

Round One: Saskatchewan — Canada Negotiations 1980

Questions surrounding the Constitution of Canada had for decades caused problems between and within the political parties of Canada. Indeed, as Michael Kirby said to Prime Minister Pierre Trudeau in his briefing document of September 1980, “it should be borne in mind that there is nothing more difficult to arrange, more doubtful of success, and more dangerous to carry through than initiating changes in a state constitution.”¹

This “danger” was particularly evident among the political parties during the patriation process in 1980-81. The initiative caused headaches within the parties as they tried to reconcile various ideological factions as well as regional pressures. It was compounded by the fact that the parties also had to contend with federal and provincial sections, which were sometimes discrete entities and sometimes inter-related, although not always in a hierarchical manner.

These latter divisions were particularly evident within the Progressive Conservative Party and the New Democratic Party (NDP). The former suffered serious splits among provincial sections, and between the federal and some provincial sections. In particular, the Conservative governments of Ontario and Alberta had been at odds for several years over energy pricing in Canada, so it was not surprising that they would be on opposite sides of Prime Minister Trudeau’s constitutional proposals.²

For the most part the NDP had been free of such internal splits over policy matters. However, as with the Progressive Conservative Party, the energy pricing disputes of the 1970s opened up new regional fissures surrounding the proper role of the federal and provincial governments

with regard to the control and pricing of natural resources. For the most part these differences were papered over when the provincial sections of Alberta and Saskatchewan reached a deal with the federal NDP on the matter in 1973. When Ed Broadbent became leader of the national party in 1976, the party seemed much more united than it had been in the past. However, natural resource issues continued to simmer below the surface, especially when the Supreme Court ruled critical resource legislation in Saskatchewan to be *ultra vires* of the provincial legislature. It was not surprising, therefore, that natural resource questions, and in particular energy pricing issues, should be part of the negotiations on the Constitution after 1980.³

While constitutional negotiations were in large part fueled by regional ethnic concerns emanating from Québec, some provincial sections of the NDP, especially those in Saskatchewan and Alberta, saw the negotiations as a way to redress regional economic inequalities in Canada. Thus, while the federal government was mostly interested in combating separatism in Québec by reinforcing national institutions, entrenching a national language policy, and strengthening the role of the federal government over the whole country, many of the provinces were more interested in redressing regional economic differences and problems. Indeed, Prime Minister Trudeau seemed at first not to understand the importance of these regional pressures in western Canada. With his eye focused on Québec, he tended to vacillate between characterizing western demands as a minor annoyance, to accusing them of being “enemies within.”

As mentioned above, the New Democratic Party under Ed Broadbent managed to negotiate these regional shoals with a minimum of damage

to the party as a whole. With the election of the Clark Progressive Conservative government in the spring of 1979, pressure for constitutional change was temporarily lessened as the new federal government sought to find its way on a number of other issues. Nevertheless the federal New Democratic Party Council in August of 1979 decided to set up a committee in order to update the party position on the Constitution and national unity issues.⁴ The National Council of the NDP met on October 19, 1979. The Council decided that rather than concentrating on Québec, they would broaden their discussion to include constitutional change in general. There seemed to be sympathy for the idea that the party should be less centralist in nature. However, it was surprising that while this initiative came mainly from western provinces, it also came from Ontario. This new direction met with some resistance from Broadbent, who wanted to ensure that any devolution of power would not make it less likely for the federal government to be able to provide a unifying force for the country.⁵ However, a number of speakers took him to task for this position, providing a preview of discussions in the following year.

