



Interview with Rick Mantey ¹⁵⁰

Let's face it. Cabinet shuffles aren't done because the Premier has nothing better to do with the day. It's based upon performance of the Ministers, based upon how well they've performed in the House, how well they have grasped their portfolios, how well they have kept the Premier informed of what's happening on the major issues.

- Rick Mantey

Realistically, (the Meech Lake Accord) didn't have a snowball's chance in hell of passing, especially within the timeframe provided, and everyone on the federal government side should have realized that.

- Rick Mantey

I. INTRODUCTION

Under the Filmon Government, Rick Mantey worked his way up from a summer student to a researcher, from the Speaker's office to the Premier's office, and to secretary of the legislative and regulatory review committee. Specializing in the rules and procedures of the House, Rick advised the government in these areas and saw first-hand some of Manitoba's recent legislative crises unfold. Since 1999, Rick has operated his own consulting company, advising private sector clients on government relations, procedural development, legislative and regulatory development, and international relations.

A true student of government and procedure, Rick shared with us his perspective on a number of legislative crises at both the provincial and federal levels of government throughout history. He also shared his observations on the functioning of the legislature, its strengths and weaknesses, and possibilities for electoral reform.

¹⁵⁰ Interviewed by B. Schwartz and E. Melrose (28 June 2002 and 15 July 2002).

II. THE FRENCH-LANGUAGE DEBATE

Let's talk a bit about the French-language debate, the bell-ringing. What do you understand the justification of the bell-ringing to be? Was it opposition to the substance of the bill, or objection to the lack of consultation and democratic input?

Mantey: When you look at the French-language issue, you take a look at the proceedings from January and February of 1984 and you will find that it had nothing to do with the substance of the constitutional amendment per se. It had to do with the fact the government had moved closure and was effectively cutting off the debate. Realistically, the nub of the problem, at this point in time, was closure, and the inability of the government to say, "We'll let this thing be debated out until nobody can speak on anything else." They were being hit pretty hard so the government decided to invoke closure.

What would have happened if they had kept ringing the bells? At some point do you think Speaker Jim Walding would have intervened as Lloyd Francis did¹⁵¹, or do you believe this would have gone on indefinitely?

We'll never know. There were a number of options. Jim Walding, first of all, would not have intervened. I believe Jim Walding had a lot more respect for the House than to intervene. The tradition is the caucus whips come in and signify that all members are ready to vote and then the vote occurs. The second option was that of prorogation—an executive decision made by the executive council to end the session. The final option is to dissolve the legislature and call an election on it if you felt you had the support of the people. Premier Howard Pawley decided to prorogue realizing he wasn't going to get the Speaker into the House. Of the three, the only realistic option for him was prorogation.

There was no precedent in Manitoba or in the House of Commons of a Speaker turning off the bells?

No. And remember, we had just finished having the bell-ringing incident in the House of Commons on the National Energy plan, and Speaker Jeanne Sauvé

¹⁵¹ On 19 March 1984, a recorded vote was to be taken and the division bells began to ring calling members to vote. At 6:15pm, Speaker Lloyd Francis, assured that a vote could not be taken until the following day, suspended the sitting, turned off the division bells, and indicated the sitting and the division bells would resume at 9:00am the following morning. On March 20, the Conservative Opposition chastised the Speaker, claiming that "there would seem to be no provision in either the Standing Orders or Beauchesne's which would permit the Speaker unilaterally to suspend the sitting under any circumstances." See House of Commons, *Debates*, Vol. II (20 March 1984) at 2245.

did not intervene.¹⁵² They eventually came to an all-party agreement to bring the bill to a vote. So, Walding had very solid precedent from the House of Commons.

There was no tradition in Manitoba of Speaker's closure on debate either?

No. And don't forget, up until 1984, the last time we used closure was 1929, 1930. So, we have a very long history of not using closure in the province of Manitoba.

When a vote is called, who is it who turns on the bells in the legislature?

The rule is very clear that when the question is put, they do a voice vote first and the Speaker then determines in his or her mind who has won the voice vote. Under the Manitoba rules, if two members or a House leader feel the decision is incorrect or that the Speaker didn't hear the members properly, they can rise and demand a recorded vote. At this stage, the bells start ringing to call in the members.

What were the votes on which the bells were rung? Did they have to do with the French-language bill?

