



CIRCLE IN THE SAND

CREATED & WRITTEN BY JIM HARNOCK

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“...it has now been demonstrated to us by a few misguided persons just how fragile a democratic society can be if democracy is not prepared to defend itself...
 ...If a democratic society is to continue to exist it must be able to root out the cancer of an armed revolutionary movement that is bent on destroying the very basis of our freedoms.”

- Pierre Elliott Trudeau, 16 October 1970

PREMISE: In the not-too-distant future, a militant anti-separatist movement develops in Quebec. Shortly after a Federal election in which the Parti Quebecois makes significant gains, the group in question progresses from simply spewing hateful rhetoric to taking violent action. The recently elected Liberal minority government must grapple with the situation and the potential ramifications of an invocation of the *Emergencies Act*, and possibly further emergency legislation.

ISSUES: Can legislation such as the *Emergencies Act* (in the context of the story, ss. 16-26) be justified in a free and democratic society, given its clear infringement on sections 2 (b, c & d), 6, 8, 9 and 10 of the *Canadian Charter of Rights and Freedoms*? If not, would the answer be any different if we faced a clear and present danger that threatened the foundation of Canadian society? Further, can *inaction* in such a situation be justified in a free and democratic society?

THESIS: In our everyday world, the restrictions on *Charter* rights potentially imposed by the *Emergencies Act* are in no way acceptable. However, the *Act* is designed for a specific goal: dealing with emergencies in Canadian society that cannot be dealt with otherwise. This is particularly true of threats to the internal stability of the country posed by armed domestic extremist groups. In a situation in which such a group launches or threatens an attack on the political or social infrastructure of Canada (federal or provincial), the restrictive powers with which the *Act* empowers the government are not only acceptable in a democratic society, but may in fact be *necessary* to the protection of a democratic society.

BACKGROUND: The setting is the very near future – just enough into the future that our current group of political leaders are out of the picture, but not far enough that people will be buzzing around in flying cars like the Jetsons. The Canadian political landscape remains very much unchanged in the short period between today and the beginning of the story, in that the Liberal Party of Canada remains in power (though in a minority government), the Conservatives remain the official opposition, the New Democrats remain a small group trying to push the Liberals in slightly different directions, and, of course, the separatist agenda of the Bloc Quebecois and Parti Quebecois remain a fixture at the national and provincial levels, respectively. The major difference that has cropped

up in Canadian politics between present day and the beginning of the story is that a hard-line anti-separatist group called the Quebec Nationalist Front (QNF) has developed a strong following and as a result has been stepping up their direct action initiatives.

MAJOR CHARACTERS:

MALCOLM REYNOLDS: The new Prime Minister of Canada, Reynolds leads a Liberal minority government into his first term in office. Though as qualified to take the PM's role as anyone in the party, Reynolds – being only three months in office – is still hesitant in his decision-making. Part of this is due to the fact that, until they (surprisingly) won the election, the Liberal Party considered Reynolds a “place-holder” until one of their rising stars could take over as party leader.

LOUISA FRONTENAC: The youngest member of the new government, Frontenac serves as the National Security Advisor to the Prime Minister. Widely regarded as one of the few remaining bright lights in a deteriorating Liberal Party, Frontenac is also known for her headstrong approach to politics – understandable, given that she holds up Pierre Trudeau as her role model.

REINER SCHEISSKERL: One of the most vocal critics of the Reynolds government, Scheisskerl is the current leader of the NDP (though it is widely speculated he won't be for much longer). He is a constant thorn in the side of the government, trying to use the few seats the NDP has in the House to bully/badger the Liberals into making some policy concessions – some of which they have to accept to stay in power. Scheisskerl's approach does not win him any friends on Parliament Hill and the NDP would probably be in a better position with a less confrontational leader.

LLOYD GEORGE ASKUWHETEAU: A Native Canadian of Algonquin descent whose last name means “he keeps watch.” A former law professor, Askuwhteau is now a full-time human rights activist and acting head of the Canadian Coalition for Fundamental Freedoms (CCFF). As with any activist, he is extremely critical of pretty much any move the government makes.

JEAN LAFITTE: Federal leader of the PQ, Lafitte is a staunch and unapologetic separatist as well a staunch and unapologetic supporter of federal payments to Quebec (which he seems to think should continue even after the province achieves sovereignty). Lafitte opposed just about everything the government does, just on principle. There is a running joke on Parliament Hill that Lafitte only has two responses to government action: “it's bad” and “it's horrible.”