With the re-election of the federal Liberals in early 1980, discussion of the referendum and the Constitution began again in earnest. It was agreed that Roy Romanow would be the Saskatchewan representative to a newly reconstituted federal committee in April of 1980. This committee was under the direction of Bill Roberts, who later came to work for the provincial government of Saskatchewan. Unfortunately, Romanow was unable to attend the first meeting of the committee but he did send his overall assessment of constitutional reform to Broadbent. He made two general points. The first was that he felt that the 1977 constitutional statement by the NDP downgraded the importance of constitutional reform and was patronizing in its approach. His second point related to the overall approach of the NDP toward the roles of the federal and provincial governments. In his letter he stated:

I sincerely believe that strong feelings of regionalism are a fact of life in Canada and are unlikely to recede in the near future. Accordingly, if we are to effect social change

in Canada, we must be cognizant of that Canadian political phenomena [*sic*] and align ourselves in such a way that social democratic governments at both the federal and regional level are able to affect necessary social change. I do not think that this entails the degree of decentralization proposed by the Tories, but it must recognize that there are probably “many roads to socialism.”⁶

He went on to warn that if the party did not pay close attention to regional concerns, it would find itself isolated and the political base of the party in western Canada would undoubtedly erode.⁷

These were quite strong views and undoubtedly caused Broadbent some concern. In spite of these differences, Romanow wanted to keep the lines of communication open and to keep Broadbent and his caucus informed of the Saskatchewan government position at all times. He instructed his intergovernmental affairs department to ensure that the federal leader and caucus received all press releases and materials sent out by the Saskatchewan government, and that whenever they were in Ottawa, Saskatchewan ministers should make a point of meeting with the federal leader and members of the caucus. As a corollary, he wanted to ensure as well that federal MPs should feel free to approach the government of Saskatchewan where confidentiality did not dictate otherwise. He also asked the Saskatchewan NDP office in Ottawa to send out a monthly information package to the federal leader’s office. Finally, he noted that in the longer term the new Ottawa office, which would be staffed by Dick Proctor, would become the intermediary for communication.

It was obvious from these instructions that, while the provincial NDP government wanted to maintain open relations with the federal party, it was unwilling to back away from its more decentralist view of Canada.

As we know, events moved very quickly in the spring of 1980. The referendum in Québec was called, and the Parti Québécois (PQ) initiative was defeated soundly. As a result, the Prime Minister and his cabinet decided to move quickly on the constitutional promises made during the campaign. Trudeau called a meeting

of the First Ministers in Ottawa for June 9, 1980. Having just been re-elected, and having defeated the PQ in its referendum, the Prime Minister was determined to move ahead quickly on his constitutional agenda, which was now quite different in tone and approach from the last time he met with the First Ministers in the early winter of 1979. Trudeau now insisted that two new items - more central control over the economy and a statement of common principles that would act as a preamble to the Charter of Rights and Freedoms - be included. As well, he withdrew some concessions that he had made at the bargaining table in February of 1979. Needless to say, he was far less amenable to provincial proposals for decentralization of certain federal powers over natural resources and the fisheries. Finally, he emphasized the need for speed in dealing with the Constitution, and hinted broadly that the federal government would not wait long for the provinces to agree to a set of proposals.⁸

This new, aggressive approach displeased many of the provincial governments. Nevertheless, at the end of the meeting the First Ministers agreed on both a process and an agenda for intense talks during the summer of 1980. The CCMC, a continuing committee of ministers from all governments, under the joint chairmanship of Jean Chrétien and Roy Romanow, was given the task of delivering a comprehensive set of proposals, which could be further negotiated and agreed upon, to the First Ministers in September.

The accelerated federal-provincial negotiations meant that the opposition parties in the House of Commons were required to examine and reassess their own position with regard to both the process of constitutional negotiation and ultimately the revision of the Constitution itself. The federal NDP began that process in early June, prior to the meeting of First Ministers. On June 5 Bill Roberts, on behalf of Ed Broadbent, sent Premier Allan Blakeney a copy of an interim report that outlined a tentative position for the federal NDP caucus.⁹ The report contained recommendations on both process and substance. The first paragraph read:

While taking account of accelerated constitutional events, the working group found it necessary to reject all unilateral actions emanating from Parliament and the federal government for constitutional change. In addition, the working group viewed with deep concern the setting of short deadlines within which to achieve constitutional renewal. It was considered that a full process of constitutional revision would require speed but not haste. Such a process would thus demand 18 to 24 months as a minimum in order fully to involve the Canadian public and achieve equitable and long-lasting change.¹⁰

Thus, the committee was unequivocal in its rejection of unilateral action and particularly a process that would seek to make changes in the fall. On this matter the NDP in Saskatchewan was in complete agreement with the federal party. However, the committee also recommended a rather elaborate process for the involvement of members of the legislatures of Canada, as well as other groups, in the broad process of constitutional negotiation.

