

D R A F T

October 23, 1980

DRAFT MEMORANDUM TO ROBERT WEESE - SASKATCHEWAN DEPARTMENT  
OF INTERGOVERNMENTAL AFFAIRS

Dear Mr. Weese,

I am replying to your letter of October 21st which followed up on our meetings of October 16th and 17th. I will deal with each of the issues you raised in the same sequence raised in your letter.

Non-discrimination

Your assessment of our discussions, as outlined in your letter of October 21st, are accurate. I will inform the Prime Minister that Premier Blakeney will be writing to him on this subject.

Equalization

While I agree with the general intent of your summary of our position on this issue, the phrasing in your letter requires that I clarify the exact nature of our discussions. I indicated that the federal government was not unalterably wedded to the present wording of the equalization clause in the constitutional resolution, particularly if several provincial governments favour an alternative wording. I do not think, however, that I would describe any of the alternatives outlined in appendix A to your letter as "strengthened" versions of the existing section 31 of the resolution. Rather they are alternative ways of describing the government's commitment to the principle of equalization and we are certainly prepared to consider them.

However, your concluding comments at the end of page 1 of your letter indicate that you expect the federal government to indicate to you which alternative it prefers,

and hence presumably which alternative it intends to introduce in committee. I have difficulty in doing this for two reasons. First, one of the stated public purposes of the committee process is to give interested Canadians and parliamentarians an opportunity to try to improve on the wording of the draft Resolution. To the extent that we proceed to negotiate detailed wording changes with you or any other individual province, we are making a mockery out of the committee system. Second, in the particular case of equalization, since you know that other provinces are also concerned about that section, and indeed that at least one other Premier intends to appear before the committee to argue for different wording for that section, it would clearly be an affront to that Premier, and others who may appear before the committee, to promise at this time that we would adopt one specific equalization clause rather than another. I am therefore not in a position to respond to what I think was the intend of your question.

In saying this, let me stress that I am not attempting to dodge your question or unnecessarily prolong our discussions. I think, however, that you will agree that it would do violence to the parliamentary committee system if the government were to agree with outside parties on all the amendments it will introduce and support at the committee stage. Nevertheless, during our meetings I clearly indicated the willingness of the government to consider new wording of the equalization clause and I urge you to present your alternatives to the committee, or alternatively to have a member of the committee present them for you.

Final Amending Formula: Alternative to the Victoria Formula

I indicated to you during our meetings last week that the government would seriously consider reverting

to the original Victoria formula by making the amendment you suggested in the top paragraph of page two of your letter.

Your amalgamated formula, outlined in the fourth paragraph of page two of your letter, has considerable appeal. However, I think the federal government would be reluctant to introduce such a major change in the Resolution at this time unless we knew that it had the support of a considerable number of provincial governments. If there is general provincial support for such a change, it would be useful if you could determine that.

Section 42: A Deadlock Breaking Mechanism

We are examining your draft, and some we have developed on our own, of a clause which would make it clear that section 42 is a genuine deadlock breaking mechanism. Your drafts will help us in this regard. However, once again, it is impossible for us to reach a formal agreement with you on the exact nature of the clause we will introduce.

I have indicated, however, I too felt there should be some set provision so that a referendum had to be called within a limited period of time (three to five years) of the initial approval of an amendment. I also said, however, that despite your insistence, the federal government would not support complete reciprocity between federal and provincial governments in the calling of a national referendum. I realize that the draft contained in Appendix C of your letter is not complete reciprocity, but rather includes an element of reciprocity only. This matter will be examined in the coming weeks by the federal government. However, your proposal has not yet been considered by Ministers.

Referendum Rules Committee

I will have to get back to you sometime next week or early in the following week with a reaction to the proposal contained in Appendix B. I share your concern that it is essential that the rules for a national referendum be fair, and be seen to be fair. For this reason your proposal that the rules for the referendum be established by a federal-provincial body has some appeal. The actual way such a committee would work, however, and whether it should be full-time or part-time, needs to be examined by officials, and then Ministers, and we have not had time to do this to date.

Part IV

Of the four points proposed at the top of page four of your letter, the federal government has no strong objection to the first point. However, I indicated to you categorically that your second point was unacceptable to the federal government and that we would consider points three and four, although I doubted that we would find them acceptable.

Resources

Your argument in connection with sub-section 2 is a legal one which is being considered by the Department of Justice and we will respond to you on it shortly. However, I did indicate that there was a strong possibility that the federal government would not accept further amendments to the resources clause now that an agreement on legal wording has been reached with the Leader of the federal New Democratic Party.

Administration Arrangements for International Trade

As I told you last week, we will start to work on the exact nature of an administrative or legislative

solution to the problem of international trade in resources. However I also told you, as confirmed in your letter, that this would inevitably take time because there is a limited amount of human resources we have and the incredible pressure we will be under in the coming months in view of the fact that the parliamentary committee will be reporting back to Parliament on December 9th. Since we have agreed that the solution to your international trade in resources problem will be of an administrative rather than a constitutional nature, while we will do what we can on it, I am sure you can appreciate appreciate the fact that we must give priority between now and December 9th to solving matters associated with the parliamentary committee.

