PAAC E-News

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*President's message*

## A 'woman's man' in the positive sense

*by Elaine Flis*
*PAAC President*

The surprise winner of the contest to be leader of the Liberal Party of Canada is a surprise win for the women of Canada, particularly those who have political ambitions. Stéphane Dion has many strengths. He is a champion of the environment from way, way back, and may well be the greenest Prime Ministerial candidate on the horizon. But from the perspective of Liberal women, he's an excellent choice because he has long championed the cause of women in politics.

Dion's first question as Opposition leader in the House of Commons echoed a theme from his leadership campaign. It was an assault on the Harper Conservatives for their

cutbacks in the department of Canadian Heritage that left deep wounds to the budget of Status of Women Canada. This past summer certain conservative groups including something called 'REAL Women Canada' - which on the surface makes noises like a women's equality movement, but which on a deeper level seems to favour a Betty Crocker view of women - pressed the Harper government to scrap the agency, which is a legacy of Pierre Trudeau. The Conservatives got started by amputating $5-million from the agency's $23-million budget. It was a deep cut, and a telling choice. That the new Liberal leader went after them for their anti-women cutbacks first thing off the mark in the House, is also telling.

In the larger view, the selection of Stéphane Dion as leader looks like a good step toward renewing the party and reaffirming those core Liberal beliefs that attracted people such as myself to the party in the first place. Dion has solid experience in earlier Liberal governments, yet at 51 is still fairly young. He is, I think, untainted by the recent scandals, both in the public mind and in actual fact. As a former academic he's thoughtful if not flashy, strong and knowledgeable on the environment and a longstanding advocate of equality in all its forms. He is the enemy of separatists.

Dion is a seasoned Liberal, yet his team's win over Team Rae and Team Iggy, with their backrooms full of heavy hitters from the old days of the party, speaks loudly of renewal. The party didn't pick the man with the folksiest banter or the one the media claimed had 'sex appeal.' Liberals picked a leader whose dedication to Liberal causes looks genuine to me. When Dion's campaign merged with that of Gerard Kennedy when Kennedy threw in his support, the team formed a natural combination of experience and steadiness, youth and new blood, with little baggage from the past.

The combination worked in the leadership campaign, and it looks good for the federal political scene. It *must* look good to supercritical factions in the media, since in the absence of real issues they instantly stooped to sniping at Dion for his accented English and his dual citizenship with France and Canada. His French citizenship is something he inherited from his mother. Those who don't value women are pressing him to symbolically discard it. Interesting.

In the upcoming election, which could come as early as springtime, 51 per cent of the voters will be women. Many, I think, will see the Liberal party under Dion's leadership as more welcoming to them, and to their contributions. They will be looking at some very clear and classic choices, as will all Canadians, thanks to the selection of Stéphane Dion as Liberal leader. He's a good choice.

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Now, it is my pleasure to welcome our newest members:

- Adam Chaleff-Freudenthaler, Workplace Safety & Insurance Board
- Veso Sobot, IPEX Inc.
- Allison McAleer, Canadian Health Food Association

Welcome to new members, and happy holidays to all members. Please feel free to email me at eflis@enterprisecanada.com with your input and ideas for the organization. See you in 2007!

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*PAAC Web V2.0*

## More content, service in members' area

*by Chris Churchill*
*PAAC Board Web Co-ordinator*

Internet technology is a wonderful communications tool, and PAAC is taking full advantage of it on our website. As part of our commitment to making the site useful for our members, we update its features and capabilities from time to time. And we've done it again.

The first round of updates included the ability to register on-line for events and the annual Conference, renew your membership, use the Members' Directory to make valuable connections with other PAAC members from across Canada and search the archives for past issues of PAAC e-news or to explore other helpful or interesting information.

The latest changes, just implemented, are the second phase of our efforts to provide additional content and service for our members. We've revamped the main page of the Members' Area for easier navigation and access to the added content. Did you miss Allen Gregg's Award of Distinction acceptance speech? Don't fret, now you can read the text or listen to his moving address in its entirety by downloading it from the Members Section. And soon you will also be able to find agendas and minutes from our Board Meetings so you can see how we're operating the Association on your behalf.

