

# Policy Dialogue

ISSN# 1718-9772

Number 14

Saskatchewan Institute of Public Policy



Winter 2007



*STEPPING INTO THE ARENA OF PUBLIC POLICY MAKING: MEDIA REPORTING FOR THE COMMON GOOD?*

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# DIRECTOR'S NOTES

## Federal Election is in the Air

BY IAN PEACH, DIRECTOR, SIPP



*SIPP is a non-profit, independent, non-partisan institute at the University of Regina committed to stimulating public policy debate and providing expertise, research and analysis on social, economic, fiscal, environmental and administrative issues related to public policy.*

It would seem a federal election is in the air. While in their early days, the federal Conservatives approached the task of governing from a fairly rigid, even ideological, perspective, their governing style has become increasingly politically astute and responsive as they have become more experienced at governing. Now, with an election pending, we are not only seeing campaign-style advertisements designed to weaken any momentum the Liberals may have generated from their leadership, but we see a government that at first seemed ideologically anti-environment providing \$1.5B for responses to climate change. As the editorial cartoon on our website this month suggests, everyone in the House of Commons seems to have turned green these days!

The only weakness in this new, practical, and responsive approach to governing is the recent controversy over appointments to judicial advisory committees. The Prime Minister's assertion that he indeed intends to appoint judges on the basis of their support for the government's "get tough on crime" agenda and to use the judicial advisory committees to do so seems to be a throwback to the old, populist Reform Party days. It demonstrates a weak comprehension of the judicial function and the importance of judicial independence to a liberal democratic society and is inconsistent with the politically astute Stephen Harper we have been seeing on other issues. It will be interesting to see which Stephen Harper dominates in the heat of the next federal election campaign.

This issue of *Policy Dialogue* includes commentary on a number of issues that are likely to play a role in the coming federal election campaign, either nationally or in particular regions. I hope you enjoy the commentaries provided by our colleagues who have contributed to this edition. As always, we would be happy to hear from you as well. ☞

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# THE HARPER GOVERNMENT

## At One

BY DAVID E. SMITH, SENIOR POLICY FELLOW, SIPP

*The Conservative party is only a year or two older than the government it forms, having experienced a long gestation of fission and fusion. Yet since last year's election, the party has progressively solidified. Politics in a free society is about flux, and as a result, nothing is certain.*

The first anniversary of the 2006 election, which saw Stephen Harper lead the new Conservative party to power, albeit as a minority government, offers occasion for reflection and speculation.

Noteworthy is the government's unity—notwithstanding Michael Chong's resignation (more below). The Conservative party is only a year or two older than the government it forms, having experienced a long gestation of fission and fusion. Yet since last year's election, the party has progressively solidified. Politics in a free society is about flux, and as a result, nothing is certain. Still, out of a collection of neophyte politicians, the prime minister has welded, in the past twelve months, a stronger governmental and electoral force than he commanded only recently. As with all cabinets, some of his ministers have proved more adept at their job than others. The cabinet shuffle in January 2007 recognized that reality.

It, and the parliamentary resolution in December—that Quebecois are a nation within a united Canada—have to be seen in the context not only of electoral calculations but also as a summing up of the challenge presented by new Liberal leader Stephen Dion. Critics have said the resolution is too clever by half and will prove a Trojan Horse: a parliamentary resolution is about as significant as it gets in Canadian politics, they say, and Quebec separatists will squeeze from it unintended status and treasure to the detriment, not benefit, of Canadian unity.

Mr. Harper's new-found interest in the environment in 2007 may also be attributed to Mr. Dion's pale green credentials, and to public acceptance of the Green party's policies (they ran second in the London North by-election in November) and its new, media-knowledgeable leader, Elizabeth May.

What interests the prime minister should necessarily interest all Canadians, since, like his Liberal predecessors, he is said to control (through the Prime Minister's Office) every policy of importance. Support for this hypothesis is said to be found in the career of the hapless Rona Ambrose, former minister of the environment but after the cabinet shuffle minister of intergovernmental relations, another portfolio close to the heart of the PM, and from which its former occupant, Michael Chong, felt compelled on principle to resign when the leader's vision of a nation departed from his own.

A social conservative but a politician first, Mr. Harper's initial year in office has proved legislatively unrewarding for opponents of same-sex marriage (a motion to reopen that debate collapsed). Vic Toews, his first minister of justice and a vocal proponent of get-tough-on-crime, reappeared after the shuffle as president

Harper @ 1 Cont'd on PAGE 4



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## Policy Dialogue

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## We encourage your input.

If you would like to comment on something you read in this newsletter or if you have something to say to the public policy community, send an email to our Letters Editor at [sipp@uregina.ca](mailto:sipp@uregina.ca).

*“Out of a collection of neophyte politicians, the prime minister has welded, in the past twelve months, a stronger governmental and electoral force than he commanded only recently.”*

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of the Treasury Board, being replaced by the smoother faced Robert Nicholson. Social conservatism as a basis for policy has itself been shuffled further back from public prominence.

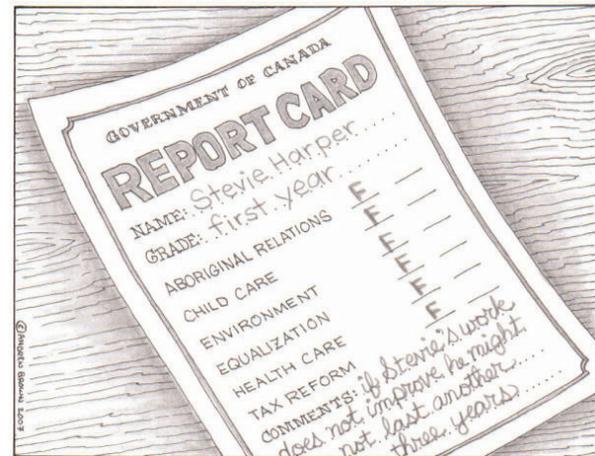
This has not been the case for other policies promised by Conservatives and, before them, Reformers. Long a thorn in the saddle of some westerners, the monopoly the Canadian Wheat Board has held over the sale of Canadian grain since the Second World War is about to end. Firing the Board's president and interfering in the election of Board directors provide proof of the government's commitment to its electoral pledge to transfer grain marketing into a voluntary enterprise.

Another policy favourite of the western region is Senate reform. A commitment by the new government to a Triple-E upper chamber—equal, effective and elected—would mean a commitment to mega-constitutional reform, something most observers say is not worth the political capital that it requires. Instead, the prime minister has proposed two minimalist alterations: senatorial terms in place of the seventy-five year mandatory retirement age, and advisory senatorial elections in the provinces, whose winners the prime minister would recommend to the governor general for appointment to the Senate. Not the end of Senate reform perhaps, or even the beginning of the end, but, to modify Churchill's dictum, perhaps the end of the beginning. Time will tell, as it will reveal whether the unease expressed by some Liberals that in these initiatives Mr. Harper is preparing to mount an electoral campaign against a Liberal-dominated upper chamber has some foundation.

Accountability—or its absence under the Martin Liberals—was the dominant theme of the Conservative campaign in the 2006 election. Its first bill in the new Parliament was the Federal Accountability Act (FAA), an omnibus piece of legislation amending over one hundred existing statutes. Enacted late in 2006, the FAA introduces a complex array of guardians and watchdogs of the bureaucracy and Parliament. The premise of this unprecedented expansion of integrity agencies is that public trust in government will be restored only with the advent of more government. Faith rather than fact explains support for this premise, since decline in trust in government over the last few decades is co-terminous with earlier efforts to make government more open and accountable, for example, Freedom of Information legislation.

In the last half century military and defence matters have ranked low in public visibility. The involvement of Canadian

troops in Afghanistan is a very different matter from providing peacekeeping forces. Public awareness of the extent and duration of Canada's commitment (in 2006 Parliament extended the period for two more years) has grown. The initial decision to send troops was made by the previous Liberal government, but the Harper government accepted that responsibility and has made it an article of its own faith.



Cartoon by Andrew Brown.

Not since the Korean War has debate about military engagement assumed the prominence seen today in Parliament and the media. Here is a new dimension in Canadian politics, one that will increase in controversy as new troops are sent. Soldiers from Valcartier are destined for Afghanistan later this year.

