

QUEBEC REPORT

RIGHTS, LANGUAGE AND LIBERALISM

by Guy Laforest

With the start of a new year there are, indeed, many questions in the air in Quebec: what will be the personal and political fates of Robert Bourassa and Brian Mulroney? What would be the consequence of the departure of either or both of them on the dynamics of politics in Quebec and Canada? What kind of future lies ahead for our demands in terms of powers and recognition in the Canadian federation? The recent news concerning the sickness of Robert Bourassa will undeniably nourish such interrogations. Nevertheless, I intend to leave them aside for the moment and to address one problem that is bound to surface in 1993 no matter what happens to our current crop of political leaders.

THE SIGN LAW REVISITED

In December 1988, the Liberal government of Robert Bourassa made the fateful decision to use the famous (infamous in Charterland, as Peter Russell would say) notwithstanding clause of the *Constitution Act, 1982*, in order to adopt Bill 178 and a number of controversial regulations banning outdoor commercial signs in English, thus trumping the Supreme Court ruling that had invalidated specific sections of Bill 101. The move by the Bourassa government had dramatic consequences in the unfolding of the Meech Lake constitutional saga. It immediately provided a justification for the Manitoba government — particularly lukewarm in its attitude toward Meech — to stop the ratification process in its legislature. In retrospect, many analysts

have argued that this was the single most important event in the building up of momentum in the opposition that eventually led to the demise of the accord in June 1990. As we know all too well, we are still affected by the winds that stormed the country at the time.

In Quebec, the promulgation of Bill 178 led to the resignation of three top-notch English-speaking ministers from the Bourassa cabinet: Herbert Marx, Richard French, and Clifford Lincoln. As our society is about to go through a new episode in its linguistic tribulations, since the sun will set in December 1993 for the validity of Bill 178, the words of Clifford Lincoln in the National Assembly at the

"It is an entirely debatable point whether or not commercial signs belong to the core of freedom of expression in a manner such as the Supreme Court of Canada claimed it did. The Bourassa government never tried to wage the linguistic battle at the philosophical level."

time of his resignation remain unforgettable: "Rights are rights are rights." Lincoln, and many others, felt that their fundamental rights and liberties had been violated. Their sense of outrage is still palpable every day in the pages of *The Gazette*, particularly under the pen of William Johnson, who considers Quebec, largely because of this, to be an illiberal society.

I do not know exactly how things will turn out in 1993 on our linguistic battlefield. Claude Ryan, the minister responsible for this file, has asked the members of the Commission de la langue française to make recommendations that could lead to a substantial overhaul of governmental policies on the matter of language. Since this whole domain is at

the heart of anxieties and reflections concerning identity in Quebec, the issue is bound to dominate politics throughout the year. For the time being, there is only one point in this affair that I would like to make.

In the wake of the reverberations following Lincoln's powerful speech in Quebec's English-speaking community, Bourassa made a formal apology. He recognized that he was trampling on fundamental rights, but soon added that he had no choice but to use the notwithstanding clause and pass the legislation. He invoked the need to preserve social peace and the peculiar circumstances of Quebec in North America. He told his fellow English-speaking citizens that he knew he was asking them to sacrifice something crucial. Bourassa's reaction strengthened the intuitions and the furor of a number of leaders of Montreal's English-speaking community. They became more and more convinced that something profoundly illiberal had been accomplished in Quebec. Soon after that, the Equality party was born.

BOURASSA'S MISTAKES

I wish to claim that Bourassa made two tragic mistakes by speaking out as he did: a political error and, more important, a philosophical one. On the political side, he should not have fed the self-righteousness of a number of people in the English-speaking community. The key point, however, is that he should not have taken for granted the narrow vision of liberalism embraced by people such as Julius Grey and William Johnson. It is an entirely debatable point whether or not commercial signs belong to the core of freedom of expression in a manner such as the Supreme Court of Canada claimed it did. The Bourassa government never tried to wage the linguistic battle at the philosophical level. It preferred its usual methods consisting of a mixture of pragmatism, realism, cynicism, and

incrementalism. It preferred the same kinds of methods used at a later stage in the Ottawa-Charlottetown round of constitutional negotiations. According to this approach, a government does not need a theory of liberalism or a vision of Canadian federalism. A government reads polls and plugs holes here and there. The French expression for this is "Parer au plus pressé."

