

CONFIDENTIAL

October 20, 1980

MEMORANDUM FOR THE PRIME MINISTER

Agreement with N.D.P. on Amendment to
Patriation Resolution

Attached is a copy of the letter that it is proposed Mr. Broadbent might send you. It has been drafted by his office taking into account some comments which we made. It seems generally acceptable. (We're not responsible for the poor English.)

Also attached are two letters which you might send in reply. The first expresses your pleasure at receiving Mr. Broadbent's support and confirms your willingness to support an amendment along the lines he requests. The second letter sends a draft of the precise text which we think has been agreed upon and asks for Mr. Broadbent's confirmation of that text. I think this second letter is advisable to avoid the agreement becoming "unstuck" at a later date through argument over details. This particularly might occur if Premier Blakeney should persuade Mr. Broadbent to abandon or delay his support for the resolution. The text has been forwarded under cover of a second letter so that we would not be seen publicly as drafting Mr. Broadbent's amendment for him. The first letter will be made public, the second will not. If you approve of the letters, they could be dated tomorrow and the exchange of correspondence with Mr. Broadbent made public tomorrow afternoon.

With regard to your questions concerning subsection (2) of the draft, that subsection confirms existing provincial jurisdiction over resources. It has

October 21, 1980

been part of the proposed amendment since negotiations with the provinces in the fall of 1978 and has throughout the summer's negotiations been part of the federal position. It was part of the "offer" made by you to the provinces at the September First Ministers' Conference. Also, Mr. Broadbent's office understands that it was part of the arrangement discussed and agreed to by you and Mr. Broadbent. While Mr. Broadbent's speech in the House of Commons did not mention confirmation of resource jurisdiction, his staff advises that this was firstly an oversight and secondly that confirmation of existing provincial legislative jurisdiction has been implicit throughout all of Mr. Broadbent's remarks.

of the Opposition.

You will recall that at the meeting on October 1st, I indicated to you that the New Democratic Party, as a matter of policy, strongly supports inclusion in the Canadian Constitution of the entrenchment of certain fundamental rights, the principle of a recognition of the central duality of Canadian history by enabling minorities of the two official languages in any province to have access to education in their language where numbers make this feasible. In addition, I express my view that as undesirable as it is from some perspectives, it is important at this period in our history, to break the deadlock which has existed for many years in the constitutional change process and I therefore agreed that action of the kind taken by Parliament was acceptable. In expressing this, I made the point that it was very desirable, indeed essential, to ensure that action by Parliament be of the kind that would ensure the support of as many parties in the House of Commons and as many provincial governments as is possible. In

Michael J.L. Kirby

D r a f t

October ~~21~~²⁰, 1980

Dear Prime Minister:

I am writing subsequent to the introduction in the House of Commons of the "Proposed Resolution for a Joint Address to Her Majesty the Queen respecting the Constitution of Canada" and to the meeting I had with you at your request on the day that you also met with the Leader of the Opposition.

You will recall that at the meeting on October 1st, I indicated to you that the New Democratic Party, as a matter of policy, strongly supports inclusion in a Canadian Constitution of the entrenchment of certain fundamental rights, the principle of equalization and a recognition of the central duality of Canadian history by enabling minorities of the two Official Languages in any province to have access to education in their language where numbers make this feasible. In addition, I express my view that as undesirable as it is from some perspectives, it is important at this period in our history, to break the deadlock which has occurred for many years in the constitutional change process and I therefore agreed that action of the right kind by Parliament was acceptable. In asserting this, I made the point that it was very desirable, indeed essential, to ensure that action by Parliament be of the kind that would obtain the support of as many parties in the House of Commons and as many provincial governments as is possible. In

addition, the approach to constitutional change initiated by Parliamentary action should be of the kind that would obtain the maximum support among all peoples and regions in Canada.

For the above reasons, I stressed the necessity of including in any proposal to Parliament, in addition to the above desirable elements, the confirmation of the provinces' right to manage and control their resources and more specifically of their right to levy indirect taxes in this sector and to share a concurrent power with federal paramountcy with respect to interprovincial trade in resources. I did so because I believe it is profoundly important that a package of proposals presented for constitutional change be such as to obtain the personal support of as many people in Canada as is possible.

Many Canadians in recent years have expressed apprehension about their provincial governments' lack of control of their provincial resources. It is certainly true in Atlantic Canada, in Québec and in Western Canada. It is for this reason that I strongly believe that the constitutional recognition of the provinces' right to control their resources must be established at this time to obtain the kind of regional support among Canadians that is necessary for Parliamentary action to be seen as desirable at this time.