In this assessment of the Harper government on its first anniversary, nothing has been said about its inaugural budget, which made cuts to programs (literacy) and agencies (Law Commission of Canada), or its surprise announcement to tax income trusts. Much has been said for and against these measures. What is striking about these decisions is the desire to appear resolute in the matter of public policy, so resolute on occasion as to eschew debate and consultation. The concept of the White Paper as a preliminary step to the formulation of policy seems to have been forgotten. The personalization of politics continues unabated—Mr Martin earned the reputation for being a ditherer, and his government indecisive; by design, it would appear, Mr Harper has opted to be resolute and his government focussed. Carrying out the goals set down in its election platform helps concentrate the attention of a government in its first year; it will be less easy to accomplish in year two and after. ~

# ACCOUNTABILITY WITHOUT TRUTH?

## Achieving Meaningful Accountability to the General Public

BY CHRIS AXWORTHY, Q.C., B.A. (HONS), L.L.M., PROFESSOR OF LAW, UNIVERSITY OF SASKATCHEWAN

*This note is a synthesis of “Everything But The Truth”, prepared for a Panel on Democratic Office and Accountability, at the 2006 Law & Parliament Conference, Accountability as a Pillar of Democratic Governing, which was held November 2, 3 and 4, 2006 in Ottawa, Ontario.*

Few would disagree that truth and accountability go hand-in-hand or that politicians and other public officials should tell the truth. But the Federal Accountability Act does not require public officials to tell the truth; in fact, the word is not mentioned once in the Act’s 317 sections!

Yet examples of political untruths abound. Bush and Blair lied about weapons of mass destruction in Iraq, and Hungarian Prime Minister Ferenc Gyurcsany admitted that to get reelected: “We lied in the morning, we lied in the evening.”

Closer to home, Mr. Justice O’Connor concluded that the RCMP provided misleading, imprecise and inaccurate information about Mahar Arar. It didn’t tell the truth!

In the face of overwhelming evidence to the contrary, statements made by the Prime Minister and Federal Ministers of Justice and Public Safety assert that the various “tough on crime” bills proposed by the government will reduce crime and make our streets safer. In fact, the evidence, including by the government’s own experts, categorically expose these “untruths”.

And then there is the whole Gomery Inquiry. However, nowhere amongst Mr. Justice Gomery’s wide-ranging report was there a recommendation that elected and non-elected public officials be required to tell the truth!

Effective accountability legislation needs to include, as one of its operating principles, that public officials tell the truth because, as we know, public officials cannot always be counted on to be accurate – to tell the truth and not to mislead.

It’s not possible to achieve meaningful accountability to the general public unless public officials have a strong commitment to the truth. There can be no accountability without the truth. Few would answer the question: “should public officials tell the truth or tell lies?” by choosing the latter.

How differently public officials would have to conduct themselves if they were held to a truth requirement. And imagine the impact on public discourse and accountability.

A wide range of unacceptable practices were proscribed in the Accountability Act; why not telling lies? Public officials know they should, for example, avoid conflicts of interest and they know they should tell the truth – yet the Act addresses the former, but not the latter.

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Was it thought far too risky, even dangerous, by and for elected public figures, in particular, to be required to tell the truth? Or, is it too difficult to separate truth from non-truth? Or is it, an undesirable political option, creating a great, expansive minefield into which elected and non-elected public officials could stumble with predictable consequences? While these might be pragmatic, political rationales, surely, we will not hear them trotted out as a “justification” for including almost everything imaginable in the Accountability Act, except the requirement to tell the truth.

Separating truth from non-truth in a political context may be difficult sometimes. However, legislation is in place requiring a seller of consumer goods and services to tell the truth. According to the Deputy Commissioner of the Competition Bureau, Raymond Pierce: “[t]he importance of truth in advertising cannot be overstated. Advertisers have both a moral and legal obligation to ensure that they provide

Truth Cont’d on PAGE 17

# YOU SAY NATION, WE SAY *NATION*

## Questions for Dr. Antonia Maioni

BY PATRICIA BELL, ADJUNCT PROFESSOR, UNIVERSITY OF REGINA SCHOOL OF JOURNALISM

*The director of the McGill Institute for the Study of Canada says Canadians are speaking two different languages when we discuss the federal government motion recognizing the Quebecois as a nation within Canada. (Dr. Maioni was born in Montreal. At McGill University, she also holds the positions of Associate Professor of Political Science and William Dawson Scholar.)*

**When Prime Minister Stephen Harper introduced the motion recognizing “the Quebecois form a nation within a united Canada”, you called it a welcome reprieve. But you also noted that to the people of Quebec, the word “nation” means something different than it does to other Canadians.**

There are two important differences in terms of definitions. One is nation and nation, and the other is the Quebecois-Quebecer conundrum. Both have simple dictionary definitions. But the meanings attached to the words are heavily fraught symbolically and politically. In Quebec, when we say “nation”, we’re not necessarily referring to Canada. We have a national library, a national legislature, a national capital and they all refer to something in Quebec. In many respects, people in Quebec see that nation as their primary source of identity.

**So, do you think Quebecers interpret this resolution as acknowledging their particular understanding of the word nation?**

Yes, in the sense that if you take the second part of the motion, which is, in French, – “que les Québécoises et les Québécois forment une nation”. If you say they form a nation, most people in Quebec would agree with that, and the vast majority of francophone Quebecers would agree with that. It’s the front end of the sentence that is problematic because in the French wording of it, it says *Quebecois*, and the literal translation of *Quebecois* is Quebecer. But the motion in English says the *Quebecois* form a nation. That is hugely problematic because most Quebecers are not hearing that Quebecers form a nation. In fact, what most Quebecers are hearing is that Quebec forms a nation. And that’s the subtext. Technically speaking that is not right. But that’s what most Quebecers have actually internalized.

**So the question about whether there are people living in Quebec who don’t fall within this definition ...**

Becomes moot. I think English speakers in Canada read the motion as saying the Quebecois form a nation and they see that as meaning all French-speaking Quebecers form a nation. And that’s not it. There are two things going on. One is that Quebecers see the motion as a sense of belonging for all Quebecers. The second is that there is a political connotation to it as well. If Quebecers read this as all Quebecers form a nation, then Quebec forms a nation.

**And how do you see that working its way out? Is it more than symbolism?**

If this is to have any resonance, it can’t remain at the level of symbolism. When Harper rode into Quebec on his white horse, he was promising open federalism, and that was both a symbolic recognition of Quebec’s place in international affairs and some concrete measures on the ground in terms of fiscal imbalance and provincial jurisdiction. People are waiting for the other shoe to drop.

**So, is this motion going to have significance constitutionally?**

Not in the short term, but possibly in the medium to long term. If it is just symbolism, then we are back to square one. If something else, then we have to ask exactly what it means. In the short term, it has to do with

QUESTION PERIOD

Quebec's fiscal relationship with Ottawa. But the constitution question can't remain moot forever.

**Will there be immediate consequences in terms of the debate about treating provinces equally?**

It's going to matter when we start mapping what our new federalism is going to look like. In the short term, the Quebec Liberal government will probably reap some benefit. They will be able to go into an election saying "look we've been recognized as a nation, so let's try to adapt the federalism that exists rather than throwing out the baby with the bathwater." Harper is certainly hoping he'll grow his base in Quebec in the next election. He can say that every party voted for this motion. He can say that in English and in French. Especially, he can say that in French.

**But won't Quebecers be expecting something more concrete?**

If he moves on the fiscal imbalance, he can buy his way to another election and then say something else can happen after that.

**To come back to the word "nation", you say it is understood in Quebec in a totally different way than in the rest of Canada.**

Yes, it's a very European concept, something distinctive from state. In the world you have nation states, states, and nations. They are not necessarily congruent and for a lot of Quebecers, having more than one nation in Canada is perfectly fine. Some see an attachment only to one, and that obviously makes them fall on one side or the other of political affiliations. But most Quebecers lie in the middle and can be comfortable with both.

**How will this affect Canada's image in the world?**

Lots of countries have arrangements for distinct communities to have representation at UNESCO, and for most – Belgium for example – it's constitutionally derived. There's something written down that says "this nation is going to sit at the table with us on matters that have portent to them". It may be untoward in an Anglo-Saxon view of the world, but it's certainly not in a European sense. If we're talking about stable democracies, the fact that you could have more than one constituent part of a country represented at an international forum shouldn't be the end of the world.

**But is this clear to Canadians outside Quebec?**

In the class I'm teaching in provincial politics, we're looking at relations between Alberta and Ottawa. They've been fraught with tension and disagreement, as have those between Quebec and Ottawa. Yet, for Albertans talking about nation, there is just one, and it is Canada. In Quebec, many people say "Quebec is my nation, my sense of belonging and identity and Canada is institutionally my country and my passport." So the motion, not that it wasn't sincere, just illustrates the fact we are speaking two completely different languages – both technically, and in understanding what Quebec is and how it sees itself within the federation.

