

ABORIGINAL RIGHTS AND THE CHARLOTTETOWN ACCORD

by Mary Ellen Turpel

On September 24, 1992, Dalhousie Law Professor Mary Ellen Turpel, a key adviser to Assembly of First Nations Chief Ovide Mercredi, spoke at a Canada Watch-sponsored constitutional conference held at Osgoode Hall Law School. The following is a partial transcript of her remarks.

I want to tell you something of my own life experiences. Obviously I am a pure product of the Hudson's Bay Company. I am of Cree, English, and Scottish ancestry. I guess I am truly Canadian in that sense because of my diverse background. My life experiences and my commitment and dedication to a form of justice for aboriginal peoples in Canada has taught me that you cannot be overly dogmatic in terms of

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your principles. Now, of course, I have been known to have my own dogmas. I am certainly intensely ideological but I don't believe we can be overly dogmatic and overly doctrinaire.

There is a very good saying that I think reflects and captures my reasons for supporting this Accord, and that is "sometimes your karma runs over your dogma." In other words, sometimes your life experiences and your awareness and your appreciation lead you to understand the fact that nothing happens in a complex society, in a complex world, without compromises. And so that karma, that experience, sometimes runs over your dogma. Especially for us woolly academics, we need our practice and our reality to come up and give us a good slap in the face to let us know that some of our theoretical and

more doctrinaire inclinations do not govern the way we can conduct our lives.

So, having said that my karma has clearly run over my dogma, I would have liked to have seen certain things in the Accord that are not there for Aboriginal people. I can accept the fact that we had to compromise. I participated (and continue to participate) in the entire process and I have seen the dynamics of the process. I know for a fact that one does not get to consensus (and I know this also as an Aboriginal person) by insisting on dogma. ...

Having said that, I want to address the issue of women. I understand Mary Eberts spoke here this morning. I have represented the Native Women's Association of Canada. I am an Aboriginal woman. I used to be the legal counsel for the Native Women's Association of Canada for several years before I went off and did graduate work and became a law professor. I feel duty-bound to offer you another perspective on the debate.

First of all, to suggest that women were excluded from this process is, I think, a gross misrepresentation. I feel quite insulted by that statement for the following reasons. The Inuit Tapirisat of Canada (the Inuit organization) is headed by an Inuit woman. Rosemary Kuptana participated throughout the entire process. She is a woman, she's an Aboriginal woman, and she fully participated in this process. So did Mary Simon, who is the president of the Inuit Circumpolar Conference of Canada

and, in fact, could speak for Inuit people around the globe in her participation. Alexa McDonough, from the province of Nova Scotia where I now reside, participated fully in this process. In my own delegation, the Assembly of First Nations, I participated. I don't think I have to subject myself to medical examination and I hope you can in fact tell that I am a woman, very proud to be a woman, very proud to be an Aboriginal woman and a feminist. In addition, we had women elders present, we had women chiefs present, Chief Wendy Grant, Chief of the Musqueam Nation, vice-chief representing all the B.C. Chiefs in the Assembly of First Nations. Women participated in this process.

Having said that, I do not for a moment deny the fact that the Native Women's Association of Canada did not have independent representation. I personally would have liked to have seen them there. But I do not think their absence was fatal to the outcome. For them or for NAC or for any other group to say

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that they have a monopoly on the representation of women's interest is a profound misrepresentation to the people of Canada about our democratic parliamentary system. In terms of the Assembly of First Nations, we have chiefs that are elected by people in communities

including women. We have more women chiefs on a percentage basis than there are women in parliament. To suggest that somehow we cannot speak or consider the interests of women is (as you can tell from my blood pressure rising here) profoundly insulting. ...

I want to say a word about the fact that the package as a whole is a package of compromise. It is not a package for people who are dogmatic. But it is a package that is of fundamental importance for Aboriginal people. For those of you who may be undecided, I am hoping to persuade you to vote "yes" if for no other reason than the Aboriginal package and I will tell you why. The

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dynamics, in my view, that led to the conclusion of the Aboriginal package are dynamics that will never be repeated. There was a spirit of generosity that was present because people were anxious to get a deal and anxious to get a unanimous package. We were lucky to be able to participate in a spirit of generosity to facilitate this process. We were not there in a power grab. We participated because we believe in a unified Canada, and we believe in accommodating difference in a unified Canada.

We will never repeat the process again. I know one should "never say never," but I feel very strongly that we won't and that a "no" vote any-

where is the end of the process. I have grave worries about a "no" vote in the province of Quebec and I have worries because of our own people. We have said to our people (and the former national Chief of the Assembly of First Nations, Georges Erasmus, has said this publicly on many occasions), "give us one more chance." Let us go out and try to persuade Canadians and find a way to build bridges, a way to develop a constructive relationship. There are movements, very strong and very real in our communities, that are not interested in peaceful solutions. Suppose we have to turn around on October 27 and suggest to those people that we failed, or that perhaps we would like to have another chance in five years to do it again. Excuse me very much, Preston Manning, but that's not much of a solution or an answer. For some of us, like myself, who are ideologically very committed to peaceful solutions, to dialogue, openness, working together, compromise, building alliances, and to lifting each other up, the idea and the prospects of a "no" vote are particularly devastating. I worry very much about a "no" vote in Quebec. Not because of the fact that it brings the process to a halt, but because of the future relationship between the First Nations and Quebec, which I think will reach a low that is below the point reached in 1990. I think you have to turn your mind to the consequences.

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IS THE REFERENDUM DEMOCRATIC?

by Reg Whitaker

On October 26, Canadians for the first time in their history vote nationally on constitutional changes.

It has often been remarked that the strictly elitist nature of the BNA Act in 1867 undermined the popular legitimacy of Confederation. The 1981-82 patriation failed in the end to include any provision for amendment by popular referendum, and the image of Meech Lake as a deal done behind closed doors by 11 white males was an important cause of its popular rejection.

Is October 26 a clear advance for democratic accountability, regardless of the outcome? Having a referendum at all is obviously more "democratic" than following past precedent, but October 26 is also a distortion of democracy.

PROBLEMS

First, the question. It demands an all-or-nothing answer, "yes" or "no." But the package is an extremely complicated set of compromises for which there is no comprehensive legal text. Even a full legal text would, of course, be largely unintelligible to most ordinary citizens without law or political science degrees.

The real problem is that citizens will have to make up their minds on the basis of trust: which set of advocates does one believe, or which does one mistrust? Given the current legitimacy crisis of politicians and other established elites, this is hardly a reassuring scenario.

October 26 means "yes" to a bundle of complicated changes, the overall effect of which remains very unclear—or a "no" to what? A "no" in Quebec would obviously mean something altogether different from an English Canadian "no," but the