

APPENDIX

LETTERS FROM THE PRIME MINISTER TO THE
PREMIERS OF THE PROVINCES CONCERNING
"PATRIATION" OF THE BNA ACT WITH ATTACHMENTS

(Same letter sent to all other Premiers)

CONFIDENTIAL

Ottawa K1A 0A2

April 19, 1975

The Honourable William G. Davis, Q.C.,

Premier of Ontario,

Parliament Buildings,

Toronto, Ontario.

My dear Premier:

I was very pleased indeed at the reaction of yourself and our fellow First Ministers, during our dinner on April 9, to my proposal that we should proceed at an early date to the "patriation" of the British North America Act with the amending clause agreed on at Victoria. I am encouraged to believe that, after fifty years of effort, we may finally dispose of the last remnant of our one-time colonial status that is involved in our not being able to amend our own constitution in totality.

I am enclosing herewith a copy of Part IX of the Victoria Charter. As you know, there was no objection to it in 1971 by any government. It was regarded as the best solution that could be found to the difficult problem of making changes in future to those parts of our constitution that cannot now be amended under either Section 91(1) or Section 92(1) of the B.N.A. Act.

There are three Articles in Part IX—Articles 53, 54 and 55—which reproduce the substance of Sections 91(1) and 92(1). These were included at Victoria as a part of the "tidying up" of the constitution that would have been accomplished by the Charter which, of course, covered much more than simply the amending procedure. What I am proposing now, as I made clear, is that we should not, at this time, get into any questions of substance or form at all: we should simply "patriate" with an amending clause to cover those parts of the B.N.A. Act that are not now covered. This would mean that we would not now act on Articles 53, 54 and 55 since they involve amendment of Section 91 and 92 of the B.N.A. Act. We would move simply with regard to the other Articles of Part IX. We would leave for future action under the new amending procedure whatever changes of form or of substance we or future governments may want to accomplish in the Canadian constitution.

The procedure for "patriation" was discussed at the Working Session of the Constitutional Conference on February 8-9, 1971. It is outlined in pages 399 to 402 of the Secretary's Report on "The Constitutional Review, 1968-1971". As you will see, the procedure contemplates three main steps: approval by the legislatures of the provinces and by both Houses of Parliament; legislation by the British Parliament and, finally, the issue of a Proclamation by the Governor General. The legislation by the British Par-

liament would provide the legal validity for the Canadian proclamation and its provisions about the procedure of amendment. It would also provide that no future British law should have application to Canada and would make consequential repeal or amendment of British statutes affecting the Canadian constitution. The issuance of the proclamation by the Governor General would coincide with the effective date of the British legislation. Once all this had been done, we would have full and complete capacity to deal with our constitution in Canada and the British Parliament would no longer continue to have the powers it still legally has to deal with the law and constitution of Canada.

I was particularly taken with the suggestion at our dinner that it might be desirable to accomplish the "patriation" of the B.N.A. Act just before the Olympic Games in 1976. The Queen will be visiting Canada for the formal opening of the Games. It would be most appropriate if she could be here for some suitable ceremony in the National Capital, attended by all the First Ministers of Canada, to complete this historic process relating to our constitution. Another alternative would be to hold the ceremonies on July 1. To meet either of the suggested times, it would mean that the resolutions of the legislatures and the Joint Address of Parliament would all have to be passed at an early point in their respective sessions in 1976. The British Parliament would then have to legislate in its 1976 session, probably by May or June if that could be accomplished. This would leave time to plan the ceremony for the proclamation and whatever other formal arrangements seem appropriate. While all this would require prompt action, the substance of what is to be approved by the legislative bodies is brief and simple. I would hope that we could meet the schedule that would make the events of 1976 and the visit of the Queen especially historic.

I have asked Gordon Robertson to communicate with your office to arrange a convenient time to call on you on my behalf to discuss all aspects of what is proposed. He plans to have Frank Carter, the Deputy Secretary to the Cabinet for Federal-Provincial Relations, accompany him with the thought that they could use the occasion of the visit also to discuss with you, your Ministers or your officials any other questions pertaining to federal-provincial relations that you think could usefully be explored with them.

I was very glad to have had the occasion on April 9-10 to join with you and the other First Ministers in the discussion of the important problems that were before the Conference. It may well be, however, that the history books of the future will regard the discussion at our dinner on April 9 as a more memorable part of our meeting.

Sincerely,

P. E. Trudeau