CANADA WATCH

Practical and Authoritative Analysis of Key National Issues

The Atlantic Fisheries Crisis: Troubled Waters, Anxious Thoughts, Controversial Initiatives

by David Johnson

It is said that the prospect of being hanged concentrates the mind. Likewise, the prospect of the waters of Canada's continental shelf being rendered still and barren, devoid of an abundance of fish, has had the effect of concentrating the minds of Atlantic Canadians, federal and provincial government leaders, and now even the representatives of an international fishing regulatory body.

As those Canadians interested in the Atlantic fishery have come to realize that systematic overfishing has resulted in Canada's offshore becoming, in Farley Mowat's brutal words, a "sea of slaughter," we are finally witnessing a number of initiatives being taken by the federal government to halt the pillage and bring the offshore under a strict, protective regulatory regime.

Both the prime minister and Brian Tobin, the minister of fisheries and oceans, have publicly announced that over this spring the federal government will be seeking parliamentary approval of legislation giving Canadian authorities the power to enforce "custodial management" rules respecting the offshore fisher-

Continued, see "Atlantic Fisheries Crisis" on page 102.

Refusing To Rethink Canada

by Kenneth McRoberts

With the results of the last election, the writing was on the wall: the "national unity" strategy that all three federal parties have so faithfully supported for 30 years has not worked. The rise of the Bloc québécois clearly signalled that French Quebec remains committed as ever to Quebec as its primary allegiance. The surge in support for Reform demonstrated that major elements of the strategy, such as the promotion of official language minorities and multiculturalism, have produced resentment in parts of English Canada.

PQ Return a Possibility

Now, there is a widespread speculation that the Parti québébois soon will be back in power in Quebec. A new PQ government promises to be quite different from the first one, which was so hesitant in defining and pursuing its options. This time

Continued, see "Refusing To Rethink" on page 104.

VOLUME 2, NUMBER 7
APRIL 1994

Articles

Regular Features

Canada Watch is a publication of the York University Centre for Public Law and Public Policy and the Robarts Centre for Canadian Studies of York University.

"Atlantic Fisheries Crisis," continued from page 101.

ies, even in areas beyond Canada's 200 mile Exclusive Economic Zone (EEZ).

And over Easter weekend the Canadian Coast Guard seized the *Kristina Logos*, a trawler that flew the Panamanian flag yet was allegedly Canadian-owned and registered. This ship, apprehended on the Grand Banks 28 miles beyond Canada's 200-mile limit, was found with a hold full of cod and other groundfish, all species now the subjects of a growing international fishing moratorium in these waters. While this action heralds a tougher approach by the federal government to the problem of foreign overfishing on the Grand Banks, it is also a course of action fraught with problematics.

The Fisheries' Collapse

From the mid-1980s, the federal Department of Fisheries and Oceans (DFO) became increasingly aware that Atlantic groundfish stock was not being harvested, but destroyed. Between 1988 and 1992, the total catch of northern groundfish fell from roughly 400,000 tons to less than 100,000 tons. Figures for 1993 are expected to reveal a total catch of about 50,000 tons, one-eighth of the catch five years earlier. The 1994 by-catch is expected to be but 6,000 tons.

These figures were not only devastating to the local economy so dependent on the fishery, but frightening to the federal government and the government of Newfoundland. In an effort to safeguard this resource, a conservation moratorium was established by the DFO, in July 1992, for all northern cod—those found off the northeast coasts of Newfoundland and Labrador. Since then, recognition of a crisis in the fishery has extended across species and across waters, and moratoria have been developed to the point that the entire Atlantic Canadian groundfish fishery has been brought to a halt. With some minor exceptions, Newfoundlanders cannot even legally jig cod for their own dinner tables.

Roots of Crisis

What brought about this catastrophe? The 1993 Cashin Task Force Report on the Atlantic Fishery highlights a number of contributing factors: overly high total allowable catches based on inadequate understandings of "stock dynamics"—that is, spawning requirements and maturation; underreporting of actual catches; destructive fishing practices such as the taking of "immature" fish through the use of excessively "tight" nets; the promotion of ever larger fleets and ever more fish plants resulting in economic overcapacity; the unforeseen impact of ecological changes ranging from water temperature, and changes in water salinity to the increasing predatory challenge posed by seals; and, the factor most spoken of by Atlantic Canadians, foreign overfishing of "straddling stocks" on the "Nose and Tail" of the Grand Banks.

It is intriguing that while the Cashin report provides ample evidence and argument that those in our governments and within the Canadian fishing industry must bear some significant responsibility for the plight of the fishery, it is the issue of foreign overfishing that most captures public attention in Atlantic Canada. As attention has grown, the Canadian government, with the active support of the government of Newfoundland, has taken increasingly stronger initiatives to deal with that element of the general problem. As these initiatives have become stronger, they have also become more controversial.

The International Dynamic

The problem of foreign overfishing, though, is not to be underestimated. Just as Canadian fleets have raped the fishery, so too have the European, Panamanian, and South Korean fleets. Foreign fishing operations primarily occur beyond Canada's 200-mile EEZ recognized by the 1982 International Law of the Sea Agreement. Waters beyond this boundary are considered "high seas," with fish stocks open to all nations, subject to regulation by the Northwest Atlantic Fisheries Organization (NAFO).

This is an international regulatory agency with membership derived from Canada, the European Community, Russia, and Japan. NAFO is established under the International Law of the Sea Agreement to monitor fish stocks in the northwest Atlantic and to set catch quotas for its member states, with this decision making being done in conjunction with adjacent coastal states—that is, Canada.

From the Atlantic Canadian perspective, NAFO and its raison d'être elicit two major complaints. First, due to the vagaries of nature, whereas most countries' continental shelves exist wholly within their 200-mile EEZs, in the Atlantic Canadian offshore, the Grand Banks extend beyond Canada's 200-mile limit in two places known colloquially as the "Nose and Tail." These shallow, warmer waters mark an important element of the habitat of the groundfish living in the waters of the continental shelf.

The second perceived problem with NAFO is that most Atlantic Canadians view it as a toothless tiger, the quotas of which are honoured more in the breach than in the observance. In the words of a 1990 DFO review on the northern cod stock, "such nations as Spain and Portugal habitually ignore scientific

advice, flaunt their defiance of conservational strategies, and limit their catches only to the capacity of their fishing fleets."

Although accurate statistics on foreign overfishing are notoriously difficult to establish, evidence of systematic foreign overfishing does clearly exist. In 1986, for example, the European Communities fishing nations admitted to NAFO that despite a northern cod quota of 36,000 tons, they had landed approximately 100,000 tons: this, when the total quota for northern cod agreed to by Canada and NAFO had been 266,000 tons. Such repudiation of quotas has persisted to this day.

