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F.P.R.O. B.R.F.P.
Michael Kirby

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MAR 12 1981

F3-11(1)

March 11, 1981

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MEMORANDUM FOR MR. M. KIRBY

Constitution Debate

For your information attached is a note that
we have provided to Mr. Pinard on the question of
ending the constitution debate.



André Garneau

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Attach

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March 11, 1981

MEMORANDUM FOR THE HONOURABLE YVON PINARD

c.c. Jerry Yanover

Constitution Debate

Attached is a copy of a note from Mr. Kirby to the Prime Minister which says, in short, that there are two possible dates for announcing closure, March 23 and March 30, and that despite your preference he recommends March 23. This indicates that although our discussion with Fred Gibson and Eddy Goldenberg seems to have laid to rest the idea of a "time allocation" motion, Mr. Chrétien's advisors are still pressing hard for an early end to the debate.

We have suggested to the Prime Minister that whether the subject is discussed in Cabinet tomorrow or outside Cabinet with you and Mr. Chrétien, a decision will have to be made soon if there is a possibility that closure will be on the earlier date, in order to allow you to plan the House schedule.

We have confirmed that, if necessary, Finance can do without the Borrowing Authority until April 3 or 6. It would be technically possible to use closure on March 24 and still get the Borrowing Authority, but only with the following disadvantages:

- in order to get the Borrowing Authority by the end of the week of March 23-27, 75C would have to be used virtually simultaneously with S.O. 33; the mood in the House could be very sour afterwards.
- the Senate would be faced with passing the Address, the Borrowing Authority and the Appropriation Bill within a period of a few days; the resulting pressure may make it difficult to control Senators.

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We prefer disposing of the Borrowing Authority first, as discussed the other day, and delaying notice of closure until March 30. This would have the added advantage of ensuring that the Senate had had enough time, before closure was used, both to debate the constitution and pass the Borrowing Authority and the Appropriation Act.

The key to Mr. Kirby's recommendation of an early end to the debate is the risk of an unfavourable Newfoundland court decision before the Address is adopted. If the Prime Minister decides in favour of a March 24 date, you might want to suggest that he leave open the possibility of reconsidering in the event that the Newfoundland decision is rendered before March 20.

For your convenience, two draft schedules are attached, for March 24 and March 31 dates respectively.

On two related matters:

1) Use of S.O. 33 on an amendment:

We have heard that the Table may now be prepared to rule that S.O. 33 can be applied to an amendment only. Without having had time to check the precedents, we think that even if the Speaker would so rule, the Government should not use closure on the present Conservative amendment. To do so would:

- (a) give the Opposition something to fight about,
- (b) possibly lose the NDP,
- (c) mean using S.O. 33 twice on the Address, and
- (d) place the Speaker under suspicion of favouring the Government.

2) Senate Timetable

Senator Frith has spoken to Senator Flynn to say he is generally in favour but needs to discuss the problem of amendments

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further; Senator Flynn apparently is in no hurry, and did not raise the matter in the Senate yesterday. Senator Frith confirmed to us that no reply would be sent without your approval.

If the House adopts the Address on March 24, it will be more important than ever that the Senate adopt its Address 3 days later, because of (a) the need to deal with the other 2 Bills, and (b) the need to make firm plans to send the Address to the U.K. For that reason, we should perhaps encourage Senator Frith to push for a Senate order sometime next week.

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ORIGINAL SIGNÉ PAR
✓ A. GARNEAU

André Garneau

A. Watt/dc

Attach.

MONDAY TO FRIDAY

MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY
2	3	4	5	6
9 SUPPLY	10 CONST'N	11 CONST'N	12 CONST'N	13 CONST'N
16 CONST'N	17 CONST'N	18 SUPPLY	19 BORROWING AUTHORITY - notice of TSC	20 CONST'N
23 TSC Debate CONST'N	24 BORROWING AUTHORITY	25 BORROWING AUTHORITY (if there was a report stage)	26 SUPPLY	27 CONST'N
30 CONST'N - notice of closure	31 (closure) CONST'N	1	2	3

(PM of speaker 23, 27 n page 25)

MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY
2	3	4	5	6
9 SUPPLY	10 CONST'N	11 CONST'N	12 CONST'N	13 CONST'N
16 CONST'N	17 CONST'N	18 SUPPLY	19 BORROWING AUTHORITY - notice of 75C	20 CONST'N - PM's speed
23 debate on 75C CONST'N notice of 5033	24 assume CONST'N	25 BORROWING AUTHORITY	26 SUPPLY	27 BORROWING AUTHORITY (if there was a report stage)
30	31		2	3

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MEMORANDUM TO THE PRIME MINISTER

Timing of the Constitutional Debate

The purpose of this note is to outline the options you have with respect to ending the constitutional debate as well as the options in terms of the date of your speech. This is predicated on the assumption that you want the debate to terminate by the end of the month.

