

not reached at the September 8-12 meeting, the federal government will proceed to amend the Constitution, until CONFIDENTIAL officially, that it will:

a move on the element August 7, 1980
Package, and perhaps other items (yet to be determined):

NOTE TO THE PRIME MINISTER
a to introduce on or about September 23
a give effect to this intent

a proceed by a Joint Parliamentary Address,
probably without recourse to a refe-
Constitutional Strategy, August -
September 1980

- 4) That the process of constitutional negoti-
tation will continue beyond the September
FMC in some form, yet to be established.

This paper considers federal government consti-
tutional strategy from now until the autumn, focussing
particularly on the August 26-29 CCMC meeting and the
September 8-12 First Ministers Conference. It is
divided into four sections:

- Introduction
- August CCMC meeting and package review
- September FMC
- The post-FMC period.

I. INTRODUCTION

Second, it would be inconsistent with the
assumptions outlined above for the federal government
to do anything but that which would lead the provinces to give the federal
good faith and the provinces to give the federal
of action
credible
the direct
plation of
introduction
September
to charges
must be

This paper is based on the following assumptions:

- 1) That the preferred outcome of the current constitutional talks is a negotiated settlement compatible with the goals of the federal government.
- 2) That public acceptance of unilateral action will depend in no small way on the federal government having honestly tried to reach agreement with the provinces. Unilateral action is, politically speaking, an acquired right, not a natural right.
- 3) That, if agreement with the provinces is

not reached at the September 8-12 FMC, the federal government will proceed to amend the Constitution unilaterally. More specifically, that it will:

- move on the elements of the People's Package, and perhaps other items (yet to be determined);
- to introduce on or about September 29 a resolution to give effect to this intent;
- proceed by a Joint Parliamentary Address, probably without recourse to a referendum.

- 4) That the process of constitutional negotiation will continue beyond the September FMC in some form, yet to be established.

These assumptions carry certain implications. First, from the federal point of view we are involved in a genuine negotiating process, which means Mr. Chrétien must be given some negotiating room in the August session to explore the outlines of a constitutional settlement on an ad referendum basis. While the authoritative and final positions and the overall judgment about whether a satisfactory package exists must obviously be left to the Prime Minister at the First Ministers Conference, Mr. Chrétien must not be forced into a position where he can do little but stonewall and prevaricate during the final CCMC meeting. The CCMC must be used to prepare the ground for an agreement at the FMC.

Second, it would be inconsistent with the assumptions outlined above for the federal government to do anything that would cripple the negotiations or that would lead the provinces to question Ottawa's good faith more than they do already. The threat of unilateral action and a possible referendum are credible and clearly acknowledged now. A step in the direction of unilateral action prior to the completion or ultimate break-down of negotiations (say, introducing legislation on the Charter of Rights on September 8) would leave the federal government open to charges of bad faith and hypocrisy, and would doubtless jeopardize the talks.

CONFIDENTIAL

Third, to ensure that the federal government is well positioned to act on its own if talks fail, efforts must be made throughout the coming weeks to present the government's case effectively to the public. This could within limits facilitate the negotiations themselves, for if the provinces believe that Ottawa is on to a winner politically and if they observe that Ottawa is winning the communications battle, that will be an inducement to compromise and agreement. The recently published Gallup poll surveying the opinion of Canadians about the federal government's main proposals is very favourable to Ottawa and confirms our own survey work; that evidence will be pondered carefully in provincial capitals.

*Should have been a
review of Quebec by
Chrétien*

All of this calls for work to be completed on three fronts. It will be obvious that there is considerable overlapping:

- 1) The Unilateral Package. This is the package with which the Government would proceed unilaterally, should negotiations break down. Because there is some doubt at this stage as to the appropriate contents of the package, we should define it broadly rather than narrowly, since it will be easier to cut back than to add on. As you know, work on this package is well underway and will be completed by mid-September.
- 2) Negotiating Positions for the CCMC. It should be the object of the CCMC to prepare the ground for FMC agreement. This means categorizing the items into basically non-contentious matters (equalization, family law, Supreme Court), matters which are unlikely to be fully resolved in the first phase of constitutional discussion (e.g., Senate), and matters about which there is continuing intergovernmental disagreement. This third category of items should receive CCMC attention, not necessarily with a fear to resolving all the problems, but with the object of narrowing and defining the areas of discord. To do this, Mr. Chrétien would need to be equipped with

certain initial (but not final) fall-back positions on several of these items to which he could resort in the course of the CCMC August negotiations.