Recent Canadian Initiatives

It is these two problems that have occupied much of the attention of the DFO in recent years and recent months. Following some two years of Canadian diplomatic pressure, NAFO agreed at its most recent meeting in Brussels on February 18 to match the Canadian moratorium. The result was a one-year prohibition on the taking of all groundfish within NAFO-regulated waters. According to Brian Tobin, this was a major victory, demonstrating that the NAFO states had finally recognized the economic and environmental crisis facing the fishery and the need for a consistent and integrated management process to restore the fish stocks.

Of course, it is deeds not words by which such actions must be judged, and this reality explains a subsequent, major announcement by the prime minister on February 25. Speaking in St. John's, Mr. Chrétien stated that the federal Department of Justice had been instructed to draft legislation authorizing the government of Canada to unilaterally extend its custodial jurisdiction over all fish stocks inhabiting the continental shelf beyond Canada's EEZ. The prime minister bluntly warned that should the NAFO moratorium on the "high seas" fishery be violated, Canada would take direct action to bring such fishing to a halt. While this statement was met with enthusiasm from the government of Newfoundland and Canadian fishery representatives, its controversial nature cannot be ignored.

High Seas and High Stakes

Simply put, unilateral extension of Canadian jurisdiction beyond 200 miles would be a violation of the Law of the Sea Agreement. Such action by Canada would leave this country open to legal proceedings by aggrieved parties before the World Court. In addition, the nations of the European Community have a host of non-legal mechanisms by which they could retaliate.

Canadian direct action in stopping and seizing foreign ships could result in the imposition of punitive trade sanctions on a variety of goods entering European markets. Furthermore, these sanctions would likely not only fall on Atlantic Canadian trade goods, such as pulp and paper, but on goods from other parts of the country as well, thereby subjecting the federal government to inter-regional business pressure and compounding the pressure it would already face from the international community.

Though these difficulties and pressures must be factored, the case for unilateral action is not without philosophical and pragmatic merit. Should the NAFO moratorium be violated in the extreme, thereby impugning both Canadian and NAFO fishery management policies, the federal government can make a strong case that for the northwest Atlantic groundfish fishery to be saved, effective custodial management must be exercised by one sovereign power. In this case, the geography of the continental shelf dictates that this power be Canada.

It can furthermore be argued that the very concept of the law of the sea has always been "fluid." The gradual extension of coastal state sovereign authority over offshore waters has itself been marked by a number of unilateral actions. In 1952, Chile, Ecuador, and Peru each took unilateral initiatives to establish the first 200-mile EEZs. These actions had been preceded by the unilateral action of the United States in 1945 to claim a "fishing conservation zone" beyond its then 3-mile territorial sea; this zone was set coterminus to the U. S. continental shelf.

And, of course, in 1977, Canada and many other coastal states took unilateral actions to establish 200-mile EEZs, which were not legally recognized before the 1982 Law of the Sea Agreement. From the old 3-mile "cannon shot" rule of sovereignty to the current 200-mile EEZs, the history of the development of sovereign jurisdiction over the sea has been as a result of both diplomacy and unilateral state actions. These precedents assist the Canadian government today.

A final, practical consideration clearly entering into the thinking of the federal government is that unilateral action could be justified as an emergency environmental safeguard. Such a policy might gain the support of the politically powerful European environmental movement. Canadian unilateral action would not be undertaken to push the Europeans out of the "Nose and Tail" to give Canadians unrestricted access to those fish stocks; rather, the action would be to prevent any fishing of these stocks until they have recovered sufficiently to allow environmentally sustainable fishing by all members of NAFO.

Continued, see "Atlantic Fisheries Crisis" on page 104.

"Atlantic Fisheries Crisis," continued from page 103.

The Future: Possibilities and Responsibilities

And so we await the proposed federal legislation and whether the NAFO moratorium will be obeyed, rendering so much of the foregoing moot. Regardless of these current initiatives, a cold, hard reality remains, one disquieting to most Atlantic Canadians. And this is that the tragedy of the fishery cannot be blamed solely on European overfishing. Canadian mismanagement and abusive fishing practices themselves must bear a substantial burden of responsibility. The meaning is clear.

The reform and revitalization of the fishery will also be a Canadian responsibility. But as the Cashin task force report has indicated, an environmentally sustainable fishery for the 21st century will call for a significantly smaller, much more professionalized system of fleets and fish plants than there was in the boom times of the early 1980s. That the fishery can recover if properly protected and managed is not in question. What is in question is the future face of the Atlantic Canadian economy. This is an economy that now must struggle, more than ever before, to redefine itself, to diversify itself, to restructure itself. As the broader country confronts these challenges generally, so must Atlantic Canada confront these demands specifically.

David Johnson is an Assistant Professor in the Department of Political Science, University College of Cape Breton.

"Refusing To Rethink," continued from page 101.

around, the objective will clearly be defined as sovereignty, and vigorously pursued.

To be sure, much may happen between now and whenever the Quebec election is called. The PQ leadership has already committed errors born of overconfidence; Daniel Johnson has given the Liberals a new sense of direction.

However, it is striking that neither the last election result nor the prospect of a new PQ government has spurred the serious rethinking that one might have expected elsewhere in the country. Both in federal government circles and among major English-Canadian opinion leaders, the dominant stance seems to alternate between fastening on to "the real questions," such as the debt and the need to cut expenditures, and resolutely asserting the continued effectiveness of the old "national unity" strategy.

Collège militaire royal: Missing the Point

With respect to the Chrétien government, its decision to close the Collége militaire royal (CMR) does not speak well for its ability to understand the stakes in any upcoming "national unity" struggle. By all appearances, the government simply did not anticipate how nationalist leaders would be able to use the closure to demonstrate their thesis that the federal government, and the Canadian political system in general, is indifferent to the particular interest of Québécois. Unlike most aspects of the federal government's promotion of French and of francophones, this one has a direct bearing upon Quebec: the CMR is based within Quebec and was created to further the advancement of Quebec francophones in the military. Yet, the Chrétien government acted as if the only issue these days is showing responsiveness to business pressures for debt reduction.

By refusing to reverse its decision, the Chrétien government has compromised the position of Premier Daniel Johnson, who had no choice but to endorse public pressures to save the college. If the Chrétien government had rescinded its decision in the light of Johnson's request, it might have been able to salvage the situation, giving Johnson badly needed credibility as a defender of Quebec's interests. Instead, he, and the federalist cause in Quebec, was left hanging.

To be sure, Ottawa has with great fanfare announced some major grants and spending programs for the province. But they do not have the symbolic impact of closing the Collège militaire royal, which could come back to haunt the federalist cause in any referendum campaign on sovereignty.

As to any strategic planning for a referendum on sovereignty, there is no way of knowing for sure what is occurring within the Chrétien government. Thus, it is difficult to know how much stock to place in a recent press report that planners are, in fact, looking to Jean Charest to lead the federalist cause. If the report is valid, it would suggest that the government is only too acutely aware of the vulnerability Prime Minister Chrétien, as Trudeau's key lieutenant in orchestrating the 1982 constitutional revision from which Quebec was isolated. But this would be all the more reason to do everything possible to ensure the re-election of the Johnson Liberals.