Don't forget to check back often to see other updates and information that will be

implemented across the entire web site. If you have any suggestions about how we can improve the site or provide more useful content, please send them along. Meanwhile, if you haven't seen the latest updates, you should go take a look. Go on, we'll wait…

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*Democracy watch:*

## The secret law

There is an aspect of Canadian democracy which many in legal circles, particularly judges, don't like to talk about because they prefer that juries not know about it. It's the legal principle of jury nullification, which means the power of a jury to refuse to apply the law in a particular case if they think the result would be unjust, or if they think the law itself is unjust. People find out about it when it figures in a front-page court case, but judges don't tell juries they have this power, and lawyers are not permitted to mention it to juries on pain of the judge's wrath. Still, jury nullification has been part of English law since those good people sloughed off Star Chamber justice and implemented the modern jury concept, and England has handed this principle down to those of us who live in the colonies.

In 15th century England, the so-called Star Chamber - possibly given that name because the ceiling was decorated with signs of the Zodiac - was where the King's Council met to decide legal matters far from the eyes and ears of the Great Unwashed. It was eventually abolished, but to this day the term Star Chamber is used to disparage any administrative process producing arbitrary rulings from on high. Today instead of Star Chamber justice we have juries, and the right to a trial by a jury of one's fellow citizens is a person's single most important right in a constitutional democracy.

That is why it was so refreshing, this past October, to see the Supreme Court of Canada slap down a lower court that did not trust a jury to do its job. The publicity surrounding the decision gave the principle of jury nullification the best news coverage it has had since Henry Morgentaler was acquitted by a jury that couldn't choke down the abortion laws of the day. This latest case was Regina v. Grant Wayne Krieger, who was charged in Alberta in 1999 for trafficking in marijuana. It was no ordinary drug case. Krieger suffers from multiple sclerosis, and has special dispensation from the courts to grow and use pot to alleviate his symptoms. He does not, however, have special dispensation to supply it to others to alleviate their symptoms. He did that on his own. You might say he's an activist. He admitted what he did, and threw himself on the mercy of a jury trial. His first jury acquitted him, but the Alberta Court of Appeal tossed the verdict and ran him through the system again in 2003. That's how his case arrived in the court of Alberta judge Paul Chrumka.

**The jury thought they had to obey**

Under the law, Krieger was guilty. The 2003 jury had no knowledge of their power of

nullification, yet two of them went to Chrumka to beg off the jury as a crisis of conscience issue because, they said, they just couldn't bring themselves to convict Krieger. Chrumka denied their request and *ordered* the jury to bring in a guilty verdict. That's the thing the Supreme Court slapped down - not the idea that a jury should be allowed to work in ignorance of their authority under the law, but the fact that the judge ordered them to convict. Which they did, like good obedient boys and girls, because they believed the judge when he said they had no choice but to obey his order. Krieger's lawyers knew better, and appealed it all the way to the Supreme Court.

The result was that rarest of written delicacies: A legal decision that is actually fun to read. There was no legal mushmouth in it, just clear talk in a few pages. None of the seven Justices dissented the ruling written by Mr. Justice Morris Fish. "Unfortunately, the trial judge usurped the jury's function," wrote Justice Fish. "He directed the jury to convict and said they were bound 'to abide by that direction.' In substance, their verdict was that of the judge; it was theirs only in form. Mr. Krieger was thereby deprived of his constitutional right to the jury trial he had chosen."

In 2003, Judge Chrumka had instructed the jury "to retire to the jury room to consider what I have said, appoint one of yourselves to be your foreperson, and then return to the court with a verdict of guilty." When the two jurors gave him attitude, Chrumka said in his court, "It is apparent that some of the members either didn't understand my direction this morning, that is that they were to return a verdict of guilty...or they refused to do so." And he added, "Once they are directed to do that it's up to them to...abide by the direction." Which is not so.

