

Patronage and the Scrutiny of Appointments: A Round Table

This is an edited version of the third session of the 11th CPA Regional Seminar in Charlottetown in October 1986. The lead-off speakers were Richard Treleavan, Deputy Speaker of Ontario and Charles Birt MLA of Manitoba. An audio cassette of the entire session is available.

Richard Treleavan: Patronage, of course, is wider than just the scrutiny of appointments by legislatures but I would like to restrict my comments to this aspect of the subject. In Ontario, we had forty-two years of government by the same party and appointments in the public sector just tended to go along without any internal review. When the Liberals and the NDP formed their accord and came to office in 1985 part of their agreement was that there would be a review of appointments in the public sector. A committee of the Assembly looked into the matter and I would like to review with you its recent report.

Our mandate was to examine and report on the methods by which appointments should be made to Agencies, Boards and Commission to which the Lieutenant Governor-in-Council makes some or all the appointments, and all corporations in which the Crown in right of Ontario is a majority shareholder.

The proliferation of agencies, boards and commissions (I will call them ABC's) is beyond accurate count and raises serious issues of accountability and control. In reviewing the prerogative power of appointment, the Committee made no recommendation to change or abrogate the right of the government of the day to make appointments to ABCs. We accepted the principle that appointments under our parliamentary system of government should be made by the government. We concluded that the legislature should have a role in the appointment process and therefore, an opportunity should be given to various standing committees to review appointments so that members could play a more active role in the appointment process than we had seen over the years.

The recommendations in our report are based on three principles the first of which is openness. Everyone who has an interest in serving on Ontario's ABCs should be able to apply for a particular position. A complete list of all Orders in Council appointments should be publicly accessible and show the qualifications for acceptance and selection. In broad terms, the Committee proposed that the Ontario public be invited to apply for public appointments.

A second principle is that the public interest is best served when qualified individuals are appointed. At the same time, we do not expect only non-partisan appointments. Those involved directly with particular political parties often have excellent qualifications and the Committee did not want to discourage their participation in the public life of Ontario.

The third principle is accountability. The constitutional role of a legislature in our parliamentary system is to ensure the accountability of government by scrutinizing its actions, policies and programs to foster the formulation of better decisions and better policies. In this context we made recommendations that will give committees the opportunity of scrutinizing Orders in Council. I underline the word *scrutinize* rather than veto.

We recommended that the Government of Ontario, create and distribute an appropriately devised application form to be used for Order in Council appointments to our ABCs. This would include some reasonable personal data, experience, and a release authorizing reasonable background checks. The application would be subject to any privacy legislation or freedom of information legislation that is available or in place at that time so that the person knows or hopes to know how far this information will be disseminated.

We called for a separate and distinct Appointments Secretariat to be created reporting to the Office of the Premier to act as a central application processing centre. There was a consensus on the Committee that heretofore all applications had gone into the Premier's office to be lost in the morass of the that office. There should be a databank to received applications for appointments and the databank should be organized in a way that would permit monitoring of a person's applications, again within the scope of any privacy legislation. This databank would keep track of the ABC's and their membership in a way that applications could be cross referenced so that some ABC and Ministry officials would be able to look into this databank and find a person whose qualifications, and experience make him ideally suited for an ABC other than the one applied for.

We recommended that when the government decides it wishes to make an appointment or when a new ABC is created, all Orders in Council, dealing with these appointments would be tabled in the House. Such Orders in Council would not take effect for 60 days and in that time, there is 30 days within which the appropriate committee can decide whether they want to review the appointment. If at the end of that 30 days, they do not review, nothing happens. But if within that first 30 days, the appropriate committee advises that it wishes to review a particular appointment, then the appointment is delayed for a further 30 days to enable the committee to look into it.

When deciding which appointments to review committees should consider the degree to which an agency is integrated with the government and the extent to which its activities impact on the general public. The great majority of appointments will never be reviewed but others would be scrutinized quite carefully. It was not anticipated that we go into the huge spectacle that characterizes many American jurisdictions which hold public hearings on television. That would be rare.