- 3) Federal Proposal for Comprehensive Constitutional Reform, for Presentation at the FMC. This would be the "bottom-line" position of the federal government on the twelve items, taken together, and would be reserved for the Prime Minister to use as he sees fit in the course of the September First Ministers Conference. It would involve some further movement towards the provinces on the part of the federal government beyond certain of the positions taken at the CCMC meeting and would represent the point beyond which the federal government was not prepared to go, ~~in this round of negotiations~~. It would have the dual purpose of serving both as a negotiating instrument to help achieve agreements if that is possible, and as a clear symbol to the public of Ottawa's effort to meet the concerns of the provinces, should negotiations fail.

While many of the elements of these three sets of proposals would be the same, they would be different from one another in certain respects, according to the different purposes they were designed to serve. All three would arise out of the necessity to turn at this stage in the negotiating process from the 12 items, taken one-by-one, to the items taken together as a unified whole, and the consequent need to assess the impact they would have collectively on our political life.

If we were to proceed in this fashion, all three sets would need to be ready for Cabinet review prior to the CCMC negotiations in August. This would permit all concerned to approach the CCMC and FMC negotiations with a sense of security about how far the federal government is prepared to go and at what point in the negotiations specific concessions might be made. It would also force us to consider the overall impact of a series of individual changes which might be made under the head of specific items.

The development of these three sets or proposals would have an important communications function, since it would permit the federal government to represent its position coherently at three critical points in the process of constitutional reform, namely, at the end of the CCMC's summer negotiations, at the end of the FMC in September, and (if negotiations fail) at the start of the process of unilateral action after September 12.

If the set of proposals used at one point in this process serves as the basis for intergovernmental consensus, it can be presented as a collective position of the governments involved; if it does not, it can be presented as the position of the federal government itself. If, for example, the FMC does not result in agreement, then the third set of proposals can be treated as a generous federal government proposal which the provinces would not accept, and the federal government can then revert to the first set (The Unilateral Package) for unilateral federal action in the autumn.

*or use the third set
as the basis for
unilateral action*

If this general procedure is accepted, it will require that the following work be done:

- 1) Preparation in legislative form of the first package (The Unilateral Package). This is already under way.
- 2) Determination (for the purpose of preparing the second and third sets of proposals) of how each item should be handled; e.g.,
 - should it be left to the second phase for formal agreement?
 - should an emerging consensus on the item be accepted by Ottawa?
 - should the existing federal position on the given item be maintained, even in the teeth of provincial opposition?

In this connection, it appears that the information should be treated as a subject of active negotiation at the CCMC and FMC?

- 3) Preparation, for each item that is to be the subject of active negotiation, of two fall-back positions which the federal government might adopt, namely, the CCMC position and the FMC "bottom-line" position.
- 4) Review and refinement of the CCMC initial fall-back positions and the FMC final offer, based on the work done as per 2) and 3) above.

Our discussion of the CCMC and FMC in the next two sections of this note is based on the assumptions that the general approach advanced above has been accepted.

The CCMC meeting this month should not be approached as a continuation of the Montreal-Toronto-Vancouver round, but as preparatory meetings for the September FMC.

The objectives of the meeting should be:

- to consolidate the work done in July and to review what was done in the light of the discussions negotiating Ministers have had with their governments;
- to identify those areas where a substantial consensus exists (Supreme Court, family law, equalization);
- to see what further progress can be made on other items; and,
- to prepare a report to First Ministers.

II. AUGUST CCMC MEETING

In this connection, it appears that the informed public tends to see the present round of negotiations as being an arbitrary list of items, not all related to each other. In our presentation of our case to the public we should begin to stress that the twelve items, taken together, amount to the heart and substance of a renewed Constitution. We should, at the same time, strive to elevate the level of the public debate to a consideration of what is constitutionally necessary for Canada today and in the future.

