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TELECOPIER MESSAGE

Cabinet for Federal-Provincial Relations,
59 Sparks Street,
Ottawa, Ontario.

TO: Michael Kirby

Dear Mr. Kirby,

FROM: Robert D. Weese
Saskatchewan Intergovernmental Affairs

Thursday, October 23 and 24, involving
officials of the federal and Saskatchewan governments,
I wish here to record the major points of our discussion
I wish here to record the major points of our discussion

October 21, 1980

Non-Discrimination Section of Charter of Rights (Article 15)

Phone - 565-6308

meeting last week, Saskatchewan officials
proposed that the non-discrimination section of the Charter
not be proceeded with at this time, in view of the dramatic
impacts it could have on federal and provincial legislation.

Total message - 13 pages + cover page

You indicated that a "test" of this section was
not possible, but that you and your legal advisers were
sympathetic to the concerns raised by Saskatchewan.

I understand that Premier Blaney intends to
write to the Prime Minister on this subject.

Equalization

You indicated that the federal government would
be prepared to strengthen the equalization provisions
(section 31 of the Resolution), if requested
provinces.

As for ways in which that might be done,
I believe, that the provision specifically to "equalization payments"
subsection 31(2) be replaced with one of the alternatives
outlined in Appendix A.

Please let us know as soon as possible which
of these alternatives you prefer.

R. D. Weese, B.R.F.P.
Michael Kirby
OCT 22 1980

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Mr. Michael Kirby,
Secretary to the Cabinet for Federal-Provincial Relations,
59 Sparks Street,
Ottawa, Ontario.

October 21, 1980.

Dear Mr. Kirby,

Further to the meetings held in Ottawa on Thursday and Friday, October 16 and 17, involving officials of the federal and Saskatchewan governments, I wish here to record the major points of our discussion and, where appropriate, to propose detailed drafts for your consideration.

Non-Discrimination Section of Charter of Rights (Section 15)

At our meeting last week, Saskatchewan again proposed that the non-discrimination section of the Charter not be proceeded with at this time, in view of the drastic impacts it could have on federal and provincial legislation.

You indicated that a "hoist" of this section was not possible, but that you and your legal advisers were sympathetic to the concerns raised by Saskatchewan.

I understand that Premier Blakeney intends to write to the Prime Minister on this subject.

Equalization

You indicated that the federal government would be prepared to strengthen the equalization commitment (section 31 of the Resolution), if requested to do so by provinces.

As for ways in which that might be done, we agreed, I believe, that the provision should refer specifically to "equalization payments". We suggest that subsection 31(2) be replaced with one of the alternatives outlined in Appendix A.

Please let us know as soon as possible which of these alternatives you prefer.

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Having said that, we wish to respond to your concerns over the inclusion of the phrase "interprovincial and international trade". It may be preferable from your point of view if subsection (2) were to conclude with the phrase:

"Whether or not such production is exported (removed) in whole or in part from the province."

We believe that this phrase could not conceivably lead to a decision that the provinces had acquired any new exclusive powers over trade or that any federal jurisdiction over trade and commerce had been diminished.

The new subsection is attached as Appendix E.

We are anxious to have your views on this at the earliest possible date.

Re: Administrative Arrangements for International Trade

In connection with international resource exports, you made clear that provincial powers would not be conferred at this time through constitutional provisions. However, it was agreed that the problem of removing constitutional roadblocks to provincial resource management would be dealt with by administrative arrangements. Two mechanisms were discussed: federal licensing of exports destined outside Canada, and federal delegation to provinces of regulation-making authority.

As we indicated at our meeting last week, we feel that the problem can best be dealt with by means of a delegation similar to that employed in the Citizenship Act, which allows for provincial regulation-making authority. Federal legislation would be required to make the delegation. We consider it important that such legislation relate to international trade only and that any exceptions to the scope of delegated authority be specifically enumerated.

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APPENDIX A

Equalization

Replace subsection 31(2) with one of the following:

- (A) "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." (Manitoba/Saskatchewan Proposal, FMC)

OR

- (B) "Parliament and the Government of Canada are further committed to the principle of making equalization payments to ensure that provincial governments are able to provide essential public services of reasonable quality without imposing an undue burden of taxation." (Modified Quebec Proposal)

OR

- (C) "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 without imposing an undue burden of taxation." (Modified Manitoba/Saskatchewan Proposal).

APPENDIX B

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Amending Formula: Section 41(1)(b)(ii)

Proposed Draft

Reversion to Victoria Formula

41. (1) An amendment to the Constitution of Canada may be made by proclamation issued by the Governor General under the Great Seal of Canada where so authorized by

42. (1) (b) resolution 42(1).)