If the Chrétien government is having difficulty gearing up for the possibility of another struggle over "national unity," opinion makers in English Canada are remarkably loath to recognize that the old strategy has not worked and a new one may be necessary.

Defending Official Bilingualism

A central element of the "national unity" strategy was to strengthen the presence of French, and of francophones, throughout the country so that Quebec could not claim to be the essential defender of francophone interests in Canada. Thus, Ottawa has poured great amounts of energy and resources into reinforcing the francophone minorities.

Recently, an enterprising *Globe and Mail* journalist secured some data that had not been widely discussed—even in academic circles. The data demonstrated that in all provinces where there are substantial numbers of both francophones and anglophones, the inferiority of francophone incomes was greater in 1992 than it had been in 1977. This was presented as evidence that the federal government's official bilingualism had failed (*The Globe and Mail*, March 23, 1994).

Opinion leaders, including writers in the same newspaper, could not ignore such an attack on one of the pillars of the national unity strategy and rushed to its defence. Claiming that "the numbers have to be taken with a dose of realism," *Globe and Mail* columnist Robert Sheppard noted that even if franco-Ontarians are now twice as far behind Ontario anglophones than they were in 1977, they are making more than Quebec francophones and almost as much as Alberta anglophones. (Of course, this has no bearing on why francophones have lost ground in Ontario). Then, for good measure, a *Globe and Mail* editorial came to the rescue. It turns out that rather than proving the failure of Ottawa's official bilingualism, the data proved the failure of Quebec's policies. After all, both anglophones and francophones in Quebec had slipped relative to their counterparts in the other provinces. This general decline in Quebec's position was clearly the fault of Bill 101 and the Quebec government's "ethnostatism." (This glossed over the fact that, relative to Ontario, most other provinces had also slipped without the benefit of Bill 101).

Yet, in a sense, the whole debate was beside the point. The real test of the policies is whether, in fact, they have increased the presence throughout Canada of people who live their lives in French, whatever their incomes may be. By this measure, the policies have failed. The 1991 census revealed that in all provinces but Quebec, the proportion of the population using French at home had declined. (In fact, in most provinces the actual number of francophones had declined.) As a result, in all provinces but Quebec, New Brunswick, and Ontario, francophones represent less than 3 percent of the population.

Like it or not, Quebec is the home of most of Canada's francophones: 89.5 percent in 1991. The range of opportunities and experiences in French that is available to Quebec's 5.6 million francophones can never be equalled in other provinces. Inevitably, Québécois will see their province as fundamentally distinct from the rest of the country, and will look first to the government of Quebec to defend their interests.

Here and elsewhere, the time is long overdue for a major rethinking of the nature of Canada. This becomes all the more acute given the prospect of a PQ victory. The last time the PQ was elected, most of English Canada's opinion leaders were caught by surprise, as was the federal government itself. After all, the prime minister had said that "separatism is dead." This time, a PQ election would not be a surprise. We will be unprepared anyway.

Kenneth McRoberts is Director of the Robarts Centre for Canadian Studies and Professor of Political Science at York University.

Canada Watch
Practical and Authoritative Analysis of Key National Issues

Volume 2, Number 7
April 1994

Publisher
D. Paul Emond

Editors-in-Chief
Jamie Cameron, York Univ.
Kenneth McRoberts, York Univ.

Senior Editor
Michael Rutherford, B.A.

National Affairs Editor
Patrick Monahan, York Univ.

Quebec Editor
Alain Noël, Université de Montréal

Western Editor
Roger Gibbins, University of Calgary

Economic Editor
Fred Lazar, York University

Legal Editor
Bruce Ryder, York University

Editorial Assistants
Denise Boissoneau
Krystyna Tarkowski

Production
WordsWorth Communications

ISSN 1191-7733

Canada Watch is produced jointly by the York University Centre for Public Law and Public Policy and the Robarts Centre for Canadian Studies of York University and published by:

Emond Montgomery Publications Limited
58 Shaftesbury Avenue
Toronto, Ontario M4T 1A3
Phone (416) 975-3925
Fax (416) 975-3924.

Subscription Information
Canada Watch is published eight times per year. Institutional subscriptions cost $165.00 plus GST and include an annual cumulative index. Individual subscriptions are entitled to a 40% discount. Please contact Terry Hamilton at Emond Montgomery Publications for more information or a subscription.

Printed in Canada

The "Absolute" Relativity of Rights in Canada

by Jamie Cameron

"[T]here is little room for absolutes"

Judges and academics frequently express pride in Canada's Charter of Rights and Freedoms. That our rights are not absolute is a point of pride that receives frequent mention.

To Canadians, the American jurisprudence appears strange and flawed. There, the fiction of absolute rights has produced bizarre results. The First Amendment, which guarantees "the freedom of speech" in unconditional terms, is a prime example. To avoid the consequences of the text, American courts have held, contrary to all popular understanding, that obscenity (and some other types of expression) is not even speech! But then, in other cases, like those dealing with hate propaganda, the courts revert to the dogma of absolute rights. The puzzle is not easily understood.

In Canada, the Charter establishes a "constitutional equation," which requires the courts to balance the rights and freedoms that it guarantees against the demands of democratic authority. There is no presumption in the text itself that either should win. Through the creation of an equation that balances the interests at stake in particular cases, the Charter invites a nuanced analysis.

Whereas Canada rejects absolutes, the United States remains suspicious of balancing. It has not been forgotten that balancing saved democracy by suppressing the Communist threat during the McCarthy era. Though it of necessity forms a part of the analysis today, balancing retains a negative connotation in the American jurisprudence.

However, not only is the Charter's equation of rights and limitations realistic, it preserves continuity between a tradition of parliamentary supremacy and a regime of constitutional rights. So it was surely appropriate for Canada to reject the fiction of absolute rights. The question is whether it has. On some issues, a different ethic has emerged.

Zero Tolerance Policies

Cases that expose a tension between equality and expressive freedom provide one example. In such instances, courts have generally, but not always, taken the view that offensive ideas that undercut Canada's commitment to equality can be prohibited. According to that analysis, expressive freedom is not an absolute and, when confronted by countervailing values, must yield. At what point, however, does the converse also hold true: when should this vision of equality be tempered by deference to expressive freedom?

Not long ago Ontario's Ministry of Education released a document entitled "Framework Regarding Prevention of Harassment and Discrimination in Ontario Universities." That document demands zero tolerance for a wide range of activities on university campuses that might be considered offensive, and are accordingly characterized as harassment or discrimination. Under the government's policy, there is no room for alternative views about gender, ethnicity, or other characteristics.

Nowhere in the policy statement, which establishes timetables and thresholds for compliance, does the Ministry of Education acknowledge that expressive freedom and the autonomy of academic institutions are important values. And that is because the framework document seeks to promote a vision of equality absolutely and, to all appearances, at any cost to other values.

Completely lacking in this document is any sense of the balance and nuance the Charter intended.

"... to be paramount"

Charter values also come into conflict when clashes between freedom of the press and a fair trial arise. Although the Homolka publication ban may be the most notorious and controversial example thus far [*see* "Justice, Democracy and the Press," *Canada Watch*, March '94], there are others.

