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# Stephen Harper's Hitlist: Power, process and the assault on democracy

By Murray Dobbin



### **About the Author**

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# Stephen Harper's Assault on Democracy

"Many of our most serious problems as a country can be traced to the apathy and non-involvement of Canadians in public affairs, and to decisions that too frequently ignore the popular will.... We believe in accountability of elected representatives to the people who elect them, and that the duty of elected members to their constituents should supersede their obligations to their political parties."

- Stephen Harper, Reform Party foundational document

On January 23, 2010, thousands of Canadians in more than 60 towns and cities across the country demonstrated their anger over the shutting down of Canada's Parliament by Prime Minister Stephen Harper. At the same time, more than 220,000 Canadians also joined a Facebook protest called Canadians Against the Prorogation of Parliament.

It was the second time the prime minister had summarily locked the doors to the people's house – the House of Commons. It was clear to most commentators, including columnists and editorial writers normally sympathetic to the Harper government, that the reasons for the shutdown were purely partisan: it ended the opposition's persistent and effective questioning about the government's complicity in the torture of Afghan "detainees" in the first years of the Afghan war. And prorogation would also allow Harper to appoint five new senators unopposed, and, more importantly, dissolve the current senate committees and form new ones with Conservative majorities.

This cynical move by Harper was preceded by two other less dramatic assaults on democracy: the government's refusal to obey a parliamentary resolution demanding documents related to the Afghan investigation, and the decision by the Conservative members of the parliamentary committee investigating the issue to boycott the hearings, thus bringing the process to a halt.

Pundits had widely predicted, even in the face of polls hinting at growing opposition, that Canadians didn't care about something as arcane as "prorogation." They were practical people, concerned about bread-and-butter issues – jobs, the cost of living, and their mortgages. But something happened

with this latest expression of disdain for democracy. It was the last straw. If it is true that Canadians are slow to anger then the outpouring of rage at Harper's move demonstrated that they finally had enough. It turns out that Canadians actually care a great deal about democracy and as arcane as the word is, they had no trouble figuring out that "prorogue" means to shut down, to suspend, and in this case it meant the government trying to escape the consequences of its actions. Just days after the demonstrations, a report by the Institute of Wellbeing – the "Democratic Engagement Report" – revealed what the authors called "a huge democratic deficit." The report reinforced the spontaneous outpouring of anger at the shutting down of Parliament. "At a time when people are demanding greater accountability and transparency, they see their government institutions becoming more remote and opaque. Too many Canadians feel that their voices are not being heard; that their efforts to influence government policy are ignored..."

The list of Stephen Harper's assaults on democracy is long and unprecedented, not only in Canada, but very likely in all of the English-speaking parliamentary democracies in the world. But how to explain such an attitude on the part of a politician who, after all, was elected democratically to run his country?

His contempt for what Canada had become led directly to his contempt for democracy (this is, after all, what produced the things he hates) and his willingness to subvert democracy any time it frustrates his long-term goal: to dismantle the Canada that three generations of Canadians have built. This is his ultimate goal – not to govern, not to be the leader of a political party, not even to be the prime minister. These are simply the

necessary steps on the way to achieving the power necessary to undo what past governments have accomplished. He is the only prime minister in Canadian history to openly detest his own country: its efforts at egalitarianism, its social programs, its wealth redistribution, its peacekeeping history internationally, and its attempts at promoting and preserving its unique culture.

Harper has made this clear on numerous occasions and by the career choices he has made outside politics. He once quit federal politics in frustration to head up the National Citizens Coalition, the most right wing lobby group in the country (motto: “More freedom through less government”), which was formed in the late 1960s to fight Medicare. On December 8, 2000, when he was president of the NCC, Harper told *The National Post*: “Canada appears content to become a second-tier socialistic country, boasting ever more loudly about its economy and social services to mask its second-rate status.” This sneering contempt for the very things that Canadians hold dear is the flip side of his attraction to positions from the far right of American politics.

In a speech to a right wing American think-tank, The Council for National Policy, in June 1997, Harper ridiculed all Canadians: “I was asked to speak about Canadian politics... it’s legendary that if you’re like all Americans, you know almost nothing except about your own country. Which makes you probably knowledgeable about one more country than most Canadians.” The whole speech was full of such insults and sarcasm about his own country, its political system and other political parties.

Indeed, the prime minister doesn’t seem to accept that there is a separate, distinct Canadian nation. Harper was asked in a 1997 CBC interview, “Is there a Canadian culture?” He replied: “Yes, in a very loose sense. It consists of regional cultures within Canada – regional cultures that cross borders with the U.S. We’re part of a worldwide Anglo-American culture. And there is a continental culture.” Harper simply cannot accept or acknowledge the things that make Canada unique – and different – from the United States.

This is the only plausible explanation of his openly anti-democratic behaviour and policies. Preoccupied with the goal of turning back Canadian social democracy, Harper the master strategist is constantly calculating every step toward that objective – how to maintain power long enough to accomplish his goal, how quickly he can move to implement it, how much Canadians will tolerate in terms of policies that contradict their values, how he can change the political culture through social engineering, what the opposition parties will do, and how to keep hidden, from the media and the people, his actual agenda of radical change.

If the end justifies the means then accepting the fact that you have a minority government and all this normally entails is simply accepting a barrier to your ultimate objective. If you recognize, as Harper must, that your goals fly in the face of what the majority of Canadians want, then you must circumvent that majority in any way you can. Why? Because Harper knows that a majority of Canadians will never support his goal of turning back the clock and creating in Canada a completely unfettered free-market society. By definition, to achieve such a goal it is necessary to do so by stealth, by undemocratic means – or give up on the goal altogether. This study is intended to examine the most serious violations of democracy committed by the prime minister and his government. Some are clearly more serious than others. But taken as a whole they add up to a dangerous undermining of our democratic traditions, institutions and precedents – and politics. These violations are not accidental, they are not incidental, and they are not oversights or simply the sign of an impatient government or “decisive” leadership. They are a fundamental part of Harper’s iron-fisted determination to remake Canada, whether Canadians like it or not.

## **Social engineering from the right**

One of the most popular concepts on the political right over the years has been the notion of “social engineering.” The phrase is intended to describe a process by which liberals and the left “engineer” society – that is, set out to remake it – by implementing government programs, intervening in the economy, and redistributing wealth so that there is a measure of economic equality (in a system defined by inequality). The implication is that these changes were undemocratic – imposed by politicians, intellectuals and bureaucrats.

Yet right wing social engineering is exactly what Stephen Harper intends to do, and has already done in many ways. We are now a far more militarized culture than when he came to office four years ago – with an aggressive “war-fighting” military. Our foreign policy is now in lock-step with the U.S. This has never been debated in Parliament nor has the Conservative Party actually run on such policies. In spite of the fact of widespread support for new social programs such as universal child care and Pharmacare, these programs are ruled out by the Harper government. While his minority government status has so far prevented an assault on Medicare and the Canada Health Act, Harper is on record as supporting increased privatization and two-tier Medicare.

This is true social engineering if by that term we mean the illegitimate remaking of Canadian society and governance. When all the social programs and activist government programs that the prime minister objects to were implemented there was widespread public support for them. Govern-

ments were responding to social movements demanding these things: unemployment insurance, Medicare, subsidized university education, Family Allowances, public pensions, old age security. These programs were not imposed by a cabal of liberal and socialist intellectuals and bureaucrats – they were rooted in the expressed values of Canadians.

Harper's determination to remake Canada in the image of unregulated capitalism is illegitimate because it aims at dismantling what decades of democratic engagement has created. It is even more outrageous given the fact this fundamental shift is being undertaken by a government that received support from less than 23 per cent of the eligible voters in Canada. Canadians have not changed their minds about these programs and values – if anything, support has been reinforced by the perceived threats to these gains. These things are the fruits of democracy – its ultimate litmus test. Harper's plan to rid the country of this legitimate evolution of social and economic change is true social engineering, and profoundly anti-democratic.

While the prime minister has a minority government he cannot fundamentally change the country's direction through legislation as the opposition can vote him down. But the quirks of minority governments allow him to control spending regarding any program and he does not have to raise the question in the House of Commons at all. That means that he can keep legislation on the books establishing various institutions but in effect make them disappear by cancelling their budgets, as he did with Law Commission of Canada (LCC). Eliminating the LCC was an important policy decision that arguably should have been the subject of debate in the House – eliminating it by cancelling its budget was legal, but not democratic.

There are numerous examples of Harper using his control of the purse strings of government, engaging in right wing social engineering. One of the most prominent examples is his attack on culture – a favourite target of right wing regimes. The Bush administration also attacked culture in the U.S. because writers, filmmakers, playwrights and artists are often the most effective social critics. In Canada, governments have always played a major role in funding the arts. But in the run-up to the November 2008 federal election, Harper announced \$40 million in cuts to Canadian arts programs. In the short term, it backfired, costing Harper many seats in Quebec which takes culture more seriously than anywhere else in Canada. But the cuts were not reversed and the country will change as a result. While \$40 million does not sound like much it sustained thousands of cultural workers, and funded thousands of artistic creations reflecting the country.

Another target of Harper's engineering is pure science. The January 28, 2009 budget implemented huge cuts to three of the most important and prestigious grant-making agencies

in the country – the Canadian Institutes of Health Research, the Natural Sciences and Engineering Research Council, and the Social Sciences and Humanities Research Council. A large percentage of scientists and academics working in Canada rely on these agencies to fund their research. The budgets were reduced collectively by \$113 million over the following three years. Genome Canada was expecting approximately \$120 million to kick-start new international research projects (some led by Canadian researchers). Instead there was no mention of the project – and no money. The government also implemented \$35 million in cuts to the National Research Council, one of the oldest such bodies in Canada and one of the most highly respected science agencies in the world.

Why Harper would attack science in this manner (he massively increased spending on physical infrastructure for science institutes and universities) was not revealed. In the U.S., the Obama administration is putting billions into exactly the kind of research the prime minister is cutting – citing the need to be internationally competitive. But the fundamentalist political base of the Conservative Party is openly hostile to science and Harper's Minister of State for Science and Technology, Gary Goodyear, is an evangelical Christian. Asked if he believed in evolution, Goodyear replied: "I'm not going to answer that question. I am a Christian, and I don't think anybody asking a question about my religion is appropriate." Months after the cuts, the Genome Project announced it was forced to abandon its participation in an international stem-cell research project – research opposed by evangelicals. Another area targeted by Harper for re-engineering was the whole area of women's rights and equality and, more broadly, the defence and enhancement of human rights (see below for more details). Both these social developments in Canada over the past 40 years have been denounced and resisted by the same Christian fundamentalist community that is the core voter base for the Harper Conservatives, as it was for the party's predecessor, the Reform Party.

The Canadian Policy Research Networks (CPRN) described its mission this way: "... to create knowledge and lead public dialogue and discussion on social and economic issues important to the well-being of all Canadians. Through more than 700 publications, CPRN's work touches on many of the major socio-economic challenges facing Canadian society. We analyze important public policy issues in health care, supports to families, learning opportunities, job quality, and sustainable cities and communities." It was ranked as the most influential policy institute in Canada. The CPRN also led Canadian research institutes in its in-depth values surveys of Canadians – surveys that showed Canadians to be highly supportive of activist government, democracy and social programs. It was recognized as a "champion of citizen engagement." The Harper government eliminated its funding. On October 29, 2009, it was forced to close its doors.

Combining just these examples it is hard not to conclude that Stephen Harper wants to try to remake Canada at least partially in the image of Christian fundamentalism – a country devoid of modern culture, hostile to science, disdainful of human rights and dedicated to reducing the role of government and public engagement in democracy.

### **Treating his minority government status as a mandate for his entire program**

Prime ministers in Canada govern at the pleasure of Parliament, not the other way round. Everyone understands intuitively that if you have a minority government you must cooperate with the other parties and compromise, or persuade them to your way of thinking. That's what minority means. But from the day in 2006 that Stephen Harper achieved his status as prime minister he has treated this underlying principle with contempt. Once in power, it seems that Harper forgot that only 38 per cent of voters voted for his party and that 62 per cent voted against him and explicitly for the other parties in the House of Commons. For Harper, once he got his hands on state power he was determined to use it even if that meant running roughshod over the rules of Parliament.

