NECK ON THE BLOCK. HE IS BEING PRESSURISED BY HIS CAUCUS TO DISSOCIATE HIMSELF FROM THE LEVESQUE GOVERNMENT AND COME OUT STRONGER IN FAVOUR OF THE OTTAWA AGREEMENT.

5. ON THE ABORIGINAL FRONT, FOLLOWING A LUNCHEON MEETING YESTERDAY BETWEEN INUIT LEADERS AND MR TRUDEAU, IT WAS ANNOUNCED THAT THE FORMER HAD BEEN GIVEN 48 HOURS TO PRODUCE SUITABLE WORDING FOR A POSSIBLE REINSTATED CLAUSE ON THE ENTRENCHMENT OF ABORIGINAL RIGHTS.

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LOAD MORGAN

GOV. HOG/MISSION SECTIONS AND BRITISH
Ref. A05932

MR. ALEXANDER

Lord Moran, our High Commissioner in Ottawa, came to see me yesterday.

2. Though we talked about many other matters, the main purpose of his visit was to make two points:

(i) The fact that I had a personal relationship with my Canadian counterpart (as indeed my predecessors have had), and that this channel of communication had been used at certain moments during the affair of the Canadian Constitution, had, he feared, affected his standing as an interlocuteur valable in the eyes of the Canadian Prime Minister.

(ii) The American Ambassador in Ottawa, before taking up his duties, had had an hour with the President of the United States and was able to refresh this contact when he returned to Washington. He made no secret of the fact; and this naturally improved his standing in Ottawa. By contrast he (Lord Moran) was not able to say that he had seen the Prime Minister either before taking up his appointment or at any time since.

3. I said that there was a tradition of a direct relationship between the Secretary of the Cabinet in London and his counterpart in Ottawa which I had inherited; and I valued that relationship, because it enabled us to discuss together questions about organisation and machinery at the centre of Government, to our mutual advantage. I had also had some dealings with Mr. Pitfield in the course of my work as the Prime Minister's Personal Representative for the purposes of the Economic Summits. It so happened that over recent months I had had a number of contacts with Mr. Pitfield at the time of the Ottawa Summit and then again at CHOGM in Melbourne; and it was perhaps not surprising both that we had discussed the Canadian Constitution and that, particularly at Melbourne, we should have been a channel between the two Prime Ministers. I did not regret that; but I assured Lord Moran that I
regarded this particular matter as exceptional, and had no wish or intention to use the contact with Mr. Pitfield to replace proper diplomatic channels for contacts between the two Governments and the two Prime Ministers in the ordinary course of business.

4. On the second point, I said that I thought that it would be useful if Lord Moran could see the Prime Minister on one of his visits here; she was very busy at the moment, but perhaps something could be arranged next time he was here.

5. I asked whether Lord Moran thought that, once the Canadian Constitutional affair was settled, it might be useful for the Prime Minister to send Mr. Trudeau a personal message, which could be sent through him (Lord Moran). Lord Moran thought that this ought to wait until the legislation at Westminster was safely through, but that such a message at that point could well be a good idea.

ROBERT ARMSTRONG

10th November, 1981
**LETTERCODE/SERIES**  
PREM 19

**PIECE/ITEM**  
669

(One piece/item number)

**Extract/Item details:**

*Minute from Armstrong to Hilary*

*dated 10 November 1981*

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My dear Peter,

You will have heard our good news and, for our part, we think we heard your sigh from across the water! We are enormously grateful for the help that you and Mrs. Thatcher and your government gave to us over the last difficult year and a half. Your support demonstrated your friendship for Canada and your commitment to principle, despite the difficulties. It was vitally important to us and was in no small way a contributing factor to the successful conclusion of our strategy. It was, indeed, a fitting demonstration of the close ties between our two countries which will in no way be lessened by the ending of our constitutional link.

I would be delighted if some time in the New Year you could manage a trip to Ottawa, and perhaps to other parts of Canada as well. We are always glad of the opportunity to discuss the many common issues that concern us and I should also like to bring some focus on further advancing our bilateral relations.

Yours sincerely,

Mark MacGuigan

The Right Honourable The Lord Carrington, KCMG, MC.
Foreign Secretary
Foreign and Commonwealth Office
Downing Street (West)
London, England
SW1A 2AL
CONSTITUTION

1. IT SEEMS FROM ALL ACCOUNTS THAT CERTAINLY THE FEDERAL GOVERNMENT AND PROBABLY THE QUEBEC GOVERNMENT ARE PROPOSING TO PROCEED CIRCUINSPECTLY.

2. THE FEDERAL CABINET MET ON FRIDAY MORNING AND, DESPITE SOME INACCURATE REPORTING WHICH MAY BE REFLECTED IN THE BRITISH MEDIA, DECIDED THAT WHILE THERE WAS NO QUESTION OF THE NEW CONSTITUTION NOT BEING APPLIED IN ALL RESPECTS TO QUEBEC (PARTICULARLY THE MINORITY LANGUAGE EDUCATION PROVISION), TIME WOULD BE TAKEN TO SEEK AN ACCOMMODATION WITH THE PROVINCE. IT MAY WELL BE TRUE, AS REPORTED, THAT THERE ARE DIVISIONS WITHIN THE CABINET OVER TACTICS BUT THE GENERAL LINE AGREED IS OBVIOUSLY THAT TAKEN BY MR TRUDEAU HIMSELF AT THE CONCLUDING SESSION OF THE CONFERENCE WHEN HE SAID: "I HOPE THAT IN THE WEEKS, AND IF NECESSARY MONTHS TO COME WE SHALL STILL BE ABLE TO CONVINCE OUR COLLEAGUES FROM QUEBEC TO DO IN THE CONSTITUTION WHAT IN FACT HISTORICALLY HAS ALWAYS BEEN DONE IN QUEBEC SINCE THE BEGINNING OF CONFEDERATION: TO TREAT THEIR ANGLOPHONE MINORITIES IN THE SCHOOL SYSTEM EQUITABLY."

3. THIS NEED NOT OF COURSE IMPLY A DELAY OF WEEKS OR MONTHS IN SUBMITTING THE AMENDED OR NEW RESOLUTION TO PARLIAMENT. THE GOVERNMENT'S LEGAL DRAFTSMEN ARE WORKING HARD TO TURN THE OCCASIONALLY EVADELY WORDED AGREEMENT INTO LEGAL LANGUAGE. MR TRUDEAU DID NOT AFTER ALL MEET THE LEADERS OF THE OPPOSITION PARTIES ON FRIDAY; HE IS NOW EXPECTED TO DO SO ON MONDAY EVENING OR TUESDAY, AS WEDNESDAY IS A PUBLIC HOLIDAY AND THE BUDGET SCHEDULED FOR THURSDAY (FOLLOWED BY A DAY FOR THE OPPOSITION'S INITIAL RESPONSE) WE CAN REASONABLY ASSUME THAT THE CONSTITUTIONAL ISSUE WILL NOT BE BEFORE PARLIAMENT AGAIN BEFORE 16 NOVEMBER AT THE EARLIEST.

4. MR CLARK IS KEEPING HIS POWDER DRY WHILE SAFELY EMPHASISING THE IMPORTANCE OF REACHING AGREEMENT WITH QUEBEC. GIVEN HIS PARTY'S MISERABLE STANDING IN QUEBEC AND THE PRECARIOUSNESS OF HIS POSITION AS THE PARTY LEADER, HE WILL NEED TO THINK CAREFULLY ABOUT HOW FAR TO TRY TO INSIST ON AGREEMENT WITH QUEBEC. MR BROADBENT'S PARTY IS NOT SOLID: THERE IS DEEP DISAPPOINTMENT ON THE PART OF SOME NDP MEMBERS AT THE REMOVAL OF THE ENTRANCED RECOGNITION OF THE ABORIGINAL AND TREATY RIGHTS OF THE ABORIGINAL PEOPLES. MR TRUDEAU HAS HOWEVER BEEN ABLE IN ANSWERING QUESTIONS IN THE HOUSE TO POINT OUT THAT THIS PARTICULAR AMENDMENT WAS MADE AT THE INSISTENCE OF THE PROVINCIAL...
PREMIERS, INCLUDING MR. BLAKEY, THE NDP PREMIER OF SASKATCHEWAN, AND THAT HE (TRUDEAU) HAD INSISTED THAT THE AGREEMENT REACHED LAST WEEK INCLUDE A PROVISION FOR A CONSTITUTIONAL CONFERENCE ON ABORIGINAL RIGHTS.