Conclusion

I appreciate receiving your draft proposals for a new equalization clause, the linking of sections 41 and 42, the referendum rules committee (Appendices A,C and D of your letter). They will help us considerably. If you have any further thoughts on these matters, or if you think it would be useful for us to meet again, please let me know. In the meantime we will work on variations of some of your proposals and specifically discuss with you your wording in section D and the reaction of the Justice Department to the legal argument on pages 5 and 6 of your letter.

Yours sincerely

Michael J.L. Kirby

Barbara Reed

Frank Carter      2:45    151 Sparks

-- edit and see if there  
is anything to be added  
-- go over very carefully the PM's  
comments on the memoranda of  
October 16-17 which Barbara  
wrote for him last week.



The Institute / L'Institut  
for Research on Public Policy / de recherches politiques

*file*

Ottawa Office

January 13, 1981

CONFIDENTIAL

M E M O R A N D U M

To: Mr. Michael Pitfield  
Clerk of the Privy Council and  
Secretary to the Cabinet  
c.c. Dr. Michael Kirby ✓

From: R.G. Robertson

Re: The Position of Saskatchewan on the  
Constitutional Package

Last Thursday I had a call from Premier Blakeney's office to say that he would like to talk to me on the telephone on Monday and he called me at 5:00 p.m. yesterday - shortly after you and I had spoken on the telephone. He said that he was going to be leaving for about two weeks and he was not entirely sure whether his position had been fully understood in Ottawa. He asked whether I could pass on a message on his behalf and I said I would do so.

Mr. Blakeney said that while there had been some discussions with him about changes in the constitutional package, the federal government "had been unable to be specific" and in this situation he, on his part, had not been able to give a final word. A commitment of support had never been possible on his part because that "depends on what the final package is". Out of this might have arisen some doubt on the federal side as to whether Saskatchewan had a clear "bottom line". He felt that it was important before he went away to make the matter clear. His message was:

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3670  
South, N.S.  
BJJ 3K5  
(902) 424-3801

2149, rue Mackay,  
Montreal, Que  
H3G 2J2  
(514) 8533

60 Queen St. 12th fl  
Ottawa, Ont.  
K1P 5Y7  
(613) 238-2296

563 Spadina Ave.  
Toronto, Ont.  
M5S 2J7  
(416) 978-6835

P.O. Box 458, Station G,  
Calgary, Alta  
T3A 2G4  
(403) 282-1255

1. Saskatchewan does have a bottom line.
2. The bottom line is different from Mr. Broadbent's.
3. Saskatchewan will express vigorous opposition if the final package is one with which they are not able to agree.
4. Saskatchewan will support the federal government's initiative "if it gets an acceptable package". That package would be "not far different from" what is in the submission he made to the Joint Commission.
5. He "does not know what the position of the NDP caucus is" but he believes they "are troubled" about the constitutional proposals.

Having gone over these points clearly and specifically, Premier Blakeney then went on to some elements of the package itself.

(a) Resources

Saskatchewan's position is set forth in the Brief. They are not attached to the specific wording there but the "international trade problem" reflected in the CIGOL case has to be addressed in the "constitutional provision itself". Saskatchewan is "unable to accept a letter saying their problem will be solved".

(b) The amending formula

Saskatchewan would "like to see the referendum provision out". If the federal government felt it must be retained, Saskatchewan wants "a degree of reciprocity". It can be less than set forth in the Brief but it must be adequate to "protect the provinces against the Government of Canada". He said specifically that, if there is a referendum proposal, it would have to ensure that it could not be one held "without a resolution of Parliament passed after Parliament had seen what level of acceptance" there had been by the provinces in any specific case.

Premier Blakeney went on to say that what Saskatchewan was searching for was "something to keep the referendum from being a real hammer on the negotiating table". The preferred position, however, would be to have Section 42 eliminated - it would be a "source of great friction".

(b) The amending formula cont'd

So far as the amending formula itself is concerned, he now realized that a change to the proposal in his Brief might cause some worry in Quebec since its veto would be lost if its proportion of the Canadian population fell below 20%. He could "live with Victoria" but it had to be recognized that it caused some difficulty in the West because of the inequality it established for the provinces - especially for Ontario.

(c) The Charter

Premier Blakeney was quite brief in his reference to the Charter. He said that if the amendments to it were of a kind that would "transfer significant quasi-legislative authority to the courts, Saskatchewan would not be able to go along".

After covering the above points, Premier Blakeney said that Saskatchewan could not in the circumstances make any final decision until it sees what comes out of the Joint Committee for recommendation to the House of Commons and the Senate. After that, if the proposals did not meet the points to which he had referred "Saskatchewan would not be able to stay quiet".

I asked Premier Blakeney if he was aware that Mr. Chrétien was submitting to the Joint Committee the Government's amendments to the package later that very day. He said that he was aware of that fact and realized that his comments could not affect what might then be proposed. He said it seemed to him that if any further changes were necessary, the desirable place would undoubtedly be in the Committee before it had completed its proceedings. His main interest was to be sure that the position of his government was understood. I undertook to pass his message on.

  
R.C. Robertson