The prime minister's determination to use his power would see him demonstrate contempt for virtually every aspect of Canada's democratic institutions, traditions and precedents, the majority of Canadians who did not vote for him, the opposition political parties with legitimacy equal to his own, for the various watchdog agencies tasked with making our system of government transparent and accountable, for the media, for his own MPs and cabinet ministers and for institutions of Parliament other than the House of Commons – the Senate and House Standing Committees. He treats the checks and balances of Canada's political system as somehow perverse and unacceptable impediments to his agenda.

John Adams, one of the founding fathers of the United States, expressed a fundamental value of democracy this way: “[We shall have] a government of laws, not men.” This statement simply affirms what we know intuitively – that those who exercise power over us are not free to do anything they wish with the power we temporarily and conditionally assign to them. They are subject to limits set by law. And they are bound by the principles of democracy not to use their power to pursue personal agendas or vendettas.

Harper can be seen as a classic example of what Adams was implicitly warning about. His is a government of men, not laws – doing whatever he wishes, regardless of democratic tradition and convention and historical precedent. It is for this reason that many commentators have rightly identified Harper as a radical and not a genuine conservative.

### **Stephen Harper's model government: Alberta's one-party state**

Harper's ideological approach to politics and his contempt for parliament are exacerbated by another feature peculiar to this Alberta-based politician. He has always admired the way things are done in Alberta and once wrote a commentary in *The National Post* proposing that Alberta put up a “firewall” around the province to protect it from the federal government.

Alberta has for decades been effectively a one-party state. While the Conservatives (and Social Credit before them) don't get all the votes in elections, they get the vast majority of the seats and the meaningful political debates take place within the governing party and the cabinet – not between the government and the opposition. Politicians who want to exercise power join the Conservatives. If there is a precedent for Harper's pernicious attitude towards democracy, it is found in Alberta, where the government demonstrates some of the characteristics of a monarchy: an entitlement to rule and an arrogant disdain for dissent.

As William Neville, a former Progressive Conservative, pointed out in a *Winnipeg Free Press* commentary on Harper's latest prorogation:

“Harper's office sent a memorandum to all its parliamentary supporters listing all the wonderful things that ministers, Conservative MPs and senators are doing – and, by implication, able to do – because Parliament is not sitting. Essentially, Harper is suggesting that government gets better the less Parliament does.”

That argument was made explicit by no less an authority than one of Harper's senior ministers. Jason Kenney, who holds the portfolio for Citizenship, Immigration and Multiculturalism, commented on January 23, 2010, “As a minister, I often get more done when the House is not in session.”

Alberta's one-party state government is an aberration in Canada and in most English-speaking parliamentary systems – but at least in Alberta, governments achieve a large plurality of votes in elections.

# Two Prorogations in Less Than a Year

## The first prorogation of Parliament, December 4, 2008

On any given political issue, the majority of Canadians polled generally say they are only slightly aware of the issue and its implications. But it is fair to say that in late 2008 when Stephen Harper first postponed a confidence vote in his government and then asked Governor-General Michaëlle Jean to shut down Parliament in order to avoid the vote entirely, the vast majority of Canadian were paying attention.

It was high drama, as high drama as Canadian politics gets, and it was all rooted in Harper's personality and his ruthless approach to politics. Every few months, it seems, the prime minister loses control of the message and does something that reminds people of who he really is. That happened when he announced that as part of his 2009 budget he was going to repeal the legislation that provided government funding for political parties running in the federal arena. The funding was put in place as part of Jean Chrétien's radical reform of elections spending laws that banned both corporations and unions from contributing to federal political parties. In exchange for this lost funding, which was seen as giving interest groups too much power over elections and democracy, the government would provide \$1.75 (indexed to inflation) annually for each vote that a party received in the previous election.

Harper calculated that the Conservatives with their huge party membership did not need the money. More to the point, both the Liberals and the NDP depended on it – the Liberals in particular were deep in debt. It was a ruthless and transparent manoeuvre designed to crush the opposition before the next

election was even called. And it was extremely cynical – he had never criticized the program publicly and nowhere in the party's policies was it even mentioned. And Harper, though he had spent years railing against limits on corporate spending, had actually toughened up the spending law passed by the Chrétien Liberals.

Harper's strategic genius let him down this time. He assumed that the move to cancel government funding of elections – contained in his new budget – would be passed by the opposition because none of the parties would dare precipitate another election (just three months after the last one) by voting against the budget – the only way to defeat the measure. He apparently never imagined that the opposition parties would respond the way they did with a plan of their own to bring down his government on a motion of non-confidence.

There didn't have to be an election – there could be a new government made up a different configuration of MPs in the existing House of Commons. The three leaders held a news conference to announce their plan to replace the Harper government with a Liberal/NDP coalition, which would be supported on a limited number of issues by the Bloc Québécois. For once, it seemed, the opposition could act with even greater boldness than the prime minister. But it wasn't enough.

When Harper's strategizing fails him, his ruthlessness and boldness are called upon to rescue him. First, Harper postponed the confidence vote. Then he did what no other prime minister in Canadian history (and possible British parliamentary history) has ever done: he went to the governor-general and asked her to prorogue Parliament simply to avoid a confi-

dence vote. There was no other explanation offered. In what will go down in the history books as one of the most controversial, and ill-considered decisions by a Governor General, Michaëlle Jean complied. Parliament would be shut down for three months. Harper had saved his government.

With Stéphane Dion as Liberal Party leader there is no doubt the coalition government would have presented itself to the same Governor General and she would have been bound by parliamentary rules and convention to accept it. But once Parliament was shut down, the coalition began to falter. Opinion polls were opposed to it by a wide margin – but mostly, it was revealed later, because Canadians did not want Dion, who had just been decisively rejected by them in an election, to get the PM's office by other means. Michael Ignatieff, the leader-apparent of the Liberals after Dion stepped down, was cool to the idea of a coalition and firmly rejected it after being appointed leader in January 2009.

There was no doubt in anyone's mind what Harper did and why. His minister of democratic reform, Steven Fletcher, made it official when he declared that prorogation "is a valuable parliamentary convention and it prevented the catastrophic coalition of the Bloc, the Liberals, and the NDP." But one question remains and it is as important as Harper's decision to ask for prorogation: was Michaëlle Jean following constitutional law by agreeing to Harper's request? If she was, then the prime minister seems alone in his responsibility for cynically thwarting democracy and setting a precedent (which he, of course, was the first to take advantage of a year later).

But if she was wrong, then the precedent is conceivably even more damaging because it has her seal of approval, when it shouldn't have, and actually sets a constitutional precedent, not just a political one. In other words, if it can be shown that she should have refused, then the fact that she did not represents new constitutional law: proroguing to avoid a parliamentary vote of confidence is now acceptable. Harper's damage to democracy would then be much greater than even acknowledged.

Some pundits and commentators, many defenders of the PM in general, made the claim that Jean had no choice: she is bound by convention to take the advice of the prime minister and not become engaged in the politics of Parliament. But this view does not stand up to scrutiny. Andrew Heard, associate professor of political science at Simon Fraser University, argues persuasively that the Governor General should have refused Harper's request and asked the coalition to form a government.

First, there is the convention that Governor Generals should not intervene in politics, but, in Heard's words, "...must allow ample room to let the elected politicians try and resolve crises

between themselves." But Heard points out that, given the literally unprecedented manoeuvre by Harper, Jean could not avoid getting involved in politics: "...the Governor General's decision was actually going to be a substantial intervention in the political process regardless of whether she granted prorogation or not. Indeed her decision to grant Mr. Harper's request has in fact prevented our elected members of parliament from resolving the issue in a timely fashion."

There are several constitutional principles to which Jean should have availed herself to defend parliamentary democracy. First, she had access to the fact that using prorogation in this manner is highly questionable constitutionally. Second, says Heard, "Only the elected members of the House can determine who has the right to govern in a minority situation." By asking the Governor General to shut down Parliament, Harper was asking Jean to determine who had the right to govern – subverting the role of the House of Commons. She could have refused.

It is the Governor General's explicit role to "...protect the state from serious abuses of power by the government for which there is no judicial remedy." That is almost an exact definition of what Harper's request meant – it was a virtually historic, unprecedented abuse of power and Jean should have "protected the state" from the abuse by saying no.

Heard further points out that the Governor General is bound to act on any constitutional advice "...offered by a prime minister *who enjoys the confidence of the House of Commons* [my italics]." But that is just the point: Harper clearly did not have the confidence of the House. Not only was the request arguably unconstitutional, "The prime minister's authority was also greatly undermined by the existence of a signed agreement for an alternative government supported by the majority of MPs..."

Heard further argued that "The Governor General can only refuse advice if she can appoint an alternative government. Opposition leaders had written to the governor-general several days ahead of her meeting with the prime minister. She was clearly informed that the majority of MPs intended to vote no confidence in the current government and of their commitment to support an alternative government for a minimum of 18 months." She was well within her constitutional powers and convention to reject Harper's request and invite the coalition to form a government.

With this precedent, any prime minister in the future can demand prorogation whenever he or she thinks they may lose a vote of confidence – and they can prorogue for periods much longer than a couple of months. Says Heard: "This precedent is a damaging and dangerous consequence of the Governor General's decision. If this precedent stands, no future House

of Commons can dare stand up to a prime minister without danger of being suspended until the prime minister believes the House has been tamed.”

## **The second prorogation of Parliament, December 30, 2009**

It did not take long for the prime minister to take advantage of the precedent set, at his behest, by the Governor General. Just over a year later, after facing weeks of mostly bad press over the Afghan detainee torture issue and relentless questioning by opposition members of the International Affairs committee, Harper casually shut down Parliament once again. The government was losing control of the situation, something Harper is unaccustomed to. The government's strategy of attacking the character of an extremely credible witness with impeccable credentials had backfired – two-thirds of Canadian polled believed diplomat Richard Colvin and not Foreign Minister Peter McKay or other government spokesmen. And more than 100 former diplomats, many of them ambassadors, signed a letter criticizing the government for its vicious attacks on a public employee who was just doing his job.

The opposition knew it was closing in on possibly explosive information as the government refused to hand over uncensored documents directly related to Colvin's testimony – documents that had been released earlier but with huge swaths blacked out. Harper must have known that refusing to comply, as he did, would quickly lead to charges of contempt of Parliament over which he would have little or no control. In addition, the committee would have begun calling Conservative cabinet ministers to testify, something Harper was not willing to risk: they could not refuse to testify and could conceivably have been forced to testify under oath.

For a man accustomed to controlling everything, it was a situation he could not strategize out of. So, in the middle of the Christmas-New Year's break, on December 30, 2009, he again asked Governor General Michaëlle Jean to shut down Parliament. This time he didn't even bother with the niceties of parliamentary protocol by formally making the request in person – he asked for prorogation by phone, a transgression that C.E.S. Franks, a professor at Queen's University, called “an affront to the dignity of the office of Governor General.” Nevertheless, Jean again gave Harper what he wanted.

There was an additional bonus to the second prorogation for the prime minister, it facilitated Harper's campaign to take control of the Senate. In 2009, he appointed more senators in one year than any prime minister in Canadian history. And in January 2010, he appointed five more, giving him a plurality in the Senate. By proroguing Parliament, Harper also

dissolved the existing Senate Standing Committees, formed when the Liberals were in charge. He could now start afresh – establishing new committees, with Conservatives in the majority and, given the heated partisan atmosphere surrounding their appointments, ready to rubber stamp anything Harper sends their way.