The meeting should then concentrate on the major economic items. Mr. Chrétien might wish to say that his consultations with his colleagues have left him with some room for manoeuvre on a number of issues, stressing that if he is to move in the direction of the provinces on some of the items, there will have to be a corresponding move by the provinces.

The CCMC Meeting, August 26-29

The CCMC meeting this month should not be approached as a continuation of the Montreal-Toronto-Vancouver round, but as preparatory meetings for the September FMC.

The objectives of the meeting should be:

- to consolidate the work done in July and to review what was done in the light of the discussions negotiating Ministers have had with their governments;
- to identify those areas where a substantial consensus exists (Supreme Court, family law, equalization);
- to see what further progress can be made on other items; and,
- to prepare a report to First Ministers.

This might best be achieved by having a short opening plenary session, which would enable Mr. Chrétien and Mr. Romanow to establish the procedure to be followed and provide for reports from those officials' committees that have met in the interim.

Ministers would then meet privately and Mr. Chrétien could first and foremost, make clear to his colleagues once again that the Peoples' Package is non-negotiable, save in the respect that there is every opportunity to further refine and improve its contents.

The meeting should then concentrate on the major economic items. Mr. Chrétien might wish to say that his consultations with his colleagues have left him with some room for manoeuvre on a number of items, stressing that if he is to move in the direction of the provinces on some of the items, there will have to be a corresponding move by the provinces.

He might propose the reaching of consensus where it appears to be in the cards, and suggest (at the proper time) that where consensus seems unlikely Ministers should attempt to narrow their differences to the extent possible, and to clarify the nature and extent of those differences that would remain.

The report to First Ministers would, then, fall into three parts:

- 1) The Peoples' Package, refined and improved.
- 2) A grouping of items upon which a considerable degree of consensus had been achieved, and that First Ministers might hope to settle with relative ease. Our aim would be to make this grouping as wide as possible.
- 3) A grouping of those items where consensus had continued to escape CCMC Ministers, with differences narrowed to the extent possible and clearly expressed.

The problem with this is that it implies there will be no unilateral action on these items.

This should provide a workmanlike basis
for the First Ministers Conference.

1. THE FIRST MINISTERS CONFERENCE

The purpose of the First Ministers Conference is to provide a forum for the discussion of the major issues of the day and to reach a consensus on the way forward.

The First Ministers Conference is a meeting of the Prime Minister and the Premiers of the provinces and territories. It is the highest level of intergovernmental consultation in Canada.

The First Ministers Conference is held at the Prime Minister's Office in Ottawa. It is usually held in the afternoon and lasts for a few days.

The First Ministers Conference is a very important event in the Canadian political calendar. It is a time when the Prime Minister and the Premiers of the provinces and territories meet to discuss the major issues of the day and to reach a consensus on the way forward.

The advantages of projecting an image of the Prime Minister as the leader of the country are many. It allows the Prime Minister to address the people directly and to explain the government's policies and actions. It also allows the Prime Minister to show his leadership and to inspire confidence in the people.

III. FIRST MINISTERS CONFERENCE, SEPTEMBER 8-12

1. Preliminary Considerations

In designing a possible model and in considering how federal strategy can best be implemented, we have several concerns in mind:

- The need for the Prime Minister to maximize the possibility of general agreement if at all possible, while at the same time consolidating his position in public opinion, should negotiations fail.
- The commitment to hold the conference in public, balanced by the necessity of providing adequate opportunity for First Ministers to negotiate away from the glare of the television cameras.
- The requirement that the federal government's public presence at these talks should always be constructed in a way that renders the federal position readily intelligible and highly attractive for ordinary citizens. Clarity, simplicity and popular appeal are the bywords in this respect. No one will win the hearts and minds of Canadians by floundering about in the swamp of communications technology in all its detail.
- The advantage of projecting an image of the Prime Minister as the leader of the country as a whole, bending every effort to reach an accord with the provinces that will be to the advantage of all the people of Canada. Mr. Trudeau's powerful TV image is hard-edged. There is little uncertainty in the public mind about his determination and toughness; but people doubt his capacity to get along with the provincial governments and to reach an agreement in an atmosphere of give-and-take.

