

The Beginning of the End of the Gang of Eight: June 4, 1981

The meeting between Ed Broadbent and the three prairie provinces' New Democratic Party (NDP) leaders in Calgary on February 18, 1981, marked the end of attempts by the Saskatchewan government to negotiate some kind of middle ground with the federal government. A day after the meeting, Premier Allan Blakeney announced that Saskatchewan would oppose the federal resolution.

However, this did not mean that the province of Saskatchewan was immediately willing to join the other six provinces in opposing Trudeau. There remained substantial differences on several important matters between Saskatchewan and the original six provinces that had taken the federal government to court. Saskatchewan still wanted to force the federal government back to the negotiating table through some kind of pressure within or without Parliament — including an appeal to the British Labour Party in Great Britain, with whom Saskatchewan thought it might have a “special relationship.” Finally, Premier Blakeney still had not given up the idea of creating some cluster of middle provinces, including Nova Scotia which was still uncommitted, that might provide an alternative between the opposing provinces and the federal government. In other words, he still believed that there was some hope of creating a compromise or middle ground on the patriation initiative. Thus, for a period of time, Saskatchewan was alone in its opposition.

By the middle of March, however, it became apparent that the strategy was simply not going to succeed. As a result, Saskatchewan and Nova Scotia joined the other six opposing provinces to form what would be called “The Gang of Eight.”

From the beginning, the Gang of Eight was an unlikely grouping, held together primarily by their opposition to the process of the federal initiative. On the substance side, there were wide differences. British Columbia continued to emphasize issues like Senate reform, while Manitoba was primarily opposed to an entrenched charter of rights and freedoms. Alberta was involved in an intense dispute on energy pricing and was content to use the matter of the Constitution as a bargaining chip in what it considered to be the most important matter before their government. The opposing Atlantic Provinces, including Prince Edward Island, Nova Scotia, and Newfoundland, had fewer substantial concerns with the federal initiative and were largely content to follow Alberta's lead for partisan reasons.

The Québec position was more ambiguous. The other seven provinces remained uneasy about being in a coalition with the separatist government of that province. Clearly, the goals of the Parti Québécois (PQ) government were not to strengthen national unity, but rather to further the possibility that Québec could withdraw from Canada. While it was true that the PQ had suffered a serious defeat in the referendum of 1980, it was still the government of Québec and would soon be fighting a provincial election in the spring of 1981. This left the other governments open to the charge that they were aiding and abetting a separatist government in its reelection efforts. All in all, it was a very uneasy alliance.

With this background, it became even more difficult to forge a consensus among the group on what an alternative patriation package would

look like. For its part, the government of Québec wanted a minimalist package with patriation and possibly an amending formula. They were intent on ensuring that the Trudeau initiative would be the focus of the provincial election campaign in March and April. A provincial alternative package would not only be difficult to achieve but could divert attention away from the perceived high-handedness of the Trudeau government in Ottawa.

Thus, Québec entered the negotiations about a consensus package with two important goals. The first, and most important, was to delay any package until after the provincial election. The second, depending on the outcome of the election, was to ensure that any provincial initiative did not frustrate the long term goals of the nationalist movement in Québec. This was a tricky balancing act, but the Lévesque government was quite successful in both objectives.

It was not an easy path, however, as Sheppard and Valpy said in their book:

Having Blakeney and Buchanan as part of the group added new momentum but also disrupted the understandings that have been formed, since they, along with Bennett, represented a kind of soft center, more willing to compromise than the others. As the only NDP government present, Saskatchewan was at pains to march to its own tune, so the alliance became fraught with further strains and jealousies. Blakeney's pan-Canadianism and Romanow's media star status were irksome to some of the eight's entourage; since the Regina bureaucracy was one of the best in the country, Blakeney and his staff generally came to meetings with their homework done, and a batch of new proposals up their sleeves (the latter was a particular irritant to Québec). In the hotel corridor throughout the summer following their re-election, Québec's Morin and Claude Charon were quietly denouncing Saskatchewan. "Last on, first off," they told reporters privately.¹

During late February and throughout most of March, ministers and officials from the eight provinces attempted to forge an alternative package. When it became apparent that Alberta was in favour of the tactic, Québec was forced to

negotiate, despite being involved in an election campaign.