**And if we did understand each other, would we consider this resolution benign?**

I think it's the opposite. My fear is that if people outside Quebec really begin to understand what Quebec needs or wants, I'm not sure how many would be able to say "I'm comfortable with that." It comes back to Quebec being something other than just one province among the others.

**But you don't see this as the end of the dialogue?**

Quebecers see this as the beginning. That's really important. It's a beginning. ∞



*Dr. Maioni, Associate Professor of Political Science and William Dawson Scholar at McGill University.*

# CANADIAN WHEAT BOARD

## Keeping Canadian Agriculture Relevant

BY DR. SYLVAIN CHARLEBOIS AND PROF. WOLFGANG LANGENBACHER, FACULTY OF BUSINESS ADMINISTRATION, UNIVERSITY OF REGINA

*A government-appointed task force recommended a four-step plan to turn the CWB into a farmer-owned grain marketing company and to allow Western Canadian growers to sell their wheat and barley to any domestic or foreign buyer. Many acknowledge that the CWB has played a significant role in the development of agriculture in Canada, and rightly so. However, Canada is missing out on global opportunities and is being subjected to unprecedented pressure to globalize. These conditions have led to uncertainty and a call for change in the ways the agrifood supply chain is managed and marketed.*

A government-appointed task force recently recommended a four-step plan to turn the Canadian Wheat Board (CWB) into a farmer-owned grain marketing company and to allow Western Canadian growers to sell their wheat and barley to any domestic or foreign buyer. Currently, the CWB, which is the largest wheat and barley marketer in the world, is by law the only organization in the Canadian grain industry allowed to trade in world markets. As one of Canada's biggest exporters, the Winnipeg-based organization sells to over 70 countries and returns all sales revenue, minus marketing costs, to farmers. Many acknowledge that the CWB has played a significant role in the development of agriculture in Canada, and rightly so. However, Canada is missing out on global opportunities and is being subjected to unprecedented pressure to globalize. These conditions have led to uncertainty and a call for change in the ways the agrifood supply chain is managed and marketed.

The operation of the CWB in the agricultural commodity trade in the last decade has been a contentious issue for a number of reasons. First, the CWB, and Canadian agriculture in general, is primarily driven by politics, as is every country's agricultural policy. Domestically, various governments have been active in upholding the virtues and presumed efficiencies of marketing boards. Their argument was, in short, that such mechanisms represent the Canadian way of managing an economy. Current agricultural policies concerning the CWB have had considerable support from both Ottawa and the provincial governments, especially Manitoba and Saskatchewan. Thus, the CWB has become a symbol of the Canadian way of life; but it also has come to symbolize economic inertia and restraints to competition. Following the establishment of the CWB, Canadian governments have at times considered, but ultimately refused, intervention directly in this sector of the economy,

except by passing legislation that reinforces current policies. This hands-off approach is now embedded in the ideology of the Canadian agribusiness sector. Consequently, most Canadian governments, apart from the current federal government, prefer the *status quo*, even as independent analysts advocate reform.

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*With emerging agricultural economies such as those of India, Russia, Ukraine, Brazil and Argentina, the ranking of world wheat exporters and producers is undergoing a seismic shift. In India, for example, wheat production grew significantly in the last five years, and this quickly globalizing nation is now producing 12% of the world's wheat.*

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Second, the CWB's *modus operandi* has attracted the attention of many grain trading nations that have accused the CWB of distorting trade flows, though recent rulings by independent bodies have affirmed the CWB's status as a fair trader. Since 1995, numerous rulings from the World Trade Organization (WTO) have substantiated the long-standing claims of the Government of Canada and pro-monopoly lobby groups that the CWB operates within WTO rules. Similarly, trade quarrels with American interest groups since the North American Free Trade Agreement (NAFTA) have been unanimously settled in Canada's favour. In fact, all 14 attempts to stop Canadian wheat from entering the U.S. market were unsuccessful.

These legal triumphs came with hidden costs. While wheat productivity and efficiency are increasing in many

*“Our grain industry in Canada is anything but market-driven, and the CWB’s monopoly has become an impediment to growth and prosperity.”*

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parts of the world, we have limited our own ability to compete. With emerging agricultural economies such as those of India, Russia, Ukraine, Brazil and Argentina, the ranking of world wheat exporters and producers is undergoing a seismic shift. In India, for example, wheat production grew significantly in the last five years, and this quickly globalizing nation is now producing 12% of the world’s wheat. Just in the last three years, Russia and Ukraine replaced Canada and Australia as top five wheat exporting countries. Climate certainly had a significant impact on these rankings, but Canadian productivity was declining long before recent uncooperative weather patterns.

The CWB currently requires farmers to enter markets where price matters more than quality. With global consumption of wheat projected to decline from last year’s record low as a result of the shrinking market for animal feed, there will be more pressure to provide quality, differentiated products to world markets.

Canada is becoming less relevant to the global agenda. We are more isolated from other countries than ever before, as evidenced by current trade talks at the WTO. Last year in Geneva, CWB President Adrian Measner, while defending single-desk marketing schemes, was quoted as saying that Canada was alone against the other 146 WTO members. Canada had no allies at the negotiating table, and there was no doubt that the WTO would no longer sympathize with the CWB. Sooner or later, the long-awaited reforms to the CWB, long used to justify Canadian policies, will need to be implemented, no matter what Canada says or feels about its existence. The old argument that the U.S. or the EU has agricultural subsidies no longer holds water on the international scene. It is surprising in the 21<sup>st</sup> century that Canada still has marketing boards such as the CWB while many other advanced economies, including the U.K., South Korea, New Zealand and Australia, have dismantled theirs. By implementing vertical marketing approaches and savvy distribution models, many of these countries now have very efficient and productive agricultural industries. Conversely, the CWB has allowed Canadian farms to remain smaller and less able to vertically integrate and take full advantage of the many modern

management tools and information systems that have transformed whole industries.

Our grain industry in Canada is anything but market-driven, and the CWB’s monopoly has become an impediment to growth and prosperity. Many farmers with limited production capacity do not realize the extent to which global trade has changed the way Canada should position itself within world markets. Farmers need to realize that they are one part of the entire economy. Managing a farm is similar to managing any other business enterprise.

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*Canada is becoming less relevant to the global agenda. We are more isolated from other countries than ever before, as evinced by current trade talks at the WTO.*

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Agriculture is not faced with unique market conditions that require government intervention. All other enterprises in the economy also have idiosyncratic market conditions that provide unique obstacles to surmount. The private club status currently enjoyed by farmers is undeserved. Canada needs to implement freer market reforms in the agricultural sector, and the recent task force’s recommendations are consistent with that vision. Otherwise, the irrelevance of Canada’s agriculture will become even more apparent within our own borders. ∞



*Photo courtesy of Don Hall Photography.*

# TILMA OR NOT TILMA

## A Commentary

BY JIM MARSHALL, CHIEF ECONOMIST, SIPP

*There is now an interest in Saskatchewan joining the Trade, Investment and Labour Mobility Agreement (TILMA) between Alberta and British Columbia. The debate on its merits or demerits will spread into other jurisdictions over the next several weeks and months. As this debate continues, a realistic perspective on the TILMA may be of service to the public.*

The Fraser Institute thinks great things of the Trade, Investment and Labour Mobility Agreement (TILMA), calling it “an extraordinary achievement for B.C. and Alberta”.<sup>1</sup> The B.C. Ministry of Economic Development cites a Conference Board of Canada study suggesting the TILMA will result in 78,000 new jobs and add \$4.8 billion to Real GDP in B.C. alone.<sup>2</sup>

But the Council of Canadians is very concerned that TILMA will leave “even policies designed to protect the environment and public health ... vulnerable to attack from corporate lawsuits”.<sup>3</sup> And the National Union of Public and General Employees has issued a “Red Alert”, arguing that, under TILMA, provincial governments and “all governing bodies within those provinces will lose the right to react to the political choice of their populations”.<sup>4</sup>

There is now an interest in Saskatchewan “joining the TILMA” and the debate on its merits or demerits will spread into other jurisdictions over the next several weeks and months. As this debate continues, a realistic perspective on the TILMA may be of service to the public.

The TILMA was signed by the governments of Alberta and British Columbia in April 2006 and will come into effect on April 1, 2007. The agreement aspires to reduce regulations in both provinces that might serve as barriers to inter-provincial trade or inter-provincial mobility of labour and investment. It also establishes a process whereby anyone who feels they have been hurt by a restriction on trade in either province can appeal to a panel and, if successful, can be awarded damages to be paid by the provincial government at fault.

