

Canada

A04954PRIME MINISTERParliamentary Affairs: Canada

## BACKGROUND

The Chancellor of the Duchy of Lancaster wishes to report briefly under Parliamentary Affairs on the present state of play on the Canadian constitutional issue.

The Supreme Court of Canada is expected to deliver its judgement on the questions referred to it by the Federal Government and certain of the Provinces not later than the first week in June. If the judgement is (unexpectedly) unfavourable to the Federal Government they will drop the proposed Resolution for an address to The Queen requesting the enactment at Westminster of legislation to patriate the Canadian Constitution. If the judgement is favourable, there will be a further two day debate in each House of the Canadian Parliament on the Resolution. Under procedural orders already adopted by both Houses, no further amendment of the Resolution will be possible at that stage. If the Resolution is approved, as seems certain, the request will be sent to London without delay.

In the last ten days, there have been further messages from Mr Trudeau via the High Commission and emissaries from Ottawa that, if all goes well in the Supreme Court and the Canadian Parliament, he expects the proposed Canada Bill to be enacted at Westminster in time for the celebrations to mark Canada's National Day and the 50th anniversary of the Statute of Westminster on 1 July, to which The Queen has been invited. The Chancellor of the Duchy has made it clear to the Canadians that this is a wholly unrealistic timetable, and has reminded them of the repeated warnings last year that the request would have to be in the hands of the United Kingdom Government not later than January 1981 in order for the proposals to be dealt with at Westminster by the end of the current Session. Any attempt to force the legislation through to Mr Trudeau's timetable would excite avoidable opposition, and would create unacceptable difficulties for the Government's domestic legislative programme. Mr Pym has accepted that a "more conceivable" aim would be for the legislation to be passed before the Summer Recess, provided that the Government were prepared

if necessary to give the Canada Bill priority over other legislation requiring Royal Assent by the end of July and/or to keep Parliament sitting after the Royal Wedding. He has, however, emphasised to the Canadians that even this timetable would be at risk if there was any further delay in sending the request to London, or if the ruling of the Supreme Court left any room for doubt about its constitutional propriety.

OD decided in February that it would be in the best interests of the United Kingdom to accept the Canadian request and pass it through Parliament unamended. Since then the Federal Government's timing has slipped badly, but their decision to go to the Supreme Court first has been helpful from our point of view. It seems likely that the Canadians would reluctantly accept our inability to act by 1 July, but would be in grave difficulties if we cannot act before the summer holidays. Delay until the autumn would give maximum scope for further opposition to build up, both in Canada and here. Both Anglo-Canadian relations and the prospects at Westminster would therefore be damaged if a Canadian request were left unanswered until after the summer holidays. So Mr Pym's present thinking is very welcome. But the Cabinet will in due course need to decide what price it is prepared to pay, in terms of deferring other legislation and/or the date of the recess, in order to achieve what is agreed to be a major foreign policy objective.

The Chancellor of the Duchy has agreed with the Foreign Secretary that the Government's reply to the two reports by the Select Committee on Foreign Affairs should be postponed until after the Supreme Court verdict, though it might be published before the end of the final Canadian Parliamentary proceedings. The Chancellor of the Duchy (unlike the Lord Privy Seal) is inclined to favour a preliminary two day debate following the publication of the Government's reply in order to clear the air before the Canada Bill itself is introduced, but accepts that this question will need to be re-examined in the light of the nature of the Supreme Court verdict.

#### HANDLING

The Parliamentary handling of any Canadian request will depend on its timing and the precise terms of the judgement of the Supreme Court, and you will wish to avoid any detailed discussion in Cabinet until the position on these two

points is clearer. After the Chancellor of the Duchy has made his report, you may wish to ask the Foreign Secretary to comment, and also (because of the House of Commons angle) the Lord Privy Seal. The Lord President may have views on the implications for the legislative programme in the House of Lords of finding time for the Canada Bill before the Summer Recess. Cabinet noted last week that the existing pressures on the timetable meant that the Employment and Training and Education (Scotland) Bills could not now receive Royal Assent until the autumn; might other measures have to be postponed to make room for the Canada Bill? The main candidate for deferment seems to be the Transport Bill, but a final decision can be taken when the Supreme Court judgement is available.

## CONCLUSION

The conclusions of the Cabinet might be -

- i. To note the Chancellor of the Duchy's report;
- ii. To agree that Canadian representatives should continue to be told that it is unrealistic to think in terms of passing a Canada Bill at Westminster by 1 July;
- iii. To invite the Foreign Secretary to circulate (to OD members) the final draft of the Government's reply to the two reports by the Select Committee on Foreign Affairs, and to settle the timing of its publication with the Chancellor of the Duchy after the Supreme Court has delivered its judgement;
- iv. To invite the Chancellor of the Duchy, in consultation with the Foreign Secretary and the Lord President, to bring further proposals on the handling of any Canadian request before the Cabinet as a matter of urgency as soon as the Supreme Court judgement is available, dealing, in particular, with the implications for the Government's own legislative programme, and the desirability of arranging preliminary debates in both Houses.

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