

# THE HARPER RECORD 2008–2015



EDITED BY TERESA HEALY AND STUART TREW



# **THE HARPER RECORD 2008–2015**

TERESA HEALY AND STUART TREW (EDS.)

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# Preface

Bruce Campbell

THE CANADIAN CENTRE for Policy Alternatives has a long history of critically assessing the records of governments – from the Mulroney years, through prime ministers Chrétien and Martin, to the current Harper government. *The Harper Record* project, both in its first incarnation covering the 2006 to 2008 period and this present volume, continues that tradition.

*The Harper Record (2008–2015)* was a year in the making. Edited once again by the tenacious Teresa Healy, and joined this time by *CCPA Monitor* editor Stuart Trew, the book offers a critical assessment of this government’s policies, measured against a progressive yardstick of social, economic and environmental justice values that underpin all CCPA work.

Thirty-seven researchers and activists contributed to this volume – from universities, the human rights community, unions, environmentalists, and the CCPA’s network of research associates and staff. Their contributions are thoughtful, informed, well researched and well reasoned. They expand and deepen our understanding of the latest stage of the Harper government’s record, in particular how the government responded to the 2008 crisis and Great Recession.

The CCPA, along with other prominent civil society charitable organizations, has been singled out by the Canada Revenue Agency for a political activities super-audit, which has been open for two years. We are under no illusions that this is a routine accounting exercise. As Pearl Eliadis carefully documents in this volume, these audits are almost certainly politically motivated, targeting organizations that

have been critical of government policies. We are not aware of any conservative-oriented think-tanks that have been subjected to similar auditing.

The publication of this volume is an indication that the CCPA is not intimidated by the threat of retaliation by the Canada Revenue Agency. *The Harper Record 2008–2015* represents the continuation of our long-standing tradition of critical, evidence-based, values-explicit public policy analysis.

We are scrupulously non-partisan. We are equal opportunity critics, having challenged the policies of governments of all political stripes, both federally and provincially. Likewise, our work has influenced the policies of municipal, provincial and federal governments spanning the political spectrum.

While we are not an activist organization, our work provides the intellectual fuel for the advocacy work of civil society organizations. Perhaps most importantly it helps Canadians make choices about which policies matter most to them.

— *Bruce Campbell, Executive Director, Canadian Centre for Policy Alternatives*

# Introduction

Teresa Healy and Stuart Trew

IN 2008, THE Canadian Centre for Policy Alternatives (CCPA) published *The Harper Record* as the latest installment in a series of publications that have, over the past 25 years, chronicled the policy legacies of successive federal governments. A distinguished group of 47 writers and researchers worked with editor Teresa Healy to assess Stephen Harper's first two years as prime minister of Canada's 39th Parliament. The intention was to offer a detailed account of the laws, policies, regulations and initiatives introduced by the Conservative minority government during its 32-month term from January 2006 to September 2008.

This new edition of *The Harper Record* builds on the earlier compilation by examining the Conservative government's policy record from the 2008 crisis through the subsequent Great Recession and ongoing economic recovery. The book was over a year in the making, and though it lands in the middle of an important federal election we feel it will continue to be relevant to policy-makers, activists, historians, journalists and the public for many years to come. From the economy to the environment, social programs to foreign policy, immigration reforms to tax cuts, the tar sands to free trade deals, and many other areas, the 36 contributors to *The Harper Record 2008–2015* detail the facts and key moments of the 40th and 41st Parliaments.

As we reflect back on these years, it is clear that election dates obscure as much as they reveal in marking significant moments in Canadian political life. In reviewing the chapters herein, we see that the more important moment for this gov-

ernment—the pivot at the centre of its ongoing plans to recast the Canadian political economy, to transform how we think about the government—was the 2008 crisis and recovery. The crisis was the context within which the government restructured the public sector and labour relations, cut public services, deregulated industry, dismantled environmental protections, reformed Canada’s immigration system, and undermined parliamentary democratic processes.

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## Putting the record in context

The 40<sup>th</sup> Parliament, which began in November 2008, was dominated by the impacts and implications of the global financial crisis and resulting Great Recession, as this period is frequently called. Less than two months after the government was re-elected with a minority in 2008, Prime Minister Harper faced the probability of a vote of non-confidence and a possible NDP-Liberal coalition government if the Governor General approved.

The opposition had swelled to a crescendo as a result of the government’s minimalist response to the deepening economic crisis displayed in its *Economic and Fiscal Update* of late November. While countries around the world were co-operating to stimulate the global economy through public investments, Canada was an outlier, planning more tax cuts, privatization and balanced budgets into the future.<sup>1</sup> Harper pre-empted the eventuality of a coalition government by asking the Governor General at the time, Michaëlle Jean, to prorogue Parliament, which she agreed to do on December 4, 2008. In early January 2009, before Parliament returned, Harper appointed 19 Senators to the unelected chamber.<sup>2</sup>

Later that month, the government tabled a budget in which it promised stimulus spending in line with the 2% of GDP committed by other governments in the G20. It was in one sense a survival measure that went against deeply held Conservative ideology, which is why the stimulus measures were offset by corporate and income tax cuts. Though the projected stimulus fell to \$18 billion in 2009 and \$15 billion in 2010, the *Economic Action Plan* represented a dramatic change of direction on the part of the government,<sup>3</sup> which would spend almost \$100 million advertising the program between 2009 and 2014.<sup>4</sup> The coalition crumbled and public support for the government increased.

But then by the end of 2009, with the opposition parties raising questions about what the government knew about the torture of Afghan detainees, the prime minister again requested prorogation. Harper shut down Parliament until March 2010, when the government delivered its Speech from the Throne and a new budget,<sup>5</sup> but

not before appointing another five Senators, thus assuring the Conservatives would have a majority in the upper chamber.

By mid-2010, national economic growth had begun to recover, but there were 300,000 more workers unemployed than when the recession began.<sup>6</sup> When the G20 met in Toronto in June 2010, civil society organizations held counter-events, demonstrations and conferences. The federal government's security forces co-ordinated the policing of the event, turning the city centre into a militarized zone and conducting the largest mass arrest in Canadian history (more than 900 people were detained).<sup>7</sup>

Perhaps surprisingly, Canadians were gripped that summer by the government's decision to end the mandatory long-form census, which would have been undertaken in 2011. Many individuals, as well as organizations, provinces, territories, and First Nations objected to the government's decision to eliminate an important source of knowledge about the population upon which policy decisions could rationally be based.<sup>8</sup> Canada's chief statistician resigned and Statistics Canada faced an unprecedented crisis.<sup>9</sup>

The 2011 budget was delivered in March and demonstrated a sharp return to conservative fiscal policy on the part of the government. Total federal program spending was slated to drop by 16% in 2009–10 and by 12.9% in 2015–16, representing the return of an austerity agenda from a government committed to tax and spending cuts.<sup>10</sup> The government was defeated immediately after delivering its budget. Harper went to the Canadian people asking for a “strong, stable, majority government.” He received it in the election of May 2, 2011.

