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Foreign and Commonwealth Office

London SW1A 2AH

31 October 1980

*Dear Michael,*

THE CANADIAN CONSTITUTION: MEETING ON 3 NOVEMBER

You might find it useful to have a note of recent events bearing on the Canadian constitutional issue before the Prime Minister's meeting on Monday afternoon.

On 25 June Mr Trudeau called on the Prime Minister. She said that whether or not the request for patriation was made with the agreement of all the Provinces, such a request would be agreed if it was the wish of the Government of Canada. Mr Trudeau subsequently wrote (18 August) saying he was "gratified to receive your assurances of support". On 8 July Lord Carrington saw the Canadian Secretary of State for External Affairs, Mr MacGuigan, and spoke similarly.

On 13 September the Constitutional Conference chaired by Mr Trudeau, with the ten provincial leaders, broke up without agreement either on an amending formula for the British North America Act (BNA) or on how to enlarge the Act to form a new Constitution for Canada.

On 26 September talks took place at the Foreign and Commonwealth Office between a senior legal Canadian team and FCO legal and other officials. This provided us with the first opportunity to  
/examine

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examine the new proposals of the Canadian Federal Government. The proposals went beyond the expected resolution for a Joint Address to HM The Queen, plus an Act to amend the Constitution. Most notably, it included a 'Charter of Rights and Freedoms', an item which had always been controversial in Canada. At the talks, FCO officials made it clear that the proposals went further than had been hoped; the degree of controversy they excited in Canada was likely to be mirrored in this country.

On 6 October two Ministerial emissaries of Mr Trudeau, Mr Mark MacGuigan (External Affairs) and Mr John Roberts (Environment) called both on the Prime Minister and on Lord Carrington. Mrs Thatcher made it clear that there was no question of the British Government refusing a request from the Canadian Government for patriation of their Constitution. At the same time she asked the emissaries why the Canadians wanted the Westminster Parliament to pass a Bill of Rights. This would make the issue more controversial in this country and as a consequence the passage of the proposals through Westminster might be more prolonged. Lord Carrington spoke similarly and mentioned the possibility of a lengthy debate both in the House of Commons and in the Lords.

In the early hours of 24 October, Mr Trudeau applied the guillotine on debate in the Canadian House of Commons on a motion to refer the draft Resolution on the Constitution for formal consideration by a Joint Commons/Senate Committee. This procedure was strongly contested by both opposition parties (Progressive Conservatives and new Democrats). The Joint Committee is due to report by 9 December. Mr Trudeau may guillotine subsequent debate; present indications are that the Canadians will try to get the request for patriation to the UK earlier than the two visiting Ministers indicated (January/February).

/On 27 October

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On 27 October the Chancellor of the Duchy of Lancaster telephoned his opposite number in Canada, Mr Pinard, to discuss this issue (he had been unable to meet Mr Roberts during his visit to the UK). He emphasised the difficulties of our parliamentary programme and said that if the Bill did not reach us by the beginning of January it would not be possible to complete it within the forthcoming session, and it would have to be taken in the session beginning in the autumn of 1981; under these circumstances, it could be concluded by the Spring of 1982, provided it was a simple Bill, not including a Bill of Rights. Otherwise, it could be expected to run until the end of the 1981/82 legislative session.

Most recently, the Select Committee on Foreign Affairs of the House of Commons have told us that they would like to consider the Canadian constitutional issue. There will be publicity for this from about 5 November.

I attach annexes on (a) the constitutional position, (b) opposition within Canada to Mr Trudeau's proposals, and (c) reference to the Canadian Courts. I have also added the text of the Lord Chancellor's answer to a Parliamentary Question by Lord Avebury on Monday 27 October.

I am sending copies of this letter and enclosures to the Private Secretaries of other Ministers attending Monday's meeting.

*Yours ever,*

*M A Wickstead*

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APS/Lord Privy Seal

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