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1039 Politics (1934)

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T. G. Norris Papers

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ORIGINAL ORDER

22-10

December 19th. 1934

Dr. Frank Patterson,
614 Birks Building,
718 Granville Street,
Vancouver, B. C.

PERSONAL

Dear Dr. Patterson,

Since coming back from Vancouver I have gone into the matter of local radio broadcasts and after discussing it with several of our people, I have come to the conclusion that a weekly broadcast would be desirable. I suggest that broadcasts commence as soon after the New Year as possible and carry on for, say, three months - possibly longer if at the end of three months it is considered desirable. Our plan is that the first broadcast should be a general talk dealing in a broad way with the record of the Bennett Government and the hope for the future under it, and being introductory to the broadcasts which would follow. Each of these would be confined to a particular subject or legislation under the Government as affecting a particular class of persons. Our main concern is of course with the farmers and one of our early broadcasts and possibly a later one would deal with the Bennett tariffs as affecting the fruit industry, - dumping duties etc,- the Natural Products Marketing Act

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and the Ottawa agreements as affecting the fruit industry. A later broadcast would deal with the Banking Legislation. A further one would deal with labour and unemployment and still again another would deal with the position of general business under the Bennett Government with particular reference to the Ottawa agreements.

Weddell, who is one of the other lawyers here, Bennett, a merchant, and I are prepared to give some of the broadcasts. We think that we will be able to have a farmer speak and possibly a labour man. We will be glad to submit the addresses to you before they are delivered but we would ask you to bear in mind that addresses which would be suitable in Vancouver would be quite unsuitable here and vice versa. I think that you understand the situation.

The Board of Trade gave Stirling a dinner here on Thursday last. It was very well attended and we had many of our own people from all over the riding. They are stressing the need of organization. I do not think that a Provincial or Dominion organizer would be of any great assistance. All that is needed is that somebody here shall take the initiative and get them going. It has been tentatively arranged that as soon as possible after the New Year Kirkpatrick and Harry Boyle from Penticton, Frank Hassard from Enderby, somebody from Grand Forks, myself and one or two others will get together and make the necessary arrangements to get going. Generally speaking the organiza-

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tion here must be dealt with on the basis of Provincial ridings. I do not think that there will be great difficulty in Grand Forks, Similkameen and South Okanagan but in North Okanagan a situation exists somewhat similar to that which I believe exists in New Westminster. I may say confidentially that the President of their North Okanagan Association is not generally popular and has endeavoured to keep everything under his own hand without reference to the executive. I believe that there have not been any meetings of the Executive for a long time. The fact that he had himself made Returning Officer at the time of the last Provincial Election has not assisted. I will be in Vernon within the next few days and will endeavour to pick up some information and will write you again thereafter.

The Prime Minister's "Control of Business" Speech at Montreal and the Herridge Speech at Ottawa will help a great deal up here as the result has been to definitely put McKenzie King and his Party in the reactionary class, more especially as our people are very anxious to keep the Natural Products Marketing Act and King has pronounced definitely against it as an undue interference with business.

You might be good enough to let me know what funds will be available for the radio braadcasts and whether in general you approve of the proposal as outlined in this letter. Some of our people are anxious to have an idea of the type of broadcast which was delivered in Vancouver. As

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you know, we did not get it here. If there are one or two of the addresses available perhaps you would be good enough to send them along. I presume that you will make some arrangements with the Trail Station as I think that the South end of the Yale riding can be handled more advantageously from that point. There is good reception from this station to the North as far as Kamloops and Ashcroft and to the South at least as far as Greenwood.

Please let me know whether there is anything further that you would like to have from me. As you requested, when I am next in Kamloops I will check up matters there and see who will be able to give us some assistance. Sjoquist is the most likely man. Black is right politically but is not very aggressive.

Yours faithfully,

TGN/L.

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December 17th. 1934

The Honourable Grote Stirling,
Minister of National Defence,
Ottawa.