If the 40<sup>th</sup> Parliament was dominated by debates over economic crisis and stimulus spending, the 41<sup>st</sup> Parliament witnessed conflict over the government's efforts to reassert a more fiscally conservative economic environment. The 2012 federal budget imposed deep cuts, catalyzing civil society to organize to fight the government's agenda. From the Quebec student movement in 2012 (the Maple Spring) to renewed calls by Aboriginal women for an inquiry into missing and murdered Aboriginal women, the appearance of Idle No More late in 2012 to rising conflict over pipeline developments in Western Canada, disputes over hydro developments in Labrador to new evidence of voter suppression in the 2011 election, opposition to the government's procurement plan for new fighter jets to the ongoing crisis in manufacturing and slow growth, the government had a lot on its plate.

As members of Parliament prepared to return to Ottawa after the summer recess in 2013, Stephen Harper again went to the Governor General with a request to prorogue Parliament until after Thanksgiving. Many observers believed the government was avoiding renewed criticism of a nascent Senate spending scandal<sup>11</sup> that would continue to dog the prime minister into the 2015 electoral campaign, as journalists continually raised questions about the handling of the scandal by

the Prime Minister's Office and demanded to know which PMO officials were involved. The 41<sup>st</sup> Parliament ended, as it began, in acrimony.

With this book, we are doing a number of things at the same time. We record the facts, legislation, statements, decisions and dates of the many changes made by the government of Stephen Harper in the last two Parliaments. In part, we do this in order to contribute to our collective memory of this time, which is a useful goal in itself. Contributors to this volume go further, however, to analyze specific policies in terms of their broad impact on the economy, social relations, and on diverse sectors of Canadian society.

Not all policies affect individuals, communities or governments in the same way. Some of these changes involve shifting inter-governmental relations, between the federal and provincial governments, and between government and Canada's First Nations. Because we are reviewing the government's record in the 40<sup>th</sup> and 41<sup>st</sup> Parliaments, we write this introduction in the past tense. At the time of writing, we are in the midst of an election campaign whose result will not be apparent for some weeks yet.

Each contribution to this collection is based upon careful research in particular policy domains. Below we introduce some of the shared and crosscutting themes raised in the chapters that follow. Together they paint a picture of a government that weakened its ties to Parliament, narrowed its relationship with civil society, exerted strategic control over inter-governmental relations, rejected scientific and expert knowledge in the interest of pursuing more partisan economic and social policy objectives, and sought to promote market relations through the activities of the state. In each case we see the importance of the 2008 financial crisis to achieving the government's objectives: from stimulus to austerity there is an organic connection between the government's response to the Great Recession and its systemic transformation of the role of the Canadian state.

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## **Weakened ties to Parliament**

In 2011, while still in minority, the Conservative government was found to be in contempt of Parliament by a committee of MPs whose work was impeded by the government's failure to produce estimates on the costs of its major initiatives (Mallea). For the first time in Canadian history, a vote in the House of Commons affirmed this assessment and the government fell on a vote of non-confidence. When it was returned with a majority later that spring, the government began in earnest to restructure its relationship to Parliament under the strict control of the Prime Minister's Office.

With its important win on May 2, 2011, the Harper government, like recent Liberal majorities, was no longer bound by many of the formal restraints of Parliament



(Wilson): the Conservatives controlled the House and Senate, giving the party the option of passing legislation without having to accommodate opposition amendments or broader public concerns. An example of how the Harper government would approach parliamentary and extra-parliamentary consultation while in majority arose early with the decision to take away the single-desk marketing power of the Canadian Wheat Board (CWB). The process created a template the government would follow for much of its legislative agenda over the following years, notably in the CEAA review and passage of Bill C-51 (Kinney; Mazigh).

During the 2011 election campaign, the Conservatives said that if returned to government they would allow farmers a vote on their plans for the CWB. Shortly after winning a majority, the government backtracked, announcing through Agriculture Minister Gerry Ritz that the federal election had served as the only vote necessary on the matter. The government used closure in Parliament to limit debate on Bill C-18 and chose not to refer it to the House of Commons standing committee on agriculture and agri-food. Instead, the government created a special ad hoc committee to review the CWB legislation, which was granted royal assent before the end of the year (Slater).

Expediency was not a Conservative innovation, but the increased use of omnibus bills as a means of obscuring significant legislative initiatives at budget time was. From 1995 to 2000, federal budget implementation legislation averaged 12 pages in length.<sup>12</sup> In 2009, it was 530 pages long, while the Harper government's 2010 *Budget Implementation Act* topped 880 pages. It was through this mechanism that the government introduced the largest-ever dismantling of Canadian environmental policy, buried in the 2012 *Budget Implementation Act* (Kinney). As a result of the act's process and content, the desires of corporations to bring resources to market trumped the public's ability to deliberate the impact of oil, gas and mining projects. Similarly, 2012 omnibus legislation gave the immigration minister powers that had previously required parliamentary oversight and public consultation, including the right to decide the number and priority of immigration applications and what constitutes a "safe" country of origin for refugee claims, while the 2014 omnibus budget bill restricted the ability of refugees to claim social assistance (Walia, Carlaw).

The Harper government sought other less-than-democratic means to avoid parliamentary deliberation on controversial legislative changes. For example, the government used private member's bills 25 out of 30 times in 2014 to advance tough-on-crime laws (Mallea). Bill C-377, which imposes onerous reporting requirements on labour unions, was also introduced this way, the benefit being that private member's bills receive less scrutiny than official government legislation and are frequently poorly written. In substance, C-377 provided for future changes to be imposed

through regulation, thus avoiding further parliamentary oversight (Braley-Rattai). For an example of how that might work in practice, we can point to the justice minister's use of his executive authority to bypass debate in the legislature in order to unilaterally increase the length of prison sentences (Mallea).

This last governmental trick did not depend on having a majority of seats in the House of Commons. While in minority, the Harper government made changes to the policy governing temporary workers by administrative rather than parliamentary means whenever possible. In majority, however, the Conservative government chose to announce changes to migration policy after direct consultations with employers, instead of approaching Parliament and inviting public debate. The government frequently announced such changes on Fridays when media and public attention was low (Flecker).

Though the government responded appropriately to the severity of the 2008 financial crisis, it did not prepare for any future crises by increasing oversight of the financial services sector, where it remains quite limited (Roberge). Where the government had an opportunity to *decrease* parliamentary oversight it did so. This was an important but rarely acknowledged consequence of the government's efforts to expand the global investor rights regime through the signing of dozens of international investment treaties. These agreements, which typically include a controversial investor–state dispute settlement mechanism, diminish the rights of citizens, legislatures and courts by significantly expanding those of foreign investors (Sinclair). The government quietly ratified a highly contested Canada–China Foreign Investment Promotion and Protection Agreement (FIPA) while a court case assessing its constitutionality was still undecided.

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## Narrowed relationship with civil society

In an abrupt departure from the broad consensus and brokerage politics that characterized previous governments' approach to democracy, the Harper government since 2008 sought to build a very small but stable "winning coalition." Carlaw explains this was more than an electoral strategy; it informed how the Conservatives would govern. The Harper government learned that it needed a majority to dominate the opposition, which had developed significant strength in the context of the global financial crisis. For example, the government was compelled to make large investments in First Nations housing and infrastructure as a direct result of the organized opposition of First Nations and Aboriginal leadership during the 2008–09 prorogation crisis (Wilson). Henceforth, the government began alerting

the population that it intended to seek a “stable” majority government with which to advance its agenda.

