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To M. Chrétien

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Memorandum to: The Prime Minister

From: Michael J. L. Kirby

October 25, 1981

Most Recent Survey Results

On October 21 and 22, we undertook another national survey of public opinion to seek out Canadians' attitudes towards the constitutional issue and its resolve. Some of the questions posed were of a time series nature, that is, we have asked them in other surveys. Others were developed as a result of recent events in order that the reaction be as immediate and actionable as possible.

Unprompted Reaction - What Should The Federal Government Do?

Three weeks ago, four in ten Canadians said that the federal government should enter into further negotiation with the provinces, and one in ten said proceed unilaterally. Today, unilateral action is suggested by nearly two in ten, up about 10%, and further negotiation as an option is suggested by just over three in ten, down some 10%. It is clear that Canadians are not comfortable with the present conflict, and want it resolved. The delay is also being shown to be functioning in the favour of the federal point of view, not in that of the collective provincial positions.

Who Do Canadians Feel Has To Give More?

Overall, 59% feel that the federal government's stand needs changing compared with 44% saying that the provincial governments need to loosen up. That is, the federal stance is the one which people believe has to be attacked. This means that the blame for the conflict lies more heavily on the federal government's shoulders than on those of the provinces. This has also been clear in other surveys taken. In the process which evolves next week, then, the federal government must be seen and continue to be seen as being somewhat conciliatory in its negotiations.

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Prompted Reaction To Possible Alternative Actions

With data consistent with that of three weeks ago, the level of support of various action alternatives is as follows:

	% who support the alternative ...	
	<u>strongly</u>	<u>not at all</u>
. the federal government agree to meet the provincial premiers <u>over a prolonged period of time and as many times as necessary</u> to react an agreement	52	22
. the federal government <u>abandon its quest</u> for constitutional reform at this time	35	10
. the federal government <u>proceed with its original plan</u> to patriate the Constitution with an amending formula and the Charter of Rights	26	44
. the federal government <u>hold up the presentation of its budget until an agreement is reached</u> with the provincial premiers	22	58

That is, Canadians are desirous of a fairly negotiated settlement of the issue more so than any other alternative. And, at the same time, they are not willing to have the constitutional issue subliminate other business.

The Preferred Choice Among Four Potential Directions

In clear rank order, Canadians' preference among four alternatives is, as it was in the last measurement,

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	% of Canadians who like this alternative	
	<u>Most</u>	<u>Least</u>
. the federal government proceed to patriate the Constitution with an amending formula, but <u>not</u> the Charter of Rights, and put the Charter of Rights issue to a vote by means of a <u>national referendum</u> within the next two years	39	15
. the federal government proceed to patriate the Constitution with an amending formula and the Charter of Rights with the <u>provision</u> that any province could pass legislation to not have the Charter of Rights binding on the people of that province	19	15
. the federal government proceed to patriate the Constitution with an amending formula, but <u>not</u> impose the Charter of Rights on any province <u>unless</u> that province asked for it voluntarily	19	17
. the federal government proceed with its original plan to patriate the Constitution with an amending formula <u>and</u> the Charter of Rights	19	48

That is, Canadians want to see the conflict resolved by consensus. However, that finding is less clear in Quebec. In Quebec, only 28% wanted to see the issue put to a referendum, and about as many preferred the opting-out option. There are two possible reasons for this lower preference for a referendum. One is that people in Quebec have had the experience of a referendum and seen its potentially divisive nature as a potential means to resolve an issue such as this, and are now not nearly so keen to experience it again. The other is that in the experience of the Quebec referendum, many PQists saw their goal defeated and, in this case, do not want to gamble again with the possibility of an unfavourable outcome.

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Could Eliminating Elements Of The Charter Of Rights Help?

Given various alternatives to eliminating some of the elements of the Charter of Rights, in an effort to reach an agreement at the next First Minister's Conference, the data strongly indicates that negotiating out pieces of the Charter is not the solution.

