

JOPLING, D.P.

26th January, 1981

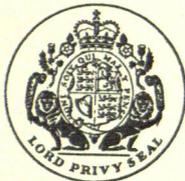
Canadian Constitution - Robin Maxwell-Hyslop.

I thought that you would be interested to see the enclosed correspondence.

Robin was extremely offensive to Ian, when we saw him last Wednesday night!

Ian Gow

The Rt. Hon. Michael Jopling, M.P.



Foreign and Commonwealth Office
London SW1

22 January 1981

Ian.

CANADIAN CONSTITUTION

I thought you might like a short line to follow up the discussion we had yesterday evening with Robin Maxwell-Hyslop.

I enclose copies of the correspondence which Peter Carrington has had recently with the Speaker and Robin Maxwell-Hyslop. From these, you will see that we in the FCO have not been going round telling people that the Canadian Constitutional Bill would be unamendable in Parliament.

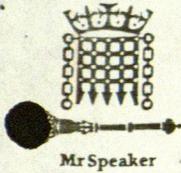
Robin Maxwell-Hyslop last night mentioned the 1949 Newfoundland Act (amending the British North America Acts). So far as we have been able to establish A P Herbert tabled amendments to the Bill at the Committee stage; these amendments were debated but were not accepted. This seems to be perfectly consistent with what we have been saying about amendability.*

I am sending a copy of this letter to Robin Maxwell-Hyslop.

*gms ✓
Ian*

Ian Gow Esq TD MP
10 Downing Street

** ie apart from Constitutional Commission,
amendability depends upon the title of the bill.
1.47.*



Mr Speaker

1. Nch
2. NAD for draft reply from S/S
by 2/1.

9 P.S.
P.S./Mr Ridley.
Mr Harding. P.S./L.S.
Mr Day. P.S./P.O.S.

AM 14/1

Dear Peter,

Speaker's House Westminister London SW1A 0AA

Amc 012/1

22 JAN 1981

13th January 1981

Pl copy to

Mr Foulard
Mr Gaudinier

Mr B
14/1

Mr Gray as
Pl speak

I am writing to you about the possibility of introducing into Parliament a Bill to transfer from Westminister to the Parliament of Canada the responsibility for tendering advice to the Queen on any Bills amending the provisions of the British North America Act 1867.

It has been suggested to me that the Canadian High Commission in London may be under the impression that such a Bill could not be amended during its passage through this Parliament, and that they may have informed their Government accordingly. I do not know whether this report is correct or not, but I ought to make it clear for the record that I can see no reason why this Bill should be treated differently from any other Bill, and that I should be open to serious criticism in the House if I were to refuse to accept orderly amendments or attempt to prohibit debate on them.

I am not approaching the High Commission direct, as I think that this is perhaps more a matter for you: but I should be grateful if you could make them aware of my views.

Louis Iwer,
George.

Speaker

The Rt Hon Lord Carrington KCMG MC PC
Secretary of State for Foreign and Commonwealth Affairs
Downing Street
London SW1A 2AL.



Foreign and Commonwealth Office

London SW1A 2AH

21 Jan.

Jean George

Many thanks for your letter of 13 January on the subject of the British North America Act.

We have not yet, of course, received any request from the Canadians with regard to patriation of the Constitution. As things stand, the request seems likely to be delayed in reaching us until the end of February or March at the earliest. Until the Canadian Parliament's current deliberations are completed, we cannot know precisely what the contents of the request will be.

Officials gave the Head of Western European Division of the Canadian Department of External Affairs briefing on this aspect of the legislative process on 15 December. It was then made plain to him, and to members of the Canadian High Commission, that a decision on whether any specific amendment should be accepted for debate would be for the Speaker and the House Authorities in the Commons.

We have nevertheless followed up your suggestion that we should contact the Canadian High Commission. They seem to be under no misapprehension about the parliamentary position and your jurisdiction as Speaker with regard to the amendability of Bills.

J. Carrington

(CARRINGTON)

Rt Hon George Thomas MP



Foreign and Commonwealth Office

London SW1A 2AH

21 January 1981

Dear Robin

As I told you on the telephone yesterday evening, I was indeed sorry not to have been able to reply personally to your letter of 11 December. I was away in Morocco by the time officials had considered your letter, and my Office thought it was better for you to have a fairly early reply from Nicholas Ridley rather than await my return on 17 January.

You suggested on the telephone that the FCO had been taking the line that the patriation Bill now before the Canadian Parliament would be unamendable in the UK Parliament. I think there must be some misunderstanding here. We have not spoken in this sense to the Canadian High Commission or anyone else. Indeed, officials from Home Departments as well as the FCO went to considerable trouble in December to explain to key officials from the Canadian Department of External Affairs and the Canadian High Commission the precise position with regard to amendability. It was then made clear to the Canadians that the normal procedure would apply and a decision on whether any specific amendment was or was not permissible would be for the Speaker and the House authorities in the Commons, in the light of the actual terms of the Bill. For that reason, and because as far as we know the Canadians themselves have not reached a final decision on the contents of a Bill to accompany any request, one could not predict precisely what the position would be as regards any particular amendment which might be proposed. The precise wording of the Canadian proposals will probably not be known to us until the end of February/March at the earliest.

/More

R Maxwell-Hyslop Esq MP



More specifically, you suggested that Ian Gilmour had given a similar impression when he replied to the adjournment debate before Christmas. You are probably referring to his statement that the British Parliament was "... bound to act in accordance with a proper request from the Canadian authorities and cannot refuse to do so." In this sentence Ian was dealing with the 'request and consent' convention, according to which the British Parliament does not legislate for Canada except at the request and consent of the Federal Parliament, and with the way in which the British Parliament had responded in the past to requests from the Federal Parliament, for amendment of the BNAA. He was not there concerned with the question of amendability under our parliamentary procedure, nor was he questioning Parliament's legislative freedom of action by suggesting that it was under any kind of a legal obligation to act in one way and one way only. He clarified this at the meeting of the All-Party group on Canada which took place on 14 January in the Commons, and made it clear that he had, in fact, no intention of going beyond Richard Luce's earlier remarks on precedent. Incidentally Professor Wade, who as you know generally takes a somewhat different view of these proposals to our own, thought that Ian's formulation of the problem was in fact correct because of the inclusion of the key word 'proper'.

I hope you will accept, therefore, that none of us had deliberately misled anybody about the parliamentary position with regard to the amendability of Bills. In the light of your comments and of those in the Speaker's

/recent



recent letter, however, we have spoken again to the Canadian High Commission, who seem to be under no misapprehension about the Parliamentary position.

J. P. Carrington

(CARRINGTON)