5. UNDER THE AMENDING FORMULA NOW AGREED, THE SENATE LOSES THE ABSOLUTE VETO WHICH IT SUCCESSFULLY DEMANDED EARLIER THIS YEAR AND IS TO BE GRANTED A "SUSPENSIVE" VETO WHICH WILL ALLOW IT TO DELAY FUTURE AMENDMENTS FOR SIX MONTHS. MR. TRUDEAU HAS LET IT BE UNDERSTOOD THAT THE SENATE (DOMINATED BY LIBERALS) WILL AGREE TO THIS.

6. FOR HIS PART, MR. LEVESQUE HAS DECLINED TO BE PUSHED BY HIS RANK AND FILE INTO HASTY ACTION. AT A CAUCUS MEETING ON FRIDAY THE QUEBEC GOVERNMENT WAS URGED TO BOYCOTT ALL FUTURE FEDERAL/PROVINCIAL CONFERENCES EXCEPT THOSE DEALING WITH FINANCE. A SUBSEQUENT CABINET MEETING REJECTED THIS ADVICE AND AGREED THAT MAJOR DECISIONS WOULD BE PUT OFF FOR A WEEK. WHILE MR. LEVESQUE'S SPEECH AT THE OPENING OF THE NATIONAL ASSEMBLY ON 9 NOVEMBER IS LIKELY TO BE COUCHED IN VITRIOLIC LANGUAGE, IT IS NOW UNLIKELY TO REVEAL WHAT COURSE OF ACTION THE QUEBEC GOVERNMENT WILL FOLLOW.

7. MR. RYAN, LEADER OF THE QUEBEC LIBERAL PARTY HAS DESCRIBED THE AGREEMENT AS AN IMPORTANT STEP TOWARDS A RENEWED FEDERALISM BUT IS RESERVING COMPREHENSIVE COMMENT UNTIL HE HAS SEEN WHAT THE NEW CONSTITUTIONAL RESOLUTION WILL AMOUNT TO IN DETAIL.

8. THE INDIAN ORGANISATIONS HAVE REACTED STRONGLY TO THE REMOVAL OF THEIR ENTRANCED RIGHTS FROM THE CHARTER WITHOUT THE SLIGHTEST ATTEMPT TO CONSULT OR INFORM THEM. THEY WILL UNDOUBTEDLY CONTINUE TO LOBBY AND PUBLICISE THEIR GRIEVANCES, BUT THEY SUFFER BADLY FROM INTERNAL DISUNITY AND THE FACT THAT NEITHER PROVINCIAL NOR FEDERAL GOVERNMENTS SEE POLITICAL OR ECONOMIC ADVANTAGE IN ESPousing THE CAUSE OF THE ABORIGINAL PEOPLES. GIVEN THE GENERALLY HELD VIEW AMONGST THE INDIANS THAT THE BRITISH CROWN REMAINS RESPONSIBLE FOR THEM WE SHALL NEED TO WATCH CAREFULLY FOR SIGNS THAT INDIAN FRUSTRATION MAY PRODUCE VIOLENCE.

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FROM OTTAWA E52210Z NOV 81
TO IMMEDIATE FCO
TELEGAM NUMBER 625 OF 5 NOVEMBER

CONSTITUTION

MY TELNOS 622, 623 AND 624

1. THE IMMEDIATE CREDIT FOR THE BREAKTHROUGH WHICH OCCURRED
OVERNIGHT GOES, SURPRISINGLY, TO MR PECKFORD OF NEWFOUNDLAND WHO
DRAFTED THE COMPROMISE LAST EVENING AND SOLED IT DURING THE NIGHT
AND EARLY THIS MORNING TO THE MAJORITY OF OTHER PARTICIPANTS.

2. HOWEVER NO AGREEMENT WOULD HAVE BEEN REACHED IF MR TRUDEAU
HAD NOT ENGAGED IN THE CONFERENCE WITH A GENUINE PREPAREDNESS TO
COMPROMISE. IN THE EVENT HE HAS ACHIEVED THE GREATER PART OF WHAT
HE SET OUT TO DO LAST YEAR, ALTHOUGH HE HAD TO WATER DOWN THE CHARTER
OF RIGHTS, DROP THE REFERENDUM PROVISION (AND THEREFORE FEDERAL
GOVERNMENT INITIATIVE) IN THE AMENDING FORMULA AND CONCEDE OPTING
OUT. HE ALSO HAD TO ACCEPT THE ISOLATION OF THE QUEBEC GOVERNMENT
AND ITS DANGEROUS IMPLICATIONS.

3. MR LEVESQUE SPOKE RANCOROUSLY AT THE FINAL SESSION BUT DID NOT
REVEAL WHAT ACTION HE NOW PROPOSES TO TAKE. WE SHOULD KNOW AT
THE LATEST BY MONDAY, 9 NOVEMBER WHEN HE SPEAKS AT THE OPENING
OF THE QUEBEC NATIONAL ASSEMBLY. THE FEDERAL GOVERNMENT CLAIMS TO BE
CONFIDENT OF THE SUPPORT OF THE QUEBEC PEOPLE: SO DOES THE QUEBEC
GOVERNMENT. BOTH CLAIMS ARE SUPERFICIALLY VALID GIVEN THE LARGE
NUMBER OF ELECTED REPRESENTATIVES THAT BOTH HAVE IN THE PROVINCE.
IT MAY WELL BE THAT, AS THE SPECULATION HERE SUGGESTS, THERE WILL
HAVE TO BE ANOTHER REFERENDUM. WHATEVER ELSE HAPPENS, IT SEEMS
TO ME THAT TODAY'S AGREEMENT WILL MAKE IT THAT MUCH MORE DIFFICULT
FOR MR LEVESQUE TO CONTROL THE OUTRIGHT SEPARATISTS IN HIS PARTY.

4. THE NATIVE PEOPLES WILL NOT BE HAPPY WITH THE WAY THEIR RIGHTS
ARE TO BE TREATED UNDER THE NEW ARRANGEMENT AND MAY WELL THEREFORE
CONTINUE THEIR LOBBYING IN LONDON.

5. PLEASE ENSURE THAT LORD MORAN C/O HEADS OF MISSION SECTION HAS
A COPY OF THIS TELEGRAM AND MY TEL NOS UNDER REFERENCE.

Davies

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FM OTTAWA 052115Z NOV 81
TO IMMEDIATE FCO
TELEGRAM NUMBER 624 OF 5 NOVEMBER

CONSTITUTION

MY TELNO'S: 622 AND 623

1. FOLLOWING THE PUBLIC FINAL SESSION OF THE CONFERENCE THIS
   AFTERNOON, MR TRUDEAU WENT DIRECTLY TO THE HOUSE OF COMMONS,
   TABLED THE TEXT OF THE AGREEMENT AND MADE A BRIEF STATEMENT SUM-
   MARISING THE AGREEMENT AND THE PARTICULAR POINTS OF DIFFERENCE
   WITH THE QUEBEC GOVERNMENT. HE SAID THAT HE WAS NOT SURE WHETHER
   TO AMEND THE RESOLUTION NOW BEFORE THE HOUSE OR SUBMIT A NEW ONE
   AND HOPED THAT THE LEADERS OF THE PROGRESSIVE CONSERVATIVE AND THE
   NEW DEMOCRATIC PARTIES WOULD AGREE TO CONSULT TOMORROW.

