

CONFIDENTIAL

July 2, 1980.

MEMORANDUM FOR THE HONOURABLE JEAN CHRETIEN

Decisions required out of today's  
Priorities and Planning Cabinet  
Committee meeting

There are only some of the twelve items on the federal-provincial negotiating list on which we need direction. These are:

- Resource Ownership and Inter-provincial Trade,
- Communications,
- Fisheries,
- Offshore Resources and
- Powers over the Economy.

Several of the other items, including Family Law, Equalization, Charter of Rights, Patriation and Principles, are such that either no direction is needed because agreement on these issues has virtually been achieved (e.g. Family Law and Equalization) or because we have already offered to set up a federal-provincial drafting committee and Cabinet direction is not needed until this Committee has completed its work by the end of July (e.g. Principles, Charter of Rights and an amending formula). The remaining two items, Supreme Court and Senate, are items on which little agreement is going to be achieved over the summer and hence no direction is now needed from your Cabinet colleagues.

In addition, the federal government's position on these two institutional items will probably depend on the ultimate resolution of the powers items in that we will probably be prepared to give greater provincial involvement in national government institutions if we retain most of our existing economic powers, whereas if we devolve economic powers to the provinces there will be less need for us to give provincial governments a role in our institutions.

I therefore suggest that you try as much as you can to restrict discussion at the meeting to the five items mentioned above. In what follows, I have given you brief notes on each of these items:

Resource Ownership and Interprovincial Trade

Ministers need to decide on which of the three alternatives outlined on page 3 of the memorandum they wish to adopt. The arguments in favour of each alternative are given on page 4. Either alternative 2 or alternative 3 is acceptable. While alternative 3 has some tactical negotiating advantages, they are not enormously significant and I suspect that if Ministers choose alternative 2 it will not completely disrupt our negotiation.

The questions on the Declaratory Power raised on page 5 of this part of the memorandum need not be discussed at this meeting.

Communications

I support the recommended federal position on page 3. However, Mr. Juneau will oppose giving the provinces jurisdiction over closed-circuit television, giving the provinces any involvement in broadcasting and possibly giving provinces jurisdiction over the intra-provincial aspects of major telecommunications carriers in Quebec, Ontario, British Columbia and Newfoundland.

You should note that with regard to broadcasting, the recommended federal position only calls for establishing an interdepartmental group to develop a federal proposal which may or may not be introduced into

the negotiations before September. If we are to be at all serious about negotiations on broadcasting, this interdepartmental group must be established, even if we have to do so over the objections of the Department of Communications.

I know you agree that the intra-provincial aspects of major telecommunications carriers (e.g. Bell Canada and British Columbia Telephone Company) should be transferred to the provinces. I would also be prepared to give the provinces jurisdiction over interprovincial rates (retaining only international rates for the federal government) but to do so would be inconsistent with our position on Powers over the Economy in which we argue that there must be federal paramountcy over all aspects of interprovincial trade. Similarly, closed-circuit television which is even more locally oriented than cable television, should be given to the provinces since we have already agreed to give them cable television. I hope it will be possible for you to resist the very status quo position for which the Department of Communications will argue.

#### Fisheries

The proposed federal approach outlined on page 2 is a good one. It also represents a significant change in position for the department from the position it has previously taken in that, until now, it has categorically rejected any suggestion that there might be mandatory consultations between federal and provincial governments on any policy issues. In view of this compromise which departmental officials have already indicated they are willing to make, I think we should support this position. Note, however, that as stated in the bottom paragraph on page 2, Newfoundland, and probably Quebec and Alberta, will strongly oppose this position because they want, at the very least, concurrent jurisdiction.

The questions for Ministers outlined on page 3 of the document need not be discussed today.

#### Offshore Resources

The key part of this paper is from the middle of page 2 to the middle of page 4.

Alternative 1, favoured by EMR, should be rejected if at all possible. It amounts to a withdrawing of the proposal made in February, 1979 to examine the feasibility of concurrent jurisdiction. Surely we are at least prepared to look at this issue in consultation with the provinces.

I wanted to have a third alternative added to the paper, but it was so strongly opposed by EMR that I did not put it in at this time. This third alternative would have the federal government grant jurisdiction over the offshore to the provinces (which would be an extremely significant political act in all of Atlantic Canada, but particularly in Nova Scotia and Newfoundland) and rely instead on using the same federal powers over onshore resources which we intend to retain under the item Resource Ownership and Interprovincial Trade to ensure that the national interest in offshore resources is protected. I know that several Ministers, including the Prime Minister, are on record as not wanting to give jurisdiction over the offshore to the provinces. In view of the significant gains which would be made in the public's attitude towards the flexibility of the federal government, and because most Canadians believe it is "right" for Canada's poorest province to get the benefits of offshore oil, you may want to ask Ministers if they want to consider this either as an alternative now or at least at some future point in these negotiations.

Assuming such an alternative is not considered, then alternative 2 on page 3 is the best choice.

Ministers do not need to discuss the questions raised on the bottom of page 4 and on page 5.

Powers over the Economy

The position as outlined in the document is clear. Essentially we are seeking Ministerial support for two things:

- including in the Charter of Rights mobility rights of all citizens to acquire property and work in any province;

- placing restrictions upon the ability of provincial governments to use their legislative and executive powers to impede economic mobility by setting up barriers to inter-provincial trade by revising and expanding section 121 of the B.N.A. Act. (Section 121 says that "all articles of the growth, produce or manufacture of any one of the provinces shall be admitted free into each of the other provinces".) We are proposing to try to get this extended so that in addition to referring to goods it also refers to capital and services. Thus a broadened section 121 would deal with impediments to economic mobility which arise from discrimination on the basis of the province of residence, location, origin, or destination of subjects or objects of laws, regulations and practices of provincial governments.

Parliamentary action

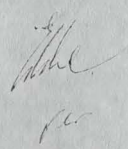
Ministers need to decide two points:

1. Is there going to be a one or two day debate on our draft Statement of Principles before Parliament adjourns (now tentatively scheduled for July 18)?
2. If so, when should the debate take place?

There are significant advantages to having a debate in Parliament on the Statement of Principles. First, it would help to keep the constitutional issue before the public during the month of July. This, I think, works to the advantage of the federal government.

Second, it would make it very difficult for the Leader of the Opposition and the Leader of the NDP to continue to avoid stating where they stand on the fundamental question raised in the Statement of Principles. In particular, it would be extremely useful to know where

they stand on the question of interprovincial trade in resources before we get into a "war" with Alberta, as we inevitably will in late July. Third, knowing where the Leaders and their Parties stand at this time, will help us to design our strategy for Parliamentary debate in the fall. If we can force them out into the open now, it would be very helpful (it would also be interesting, to see if Mr. Clark is going to side with Mr. Lougheed or Mr. Davis on the basic fundamentals of what kind of constitutional reform is needed in Canada).



Michael J.L. Kirby