A committee tabling a report to the House with respect to a particular appointment would give no reasons and no editorializing. They would simply concur or not concur. People putting their names up for appointments to share in the public life certainly do not need editorializing on their background. Around election time governments have a habit of speeding up the appointment process so our recommendation is that the government accept as policy and practice that orderly appointments to ABCs will be made in the period leading up to an election. Once a writ is dropped, no new appointments should be made and all expiring appointments be continued automatically for three months. That way, the new government, when it comes in, can make the new appointments.

Mr. Charles Birt (Manitoba): The Ontario experience attempts to put in place a mechanism whereby you get good people to put their names forward and to sit on these various boards and panels and contribute to the public life of the province. I compliment their committee on doing a very thorough job and I do not wish to rain on their parade, so to speak. But there are several principles that I think either do not follow through to their logical conclusion or perhaps are addressing the wrong issue.

One of the concerns I see is whether the question is really accountability or interference? Where does the probing of the legislature start and where does it stop? As I see it the way this is set up, you can get the political process going right into the day-to-day nitty gritty decision making-process of government or the interpretation of governmental policies through its various agencies, whether they be labour boards, interpreting acts, or whatever. I question whether or not that should be done. I think it perhaps does not recognize this particular danger. Governments use the Order in Council process to make decisions. That is the only way they can function.

But if the principle of examining their credentials and making sure that they represent a cross-section of society, and making sure that they will bring the best judgement to their office is valid, then why not expand that policy to review the public service? Political patronage no longer stops at appointments to boards. People of a particular interest or persuasion are now being put into the civil service. The inviolate area of the public service is no longer inviolate. I think all governments, no matter what political stripe, are guilty of this. If you are going to review the public appointment process, it seems to me that there is an equally strong valid reason to bring that spotlight to bear on those political appointees who are now being hidden or put on to the public

payroll inside the civil service. Now, that is also dangerous because you are bringing the spotlight of politics into the day-to-day governing of government and quite frankly, I do not think you can have a healthy civil service if you have politicians probing into what people there have done. The key area in all of this is the report's recommendation to get the best people available and to reflect a cross-section of the society in a particular province. It asks: "Does the person appointed have the necessary qualifications, does the person have a criminal record?" Furthermore "is there a financial conflict of interest or are there other aspects of the person which would not make him or her suitable for the position?" That is the trigger mechanism that would allow the committee, to say we want to examine this particular appointee.

On the next page it says: "The committee reviewing the Order in Council appointment has the customary right to call witnesses, hold public hearings and report to the House their views within 30 days". Those two steps, as I can see it, could cause a great deal of potential harm. Let's say that we have a judge who has pronounced a decision on Dr. Henry Morgentaler and his particular activities. In Manitoba, a provincial judge can also be appointed to be an adjudicator in a human rights hearing. So let us assume the Order in Council comes through appointing this judge who has made a decision on Morgentaler, he is going to be asked to sit and adjudicate on a human rights issue. Can you imagine the uproar that is going to come on a review of his particular credentials. Some individuals in the legislature may very well want to examine the reasons for the decision on the Morgentaler or whatever case that might be.

The same thing could be done to an ordinary person who might be appointed to a labour board. You may get a position where someone's point of view, for whatever reason, is not acceptable to one or two people. You will have a public circus. Are you going to get the best people putting themselves forward to go through that sort of scrutiny? Will that scrutiny really make the system any better? I do not think we want to get that type of charade. It is the conduct of the members in the course of their activities that is really the question we are trying to address in reviewing this whole question of patronage appointments. We are trying to clean up the system, improve the spirit, the health of our system. Unless that is the attitude of the members present, I can see real danger.