DAI KUROZAWA: The legal counsel and media face of the QNF, Kurozawa's name means, literally, large black swamp. It's a fitting moniker, as he embodies all the slimy characteristics that make lawyers so universally reviled.

MELISSA THOM: Senior advisor to Scheisskerl of the NDP, Thom is very much a socialist, but more realistic than her boss in her approach to dealing with the government.

STORY: The newly elected Liberal minority government, headed by PM Malcolm Reynolds, struggles to run an effective government in the face of constant verbal attacks from the Conservatives, frequent complaints from the BQ and endless demands from the NDP. Complicating things for Reynolds et al is the QNF. The anti-separatist group, under new leadership, has stepped up its rhetoric in a major way. Tolerated by the previous Federal government under s.2(b) of the *Charter*, the QNF has begun to make many people uncomfortable with their propaganda – which borders on hate speech according to some – and their marches through the cores of various cities in Quebec – which some francophones find frightening. With the increasingly hostile rhetoric of the QNF leadership, National Security Advisor to the PM, Louisa Frontenac, recommends the infiltration of the group by CSIS agents to monitor their activities as well as the consideration of placing constraints upon their city marches. Reynolds is hesitant to proceed with either recommendation, especially placing any constraints on the QNF's freedom of association, given that, while some people are uncomfortable with the marches, they are in fact peaceful. His hesitancy is reinforced when Scheisskerl – whose support as NDP leader would be needed to ensure any Liberal initiative in that area would succeed – voices his absolute opposition to any measure restricting any Canadian's right to freedom of association and assembly. After all, if the government reigns in political groups like the QNF, what's to stop them from doing the same thing to the unions?

The question is soon rendered moot as, in one fell swoop, the leadership of the QNF cross the line into the realm of domestic terrorism, threatening to abduct members of the PQ and/or BQ unless they renounce their separatist agenda. It's a tough issue for the government to grapple with, as the group has not committed any concrete crimes for which they can be held accountable. Even their threats of abduction, according to the QNF lawyer, can be considered protected, as it is essential to the political expression of the QNF. Frontenac reiterates her recommendation for CSIS infiltration and this time understandably gains support from Lafitte for the action. As much as he dislikes the feds poking their noses in provincial business, he wants the QNF dealt with quickly and, if possible, destroyed.

When the media discovers and announces the government's plan to place restrictions on the group, the QNF responds quickly and explosively. Releasing an audio message on their website, the QNF launches a vitriolic attack on the separatists, advocating violence against any PQ/BQ supporter and, further, threatens bodily harm to specific individuals, including Lafitte. When a bomb is discovered (and safely disposed of) outside Quebec headquarters of the BQ and shots are fired at the home of a PQ official, the federal government can no longer avoid action.

With the police ill equipped to deal with domestic terrorism, PM Reynolds reluctantly begins the process of invoking the *Emergencies Act*. The plan is threefold: to temporarily prohibit public assemblies of both separatist and anti-separatist groups, in the interest of preventing conflict; to place restrictions on travel within downtown cores of

Quebec's major cities; and to secure and protect PQ/BQ officials and public infrastructure. Both Scheisskerl and Askuwhteau make efforts to stall the government, arguing that the *Act* is being used to irresponsibly and unconstitutionally suspend civil liberties based on tenuous claims of apprehended insurrection. However, the government is able to defeat their objections through an argument that by *not* acting to put an end to the QNF's operations, the government would not only be violating the *Charter* itself (after all, the QNF is not only actively promoting the physical harm of PQ/BQ members, but their propaganda has the effect of attempting to limit the fundamental freedoms of their opponents), but they would be neglecting the ideological foundation of the *Charter* – the protection of Canadian citizens.

With the support of the Bloc Quebecois, the government invokes the Public Order Emergency section of the *Emergencies Act*, sending in the army to carry out the plan of protection and containment. The media continues to question the necessity and circular logic of violating rights to end rights violations and Askuwhteau personally leads a protest on similar grounds. Despite the criticism, the invocation of the *Emergencies Act* successfully achieves its goals: incidents of violence against separatists are prevented, further bombings are thwarted and the QNF leadership group is taken into custody to stand trial for hate crimes and terrorism.

The story will end with a speech from the Prime Minister summarizing the situation, the steps the government took in arriving at the decision to bring the *Emergencies Act* into play and why it was felt that the *Act* was the only viable option for dealing with the crisis. This speech will serve as my conclusion.