In a letter to Broadbent's office on July 28, 1980, Romanow thanked the federal party for the opportunity to express views on the federal constitutional position and agreed with its rejection of unilateral action in particular. Beyond that, however, he was "cautious" about any model involving a large number of legislators and groups in the constitutional process. He said:

I would in summary urge the committee to alter its report to make perfectly clear that constitutional negotiation should be carried on by the duly elected governments of the provinces and the federal government. Wider public participation in the constitutional negotiation should be achieved not by reducing the role of the First Ministers' Conference but through procedures which would allow interested parties to participate in intergovernmental negotiations.¹¹

This was the first sign that there might be substantial differences between the two parties.

As we know, events quickly overtook these internal party negotiations. The CCMC was unable to deliver a unanimous report to the First

Ministers' Meeting of September 1980, and the meeting itself was unproductive, to say the least.

The failure of the First Ministers to reach agreement at the First Ministers' Conference set in motion a crisis that was to last until November of the next year. Determined that the lack of agreement with the provinces would not prevent him from achieving some constitutional change, Prime Minister Trudeau decided to move ahead on a package of proposals. In order to do so he needed at least some provincial support, as well as support in the House of Commons from western Canada. He was able to secure the support of Premier William Davis (Ontario) and Premier Richard Hatfield (New Brunswick) for a patriation package. While useful, this left him with no support in Western Canada. He therefore set about trying to get the agreement of the federal NDP.

On October 1, 1980, the day before he planned to make public his intention to patriate the Constitution without the approval of the provinces, Trudeau had a lengthy conversation with Ed Broadbent. He outlined his proposals and, with some reservations and amendments, secured Broadbent's approval. The key amendment had to do with provincial control of natural resources, and was largely inserted so that the provincial sections in western Canada, and in particular Saskatchewan, could support the Trudeau initiative.

Unfortunately, Broadbent did not contact all provincial leaders prior to giving his tentative approval to the Prime Minister. As Judy Steed stated in her biography:

What he did not do, however, was leave Trudeau on hold at the last minute in order to consult his advisers and provincial NDP leaders — which later came to be seen as his major sin. "He should have said, thank you very much, I will take this under consideration and get back to you," says a former aide.¹²

Instead, he consulted with some senior members of his caucus and telephoned a number of provincial leaders, including Howard Pawley in Manitoba, Dave Barrett in British Columbia, Grant Notley in Alberta, and Allan Blakeney

in Saskatchewan. He received qualified support from the first three leaders, but Blakeney was undecided, for three reasons. First, he really did not want someone else negotiating for him. He believed this to be especially true since the legal issues involved were highly complex and of great importance to the province. Second, he was also bothered by the fact that the federal government seemed to want to negotiate through Broadbent, and not directly with the province. Third, he was troubled by the fact that the initiative would not have the approval of a majority of provinces. Accordingly, he called his senior advisers and asked them to be prepared for the Prime Minister's address the next day.

On October 2, 1980, Prime Minister Trudeau announced that he would patriate the Constitution, including an amending formula and a Charter of Rights and Freedoms. The next day Ed Broadbent announced that he and his party would support the initiative. This came largely as a result of the Prime Minister agreeing to support an amendment that would include an agreed-upon text covering ownership and control of natural resources, a key matter for western Canadian provincial sections, most importantly Saskatchewan. In Trudeau's mind, Broadbent's support would provide much-needed support for patriating the Constitution.

On October 7, Allan Blakeney and Pierre Trudeau spoke on the phone about the constitutional initiative. There are no recordings of the conversation but we do have the handwritten notes taken by Blakeney during the conversation.