2. MR CLARK FOR THE PROGRESSIVE CONSERVATIVES SAID THAT HE WAS
   NATURALLY HAPPY TO HAVE THE MATTER BACK IN THE HOUSE OF COMMONS
   WHICH HAD CONTRIBUTED SO MUCH TO THE IMPROVEMENT OF THE FEDERAL
   PACKAGE. HE DWELT AT CONSIDERABLE LENGTH ON HIS CONCERN AT
   QUEBEC'S ISOLATION AND POTENTIAL SERIOUS CONSEQUENCES. HE THOUGHT
   THAT THE HOUSE HAD A FURTHER ROLE TO PLAY IN REFINING THE RESOLUTION
   WITH THE AIM OF SEEKING SOLUTIONS TO THE OUTSTANDING PROBLEMS AND
   EVEN BROADER AGREEMENT. HE CONFINED HIMSELF TO SAYING THAT HE WOULD
   BE PREPARED TO MEET THE PRIME MINISTER TOMORROW TO DISCUSS TIMING.
   MR BROADBENT OFFERED UNRESERVED CONGRATULATIONS TO THE PRIME
   MINISTER AND THE PREMIERS FOR REACHING A BROAD CANADIAN CONSENSUS.

3. MR CLARK WAS OBVIOUSLY SEEKING TO MAXIMISE HIS PARTY'S CREDIT
   FOR THE IMPROVEMENT OF THE FEDERAL RESOLUTION IN PARLIAMENT AND TO
   KEEP HIS OPTIONS OPEN. IT IS NOT TO BE DISCOUNTED THAT HE WILL
   MAKE A SERIOUS EFFORT TO NEGOTIATE FURTHER CHANGES WITH A VIEW TO
   GETTING QUEBEC ON BOARD. HOWEVER, ALTHOUGH MANY CANADIANS WILL
   OF COURSE BE CONCERNED AT QUEBEC'S ISOLATION, IT SEEMS DOUBTFUL
   THAT MR CLARK WILL FIND MUCH SUPPORT FOR PROLONDED AND
   OBSTRUCTIONIST DEBATE IN PARLIAMENT.

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PRIME MINISTER

Canadian Constitution

I have just heard from Mr Michael Pitfield, my Canadian counterpart, that the Federal Government has reached agreement with nine of the provincial premiers on a draft measure for patriation of the constitution, an amending formula, and a Bill of Rights.

2. The amending formula provides for the agreement of seven of the ten provinces, save in two or three areas where there will be a unanimity requirement. I do not have the details of the Bill of Rights but I understand that it will now include provision enabling a provincial Government to derogate from particular provinces for a limited time, with a right to come back for a renewal at the end of that time.

3. The Federal Cabinet will meet tomorrow. The proposal is to proceed in the Canadian Parliament forthwith, probably on Monday or Tuesday of next week, with a view to sending the measure to Westminster in a week or ten days' time.

4. The dissenting province is, of course, Quebec. Mr Pitfield expressed the hope that British Members of Parliament who had hitherto been standing out against the constitutional proposals would not enter the lists in support of Quebec.

5. I said that I could not predict how that would be, but I thought that the fact that agreement had been reached with all the other nine provinces would improve the chances of the measure succeeding at Westminster.

6. I am sending copies of this minute to the Foreign and Commonwealth Secretary and to the Lord President.

5 November 1981

CONFIDENTIAL

ROBERT ARMSTRONG
(drafted by Dr. R Armstrong and signed on his behalf)
CANADIAN CONSTITUTION

1. The Canadian High Commissioner telephoned Mr Luce's Private Secretary (in Mr Luce's absence) this evening to let him know that 9 of the 10 provinces had reached agreement with Mr Trudeau on a slightly modified package of constitutional proposals. Quebec alone had not signed. The statements are at this moment (5pm) being typed for the announcement to be made in Ottawa.

2. The revised package includes:

   (1) The amending formula will be as in the April 1981 accord (basically the Vancouver concensus) instead of the Victoria formula in the original resolution, but there will be no obligation for fiscal compensation if a province opts out of any part of the package.

   (2) There will be no delegation of legislative powers.

   (3) There will be no referendum.

   (4) There will be a fully entrenched Charter of Rights including Federal language rights.

   (5) The provinces will be able to pass legislation enabling them to opt out.

   (6) Mobility of travel and employment will be entrenched in the Charter except in the Provinces where there is over average unemployment.

2. The Premiers and the Federal Government have initialled this agreement. The inter-Governmental Ministers will remain in Ottawa to finalise the drafting. It is still possible that one or more Provinces may reneg on the agreement as they did in 1971, but this is thought unlikely.
3. The new agreement means that the All-party agreement on Parliamentary handling will have to be renegotiated but Mrs Wadds thought in view of the number of Provinces supporting the revised package that the opposition parties would not cause any difficulty and that it is likely that the Parliamentary process will be completed quickly. It is not yet possible to predict precisely when the Canadian Parliament will debate and vote on the measure, but this could be sometime next week, which means that the Resolution might be with us during the week beginning 16 November.

4. These are only the barest details. We expect to have a full statement and agreement tomorrow morning.

5. The High Commission in Ottawa have telephoned and their initial reaction is that it looks as if this is going to get us off the hook.

5 November 1981

B R Berry
North America Department
CONFIDENTIAL

GMS 310
CONFIDENTIAL
FROM OTTAWA 242202Z NOV 81
TO IMMEDIATE FCO
TELEGRAM NUMBER 617 OF 4 NOVEMBER

CONSTITUTION

1. I HAVE DISCUSSED THE STATE OF PLAY AS AT EARLY AFTERNOON TODAY WITH A SENIOR MEMBER OF THE FEDERAL GOVERNMENT TEAM. HE EMPHASISED THAT THE SITUATION WAS VERY FLUID AND THEREFORE DIFFICULT TO DESCRIBE ACCURATELY.

2. THE MOST SIGNIFICANT DEVELOPMENT IS THAT MR TRUDEAU HAS PROPOSED THAT THE FEDERAL PACKAGE AS IT STANDS BE PATRIATED, THAT IMPLEMENTATION OF THE CHARTER OF RIGHTS BE DELAYED WHILE FURTHER DISCUSSION TAKES PLACE AND THAT IF THERE IS NO AGREEMENT AT THE END OF 2 YEARS THE MATTER BE PUT TO CANADIANS IN A NATIONAL REFERENDUM. MY INFORMANT SAID THAT MR LEVESQUE HAD EXPRESSED INTEREST IN THIS PROPOSAL. HOWEVER, MR TRUDEAU HIMSELF TOLD REPORTERS ON HIS WAY TO LUNCH THAT MR LEVESQUE HAD AGREED WITH HIS PROPOSAL.

3. THERE ARE A NUMBER OF OTHER PROPOSALS STILL ON THE TABLE INCLUDING THOSE MADE AT THE OPENING SESSION BY MESSRS HATFIELD AND DAVIS, THAT MADE BY MR DAVIS YESTERDAY (ACCEPTANCE OF THE DISSENTING PROVINCES' AMENDING FORMULA IN RETURN FOR ACCEPTANCE BY THE DISSENTERS OF THE CHARTER OF RIGHTS) AND VERY DETAILED AND LENGTHY PROPOSALS BY SASKATCHEWAN (SUMMARY IN MIFT). MR DAVIS' TRADE-OFF PROPOSAL HAS NOT ATTRACTION SUPPORT LARGE LARGELY BECAUSE MR TRUDEAU MADE IT CLEAR THAT UNDER IT THE PROVINCES WOULD HAVE TO ACCEPT THE CHARTER AS IT STANDS AND THAT THEIR AMENDING FORMULA WOULD APPLY ONLY TO SUBSEQUENT CONSTITUTIONAL CHANGES.