The key provision of the agreement is that each of the two provinces has agreed to ensure “its measures do not operate to restrict or impair trade between or through the territory of the Parties, or investment or labour mobility between the Parties”.<sup>5</sup> There are a number of provisions

specifying how these objectives will be achieved, what is expected from each province and, in the case of disputes, how they should be resolved. There are provisions allowing for exceptions, some specified in the agreement and others which may be identified later by either of the two provinces. There are also provisions which allow for a two-year transition period during which the provinces can adjust their policies to move toward the agreement’s requirements or amend the agreement as necessary.

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*Whether for good or bad, the world is moving towards global markets and a “world economy”. Some might argue that internal trade agreements such as TILMA merely reflect that trend, rather than advance it.*

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Economists are generally in favour of free trade because it allows unimpeded flows of goods and services and labour and productive capital across political boundaries, enabling production efforts to grow in locations where they can thrive. This allows each jurisdiction (or the businesses in them) to focus on producing the goods and services they are best capable of producing, trading them for goods produced elsewhere. By allowing capital to locate where it is most productive and labour to move where it is most needed, the collective productivity of the jurisdictions involved is maximized.

That all sounds good on paper, but it tends to overlook some important considerations. Any change in productive activity takes time and during that period, there may be considerable disruption as businesses in various jurisdictions either close due to lost business or make plans to relocate to

other jurisdictions. It may well be that these enterprises pass each other in opposite directions on the way but they may not migrate at a steady and consistent path, as implied by economic analysis. The negative effects of transition may not affect all jurisdictions evenly.

It is also likely that being able to work in a variety of jurisdictions will eventually allow workers access to higher incomes as they move to higher-paying jobs, either temporarily, seasonally or more permanently. Again, that flow can be two way between jurisdictions and may be to the advantage of all. But again, not all workers will be equally capable of moving, either between jurisdictions or, more likely, between occupations, limiting the ability of some to take full advantage of new trade opportunities.

The rosy picture of free trade painted by economists may not be representative of real experience. But the bleak picture presented from a more protectionist perspective is unlikely as well. Since all regions enjoy some characteristic or capacity that allows them to produce something better than other things, there will be opportunities for all parties in a free trade agreement to benefit to some extent from improved mobility. The principle of Comparative Advantage suggests every party is in a position to benefit from freer trade.

It is also the case that TILMA represents just one more step in a long process in which governments have realized the necessity of establishing relationships with other nearby governments to standardize regulations and operations. It may well be that intergovernmental agreements serve more as reflections of these evolutionary processes more than drivers of them. Confederation itself was an effort to strengthen the bonds between provinces by reducing the divisions between them. The TILMA is established pursuant to an enabling article (Trade Enhancement Arrangements) included in a broader agreement signed by all provinces called the Agreement on Internal Trade, which has been in place since July 1, 1995.

As many industries, trades and professions are driven, mainly through technological advancement, to adopt national and even international standards, many of the unique regional distinctions in standards are disappearing in any event. Whether for good or bad, the world is moving towards global markets and a "world economy". Some might argue that internal trade agreements such as TILMA merely reflect that trend, rather than advance it.

There are advantages to be derived from freer trade. We have noted improved access to higher quality goods and services at lower prices through trade and improvements in our own productive efforts through access to larger markets than those available to us locally. These improvements may

reflect improved transportation technology and specialization of labour and productive effort more than the result of intergovernmental agreements like TILMA. Such arrangements may facilitate change that is already under way and, while change may be unnerving, it rarely is all good or all bad: most often it is neither a salvation nor damnation. ☞

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# BRITISH COLUMBIA'S "NEW RELATIONSHIP"

## Recognizing Aboriginal Title and Rights

BY TONY PENIKETT, VANCOUVER-BASED MEDIATOR AND FORMER YUKON PREMIER

*For one hundred years, British Columbia remained in denial about aboriginal rights. Even after Tom Berger took the Nisga'a land rights case to the Supreme Court in 1973, resistance continued. In 1982, Trudeau and Canada's premiers approved a new constitution and the world's first aboriginal clause. Ever since, the Court has been busy interpreting the meaning of the country's "existing aboriginal rights" and defining their content.*

A remarkable thing happened in British Columbia during the spring of 2005. B.C. Premier Gordon Campbell sat down with First Nation leaders in that province to craft a "New Relationship" Accord, which proposes a new government-to-government relationship based on recognition of aboriginal title and rights. The Accord also acknowledges that the Aboriginal-Crown relationship in British Columbia is at the root of First Nations poverty.

We are all here to stay. We agree to a new government-to-government relationship based on respect, recognition and accommodation of aboriginal title and rights. Our shared vision includes respect for our respective laws and responsibilities. Through this new relationship, we commit to reconciliation of Aboriginal and Crown titles and jurisdictions.

We agree to establish processes and institutions for shared decision-making about the land and resources and for revenue and benefit sharing, recognizing, as has been determined in court decisions, that the right to aboriginal title "in its full form", including the inherent right for the community to make decisions as to the use of the land and therefore the right to have a political structure for making those decisions, is constitutionally guaranteed by Section 35. These inherent rights flow from First Nations' historical and sacred relationship with their territories.<sup>1</sup>

Many First Nation Leaders were ecstatic. Grand Chief Edward John observed: "We may yet bury Joseph Trutch's denial of aboriginal rights and title legacy ... to which this province has hung onto like a colonial security blanket."<sup>2</sup>

The Campbell Accord is remarkable, not just for its

language, but also because, just one year before, his lawyers were at the Supreme Court of Canada in the *Haida* case arguing that the B.C. government had no duty whatsoever to consult First Nations about resource developments on lands subject to aboriginal title claims.

What happened to change Premier Campbell's mind? Was he influenced by the failures of the tripartite treaty negotiation process that has spent \$600 million over the last 13 years without concluding a single treaty? And does that explain the absence of the word "treaty" occurring anywhere in the accord?

Understanding that treaty making is a continent-wide story with a five hundred year history helps Canadians appreciate what is happening in British Columbia today. Unfortunately, Canadian school children do not learn about the Ottawa chief Pontiac, whose resistance to the British occupation led to the Royal Proclamation of 1763 and the formation of the policy that settlers could only obtain land from the Crown after the Crown had purchased it from Indian nations through publicly negotiated treaties. In adopting this policy, colonial authorities recognized aboriginal title and aboriginal governments and, incidentally, made Pontiac an important but unacknowledged father of confederation. Of all the British colonies in North America, only the government of British Columbia rejected this policy.

Perhaps few Canadians appreciate that the British Columbia debate about aboriginal self-government, in which Gordon Campbell has been a leading opponent, began in debates in the Spanish court in the 16<sup>th</sup> century. In 1550, at Valladolid, courtiers defended Hernán Cortés's brutal conquest of Mexico and destruction of Tenochtitlán — then the greatest city on earth — because the Aztec and Maya were "natural slaves". Opposing this view was Bartolomé de las Casas, the first bishop of Chiapas, who argued that the conquest was illegal. Long before they heard the word Spaniard, the Indians had "kingdoms, royal dignitaries,

jurisdiction, and good laws and there is among them lawful government.”<sup>3</sup>

Prior to union with Canada, James Douglas, the first colonial governor, had negotiated 14 treaties with tribal groups on Vancouver Island. Later, Athabascans in the northeast corner of the province signed Treaty Eight with Canada. But from the time of Governor Joseph Trutch, Douglas’s successor, until Premier William Bennett, provincial officials always argued that aboriginal title had been extinguished by European settlement and that the imperatives of the Royal Proclamation did not apply in the province.

For one hundred years, British Columbia remained in denial about aboriginal rights. Even after Tom Berger took the Nisga’a land rights case to the Supreme Court in 1973, resistance continued. The Court’s judgment in the Nisga’a case caused Prime Minister Pierre Trudeau’s government to abandon its White Paper, the last openly assimilationist policy proposal from Ottawa. But Melvin H. Smith, venerable B.C. bureaucrat and author of the best-seller, *Our Home OR Native Land*, was having none of it. As far as Smith was concerned, Berger and the Nisga’a had lost their case and, as far as he was concerned, the White Paper represented the perfect and final solution to the “Indian Problem”.

In 1982, Trudeau and Canada’s premiers approved a new constitution and the world’s first aboriginal clause. Ever since, the Court has been busy interpreting the meaning of the country’s “existing aboriginal rights” and defining their content. *Sparrow*, the first such case, was a 1990 aboriginal fishing case that confirmed a B.C. first citizens’ right to fish for food, subject only to the imperatives of conservation.

