

Stat.

SECRET

January 15, 1981

MEMORANDUM FOR: A. GARNEAU
M. KIRBY
F. GIBSON
J. YANOVER
J. FAIRBAIRN
W. CARTER
 E. GOLDENBERG

Constitution: Parliamentary Considerations

Attached is a draft briefing note which we are to discuss tomorrow afternoon in Mike Kirby's office. It will have to be revised to reflect whatever developments occur in the Constitution Committee respecting the admissibility of amendments which go beyond the scope of the present Address.

- ① # 31 prohibits
- ② Admissibility of a resolution
- ③ Use authentic
AW/dc

Andrew Watt
Andrew Watt

address, the main
concurrence in the Committee report, or introduce a motion
for the presentation of the Address recommended by the
Committee.

Constitution: Parliamentary Considerations

The Joint Committee has agreed on a timetable and a procedure for clause-by-clause study of the resolution. It now seems very likely that the Committee will be able to report by February 6, and that the report will recommend an Address containing the desired amendments. The Conservatives have given notice that their strategy, for the rest of the committee hearings and in Parliament, will be to attack the principle of unilateral action; but it seems unlikely that they will try to sabotage the committee work by delaying tactics, although they will continue to claim that more time should have been allowed.

While it is probably too early to make concrete decisions, it would be useful to obtain the views of Ministers on a number of issues relating to the consideration of the Address by Parliament.

1) Procedure at the Third Stage

The Joint Committee will either produce a report recommending an Address totally acceptable to the Government, or it will not. If it does not recommend an Address acceptable to the Government, the only real option is for the Government to introduce a new motion asking Parliament to approve the desired Address. The complicated procedure involved in amending a committee report rules out as a practical alternative a motion to concur in the committee report, in a case where the Government is not prepared to accept the Address recommended by the Committee.

Should the Committee recommend an acceptable Address, the Government has two basic options: seek concurrence in the Committee Report, or introduce a motion for the presentation of the Address recommended by the Committee. (A third option, and the preferred one for a variety of reasons, would be to obtain the unanimous consent of the House to treat the Address recommended by the Committee as a Bill. We assume from the attitude of the Conservatives that they will never agree.)

The characteristics of each way of proceeding are as follows:

(a) Concurrence

- no limit on length of debate or number of amendments that can be proposed
- amendments can only be made by reviving the Committee (with the concurrence of the Senate) and having it report back again
- the Address is not directly before the House
- it will be argued that concurrence by both Houses is not sufficient authority to present an Address to the Queen (this would at the least cause delays, and could have an effect in Britain and possibly on the authority of the Speakers here)

(b) Direct Motion

- no limit on length of debate or number of amendments that can be proposed
- amendments can be made directly by each House

- the Address is directly before each House, and there is therefore no doubt that approval of the motion is authority to present the Address
- there is a possibility of procedural arguments against moving the motion before debating the committee report.

Our conclusion is that there seems to be no advantage, either in terms of the time involved or the ease of avoiding votes on amendments, in seeking concurrence in the committee report. Furthermore, there appears to be considerable advantage in moving directly with a motion for an Address: arguments over the procedure for amending committee reports would be avoided and, more important, there would be no doubts about whether Parliament had actually approved the Address.

This latter point is complicated by the possibility that the Committee may consider itself unable to amend the Address in areas other than those contained in the document before it; their report might, for example, be divided into an amended Address and a series of amendments which the Committee favoured but did not have the authority to recommend. Natural resources may be among the latter. If the report equivocates in this way on some amendments, it will be harder to argue that concurrence alone is sufficient.

The only drawback of moving a resolution directly is that it could appear to leave the committee report in limbo. This may raise some procedural problems which will require careful handling, but will not be a significant point if the Government's motion proposes an Address identical to that recommended by the Committee. It would be helpful, though, if the Committee itself were to recommend that the Government introduce a motion for the presentation of an Address.

You may want to suggest that Mr. Pinard seek out the views of the NDP on the procedure to be followed; if the NDP supports the Conservatives' view about the effect of concurrence in the report, that option may have to be dropped altogether.

2) Timing

You may want to raise with Ministers four aspects of the timing of the debate:

(a) Length of the debate.

Ministers will want to consider how many days the debate should be allowed to continue. They may want to consider that:

- the resolution has not yet been debated directly by the House
- there are other urgent and important measures
- there is pressure to deal with the economy
- time allocation is not possible, since there is no Bill
- the use of S.O. 33 will be very controversial and could affect the time required to deal with other legislation.

(b) Should the debate take precedence over all other government business?

The income tax legislation (Bill C-54) will not have been passed by February 9. Although the borrowing authority provided by it will not be needed before April 1, there will be political pressure to pass the Bill by the beginning of March, because a large number of individual tax refunds cannot be processed until the Bill becomes law.

Mr. MacEachen may have other Bills that will require House time before April, for financial reasons.

It might be useful to broach the question of whether the constitution should be debated continuously from February 9 until its final approval or whether the debate should be interrupted from time to time to deal with budgetary measures.

(c) Calendar

If the debate on the third stage began on February 9 (the earliest possible date), and proceeded continuously for a total of 20 sitting days (for example), the Address would be approved by the House on March 6. Quite apart from possible interruptions for other government business, however, there will probably have to be at least 3 allotted days in that period, which means that the constitutional debate would take up all the government time between February 9 and March 12.

(d) Should the debate go on concurrently in the Senate?

Whether the Government proceeds by way of concurrence or by moving a resolution directly, it has the choice of delaying the Senate debate until after the House of Commons debate has finished. The time difference will be minimal, since it is unlikely the Senate would spend more than two weeks on it. A concurrent debate would be somewhat harder to manage, and there might therefore be more risk that the Senate would vote to amend the Address. On the other hand, there will be considerable pressure within the Senate for an early debate, and if party discipline can be guaranteed a concurrent debate is safe.

(e) Consideration by the U.K. Parliament

The British legislative timetable may also be a factor.

(f) Tactics

It has been suggested that to set the stage for a limited debate in the House, the Government should propose a schedule for the debate, including extended hours and extra sittings. Such a move seems useful, but Ministers may want to consider whether proposing it before February 6 could affect the work of the Committee at a crucial stage.

Summary

Although no decisions are necessary yet on the strategy for the "third stage", it might be useful to reach a general understanding that the government members on the Committee should work toward a report which would recommend the introduction by the Government of a motion for an Address.