RESEARCH MATERIALS

Bakan, Joel. "5: Freedom of Association and the Dissociation of Workers." Just Words: Constitutional Rights and Social Wrongs. Toronto: U of T Press, 1997.

In the case of this section of the book, I will actually be using the line of reasoning Bakan argues against as opposed to what he argues for. Specifically, the information in Section I of the chapter, dealing with the proliferation of back-to-work legislation (which unions see as a violation of their Charter rights) as well as Dickson's comments regarding the hollowness of having a protected right to form an association but not to pursue the activities for which it was formed. These will be used as Scheisskerl's argument against anti-QNF sanctions.

Canada. The Charter of Rights and Freedoms: A Guide for Canadians. Ottawa: Minister of Supply and Services Canada, 1982.

I will also be using the version of the Charter included in the Sharpe book, I prefer this version simply because I've been using it for so long, I know where each section is without looking. The primary sections to figure in the story will be s.2(c) and (d) – though s.2(c) will quickly become moot and sections 8 and 9 will come heavily into play once the government deems it necessary to invoke the Emergencies Act.

Canada. Securing an Open Society: Canada's National Security Policy. Ottawa: Privy Council Office, 2004.

This government publication outlines Canadian security policies, including "...the appointment of the National Security Advisor to the Prime Minister to improve coordination and integration of security efforts among government departments." This will be essentially a background document to establish the interaction of the various characters and the roles they play once the QNF plot reaches its crisis point. The report also contains information on policies regarding domestic extremism, which clearly has a fairly heavy bearing on my project.

Canadian Broadcasting Corporation. CBC Television News: Just Watch Me. Tim Ralfe, interviewer; Pierre Elliott Trudeau, subject. Broadcast 13 Oct. 1970. <http://archives.cbc.ca/IDC-1-71-101-610/conflict_war/october_crisis/clip6>

An interview conducted on the steps of the Parliament buildings as the Canadian army patrols the streets of the capital in which the reporter debates with the Prime Minister about the merits of military presence. Though the question is never asked outright, the general theme of the interviewer's questions is the same as the theme of my story: is this kind of move democratic? Is it acceptable in a democratic society? Trudeau's response is that it is the government's responsibility to protect the citizens of Canada from extremist

groups who try to “run the government” through criminal means, regardless of “weak-kneed people who don’t like the looks of...” soldiers in the streets. There are also some very interesting comments from Trudeau regarding media coverage of the Crisis, specifically the media characterization of jailed FLQ members as political prisoners.

Canadian Broadcasting Corporation. CBC Television News: Trudeau's War Measures Act speech. Address to the nation by Pierre Trudeau. Broadcast 16 Oct. 1970. <http://archives.cbc.ca/IDCC-1-71-101-618/conflict_war/october_crisis/>

In the loaded words of the CBC, this is the speech in which Trudeau explains “why he thinks military rule is necessary during the October Crisis.” Trudeau explains that such a step is necessary to protect Canadian democracy from armed extremists who undermine the society. Through their kidnappings of Laporte and Cross as well as their other crimes, the FLQ has shown themselves to be both a physical and ideological danger to the fabric of Canadian democratic society. “Within Canada there is ample room for opposition and dissent, but none for intimidation and terror.”

Canadian Security and Intelligence Services Act, 1984, c. 21, s. 1

This Act will simply be used as a supporting document, as the Emergencies Act hinges on its definition of what constitutes a threat to the security of Canada.

Emergencies Act, R.S., 1985, c. 22

“An Act to authorize the taking of special temporary measures to ensure safety and security during national emergencies...” The part of the Act I will be applying in this project will be s.3, which defines national emergency, and Part II (s.16-s.26), which lays out the details of declaring a public order emergency. The big question the characters will have to grapple with is do the actions of the QNF constitute a national emergency on the scale that the Act requires? The government will invoke s.19(1)(a)(i) and (ii) and s.19(1)(b), which would violate s.2(c) and (d) and s.6 of the Charter.

Mandel, Michael. “Chapter 2: The Charter and Democracy.” The Charter of Rights and the Legalization of Politics in Canada. Toronto: Thompson, 1994. 39-122.

