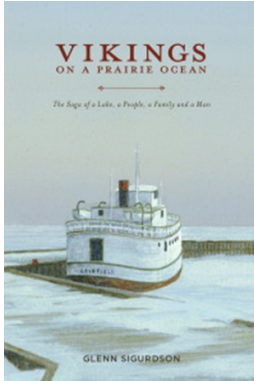


A Good Way To A Good Place

P268 in *Vikings On A Prairie Ocean* by Glenn Sigurdson



In the spring of 1988, as recently retired president of the Icelandic Festival of Manitoba, I was chairing the Centenary Committee. Many significant projects were identified, including writing the history of the Icelandic Festival. I knew of, but had never seen, a copy of the constitution that had been developed by the colonists to regulate their affairs as a self-governing colony. We retained a young Icelandic scholar, Jonas Thor, then studying at the University of Manitoba. I asked Jonas if he could locate it, wondering out loud whether another project might be to have it displayed in some way as an historical site.

One afternoon he dropped by the office with “here is your constitution.” We chatted as I thumbed through the document. My eyes riveted on election of a conciliator, together with municipal councillors, in the first few paragraphs:

The duty of Conciliators is to seek to compose differences in all private cases. The Conciliators shall summon before them, the parties to the dispute at some definite time and place, in accordance with the wish of either party to the case, and notification by letter shall be a sufficient notice of summons. If conciliation comes to naught the plaintiff shall pay each conciliator 1 (one) dollar for the attempt at a settlement, but if a settlement comes about, then both parties shall pay the same amount according to agreement. Payment is to be made when the attempt at conciliation is completed. Conciliators shall be obliged to record their settlements and their attempts at conciliation.

If the attempt at conciliation does not succeed, or if either of the parties to the case does not attend after a legal notice of summons, then shall the parties, if either so demands, place the case before a board of arbitration of five impartial individuals which the parties to the case themselves select. Each party to the case shall nominate two, but the fifth member shall be the Governor or the Vice-Governor of the Regional Council if they cannot agree on the fifth one. The majority vote of the Committee of Arbitration decides the issues. Arbitrators are obliged to record their decisions.¹

What would have inspired these Icelanders bordering on starvation, quarantined by smallpox, to devote their energies to creating this remarkable document?

It was a bizarre coincidence to come upon this within two hours of leaving for Toronto to a major conference, *Access to Civil Justice*, part of an initiative of the attorney general of the day, Ian Scott, to overhaul the civil justice system of Ontario. Our paths had crossed two years before during the mercury case. Ian was committed to streamlining a justice system beset by cumbersome procedures and overbearing costs to make it more accessible to the ordinary

person through the development of creative new approaches to resolving disputes. He asked me to lead a discussion on the potential for mediation.

I pored over the document on the flight. I thought about the session I was to lead the next afternoon. These Icelanders had developed a unique system of civil justice elegantly integrated into a governance structure. The election of the conciliator would give the holder of the position moral authority and the office influence and stature within the community. Mandatory mediation prior to binding arbitration was always a concern, for mediation is traditionally voluntary, not based on compulsion like a court. It is the willingness of the parties to participate freely and to agree on a mediator of their choice, that empowers the process. But the election of a mediator was a compelling way of managing those concerns.

I put the Icelanders' clauses up on the screen and invited people to speculate on its origins. Not surprisingly, no one had the answer, and were even more dumbfounded to learn the time and the context.

Later I pursued the origins of this further. I could find no clear answers. There is a history of mediation within Scandinavian legal systems. I came across some suggestion that there was something akin to this in the land registry legislation of Ontario, of which some of the colonists may have been aware from their Kinmount experience. History aside, the important fact for me was that this practical arrangement had resonated for the New Icelanders who wanted a workable governance structure in their new home.

Since I had completed the mercury case, I felt an underlying tension growing inside me blossoming into an internal tug of war. I had deep loyalties to Manitoba—my family and my profound friends there, the communities, my clients, my colleagues and the firm. And yet, influences were at work telling me it was time to make a change. I started considering the possibility of moving to Vancouver, encouraged by my wife Maureen, who had spent much of her childhood visiting her grandmother a block away from English Bay every Christmas, Easter and summer, facilitated by her dad, a CN engineer who would put her aboard the train west. Since the day I met Leon I had been imperceptibly but surely moving to the field of what was then called “public dispute mediation.” More career possibilities in that direction were starting to emerge over the horizon in British Columbia much more than Manitoba. I would be closer to Jerry Cormick. We were teaching together at the Banff Center. I knew the kind of path-breaking work he was doing. I was on the board of directors of the Mediation Institute. The decision to move was not easy, and dragged on for three years.

Darcy helped me make that decision. He found a silver lining in a dark cloud. He told me that my career still had many directions to travel. He didn't want me to go, but go I must he said, so like the Icelanders I would go but stay. We would open an office of the firm in Vancouver.

So in 1989, Maureen and I, with our eleven-year-old son Paul and six-year-old daughter Sonja made the jump into a very uncertain future. Those first years rebuilding a career in a

new place from a standing start with a young family, were not easy. Within a couple of years continuing the relationship with the firm in Winnipeg proved impracticable. Step by step, a new future opened, for the family and for my career.

