

Premier Wall and Senator Beyak have dared to do what others won't. They deserve our praise.

by Conrad Black



It is a pleasure to be able to commend two prominent Canadian public office-holders; the impulse to congratulate people in government doesn't take hold of me too often or tenaciously, but it has gripped me this week. Saskatchewan premier Brad Wall and Ontario senator Lynn Beyak have earned the gratitude of all Canadians by the quality of their public service. Premier Wall invoked, for only the fifth time, the Notwithstanding Clause, by which governments can vacate court rulings, especially the provincial governments in matters of

property and civil rights. Under section 92 of the British North America Act of 1867 these were a provincial jurisdiction, and they remain so under the Constitution Act of 1981.

It was Pierre Trudeau's fear in 1982, shared by many, including me, that provincial governments would make a habit of utilizing this clause to turn the Charter of Rights and Freedoms into a meaningless recitation of platitudes, subject to constant infringement by provincial legislatures. This fear appeared to be justified when Robert Bourassa effectively scuttled the Meech Lake Accord, by which Quebec would have subscribed to an amended version of Trudeau's Constitution Act, when Bourassa invoked the Notwithstanding Clause to vacate the Supreme Court of Canada's vacation of the Quebec statute requiring unilingual French commercial signs, in 1988.

Pierre Trudeau feared the provinces would use the notwithstanding clause to turn the Charter into a meaningless recitation of platitudes. But the result has been the exact reverse of what was feared.

That clause was also invoked against same-sex marriages in Alberta in 2000 (ineffectively, as it is a federal matter), but apart from those occasions, has not really been employed to alter the application of the Charter. The result has been the exact reverse of what was widely feared. Pierre Trudeau devised the Charter of Rights and Freedoms as a useful assertion of acquired individual rights, supplementing common law recognition, but also as a method of knocking Quebec separatists off balance by demonstrating the vocation of the federal government to safeguard personal freedom, and by highlighting the exaltation of human rights over what he represented, with some reason, as the rather squalid dispute between Quebec and Ottawa over the allocation of governmental powers.

Instead of being a constant method of obstructive provincial legislators frustrating the liberative purposes of the Charter of Rights and Freedoms of 1982, the Notwithstanding Clause (Section 33) has been an unused appendix that has flared up rarely, while the Charter has been seized by judges at every level to redefine legislation according to their own socio-political whims and preferences. The right to legislate has been usurped by judges while the provincial legislatures and federal Parliament have sat, mute and inert, reduced to irrelevant talking shops in many fields while judges have rewritten the law from whole cloth drawn from their often idiosyncratic imaginations. The high court of Parliament has abdicated, like the Supreme Soviet of the late Union of Soviet Socialist Republics, while tinkering judges run riot ignoring and reformulating whatever elected legislators may have intended. It is a shambles, and more seriously for a legal system, it is illegitimate. Ultimately, the people must rule, through elected officials. And ultimately, legislators make and enact laws, and courts interpret them with reasonable regard to what was intended by the legislators.

Having struck this blow, Premier Wall should really break loose and get rid of the Supreme Court's insane decision in 2015 that Saskatchewan's legal prohibition of strikes is unconstitutional.

In Saskatchewan, the Court of Queen's Bench had determined that the provincial government could not fund non-Roman Catholic students attending a Roman Catholic school, a matter that arose because of the closing of a public school in the village of Theodore. In practice, this cross-sectarian attendance is not uncommon in many school districts throughout Canada (and the United States), because the separate school system generally has a more traditional curriculum and method and is less prone to the work-to-rule sloppiness of the more heavily unionized state systems, where educational standards have often deteriorated. The court ruling was nonsense, as the

rights claimed for the separate system are constitutionally guaranteed and the governments are not in the business of determining the religion of schoolchildren, as long as school taxes are paid according to parents' professed sectarian preferences. If effected, the court decision would have required that 42 Theodore children make the daily excursion to another town 17 kilometres away.

Having struck this blow, Premier Wall should really break loose and get rid of the Supreme Court's insane decision in 2015 that Saskatchewan's legal prohibition of strikes in deemed essential public service occupations is unconstitutional. My dear friend Justice Rosie Abella, who arrived at the high court 13 years ago slightly stooped from carrying water on both shoulders for the Ontario Federation of Labour for the previous 20 years, convinced a majority of the court that the Saskatchewan law violated the Charter's guarantee of freedom of association. This is absurd, and now that he is in the habit, Wall would do all governments in Canada a favour by hitting that one out of the park too. The bench is wildly out of control and the federal government, which has never invoked the Notwithstanding Clause, has suffered a greater usurpation of prerogatives than any other jurisdiction in the country.



In a general way, I have commented favourably before in this space on Sen. Beyak's remarks to the Senate on March 7 about native residential schools and the Truth and Reconciliation Commission. She was widely reviled for her address. Fortunately, in recent days, the tide seems to have turned and many, including many native leaders, have come to her defence. Including a subsequent comment, she made seven principal points. These were that fewer than a third of aboriginal children attended residential schools while they were operating; that very few of the 150,000 who did so were wrenched from their families, many of which were nomadic and destitute; that we should revisit the Trudeau-Chrétien white paper of 1969; that changing the name of the Langevin Block in Ottawa because of H.-L. Langevin's minor role in the residential schools is nonsense; that the financial compensation paid to many who attended those schools obliges some of them to present a grim recollection of the schools; and that there should be a "national audit on every single dollar coming and going out of the indigenous file," and a referendum among all indigenous people aged 12 and over, about what their own ambitions for the future are. (The Trudeau-Chrétien white paper recommended a one-time compensation payment to every native person and the exchange of their

native status for normal citizenship.) All of Sen. Beyak's proposals are reasonable, well-informed, and constructively intended. (Langevin was John A. Macdonald's patronage-minded minister of public works and singling him out in this way is outrageous.)

She praised aspects of the Truth and Reconciliation Commission report and made clear her intimate knowledge of the subject and profound empathy with the native people. For her compassionate and perceptive insights, Sen. Beyak was thrown off the Senate Aboriginal Peoples' Committee by her own party (Conservatives), and NDP MP Romeo Saganash said that Sen. Beyak's words were "like saying 'Well there are some good sides to what Hitler did to the Jewish community.'" (As a residential school student, Saganash got a trip with his school hockey team to play in a tournament in Switzerland. Nazi death camps didn't do that.) In fact, Sen. Beyak has shown why we have a Senate and why we should keep one, but appoint a larger number of conscientious and expert people in a range of public policy areas, to invest Parliament with more talent and greater integrity. We should be grateful to have such people as Brad Wall and Lynn Beyak in the public life of the country.

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