You have to look at the provisions of the closure motion. The provisions say that before a certain time, a minister of the crown shall rise in his or her place and shall indicate that at the next sitting of the house, debate will not be further adjourned. You give notice of that. So, the tactic of the opposition is to get through routine proceedings but block the ability of the government to get to that moment when a minister will move the closure motion. Basically what you had is that, after question period, the question was "that the House do now adjourn" and the opposition would walk out, and the Speaker would indicate he has heard from the opposition whip that the opposition does not intend to be back before the time of adjournment, so he would secure the chamber and at the regular adjournment time, he'd come back and adjourn the House until the

¹⁵² On 2 March 1982, the federal Opposition demanded a recorded vote on a motion to adjourn and then left the Chamber refusing to vote, which started division bells ringing, in order to protest against the Liberal Government's omnibus energy bill. While both House Leaders met to discuss the impasse with Speaker Jeanne Sauvé, there was an understanding that the traditions of the House would be respected and the Speaker would not be asked to intervene and order that a vote be taken. After ringing for 15 days, the division bells were turned off on March 17 when the three parties in the House negotiated an agreement. See Staff, "Tory protest blocks energy bill debate" *Globe and Mail* (3 March 1982) at A1 and M. Gibb-Clark & R. Matas, "The House goes back to work" *Globe and Mail* (18 March 1982) at A1.

next sitting day. The bell-ringing incident occurred because the opposition did not give Speaker Walding a time when they were going to be coming back into the House. What happened was Government House Leader Andy Anstett moved a motion seeking referral of the matter of bell-ringing to the Rules Committee and an interim imposition of a two hour limit on bell-ringing. On 16 February 1984, this motion was brought to a vote. It was in response to this vote that the opposition left the chamber and the bells began to ring for what would be 12 days.

If the Pawley government had been determined to pass the bill, could they have done it?

They could have processed the bill. Just re-introduce the bill—bring it back in the next session. If you are really so hot on this policy, you prorogue the house, you bring in a new session, you call a meeting of the Rules Committee, you ram through the changes you want—the limits on bell-ringing, you ram it through the House, and you do it in such a way that allows your measure to get through. But one has to weigh the political consequences of their actions.

So, the rules were changed the summer after prorogation?

Right. What happened after the bell-ringing incident is that the Rules committee of the House got together and the government decided to limit the bells and, since they had a majority on the committee, they ensured that that rule got passed.

Why would the opposition agree to give up their power of indefinite delay?

The Opposition didn't agree. This was a government measure. First they changed it to a fifteen minute limit on bell ringing, but later realized this wasn't long enough. So the next summer, they changed it to an hour, and that is what you still have today.

III. THE DEFEAT OF THE PAWLEY GOVERNMENT

The next major event we'd like to discuss is the defeat of the Pawley government in 1988. Can you give us some background as to what was taking place around that time? Was there any indication Jim Walding was going to bring down the government?

Well, Premier Howard Pawley started with a majority government—30 seats in the House. One of these, of course, was Speaker Myrna Phillips who could only vote in the case of a tie, but that still left the government with a two vote advantage. Larry Desjardins resigns prior to the third session. Now you have a

vacancy and your numbers are getting closer and closer. During the first two sessions, everything is fine. Eventually they get to the third session and all of a sudden, the vote is being taken on the budget and there's Jim Walding standing with the opposition, and given the numbers in the House, the government is able to be defeated.

So, on that day, 8 March 1988, the House is discussing the motion. The people in the legislature have no idea a few moments later, something momentous is going to happen; the government is going to be defeated. Walding votes with the opposition, jaws drop. Now what was the actual vote that caused the fall of the government?

Under Manitoba tradition, you have the main motion on the budget, and the rules allow for an amendment, and a sub-amendment. Under Manitoba practice, all three are questions of confidence. The vote Walding supported was the non-confidence amendment to the main budget motion.

Now, is the government defeated at this point?

Well, that was on the amendment—you still have to vote on the main motion. The government is defeated at the point the main motion is passed, as amended. Under Manitoba rules, each question must be put, so even though the amendment showing a lack of confidence in the government has passed, the question on the main motion must still be put—even though you know, and the Speaker knew—what was happening. The Speaker still had to put the main question. The Speaker then calls the next question—the question on the main motion—and there is a voice vote. The Speaker declares the main motion carried on that voice vote.

What is the status of the legislature when there is a defeated government?