Discussion began with what Blakeney considered to be a major point. He made it clear to the Prime Minister that he and Ed Broadbent were not acting in concert. That is, the agreement by Broadbent to support the constitutional initiative did not mean that Saskatchewan would support it. As he said in his notes, "We are far from free in accepting this package. I hope he stated that but..."¹³ Blakeney went on to say that Broadbent had called him on Wednesday and told him about the package and the approach by the Prime Minister. He reemphasized that he and Broadbent were not

in agreement. More particularly, he said, “[I am] not sure it reflects Western concerns.”¹⁴

Blakeney stated that he had looked at the package and he found that there were “problems.” In particular he outlined differences on the resources section, the amending formula — especially section 42 — and on the equalization section. He was troubled by the international proposals on resources and how the province would be accommodated within it. On section 42, regarding the use of a referendum in order to affect constitutional change, he said that he was “upset” for a number of reasons. He went on to say that he viewed referenda as “the weapon of conservatives.” He ended by saying that the inclusion of a referendum provision suggested that “provinces do not speak for the people but that the federal government does.”¹⁵

Blakeney went on to discuss problems with the equalization section, the lack of entrenchment of the Supreme Court, and matters of “Native” concern.¹⁶ Prophetically, he also noted that he thought that the process itself, “unilateral action,” was likely to extend the battle. He ended by reviewing his points with the Prime Minister.¹⁷

At this point Trudeau responded to each one of Blakeney’s points. On the matter of whether or not Ed Broadbent spoke for Allan Blakeney, the Prime Minister appears to have told the Premier that he (Trudeau) understood that Ed Broadbent was speaking for him (Blakeney).¹⁸ On the matter of natural resources the Prime Minister appears to indicate that he could be flexible with regard to some further changes. Concerning the referendum provision in the amending formula, the Prime Minister was adamant that it would be included. He was amenable to changes with regard to the equalization portion, changes to section 41, non-discrimination clauses, and some small changes to part four of the package. He did not buy Blakeney’s argument about whether or not the Senate reference case was binding. Finally, except for small changes, Trudeau indicated to Blakeney that he was not willing to go further on the resources section without some commensurate concessions on powers over the economy.¹⁹

At the end of the discussion it was clear that there were major differences in detail, as well as in substance. At one point Blakeney turned to his assistant and shook his head in disbelief, indicating the depth of the disagreement or miscommunication between the two leaders. At the end of the discussion Blakeney suggested that he would issue a statement, although it would not be definitive. He then asked the Prime Minister not to respond to Broadbent immediately; stating his belief that taking a few days to review the matter would not detract from the process. Blakeney told Trudeau that he wanted to send a few people to Ottawa to look at the proposed amendment in detail. He also indicated that he did not accept the Broadbent amendment at the time and would press further to see what could be done, and that he did not mind if Trudeau told Broadbent about their conversation. Blakeney concluded by saying that Roy Romanow and his officials would be in Ottawa by Thursday. The Prime Minister agreed to make Jean Chrétien available.²⁰

For the NDP these few days were pivotal. Blakeney was determined not to allow Broadbent to negotiate for the Saskatchewan government; he was unwilling to allow anyone else, including Broadbent, to speak for him. He believed that the federal leader and his officials did not have a good understanding of the Saskatchewan position and the detail associated with it. In short, he believed that although Broadbent had a good broad understanding of constitutional issues, he tended not to pay attention to the implications inherent in detailed constitutional change. For his part, Broadbent felt that his work in getting a natural resources section into the agreement, pending a negotiation of details, was a major concession from Trudeau and that the Saskatchewan government should not be so fussy about what he perceived to be minor drafting problems. What is absolutely clear is that neither Broadbent nor Blakeney believed that they were part of a package deal. Obviously, Broadbent had informed the Prime Minister that he felt that his provincial sections would agree with the proposal if there were some modifications, but at no point did he indicate that he could definitively speak for provincial leaders, especially Allan Blakeney. Never-

theless, the Prime Minister chose to believe that Broadbent did speak for his entire party and that the two men were attempting to “play him” by appearing to be against one another.