"Let me say at once that this is not a case of a slip of the tongue," wrote Mr. Justice Fish in 2006. "Nor is it a matter of assessing the impact of subtle language susceptible to different interpretations. The judge's purpose was as clear as the words he used to achieve it. He evidently considered it his duty to *order* the jury to convict and to make it plain to the jurors that they were not free to reach any other conclusion. In effect, the trial judge reduced the jury's role to a ceremonial one: He ordered the conviction and left to the jury, as a matter of form but not of substance, its delivery in open court."

The Supreme Court decision reflected a very straightforward reading of a legal point which is not at all controversial. It's something any lawyer knows, and it's not the principle of jury nullification. It's the fact that a judge cannot legally direct a jury to deliver a guilty verdict. He can direct a *not guilty* verdict, and he can set aside a legally unsupportable guilty verdict of *theirs,* but he cannot order a guilty verdict of his own. Many in legal circles were amazed that Chrumka did it anyway, and further amazed that the Alberta Court of Appeal upheld him. The Supreme Court slapped them both upside the head in Justice Fish's written decision, which is a *tour de force* of clarity, bluntness and brevity.

**A good law, yet a secret law**

In that decision, Mr. Justice Fish also touched on jury nullification, which lesser judges prefer not to see in the public prints because they worry that the average person who winds up on a jury will be too anxious to use that power, and might therefore misuse it.

Yet whether judges like it or not, although juries are obliged to apply the law they still have the power to refuse to apply it in a particular case if their consciences permit no other course. The principle goes way, way back. It was mentioned in the 1988 Henry Morgentaler decision by Judge C. J. Dickson, who quoted English magistrate Lord Mansfield from 1784: "It is the duty of the Judge, in all cases of general justice, to tell the jury how to do right, though they have it in their power to do wrong, which is a matter entirely between God and their own consciences." In Lord Mansfield's terms, 'wrong' meant contrary to the letter of the law. To a modern jury in a case like this, it is the letter of the law that might be seen as wrong, which is why the principle of jury nullification is a good thing in a democracy, where citizens have the final say. It was a good law in 1784, it was a good law in 1988, and it's a good law now.

Yet it remains largely a secret law. Juries are not informed of it. Defense lawyers are not allowed to mention it to juries. Public schools don't seem to be teaching possible future jurors the full truth of the matter. Daily news journalists write about it whenever a case like Krieger's comes along, but they're in the business of publishing news, not teaching civics lessons left untaught by educators. And since the average citizen does not study the finer points of law, most juries operate in ignorance of this important aspect of our democracy. The only cure is for more people to write about it, and encourage more people to talk about it. Would wider knowledge result in the rise of outlaw juries, making arbitrary verdicts in defiance of law? Not if most people have good sense, which is what makes the jury system work in the first place. Juries can be trusted.

Judges? They are fond of saying that ignorance of the law is no excuse for breaking it. Yet the flip side is that disapproval of the law is no excuse for keeping people ignorant of it. The full powers of a jury should be disclosed to those who serve on one, or who might yet do so. And any lower court judge who doesn't like that should address his letter of protest to the complaints department, which is located at 301 Wellington St. in Ottawa. That's the imposing white building with the tall windows and the plaque out front that says, Supreme Court of Canada - A Pillar of Canadian Democracy.

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*The Book Man*

# Long tailed marketing and short sighted politifcs

*Book Reviews by Stewart Kiff*

*The Long Tail: Why the Future of Business is Selling Less of More*

by Chris Anderson

As the editor-in-chief of *Wired* magazine, author Chris Anderson has observed the advent of the Internet and how it changed the way retail business works. His book, *The Long Tail,* started as an article for *Wired* in October of 2004 and is augmented by a very thorough and worthwhile website. Although most of us know instinctively that the Internet is rapidly changing the context of retail business, this book provides the analysis and the context to help readers understand these changes.