(2) A referendum referred to in subsection (1) shall be held only in the following cases and in no others:

(b) resolutions of the legislative assemblies of at least a majority of the provinces that includes

...

(a) where

(ii) at least two of the Atlantic provinces, and

(i) the requirements of paragraph 41(1)(a) have been satisfied for at least one year with respect to a proposal for amendment,

(ii) the requirements of paragraph 41(1)(b) have not been satisfied with respect to the proposal for amendment at the expiration of the year mentioned in subparagraph (i),

(iii) the issue of the proclamation is authorized by resolutions of the Senate and House of Commons after the expiration of the year mentioned in subparagraph (i), and

(iv) polling day at the referendum is not more than two years after the expiration of the year mentioned in subparagraph (i);

or

(b) where

(i) the requirements of paragraph 41(1)(b) have been satisfied for at least one year with respect to a proposal for amendment,

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APPENDIX C

Referendum Procedure Section 42

Proposed Draft

42. (1) (Same as proposed federal resolution 42(1).)
- (2) A referendum referred to in subsection (1) shall be held only where directed by proclamation issued by the Governor General under the Great Seal of Canada, and such proclamation shall be issued and referendum held in the following cases and in no others:
- (a) where
- (i) the requirements respecting resolutions in paragraph 41(1)(a) have been satisfied for at least one year with respect to a proposal for amendment,
 - (ii) the requirements of paragraph 41(1)(b) have not been satisfied with respect to the proposal for amendment at the expiration of the year mentioned in subparagraph (i),
 - (iii) the issue of the proclamation is authorized by resolutions of the Senate and House of Commons after the expiration of the year mentioned in subparagraph (i), and
 - (iv) polling day at the referendum is not more than two years after the expiration of the year mentioned in subparagraph (i);
- or
- (b) where
- (i) the requirements of paragraph 41(1)(b) have been satisfied for at least one year with respect to a proposal for amendment,

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Appendix C (cont.)

New s. 40 and s. 46

- (ii) the requirements respecting resolutions in paragraph 41(1)(a) have not been satisfied with respect to the proposal for amendment at the expiration of the year mentioned in subparagraph (i),
 - (iii) the issue of the proclamation is authorized by resolutions of the Senate and House of Commons after the expiration of the year mentioned in subparagraph (i) but within one year after the expiration of that year, and
 - (iv) polling date at the referendum is not more than two years after the expiration of the year mentioned in subparagraph (i).
- (3) Where subparagraphs (2)(b)(i) and (ii) obtain, motions to resolve, under subparagraph (2)(b)(iii), to authorize the issue of a proclamation shall be proposed as soon as practicable in the Senate and House of Commons, and, within one year after the expiration of the year mentioned in subparagraph (2)(b)(i), every question necessary to dispose of the motions shall have been put.
- (c) a nominee agreed to by a majority of the provinces.
- (5) Where a majority of the provinces fail to agree on the nominee mentioned in paragraph (4)(c), the Chief Justice of Canada shall select the nominee from among candidates named by the governments of the provinces, and each provincial government is entitled to name one candidate.

APPENDIX D

Referendum Rules Committee

New s. 40 and s. 46

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46. (1) Subject to subsection (2), the Governor in Council may, on the recommendation of a Referendum Rules Committee established under this section, make rules applicable to the holding of a referendum under sections 38 and 42.
- (2) (same as federal draft)
- (3) As soon as practicable after the authorization for the holding of a referendum under this Act, a Referendum Rules Committee shall be established to recommend the rules applicable to the holding of that referendum and the Referendum Rules Committee shall make its recommendation by majority, within two months of its establishment.
- (4) The Referendum Rules Committee referred to in subsection (3) shall consist of:
- (a) The Chief Electoral Officer of Canada, appointed by resolution of the House of Commons;
 - (b) a nominee of the Government of Canada;
 - (c) a nominee agreed to by a majority of the provinces.
- (5) Where a majority of the provinces fail to agree on the nominee mentioned in paragraph (4)(c), the Chief Justice of Canada shall select the nominee from among candidates named by the governments of the provinces, and each provincial government is entitled to name one candidate.

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APPENDIX E

Resources: Express Grant of Jurisdiction

- 92A(1) In each province the legislature may exclusively make laws in relation to
- (a) exploration for non-renewable natural resources in the province;
 - (b) development, conservation and management of non-renewable natural resources and forestry resources in the province, including laws in relation to the rate of primary production therefrom; and
 - (c) development, conservation and management of sites and facilities in the province for the generation and production of electrical energy,

whether or not such production is exported (removed) in whole or in part from the province.