PRESENT AT THE FRAMING

ABSTRACT

In this article, I will discuss my particular relationship with the events leading to the Royal signing, on April 17, 1982. In doing so, I hope the political climate, responsible for the birth of the *Charter*, including the strengthening of clauses protecting women and members of the aboriginal community, may be better understood.

During the fall of 1981 in the middle of the Manitoba election, Premier Sterling Lyon was engaged in the tortuous negotiations leading to the eventual adoption of the *Canadian Charter of Rights and Freedoms*. During this process, he was generally recognized as one of the most vociferous opponents of the *Charter*. Lyon resolutely believed that the *Charter* would weaken parliamentary supremacy. He was deeply troubled by the direction he thought Prime Minister Trudeau was taking Canada and the possible erosion of values he held dear.

Sterling Lyon enjoyed a reputation as a combative spokesperson for the Premiers, chairing the annual first minister's meetings in their two-year constitutional battle with Trudeau. Some did see him as being too boisterous and extreme in his opposition to Trudeau. However, his adversarial relationship with Trudeau certainly endeared him to most Manitobans who, like many others in western Canada, rightly or wrongly, were less than enamored with the Prime Minister. There had been speculation that the Premier had been patiently waiting for the Supreme Court decision on Trudeau's constitutional package, which would have permitted him to run against Ottawa.

New Democratic Premier Blakeney of Saskatchewan was also concerned about the impact a charter might have on our political system. Interestingly, Premier Blakeney's concerns principally dealt with his fear that the *Charter* would result in a shift in power from duly elected political representatives to un-elected and un-accountable judges. Most critical, according to Premier Blakeney, would be the additional power the *Charter* would provide to corporate and wealthy interests.[1] In his opposition during these high profile discussions, Premier Blakeney found himself in opposition to his federal leader, Ed Broadbent, and many in the federal New Democratic Party: sharp differences were revealed at the 1980 NDP convention in Vancouver.

It was reckoned that Premier Lyon's high profile participation at the upcoming constitutional negotiations would greatly aid his re-election to a second term of government: no provincial government had ever been denied a second term in Manitoba's history. Moreover, Lyon's win in 1977 was achieved with the highest popular vote in Manitoba history. There can be no doubt about Lyon's strength as an effective spokesman for dissident Premiers and his skill at articulating his sincerely held objections to an entrenched charter of rights. Lyon is described as being, "The premier most ideologically opposed to an entrenched charter of rights, Lyon is also the one most obviously playing to the television camera: he has about two weeks to go in a provincial election campaign".[2] In an interview with the *Globe and Mail*, Sterling Lyon recalled, "we weren't just being ill-tempered. It all goes back to a grade school

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understanding of the hierarchy of power in a parliamentary system. I said time and again to the Prime Minister: "you're taking power from parliament – the representatives of the people – and giving it to nine people. What you are doing is importing an alien appendage into our parliamentary system".[3]

In November 1981, heading into an election, as the Opposition Leader for less than three years, I enjoyed far less public profile than Premier Lyon and was generally considered the underdog in the campaign. However, Premier Lyon seriously miscalculated the mood of the Manitoba electorate. Contrary to Lyon's expectation, the patriation and the *Charter* ranked much lower on the public's priorities than the anger from the recession of the early 80s over the loss of thousands of jobs. The electorate was not in a forgiving frame of mind. Lofty expectations about a spectacular economic performance in the neo-conservative revolution promised by the Tories had been soundly deflated.

Sterling Lyon's fierce opposition to the *Charter* did not enjoy majority support in the province: It drove a deepening wedge between him, important sectors of the diverse Manitoba population, i.e. women, aboriginal, ethnic, and Francophone. However, it was not the overriding issue in the election. To many Manitobans, the continued debate about the constitution appeared to highlight misplaced priorities by all governments. I recall receiving enthusiastic ovations throughout the province whenever I called for the "patriation of our sons and daughters to Manitoba." There was a large exodus of young people who were seeking employment outside the province. Politicians were perceived as being too obsessed with endless constitutional talks: they were blamed for failing to take proactive steps to attack the mounting economic crisis. The consequences of such public disillusionment would target Premier Lyon at a risky political time for him.

To make things worse, Premier Lyon was unable to remain until the end of the constitutional negotiations; an urgent message arriving, warning him of rapidly sinking Conservative support, forced his premature return to the election campaign. Manitoba, like Quebec, was not represented by its Premier when the agreement by the First Ministers was finally achieved. Indeed, it is reported that Premier Lyon was somewhat reluctant to agree to the compromise and Ontario's Attorney-General, Roy McMurtry, and Hugh Segal called Senator Nathan Nurgitz, Sterling Lyon's campaign manager, at a little before 6:00 A.M. Manitoba time and warned him that "the gang of eight has now become the gang of two, I wouldn't presume to advise you on Manitoba politics." The prospect of being isolated with a separatist Premier of Quebec in the final days of an election campaign was more than a little worrying for Nurgitz and his leader. This message was reinforced by subsequent calls by Premier Lougheed and Manitoba's Attorney-General Gerry Mercier.[4]

Twenty-five years later, I have a renewed respect for not only the arguments articulated by Prime Minister Trudeau, but also greater sympathy for some of the insight contributed to the debate by Premiers Lyon and Blakeney. They all contributed as great Canadians to the debate.