4. THE MEETING IS GOING ON BEHIND CLOSED DOORS THIS AFTERNOON AND MAY POSSIBLY CONTINUE TOMORROW. MR LYON OF MANITOBAN HAS LEFT TO CONTINUE HIS ELECTION CAMPAIGN BUT IS REPRESENTED BY HIS ATTORNEY-GENERAL.

CONFIDENTIAL /5
CONFIDENTIAL

5. MY INFORMANT EXPRESSED THE VIEW THAT MR TRUDEAU HAD MOVED A
CONSIDERABLE WAY IN AN ATTEMPT TO LEGITIMISE HIS CONSTITUTIONAL
PACKAGE IN THE EYES OF THE CANADIAN PEOPLE AND FOR THE BENEFIT OF
THE BRITISH PARLIAMENT AND THAT THERE WERE GROUNDS FOR SOME HOPES
THAT A COMPROMISE DEAL WOULD EMERGE. I SHARE HIS VIEW.

FCO PSE PASS TO LORD MORAN C/O HEADS OF MISSION SECTION, FCO

DAVIES

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PS/HOME SECRETARY

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2

CONFIDENTIAL
CONSTITUTION

1. According to reports from a number of sources Mr Davis of Ontario has proposed a major move to achieve a compromise. He has apparently offered to accept the Vancouver Amending Formula, i.e. that proposed in April by the dissenting premiers, if the dissenters will accept a charter of rights (perhaps a reduced version of that proposed by the federal government).

2. The dissenting premiers met with Mr Davis this afternoon and then by themselves later.

3. There has been no official comment from any participant.

MORAN

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CONSTITUTION

1. THE FIRST CLOSED SESSION OF THE CONFERENCE ENDED YESTERDAY EVENING WITHOUT ANY OFFICIAL ANNOUNCEMENT OF WHAT HAD BEEN DISCUSSED OR WHETHER THERE HAD BEEN PROGRESS. PREMIERS QUESTIONED BY REPORTERS AFTERWARDS INDICATED THAT THE MEETING HAD BEEN CONDUCTED IN A FRIENDLY ATMOSPHERE AND CAME SOME HOPES OF PROGRESS. EVEN LEVESQUE SAID "UNLESS APPEARANCES ARE DECEIVING, BECAUSE ONE NEVER KNOWS, IT SEEMS THERE IS SOLID EFFORT UNDER WAY. THERE HAS BEEN PROGRESS IN MY OPINION...THERE ARE POSSIBILITIES ABOUT AN AMENDING FORMULA". PERHAPS THE MOST NEGATIVE WAS LYON OF MANITOBA WHO CONFINED HIMSELF TO SAYING: "WE HAVE NOT SEEN TOO MUCH FLEXIBILITY ON THE PART OF THE FEDERAL PEOPLE BUT MAYBE AFTER A NIGHT'S REST THEY'LL SEE THE LIGHT A LITTLE BETTER". LOUGHEED WHEN INTERVIEWED THIS MORNING SAID HE THOUGHT THAT HATFIELD'S COMPROMISE SUGGESTION WAS NOT VERY HELPFUL AND THAT TRUDEAU SHOULD GO BACK TO HIS OWN 1978 PROPOSALS WHEREBY THE FEDERAL GOVERNMENT WOULD HAVE AN ENTRAINED CHARTER OF RIGHTS BINDING ON THE FEDERAL GOVERNMENT ALLOWING THE PROVINCES TO OPT IN. HE EXPRESSED THE HOPE THAT TRUDEAU WAS NOT MERELY GOING THROUGH THE MOTIONS IN ORDER TO SATISFY THE NEW DEMOCRATIC PARTY WHICH MIGHT BE HELPFUL TO HIM WHEN HE WENT TO LONDON.

2. FOR HIS PART TRUDEAU SAID "THERE IS A CHANCE OF AN AGREEMENT BUT I DO NOT KNOW WHAT ODDS I'D GIVE. SOME OF THE GROUP OF EIGHT ARE SHOWING A REASONABLE FLEXIBILITY". IN A TELEVISION INTERVIEW THIS MORNING, CHRETIEN SPEAKING IN A VERY CONCILIATORY MANNER EMPHASISED THE MOVES THAT HAD BEEN MADE BY THE MEMBERS OF THE FEDERAL CAMP AND HOPED THAT THE DISSENTING PREMIERS WOULD FOR THEIR PART FEEL ABLE TO MOVE FORWARD.

3. IT APPEARS THAT THE MEETING CONCENTRATED ALMOST EXCLUSIVELY ON DISCUSSION OF AN AMENDING FORMULA AND THAT ATTENTION Turned TO THE SUBSTANCE OF THE CHARTER OF RIGHTS ONLY TOWARDS THE VERY END. IT HAS BEEN WIDELY REPORTED THAT HATFIELD FOUND HIMSELF IN DIFFICULTY WHEN ASKED TO EXPLAIN THE DETAILS OF HIS COMPROMISE PROPOSAL AND HAD TO BE HELPED OUT BY TRUDEAU. THIS HAS LENT ADDITIONAL CREDENCE TO THE VIEW THAT THE CONCESSIONS OFFERED YESTERDAY MORNING BY DAVIS AND HATFIELD WERE ORCHESTRATED BY THE FEDERAL GOVERNMENT.
4. RYAN, THE LIBERAL LEADER IN QUEBEC HAS ISSUED A WARNING TO LEVESQUE THAT HE SHOULD NOT FOLLOW THE ONTARIO CONCESSION AND OFFER TO GIVE UP QUEBEC'S VETO ON FUTURE CONSTITUTIONAL AMENDMENT.

5. CLARK THE OPPOSITION LEADER IN PARLIAMENT HAS CHALLENGED MR TRUDEAU TO HOLD A FEDERAL ELECTION OR REFERENDUM IF NO AGREEMENT IS REACHED DURING THE MEETING.

6. THE MEETING CONTINUES IN CLOSED SESSION TODAY.

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RESTRICTED
2nd November, 1981

Stephen Gomersall Esq.,
Private Secretary to the
Lord Privy Seal,
Foreign & Commonwealth Office,
London,
SW1A 2AH.

Dear Stephen,

Canadian Constitution:
Reply to Foreign Affairs Committee

Thank you for copying to me your letter of 18th October to Henry Steel. The Lord Chancellor has considered the draft Government Observations attached to your letter, and has suggested a number of amendments. Some are merely drafting or linguistic points, or amendments intended to clarify the issues. But a number of his suggestions are amendments of substance intended to strengthen the draft, and I think it may be helpful if I send a copy of the complete text, with the Lord Chancellor's suggested amendments, to you, to the recipients of your letter to Henry Steel, and to Martin Berthoud in your Legal Advisers' Branch.

Yours sincerely,

M.H. Collon
GOVERNMENT OBSERVATIONS ON THE MAC REPORT

"BRITISH NORTH AMERICA ACTS: THE ROLE OF PARLIAMENT"

Introduction

1. The British North America Act 1867 is the basic Canadian constitutional instrument. That Act was an Act of the United Kingdom Parliament. It can in certain important respects be amended only by Act of the United Kingdom Parliament. It has been so amended some 14 times. This anomalous situation whereby particular provisions of the constitution of one sovereign nation can be amended only by the legislature of another sovereign nation is preserved by section 7(1) of the Statute of Westminster 1931, under which Canada's complete independence was otherwise confirmed. The historical background is touched on in the Memorandum by the Foreign and Commonwealth Office to the Foreign Affairs Committee (147/79-80/FC; H.C. 42 II p.2) and generally in the Report of the Foreign Affairs Committee itself.