In such situations Canadian courts repeatedly invoke the mantra that a fair trial "must have paramountcy" over expressive and press freedom. Once that pronouncement is made, restrictions are easily rationalized. Thus a broadcast of *The Boys of St. Vincent* was banned because charges arising from sexual conduct resembling that in the film were pending in Ontario. And in Homolka's case, Judge Kovacs held that publication of all but a few details of her proceedings should be banned to protect her co-accused's right to a fair trial some 18 months later.

Few would challenge the right to a fair trial. At the same time, it is frequently forgotten that open justice, and public access to information about the justice system, are there, in part, to protect that right. Perhaps that was the gist of the argument that Homolka's co-accused, Paul Teale, made in opposing the publication ban. If I am to be judged, he seemed to be saying, then it is only fair that you also judge her, and her relations with the Crown.

It is questionable, in any case, whether conflict between a fair trial and a free press *can* be eliminated. How, then, should the two be balanced? In addressing that issue, have our courts asked the difficult ques-

tions? What do we mean by a fair trial, and can any trial be made absolutely fair? What are the sources of prejudice to an accused, and how likely is it that they can be eliminated? Does fairness require all information about criminal proceedings to be banned? What, then, would remain of open justice?

In *R. v. Vermette*, the Supreme Court of Canada held that it should not be assumed that publicity in the form of a politician's remarks had compromised the accused's right to a fair trial. To decide that question, the court said, it should not "rely on speculation." There, the suggestion that it would be impossible to select an impartial jury was "a matter of speculation."

In Homolka's case Judge Kovacs spoke of the "exceptional circumstances" that prevailed at the hearing. Even so, he could only speculate that publicity might create a risk of prejudice to Paul Teale's impending trial. And that, in his view, was enough.

Again, the problem is a lack of balance and nuance in resolving the fair trial-free press conflict. We cannot assume that publicity *per se* prejudices a fair trial. Yet it remains unclear what circumstances must be present to displace the presumption in favour of open justice.

Conclusion

Like our American friends, we in Canada also have our absolutes. In the instances discussed above, instead of balancing, our courts simply invoke. And once invoked, values like equality and fair trial too often mark the end, rather than the beginning, of the analysis.

Jamie Cameron is Director of York University's Centre for Public Law and Public Policy and is an Associate Professor at Osgoode Hall Law School, York University.

NATIONAL AFFAIRS

Why Preston Manning Should Not Have To Submit Receipts

by Patrick J. Monahan

The recent controversy over Preston Manning's $31,000 expense allowance represented the first major political stumble for the normally sure-footed Reform party leader.

Manning professed to be totally taken aback by the controversy. After all, the practice of major political parties covering the expenses of their leaders is well accepted in Ottawa, and seems perfectly justifiable in principle.

What Mr. Manning seemed to have conveniently forgotten is that he had built his career by exploiting the belief that politicians in Ottawa are fat cats and opportunists. It was Preston Manning who had made such a show of handing back the keys to his government car last fall, apparently signalling that, finally, here was a politician fit for the task of cleaning up the capital.

Too bad that none of the reporters at the "car keys" photo-op thought to inquire as to how Mr. Manning planned to get himself around town. Had Manning been asked this question, reporters would have discovered that, while he had forsaken his government limo, he was prepared to accept a car allowance from the Reform party.

Manning might have attempted to distinguish the party's car allowance from the government-supplied limo on the basis that the allowance was paid for by party funds, rather than tax dollars. But that argument simply wouldn't wash, since the party moneys were themselves accumulated through tax credits granted to Reform party supporters.

Alternatively, Manning might have pointed out that providing him with a car made sense because it made for a more efficient use of his time. If Manning had to worry about taxis or car pools, he would be diverted from his main task, which is to criticize the government on behalf of his constituents.

A perfectly valid and sensible argument. It is precisely on this basis that the taxpayer provides *all* the party leaders with cars and drivers. Forcing the prime minister to forsake his limo and take the bus might seem to some taxpayers to be a smart money-saving move. But it's actually a false economy, since the cost in terms of lost time far exceeds the tiny savings associated with the sell-off of the government's limo fleet.

The problem for Manning was that he had foreclosed this perfectly sensible argument by his staged stunt with the car keys. The moment he handed back the keys to his government car, he was committed to the view that supplying cars to politicians is a waste of tax dollars.

That's why Manning got caught with his hands in the cookie jar when he turned around and accepted a taxpayer-financed car allowance from the Reform party. Having self-righteously suggested that government-supplied cars are a waste of tax dollars, Manning could not then accept a car that was paid for—even indirectly—by the same taxpayers.

Double standards are deadly. It's these kinds of mistakes that tend never to be forgotten. If Preston Manning ever again tries to criticize

Continued, see "Preston Manning's Receipts" on page 108.

"Preston Manning's Receipts," continued from page 107.

some politician for living high off the hog, he will only succeed in reviving memories of his own ill-conceived attempt to preach one standard while acting according to another.

Compounding the Error

Preston Manning's expense allowance wasn't just a problem for the leader. How were the other Reform MPs going to respond when they found out that their leader was accepting party money, *without having to provide receipts*? Sure, Manning *says* he needs the money to cover expenses. But $31,000 for dry cleaning and parking? How do we *know* that Manning isn't wearing his shirts an extra day and pocketing some spare change?

Into the breach stepped Calgary Reform MP Stephen Harper, champion bean counter. The problem with the expense allowance, according to Mr. Harper, was that Manning wasn't required to provide receipts. We need *written proof*, Harper insisted, that Preston's shirts really have been laundered before we fork over any party dough.

The party executive circulated a memo rapping Harper on the knuckles, but implicitly acknowledged the validity of his point by announcing that Manning would henceforth begin providing receipts. Harper eventually emerged as the apparent hero of the piece. Other Reform MPs rallied to his defence. Even Manning was reduced to the lame observation that Harper's only mistake had been to air his grievances in the press, rather than behind closed doors.

Mr. Manning better make sure he's got a big shoe box for all those receipts. Pick up a magazine to read in the airport while waiting for the plane? No problem, Mr. Manning. Just make sure the receipt for $2.50 finds its way into your trusty shoe box and is filed with party headquarters so you get your cheque for $31,000 at the end of the year.

Sometime next year, some enterprising reporter may ask how much it is costing the Reform party to keep track of Mr. Manning's receipts. And the reporter will be surprised to find out that the cost of the tracking system far exceeds the total amount of the expense allowance itself. Chalk it up as another victory for economy in government.

This brings us back to the real lesson of this episode, which threatens to be lost amid the mountain of receipts for shoe shines and haircuts that will soon be accumulating at Reform party headquarters. Contrary to received Reform party wisdom, the vast majority of the nation's politicians are not in the business to make a fast buck. They're just Canadians who are willing to make a contribution to the public life of this country, often at tremendous personal and financial cost.