When you start getting down to the renewals of say the Chairman of a Labour Board and you start questioning his earlier decisions or how he voted, this is where I get concerned about interfering with the day-to-day workings of a system. Will those people who want that reappointment start making political decisions to their masters on a particular committee? I would hope not.

The Ontario system outlines a rather elaborate method to ensure that the best people come forward. I cannot help but think that an astute political person such as someone in the Premier's office, can circumvent even this process and I question whether or not it will deal with the question of cynicism in our public life. Those are just some general comments on the Ontario experience.

Gordon Wright (Alberta): It is true that there are difficulties attendant on any process of scrutiny, difficulties concerned with malicious probing, mischief and questions and that sort of thing. But I notice Mr. Birt does not really come out with any alternative. Perhaps you do not think it is necessary to have the scrutiny. I think it is and I believe that on the whole the American experience in scrutiny of appointments is a sound one. If there is something mucky in the past of the appointee, then let it

come out, let it not be a matter for speculation; perhaps false speculation, forever in the future. If the mechanism is more perceived than real, then let that come out too. I agree it does depend a lot on the fairness of the questioners and the person in charge of the particular enquiry. But that is always so and I believe that by and large, excesses of that sort can be controlled. So I speak strongly in favour of some process of scrutiny.

That is not to say there is no place for patronage. I certainly believe there is. I believe that, if properly used, it is a necessary process to enable a new administration to be able to put into effect its program. Where proper patronage stops is something that again the public is correctly cynical about and a process such as the one under review might well have something to achieve.

Hon. David Carter (Alberta): The sheer fact that Ontario has approximately 2,500 board appointments is probably a good challenge for the rest of us to analyze the number of appointments of this nature within our jurisdictions. All too often, I think some of us do not even realize how many committees we have. I know that to be the case with regard to social services in Alberta where I did a lot of work to do over the last seven to eight years.

Not all board appointments are made in a blind manner. More often than not, depending on the type of board appointment, one can look at a general framework of resumes and individuals and try to get higher profile people from the general public who indeed are willing to serve on these kinds of boards. It is not as if there is a thundering herd of people out there who want to come and give that much time for so little money, so much frustration and so much potential abuse.

Ideally of course, a government needs time to consider a great long list of names and to have full resumés. Having said that, you know how difficult it is to get appropriate resumés on a number of people when you have these potential appointees going across your desk to be handed on to some other group to make a selection. I certainly share your frustration, the number of people that you can nominate or suggest to the cabinet for appointment if you are lucky is one in 20. You give up trying to get people appointed after the first few times.

But there is another point in all of this. Remember that even if you do make your appointments on a narrow political basis it still creates a lot of unhappiness within your own political party. What we really are into is a potential catch 22 situation. But I think a lot of that also goes back to the fact that some of us, probably all of us, have too many boards and too many appointments and above all, when you do have people who work on those committees for a while, you then come to share their frustration, because indeed for too many of them, the stipend is too low, the time involvement is too much and the frustration level is too high and what we end up doing in all too many cases is making them more cynical about the process that they indeed have been unable to really have sufficient input other than just carrying on the necessary housekeeping stuff to keep a committee going.

Mr. Chris Decker (Newfoundland): If patronage were completely abolished the legislatures would be lot duller places. As an opposition member in Newfoundland we get a big kick out of hounding ministers when they make some of those appointments which we know are purely political appointments. The defeated candidate is the big one. I represent a district in the northern part of Newfoundland. We have quite a lot of fish but we do not have any agriculture. If this world goes on for another million years, there will be no agriculture on the northern peninsula. Nothing will grow up there. But yet, one of the former defeated candidates was appointed as an agriculture specialist from the northern peninsula, and the best fun we could get out of this

was to pick the highest profile minister and ask him about agriculture in the north and watch the fellow, who knows in his own heart damn well that it was a political appointment, try to justify it.

