c.c. The Hon. Jean Chrétien
Mr. Pitfield
Mr. Smith
Mr. B. Dewar
Ms. Fairbairn
Mr. Tassé
Mr. P. McDonald
Mr. Goldenberg

S E C R E T

January 21, 1981

MEMORANDUM FOR THE PRIME MINISTER

The Constitutional Resolution:
The Role of the Senate in the
Amending Procedure

Since our meeting with you Monday at which the above subject was discussed, a draft amendment, copy attached, that would give the Senate a full veto over Senate reform has been the subject of extensive discussion among Senators at the instance of Senator Perrault and Senator Petten, both of whom were given copies of the draft. Discussions to date have been one-on-one or in relatively small groups and will culminate this evening with a full Senate caucus at 6:00 p.m. Both Senators Perrault and Petten are aware of your concern that a full caucus will do nothing more than provide dissenters with a forum in which to gain support for their views. Nonetheless, discussions to this point have been positive enough that they are satisfied a full caucus is warranted.

The following are some general observations drawn from reports from Perrault, Petten and Austin and, through Austin, Lucier:

(1) Senators have generally moved off the position that nothing short of the repeal of section 44 will suffice.

(2) There is broad but somewhat reluctant support for the amendment as circulated to an extent that would almost undoubtedly assure passage of the Resolution in the Senate.

... 2

(3) There is, nonetheless, widespread regret that the concession is so "blatant" and a widely shared belief that it would be broadly popular and easily justified on the basis of the historical traditions of the Senate to vest the Senate with a full veto over all aspects of the monarchy (paragraph 50(a)) and the commitments relating to equalization and regional disparities described in paragraph 50(c). Some Senators have described a continuing role in the Senate in relation to amendments touching the monarchy as being of significance in the west (Senator Hayes) and others have indicated that it would be "in all areas of Canada where the monarchy is still held in high esteem". Senators from the Atlantic region support a full Senate veto over modification of the commitment to equalization.

(4) There is widespread optimism among Senators that you will agree to extension of a full Senate veto to the monarchy and equalization. This optimism is based on statements attributed to you in Caucus this morning to the effect that if Senators clearly indicate what they want, and what they want is reasonable, you will meet their wishes.

Late this afternoon, Senator Perrault provided me with the following figures. He has polled 53 of the 64 Liberal Senators. Of these he regards 45 as being clearly ready to support an amendment in the terms under discussion. Five Senators, Cook, McElman, Lafond, Thompson and Lang, are unalterably opposed. Three are undecided. Of the remaining 10, Senator Perrault estimates the majority to be on-side.

Given the fact that there are currently 94 Senators, Senator Perrault's figures come quite close to ensuring a majority but the majority is not likely to be comfortable.

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We will receive further reports from Senators Austin, Petten and Perrault following the caucus this evening.

On the basis of the discussion in the Senate to date, of the statements attributed to you in caucus today, and of our earlier recommendations in this regard, we would recommend that you seriously consider agreeing to a full Senate veto over amendments relating to all aspects of the monarchy and equalization. It appears clear that these additional concessions will, without significant cost, not only ensure you a comfortable majority in the Senate but ensure you willing, rather than reluctant, support from a significant number of Senators.

Fred E. Gibson

Amendments without Senate resolution

44. (1) An amendment to the Constitution of Canada, other than an amendment in relation to a matter referred to in paragraph 50(d), (e) or (f), may be made by proclamation under subsection 41(1) or section 43, as appropriate, without a resolution of the Senate authorizing the issue of the proclamation if, within one hundred and eighty days after the passage by the House of Commons of a resolution authorizing its issue, the Senate has not passed such a resolution and if, at any time after the expiration of those one hundred and eighty days, the House of Commons again passes the resolution.

Computation of period

(2) Any period when Parliament is prorogued or dissolved shall not be counted in computing the one hundred and eighty day period referred to in subsection (1).

Matters requiring amendment under general amendment procedu:

50. An amendment to the Constitution of Canada in relation to the following matters may be made only in accordance with a procedure prescribed by section 41, as modified by section 44, or by section 42:

(a) the office of the Queen, the Governor General and the Lieutenant Governor of a province;
(b) the Canadian Charter of Rights and Freedoms;
(c) the commitments relating to equalization and regional disparities set out in section 31;
(d) the powers of the Senate;
(e) the number of members by which a province is entitled to be represented in the Senate;
(f) the method of selecting Senators and the residence qualifications of Senators;
(g) the right of a province to a number of members in the House of Commons not less than the number of Senators representing the province; and
(h) the principles of proportionate representation of the provinces in the House of Commons prescribed by the Constitution of Canada.

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S E C R E T

January 21, 1981

MEMORANDUM FOR THE PRIME MINISTER

Opposition Amendments to the Proposed Constitution Resolution

The Honourable Jake Epp, on behalf of the Progressive Conservative Party, tabled 26 amendments to the draft Resolution in the Special Joint Committee last night. Copies of the amendments, in English and French, are attached as Appendix A. Justice officials, in discussions with Lorne Nystrom yesterday, were able to obtain a fairly detailed outline of amendments to the Charter of rights and freedoms that are likely to be tabled on behalf of the New Democratic Party.

On the basis of the material tabled by the Conservatives and of the discussions with Mr. Nystrom, Fred Jordan, working through the night last night, was able to prepare the attached documents (Appendices B and C) which are draft analyses of Opposition amendments to the Charter of rights. The draft analyses and recommendations have been the subject of intensive meetings in the Department of Justice this morning and through the early part of this afternoon and formed the basis of a preliminary discussion of the Opposition amendments that took place in a meeting of Liberal members of the Joint Committee that was held this morning.

I would like to draw your attention particularly to item 10 in the discussion of the Progressive Conservative Party proposed amendments to the Charter. That item deals with a proposed amendment that would allow for provincial opting-in to institutional language rights, as they apply to New Brunswick, or in a more limited way. You will note from the draft paper that

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attendu que les êtres et les institutions ne demeurent libres que si la liberté s'appuie sur le respect des valeurs morales et spirituelles et de la légalité,

la Charte canadienne des droits et libertés garantit les droits et libertés qui y sont énoncés, lesquels ne peuvent être restreints que par une règle de droit, dans des limites qui soient raisonnables et dont la justification puisse se démontrer dans le cadre d'une société libre et démocratique.»