

CONFIDENTIAL

July 11, 1980

MEMORANDUM FOR THE PRIME MINISTER

c.c. The Honourable Jean Chrétien
The Honourable John Roberts

Assessment of the First Week of
Constitutional Discussions and
Tactics for the Second Week

This memorandum is divided into three parts:

- an overview and general assessment
- a review of the twelve items
- a discussion of federal tactics and strategy, and a request for further guidance.

Events are breaking fast and in consequence some of our judgments must remain tentative and provisional at this stage. This applies particularly to the more subjective portions of this note, such as the section on the mood of the provinces which follows immediately below.

I. Overview and General Assessment

a. Mood of the Provinces at July 8-11
CCMC Meeting

To the extent that one can generalize, the mood appears to be more anxious and uncertain than was the case during the 1978-79 process. There appears to be a good deal of a "wait and see" attitude and in some quarters distinct suspicion mostly as to the real intentions of the federal government, but to some extent also as to those of the Quebec government.

This may flow in part from the different background and circumstances of the two processes. The 1978-79 CCMC process was preceded by a First Ministers' Conference where the federal government was perceived as showing great flexibility in its willingness to discuss the distribution of powers. The July 1980 process has been preceded instead

by federal statements concerning the need for clarification of economic powers and the strengthening of the common market, the separation of the power issues (which interest provinces) from rights (which generally do not) and the regular suggestions of possible unilateral federal action as early as this fall. The July 1980 process has also been preceded by the Quebec government losing its referendum.

These factors, combined with the new federal and Quebec initiatives to publicize their positions, lead some provinces to suspect that the exercise is a formality, a necessary charade preceding predetermined unilateral action, probably by Ottawa, and thus not one in which it would be wise to offer up compromises of their opening positions.

As to particular provinces, Ontario is demonstrating more flexibility and determination that the process should succeed than it did in the past. P.E.I. is taking a much more active part. Quebec's special approach will be discussed below; suffice it to say here that it is taking a much more active role than in 1978-79. Alberta is strangely silent, presumably because of its concern with the outcome of the energy pricing talks and Premier Lougheed's position that the energy issue must be settled before there can be any agreement on the Constitution.

As to general provincial attitudes to subject matters, on powers, there appears to be a large measure of consistency with the previous round. The main difference here will be in the economic area where for the first time the provinces are being put on the defensive by the federal government's insistence that the exchange of powers go both ways. Clearly, the provinces were not prepared for this change in position by the federal government and they are unsettled by it, not knowing how to respond to this "attack". Moreover, they are deeply suspicious. They think that the federal strategy is to offer a little (but less than 1978-79) on issues that are important to the provinces, and then to take back a lot of power through an approach to the Powers over the Economy issue.

With respect to rights, there appears in the formal opening statements of the provinces to be some regression from the point reached in 1979, with only a few provinces now showing willingness to see any entrenchment. At the same time, it is apparent that this is a negotiating or bargaining position (notwithstanding federal statements that "rights should not be bartered against powers") rather than an inflexible position.

On institutions there appears to be the most progress, with almost universal interest in a revised Senate and flexibility on building more duality into the Supreme Court. This may, more than anything else, reflect recent events in Quebec and the ideas in the Beige Paper, the Pepin-Robarts paper and the view that if the federal government is serious about hanging tough on distribution of power issues then the provinces should at least try to get some involvement in the institutions of the central government. This is the most encouraging development to date.

b. How Well is the Government of
Canada's Strategy Working?

You will recall that the federal government's broad strategy on constitutional reform was restated in my memorandum of 4 July 1980, and contained five elements:

- i. to insist on the distinction between the people's package and the package for governments;
- ii. to make it clear to provincial governments and the public that the federal government is committed to a deadline on the people's package;
- iii. to make it clear that the federal government would not bargain elements of the first package against elements of the second;
- iv. to insist that the federal government was prepared to bargain on the second package, so long as it involves give and take on both sides;
- v. to establish the central linkage between resources and powers over the economy.

My conclusion at the end of the first week of negotiations is that the strategy in general is working well.

- The message in points i.-iii. has been received, if not accepted.
- The federal government has, at least for the moment, seized the initiative on the economic items, to the distress and confusion of several provinces.
- The communications battle, primarily with Quebec so far, is not being lost, even if it is not yet being won.

