

c.c.: The Hon. Jean Chrétien  
Mr. Pitfield  
Mr. Coutts  
Mr. Axworthy  
Mr. Roger Tassé  
Mr. Cameron ✓  
Mr. Rabinovitch  
Mr. Carter  
Mr. Gwyn

SECRET

June 4, 1980

MEMORANDUM FOR THE PRIME MINISTER

Strategy for achieving a new constitution -  
items remaining for decision

In reviewing yesterday's meeting in your office on this subject, it seemed to me that a few items bearing on the strategy remained to be decided or would benefit from a further exchange of views.

The items are the following:

- (a) What to say on June 9 about what is to happen in September in regard to the Principles, the Charter of Rights and Patriation?

As you will recall, I had suggested a few days ago that you should keep open the option of moving unilaterally if you have to, on this package in September. Indeed, on Tuesday, I suggested that you should tell the Premiers (and the public) that the government intends to move on these items in September.

In reflecting further on yesterday's discussion, I think your options can be kept open without taking quite as firm a line as I had suggested on Tuesday. I now have in mind your adopting something like the following approach with the Premiers. This approach will, I think, help to avoid your concern that we would be accused of arrogance by taking the position that we may move unilaterally on the People's Package.

"I have said that the fact that we are going to proceed on these items is essentially non-negotiable. That does not mean that their wording and scope cannot be

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negotiated. We want to work with the provinces to ensure that we have the best version possible of the Principles and the Bill of Rights. We would like this joint consideration to move forward with great urgency during the summer. In September, after the First Ministers have met again, I will consider what action the Government of Canada should take on these items, including Patriation. One of the possibilities I will be considering, in light of the circumstances that prevail at that time, is whether to move then, possibly on a unilateral basis, to bring about these changes to the Constitution."

(b) The possibility of a debate in the House of Commons on the Principles.

The question arising out of yesterday's meeting was whether:

- (i) You should make a Statement on Motions with regard to the June 9 meeting on, say, June 12; or
- (ii) There should be a debate in the House on the last two or three days of the current session about the Principles or, perhaps, about a possible joint address;  
or,
- (iii) Whether there should be both a Statement on Motions and a debate at the end of the session?

You might agree that a decision on a debate could be postponed for the time being, but that planning should proceed on the basis that there would be a Statement on Motions on the 12th. Your statement at that time would provide an opportunity for you to indicate, if you wished, your intentions as regards the later debate.

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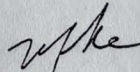
- (c) Which subjects should be proposed to the Premiers as items for priority consideration?

A suggested list of items in the People's Package, and the Government's Package (as the negotiating List Package) is attached as an Annex.

- (d) What process should be proposed to the Premiers?

I am also attaching an Annex setting out a possible process for proceeding with negotiation on the constitution.

If you are in basic agreement with the approach suggested in (a) and (b), and with the content of the lists in the two Annexes, then a meeting tomorrow afternoon may not be necessary. In this case, we will proceed to prepare your briefing book, including a scenario for the June 9 meeting, based on the above points and on the assumption that our strategy will be to negotiate the People's Package and the Powers and Institution's Package (the Government's Package) in parallel (that is, at the same time) rather than first negotiating the People's Package and then starting work on the Powers and Institutions Package.



Michael Kirby

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June 4, 1980

The "Building Blocks" (or "Peoples") Package

1. Principles of the New Canadian Constitution
  - to become the major component of the preamble and introduction to the New Constitution
2. Charter of Rights
  - imposing limitations on governments and guaranteeing individual and collective rights
  - to include language rights, possibly with provision for provinces to "opt-in"
3. Equalization
  - imposing obligations on all governments, but more particularly the federal government, for the benefit of the people in the various regions of Canada
4. Patriation (with or without the Amending Formula)
  - work this summer on the amending formula in general is unlikely to be productive, but progress could be made on the legislative delegation aspect

The Power and Institutions (or "Governments") Package

- Note:
- This is an attempt to blend the first priority items of the provinces (as far as we know them) with some items of concern to the Government of Canada.
  - A notation is provided at the end of the package of those items from the "list of 14" of February 1979 which are not included herein.

- Discussions with the Premiers on June 9 are more likely to result in additions to the suggested package than in deletions therefrom.

