

SECRET

May 30, 1980

Mr. Laurier
(note deletion of
para on
Parliamentary Review
The agrees with
this part very much
but did not want
to "confuse" the
P.M. given the
new dates.
v.)

MEMORANDUM FOR THE PRIME MINISTER

A Strategy for Achieving a New Constitution --
Patriation, Parliament and the Process

Patriation in Package #1

As you know, the principal difficulty (apart from the problem with Quebec) that I have had in recommending that Patriation be included in Package #1, a package on which the federal government might have to take "unilateral" action early in the fall, is the risk this step would likely involve for federal credibility. The provinces would immediately realize that, in so doing, the federal government would obtain virtually everything it wanted in a New Constitution, as all its top priorities would be in Package # 1.

From the federal government's point of view, we would be leaving ourselves no significant incentive to bargain in a serious way with the provinces on the issues that are of most concern to them. In saying this, I am aware that some provinces would support us strongly on early Patriation. Even a province which supports early Patriation, however, might question our ability, although not our desire, to bargain in good faith once we have achieved our major goals with our implementation of Package # 1.

If, however, it is essential that Patriation be included in Package #1, I know that you would wish that this be done in such a way as to ensure the highest possible degree of federal credibility. Accordingly, I would recommend:

- (a) that you tell the Premiers on June 9th that you regard Patriation as being in Package #1.
(An alternative way of proceeding, which you might wish to consider, is to do away with the notion of packages and simply refer at the meeting to "some items" on which you might have to proceed unilaterally, naming the Principles of a New Constitution, the Bill of Rights and Patriation.

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This might offer some presentational advantages since it would tend to blur to an extent the distinction between those special items and other items. For convenience sake, however, we will continue to refer to Package #1 and Package #2 throughout this memorandum.)

- (b) that you tell them that you can appreciate their concern that, once Package #1 has been adopted, the federal government might find it difficult to bargain seriously or in good faith.
- (c) that to demonstrate the seriousness of federal intent, you propose the following:
 - (i) that Package #1 and Package #2 items (or all the priority items if the package approach is abandoned) be negotiated in parallel;
 - (ii) that Package #2 include certain items of high priority to the federal government, such as the Supreme Court, the Upper House and Powers Affecting the Economy;
 - (iii) that the negotiating process be sustained and intensive (see proposal below).

Process of Negotiations:

As with Parliamentary review, a proposal for a period of intensive negotiation of priority constitutional items (presented as Packages or not) will add much to the credibility of the undertaking you give the Premiers to negotiate their concerns in a meaningful way. I would propose for your consideration that you suggest to them on June 9th something along the following lines:

- that First Ministers decide that several weeks be devoted by federal and provincial Ministers to constitutional negotiations during the summer months;
- that at any time during the summer the Ministers could recommend that First Ministers convene to consider progress or to deal with problems that had proved intractable at Ministerial level; and,
- that the First Ministers would in any event meet again on September 18 for a full week's conference in Ottawa.

...A possible development of this approach to process is contained in the Annex to this memorandum. It would be most useful to have your reaction to it.

m/ke

Michael J.L. Kirby

ANNEX

Constitutional Negotiating Process:
A Possible Approach

- (a) June 16: An organizational meeting of Ministers would be held in Ottawa. At that time a schedule for consideration of particular items during the summer would be worked out and agreed.
- (b) June 17 to July 4: Governments consider their positions.
- (c) July 7 to July 25: Federal and Provincial Ministers and officials would remain in continuous session (except for weekends) for 3 (or 4) weeks.

(We would propose Winnipeg as the site for the Ministerial meetings. The city is exceptionally well-served by airlines and has very good conference facilities. For these reasons, among others, including the fact that it is in the West, it would provide an excellent location. If the meetings were held in Ottawa, which would otherwise be a preferred location, the federal participants would be at both an advantage and disadvantage. They would be close to home and Cabinet, but would not be able to work more or less continuously with their provincial counterparts and would thus be less well-informed of the evolution of provincial thinking.)

- (d) July 25 to August 22: Break in negotiations to allow governments to consider or reconsider positions and issue new instructions. The Provincial Premiers meet in Winnipeg on August 21 and 22.
- (e) August 25 to August 29 Federal and Provincial Ministers and officials meet in continuous session.
- (f) September 2 to 5: Governments consider positions and prepare for First Ministers Conference.
- (g) September 8 to 12: First Ministers Conference in Ottawa.