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cc Sir Philip Moore
File.
Canada

10 DOWNING STREET

From the Private Secretary

6 October 1980

Dear Paul,

PATRIATION OF THE CANADIAN CONSTITUTION

As you know two Canadian Ministers, Messrs. MacGuigan and Roberts, called on the Prime Minister this afternoon to brief her on the intentions of the Canadian Government in respect of the patriation of the Canadian Constitution. Much of the discussion was taken up with a briefing from the two Canadians on the present state of play in Canada. Since this will be familiar ground, I do not propose to record it in detail. The main point was that, according to Mr. MacGuigan, the Canadian Government were requesting something which was in their judgement necessary for the survival of Canada in its present form. Commitments had been entered into viz-à-viz the electorate in Quebec which had to be honoured.

The Prime Minister commented that she had originally expected to be going to the Westminster Parliament with a straightforward request for patriation of the Canadian Constitution and no more. She thought this would have been relatively straightforward. But now she would have to add that the Canadian Government also wanted the Westminster Parliament to pass a Bill of Rights. Some one was certain to ask why the Canadian Parliament could not pass the Bill of Rights for themselves once the Constitution had been patriated. Mr. Roberts explained that the difficulty arose because of the amending formula which the Canadian Government would be instituting as part of their Constitutional proposals. This formula would necessarily be somewhat rigid in order to protect the position of the Provincial Governments. Once it was in place however it would be very difficult to secure the adoption of a Bill of Rights. This would have constitutional implications and could not, in a Federal structure, simply be passed by the Parliament in Ottawa.

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The Prime Minister said that she took the point but was concerned lest she should be accused of interfering in Canadian internal affairs. Mr. Roberts said that the answer to any such accusation had to be that the British Government were responding to a joint resolution of the House of Commons and Senate of Canada. The surest way to provoke accusations of interference would be to reject such a request. In any case the proposed legislation was being placed before the Canadian Parliament today and it would now be impossible for the Canadian Government to consider removing the Bill of Rights from it. The Prime Minister commented at this point on the very short notice the British Government had been given of the Canadian Government's intentions.

Both the Prime Minister and Mr. Ridley noted that the addition of a Bill of Rights to the legislation being passed through the Westminster Parliament was likely to mean that the issue would become more controversial in this country and that, as a consequence, its passage would be more prolonged. Mr. MacGuigan said that the Canadian Government expected that the proceedings in the Canadian Parliament would be finished in January or February of next year and that the request for patriation would be made immediately thereafter. He hoped that if the request reached London no later than February there would be no difficulty in meeting the Canadian Government's deadline of 1 July for completion of the process as a whole. The Prime Minister told Mr. MacGuigan that this would not be an easy timetable to observe. The period in question would include both the Easter Recess and the Whitsun Recess and Parliament would be coping with the Budget and the Finance Bill. She had hoped that the request for patriation would be made before Christmas. At the very latest it should be no later than early January. She advised Mr. MacGuigan and Mr. Roberts to try to discuss the problems with the Chancellor of the Duchy of Lancaster before they returned to Canada.

There was some discussion about the forms of opposition that would be mounted against the legislation. Mr. Roberts said that within Canada the opposition would have three sources. There would be those, notably in Quebec, who would argue that no patriation should

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be agreed until there had been a redistribution of powers between the Federal Government and the Provinces; there would be those who would argue that a Bill of Rights was inappropriate; and there would be those who would argue that patriation should not take place until various questions of resource allocation and of social and economic policy had been resolved. It would be open to those who were opposed to the legislation to contest the legality and constitutionality of what was proposed in the Canadian Courts. Outside Canada, those opposed to the new Bill could be expected to lobby British politicians actively. The Prime Minister asked whether there was likely to be an appeal in the Canadian Courts against the legality of what the British Government were going. Mr. Roberts said that this was not on the cards. Mr. Ridley commented nonetheless that it would be very awkward if the British Parliament were to patriate a Constitution that the Canadian Courts might subsequently find illegal. Mr. Roberts acknowledged the point but repeated that a failure on the part of the British Government to respond to a request from the Canadian Government would involve the British Government more deeply than agreement to the request.

The Prime Minister made it clear that there was no question of the British Government refusing a request from the Canadian Government for patriation of their Constitution. The inclusion of the Bill of Rights might have made the situation more complicated but had not changed it in its essentials. She would refuse to get into any discussion of the merits of the proposals. We would do our best to meet the Canadian Government's timetable requirements. The simpler the Bill the better both from the point of view of avoiding controversy and of getting it through the Westminster Parliament quickly. Mr. Ridley made the point that it would be essential that whatever legislation was submitted by the Canadians should be right from the outset. It would be essential to avoid having to amend it during its passage through the Westminster Parliament.

In response to a question from the Prime Minister Mr. MacGuigan said that both Mr. Callaghan and Mr. Steel had pledged their support at an earlier stage. He would be seeing Mr. Callaghan again tomorrow.

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I am sending copies of this letter to Murdo Maclean (Chief Whip's Office), Robin Birch (Office of the Chancellor of the Duchy of Lancaster), Bill Beckett (Law Officers' Department) and David Wright (Cabinet Office).

Yours ever

Michael Alexander

Paul Lever, Esq.,
Foreign and Commonwealth Office.

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