By now, most Canadians are familiar with the details of the shutdown, and the extremely weak excuse Harper gave for shutting the doors of Parliament. Claiming that he needed time to “recalibrate” his government's policy dealing with the ongoing problems in the economy, Harper said little about the 36 pieces of legislation that died with prorogation. It seemed to put the lie to his repeated accusations against the opposition that they were frustrating and delaying the government's legislative agenda. The 36 bills, all of which would have to be restarted from scratch, including bills considered priorities for Harper that dealt with getting “tough on crime,” represented half of all the work carried out by Parliament since the 2008 election.

According to Scott A. Ross, a Liberal blogger whose musings appear in *The National Post* newspaper, the cost of proroguing Parliament this time (assuming that only five of the 36 bills being considered would actually have become law), including paying MPs and senators for accomplishing nothing and the cost of producing the bills that won't become law, was \$130,407,733.

It is rare that anything like a consensus develops on political issues in Canada, especially amongst the pundits, editorialists and academics routinely commenting on events. But the second prorogation by Harper set alarm bells ringing cross the country, and drew out scores of concerned members of the usually quiescent elite in Canada. It was clear to virtually every commentator that Harper had calculated his move to avoid tough questioning from the International Affairs committee on the government's complicity in torture in Afghanistan. By shutting down Parliament, prorogation also shuts down the Senate, and all the committees of both houses. All the committees must be reconstituted after Parliament resumes sitting, meaning that the prime minister could delay appointing a chair to the offending committee for a long time. The “recalibration” was treated as a joke. Harper was so contemptuous of parliamentary rules he could not even bother to develop a believable cover story.

More than 175 professors of political science signed a letter denouncing the prorogation. Written by Daniel Weinstock, who holds a Canada research chair in ethics and political philosophy at the University of Montreal, the letter said, in part: “Given the short-term, tactical, and partisan purposes served by prorogation, and given the absence of any plausible public purpose served by it, we conclude that the prime minister has violated the trust of Parliament and of the Canadian people.

“We emphasize, moreover, that the violation of this trust strikes at the heart of our system of government, which relies upon the use of discretionary powers for the public good rather than merely for partisan purposes. How do we make sure it serves the public good? By requiring our governments to face Parliament and justify their actions, in the face of vigorous questioning.” The letter appeared in many daily papers across the country.

The shamelessness of the move even attracted attention in other countries, a rare event for politics in Canada, with the arch-conservative business magazine, *The Economist*, publishing a scathing editorial entitled “Harper goes prorogue” attacking the prime minister: “Never mind what his spin doctors say: Mr. Harper’s move looks like naked self interest,” said the editorial. It ridiculed the “recalibration” argument, saying Harper’s government “cannot apparently cope with Parliament’s deliberations while dealing with the country’s economic troubles and the challenge of hosting the Winter Olympic Games.” The magazine had endorsed Harper in the 2006 and 2008 elections.

Even columnist John Ibbitson, normally an eager fan of Harper’s policies, could barely contain himself, writing: “No other legislature among what Winston Churchill called the English-speaking peoples would tolerate such treatment.” Even *The Globe and Mail* editorial board, which overlooks most of Harper’s outrages, was shocked and stated in an editorial: “Canadians are right to wonder how the prime minister’s insulting prorogation ploy fits with the Conservative commitment to restore public trust in government.”

One of the benefits of Harper’s four-year reign, for those supporting his conservative policies, was that Canadians were becoming less and less engaged, and more and more disillusioned with federal politics. But the second shutdown of Parliament threatened to change all that. What started out as a simple Facebook page expressing outrage, turned virtually overnight into Canadians Against the Prorogation of Parliament – an internet protest that eventually garnered over 220,000 names. It also spawned an on-the-ground movement which, in the space of two weeks, organized demonstrations in 61 communities on January 23, 2010, the Saturday before Parliament had been originally scheduled to resume. Some 25,000 people braved winter weather to denounce the government and demand democracy. The movement is not going away.

# Thwarting Democracy

## **In contempt of Parliament: Refusing to hand over documents on Afghan torture**

Just before Stephen Harper prorogued Parliament for the second time, on December 30, 2009, he had already demonstrated his contempt for Parliament by ignoring a direct majority vote in the House of Commons demanding that the government produce uncensored documents relevant to the allegations made by diplomat Richard Colvin. Colvin's testimony about the government's complicity in the torture of Afghan detainees prompted a storm of protest and subsequent stonewalling from the government. In January this year, University of Ottawa constitutional law professor Errol Mendes told an informal hearing of the parliamentary committee looking into the Afghanistan detainee issue that "The executive is really placing itself above Parliament. For the first time that I know in Canadian history, the executive is saying we are superior to Parliament. This is... an open defiance of Parliament. Nothing more, nothing less."

Mendes left little doubt about how serious this defiance of Parliament was: "The refusal to release the uncensored documents is a violation of the Canadian Constitution. This is the equivalent to a defiance of a judicial subpoena. The Harper government, if it does not respect its constitutional obligations, will be in contempt of Parliament."

Conservative officials, up to and including the prime minister could be called before the Bar of the House where the House would determine what punishment to impose – punishments which include possible expulsion from the House.

Senior Minister Stockwell Day responded for the govern-

ment, telling the opposition if it wanted the documents it should go to court.

## **Thwarting democracy: The guide to subverting parliamentary committees**

While many Canadians may not be aware of the work of parliamentary committees most days, these deliberative bodies are actually a key feature of parliamentary democracy – and get more actual substantive work done than often occurs in the House of Commons. While the latter is increasingly taken up with partisan bickering and point scoring, the work of the committees is to examine legislation in detail, debate possible amendments and, perhaps most importantly, call witnesses (subpoena them if necessary) to give testimony relevant to the issue at hand.

The committees (both the House and the Senate have them), reflecting all the legislative areas the government is engaged in, provide the only effective public access to law-making in Parliament. In that sense they are amongst the most democratic features of Parliament. Committees can call witnesses and witnesses can ask to be heard. While committee deliberations are only rarely reported in the media, the Foreign Affairs Committee's high-profile investigation into the Afghan detainee issue demonstrates the kind of power and influence they have if they wish to use it.

In the latter case it also demonstrates that a committee can be used to check the power of the Prime Minister's Office (PMO). The PMO did everything it could to thwart the

Military Police Complaints Commission in its investigation of the detainee issue, including intimidating witnesses, such as diplomat Richard Colvin, and preventing them from publicly testifying at the commission's hearings. By opening up the issue and calling on Colvin to testify, the opposition circumvented the power of the PMO and revealed information critical to the public's understanding of an important issue. The committees' membership reflects the parties' strength in the House of Commons (or Senate) so the Conservatives have a minority on all committees. The prime minister's principal power rests in the fact that he can choose the committee chairs (which he does, renegeing on a promise to allow them to be chosen by the committees).

One of the most persistent complaints that Stephen Harper levels at the opposition is the committees' alleged "delays" and "disruption" of his government's legislative agenda. Yet as is the case so often, it betrays Harper's lack of appreciation of the fact that he heads a minority government. In most such situations, governments wanting to keep the confidence of the House engage in some level of compromise. But Harper's contempt for the opposition parties and of democracy itself leads him to brand their legitimate review of legislation as interference.

In the spring of 2007 he moved to fix the problem.

On May 17, 2007, Don Martin, a prominent small "c" conservative columnist with *The Calgary Herald*, received a secret document that demonstrated Harper's solution to opposition intransigence. It was a 200-page guidebook provided to Conservative committee chairs only, which, according to Martin: "...tells them how to favour government agendas, select party-friendly witnesses, coach favourable testimony, set in motion debate-obstructing delays and, if necessary, storm out of meetings to grind parliamentary business to a halt." The book was handed out to the Conservative chairs a couple of days before at a meeting with government whip Jay Hill – a meeting where, according to Martin's sources, Hill "...lavished praise on the chairs who caused disruptions and admonished those who prefer to lead through consensus." Besides its inherently anti-democratic thrust, the guidebook also revealed yet more evidence of the degree of control that Harper exerts over the government – whether MPs, cabinet ministers or committee chairs.

Among the suggested tactics in the book, according to Martin:

- Procedural notes tell the chairs to always recognize a Conservative member just before a motion is put to a vote "and let them speak as long as they wish" – a manoeuvre used to kick-start a filibuster as a stall tactic.
- The guide says a "disruptive" committee should be adjourned by the chair on short notice. "Such authority is solely

in the discretion of the chair. No debate, no appeal possible." By failing to appoint the vice-chair to run the meeting, the adjournment will last until the chair is ready to reconvene the committee.

- That the Conservative Party helps pick committee witnesses. The committee chair "should ensure that witnesses suggested by the Conservative Party of Canada are favourable to the government and ministry," the document warns. One high-profile example of the tactics being used was the decision last December of the chair of the Foreign Affairs Committee examining the detainee issue, to walk out, along with all his Conservative colleagues, thus making it impossible, under House rules, for the committee to continue its work.

## The "in-and-out" elections spending scandal

Following the 2006 federal election, revelations about possible rule breaking by the Conservatives led to a developing scandal called the "in-and-out" affair. The scheme involved a sleight of hand through which the national party was able to increase the amount of money it was reimbursed under the Elections Canada spending rules. Candidates winning a certain percentage of the vote are entitled to a 60 per cent refund of the money they spend. But many ridings cannot spend up to their limit – especially those in marginal ridings where Conservatives had no chance of winning.

The Conservative Party had reached their national advertising limit of \$18.3 million, so it transferred \$1.3 million dollars to 67 riding campaigns that had not hit their own \$80,000 limit. The party then had the ridings immediately return the money to the party, claiming that it was being used to purchase advertising and creating receipts on photocopied letterhead of the ad company, Retail Media, used by the national headquarters. Retail Media's CEO told investigators that "the invoice must have been altered or created by someone, because it did not conform to the appearance of invoices sent by Retail Media to the Conservative Party of Canada with respect to the media buy." The ads were arranged for by party headquarters and were identical to its national ads except for small print identifying the local candidate.

The scheme was discovered by accident when an investigator from Elections Canada became suspicious after a naïve official agent for a candidate revealed the transfer arrangement. Several other examples were discovered. In 2007 Elections Canada refused to reimburse candidates \$1.1 million for television and radio ads. The Conservatives almost immediately launched a lawsuit against Elections Canada.

Commissioner of Elections William Corbett has been conducting a separate investigation into the matter for more

than two years. In April 2008, his investigators raided the Conservative Party's headquarters in Ottawa and seized boxes of documents and computer files. E.C. investigator Ronald Lamothe's affidavit noted:

“...a deliberate ‘in-and-out’ scheme conceived to move money from national coffers into and out of the accounts of local campaigns, which have their own spending limits, in order to skirt the national spending limit... Funds were transferred into and out of each of the bank accounts of the 67 campaigns ... entirely under the control of and at the direction of officials of the Conservative Fund of Canada and/or the Conservative Party of Canada... The purpose of the in-and-out transfers was to provide participating candidates with documentation to support their reimbursement claims for these election expenses.”

After the raid, the opposition parties began grilling Stephen Harper in the Commons about the in-and-out scheme – upon which he dared them to make the accusations outside the House. They also raised the issue at the Committee on Procedure and House Affairs. The partisan acrimony resulting from the investigation resulted in chaos at the committee – the chair, Gary Goodyear, was removed by a vote of non-confidence for filibustering, and Jay Hill, the Conservative whip, ultimately refused to appoint another chair unless the opposition parties ceased discussing the issue.

The partisan fighting ended only when Harper called another election at the end of August – in the process violating his own fixed elections dates legislation.

On January 18, 2010, Federal Court Justice Luc Martineau in Ottawa set aside the chief electoral officer's decision not to approve \$1.1 million in Conservative Party expenses challenged by Elections Canada after the 2006 federal election. No decision to appeal has been announced at the time of this writing.

The court decision does not affect Commissioner of Elections William Corbett's investigation, which could result in a referral to the director of public prosecutions for possible charges.

## **Ignoring resolutions passed in Parliament by majority votes**

There have been several motions passed in the House of Commons as non-binding resolutions. While they cannot force the government to act, these resolutions actually reflect the will of Parliament as they can only pass if a majority votes for them. The Harper government has ignored all such resolutions.