2. The proposals which may shortly be transmitted by the Canadian Federal Parliament would request that a Bill be laid before the United Kingdom Parliament which would essentially do two things. It would amend the Canadian Constitution in a number of respects, notably by providing for a Canadian Charter of Rights and Freedoms. Further, it would terminate the remaining responsibility of the United Kingdom Parliament in connection with amendment of the Canadian Constitution and confer the relevant powers of amendment on Canadian institutions, thereby (to use the term which has gained a wide currency) "patriating" the Canadian Constitution.
3. These Canadian proposals have provoked extensive public discussion in Canada and the United Kingdom. The Government welcome the Report of the Foreign Affairs Committee as making a significant contribution to this debate.

4. The Government note that in accordance with the mandate which the Foreign Affairs Committee gave itself, the Report of the Committee concentrates on the role of the United Kingdom Parliament in relation to the British North America Acts and accordingly deals from the UK Parliamentary angle with the constitutional history, with precedent and with legal propriety. It contains valuable material bearing on these aspects; and it clearly shows that there is room for debate among legal and constitutional experts about some of them. That genuine differences of opinion may be held about the inferences to be drawn from an examination of constitutional history and precedent is confirmed by the recent litigation in the Canadian courts, bearing directly on whether, and if so to what extent, Provincial concurrence is required in the making by the Federal Parliament of a request for constitutional amendment (see paragraphs 11 to 18 below). The Government acknowledge the importance of the matters dealt with by the Committee in its Report. In the Observations that follow, the Government will comment on some of these matters, particularly in the light of developments that have occurred since the Committee published its Report. The Government will in addition draw attention to certain broader considerations which, in their view, are crucial to an overall examination of the issue. In preparing these Observations the Government have also taken into account the additional material contained in the Committee's Supplementary Report.

/ The Committee's
The Committee's Conclusions

5. These Observations are directed primarily to the Committee's Conclusions as presented at pages xi to xiii of its Report. The Government find no difficulty in principle with Conclusions 1 to 3, while not necessarily accepting in detail the reasoning on which they are based. The Government fully accept Conclusions 7 and 11(i) to (v). Conclusion 12 relating to the existence of litigation in Canadian courts no longer falls to be considered in terms now that a series of Provincial cases has been dealt with on appeal by the Supreme Court of Canada. But for reasons which will be developed in these Observations, they are unable similarly to endorse the remaining Conclusions.

Conclusions 11 and 7

6. The Government are in complete agreement with what they regard as the central conclusions of the Committee, namely Conclusions 11(ii), (iii) and (iv). The Government endorse Conclusion 11 (iii) that it would not be in accord with the established constitutional position to patriate the Canadian Constitution unilaterally, and Ministers have so stated in the House. Unilateral patriation could hardly be reconciled with the convention by which the United Kingdom Parliament acts only at the request and with the consent of Canada. Moreover, such patriation without provision of a formula for Canadian amendment of the British North America Acts would, as the Committee points out, deprive the Canadian people of any lawfully established means of amending their own Constitution and would accordingly leave the Canadian Parliament in an impossible situation: in the Committee's words, it would "amount to a gross interference in the internal affairs of Canada and a grave breach of relations between the United Kingdom and Canada" (paragraph 120 of the Report).
Conclusion 11(iv) that it would be similarly improper to enact a requested constitutional package with amendments not consented to by the Canadian Government and Parliament is founded on the same basis as Conclusion 11(iii) and the Government likewise agree with it: as the Report says (paragraph 122), "A partial package is a new package". The Government are in no doubt that unilateral action would be deeply resented in Canada, and would seriously jeopardise both Canadian relationships with the UK, and the internal stability of the Canadian Federation.

The Government also endorse Conclusion 11(ii) that it would not be in accord with the established constitutional position for the United Kingdom Parliament to undertake any deliberation about the suitability for the peoples of Canada of a requested constitutional package.

8. The Government likewise accept Conclusion 7, that there is no rule, principle or convention that the United Kingdom Parliament then requested to enact constitutional amendments directly affecting Canadian Federal-Provincial relations, should accede to that request only if it is concurred in by all the Provinces directly affected.

This conclusion is now in conformity with the majority judgments of the Supreme Court so far as it involves the finding of the Committee, in its discussion of the considerations which led it to formulate Conclusion 7, that the objective of section 7(1) of the Statute of Westminster "... was simply to maintain the status quo in relation to constitutional amendments. We cannot see in that status quo ... any evidence of a requirement ... of unanimous consent [of the Provinces]" (paragraph 99 of the Report). Differing views can of course be taken on what was the nature of the status quo prior to the enactment of the Statute of Westminster. What seems clear, however, is that it has at no time been the practice of the United Kingdom Government or Parliament, in relation to requests for constitutional amendment either before or after the Statute of Westminster, to seek to apply some considered test or measure of the extent of Provincial concurrence.
Beyond saying that, the Government do not think it necessary for them to enter into a discussion of the existence or extent of Provincial concurrence in relation to particular past instances of amendment to the British North America Acts. So far, however, as here

10. Accordingly, the Government concur in what they regard as being the combined effect of Conclusions 7 and 11, namely that the United Kingdom Parliament will not examine the suitability for Canada of constitutional amendments requested by the Federal Parliament and that, for the United Kingdom Parliament in its role as part of the process of Canadian constitutional amendment, there is no requirement that there should be agreement to such amendments by all the Provinces directly affected.

11. On the separate but closely related issue of whether there exists in Canada a constitutional convention or principle requiring unanimous Provincial concurrence to a request for constitutional amendments directly affecting Federal-Pro vincial relations, the Committee explicitly refrains from expressing any settled view (paragraph 98 of the Report). As the Committee points out, that issue was at the time of its Report among those pending before various Provincial Courts of Appeal in Canada.

12. Since then the Supreme Court has ruled on appeals from the Courts of Appeal of Manitoba, Quebec and Newfoundland. The judgment on each appeal is, with slight variations, to the same effect. The cases were fully argued at Provincial level. The arguments advanced at that level and the somewhat conflicting judgments of the Provincial Courts of Appeal were before the Supreme Court and there were also fresh pleadings. In addition to the Federal Government, all the Provincial Governments and the Four Nations Confederacy Inc were represented at the Supreme Court hearing. The judgment of the Supreme Court takes the form of two separate majority opinions (to which there are
(separate minority dissenting opinions) on different aspects of the questions referred to it.

13. It is apparent throughout the majority opinions that the Court was at pains to make clear that it did not presume to pronounce upon the authority of the United Kingdom Parliament, or its practices and conventions, but was concerned only with the Canadian aspects.

14. In the first opinion the Court concluded by a 7-2 majority that the proposed patriation package would clearly affect Federal-Provincial relationships, but that whatever Canadian constitutional convention might say on the matter there was no rule of Canadian law requiring Provincial assent as a pre-condition for the Federal Parliament to request constitutional amendments affecting those relationships. Specifically, constitutional conventions are not law and are not enforced by the courts. Further, as a matter of Canadian law there is no provision in the British North America Act or in the Statute of Westminster for taking into account the "nature and character of Canadian federalism". "The law knows nothing of any requirement of Provincial consent, either to a resolution of the federal Houses or as a condition of the exercise of United Kingdom legislative power." (p.50).

15. The second majority opinion must be set in context. The central question here was whether there existed a constitutional convention requiring Provincial assent to constitutional amendments affecting Federal-Provincial relationships. The Court was prepared to consider this question on the basis that "We are not asked to hold that a convention has in effect repealed a provision of the B.N.A.Act ... Nor are we asked to enforce a convention. We are asked to recognise if it exists." (p.76).
It had already disposed of questions relating to any applicable rules of law in the first majority opinion.