For Québec, one of the major stumbling blocks was the amending formula. Along with Ontario, Québec had acquired a veto status among the various proposals for amending formulae during the previous several decades. That is, no amendment to the Canadian Constitution could take place without the agreement of the province of Québec. On this matter, Trudeau and Lévesque agreed. However, the Alberta government had put forward a new amending formula, originally called the Vancouver consensus, now called the Alberta formula, which did away with regional vetoes. This formula had two major aspects. First, it recognized the formal equality of provinces in Canada. Second, it allowed provinces to opt out of constitutional amendments which infringed or trespassed upon their jurisdiction. Thus, while the veto would be lost to all provinces, it was to be replaced with the right to opt out of any amendment which would alter the federal-provincial distribution of power.² For Québec, agreeing to this formula meant giving up the traditional position adopted by all political parties in the province that Québec should have a veto over all constitutional change. The perception of many in the Lévesque government was that to agree to anything else would be seen as a betrayal and, therefore, the Alberta formula should be rejected. Others, including Claude Morin, the chief ministerial negotiator for the province, maintained that this stance would provide a needed tactical advantage over the Trudeau government. The problem was finally resolved, temporarily, in late March.

Several meetings of ministers and officials of the dissenting eight provinces were held in March, but the principal meeting was in Winnipeg on 24 March 1981. At that meeting ministers agreed to a variation of the Alberta opting out formula which included a provision for full fiscal compensation to any province which opted out of a constitutional amendment. Saskatchewan and British Columbia both argued that the provision in the formula which permitted provinces to opt out from these amendments "affecting" provincial rights

was too broad. The discussions produced a variation of this feature by limiting the opt-out to only those amendments which derogated from provincial rights. As well, Saskatchewan and British Columbia convinced the others to insert a provision that opting out required a two thirds vote of the legislature. Several of the provinces, including Newfoundland, Manitoba, and Alberta, hesitated at the two thirds majority provision, but all, including Québec, finally agreed. (Québec was represented only by an official since the government was in the midst of a general provincial election.) These arrangements were confirmed in a conference telephone call amongst the premiers on 30 March 1981.³

Whether or not the provinces should go beyond patriation and an amending formula was another matter of contention. Several provinces, most notably British Columbia and Saskatchewan, recommended several options for handling the “charter issue.” The federal charter of rights and freedoms had become extremely popular with several key interest groups and with Canadians in general. By restricting themselves simply to patriation and an amending formula, the dissenting provinces were left open to potentially damaging criticism.

The difficulty was that although all of the eight provinces recognized the tactical problem posed by the Charter, there was little support, especially for the Trudeau version, among the eight. In particular, Manitoba and Québec were vigorously opposed, while other provinces like Saskatchewan, wanted a substantially different version of a charter. Therefore, the eight provinces initially chose to omit any version of a charter, relegating it to “further discussion” during future negotiations. As expected, Québec was especially pleased with this decision since they viewed the charter as a centralizing agent in the Canadian Federation.⁴

Although they had agreed not to include a charter, the government of Saskatchewan was not convinced of the wisdom of this decision. They were also worried about whether or not Québec could be trusted to keep the agreement on the amending formula after the election. Therefore, the Saskatchewan bureaucrats produced several

“fallback” variations on both issues for Premier Blakeney. Saskatchewan continued to believe that if the alternative patriation package was to be credible, it would need to include some kind of “charter alternative.” An internal document outlined the possible alternatives.

The first alternative would be to say that the provinces were only willing to proceed with patriation and an amending formula at this time. A charter could be considered at a later date. “Indeed, it could even be the first item on the agenda for the three-year post patriation negotiation period.”⁵ The second alternative was to agree to proceed now with a charter that would apply only to the federal government and its agencies. “This procedure was proposed by the federal government itself in 1978.”⁶ The third alternative was more complex. It was outlined in an internal briefing note to the Premier in early April of 1981.