For the Harper government, democratic legitimacy was to be found in the general election, which is how “the people” make their desires known (Banack). According to Banack, the government freely dispensed with parliamentary deliberation because it assumed “the elites,” influenced by “special interests,” distort politics by slowing down or impeding the government’s agenda through such processes. Deliberation in Parliament or outside of it was seen as redundant, since policy decisions were to be based on faith in the party’s partisan (neoliberal) belief in the primacy of market solutions to most problems affecting the “people.” Banack calls this “technocratic populism,” a strategy with roots in Alberta’s past Social Credit governments.

Governance depended upon the creation of racialized groups of insiders and outsiders. The Conservative government invited segments of immigrant populations to see themselves as socially conservative, hard-working and patriotic new citizens in contrast to supposedly undeserving freeloaders, “bogus refugees” and “security threats” standing in the way of immigrant success (Carlaw). In recent years, the government made citizenship more difficult to attain, created inequalities among different types of citizens, and changed the conditions under which dual citizens could lose their citizenship rights (Carlaw). It enacted mass raids and deportations of non-status workers. It imposed mandatory detentions of refugee claimants, radically reduced family class immigration numbers, and wrapped these racialized policies in anti-immigrant rhetoric (Walia). Instead of promoting permanent economic immigration, the government favoured temporary migration and the creation of a disposable workforce (Flecker; Walia; Mertins-Kirkwood; Carlaw).

Since 2006, and in particular since the 2011 election, the Harper government exhibited a general orientation to politics that justified centralization of political decision-making in the hands of the PMO (Campbell), avoiding consultation and democratic accountability between elections. However, this was not simply a question of neglect, benign or otherwise. The Harper government depended upon the active suppression of democratic organizations making claims on the state. Eliadis provides us with the profoundly disturbing results of her analysis of 70 cases involving 108 organizations and advocates who have been vilified, harassed by regulations, spied on or otherwise closely scrutinized by the Harper government. In her estimation, nowhere in Canadian law or the Constitution is there provision for this kind of wholesale or pre-emptive action against such a large section of civil society. Mazigh articulates this dynamic in the context of security legislation implemented since 2008 as evidence of a dangerous imbalance between the ability

of the state to collect information about citizens, and the public's inability to hold the state accountable for these actions.

This shift in the relationship between the government and the governed is one of the most striking characteristics of political change instituted by the Harper government. Institutional changes have made it significantly more difficult for organizations to form and articulate collective interests, since the government favours individualized forms of interest representation. For example, the Harper government made significant efforts to delegitimize the role of the labour movement in Canadian society (Braley-Rattai). It imposed unique and onerous financial reporting obligations on trade unions through Bill C-377, which was passed without amendments—the government's last legislative act in the 41<sup>st</sup> Parliament in June 2015—despite significant and prolonged attempts to reform it in both houses. The government claims a right to carry out this and other measures as a result of its electoral mandate, but as a private member's bill C-377 had no such legitimacy.

The passage of Bill C-377 was the culmination of the government's anti-union strategy that was ramped up after the 2011 election. The government imposed back-to-work legislation on a series of lawful strikes in 2011–12. In the name of democracy, it abandoned the longstanding and stable tripartite system of labour relations in favour of practices allowing employers more opportunities to interfere with workers' rights to organize and bargain collectively (Braley-Rattai). Other tripartite institutions met similar fates. For example, all National Sector Councils lost their federal funding in 2013, and the employment insurance appeal process was also changed unilaterally. Business and labour groups, which fund the program, were not consulted (Wood).

The government's aversion to participatory processes in policy development is evident in all of the policy areas under review in this book. For instance, there was very little public discussion of the role or direction of the military during these years. Despite public displays of patriotism, militarism and an expanded role for the military overseas, military procurement has been a disaster, almost certainly because there has been no defence white paper since the Chrétien government issued one in 1994 (Webb).

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## **Strategic control of inter-governmental relations**

In 2006, Stephen Harper described the government's vision of federal-provincial/territorial relations as “open federalism.” In this view, much social and economic policy is seen broadly as a matter for provincial governments to deal with according to their particular preferences. Originally open to partnerships between differ-

ent levels of government, the prime minister was conspicuously absent from important provincial meetings on the economy and the environment.

In social reproduction among other areas, the government withdrew almost completely from its national leadership role, reduced funding for social policy, and assumed that care work would be undertaken in the market and within the nuclear family (Bezanson). Significantly, the Conservative government used every opportunity to displace public health care as a unifying national symbol and defined it instead as strictly a provincial matter. When the Health Accord expired in 2014, the government imposed a “take it or leave it” approach with the provinces in which federal transfers for health care would henceforth increase in line with GDP growth when health groups insist there should be a 6% escalator (Newitt and Silnicki). Similarly, funding increases to the Canada Social Transfer were locked-in without negotiating flexibility for addressing the needs of provincial social services (Mussell).

At first, “open federalism” was seen to give provinces and municipalities increased room for policy innovation. However, over time, the federal government became more interventionist and reasserted its control over some of these policy areas without increasing the necessary funds. The Harper government became decidedly prescriptive in housing policy (Doberstein and Smith), as well as in the complex area of skills development and job training (Wood). In certain regions and in certain sectors (e.g., infrastructure and natural resource development) where the Conservatives desired to intervene they have done so. Krawchenko and Stoney see this as characteristic of an approach to federalism that is “strategic” rather than “open,” linked to the government’s stated goal of positioning Canada as an “energy superpower.”

In many ways, these were the policies of a very activist government. The Harper government fought all the way to the Supreme Court to close down Insite, a Vancouver-based supervised injection site that is renowned for its positive outcomes for people suffering drug addiction. After losing its case, the government enacted regulatory changes to make it unlikely that other such sites will be opened in the rest of Canada (Mallea). Where it did not suit the government to recognize separate jurisdictions, it conflated them. As part of the overhaul of environmental legislation and regulation in 2012, for example, the government removed what it called “duplication” in the environmental assessment process. One only needs to look at the federal government’s rejection, in late 2010, of the New Prosperity Gold-Copper Mine Project in British Columbia, which had been approved earlier by a faulty provincial assessment, to see the risks here. The purpose of the new “one project, one review” policy is clearly to try and fast-track large projects supported by industry (Kinney).

The government also did not live up to expectations for a new relationship with First Nations — expectations generated by Prime Minister Harper’s 2008 apology to residential school survivors. In fact, the government was highly interventionist in treaty, funding and land-claims negotiations (FitzGerald). Rather than adopt the negotiated agreements of the Kelowna Accord, the Conservative government tied federal funding to the imposition of reforms that increase ministerial control over elections and undermine constitutionally enshrined Aboriginal and treaty rights (Wilson). The federal government took control, underfunded then cancelled inter-generational healing practices in Aboriginal communities where Aboriginal-led, culturally appropriate programs were proven to be working well (FitzGerald).

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## Rejection of scientific and expert knowledge

The Harper government consistently used ideology to trump evidence-based policy decision-making in a number of areas—a fact highlighted frequently by many different voices since 2011. In family policy development, for example, the government relied less on expert knowledge and resorted instead to a broad ideological framework rooted in neoliberal economics and socially conservative “family values” (Bezanson). The government refused to fund research or advocacy for or about women through Status of Women Canada. Loss of funding caused many feminist organizations to close, creating a significant loss of capacity for feminist perspectives and policy alternatives (Stinson).