A) General Constraints

It is evident that closure should be imposed after the Ontario election (March 19) and as far away as possible from the anticipated Quebec election (April 13). Mr. Pinard's view which I share is that closure should not be announced on a Friday because it would leave the weekend for opposition to build. Nor should it be announced on a Thursday because of the adverse public reaction to a vote which would have to occur at 1:00 a.m. on Saturday morning. He also opposes announcing closure on a Tuesday because the motion would not be voted upon until Wednesday after Opposition caucuses. Thursday March 26 is an Opposition Day by House rules because it is the end of a supply period. We have discussed the possibility of your speaking on Monday March 23 and of announcing closure on Tuesday March 24 and voting on Wednesday night March 25. However, because March 26 will have to be an allotted day, and because we always run the risk of a filibuster for at least a day after announcing closure to prevent a vote, I concur in the strong view of Mr. Pinard and his officials that the idea of announcing closure on Tuesday March 24 cannot be proceeded with.

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In effect then, the only feasible options for announcing closure before the end of the month are Monday March 23 and Monday March 30.

There is one other constraint on House business and that is that the Borrowing Authority Bill should be passed before March 31, although the Department of Finance could operate with difficulty if the Bill were not passed until a few days into the new fiscal year. Mr. Pinard believes that time allocation will be required for this Bill and that it will be more easily accepted if imposed before closure on the Constitutional Resolution. While I agree that it would be more easily accepted if imposed before closure, it would remain possible to pass the Bill within a few days after March 31 even if it is debated after closure is voted on March 24. Therefore I do not believe that the Borrowing Authority Bill should be the prime consideration in determining the date of termination of the constitutional debate. I should be clear that Mr. Pinard has a different view and you should discuss this with him or you might want to raise it in Cabinet.

b) Options

1) March 23

As stated above, the first possible date to announce closure is March 23. The vote would be at 1:00 a.m. on March 25. The advantage of this date is that it is early and is likely to be before the court decision in Newfoundland. As well, it will be three weeks away from the Quebec election. In addition it gives more time to get the Canada Act introduced for first reading in the British House before their Easter recess. There may be a partisan reason for proceeding on March 23 in that Jake Epp is now on holiday in South Africa and apparently is not due back before March 25. It might be worthwhile to vote when the chief constitutional critic of the Opposition is on holiday.

If you decide to announce closure on March 23, you could speak on that day and in effect be the wrap-up speaker for the government. For the reasons we discussed earlier, I recommend against this option because news coverage will focus on closure rather than your speech.

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Therefore you could speak any day on the week of March 16. I would recommend against speaking on March 19 which is election day in Ontario. If you wish to speak as close to the end of the debate as possible you might wish to speak on Friday March 20. This would enable you as well to make the weekend news.

Finally, if closure is announced on March 23, and voted on early in the morning of March 25, it will clearly be impossible for Mr. Chrétien to speak in London at the Canada Club on March 25. I do not think that this should be a major consideration as he will be in London a few days later once the Resolution has passed.

2) March 30

The second possible date for announcing closure would be March 30. The clear advantage to this date is that it will have been definitely possible to pass the Borrowing Authority Bill and this will ease the considerable burden upon the Department of Finance if that Bill does not pass by March 31. Another advantage is that you could still speak on March 23 and Mr. Chrétien could go to London for his speech on March 25.

However these advantages in my view are outweighed by the danger of continuing the debate in Parliament when we risk receiving an adverse decision at any time from Newfoundland. Therefore I would recommend announcing closure on March 23.

c) Preparing for Closure

Clearly closure will not be well received even though it is expected. Springing it with no advance inkling will create difficulties for the government. It will be necessary for the groundwork to be set and to be set early. Therefore you might want to ask Mr. Pinard in Cabinet tomorrow for advice as to how to set up closure.

Lastly, our prime consideration must remain keeping the support of the New Democratic Party. Mr. Pinard and Mr. Chrétien should determine from Mr. Broadbent how early he would agree that there has been a full and fair debate and therefore how early he would accept closure even if he votes against the closure motion itself.

Michael Kirby