

Const - - 10/11

F3-11(1)

February 3, 1981

F.P.R.O. B.R.F.P.

Michael Kirby

CONFIDENTIAL

FEB 3 1981

MEMORANDUM FOR THE PRIME MINISTER

c.c Mr. Pitfield
Mr. Kirby
Mr. Coutts
Joyce Fairbairn
Mr. Gossage

See

Patriation, the U.K.: Notes for Question Period
(Update)

*Fb
Record of
exchange of
communications
between Can.
govt. and
U.K. govt
on patriation*

I would like to draw your attention to two further issues:

a) Mrs. Thatcher's reference to whips

You will remember that when we discussed my notes of the meeting on June 25 in the Cabinet Room at 10 Downing Street, I underlined the fact that my notes referred to the fact that she had said "it will be a government measure and the whips will be on" but had not, in my hearing, mentioned "a three-line whip". She could, of course, have used this expression at lunch where I was not present. In my note yesterday I pointed out that the Brits had at first challenged your public references to Mrs. Thatcher's assurances regarding whips but then, after checking with "London" (presumably Mrs. Thatcher's office) reluctantly agreed to accept the fact that the "...whips will be on" assurance had indeed been given. External Affairs is worried that continued reference to "a three-line whip" may eventually force/allow a U.K. government spokesman to disclaim that this particular assurance was provided to you last June. In sum, therefore, to be on the safe side, you might in future use the "whips will be on" formula which has already received formal blessing from the Brits.

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b) The exchange in the House regarding your meeting with Mr. Pym on December 19.

While you steadfastly refused to be drawn into a discussion of the detail of your meeting with Mr. Pym (despite the fact that the Opposition obviously had received some form of report of that meeting), you did suggest, when pressed, that Mr. Pym had discussed the fact that provincial challenges in the courts would create problems in the U.K. Parliament.

The relevant excerpt from yesterday's Hansard follows:

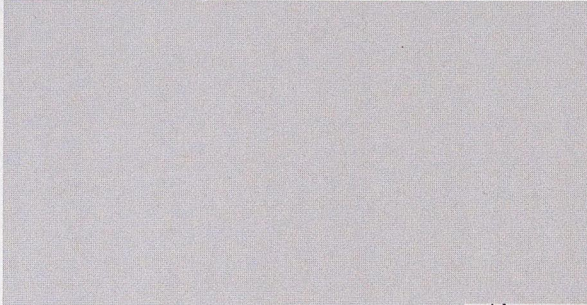
Elmer Mackay: "... I should like to ask the Prime Minister whether, ... Mr. Pym suggested that it would be helpful to have a reference to the highest court in Canada on the important constitutional questions, because Members of Parliament in the United Kingdom were a bit uneasy about adjudicating or passing judgement on Canadian law."

Prime Minister: "...I think it is probable that Mr. Pym said words to that effect. I took them to mean exactly what they convey, that it would be easier for the backbenchers in the United Kingdom to vote on this measure if it had the blessings of the courts. My answer to this line of argument has always been the same: it is not for the British front or backbenchers to judge whether what the Canadian government and Parliament is doing is right or not."

.../3

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Should the Opposition return to this
theme today and should you wish to be
drawn in to a discussion on the detail of
that meeting, you could also note that



s.13(1)

; the
only relevance of the above issues,
therefore, being their effect on timing
in the British House of Commons.

R.R.F.
R.R.F.