This approach to policy, which downplays or ignores evidence that runs counter to the government’s objectives, was also visible in policies affecting workers. Pan-Canadian research and analysis on labour market policy became virtually non-existent since government defunding ensured that organizations previously doing this work shut down (Wood). Facing criticism for the skyrocketing numbers of workers in the Temporary Foreign Workers Program (TFWP), the government split the program in two and changed the way temporary work permits were counted (Flecker). This obscured the social and economic impact of the International Mobility Programs, which were bringing an even larger proportion of migrant workers into the country than the TFWP (Mertins-Kirkwood).

The government suppressed the mandatory long-form census (Eliadis) and chose austerity over evidence in the decision to defund autonomous health options for Aboriginal peoples (FitzGerald). It oversaw the closure of the Canada Health Council, which had been monitoring the performance of provincial health care systems (Newitt-Silnicki). With the decision to end door-to-door mail delivery, Canada Post and the Harper government ignored studies that concluded innovations in areas

of postal banking could raise money for the corporation (West). In a rare example where the government did respond to evidence in homelessness policy it divided the affected population into deserving and undeserving poor, and dramatically underfunded the program (Doberstein and Smith).

Before overturning the environmental assessment system completely, the government provided no scientific evidence to support its contention that faster reviews would be better, or that the previous processes were burdensome, except to affirm claims from business leaders that they were (Kinney). Canada could soon become the first country in the world to allow grain exports to have a low-level presence of genetically-modified foods not approved by its national regulator, in this case Health Canada (Sharratt). The decision, which came near the end of the 41<sup>st</sup> Parliament, was yet another example of the government's preference for deregulation (or corporate self-regulation) as experienced in food and rail safety, with catastrophic results in both cases (Campbell; West).

In security and intelligence policy, the government often disregarded advice when warned its legislative proposals were unconstitutional or in violation of the Charter. Heated rhetoric, much of it divisive and racially charged, supplemented for a lack of evidence that the bills C-44 and C-51, which granted CSIS extraordinary new spying and enforcement powers, were necessary, or that they satisfied the need to balance human rights and privacy concerns with Canada's national security (Mazigh).

Without regard for its international reputation as a leader in evidence-based criminal justice policy, the Harper government rejected its own studies demonstrating the positive outcomes of current policy for communities and offenders in favour of longer sentences (Mallea). When presented with evidence of human rights abuses during Israel's 2006 and 2014 bombing campaigns in Lebanon and Palestine, the Harper government continued to applaud the Israeli government for its restraint and to demonize Palestinians for provoking the attacks. This is the likely reason why Canada lost its bid for a seat on the UN's Security Council in 2010 (Gruending). In these areas, and especially on matters of climate change, the government's disregard of facts in favour of ideology isolated Canada on the world stage.

Perhaps the most shocking expression of the government's antagonism toward knowledge production came through revelations that it had destroyed two-dozen federal Department of Fisheries and Oceans scientific libraries, collections and archives across the country. No assessment of the impact of this decision was made prior to filling the dumpsters with historical records, but it came after systematic defunding of science, muzzling of government scientists, and the erosion of Canada's reputation as a world leader in environmental science (Zeffiro).

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## State intervention in the interest of markets

Faced with a deepening economic crisis in 2008, and the associated threat of being toppled by an NDP-Liberal coalition in the wings, the Harper government implemented, in 2009, one of the largest economic stimulus packages among developed countries. This included earmarking \$200 billion toward a fund to ensure continued lending by banks to businesses and consumers, \$6.2 billion in tax cuts, \$6.1 billion to extend employment insurance coverage, and billions more in infrastructure spending and direct support to some industries. However, the *Economic Action Plan* represented only a temporary shift from the government's partisan (neoliberal) aversion to intervention in the economy—unless that intervention helps “the market” do its work (Bernard).

As the economy recovered, however sluggishly, the Harper government returned to its preference for reducing the size of government, exposing a central inconsistency in its stimulus strategy: public investments were meant to be temporary, but taxes were reduced permanently (Krawchenko and Stoney). Those tax cuts disproportionately benefited upper-earners and, at the same time, greatly reduced government funds. This constraint was then translated into public spending cuts (O'Manique).

Along with a commitment to balanced budgets, reduced government revenues justified cutting program spending along with long-term underfunding of the public sector, and the closures of institutions within the broader public sector (West). The impact compelled sub-national levels of government to seek alternative modes of service delivery such as privatization, contracting out, and social impact bonds for financing infrastructure and public services (West).

Along with these cuts the government established a new regulatory policy requiring federal departments to repeal a regulation for every new one proposed to Treasury Board (Campbell). Meanwhile, regulators such as the Transportation Safety Board and Canadian Food Inspection Agency were starved of the resources they need to properly do their jobs. The failure of the regulatory regime is elaborated in Campbell's chapter on the Lac-Mégantic rail disaster that killed 47 people in 2013.

The neoliberalism embraced by the government favours market-oriented solutions to economic and social problems and rejects any assumption that governments should consider collectivist goals (West; Krawchenko and Stoney). This is evident in the persistence with which the Harper government sought to establish individual property rights on reserves, such as the right to buy and sell land, against the interests of many Aboriginal communities (FitzGerald). Instead of funding women's organizations oriented toward collective approaches, the Harper government changed the mandate of Status of Women Canada such that project funding decisions were to be based on entrepreneurial and business-oriented approaches (Stinson). When



studies suggested the need for more regulated child care spaces across Canada, the government chose instead to offer minimal child benefit payments and tax breaks to families—support that does not come close to funding home child care costs.

In the realm of social policy, the Harper government chose targeted rather than comprehensive approaches that were centred on tax breaks for single-earner households (Doberstein and Smith; Bezanson). Though some policy recognized the value of women’s unpaid work, it increased women’s dependence on the male wage (Bezanson). Doberstein and Smith similarly identify the partial appeal of the government’s social policy, but criticize the limited financial investment in housing during the last two Parliaments.

In general, the government used crisis stimulus spending to justify subsequent deep cuts to social programming and the public sector. The uncertain and precarious economic situation during the recovery was the perfect ideological device to undermine opposition to the cuts, and to weaken the voices of the most marginalized (O’Manique). From the government’s perspective the work of caring for people can be done in private homes or paid for through the market (Bezanson). This was evident in health care policy, where government neglect led to increased private sector funding and delivery (Newitt and Silnicki).

The government also used an expanded TFWP to deregulate the labour market, since this type of economic migration depresses local wages and increases flexibility for employers (Flecker; Mertins-Kirkwood). Spending cuts on active labour market measures (e.g., training) reached their lowest levels yet in 2011; at only one-third of the OECD average, this funding provides unemployed workers in Canada with few resources to engage in skills training (Wood).

The government’s commitment to free-market economics was apparent in the kinds of state institutions, laws and international treaties it supported. For example, more than their Liberal predecessors, the Conservative government promoted investment treaties to protect Canadian-based companies in countries where they have interests in mining or energy resources (Engler, Sinclair). These treaties attempt to limit governments’ efforts to protect their economic development options, social policy or natural environments by granting multinational investors the right to damages in the event government policy interferes with their investments or expected profits.

In other words, the government intervened quite forcefully to protect private investors and multinational capital, and to dismantle examples of non-market-based or collectivist economic systems. Once again, the forced end to the single-desk Canadian Wheat Board offers an unfortunately perfect example. An efficient advocate on behalf of farmers, the CWB ensured product moved swiftly along Canada’s rail system to port, earned a high price on international markets, and main-

tained the trust of buyers around the world. Today, grain farmers must negotiate separately within a market-driven food system dominated by a few large, mostly U.S. multinational companies—a system with obvious power imbalances (Slater). We see the same preferences in the energy sectors (pipelines over public opposition), the rail system (self-regulation over the precautionary principle) and social services (boutique tax breaks instead of the expansion of more efficient new social services like child care and pharmacare).