In sum, we have accomplished much of what we set out to achieve in the first week, and the general strategy and the fact that the federal government has taken the offensive has sowed at least temporary confusion in provincial ranks and altered the dynamic of the negotiations. Nevertheless, long-term success is in no sense secure, and will depend heavily on the extent to which we can capitalize on our advantage, and the rapidity with which the provinces adjust to the current circumstances.

Long term success will also depend on the extent to which the provinces believe that the federal government will act unilaterally in areas other than rights and patriation. Some provinces (e.g. Nova Scotia and Quebec) think that we may move in other areas if we have the support of say 8 provinces, while others doubt this. If the provinces start to believe that we will take action, even in areas of the distribution of powers, where there is a strong consensus but not unanimity then real progress may well occur in the negotiations as the provinces will then feel an urgency to get the best possible deal they can, even if it is not all they want. In short, creating the impression (but not saying so explicitly) of our determination to unilaterally move in a wide range of areas should become part of our basic posture. Do you agree with this?

In another perspective, some surprising and promising developments in the first week open up for all governments the possibility of productive constitutional discussions. (I am thinking here in particular of the emergence of the Senate as a central preoccupation.) The Government of Canada has a central leadership role to play in ensuring that these openings are not wasted when they occur, and in the final section of this note we make some suggestions about what steps the Government of Canada might most usefully take in the second week.

c. Strategy of the Government of Quebec

The PQ government, poised uneasily between a referendum defeat and a pending provincial election, faces a complicated set of circumstances. While one can readily acknowledge the dexterity with which they defend their position and cover their flanks, it must also be remembered that the difficulty one currently encounters in discerning a clear PQ strategy may be as much due to their uncertainty as it is to their sophistication.

Two broad alternatives confront the Government of Quebec at this juncture:

1. To seek to achieve the equivalent of sovereignty-association, or something approaching it, but 'à la pièce' and within the framework of federalism.
2. To attempt to demonstrate that they, as the government, are the best negotiators for Quebec within the federal system, presumably by delivering some significant constitutional achievements, both by negotiating some good things for Quebec and by warding off some bad things.

These two alternatives lead in different directions in some respects, and overlap and intermingle in other respects. If the Government of Quebec has made a clear choice between them, it is not evident in their action so far. Their extreme provincial rights position on resources and communications seems at first glance to imply the first alternative, although it could also be a very tough, initial bargaining position, should they be pursuing the second. Their apparent willingness to discuss the Senate might indicate that they are now concerned to show that they can bring off substantial reform within the federal system, or it might be a pre-election tactic to occupy temporarily some of the Beige Paper ground, and thus make life difficult for Claude Ryan.

Their dilemma may be suggested by putting the following question: Does the PQ want the constitutional talks to succeed or fail? We would advance the following tentative response, which really involves a complex knitting together of elements of both alternatives. What the PQ may be seeking out of the constitutional talks is to make a limited and conditional compromise on a limited number of items, and to ensure that no agreement is reached on the other items - thus, partial success and partial failure. The signs are that they may be prepared to reach provisional agreement on central institutions such as the Senate and the Supreme Court (occupying Ryan territory and introducing the confederal principle into those bodies as much as possible), and that they will take what they can get on the division-of-powers items, but complain that it is far too little. They will stoutly resist any limitations on their existing power.

Thus they might be in a position to hold a fall election, claiming that they have effectively negotiated some useful changes (and spiking Ryan's guns in the process), but that a rigid and unbending central government has refused to budge, or has almost refused to budge, on the issues dearest to Quebec's heart, namely, the division of powers. In addition, of course, they would no doubt regard unilateral federal action on the people's package as a heaven-sent election issue, more exploitable than the mixed bag outlined above.

It is likely that the Government of Quebec's strategy will become clearer as the talks proceed. In the meantime, one might offer brief comments under the following heads:

- Agacer les fédéralistes. Consistent with past performances, Claude Morin regularly attempts to prick and unsettle members of the federal government. He does not do this with members of other provincial governments. One can presume that his objectives here are three:
 - i. to elicit more information about federal government positions and plans than was offered;
 - ii. to attempt to keep the federal government on edge;
 - iii. to convey the impression that it is a Quebec - Ottawa struggle, with strong provincial support on the Government of Quebec's side. (This is the approach he has concentrated on this week, particularly with the press).