We would be willing to explore various techniques that might be used to allow a full-blown charter to go ahead as part of the patriation exercise. Possible techniques might include: opting in; opting out; the addition of a non obstante clause; a provision that would exempt existing laws from the charter. One suggestion along these lines came from Gordon Robertson; the charter would not take effect for four years, during which period provinces could choose to opt out by legislative resolution.⁷

The fourth alternative was to agree to a limited charter immediately, with fundamental freedoms and democratic rights only, and negotiate the rest after patriation. A sub-alternative to this approach was to split the charter into two parts, with fundamental freedoms and democratic rights binding on all governments and the rest subject to opt in, opt out, or non obstante.

The fifth alternative was to agree to Trudeau’s charter “holus bolus” if he accepted the amending formula put forward by the Gang of Eight. Finally, the sixth alternative was to agree to Trudeau’s charter in the patriation exercise but only as part of a broader constitutional reform which might include changes to the national institutions and division of powers.⁸

While all of these alternatives were interesting, the Premier and his advisers were not convinced that any of them were possible. In an internal memo of April 10, various decision options were outlined for various scenarios, including the charter. Number 5 was entitled “How to handle the Charter Issue.”⁹

Recommendation: try to convince others of need [sic] to reach some accommodation (probably on [sic] basis of option three or four as outlined in attachment five, charter of rights — options). *If unsuccessful, stick with Alberta.* (Emphasis mine)

“Sticking with Alberta,” was clearly a touchstone of Saskatchewan’s approach at this meeting. The Blakeney government had few close allies among the other opposing provinces. Indeed, as noted above, Québec considered Saskatchewan to be an unreliable participant. In practical terms, this meant that if Saskatchewan was to be successful on any particular issue it would almost always require Alberta’s support.

A Brand-New Game

The re-election of the Parti Québécois in the April 14 election was a stunning political turnaround. Only a year earlier, it looked as if the Liberal Party, under the leadership of Claude Ryan, would win the election handily. Indeed, most senior politicians in Canada, including Allan Blakeney, were looking forward to having a federalist as premier of the province. For his part, Blakeney had worked hard to develop a personal relationship with Mr. Ryan. There were many similarities between the two leaders: they were both considered cerebral, did not suffer fools gladly, and generally were not thought to be “natural politicians.” In 1980, when the two met in Québec city — a meeting at which I was present — it was thought that there would be considerable high-level discussion about the constitution and the state of Canadian politics. There was some of that, but interestingly the majority the time was spent on the mundane matters that faced provincial political leaders, such as by-elections, speeches, and “low-level” political matters. Both leaders were animated and quite

friendly in the discussion. Unfortunately for Premier Blakeney, Mr. Ryan was decisively defeated in the April 14 election and the provincial government was faced with having to deal with the Parti Québécois, now re-elected and in a much stronger position.

The fears that a re-elected PQ would be much more difficult to deal with were quickly borne out when the Premiers met in Ottawa on the evening of April 15. As mentioned above, during a telephone conversation between the eight premiers on March 30, 1981, all first ministers had agreed to the package including patriation and an amending formula. The meeting on the evening of the 15th was to be a formality. To be fair, Premier Lévesque had indicated over the phone that he had some minor problems with the package but nothing substantial. As it turned out, Lévesque insisted that the two-thirds provision of the amending formula be removed. In other words, a decision to opt out of a particular amendment could be triggered by a simple majority in a legislature, and not a two-thirds majority.

This provision had been considered crucial by British Columbia and Saskatchewan. Consequently, the meeting turned into a marathon bargaining session. Finally, at three in the morning, all eight premiers agreed to Lévesque’s demands. The two-thirds provision was removed.

One can only speculate on the motivations of Premier Lévesque. He may have honestly had second thoughts after March 30 or, more likely, the provision had been bothersome for him from the beginning but he was reluctant to force a showdown with the other seven provinces before the election. Bolstered by his new mandate, he and his government now felt much more confident in demanding the change. As Premier Sterling Lyon from Manitoba said afterwards, “we all knew Lévesque had a game to play. It would have been naïve to think otherwise. He would always use the caveat of sovereignty association.”¹⁰

One of Lévesque’s senior advisers, Martine Tremblay, indicated in an interview in 2011 that they had only a little room to maneuver and that the challenge was to get as much as was

possible for Québec without rupturing the common front.¹¹ Claude Morin, his Minister of inter-governmental affairs, said, “the truth — and the problem — is that the Accord of April 16 was, for us, a defense mechanism and, for them, a negotiating tool... . It contained the maximum concessions that Québec, given the gravity of the situation, could accept with any decency and, at the same time, the maximum dissent that the Anglophone provinces allow themselves when faced with the ‘national government of Canada.’”¹²