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## Conclusion

There are other themes to be gleaned from the contents of the chapters presented here. There are many policy areas and political practices that this book does not cover. However, we are convinced that this collection will contribute enormously to our collective understanding of the Harper government during the years 2008 to 2015, in particular the many ways the government profited from the worst economic crisis since the Great Depression to further its vision for what government should and shouldn't do. We invite you to consider the insights that our contributors offer based on their careful analyses of a wide range of policy areas. The task of remembering the extent and the speed of the changes that have taken place under the Harper government is an onerous one. We are honoured to have been able to work with authors who have taken on this collective responsibility in such a dedicated and thorough manner.

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**DEMOCRACY**



# Irreconcilable differences

First Nations and the Harper government's energy superpower agenda

Daniel Wilson

TO MANY CANADIANS, the prime minister's apology for residential schools in June 2008 appeared as true statesmanship. Most political observers regard the day as a high point for Stephen Harper's public image. Reconciliation between the Crown and First Nations even seemed a possibility. But in the end, as the policy record shows, it was only words. The government has forsaken the more difficult road to reconciliation, partially laid out by previous Progressive Conservative and Liberal governments, for the well-trodden path of assimilation. Ironically, the prime minister's insincerity on the day of the apology may prove the greatest obstacle to the achievement of one of his government's highest ambitions: getting natural resources out of the ground and to markets.

First Nations have the means, the motive and the opportunity to significantly impede about \$650 billion worth of new investment in natural resource development over the next decade. Harper's tactics on this file, and others described below, are generating more resistance than co-operation. Bolstered by the rise of the Idle No More movement and an impressive winning streak in court, Indigenous resolve against the Harper government agenda is deepening. Ideological differences underlie the discord, while the prime minister's inability to change course prevents progress. As a result, many of the government's economic promises re-

lated to oil and gas expansion in particular may never occur. As long as true reconciliation is not an option, First Nations will almost certainly use their new political and legal clout as a lever for change.

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## The policy of assimilation

The belief that the interests of Canada and of Indigenous peoples are best served by the assimilation of the latter into the “mainstream” socioeconomic culture is as old as the country itself. Residential schools are the best-known tool of assimilation, aimed at “killing the Indian in the child,” so that future generations would come to behave like the colonialists, but they are not the only one.<sup>1</sup> The *Indian Act* itself perpetuates federal government control over the lives of First Nations citizens and the actions of First Nations governments. This control is justified through frequent government insinuations about corruption and incompetence designed to undermine the legitimacy of First Nations governments.

The simplest and most direct tool used to implement assimilation policy has always been the impoverishment of First Nation communities. Denying funding for education, housing, health care, economic development, accountability and self-government diminishes the capacity of First Nations governments to care for their citizens on reserve. The consequent hardship encourages people to leave. As with the residential schools experience, First Nations citizens are more likely to assimilate when forced to live outside their own communities. Ironically, this is the opposite of the 19<sup>th</sup> century policy of deliberately starving First Nations people in order to get them to accept living on reserve in the first place.<sup>2</sup>

Assimilation was the plainly stated objective of the 1969 Trudeau-Chrétien White Paper, which outlined a plan for removing all rights specific to Indigenous peoples, erasing the relevance of history and law to that point.<sup>3</sup> The frankness of its intentions led to a surge in Indigenous activism, which included the creation of the forerunner of the Assembly of First Nations (AFN) and the use of litigation to advocate and enforce the rights Trudeau wanted to take away. Where diplomacy and the law failed, direct action sometimes took their place. The government was forced to back down.

Over the next four decades, federal governments became less overtly hostile and the acknowledgement of Indigenous rights grew. This shift in attitude, if not direction, was driven by political, practical and legal pressure from First Nations, marked by events such as the inclusion of Sections 25 and 35 in the *Constitution of Canada, 1982*,<sup>4</sup> the Royal Commission on Aboriginal Peoples (RCAP) in 1996<sup>5</sup> and the Kelowna Accord in late 2005.<sup>6</sup>



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## The minority years

And then Canadians elected a Conservative government led by a prime minister who would later say, “We also have no history of colonialism,”<sup>7</sup> and tell a U.K. business meeting, “I know it’s unfashionable to refer to colonialism in anything other than negative terms.... But in the Canadian context the actions of the British Empire were largely benign and occasionally brilliant.”<sup>8</sup> This is a prime minister mentored by Tom Flanagan, the man who wrote, “Call it assimilation, call it integration, call it adaptation, call it whatever you want: it has to happen.”<sup>9</sup> These are views from which Stephen Harper has refused to distance himself.<sup>10</sup>

During the campaign that elected the first Harper government, the Conservatives made clear they would seek to maintain First Nations in poverty by breaking yet another promise of the Crown to Indigenous peoples. That promise, made by the previous prime minister and all thirteen provincial and territorial leaders, was known as the Kelowna Accord.<sup>11</sup> Less than two weeks before election day, future cabinet minister Monte Solberg described the accord as having been “crafted at the last minute on the back of a napkin.”<sup>12</sup> In fact, eighteen months of consultation and negotiation had gone into the agreement. Plans made during that time, notably the Accountability for Results initiative,<sup>13</sup> were unceremoniously dropped.

The new Conservative government insisted no agreement had been reached in Kelowna, despite the unanimous views of the participants at the meeting. It also said that investment in First Nations communities would only be of use if accompanied by “systemic reforms” that the Harper government would dictate — not those developed during the consultation process that preceded the Kelowna Accord.<sup>14</sup>

One of the new government’s first pieces of legislation, *The Federal Accountability Act*, included a section that would give the auditor general of Canada responsibility for auditing First Nation government finances.<sup>15</sup> First Nations did not object to the idea of such a position (having proposed a First Nations Auditor General as part of the Accountability for Results initiative under the Kelowna Accord), but that an officer of Parliament would exercise this authority. First Nation governments are not simply administrative agents of the federal government; therefore, a First Nation authority should carry out audits.<sup>16</sup> The Harper government argued the point strenuously in committee hearings, but with the help of the three opposition parties the disputed clause was deleted from the final bill.

This would be the first of many attempts over the next eight years to paint First Nations governments as illegitimate. In each case, the Harper government deployed the same tactics, which can be broken down as follows:

- Suggest that First Nations governments are corrupt or incompetent. In the case of the *Accountability Act*, opposition to being audited is presented as evidence.
- Poison the waters with unacceptable conditions, such as undermining the right of self-determination by trying to subordinate First Nation governments to the level of administrators for the Minister of Indian Affairs (now Aboriginal Affairs).
- When First Nations object to the second issue, spin it as more evidence of incompetence to support the claim that the lack of co-operation from First Nations governments justifies maintaining reserves in abject poverty (because additional money would be wasted).

