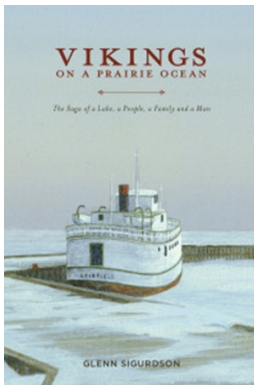


Hopes and Fears Drive Decisions

P243 in *Vikings On A Prairie Ocean* by Glenn Sigurdson



Never one to fear the unorthodox, but prudent in his own way as he grew his young firm, Darcy turned the dark old basement of a building at 290 Gary Street into his personal residence. There, over a long afternoon of whiskey and cigars, Darcy and I bonded, and from that day until the day he died we were brothers. His offices were next door to Richardson and Company, and soon I was walking between the two offices many times a day. I would take him into the North, and he would turn me into a real lawyer.

He was a great mentor, always opening and never closing doors. He often told the young men and women who walked with him, “My job is to make you famous!” Voted one of Manitoba’s ten greatest lawyers in an informal professional polling a few years ago, a great trial advocate to be sure, Darcy’s true genius was the art of the possible and the pragmatic, and his impeccable sense of positioning and timing to achieve that. He was no ordinary man. His mother, who was more like a sister to him, was only 16 when he was born. His father was a cowboy rambler who took off to Alberta not to be seen again. He and his brother and sister and their mother went on together to build remarkable lives and successful careers. Darcy had a well-earned reputation as a lover and a fighter. He had no difficulty taking that set of talents into any setting, whether a bar or community hall, a board room or a court room. Over the years ahead we were inseparable on the Hydro case, and ultimately our friendship was the basis for the formation of a new firm created out of the merger of Richardson and Company and the McCaffery firm to become Taylor McCaffery in 1979.

Before he moved precipitously in situation, Darcy “sniffed” the ground carefully. “Glenn, we need to go to the North for a week to meet the folks.” So, in the summer of 1975, we travelled from community to community absorbing and assessing to be sure, but doing so in a blur of talking and drinking, all of which he elegantly labelled his “bonding mission.” Darcy was fully “bonded” upon our return, and soon he would be sporting the “We Speak with One Voice” T Shirts he had helped inspire on our journey.

Darcy’s relationship with the Cree people would become a profoundly important part of his life and legacy. Darcy, as was I, was entranced with the eloquence of the Cree speakers, men and women alike, who spoke freely, simply, and powerfully building on each others stories and metaphors at meetings lasting most of the day with speakers lined up one after the other. His pen filled scribbles. What made the Cree language accessible was the genius of Allan Ross. Allan was part of the Robertson family, the name of the last great “factor” (manager of a post) for the Hudson’s Bay Company. He had been brought up by his Cree grandmother who taught him the language with such mastery that he was regarded throughout the North as one of its “greatest speakers,” and certainly the finest translator. It was as if he was in a trance when he translated, listening so intensely sometimes for what seemed like ten minutes or more, making the odd note in an old scribbler, and then interceding to explain what had been said. Later Allan would complete his law degree, but would never actively practice, becoming in later years Chief at Norway House.

What should the response be to the arbitration proposal that appeared to have traction? We met with the Cree leadership from across the communities in a lodge south of Thompson for two days, where we discussed the proposal's pros and cons inside and out. The Cree were resolute. They would not hand control over their destiny to a man in a suit, an arbitrator with final decision authority, with even broader powers than a judge. If there was to be adjudication, they would only accept its conduct by a man in black robes in whose presence the honour of the Crown and the commitments given at the time of the treaties would be at stake. The clear instruction was to reject the proposal. They would accept nothing but getting face-to-face with these people and institutions.

The dispute between the Cree and Hydro was now a regular headline. The acrimony was intense. The rhetoric rising every day, with Canada tangled up in its own feet with a fist full of dollars invested in a transmission line in the '60s, and a sackfull of fiduciary obligations to the Indians coming home to roost in the '70s. Skirmishes were already coming into public view between the province and the fed's, and Prime Minister Trudeau and his ministers' relationship with Premier Schreyer were becoming increasingly less warm and fuzzy. It was a tangled mess; our goal was to make it even more tangled, knowing full well that to have a serious conversation our clients needed to be taken seriously.

The possibility of war makes peace possible. A fight is easy to start; finding a way to make peace is much tougher. We knew we would need form of intervention to help bring about any meaningful face-to-face discussions. "If not an arbitrator, what about a mediator, someone who could help advance the discussions as a middleman working with and among the parties, but without the power to decide?" we asked. The Cree leadership agreed.

It was in the spring of 1975 that I first met Leon Mitchell, days after he was agreed upon as mediator for the issues involving the Northern Cree and Manitoba Hydro. I'd read through the terms of reference developed with respect to his mandate. One of the terms stipulated that the mediation was to be completed in 30 days. This was completely unrealistic, and I made my view known to Leon, energetically, as I was inclined to do in those days. Through bushy eyebrows, and with the hint of a smile on his wise face, Leon said, "I will keep working until somebody tells me to stop." His sagacity was revealed. What surprises me in hindsight is that I understood his implicit message. He knew that debating the length of the mediation at the outset, amidst the acrimony among the parties, would have doomed the process before it began. So when the 30-day clause found its way into the draft, Leon saw what others failed to see. The likelihood of someone pulling the plug as long as Leon said there was progress being made was remote. And in any event, no one would halt the proceedings without Leon's voice being heard, as the power to write a final report on his efforts remained in the text. I had my first lesson from the master. He became my mentor, my colleague and my great friend.

