

SECRET

Canada



Chancellor of the Duchy of Lancaster

PRIVY COUNCIL OFFICE
WHITEHALL, LONDON SW1A 2AT

HA

28th January 1981

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Mud: 22/1*

Dear George.

PATRIATION OF THE CANADIAN CONSTITUTION

... I enclose a record of the discussion which the Chancellor of the Duchy had on Friday, 23rd January, with Mrs Wadds and Mr Haggan about the problem of the Canadian Constitution. In view of the sensitive nature of the discussion you will see that I have put a high classification on the note.

At the end of the meeting it was agreed that the Chancellor of the Duchy and the High Commissioner would keep in touch from time to time and would have another meeting in about a fortnight's time as part of this process.

I am sending copies of this letter and the enclosure to Stephen Gomersall, to David Wright, Wilfred Hyde, Richard Hastie-Smith, and Michael Alexander at Number 10.

Yours ever.

Robin

R A BIRCH

G G H Walden Esq
Private Secretary to
The Secretary of State for
Foreign and Commonwealth Affairs
LONDON SW1

SECRET

PATRIATION OF THE CANADIAN CONSTITUTION
NOTE OF MEETING WITH CANADIAN HIGH COMMISSIONER, 23rd JANUARY

PRESENT

The Chancellor of the Duchy of Lancaster
The High Commissioner, Mrs Wadds
Mr Reeves Haggan (Assistant Secretary of the Canadian Cabinet)
Mr Dan Gagnier (First Secretary. Canadian High Commission)

IN ATTENDANCE

Mr Hyde (Cabinet Office)
Mr Birch

The Chancellor of the Duchy said he was glad of the opportunity to give the High Commissioner a first hand account of his discussion with Mr Trudeau and to explain to her the extreme difficulty of the situation that was likely to arise if the Canadian Government were to ask the British Government to secure the passage through the British Parliament of legislation on the lines presently envisaged. As he had made clear to Mr Trudeau, it was his judgment that such legislation would not go through either House of the British Parliament. There was no doubt that the British Parliament would be very willing to patriate the Canadian Constitution with powers for its subsequent amendment in Canada, or to implement a request on which it was known the Federal Government and the Canadian Provinces were of one mind. At present, however, it seemed to members of both Houses that they were being asked to take a view on a particular solution proposed by the Federal Government to the constitutional problems that had arisen in Canada. They did not feel that they had the knowledge or competence to make such a judgment. On the other hand, the extended discussions about devolution to Wales and Scotland between 1977 and 1979 had made members of all parties aware of the significance of the issues now being debated in Canada and a number of members were well informed

about the situation there as a result of visits they had made and the representations made by Canadian interests in this country. Part, but not all, of the objections that were felt to the proposed legislation would be removed if the current legal proceedings in Canada had been satisfactorily completed. The Chancellor of the Duchy emphasised that the Government were well aware that there were strong arguments that could be deployed to counter some of the objections which he had described. He was bound to say, however, that he did not think that at present these counter arguments would carry the day, and it would do great damage to relations between the two countries if the British Government were to present to Parliament a Bill which they did not believe would pass into law.

The High Commissioner thanked the Chancellor for his clear exposition of the situation as he saw it and as he had explained it to Mr Trudeau. The Federal Government could not accept the argument that they were somehow unfairly inflicting Canadian problems on the British Parliament. The Federal Government had, and were taking, responsibility for the form of the proposed Bill and there was no difference in principle between what was now proposed and earlier occasions on which amendments to the British North America Act had been passed by the British Parliament. Not all these amendments had had the support of the Provinces. The matter was essentially one for decision by the duly elected Canadian Government and she found it hard to comprehend that British Members of Parliament should feel that they could pass judgment on what the Canadian Government and Parliament had decided. In Canada, loyalty to the Federal Government was as great as loyalty to individual Provinces and once the Federal Parliament had passed the Bill, Canadians as a whole would not expect the Government or Parliament of another country to make difficulties about the necessary change in the law.

Mr Haggan said that he thought it likely that the forthcoming judgment in the Manitoba Supreme Court would not be unanimous and would not be in such precise terms as to enable either view of the legality of what the Federal Government proposed to be said to have prevailed. In any event, the case the Federal Government had argued before the Manitoba Court was that the issue was not justiciable. Mr Trudeau considered that it was a major abuse of the Courts to ask them to decide what was in essence a political question with the risk of their passing a political judgment. As regards the likely timing, he would expect the Bill to have passed through the Federal Parliament by about end of February or the beginning of March so that the formal request from the Federal Government to the United Kingdom Government for them to introduce the necessary legislation at Westminster would follow shortly afterwards. On this point the Chancellor said that although he had made clear to Mr Trudeau the particular problems of passing in the present Parliamentary Session a controversial Bill that could not be introduced until March he had also stressed that shortage of Parliamentary time was not of the essence of the problem. The essence was that members of Parliament did not feel it was right for them to pass a Bill other than one which patriated the Constitution to Canada.

The following points were made in further discussion:-

- a. The Select Committee on Foreign and Commonwealth Affairs at Westminster had taken evidence about the proposed Bill mostly from Opponents of the Federal Government's intentions, and their report, which was due out shortly, was unlikely to be helpful;

- b. A vigorous adverse reaction could be expected in Canada if it became apparent that the Canadian Government could, in effect, be defeated in Britain as a result of lobbying here by Canadians whose views had not succeeded in the Federal Parliament. It had been, and remained, the view of the Canadian Prime Minister that the Canadian Government should not itself undertake lobbying of British opinion because to do so would concede the right of the British Parliament to give consideration to the substance of the request made by the Federal Government.
- c. Nevertheless the High Commission were working to see that British MPs understood what was involved. They had explained for example to members of all parties that a rejection of the Bill in Westminster would destabilise Canada. Quebec might well be lost and the other Provinces opposed to the Federal Government would have a great political victory. Under the existing constitutional arrangements the Provinces had devolved powers to such an extent as endangered the ability of the Federal Government to manage the economy. Any action that increased those powers would be very dangerous and would provoke a major crisis not only within Canada but also for relations between Canada and Britain.

In conclusion, the Chancellor said that he entirely shared the High Commissioner's appreciation of the gravity of the situation that would arise if the British Government or Parliament found itself in opposition to the declared wishes of the Canadian Government. While his particular responsibilities concerned the Parliamentary situation and the responsibility for relations with Canada rested of course with

the Foreign and Commonwealth Secretary he knew that the Government as a whole shared his concern that such a dangerous, indeed calamitous, situation should not arise. The danger was that it might arise on issues that were, to the ordinary people of both countries, extremely esoteric, because on the one hand it appeared politically impossible for the Prime Minister of Canada to change course and on the other many Members of the British Parliament were deeply and genuinely concerned that they would be asked to play what seemed to them an inappropriate part in the resolution of the internal affairs of Canada. The situation was a changing one, and might be affected by the terms of the report of the Select Committee, and by the judgment of the Manitoba Court. He suggested, and the High Commissioner readily agreed, that there should be a further informal meeting in about a fortnight's time.

Copied to: Mr Walden (Foreign and Commonwealth Office)
Mr Wright (Cabinet Office)
Mr Hyde
Mr Hastie-Smith
Mr Alexander (No 10)