Most often the agreement of Québec to the April Accord has been characterized as a huge gamble for the Lévesque government. They had arguably given away the traditional veto and at the same time had agreed, through the provisions of the new amending formula, that all provinces were “equal.” For his part, the Prime Minister argued that the amending formula was unacceptable because it would allow “incremental separatism” in the future.¹³

However characterized, the impact of Lévesque’s late-night demands on the dissenting provinces was dramatic. What should have been a positive meeting was immediately transformed into a rather surly, uninspiring gathering. It became quite clear to the other seven provinces that Québec would be operating from a position of political strength and that their willingness to compromise with either the other members of their own group or with the federal government was going to be minimal. The stage was set for a slow-motion breakup of the Gang of Eight.

For its part, the Saskatchewan delegation left the meeting feeling quite discouraged. As expected, the federal government quickly denounced the Accord for all of the reasons that Saskatchewan had outlined to the other members of the group. In particular, the Prime Minister pointed out that there was no charter of rights and freedoms, and an amending formula which would be largely unworkable and lead to incremental separatism. Further, there was no guarantee that there would be progress on any of the other constitutional matters that required attention. As expected, he rejected it out of hand.

In real terms, the Accord had little impact on the Canadian public. Despite some advertising and positive statements by most of the provincial governments involved, Canadians remained largely ignorant of the proposal. In other words, had other events not transpired, including most importantly the Supreme Court decision, there is little to suggest that the dissenting provinces could have succeeded in selling their package as an alternative to what the federal government was pushing through Parliament.

The real impact, as noted above, was in the impact of the meeting and the agreement on the dissenting provinces.

Forging Ahead

The months after April 16, and before the Supreme Court decision, were generally quiet on the matter of patriation. Despite the near-fiasco of the April 16 meeting, the Gang of Eight continued to be united in their opposition to the federal initiative. Therefore, the ministers responsible for the Constitution decided to meet on June 4, 1981 in Winnipeg. This meeting was called to assess the various initiatives underway in Great Britain and to attempt to devise a strategy to deal with an impending Supreme Court decision. For the most part, little has been written about this meeting. At the time, it was not considered to be very important. However, I consider it to have been crucial.

The meeting was held in the legislature building in Winnipeg. All eight governments were represented at the ministerial level and had with them their most senior civil servants and advisers on constitutional matters. At the time, the government of Manitoba was still chairing the Annual Premiers Conference and so was the *de facto* chair of all of the provinces until the next provincial Premiers’ meeting took place in August in British Columbia. This meant that Manitoba chaired the meetings of the Gang of Eight as well.¹⁴

The meeting was called to order at around 10 a.m. on the morning of June 4, 1981. The agenda was approved, including: a discussion about the

Supreme Court decision and possible reaction by various governments; the petition being prepared for submission to the British Parliament; polling on the subject of the Constitution; and, reports on activities by various provinces in Great Britain as they sought to convince the British Parliament to reject the Trudeau patriation package. However, despite the formal agenda, most of the discussion was about how to react to possible variations of a Supreme Court decision.

The meeting opened on the subject of the Supreme Court decision itself. Speaking first, the Québec minister said that he had originally been quite pessimistic about the decision but was now cautiously optimistic. The Alberta minister responded by saying that there were more provincially oriented judges during the hearings than he had expected. He also indicated that Alberta would continue to oppose the federal patriation plan regardless of the decision of the Supreme Court. Québec then reiterated that position, affirming that it would continue its vigorous opposition to the federal plan. Mr. Morin, the Minister of Intergovernmental Affairs for Québec, also indicated that his government had been re-elected in large part because it had opposed the Trudeau effort. His tone and enthusiasm prompted me to write a comment in my notes that this sounded a lot like PQ propaganda. He went on to reveal that they thought the main field of battle would be in London, although they would fight on in Québec and Canada as well. He concluded by saying that there would be a special committee of ministers set up in Québec on this matter in the next weeks.