One, a resolution calling on Canada to allow war resisters to be allowed to stay in Canada permanently as conscientious objectors, was actually passed twice – once in June 2008 and again in September 2009. The Canada Border Services Agency has continued to routinely enforce deportation orders of U.S. war resisters. Ottawa-based immigration lawyer Yaver Hameed believes that “the contradiction between the non-binding parliamentary motion that allows war resisters to stay in Canada versus the Canada Border Services effecting deportation orders to war resisters reveals a lack of commitment to our basic democratic values.” Since the resolution was passed, several war resisters have been sent back to the U.S. and subsequently to prison. Sixty-three per cent of Canadians polled support giving sanctuary to war resisters.

In June 2007, an NDP sponsored resolution, first debated and passed by the Standing Committee on International Trade, was debated for three hours in the House of Commons. The motion called for a formal letter of agreement to be signed with the U.S. and Mexico to ensure that bulk water will never be defined as a good or service under the North American Free Trade Agreement (NAFTA). As NAFTA critics and the majority of the committee pointed out, the federal government or the provinces could face multiple NAFTA lawsuits if governments, under current NAFTA rules, tried to prevent the bulk export of water. The motion passed the House of Commons by a vote of 134 to 108, with all Conservatives voting against. The government ignored the resolution despite the opposition of the vast majority of Canadians to such exports.



# Controlling Critics

## Undermining and manipulating arms-length commissions and watchdog agencies

The federal government is more than just Parliament. It also consists of many arms-length and independent agencies that are designed to be beyond the political control of the government. They were established in large measure to ensure that the areas they oversee are not politicized by the government of the day and that democratic accountability is ensured. Most report directly to Parliament, not to the Prime Minister's Office, and so are normally beyond the PMO's control. They are generally given wide leeway to get their work done and their reports are not vetted or edited by the government.

But a determined occupant of the Prime Minister's Office can undermine, weaken and attack that independence in various ways. The government can refuse to co-operate, the PMO has the power to appoint the heads of these bodies or the boards, and it has the power to cut the budgets of such agencies – all without any reference to the House of Commons, even in a minority situation. Stephen Harper has used all these methods to weaken agencies whose work raises questions about his government's policies or actions.

Some of the principal examples:

### The Parliamentary Budget Office

Kevin Page, a veteran public servant, heads the Parliamentary Budget Office (PBO), and in June 2009, following a long and protracted public battle with the government, told *The Toronto Star* that the Conservative government was doing its best to shut him down. "This is a litmus test for democracy," said Page, referring to the government's decision to slash his bud-

get from \$2.8 million to \$1.8 million. He said that in his battle over his budget he was reminded of *Washington Post* reporter Bob Woodward's legendary comment: "Democracies die in darkness."

Page had reported in October 2008 that the war in Afghanistan had cost \$18 billion – drawing widespread media attention to something Harper would have preferred to keep buried. The prime minister was reportedly furious at the revelation. Then, in November of that year, he released a report predicting (correctly) that the government has headed for a deficit. The cutting of Kevin Page's budget came as a surprise – even Conservative MPs connected to the process, had suggested a budget increase.

Page and his office provide independent analysis on economic trends, and closely examine government estimates and spending. The PBO works directly with the Commons and Senate finance committees as well as the public accounts committee.

"Our budget is cut and I am in an almost impossible situation. ... I cannot carry out my mandate," Page told *The Toronto Star* on June 24, 2009.

### The RCMP Public Complaints Commission

Given the virtual collapse of accountability and the highly questionable actions of the RCMP over the past few years, if ever there was needed a strong oversight body it is now. That is what the RCMP Complaints Commission is supposed to do and its head, Paul Kennedy, was apparently doing his job too well. While the prime minister could not intervene directly in

the commission he could, and did, refuse to renew Kennedy's four-year mandate. This occurred on Nov. 18, 2009.

Kennedy was very critical of the RCMP's indiscriminate and often lethal use of tasers and also targeted the practice of police investigating themselves in the case of serious incidents involving the public. (Former Harper political operative and friend, Ken Boessenkool, has been a lobbyist for Taser International.) This past January, Kennedy told a Liberal Party forum that he "...feared that Canada's international reputation could be affected by the way independent overseers are being silenced – since many nations have long looked to Canada as an example of a country willing to be self-critical."

Kennedy saw the government's choice for his replacement as someone who may not be nearly as aggressive in pursuing the mandate of the office. Ian McPhail, appointed for one year as interim chair, is a real estate lawyer with ties to the Conservatives going back to 1970. While Kennedy saw his job as making the RCMP accountable, McPhail says his responsibility is to understand how "an administrative agency should operate." According to *The Globe and Mail*, McPhail believes "...the CPC chair does not have to be an expert in criminal law or civilian oversight in general."

### **The Military Police Complaints Commission**

Of all the independent commissions and agencies that have annoyed Stephen Harper, none seem to have disturbed him as much as the Military Police Complaints Commission (MPCC). Its principal focus has been on the torture scandal surrounding the handover of Canadian-captured Afghan detainees to the Afghan security forces – notorious for their record of torture and abuse of prisoners. The commission's determination to get to the bottom of the scandal has resulted in almost unprecedented stonewalling, harassment of potential witnesses and refusal to co-operate on the part of the Harper government.

The conflict between Peter Tinsley, the commission's chair, and the government came to a head in October 2007, when Tinsley suspended the hearings in the face of three government motions seeking an adjournment. Just weeks before, written testimony by Richard Colvin (the Canadian intelligence officer now famous for testifying at parliamentary hearings into the affair) was sealed at the behest of the government – direct interference in its deliberations which made independent review of Colvin's testimony impossible.

The government tried successfully at that time to prevent Colvin from testifying at all before the commission, and government lawyers threatened to impose national security restrictions on virtually all government witnesses the commission sought to call. The government, by the spring of 2008, had placed severe restrictions on thousands of pages of documents requested by commission counsel. This refusal to

co-operate with the commission continued through 2008 and 2009. Commission counsel Freya Kristjanson told *The Globe and Mail* in October 2009: "Since March 2008... when the chair announced that this panel would hold a public interest hearing, the commission has not been provided with a single document by the government."

Tinsley's term as chair was not renewed when it ended in late 2009 and to date there has been no replacement named. He is hardly a soft liberal in terms of his background. A lawyer, he was a United Nations war crimes prosecutor in Kosovo, a former director of the Ontario Special Investigations Unit looking into police incidents resulting in death or serious injury, and served in the Canadian Forces for 28 years.

Regarding the government's behaviour towards him, the commission and the parliamentary hearings into the torture issue, Tinsley told *The Hill Times*: "We have now, with the prorogation, moved to a point that one could say Parliament has been dismissed. For one, like myself, who believes that fundamental to our legal structure is the supremacy of Parliament, that's very disturbing, so I would use the term dictatorial, in a metaphorical fashion."

### **Canadian Nuclear Safety Commission**

Another high-profile case of government political interference in a quasi-judicial agency was the direct intervention in the Canadian Nuclear Regulatory Agency (CNRA) – responsible for monitoring the safety of all nuclear reactors in Canada, including the Chalk River reactor which produces medical isotopes. In November 2007, a crisis developed over the decision by Linda Keen, president of the CNRA, to extend a regular maintenance shutdown when safety violations were discovered by CNRA inspectors. The shutdown caused a worldwide shortage of isotopes.

In December 2007, Minister of Natural Resources Gary Lunn wrote a three-page letter to Keen threatening to fire her and questioning her competence. Keen fired back (after Lunn's letter was leaked to the media) accusing Lunn of political interference in an independent body and pointing out that he had no authority, as minister, to fire her as president. Opposition parties called for Lunn's resignation and backed Keen for applying the letter of the law to an issue as important as nuclear safety.

Prime Minister Harper publicly pointed the finger at Keen as the cause of the crisis. But many close to the issue accused Lunn of failing to act weeks before he did, when he was first informed of the potential isotope crisis. His decision to fire Keen was seen as a diversion from his own culpability. Parliament ended up passing legislation over-ruling Keen and the reactor was restarted. Keen was fired by the federal government in January 2008 by an extraordinary Order in

Council passed by the cabinet. Keen told a Liberal Party forum in January 2010 that she had warned of a chill effect on independent tribunals: "... Are we in an era where tribunals must be more interested in meeting the needs of the government than in doing their jobs?"



# Manipulating and Muzzling the Media

## Harper's undermining of the Access to Information Act

Public access to information about what government is doing is at the heart of democratic accountability. It has been called democracy's oxygen. In a system where ordinary citizens determine who has state power through elections, their electoral decisions can only be well informed if they are based on government transparency regarding its actions. Whether that information is sought by individuals, civil society groups, researchers, or journalists, democracy cannot function as promised if information is systematically denied by the government of the day.

While no government in the past 20 years has a clean record of transparency and enthusiastically providing information (often used to criticize it) the Conservative government of Stephen Harper has been widely accused of taking secrecy to obsessive levels.

Many journalists and others trying to prise information out of the current government have written about their experiences. In addition, W.T. Stanbury, professor emeritus at the University of British Columbia, wrote an article for *The Hill Times* in June 2009, that pulled together the many examples – and the various methods – of the Harper regime's efforts at maintaining a tight grip on information.

One of the methods of slowing down the flow of information, if not stopping it altogether, was the practice of designating certain requests as needing "special handling." Information Commissioner Robert Marleau "found that there is 'amber lighting' or special handling applied to access to

information requests coming from specific groups... It turns out that, yes, journalists [are included], but Parliamentarians, lawyers, immigration lawyers, a whole series of other users were in a worse situation than the media,"

Yet, according to the Canadian Newspaper Association's own analysis "more than one in four of all requests designated for special handling comes from media requesters, even though fewer than one in six requests overall come from the media. In fact, media requests are about twice as likely to get the tougher treatment as requests overall."

The vice grip on information, and the deliberate undermining of the Freedom of Information Act led to Marleau (who was appointed by the prime minister) telling Canwest News Service in February 2009: "A lack of leadership at the highest levels of the Conservative government has contributed to a 'crisis of information management' that has slowed the disclosure of public records to a trickle."

Another method of slowing down the distribution of information is to make more and more of it subject to the access-to-information (ATI) process – in other words information that has traditionally been made available as a matter of course for the public and the media is now placed behind the barrier of ATI. According to Sun Media columnist Greg Weston, the Harper government has "forced virtually all government information to flow through access to information and, in so doing, (has) completely overwhelmed the system to the point where it is now dysfunctional."

If manipulating the rules of ATI doesn't do the job, the government can always resort to pushing the question into

the courts, which both delays the issue indefinitely but can also end up in an out-of-court settlement in which the details of the case are kept secret. Harper sued the Liberal Party over allegations it made about the government regarding the Conservatives' efforts to persuade independent MP Chuck Cadman to vote with the Conservatives to defeat the Liberal minority government. The suit was launched March 8, 2005 and effectively closed off any access to information about the issue. An out-of-court settlement (the Conservatives were seeking \$3.5 million) almost a year later locked the information away forever.

The easiest way to block access to information you want to keep secret is to simply delay producing the information by seeking repeated and/or lengthy extensions of the time necessary to "find" and produce it. As reported in a *Hill Times* editorial of March 2, 2009: "Access to Information Commissioner Robert Marleau released a scathing report on how quickly 10 federal institutions responded to access to information requests in the last fiscal year. He gave six of them failing grades.... Foreign Affairs took an average of 132 days to meet requests and Public Works 126 days."

Another popular method of thwarting public and media efforts is to unilaterally charge large fees for the "preparation" of information. According to David Akin of *Cannest News Service* "Two legal experts say the Department of Foreign Affairs and International Trade (DFAIT) violated Canada's Access to Information laws when it decided to systematically charge 'preparation fees' before responding to Access to Information requests..." The department assembled over 160,000 pages to be released but refused to put them on the public record because those requesting the information abandoned the request due to cost considerations.