Other even more contentious bills died on the order paper, in part due to elections and prorogations and in part because the minority status of the government prevented it from sticking to its own timelines. But some legislation pertaining to First Nations did pass during the government's first five years, the following examples being the most notable:

- The *Specific Claims Tribunal Act* (2008) passed with the support of the AFN, reflecting that both Indian Affairs Minister Jim Prentice and AFN National Chief Phil Fontaine were former Indian claims commissioners and shared some perspectives on the issue. The AFN was even given a role in helping to draft the bill, a practice that has not been repeated.
- Also in 2008, decisions under the *Indian Act* were made subject to the *Canadian Human Rights Act*. Like with the *Accountability Act*, the bill was objectionable to some First Nations because it made decisions by their governments subject to an outside body's review. In typical form, the Harper government suggested those objections were driven by the desire of corrupt chiefs to abuse human rights. After significant amendments were brought by opposition parties to improve the bill, and in recognition of the opportunity to finally challenge federal government decisions on human rights grounds, most First Nations withdrew their objections to the legislation.
- Amendments to the *Indian Act* were passed in 2010 to address gender discrimination in the granting of Indian status. This legislation was mandated by a B.C. Court of Appeal decision in *McIvor v. Canada*. The result, however, has been criticised, including by the plaintiff, for addressing only part of the gender discrimination problem and leaving in place provisions that diminish the number of people born to First Nations parents who are eligible for status.<sup>17</sup>

The minority years were also marked by three critical events: the vote on the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), the 2009 federal budget negotiations, and the residential schools apology.

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## United Nations Declaration on the Rights of Indigenous Peoples

On September 13, 2007, the General Assembly of the United Nations passed UNDRIP by a vote of 144 in favour to four against. As article 43 of UNDRIP states, the rights recognized therein “constitute the minimum standards for the survival, dignity and well-being of the Indigenous peoples of the world.”<sup>18</sup>

The declaration was 20 years in the making, with the intimate involvement in Canada of previous Progressive Conservative and Liberal governments as well as First Nations. The Harper government, however, cast one of the four votes against UNDRIP.

Canada’s internationally embarrassing stand against the survival of Indigenous peoples received approbation at home, with mainstream news outlets parroting the government’s claims that UNDRIP was “incompatible with Canada’s constitutional framework,”<sup>19</sup> that the requirement for free, prior and informed consent concerning decisions affecting Indigenous rights would be unworkable, and that clauses pertaining to Indigenous land title and compensation for lands taken illegally would cause economic chaos.<sup>20</sup>

Opposition parties saw no merit in the government’s arguments. A New Democratic Party motion acceding to UNDRIP, which was supported by the Liberals and Bloc Québécois, passed in the House of Commons in April 2008, with the Conservatives continuing their objections.<sup>21</sup>

But by 2010, when elections and policy changes in the United States, Australia and New Zealand — the other three UNDRIP holdouts — made it clear that Canada would be standing alone against the declaration, the Harper government capitulated. The notion that accession to UNDRIP was incompatible with Canada’s constitution was revealed as the fiction it had always been.<sup>22</sup> However, the impression that the Harper government does not support the survival, dignity and well being of Indigenous peoples lingers.

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## Budget 2009

The power of the opposition in the minority government was never clearer than during the run up to the budget bill of 2009. Fresh off the prorogation crisis that nearly

brought the Harper minority down in late 2008, the government was forced to address the global economic crisis and Canada's ailing infrastructure in its next budget.

Part of the negotiations included the only meeting Stephen Harper has held with the 13 provincial and territorial leaders as well as the leadership of the four largest national Aboriginal organizations: the AFN, the Métis National Council, the Inuit Tapariit Kanatami, and the Congress of Aboriginal Peoples. That meeting, in January 2009, led to the single largest investment ever made for First Nations housing and infrastructure, worth \$915 million.<sup>23</sup>

Prime Minister Harper, who had rejected a similar investment in housing, water and infrastructure under the Kelowna Accord, was forced by political circumstance to abandon his objections. His government's insistence that the money identified in the Kelowna Accord to improve life on reserves would be wasted unless accompanied by undefined "systemic reform" disappeared. Political expediency trumped ideology.

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## The apology

Like UNDRIP and the Kelowna Accord, the out-of-court settlement with the survivors of residential schools was unfinished business inherited from the previous government. Although a formal apology was not specified in the legal documents, former AFN national chief Phil Fontaine, as the named plaintiff in the court case, had made it a priority in discussions with the Martin government, from which a firm commitment had been received.

Fontaine also pressed the reluctant Harper government to honour that pledge. The entirety of factors that went into the decision to provide the apology cannot be fully known, but Harper himself, in informal remarks immediately prior to the apology, credited former NDP leader Jack Layton with helping him to see that it would be the right thing to do.

June 11, 2008 was a solemn, uniquely powerful day. It was a profound moment in the history of Indigenous relations in this country. When Stephen Harper said, "Today, we recognize that this policy of assimilation was wrong, has caused great harm, and has no place in our country," it was an important step toward reconciliation, or so it seemed.<sup>24</sup>

In light of the actions of the government before and since, especially the legal battles the Truth and Reconciliation Commission faced in pursuing its mandate, one must wonder whether the prime minister did not understand the words he spoke.<sup>25</sup> Perhaps, having been cajoled into giving the apology, he was uncommitted to its implications or had not considered their full implications.

Whatever the case, the clear impression over Harper's nine years in office is that he remains firmly committed to the policy of assimilation and the apology was, at best, insincere.<sup>26</sup>

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## The majority years

The majority won in the May 2, 2011 election unleashed the Harper government from parliamentary restraint. It would now be able to craft legislation, refuse amendments to it and gain passage within timelines that the government controls.

What the majority of seats in the House of Commons did not guarantee were compliant courts or public complacency. On Indigenous issues, the contrast between parliamentary power and growing vulnerability outside the House of Commons is the story of Harper's majority years.

## The zombies

With its majority government, the Conservatives were able to reintroduce and pass four bills they had been unable to get through previous Parliaments: *The First Nations Accountability Act*, *The Matrimonial Real Property Act* (MRP), *The Safe Drinking Water for First Nations Act* and the *First Nations Elections Act*.<sup>27</sup> Each of these had died on the order paper at least once during the minority years, but experienced a zombie-like resurrection over objections from First Nations and opposition parties.

During hearings, First Nations argued that each of these bills undermines constitutionally enshrined Aboriginal and treaty rights. In fact, it is likely that none would survive a court challenge based on the Crown's duties to consult and accommodate First Nations rights and interests. Provisions to incorporate provincial regulations for application on reserve (water and MRP) and increase ministerial control over band operations (elections) brought more specific objections as they undermine the right to self-government.

The accountability bill, which resumed the battle lost by the government with C-2, was clearly designed to embarrass First Nations leadership and fuel allegations of corruption. The Conservative government is even considering a bill to allow for the private sale of reserve lands — an idea suggested by none other than Tom Flanagan — which would undoubtedly inspire even greater anger among First Nations.

More broadly, each of these bills was a sign that the Harper government would continue to dictate from Ottawa how First Nations should operate, displaying the same paternalistic, colonialist disregard for the autonomy of First Nations that had

been the hallmark of the Crown's approach since Confederation and lay behind the residential schools policy.

It was the reintroduction of this suite of legislation, compounded by two omnibus budget implementation bills (C-38 and C-45), which gave rise to the Idle No More movement in late 2012.

