

CONFIDENTIAL

MR. COLES

Canadian Constitution

Prime Minister

To note.

MW

(2)
A.Y.C. 7/1

h-a
M 8/11

Mr. Michael Pitfield, the Secretary of the Cabinet in Ottawa, rang up yesterday evening, and we had a long conversation on the subject of the handling of the coming stages of this problem.

2. Mr. Pitfield said that there had been plans for people to come over and see the Lord President later this week, but they had fallen through, and he was therefore ringing up on the instructions of his Prime Minister to register his Prime Minister's serious concern about the implications of the Government's decision to postpone the Second Reading of the Canada Bill in the House of Commons until after the Court of Appeal had heard the Indian case.

3. Mr. Pitfield asked whether we knew the date on which that case was to be heard. I said that the date was not yet finally fixed, but I understood that it would be during the second half of January or at any rate not later than the very early days of February.

4. Mr. Trudeau's concern, as reported by Mr. Pitfield, was that, as a result of the decision not to take the Second Reading until after the Court of Appeal hearing in the Indian case, the British Government would find itself drawn into a process of "Hansardisation". I understand that this denotes a process whereby one action creates a series of precedents which are then exploited to get a process bogged down in Parliament. Mr. Trudeau feared that, if we waited for the Court of Appeal hearing, and the Indians then appealed to the House of Lords - as he was sure they would, if they went down in the Court of Appeal - we should feel obliged to wait for the House of Lords hearing. Not only that; there were infinite possibilities for other legal delays. There were other interested groups in Canada who might seek to open proceedings in the British courts with a view to delaying the passage of the Bill in Parliament. Mr. Trudeau had been informed that the Quebec Government were planning to brief Counsel in the United Kingdom with a view to similar action. If the British Government delayed for the Indian case, the fear was



CONFIDENTIAL

that they could find themselves drawn into an infinite process of waiting for one legal hearing after another. They might also come under pressure from the Quebec Government to delay proceedings on the Canada Bill in Parliament until the legal proceedings instituted by the Quebec Government in Canada were concluded.

5. The consequences of prolonged delay at Westminster would be very serious in Canada. It was not too much to say that future planning on the life of the present Federal Government was involved. Without going into detail on the telephone Mr. Pitfield said that he must leave me in no doubt about the serious consequences of delay in London and the increasing concern which his Prime Minister felt.

6. I said that before reacting to what Mr. Pitfield had said and expressing anything other than a tentative personal view - which would not in the circumstances be much use to him - I would wish to take time to find out how the possibilities of progress were seen and how the Lord President and the business managers in London now saw the prospects. The House of Commons was still in Recess and would be until 18th January and I did not know how far the business managers would be able in the meantime to form a view about the state of opinion in the House of Commons and the possibilities of progress on the Bill. I supposed that it was possible that, if the Court of Appeal hearing went against the Indians and they appealed to the House of Lords, the Government might think that it could proceed with the Bill on the understanding that its passage would not be completed until after the House of Lords hearing, which would obviously need to be brought forward as quickly as possible. Speaking personally, I thought that the Indian case would have more emotive effect at Westminster than the Quebec case. It might be that the Indian case could be regarded as something of a test case, so that, if the Indians failed in the courts, the Government would think that they had a basis on which to seek to persuade the House of Commons that it was right to proceed with the legislation notwithstanding the fact that other cases were being brought: particularly if it could be shown that the motive for bringing those cases was

CONFIDENTIAL

essentially dilatory. It remained the Government's wish to proceed with the Bill as quickly as was consistent with getting it through successfully and reasonably smoothly; and on that British Ministers clearly had to be the judges.

7. I told Mr. Pitfield that I would report his Prime Minister's serious concern to the Prime Minister and her colleagues, and in particular to the Foreign and Commonwealth Secretary, the Lord President and the Lord Privy Seal. He said that Mr. Trudeau had wondered whether to speak direct to the Prime Minister but had decided against doing so: he knew that she would understand his position and he knew that she had plenty of other things to think about.

8. Mr. Pitfield asked when he could expect to hear from me again. I said that I should like to take two or three days to find out how these matters were now seen by the business managers and others over here, and I would get in touch with him again when I had a view which I was in a position to convey.

9. I am sending copies of this minute to the Private Secretaries to the Foreign and Commonwealth Secretary, the Lord President, the Lord Privy Seal and the Chief Whip.