The specific sections I plan to use from this chapter are A New Kind of Democracy? and The Override Clause. I have to admit, I’m still largely undecided as to how I will incorporate the former – it will either be as part of Frontenac’s defence against accusations of anti-democratic recommendations (the Charter is not, nor has it ever been democratic, in the traditional sense) or as an argument in favour of creating new legislation to deal with the crisis and invoking a s.33 override (the Charter is a “blank cheque for judges,” so in order

to make certain we can adequately deal with the problem, we have to bypass the courts). Regardless of what direction I take with the first section, the override section will come into play with the proposal of new legislation to curtail the activities of the QNF, which will deal with the s.33-as-necessary versus the s.33-as-Satan dichotomy Mandel discusses.

Ribeiro, Marc. Limiting Arbitrary Power: The Vagueness Doctrine in Canadian Constitutional Law. Vancouver: UBC Press, 2004.

Of particular interest in this book is the final chapter, which deals with the chilling effect of overbreadth and internal limitations in Charter sections (such as the “fundamental justice” rider attached to s.7). The argument presented in the story will be that internal limitations are necessary components of any rights legislation to prevent rights from becoming absolute, which would lead to chaos (or worse, an American-style litigation fetish). The idea of the chilling effect will come into play as the government prepares to invoke the Emergencies Act and the potential social harm such action may cause will be weighed against the aims of the government.

Sharpe, Robert J. & Kent Roach. “Chapter 4: Limitation of Charter Rights.” Essentials of Canadian Law: The Charter of Rights and Freedoms, 3rd ed. Toronto: Irwin Law, 2005. 62-85.

A discussion of the balance between individual rights and the interest of the community at large, in addition to the Oakes Test. The question of how the Emergencies Act fares in relation to the minimum impairment and proportionality tests will be brought up by the character of Askuwhteau in questioning the government’s actions. He will argue that the legislation is overbroad and too heavy-handed in its response to the situation, causing undue restriction of citizens’ rights. The government stance will be that in invoking only a portion of the powers available to them under the Emergencies Act, they are, in fact, fulfilling the requirements of the Oakes Test.

Sharpe, Robert J. & Kent Roach. “Chapter 13: Life, Liberty and Security of the Person and the Principles of Fundamental Justice.” Essentials of Canadian Law: The Charter of Rights and Freedoms, 3rd ed. Toronto: Irwin Law, 2005. 200-233.

The media, the QNF lawyers and Askuwhteau will question whether the government’s actions under the Emergencies Act are a violation of s.7 of the Charter. This chapter outlines the ways in which the SCC has interpreted s.7 and what constitutes “liberty” and “security of the person,” as well as discussing what interests have in the past been protected by s.7 in the courts. The argument will be that the invocation of the Act infringes on rights to privacy and fundamental personal choice – privacy through searches and arrests and personal choice by curtailing group activities and essentially criminalizing the QNF’s political expression -- which have been established by the SCC as being

protected by s.7. The government stance will be that while their actions could be seen as violating said rights, one cannot make a convincing argument that their actions fail the test of fundamental justice. After all, their actions are a direct result of QNF aggression against innocent parties. If they chose to do nothing in response to the extremist actions, the government would be guilty of failing to protect the liberty and security of those whom the QNF wishes to bully.

REFERENCE MATERIALS

These items will be used for style and structure reference, but will not be cited as formal sources in the project.

Miller, Frank. The Dark Knight Returns. 3th ed. New York: DC Comics, Inc., 1996.

Miller, Frank. The Dark Knight Strikes Again. 2nd ed. New York: DC Comics, Inc., 2002.

Despite being Batman stories, both Dark Knight Returns (DKR) and Dark Knight Strikes Again (DK2) are also satires of mass media. DK2 (and to a lesser extent DKR) also deals with issues of political manipulation and leaders lying to the public “for their own good.” I’m planning to incorporate television news broadcasts into my project as a major way of bridging scenes and filling in narrative gaps, and Miller uses this technique extensively in both books.

O’Neil, Dennis. The DC Comics Guide to Writing Comics. New York: Watson-Guption, 2001.

This one is fairly self-explanatory – it’s a handbook for the forms, codes and conventions of writing comics. There’s also a large section on structuring and formatting a story for the hybrid medium.

Vaughan, Brian K. Ex Machina: The First Hundred Days. New York: Wildstorm/DC, 2005.

Ex Machina is about a superhero who retires his costume in favour of becoming mayor of New York City. The story is about the newly elected mayor dealing with a threat to the city’s infrastructure. This is a good example of a book centring on politics and politicians that is more than just a series of talking heads – something that I’m hoping to achieve myself.