If anyone ever doubted that fact, they need look no further than the compelling evidence supplied by Preston Manning himself. Despite a salary as party leader in addition to his normal MP salary, he still needs a special expense allowance to cover his dry cleaning bills.

So, please, let us hear no more from Preston Manning or the Reform party about the alleged sumptuous lifestyle and personal fortunes of the country's MPs. Instead we should turn our undivided attention to the real and pressing problems facing this country.

Patrick J. Monahan teaches at Osgoode Hall Law School and is National Affairs Editor of Canada Watch. *National Affairs is a regular feature of* Canada Watch.

QUEBEC REPORT

Big Brother

by Alain Noël

"A surveillance society in gestation"

Early last year, Quebec was nominated for the "Big Brother Award" by a new and relatively unknown international organization called Privacy International. Quebec did not "win," but was nonetheless singled out as the "prototype of a surveillance society in gestation."

What struck Privacy International was the extent to which the government could stock and use personal information. Quebec's extensive computer files, medicare cards with a picture, and welfare controls were mentioned as indicative of a state that could monitor citizens closely and with impunity.

The Quebec government and most editorial writers rejected the attack as overblown, explaining that a welfare state that provides generous services, including free health care, must necessarily have major computer resources. Senior civil servants added that the law prevents the Quebec government from matching or combining files maintained by various departments or agencies, even though this restriction poses major costs in terms of duplications. Institutional protections are also provided by the Access to Information Commission, the Human Rights Commission, the ombudsman, and the auditor general.

However exaggerated, Privacy International's critique struck a sensitive chord. A poll conducted by Ekos Research in late 1992 suggested that Canadians worried almost as much

about the protection of privacy as they did about unemployment, both concerns being much more important than national unity. As for Quebeckers, they appeared more concerned about privacy than the rest of Canadians, who themselves were more preoccupied with it than Americans are.

The Unfriendly Face of the Welfare State

The events of the last year did nothing to reassure Quebeckers. Revenue Quebec, for instance, was criticized for its excessively zealous procedures. In recent years, the department was taken to court as much as 70 times more often than its Ontario counterpart, usually for cases related to sales taxes and fiscal procedures. Most of the time, according to tax lawyers, Revenue Quebec won, and when it did not, the law was changed! After the press made public a series of embarrassing cases, the deputy minister resigned and the minister promised things would change. Early this April, a full reform based on the "new" idea that taxpayers should be presumed innocent until found guilty was announced.

Before this reform, Revenue Quebec considered all taxpayers as potential defrauders ("*fraudeurs en puissance*"). The presumption was not unique to this department. The same attitude prevailed in the Department of Manpower, Training, and Income Security, responsible for the "*boubou-macoutes*," special agents who every year randomly visit almost a third of all welfare households. Likewise, early this year, when more then 60,000 persons failed to comply with the new procedures necessary to obtain a medicare card, the Quebec Health Insurance Board was quick to conclude it had uncovered a new group of defrauders. At about the same time, the Quebec Automobile Insurance Corporation became notorious for its cavalier treatment of claims by injured drivers, all potential cheaters according to the corporation.

The cases vary, but not the discourse. Quebeckers, be they taxpayers, insured drivers, users of medical services, or welfare recipients, are all "*fraudeurs en puissance*." The role of their government is to prevent them from cheating by keeping a close watch and by creating as many disincentives as possible.

The Quebec state, seen as an instrument for collective promotion during the Quiet Revolution, has become a suspicious provider of services to a population that cannot be trusted. How can this evolution be explained?

In part, the new, unfriendly face of the welfare state can be associated with the conservatism of the 1980s. Elected to "take government off the backs of citizens," conservatives in anglo-saxon democracies proved to be less concerned by "excessive" government than by certain types of interventions. They often ended up promoting a stronger state designed to regulate free markets, reduce expenditures, and maintain law and order.

"A High Value-Added Society"

For Quebec, however, this ideological explanation is not fully convincing. After a brief flirtation with privatization in the mid-1980s (some may recall "*l'État-provigo*"), Quebec Liberals basically abandoned the idea of a clear right-wing orientation in favour of a more ambivalent, middle-of-the-road course of action. Moreover, the notion that citizens are all potential defrauders is more a product of the 1990s than a creation of the conservative 1980s.

In an as yet unpublished study of the discourse of the Bourassa government, Gilles Bourque and Jacques Beauchemin, both sociologists at the Université du Québec à Montréal, point to a deeper and more fascinating explanation of this recent evolution. When they submitted a series of government documents to content analysis, Bourque and Beauchemin found little reference to core liberal values such as progress, rationality, freedom, equality, or democracy. Even social actors tended to disappear in favour of governmental institutions and programs. What remained were problems of various types—a high school drop-out rate, unemployment, violence, drugs, HIV, pollution—and categories of the population to be managed by a government committed to create a "high value-added society" that could compete in world markets. Members of a national community defined by its identity have been replaced by sub-groups with problems; citizens of a state defined by core democratic values have given way to clients of a state that manages services in the name of competitiveness; individuals with entitlements and rights have become potential free-riders and cheaters.

Daniel Johnson's platform is in keeping with this version of postmodernity in which the very idea of a collective project becomes an object of derision. Entitled "*Agir*" (to act), the Liberal program promises action, but never explains clearly the fundamental purpose of all this action. By contrast, of course, the Parti québécois offers a full project. To Daniel Johnson, such broad ambitions appear nothing short of irrational. The sovereigntist option, he stressed in a recent interview, is imbued with "magical thinking."

The governments of Ontario and British Columbia announced this year that they would reinforce efforts to uncover welfare cheaters. While the proposals stopped short

Continued, see "Big Brother" on page 110.

"Big Brother," continued from page 109.

of focusing on visiting agents, they gave rise to discourses similar to that promoted by the Quebec government in recent years, and indicated how disoriented New Democrats have become. Citizens in these two provinces should be attentive. If the parallel is genuine, these governments' new emphasis on controls will not be confined to people receiving social assistance.

Alain Noël is Assistant Professor, Département de science politique, Université de Montréal. Quebec Report is a regular feature of Canada Watch.

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 May/June issue is May 16, 1994. 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

WESTERN REPORT

Once More for God and Country

by Roger Gibbins

Much as Canadians might wish to ignore the fact, the national unity debate is again coming to a simmer as the Quebec provincial election approaches. Should the pollsters be right and the PQ win, the debate will quickly come to a boil. Given this unwelcome but probable scenario, what is the western Canadian reaction likely to be?

While this question is still hypothetical, it is important nonetheless. In a recent article on the future of Quebec (*Calgary Herald*, April 7, 1994), Edmonton journalist Allan Chambers argued convincingly that in a sovereignty referendum, Quebeckers will vote to stay in Canada "if the national context is somewhat welcoming." Stated more emphatically, the outcome of the referendum could hinge as much upon opinion outside Quebec as inside.