In this scenario, you realistically have no choice but to go to the Lieutenant Governor and say to the Lieutenant Governor, I must tender my resignation. What would have occurred in the Pawley case is the cabinet would be assembled, they would pass the required orders in council, and the Premier would go to the Lieutenant Governor and say I have been defeated on a major parliamentary matter of confidence and I think an election should be called. The legislature is dissolved at the point when the Lieutenant Governor signs the Orders in Council. Basically, when you get down to a throne speech, or a budget, there really is no choice. If you don't get the support and you're defeated, you're gone. In this case, the Lieutenant Governor dissolved the legislature, on Pawley's advice, the very next day.

IV. THE MEECH LAKE ACCORD

Right away, the new government is faced with another huge issue in our legislative history and that is the Meech Lake Accord. What are some of your recollections of that series of events?

You've got to understand procedurally what happened in 1984 with the French-language issue to understand what happened when we get into the Meech Lake issue. Prior to 1984, a session is convened, the business is conducted and you prorogue, and you come back with the Throne Speech and commence a new session. In 1984, Andy Anstett takes an unusual step for Manitoba and actually adjourns the House until a time fixed by the Speaker at the request of the government. If you look at the last day's proceedings of that session, you'll see the then Opposition House Leader, Harry Enns, asking the government House leader whether this is going to be a new process in Manitoba, and Anstett says no, we're doing this in case we have to call the House back to deal with the Supreme Court of Canada reference. Well, that motion, since 1984, has been used in every session since, but the House has never provided a permanent mechanism in order to allow for business to be brought back into the House on an emergency basis.

So, all of a sudden you have this thing called Meech Lake coming down the pipe, and you have a minority government, and we were in this process whereby the House is adjourned until a time fixed by the Speaker at the request of the government, and we have to call the House back. There is no mechanism by which you can get the Meech Lake resolution on to the order paper for the House to consider it immediately. How do you get the resolution on the order paper without the House being in session? Under Manitoba rules, to put something on the order paper, you have to give two days notice. If you start with a typical week, you have to file with the clerk's office on the Monday, you have to wait two days until it's on the notice paper, then you have to wait two more days until it appears on the order paper. So you won't even be able to call that for business until Friday.

Without a mechanism, or at least a parliamentary practice to fall back on, the Table Officers provided the best advice at the time. That's where Elijah Harper's strategy was great, because he saw that there was a deficiency in the rules and raised a point of order and Speaker Denis Rocan had no choice but to say, "No, the process, as outlined in the Rules, has to be followed".

Suppose it's not Meech Lake, but some other legislation, something desperate, and now they've run into a procedural problem which means that they have to get around the

rules, but they can't get unanimous consent—there's one trouble maker. What do you do? Is there any kind of emergency mechanism?

No. Basically if there's one individual who feels very, very strongly about this piece of legislation, that individual can hold up the introduction of it, and deny all unanimous consents required to get it through the House. Now, at the federal level, they have a mechanism where a special order paper gets printed and they can deal with an issue right off the hop. But in Manitoba, it could still take a government a whole week to get a measure through if somebody really wants to be a trouble maker. In my opinion, this is one area of legislative reform which needs to be addressed soon by the legislature.

Now, Darren Praxnik noted in his interview in his opinion, it never really dawned on the Prime Minister, Brian Mulroney, that Filmon might actually not be able to bring the bill through the legislature. He didn't really see that there might be some real procedural difficulties in doing this.

No, and if you look at the document Filmon signed, there is an asterisk that says, 'subject to the public consultation process in the Province of Manitoba'. So the Prime Minister knew, he saw in the document he signed, there was a public consultation process to be undertaken. Brian Mulroney is sitting there with an overwhelming majority government—one of the largest majority governments in the history of this country—he can get any motion passed. He doesn't really have to worry about negotiating with two other political parties for the survival of his government. Filmon not only has members of his government coming to the First Minister's conference, he has Sharon Carstairs, he has Gary Doer, in order to move this along. Time was not well spent on the part of the federal government and the supporters of Meech to get this thing going. There was a sense of frustration on both sides because, at the last minute, we're trying to ram this through.

Suppose Elijah Harper doesn't do his stalling tactics. It still could have been stalled at committee stage, could it not?

Well, you had 400 people wanting to speak, so are you going to limit 400 people? And a minority government does not have a majority on the committees. So, realistically, it didn't have a snowball's chance in hell of passing, especially within the timeframe provided, and everyone on the federal government side should have realized that.