	% of Canadians who, to reach agreement, would ...			
	support strongly		oppose strongly	
	<u>Total</u>	<u>Quebec</u>	<u>Total</u>	<u>Quebec</u>
. that the federal government drop from its Charter of Rights the provision that, where numbers warrant, language education rights be guaranteed for French and English children	21	26	50	47
. that the federal government drop from its Charter of Rights the provision that Canadians from every province be allowed to work anywhere in the country	14	23	59	45
. that the federal government drop from its Charter of Rights the provision that every individual be considered equal by law and protected against discrimination on the grounds of race, sex, age, colour, religion, or mental or physical disability	14	25	66	48

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% of Canadians who,
to reach agreement, would ...

<u>support</u>		<u>oppose</u>	
<u>strongly</u>		<u>strongly</u>	
<u>Total</u>	<u>Quebec</u>	<u>Total</u>	<u>Quebec</u>

- that the federal government drop from its Charter of Rights the provision that every individual be guaranteed protection against unreasonable seizure, arbitrary detention or imprisonment, cruel or unusual punishment and have the right to retain a lawyer, and be presumed innocent until proven guilty

14	24	69	51
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This data supports previous data we have collected and other published data indicating that there continues to be widespread general support for the components of the Charter of Rights, despite opposition to it by the provincial premiers. And, their cases do not appear to be gaining public sympathy in terms of diluting support for the substance of the Charter of Rights.

Should The Charter Of Rights Be Dropped At This Point?

Asked if an agreement cannot be reached and it becomes necessary to obtain an agreement should the federal government drop the Charter, or proceed unilaterally with the Charter, opinion is split. This finding, as has been shown in previous surveys, shows that the opposition to the federal thrust is not one of substance as much as it is one of process. That is, Canadians are torn between dealing with the high profile conflict which has arisen and the fact that, in their hearts, most agree with and support the principles embodied in the Charter of Rights. This is creating confusion and anxiety among Canadians at large as they want, but don't see, a satisfactory solution.

What the public is saying is that they want the substance of the Charter of Rights, with no conflict. That is their ideal. That is the solution they want.

Given the trade-off between having the substance and the conflict versus no substance and no conflict, the preference splits right down the middle. Traditionally, that has happened when we have given people the choice between two alternatives neither of which is palatable to them.

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What they really want is the opportunity for them to settle the issue and the conflict through a referendum, not resolution at any price achieved by dropping something or compromising on the potential of the Charter of Rights.

How Would People Vote In A Referendum On The Charter Of Rights?

There is clear support in a ratio of about 2:1 for the federal position.

People were asked if the federal government was to hold a national referendum today to resolve the issue would they vote in favour or against patriating the Constitution with an amending formula and the Charter of Rights. Fifty-four per cent (54%) would vote in favour, 33% against, and 13% are undecided. In Quebec the vote would be split: 42% say they would be in favour, 39% against, and there are 19% undecided at this time.

The next question posed was if the federal government patriated the Constitution now with an amending formula but not with the Charter of Rights, and put the Charter of Rights to a vote by means of a national referendum in two years to resolve the issue, would they vote then in favour or against including the Charter of Rights in the Constitution. This option eases the negative, but does not build overall support. 56% said they would vote in favour, 20% against, leaving 24% undecided. In Quebec, 45% would vote in favour, 22% against, and 33% are undecided.

It appears that leaving the issue for two years doesn't make for increased support for the Charter of Rights, but decreases the overt level of opposition. Rather than being negative on its inclusion, many take the more comfortable, more conservative stance of being undecided at this time. This latter alternative, involving more time, helps people better deal with the current level of conflict, but the responses to both questions, once again, confirm that there continues to be a strong underlying level of support for the substance of the Charter of Rights.

What Happens If The Federal Government Proceeds Without Provincial Agreement?

Again, we see indecision and some confusion with respect to how people would want their provincial governments to respond. But, it is also clear that Canadians would respect the results of such a move and would not support disobeying any law which might have been formulated on their behalf.

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% who would ...