Robert Armstrong

*(dictated by Sir R Armstrong
and signed on his behalf)*

6th January 1982

CONFIDENTIAL

GRS 160

CONFIDENTIAL
FM OTTAWA 041525Z JAN 82
TO PRIORITY FCO
TELEGRAM NUMBER 2 OF 4 JANUARY

YOUR TELNO 475: CANADA BILL: ALBERTA INDIANS COURT CASE

1. I UNDERSTAND POSITION BUT HOPE YOU WILL BEAR IN MIND THAT IF, AS A RESULT OF INDIAN COURT ACTIONS, PASSAGE OF THE CANADA BILL IS SERIOUSLY DELAYED, MR TRUDEAU WILL BE EXASPERATED AND WE MAY AGAIN HAVE A DIFFICULT TIME WITH THE CANADIAN GOVERNMENT. YOU WILL RECALL THAT WHEN I LUNCHED WITH HIM ON 3 DECEMBER MR TRUDEAU WAS STILL ASKING IF IT WAS UNTHINKABLE THAT PASSAGE COULD BE ACHIEVED BEFORE CHRISTMAS AND HE CLEARLY HOPED THAT IT COULD BE BROUGHT HOME BY MID-FEBRUARY AT THE LATEST. HE WILL HAVE BEEN DISAPPOINTED BY WHAT THE LORD PRESIDENT AND THE CHIEF WHIP SAID TO MR CHRETIEN ABOUT THE WHOLE PROCESS PROBABLY TAKING UNTIL MARCH OR APRIL, BUT ANY QUESTION OF A MUCH LONGER DELAY, TO TAKE ACCOUNT OF AN APPEAL TO THE HOUSE OF LORDS, OR THE SASKATCHEWAN AND BRITISH COLUMBIAN CASES, OR ANY OTHERS, WOULD BE A SEVERE BLOW TO HIM.

MORAN

[COPIES SENT TO NO 10 DOWNING STREET]

CANADIAN CONSTITUTION LIMITED

NAD
CCD
P & CD
PCCU
PARLIAMENTARY UNIT
NEWS D
INFORMATION D
PS
PS/LPS
PS/MR LUCE
PS/MR HURD
PS/LORD TREFARNE
PS/PUS

MR DAY
MR URE
LORD N G LENNOX
CABINET OFFICE

COPIES TO:

SIR I SINCLAIR }
MR FREELAND } LEGAL ADVS.
DR PARRY }

PS/CHANCELLOR OF THE DUCHY OF
LANCASTER

PS/LORD CHANCELLOR HOUSE OF LORDS

PS/LORD PRESIDENT

MR H STEEL, LAW OFFICERS' DEPT
PS/HOME SECRETARY

MR BAILEY TREASURY SOLICITOR'S

CONFIDENTIAL

CONFIDENTIAL

GRS 204
CONFIDENTIAL

FM FCO 311330Z DEC 81
TO PRIORITY OTTAWA
TELEGRAM NUMBER 475 OF 31 DECEMBER
CANADA BILL: ALBERTA INDIANS COURT ACTION
YOUR TEL NO 738

1. WE CANNOT EXPECT THAT THE ALBERTAN CASE WILL BE DISPOSED OF AT THE NEXT HEARING BECAUSE, EVEN IF THE COURT OF APPEAL DECIDES IN OUR FAVOUR, THE INDIAN ASSOCIATION OF ALBERTA MAY, WITH THE LEAVE OF THAT COURT OR OF THE HOUSE OF LORDS, APPEAL TO THE HOUSE OF LORDS. IF THE EVENTUAL DECISION GOES AGAINST US, WE ARE INTO A NEW BALL GAME. MINISTERS WILL NOT WISH TO MAKE ANY PREDICTIONS AT THIS STAGE AND WILL NOT GO BEYOND THEIR DECISION TO REVIEW THE QUESTION OF SECOND READING ONCE THE OUTCOME IN THE COURT OF APPEAL IN THE ALBERTA CASE IS KNOWN.
2. WE UNDERSTAND THAT THE INDIANS HAVE TAKEN HEART FROM THE COURT OF APPEAL'S DECISION TO ALLOW THE ALBERTA HEARING AND THIS MAY STIMULATE FURTHER ACTIONS AND/OR STIR UP THE BRITISH COLUMBIAN AND SASKATCHEWAN PLANS. THE LAST TWO HAVE NOT YET GONE FURTHER THAN, IN THE BRITISH COLUMBIA CASE, THE SERVICE OF A WRIT OF SUMMONS.
3. IF YOU ARE ASKED BY THE CANADIAN AUTHORITIES, YOU MAY DRAW ON THIS TELEGRAM. WITH THE PRESS, YOU SHOULD STICK TO THE LINE IN PARAGRAPH 3 OF MY TELEGRAM NUMBER 472 AND REFUSE TO BE DRAWN FURTHER. THE LEAST SURFACE EXPOSED THE BETTER.

CARRINGTON

CANADIAN CONSTITUTION LIMITED
NAD
CCD
P & CD
PCCU
PARLIAMENTARY UNIT
NEWS D
INFORMATION D
PS
PS/LPS
PS/MR LUCE
PS/MR HURD
PS/LORD TREFARNE
PS/PUS
SIR E YOUDE
MR DAY
MR URE
LORD N G LENNOX
CABINET OFFICE

COPIES TO:

SIR I SINCLAIR }
MR FREELAND } LEGAL ADVS.
DR PARRY }

PS/CHANCELLOR OF THE DUCHY OF
LANCASTER

PS/LORD CHANCELLOR HOUSE OF LORDS

PS/LORD PRESIDENT

MR H STEEL, LAW OFFICERS' DEPT

PS/HOME SECRETARY

[COPIES SENT TO NO 10 DOWNING ST]

CONFIDENTIAL