

Canada



H.
Vind 2/2

Prime Minister

(2)

You may feel that if the Chancellor of the Exchequer cannot accept Lord Carrington's line, you should have a meeting with both of them.

Yes not

FCS/81/10

CHANCELLOR OF THE DUCHY OF LANCASTER

Amul - 28/11

Patriation of the Canadian Constitution

1. Thank you for your letter of 19 January. We sent across suggested talking points for your meeting with Mrs Wadds, and I would like, if I may, to mention first the line which I am told by the Department you took with her.

2. We have not yet seen a written record of conversation: but I gather that you told her squarely that if the Canadian Government thought they were going to get their proposals through the UK Parliament during this session, they would be mistaken. I believe you may have added that things would not become any easier with the passing of time if the proposals remained in their present form; there was no way in which you could guarantee they would get through Parliament.

3. I realise that you spoke in quite strong terms to Mr Trudeau in December; but the impression I get from, for instance, Ottawa telegram number 552 of 19 December, is that you left open at least the possibility of the Canadian legislation going through during the current session (eg in paragraph 2 of the telegram you are quoted as saying 'it was highly questionable whether it would be possible at present to achieve the passage of the necessary legislation through Parliament'.) In other words, you seem to have left a

/chink



think of light for Mr Trudeau. With Mrs Wadds, it seems that you have closed this off. I confess I am a little worried as to the repercussions that Mrs Wadds' subsequent report will have in Ottawa.

4. I realise that this is a difficult hand to play at this moment. So much will depend not only on the ultimate shape of the Canadian proposals and the eventual degree of opposition they attract in Canada - but also on the results of court action in Canada. There seems to be some prospect that both the Manitoba and the Quebec courts will find in favour, to a greater or lesser extent, of the Federal position. This would presumably have a considerable impact in Canada and on opinion among MPs in this country. At the same time, I recognise that the unfavourable conclusions expected from the FAC will militate in the opposite direction.

5. For the kind of reasons which I have indicated, I think it important, as you yourself suggest in your letter, that we should all, at this very delicate moment, continue to keep our options open. I interpret this as warning the Canadians of possible difficulties; but not at this stage risk souring our relations with them by seeming to close the door entirely to their proposals.

6. You ask about alternative courses of action, including that of unilateral patriation, without a Bill of Rights but with provision for the amendment of the Constitution. This is a theoretical possibility which has frequently been considered; but it suffers from our point of view from two major difficulties:

- (a) It is open to serious question on constitutional grounds, as it runs counter to the 'request and consent' convention.

/(b)



- (b) It would be regarded by the Canadians as a worse form of interference in their internal affairs than any other move we could contemplate.

7. To expand a little the second point, the way things are going now, the Canadians are themselves deciding both on the shape of their proposals and the timing of sending them to London. To the maximum extent, they are deciding their own destiny. If we snatched the ball from their hands, I feel convinced we would simply succeed in uniting them against us. Quite apart from this general principle, whatever amending formula we used would be objected to by some of the Provinces. I do not, of course, mean to preclude the possibility of our going back to Mr Trudeau at some stage and asking him to modify his proposals by omitting the Bill of Rights. But all the indications are that, as things now stand, this would infuriate him, almost as much as 'unilateral' patriation.

8. My conclusion is that we should stick to the line you took in Canada; warn the Canadians of the difficulties, but keep options open pending court action in Canada. If this is agreed, we could postpone consideration at OD until the court situation is clearer. But if you think the Parliamentary situation is such that we must go on giving the Canadians your recent message to Mrs Wadds, we should perhaps have an early meeting to thrash the matter out.

9. I am copying this minute to the Prime Minister.

C
(CARRINGTON)

Foreign and Commonwealth Office
28 January 1981

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