

S E C R E T

October 26, 1981.

MEMORANDUM FOR MICHAEL KIRBY

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I am enclosing a table which sets out the positions of each province and possible federal responses. The table is useful only in terms of preparing our own position. It does not deal with the principal issue for the Eight which is the legitimacy of unilateral action.

In a sense, if there is no will to agree on the part of the provinces, the only utility in making offers is to show a genuine effort in order to bolster our public position. If there is a will to agree on the part of some of the provinces, a genuine effort may bring a number of provinces on side.

The crucial issue in one sense is the Charter of Rights. There is no doubt that a Charter which applies only at the Federal level and which has an opting-in provision would bring if not unanimity, at least a very large consensus. However such a concession is equivalent to giving up everything the government has stood for in the last year and a half. The Prime Minister would have to be sure of the support of his Cabinet and caucus and Party before making such a concession.

The problem with making concessions on the Charter is that the substance is very good. Once some concessions are made the whole thing can begin to unravel. That is why I would be very reluctant to having some sections subject to opting-in. The obvious question would be that if some parts are made subject to opting-in, why not the whole thing. And to this there is no satisfactory answer.

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My own view is that if a few provinces really want to come on side, there is no need to make concessions on the Charter. A real willingness on their part to be part of a consensus can be met by considerable flexibility on the amending formula. And if there is no real willingness to be part of a consensus, minor concessions on the Charter will be of no use.

Saskatchewan as always is a special case and will probably once again raise the issue of some jurisdiction over aspects of international trade. I remain as convinced today as I was last January of the importance of having the support of Saskatchewan. If this means bending over backwards, I would not be adverse to so doing. What is very important is that we do not put ourselves in a position which a few years from now will appear in hindsight to have been overly rigid as was the case after Victoria in 1971.

-- In addition to the table which I have prepared, I am enclosing

- 1) Premier Davis' statement of September 1980 in which at page 2 he deals with the language of criminal trials;
- 2) section 13 of the Victoria Charter.

Eddie Goldenberg

SECRET

PROVINCE	ISSUE	POSSIBLE FEDERAL RESPONSE
<u>Newfoundland</u>	Terms of Union Has previously (1979) supported principle of a Charter.	Can be resolved in in <u>any</u> amending formula.
<u>Prince Edward Island</u>	No particular issue Has previously (1979) supported principle of a Charter.	---
<u>Nova Scotia</u>	Wants an administrative agreement on the offshore Has previously (1979) supported principle of a Charter.	Can give positive signals this week.
<u>Quebec</u>	Opposes any change to powers of National Assembly especially on language and mobility	Only opting-in to the Charter could resolve Quebec's opposition.
<u>Ontario</u>	- Opposes being bound by Section 133 - In 1980 supported constitutional guarantee for criminal trials in both languages across the country	Could offer #13 of Victoria Charter on language of statutes.
<u>Manitoba</u>	Fundamental opposition to Charter	No possible deal other than opting-in.
<u>Saskatchewan</u>	- Opposes deadlock breaking mechanism - Opposes amending formula with second-class provinces	- Could offer Federal position of last January. - Could offer Toronto Consensus with special protection for Quebec on matters of language.

	<ul style="list-style-type: none"><li>- Wants more on international trade in resources</li><li>- Opposes perpetual Senate veto</li><li>- Opposes enshrining of equality rights</li><li>- Has previously (1979) supported principle of a Charter.</li></ul>	<ul style="list-style-type: none"><li>- Could offer Federal position of last January.</li><li>- Could only reinstate Section 44 if it were the key to a very wide consensus.</li><li>- Section 15 could be made subject to opting-in if the rest of the Charter (language and mobility rights) were uniform across the country.</li></ul>
<u>Alberta</u>	<ul style="list-style-type: none"><li>- Concerned about a resource grab.</li><li>- Opposes a Charter although Lougheed supported the concept in 1971.</li><li>- Opposes an amending formula which gives a perpetual veto to Ontario.</li></ul>	<ul style="list-style-type: none"><li>- Could be met by proposing Toronto Consensus.</li><li>- Only opting-in could secure Alberta's support.</li><li>- Could be resolved by proposing the Toronto Consensus.</li></ul>
<u>British Columbia</u>	<ul style="list-style-type: none"><li>- Opposes an amending formula which gives a perpetual veto to Ontario.</li><li>- Has supported principle of a Charter in the past (1979).</li></ul>	<ul style="list-style-type: none"><li>- Could be resolved by proposing the Toronto Consensus.</li></ul>