

Berger questions new Charter of Rights



Justice Berger has long been a champion of minority rights.

The youngest appointee to the British Columbian Supreme Court in this century, Justice Thomas Berger came to the forefront of the battle for Native Peoples' rights when, in 1977, he advocated a moratorium on the building of the MacKenzie Valley Pipeline until all land claims had been settled. Justice Berger also recommended that a study, regarding the effects of the pipeline on northern native life, be implemented prior to issuing construction permits. Berger's new book, "Fragile Freedoms", looks at Canada's attempts to deal with its minorities, from the Acadians to the present-day native rights claims.

On a recent typically crisp

Toronto day Justice Berger met with Excalibur writers Berel Wetstein and Gary Cohen in his downtown hotel room. Relaxed and casual, though noticeably fatigued after several gruelling days of touring and speaking about his book and the new Canadian constitution, Berger discussed his views regarding dissent and civil liberties in Canada, and the new Charter of Rights.

You say at the end of *Fragile Freedoms* that the Constitution-making process should enable us to know ourselves. What have you learned about the Canadian people over the past few weeks?

The first ministers are our

representatives and in a sense the agreement they made provides insight into the Canadian character. It seems that the Ghost of MacKenzie King still hovers over us. Compromise is the highest principle — possibly the only principle. I thought we were a more tolerant, imaginative people than it turns out we are — in as far as the first ministers' agreement shows we are.

Why do you feel the Native Peoples were left out of the Constitution?

You would have to ask Mr. Trudeau and the premiers. The notion of making a deal — any deal — seems to have been paramount. It is possible that the prospect of release from the crisis may have overwhelmed their judgement.

You are obviously disappointed with the absence of Native Rights in the Constitution. What effect do you think this will have on the legal status of Native Land claims — particularly those of the Metis and Dents?

It doesn't help, does it? It's been a long time since John A. MacDonald washed his hands of the Metis. I thought we were finally ready to recognize the Metis as a people. The chapter in the book which deals with the Metis can help answer that question. You can quote the book, just put it in the negative. It will tell you what won't happen.

Will Quebec capitulate and sign the Constitution?

I don't know. Quebec has always had a veto and if the agreement denies Quebec a veto then I think it is unwise and unjust. If you accept the idea of duality in Canada, Quebec is entitled to a veto.

Why did you write that terrorism is not war or insurrection?

That was written in the context of the implementation of the War Measures Act in October 1970. In this instance it was not war or insurrection. Measures

taken against that terrorism were thus exaggerated. To the best of our knowledge it was about a dozen people imitating acts of terror they had read about in other countries. To treat them as an invading army or to compare them to the revolutionaries of 1837-38 was to exaggerate their importance beyond all reality.

Did the picking up of hippies in Vancouver and prostitutes in Edmonton scare Mr. Trudeau into the realization that there was a need for a Charter of Rights?

If you drove him to the wall and said was the War Measures Act necessary Mr. Trudeau might admit it was a mistake. Trudeau is one of our champions of civil liberties. His role during the Duplessis years was admirable. I think his belief in a Charter of Rights is a deeply held conviction borne of his experience as a champion of dissent. As the man who implemented the War Measures Act the two extremes of his experience gave him insight into the need for a Charter of Rights.

or can they live together?

The strand of egalitarianism that comes from France is transmitted to our own experience through the authority of the Church. The inward looking nature of society helps us to work together. Pascal said become what you are. This is true of individuals. As each society is true to itself we have something to give each other.

Do you think the Supreme Court of Canada is not adequately versed enough in human rights questions to hand down decisions as Donald Smiley, a York professor, claims?

There is much to be said on both sides. Should the ultimate guardians of minority rights be politicians or judges. Smiley says the politicians—I say the judges. It's a philosophical question on which reasonable men can differ. But there is this much common ground — the ultimate guarantee of minority rights lies in public attitudes. Politicians in Canada have never rallied to the defence of minorities under attack. Judges

"Quebec is entitled to a veto"

Why do you feel there is so much animosity towards the Native People in Western Canada?

Most Westerners are well disposed towards Native Peoples. Those who express animosity towards them are uneasy that native people are asserting themselves. It's an unsettling experience for those who are used to seeing them as passive and submissive.

Do you think Canadians are politically naive or do they just prefer order to freedom?

I don't think you can make a generalization like that. People want both order and freedom. The trick is to serve both ends.

Can the egalitarianism of French history mix with the Parliamentarianism of English history? Are they oil and water

have sometimes come to their defence. Still, the real safeguard is public acceptance of diversity.

