

File
Canada

cc master

10 DOWNING STREET

From the Private Secretary

17 December 1980

Dear Brian,

Patriation of the Canadian Constitution: Visit to Canada
by Mr. Pym

The Secretary of State for Defence called on the Prime Minister this morning to discuss the line he will take with Mr. Trudeau on Friday 19 December at their meeting.

Mr. Pym told the Prime Minister that in his view a Bill for the Patriation of the Canadian Constitution would, if the Canadian Government did not modify their request, get through neither the House of Commons nor the House of Lords. The more Members of Parliament went into the matter, the less they liked it. The Foreign Affairs Committee were likely to report unanimously against the legality of the Canadian proposal. The group set up by Mr. Aitken and Mr. Foulkes would also be hostile. The Opposition would be unhelpful if only because they saw an opportunity to make timetable difficulties for the Government. It would not, in Mr. Pym's view, be possible to get away with a single vote on the measure. The Chief Whip and Mr. Ridley both shared his view about the situation in the House of Commons. The Lord President and the Foreign and Commonwealth Secretary did not think the House of Lords would agree to passage of the necessary legislation in present circumstances.

Mr. Pym said that his message to Mr. Trudeau would therefore be that, while HMG were absolutely behind him, the legislation which he was asking to have passed through the Westminster Parliament would be highly controversial. Either Mr. Trudeau should reconsider the substance of the request, eg drop the Bill of Rights and ask only for patriation with amending powers, or the British Government would have to be given additional time to get the measure through. His intention would be to encourage Mr. Trudeau to think more seriously about what the Canadian Government could do to help overcome the evident difficulties at Westminster. HMG must not get into a position where they attempted to pass legislation on behalf of the Canadian Government, and failed because of opposition in the Conservative Party. Mr. Pym said that he believed that with time it should be possible to meet the Canadian Government's request but that there was no chance of getting it through by 1 July as Mr. Trudeau hoped - the more so since there seemed likely to be a considerable delay before the formal request was received.

/ The Prime Minister

The Prime Minister said that Mr. Pym's commentary would come as a considerable surprise to Mr. Trudeau. If the message was conveyed too starkly, there would be a real risk of an explosion on the Canadian Prime Minister's part with all the consequences that this might have for Anglo-Canadian relations, for The Queen's position, and for Canada's membership of the Commonwealth. Mr. Pym should therefore not tell Mr. Trudeau that there was "no hope" of meeting his request. He should take the line that he wished to share his concern with Mr. Trudeau and explain the difficulties likely to be encountered. He should say that the more the problems in Canada, eg with the Supreme Court, had been cleared up, the easier it would be here. Mr. Pym should also explain the difficulties which had arisen with a Foreign Affairs Committee which had only just been established, and was determined to exercise its new found powers.

The Prime Minister said that she continued to feel strongly the the United Kingdom Government could not "look through" the Canadian Government's request. We had to do our best to meet it. HMG should give political advice rather than legal advice to Parliament. The situation would of course be different if the Canadian Supreme Court said that Mr. Trudeau was acting ultra vires. Mr. Pym said that there seemed to be a 50-50 chance that the Supreme Court would take this view.

Mr. Pym agreed about the need to take Mr. Trudeau through the problems as gently as possible. But it would be wrong to disguise from Mr. Trudeau that it was "extremely unlikely" that the legislation, if submitted as at present envisaged, would go through.

I am sending copies of this letter to George Walden (Foreign and Commonwealth Office), Murdo Maclean (Chief Whip's Office), Robin Birch (Office of the Chancellor of the Duchy of Lancaster), Jim Buckley (Lord President's Office), and David Wright (Cabinet Office).

Yours sincerely

Michael Alexander

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Ministry of Defence.

WPM