Thus, at the end of the conversation, while the Prime Minister agreed to have Chrétien meet with Romanow, there was little enthusiasm on the federal side, and less expectation of being able to make a deal with the Saskatchewan government:

The Prime Minister obviously felt he was in a sense being double dealt. He clearly had [been] given to understand by Broadbent, either deliberately or inadvertently, that Broadbent spoke for Premier Blakeney and for the government of Saskatchewan, and therefore was committing both of us to the process and to support the package if resources were included. When he explained that ... to the Premier, the Premier set the record straight on that particular point. But obviously the federal government felt that Saskatchewan was now about to “up the ante” on the whole process [and] that they had sent Broadbent out front to do the initial work and were now coming down to “get what they could” over and above what Broadbent had agreed to.²¹

Allan Blakeney sent Romanow, his minister and Deputy Premier; me (as Romanow’s deputy minister); and two constitutional lawyers, John Whyte and George Peacock, to Ottawa immediately. Romanow and I developed a strategy on the flight. It included putting forward one or two the small items, like equalization at first, and then outlining the more serious matters, like section 42 in the referendum provision, turning to resources, and then completing the process with a return to some of the smaller items. It should be noted that these negotiations were considered to be secret, and it was understood by Premier Blakeney that the Prime Minister would not share the negotiations directly with Ed Broadbent. Even the meeting times and places were to be of a “clandestine nature.” Upon their arrival, however, Romanow and company were told by the director of the Ottawa office, Dick Proctor, that Chrétien had already informed Broadbent of the meeting and most of the substance involved.

Romanow was quite upset by this, and decided not to contact Broadbent that night.

The meeting was set for the following morning at 10:00 a.m. Chrétien and his people arrived about 15 minutes late:

He was very cool and informed Roy that he had only an hour or so to pursue this and “Why were we there?” Roy started out by indicating that Broadbent did not speak for us again. That there were a number of things that concerned us, like equalization. He gave a short explanation of equalization and then launched immediately into section 42. Roy gave the long pitch on section 42. Chrétien responded by indicating that it was a deadlock breaking mechanism and that Canada needed a deadlock breaking mechanism. Roy pointed out the obvious difficulty with that given the fact that they could launch a referendum under section 42 at any time that they wanted, and that there was no “reciprocity” provision in that should all 10 provinces agree on something and the federal government be the one causing the deadlock.²²

It was not a good beginning.

What ensued was a back-and-forth between the two groups, attempting to clarify their differences. It was finally agreed that the lawyers should meet to discuss possible drafts. The two delegations were to reconvene again at 4:00 p.m. In the meantime Romanow, Proctor, and I met with Broadbent and gave him a full account of the meeting. Romanow was quite positive about the initial contact, which pleased Broadbent. He told him that the meeting would reconvene at 4:00 p.m.

When the two groups reconvened there was some hard discussion over the amending formula and international trade, especially surrounding what were called administrative arrangements. After about an hour Romanow and Chrétien met privately. Following that meeting Chrétien attempted to phone Trudeau but was not successful. He then suddenly left the meeting to go to a cocktail party, leaving Romanow and me in the room by ourselves.

After a short debriefing Romanow called Blakeney and described the events. He was much more pessimistic than earlier. The lawyers were to meet again at 7:00 p.m. to look at some further wording. In the meantime, Proctor, Romanow, and I went to see Broadbent at his home:

What ensued there was a very interesting discussion. Notwithstanding all of the agreement that the government of Saskatchewan was negotiating for itself now, with the federal government, Broadbent and company continue to interrupt, intervene, and insert themselves into the process. The chief insertion was around 6 p.m. when Broadbent and Trudeau spoke about the negotiations of that day. As it turns out it was a good thing that they did speak because we got a clear picture of what they thought was happening and [it] was not what we thought was happening.