That same year, B.C. Premier William Vander Zalm instructed provincial negotiators to join their federal and tribal counterparts in Nisga’a treaty negotiations. The following year, the two governments and the First Nations Summit mounted a B.C. land claims task force and the task force recommendations led to the creation of the tripartite British Columbia Treaty Commission that would fund, facilitate and publicize treaty negotiations.

With the *Delgamuukw* decision in 1997, the Supreme Court affirmed the continuity of Aboriginal title in British Columbia. However, *Delgamuukw* was a two-edged sword, in that the decision also confirmed the right of governments to infringe, with compensation, on aboriginal title for legitimate legislative purposes such as settlement, mining and forestry. The ruling energized First Nations but governments responded with indecision and treaty negotiations slowed to a crawl.

In 2000, the Nisga’a finally achieved a treaty, title to approximately 2,000 square kilometres of their traditional

territory, a \$200 million capital transfer and, for the first time anywhere, a self-government agreement inside the treaty. Constitutional protection for the Nisga’a Lisims Government proved highly controversial.

In the legislature, provincial Liberal Leader Gordon Campbell opposed the treaty, particularly its self-government chapter, and, having lost that battle, he challenged its constitutionality at the B.C. Supreme Court. After losing *Campbell*, the leading self-government case that ironically bears his name, the Liberal leader promised to re-fight the issue in the court of public opinion. In 2002, as premier, Campbell ordered a province-wide referendum to confirm his government’s position that aboriginal self-government should be limited to delegated municipal powers. Many aboriginal citizens boycotted the vote but a large majority of voters endorsed the Campbell position and treaty negotiations appeared headed for the junk yard.

By the end of the 20<sup>th</sup> century, the Nisga’a Nation had concluded the province’s one and only modern treaty, and that agreement came from a process that preceded and paralleled the British Columbia Treaty Process.

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*The Campbell Accord is remarkable, not just for its language, but also because, just one year before, his lawyers were at the Supreme Court of Canada in the Haida case arguing that the B.C. government had no duty whatsoever to consult First Nations about resource developments on lands subject to aboriginal title claims.*

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Some suggest that the B.C.T.C. process may be more about “building relationships”<sup>4</sup> than settling treaties. If so, it is surely an extraordinarily expensive way to go about it. Worse, the suggestion raises serious questions about whether government mandates were designed to get settlements and, if not, why not?

A federal finance official once opined that treaties take so long because it is cheaper to negotiate than settle. But is endless negotiation really cheaper than treaties? Another retired mandarin complained about the costly processes Canada has created to negotiate treaties: “We have capped the costs of the claims, but not of the negotiations.”<sup>5</sup>

A September 2001 B.C.T.C. review discussed the delays

## New Relationship Cont'd from PAGE 13

in treaty making and artfully passed the buck to the negotiating parties. “The Treaty Commission does not negotiate treaties,” explains its report.<sup>6</sup> Unfortunately, nor does anyone else.

One way to examine the effectiveness of the current B.C. process is to do a product analysis. What exactly, by way of measurable benefits, has B.C.T.C. machinery produced for each of the parties?

The federal government admits using the treaty commission to reduce road blockades and office occupations — far less frequent than in the previous decade. Perhaps then the treaty process, which prevents First Nations from litigating their issues, has been the key tool for managing the “Indian issue” in British Columbia.

Without suffering the financial expense of settling and selling any treaties, the provincial government might have gotten exactly what it wanted: namely, hundreds of interim measures and accommodation agreements that reflect the government priorities in fostering economic development and protecting provincial resource revenues. In reflecting on the 2004 *Haida* decision, Thomas Isaac, who represents provincial and corporate parties in aboriginal law cases, has written that the Supreme Court ruling creates the possibility that the need for treaties will subside, as many Aboriginal rights claims could be dealt with at the consultation and accommodation level. The ability of the Crown to engage in ‘hard bargaining’ may lead to an understanding that consultation and any resulting agreements may prove more efficient than the treaty negotiation process.<sup>7</sup> In other words, interim and economic measures could become an alternative to treaties; and First Nations have used government funding, critics complain, to build a “land-claims industry” that employs hundreds of consultants, lawyers and negotiators. This industrial effect caused one First Nation lawyer to liken the treaty process to a fish farm: “We’re all penned up and fed our little pellets,” she complained. “We can look at the sky and dream our small-fry dreams, but most of us are going nowhere. Some day, someone may escape towards a treaty, but most can only dream.”

In 2001, Premier Campbell had sent negotiators to B.C. treaty tables as the representatives of non-Indians, the defenders of settler interests. When the Yukon government adopted such a posture in the mid-eighties, the Council for Yukon Indians rejected the government offers, and negotiations broke down. A new territorial administration took a different position. It argued that the territorial government represented all Yukoners, aboriginal and non-aboriginal. Their duty therefore was to advance the broad

public interest and settling treaties was not just in the aboriginal interest but also for the common good. That attitudinal shift marked the moment that Yukon treaties became possible. Is the “New Relationship” Accord such a moment? Time will tell.

Is the Accord merely a political statement or does it constitute a statement of provincial policy? Does Premier Campbell’s “New Relationship” Accord envision replacing the B.C.T.C. process with something better? We shall see. If the Province continues, as it has done for the last few years, to use dozens of interim measures, forest and range, and other economic agreements as alternatives to treaties, I fear it would be trading short-term gain for long-term pain.

Accommodation agreements can make important contributions to reconciling aboriginal and settler communities, but they are no substitute for treaties and self-government agreements in resolving the big questions of aboriginal lands and governance. If the promising “New Relationship Accord” fails to accelerate British Columbia’s lumbering treaty process, it could become just another link in our continent’s chain of broken treaty promises. ∞

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# REFLECTIONS ON PART-TIME AND OTHER CONTRACT ACADEMICS

BY LINDA JOAN PAUL, UNIVERSITY OF REGINA

*In this article, Linda Paul examines the challenges and negative consequences of running a university using a large contract labour force and the effect of contract work on academics and academic freedom. This article explores the possible policy initiatives that could improve the work environment.*

*"I think the university has to review, assess and change the whole policy of term positions and part-time academic positions and do its best to treat them [contract academics] fairly, to let them serve the university in their full strength and at the same time give them opportunity and hope for the future."*

- Survey Respondent

This impassioned entreaty comes from a former term appointee and could relate to many contingent academics' feelings in Canada and the western world.

As with the general labour force, many academics work on a contract basis. The Canadian Association of University Teachers (CAUT) recognized this as a growing and significant problem, shifted its policy dramatically in the late 1990s to create a subcommittee of part-time and contract academics and, in 2000, appointed a professional officer to work with and for them. CAUT has developed many policy initiatives regarding contingent academics, including a Policy Statement on Fairness for Contract Academic Staff. Contingent academics are often a significant proportion of the total academic workforce in a university. At the University of Regina, for instance, close to half the academic workforce is sessional and other contingent academics.<sup>2</sup>

Who are these people? They hold contract appointments of fixed length, contractually limited for a specific time-duration or are part-time academics, usually hired on a per-course basis. Because they do not have tenure, they do not have academic freedom. They cannot say what they think without fear of reprisal or dismissal. They may not receive remuneration comparable to those of their tenured counterparts. Characteristically, they receive fewer or lower-level benefits than permanent academics. Some receive none.

They hold a wide variety of appointments. Their

characteristics vary tremendously. Some are professionals holding a full-time job or retirees or young parents (often women) wishing to teach only occasionally. These people may be satisfied with their teaching situations.

However, a large group of contract academics teach as often as possible, consider their association with academia their major career and would like permanent and full-time work. They devote tremendous energy to their jobs and would like to be recognized as serious academics, with remuneration, employee benefits and a respectful and appreciative work environment which reflects their devotion. This does not always occur. There is a gender component to this segment of academia. The largest proportion of women is hired in these ranks, rather than as assistant, associate or full professors.

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*There are many ways to value contract academics. Canadian universities, mainly public institutions, must develop policies that enhance the creative voice of their contingent academics.*

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Many possible policy initiatives could improve the work environment. "I feel excluded. And silenced. Powerless," remarked one contract academic. S/he related these feelings to equal-opportunity policy. While many consider this concept in terms of gender, ethnicity, race and sexual orientation, s/he related it to work environment. "I'm definitely not being given equal opportunity to take part, to be part of the decision-making and even contribute."<sup>3</sup>

Contract Academics Cont'd on PAGE 16

## Contract Academics Cont'd from PAGE 15

How is this group perceived by academia? Is its knowledge, research, education and commentary considered as laudable as for tenured (-track) staff? Many contingent academics think it is not. Giving voice relates to their invited presence on department, faculty and university-wide committees, their right to vote on university issues, to supervise theses, their invitation to participate in policy or research institutes, to attend conferences, to present research papers. It relates to their treatment by colleagues.