16. In the event the Court found in the second majority opinion that there was a constitutional convention as to Provincial assent, although it was not prepared to quantify the required level of assent, and that the passage of the proposed package by the Canadian Parliament without the agreement of the Provinces "would be unconstitutional in the conventional sense",

17. The relationship of this second majority opinion to the first is clarified by the stress which it places on the nature of the sanction in the event of non-observance of convention. As the Court stated "It is because the sanctions of convention rest with institutions of government other than courts, such as the Governor General or the Lieutenant-Governor, or the House of Parliament, or with public opinion and ultimately, with the electorate that it is generally said that they are political."

18. In short, the effect of the judgment of the Supreme Court taken as a whole appears to be that as a matter of Canadian law Provincial assent is not required. The second majority opinion recognised that there is a Canadian constitutional convention as to Provincial consent. But conventions are not law. The sanctions for non-observance lie at the political level.

While the Government regard these opinions as declaratory of Canadian law and convention, the enforcement of Canadian convention is a matter for Canadians. The judgment has no effect on the exercise by the United Kingdom Parliament of its own legal powers or on the nature and scope of conventions applicable to the United Kingdom by virtue of its own practices or of intra-Commonwealth relations.

/Conclusions 4 to 6
19. These Conclusions refer to the need to take account of the federal character of Canada's constitutional system (Conclusion 4); assert that the United Kingdom Parliament is left free to decide whether the making of a particular request is so out of line with the established constitutional position that the request can rightly be rejected (Conclusion 5); and assert also that it would not be in accord with the established constitutional position to accept unconditionally the propriety of every request from the Canadian Parliament (Conclusion 6).

20. These Conclusions set the scene for Conclusions 8 to 10, of which more will be said below. They appear to proceed on the basis that such precedent as there is admits of the United Kingdom Government and Parliament measuring constitutional propriety against some objective indicator as to the nature of Canada's constitution. They also appear to involve reliance on a view that the federal nature of that constitution necessarily involves some requirement for Provincial concurrence in the making of requests by the Federal Parliament for constitutional amendments which directly or significantly "affect the federal structure". The Canadian Supreme Court has, in the view of the Government, dealt conclusively with whether there is any such legal requirement. There is no such legal requirement.

21. The approach adopted in these Conclusions seems to give insufficient weight to the fact that, whatever may have been the circumstances in which the various requests for amendments have been made throughout the years, there has been no instance where the United Kingdom has declined to act on the basis of a Canadian request or has purported to examine whether or to what extent there would be effects upon "the federal structure" and whether Provincial consent existed or was required. The repeated statements by Ministers of successive Governments that it would be in
Accordance with precedent for the Government to introduce, and for Parliament to enact, legislation on the basis of a Canadian request have been statements of plain fact: in every one of the numerous cases where there has been a request from the Federal Parliament for amendment, the Government have introduced, and Parliament has enacted, legislation in accordance with it.

22. In view not only of the consistent line taken by Ministers since 1940, if not earlier, but also of what has happened in practice on the occasion of previous requests, the Government regard as too dismissive the evidence, quoted at length in paragraph 80 of the Report, to the effect that "the series of Ministerial statements in the British Parliament ... cannot therefore properly be regarded as providing a clear convention for action in the present case". While the Government accept that there is in the nature of things never an exact precedent for a particular constitutional amendment, the consistent practice has been to act in accordance with the request and consent of the Federal Parliament. The force of this consistent practice cannot be ignored. This does not mean the United Kingdom Parliament is under some legal obligation automatically to enact whatever Canadian proposals are put before it; but it does point overwhelmingly in the direction of acceding to a request for patriation which is known to be within the legal powers of the Canadian Parliament to make. Certainly for the United Kingdom Government and Parliament not to act on such a request would be entirely unprecedented. It must be added that quite apart from the existence of a convention (such as that already referred to in the preamble to the Statute Westminster), which implies something already established and universally recognized, the question of constitutional propriety is given, and unprecedented, circumstances must always be considered. For whereas there was no convention in 1909 that the Dominions could not reject a budget, it is now almost universally agreed that it was constitutionally improper for it to do, and the resultant effect in 1909 has been established as convention by the
Conclusions 8 to 10

23. It follows that the Government do not agree with the Committee's Conclusions 8 to 10 which conclude, broadly, that, irrespective of what may be the position in Canadian constitutional law and convention, it would be proper for the United Kingdom Parliament to decide that the request did not convey the clearly expressed wishes of Canada as a federally structured whole because it did not enjoy a sufficient level and distribution of Provincial concurrence. Indeed the Government do not find these Conclusions readily reconcilable with the Committee's own Conclusion 11. A number of points arise here.

24. In the first place, the Committee's view seems to be based on an assumption that section 7(1) of the Statute of Westminster in some way conferred a positive role; that is, a role as in some sense custodian for the wishes of Canada as a federally structured whole though not (see paragraph 104 of the Report) as a guardian or trustee for the Provinces themselves. Yet the Committee itself concludes that section 7(1) merely preserved the status quo. The Government have already concurred in the Committee's conclusion that there is no legal requirement to obtain the agreement of all the Provinces directly affected to requested amendments of the Constitution. This point has been mentioned in paragraphs 8 to 10 above.

25. The Committee expresses the opinion that the United Kingdom Parliament has "a duty or responsibility to the Canadian people or community as a federally structured community" (paragraph 103) or, in the words of Conclusion 10, to "Canada as a federally structured whole". The Committee concludes, also in Conclusion 10, that it would be proper to test the level and distribution of Provincial concurrence against the "least demanding of the formulae which have been put forward by the Canadian authorities for a post-
patriation amendment ...'.

26. The Government consider that these Conclusions fail to take sufficiently into account more than fifty years of constitutional and political development and the realities of present day international relations, and the circumstance that Canada is now universally accepted as an independent sovereign power exercising through the Federal Government and Parliament the least since the enactment of the Statute of Westminster. The Balfour Declaration, contained in the Report of the Inter-Imperial Relations Committee of the Imperial Conference of 1926, said of relations between the United Kingdom and the Dominions that:

'They are autonomous communities within the British Empire, equal in status, in no way subordinate one to another in any aspect of their domestic or internal affairs, though united by a common allegiance to the Crown, and freely associated as members of the British Commonwealth of Nations' (Cmd. 2768, p.14).

27. Canada has been a sovereign and fully independent nation at

28. Relations with Canada are conducted at the diplomatic level exclusively with the Federal Government. Access by the Provinces to the Crown is exclusively through Her Majesty's Ministers in Canada. For very many years, all Canadian requests for constitutional amendments have been acted on by the United Kingdom exclusively at the request of the Federal Parliament. The Government are not persuaded that any of the earlier cases show that Provincial objections must be heeded. To refuse now to give effect to a legally valid request from the Federal Parliament would cause grave offence. Canada is a key member of the Commonwealth and, beyond this, there are close links between Canada and the United Kingdom in the form of common membership of the NATO Alliance, of the OECD group of /industrialised
industrialised countries and of many other international organisations. Canada is a valued member of the international community with special influence in the Third World. Much is therefore at stake; the repercussions of a rift over the constitutional issue between the United Kingdom and Canada could well spread beyond the bilateral relations between the two countries.

29. Apart from international relations, there is, however, another and probably more fundamental reason why the United Kingdom should not put in question a legally valid request from the Federal Parliament for constitutional amendment. Canada is a parliamentary democracy which has common roots with our own. The Federal Parliament is not a body isolated from and unrepresentative of the Provinces and the Canadian peoples. It represents Canada as a whole and the peoples of Canada just as the United Kingdom Parliament represents the United Kingdom as a whole and the peoples of the United Kingdom. The Ministers of the Canadian Government are elected members of the Federal Parliament. It is to that Parliament and to that Parliament alone that they are answerable. The members of that Parliament must be assumed to be sensitive to Canadian sentiments and Canadian opinion. If the members of the Federal Parliament were to misread the wishes of the Canadian people, it is they who would be answerable to the Canadian electorate. It would be for that electorate to decide what significance to attribute to any departure from the constitutional convention identified by the Canadian Supreme Court.

