

OP.

Subject filed on Canada, UK/CAN relations P/4 T. 6/82

PRIME MINISTER'S

PERSONAL MESSAGE

SERIAL No. T 6/82.



PRIME MINISTER · PREMIER MINISTRE

Ottawa, January 13, 1982

My dear Margaret:

As you know, I have greatly appreciated your consistent support on the Constitution, and I have full confidence in your resolve to deal with the Canada Bill expeditiously. Naturally, I also recognize that you alone must decide how this commitment is to be met. However, given the importance of the Canada Bill to the people of Canada, I believe it is important that we keep one another fully informed of our thinking on all matters that might bear on its timely passage by Westminster. It is against this background that I feel compelled to express to you my concern with your Government's decision to postpone the scheduling of second reading of the Canada Bill until the Court of Appeal has given its judgement on the Alberta Indian case.

I understand that this decision was made to ensure the eventual easy passage of the Canada Bill. If the Court renders a favourable decision on January 18th or thereabouts, then little damage may have been done and it should be possible to give notice of second reading that week. (You will recall that Mr. Pym had earlier said that second reading would start in that week.)

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The Right Honourable Margaret Thatcher,
Prime Minister of Great Britain,
10 Downing Street,
London, England.

My concern is that the decision to delay the start of second reading until after the Court of Appeal rules on the Alberta Indian case provides a basis for demands for further delays in second reading. Opportunities before the courts abound: the Alberta case may be appealed to the Lords; as you know, British Columbia Indians have started proceedings in the Chancery Division; we anticipate that action of some kind will be initiated by Saskatchewan Indians; other Indian groups, including the Cree in Northern Quebec, may also institute proceedings. Indeed, there is no technical limit to the number of cases that could be brought in both Canada and the United Kingdom.

All this suggests that the decision to delay second reading until after the ruling on the Alberta Indian case is handed down is certain to lead to pressure at Westminster for repeated delays to await a series of judgements in a series of cases which will be carefully scheduled to maximize the delay in passage of the Canada Bill.

In Canada, the Government of Quebec will bring a reference to the Quebec Appeal Court on March 15th seeking a ruling on Quebec's claim to have a constitutional veto, a subject on which I understand Mr. Lévesque has written to you. This case will surely be appealed to the Supreme Court of Canada with proceedings likely to drag on into the fall of this year.

These proceedings, regardless of their outcome, will, unless the issue is settled expeditiously at Westminster, prolong and intensify the political problems in Quebec and throughout Canada. On the other hand, if royal assent could be given to the Canada Bill before the Quebec Court proceedings commence on March 15th, it is virtually certain that the Quebec Court would find the issue hypothetical and therefore not one requiring a ruling on their part.

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If, in the Alberta Indian case, the Court of Appeal rules, as your officials expect, in favour of the Foreign and Commonwealth Office, I hope that your Government would take the position that since the Canadian Courts have dealt with the question of provincial consent and since no Canadian or British Court has recognized the validity of Indian claims to a special relationship with the British Crown, there is no argument for any further delay. You could then proceed very quickly to second reading.

If the Court of Appeal rules against the FCO position, the situation would raise profound questions about the British Government's obligations under the Indian treaties, about the manner of their discharge, and about the meaning of the Statute of Westminster, not just for Canada's sovereignty but for the sovereignty of Commonwealth countries more generally.

You will recall that the vast majority of Canadians now regard the constitutional issue as settled and they look to Britain for early, formal assent. There is a risk that further delay could give rise to controversy and misunderstanding in Canada over the British role in this process. Beyond that, there are the unthinkable consequences of the package coming unstuck in the United Kingdom, after its approval in Canada.

I hope that this letter has helped you to more fully understand my concern about the need to dispense with the Canada Bill expeditiously. In this regard, I particularly appreciate Mr. Pym's undertaking to High Commissioner Wadds on Monday that your Government will consult us after the decision of the Court of Appeal before making any further decision on the timing of second reading.

Yours sincerely, and

with personal regards.

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