And on Feb. 8, 2010, the Harper government was caught breaking the law regarding the ATI Act. A Conservative political operative working for Public Works Minister Christian Paradis forced the Department of Public Works to break the Access to Information Act and deny the full release of a report to *The Canadian Press*. The department was in the process of mailing the material out when the aide rushed into the room and ordered bureaucrats to "unrelease" the documents.

## Controlling the message, managing the media

On May 23, 2006, some two dozen journalists from the Parliamentary Press Gallery walked out of a news conference even before the prime minister had shown up. They did so in protest over efforts by Harper's deputy press officer, Dimitri Soudas, to exercise control over who would ask questions. Reporters had to sign up if they wanted to ask a question and then Harper could choose whom to answer. It was like the

White House, not at all like the practice that had existed for decades in Ottawa where the media itself made such decisions. This was the showdown, just four months after Harper had won his first minority government.

It was a battle that the press gallery would lose. Indeed, some believed that the whole confrontation was staged by the Prime Minister's Office in the hopes for such a confrontation, a theory given some credence by an interview Harper gave later to the rightwing Alberta-based *Western Standard* magazine. He told the magazine: "Well, I've got more control now I'm free to pick my interviews when and where I want to have them."

The Press Gallery also had a meeting with Harper's very tough press officer, Sandra Buckler, in May 2006. She had worked for Harper for years and prior to this for the Reform Party's Preston Manning. If the gallery had any illusion that there was simply a misunderstanding with a new prime minister, Buckler disabused them of the idea. *Hill Times* journalist Sean Durkin wrote: "Sandra Buckler did everything she could to antagonize the press gallery, prompting its president, Emmanuelle Latraverse, to call an end to the meeting after 20 minutes. Buckler made it clear she didn't care about any of the gallery's concerns, and indicated that even more plans were in the works to control the flow of information to reporters and limit their access to government."

Harper had suggested to *The Western Standard* that breaking the gallery's control of the news was "good for democracy." But as the *Toronto Sun's* Alan Findlay told the *Ryerson Review of Journalism*, when government tightly controls access to information it is the government that escapes accountability by deliberately making it impossible to ask the tough questions. "Not returning calls, not holding press conferences, cherry-picking reporters for interviews – all make it difficult to collect and scrutinize government information."

By the end of the first year of the Harper government – seven months had passed without a single news conference or scrum – things were no better. Chris Cobb, a political writer for *The Ottawa Citizen*, told *The Review*: "Mr. Harper has adopted a communications strategy unlike any Ottawa has seen before. Government-by-surprise is part of a Harper communications package that also includes tight control over public statements from his cabinet ministers, and a muzzle on senior bureaucrats, parliamentary secretaries and ministerial communications advisers."

One of Harper's strategies was to virtually ignore the Ottawa press gallery altogether and communicate through local and regional media, where reporters would not have the contacts and collective information sharing that the Ottawa reporters had. It would be easier to get an unmediated message through to the public by giving interviews to reporters who did not

normally cover national politics, and who would be less able to ask questions based on the deep background their Ottawa counterparts might have.

Some predicted that cutting off the press gallery's access to the prime minister and to information would cause them to dig harder and do investigative pieces, resulting in better journalism and more exposure of Harper's government. But it didn't turn out that way for the most part. Harper is now well known for being brutal in his treatment of those he sees as enemies in the media and for rewarding his friends. And it works. According to Robin Sears, a political strategy consultant, "...there is little appetite for a non-government-driven news agenda at most news organizations, so independent or investigative stories are not encouraged. Finally, it is hard work to find, develop, source and write stuff on your own, so few people try."

Sears' analysis turns out to be right as Harper's iron discipline has largely worked, according to Ekos pollster Frank Graves. The Parliamentary Press Gallery has given up the fight and little has changed since the reporters walked out in March 2006. If anything, things have worsened. The prime minister does not even enter the House of Commons for Question period through the front door, but takes a circuitous route "...ducking down through a narrow hallway, behind the public gallery, atop the west side of the Chamber, down a small staircase, and then scuttling into the government lobby through a back door across from the Speaker of the House of Commons' chamber," according to Hill Times reporter Tim Naumetz, writing in November last year.

There aren't even any photo-ops anymore – the Prime Minister's Office sends a constant stream of favourable photos of the prime minister to media outlets across the country almost every day. Thus, Canadians never see the hard side of Harper – just the warm Beatles fan playing the piano at the National Arts Centre.

According to Naumetz, press gallery veterans believe that Harper's deputy communications director Dimitri Soudas keeps a blacklist of reporters who will not be recognized for questions.

# A Personal Agenda

## Harper's obsession with reforming the Senate

Whatever Canadians feel about the Senate, for the vast majority it is not a priority, indeed it does not show up in any poll that asks Canadians to name their most important issues. But an elected and equal Senate has always been a priority for Stephen Harper and was a key plank in the Reform Party platform when Harper was its policy director. The Conservatives had it as part of their platform in 2008, but Harper, once again, seems disdainful of the fact that only 38 per cent of Canadian voted for Senate reform by voting for his party. As with so many items on his agenda stymied by the opposition, the prime minister has expressed anger that the opposition parties are blocking his way on Senate reform, and on this issue he has demonstrated again that the end justifies the means.

It is both ironic and hypocritical that Harper, in his quest for a democratic senate, is prepared to run roughshod over democracy to get it. He denounces the Senate, for example, for "blocking" or "delaying" his legislation on a whole range of issues. But the job of the Senate (elected or otherwise) is precisely to provide "sober second thought" to the legislation passed by the House of Commons and is not a rubber stamp for the government of the day. And with the evidence that this prime minister is more controlling than possibly any other in Canadian history, it is even more incumbent on the Senate to play the role of a check and balance on the power of the executive – the prime minister.

In both the 2006 and 2008 elections Harper pledged not to appoint Senators as vacancies arose. Yet Harper is so determined to behave as if he has a majority that he will do

anything in his power to achieve an elected Senate. On Dec. 22, 2008 – at the time his government was facing defeat by the Liberal-NDP coalition – he appointed 18 new senators, the largest number ever in a single day. He stated that this was to prevent any potential coalition from appointing senators: "If Senate vacancies are to be filled... they should be filled by the government that Canadians elected rather than by a coalition that no one voted for." Coalition governments are normal in parliamentary democracies and Harper's complaint notwithstanding, a majority of Canadians actually did vote for the coalition parties, taken together.

On January 29, 2010, Harper repeated his performance, appointing five new senators and in so doing, achieving a plurality in the Senate (more seats than the Liberals but not an absolute majority due to several independents). All were appointed in a highly partisan atmosphere, and all have almost certainly pledged to support his vision of a reformed senate. But as conservative *Calgary Herald* columnist Don Martin pointed out: "There'll be no pretence of the Senate as a collection of honourable citizens trying to provide a different take on legislation. It'll be a lapdog kennel.... Harper is setting up a stark partisan division of the Senate with surprising gusto given he's a leader who promised to reform it into an effective and elected regional counterbalance to the Commons." All of these senators can serve until they 75 – even if the rules change in the meantime.

It is still not entirely clear what a final Senate reform package would look like but when he was the Reform Party's policy director, Harper espoused the view that the Senate would have a veto over legislation passed in the House of Commons. Given his aversion to any active role for government

this rearrangement of the Houses of Parliament could work to Harper's ideological advantage over time. It could conceivably produce a situation of continuous deadlock whenever different parties controlled the Senate and the House of Commons.

Not only did Harper violate his own promises and principles in his appointments, his threat to implement the change with a simple parliamentary resolution, without any reference to the provinces, promised to create a constitutional crisis. Most of the Atlantic provinces immediately challenged the prime minister, as did Quebec. But for Harper it was just another occasion for brinkmanship – in your face politics, showing contempt for other elected first ministers and risking a constitutional crisis in which the Supreme Court would have to rule on the question.

## **Stephen Harper's vendetta against the Canadian Wheat Board**

There is no more dramatic example of Stephen Harper's determination to remake the country than his sustained attack on the Canadian Wheat Board (CWB). Harper – aided by his agriculture ministers Chuck Strahl and, later, Gerry Ritz – bent and broke the law more times trying to eliminate the CWB than he did regarding any other institution. Harper's personal campaign against the Wheat Board goes back to his time in the Reform Party and extended through his stint running the rightwing National Citizens Coalition, where he ran an extremely expensive campaign attacking the board. As soon as he was Prime Minister, he took it up again.

The CWB, established in 1935 to protect farmers from the gouging of middlemen and grain companies, is what is called a "single desk" seller – it has a monopoly on the selling of wheat and barley produced by Canadian prairie farmers. By selling the entire western Canadian crop, the CWB has enormous leverage in the marketplace (it controls up to \$7 billion in grain stocks) and gets the best price possible – resulting in an annual boost to farmers' profits of about \$600 million (when you factor in the CWB's economic influence on western rail transport fees the advantage jumps to more than \$1.5 billion).

The attack on the board is purely ideological and Harper, backed by the private grain industry, claims it is about "choice." But the "market" is monopolistic itself: 73 per cent of it is controlled by four giant grain companies. Contrary to the arguments of the government, you could not have both systems operating simultaneously: the single desk would lose its market power if farmers could sell to private companies.

The CWB is run by farmers who elect a majority of the board members (the government appoints the remainder).

Farmers have consistently voted in favour of maintaining the CWB monopoly – in spite of the campaigns against it. Ignoring the repeated elections of pro-CWB farmers to the board, Harper made it clear on numerous occasions that regardless of farmers' support he intended to crush all dissent, stating in June 2008: "But the bottom line is this. Mark my words. Western Canadian farmers want this freedom [an open market] and they are going to get it. And anybody who stands in their way is going to get walked over." In Dec. 2008, five months later, yet another election confirmed the CWB's monopoly over the selling of wheat and barley.

This was in spite of an intensive Conservative campaign in support of anti-CWB candidates. Five prairie Conservative MPs had campaigned for these anti-CWB candidates, using tens of thousands of taxpayers' dollars.

This followed a legal change in the regulations by the government that restricted candidate spending to \$15,000 but explicitly permitted anyone else (other farmers, corporations, politicians) to spend an unlimited amount supporting candidates. The five MPs refused to report their spending to the election co-ordinator. It seems that the Conservative MPs somehow had access to the CWB mailing list, a fact investigated briefly by the RCMP on a complaint from the National Farmers Union. They dropped the case because they could not "guarantee" a conviction, according to former NFU President Stewart Wells.

In 2007, the government had attempted to end the CWB's monopoly over the sale of barley, using an Order in Council – essentially a cabinet edict. But a federal court ruled that was illegal. Another court ruled against the government on another issue: it declared illegal the Harper government's gag order against the CWB, preventing the CWB and its chairman from publicly defending its own institution. (The government eventually won a court appeal of the ruling.)

The court ruling against the Order in Council (any change had to be passed by Parliament) did not faze Harper. In response he stated: "[The ruling] does not change the determination of the government of Canada to see a dual market for Canadian farmers. I hope the wheat board will start working with the government to make sure this is going to happen, 'cause it's going to happen one way or another."

