

discrimination, did not cover discrimination on the basis of sexual orientation. The Ontario Court of Appeal held that the Act's failure to include sexual orientation was a denial of Haig's equality rights under section 15 of the Charter.

In *Haig*, the Ontario Court of Appeal held that this was a case for reading in. The court ordered that the words "sexual orientation" should be read into the list of prohibited grounds of discrimination in the Act. Once the Act had been amended in this fashion, Haig would be able to complain to the Canadian Human Rights Commission and obtain a remedy for his dismissal.

The decision in *Haig* will stand because the attorney general of Canada elected not to seek leave to appeal to the Supreme Court of Canada.

It is tempting to condemn the reading in by the *Haig* court as an invasion of Parliament's legislative process. It is that, of course, but what is the alternative? The orthodox solution would be to strike down the unconstitutional statutory provision. But that would have destroyed *all* of the protections against discrimination in employment, and would have done nothing directly for Haig. That is why Krever J.A., for the court, said that reading in "would be less intrusive than the total destruction of the objective that would result from striking the provision down."

Another solution that has occasionally been adopted by the Supreme Court of Canada is to declare an unconstitutional provision to be invalid, but to suspend the declaration of invalidity for a temporary period of time to give Parliament the opportunity to amend it into conformity with the constitution. This was done, for example, in *R. v. Swain* (1991), where the court struck down (for lack of appropriate procedural

protections) the *Criminal Code* provision for the automatic detention in a psychiatric facility of persons acquitted of criminal offences on the ground of insanity. To avoid releasing all insanity acquittees, many of whom would likely be a danger to the community, the court suspended its declaration of invalidity for a period of six months. This enabled Parliament to enact a new provision that repaired the constitutional defects of its predecessor.

The attraction of the suspended declaration of invalidity is that it avoids the disruptive effects of the immediate nullification of a statutory program. However, it is also very intrusive of the legislative function. To be sure, the court does not directly amend the unconstitutional statute. But the court does assume the radical power of maintaining in force a statute that is unconstitutional. And the court also, in effect, imposes a deadline on the competent legislative body, which must enact a new law in time to stop the declaration of invalidity from taking effect.

Coming back to *Haig*, there is no escape from the conclusion that, one way or another, the unconstitutional exclusion of homosexuals from the protection of the *Canadian Human Rights Act* had to be repaired. In *Haig*, that repair was effected by the court itself in a straightforward fashion that did not significantly alter the legislative scheme. Although the court added words that Parliament had not enacted, this radical result need not be other than temporary. If Parliament is not content with the court's solution, Parliament can enact a new scheme — in compliance with constitutional requirements, needless to say. In this sense, the democratic legislative process retains the last word.

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CW UPDATE

THE MONTH IN REVIEW

by Michael Rutherford and
Jonathan Batty

CHRÉTIEN AND CABINET SWORN IN

Jean Chrétien was sworn in as Canada's 20th prime minister on November 4 at Rideau Hall in Ottawa. Also sworn in were the following 22 members of the new Liberal Cabinet:

- **David Anderson**, Minister of National Revenue (B.C.)
- **Lloyd Axworthy**, Human Resources Minister and Western Development Minister (Manitoba)
- **David Collenette**, Defence Minister (Ontario)
- **Sheila Copps**, Deputy Prime Minister and Environment Minister (Ontario)
- **David Dingwall**, Public Works and Atlantic Opportunities Minister (N.S.)
- **Michel Dupuy**, Heritage Minister (Quebec)
- **Art Eggleton**, Treasury Board President and Infrastructure Minister (Ontario)
- **Joyce Fairbairn**, Senate Leader (Alberta)
- **Ralph Goodale**, Minister of Agriculture (Sask.)
- **Herb Gray**, House Leader and Solicitor-General (Ontario)

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- **Ron Irwin**, Indian Affairs and Northern Development Minister (Ontario)
- **Roy MacLaren**, International Trade Minister (Ontario)
- **John Manley**, Industry Minister (Ontario)
- **Sergio Marchi**, Immigration Minister (Ontario)
- **Diane Marleau**, Health Minister (Ontario)
- **Paul Martin**, Finance Minister (Quebec)
- **Marcel Massé**, Intergovernmental Affairs Minister (Quebec)
- **Anne McLellan**, Minister of Natural Resources (Alberta)
- **André Ouellet**, Minister of Foreign Affairs (Quebec)
- **Allan Rock**, Justice Minister and Attorney-General (Ontario)
- **Brian Tobin**, Fisheries Minister (Nfld)
- **Doug Young**, Transport Minister (N.B.)