- Claude Ryan and the legislative Committee on the Constitution. One element of PQ strategy seems fairly clear: to occupy the centre ground in Quebec opinion and to force Mr. Ryan as much as possible to make common cause with them. The more they can stand at the head of a multi-party coalition of forces with broad popular support, the happier they will be. They will attempt to exploit positions (for example, on the Upper House and the division of powers) which Mr. Ryan will be compelled to support, to oppose federal initiatives (say, on principles) which Mr. Ryan will feel constrained to oppose, as well, and they will try to isolate Mr. Ryan as a lonely provincial advocate of entrenched language rights. Their stance on the public release of documents and their establishment of a legislative committee (which will hold public meetings in Quebec City on August 14 and 15) will help them to keep in touch with public opinion, to broaden it in their favour, and to implicate other political forces in what they are doing.

- Negotiations inside the room and public relations outside. It is very clear that they have a two-track strategy, as does the federal government, conducting constitutional negotiations with the other governments inside the conference hall and trying to hit the streets first with their version of the story. What information is the Government of Quebec trying to convey? Probably, the following:
 - i. It is a fight between Ottawa and the provinces;
 - ii. In particular, it is a fight between Ottawa and Quebec;
 - iii. The federal government is systematically insensitive to Quebec's needs;
 - iv. The PQ is assiduous in its defence of Quebec's historic interests;
 - v. Responsibility for failure will lie with Ottawa;
 - vi. Responsibility for success will lie with Quebec.

In sum, vote for us in the next provincial election.

* * * *

One final point might be made. The Government of Quebec is going to go to great lengths to avoid being caught out alone in a 10 - 1 split against them, except on two items, namely, patriation and entrenched minority language education rights. There it seems they are prepared to go it alone if necessary. This concern not to be isolated gives the federal government more leverage than it had before, if it plays its cards right. It is also worthy of remark that the Quebec delegation is participating much more actively in the process than was the case last time round.

II. Where we Stand on the 12 Substantive Items

This part of the memorandum is divided into 3 parts:

People's Package

- (a) Charter of Rights
Patriation
Principles

- (b) Items where there is likely to be agreement by 7 or more provinces plus the federal government
Equalization
Supreme Court
Family Law
Fisheries

- (c) Tough items from the federal point of view
Resources
Offshore Resources
Powers over the Economy
Communications
Senate

It should be noted that the People's Package items, if not separated out, would certainly fall under "Tough Items".

(a) People's Package

(i) Charter of Rights

There are the strongest indications that this will be among the most difficult items to negotiate. Many provinces are actively hostile, mostly on the old common law grounds that the rights of individuals are best protected by universal suffrage and responsible government. Provinces generally see a Charter as transferring powers to the courts rather than the people. A number of provinces, moreover, have indicated a preference for the Pepin-Robart's approach to linguistic rights and want to have that approach discussed. Quebec is adamant upon linguistic rights and will not accept a Charter that infringes on the provisions of Bill 101. The rest of the provinces generally seem to favour having linguistic rights, including minority language education rights in the Constitution, but not necessarily in a Charter of Rights.

Ontario (with reservations) is generally in support. New Brunswick and Newfoundland are close to total support. In the case of Newfoundland, they may be offering support to get what they want from the federal government on offshore resources and fisheries.

The Conference agreed that there would be a Ministers only discussion of the substance at a private dinner meeting on Tuesday, July 15.

(ii) Patriation

The provinces, with the exception of Ontario, B.C. and Nova Scotia, have real concerns about any early agreement or move on patriation. These centre upon the perceived danger of an intransigent federal position on powers emerging once patriation has been agreed. Quebec, P.E.I. and Saskatchewan are firm on the subject - there is to be no patriation until division of powers is settled. While the rest of the provinces base their hesitations on the need for an agreed amending formula, it is likely that their underlying concern is the same.

Ontario, Nova Scotia, Manitoba, Saskatchewan and Alberta would like to have the delegation of legislative authority examined in conjunction with the amending formula.

It may be that a Senate with a majority of provincial government appointments could be used to ease the amending formula difficulty.

(iii) Principles

No province endorsed the federal draft. All provinces agreed that a committee of officials be set up to consider the possible content of a "preamble to the Constitution". Quebec, Ontario and B.C. will each produce a draft.