Then there is the one about the Minister of Public Works. He said he got jobs for four in a family of five. And because he could not get the job for number five, in the next election, they all went out and voted against him. Patronage is very much a fact of life and I do not think it is always undesirable, even though I am not able to take advantage of it at this time. I am still recent enough out of the electorate to know that when the people decide to change the government, they want to change direction of the government and the 52 members in the House of Assembly in Newfoundland cannot change the direction of government, unless they change some key people. We should even consider changing Deputy Ministers. I think we should look at changing ADMs, at least we should know where our Deputy Ministers stand because they are so important as we all know in the directions that our provinces are going. If a DM is going to stop that change, I think he should be pushed aside.

We should also decide that our judiciary system is no place for political patronage. I like the American way of electing their Justices. I would even go that far. Let me give you an example. In Newfoundland, we just had an illegal strike. The leader of the NDP party appeared in the strike and of course he is going to be hauled into court as soon as there is time to get him in. Now if he is sentenced to jail, be it for a day or two months or whatever, the man is going to appeal that decision. There is a strong rumor around Newfoundland that one of the present cabinet minister is going to be appointed to the Appeal Court. What I am saying is let us not try to fool ourselves. Patronage is a fact of life. Let us designate which appointments will be which so that everybody knows the game we are playing.

Mr. Maurice Bossy (Ontario): The present Ontario government came into office at a time when the appointment issue had a high profile at the federal level. In Ontario there used to be an appointments bible. Of course there were only a few copies I believe Mr. Davis had one copy and the Clerk of the House had one copy. Not even the members of the party in power had access to that bible. So the first thing that we have done is to identify the ABCs so that any member has access to them. I have a copy in my riding office and another in my Toronto office. It shows who is appointed to what and how much they receive. That was unknown before. No one was supposed to know except the Premier, I guess, and the Clerk. The question that arose so many times was "How did you get on these boards?" You never knew when the term expired and you did not want to offend someone and ask "when is your term over because I would like to have your position." You could go to your own member and ask but he or she did not know.

Now I tell people in my riding: "If you want to know, please do not ask, I cannot remember all the positions but come to my office, look in the book. Go through the pages, see what you might be interested in. That in itself, has helped resolve a little bit of the problem.

Hon. Lloyd Crouse (House of Commons): I want all of you to know that in Atlantic Canada patronage is not a fact of life, it is a way of life. There is a difference. I believe in patronage and I believe in the scrutiny of appointments. And I learned that in 1957 when I went to Ottawa after my first election. Gordon Churchill, Minister of Industry, Trade and Commerce called me to his office and said, "Lloyd, I am sending a delegation to the United Kingdom and we want some very good people in different industrial capacities to go and represent Canada. I have a name that has

been submitted to me as one of the delegates but I would like to run it past you before I give him the appointment." I looked at the name and I said: "Gordon, did we not just change the government? Well, why would you consider this man? He is the biggest Liberal in Nova Scotia". He asked: "How do you know". I said "is that the *Who's Who* on your desk? Look in it and you will find he is so proud that he is listed right there as Liberal". And Gordon took out the book and said: "My God, you know your constituents". I said: "Well, I know that fellow where did you get his name?" He said: "From my Deputy Minister". "Well" I said "Gordon, I will give you the name of a very good Conservative to take in place of this fellow, but I said what is the Deputy Minister's name?" He said: "His name is Mitchell Sharp". I don't think I have to tell anyone in this room who Mitchell Sharp was.

Let me tell you another story about appointments. All ports where mariners come from foreign countries have a port doctor. Some enterprising Liberal decided that the port doctor should also take care of endangered seamen and a little later on thought that a fisherman is a seaman. It would be a good vote getter to make him applicable for port doctor's assistance as well. The appointment became a political plumb. No sooner was I elected when I received a call asking who am I going to appoint as port doctor. I said: "My God, I have not given any thought to that one. I had four medical doctors working for me in that 1957 campaign. So what to do? I checked first with the minister and he said "Well, I am not so sure we should make the change so quickly". I said: "You better because if we are going to have another federal election and I do not take that port decision away, I am going to be in trouble". And so he said: "Well, okay. You give me the name and we will make the appointment".