If this line of argument is correct, and I suspect it is, the west could play a critically important role given the fact that unsympathetic noises toward Quebec are most likely to come from the west, and from the region's Reform MPs in the House of Commons. If history and recent voting patterns provide a reliable guide, the part of the country most likely to bid Quebec "adieu" will be the west.

The Knee-Jerk Reaction

What, then, should we expect of the immediate regional reaction to a renewed national unity debate? Certainly, there will be unease with the inevitable attempts by the federal government to provide financial incentives for a no vote in the Quebec sovereignty referendum, and, indeed, for a Liberal vote in the provincial election. Those incentives, generously financed from a shrinking public purse, will come as surely as night follows day. There will also be unease with the second inevitable response by the federal government, which will be to provide informal ways to meet Quebec's constitutional agenda.

It is unlikely, however, that this immediate response will be crippling to the federalist cause in Quebec. It will be written off as little more than conventional regional carping, the presumed inability of westerners to appreciate the larger interests of national unity. Nor is it certain that the Reform party will be a major source of negative cues for the Quebec electorate. This will depend on whether Preston Manning remains in firm control of his party. If he does, then it is likely that Reform will adopt a conciliatory posture. Manning, after all, has already committed the party to expansion in Quebec.

If anything, it is likely to be the Reform party itself, rather than the federalist cause in Quebec, that could be most damaged in the forthcoming national unity scramble. In an environment where the "maturity" of national parties will be measured by their willingness to pay tribute to the nationalist impulse in Quebec, Reform runs a risk of being a casualty in the national unity debate. It will be the target of unrelenting attacks by the federal Liberals as the latter mobilize the traditional forces of Canadian nationalism in the defence of God, country, and the Liberal party.

Deeper Sources of Unease

The most problematic western Canadian response to a renewed national unity debate is likely to be indifference. Both the free trade

agreement and NAFTA, which enjoyed strong although not universal support in the west, implicitly urged Canadians to refocus their attention and energies away from the national community to the continental and international economies. Western Canadians have accepted this message with enthusiasm and, as a result, are simply less interested in the evolution of the Canadian federal state.

The survival of Canada, and Quebec's strategic threat to that survival, will not generate the same intense, visceral reaction this time around in the national unity debate. This does not mean that western Canadians do not care, but it also does not mean that they are unlikely to go out of their way to provide a positive or comforting message to Quebec. The danger is that regional indifference may be interpreted as hostility by Quebeckers.

Thus, the challenge for the supporters of the federalist option in Quebec will not be to ward off regional hostility from the west, but to penetrate a growing regional indifference. More specifically, the task will be to bring western Canadians into the debate, and to do so in a positive manner. Neither task will be easy in a region whose mind and heart is increasingly to be found elsewhere.

Roger Gibbins is Professor and Head of the Department of Political Science, University of Calgary.
Western Report is a regular feature of Canada Watch.

ECONOMIC REPORT

The Attack of the Bond Rating Services

by Fred Lazar

Downgrading of Government Debt Across Canada

Part of the federal government's foreign debt was recently downgraded. Last fall, Ontario's debt rating was downgraded. Indeed, most governments across Canada have been subjected to the same experience during the past few years. Unfortunately, it appears that the federal and provincial governments have become totally intimidated by bond rating services, and, as a result, they seem to be willing to consider whatever measures they believe are necessary to control their deficits and maintain their credit ratings.

To preserve credit ratings, and governments are not always successful, during the past year, provincial governments' cumulative deficit reduction strategies have removed about 2 percent from the spending stream in Canada and have contributed significantly to slowing the rate of economic recovery. Slower growth exacerbates the deficit problem by reducing revenue growth and increasing the number of UI and other social assistance recipients.

The "financial" community now seems to dictate the policy course for governments in Canada. Panic overwhelms policy makers when the financial community warns of credit downgrading. Rapid declines in the value of the dollar create equally outrageous panic since such moves are interpreted by the same financial community as confirmation of their dire concerns with government deficits and debt.

Governments no longer appear to respond to the electorate, but rather to the dictates of the bond rating services and "faceless" international investors—a complete reversal of democracy. Standard & Poor's is not even a Canadian company, yet it wields more influence than millions of Canadians. The Bank of Canada, by acquiescing to higher interest rates in order to support the dollar and drawing arbitrary lines in the sand around the dollar, encourages speculation, adds unwarranted credibility to the Cassandras of government fiscal irresponsibility, and makes deficit reduction more difficult.

Debunking the Credit Rating Agencies

But perhaps it is time for governments in this country to challenge the credit rating agencies and their followers in the financial community. Saskatchewan and Newfoundland have the lowest credit ratings among the provinces and, as a result, are extorted into paying a substantial interest rate premium in order to borrow. The downgrading of Ontario's credit rating is expected to cost Ontario taxpayers up to $25 million more a year in interest payments. The unnecessary upward spike in Canadian interest rates, as a result of the latest and assuredly not the last "currency crisis," may cost Canadian governments collectively $5 to $15 billion, depending on how long rates remain at the "post-crisis" levels.

Are these risk premiums stemming from downgrading of debt warranted or are they just a form of blackmail? Does anyone really ex-

Continued, see "Bond Rating Services" on page 112.

"Bond Rating Services," continued from page 111.

pect the federal government to allow either Saskatchewan or Newfoundland to default on their debt? Is Ontario any more likely to default in the future because it has been running $10 billion deficits for a few years? Anyone who truly believes that Ontario, Saskatchewan, Newfoundland, or even the Canadian government, is more likely to default in the future is in serious need of therapy.

The higher risk premiums imposed on governments in Canada are a case of theft on a grand scale against Canadians. The resulting policies demanded by the financial community to avoid further blackmail have imposed even greater costs on Canada. Savings and loans institutions in the United States, and trust companies in Canada, were run by crooks or were just poorly managed, and were operating on or beyond the brink of insolvency for several years before they collapsed. It is amazing that they were able to attract billions of dollars in deposits by offering a slight interest premium over the interest rates paid by larger, more stable, and better managed deposit-taking institutions, just because of the availability of government guarantees (in the form of deposit insurance). The financial community, especially the brokers who arranged for massive infusions of deposits, were quite happy to participate in the charade. Fees are fees and one should not look too closely at how the moneys are used.

Challenging the Agencies

Governments in Canada should challenge the bond rating agencies and call the bluffs of the financial community. I am sure that there is a waiting list of companies who would eagerly step forward to replace any institution foolish enough to give up a lucrative position in issuing and/or acting as a market-maker in Canadian governments' bonds.

The rating agencies supposedly predict the default probabilities on various types of debt. But are they capable of performing this task well? Michael Milken, the former junk bond king, proved them wrong. He made billions because of the inadequacies of these agencies in rating the debt of smaller or lesser known corporations. It would be interesting to examine how successful these agencies have been in predicting defaults at the time of new issues of debt, not after the fact, when the financial problems of companies or countries are widely known.

