

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.

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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

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that the prime minister defer Senate appointments until after the next federal election. He argues that the appointments issue is not legal or constitutional but moral: if it was wrong in 1984 for Liberal Prime

"Although his power of appointment is unfettered, Mulroney has no mandate to reform the Senate unilaterally, even on an incremental basis, by conceding the 'elected' element of the Triple E proposal. Were he to do so, his actions would confer a measure of democratic legitimacy on the Senate."

Minister Turner to rubber stamp Trudeau's appointments, then it must be just as wrong in 1992 for Mulroney to make a string of similar patronage appointments.

Chrétien is right that the prime minister is not required by law or constitutional imperative to accede to any of these demands. It is a different question whether he should.

POLITICS, PATRONAGE AND CHOICES

Although his power of appointment is unfettered, Mulroney has no mandate to reform the Senate unilaterally, even on an incremental basis, by conceding the "elected" element of the Triple E proposal. Were he to do so, his actions would confer a measure of democratic legitimacy on the Senate. Thus validated, the institution might be induced to exercise its legal authority, thereby becoming a Double E Senate and an "effective" source of political authority. The constraints the accord would have imposed on the Senate's power would not apply. In the absence of any democratic mandate to do so, it is surely inappropriate for the prime minister to introduce such fundamental change into our democratic institutions.

Nor is a moratorium politically viable. With discussion of constitutional reform on hold indefinitely, why would the prime minister forfeit the right to make these appointments? A federal election must be held no later than November 1993. Should Mulroney agree to defer Senate appointments, there would be nothing to prevent a new governing party from filling those vacancies immediately after the election.

During the leadership debate of the 1984 election, Brian Mulroney pointed a finger at then Prime Minister Turner and shouted, in reference to Trudeau's patronage appointments, that "you had a choice." Turner went down to defeat in that election. Likewise, the people of Canada had a choice in October 1992, and they decided not to endorse the accord.

Now the prime minister has a choice. And it is purely political: a deluge of patronage appointments may compromise his party's chances of re-election. But it would not be illegal, unconstitutional, or even contrary to parliamentary tradition in Canada.

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CW UPDATE

THE MONTH IN REVIEW

by David Johnson

KLEIN WINS ALBERTA PREMIERSHIP

On December 5, Ralph Klein won the Alberta Progressive Conservative leadership contest, thus becoming the premier of the province. Klein succeeded to the position vacated by Don Getty by defeating Nancy Betkowski in a hard-fought runoff race in the two-stage contest. With over 77,000 votes cast in the province-wide election open to all party members, Klein won 59.1 percent of the vote to Betkowski's 40.5 percent. It is interesting to note that in the subsequent selection of a cabinet, none of those who had challenged Klein for the leadership were included. This may be an indication that the divisions in the party that the contest exposed have yet to be mended. A general provincial election is expected sometime this year.

NAFTA SIGNED

The North American Free Trade Agreement (NAFTA) was formally signed by Prime Minister Brian Mulroney and Presidents George Bush and Carlos Salinas on December 17 in separate ceremonies in Ottawa, Washington, and Mexico City. The signing marks official executive approval of the agreement by all three negotiating governments. To become effective, the agreement must now receive legislative ratification in the three countries. Such endorsement is virtually guaranteed in Mexico, while in this country the federal government is expected to introduce implementing legislation before Parliament in February. Approval by the late spring should

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