The list of dirty tricks used by the government to undermine or destroy the CWB is a long one. The National Farmers Union (NFU), the principal defender of the Board in its long fight to survive, provided this chronology of attacks on the CWB:

- Then-minister, Chuck Strahl, holds a closed-door meeting in Saskatoon with anti-CWB organizations (July 27, 2006);
- Minister Strahl appoints a "Task Force" on the CWB

stacked with industry-linked, CWB-opponents (Sept. 19, 2006);

- Minister Strahl issues a gag order on the CWB – it cannot publicly defend its single-desk mandate (Oct. 6, 2006);
- In the middle of a CWB board election, Minister Strahl summarily cuts 16,000 farmers from the CWB directors' elections voters' list, out of a total of 44,000, with no consultation with the board (Oct. 17, 2006);
- Strahl begins firing incumbent government-appointed CWB directors and replacing them with anti-CWB directors (Oct.-Nov. 2006);
- The government fires CWB CEO Adrian Measner (32 years with the board) for refusing to obey the gag order and refusing to promote the government's position of "choice" (Nov.-Dec., 2006);
- The government conducts a sham "plebiscite" – unclear question, no public voters' list, no spending controls, and no guarantee of ballot secrecy. Some farmers received multiple ballots (Jan.-Mar. 2007);
- The government introduces a Cabinet Order in Council to strip barley from the CWB mandate (Apr. 21, 2007);
- The federal court rules the government's actions illegal (July 31, 2007);
- The federal government appeals (Aug. 30, 2007) and loses, again (Feb. 26, 2008);
- The Harper government introduces legislation, Bill C-46, to fast-track removal of barley from the CWB, to terminate farmers' right to vote on removals, and to create a CWB-harassment mechanism in the form of an arbitration system (Feb. 29, 2008);
- Another ministerial letter of instruction forced the CWB to remove thousands of legitimate voters from the initial voters' list for the fall board vote. These farmers were never directly contacted by anyone to tell them that they had been removed (July 2008).

The government also attacked the CWB on other fronts: legal actions, a staff purge, and attempts to pressure CWB directors. During the 2006 board elections (won overwhelmingly by pro-single desk candidates), Conservative-friendly advertising agencies solicited phony letters to newspapers to create an illusion of producer support for the gutting of the board.

The CWB still currently enjoys its single desk monopoly on wheat and barley (and farmers enjoy their \$600 million to \$1.5 billion in extra yearly income). All the anti-CWB legislation introduced in the House has been defeated by the opposition or died on the order paper as all three opposition parties have worked hard to defend the board.

But Harper has not given up. On the record, Conservative MP David Anderson has said that the government should sacrifice the board in the current WTO negotiations, and Alex Binkley, writing in the *Manitoba Co-operator*, claims the government has new legislation ready to introduce. It is almost certain that they will use a tool they have used twice

before: trying to further suppress the eligible voters by introducing a minimum volume of deliveries to qualify, an anti-democratic move aimed at small farmers.

# Failing to Protect Canadian Citizens

## Refusing to seek clemency for Canadian death row inmates overseas

Ronald Smith is a convicted killer who has spent years on death row in Montana State Prison. The Harper government refused to seek clemency for Smith from the U.S. government. It had been Canadian government policy since the abolition of the death penalty in Canada to seek clemency for Canadians sentenced to death in other countries. The logic is straight forward: if Canada does not believe Canadians should face the death penalty here, then they shouldn't face it elsewhere. There were no exceptions.

The Harper government's new policy stated that it would decide to seek clemency on a case-by-case basis, based on the particular circumstances including the nature of the crime and whether the host country is democratic and respects the rule of law. Once again, it seemed that Harper's personal preferences trumped Canadian law and tradition by inserting subjective criteria for deciding a Canadian citizen's fate. He knew he couldn't execute prisoners in Canada so he took the opportunity to ensure that at least some Canadians would face the penalty he preferred. The practice of seeking clemency was not written in formal legislation but until Harper's election, all other prime ministers had recognized the practice. It was not clear under the new rules who would be making such subjective life and death decisions.

The Canadian Bar Association, at its 2007 annual meeting, denounced the new policy: "The case-by-case approach invites arbitrary and discriminatory decisions, implying that the death penalty may be appropriate for some Canadians," stated the

resolution passed unanimously. "It puts the administration of justice into disrepute," association president Guy Joubert said. Not only was the new position a violation of years of practice and not debated in Parliament, it also revealed a government either ignorant of the potential consequences or dismissive of them. The Bar Association pointed out that based on the new policy, Canada would only seek clemency if it determined that the country in question was not democratic or had a flawed justice system – declarations that would hardly encourage that country to co-operate in the request for clemency.

## The Omar Khadr case

One of the best known and notorious cases of Stephen Harper's contempt for the law and the rights of Canadians – key concepts in any democracy – is the case of Omar Khadr. Khadr was just 15 years old when he was arrested in Afghanistan in 2002, at the height of the illegal U.S. invasion of that country. While he clearly fit the UN's accepted definition of a child soldier, he was charged with "murder, conspiracy, and support of terrorism" by the U.S. for allegedly fighting back against U.S. soldiers (he was shot in the back three times). He was sent to the now infamous Guantanamo Bay, Cuba. He has been awaiting trial for almost eight years. He has, for several years, been the only prisoner from a western democracy who has not been repatriated by his government.

Despite international consternation, calls for his repatriation from dozens of sources in Canada – including the Canadian Bar Association, the Canadian Civil Liberties Association and Amnesty International, the Harper government has absolutely refused to budge from its position. Its only explanation is

openly ridiculed by legal experts: that Canada will wait until Khadr goes through the legal process in the U.S. Of course, even the U.S. courts have ruled that the “legal process” followed in Guantanamo is a violation of the most basic principle of habeas corpus.

Canadian courts have been ruling on various aspects of Khadr’s case for almost six years – and every lower court ruling found in favour of Khadr demand that the Canadian government be forced to bring him home to Canada. On April 23, 2009, federal court judge, James O’Reilly, ordered the government to seek Khadr’s return, concluding it failed to ensure his treatment complied with international human rights norms. That decision was upheld by a two-to-one decision by the Federal Court of Appeal on Aug. 14, 2009. Judge O’Reilly found that Canada had been complicit in tortures, which included sleep deprivation and the use of vicious dogs to intimidate him, by virtue of their refusal to take an active role in protecting him from such abuse. This placed on the Canadian government a constitutional “duty to protect” a Canadian citizen imprisoned abroad.

While the Supreme Court of Canada reversed the lower court’s decisions this past January in a unanimous ruling, it had extremely harsh words for the Canadian government and made it clear that the government had to act to end the violation of Khadr’s constitutional rights, or the court would force it to.

The court unanimously upheld Khadr’s claim that his Charter rights had been violated, stating: “Canadian officials questioned Mr. Khadr on matters that may have provided important evidence relating to his criminal proceedings, in circumstances where they knew that Mr. Khadr was being indefinitely detained, was a young person, and was alone during the interrogations.

“Interrogation of a youth to elicit statements about the most serious criminal charges – while detained in these conditions and without access to counsel and while knowing the fruits of the interrogations would be shared with the U.S. prosecutors – offends the most basic Canadian standards about the treatment of detained youth suspects.”

Khadr had been interrogated twice in 2003 and 2004 by Canadian officials from CSIS and DFAIT (the foreign affairs department) who knew that he had been softened up in the days before by the extended use of sleep deprivation.

The Supreme Court also pointed out that the breaches of Khadr’s rights were on-going since the information obtained in violation of his rights could still be used against him in the U.S. proceedings so that: “...the effect of the breaches cannot be said to have been spent.”

But the court seemed to be responding to veiled threats from the Harper government’s lawyer in the case who warned the panel of judges not to intervene in – or “micromanage” a foreign policy matter that could create serious difficulties in relations with the U.S.

On February 3, 2010, the PMO stated it would not seek the repatriation of Khadr. If the prime minister does not follow the court’s explicit order or takes perfunctory action that does not substantively remedy the situation, he could create the crisis the court sought to avoid by “...leaving the government a measure of discretion in deciding how best to respond.” The court was clear that if the government does not substantively address the Charter of Rights violation: “...courts are empowered to make orders ensuring that the government’s foreign affairs prerogative is exercised in accordance with the constitution.”

### **Security certificates – Violating the Charter of Rights**

It is difficult to know exactly why Harper is so ferocious in his determination not to bend to the law, broad legal opinion, or opposition arguments when it comes to matters connected with Islamic terrorism. Some have suggested that it is his way of demonstrating to the U.S. the Canadian government’s dedication to the “war on terror.” This phrase has been banished from the Obama White House but Harper still uses the term and seems to still be proving his loyalty to George W. Bush. Others have speculated (citing as well, Harper’s carte blanche support of virtually any Israeli action in the Palestinian territories or Lebanon) that his Christian fundamentalism makes him hostile to Islam and not just terrorists.

Whatever the explanation, there is no area more subject to Harper’s studied disdain for democracy, human rights and civil liberties than the area of Canadian national security. Harper has demonstrated that he will fight every case, no matter its particulars, to the last possible battle – often in the Supreme Court of Canada. This was true with the Khadr case and also with the issues surrounding so-called security certificates.

Security certificates are a legal mechanism by which the Government of Canada can detain and deport foreign nationals or any non-citizen living in Canada for various reasons, including being a perceived threat to national security. The certificates have been around in one form or another for over 20 years but used primarily since the 9/11 attacks. Those held under these certificates are denied the same legal and constitutional rights enjoyed by Canadian citizens and one of the most egregious aspects of the certificates was that neither the defendant nor his lawyer were allowed to see the evidence justifying their detention. They were faced, effectively, with indefinite detention, fighting in the courts for their rights, or the alternative: being deported to their home countries many

of which were known to use torture. The effect of the certificates was that individuals could be deported based on secret intelligence presented to a federal court judge at closed-door hearings.

The certificates were challenged on constitutional grounds by three of the alleged Al Qaeda-linked detainees – Algerian-born Mohamed Harkat, Moroccan-born Adil Charkaoui and Syrian native Hassan Almrei. The Harper government had refused to engage the men or their legal counsel, rejecting claims of rights violations, and the men were forced to take the case to the Supreme Court of Canada, alleging that the certificates violated various sections of the Charter of Rights and Freedoms.

The court found in favour of the men, striking down the security certificate system but giving the government a year to change it so that it was in compliance with the Charter. The court recognized the need for national security and the principle of the certificates, but found in a unanimous 9-0 decision that this could be accomplished with greater attention to the rights of the detainees. On Feb. 22, 2008, just one day before the court's deadline for changes, the Harper government complied with the order by signing into law amendments to the security certificate process that introduced a "special advocate": lawyers who could view the evidence against the accused. It was, however, the absolute minimum required to comply with the Supreme Court's decision; the lawyers would be chosen by the justice minister (the same one who defended the certificates), and the lawyer would see only a summary of the evidence. He or she could reveal nothing about this evidence to their client – even to seek clarifications or corrections.

### **The Abousfian Abdelrazik scandal**

The case of Canadian citizen Abousfian Abdelrazik demonstrates dramatically just how perverse the Harper government can be when it comes to its determination to be tough on terrorism. Most Canadians are aware of the case and the multiple, bizarre twists and turns it took before this man – never charged with anything – was finally repatriated to Canada after spending six years marooned in Khartoum, Sudan. The Harper government looked not only callous in its treatment of Abdelrazik, it looked inept, giving one reason for keeping him in the Sudan one day and when that rationale fell apart, providing a totally different rationale, and then, yet another. It was as if they could not even be bothered to spend a little time getting their lies and deception in order.

For over a year Abdelrazik had been living in the lobby of the Canadian embassy, a form of recognition that he was a Canadian citizen. He had been released, for a second time, by the Sudanese government because they had no evidence that

he had committed any crime. The government even offered to provide a plane to fly him home if the Canadian government would contribute to expenses. It refused. The Sudanese government – hardly a paragon of democracy – was more embarrassed by the situation than Abdelrazik's own government.

When the government claimed that Abdelrazik could not return because he was on a United Nations (UN) no-fly list, the UN quickly pointed out that this was not a barrier to his return. Richard Barrett, co-coordinator of the UN's Al-Qaeda and Taliban Monitoring team told *The Globe and Mail*: "Whether it is Abdelrazik or anybody else, it is up to the state in question whether they want to allow the person to come back or not." The monitoring team oversees United Nations resolutions establishing the blacklist on which Abdelrazik was placed in 2006 (at the request of the U.S.). Barrett said the travel ban exemption allowing for the return of a citizen is so clear that governments need not even apply for permits. When that reasoning was dispensed with, the government stated it would still not provide a travel document because all the countries that a flight would pass over would also have to agree to an exemption from the no-fly list. This, too, was declared untrue by the UN Barrett stated: "The overflight states don't come into it and they haven't ever come into it."

