

Mr. Chrétien: For your information

CONFIDENTIAL

July 11, 1980

MEMORANDUM FOR THE PRIME MINISTER

TO: The Honourable Jean Chrétien
The Honourable John Roberts

Material concerning the
Constitutional Talks

Meeting with the Prime Minister

We are pleased to provide you with three items
for your weekend reading.

-- There will be a meeting at 10:30 a.m. on
Monday, July 14th, 1980 in the Prime Minister's
Office in the Centre Block to discuss the enclosed
material and the paper on the Senate to be delivered
to you on Sunday.

You are asked to be in attendance.
A memorandum on Upper Chamber reform options
and may be useful as background (attached).

A memorandum on Upper Chamber reform options
discussions. It will be provided
latest by Sunday evening.

B. Loring
Michael Kirby

Enclosures

/djs

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July 11, 1980

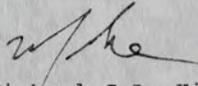
MEMORANDUM FOR THE PRIME MINISTER

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

Material concerning the
Constitutional Talks

We are planning to provide you with three items for your weekend reading:

1. The attached memorandum. This note reviews the week's events in Montreal and seeks your guidance on how to proceed during the second week in Toronto.
2. A memorandum on the principle of concurrent powers. This was prepared for Mr. Chrétien and may be useful as background (attached).
3. A memorandum on upper chamber reform outlining some options based on this week's CCMC discussions. It will be provided to you at the latest by Sunday evening.


Michael J.L. Kirby

D.Cameron/cd

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July 16th, 1980

MEMORANDUM FOR THE PRIME MINISTER

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

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

This memorandum is organized in the same way
as our 11 July 1980 note to you, namely:

- an overview and general assessment
- a review of the twelve items
- a concluding section summarizing the situation
and seeking your reaction and guidance.

We are attaching ⁴ ~~two~~ ^{draft 121 + 96v1} ^{Romanow text} annexes which may be of interest
to you as background; the first is a partial
transcript of a press conference Mr. Chrétien
and Mr. Romanow gave this week in Toronto; and the
second is a series of press clippings on the consti-
tutional talks.

I. Overview and General Assessment

a. Mood of the Talks

From a rather fractious beginning, the constitu-
tional talks have become more positive towards
the end of this week. What seems to have
happened is that over the weekend the provinces
had time to study the federal position paper on
Powers Over the Economy and to review Mr. Chrétien's
positions as expressed in the first week. As a
result, they became angry at the federal govern-
ment for asking that it be given powers. Simul-
taneously they became nervous that the federal

... 2 /

*That deal with
Chrétien's statement
by Romanow*

*we're with the real issues
of the type of authority we want*

might decide to move unilaterally in this area as well as in the areas of rights and patriation. The overall federal position is now perceived by all the provinces, but particularly the four western provinces, Quebec and Newfoundland, as a very significant hardening of its position in February 1979. The provinces clearly had not anticipated this and consequently they are upset and at least partly confused by it.

Another thing which has upset the provinces is the way in which the federal government publicized its positions at the first week's meeting. Several provincial delegations reviewed press clippings on the Constitution over the weekend. For example, even in places like Regina and Saskatoon the federal position had come through clearly and forcefully. While they expected a strong communications campaign from Quebec, they did not expect the federal government to mount a similar offensive and right now they feel that the federal government is doing a better job of getting its message across in their province (e.g., Saskatchewan) than the Saskatchewan government is doing in presenting its position to its own people.

These events on the weekend, combined with the perception in a number of the officials' committees (e.g., fisheries and communications) that the federal government is being unreasonable, inflexible and taking an unnecessarily hard line, has combined to further change the mood of the provinces. This hardening was also reflected in the positions which Mr. Chrétien and Mr. Roberts took on the issues of Offshore Resources, Resource Ownership and Inter-provincial Trade and Powers Over the Economy at the Ministers' only meetings.

However, by Thursday, there were some signs that the provinces had adjusted in some measure, even if reluctantly, to federal strategy and that some more profitable discussions were possible.

On Resources and Powers Over the Economy, the provinces have been making a determined, but unsuccessful effort to keep the two items separate. There appears now to be a recognition that the only way in which these issues will be discussed is in conjunction with one another, as is evidenced by the striking of a single committee to examine both issues.

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It may well be that a basic difference of principle exists between the federal government and the provinces as to whether the national economy transcends, or is simply an aggregation of the regional economies. Certainly, there are some clear signs that the cleavage in outlook runs as deep as this. The Western provinces in particular may want to be able to regulate the external world which impacts on their major resource areas (e.g., potash in Saskatchewan and oil and gas in Alberta). In effect, they appear to believe that the national economy consists of a series of regional economies and that the provinces themselves should control these regional economies. This is a fundamentally different view of Canada from that held by the federal government and Ontario and may well be the underlying cause of the concern and resentment which the provinces have towards the federal economic proposals.