V. THE MTS DEBATE

Let's move on to the MTS debate, our last big issue. The view of the government, as I understand it, was 'we signed a deal which had its positives and negatives—the positives were we introduce bills in the spring, you get lots of time during the summer to deliberate, but the quid pro quo is that you would be voting on the bills in the fall'.

This agreement didn't come in the dark of night. It was discussed fully and frankly in both caucuses, passed by the legislature, agreed to by all members. So, realistically if you don't know what you're signing, don't sign it. That's what it boils down to.

My view at the time was they shouldn't have signed the deal on the NDP side. On the other hand, I thought the government should have taken responsibility for closure themselves rather than making the Speaker do it.

Well, the Speaker didn't invoke closure. If you look at the rules at the time, the Speaker's first ruling about the length of the session went against the government. She gave the New Democrats two additional weeks because they asked for interpretation of the rules. When the government House leader got up and asked for interpretation of the rules on how you end this thing, all of a sudden it's now the government is telling the Speaker to invoke closure. No—the government did the very same thing the opposition did and this time, the Speaker said this is how I see it, and this is how it has to come to an end. And since you have no precedent on this in Manitoba history, she was fully justified in answering the point of order raised by the House leader at the time and saying this is how I feel it has to come to an end. Realistically, would they have preferred legislative chaos if she wouldn't have done that? There has to be some balance. She was saying, this is how I interpret the rule, and this is how it should be done.

In principle, it seems very sensible to have the bills introduced, have lots of time for discussion and pass it in the fall. The way I view it, the problem in our system is, where you've got all these artificial majorities, you've got consistently 39-42 percent of the people electing a majority; the opposition can really do nothing. The only things they can do are stall and make a fuss. If you've given up your power to stall and make a fuss, what have you got?

Exactly, you've got nothing.

So, if you had been advising the NDP, you wouldn't have recommended that they sign on to this?

Absolutely not.

VI. INSIDE THE LEGISLATURE

The precedent that disturbs me in more recent times is this—you can get asked a question in the House of Commons and there's no parliamentary rule of responsiveness. A witness who danced around a question in a courtroom the way ministers do would be told that their answer is not responsive. Yet, I see time after time, you get asked hard questions, you change the topic, take a slam at the opposition, give your prepared spin of the day. There doesn't seem to be any visible consequences to that kind of evasiveness.

Beauchesne¹⁵³ talks about the fact that a minister does not have to respond to a question. The minister does not have to provide an answer. We always hear in the Manitoba house, “Beauchesne citation 417, answers to questions should be brief as possible, deal with the matter raised and not provoke debate”. But, yes, ministers dance around. With some of those questions, the answer is quite obvious, but the minister isn't going to stand up on the public record and give you the full goods, especially when it may make him/her look bad. They are going to give you an answer that makes them look good or deflect you from any problem points.

Has that rule ever been enforced by a Speaker?

Yes, actually current Manitoba Speaker George Hickes is very good about this, and it gets thrown at him constantly. But he is very good at reminding ministers and to slap their answers down—deal with the matter raised, don't provoke debate and get on with it. Speaker Hickes is also good at telling the opposition that a supplementary question does not need a preamble, so get on with it. So, he has been very fair in Manitoba.

VII. TOOLS OF OPPOSITION

Does an opposition in a modern legislature—Manitoba, Ottawa—still have the tools they need to stall things, delay things, to protract things so that they can make a political point, or has the balance steadily shifted in favour of governments being able to make the trains run on time?

¹⁵³ A. Beauchesne, *Beauchesne's Rules and Forms of the House of Commons of Canada*, 5th ed. (Toronto: Carswell, 1978). Beauchesne's has become the 'procedural bible' in Canadian jurisdictions, laying out the rules of proper procedure in Parliament and provincial legislatures.

It is still very balanced. If you really want to provide a delay, you can in Manitoba. In Ottawa, that's not necessarily the case because they use time allocation. Time allocation, unlike closure, doesn't cut off the debate, but it says you have one day of debating here, one day for report stage here, one day for third reading here, and the bill gets passed. So, on the provincial level, the opposition still has a good amount of tools available to them to use to delay. You can still bell-ring to a certain extent, you could introduce a limited number of amendments, and the opposition leader is allowed to speak for an unlimited amount of time. All the tools are still there in a provincial legislature, at least in Manitoba.

With all the rules in Ottawa now, why do we still keep hearing about closure being invoked at times by the current government? Why do they need it if they have this time allocation?