Trudeau told Broadbent that Chrétien had reported that Romanow was there with no real mandate to make a deal and that Saskatchewan had [word whited out] in a number of places, and that in his opinion we were not serious. Further, that it was obvious to Chrétien that we were there simply to “portaging themselves over the weekend,” in order that Blakeney could go to the premiers meeting having said he tried to do something but was unable to do so, and therefore keep his Captain Canada image intact. Trudeau wondered what he should do at that point. He was willing to go ahead with his deal with Broadbent and announce resources in the morning. Broadbent replied by saying that he did not have the same understanding of the process. That it was obvious to him that Romanow was there with the mandate and wanted the deal. Why would he be there with lawyers and officials if he were not? It seemed silly to Broadbent for him to come with all these people if it was just window dressing. Accordingly, Broadbent asked Trudeau to wait at least until the morning on an announcement on inserting resources into the package. By then he would have spoken to Romanow.²³

After Broadbent had concluded this discussion with Trudeau there was a long discussion with Romanow about whether or not the Liberals were simply playing a game with Saskatchewan. Romanow agreed to call Broadbent in the morning before Trudeau’s 10:00 a.m. press con-

ference. The Saskatchewan group then went for dinner with their lawyers at around 10:30 p.m. After considerable discussion they concluded that there was very little to be gained from continuing the process. It seemed obvious that the federal government was unwilling to move in any substantial way on several of the key points for Saskatchewan. It was also clear to them that “Trudeau was going to win either way.”²⁴ If he went ahead with including a natural resources section he would probably get Broadbent’s support. If Broadbent decided not to support him, after the offer of the natural resources section, Trudeau would appear to be reasonable to the Canadian public and have succeeded in badly splitting the NDP.

The next morning Romanow and Chrétien had a short discussion in which Chrétien said that there was not much more to discuss, that he had the Saskatchewan drafts, and would call later if Romanow was still in town. Romanow then called Broadbent to say that there might be another meeting but that in any case Trudeau should go ahead with his press conference. He also urged Broadbent to tell the Prime Minister that Chrétien should be instructed to negotiate in good faith. At this point Broadbent spoke one more time with the Prime Minister. The Saskatchewan delegation waited for the outcome:

We then sat 15 anxious minutes waiting while Broadbent and Trudeau spoke. Broadbent then called us back. Trudeau had agreed that he would delay the announcement on resources, and that he would not give it at his press conference at 10 a.m. He also agreed to send Chrétien back to negotiate in good faith one more time. However he indicated to Ed [Broadbent] that he would expect Blakeney to make an announcement before the weekend — that is before the Premiers meeting of October 14 — of support if a deal was worked out.²⁵

The Saskatchewan delegation then had a discussion about whether or not there was any chance of gaining substantial concessions from the federal government during these negotiations. At this point I proposed an alternative strategy, urging the government of Saskatchewan not to jump one way or the other right away. I pointed out that the Premier’s announcement

that he was considering the package had gone over fairly well in the province and that his meeting with Premier Hatfield would indicate that there might be some ability to develop a third camp between Trudeau on the one side and Lougheed²⁶ on the other.

I therefore told Roy I thought the strategy should be one whereby we simply continued consideration, that [when] the Premier and Hatfield met they clearly indicate to the press that there was a group or premiers who although objecting in principle to the federal action, thought that it might be made more acceptable and that we should attempt to get a positive result under what began in essence as a very negative [*sic*] divisive action.²⁷

After considerable discussion between Blakeney and Romanow on the telephone, they agreed that the result of the meeting should be that no deal had been struck between the two governments on the issue, but that this did not preclude an agreement at some future time. In essence, Trudeau and Broadbent should proceed as they saw fit.

When the two delegations met again later in the morning the atmosphere was distinctly cool. The result was that, after going through details, there were still differences.

