

This is a copy. The original has been extracted and closed, 40 years.

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CABINET OFFICE

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From the Secretary of the Cabinet: Sir Robert Armstrong KCB, CVO

Ref. A04008

16 January 1981

Patriation of the Canadian Constitution

\* ~~~~~ \* after consultation with Derek Day, I had a talk yesterday afternoon with Mr Richard Hatfield, the Premier of New Brunswick. Mr Hatfield is one of those provincial Premiers - I think there is only one other - that support the Canadian Government's proposals.

Mr Hatfield said that he had talked to both Members of the House of Commons and Members of the House of Lords and had been clearly given to understand that the draft Bill proposed by the Canadian Government could not be got through Parliament, in the present state of Parliamentary opinion. I said that I thought that the British Government's assessment was very similar and that Mr Trudeau was aware of that.

We had some discussion of the timing. I said that Mr Trudeau had hoped that the Bill could be passed and enacted by 1 July. Even assuming Parliamentary willingness to approve it, there would now be great difficulty in enacting the Bill by 1 July this year. The period from March to the end of July was already fully taken up with the Government's own legislative programme. The Canadian Bill would have to be taken in Committee of the whole House, as a constitutional measure, and could require up to 5 Parliamentary days in the House of Commons and as many or more in the House of Lords. Mr Hatfield said that he understood that the Bill might be unamendable in the House of Commons. I said that it might be, or might be able to be made, so; but it was not certain that the House of Commons could be prevented from removing whole clauses from the Bill, and it would in any case be amendable in the House of Lords, unless they could be persuaded not to amend it: there appeared to be no procedural means of making it unamendable.

\* ~~~~~ \* Passage deleted and closed (40 years) under FOI Exemptions /I asked

Wayland

25 August 2011

G G H Walden Esq CMG



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I asked Mr Hatfield how important the date of 1 July was. It had seemed to us that Mr Trudeau was very anxious to celebrate the 50th Anniversary of the Statute of Westminster by completing the final breaking of the link in time for a celebration on Canada day, 1 July. Was there any deeper reason for Mr Trudeau's urgency? Mr Hatfield obviously thought that in Canadian terms this process ought not to be allowed to drag on, but he thought that, if Mr Trudeau could be reasonably sure that the British Parliament would get the measure through in the 1981-82 session, he would in the end be prepared to wait.

Mr Hatfield asked whether I had any suggestions for things that ought to be done in the near future. I said that he would have become aware that those who were opposed to the Canadian Government's proposals were actively lobbying in this country with Parliament and other opinion, and it seemed as if the case for the Canadian Government's proposals was not being put over here. I thought that it would be useful if that case could be developed more positively. Mr Hatfield was obviously concerned about the effects on relations between this country and Canada, if the British Parliament failed to pass whatever measure was sent to it, and I said that I very much shared that concern; the problem was to make people aware of the concern without it appearing to take the form of a threat.

Mr Hatfield told me a number of other interesting things.

B { On the legal side, he said that the Supreme Court of Manitoba was expected to duck the issue, by finding that there was no legal question but only a political one, in which the Court had no locus. A case was also coming forward shortly in the Supreme Court of Quebec. Mr Hatfield was impressed with the skill with which the Quebec Government's case was being put, but he had been advised that the balance of probability was that the Quebec Court would find for the Federal Government. If it did so, Mr Hatfield thought that that might well be the end of the legal argument in Canada. These hearings were expected to take place within the next few weeks.

Mr Hatfield said that he saw no possibility of agreement among or with the provincial Premiers

Mr Hatfield said that the opposition to the Charter of Rights which was tagged on to the Patriation provisions was concentrated mainly on the language provisions. He said that the Parti Quebecquois objected to these proposals being introduced by way of legislation of the British Parliament introduced at the request of the Canadian Parliament: they wanted themselves to claim credit for any developments of this kind. This was one of the reasons why it was important to Mr Trudeau that the provisions should be introduced as a result of a resolution by Federal Government and dealt with through the appropriate constitutional channels.

/Mr Hatfield

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Mr Hatfield told me about the results of a Gallup poll taken in December which had recently been announced. These showed that more than 60 per cent of those polled supported Patriation of the Canadian Constitution; but only 22 per cent supported the Canadian Government's proposals, including the Charter of Rights. The 22 per cent was an average over the whole of Canada, and the highest figure in any single province was 28 per cent. This poll would undoubtedly be a set-back to Mr Trudeau. Mr Hatfield very much doubted whether the Canadian Government would adopt what he called the referenda route, of which he himself was not in favour.

Mr Hatfield said that he would be in London again on 19 and 20 February and I said that if he should wish to be in touch again at that time I hoped he would let me know.

I am sending copies of this letter to Michael Alexander and Robin Birch.

ROBERT ARMSTRONG

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