PERSONAL AND CONFIDENTIAL

My dear Grote,

Upon reading over my letter to you of December 15th. it has occurred to me that some doubt may be raised in your mind because of the fact that Section 28 does not say that after the investigation the Judge found to be incapacitated or disabled shall be retired. It says that he shall cease to receive any further salary. It would seem that if the Judge ceases to receive any further salary he would be glad to resign and to take advantage of the superannuation provision contained in Clause 3 of Section 28 and in Section 23 so that there would be no difficulty on that score. However, I think that under the wording of Section 14 of the Act if a Judge ceases to receive his salary, another Judge may be appointed even although the first mentioned Judge has not actually retired. Section 14 reads as follows:

"14. The salaries of the judges of the Court of Appeal and of the Supreme Court of the province of British Columbia shall be as follows:-

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		Per Annum.
(a)	The Chief Justice of the Court of Appeal.....	$10,000.00
(b)	Four Justices of Appeal, each.	9,000.00
(c)	The Chief Justice of the Supreme Court.....	10,000.00
(d)	Five puisne judges of the Supreme Court, each.....	9,000.00

It does not provide that there shall be six judges only of the Supreme Court. It provides that the salaries of the Judges shall be for the Chief Justice and the five Judges. It would seem therefore that there is no reason why there should not be a further appointment providing there is no additional salary. The limitation in respect of salaries for a Chief Justice and five Judges does not of course affect the matter of superannuation.

I would also like to point out that Section 28 refers not only to Judges who are incapacitated but also to those who are disabled from the due execution of their offices. From the information we have it would seem that Judge Fisher is disabled from the due execution of his office although possibly not incapacitated.

A matter which should I think be considered is that Judge Fisher may be in a mental condition - his affliction being of a recurrent or progressive nature - to resign now but if there is any considerable delay and his disability becomes worse the matter might be such as to require the appointment of a commission of enquiry. It would seem therefore that if the facts are as I understand them to be, something should be done at this time by way

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of seeking his resignation and superannuating him, if the enquiry, which would become essential were he to become entirely incapable of resigning, is to be avoided.

The foregoing is of course subject to it being established that he is suffering from the brain affliction which has been indicated as I naturally sympathize with him in his illness and have only put forward my views of the matter on the basis of the information as to his condition which seems to be generally accepted as the truth.

Yours sincerely,

TGN/L.

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December 15th. 1934

The Honourable Grote Stirling,
Minister of National Defence,
Ottawa.

PERSONAL & CONFIDENTIAL

My dear Grote,

Since my conversation with you in Vancouver and again at Kelowna I have considered the position with regard to Judge Fisher and the general question with regard to possible vacancies on either the Supreme Court of the Court of Appeal Bench. As I told you, there is no particular seniority as between Court of Appeal and Supreme Court appointments. The Court of Appeal is a Court consisting of five Judges whose remuneration is the same as the remuneration of Supreme Court Judges. The Court sits as a Court en banc and therefore the single Judges have authority only as members of that Court. In the Supreme Court the judgment of each Judge has effect per se.

In the Court of Appeal the Chief Justice and at least one of the other Judges are due for superannuation on the grounds of ill-health and age but that they will resign in the near future is unlikely. You asked me in Vancouver whether I would prefer to go to

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the Supreme Court or the Court of Appeal. One ordinarily would prefer the Court of Appeal as the arguments before it are, in the main, arguments on the law and it is preferable from that point of view. I told you that I would like to be appointed to the first vacancy which occurred in either Court. I now confirm this.

With regard to Judge Fisher, the position is, as I understand it, that he has some brain affliction which has resulted in his having to remain in an institution in Seattle. It is doubtful whether he will recover. Even if he does recover from the present attack, I should think that the weakness is such as to unfit him for further service on the Bench. The strain of judicial work would be brain-wearying and in any event I do not imagine that it would be considered desirable to have a trial Judge sitting of whom it might be said that he had a mental weakness. I make these statements from the information I have - which would have to be confirmed - that the trouble is a brain trouble. Confirmation can doubtless be obtained-through Dr. Patterson who is discreet and should have sources of information not available to others.