Romanow then candidly put the case to Chrétien that Saskatchewan's support seemed to be buying the province nothing. Chrétien responded that he thought that was not the case, that Saskatchewan had in fact gotten resources, and that that should be enough. Romanow indicated that resources had already been gotten by Broadbent, and asked why Chrétien thought that this should be enough:

It was at this point that in one of those bursts of spontaneity Chrétien looked across at Roy [Romanow] and said words to the effect of, "Listen Romanow, we all know why you are here, you are here on a salvage mission, Broadbent got out front too fast, you have no cards left to play and you are willing to salvage as much as you can get," to which [Romanow] replied, "I did not think that I was here on a salvage mission, I thought I was here on a search and destroy mission"

At which point Chrétien sat back and said "well I will tell you how I will go to my Cabinet. I will go to my Cabinet and I will say, *mon ami* Romanow came to see me, he said I have a problem with the resources section on international trade. I said I agreed. We will fix that up through administrative arrangements for him. *Mon ami* Romanow came to me and he said we have a problem with linking sections 41 and 42 and I said to him I will help you out on that. My friend Romanow came to see me and said we also have a problem on this non-discrimination section and I said we will find words to accommodate that. Sounds pretty accommodating does it not?" To which I [Leeson] replied to Chretien "I thought we would say something like the following, 'We came to our friend Chrétien and we asked for some small test in trade and commerce and he said no. We came to our friend Chrétien and asked for a minor constitutional provision on international trade and he said no. We came to our friend Chrétien and said should we not have simple reciprocity, a fair mechanism in 42 so the federal and provincial governments are equal, and our friend Chrétien said no.'"

At that point we all agreed that politically we would interpret the meeting in different ways.²⁸

Both sides left the meeting at that point. Romanow telephoned Blakeney and then went to a meeting with Broadbent where he reported that there would be no deal. Broadbent was clearly upset and worried about internal problems for the NDP.²⁹

With the value of hindsight, it is not difficult to see why problems developed. For his part, Ed Broadbent had reason to feel comfortable with what he had done. The proposed constitutional changes were not entirely in line with what he would like to have seen, but they were close enough to both his beliefs and those of his party to warrant general support. As well, he had been given assurances by the Prime Minister that he would have a veto over future changes and that there could still be changes, especially to the Charter of Rights and Freedoms, that would make it even more acceptable to him and his party. Recognizing the internal strains and stresses that could cause problems within his party, especially on the matter of natural resources, he had

secured the approval of the Prime Minister for what he [Broadbent] perceived to be an acceptable resources provision. He took these changes to party leaders in western Canada, albeit without details, and got support from three of them — British Columbia, Alberta, and Manitoba. In the case of Saskatchewan, Allan Blakeney indicated that he would not accept or reject the proposal, but needed more detail before he could agree. Finally, on the matter of process, that is, moving ahead without the consent of the provinces, Broadbent had reasonable assurances that the process was entirely legal, and that polls showed the Canadian people were behind the initiative. All in all, he felt comfortable with what he was doing.

Allan Blakeney also had reason to feel comfortable with his position. While he was grateful that the federal party had initiated the process and had been successful in securing the Prime Minister's agreement on a resources section, he understood better than most that the "devil was in the details." That is, he wanted to ensure that the provision would solve the problems created by the overlap of federal and provincial jurisdictions in the area. Most importantly, he had made clear his position that agreement on a provision by the federal NDP did not constitute agreement on behalf of his provincial government. Thus, when it became clear that the Prime Minister was, rightly or wrongly, interpreting the federal NDP agreement to include agreement by Saskatchewan, he became rightly nervous.

As well, Blakeney was less comfortable with what he considered to be a moving target. That is, he understood that there would be further changes to the resolution in the future and that these might be at the request of other players. This meant that he would constantly be in the position of having to say yes or no to other groups or governments. This allowed, in his view, the federal government to have maximum flexibility and to put the government of Saskatchewan in the less enviable position of constantly being a negative player. He rightly recognized that this was a very difficult situation and could prove to be extremely uncomfortable in the future.³⁰

Finally, Blakeney was very uncomfortable with the process. He knew and understood the arguments about unilateral action and the damage that this could do to a federal state like Canada. Notwithstanding this, he was willing to accede to the process if the substance of the agreement seemed to be overwhelmingly desirable. In other words, despite the conclusion of the Prime Minister that he was unwilling to make a deal, and was playing for time, Blakeney could have been persuaded to sign on if Trudeau had made a greater effort to accommodate his concerns.