30. The United Kingdom Parliament has no constituency in Canada. It is answerable to no electorate there. The United Kingdom Parliament
Parliament could therefore be expected to refrain even from the appearance of assuming a responsibility which belongs properly to the duly elected representatives of Canada, by whom the issues have been exhaustively considered, particularly when such a role would involve judgments of a kind that, in the circumstances of 1981, it is not in a position to make. It would be quite contrary to international usage for any external power to concern itself with the relationship between the federal government and the Province. As to the suggestion in Conclusion 10 that the United Kingdom Parliament should concern itself with the sufficiency of the level and distribution of Provincial concurrence, if there is, as Conclusion 7 suggests, no requirement of concurrence by all the Provinces directly affected, this would mean that a line is to be drawn somewhere short of full concurrence. The Government consider that there is no defensible basis for the drawing of such a line by the United Kingdom. There is certainly no precedent for it doing so: and certainly no precedent for any particular degree of Provincial opposition being critical. The Committee, also in Conclusion 10, proposes as the test the least demanding of the formulae which have been put forward by the Canadian authorities for post-patriation amendment. For the United Kingdom to select and apply for this purpose a particular post-patriation amendment formula would, however, involve a substantial incursion into Canadian prerogatives. In any event, the Supreme Court of Canada in the recent judgment has found as a matter of Canadian law that there is no legal requirement in Canada as to Provincial concurrence in the making of a request by the Federal Parliament for the enactment of legislation embodying constitutional amendments affecting Federal-Provincial relations. The opinion of the Supreme Court of Canada on these constitutional issues should be regarded
Monetary in the absence of a requirement (now established not to
exist) of unanimity of provincial consent, it would be practically
impossible as well as objectionable in principle for the UK Parliament to
determine the degree of concurrence which was necessary to enforce with
Canadian usages.

regarded as decisive. There can surely be no doubt that the
Canadian courts are better placed than is the United Kingdom
Parliament to determine disputed questions of Canadian constitutional
law and convention. The repercussions of the United Kingdom
Parliament obstructing a considered request of the Canadian
Government and Parliament, the legality of which has been upheld
by the Canadian courts, by interposing a criterion of its own
selection would be extremely serious.

Conclusions of the Government

32. Technically and as a matter of strict law, the powers of
the United Kingdom Parliament are undoubtedly unfettered. But
the realities
of fifty years and more of post-
Colonial development have to be recognised. The exercise of such
powers as still remain in the hands of the United Kingdom Parliament
under the Statute of Westminster depends on the request and
consent of Canada, the necessary request and consent being, from
the point of view of the United Kingdom Parliament, not of the
Provincial governments or legislatures but of the Federal
Parliament.

33. The Government therefore concur fully in the conclusion of
the Committee that the United Kingdom Parliament should not
unilaterally modify a Canadian request for constitutional amendment.
But it is necessary to go further. It is the Federal Parliament
which is empowered to act for Canada as a whole and, in the view
of the Government, is the legislature which is the true and sole
guardian of the interests of the Canadian people as a whole. The
Government would not think it right to reject a request for
constitutional amendment which on its face reflects the will of the
duly elected representatives of that legislature and which is, in

/Canadian
Canadian constitutional law, a request which it is proper for the Federal Parliament to make. Rejection of such a request would imply that in some respects the United Kingdom still exercises constitutional control over Canada. This would not, in the view of the Government, be compatible with the full sovereignty and equal status of the two nations recognised by the Balfour Declaration and with the relationships between the two countries as they have developed since then. Nor would any departure from constitutional convention held to exist in Canada provide a justification for declining to apply our own conventions which have been established in terms of relationships among fellow members of the Commonwealth and on the basis of international comity.

The Committee's Recommendation

34. The Committee recommended (paragraph 15) that the Government should draw to the attention of the Government of Canada its view that the considerations set out in Chapters V to VIII of its Report supported the Committee's Conclusions; also that that view, together with the other considerations and conclusions in the Report, had been reported to the House. This recommendation was carried out at the Foreign and Commonwealth Office at a meeting between the Canadian High Commissioner and an Under-Secretary at the Foreign and Commonwealth Office on the date of publication of the Report, ie 30 January 1981.
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FM OTTAWA 301392 30 OCT 81
TO PRIORITY FCO
TELEGRAM NUMBER 602 OF 30 OCTOBER

YOUR TELNO 400: CONSTITUTION

1. THE LETTER TO THE TIMES FROM THE CONSERVATIVE MPS HAS BEEN PROMINENTLY REPORTED HERE ON TELEVISION AND THE RADIO AND BOTH HAVE CARRIED INTERVIEWS WITH SOME OF THE MPS CONCERNED. CURIOUSLY THERE WAS NO REFERENCE TO IT IN THIS MORNING'S MAIN NEWSPAPERS. THE TIMING OF ITS PUBLICATION WILL BE USEFUL IN INCREASING PRESSURE ON THE FEDERAL GOVERNMENT TO COMPROMISE BUT I THINK IT UNFORTUNATE THAT THE LETTER SHOULD REFER TO THE NEED FOR PARLIAMENT "TO CONTINUE ITS RESIDUAL ROLE IN THE CONSTITUTIONAL AFFAIRS OF CANADA". ANY SUGGESTION THAT WE SHOULD REMAIN RESPONSIBLE FOR THE CANADIAN CONSTITUTION IS UNWELCOME TO THE GREAT MAJORITY OF CANADIANS.

2. I TOOK THE OPPORTUNITY OF A CALL THIS MORNING ON THE MINISTER FOR CONSUMER AND CORPORATE AFFAIRS, MR. OUELLET, TO TELL HIM ABOUT THE LETTER AND TO REMIND HIM OF WHAT YOU HAD SAID TO MR. MACGUIGAN AT CANCEL. HE SAID THAT HE WAS NOT PERSONALLY OPTIMISTIC ABOUT THE CHANCES OF A COMPROMISE NEXT WEEK SINCE WHAT WAS AT STAKE WAS A PROFOUND DIFFERENCE BETWEEN TWO CONCEPTS OF CANADA, SOME OF THE PROVINCIAL PREMIERS SINCERELY BELIEVED THAT THEIR GOVERNMENTS SHOULD PLAY THE PREDOMINANT ROLE, WHEREAS THE FEDERAL GOVERNMENT BELIEVED THE OPPOSITE. I ALSO MENTIONED THE LETTER TO THE SECRETARY OF THE CABINET, MR. PITFIELD, WHEN HE TELEPHONED ME ON ANOTHER MATTER, AND SAID THAT IT REINFORCED WHAT SIR R. ARMSTRONG HAD SAID TO HIM EARLIER. I SAID IT WOULD GREATLY HELP US IF THEY COULD SECURE A WIDER MEASURE OF AGREEMENT WITH THE PROVINCES. HE SAID THEY WOULD BE DOING THEIR UTMOST.

3. TODAY'S GLOBE AND MAIL CARRIES A LONG ARTICLE BY A TORONTO LAWYER ARGUING THAT THE BRITISH PARLIAMENT SHOULD REJECT THE FEDERAL PACKAGE. IT ASSERTS THAT "WHEN IT COMES DOWN TO IT, THE BRITISH OWE CANADIANS NOTHING IN RELATION TO THE NEW CANADIAN CONSTITUTION AND, IN TERMS OF WHERE THEIR FUTURE PROBLEMS AND OPPORTUNITIES LIE, HAVE LITTLE TO HOPE OR FEAR FROM CANADA, WHATEVER THE ULTIMATE DECISION OF THE THE BRITISH PARLIAMENT". THE AUTHOR IS A LAW PARTNER OF MR. JOHN TURNER, FORMER LIBERAL MINISTER OF FINANCE WHO LEFT THE GOVERNMENT SOME TIME AGO BUT IS OFTEN SPOKEN OF AS A POTENTIAL LIBERAL PRIME MINISTER.
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4. The Consul-General in Toronto saw Mr Davis, Premier of Ontario, on Wednesday night. Davis said that he thought perhaps four dissenting Premiers would be willing to accept an amended Charter of Rights. Everything depended on how flexible they were willing to be; he thought the Prime Minister would be conciliatory if others were.