*BC + Manitoba
are not*

On the other hand, however, one must note the following facts:

- i) both the federal and provincial governments accept the principle of a Canadian economic union. Certainly, no province wants to be forced to attack it directly;
- ii) both the federal and provincial governments accept the view that in a federal system some limitation on the full sweep of an economic union is not inappropriate. All federal government statements acknowledge this point.

From this point of view, the conflict may be more one of degree -- of where you draw the line -- than it is a conflict of principle. That, however, remains to be determined.

It is evident that, whatever one concludes about the question of principle, one can explain a good deal of the provincial reaction by referring to the following points:

- The provinces were not expecting an aggressive federal initiative in the economic-powers area.
- The provinces tacitly assumed that movement in that area would be in one direction -- toward them. They are startled to find that the game is tougher than that.

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- Because the provinces were not sure of the full significance of the federal proposal, they were suspicious of it.
- Some provinces have chosen, not to contest the basic principles of the federal position, but rather to question the federal government's claim that balkanization has gone so far that something must be done, and that the federal government may require additional powers which it does not now have to manage the situation.
- In the intergovernmental struggle for power, the federal government has simultaneously shifted the ground and upped the stakes.
- More speculatively, the provinces may sense some shift in public opinion against them. There is no question that they recognize that Ottawa has selected an eminently "saleable" position on which to stand.

Mr. Romanow's comments, in his Tuesday afternoon press conference statement, exemplify provincial reaction to the economic-powers issue. In commenting on the federal position in Powers Over the Economy he said that he flatly rejected the basic assumption of the paper which was that the federal government needs more power to manage the national economy in the national interest. He said that he was "very, very nervous" about federal initiatives in the economic powers area. He said further that the federal proposals would lead to "no provincial involvement in managing their provincial economy" and this position was causing "a considerable amount of anxiety among himself and his provincial colleagues".

More importantly, however, he went on to argue that even if one accepted the premise that provincial governments were instituting barriers to trade, as suggested in the federal paper, this was "a price of federalism". In other words, even if the assumption of the federal government's paper is correct, provincial barriers are an economic cost we have to live with precisely because we are a federation.

Mr. Romanow then went on to say that the basic difference between the federal and provincial governments, particularly the resource-producing provinces, was that whereas the provinces want to limit the trade and commerce power in the resource area, the federal government wants to expand the trade and commerce area to include the movement of services and capital. This was a fundamental, and, if the federal government does not change its mind, irreconcilable, difference between the federal government and the provinces and, he implied, could lead to the break up of the constitutional talks.

By way of conclusion to this section, I might make the following points. As you will notice, several have clear implications for the federal government's strategy and tactics.

- i) All the provinces clearly understand that the federal government is not prepared to bargain rights against powers. However, this does not preclude their holding out on the people's package item until they see what is achieved on the other items. The debate has now moved into a give and take between Powers Over the Economy, Resources and Offshore Resources.
- ii) No province except Ontario is prepared to accept the underlying assumption of the federal paper, namely that there is a problem with the economic union as it now exists. That is, no one except Ontario thinks the feds need more power.
- iii) Saskatchewan and Alberta are trying very hard to get all the provinces to agree that at the First Ministers' meeting in September they will not vote sequentially on each item on the agenda, but rather they will wait to the end of the meeting and then vote on a package. These provinces believe that if each province is polled on each individual item, the federal government will then proceed to move on items on which there is a consensus, but not unanimity, whereas if provinces are forced to vote on a package of proposals, no province except Ontario will support the proposed federal package.

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July 17, 1980

B. How well is the Government of Canada's strategy working?

The broad five-point strategy continues to serve us well.

With a few, if any exceptions, provinces now accept the distinction between the people's package and the package for governments.

With regard to the deadline, provinces generally accept it for the people's package and further are beginning to wonder if the Government of Canada does not intend to have the deadline apply more broadly, in particular to powers over the economy.

While there is wide, if grudging, acceptance that the Government of Canada will not bargain powers against rights, a new provincial tactic seems to be emerging, to try to hold off discussion of the people's package till they have gained as much as possible in the powers package.

"Give and take" is now widely conceded as a principle although specific results as yet are few.

Establishment of the central linkage between resources and powers over the economy has been achieved, as evidenced by the establishment of one committee to deal with both.