	<u>strongly support</u>		<u>not support</u>	
	<u>Total</u>	<u>Quebec</u>	<u>Total</u>	<u>Quebec</u>
• the provinces going to London to ask the British government not to pass the patriation request	32	34	40	35
• a decision by your provincial government to hold a provincial referendum on whether it should further oppose the patriation of the Constitution	38	42	31	35
• your provincial government making a recommendation that its people disobey the Constitution after it is patriated and becomes law in Canada	11	16	70	56

What Would Canadians Want The British Parliament To Do?

Canadians were asked if the federal government was to patriate the Constitution without agreement, what should the British government do?

Unprompted, 27% overall felt that the British government should pass the constitutional package request immediately or in a reasonable length of time.

But, 29% overtly responded that the British government should refuse to pass the request and/or send it back to Canada and refuse to handle it until accord is reached. There is clearly a sensitivity to proceeding to take the issue and airing it outside the boundaries of Canada before solving our own domestic or internal conflict. This further underlines the discomfort Canadians are finding with the dissension emanating from this issue. They are looking for a solution and cannot find one, and the frustration with this is showing.

Should The British Government Have The Right To Make Any Changes In The Request?

Canadians echo a resounding "No". Eight in ten feel the British government should have no right to tamper with the request, once it is formally presented to them by Canada.

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What If The Provinces Lobby The British Government?

People were asked if the federal government was to proceed to patriate the Constitution without agreement and the provinces were to go to London, who should the British government favour. The balance falls in favour of the provinces again (51:32), basically the same ratio by which people blame the federal government for the conflict. And, this ratio is consistent with other survey results where people are asked who is more to blame in various kinds of federal/provincial disputes. The data collected in this survey is, and has been in others, very consistent in pointing out Canadians' objections to the process, even though it is also very clear they support the substance. They want the federal-provincial conflict adequately resolved, not dismissed.

What If The British Government Delays Or Stalls The Request?

Again, proceeding without agreement and the result being that the British government delays or stalls dealing with the request, Canadians do not strongly support much overt action on the part of the federal government. And, that follows the basic line of thinking they have been expressing. If our own ship is not in order and we proceed, there will be internal uneasiness which will not result in support for bold aggressive stances against the British government if it decides that it will delay indefinitely or refuse to pass the federal government's request.

	% of Canadians who would ...	
	<u>strongly support</u>	<u>not support at all</u>
. the federal government putting heavy pressure on the British government	24	51
. the federal government taking action to worsen relations between Canada and Great Britain	7	79
. the federal government making a unilateral declaration of independence from Great Britain	20	59

Overview

The data points out that Canadians continue to support the substance of the constitutional package including the Charter of Rights. But, they

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are sensitive and troubled about the high profile federal-provincial conflict. They want it resolved. The blame for the conflict lies more with the federal government than with the provincial premiers in their minds. That is, it is a federal issue to resolve. Canadians want the conflict to end and, in the process, not hold up other issues of national and of regional importance. They are looking for a solution, but cannot see one on the near horizon and find this both confusing and frustrating. And, in holding out options, the fairest and cleanest route most Canadians perceive is a national referendum on the Charter of Rights, which, by all indications, would pass.

Furthermore, Canadians do not want Canada's internal conflict dragged over to Britain for airing. They want an acceptable resolve to the conflict before any moves are made to make a formal request of the British government.

Strategic Implications

The following represent the key strategic implications from the data as they relate to forward planning:

- . The substance of the Charter should not be radically altered. Canadians at large are comfortable with its components.
- . The federal government must be seen to be seeking a genuine compromise at the First Minister's Conference next week.
- . To resolve the public's dilemma of wanting the substance of the Charter without the conflict, they are saying "Let us make the decision" through a national referendum, in which case it is clear that they will support the substance.
- . While a significantly less popular alternative than a referendum, the public shows about equal support for opting in or opting out as a method to resolve the issue. But, neither gets at Canadians' real desire - to realize the substance of the Charter without its presently attendant conflict.
- . Canadians want the issue off the table.
- . If the present conflict is not resolved at the First Ministers' Conference, the public will not object to their provincial government fighting the issue in London. Therefore, the federal government must be prepared to wage a tough campaign in London.

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- Whatever package ultimately is put through, the federal government's communication campaign must focus entirely on the substance of the Charter.

Michael J. L. Kirby