I append relevant sections of the Judges Act which indicate the course which may be taken. Section 23 of the Act provides that any Judge of a Superior Court who becomes afflicted with a permanent infirmity disabling him from the due execution of his office, may resign and

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may be granted an annuity equal to two-thirds of the salary he received at the time of his resignation. The Section provides that this annuity shall not be granted to a Judge appointed after July 1919 unless the Governor-in-Council is of opinion that it is in the public interest that such Judge should resign his office. It seems to me that in view of Judge Fisher's condition the Governor-in-Council can properly be of the opinion that it is in the public interest that he should resign. From his own point of view I should think that he would welcome the opportunity but it will have to be intimated to him that if he does resign the Government will grant him the annuity. If he does not resign an inquiry should be had under Section 28 into his condition and he then may be superannuated with the annuity provided in Section 23. The inquiry would be made by one of the Judges mentioned in Section 28(2) and is not a very difficult or complicated matter, assuming that Fisher's condition is as stated.

One danger about the whole situation is that unless the Government takes some step it is possible that Judge Fisher may ask for leave of absence under Section 28, Clause 4 of the Act, such leave of absence to continue until after the next election in which case if there were a change in Government he might then resign to permit the appointment of a Liberal Judge. Another point is that he may neither ask for leave of absence

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nor resign but endeavour to carry on as at present and on his present salary as a Judge - although not sitting - until after the election. These of course would be political moves purely and simply. It seems to me that in view of this, the Government - having found out definitely as to his condition - would be justified in taking such steps as are necessary to ensure that he resigns now or within a reasonable time. No hardship is worked on him because he is apparently unfit for further service and will receive his annuity. The Government is justified because at the present time full salaries are being paid for six judges including the Chief Justice and only five are functioning. I should think that the Government would feel that it was proper that they should have the services of the six Judges provided for in the Act. I will refer later to the amount of work.

A question arises as to how the matter had best be handled. It seems to me that if the Government is willing to accept Fisher's resignation and grant the annuity as provided in Section 23 of the Judges Act, an intimation to this effect might be conveyed to Judge Fisher or to his relatives through Chief Justice Morrison - by way of Dr. Patterson or someone of that sort - and his resignation might be forthcoming. If he is not willing to resign, then it would seem that the reason

for such unwillingness is clear and the Government should consider taking steps under Section 28 of the Act. I suppose that it may be assumed that the Government would not be willing to carry Judge Fisher as a non-sitting Judge for the rest of his life, paying him his full salary.

It would seem to me that it would be well if this matter could be dealt with before the House sits. If it is left until after the House sits the matter may become further complicated. If Judge Fisher's affliction is a brain affliction then I should think that it is quite evident that he is disabled from the "due execution of his office", and that the infirmity is permanent as it would likely be recurrent under the strain of work. It seems to be assumed by the Judges and by others in Vancouver who are interested that Judge Fisher will not sit again and the only difficulty in the minds of his friends in Vancouver is as to what may be done for him. In the light of what I have said, perhaps you will take up the matter with the Prime Minister.

In view of the controversy which arose over the last appointment is it not desirable that there should be some early action if a long strung-out discussion is to be avoided? The situation has been thoroughly canvassed of late and if Fisher were to resign, perhaps it would not be unreasonable to expect that the acceptance of the resignation and the new appointment might be made simultan-

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eously. I do not know whether or not I mentioned to you in Vancouver that Pat Maitland said to me that my only hope of getting the coming appointment would be if steps were taken by you within twenty-four hours of the vacancy occurring. This may only be talk. I pass it on for what it is worth.

You have asked me to get you some information as to the amount of work for the Judges. The Judges' Act provides that there shall be six Judges including the Chief Justice. One of the Judges -- Judge Robertson-- sits in Victoria permanently so that he must be counted out of the general picture. This leaves in Vancouver Chief Justice Morrison, Judge Murphy, Judge D.A. McDonald and Judge Lucas. With Judge Fisher off the Bench there is no allowance made for the illness of one of the other Judges. Judge Murphy is I think old enough for superannuation and is not able to stand the strain of the work as he used to. In particular, he finds the travelling around on assize work trying. In Vancouver there is the daily chamber work to be done. The Judge who takes this cannot take trials as chambers laststhe greater part of the morning. Chambers are held, I believe, in New Westminster at least once a week necessitating the attendance of a Judge there. There are trials there as well - although of course not daily. The number of trials in Vancouver varies but in the past it has been found that

