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10 DOWNING STREET

From the Private Secretary

26 June, 1981.

Dear Francis,

Mr. Trudeau

I enclose a copy of a record of the
tete-a-tete conversation between the
Prime Minister and the Canadian Prime
Minister which took place this morning.
As you will see, the conversation was
entirely devoted to the question of the
Patriation of the Canadian Constitution.

I am sending copies of this letter and
its enclosure to David Heyhoe (Office of
the Chancellor of the Duchy of Lancaster),
Murdo Maclean (Chief Whip's Office),
Jim Nursaw (Law Officers' Department),
and David Wright (Cabinet Office).

Yours truly

Richard Alexander

Francis Richards, Esq.,
Foreign and Commonwealth Office.

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r.c. Yorke.

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RECORD OF A CONVERSATION BETWEEN THE PRIME MINISTER AND THE
PRIME MINISTER OF CANADA, MR. PIERRE TRUDEAU, AT 10 DOWNING STREET,
ON 26 JUNE, 1981, AT 1230

Present:

Prime Minister

Mr. Pierre Trudeau

Mr. M.O'D.B. Alexander

Mr. R. Fowler

Patriation of the Canadian Constitution

The Prime Minister asked whether Mr. Trudeau had any idea when the Supreme Court was likely to give its verdict on the constitutionality of the Canadian Government's proposals. Mr. Trudeau expressed some doubt as to whether he and the Prime Minister should discuss the constitution issue. Would it not be easier if they were able to say to the Press that they had not discussed the matter at all? After a brief discussion, the Prime Minister and Mr. Trudeau agreed to pursue the matter.

Mr. Trudeau said that the Chief Justice was returning temporarily to Canada from vacation on 6/7 July. The assumption had to be that he had come to the conclusion that it would damage the reputation of the Supreme Court if it became clear that they had been unable to make up their minds in 2½ months while the provincial courts had reached conclusions in a shorter period. Assuming that there was going to be a decision, it would probably be in favour of the constitutionality of the Government proposal. If the Supreme Court were to say that the proposal was unconstitutional, they would either have to indicate how it could be made constitutional - in which case they would be arrogating to themselves an essentially political decision - or they would give no indication - in which case the implication would be that the matter could not be sorted out in the foreseeable future, which, in turn, would have considerable political consequences.

If the Supreme Court were to pronounce in favour of the constitutionality of the proposal in mid July, it would then be for HMG to indicate what would be least embarrassing for them as regards the timing. There were a number of options. The Canadian

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Government would have no choice but to have a two-day debate soon. Thereafter they could either send the Bill to Westminster at once or hold it till the autumn. HMG, once it had received the Bill, would have to decide whether to seek to put it through Parliament at Westminster without delay, or to wait until the autumn. If the decision, one way or the other, was to wait until the autumn, it would give the provinces time to "hack around". Arguably, the shorter the period between the publication of the Supreme Court's verdict and action at Westminster, the better.

The Prime Minister said that the legislative programme between now and the Recess was absolutely full. The situation had been greatly complicated by the need to put through the Representation of the People Bill. If the Patriation Bill was sent over in mid July, it was hard to see how it could be dealt with before the Summer Recess. To add an extra week to the Session at the beginning of August would be very bad. The most likely people to turn up would be those hostile to patriation. She was very anxious to avoid any action which would damage relations between Britain and Canada. She feared that to force the House to resume after the Royal Wedding would cause ill feeling quite apart from the merits of the patriation question. One had to recognise that the Bill would not necessarily go through the House of Commons - and thereafter the House of Lords - as rapidly as one might like. It might take a good deal of time. The Supreme Court's timetable seemed likely to face us with a most difficult judgement. It would be extremely difficult for us to put it through but, clearly, we had no wish to appear uncaring about Canadian concerns by sitting on the Bill.

Mr. Trudeau said that he accepted the matter of timing was for decision by HMG. He had fallen so far behind with his own timetable that he was in no position to put pressure on HMG. We had given enough evidence of our willingness to handle the Bill expeditiously. Neither he nor the Prime Minister knew precisely what the Supreme Court was likely to do. He did not think they would deliberate together again, but it was possible that they would delay publication of their decision until September. Some members of the Court were

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"notorious agonisers". It might be that the Chief Justice's purpose in returning was simply to put pressure on them. If, on the other hand, they were ready to announce their decision, there would be no way of stopping them. If they produced a favourable judgement, and HMG would prefer not to receive it at once, this would have to be made clear in Ottawa. If HMG "made a reasonable case" for not sending it, the Canadian Government would not insist. He fully understood the difficulties of inserting the Patriation Bill into the Parliamentary programme so close to the end of the Session.

The Prime Minister said that if the Supreme Court did deliver its verdict, we would send our best judgement of the way to proceed to Ottawa as soon as possible.

Mr. Trudeau said that HMG would have to judge the balance of damage as between, on the one hand, trying to put the Bill through rapidly before the end of July, and, perhaps, failing; and on the other hand, leaving the Bill hanging around for several months. If the Canadian Government failed to send the Bill over, they would be asked why they had not done so. If HMG failed to put it to Westminster, they would be asked why they could not be bothered to do so. If the Prime Minister's judgement was that it would be better not to send the Bill over, he would respect it. He wondered, however, whether it might not be best to put it to the House of Commons for, say, three days, and then, if necessary, acknowledge that it would have to wait till the autumn. The Prime Minister said that in her view to try and fail would be the worst of all worlds. It would create uncertainty. Mr. Trudeau repeated that there might be criticism, and indeed anger, if HMG did not make the effort. He himself would neither feel nor express anger. But the sort of danger that would be created by a long delay would be that the individual provinces would have referenda attacking the legality of patriation. He himself did not think that any such referendum would succeed, but there was always the risk that one might. He was very "sore" with the Supreme Court.

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Having taken on the case in the way they had, they should have pronounced much sooner. He suspected that the Chief Justice felt humiliated by the failure of the Court to make up its mind more rapidly. The Chief Justice had probably written his own judgement weeks ago, But he was not in a position to force the other judges to write their own judgements. He had now created a very difficult problem for both Heads of Government, and considerable ill temper in Canada - on both sides of the political argument.

Mr. Trudeau recalled that in December he had taken the line with Mr. Pym that the judiciary did not have the right to prevent Parliament doing what it wished to do. Mr. Pym of course had argued that to secure a favourable verdict from the Supreme Court would be a great help in the Westminster Parliament. It was only the decision of the Supreme Court to take the case in April rather than to wait until the cases in the provincial courts had taken their normal course that had led him to change his view and align himself with Mr. Pym's wishes. It had then suited both Governments. What had now happened suited neither Government. The Prime Minister commented that this merely showed how difficult it was for Governments to make and carry out their plans.

Mr. Trudeau said that if the Supreme Court did deliver its verdict next month, the Canadian High Commissioner in London would of course express the Canadian Government's hopes as to what would happen, but she would not argue that HMG was expected to deal with the Patriation Bill in two or three days!

The discussion ended at 1300.

Phms

26 June, 1981.

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