## **Idle No More**

As seen by the movement's founders, the unimpeded and unilateral imposition of the Harper government's agenda on First Nations, along with its familiar paternalistic tone, was certainly part of the problem. But the rolling back of protections for water and land contained in the budget implementation bills was the final straw. Amendments to the *Canadian Environmental Assessment Act*, the removal of protections for all but a few navigable waters, changes to the definition of the Aboriginal fishery, and amendments to how land might be surrendered under the *Indian Act* were among the many objectionable provisions hidden away in these two mammoth bills.

In the words of the Idle No More founders:

What began as a series of teach-ins throughout Saskatchewan to protest impending parliamentary bills that will erode Indigenous sovereignty and environmental protections has now changed the social and political landscape of Canada... The impetus for the recent Idle No More events lies in a centuries old resistance as Indigenous nations and their lands suffered the impacts of exploration, invasion and colonization. Idle No More seeks to assert Indigenous inherent rights to sovereignty and reinstitute traditional laws and Nation to Nation Treaties by protecting the lands and waters from corporate destruction. Each day that Indigenous rights are not honored or fulfilled, inequality between Indigenous peoples and the settler society grows.<sup>28</sup>

It is clear that the federal government was unprepared for a grassroots, broadly based and entirely peaceful uprising. The fact that this did not look like other protests, using round dances and educational seminars rather than blockades, prevented the usual demonization of Indigenous protest in the media and among the general public.

In addition, social media allowed the message to spread in a new and powerful way. Idle No More was able to grow unimpeded among Indigenous people and to win over non-Indigenous supporters, particularly within the environmental movement and others opposed to the Conservative agenda.

The subsequent hunger strike of Chief Theresa Spence, to bring attention to a housing crisis in her Attawapiskat community, became linked to the movement and

garnered international attention for both causes, with sympathy protests in dozens of countries around the world. The Harper government used Spence's strike as another opportunity to smear of First Nations leadership as corrupt.

The early release of an audit and mainstream media manipulation of its findings<sup>29</sup> sullied Chief Spence's personal reputation and undermined public support for both her community's housing battle and for the broader Idle No More movement. But the frustration of First Nations and their non-Indigenous allies was not to be quelled.

### **The tale of two summits**

The Crown–First Nations Gathering held on January 24, 2012 was supposed to address the deteriorating relationship between First Nations and the government of Canada. The attendance of the prime minister, AFN National Chief Shawn Atleo and other leaders from both sides created an impression of great significance. The five “immediate steps for action” listed in the meeting's outcome statement included working on the relationship itself, removing barriers to First Nations governance, advancing land claims resolution and treaty implementation, and furthering education reform and economic development.<sup>30</sup>

At the time, some Indigenous observers criticized the gathering as largely symbolic. With little progress on the gathering's outcomes a year later, many concluded the critics were right. The failure to achieve tangible progress greatly weakened National Chief Atleo's credibility among First Nations citizens and leadership alike. Ironically, the only one of the five immediate steps for action to produce any result – education reform – would prove to be his undoing.

### **First Nations control of First Nations education**

Bill C-33, *The First Nations Control of First Nations Education Act*, introduced in April 2014, might have gained First Nations support under different circumstances. On a substantive level, it went further than any of the Harper government's other legislation, with the possible exception of the *Specific Claims Act*, to address the concerns of First Nations. And it came with a commitment to provide funding to address those concerns.

Although some argue the \$1.9 billion promised is insufficient to create full equity between First Nations and provincial schools, it does represent an admission of the funding inequity the government had to that point denied. The bill also fails to resolve the issue of reciprocal accountability that chiefs had made a condition of approval, and that had been the foundation of the Accountability for Results initia-

tive under the Kelowna Accord.<sup>31</sup> Nonetheless, the progress it represents over the current situation might have won support had it not been for the poisoned atmosphere in which the legislation was launched.

Eight years of hostility from the Harper government and the consequent loss of patience among First Nations had made it unlikely that any government proposal would find much support. But when a hastily called press conference to announce the legislation and funding included claims of a “deal” with First Nations, the national chief was accused of betraying his obligation to obtain the consensus of constituent First Nations before promising their agreement.<sup>32</sup>

On top of this, the sensitivity with regard to the education issue due to the harsh legacy of residential schools meant the negative reaction would be swift and angry. National Chief Atleo, who regarded the bill as his best and only opportunity to address the priority issue of his administration, clearly misread this context. As a result, he yielded to calls for his resignation, saying he did not want to be a personal obstacle to the legislation’s chances.

Although Bill C-33 has passed second reading, the majority of First Nations have rejected it. Because the government will not provide the promised funding without support for its legislation, it also means the inequality between the funding available for the education of First Nations children compared to children in provincial schools will continue.<sup>33</sup>

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## **The battle over resources**

If the battle over assimilation revolves around investment in First Nation communities and control over governance, its flipside is found in the battle over resources. As First Nations gain control over resource governance, the uncertain business climate discourages investment.

Meanwhile, despite the economic value of the projects at stake, the decisions of the courts, the advice of supporters and the vows of First Nations, Prime Minister Harper is inclined to dictate rather than negotiate. That personal inflexibility and commitment to ignore the rights of First Nations makes the stakes high and the room to manoeuvre slim.

## **Canada’s economic future**

In its 2014 Budget Plan, the federal government estimated there would be \$650 billion in new investment in resource development projects over the next 10 years.<sup>34</sup> This number represents all resource sectors (oil and gas, forestry, mining), but re-



fers only to potential investment rather than revenues, which can be measured by the contribution of projects to gross domestic product (GDP).

The mining and mineral manufacturing sector represented 3.4% of Canada's GDP in 2012–13,<sup>35</sup> while the oil and gas sector was responsible for just over 6% of GDP that year.<sup>36</sup> Suffice it to say, natural resource development projects are an important part of Canada's economy.

Prime Minister Harper wants to see their importance increase even further. Not long after coming to office in 2006, he trumpeted his intention to make Canada an “energy superpower,”<sup>37</sup> comparing the development of Alberta's oil sands to “the building of the pyramids or China's Great Wall. Only bigger.”<sup>38</sup>

Former finance minister Jim Flaherty understated this goal in his 2014 budget speech when he said “[m]aking sure that Canadian energy remains available to markets around the world is a priority for this government.”<sup>39</sup> It would be more accurate to say no issue is a higher priority. From Canada's withdrawal from the Kyoto Protocol to reducing regulatory barriers to spending millions on advertising and lobbying foreign governments to demonizing pipeline opponents as “radicals”<sup>40</sup> trying “to undermine Canada's national economic interest,”<sup>41</sup> there has been intense focus on this issue from the outset.

And it is this fixation on resource development that drives much of the Harper government's conflict with First Nations. As noted, the changes to environmental protection legislation and resource project assessment processes in the budget implementation bills in 2012 were the final trigger for Idle No More protests.

Given that First Nations have the ability to delay, disrupt or, in fact, stop resource development projects, the question is why more effort has not been put into building constructive dialogue rather than adversarial positioning. It's a question only Stephen Harper can answer.

## Winning in court

Over the past 30 years, the Supreme Court of Canada has insisted repeatedly that the Crown has a duty to reconcile its sovereignty with the rights of First Nations.<sup>42</sup> But the avalanche of First Nations litigation, and the overwhelming record of wins for First Nation litigants on these issues, makes it clear that the Crown is not listening.