(b) Items where there is likely to be agreement by 7 or more provinces, plus the federal government

(i) Equalization

No province questioned the need for equalization payments. B.C. alone questioned entrenchment in the Constitution. Their objection was the inclusion of any particular system. A number of provinces made the point that relative riches in Canada can and do shift from one province to another. This seemed to be a veiled attack on Alberta's perceived unwillingness to "share" oil wealth. There was some agreement that the federal government needs a certain amount of revenue to guarantee equalization. P.E.I. feels that the federal government "should have the right to tax all resources" - perhaps another veiled reference to Alberta. There was general agreement that there should be a 5-year review of any equalization formula by First Ministers. Ontario and New Brunswick feel equalization to be so central to the whole idea of the Confederation that it should be "highlighted" in the Constitution. A committee of officials has been set up with Gérard Veilleux as chairman to consider amendments to the best efforts draft. While none of these appears to alter the substance of the best efforts draft, they might make acceptance of that draft more difficult for B.C.

(ii) Supreme Court

Discussions on this item were generally positive in tone with broad acceptance of the principle of entrenchment. Quebec's proposals for a constitutional panel, a civil law panel and alternating Chief Justices were pressed by that province as reflections of duality. There was a fair degree of support for this concept although the general preference was for avoiding creation of a special constitutional panel, perhaps by having an 11 member court with 5 civil and 6 common law judges. Reservations were expressed by some on entrenching the tradition of alternate Chief Justices. Considerable divergence of views exists on whether the appointment procedure should be by consultation or by agreement between Attorneys General. Nine members (or eleven to meet the desire for principle of duality) was the generally preferred size for the court. Most provinces favour provincial references directly to the court, reflecting the concept of equal access to the Court. In sum, Quebec seems to have a fair degree of support for the principles of duality and equality of access.

On the questions of appointment of section 96 judges and the power of Parliament to create federal courts (section 101), it was agreed that these would be addressed, but only after discussions on the Supreme Court, family law and a Charter of Rights were completed.

(iii) Family Law

All provinces agree that family law belongs in the Constitution and that the totality of family law is best dealt with in a single court. There is some difference of opinion whether divorce grounds, maintenance and custody orders and their enforcement should be under federal or provincial jurisdiction. It seems likely that all of this can be negotiated.

(iv) Fisheries

This item appears to fall somewhere between the "likely to be settled" and the "tough" items, though leaning toward the latter.

There is something close to provincial unanimity that inland fisheries should be provincial.

On sea coast and marine fisheries, Newfoundland, as in 1979, wants concurrent jurisdiction with federal and provincial paramountcy on different aspects. British Columbia has now moved into a similar position. Nova Scotia, followed by New Brunswick and P.E.I. are all seeking some kind of joint management, probably confirmed in the Constitution. These three would like to have concurrent jurisdiction with federal paramountcy, but may settle for less (e.g. mandatory consultation as in the federal fall back position).

P.E.I. is particularly concerned about its "right of access". Quebec wants exclusive jurisdiction over "its" part of the Gulf of St. Lawrence and would give exclusive jurisdiction over all fisheries to the provinces.

Ontario, Alberta, Saskatchewan and Manitoba all appear to support the Nova Scotia position. Thus there may be seven provinces supporting the federal fall back position.

(c) Tough Items from the Federal Point of View

i) Communications

Ministers recognized four subject areas -- cable, broadcasting, telecommunications carriers and spectrum management. Quebec, Saskatchewan and Alberta agreed that these are inter-related. Provincial Ministers did not like the federal proposal to first discuss guiding principles. At the officials level the provinces reluctantly agreed to discuss guiding principles but were careful not to commit themselves to the need for agreed principles as a prerequisite for proceeding. Some

provinces are anxious to proceed to discussion of the specific issue areas and it was agreed by Ministers that this is where the discussion would begin when the meetings on communications recommence next week.

At the officials level discussions began with a focus almost entirely on telecommunications carriers with a limited discussion of spectrum management. At the officials level Manitoba, Saskatchewan, Alberta and British Columbia considered the Quebec proposal as "very interesting". This may be explained in part by the fact that, with the exception of B.C., these provinces own and operate telephone companies.

A. Cable

Provinces differ whether the starting point should be the February 1979 cable draft or the December 1978 Vancouver proposal or some new basis.