Despite the appearance of a thorough and scientific approach to evaluating risks (spreadsheets and financial software can fool a lot of people), these agencies are not capable of accurately assessing risks. They do not have the ability to properly understand and evaluate corporate strategies and competitive behaviour. Indeed, anyone who is good at this can make much more money working for one of the major consulting firms or other companies. Moreover, these agencies underestimate the intelligence and ability of the electorate to control wasteful government initiatives and budget deficits. But only the electorate should have the opportunity to dictate the trade-offs governments should make.

The Foibles of the Banks

The problem with the rating agencies is more pervasive. By offering a solution to the free-rider problem faced by investors in assessing credit risks, they also provide financial institutions with an excuse for not doing what the public implicitly expects of them: namely, objectively and thoroughly examining all lending opportunities and estimating their respective risks. The credit rating agencies provide the way out from fulfilling these responsibilities. It is much cheaper not to build up the credit rating functions within a financial institution and follow the leader into the financial gimmick of the day—the herd instinct run rampant.

Once again, fees are fees and the taxpayer will end up picking up 40 to 50 percent of the losses anyway. How else can one explain the third-world loans in the 1970s, the oil-patch loans in the 1970s and 1980s, the real estate loans in the 1980s, and so on? Senior executives in financial institutions are paid a lot of money to mess up continually on these scales.

Thus, not only should governments challenge the reliability and usefulness of the services provided by the credit rating agencies, they should also challenge the financial institutions in this country to fulfill their responsibilities. Maybe the federal government should consider removing the right of these companies to write off their losses on a wide array of loans against their other taxable income. It's bad enough that taxpayers have to be hit with higher interest costs because of the "job" done by outsiders. It's even worse, when we have to pick up the billion dollar tab for bad real estate loans and other mistakes that contribute nothing to the prosperity of Canada.

I suspect that debt downgrading, the absurd interest rate policies of John Crow, and the tax write-offs for massive loan losses by Canadian financial institutions have probably added $150 billion more to the aggregate debt of governments in Canada during the past six years.

Fred Lazar is an Associate Professor of Economics, Faculty of Administrative Studies and Faculty of Arts, York University. Economic Report is a regular feature of Canada Watch.

LEGAL REPORT

Taxation of Child Support

by Bruce Ryder

Single Mothers Organize To Fight Discrimination in Income Tax Act

As sure as the arrival of spring, the tax man cometh, but Susan Thibaudeau, Barbara Schaff, and a host of other single mothers across the country will not be answering the call to include as income the amount of child support they have received from their ex-partners. Their civil disobedience has landed them in the tax courts where they have argued, thus far unsuccessfully, that the relevant provisions of the Income Tax Act constitute discrimination contrary to their Charter equality rights. Thibaudeau and other single mothers have also launched a class action suit to recover damages from the government for taxes that have been collected through the allegedly unconstitutional provisions.

Inclusion-Deduction Scheme

Sections 56 and 60 of the Income Tax Act provide that periodic spousal and child support payments made pursuant to a court order or written separation agreement are fully deductible from the payer's taxable income, and must be included in the taxable income of the recipient. In virtually all cases (98%), the direction of support is from men to women.

The inclusion-deduction scheme was originally enacted in 1942, reversing the previous situation in which alimony payments were neither deductible to the payer nor taxable income to the recipient. The original rationale for the change was to provide some relief to men with alimony obligations who faced high war-time marginal taxation rates. The main rationale now offered in support of maintaining the scheme is that it provides an income-splitting subsidy that benefits parents and children on family breakdown. The female recipients of support are generally poorer than the male payers and thus frequently taxed at a lower marginal rate. Where the payer is in a higher tax bracket than the recipient, the inclusion-deduction scheme is preferable to taxing the income in the hands of the payer because it leaves more money in the hands of the broken family members to assist them in the transition to their new lives. The income-splitting subsidy is estimated to cost the government $250 million annually.

Charter Rulings in *Thibaudeau* and *Schaff*

In two separate rulings in *Thibaudeau* (1992) and *Schaff* (1993), Tax Court judges rejected arguments that the inclusion-deduction scheme discriminates against single mothers and their children. The judges found that the scheme creates no burden or disadvantage, but does create the potential for substantial benefit through income splitting. Thus, there was no "causal nexus" between the scheme and the relative poverty of households led by divorced or separated women.

The courts acknowledged that the inclusion-deduction policy operates equitably in practice only if the tax consequences of support payments are accurately predicted at the time the quantum of support is set in a separation agreement or by court order. In Schaff's case, the quantum of child support had been set without reference to tax consequences. In Thibaudeau's case, the family court judge had calculated child support in a manner that significantly underestimated her tax liability. As a result, both women were taxed more than $1,000 annually on money that was intended solely for child support. However, the courts said the proper remedy was not under section 15 of the Charter; it was the role of family courts to ensure that support obligations are calculated in a manner that takes full account of the tax consequences.

The Nature of the Discrimination

The Tax Court rulings that the inclusion-deduction scheme imposes no discriminatory burden on single mothers are questionable. First of all, the scheme places the risk of tax consequences not being accurately accounted for in setting the quantum of child support solely on the custodial parent. The possibility of returning to family court for a revision of the support order may reduce the risk of error, but the necessity of instigating such an action, and the lack of any guarantee of success, places a real burden on mothers in Schaff's and Thibaudeau's situation.

Second, the current system promotes and maintains the gender disparity in the standard of living between custodial and non-custodial households. The standard of living of men tends to rise after divorce or separation, while that of women and children tends to decline. The inclusion-deduction scheme is implicated in this phenomenon, because the custodial parent's child support expenses are not deductible. By allowing non-custodial parents (mostly fathers) to deduct child support payments from income, while limiting custodial parents (mostly mothers)

Continued, see "Taxation of Child Support" on page 114.

"Taxation of Child Support," continued from page 113.

to generally less favourable tax credits and family allowances, the tax system disproportionately subsidizes the child support obligations of men. Moreover, since all deductions operate as regressive subsidies, the scheme benefits most those least in need—namely, the wealthiest divorced or separated fathers.

Speculative Benefits

The *Thibaudeau* and *Schaff* rulings are now on their way to the Federal Court of Appeal and the issue will no doubt end up before the Supreme Court of Canada. Hopefully, the appellate courts will grapple more fully with the discriminatory aspects of the current scheme. However, as the recent Supreme Court decision in *Symes* (1993) illustrates, judges may be reluctant to decide complex questions of tax policy especially when their decisions may have contradictory and unpredictable results for members of disadvantaged groups.

What would be the impact of the removal of the inclusion-deduction scheme for support payments? Such a result would put more money in the hands of the relatively few single mothers, like Thibaudeau and Schaff, whose quantum of support has been calculated without adequate regard to tax liability. However, for most single mothers who receive support payments that include a "gross-up" to cover tax liability, a return to the pre-1942 situation will not put more money in their hands, and may actually create a risk of diminishing the child support they receive. This risk arises because fathers' ability to pay will be reduced by the removal of the deduction. The incentive placed on fathers to comply with their obligations will similarly be removed with uncertain effects. Most single mothers will be better off only if the $250 million increase in government revenues that would result from the abolition of the current inclusion-deduction scheme is redirected to the benefit of low-income households. Given the courts' inability to direct such a transfer of funds, the current equality litigation offers at best speculative benefits for most single mothers.