Basically, they have never moved a closure motion. The opposition spin is that time allocation is just a nicer way of saying closure. The House of Commons standing orders say there has to be a negotiation, but a minister is able to rise in his or her place and indicate that those negotiations have not been successful and, as a result, there is time allocation.

So at the federal level, if there was a bill you really wanted to slow down and protract in the House of Commons, what tools do you have left? Can you actually stop the train from reaching the station?

Not in the House of Commons, no.

That sounds pretty bad.

Well, I guess the ultimate judge on that one will be the people. This is nothing new in parliamentary procedure, to have closure being used, to have time allocation being used. They use it more on the federal scene because of the sheer volume of issues. Does that curtail debate? Yes, to a certain extent, but how many people are watching? You have other vehicles as well. Besides your debate in the House, you have question period, you have internet, e-mail blasting. You have a whole host of things now at your disposal to get your message across as opposed to the House and the legislative reporter sitting there and the newspapers that pump it out. I personally don't think you should be using time allocation on every single bill, but having been on the government side, I think there is always a justification to use time allocation.

My view is if you're going to curtail debate, you should have to take responsibility for that by introducing a closure motion or speed up or something that says "we're

responsible." *The way you've described it, they've found a very polite way of doing this. You just call it time allocation, which doesn't sound very autocratic, and you can have the moral equivalent of closure without paying any kind of political price for it.*

That's about right.

VIII. PROPOSALS FOR REFORM

As a student of parliamentary history and government, where do you stand in terms of your perception of PR? If we had some PR and more minority governments, would that be a good thing or a bad thing?

PR is not such a bad concept, but it just can't be PR and the maintaining of power to call an election whenever you want. I think it has to be PR combined with something like fixed terms like Gordon Campbell has done in B.C.¹⁵⁴—you know when the next election is going to be and that there is a timeframe. It behooves you to make this thing work. It takes some of the discretionary power away from the Lieutenant Governor and the Premier, but it makes it a better institution. It would have to be designed in such a way that there has to be a standard period of time before you have an election.

Historically, when you got elected to government, if you were going to be appointed to cabinet, you had to resign your seat and run in a by-election. When did that tradition change in Canada?

The tradition changed in the 1930s and was based upon the fact that a member of the Legislative Assembly was accepting a salary from the Crown, and as such this needed to be confirmed by the electorate. This did not apply to any subsequent appoints within the Cabinet, nor did it effect you seeking reelection for your riding as a member of the government. Normally these by-elections would go smoothly, for the new minister would not be challenged by opposition parties, while this was not always the case, it was the general rule.

When did the backbencher go from being, in some sense, independent to being a dutiful servant of the cabinet?

¹⁵⁴ Constitution (Fixed Election Dates) Amendment Act, 2001, S.B.C. 2001, c. 36. This Act, passed on August 23, 2001 but not yet in effect, amended section 23(2) of B.C.'s Constitution to provide: "a general voting day must occur on May 17, 2005 and thereafter on the second Tuesday in May in the forth calendar year following the general voting day for the most recently held election."

Really, it goes in waves. You see a period where backbenchers were loyal troopers, when you had real statesmen—Laurier, Macdonald, Borden—who were able to motivate their caucus. So, it wasn't a question of party discipline. The party whip is more of a late 60s, 70s development—the 'thou shall vote with the party' mentality. Everybody talks about legislating more free votes. Well, every vote is a free vote. The issue is what votes does the government consider matters of confidence. The government can say every vote is a question of confidence, but that view is rather unrealistic. Remember the cabinet is 'government' and backbenchers are merely members in support of the government, so they should be able to weigh policy, view the issues the way they see best, and not have that power of the whip thrust upon them. Currently the power of the caucus whip is immense.

We now see the party leadership determined by party members. Would you favour a return to the system whereby the caucus rather than the party convention should determine leadership?

No. If you really believe in having a political party, the membership has to have a say in that. Within the caucus, you could have potentially personal interests cloud issues and prevent a decision that may be in the party's best interests. So, you go back to the membership, and let the membership make that determination.

What are your views on reforming the nomination process? It seems to be more about having the same skills you'd need for marketing or fundraising rather than for policy making.

That is not necessarily the case. Local issues can very often drive a local election, not just the party name under which the candidate is running. A person, who has no knowledge of what is happening locally, or in any way in touch with the community, has a much reduced chance to build local coalitions to support your candidacy. Granted, a popular party does help a little bit.