C. Strategy considerations for week 3

The provinces appear to accept privately, that the Government of Canada is winning this round. Intelligence reaching us suggests that they have not conceded the outcome, but rather believe that the Government of Canada will find it difficult to maintain its momentum and initiative through the third week. This means that we should maintain a relentless pressure on them, and keep them off base to some extent by producing new ideas and appearing to change our ground within the limits of our clearly-defined objectives.

Another outcome of the provincial perception that the Government of Canada is ahead of the game is likely to be a drawing together of the provinces on items where interprovincial agreement is within reach. This is evidenced by the ease with which Quebec dropped its Constitutional Court ambitions in response to the unexpected agreement of the other provinces to the principle of duality on the Court with 5 civil law and 6 common law judges.

This may mean one of two things, or both of them

- that the provinces want to demonstrate that they can settle many matters interprovincially
- that the provinces are taking the first steps toward achieving a unanimous stance in major items for the First Ministers' meeting in September.

All of this suggests that the broad strategy should be adhered to, and that we should be very careful to maintain our leading position throughout week 3 in Vancouver.

In particular:

- We should watch for any tendency among the provinces to work out their own problems, and counter this by keeping a strong federal hand in discussions, even if these appear to be going our way without our active participation.
- We should counter any move to postpone thorough discussion of the people's package until the CCMC meeting August 25. This is important for two reasons, first, we do not want the press or the public to get the idea that this package is no longer our pre-eminent concern, and secondly, the Premiers' Conference will take place before the August CCMC, offering to the provinces a media opportunity that would not be easy for us to counter effectively.

In the two weeks now ending we have conceded nothing. Indeed we have gained important strategic ground by the major focus on powers over the economy. The provinces had expected that our only sticking point would be the people's package. They now realize that we are equally firm on the powers issue. This has helped us to keep the discussions on our grounds, within our strategy and to our schedule.

*Is this not going from
from us then?*

*Is this necessary
in the name?*

*Must be wait
until July 24*

Next week in Vancouver we will have to bargain seriously within the powers over the economy and resources package. The provinces are ready for this. For instance, they have asked us to prepare, for next Tuesday, a short paper explaining very clearly the essence of what we are seeking in powers over the economy - "what we are trying to do and what we are not trying to do" - as they put it.

We are now in a position to bargain effectively within our strategy, on a "give and take" basis, within the lines indicated by the expert departments in Ottawa and within the mandate approved by Cabinet.

D. The People's Package

As indicated above, the provinces may wish to put off serious discussion of these issues until they have gained all they can in the bargaining that will take place next week.

They may indeed wish to postpone ministerial consideration until the August meeting. This will be strongly resisted. We cannot allow the press and public perceptions of this round to focus only on powers, - resources and other sectoral concerns.

Although in the second week we concentrated on powers over the economy as a federal objective, we also managed to have committees established on patriation and amendment, Charter of Rights and Principles. We will insist that these committees report to Ministers next week, even if only on an interim basis. This will force ministerial discussion and perhaps more importantly, enable us to make known to the press that considerable work is going on in this area.

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someone that
we would discuss
principles*

why?

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The Senate

The state of play with regard to the Senate is set out in part 2. The Committee has elaborated a set of models in reasonable conformity with the options outlined in the memorandum discussed with you last Monday. It is unlikely that any final agreement will be reached next week. Certainly the Government of Canada would insist upon keeping its options open until the bargaining process over powers and resources is complete or very well advanced. It is likely that the provinces share this position.

Unilateral Action

There is no doubt that the provinces see action by the Government of Canada if little is achieved by September as a real threat. In general, they seem to believe that the Government of Canada would prevail against their objections if it came to a head-on clash. There may be good reasons, however, for us to soft-pedal this possibility (without any backing away) next week, during the bargaining process, since too much insistence on this possibility on our part might tend to poison the atmosphere.

Admirable

Notes on Provinces

Quebec

The analysis of Quebec's position and strategy contained in the memorandum to you at the end of the first week appears to stand up fairly well. As anticipated, Quebec seems to be interested in success, at least on a narrow front - Supreme Court, Family Law, Equalization.

at summit

^{sort of} While Quebec has been very active at the official level in Committees, and generally helpful in attitude at least, the overall impression is that they have joined Ontario on the sidelines and are waiting and watching.

Saskatchewan

Mr. Romanow sees the provinces as being in a "no win" position. If there is wide agreement on a majority of items, such as seven or more provinces agreeing on seven or more items the Government of Canada will proceed on the ground of consensus. On the other hand, if there is a minimum of agreement upon very few items, the Government of Canada will proceed on this ground that consultation has failed.

It is probably for this reason that Saskatchewan, supported by Alberta, would like to see the package of 12 items accepted or rejected in toto by First Ministers in September. Assuming rejection in toto the argument would then be that the Government of Canada would find it hard to move in a totally isolated position.