Once again, his tone was quite enthusiastic.¹⁵

The Prince Edward Island Minister was quite a bit more subdued and reported that they were not wedded to any Ottawa line. He said that it was difficult for Islanders to understand why this was important but that he was making progress on the matter. He said, "We can't be too preoccupied with it."¹⁶ He went on to say, "[we] must play our cards correctly. [We] cannot fight them on the beaches. People believe that the Supreme Court will decide."¹⁷ He concluded by saying that they would go to London to help with resistance to patriation but that they would shift gears

depending on the Supreme Court decision. If it was a narrow decision, such as a 5/4 split, they would fight. However, if it was a 6/3 decision, they probably would not go to London. The PEI Minister stood in marked contrast to the enthusiasm of Québec and even Alberta.

The Minister from British Columbia, Garde Gardom, was more pessimistic about the Supreme Court decision. He indicated that he thought that the provinces had to gear up for loss and that any Supreme Court win for the feds would provide the federal government with a mandate to proceed. In his opinion, there would be a split decision against provinces. He also wondered what Joe Clark, leader of the official opposition in the House of Commons, would do if there was a split decision and a strong *obiter* about whether or not the federal government should proceed. He concluded by saying "if we are going to London on a split decision we must have public opinion behind us." He also indicated that the provinces should try to command the national stage. I indicated in my notes that I thought this was a fairly tough yet well-thought-out position for British Columbia. Gardom concluded by noting that 1981 was 50 years after the passage of the *Statute of Westminster* and that he wanted to see what was in the judgment before making any final decision about what British Columbia would do.

Interestingly, BC, which would become the chair of the provinces in August, seemed to be much more pessimistic than Québec about the decision. They also seemed to be quite pragmatic about what could and could not be done in the face of a Supreme Court decision.

The Québec Minister intervened again to say that if the decision came down before August, Sterling Lyon should go to Ottawa and reply on behalf of all of the provinces. He also recommended that the premiers hold a conference call on that day and that there should be a draft statement for each scenario. He concluded by recommending that Manitoba arrange with the court for a four-day notice on the release of the judgment. He went on to say that if the judgment came down during the legislative session that his government would adjourn and then reassemble

the legislature for a “spectacular” which probably meant a special session of the Québec legislature, with a specific resolution about the judgment itself.¹⁸

At this point, Saskatchewan intervened for the first time. Mr. Romanow asked the minister from Québec if the people of Québec were not tired of the Constitution. Morin replied that there was some fatigue on the issue, but also said, “we will fight the matter here (in Québec), I will try to change opinions.” The other minister for Québec, Claude Charron intervened vigorously. He pointed out that if the federal initiative went through it would have a profound impact on Québec. “If the charter is accepted the government of Québec’s powers will be diminished. They will be less than in 1867. Do you accept that Québec should be less than it was in 1867?” Once again, it was a very hard line.

Claude Morin then went on to say “we are going to London, even if we are alone. We will not go to a federal provincial conference if it is called. *We will never accept it (emphasis mine).* [The federal patriation plan]”¹⁹

The British Columbia Minister then asked, “will you return to Sovereignty Association?”

The Québec Ministers replied, “Not right away, but later. Suppose no other province supports us. We will go it alone. We will spend money etc. We knew that we would win the election. But now we know for sure that it was PET’s [Pierre Trudeau’s] name that changed it [the election result].”

The other delegations were again quiet, being caught off guard by the candour of the Québec Minister. In particular, his statements raised the question for us as to whether or not Québec would ever accept any constitutional change.²⁰

The ministers continued their discussion of four items. First, they agreed that they would try to get four days advance notice of the decision from the Supreme Court of Canada. Second, if they did get notice from the Court, they agreed that there ought to be a conference call among the premiers. Third, on the day of the decision they agreed that there ought to be a committee

of officials in Ottawa. Finally, there was a suggestion that Sterling Lyon should go to Ottawa and represent the premiers on the day of the decision. There was some reluctance in accepting this suggestion. Alberta did not think it necessary that anyone go to Ottawa. Manitoba also said that their inclination was to stay home.

Roy Romanow reiterated that any statement on behalf of the provinces was important and that there might have to be a serious discussion ahead of any statement by Sterling Lyon.