B. Broadcasting

Generally all provinces appear to want provincial jurisdiction over "local" broadcasting, and accept federal jurisdiction over "national broadcasting". Quebec wants provincial paramountcy over broadcasting with limited federal jurisdiction in some areas (e.g. defence, C.B.C.). New Brunswick acknowledges for special arrangements for Quebec.

C. Telecommunications Carriers

All provinces except Quebec accept federal jurisdiction over international aspects of telecommunications. Provinces are very reluctant to recognize a paramount federal role in interprovincial telecommunications. Ontario is not interested in regulating Bell Canada. Quebec and B.C. are interested in more than the "intra-provincial" aspects of the telecommunications carriers. At the officials level, provinces declined to recognize federal jurisdiction over the interprovincial aspects of telecommunications.

D. Spectrum

While there is interest on the part of B.C., Alberta, Nova Scotia and Quebec in the intra-provincial and local aspects of spectrum management, the weight of opinion is that the federal government should retain the predominant role.

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Ministers considered the report of the committee of officials and agreed that officials should proceed to discuss specific issue areas keeping in mind national objectives.

ii) Resource Ownership and Interprovincial Trade

Other than opening statements there has been no discussion of this item.

Resource - rich provinces (including a hopeful Newfoundland) insist upon full provincial ownership and management with minimum (or no) federal intervention.

Manitoba, Nova Scotia and New Brunswick support the best efforts draft but see the need for a strong federal role.

Ontario and P.E.I. seem to reject the best efforts draft in favour of a stronger federal role. In addition, Ontario does not favour indirect taxation power being given to the provinces. Quebec seeks something like emasculation of federal powers and would like an interprovincial system that cuts out Ottawa from the resource area entirely.

Alberta is unlikely to negotiate this item (or any other item) until the oil pricing problem is settled.

Saskatchewan believes that the federal strategy is to isolate Alberta on this issue. They are determined to prevent this. Thus, to date, they are supporting the Alberta position and are taking a very strong "pro-West" stance. However,

Ministers from other provinces have told us that if we can solve Saskatchewan's two concerns about C.I.G.O.L. (i.e. indirect taxation and provincial pricing of exports) then at the First Ministers' meeting in September they will abandon their support for the Alberta position. It is not clear, however, whether this is what they will do given Blakeney's concern about the political attacks being made on him in his own province that he is "soft on Trudeau" and not fighting hard enough for the West.

iii) Offshore Resources

On this item positions are 10-1 against the federal government. They believe that offshore resources should be treated exactly like on-shore resources.

Nova Scotia wants provincial ownership with jurisdiction and revenue arrangements to be the same as for resources in the ground. The other Atlantic provinces are in support of this position, so is B.C. except that B.C. would like to include renewable resources attached to the sea bed (kelp, oysters, etc.). Manitoba agrees with Nova Scotia but reserves its position on Hudson's Bay.

Quebec wants to own "its share" of the Gulf and a share of income from resources on the shelf "by interprovincial agreement".

No coastal province shows any interest in the idea that primacy in resource revenues should cease when the province concerned reaches or exceeds the average Canadian income.

Newfoundland is, for obvious reasons, rather strident on this item. The land-locked provinces offer general support to the Nova Scotia position.

iv) Powers Affecting the Economy

This item caught the provinces off balance. They do not seem to have expected the federal government to be so direct in its demands upon them. Initial reactions probably do not represent anything like firm positions and, for this reason, are very sketchily outlined here. At first sight provinces regard the federal initiative as a "power grab", even though much of the federal proposal asks them and requires ourselves to accept some restraints on the exercise of existing powers.

Ontario, though not taking a "holier than thou" attitude, supported the federal position and agreed that constitutional amendment in this area could be lived with. Newfoundland also is generally supportive.

Quebec sees the proposal as a direct provocation to the provinces, a diminution of essential provincial powers based on the assumption that Canadians are a homogenous people (or peoples).

The rest of the provinces fall somewhere between. They need time to study the proposals and consider their implications. For example, New Brunswick suggests that without some provincial preference in tendering, all large contracts would go out of the province because of the "volume discount" aspect. B.C. is wondering about regulation of the learned professions, would it become federal? P.E.I. sees its land as its major resource, cannot open it to any and all big spenders particularly to non-resident land owners. Newfoundland points out that there is no free flow of electricity across provincial borders. Saskatchewan asks about affirmative action to protect disadvantaged groups. These are a few examples to give some idea of the flavour of the discussions.

v) Senate

This subject is dealt with briefly in the final section of the memorandum and will be the subject of a separate memorandum, to be delivered to you by 7:00 p.m. Sunday evening.