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there were not any too many Judges in Vancouver. Just at the present moment I should think that because of the time of year they are not exceptionally busy. At Assize time twice a year -- in the Spring and in the Fall -- one Judge is occupied steadily for perhaps from a month to possibly two months on criminal work in Vancouver. About the same time Assizes are held in Victoria, Prince Rupert, Nelson, Vernon, Kamloops, Revelstoke and I think sometimes Prince George. The Judge who takes the Kamloops Assizes attends at Vernon and Revelstoke as well. The Judge who takes the Prince Rupert Assizes takes the Prince George work. The country assizes usually last for a week in each town - often much longer. The Victoria Assizes last from two weeks to over a month depending on the number of cases. While these Assizes are taking place there is the same amount of civil work in Vancouver and Victoria. There must be a chamber Judge in each place and Judges to take the civil trials. The result has been in the past that the Judges coming up from Vancouver have rushed the country Assizes out of all reason, usually sitting at night to get the work done so that they might get back to Vancouver to attend to their civil work. This has been the course when all the Judges were available. With one not sitting you can see that there is a heavy burden of work thrown on the others. I will endeavour to get you more particulars on this matter and write you later but I think that what

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I have said will be sufficient to give you some idea of the amount of work.

I hope that I have covered the matter fully. I will let you know if I am able to obtain any more definite information.

Yours sincerely,

TGN/L.

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November 26th, 1934

Honourable Grote Stirling,
Minister of National Defence,
Ottawa

PERSONAL & CONFIDENTIAL

My dear Grote,

In the course of a letter about business matters received by me from Pat Maitland he adds the following statement:

> "It looks to me as if you are in rather a favorable position for the future. Poor F. is finished and will not return to the Bench, if my information is correct. I have written Stirling again in reference to the Vancouver appointment and on behalf of my old friend Burns and pointed out to him the new situation, which has arisen, and the fact that it will be considered an Interior appointment."

The doughty Pat is as breezy and ingenious as ever. He is attempting to use that which should be an argument in my favour in respect of the present appointment, that is to say, the absence of Fisher from the Bench as an argument against me. I have seen him in action often enough to recognize the technique. What he says in effect is that the present appointment should go to Burns and that when Fisher is finally declared unfit to sit (if he ever is declared unfit

to sit during the life of the present Government) that it will then be time enough to consider whether I should be appointed. He suggests that judicial appointments should ~~nominally~~ normally be made from Vancouver or the Coast but that one might be made from the Interior if Fisher retires. His views are simply the expression of the old Vancouver view that the City of Vancouver is the Province of British Columbia. In the past insofar as the matter of appointments of all sorts is concerned that view has always been given effect to - in any event Vancouver has certainly never suffered.

However, the situation is not exactly as he points out. With regard to judicial appointments in the Superior Courts the Coast cities have been and are still well represented. In the Court of Appeal there are five judges as follows:-

Chief Justice J.A. Macdonald appointed from Vancouver
Mr. Justice Martin appointed from Victoria
Mr. Justice McPhillips appointed from Victoria (A Roman Catholic and will in time be replaced by a Roman Catholic)
Mr. Justice M.A. McDonald appointed from Vancouver
Mr. Justice McQuarrie appointed from New Westminster

In the Supreme Court the following is the list:-

Chief Justice Aulay Morrison appointed from New Westminster
Mr. Justice Murphy appointed from Ashcroft (A Roman Catholic and will in time be replaced by a Roman Catholic)
Mr. Justice D.A. McDonald appointed from Vancouver
Mr. Justice H.B. Robertson, practising in Vancouver for about ten years and appointed from Vancouver but to sit in Victoria as he was identified with Victoria prior to about 1924.

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Even if by any stretch of argument the Mr. Justice W. A. McDonald's appointment can be said to have been an appointment as representing Vancouver, under present conditions it is not unreasonable to think in view of the foregoing representation from the Coast and in view of Fisher's absence that the appointment now should be made from the Interior. The Interior has developed greatly since W.A's appointment. In any event the present Government has made no appointment from the Interior of the Province.