One significant concern is the ability to conduct unimpeded research. Providing course releases and research funding, advancing travel funds to conferences and providing audiences for their research findings are academic policy initiatives which enhance voice. For instance, recently the University of Toronto developed guidelines specifically to exclude sessional lecturers from applying for SSHRC research grants. What this implied was that their voice could not and should not be heard, that their research and ideas were less valued. The union representing these sessionals called for protest.<sup>4</sup> Within weeks of public outcry, that university reversed its policy decision.<sup>5</sup> Other universities, such as the University of Regina, have yet to allow contingent academics access to SSHRC grants.<sup>6</sup>

There are many ways to value contract academics. Canadian universities, mainly public institutions, must develop policies that enhance the creative voice of their contingent academics. To do so will exponentially expand the knowledge base of academia and create a work environment where all academics feel appreciated. ∞

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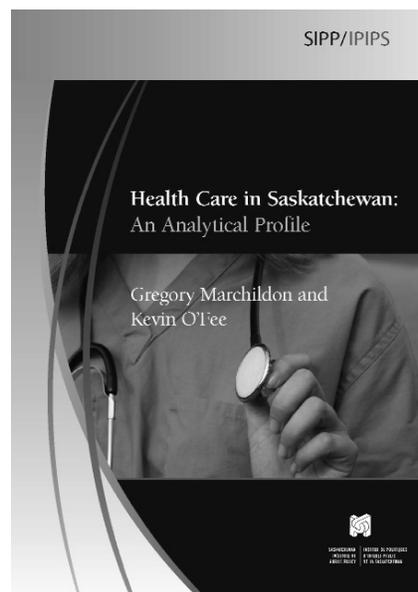
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## Truth Cont'd From Page 5

consumers with accurate information upon which to make their purchasing decisions.” If truth is required for selling beans, a soft drink or a TV dinner, why not for statements of public officials?

Contrast the omission of the word “truth” in the Accountability Act with the truth requirements in consumer transactions. If, in the process of selling beans, a soft drink or a TV dinner to the public a seller makes statements that are “false or misleading in a material respect” he or she will commit an offence and a criminal one at that. Claims about what a particular product (or service) will do or achieve or bring about—if not true—generate criminal and civil liability. It’s an offence to make a statement which purports to be supported by research when it is not. In order to avoid responsibility in this latter instance, the representor must show the claim is true. One last important point is that not only is the literal meaning of the representation assessed but if the “general impression conveyed” is misleading, an offence will be committed.

Is truth about beans, soft drinks and TV dinners more important than truth about public policy?

What current politicians have been saying about so-called tough on crime measures is one glaring example of not telling the truth and of undermining the accountability of public officials.

In the area of criminal justice the public seems quite prepared to dismiss the views of experts and the evidence supplied by research about what works – the facts. This phenomenon is not unique to Canada. Public officials can add “fuel to this fire”. More usefully, they could tell the truth about what works and what doesn’t.

To say, for example, as the Prime Minister and other Ministers have said, that so-called tough on crime initiatives “will make our communities safer” is simply not telling the truth, and it undermines the accountability of elected public officials. To be truly accountable, these officials should have, and perceive themselves as having, the responsibility to not further confuse and mislead the public

Essentially, my point is that the pursuit of the goal of greater accountability of public officials to the public at large requires them simply to say what they are doing. If, for whatever reason, a public official has a desire for longer, tougher punishments and/or a view that longer, tougher

punishments are simply a good thing then he or she should simply say so. To say that such punishments will deter crime, either on the part of present offenders or on the part of the public at large is not being truthful (as the overwhelming weight of evidence clearly shows). It contravenes the covenant of accountability to which public officials should be held.

A public official may say that he or she “believes” the particular measure will bring about a particular result, even though such “belief” may be in the face of the overwhelming mountain of evidence to the contrary. Courts have had little time for a belief said to be honestly and reasonably held unless it is made in good faith. If the belief is honest, but not reasonably held, it will not qualify as being made in good faith. It is not enough that the belief is held, it must be honestly and reasonably held. Just saying something is so does not make it so.

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*To say, for example, as the Prime Minister and other Ministers have said that so-called tough on crime initiatives “will make our communities safer” is simply not telling the truth, and it undermines the accountability of elected public officials.*

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There are, then, many examples, some more blatant than others, of elected and non-elected public officials not telling the truth. There are also other cases in which the public has been, and is being, misled by its public officials, especially elected ones, into thinking things are other than they are.

So, I return to where I started. It is surely not too much to expect our public officials to tell the truth – and for them to see that the public trust, of which they are such an integral part, requires it. Also, it is surely not too much to ask that the legislation which sets out public accountability rules include telling the truth as one of those basic principles. Why does the much-vaunted Accountability Act not require public officials to tell the truth? Can there be accountability of public officials to the public without a requirement to tell the truth? I think you will have realized by now that I think the answer is no! ≈

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*“It is surely not too much to expect our public officials to tell the truth – and for them to see that the public trust, of which they are such an integral part, requires it.”*

# THE CONSTITUTION AFTER 25 YEARS

## A Commentary

BY JOHN D. WHYTE, SENIOR POLICY FELLOW, SIPP

*In this article, John Whyte looks back over the 25 years since the Canadian Constitution and Charter were formed and explores the question: Do the national challenges that drove the process that led to those constitutional reforms have current salience, and are they acting on the Canadian political community in ways that were anticipated?*

We think of constitutional texts as being written for the ages, as having a canonical quality that allows them to serve as wise guides over generations. Twenty-five years is but a moment in constitutional life and we should, perhaps, be wary of assessing too soon a document that has served our nation only a short time.

Yet, constitutions are designed to work in real worlds and actual political contexts and these can change rapidly. We sometimes come to know soon how a constitution has shaped our political society and, equally significantly, how changes in political values and practices have produced new understandings of it. For instance, within 25 years of Canadian confederation in 1867, judicial interpretation of the British North America Act (as it was known) had turned the constitutional text upside down in response to the adamant refusal of two provinces in particular to be drawn into the spirit or the machinery of a strong and dominant national government. The 1867 text certainly offered the prospect of federal supervision over every sort of provincial institution, from appointment powers, to disallowance of provincial legislation, to federal legislative uniformity, to declaratory powers, and to the overarching general power to provide peace, order and good government. Yet, within a few decades, the tower of provincial power based on the authority over legal relations between private persons (which was then the chief function of the state) was unequivocally affirmed and, at the same time, the centerpiece of national capacity – the constitution's peace, order and good government clause – was reduced to a contingent and largely temporary power and not allowed to act as the foundational source of federal authority.

We can entertain similar thoughts about the 1982 *Constitution Act*. Do the national challenges that drove the process that led to those constitutional reforms have current salience, and are they acting on the Canadian political community in ways that were anticipated? There are a

number of substantive and procedural features of the 1978 to 1982 process that seemed so important and appropriate then that are now understood very differently.

At the procedural level, 25 years ago it seemed that the strong bi-national foundation of Canada's founding had faded to myth and that Canada's legitimating paradigm had become either approval from two orders of government or unilateral federal authority to address the nation's great needs. Certainly, the struggle to establish a strong national authority at the federal level was being pursued actively by both Prime Minister Pierre Trudeau and Supreme Court Chief Justice Bora Laskin. The Supreme Court, on the other hand, in three important reference cases in that period, stood up against Trudeau and asserted the central idea that

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*[A]lthough we should all be committed to fidelity to the texts of our constitution, the fidelity that we truly owe is to the deep meanings of our social experience for our constitutional order.*

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legitimacy rested on consent from both orders of government. Trudeau was willing to accept either the sufficiency of the consent of national parliamentarians or the need for additional consent from a majority of the provinces. What was not in play was concern over bi-national consent. The formal 1982 amending formula itself adopts a purely federal conception of legitimacy for our basic law. Yet, the dominant normative effect of the constitutional process that gave us the new formula has been the necessity of Quebec's consent to fundamental changes. The clouds of illegitimacy over the 1982 process have not dissipated and, in fact, have been affirmed by the remedial (but unsuccessful)

constitutional projects initiated by Prime Minister Mulroney. Today it is almost beyond believing that a purely federal consent process that did not include Quebec's participation would suffice to support significant change.