Barry Stuart re-entered my life, big time. He had recently been appointed to the National Round Table on the Environment and the Economy as a member of the executive committee. Barry's long friend, David Johnston, then principal of McGill University, later to become governor general of Canada, was its first chair. Barry called and said he wanted to meet me for lunch at the Hotel Vancouver. Twenty years after our initial time together, he was once again working up the passions of his student. Barry had returned from Papua New Guinea, where he was a key architect in negotiating the constitution of a new republic after achieving independence from Australia (he would be awarded the Independence Medal at the United Nations 20 years later). He was now working as a judge in the Yukon Territory.

Barry always combined many careers into one, and his periods of intense activity on his circuit across the North afforded him the flexibility to integrate into his judicial duties his continuing commitment to the people, the land and the environment. For three years he had been on leave of absence, acting as chief negotiator and sealing a legacy as the leading figure in achieving the Yukon Land Claims Agreement.

Now, he had embraced with vigour the sustainable development charge of the World Commission on Environment and Development chaired by Gro Brundtland, the former prime minister of Norway. His experiences had persuaded him that the critical challenge was not to define and develop policy prescriptions for sustainability, but as a process of engaging diverse values and interests: reaching sustainable outcomes by building sustainable relationships. .

Barry had a vision. He was not to be deterred. "It needs to be on one page," he said, "like a constitution on the wall, a set of user-friendly principles we can take into communities, businesses, environmental groups, First Nations and government departments, that will provide guidance on how to build processes to reach consensus on difficult decisions and resolve differences."

"Barry, that's a pipe dream," I replied, "and even if we could put something together, this sounds more like writing a text book than something we hang on the wall."

"We're not going to write it, we're going to negotiate it."

"Negotiate it! With who? Are you going goofy?" Barry and I often engage in frisky conversations.

"We'll negotiate it with all of the Round Tables of Canada. Every province and territory has established one modelled after the National Round Table, with broad ranges of stakeholders represented. The credibility of the principles will be based on their having been negotiated through a national process with every point of view represented."

"Who is going to do this?" If ever I defied the fundamentals of my legal training to not ask a question unless you knew the answer, that was it. Actually, the fact is that I knew the answer. I just wasn't sure I wanted to.

"We are. You, Jerry and me," he responded without even a glimmer of hesitation.

"Jerry? He's agreed to this boondoggle?"

"Not yet. That's your job to bring him aboard. This is what you guys are doing. He's the guy who invented this whole field, and even though he's living in Seattle, he's a Canadian, and you guys are teaching this stuff at Banff. And now you're doing it up here. Isn't he from an original settler's family from Saskatchewan?" It was clear that Barry, like Maurice, was about to turn my life, and Jerry's, in another direction. Soon he widened his net again and pulled others into his orbit, like my old Osgoode classmate Paul Emond.

Two-and-a-half years later, along with a task force of ten remarkable colleagues, with endless training sessions and countless discussion, from one end of the country to the other under Barry's tireless leadership, we finally all sat together in a restaurant in Montreal celebrating the successful negotiation of "Building Consensus for a Sustainable Future: Guiding Principles." Every province and territory had signed on, including Quebec (one of the few documents it signed in the difficult years following the failure of the Meech Lake Constitutional Accord) and the Canadian Council of Ministers of the Environment. We didn't make it down to one page, but a highly user-friendly brochure was an incredible achievement. We sent 25,000 copies into publication and it was subsequently referenced in many international agreements.

Barry's mission was not complete. More breakfasts followed, and the next challenge was laid out as a "duty," not an odyssey. A practical handbook needed to be written to show how the principles could be put into action, based on the body of experience that we continued to accumulate. Jerry's track record was significant, and my own experience base was building. I always brought the enormous body of experience that came with me from Manitoba. I had also now provided leadership to a process resulting in an agreement amongst all the sectors of interest around the salmon fisheries on the Skeena River (First Nations, recreational, commercial, the Department of Fisheries and Oceans). I had been asked to serve as chair, and for almost four years the unheard of was achieved, "every opening of the fishery was by agreement amongst all the sectors," in what had become a path-breaking process of integrated resource management. At the request of Bernie Wiens, chair of the Canadian Council of Ministers of the Environment, who I'd come to know through the Round Table work, I had led the development of a "wildlife diversification agreement" to more effectively exploit the wildlife resources on the land base given the dismal state of the agricultural economy. I had been involved in a situation on Haida Gwaii, in the Queen Charlotte Islands, in a complicated tangle involving the siting of a marina promised in the South Morseby agreement to compensate the community of Sandspit as a result of the loss of logging.

Slowly, I realised that the tools I was using I had learned long ago, and I felt a deepening appreciation that wisdom in human affairs draws from a deep well. Looking backwards enables you to see forwards. My old history teacher's question again reared its head: "Is history bunk?" I could answer it now. The past is the future.

ⁱ Agreements in Reference to a Temporary Constitution in New Iceland, Translated by Professor Skuli Johnson. Retrieved from: <http://www.mhs.mb.ca/docs/transactions/3/icelandicsettlements.shtml#06>.