Thus, it is not difficult to see how Blakeney and Broadbent, despite obvious good will between them, might come to a difference of opinion over whether or not to sign on to the initiative. Indeed, again with the advantage of hindsight, it is clear that there was a good probability that the two would disagree.

Endnotes

- 1 Ron Graham, *The Last Act: Pierre Trudeau, the Gang of Eight, and the Fight for Canada* (Toronto: Penguin Canada, 2011) at 63. Interestingly, Mr. Kirby first noticed this quotation on a small placard which I had on my desk in Regina. We had used the quotation and the placard at the Annual Premiers' Conference in Regina in 1978.
- 2 Several good books go into much more detail on the internal discussions within the Progressive Conservative Party. See e.g. Robert Sheppard & Michael Valpy, *The National Deal: The Fight for a Canadian Constitution* (Toronto: Macmillan Canada, 1984) at 78 [Sheppard & Valpy], who devoted an entire chapter to the issue.
- 3 Regional splits were particularly difficult for the New Democratic Party, since it prided itself on being a party that championed national solutions for social and economic problems. For example, such programs as old-age pensions, unemployment insurance, Medicare, the Canada Pension Plan, and many others were considered the flagships of public policy in the party. Regional or provincial solutions to problems were generally considered to be acceptable only if it was impossible to get a national program. Hence, the establishment of Medicare in Saskatchewan

- was considered only as a precursor to a national program. For a good summary of the CCF/NDP positions on the Constitution, and the difficulties of the 1970s, see Murray Cook, "Constitutional Confusion on the Left: The NDPs Position in Canada's Constitutional Debates" (Paper delivered at the Annual Meeting of the Canadian Political Science Association, University of Manitoba, June 2004) [unpublished].
- 4 In a letter to me on August 23, 1979, Ed Broadbent asked if I could serve on this committee. On September 10, 1979, I wrote back thanking him for the invitation, pointing out that as the chief civil servant for Saskatchewan on the issue I felt it unwise to participate in a political party committee. Letter from Ed Broadbent, then Leader of the New Democratic Party, to Howard Leeson, then Deputy Minister of Intergovernmental Affairs for Saskatchewan (23 August 1979).
 - 5 *Ibid.*
 - 6 Letter from Roy Romanow, then Deputy Premier of Saskatchewan, to Ed Broadbent (3 May 1980).
 - 7 *Ibid.*
 - 8 Sheppard & Valpy, *supra* note 2 at 40.
 - 9 Letter from Bill Roberts, special assistant to Ed Broadbent, to Allan Blakeney, then Premier of Saskatchewan (7 June 1980).
 - 10 *Ibid.*
 - 11 Letter from Roy Romanow to Ed Broadbent (28 July 1980).
 - 12 Judy Steed, *Ed Broadbent: The Pursuit of Power* (Markham, ON: Penguin Canada, 1988) at 245.
 - 13 This summary and quotations are taken directly from the handwritten notes of Premier Allan Blakeney, dated 7 October 1980 [Blakeney Notes].
 - 14 *Ibid.*
 - 15 *Ibid.*
 - 16 Inclusion of the matter of Aboriginal peoples presages his later concerns in November of 1981.
 - 17 Blakeney Notes, *supra* note 13.
 - 18 This became, of course, a major matter throughout the next several months.
 - 19 Blakeney Notes, *supra* note 13.
 - 20 *Ibid.*
 - 21 Memorandum from Howard Leeson (14 October 1980) [Leeson Memo].
 - 22 *Ibid.*
 - 23 *Ibid.*
 - 24 *Ibid.*
 - 25 *Ibid.*
 - 26 Premier Peter Lougheed, of Alberta and five other Premiers had agreed to fight the federal initiative. Lougheed was generally considered to be the unofficial leader of the group.
 - 27 Leeson Memo, *supra* note 21.
 - 28 *Ibid.*
 - 29 *Ibid.*
 - 30 In the two weeks following the final patriation agreement in November of 1981, when the federal government began to suggest changes to the agreement, Blakeney's fears were certainly borne out.