In addition, eight secretaries of state were named, with specific duties, but not full Cabinet minister status. They are:

- **Ethel Blondin-Andrews**, Youth Training
- **Raymond Chan**, Asia Pacific
- **Sheila Finestone**, Multiculturalism and the Status of Women
- **Jon Gerrard**, Science, Research and Development
- **Laurence MacAulay**, Veterans Affairs
- **Douglas Peters**, International Financial Institutions
- **Fernand Robichaud**, Parliamentary Affairs
- **Christine Stewart**, Latin America and Africa

**CHRÉTIEN SCRAPS
HELICOPTERS**

Prime Minister **Jean Chrétien** emerged from the first meeting with his new Cabinet on November 4 to announce the cancellation of the \$4.8 billion EH-101 helicopter contract. The cancellation will result in penalties for terminating the contract, on top of the \$440 million already invested in the program. Chrétien said that there would be "no compensation for anybody" as a result of the decision. Five days earlier, Bloc québécois leader **Lucien Bouchard** had demanded \$1 billion in federal compensation for Quebec if the deal was cancelled.

NAFTA RECONSIDERED

The new Liberal government in Ottawa expressed concerns about NAFTA during the first day of its tenure, in keeping with the position it took with respect to the deal during the election campaign. The Liberals are unhappy with NAFTA provisions on subsidies, U.S. anti-dumping laws, and energy. It is suggested that side deals on these definitions might be negotiated, just as side deals were negotiated to address the concerns of President Clinton when he was first elected.

**PEARSON PRIVATIZATION DEAL
UNDER REVIEW**

On October 28, Prime Minister designate **Jean Chrétien** appointed **Robert Nixon**, a former Ontario treasurer, to review the privatization of Toronto's Pearson International Airport and make a report within 30 days. On October 7, the Conservative government had signed over Terminals 1 and 2 of the airport to the **Pearson Development Corp.**, a consortium of private developers.

TAINTED BLOOD INQUIRY

On October 5, the federal government appointed Mr. Justice **Horace Krever** of the Ontario Court of Ap-

peal to conduct a judicial inquiry into Canada's tainted blood tragedy. He will have until September 1994 to explain how more than 1,000 hemophiliacs and other patients contracted the AIDS virus from blood transfusions in the early 1980s.

**FIXED LINK AGREEMENT
SIGNED**

Construction on the bridge to link Prince Edward Island to the mainland was set to proceed after financial agreements were signed on October 8. Under the terms of the agreement, **Strait Crossing Development Inc.** will finance the cost of the project, which is expected to be about \$840 million. When the bridge is completed on May 31, 1997, the federal government will begin providing the private consortium with annual subsidies of \$41.9 million (in 1992 dollars) for 35 years.

**JOHNSON ENTERS RACE AS
TREMBLAY BOWS OUT**

Quebec Treasury Board President **Daniel Johnson** announced officially on October 13 that he would be in the running for the leadership of the provincial Liberal party. On October 5, Industry Minister **Gérald Tremblay** announced that he will not be a candidate to replace Premier **Robert Bourassa**.

**CLAYOQUOT PROTESTERS
JAILED**

On October 14, Mr. Justice **John Bouck** of the B.C. Supreme Court handed down jail sentences to 44 protesters who had violated a court order against logging road blockades at Clayoquot Sound. The protesters, the first of more than 700 who have been charged with contempt of court since July 5, were given sentences ranging from 45 to 60 days in jail and fines ranging from \$1,000 to \$3,000.

ONTARIO CHALLENGES NAFTA

Premier **Bob Rae** of Ontario announced on October 14 that his government will launch a court challenge against NAFTA on the grounds that the deal interferes with areas of exclusive provincial legislative jurisdiction. At the same time, Rae announced his NDP government would introduce legislation to protect Ontario's water resources and that the *Power Corporation Act* would be amended to guarantee energy supply to the Ontario consumers.

U.S. UPHOLDS LUMBER RULING

On October 18, the U.S. International Trade Commission reaffirmed an earlier ruling that U.S. companies are hurt by imports of subsidi-

dized Canadian lumber. The ITC members had been ordered by a Canada-U.S. arbitration panel to reconsider the ruling they made in June of last year.

SOMALIA INVESTIGATION UPDATE

The military laid charges on October 18 against Lieutenant-Colonel **Carol Mathieu**, the leader of the Canadian Airborne Regiment during its peace-keeping operations in Somalia earlier this year. Mathieu was charged with negligent performance of his duties. On October 21, a military judge ended a court martial of Private **Elvin Kyle Brown**, saying that the proceedings had been tainted by the personal interest shown in the case by Mathieu, Brown's commanding officer.

Brown had been accused of murdering a Somali.

