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FILE

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Canada

10 DOWNING STREET

Subject
Admiral
From the Private Secretary

5 November 1980

Patriation of the Canadian Constitution

The Prime Minister held a meeting here on Monday, 3 November to discuss the patriation of the Canadian Constitution. It was attended by the Home Secretary, the Lord Chancellor, the Lord Privy Seal, the Chancellor of the Duchy of Lancaster, the Chief Whip, Mr. Ridley and Sir Robert Armstrong.

The Lord Privy Seal said that there was no precedent for the present situation which had arisen over the proposed legislation to patriate the Canadian Constitution. Six Canadian provinces had reacted strongly against Mr. Trudeau's proposals and three of them were taking the Canadian Federal Government to court. Mr. Trudeau considered that it was necessary for the patriation legislation to include a Bill of Rights in order to keep Quebec within the Canadian Federation. Nevertheless Quebec was one of the Provinces opposing the proposal. The Canadians had been given repeated assurances that the British Government would introduce whatever legislation was requested by the Canadian Federal Government and Parliament, but it was likely that the Bill might encounter real difficulties with backbenchers at Westminster, particularly as it was the Right-wing political parties in Canada who were opposed to the Bill.

The Lord Chancellor said that in his view the preamble to the Statute of Westminster (which was not affected by Section 7(1) of that Statute) made the constitutional position clear. The Westminster Parliament could not amend a Bill attached to a Canadian request. The only question would be whether the request should be accepted or rejected as a whole, although the Government might postpone the introduction of the Bill if the legality of the Federal Government and Parliament's actions was being tested in the Canadian courts. It was also the view of Parliamentary Counsel that the draft Canada Act could be given a title describing it as a Bill to give effect to a Request by the Senate and House of Commons of Canada, which would make it even clearer that the House of Commons could not amend the Bill. This should ease the passage of the legislation through the Westminster Parliament, although an initial row would probably take place when the Bill was introduced in each House. As a weapon of last resort it would be open to the Westminster Parliament proprio motu to patriate the Canadian

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Constitution by means of a one clause Act which would simply transfer the powers now rested in Westminster to the Canadian Federal Parliament, even without their consent. Such action might lead to Canadian retaliation. A British refusal to pass the Canadian legislation might lead to a unilateral declaration of independence by the Canadian Federal Parliament, which might not thereafter be accepted by the provincial government, and could lead to a situation of chaos.

main

In discussion the following/points were made:

- (a) The inability to move amendments was not unique: it was analogous to that involved in the ratification of treaties by the Westminster Parliament.
- (b) A Bill which could not be amended should go a long way towards removing the Government's difficulties with its backbenchers; but it would be desirable to establish that the Speaker would rule that the Bill was unamendable.
- (c) The Select Committee on Foreign Affairs had asked the Foreign and Commonwealth Office to submit a paper on the question of patriating the Canadian Constitution. This would provide the Government with a useful opportunity to explain its position, though the Government's statement on its legal position would probably attract a lot of criticism from the dissentient Canadian Provinces and legal academics, who might well seek themselves to give evidence to the Select Committee.
- (d) Mr. Trudeau was approaching this issue with great resolution and driving the legislation through the Federal Parliament. It was most improbable that he could be persuaded to drop the idea of a Bill of Rights and go for simple patriation.
- (e) The challenge in the Canadian courts to the Federal Government's legislation would probably be exhausted fairly quickly and this was therefore unlikely to provide a reason for postponement on the part of the Westminster Parliament.

The Prime Minister, summing up the discussion, said that this was an important issue which ought to be discussed by the Cabinet on the basis of a paper by the Foreign and Commonwealth Secretary at their meeting on Thursday, 13 November. Once the legal position had been clarified and the Cabinet had taken a decision, the Foreign and Commonwealth Secretary, accompanied by his Legal Adviser, would be able to arrange to give evidence to the Select Committee on Foreign Affairs to explain the reason for the position which the Government was taking up; in the meantime he should

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confine himself to a purely factual paper. The Lord Chancellor and Attorney General should hold themselves in reserve to deal with the criticisms which were likely to be made of the Government's position on constitutional and legal grounds. The Chancellor of the Duchy of Lancaster should arrange through his officials to obtain the views of the Clerk of the House of Commons on whether a Bill requested by the Canadian Parliament and Government would be unamendable or, if not, whether it was feasible by suitably entitling the draft Canada Act to make it proof against amendments in the House of Commons. Care should be taken not to let it become known prematurely that the House of Commons was going to be confronted with legislation on a potentially contentious issue which they would be unable to amend.

