

Ref. A04597

PRIME MINISTER

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Patriation of Canadian Constitution

You are to hold a meeting at 5.30 this evening with the Chancellor of the Duchy of Lancaster, the Lord Privy Seal and the Attorney General on how the handling of this should be presented at Cabinet next week.

BACKGROUND

2. When this was last discussed in OD, the general view was that, when the request of the Canadian Government and Parliament was received, the Government would have to introduce the Bill in the House of Commons in accordance with the Canadian request and without delay. It was recognised, however, that there would be a considerable body of opinion in the House of Commons opposed to proceeding with the Bill, and that there might well be a reasoned amendment on Second Reading to the effect that the House of Commons declined to give a Second Reading to the Bill until the Supreme Court of Canada had ruled on the legality in Canadian law of the Canadian request. Ministers thought that such a reasoned amendment would be difficult to resist, and might well carry the day, particularly if the Attorney General made clear his own view that as a matter of propriety (rather than law) it would be well to wait until the Supreme Court of Canada had ruled on the Manitoba judgment before proceeding with the Bill in the British Parliament.

3. The Foreign and Commonwealth Office reply to the report of the Foreign Affairs Committee (FAC) has been drafted on the assumption that the Government would introduce the Bill as soon as it was received. When the Chancellor of the Duchy and the Lord Privy Seal saw the Canadian Minister of Justice last week, they told him that it was the Government's intention to introduce the Bill as soon as possible after it was received - which means soon after Easter - though the Chancellor of the Duchy left the Canadian Administration in no doubt about the risk of a reasoned amendment for delay being accepted by the House.



4. The Foreign and Commonwealth Office position seems, however, suddenly to have changed. The Lord Privy Seal told the Chancellor of the Duchy this morning that it was now his view that the Government should not introduce the Bill until after the Supreme Court of Canada had pronounced on the Manitoba judgment. The Supreme Court hearing is expected to begin on 28th April, which was considerably earlier than had previously been expected, and should be completed by about the end of June. Technically there may also be appeals from other Provincial Courts; but the Manitoba judgment goes to the centre of the issue, and it seems to be generally agreed that, if the Supreme Court finds in favour of the Manitoba judgment - or at least does not find against them - and the Federal Government, that can be regarded as in effect settling the legal issue in Canada.

5. This considerable volte face on the part of the Foreign and Commonwealth Office is one with very considerable consequences. It will mean rewriting a paragraph in the reply to the FAC. It will also mean telling the Canadian Federal Government that the United Kingdom Government has changed its position since the Chancellor of the Duchy and the Lord Privy Seal saw the Canadian Minister of Justice last week. It was known at that time that the Supreme Court hearing would begin on 28th April; it will not therefore be very easy to explain such a volte face to the Canadian Government.

6. In the discussion of this it has to be remembered that the Attorney General has throughout taken the view that it would be proper for the British Government to delay the introduction of the Bill at Westminster until the Supreme Court of Canada had concluded its proceedings on the Manitoba judgment. That is a judgment on a matter of propriety, not a judgment on a matter of law. Nonetheless, if the Attorney General were to express that view in the House of Commons, it would carry great weight.

7. It has also to be remembered that both the Chancellor of the Duchy and the Lord Privy Seal believe that it would be easier to get the Canadian Bill through the Westminster Parliament after the Supreme Court judgment than it would be if we went ahead without waiting for that.



8. I think that the question which Ministers have to decide, eventually at Cabinet on 9th April but in a preliminary way now, for the purposes of preparing a paper for Cabinet, is whether the Government should from the outset take the responsibility of deferring the introduction of the Bill until after the Supreme Court judgment, or whether to go ahead with the Bill soon after Easter, as the Canadian Government has been told to expect, and allow the House of Commons to defer its progress by means of a reasoned amendment. In terms of Parliamentary handling the latter course might be easier; in terms of relations with the Canadian Government, there would be much to be said for letting the House of Commons carry the can rather than the Government carrying it itself.

HANDLING

9. I suggest that you ask the Chancellor of the Duchy to outline the problem, and the Lord Privy Seal to follow him with the Foreign and Commonwealth Office view. The Lord Privy Seal might be pressed to explain why the Foreign and Commonwealth Office has changed its view at this late date. You will probably also wish to ask the Attorney General if his view has changed since he expressed it in OD. Since much could turn on the way he puts his view, if he were asked to express it in the House of Commons, you may like to ask him to recapitulate it now.

CONCLUSION

10. If the view of the meeting is that the Government should stick to its mind, introduce the Bill soon after Easter and let the House of Commons take the responsibility for deferment, you may wish to invite the Lord Privy Seal to express his paper for Cabinet accordingly; and you may wish to suggest that the Chancellor of the Duchy should be prepared to help behind the scenes with the preparation of a reasoned amendment, if that seems to be called for.

11. If the Foreign and Commonwealth Office change of view is accepted, then the Lord Privy Seal would have to be invited:-

- (a) To amend the draft reply to the FAC.
- (b) To circulate a paper to Cabinet accordingly for discussion on 9th April.
- (c) To advise on how we should explain and justify the change of view to the Canadian Federal Government.

31st March, 1981

ROBERT ARMSTRONG