With regard to Mr. Justice W.A. McDonald, our Supreme Court Act contains a provision that one of our Supreme Court Judges must reside at Nelson, Nelson at the time of the enactment being apparently the centre of business in the Interior. The rule was really never followed insofar as residence is concerned. Mr. Justice W. A. McDonald was from the time he left Manitoba closely identified with the Interior and was practising in Nelson up to within a year or so of his appointment to the Bench. His appointment was always considered as an appointment from the Interior. He was really identified with Nelson and not with Vancouver. You will remember that when I wrote to Senator Taylor about the matter of this appointment he replied along that line. I do not know whether I gave you a copy of his reply but in any event I enclose

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a copy now. You will note what he says about W.A. When Dr. King was the Minister from British Columbia it was thought that Dugald Donaghy or Manson would be appointed to the Bench but Fisher, who at that time was practising in Fernie (in Dr. King's riding) was appointed. As W.A. Macdonald has retired and Fisher is not sitting there is a double reason for appointing an Interior man - if locality is of any importance.

The Minister of Justice stated to you before Fisher's illness that he did not think that he would appoint any more judges in British Columbia. The condition with regard to the Courts was really due to the depression and to a temporary lull in work. Now that Fisher is ill it would seem that an appointment must be made. If W.A. MacDonald's place is filled it may be a long time before Fisher is declared unfit to sit, as it may be felt that there is no urgency in view of the fact that one appointment has been made.

With regard to the Court of Appeal of this Province two of the Judges are really physically unfit to sit but there is no indication that they will retire and I should think that it is likely that they will remain at their work for some time yet.

The real point of the present situation is that while Fisher may not return to the Bench, his place may not be filled and that in view of the stand which the Minister

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of Justice has taken there is only one vacancy at this time. Further, if the vacancy does occur in the future, one does not know what other aspirants there may be from the Coast and what claims may then be put forward on their behalf.

When I mentioned to you that Judge D. A. McDonald had said that Burns was out of the running you asked me the reasons for his statement. I did not know then but the story in Vancouver is that Burns was not appointed on the last occasion because of the intervention of Chief Justice Morrison. He and the Chief Justice are not on speaking terms. Burns has done little or no Court work for some years on this account. The Chief Justice would, of course, be the man to whom the new appointee would be primarily responsible in respect of his work.

I hope that you will not think that I have dealt with this matter at too great length but it seemed to me that in view of what Maitland apparently had written I should put my views before you. I hope that, while locality may be of some importance and is in my favour, you will feel justified in doing your best on my behalf on the more vital grounds.

Kind regards,

Yours sincerely,

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My File No. 913B

April 25th. 1934

Grote Stirling Esq. M.P.,
House of Commons,
OTTAWA

My dear Grote,

Please accept my thanks for your letter of April 18th. We saw the short report of your speech in the Vancouver Province. Rose has stated that he intends to publish it in full as soon as Hansard arrives. Everyone is keenly interested in it. Today's paper - Bishop - says that the Government now realizes that the Bill was badly drafted. I would be interested to know whether there are likely to be radical changes made in its form. It is difficult to understand Sloan's statement that the Province could not pass pooling provisions in the Provincial Bill. Provision for pooling is the one thing that the Provincial Legislature certainly could deal with, it being a matter of property and civil rights. In making his statement, I think that Sloan was endeavouring to leave a way open so that he might say if challenged that what he meant was that the Provincial Legislation contained no provision for pooling and that as the

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Legislature had risen it was now too late to provide for pooling either in the Provincial Bill or by order-in-council, but at the same time he was trying to leave the impression that in this respect the Dominion Bill was defective and that the power was a power which should be exercised only by the Dominion.

We were glad to know that you got a good hearing on the Bill.

I was glad to hear that the Weeks' Appeal was coming on. By now the hearing will be over. I suppose a decision will be reserved

Thanks for the mention of your discussion with the Minister of Justice as to Supreme Court vacancies.

It is quite hot here now -- almost like mid-summer. Mission Creek is in flood now -- about three weeks early and there is the usual scramble on the part of the farmers in the Benvoulin District to do and persuade the Government to do a certain amount of construction work.

Since dictating the foregoing I have just this moment received your wire to the effect that the Weeks Appeal was dismissed. It was good of you to wire me and if I may say so, I am extremely appreciative of the close attention you have given this matter from the start, and for the way you have helped to get it along. I am quite sure that without your assistance Weeks would

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have got no where and without the knowledge that you were taking an interest in the matter he would have lost heart long ago and chucked the whole thing up. I know that he also appreciates what you have done and will be most grateful.

Kind regards,

Yours sincerely,

TGN/L.

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