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FM OTTAWA 592905Z OCT 81
TO PRIORITY FCO
TELEGRAM NUMBER 599 OF 29 OCTOBER

CONSTITUTION

1. IT IS AS YET IMPOSSIBLE TO TELL WHEN THE PACKAGE MAY REACH US OR WHETHER BY THEN IT WILL HAVE OBTAINED A GREATER DEGREE OF PROVINCIAL SUPPORT. BUT I AM SURE THE DEPARTMENT IS RIGHT TO WORK ON THE BASIS THAT IT MAY BE WITH US SOON AND MAY STILL BE OPPOSED BY EIGHT PROVINCES. I NOTE WHAT YOU SAID TO MR MACGUIGAN IN CUCUN (UKDEL CUCUN TELNO 29) ABOUT THE DOUBTFUL PROSPECTS FOR PASSAGE OF THE BILL.

2. IN THESE CIRCUMSTANCES THE DEPARTMENT ARE NO DOUBT CONSIDERING WHAT WE SHOULD DO IF THE BILL IS REJECTED BY PARLIAMENT. IN THIS CONTEXT MAY I MAKE THE FOLLOWING SUGGESTIONS?

3. I THINK IT WOULD BE DAMAGING FOR US SIMPLY TO DO NOTHING, IMPLYING OR SAYING THAT THE CANADIANS MUST COME UP WITH A REVISED PACKAGE MORE ACCEPTABLE TO US. THIS WOULD BE REGARDED BY VERY MANY CANADIANS AS UNREASONABLE, MR DON JAMIESON, FORMER MINISTER OF EXTERNAL AFFAIRS AND LIKELY NEXT HIGH COMMISSIONER IN LONDON, TOLD ME LAST WEEK IN NEWFOUNDLAND THAT IF PARLIAMENT DID NOT LIKE THE PACKAGE IT OUGHT TO SAY WHAT IT COULD ACCEPT. THIS SEEMS A FAIR POINT; EQUALLY I IMAGINE THAT MINISTERS WOULD NOT WISH SIMPLY TO TRY AGAIN WITH THE SAME PACKAGE AND RISK A SECOND FAILURE.

4. I THINK THAT IF THE BILL IS REJECTED THE BEST COURSE WOULD BE TO INTRODUCE AT ONCE, SIMPLY TELLING THE CANADIANS BUT NOT ASKING FOR THEIR AGREEMENT, A MEASURE PROVIDING FOR SIMPLE PATRIOTISM WITHOUT AN AMENDING FORMULA. FROM THE POLITICAL POINT OF VIEW THIS WOULD GREATLY MITIGATE THE DAMAGE HERE BY REMOVING GROUNDS FOR THE ACCUSATION WHICH WOULD NO DOUBT BE MADE BY THE FEDERAL GOVERNMENT, THAT WE WERE REFUSING CANADA A CONSTITUTION AND ACTING IN A "COLONIAL" WAY.

5. ALTHOUGH I REALISE THE LEGAL OBJECTIONS TO PATRIOTISM WITHOUT ANY AMENDING FORMULA I AM INCLINED TO THINK THAT FROM THE POLITICAL POINT OF VIEW IT WOULD BE PREFERABLE NOT REPEAT NOT TO INCLUDE ANY SUCH FORMULA. ANY FORMULA WE SELECT IS OPEN TO OBJECTION. THE PRESENT ONE IS STRENUEOUSLY OPPOSED BY THE WESTERN PROVINCES, TO SELECT ANY OTHER WOULD BE A GROSS INTERFERENCE IN CANADIAN AFFAIRS. IF PARLIAMENT REJECTS THE FEDERAL GOVERNMENT'S PACKAGE IT WOULD IN MY JUDGEMENT BE MUCH BETTER TO SIMPLY DIVEST

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OURSelves OF LEGAL RESPONSIBILITY AND TO LEAVE BOTH THE QUESTION
OF FUTURE AMENDMENT AND ANY CHARTER OF RIGHTS TO BE SETTLED BY
CANADIANS IN CANADA. THIS WOULD IN THE CIRCUMSTANCES BE WIDELY
UNDERSTOOD HERE AND WOULD GIVE US A NEUTRAL POSITION IN THE INTERNAL
POLITICAL ARGUMENT.

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THIS TELEGRAM WAS NOT ADVANCED

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Thank you for sending me a copy of your letter of 18 October to Henry Steel covering the revised draft of the Government's reply to the Select Committee on Foreign Affairs on the Canadian constitutional issue.

The Lord President has only glanced at the draft in its present state, but I think that his general approach would be that the reply should as far as possible be directed towards explaining in objective terms why the Government feels obliged to act on any request received from the Federal Parliament, with or without Provincial consent. The Government's view of our own conventional obligations must inevitably imply some criticism of the relatively small importance which the Federal Government appear to attach to those in Canada. I doubt whether the Lord President would feel that the reply should attempt to play this difference down, though he would accept that the Federal Government's attitude is not something that should influence the handling of any request in the UK.

If it is accepted that we have a constitutional obligation to act on any Canadian request, there seems no need to imply that we should be influenced one way or the other by the need to preserve good relations with Canada. I would, therefore, be inclined to omit the square bracketed passage in paragraph 28. I think it is also going a little too far in the fourth sentence of paragraph 28 to argue that Provincial objections need not be "heeded". UK Ministers may, after all, find themselves involved in discussions with the Provincial Premiers, and it would be invidious to say in advance that their opinions were not to be heeded.

Cont ../.
I also wonder whether paragraph 33 does not lend a little too much support to the Federal Government's position. It may be literally true that the Federal Parliament "is the true and sole guardian of the interests of the Canadian people as a whole", but it is not the sole guardian of all their interests - some subjects are specifically reserved to the Provincial legislatures. In the next sentence, it is not quite correct to say that the request "reflects the will of the duly elected representatives" of the Federal Parliament, as opposed to the will of the Federal Parliament expressed as a majority decision, while the use of the word "proper" later in that sentence will almost certainly be challenged by some MPs at Westminster in the light of what the Supreme Court had to say about Canadian constitutional conventions. These two sentences might be better reworded on the following lines:

"Only the Federal Parliament is empowered to act for Canada as a whole, and the Government would not think it right to reject a request for constitutional amendment which that legislature is, as the Supreme Court has ruled, legally entitled to make under Canadian constitutional law."

In the last sentence of paragraph 33, I would be inclined to delete the words "held to exist", and from "which have been established" onwards. We should not imply that the ruling of the Supreme Court on the conventional issue is any more open to debate than their ruling on the purely legal point, while, as I understand it, our own conventions are based on earlier practice in the UK, and do not stem directly from a view about relationships within the Commonwealth or international comity.

I should add that I have now seen Henry Steel's letter of 22 October and agree very much with what he says.

I am copying this letter to the recipients of yours.

D C R HEYHOE
Private Secretary
Cancun: The Canadian Constitution

You will wish to be aware that the question of the patriation of the Canadian Constitution was not raised with the Prime Minister by Mr. Trudeau at any stage of the meeting in Cancun.

I am sending copies of this letter to David Heyhoe (Lord President's Office), Jim Buckley (Office of the Chancellor of the Duchy of Lancaster) and to David Wright (Cabinet Office).

Yours ever,

Michael Alexander

Roderic Lyne, Esq.,
Foreign and Commonwealth Office.