



SECRET

CANADA

THE PRIVY COUNCIL · LE CONSEIL PRIVÉ

SECRET

October 15th, 1981.

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Prime Minister,  
Your Meeting with Mr. Davis

I am deeply disturbed by two implications of the attached note.

The first is that Mr. Davis is apparently thinking of becoming a player in the making of a compromise. That will materially change your strategic position. It detaches Mr. Davis from your backing and draws him towards being an interlocutor. It opens one more front on which you have to deal. It will almost certainly complicate the process and lead to delays and excuses for delay. I feel very strongly that you must convince Mr. Davis at your meeting this afternoon that he should go and listen, express confidence in your good faith and flexibility, but not venture into any aspect of substance and refer all proposals to the First Ministers' Meeting according to the formula that: "I am sure the Prime Minister will be interested in that and hope you will bring it up with him at the FMC which clearly should be held all the more quickly in the light of your positive thinking."

The second is that we are drifting away from a focus on the Bill of Rights towards a total renegotiation of the package. Once we start into talk about a new amending formula on

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... can live with a seven provinces and 60% formula in which one of the provinces must be Quebec.

On the Charter, Davis will suggest a graduated approach in which fundamental freedoms and democratic rights, minority language education rights and mobility rights are applicable immediately everywhere. The remainder of the Charter would be negotiated over the

Davis Today

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MEMORANDUM FOR THE PRIME MINISTER

Your meeting with Premier Davis Today

Premier Davis believes that he can play a valuable role at next week's Premiers' meeting because the group of eight believe that if he shifts his position he will be able to persuade you to do the same. In other words, while Davis is not able to persuade the group of eight to do something that you want, the group of eight believe that he can persuade you to do something which Davis and the group of eight agree on.

Davis has told the group of eight that this will be possible only if there is some genuine movement on their part which, to date, has not occurred. He believes, however, that there is a possibility that such movement may occur next Monday.

Therefore, Davis wants to discuss with you today the parameters of possible compromise packages which you can live with so that he does not put a proposal on the table, or agree to a proposal which someone else puts on the table next week, which will be unacceptable to you.

Davis' proposed package would be along the following lines: on the amending formula, the dissident eight would give up their opting-out provision and amendments would require the approval of any seven provinces representing 60% of the population and the federal government. Ontario is prepared to give up their veto, but they will not insist that Quebec do the same. In the final analysis, Ontario can live with a seven provinces and 60% formula in which one of the provinces must be Quebec.

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next two years and at the end of that time would be subject to an opting-in or opting-out provision, or subject to a national referendum, or subject to the amending formula which goes into effect after the two year negotiating period. In short, Davis' thinking at the present moment is very similar to the proposal Spector and Matkin outlined to me yesterday.

Davis also thinks that it may be possible to broaden the coalition in the House. He claims that Clark is under great pressure from within his own caucus to desert the group of eight because of their completely inflexible attitude. You may want to explore this point with him at the meeting, particularly because Davis is going to pay a courtesy call on Mr. Clark after he leaves your office.

Davis will raise with you the question of Ontario agreeing to opt-in to Section 133. Mr. Chrétien has sparked a number of rumours in the press that Ontario is about to do that and he has been putting enormous pressure on Ontario in in this regard. From your earlier conversation with Premier Davis you know that there is some possibility that Ontario will agree to this but their current view seems to be that the Section 133 question should be divorced from the current constitutional negotiations.

  
Michael J. L. Kirby.

*(post-script follows)*

P.S. The one concern I have with the Davis proposal is that we must avoid him becoming an intermediary between you and the Premiers. Davis is a player on the team in which you must continue to call the shots. My concern is that the group of eight will try to split Davis away from us by leading him to believe that a compromise is possible, then after Davis has committed himself to support the compromise, the group of eight will reject it. This might make it difficult for Davis to support us if we move unilaterally on the full package. You should try to get a very clear commitment from Davis that if the FMC fails to reach an agreement, or if it is delayed beyond the end of October, then he will support you on immediate action on the full package.