On November 17, 1981, Premier Lyon was soundly defeated and the NDP was victorious. In the aftermath of the campaign, some national pundits argued that Lyon's hard-line position alienated critical blocks of support in Manitoba resulting in his defeat. In the *Globe & Mail*, Hugh Winsor surmised, "maybe it was the women of Manitoba, or maybe it was the native people or maybe was the women and native people together who did in the Manitoba Premier Lyon because of his stand against legislating human rights." Winsor further suggests that, "Mr. Lyon's repudiation by the voters go beyond the borders of Manitoba… in a more immediate sense, it should cause us to reflect on the relevance of the constitution. Did Sterling Lyon, who was one of the most obstreperous foot-draggers in the whole affair, one of the vituperative critics of Prime Minister Trudeau and the *Charter of Rights*, represent the views of Manitobans? Did any Premier have the right to speak for the people of his province? Or should, in cases of fundamental importance such as the constitution, the people be consulted directly?"[5]

Although Lyon's opposition to the *Charter* consolidated traditional NDP constituencies – aboriginal, women and the large multicultural community, the reality is that the *Charter* itself was not a decisive factor in the outcome of the election campaign. Nevertheless, the public image of Premier Lyon vigorously opposing an entrenched

charter of rights did succeed in consolidating the ethnic vote and resulted in some additional political inroads in those communities for the NDP. It is true that many observers were also startled to find that the British representative parliamentary system endorsed so firmly by the Premiers and most particularly by Premier Lyon was rightly or wrongly no longer the deeply cherished dream of many Canadians. Canada was less of a British country.

The new Manitoba NDP government assumed a much more rights orientated position than that of the Lyon government. Winsor is correct when he asserts that the message conveyed across Canada was: provincial Premiers were not necessarily reflecting the opinion of their constituents. Edward McWhinney claims, "the premiers by and large, demonstrated themselves as out of touch with the times and with their own constituencies… new, post war immigrant communities have failed to penetrate into the political processes… The social base of provincial government is too limited, restrictive and not representative, and it will have to change dramatically. Fundamental constitutional changes are to be accorded credibility (Canada and the Constitution 1979-1982, University of Toronto Press, 1982)."[6]

Momentum culminated in stronger recognition of Women and Aboriginal rights and their inclusion within the newly created *Charter*. As the new Manitoba Premier, I removed the caveat imposed by Lyon and Mercier during the dying moments of the First Ministers negotiations requiring ratification for the protection of the minority education rights by the Manitoba Legislature.

In the polarized politics at the time in Manitoba, I disagreed with Premier Lyon about the merits of the *Charter*: I favored the *Charter* and was prepared to go further by strengthening protections for Women and the Aboriginal community and I expressed public opposition to Section 33, the override provision part of the compromise that Trudeau had agreed to in order to bring dissident Premiers on side.

Retrospectively, the process pursued, like the Meech Lake process a few years later, failed to engage the public in the debate. More than governments must be involved in constitutional discussions. As Allan Cairn's points out, "the elites of the groups with *Charter* recognition have stakes in the constitution. They have left the audience and are now on the playing field, as are the aboriginal peoples for whom the constitution is a potential lever to a less marginalized future."[7] It is not only governments that now have a stake in the constitutional process.

The public must now be more actively consulted than they have been in the past. A different process in 1981-1982 and subsequently with Meech Lake (1987-1990) could have contributed to greater Canadian unity rather then the divisions we have seen since. Hugh Winsor was correct in asserting in 1981 that there was distrust among Canadians about whether First Ministers speak for them when it comes to constitution-making – that remains the case.

Twenty-five years later, I have a renewed respect for not only the arguments articulated by Prime Minister Trudeau, but also greater sympathy for some of the insight contributed to the debate by Premiers Lyon and Blakeney. They all contributed as great Canadians to the debate.

Questions remain unanswered. Has the *Charter* enhanced democracy or restrained it? Does legalized *Charter* politics inherently discriminate against the socially disadvantaged? Are there more advantages than disadvantages to a notwithstanding clause? Has the *Charter* tilted the power further toward benefiting special interests groups and Corporations? Has the *Charter* contributed toward the lessening of the influence of political parties in favor of special interest and extra-parliamentary groups? Has the *Charter* contributed at least in part to the steady decline in voting turnout, which has occurred since its adoption? What have the consequences been for women and Aboriginal peoples? Has there been an impact on Multiculturalism?

Has there been a shift in power to the Federal as opposed to provincial governments or has the shift been visa versa? Have we become more Americanized? Has the emphasis on individualism promoted laissez-faire as opposed to collective rights? Has the *Charter* contributed to this?

I trust that twenty-five years from now, it will be easier to answer these questions.

Notes

Much of this paper presented April 17, 2007, is contained in (2002) 21 Windsor Y.B. Access to Justice and was presented to the Canadian Rights and Freedoms: 25 Years Under the *Charter* Conference held by the Association for Canadian Studies.

[1] Blakeney's position was well summed up by Andrew Petter, "Immaculate Deception: the Charter's hidden agen-

da" in the advocate 45: 857-866 as being "a 19th century document let loose on 20th century state. The rights in the Charter are founded on the belief that the main enemies of freedom are not disparities in wealth nor concentrations of private power, but the state."

[2] Sheppard and Valpy. (1982). The national deal: The fight for a Canadian constitution. Toronto: Fleet Books.

[3] Has democracy been dulled? (2002, April 10). The Globe and Mail, pp. A 4.

[4] Sheppard and Valpy. (1982). The national deal: The fight for a Canadian constitution. Toronto: Fleet Books.

[5] Winsor, H. (1981, November 19). A pall on a style of politics. The Globe and Mail.

[6] McWhinney, E. (1982). Canada and the constitution: 1979 -1982. Toronto: University of Toronto Press.

[7] Cairns, A. C. (1991). Disruptions: Constitutional struggles. In D. E. Williams (Ed.), The Charter to Meech Lake (pp. 261). Toronto: McClelland & Stewart Inc.