Along this same line of the increasing weight in Canadian statecraft of distinct minority communities, one might compare the very careful, begrudging and limited recognition of the rights of Aboriginal peoples in 1982 – a recognition that people thought could not add to Aboriginal special treatment or empowerment – with the present-day wholesale acceptance of rights to traditional activities, to significant land claims and to Aboriginal political authority in the form of both self-government and access to extensive reconciliation processes. The constitutional order that was created provided the slightest launching pad for this new inter-societal condition. What has prompted this change is recognition of the normative implications of the increasingly understood colonizing story and increasing concern over the social condition that has emerged from it.

At the same time, Canada's commitment to multiculturalism has changed. A provision in the 1982 *Charter* states that *Charter* rights are to be applied in a way that is consistent with our multicultural heritage. At the time this provision seemed of a piece with respect for individuals and minorities. Now we live under significant dread of ethnoculturally based illiberalism and, in particular, the vulnerability of women. We have come to ignore this specific *Charter* idea.

The 1982 Constitution's major innovation was, of course, the entrenchment of rights. Although the *Charter* has had a huge impact on political life and the judicial function, and has fully entered into the consciousness of most Canadians, there are two ways in which the conception of the appropriate rights mechanism that was in place then holds little sway over current rights discourse. First, in 1982, the great Canadian innovation in rights recognition (or so it was proclaimed) was the power given to Parliament and legislatures to override the *Charter's* protection of basic liberties, due process and equal treatment by the state. This was to allow legislative bodies to have the final word—even after courts had found a violation of rights—over the relative importance of rights and the social and economic goals pursued by governments. The practice of legislative override, however, has never become established and, it seems, that fine balance based on sequential primacy over the status of rights claims will not now develop. This is not necessarily unfortunate; after all, it was unintelligible to both protect individuals' rights against majority oppression and then license the majority's elected representatives to ignore the oppressive effect of its schemes.



*Photo courtesy of the Department of Secretary of State, Canada.*

The *Charter's* other innovation was the general warning that rights are not absolute and often need to be curtailed to preserve a safe, fair and orderly society. But this prudent warning has been taken by the Supreme Court as reason to determine the social value of governmental schemes and whether they have been rationally constructed. The Court gives approbation (or not) to challenged public policies; it does not consider the weight that a specific rights claim may, in the context, be due. We certainly have a national system of judge-administered rights, but whether it is a system of law-defined rights is very unclear. This unraveling of legalism in constitutional interpretation was certainly not expected.

There are, of course, other deviations from 1982 expectations – over fiscal transfers, over the role of popular consent to constitutional amendments, over the responsibility of the federal government over an open, fair and efficient economy, and so forth. What do these significant changes in context and reality tell us about constitution making? Perhaps it is this. Those who wish to understand our constitution must live and work within the sense of dynamism that actually recreates and transforms our basic system. Although we should all be committed to fidelity to the texts of our constitution, the fidelity that we truly owe is to the deep meanings of our social experience for our constitutional order. We need to recognize how different the nation is from what our constitution writers intended and, sometimes, how sadly different our nation is from what our constitution makers hoped. Two things follow from this. When it comes to rewriting the terms of nationhood, it is wise to be modest, to recognize how little of the future one can really grasp – or control. Second, when it comes to understanding the power of constitutionalization, it is wise to remember that that power has not passed us by and that we always carry responsibility for examining our political condition and understanding the kind of nation that we need. ∞

# MEDIA PRESENTATION OF CRIME STATISTICS

## Pt. II – For the Common Good

BY FRED BURCH, GOVERNMENT OF SASKATCHEWAN SIPP SENIOR POLICY FELLOW, 2006-07

*All media outlets influence the expenditure of public funds but, ideally, primarily through the objective reporting of facts. Those who report on crime statistics and social issues, and those who direct and control the media outlets need to have a clear understanding of crime statistics, and have an obligation to provide the public with an objective portrayal of the data.*

Working within rigid deadlines, journalists attempt to weave highlights from multiple sources into concise accounts of complex issues. In-depth articles or documentaries, with the luxury of additional time and space, expand on headline news with the ultimate goal of assisting the public to understand significant issues. In spite of the obstacles, the end result is usually a product that meets the standards outlined in various media code of conduct guidelines. But not always. Recent articles in *Maclean's* magazine provide one such example and a base for expanding on a previous *Policy Dialogue* submission entitled "Media Presentation of Crime Statistics – Interpreting the Rhetoric". Of equal interest, however, is a conundrum resulting from the *Maclean's* articles. What happens when a subjective and sensationalized presentation of crime statistics and related social problems assists the common good?

Reporting on social problems in Regina, *Maclean's* magazine (January 15, 2007) cites official crime rates per 100,000 population, describes a homicide case, utilizes direct quotes, presents graphic visual images, notes personal observations and concludes, quite authoritatively, that certain neighbourhoods in Regina are the worst in Canada. A follow-up article opens with a simile that includes the phrase "triple homicide in the hood" (an event that has never actually occurred in Regina). The cover of the February 5, 2007 *Maclean's* announces "We Fixed Regina!" In that issue, the editors of *Maclean's* note they are gratified for having played a part in recent federal and provincial government decisions that included \$2.2 million in funding for housing and the announcement, or implementation, of other programs and events.

*Maclean's* should be congratulated for changing public opinion and encouraging a loosening of "public purse strings". But did the outcome result from a process that could be described as an appropriate mechanism for public policy

development and the expenditure of public funds? The Criminal Justice System (CJS) in Canada is a 12 billion dollar industry. This figure does not include dollars available to non-CJS government departments for funding of projects within their respective jurisdictions. All media outlets influence the expenditure of public funds but, ideally, primarily through the objective reporting of facts. Those who report on crime statistics and social issues, and those who direct and control the media outlets need to have a clear understanding of crime statistics, and have an obligation to provide the public with an objective portrayal of the data.

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Police reported crime, often summarized as "rates per 100,000 population", is critiqued in Canadian academic journals and criminology texts (e.g. Hackler 2007, Linden 2005). These rates are, in fact, the dominant unit of measure in the "flagship" Statistics Canada CCJS yearly report, "Crime Statistics in Canada". Other Statistics Canada publications and academic sources, however, use alternate methods to analyze crime. For example, studies based on spatial analysis (the "Ecology of Crime", e.g. Stark. 1987) and environmental approaches ("Situational Crime Prevention", e.g. Brantingham, 2005), analyze crime and

social problems per square kilometre or by census tract. Such studies attempt to address why certain areas—in most cities—consistently suffer from similar intense social problems. When compared to studies from previous decades, these reports illustrate that the collection, presentation and interpretation of crime statistics have been an evolutionary process and that different units of measure serve different purposes.

There are few in-depth Canadian studies that present an objective comparison of crime and social problems between cities (or CMAs). The Statistics Canada yearly crime reports, and a wealth of information presented in other Statistics Canada publications, do, however, provide the basis for evaluation of crime and social problems within specific communities. Three projects, recently completed as part of the Statistics Canada “Crime and Justice Research Paper Series”, study the distribution of crime in relation to neighbourhood characteristics within (but not between) specific cities. To date, Montreal, Winnipeg and Regina have participated.

The Statistics Canada 2006 report on Montreal’s distribution of crime noted that approximately 20% of violent crime incidents occurred in 7% of the Island’s “census tracts”. A similar study (Statistics Canada, 2004) reported that, in Winnipeg, 30% of reported violent crime incidents occurred in 3% of neighbourhoods. The Regina report (Statistics Canada, 2006) notes that 30% of all violent incidents occurred in 5% of its neighbourhoods. While these figures, and the reports, indicate that each city experiences a similar concentration of social problems in specific neighbourhoods, the data does not allow for assignment of a subjective label to any neighbourhood.

Conclusions in the Montreal study were similar to those in the Winnipeg and Regina reports. The findings revealed that “crime is more prevalent in neighbourhoods where residents have less access to socio-economic resources.... are characterized by an economically disadvantaged population with a lower proportion of highly educated people ... have a larger number of single people, lone-parent families ... and ... exhibit greater residential instability, fewer owner-occupied dwellings and a larger proportion of the population spending more than 30% of their budget on housing.” This type of information provides planners with information they can use to develop funding proposals or to ensure existing social programs are on track. Rates per 100,000 population do not.