Then can you have rights without a Charter?

A charter can offer minorities worthwhile ground to defend — they can take a stand. Yet, if we had a thoroughly enlightened nation we wouldn't need a charter. But I don't think we'll ever have that situation without a charter.

Are you distressed by the amending formula in the Constitution?

Yes. It should have given Quebec a veto. If British Columbia were a province of six million Anglophones in a nation of twenty-four million Francophones I'd insist upon a veto for my province.

Lawyer defends Kent Commission

Ian Bailey

Simple bottom-line accounting is the only way a conglomerate judges its newspaper interests. This seems to be the key idea expressed in a speech delivered yesterday at Osgoode Halls Mot Court by Donald Affleck, Q.C. and Legal Counsel for the recent Royal Commission on Newspapers (Better known for the name of its chairman, Tom Kent.)

The Kent Commission was formed soon after the unexpected folding last year of the Ottawa Journal and the Winnipeg Tribune. Its purpose was, among other things, to examine the influence of corporate concentration in the Canadian Newspaper Industry. Chairman Kent, a former journalist, consequently made three recommendations. The first, that large corporations should not be allowed to own newspapers, the second that tax incentives should be instituted to increase editorial content in newspapers. The third and most contentious point was that a government agency should be created to monitor newspapers.

In his speech, Affleck expressed a government concern over concentration ownership in Canadian newspapers. He pointed to the newspaper trend

of the eighties as, a greater concentration in fewer hands.

In explaining the government's concern, the Queen's Counsel attorney said that newspapers in this country have evolved into profit-making enterprises. Two paper rivalry, which he saw as valuable, has been destroyed due to a lack of advertising dollars caused by powerful competition from the electronic media. Affleck's concern with concentration and profit stemmed from a belief that financial success is no a guarantee of newspaper quality. Quality does not improve revenue, he said.

In reference to the controversial conclusions of the Kent Commission Affleck cited the Commission's suggestion of the creation of a Press Rights Panel with advisory powers along the lines of the Human Rights Commission. He also mentioned the recommendation of subsidies for the creation of competition.

Speaking in legal-like yet committed tone, Affleck spoke to the audience of law students about the vitriolic response of Canadian newspapers to the constraining recommendations. He attacked newspapers for chastising the Kent Commission

itself rather than the conclusions. The newspapers couldn't reveal that they didn't like the Kent Commission recommendations therefore they cited the freedom of the press, as an argument against the recommendations. This, Affleck called the Big Lie. He went on to point out that the great fear of papers is that they may have to open up to the public.

In a question period following the speech, Affleck conceded that the public might harbour mistrust over government intervention in the newspaper industry but promised legislative safeguards to prevent government tampering with the press. Affleck said that the public does care about the issue and cited public difficulty in getting letters published in the Globe and Mail on the topic of the Kent Commission. Referring to the Combines Act and its influence in the area of newspaper concentration, Affleck highlighted government fears that Lord Thompson of Fleet, who owns 150 North American newspapers as well as Simpsons and the Bay, will buy out the Southam chain and thus control 90% of English language newspapers.

Sculpture theft senseless

Gary Cohen

On Wednesday, October 27, sometime after 10:30 p.m., a steel sculpture in the Fine Arts Building was vandalized and overturned in what appears to be the work of a group of campus rowdies.

According to the artist, Rachel Rotenberg, the heavy sculpture was dragged through the sculpture and dance studios before being overturned. Four hand-made wheels on which the piece stood, each approximately 34 inches in diameter, were then "bashed off" and stolen.

"The wheels are hand-made and not perfect," says an exasperated Rotenberg. "They wouldn't be useful for anything else."

"The sculpture is sitting on its side right now and it will take about a week's work to replace the wheels."

When the sculpture is finally repaired, Rotenberg intends to move it to safer environs.

York security was contacted at the time of the incident, but they have not been able to uncover the stolen wheels nor do they have a record of anything suspicious happening on the evening of the vandalism. There are no known

suspects.

Rotenberg is certain that the attack on her sculpture was carried out by a group of people. "It had to be more than one person," she says. "The sculpture is too heavy for one person to move that distance."

Rotenberg hopes that the wheels were discarded and may turn up somewhere on campus. The Fine Arts Building and its scrap metal collection have been thoroughly searched, but to no avail. As far as Rotenberg is concerned, "it would be wonderful to find anyone of them."

If anyone has any information concerning the stolen wheels they can reach Rotenberg through Robert Bauer in the sculpture studio of the Fine Arts Building.