A long tail is the phenomenon whereby a demand curve for a retail product becomes flatter and longer, and consequently the demand for the product is better met by providing almost infinite product choices to potential customers. Consider Anderson's description of the market for retail music in the United States. Traditional retailers, even large ones like Wal-Mart, will sell only about 4,500 different titles in each store. This of course leaves a large market whose demands are unmet by this limited choice. Online retailers and providers have filled this void by providing a virtual marketplace where the customer can browse through a selection of music that no individual could consume in their lifetime. Web-based music retailer Rhapsody currently offers more than 1.5 million tracks for sale, and because it is online, Rhapsody has a virtually infinite ability to add tracks to its inventory. What it has found is that demand continues to grow as it offers more tracks. A track that ranks only 100,000th in popularity is still being downloaded some 250 times a month. The tracks from the 100,000th most popular to the 800,000th most popular still represent some 15 percent of Rhapsody's total sales. This is probably Anderson's best example of the Long Tail hypothesis: Consumers have been offered a virtually infinite number of choices and have responded positively. *The Long Tail* tells how this phenomenon is changing our consumer culture and ultimately our culture itself.

Virtually infinite consumer choice generates powerful market pressure, Anderson notes. More and more, individuals become fragmented in their interests. Therefore, to survive in the new marketplace retailers must cater to the idiosyncrasies of their clientele. Greater supply fosters even more demand, so as choices grow, so do those who appreciate them and demand even more choice. Such market pressure is a powerful force for change,

and this book explains the phenomenon in a highly readable and straightforward way.

**Highly Recommended.**

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*Dreamland: How Canada's Pretend Foreign Policy Has Undermined Sovereignty*

by Roy Rempel

In *Dreamland,* author Roy Rempel delivers a thoughtful conservative polemic on Canada's foreign policy, especially as it was practiced from 1993 by the now-departed Chrétien and Martin Liberals.

Following in the footsteps of Andrew Cohen's celebrated 2003 work, *While Canada Slept,* Rempel argues that Canada, because of its lack of investment in defense and its diffusion of scarce foreign affairs resources, has slipped from being a partner with our American allies, as it was in the heyday of Canadian defense spending in WWII and the 1950s, to being a *de facto* protectorate.

Rempel criticizes our lack of focus, particularly in our foreign affairs establishment, noting how Canada fails to support its economically vital investment in relations with the United States. He notes that only nine percent of our foreign affairs personnel serve American files, while some 75 percent of our foreign trade is with America. He contrasts this with the situation of other OECD nations like France and Germany, which combined account for only 2.5 percent of Canadian foreign trade, but whom nonetheless received roughly nine percent of foreign affairs resources.

One of Rempel's key points is that Canadian foreign policy should become much less partisan. To him, this means restructuring it more in line with the interests generated by the need to secure Canada's overwhelmingly important trade relationship with the United States.

Written before the election of the Harper Conservatives and the ramping up of the Canadian Military's combat operations in the south of Afghanistan, this book is particularly worthwhile for those who want to understand the conservative point of view driving the Harper government's foreign affairs agenda. This is a quick and easy read at just 189 pages.

**Recommended.**

PAAC member Stewart Kiff is the President of Solstice Public Affairs. He welcomes your feedback and suggestions, and can be reached at stewart@solsticecanada.ca.