Rates per 100,000 appear to have intrinsic meaning; the media (and the public) view these figures as cold hard data suitable for quick and interesting comparison. But, at the local level, rates per 100,000 are usually just that, figures of

interest. From a policy perspective, is comparing a homicide rate of 4.0 per 100,000 in a Census Metropolitan Area (CMA) of 200,000, to a rate of 2.0 in a CMA with a population of over 5 million, of much practical use in deciding on the allocation of funds for social programs? Is there, in fact, a statistically significant difference between these two rates? When attempting to explain the 104 homicides that occurred in the Toronto CMA in 2005, would municipal leaders attempt to convince their electorate their city is twice as safe as others based on the “per 100,000” rate?

Journalists simply do not have the time to study the statistics at their disposal. Therefore they, and their editors, must make choices, and then have to decide how they describe those choices. Often their decisions will be based on guidelines set by their publishers or owners. In making the final decisions related to the selection and presentation of crime statistics, media outlets have considerable freedom and influence.

Section 2 of the *Charter* guarantees “freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication”. Recognizing that this right entails enormous power, and great responsibility, most news outlets and their employees adhere to a Code of Conduct. The Communication, Energy and Paper Workers Union of Canada (ACE) in their Media Code of Conduct support responsible journalism by noting, “Our legal traditions give media privilege and protection. We must return this trust through the ethical practice of our craft. A free press should serve the public interest, not personal or specific interests. Serving the public interest must override any desire to favour the financial and competitive needs of news organizations or their parent companies.” Other guidelines include, “Use neutral words to ensure impartial, dispassionate reporting. Be careful with technical terms, statistics, estimates and election results. Be careful with headlines and make sure they reflect the facts of the story.”

The “common good” that resulted from the *Maclean’s* articles should be appreciated, but the idea that this means is justified by the particular end, on this occasion, is difficult to accept. Dissatisfaction with the process is an equally valid explanation for the negative response that *Maclean’s* attributes to “wounded” or “bruised” civic pride. If media outlets choose to present general statistical information, they have every right to do so. But keeping the rhetoric to a level that can actually be supported by the data, by following basic media codes of conduct, will assist in reducing the risk of the media stepping too far into the arena of making policy rather than reporting on it. ∞

# UNRAVELING THE MYSTIQUE OF THE FAMILY FARM ON THE CANADIAN PRAIRIES

BY DEREK POITRAS AND HARTLEY FURTAN, DEPARTMENT OF AGRICULTURAL ECONOMICS, UNIVERSITY OF SASKATCHEWAN

*The Family Farm historically has been viewed as more than simply an industry to produce food. To some in present society, the Family Farm is seen as an outdated and inefficient means of undertaking agricultural production. Yet it persists and is fiercely protected by many. In trying to discern the roots of our fascination with this institution, perhaps it is informative to look at its historical origins.*

The Family Farm inspires strong feelings. For those who farm, it is a way of life central to their identity. To others with roots in the farming community, the Family Farm is an essential part of their culture and heritage. There is almost universal lip service from politicians, and intense lobbying by farm and agricultural organizations to “save the Family Farm”. On the other hand, the *Montreal Gazette* (2006) recently once again posited that the Family Farm is too costly for taxpayers with ‘the growing urban majority’ being the ‘real victims’ of federal subsidies to small farmers. To some, the Family Farm is seen as an outdated and inefficient means of undertaking agricultural production. Yet it persists and is fiercely protected by many. In trying to discern the roots of our fascination with this institution, perhaps it is informative to look at its historical origins.

On the Canadian prairies, the familiar story of a Family Farm usually begins with a homestead. The Prairies were isolated and the land and climate at times hostile; as a result the success of a homestead was tenuous at best. Settlement in groups increased the chance of success over an individual family homestead. Some of the first successful agricultural communities were the Mennonite and Icelandic communities in Manitoba in the 1870s. Under the *Dominion Lands Act*, this model of homesteading was repeated over and over again across the prairies with groups of immigrants from many different countries spawning the many Family Farms that came to populate the landscape. The image conjured up by the Family Farm is one of a family carving out their life on a piece of ground that they could call their own. It begins simply, with a home and a few animals, and slowly develops over the years, growing, but always with the farmers and their families owning and living on the land—independent, self-reliant and hard-working. The Family Farms were the *raison d'être* of the many rural communities that came to dot the prairie landscape. This general history is still common to many on the prairies. It is

a part of their identity, and has been surprisingly resilient over time. While the story told here is for the prairies, it has analogues in farming communities found in other parts of Canada.

The Canadian experience, it seems, is not unique in this regard. Agriculture has played a significant role in the development of most civilizations. Jared Diamond, in *Guns, Germs, and Steel* (1997) provides a very detailed account of how societies have developed (or not) over the past 10,000 years. His interest was in the Darwinian ‘survival of the fittest’ and the basis for the success or failure of civilizations. He repeatedly points to intensive food production, or the development of agriculture, as the necessary first step in the subsequent development of a society that consists of more than the daily search for food for survival. This development formed the basis of modern civilizations. Diamond writes, “In short, plant and animal domestication meant much more food and hence much denser human populations. The resulting food surpluses ... were a prerequisite for the development of settled, politically centralized, socially stratified, economically complex, technologically innovative societies” (p. 92).

An additional perspective on the importance of the Family Farm, in terms of its relationship with the political and social development, is offered by Victor David Hanson in his study of ancient Greece (1995). The Hellenistic period saw the rise of an ideology of ‘agrarianism’ as the foundational structure of the city/state from which many of our western values originate (Hanson sees those values as being “Constitutional Government, Egalitarianism, Rationalism, Individualism, Separation of Religious and Political authority, Civilian control of the military” (p. 2)). Hanson defines agrarianism as “an ideology in which the production of food and, above all, the actual people who own the land and do the farm work are held to be of supreme social importance” (p. 7). In this perspective, agriculture is

no longer simply a way of producing food, but it is a social institution that develops the character of those living by it and of those well beyond.

During a more recent era, Thomas Jefferson was a staunch believer in the social importance of the institution of agrarianism. Jean Yarbrough (1998) writes that “[Thomas Jefferson] observes that agriculture will ‘contribute most to real wealth, good morals, and happiness,’ or that Americans will remain virtuous for as long as they are ‘chiefly agricultural’” (Virtues p. 57). Thomas Jefferson drew a link between the farmer’s industry, independence, and moral values to the type of citizen that he thought would be the best for the new American Republic. Indeed, Jefferson went further to attribute “Virtue” to governments anchored in the institution of the Family Farm: “our governments will remain virtuous for many centuries; as long as they are chiefly agricultural” (Notes p. 165).

For Canadians, whether or not we would lay claim to such a strong connection between the farmer and good citizenship or democracy, these notions may well influence our valuation of the Family Farm. We see this sentiment reflected in public opinion polls of what the most trustworthy professions are. A survey conducted by Leger Marketing (March 2006) found that 92% of those surveyed trusted farmers. Only nurses (95%) and fire fighters (96%) were higher. Hard-wired into our beliefs seems to be an attachment to the Family Farm as an institution of value and, thus, we have lingering doubts about abandoning it. Yet if it is to be supported at public expense, we need to be better at

articulating what the possible gains to the public are. The Family Farm historically has been viewed as more than simply an industry to produce food. The intense attachment to this institution on the part of some is probably also a reflection of this perspective. The extent to which our broader society today holds these views will likely determine the future of the Family Farm. ∞

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## Upcoming SIPP Events

### February

28th: February Armchair Discussion with Jim McKee, Director of External Relations, Coalition for Cultural Diversity “What’s at stake in the campaign to implement the UNESCO Convention on the Diversity of Cultural Expressions?”

### March

9th: “Media and Politics”, Public Forum with Rick Salutin, author and columnist for the *Globe and Mail*, and commentators Dr. Joyce Green, Associate Professor, Department of Political Science; Professor Gennadiy Chernov, Lecturer, School of Journalism; and Ms. Stefani Langenegger, Legislative Reporter, CBC

16th: SIPP Policy Skills Seminar “The Theory and Practice of Principled Negotiations” facilitated by Silas Halyk, Q.C. (McKercher McKercher and Whitmore

LLP), Professor Marj Benson (College of Law, University of Saskatchewan) and Ian Peach (Director, SIPP).

22nd: “Reducing Inequalities in Health” with Toni Ashton, Associate Professor of Health Economics, School of Population Health, University of Auckland

### April

19-20th: SIPP Conference “The Future of Post-Secondary Education in Saskatchewan: Affordability and Accessibility”

### May

23-25th: SIPP National Conference “A Living Tree: The Legacy of 1982 in Canada’s Political Evolution” / “Un arbre vivant: La loi constitutionnelle de 1982 et l’évolution politique au Canada”

(For further details on these events, please visit SIPP’s website at [www.uregina.ca/sipp](http://www.uregina.ca/sipp).)

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