Earlier in the saga, Foreign Minister Lawrence Cannon had made a promise in writing that Canada would provide a travel document if an airline could be found that would fly him to Canada. But when an airline was found, Cannon casually reversed his position with no explanation. Even when more than 200 Canadians raised money for a ticket for Abdelrazik, the government initially refused to budge – even though it now had no rational whatever to fall back on. They were simply refusing because they could.

In this particular case, the only motive of the Harper government seemed to be to kowtow to the U.S. and its tendency to put tens of thousands of people on terrorist watch lists. Abdelrazik, 47, was cleared by both CSIS and the RCMP, presumably the security organizations that a Canadian government would listen to. But the Bush administration, giving no explanation, had him placed on the UN Security Council terrorist blacklist, and refused to take him off. Harper ignored Canadian security services in favour of those of the U.S. On June 4, an Ottawa judge ordered the federal government to issue travel documents and ensure Abdelrazik was able to return home within 30 days. The government did not appeal and Abdelrazik finally returned to Canada on June 27, 2009.

# Harper Attacks Rights

## The attack on human rights

On Jan. 11, 1999, while he was on leave from formal politics and running the National Citizen's Coalition, Stephen Harper told the right wing *BC Report* newsmagazine, that: "Human rights commissions, as they are evolving, are an attack on our fundamental freedoms and the basic existence of a democratic society... It is in fact totalitarianism. I find this is very scary stuff."

With this extremist view on human rights it should come as no surprise that in the first year in power Harper eliminated one of the most effective and innovative programs promoting and facilitating human rights – the Court Challenges Program (CCP).

The CCP, established in 1978, provided funding for individuals challenging government legislation that was discriminatory (it expanded its program after the Charter came into existence in 1982). Here is what the Community Social Planning Council of Toronto said of the program: "The rationale behind the program lies in the fact that access to justice requires significant financial resources which are beyond the reach of most individuals and groups, particularly those most marginalized. Without financial support to test the constitutionality of questionable laws, constitutional rights are only protected for the wealthy that have the resources to access the courts."

In short, the CCP made constitutional rights accessible – that is, they made them real rather than theoretical. The CCP was instrumental over a period of 20 years in advancing the rights and equality not only of women (including First Nations women) but of gays and lesbians, and the disabled. "The

program has also enabled many community-based agencies to undertake court challenges regarding laws and policies that negatively affect racialized communities, immigrants and refugees, and other disadvantaged groups in Canada." Even the CCP-funded cases that lost in the courts often led, as a result of the high-profile challenges, to changes in legislation.

Prime Minister Harper cannot get rid of the Charter of Rights and Freedoms but by eliminating the modest (\$5.6 million) budget of the CCP he has effectively made challenging discrimination in Canada a luxury available only to those with access to a quarter of a million dollars – the amount it can cost to take a case all the way to the Supreme Court.

## The attack on women's rights and equality

No other part of society has suffered from Harper's contempt for democracy and his determination to turn back the clock as women. After three decades of (admittedly uneven) progress towards equality and full human rights, women have experienced the full force of Harper's visceral disdain for the notion of women's equality. It is one of the most shocking and dangerous examples of Harper's assault on democracy.

Democracy is not just political parties, voting and Parliament – it is a whole array of institutions and traditions of the country and the evolution of norms in society. Specifically, it encompasses human rights and civil liberties. The Charter of Rights and Freedoms is a relatively new institution in Canada but when it was enacted it both reflected and helped establish in law the changes that Canadian society was already going through. One of the most critical areas of change was that of

women's rights and equality. The Charter merely recognized that Canadian society had moved on from the period where women were treated as second-class citizens and discriminated against as a matter of course.

Like the earlier, decades-long struggle of women just to get the right to vote, this was a classic example of how society changes through the influence of powerful democratic movements – the feminist movement in this case – and how the law is then forced to catch up. It could not be any other way. Contrary to what the political right likes to say, this was not “social engineering” from the left, some conspiracy by a “liberal elite” – it was social change created from the bottom up by women throwing off decades of discrimination. Indeed, even before the Charter became law, the federal government, in 1981, ratified the United Nations Convention for the Elimination of All Forms of Discrimination Against Women – a convention that reflected the strength of the global women's movement.

In the very first year that Stephen Harper was prime minister he moved in a myriad of ways to reverse the course of progress for women and he has not stopped since then. In his first year in power the Harper government summarily cancelled the national child care program that the previous Liberal government had spent years negotiating with the provinces – their partners in the planned multi-billion dollar program. This program was hardly a radical proposal – Canada is one of the most backward countries among western developed nations regarding early childhood education. This program would simply have begun to close the gap. According to Sharon Gregson of the Coalition of Childcare Advocates of B.C.: “Other countries are able to provide childcare for up to 100 per cent of children between the age of three and six. Other countries, like Belgium, Denmark, Italy, Sweden, even England and the United States, invest more per capita in early-childhood-development services than Canada does.” The universal program was “replaced” by a taxable \$100 a month payment to parents of kids under six, a pittance compared to the cost of professional childcare (but an approach recommended by the right wing group REAL Women).

As referred to above, Harper then eliminated the Court Challenges Program amongst whose major beneficiaries were women. At a forum in Vancouver, organized after the September 2006, announcement that the CCP would be eliminated, Gretchin Brewin listed some of the advances made because of the program: “...pregnancy discrimination is (now) actually considered sex discrimination. ... “implied consent” – meaning what a woman wears – cannot be cited in court to justify sexual assault... men accused of sexual assault are no longer entitled to unfettered access to the personal records of their accusers. (And) human-rights law now prohibits discrimination based on sexual orientation.”

The government also closed 12 out of 16 regional offices of Status of Women Canada across the country as well as eliminating the \$1 million Status of Women Independent Research Fund. Changes were imposed to the criteria for funding for the Status of Women Canada's Women's Programme which precluded support for advocacy or lobbying for law reform. That meant that dozens of women-run NGOs would no longer receive funding because virtually all of them combined advocacy with the provision of services – such as women's shelters advocating for an end to violence against women.

One of the most cynical and callous acts by the Harper government was its decision – again, with no reference to Parliament and no consultation with women or women's organizations – to simply refuse to take the issue of pay equity any further than the law already allowed. Harper, breaking a promise made in the 2006 election, simply rejected recommendations from a federal task force to move toward what is called a “proactive pay-equity system.” Shelagh Day, one of Canada's foremost feminist and human rights scholars, told a Vancouver forum in December 2006: “The Harper government has come forward a few months ago and simply said they're not going to do anything on pay equity. The law will stay the way it is.”

In 2009, the Harper government introduced the Public Sector Equitable Compensation Act but according to human rights advocates the bill emptied “...the right to pay equity of its meaning. The new legislated criteria for evaluating ‘equitable compensation’ will reintroduce sex discrimination into pay practices, rather than eliminate it.” The law (passed by stealth by placing it in the 2009 budget where it could not be voted down without forcing an election) introduced additional criteria that would allow public sector employers to consider “market demand” in determining compensation – meaning higher pay for men even if the work was of equal value.

While women's groups organized forums across the country to draw attention to the assault on 20 years of progress, Harper has not listening to them. He was, however, listening to a group that had demonstrated its full support for himself and the Conservatives during the election: REAL Women. Responding to the \$5 million in cuts to the Status of Women, REAL Women stated: “This is a good start, and we hope that the Status of Women will eventually be eliminated entirely since it does not represent ‘women,’ but only represents the ideology of feminists.” It also congratulated the government for cancelling the “troublesome” Court Challenges Program and revealed the “social engineering” argument so often used by the right: “...the Court Challenges Program was a profoundly undemocratic use of taxpayers' money to restructure society ... The elimination of the Court Challenges Program will go a long way to promoting democracy in Canada.”

If there was any doubt that it was Stephen Harper's personal determination to set back women's equality, Garth Turner, a Conservative MP who eventually left the caucus, told the Georgia Straight: "[Harper] said, 'We have determined a series of cuts... which will be announced.... They are our position. And... anyone [who] has got any problem with that – who says anything about it – is going to have a short political career.' He said that in caucus."

# Political Advocacy Under Fire

## **The war on Insite and the Harper government's obsession with punishment**

Insite is the first supervised safe injection site in North America and describes itself as "...a safe, health-focused place where people can go to inject drugs and connect to healthcare services – from primary care to treat disease and infection, to addiction counseling and treatment." While it has always been controversial – it has an exemption from federal drug laws so users and staff cannot be charged – the provincially-funded project has been so successful that the otherwise very conservative government of Gordon Campbell, the City of Vancouver, the Vancouver Police Department and even Health Canada are all strong supporters of the program. Culturally, it represents a huge advance in attitudes towards drug use and users by a public highly aware of the limits of criminalization.

It has dramatically reduced drug use on the streets of Vancouver's Downtown East Side, has saved scores of lives (over a one-year period Insite dealt with 200 overdoses without a single death) and has resulted in many referrals to drug rehab programs. It treats addiction as a disease, as do the vast majority of Canadians. Its cost effectiveness has been calculated as high as a \$4 return for every government dollar spent.

But despite its popularity it has been in the Harper government's gunights from the beginning. Starting with denying the program long-term constitutional exemption (providing only short extensions starting in September 2006) the Harper government has defied the democratic will of the community and the province by trying to shut it down. For Harper and

his government it seems drug use is a crime that must be punished – full stop.

A very extensive, peer review study of Insite by the B.C. Centre for Excellence in HIV/AIDS, recognized as one of the world's leading research organizations, had no impact on the Harper government. It still refused a three-year extension and said it was waiting for more research on the program before making a final decision.

In April 2008, supporters of Insite (which was facing a federal government closure deadline of June 30) decided to launch a B.C. Supreme Court challenge of the federal government's legal authority to shut the project down. Arguing that the site addresses a public health crisis supporters won the first round in May 2008, when the B.C. Supreme Court ruled that the federal government did not have the authority to close Insite, ordering it to change Canada's drug laws to allow Insite to operate.

Still the Harper government would not budge, and appealed the decision. In January of 2010, the B.C. Court of Appeal upheld the lower court's decision stating: "Like palliative care, it is a form of harm reduction with benefits for both the patient and the community."

Score one for democracy.

On February 9, 2010, Justice Minister Rob Nicholson announced that the federal government was appealing to the Supreme Court of Canada.

## Contempt for international law and international relations

Canada signed and ratified the Kyoto Accord on Climate Change, yet Harper simply dismissed the Accord when he became prime minister, and stated that his government had no intention of following its dictates, and, without any debate in the House of Commons, declared that Canada's position would be whatever the position of the U.S. turned out to be. No other government in the world has signed, ratified and then simply refused to acknowledge the Kyoto Accord. It was not brought before the House of Commons for a debate or vote, presumably because in a democratic forum such a reversal would have been defeated.

While the full details of the Afghan detainee torture scandal have not yet been revealed, there is strong evidence (backed up Harper's prorogation of Parliament to avoid further revelations) that it was not just the military commanders in Afghanistan who treated the Geneva Convention on the treatment of prisoners with disdain. It seems extremely likely that it came from the highest levels of the Harper government. Of course, the previous Liberal government was also guilty of turning a blind eye to these violations of international law, but the Harper government has been accused of a cover-up and has demonstrated disdain for due process in getting to the bottom of the violations – aggressively attacking the character of its own senior intelligence officer, refusing to call an inquiry, and ignoring a parliamentary resolution to hand over key documents.

In almost every international forum, the Canadian government has either mimicked the positions taken by the U.S. or pursued its own right wing, narrow corporate interests agenda. On the issue of asbestos we have attracted outrage from around the world for our leading effort to keep asbestos from being listed as a dangerous substance under the Rotterdam Accord. Canada has also taken a lead role (with just two other countries, New Zealand and Australia) in preventing a ban on the anti-farmer terminator seed technology.

Canada joined the United States and Argentina in a WTO trade complaint against Europe for its decision to ban GMO food – a demand made by an ever-increasing majority of EU citizens.

