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GRS 397
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FM FCO 191600Z JUN 81
TO PRIORITY OTTAWA
TELEGRAM NUMBER 185 OF 19 JUNE
CONSTITUTION

*I have pointed out to B.L.O.
that the sidelined passage does
not accurately reflect the Gov's
position, as I understand it.*

1. DR MICHAEL KIRBY, SECRETARY TO THE CABINET FOR FEDERAL PROVINCIAL RELATIONS, CALLED ON DAY AND OTHERS AT THE FCO YESTERDAY. HE SAID THE SUPREME COURT'S INDICATION THAT THERE WOULD BE NO DECISION BEFORE THEIR SUMMER RECESS WAS DISAPPOINTING. IT WAS POSSIBLE THAT THE REASON FOR THE DELAY WAS PURELY TECHNICAL: FOR INSTANCE, THE BASIC DECISIONS MIGHT HAVE BEEN TAKEN BUT NOT YET WRITTEN UP OR THEY MIGHT AWAIT TRANSLATION INTO FRENCH. UNDER THESE CIRCUMSTANCES, IT WAS POSSIBLE THAT THE COURT MIGHT RECONVENE BRIEFLY DURING THEIR RECESS IN ORDER TO HAND DOWN A DECISION. WE MIGHT KNOW THE POSITION WHEN THE COURT MADE A PRE-RECESS ANNOUNCEMENT NEXT THURSDAY 25 JUNE. WE MADE THE POINT THAT THE WORST SITUATION AT THIS END MIGHT BE TO RECEIVE THE REQUEST WHILE PARLIAMENT WAS IN RECESS OR SO LATE THAT PARLIAMENT COULD NOT DEAL WITH IT BEFORE THE RECESS. WE INDICATED THAT THERE WAS STILL A POSSIBILITY OF THE LEGISLATION GOING THROUGH IF THE REQUEST WAS RECEIVED BEFORE THE END OF JUNE. IF IT CAME AFTER THAT AN EXTRA WEEK WOULD NEED TO BE ADDED TO THE CURRENT SUMMER SESSION. WE COULD SEE POSSIBLE ADVANTAGES AND DISADVANTAGES IN ADOPTING THIS COURSE RATHER THAN LEAVING MATTERS OVER TILL THE AUTUMN.

*f.a. And
n/s*

2. KIRBY WAS AT PAINS TO STRESS THAT THE REASON FOR THE SUPREME COURT DELAY WAS NOT NECESSARILY ANY DEADLOCK OF OPINION AMONG THE JUDGES. HE CITED A CASE IN WHICH THERE HAD BEEN LONG DELAYS AND THE EVENTUAL JUDGEMENT HAD BEEN 8-1.

3. WE SAID THERE WAS STILL A POSSIBILITY OF A PRELIMINARY DEBATE ON THE FAC REPORT AND THE GOVERNMENT REPLY. ON THE LATTER,

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WE INDICATED THAT PUBLICATION WAS STILL LINKED TO THE TERMINATION OF (PARLIAMENTARY) PROCEEDINGS IN CANADA:

BUT BEFORE GOING AHEAD WITH OUR REPLY WE WOULD NEED TO KNOW WHETHER (AS WAS POSSIBLE) THE FAC THEMSELVES PROPOSED TO PUBLISH A THIRD REPORT, AFTER THE SUPREME COURT HAD PRONOUNCED.

4. KIRBY SAID THEY HAD ALREADY EXPERIENCED SOME DIFFICULTY IN RESTRAINING MINISTERS (PARTICULARLY CHRETIEN) FROM PLANS TO COME TO THE UK TO LOBBY ON THE CONSTITUTIONAL ISSUE, EG IN THE CONTEXT OF THE RESOLUTION (EMBODYING THE REQUEST) COMING TO THIS COUNTRY. HE SAID THAT THE CANADIAN GOVERNMENT WOULD, HOWEVER, ABIDE STRICTLY BY MR PYM'S SUGGESTION THAT THE CANADIANS SHOULD NOT SEND MINISTERS UNLESS WE HAD FIRST MADE IT CLEAR THAT THIS WAS DESIRABLE.

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DR PARRY }

LORD MORAN C/O HDS OF MISSION POD
PS/CHANCELLOR OF THE DUCHY OF
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