III. Future Strategic and Tactical Considerations

As noted in Part I of this memorandum our basic strategy seems to be working well and no change is proposed.

The emergence of the Senate as a central pre-occupation and a potential instrument of débloccage on the Resources and Powers issues changes the game and calls for some careful strategic planning.

Tactically it would appear to be a mistake to allow the Senate to dominate the Toronto round next week. We will thus propose that the matter be referred to a committee. A Ministers-only detailed discussion of the Charter of Rights will take place on Tuesday.

The balance of the week might most effectively be used to press forward with the powers package. It is, perhaps, important at this stage to get right into the "give and take" process on these items bearing in mind the need to keep some key fall-back position for use at the First Ministers' Conference.

General conclusions about tactics for the second week in Toronto, then, might be the following:

- A rapid and imaginative federal response to the opening on the Senate would accelerate the process of discussion as well as permit several of the other items to be approached in a rather different fashion.
- Nevertheless, we should be careful not to put all our eggs in the Senate basket. Progress on that item and the division of powers items must be reciprocal if one is to sustain the active participation of the provinces and allay their fears. The challenge now will be to knit the Government of Canada's concerns and positions on the division-of-powers items creatively into the Senate negotiations, bearing in mind that some important aspects of these items can be covered through a renewed Senate. However, while Senate reform opens up a lot of possibilities for the imaginative renewal of the Federation, it does not eliminate the need for the federal government to seriously bargain on economic powers items.

- Given the detail and technical complexity of the Charter of Rights item, it is necessary to begin work on that in the course of the second week in Toronto. However, this should be proceeded with in as non-contentious and non-threatening a fashion as possible while the first serious discussions of the Senate plus powers items occur. Appropriate federal tactics can be reviewed at the end of the second week to determine whether a tougher, more forthright and higher profile stance is required for the final week.

In closing, we wish to raise some specific issues relating to the Senate and Supreme Court. Your guidance would be very helpful in approaching our constitutional negotiations in Toronto.

Senate

As you know, the Senate (and related division of power matters) was the subject of intensive discussion Thursday at a private meeting of CCMC Ministers. The result of that discussion was the preparation of a note detailing a number of points of consensus which could form the basis of ministerial consultation with respective governments during the weekend.

Listed below are the points of ministerial consensus for your review. (In addition, as mentioned earlier, an options paper will be prepared on the subject of upper chamber reform.) You will note that the principle of duality is not listed. From the federal government's point of view this seems to be a serious omission, and one which I would think ought to be repaired in any federal initiative. Upper chamber reform provides an excellent opportunity to reflect the French and English facts in one of Canada's central institutions and would not in principle be strongly opposed by most provincial governments. Also, it would be better to have the federal government asserting the reflection of the duality of the country than to have Quebec demanding it.

Ministerial Document
Points of a Senate Consensus

In private discussion, the Ministers arrived at the following points of a Senate consensus:

1. on the need for a new second chamber.
2. that the new second chamber not be an elected body.
3. that it be composed of provincial representatives.

4. that on representation:
 - a) a majority wanted equal representation on a province by province basis
 - b) some wanted a weighted representation based on an undetermined number per region, using four regions as a basis
 - c) two reserved their position.
5. that the new upper chamber could possibly, but not necessarily, be a substitute for some of the regular federal-provincial mechanisms.
6. that the new chamber have the power to ratify federal actions in such areas as:
 - a) declaratory power
 - b) federal spending power

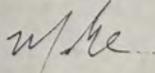
and, that there was a willingness to discuss further the establishment of another category of suspensive powers.

This consensus is to be used as a basis for discussion, after governments have given it further consideration.

Supreme Court

The following issues have arisen out of the first week's discussion of this institution, and your guidance on them would be most helpful.

1. Whether the principle of duality should be recognized in the Supreme Court in adjudication of constitutional cases and by entrenching the principle of alternating Chief Justices.
2. Whether the appointment procedure should be based on consultation or more formal agreement with provincial Attorneys General and whether appointments should be ratified by an Upper House.
3. Whether provinces should have a right to refer constitutional questions to the Supreme Court to reflect the concept of equality of access to the Supreme Court.


Michael J.L. Kirby