...

Do you want this in the memo?

- The condition that the peoples' package be kept distinct from the other items on the list and that the reasons for this be communicated to the public.
- The need to convince Canadians, not only that Ottawa is prepared to walk the extra mile to try to reach an agreement, but that it is entirely reasonable for the federal government to proceed unilaterally if negotiations break down. *ma hand package*

2. An Approach to the First Ministers Conference

The function of the First Ministers Conference will not simply be to ratify an agreement already arrived at by the CCMC ministers, but to hammer out an intergovernmental consensus on the spot. The most that can be expected from the CCMC process is to clear the ground to make the reaching of that consensus easier for First Ministers.

Since the deal will not be presented to the First Ministers ready-made, they must be given the best possible conditions to carry on their negotiations. What this means is that the FMC should strike a judicious balance between public pressure and private discussion. Governments are committed to a public conference which means that the schedule should be construed and presented as a public process with some closed-door meetings, rather than a private conference with occasional public sessions.

The glare of publicity is likely to serve the federal government well, on the whole, for two reasons:

- The Prime Minister is probably the country's best political television performer.
- The main elements of the federal constitutional position are clearly very popular and can be easily explained to the public.

...

Thus, the federal government ought not to shy away from extensive public coverage, although the provision for significant private discussions among First Ministers, or First Ministers plus a few advisers, will be essential if ultimate agreement is to be achieved.

We would suggest that the organization of the conference meet the following conditions:

- a) That all formal conference sessions be open.
- b) That private sessions not involve more than First Ministers, "constitutional" ministers and two advisers at most, and that they be held at a location other than the Conference Centre.
- c) That the first and last days of the FMC (presumably Monday and Friday) be held entirely in the open at the Conference Centre.
- d) That formal, public sessions be held Tuesday, Wednesday and Thursday morning, and that the afternoons be reserved for consultation, preparation and private discussion if necessary.
- e) That First Ministers make general opening statements on Monday and closing statements on Friday, with the Prime Minister speaking first on Monday and last on Friday.

A schedule for the FMC has been developed in the light of these factors, and is presented below, followed by discussion of the salient points.

...

DRAFT FMC SCHEDULE

Monday	Tuesday	Wednesday	Thursday	Friday
<u>Afternoon and evening:</u> FMC begins with following items: - Very brief opening remarks by the P.M. -- non-partisan tour d'hori-<u>zon.</u> - Co-chairmen report on CCMC dis- cussion. - Opening statement of First Ministers: general view of country and consti- tutional structure, reaction to specific items <u>plus package as a whole.</u> P.M. speaks first.	<u>Morning:</u> Public session to address: - Non-con- tentious items. - Division- of-powers items. <u>Afternoon:</u> No formal session	<u>Morning:</u> Public session to address: - Division- of-powers items (cont'd). - Upper- chamber reform <u>Afternoon:</u> No formal session	<u>Morning:</u> Public session to address: - Peoples' package <u>Afternoon:</u> No formal session	<u>Morning:</u> No formal session. <u>Afternoon and/or evening:</u> Public session to report on overall result of week's negotiations. General con- cluding state- ment by each First Ministers. P.M. speaks last.

...

The conference would open with the Prime Minister speaking for perhaps 15 minutes, reviewing the history of efforts to achieve constitutional reform, noting the social and economic changes which are occurring in the country and the resultant pressures on governments, underlining the necessity of all governments to seek to enhance the security and happiness of the people they represent and the country as a whole, and drawing the attention of all concerned to the historic juncture in which Canadians find themselves. If his remarks are kept brief and non-partisan, it ought not to be necessary to offer any one else "equal time" at that point.

Then the co-chairmen of the CCMC might be asked to give a brief summary of their report on the summer's negotiations. More detailed accounts of specific items might be given subsequently as and when necessary. Mr. Chrétien might focus very much on the general points of consensus and disagreement and indicate where he thinks the attention of First Ministers might be focussed.

