

## MEMORANDUM

**TO: SENATOR MITCHELL**

**DT: 4 December 1996**

**FR: Kelly Currie**

**CC: Prime Minister Holkeri  
General de Chastelain**

**Re: Confidentiality Rules and Points of Agreement**

In yesterday's plenary session, Robert McCartney of the UKUP raised the issue of whether a ruling by the Chair on a procedural matter (distinguished from a substantive matter) is subject to the rules of confidentiality and the points of agreement thereto.

Confidentiality is referenced specifically in Rules 9 and 16 and of the Rules of Procedure. After debate in the plenary on September 23-24 and October 1, 1996, the participants adopted five "points of agreement" regarding confidentiality.

(Confidentiality: Points of Agreement and Questions for Discussion, dated September 29, 1996 (copy attached)).

**Rule 16 of the Rules of Procedure provides that participants "will maintain confidentiality on all aspects of the negotiations except where they may from time to time agree to publicity."** Rule 9 binds the Chairmen to the same requirement for confidentiality as the participants.

The points of agreement make no reference to a distinction between substantive and procedural issues in relation to coverage by the rules of confidentiality. **Point 3 states that documents produced by the Chairmen's office "at the behest of the participants" will not be distributed or in any way conveyed to non-participants unless participants agree to their release.** Logically, this point encompasses written rulings of the Chair made at the request of participants. Oral



rulings or statements from the Chair would be governed by the “all aspects of the negotiations” provision of Rule 16.

A review of the minutes of the plenary discussion on confidentiality reveals no specific discussion of distinguishing between ruling on procedural matters by the Chair and other matters generally covered by the confidentiality rules. During the discussion, the UKUP expressed its preference for a distinction between procedural and other documents in some circumstances. There was no general agreement, however, to this proposition. (Specific references set out below).

On September 24, in the context of discussion of whether the Governments’ ruling on the Alliance Party’s allegations of the breach of the Mitchell principles, the UKUP stated its view that confidentiality should apply only to matters connected with the negotiations leading to a settlement. Other matters, such as statements and rulings which have nothing to do with a settlement, might not be regarded as coming within the rule of confidentiality. (Record, Tuesday 24 Sept. (14.06) para 4, p. 2).

In reference to Point 4 (regarding documents produced by participants), the UKUP stated that its notes regarding the questioning by the British Government of the Loyalist parties should be regarded as factual and procedural and therefore, not covered by the confidentiality rule. (*Id.* at para 9, p. 4-5). In response, the Chairman asked all participants to consider whether Rule 16’s “all aspects of negotiations” clause should be viewed narrowly, as the UKUP had chosen to interpret it, or more broadly, as the language implies. (*Id.* at para 10, p.5).

Later, the DUP stated its view that “all aspects of the negotiations” included all elements in the process and that took in judgments or rulings by the Governments and that the language of the Electoral Act “confirmed that the negotiations covered



everything as the contents of Rule 16 seems to cover everything also.” The UKUP is reported to agreeing to that assessment, but added that the term “negotiations” needed to be determined. (*Id.* at para 16, p. 7).

At the close of the general discussion on confidentiality, the Chairman noted that agreement on the various aspects of confidentiality was limited around the table and that at the end of the day a much greater reliance on everyone trusting each other was what was required. (*Id.* at para 30, p. 13).