

# 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?"