In 1993, the language issue will become pressing and, in all likelihood, will be dealt with in a manner that will render our political life messy once again. That's about all I know with some certainty in the first days of this new year.

Guy Laforest is Associate Professor of Political Science/Département de science politique, Université Laval. Quebec Report is a regular feature of Canada Watch.

LEGAL REPORT

POLITICS, PATRONAGE AND THE SENATE

by *Jamie Cameron*

BEWARE THE DELUGE

Robert Sheppard has predicted that a "deluge of much more partisan patronage" is "sure to follow" Prime Minister Mulroney's appointment of General de Chastelain as Canadian ambassador to the United States. Rumours of the prime minister's imminent departure from politics and a "tingly end-of-era feeling in the air" have fed rumours that there will be at least a wave, if not a full deluge, of patronage appointments.

As currently constituted, the Senate consists of 49 Conservatives, 41 Liberals, and 5 Independents, or 95 in all — several members short of its full complement. Seats are waiting to be filled, including the vacancy created some time ago by the death of Alberta's first elected senator, Stan Waters.

The circumstances recall another prime minister's departure from politics, and John Turner's defence, in the heat of a leadership debate, that he had been bound to honour Trudeau's "patronage" appointments. Today, Prime Minister Mulroney also has the opportunity, before withdrawing from public life, to reward his political friends and further solidify Conservative strength in the Senate.

A SINGLE E SENATE?

In October 1989, Waters was elected to represent Albertans in the Senate under the provincial *Senatorial Selection Act*. Yet it took "eight months of cajoling," in the months immediately preceding the deadline for ratification of the Meech Lake

Accord, before Prime Minister Mulroney would appoint him as a senator. Current demands that the prime minister defer Senate appointments until elections can be held invoke that precedent.

Meanwhile, in October 1992, a majority of Canadians voting in the national referendum, including Albertans, rejected the Charlottetown Accord. The accord would have entrenched a Triple E Senate — elected, equal, and "effective" — in Canada's constitution. Had the referendum question been affirmed, Albertans might have had a chance to elect a replacement for Senator Waters. However, having followed Reform party leader Preston Manning's advice to vote "no," Alberta is "already at a disadvantage," the prime minister claims. As a result of the accord's failure, Senate appointments will remain, as always, a matter of executive prerogative.

During the referendum debate, Preston Manning stated that if there were a resounding "no," "[t]he credibility of the government to manage constitutional change will be zero." More recently, Manning declared that "[t]he prime minister's resolve to continue to appoint senators shows a foolish and arrogant disregard for the wishes of Albertans and a majority of Canadians." He charged that Mulroney "has no intention of learning anything from the constitutional referendum."

MORATORIUM

Meanwhile, Lorne Nystrom, the federal NDP's constitutional critic, called for a moratorium on Senate appointments. In his view, the prime minister should wait until "we sort out whether we're going to abolish the place or reform the place." "It's an insult," he added, "to have an unelected parliamentary institution in 1992."

Along the same lines, Liberal leader Jean Chrétien has suggested

Canada Watch welcomes submissions on issues of current national interest. Submissions should be a maximum of 1,000 words. The deadline for consideration in our March issue is Tuesday, February 23, 1993. Write or fax us at:

Canada Watch
Osgoode Hall Law School
Room 454
4700 Keele Street
North York, Ontario
M3J 1P3
Tel: (416) 736-5515
Fax: (416) 736-5546