Bruce Ryder is an Associate Professor at Osgoode Hall Law School, York University. Legal Report is a regular feature of Canada Watch.

CW UPDATE

The Month in Review

by Michael Rutherford

Indian Affairs To Be Dismantled in Manitoba

Department of Indian Affairs Minister **Ron Irwin** announced on March 9 that he had begun negotiations to dismantle his department in Manitoba and transfer its responsibilities to Manitoba bands. Irwin hopes that the transfer will serve as a model for the rest of the country.

Labour Reform in Saskatchewan

Saskatchewan may become the first province to require companies to pay benefits to part-time employees. The Saskatchewan government introduced the proposed changes to the Saskatchewan Labour Standards Act on March 11.

Damages Awarded in Tainted Blood Case

On March 14, a judge awarded **Rochelle Pittman** and her four children more than $500,000 after finding that the Canadian Red Cross Society, the Toronto Hospital, and the Pittman physician had a duty to warn her husband that he might have received an HIV-positive blood transfusion. Had he been told, **Kenneth Pittman** might have lived two years longer and might have avoided infecting his wife. The decision came the day before a provincial deadline requiring blood-transfusion HIV victims, or those infected by them, to accept a compensation package that would bar them from launching lawsuits.

Expulsion Notices at Kahnawake

On March 14, the band council of the Kahnawake Reserve near Montreal published a list of 143 non-status residents who are being asked to leave the reserve. The band council, which has the right to expel non-status residents under the Indian Act, wants to protect what it calls the "genetic quality" of the community.

Socred MLAs Join B.C. Reform Party

Three Social Credit MLAs joined the B.C. Reform party on March 14, rebuffing an invitation by **Gordon Campbell** to join his provincial Liberals. The B.C. Reform party does not have the support of federal Reform leader **Preston Manning**.

Soldier Guilty in Somali's Death

On March 16, a court-martial found Private **Elvin Kyle Brown** guilty of manslaughter and torture in connection with the death of a Somali, **Shidane Arone**, who was killed while in the custody of the Canadian Airborne Regiment in Somalia last year. Brown was later sentenced to five years in prison and dismissed with disgrace.

Conservatives Win Ontario By-Election

Progressive Conservative **Chris Hodgson** won an upset victory over his Liberal opponent in a March 17 provincial by-election in the central Ontario riding of Victoria-Haliburton. The victory followed a Conservative advertising campaign critical of the governing NDP's plan for same-sex benefits, which the Liberals also support. The NDP was a distant third in the voting.

B.C. Loggers Descend on Victoria

Between 15,000 and 20,000 loggers arrived in Victoria on March 21 to stage a mass demonstration against proposals to reduce logging on Vancouver Island. The loggers rallied on the lawn of the B.C. legislature to protest a land-use plan put together by the NDP government's Commission on Resources and Environment.

NAFTA Agency Goes to Montreal

The federal government chose Montreal over 24 other cities as the sight of a NAFTA environmental watchdog agency, the Commission for Environmental Cooperation. The decision on March 28 received a hostile reaction from some politicians outside Quebec, including Ontario Premier **Bob Rae** and Alberta premier **Ralph Klein**.

Hydro-Québec Loses Contract

The New York Power Authority's board of trustees voted on March 29 to cancel a $5 billion (U.S.) contract with Hydro-Québec. Hydro-Québec officials said that the lost contract would mean a one-year delay in construction of the multidam Great Whale project, which the utility plans to begin at the end of the decade.

Ryan Quits Politics

Quebec Liberal Cabinet minister **Claude Ryan** announced on March 31 that he will not run in this year's provincial election. Ryan's decision ends a 16-year political career, which included a 4-year period as leader of the provincial Liberals from 1978 to 1982.

Fishing Ship Seized Off Newfoundland

The *Kristina Logos*, a Canadian-owned fishing vessel flying the Panamanian flag, was boarded and seized in international waters off Newfoundland on April 2. Fisheries Minister **Brian Tobin** said that the action was the first step in an aggressive enforcement of an international moratorium on endangered fish stocks.

Michael Rutherford is an MA student in Political Science at York University. CW Update is a regular feature of Canada Watch.

Supreme Court Watch

A digest of recent significant decisions of the Supreme Court of Canada

Brown v. B.C.
March 17, 1994

In a case involving a British Columbia man, Montague Brown, who was injured when his car spun out of control on an icy highway, the Supreme Court of Canada ruled that the provincial government could not be held liable in negligence for making a policy decision to leave road crews on the summer maintenance schedule and carry out sanding under those hours into November.

Swinamen v. A.G. Nova Scotia
March 24, 1994

In a case involving a Nova Scotia man, Patrick Swinamer, who became a paraplegic when a tree fell onto a public highway, the Supreme Court of Canada ruled that the Nova Scotia government could be sued only if it was negligent in carrying out its inspection policy. The tree that fell appeared to be in good health and was not an apparent source of danger.

The Queen v. Finta
March 24, 1994

The Supreme Court of Canada voted 4-3 to uphold the 1989 jury acquittal of Imre Finta on charges of unlawful confinement, kidnapping, robbery, and manslaughter of Hungarian Jews in 1944. At the same time, the court ruled that the 1987 federal war-crimes legislation, under which Finta was charged, was constitutional.

Parliamentary Update

Bill C-3: An Act to amend the Federal-Provincial Fiscal Arrangements and Federal Post-Secondary Education and Health Contributions Act.

This Act renews the federal government's equalization program for another five years. The Act provides for a ceiling on equalization payments that limits the cumulative growth in payments to no more than the growth of the economy from the base year of 1992-93.

House of Commons	1st reading:	January 25/94
	2nd reading:	February 9/94
	3rd reading:	March 9/94
Senate	1st reading:	March 15/94
	2nd reading:	March 17/94
	3rd reading:	March 23/94
	Royal assent:	March 24/94

Bill C-8: An Act to amend the Criminal Code and the Coastal Fisheries Protection Act.

This Act clarifies the rules governing the use of force by police officers or anyone lawfully assisting them in the pursuit of a fleeing suspect. The Act would permit the use of as much force as necessary to prevent the escape of dangerous suspects when no other less violent means are available. The Act also provides for the use of force by protection officers who attempt to disable fleeing foreign fishing vessels.

House of Commons	1st reading:	February 4/94
	2nd reading:	February 14/94

(Reported from committee without amendments on March 24, 1994.)

Bill C-18: An Act to suspend the operation of the Electoral Boundaries Readjustment Act.

This Act suspends the operation of the Electoral Boundaries Readjustment Act for 24 months and dismantles the existing 11 electoral boundaries commissions. The Act further provides for the establishment of new commissions within 60 days after the 24-month suspension period is over.

House of Commons	1st reading:	March 18/94
	2nd reading:	March 24/94

(Reported from committee without amendment on March 25, 1994.)