1. Resource Ownership and Interprovincial Trade  
(including related aspects of the declaratory power and indirect taxation)

- this would have the same scope as the old item No. 1 from the "list of 14"
- no further net major concessions should be needed; the offer on the declaratory power should be withdrawn, a clear definition would be needed for "compelling national interest" and some adjustment might be needed on the definition of "resources" (particularly concerning water). Federal departments feel, however, that the February 1979 offer went too far
- any federal movement would be tied to "Powers Affecting the Economy"

2. Offshore Resources

- nothing more than a promise to study concurrent jurisdiction was made in February 1979
- for agreement now, some concessions would be needed, perhaps on the 75-25 revenue-sharing, on ownership within the 12-mile limit, concurrency on some aspects, and guarantee of a provincial voice (not control) in major decisions on pricing and production
- also tied to "Powers Affecting the Economy"

3. Powers Affecting the Economy

- this would cover at least two major federal concerns:
  - a much stronger section 121 limiting or preventing provincial discrimination respecting the flow of goods, services and capital (the mobility of persons would be covered in the Charter of Rights)

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- a clearer definition of the federal capacity to deal with economic emergencies

- these are the two most essential points from the economic questions covered in the "second list" of February 1979

4. Communications

- the "concessions" on cablevision offered in February 1979 would probably, on balance, have added to federal powers and this would need another look

- to reach agreement with Quebec, an important new concession would almost certainly be required concerning the licensing of radio and television stations aside from Radio-Canada

(This could be a matter handled by a new constitutional provision for delegation.)

5. Family Law

- all but Manitoba agreed in February 1979. Now Newfoundland and Prince Edward Island share Manitoba's concerns

- the problem might be solved by those provinces accepting the majority view, or by reverse delegation

6. The Senate

- some new, imaginative approach will be needed to gain some of the advantages of the proposals of British Columbia, the Livre Beige, and Bill C-60, while avoiding the disadvantages

- the subject can include examining the possible use of the Senate in connection with the federal "unilateral powers" including the spending power, declaratory power and emergency power

- the subject could extend to looking at the possible relationship between the First Ministers Conferences and the Senate concerning the "unilateral powers"

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7. The Supreme Court

- a vital building block in any new Constitution
- to reach agreement with Alberta and Quebec, a new look will be needed at the handling of constitutional cases (the Livre Beige idea of a dualist bench would need to be given some consideration)
- some concessions may be needed on the related question of appointment of judges to Superior Courts

Note concerning the preceding Items in relation to the February 1979 "list of 14"

- the monarchy remains "dropped"
- the spending power is raised obliquely, under the Senate. No agreement is likely on the spending power as long as the federal government wishes to pay the people, and not the provincial governments, of "opting-out" provinces
- a possible solution would be constitutional confirmation of the special arrangement Quebec has had for many years, leaving the other provinces (which feel less strongly) as proposed in February 1979
- indirect taxation appears only under "Resources". This accords with the CCMC decision of October 1979
- the declaratory power appears only under "Resources" - and solely to provide the chance to withdraw the federal February 1979 offer. Provinces may insist that the whole question be on the agenda. It would not be easy to solve, given sharp differences of views all around
- fisheries is not included; only Newfoundland wants constitutional change. Mr. LeBlanc, with strong arguments on his side, is very much against such change. It is a subject to be avoided, if possible, in The Second Package.

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June 4, 1980

Calendar for Future Meetings of  
First Ministers and Ministers on the  
Constitution proposed by the Government of Canada

- (a) June 17: An organizational meeting of Ministers would be held in Ottawa or at some other convenient location. At that time a schedule for consideration of particular items during the summer months would be worked out and agreed upon.
- (b) June 17 to July 6: Governments would prepare for intensive discussions.
- (c) July 7 to July 25: Federal and Provincial Ministers and officials would remain in continuous session (except for week-ends) for 3 weeks, and provision would be made to continue for an additional week if necessary. These sessions could take place at Ottawa, or at another location such as Winnipeg which has particularly good air connections to the various capitals. Such communications would facilitate Ministers obtaining advice from their governments as new issues arise.
- (d) July 26 to August 24: Break in negotiations to allow governments to consider or reconsider positions and to prepare for further intensive discussions. The Provincial Premiers meet in Winnipeg on August 21 and 22.
- (e) August 25 to August 29: Federal and Provincial Ministers and officials meet again in continuous session.
- (f) August 30 to September 7: Governments consider positions and prepare for First Ministers Conference.
- (g) September 8 to 12: First Ministers Conference in Ottawa to reach conclusions on work under way and to put in train a further work program.