CRTC APPROVES TV VIOLENCE CODE

The Canadian Radio-Television and Telecommunications Commission announced on October 28 that it had approved voluntary rules on TV violence developed by the Canadian Association of Broadcasters. The new code includes an overall ban on "gratuitous violence."

ELECTION RESULTS

Canadian voters elected a Liberal majority government on October 25. The results of the vote are shown in the two tables below.

Continued, see "Month in Review" on page 66.

Total Seats

	Total Seats	Nfld	P.E.I.	N.S.	N.B.	Que.	Ont.	Man.	Sask.	Alta	B.C.	Yuk./ NWT
Liberal	177	7	4	11	9	19	98	12	5	4	6	2
BQ	54	0	0	0	0	54	0	0	0	0	0	0
Reform	52	0	0	0	0	0	1	1	4	22	24	0
NDP	9	0	0	0	0	0	0	1	5	0	2	1
PC	2	0	0	0	1	1	0	0	0	0	0	0
Independent	1	0	0	0	0	1	0	0	0	0	0	0
Total	295	7	4	11	10	75	99	14	14	26	32	3

Popular Vote

	Popular Vote (%)	Nfld	P.E.I.	N.S.	N.B.	Que.	Ont.	Man.	Sask.	Alta	B.C.	Yuk./ NWT
Liberal	41	68	60	52	56	33	53	45	32	25	28	50
BQ	14	0	0	0	0	49	0	0	0	0	0	0
Reform	19	1	1	13	8	0	20	22	27	52	36	10
NDP	7	4	5	7	5	1	6	17	27	4	16	21
PC	16	26	32	23	28	14	18	12	11	15	13	17
Independent	3	1	2	5	3	3	3	4	3	4	7	3

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B.C. REPORT SAYS LAW MISTREATS NATIVES

A report released on October 28 recommended major legal reforms in the Cariboo-Chilcotin region of British Columbia to address longstanding grievances from native peoples. The report was written by retired Provincial Court judge **Anthony Sarich**, who presided over a provincial inquiry that travelled to reserves in the area. Responding to the report, B.C. Attorney-General **Colin Gabelmann** formally apologized for the hanging of five Chilcotin Indian leaders 129 years ago.

ALBERTA NDP LEADER QUILTS

Ray Martin, leader of the Alberta New Democratic Party for 10 years, is stepping down. Martin's party lost all 15 of its seats in the June provincial election.

CRTC HEARING OPENS

The telecommunications industry will be under scrutiny in a month-long hearing before the Canadian Radio-Television and Telecommunications Commission that opened on November 1 in Hull. The CRTC will consider how the industry should be regulated and what services will be delivered by whom.

CONSERVATIVES WIN NOVA SCOTIA BYELECTION

Conservative **Brooke Taylor** drew 46 percent of the vote in the riding of Colchester-Musquodoboit to defeat Liberal candidate **John Tilley** in a November 2 Nova Scotia byelection. The result was seen as a setback for Premier **John Savage's** Liberal government.

QUEBEC, NEW BRUNSWICK SIGN TRADE DEAL

The Quebec and New Brunswick governments signed an agreement on November 3 that will reduce barriers to cross-border bids on government business. The procurement deal follows New Brunswick's retaliatory move last spring to match certain longstanding Quebec trade barriers. On November 3, the governments of Quebec and New Brunswick signed an agreement to lower interprovincial trade barriers between the two provinces in the field of procurement. The agreement applies to the purchase and rental of goods over \$25,000 and to services over \$200,000. The two governments, though, have not yet reached agreement to lower restrictions with regard to the employment of out-of-province construction workers. New Brunswick, in retaliation, instituted these restrictions last spring, while earlier this fall, Ontario's minister

of economic development and trade, **Frances Lankin**, announced that Ontario would adopt similar rules to take effect in spring 1994.

NEW PARTY IN QUEBEC?

A Quebec group headed by former Liberal **Jean Allaire** released a manifesto on November 5 calling for an alternative to the Parti québécois' hard-line sovereigntist stance and the Liberal party's federalist position. Groupe Action-Québec is proposing the idea of a sovereign Quebec linked to Canada in a joint "supranational parliament." The group will gauge public reaction to the manifesto and decide by December 15 whether or not to launch a new political party.

MCCARTHY WINS B.C. SOCRED LEADERSHIP

Grace McCarthy was chosen as the new leader of the B.C. Social Credit party on November 6. It was McCarthy's third bid to become party leader.

Michael Rutherford is an MA student in Political Science at York University and Jonathan Batty recently received his LL.B. from Osgoode Hall Law School, York University. CW Update is a regular feature of Canada Watch. 