So I went to my four doctors and said: "Gentlemen, I will have to have dinner, you put your names in a hat and the name that is pulled out of the hat will receive the appointment". That name was submitted to the Minister. I found myself that Christmas at a Board of Trade dinner in Lunenburg, seated by the former port doctor who was also my wife's physician. It was a bit of an embarrassment but I said: "I understand your pay and allowance will decline a little bit. He said: "Only temporarily, Lloyd, you are a minority Parliament here in 1957. "I am assisting your appointee, turning over all my patients because I will expect him to assist me after the next election when I take them all back".

But seriously I think, that just because one is a Liberal, Conservative or NDP, should not really have the entire bearing on whether he is appointed or not. What should be the main guide, or as we say in Atlantic Canada, the light house to lead you to the proper port, should be his qualifications. If he can do the job, then he should be given very favourable consideration. Obviously my Prime Minister thinks the same way. Look at three top appointments he has made recently. One was Stephen Lewis and I do not think that anyone could consider Stephen as a Conservative. The other was a man named Dennis McDermott, Ambassador to Ireland. I am not certain that Dennis ever support the Conservative Party. And finally, a man named Ian Deans. So, obviously, our people do take the qualifications of individuals into consideration before they make appointments.

Mr. Denis Perron (Quebec): Every political party will find it necessary to make political appointments. I have no objection to the government naming a Deputy Minister or an Assistant Deputy Minister because these people are needed to give direction to the political apparatus the people have chosen. When Mr. Lévesque was Prime Minister I think he consulted, on a great number of appointments, with the Leader of the Opposition. As far as Crown Corporations are concerned my personal belief is that most appointments should be subject to a two thirds vote of the National Assembly.

Judges, I think are a special case. The government has to name judges but all political questions must be put aside. As a former Hydro-Quebec employee I know the difference between a 25 watt bulb and a 200 watt bulb. It is the same with appointments. You can imagine the danger to our judicial system if some 25 watt bulbs get appointed to the bench.

Hon. Myrna Phillips (Manitoba): What we have adopted in Manitoba over the last five years is not as structured as the process recommended by Ontario, but there are several similarities. It does not go quite as far and still reserves the right of the government to make the appointments, but what many of us found when we were first elected was that the old way of making appointments was the prerogative of certain ministers and what inevitably happened would be that they would dash into cabinet at the tail end of the meeting and wave an Order in Council and say "I want this person appointed to this board" and everyone would say "fine, if that is the person that you have picked". So, a lot of the backbenchers were getting rather perturbed with that process and felt that they did not have enough input and in some cases were not satisfied at all with some of the major appointments. The Premier set up a committee of ministers and backbenchers to take applications for appointments. We developed criteria to broaden representation of on these boards and committees and it is working much better. But I would like to speak a moment about attitudes for it is very obvious that in terms of appointments the old boys club is alive and well and that too many appointments are still being made in that fashion. If you consider that only 48% of the population is male, and if you then narrow the number of males down to the ones that are in a professional capacity, then you have a much smaller circle from which to draw. And if you then narrow that circle down to white anglo-saxon protestants and exclude all the capable ethnic male professionals, then you end up with a very small circle indeed from which to choose your "well qualified" appointments.

What we have done in Manitoba with our guidelines is try to have our boards as representative of the population as possible. Almost every board has some ethnic representation and depending on the board, usually has francophone representation. There must also be some women on it, not just a token woman. In fact, women account for 35% of all our board appointments and our goal is 50%.