After that the general statements of First Ministers would begin, with the Prime Minister leading off. In his agenda telex, sent out earlier to the Premiers, the Prime Minister might have indicated (and made public) his view of how the time spent at this point might most profitably be used, that is, by each head of government stating his thoughts about the country as a whole, about the general constitutional arrangements which would best serve the interests of the people and about the position which his government takes on the items under discussion, taken as a package. The Prime Minister could follow this line of argument closely, laying out the peoples' package as appealingly as possible, and indicating what his position at the start of the conference is on the package as a whole. ? The Premiers would then feel some pressure to follow suit, which would force them to declare themselves publicly on those items of most concern to Ottawa and to do so in the context of comprehensive constitutional change, or to decline to do so, in which case Mr. Trudeau's "national" statement would stand in stark contrast.

...

The next three days might then be devoted to discussion of "clusters" of interrelated items. For example, Tuesday might start with the confirmation of intergovernmental consensus on certain non-controversial items like equalization, family law and the Supreme Court (a useful one to have early, so far as Quebec is concerned), and then turn to division-of-powers items. Wednesday might complete initial discussion of these items and deal with the related matter of upper-chamber reform. Thursday could be devoted to discussion of the elements of the peoples' package, which would permit the Prime Minister to argue his strongest public case last, and force the Premiers to react at that point, just prior to the wind-up of the session. As each cluster of items was addressed, Mr. Trudeau could make clear what would in effect be his final offer on the matters under debate.

The conference should end on Friday with a bang. Given the federal government's timetable and objectives, the worst result of all would be muted success or partial failure. An ambiguous outcome must be avoided, and therefore the Prime Minister must be in a position, when he appears on national television on Friday, either to celebrate an historic accomplishment or to record a lamentable failure.

Friday would be the time then, when all heads of government would be given the opportunity to say what they want, and when the success or failure of the process would be broadcast and driven home to the people of Canada. All First Ministers would have begun work on Monday, then, with their eye on what they would have to say at the end of the week.

Friday (if possible, Friday evening) would be the moment for the Prime Minister to assert his national leadership, either by confirming the success of the discussions which the Government of Canada precipitated and the historic nature of the achievement, or by recording the failure of the process and revealing what the Government of Canada proposed to do as a consequence. If negotiations did not succeed, this would be the point at which the Prime Minister could put together the "bottom-line" package, which he had presented piece-by-piece to the Premiers during the week, and appeal to the country at large on

...

D R A F T

CONFIDENTIAL

MEETING OF THE CCMC

August 26-29, 1980

OTTAWA

P R O P O S E D A G E N D A

Tuesday 2:30

1. Approval of the Summary of Consensus reached by Ministers in Vancouver on Committee Reports received by them
2. Confirmation of Work Plan
3. Striking of Committee to draft Report to FMC (Kirby and Leeson)
4. Review of Twelve Items:
 - (a) ^{For Immediate Reference to} ~~Where substantive work required by~~ officials
 - (i) Statement of Principles (Reference of Drafts to Officials)
 - (ii) ^{Christian} ~~Senate~~ ^{chairs}
 - (iii) Communications ^{If Mr. Chrétien presents} ~~a new proposal~~
 - (b) Where substantial consensus exists
 - (i) Equalization
 - (ii) Family Law (Report of Toronto meeting of officials)
 - (iii) Supreme Court (Report of Toronto meeting of officials)
 - (c) Where further ^{Ministerial} ~~political~~ discussion required
 - (i) Resources (Report of Toronto Meeting of officials)

Week Meeting of the
Opening Statement

- (ii) Powers over the Economy (*new draft*)
- (iii) Offshore Resources (Consideration of Federal Proposal as circulated in advance of meeting)
- (iv) Fisheries

[*4a*] (v) ~~Charter~~ *SENATE*

(Communications if not dealt with under 4a above)

- (vi) Patriation and Amending Formula

From 4a 5. Reports of Sub-Committees of Officials

FRIDAY 6. Consideration of Draft Reports

7. Other Business

8. Conclusion