

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.