Québec agreed. They then went on to discuss the possibility of a provincial win before the court and the reaction by the federal government. “I agree.” said Mr. Morin. “There can be two reactions to a provincial win. The federal government could propose further discussions, or they could propose a conference with Trudeau. At that conference they could say, ‘get rid of Québec.’”

Claude Morin again warned the group against allowing the federal government to divide them. “This will be their best opportunity to get rid of Québec. Do not be so kind or naïve as to give him a platform.”

Mr. Romanow responded, “why do not we just put forward the Accord at a conference?”

Claude Morin replied, “he will use it in discussion. Two years later we will get another *coup de force*. We should not provide him with the platform.”

Romanow asked, “but how do we talk to a 5/4 decision?”

At this point, British Columbia intervened to inquire about the position of Ontario in the case of a narrow federal win. Mr. Gardom speculated that Ontario might not continue to support the effort. Once again, Québec indicated that, regardless of the decision, they would be going to London.

Garde Gardom asked, “I want to know if we are going to London regardless of the decision?” The Manitoba Minister responded, “we need to see the judgment.” The ministers then reverted to discussion about the previous agreement that

they seek notice of the impending decision, set up a committee of officials, and agree on a provincial response.

This was followed by a discussion about what political actions might take place in response to the court decision. The Newfoundland Minister indicated that it would be difficult not to go to a conference after a 5/4 decision.

Claude Morin reiterated, “another conference is a trap! He will use it to make us look bad.”

Roy Romanow, returning to an earlier theme, suggested, “why don’t we just put forward the Accord. Why don’t we use the Accord at a conference?”

“He has no intention of honouring the Accord,” said Morin. “They will get out of it somehow.”²¹

At this point, the Québec minister became very candid. He said, “if Trudeau wins — sovereignty association wins. If he [Trudeau] has a conference and it fails ... sovereignty association wins. If he does not have a conference — we get rid of him — and sovereignty association wins.”²²

At this juncture, I leaned over to Mr. Romanow and said, “Roy, I understand how *he* wins. Ask him how *we* win.”

So, Roy pointedly asked Morin, “Claude, I understand how *you* win in all of these scenarios, but how do *we* win?”

Morin looked at Roy Romanow with a puzzled expression. It was clear that he did not understand the question. In his mind, there were only two positions: you were either for Trudeau, or you were opposed to him. It never occurred to him that there could be a different position for the rest of us.²³

At this point, the meeting adjourned for lunch. When the afternoon session reconvened, it was occupied almost entirely with the details of responding to the Supreme Court decision and discussing the roles of the various provinces in Great Britain. At the end of the meeting, the

various delegations dispersed to their home provinces with varying degrees of enthusiasm. Certainly, the delegations from British Columbia and Saskatchewan were deeply upset by the obvious intentions of Québec. In particular, they both realized that there was almost no chance of a negotiated settlement between a federal government headed by Pierre Trudeau, and a Québec provincial PQ government now firmly re-elected for four years.

Conclusion

Earlier, I described this meeting of the provincial ministers as very important, indeed critical, to the slow-motion breakup of the Gang of Eight. I remain convinced of that conclusion. In our minds, in Saskatchewan, it was abundantly clear that no compromise between Trudeau and Lévesque was possible. Each was intransigent, each was optimistic, and each of them was more interested in the battle over patriation than they were in seeking any compromise. This left little manoeuvring room for the other dissenting provinces.

After this meeting, it became apparent to us that we would have to put together a package which might satisfy one or the other side but probably not both of them. At this time, before the Supreme Court decision, there was little hope that we could avert a full-blown conflict which would reach all the way to Westminster in Great Britain. Indeed, we were very worried that this conflict had the potential to break up the country since it likely would provide the PQ government of Québec with the chance to hold another referendum, a referendum which this time might be successful.

Of course, the Supreme Court decision made it possible for all sides to return to the table. In particular it provided sufficient “heavy weather” to force the federal government back to the negotiating table in one more conference.

This was a scenario that the PQ government wished to avoid. Claude Morin accurately predicted that Québec could become isolated at such a conference. Nevertheless, it was one of the sce-

narios in which he also believed that sovereignty association could win in the next referendum.

