



TO
À

Ian Stewart

ORIG.
Gérard Veilleux

FROM
DE

Gérard Veilleux

SECURITY - CLASSIFICATION - DE SÉCURITÉ
CONFIDENTIAL
OUR FILE / NOTRE RÉFÉRENCE
YOUR FILE / VOTRE RÉFÉRENCE
DATE December 11, 1980

SUBJECT / OBJET Enshrining Equalization in the Constitution

1. I understand that at last Tuesday's Priorities and Planning meeting, there was significant support for the "Manitoba-Saskatchewan" proposal - as opposed to the "Quebec" proposal - as a means of expressing the federal government's commitment to the principle of equalization.
2. Throughout this summer's constitutional negotiations, and particularly at the September conference, my advice to the government, and indeed the position that was adopted, was that any of the formulations under consideration would be acceptable, i.e. the February 1979 "best efforts draft", the B.C. proposal (now incorporated in the resolution), the Quebec proposal and the Manitoba-Saskatchewan proposal. The negotiating stance of the federal government was two fold: to foster a consensus on one of the drafts, and to lean in the direction of the most flexible formulation.
3. I do believe however that the Quebec draft is preferable because it would provide the federal government with more flexibility. Such flexibility is more appropriate for a constitutional text and it would be helpful in connection with negotiations on the fiscal arrangements. Indeed, this is the advice you gave to the Minister in a September 22, 1980 memorandum (copy attached). In it, we argued that the B.C. draft was the best approach, and that the Quebec draft would be the preferred fall-back.
4. I would hope that the government realizes the basic difference between the Quebec and the Manitoba-Saskatchewan drafts. The Quebec draft reads as follows:

"Parliament and the Government of Canada are further committed to the principle of making equalization payments to provincial governments that are unable to provide essential public services of reasonable quality without imposing an undue burden of taxation."

The Manitoba-Saskatchewan draft reads as follows:

"Parliament and the Government of Canada are further committed to the principle of making equalization payments to ensure that provincial governments have sufficient revenues to provide reasonably comparable levels of public services at reasonably comparable levels of taxation."

The crucial difference is that the Quebec language, with the words "provincial governments that are unable to ...", simply determines which governments ought to receive equalization, whereas the Manitoba-Saskatchewan wording, "... to ensure that provincial governments ...", actually specifies what the result of equalization should be.

5. It is apparent that, after the B.C. draft, which does not mention equalization, the greatest flexibility is provided by the Quebec draft.
6. It should also be borne in mind, given the current energy negotiations, that the Manitoba-Saskatchewan version was not at all acceptable to Alberta, precisely because of the key difference noted in paragraph 4 above. Of course, B.C. did not find this version acceptable. On the other hand, nine provinces found the Quebec draft acceptable, and B.C. found it more acceptable than the Manitoba-Saskatchewan draft.
7. For all the above reasons, federal officials, including myself, talked to New Brunswick officials to suggest that Premier Hatfield put forward the Quebec draft in his testimony in front of the joint committee. He has now done so. To adopt the Manitoba-Saskatchewan draft would put one of the federal government's few allies on this front in an embarrassing situation and would waste an opportunity to demonstrate our flexibility.

8. If you agree that the issue is worth reconsidering, you may wish to send the attached briefing note to the Minister, for his use in Cabinet this morning.

- Attachments:
1. Copy of September 22, 1980 Briefing note to the Minister.
 2. Memo to the Minister for your approval.



TO / À

The Minister

FROM / DE

Ian A. Stewart

SUBJECT / OBJET: CONSTITUTION

SECURITY - CLASSIFICATION - DE SÉCURITÉ
<u>SECRET</u>
OUR FILE / NOTRE RÉFÉRENCE
YOUR FILE / VOTRE RÉFÉRENCE
DATE
September 22, 1980.

I understand that you will be consulted with Mr. Pinard at a meeting tomorrow morning on House tactics relating to the Joint Address on the Constitution.

Since equalization may be part of the Joint Address I would recommend that you urge that either the Quebec draft or even more preferably the British Columbia draft be retained. In the course of this summer's constitutional discussion, three alternative drafts to entrench the principle of equalization were discussed. These are attached. The so-called Manitoba and Saskatchewan drafts (the middle on the attached table) is the one that is by far the most specific particularly in the wording of section 96(2). Indeed it is for this reason that British Columbia has remained opposed to this wording arguing that it specified only one of several possible ways of paying equalization. British Columbia was also opposed to the Quebec draft (first column on the attached table) for similar reasons. It therefore suggested a rewording of Section 96(2) (see column 3 on attached table) which talks about "taking such measures as are appropriate ...".

As noted above we would urge that the British Columbia proposal be retained for the following reasons:

- a) It is a more generic formulation of equalization;
- b) It is the kind of wording that will offer governments - in particular the federal government - maximum flexibility over time. This is particularly desirable for constitutional texts which by nature are supposed to last for a long period of time.