When the proposed resolution on the constitution was publicly released on October 2nd, I indicated that, in principle, the elements contained within it reflected New Democratic Party policy and indeed, beyond that, were such as could be regarded as civilized by any Canadian whatever his or her political party affiliation may be. However, I noted with great concern, the absence of any reference to provincial control over resources was fundamental.

Subsequently, in the debate in the House of Commons on the proposed resolution, I indicated that upon further reading of the proposed resolution, my Colleagues and I had a number of other concerns but that the absence of any reference to provincial control over resources was fundamental.

Following a thorough discussion with my caucus Colleagues, I am writing to you today to stress our support of the major elements in the proposed resolution and indicate that we intend to suggest amendments when the proposed resolution reaches the Committee stage on a number of important matters, including the amending formula, women's rights and native rights, in the anticipation that your public statements indicate the government will respond constructively to positive suggestions.

However, I want to stress that we have decided at this historic moment, because of the good aspects of the proposed Resolution, that we will give it our support on the condition that the government will accept an amendment moved by myself or one of my Colleagues confirming the provinces' right to manage and control their natural resources, specifying their right to levy indirect taxes in a non-discriminatory manner in relation to those resources and providing to them a concurrent power with respect to interprovincial trade in those resources to be exercised in a non-discriminatory manner and subject to federal paramountcy. Since you have made public reference to the fact that you will consider responding in an affirmative manner to my proposal, I hope that your response will be favourable.

I look forward to an early reply.

Yours sincerely,

(Mr. Broadbent)

Elliott
The Right Honourable Pierre ^{Elliott} Trudeau
Prime Minister of Canada
House of Commons,
O t t a w a.



CANADA

PRIME MINISTER · PREMIER MINISTRE

Ottawa K1A 0A2
October 21, 1980

Dear Mr. Broadbent:

I have received your letter of October 20 in which you express your support and that of the New Democratic Party in the House of Commons for the "Proposed Resolution for a Joint Address to Her Majesty the Queen respecting the Constitution of Canada".

I am very pleased that you recognize the need at this time for action by Parliament to patriate the Constitution, to entrench certain fundamental rights, to entrench the principle of equalization, and to enshrine minority language education rights. I agree with you that it is desirable that the constitutional package have the broadest possible support in Parliament and in the country.

You stress in your letter the importance you attach to the confirmation of the right of the provinces to manage and control

Mr. Edward Broadbent, M.P.,
Leader of the
New Democratic Party,
House of Commons,
O t t a w a.

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their resources, to levy indirect taxation on resources, and to share a concurrent power with federal paramountcy with respect to inter-provincial trade in resources.

In fact, all of these points represent the policy of my government. Indeed they were put forward by the Minister of Justice in his opening statement last July in Montreal at the first meeting of the Continuing Committee of Ministers on the Constitution. I repeated them in September at the First Ministers Conference.

I can confirm to you that the policy of the government has not changed. Therefore, I would be prepared to accept an amendment which you or one of your Colleagues may propose in Committee which would:

- 1) confirm the jurisdiction of the provinces with respect to exploration, development, conservation and management of non-renewable natural resources and forestry resources in the province including the making of laws in relation to the primary production from such resources;
- 2) give the provinces concurrent jurisdiction in interprovincial trade in non-renewable resources subject to full federal paramountcy and subject to a clause which would prohibit discrimination in prices or in supplies of resources exported from the province to another part of Canada;

3.

- 3) give the provinces the right to levy indirect taxation in non-renewable resources as long as such taxation does not discriminate between the province and other parts of Canada.

Yours sincerely,

Yours sincerely,

David Broadbent, M.P.,
Leader of the
New Democratic Party,
House of Commons,
Ottawa.



CANADA

PRIME MINISTER · PREMIER MINISTRE

Ottawa K1A 0A2

Dear Mr. Broadbent:

This letter is further to my earlier one of today. In it, I set out in general terms the type of amendment to the Proposed Resolution on the Constitution which would be acceptable to the government.

I am enclosing here a draft amendment which has been worked out between my officials and your staff. The draft is one which I am prepared to accept. I would appreciate receiving early confirmation that it is indeed what you will propose in Committee.

Yours sincerely,

Mr. Edward Broadbent, M.P.,
Leader of the
New Democratic Party,
House of Commons,
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