More importantly, it became apparent to provinces like Saskatchewan that they needed to more forcefully articulate a position distinct from both Trudeau and Lévesque. This required the agreement of not only harder-line provinces like Alberta, but also provinces like Ontario which were supporting the federal government. In other words, it had to be demonstrated to both Trudeau and Lévesque that the other nine provinces mattered, that they had interests that were distinct from those two sides, and that they were willing to force one or the other side to agree with them. Unfortunately, in June 1981 there appeared to be little room for such an outcome. As we know, this became possible in November and resulted in the patriation package which was agreed to by the nine provinces, and reluctantly, the federal government, without the agreement of Québec.

Endnotes

- 1 Robert Sheppard & Michael Valpy, *The National Deal: The Fight for a Canadian* (Toronto: Macmillan Canada, 1984) at 192 [Sheppard & Valpy].
- 2 A variation of this formula is the one that was agreed to by the federal government and the nine provinces in the negotiations of November, 1981.
- 3 Roy Romanow, John Whyte & Howard Leeson, *Canada... Notwithstanding: The Making of the Constitution 1976–1982* (Toronto: Carswell/Methuen, 1984) at 130.
- 4 In this view they were probably correct. A number of Canadian scholars have written on this subject: see e.g. David Milne, *Tug Of War: Ottawa and the Provinces Under Trudeau and Mulroney* (Toronto: James Lorimer and Company, 1986) at 56.
- 5 Government of Saskatchewan, “Confidential Briefing Note — Charter of Rights — Options” (April 1981).
- 6 *Ibid.*
- 7 *Ibid.*
- 8 *Ibid.*
- 9 Internal briefing document prepared by Robert Weese (10 April 1981).
- 10 Sheppard & Valpy, *supra* note 1 at 195.
- 11 Ron Graham, *The Last Act: Pierre Trudeau, the Gang of Eight, and the Fight for Canada* (Toronto: Penguin Canada, 2011) at 108.
- 12 *Ibid* at 111.
- 13 I am not entirely in agreement with this characterization. In my opinion, the new amending formula allowed the province of Québec, and any future separatist government, to opt out of any constitutional amendment which diminished their jurisdiction, with no financial penalty whatsoever. I am more inclined to agree with those who argue that the formula allowed maximum flexibility for any future sovereigntist government, perhaps even to the extent that it could become largely de facto independent, if not independent in law. It was also in line with the Québec strategy that would allow the Québec government to “win” if the constitutional agreement went through without Québec’s agreement, or if it was frustrated and eventually died because of opposition in Canada, the PQ government could also claim victory. In other words, in any scenario the separatist government of Québec would “win.”
- 14 A complete list of the delegations is not now available. Where the identity of a minister or official is known it is inserted. Otherwise, comments are attributed to the province concerned.
- 15 I indicated in my notes at the time that I wondered if this was the PQ plan for the next run at a referendum and whether or not the Québec people would agree with that. It was clear that he and his government were still “riding high” on their election victory.
- 16 He also made the point that there was a lot more “heat” on them regarding no energy agreement and no Dree agreement.
- 17 At the time I wrote that they were obviously under pressure and probably would not stand up to that pressure in the long run. In other words, they might be open to various compromises in the future.
- 18 Once again in my notes I indicate that both the tone and substance of the Québec intervention indicated a very hard line position.
- 19 I recall specifically that there was dead silence in the room at this intervention.
- 20 That is, as I said in the note, “they are either in with the eight or they are not — they must sign with us.”
- 21 This was a critical junction in the discussion for me. As I said in my notes, it became apparent that Québec would never agree to any constitutional change. They were intent on maintaining the political fight with Trudeau. They had no intention

of agreeing to anything. I wrote in my notes, “we need to manoeuvre Québec to a point where they must reject the Accord. We must get the feds to agree to it. Then, should we set the stage for the isolation of Québec? Québec wants to get Trudeau out.”

- 22 Once again I wrote in my notes, “(they are) very candid about Trudeau and their position — they have conformed exactly to our assessment — even worse.”
- 23 I wrote in my notes after this exchange, “Québec will never agree just to the Accord — the Accord is now gone. We must now go on.”