You should know that the Prime Minister himself recently favoured the B.C. approach. Should the B.C. approach not find acceptance, I would recommend as a fall-back that you support the Quebec proposal.

SECRET

THE MINISTER

Finally, we would urge also that section 96(3) which talks about five year reviews of equalization be deleted. A great many of the provinces did not like this paragraph. They felt that these matters should be the object of continuing attention instead of reviews every five years.

Equalizing Equalization in the Constitution
The discussion in Cabinet this morning

1. The purpose of this note is to suggest that there might be merit in re-examining the support given to the "Mantle-Sinkatchew" draft as a means of establishing in law the federal government's commitment to the principle of equalization. I understand the matter may be raised in Cabinet.

2. As you know, at the Referendum and Planning discussion on Tuesday, there was significant support for the Mantle-Sinkatchew draft as opposed to the Quebec draft. The latter was not favored by the Minister of Justice as a replacement for the language of section 96(3) of the proposed constitutional resolution, originally proposed by P.C.

3. The position taken by the federal government throughout the summer was that any of the various resolutions under consideration would be acceptable. The initial negotiating stance was unclear: to state a consensus around one of the drafts, while leaving the direction of the most flexible formulation.

4. If the constitutional resolution is to be amended, the proposed Quebec version would be preferable on grounds of flexibility. The Quebec draft reads as follows:

"Parliament and the Government of Canada are firmly committed to the principle of making available to the provinces a sufficient amount of federal funds to provide essential public services at reasonable quality without incurring an undue burden of taxation."

MEMORANDUM

NOTE DE SERVICE

A. Juneau

TO
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THE MINISTER

Inquired signed

FROM
DE

Ian A. Stewart

SECURITY - CLASSIFICATION - DE SÉCURITÉ
CONFIDENTIAL
OUR FILE/NOTRE RÉFÉRENCE
YOUR FILE/VOTRE RÉFÉRENCE
DATE December 11, 1980

SUBJECT
OBJET

Enshrining Equalization in the Constitution
For discussion in Cabinet this morning

1. The purpose of this note is to suggest that there might be merit in reconsidering the support given to the "Manitoba-Saskatchewan" draft as a means of enshrining in the Constitution the federal government's commitment to the principle of equalization. I understand the matter may be raised in Cabinet.

2. As you know, at the Priorities and Planning discussion on Tuesday, there was significant support for the Manitoba-Saskatchewan draft as opposed to the Quebec draft. The latter was put forward by the Minister of Justice as a replacement for the language of section 31(2) of the proposed constitutional resolution, originally proposed by B.C.

3. The position taken by the federal government throughout the summer was that any of the various formulations under consideration would be acceptable. The federal negotiating stance was twofold: to foster a consensus around one of the drafts, and to lean in the direction of the most flexible formulation.

4. If the constitutional resolution is to be amended, the so-called Quebec version would be preferable on grounds of flexibility. The Quebec draft reads as follows:

"Parliament and the Government of Canada are further committed to the principle of making equalization payments to provincial governments that are unable to provide essential public services of reasonable quality without imposing an undue burden of taxation."

The Manitoba-Saskatchewan draft reads as follows:

"Parliament and the Government of Canada are further committed to the principle of making equalization payments to ensure that provincial governments have sufficient revenues to provide reasonably comparable levels of public services at reasonably comparable levels of taxation."

The crucial difference is that the Quebec language, with the words "provincial governments that are unable to...", simply determines which governments ought to receive equalization, whereas the Manitoba-Saskatchewan wording, "... to ensure that provincial governments ...", actually specifies what the result of equalization should be.

5. The additional flexibility offered by the Quebec draft is more appropriate for a constitutional text which by nature is supposed to last for a long period of time. In addition, from the federal point of view, flexibility is desirable in connection with future negotiations on the fiscal arrangements.

6. It should also be borne in mind, given the current energy negotiations, that the Manitoba-Saskatchewan version was not at all acceptable to Alberta, precisely because of the key difference noted in paragraph 4 above. Of course, B.C. did not find this version acceptable. On the other hand, nine provinces found the Quebec draft acceptable, and B.C. found it more acceptable than the Manitoba-Saskatchewan draft.

7. For all the above reasons, federal officials, including Mr. Veilleux, talked to New Brunswick officials to suggest that Premier Hatfield put forward the Quebec draft in his testimony in front of the joint committee. He has now done so. To adopt the Manitoba-Saskatchewan draft would put one of the federal government's few allies on this front in an embarrassing situation and might waste an opportunity to demonstrate our flexibility.

8. I would therefore recommend that consideration be given to the adoption of the Quebec equalization draft.

9. If the Manitoba-Saskatchewan version is adopted, it would be advisable to add the word "essential" before "public services", in order to limit the possible interpretation of the commitment. All other drafts of this section have referred to "essential public services."