

October 14, 1981

NOTE FOR THE PRIME MINISTER

This is the revised proposal you asked for. Changes are underlined or sidelined in red.

Michael J.L. Kirby

*If provinces offer opting in or opting out, should we accept providing 7 or 8 provinces agree to be bound?*

*Is it true Lavoie said he would accept a federal ref. on Bill of rights?*

E C R E T

October 14, 1981

Modifications from October 13 version of this memo are sidelined or underlined in red)

*have been simpler to call it*

means the resolution "sal" means the paper that the FMC on October 20.

negotiating period. negotiating period

provisions of the for the terms of change referred commencement of final amending period from two

which are applicable New Brunswick, on following

large provisions), *but including education provisions* natural resources their coming into *includes indirect tax.* final negotiation *status of these sections?*

paragraph 3 would be governments (and rights) and would the year from

2 ?

the date the measure is approved by the Senate under the terms of the present special order of the Senate.

- 5. Negotiations on the final amending formula would be conducted in conjunction with, and on the same time frame, as the negotiations provided for in paragraphs 3 and 4.

S E C R E T

October 14, 1981

(Modifications from October 13 version of this memo are sidelined or underlined in red)

Proposal (Referendum)

Throughout this paper, "measure" means the resolution currently before Parliament; "proposal" means the compromise offer outlined in this paper that the Prime Minister might put before an FMC on October 20.

*It would have been simpler to call it*

This paper reflects a one year negotiating period. It is recognized that a two year negotiating period remains an alternative.

*this one*

1. Patriation and amending formula provisions of the measure would come into force as per the terms of the measure, except as to a timing change referred to in paragraphs 4 and 5 for the commencement of the negotiation period to achieve a final amending formula and a reduction of that period from two years to one year.
2. Official languages provisions, which are applicable only to the federal authority and New Brunswick, would come into force on proclamation following adoption at Westminster.
3. The Charter (except official language provisions), aboriginal rights, equalization and natural resources provisions would be postponed in their coming into force to allow for federal-provincial negotiation of their terms. *by delayed proclamation of these sections?*
4. Negotiations referred to in paragraph 3 would be among the federal and provincial governments (and the native peoples on aboriginal rights) and would continue for a maximum period of one year from the date the measure is approved by the Senate under the terms of the present special order of the Senate. *2 ?*
5. Negotiations on the final amending formula would be conducted in conjunction with, and on the same time frame, as the negotiations provided for in paragraphs 3 and 4.

*So that "everything else"?*

*but including education provisions*

*includes indirect tax.*

those provisions would be proclaimed unless <sup>{ a consensus of prov. govts</sup> ~~the population objected~~, in which case <sup>{ six provinces representing 60% }</sup> the

SECRET

~~23, 4 and 5~~  
Clauses might object to.

6. If, at any time during the negotiation period, a text of all the provisions under negotiation provided for in paragraphs 3 and 4 were approved unanimously by First Ministers, any modifications necessary to bring the text of the measure into conformity with the approved text would be adopted in the manner provided in Clause 37 (the formula for making amendments during the unanimity period) to be effective simultaneously with the proclamation into force of the provisions under negotiation.

It would be better to use our formula for amendments instead by way of a referendum.

7. If, at the end of the negotiation period, a text of all the provisions under negotiation provided for in paragraphs 3 and 4 were not approved unanimously by First Ministers, the issue of whether or not those provisions should be proclaimed would be put to the people of Canada in a referendum. Changes to individual provisions agreed to during negotiations could be implemented following the referendum and proclamation of the unmodified text by way of the adopted constitutional amending formula.

8. If proclamation is approved in the referendum by:
- a majority of the people voting in Canada,
  - a majority of the people voting in Quebec,
  - a majority of the people voting in Ontario,
  - a majority of the people voting in two of the four Atlantic provinces,
  - a majority of the people voting in two of the four western provinces,

then the provisions forming the basis of the referendum would be proclaimed. In any other case, the authority to proclaim the provisions would not be exercised and the provisions would be treated as spent.

9. In the event that a consensus among First Ministers in favour of this proposal is reached at the FMC on October 20th, the Prime Minister will endeavour to obtain unanimous agreement in the House of Commons and Senate to amendments to the measure to provide authority to implement the proposal.

*by way of const. amendment*

10. In the event that a consensus among First Ministers in favour of this proposal is not reached at the FMC on October 20th, the Prime Minister might nonetheless endeavour to obtain unanimous agreement in the House of Commons and Senate to amendments to the measure to provide authority to implement the proposal.
11. In the event that the unanimous agreement referred to in paragraphs 9 and 10 is not obtained, the House of Commons and Senate would be invited to approve the measure without change. On approval the measure would be sent to Westminster. At the earliest feasible time and prior to proclamation, a new resolution to provide authority to implement the proposal would be introduced in Parliament. Provinces would be given until May 1st, 1982 to adopt equivalent resolutions to the new resolution. If resolutions were adopted in Parliament and all legislatures, the proposal would be given effect under Section 37 of the measure. If resolutions were not adopted in Parliament and all legislatures, the measure would be proclaimed without modification after May 1st, 1982.

*the measure would be proclaimed and*