As Leon was wont to do on occasion, with the legacy of years of old-style labour relations bargaining inside him, he pulled a mickey of scotch from his drawer, offered me a drink, and lit up a cigar. Leon and I bonded that afternoon, and my career was already moving on a new trajectory, although I didn't know it then. Leon understood how people worked, and the things they did with and against each other. His greatest strength was empathy, and on that

foundation a deep respect for others and their circumstances. No doubt much of his understanding of people was born from his own life story. As a young Jewish boy growing up in Winkler, Manitoba, Leon began his working life as a fruit peddler in the 1930s. In the early '40s he was struck down with a neurological disease that left him paralyzed for 18 months. Slowly the paralysis withdrew and he regained most of his mobility. He made his way to Winnipeg, and soon became active as a union organizer. Leon is credited with setting the foundation of the first civic employees union. Leon next set his sights on law. By 1955 he opened his own offices, and by 1969 had developed an immense practice and an enviable reputation as Manitoba's foremost labour lawyer. Never overtly political, he was admired as a champion of social justice in every way. Edward Schreyer offered him an appointment as chair of the Manitoba Municipal Board in 1969, and after his many long and intense years of practice he was ready for a change. A few years later he was appointed to the Federal Public Service Staff Relations Board as vice president in charge of interest arbitrations. During his Ottawa years he dealt with the thorniest issues in public sector bargaining, and specifically the acrimony associated with the harnesses on wage increases imposed by the anti-inflation guidelines of the mid-70s as inflation burst out of control.

Leon had admired Darcy since he first came to know the young lawyer at the legal gang's Friday lunches in Chinatown. Then circumstances would bring them together again, Leon as one of three Commissioners unravelling the largest fraud in Manitoba's history accomplished by an Austrian entrepreneur, Alexander Kasser, who had conned the prior government into giving him forest rights over much of northern Manitoba, and over 200 million dollars of government financing to build a pulp and paper plant in The Pas. Darcy became its counsel, and together they would expose a labyrinth of over two hundred dummy corporations around the world through which the money had moved and Kasser safely ensconced back in Austria out of reach with no extradition powers in place, and the monies in his hands.

Darcy's uncanny sense of the art of the possible took us to the doorstep of Leon Mitchell when searching for a mediator. He was the perfect choice. How could any of the parties refuse him? Who else could have ever fit the bill so perfectly in those circumstances at that time. In the initial meeting with all the parties crowded around a boardroom in some humble offices in the old Exchange area of Winnipeg, Stuart Martin offered what I can only presume he thought were comforting words to the Cree. He pronounced that that they should only expect the loss "of a few moose and fish," the clear underbelly of the point being "What's the big deal?" Buried inside Leon's bushy eyebrows was a glare in a flash as he sensed the hostile response that this would bring. Almost immediately, he adjourned the meeting on the basis that he considered it would be "helpful" for him to have more one-on-one conversations with each of the parties so he could be more helpful to them. Soon he was clanking around on his crutches bound to each arm in the communities across the North, under the Golden Boy in Winnipeg, and the Clock Tower in Ottawa. He journeyed from one group, piecing together some patchwork quilt of ideas, approaches, thoughts out loud, artfully vague and elastic to provide a platform to start growing a mutual conversation that everyone could own. Often I was with him, watching and learning.

Under Leon's skillful leadership through intensive negotiations over a four-year period, an agreement in principle was signed on July 31, 1977 following many days of round-the-clock negotiating sessions. As the possibility of an agreement loomed ever larger, we continued to fly in from the North additional leaders from the Cree communities to augment the

negotiating team. Beside us was an unlikely colleague, an Australian, a brilliant physicist, then completing a post doc at the Atomic Energy Commission of Canada research station at Pinawa, Manitoba. Faced with a mountain load of studies and data, Darcy and I needed serious help. Serendipity answered the call in the form of Colin, and his colleague Manfred Roehbock. With rigor and tenacity they passionately tackled the mountain of information and took on an army of engineers and experts. They were no less relentless with the other side than they were with the NFC team in advancing their rigorous view as to how the future should be shaped with a tsunami of logic and tenacity. There were days of exasperation as Darcy and I, often with Leon drawn into the room, pushed back with the pragmatics of what was doable. More than once I can recall protesting: “this team of logic horses will take us over a cliff and we aren’t going over it.” Fierce discussions aside, we each made the other better. The experience would also prove to be a conversion for Colin who would complete a law degree and become our partner at the firm.

Our final deliberations stretched deep into the night. “It takes courage to say yes. It is easy to say no,” Darcy explained, and together we worked through the tangle of considerations the leaders needed to consider. Finally, at 4:00 a.m., after a lengthy final discussion in Cree, Chief Walter Monias of Cross Lake and Chair of the NFC turned to us and said, “There is no other alternative but to sign. But you and Glenn need to sign first.” As disquieting as that might have been to some lawyers, Darcy and I picked up the pen and signed, first he, then me, then Walter and each member of the team.

The next day we were on a plane to the North. In packed halls in each community, we explained the agreement to community members and weathered the inescapable second-guessing and 20/20 hindsight to follow. Darcy captured the essence: “I know that we have a guitar that is playing music now, but if someone thinks it could play better music by tightening the strings further, let them do so. But the danger that also brings is that the strings might break and then it will play no music at all.” I can still hear Chief Walter Monias booming out on more than one occasion, “I need no notes, because I speak the truth.” Many others who had played critical roles in reaching the agreement attended to support the decision.

Chief Henry Spence and his councillors set the pattern in explaining to their community of Nelson House the events that led to the agreement and the steps needed to finalize it. Alongside Chief Spence were Chief Walter Monias, Chief Ken Albert from Norway House, Chief John Wavey of Split Lake, Ken Young, a young Cree lawyer from The Pas, and adviser to the NFC, Joe Keeper from Norway House, executive director of the NFC, and Allan Ross. We came back from the North it was with a strong endorsement of the decision to sign.