Some of these reactionary positions were inherited from the Liberal regimes of Paul Martin and Jean Chrétien, but some are new. Harper has angered France and other EU countries by simply abandoning, with no explanation either at home or internationally, its decades long commitment to development in Africa. Canada had been a close partner with Europe in this regard.

With much of Latin America slowly emerging from a period of neo-liberal economic disaster, and an earlier period of U.S.-supported dictatorships, Canada is pulling in the opposite direction. Latin America has never been a major area of interest for Canada until now and instead of engaging the newly emerging consensus, Canada is playing the role of turning back the clock and supporting the U.S. and its one remaining client state, Colombia. It has also supported the U.S. (one of just three governments to do so) in its recognition of the military coup government in Honduras – a development that has alarmed experts who had concluded that the era of military coups was truly over.

In the Middle East, Canada is now seen as even more aggressively pro-Israel than the United States – a radical departure from Canada's traditional, even-handed approach. The government has engaged in a de-funding witch hunt against any organization that criticizes Israel: eliminating funding for Kairos (the ecumenical group working on development and human rights in many countries around the world), stacking the board of Rights and Democracy (an arms length international human rights organization) with pro-Israeli members, and withdrawing funding from UNWRA, the UN agency that provides aid, education and other services to Palestinian refugees. Harper's public statements have also made this new policy clear – as when he called the wanton destruction of Lebanon's infrastructure in the July 2006 war, "a measured response" to the kidnapping of a handful of Israeli soldiers. Harper refused to protest the Israeli air force's repeated bombing of a clearly marked UN post at which a Canadian UN peacekeeper was killed.

These are all substantive changes in Canadian foreign policy, yet none of them were ever the subject of official debate or discussion in the one democratic forum where Canada's place in the world should be discussed: the House of Commons.

## Attacking political advocacy

Political advocacy, which by its nature involves critiquing and criticizing governments, is arguably one of the most crucial activities in any healthy democracy. Taken together, the organizations involved make up civil society – that part of society that provides citizens with opportunities to engage in their democracy year round, not just at election time. Such activity is already severely restricted in Canada. Groups with charitable status – environmental organizations, anti-poverty groups, progressive think-tanks, women's organizations – cannot spend more than 10 per cent of their staff time on advocacy activity on pain of possibly losing their charitable status.

Loss of this status – which allows the organizations to issue tax receipts for donations – could have a devastating impact on their finances. This rule was implemented under a Liberal

government, but in the year before the 2006 election there was a flood of complaints to Revenue Canada about such advocacy, complaints that many groups suspected were generated by Conservative supporters.

Many environmental organizations were audited – that is, investigated by Revenue Canada for how they spent their money and staff time. It is by all accounts a very intimidating and time-consuming process. Preceding the 2006 election, all charities received a warning letter from the Charities Division of Revenue Canada, saying that they should not comment on or participate in elections. It had an immediate chilling effect on advocacy from groups with charitable status. Virtually all charitable groups responded cautiously – they interpreted the warning to mean a charity could not even publish a survey on party policies.

In recent months, the Harper government has taken the suppression of such advocacy up a notch. According to a February 13, 2010 article in *The Globe and Mail*, the government has been issuing warnings to groups about the political positions they take: “An official with a mainstream non-governmental aid group said that Keith Fountain, policy director for International Co-operation Minister Bev Oda, gave a verbal warning that the organization's policy positions were under scrutiny: ‘Be careful about your advocacy.’”

The ecumenical group Kairos, involved in development work and human rights advocacy around the world, saw its \$7 million grant summarily cancelled even though it had been approved by – and developed in co-operation with – senior officials of the government. The reason: pro-Israeli groups had falsely accused the organization of supporting a boycott of Israel.

Large groups like World Vision, Oxfam and CARE as well as smaller Anglican and Mennonite aid agencies get the bulk of their development money from CIDA – the Canadian International Development Agency for which Oda is responsible. They also do advocacy work with their own, privately raised funds. The Canadian Council for International Co-operation, the umbrella group which includes aid organizations in its membership, claims its members have received “...veiled warnings about positions that clash with Ottawa's on issues such as climate change, free trade with Colombia, or the Middle East... ”

Alternatives, a Montreal-based group, is apparently going to have its \$2.1 million in CIDA funding eliminated, according to a National Post story. Since the story was published, CIDA has refused to respond to inquiries from the group. Its apparent misstep: suggesting a single-state solution to the Israeli-Palestinian crisis instead of the conventional two-state solution (which most commentators now consider effectively dead).

Other groups, as mentioned elsewhere in this study, have also been targeted politically and completely shut down for their advocacy work: the Canadian Policy Research Networks, the Law Commission of Canada, the Court Challenges Program, and the advocacy activities of Status of Women Canada. The group Rights and Democracy experienced direct political interference through the appointment of a hand-picked majority of board members who set out to change the group's traditional philosophical stance.

# Conclusion

These are not normal times. Canada's democracy is in crisis. We have a prime minister and a government that have demonstrated they are unfit to govern. But crises also present opportunities – opportunities to ensure the same crisis is not repeated.

The latest shutting down of Parliament by Stephen Harper was a wakeup call for Canadians who expressed their outrage on the streets, in letters-to-the-editor, on talk shows, and in the polls – driving the Harper Conservatives down 10 percentage points in popularity. Our democratic system – while not always abused the way Harper abuses it – has been exposed as extremely vulnerable to any prime minister who has power, and not just majority government power. Tremendous damage can be done to the fabric of the country by a prime minister with a minority in the House of Commons, and support from a minority of Canadians, if he or she is determined to bend and break the rules meant to protect democracy.

There will always be disagreements about the direction of the country – unanimity in terms of actual social, economic, cultural and foreign policies is impossible. But the system we use for ensuring an honest competition between those different views of the country must be sacrosanct. There must be a level playing field; a government of laws, not men – or we simply no longer have democracy.

That is why, in this unique situation in Canadian history, all Canadians who are dedicated to democracy – no matter what their political beliefs – must come together at the earliest opportunity to remove Harper from power. His many violations of democracy and the dangerous precedents they set are a threat to democracy itself.

There are many Canadians who like the policies of the Harper government and are willing to turn a blind eye to the violations of democracy that are being used to achieve them. But what goes around comes around: by allowing these precedents to be set, the next government – with or without a mandate – could use those precedents set by this prime minister to implement policies that the majority does not support or want.

We must get back to a democratic equilibrium whereby all the political parties and their leaders do politics by the rule of law.

One of the consequences of having no rules is political chaos: with society and its government policies being wrenched first this way, then that – with no stability, no certainty, and no time for reflection or consensus building. Politics that, in normal times, have been characterized more by relative consensus than by constant partisan warfare is not intended to dominate people's lives. It is meant to provide a context and atmosphere in which people can live their lives and communities can thrive – with security, confidence and a sense of continuity. The current political atmosphere, created largely by Harper (though not exclusively – his bad behaviour often brings out the worst in other politicians) provides none of these things. Politics at its best encourages people to get involved – they see the exercise of democracy as being in their interest, something they believe will respond to their needs, and a process in which they can trust. When they quit feeling that way, democracy cannot work.

It could be argued that democracy today is clearly not working because so many people are opting out. In the last election, fewer people voted than in any other federal election in Canadian history – just 59.1 per cent of the population cast a ballot. That means that four in 10 citizens no longer believed that democracy had anything to offer them or meant anything to them. That is amongst the lowest in the developed Western democracies and is reaching crisis proportions.

Stephen Harper's reign as prime minister must come to an end as soon as possible. But beyond that, his record of running roughshod over democracy tells us that we have to put in place reforms that make such abuse of power, if not impossible, then much less likely. No single reform can address all of the many different kinds of abuse we have witnessed over the past four years. We need restrictions on the power to prorogue; we need to protect watchdog organizations from being undermined by the prime minister of the day; we need to ensure that Access-to-Information really is about access and is not subject to partisan intervention from ministers or the Prime Minister's Office.

But perhaps the most important democratic reform we can call for is electoral reform, which would eliminate the feeling of many voters that their votes are “wasted.” Our current first-past-the-post system means that a party with as little as 40 per cent of the votes can achieve a majority government, and a party like the Greens can achieve nearly 7 per cent of voters’ support and not get a single seat (meaning that nearly a million people have no voice in Parliament). In fact, Canada is among just a tiny handful of Western democracies that still uses this arcane, elitist system of electing governments. Most countries now have some form of proportional representation – that is, a system that guarantees a political party the same percentage of seats in parliament as it receives in percentage of the popular vote.

If we had a system of proportional representation, the parties that could put together a coalition based on a mutually acceptable package of policies would have the constitutional authority to form the government – not the party that simply received the most seats in a minority parliament. If the last election had been run on such a system, the Conservatives would have had just 116 seats, not the 143 that has allowed them to govern the country as if it had a majority. The Liberals would have had 81, not 77; the NDP would have had 56 seats instead of 37 and the Greens 21 instead of none. The Bloc would have had 31, not 49. Under these circumstances, the Conservatives could not possibly have governed as no other party shares its ideology or policies. One possible scenario would have been a Liberal-NDP-Green coalition (total seats: 158) representing more than 50 per cent of Canadian voters.

But however it was worked out, the coalition government would have represented a much larger proportion of Canadians – and their values. Executive dictatorship – the complete dominance of Parliament by the Prime Minister’s Office – would be a thing of the past because the prime minister would have to negotiate every major policy decision with at least one and possibly three other parties. There would be no ideologically rigid government because no single party, regardless of ideology, could impose its agenda on Parliament (except in the extremely rare situation in which a single party received more than 50 per cent of the vote). Combined with other reforms that would make parliament – rather than the prime minister – supreme, proportional representation would restore the true meaning of democracy to Parliament.

As Canadians will remember, we almost had such a government in December 2008 when all three opposition parties declared their lack of confidence in the Harper Conservative government. The Liberals and NDP announced their intention to form a coalition government for 18 months based on a limited set of policies they agreed upon. The Bloc Québécois agreed to provide critical support. Just 43 per cent of Canadians supported the idea of a coalition or a more informal

opposition accord. But this was not a true test of a coalition government. Many Canadians understandably opposed the coalition because its leader, Stéphane Dion, had just been soundly rejected in the election. They did not want him to become prime minister through the back door.

But, partly as a result of Harper’s twice shutting down Parliament, Canadians are now more open to a voting system that would regularly produce coalition governments of the kind proposed in December 2008 by the Liberals, NDP and Bloc. According to an Environics poll commissioned by the Council of Canadians (completed between February 22 and February 24, 2010) 62 per cent of Canadians support a change in the voting system to one using proportional representation (PR). Thirty-six per cent of those surveyed said they were more supportive of PR as a result of Harper’s shutting down of Parliament. This latter figure suggests that the anger over Harper’s actions has resulted in a determination by voters to deal with the situation permanently: by changing the system itself. In addition, the strong support for PR is fairly consistent across the country – from a low of 59 per cent in Alberta to a high of 65 per cent in Québec. Young voters – prominent at the anti-prorogation demonstrations in January – were the strongest supporters, with 71 per cent favouring a change to proportional representation.

The poll numbers clearly put PR higher on the political agenda. But electoral reform is some ways off. Only the NDP and the Green Party have it in their election platforms. Yet we do not have to wait for an official change in the electoral system to achieve something similar. It would appear that Canadians fundamentally do not trust the current system, even if they are still undecided about a new one. Canadians show no signs of giving any party the level of support required for a majority government. That means we will face the same dilemma after the next election as we face at the moment: another government by a party (Conservative or Liberal) with a minority of seats and support from a minority of Canadians. Unless we demand of the opposition parties that they go into the next election with a pledge to form a coalition government that represents the majority of Canadians and their values. That could serve as the litmus test of the proportional representation system and its catalyst. If it worked to the satisfaction of Canadians, if it reduced the partisan bickering, if it put serious restrictions on the executive power of the Prime Minister’s Office, if it produced policies and programs that reflected our values, it would become the consensus position of Canadians – and the default position of any political party that wanted their support.



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