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*The Web Editor*

# Birth of a notion

*by David Silburt*
*PAAC Web Editor*

> *It is just past dawn, and the streets of Ottawa are seething with people full of fear. What began as a vague whine from the direction of Parliament Hill can no longer be denied. There is a deep and terrible thrumming in the depths of the earth; a building rumble bringing with it a sense of inescapable doom. The people mill about in the streets, their pale upturned faces slack with terror, their hair stirred by a dank and ominous wind coming from the river. They know something much worse than an earthquake is about to take place - but what?*
>
> *The people are not the only ones in fear. Wave after wave of panicked animals - dogs, cats and other things, both domestic and feral, are fleeing. Fleeing, too, are the birds, and worse. A vast cloud of every buzzing thing that flies is sweeping south, away from the river, because across the border that rumble is now continuous thunder as something huge and dark rises into the sky. The thunder comes from monstrous electrical arcs between the rising land mass and the earth below. Debris falls from the mass as it rises. Cars and trucks, throwing off flashes from their windows as they fall and twist and catch the light of those vicious blue arcs, drop from shattered roads whose broken ends are now kilometers high. Trees and buildings fall from the edge as well, and so do small, flailing shapes - could those be people, falling endlessly, their thin cries lost in the thunder?*
>
> *There is no doubt: Quebec is leaving Canada, in its place a huge steaming crater filled with congealing magma. Where will it go? What will we do without it? How will we live? And who in hell is going to fill in that damned hole?*

Back to reality. Our politicians in Ottawa, who learned nothing from the Charlottetown vote, have once again managed to rouse the monster of Constitutional debate and send it lumbering across the countryside. Their latest notion is that you can have a separate nation within Canada and still have a meaningful Canada. Some like this idea, some don't. Quebec is undeniably a nation, they say. *No, it's not. Oh, yes it is. Oh, no it isn't. Is too. Is not.* There is a sticking out of tongues. A Conservative quits Cabinet. Some Liberals break ranks. Gilles Duceppe pouts because Prime Minister Harper's motion that Quebeckers are a nation within Canada pulled the rug out from under a motion Duceppe was planning, which would have said Quebec is a nation like it or lump it. Others fear the motion is a nice handy wedge for separatism, because as Michael Bliss wrote in a *National Post* article, if Quebec is a nation within Canada, is it not even more of a nation

without Canada?

Many politicians fear Quebec separatism, but how much should average Canadians fear it? Because once you set aside the clichéd and misleading expression that Quebec could "leave Canada" the reality of what will happen if Quebec declares independence is something else. In many ways, Quebec already acts like the nation it wants to be. It calls its provincial legislature a National Assembly. It has laws protecting and enforcing the use of French that would not be tolerated in any other province to protect and enforce the use of English. Anybody with eyes can see its society is distinctly different. Do these things, and other aspects of their Distinct Society, bother Canadians? Certainly. Can we get along anyway? Sure. Can we continue to get along with *La République Démocratique du Québec Libre* when it comes into existence? Why not?

Stephen Harper's motion has been called a masterstroke because it will get him federalist support in Quebec come the next election. It has been called a blunder because it fans the embers of separatism by ensuring that when you give a little, Quebec will simply demand more. The naked fact that 140 years of hair-pulling and eye-gouging has not settled Quebec's beef with Canada suggests that a motion in the House cannot settle it now. But suppose Quebec does eventually slide into "winning conditions" for yet another referendum, holds one, and the answer comes up in favour of independence? Suppose further that they have the smarts to write their declaration of independence in an English version too, using similar phrasing to the American one, thus maneuvering the U.S. into officially recognizing it? With predictable allies like France also recognizing it, Canada would be forced to do so as well. What then?

Here's what: Quebec would still be there, and we would learn to get along with it reasonably well. There would still be tourism to Quebec. We would negotiate issues, not go to war. It is in our nature to get along with our neighbours, even when there are divisive issues. This is not Iraq. There would be no tit-for-tat bombings, no ceremonial lopping off of heads. There would be no civil war, no tanks rolling into Quebec to threaten and intimidate. There would be arguments, but there would also be trade. There would be no fence topped with razor wire built along the border.

Certainly, this latest Quebec Is A Nation notion is destabilizing. Yes, it could lead to separatism. And yes, there would be unsettling changes if that happened. But no, it would not be the end of the world, so lighten up, everybody. Politicians can bicker and posture, but Quebec is not going anywhere.

## Have your say

We welcome member input, whether it's a letter to the editor, a story suggestion or a proposal for a guest column. Feel free to email your input or suggestions to us. All submissions for publication on this site are subject to approval by the Editorial Board.

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