I am sending copies of this letter to the Private Secretaries to those who attended and to Jim Nursaw (Law Officers' Department).

M. O'D. B. ALEXANDER

G. G. H. Walden, Esq.,
Foreign and Commonwealth Office.

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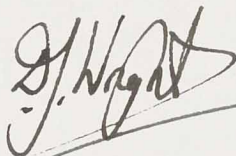
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MR. ALEXANDER

Patriation of the Canadian Constitution

I attach a record of the meeting which the Prime Minister held yesterday to discuss Patriation of the Canadian Constitution. You said that you would distribute the record yourself: copies should probably go to those present at the meeting and also to the Foreign and Commonwealth Secretary and the Attorney General.



D. J. Wright

4th November 1980

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1980 NOV 11 11 21 AM
FBI - NEW YORK

TO: DIRECTOR, FBI (100-334340)
FROM: SAC, NEW YORK (100-111111)
SUBJECT: [Illegible]

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NOTE of a Meeting to discuss
Patriation of the Canadian Constitution held at
10 Downing Street on
MONDAY 3 NOVEMBER 1980

PRESENT

The Prime Minister

The Home Secretary

The Lord Chancellor

The Lord Privy Seal

The Chancellor of the Duchy of
Lancaster

The Parliamentary Secretary,
Treasury

Minister of State, Foreign and
Commonwealth Office
(Mr. Ridley)

SECRETARIES

Sir Robert Armstrong

Mr R M Hastie-Smith

The Lord Privy Seal said that there was no precedent for the present situation which had arisen over the proposed legislation to patriate the Canadian Constitution. Six Canadian provinces had reacted strongly against Mr Trudeau's proposals and three of them were taking the Canadian Federal Government to court. Mr Trudeau considered that it was necessary for the patriation legislation to include a Bill of Rights in order to keep Quebec within the Canadian Federation. Nevertheless Quebec was one of the Provinces opposing the proposal. The Canadians had been given repeated assurances that the British Government would introduce whatever legislation was requested by the Canadian Federal Government and Parliament, but it was likely that the Bill might encounter real difficulties with backbenchers at Westminster, particularly as it was the right-wing political parties in Canada who were opposed to the Bill.

The Lord Chancellor said that in his view the preamble to the Statute of Westminster (which was not affected by Section 7(1) of that Statute) made the constitutional position clear. The Westminster Parliament could not amend a Bill attached to a Canadian request. The only question would be whether the request should be accepted or rejected as a whole, although the Government might postpone the introduction of the Bill if the legality of the Federal Government and Parliament's actions was being tested in the Canadian courts. It was also the

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view of Parliamentary Counsel that the draft Canada Act could be given a title describing it as a Bill to give effect to a Request by the Senate and House of Commons of Canada, which would make it even clearer that the House of Commons could not amend the Bill. This should ease the passage of the legislation through the Westminster Parliament, although an initial row would probably take place when the Bill was introduced in each House. As a weapon of last resort it would be open to the Westminster Parliament proprio motu to patriate the Canadian Constitution by means of a one clause Act which would simply transfer the powers now rested in Westminster to the Canadian Federal Parliament, even without their consent. Such action might lead to Canadian retaliation. A British refusal to pass the Canadian legislation might lead to a unilateral declaration of independence by the Canadian Federal Parliament, which might not thereafter be accepted by the provincial government, and could lead to a situation of chaos.

In discussion the following main points were made:-

- a. The inability to move amendments was not unique: it was analogous to that involved in the ratification of treaties by the Westminster Parliament.
- b. A Bill which could not be amended should go a long way towards removing the Government's difficulties with its backbenchers; but it would be desirable to establish that the Speaker would rule that the Bill was unamendable.
- c. The Select Committee on Foreign Affairs had asked the Foreign and Commonwealth Office to submit a paper on the question of patriating the Canadian Constitution. This would provide the Government with a useful opportunity to explain its position, though the Government's statement on its legal position would probably attract a lot of criticism from the dissentient Canadian Provinces and legal academics, who might well seek themselves to give evidence to the Select Committee.
- d. Mr Trudeau was approaching this issue with great resolution and driving the legislation through the Federal Parliament. It was most improbable that he could be persuaded to drop the idea of a Bill of Rights and go for simple patriation.
- e. The challenge in the Canadian courts to the Federal Government's legislation would probably be exhausted fairly quickly and this was therefore unlikely to provide a reason for postponement on the part of the Westminster Parliament.

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Cabinet Office

4 November 1980