Mr. John Carter (Newfoundland): Twenty years ago, when I first got involved in active politics in Newfoundland, unless you were the right political colour, not only were you not appointed to anything, you could not do business with the government. It was even difficult to do business with the firms that did business with the government unless you were the right colour. I think we agree that confidence is the key and as for the various boards that would examine potential candidates, I like to say "well, what is wrong with the opposition?" The opposition if they are worth their salt can certainly question any appointments. I think we have to insist that appointments be public, that is to say that they are not snuck in through the back door, they are not done secretly. It should be done openly and more or less above board, but the opposition is perfectly capable of scrutinizing and asking the appropriate questions and, in fact, they are delighted to do so because it gives them something to go on about.

Mr. David Warner (Ontario): If politicians are concerned about the respect that the public has for us and for our profession, then I think that a portion of that is taking the whole question of public appointments seriously. The public appointments should not be seen as simply being a tool of government, as part of the spoils of having won an election, but rather as part of those who stand for public office, attempting to ensure that the public has an

opportunity to participate in the running of their province, in the daily life running of their province.

I will give you, one example which stuck out in my mind as we went through some of our hearings. We took a look at many of the boards, agencies and commissions. We discovered they were almost predominantly white anglo-saxon, wealthy males who served on them. The one example that really struck home to me was the Royal Ontario Museum which prides itself on having an extremely fine collection of native arts and capturing the history of the native people of our province and of other parts of Canada. It had not one native person on the board of directors yet we have a very large native population in Ontario. To me that was a travesty. We found the same thing as we went through many other boards. That kind of situation helps to build cynicism among the electorate as to how open a government you are, how much you are really concerned about involving the general public in the life of the province, whether it is a library board, or a hospital board or a conservation authority or anything else.

Examples like the library board are not as likely to be scrutinized, but there is always the possibility. If, for example, a person in the community learns that someone has been proposed whom they know has been active in trying to remove Margaret Lawrence's books from the shelves of the local high school, then I assume that citizen might raise a concern and that concern then has an avenue. We can listen to that concern in the committee, if we so choose. The open process itself, makes sure that the government will be on its toes whether it is in a minority or majority situation in terms of making appointments. I think that is very healthy.

Hon. Herb Swan (Saskatchewan): I am concerned when I hear Mr. Perron say that we need a two-thirds majority to approve an appointment. You know, we only need a simple majority to elect a government. Why do we need two-third majority to appoint a civil servant.

In Saskatchewan we have a Crown corporation committee structured to review everything that happens within a Crown Corporation. If they are doing their job, they very definitely review appointments that are made. We have Public Accounts

Committees that review the expenditures of government money. They certainly take a look if there is a large pay out to any individual who has been appointed and we have a Committee of Finance in the House where all members have the opportunity for input and can question any minister on appointments to any committee. I think sometimes we come to the point almost of tying the hands of a government by having too many committees with one committee reviewing what another committee has the power to do. Eventually, you have so many road blocks in the way that a government basically cannot operate. I get concerned when I think of the delays that are now in place in government. I know there needs to be some delays. But you can overpower committees to the point where they cannot operate. I think in many cases, government now has the capability of controlling what is happening in the patronage appointments. But they are not using it.

In our legislature, I know that many times we have seen opposition members sit through Committee of Finance and not ask one question about appointments. I think they have missed their opportunity and abrogated their responsibility. So I am concerned that we should use what is in place now and I do not really find patronage a dirty word. I think there has to be some appointments by any government in order to make its ideas fly once they take the office of government. Sometimes, I think that there needs to be a complete check up at the top of the civil service, even during the life of a government. You know, if a government is in for a long time like they were in Ontario and they keep the same Deputy Ministers and Associate Deputy Ministers in all departments, the Deputies and the departments get so complacent that eventually nothing happens.

So, maybe a good shake up every four or five years is not a bad idea. I do not like to see people appointed just because their blood happens to be blue, but if you are going to be a Tory government and you do not have some blue bloods with you, then it is pretty hard to be a Tory government. I do not mean that to follow right back down to the community level of the small committee but I think it has to be at the higher levels of government if we are going to make our governments function.



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October 27-29, 1986
Charlottetown, Prince Edward Island

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