Bill Gallagher's 2011 book, *Resource Rulers*, describes the effect of what he estimated to be well over 150 wins for Indigenous litigants in court, concluding that “until we have true resource power-sharing with natives, the fate of Canada's resource sector will be in the hands of native strategists in their new capacity as Resource Rulers.”<sup>43</sup>

The 2014 decision in *Tsilhqot'in Nation v. British Columbia*<sup>44</sup> makes it even more explicit that First Nations can prove that they have title to land, that they must be

compensated where that title was seized improperly by the Crown,<sup>45</sup> that where title is proven the Crown must obtain the First Nation's consent before making decisions that affect their land,<sup>46</sup> and that the First Nation holding title has "the exclusive right to decide how the land is used and the right to benefit from those uses."<sup>47</sup> The ruling has applicability wherever title has not been ceded, which covers most of British Columbia, Atlantic Canada and several areas of the country between the coasts, such as the Algonquin territory in Ontario where Parliament resides.

Even where full title is not demonstrated, the Supreme Court has made it clear that there is a duty on the Crown to consult with the First Nations whose rights may be affected by its decision and, possibly, to accommodate their interests, depending on the strength of the First Nation's claim.<sup>48</sup>

First Nations have also shown that, in addition to litigation, they are ready, willing, and able to use political pressure, market pressure and all manner of protest to protect the land.

In the 1990s, the James Bay Cree successfully used all of these tools to block the Great Whale Hydro Electric project until the Quebec government offered a better deal.<sup>49</sup> In 2013, protests by the Mi'kmaq of Elsipogtog delayed a fracking project in New Brunswick and made fracking a key issue in the provincial election there.<sup>50</sup>

Cliffs Resources cancelled its Ring of Fire project in Ontario due to the general atmosphere of uncertainty created by unresolved Indigenous interests.<sup>51</sup> And lobbying by Indigenous people on both sides of the border has contributed to President Obama's delay in approving the Keystone XL pipeline.<sup>52</sup>

Whether through the courts, through lobbying Canada's resource clients, or through direct action, First Nations have the capacity and the will to stop the government's energy superpower plans. In this context, it is incredible Stephen Harper continues to generate more anger and resentment, making co-operation and reconciliation impossible.

## **The consensus**

It is unusual to see the level of consensus that currently exists among activists, academics, developers and politicians concerning where the risk lies and what needs to be done to address it. With few exceptions, there is overwhelming support for the prescription that First Nations must be brought onside to diminish uncertainty and the risk of project delay, disruption or termination.

Jim Prentice, Harper's former minister of Indian affairs, even warned that pipeline projects were threatened by the failure to consult and accommodate First Nations rights and interests.

“[T]he constitutional obligation to consult with [F]irst [N]ations is not a corporate obligation. It is the federal government’s responsibility,” he told the Business Council of B.C. in a June 2012 speech. “Finally, these issues cannot be resolved by regulatory fiat — they require negotiation. The real risk is not regulatory rejection but regulatory approval, undermined by subsequent legal challenges and the absence of ‘social licence’ to operate.”<sup>53</sup>

Think-tanks friendly to business and the Conservatives have echoed Prentice’s apprehension. As one of many examples, the Macdonald-Laurier Institute launched a three-year project to recommend ways to bring First Nations onside.<sup>54</sup> The work to date indicates deep concern over the risks that Indigenous opposition presents to natural resource development and the economic value of persuasion and negotiation over increasing confrontation, a view echoed by most other studies on the matter.

Those studies include the report by Doug Eyford, commissioned by the prime minister to provide advice on facilitating Indigenous co-operation in resource development. Eyford outlined “three themes that help focus action: building trust, fostering inclusion, and advancing reconciliation.”<sup>55</sup> The fact that Harper has pursued none of these should only heighten concerns about the effect his policies are having on an economically critical industry.

Indigenous people have made their voices clear, whether through the leadership or grassroots movements like Idle No More. They will be heard, they will exercise their rights, and they are willing to put themselves at risk to do so. The message could not be any clearer.

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## **Conclusion: Irreconcilable differences**

Because of objections from First Nations, the Enbridge Northern Gateway Pipeline project has been delayed,<sup>56</sup> while many now believe that it, like the Mackenzie Valley Pipeline, may never be completed. Hundreds of projects across the country — in mining, forestry, oil and gas — face similarly uncertain futures, rattling investor confidence in the ability of industry and governments to deliver on promised developments.

The courts and commentators are in agreement: there must be a significant shift in the federal government’s approach if First Nations interests are to be accommodated. Without that shift, billions of dollars in new investment and billions more in production may be lost. More broadly, Indigenous peoples will continue to be marginalized economically, socially and politically. The litany of negative outcomes in education, employment, health and well-being, which beset so many com-

munities, will continue — the product of poverty and exclusion, of colonialism and the policy of assimilation. Canada will suffer the consequences of being a country divided, having failed to come to terms with its history, its laws and its citizens.

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# Dismantling democracy

Stifling debate and dissent for civil society  
and Indigenous peoples

Pearl Eliadis<sup>1</sup>

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## Introduction

VOICES-VOIX, A NATIONAL volunteer-based coalition, was created in 2010 in response to a troubling trend of “defunding” Canadian civil society organizations (CSOs) working in the areas of anti-poverty, international co-operation, immigrant and refugee issues, human rights and women’s equality.<sup>2</sup> More than 200 Canadian organizations and 5,000 individual Canadians have subscribed to its declaration in favour of free expression and transparency in government. Over the last five years, Voices-Voix has documented the suppression of debate and dissent by recording incidents and case studies brought to its attention by affected organizations, the media, and through legal and scholarly communities. No other organization in Canada has been systematically documenting and publishing these cases.<sup>3</sup>

Since 2010, Voices-Voix published more than 110 case studies on the dismantling of democratic rights and institutions and the narrowing space for debate and dissent in this country. All the case studies are available on its website and are classified according to the federal government tactics that are used and their targets. The first main category deals with the undermining of civil society, as well as Indigenous groups and First Nations; the second examines the erosion of the Can-

adian public service and interference with independent officers and agents of Parliament; the third is the use of retaliation and reprisals against whistle-blowers and advocates; the fourth category describes the savaging of federal departments working on environmental protection; and, finally, the last category records the dismantling of basic science and knowledge, including the suppression of statistical tools such as the mandatory long-form census.<sup>4</sup>

This chapter focuses only on the first of these issues, namely the federal government's undermining of Canadian CSOs and advocates, drawing on 70 case studies (Annex 1) involving 108 organizations and advocates (Annex 2).<sup>5</sup> The case studies were developed based on information obtained from the organizations themselves, including personal interviews, as well as from court documents, research reports, and media sources. Voices-Voix has also created a video series, available online, that provides personal testimony about the organizational and personal impacts of the federal government's actions.<sup>6</sup>

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## Civil society organizations

The terms “non-profit,” “civil society organization,” and “charitable organization” (or charity) are used extensively throughout this chapter. They mean different things, and the terms have important implications for how the government has interacted with the organizations in question. The Canadian non-profit sector is the second largest in the world and includes not only non-governmental organizations (NGOs) and grassroots organizations, but also larger non-profit enterprises, such as hospitals. This sector contributes approximately 8% of Canada's gross domestic product (GDP).<sup>7</sup>

Civil society organizations are non-profits, but as referred to in this chapter they include a narrower subsection of organizations that:

Have a presence in public life, expressing the interests and values of their members or others, based on ethical, cultural, political, scientific, religious or philanthropic considerations. Civil Society Organizations (CSOs) therefore refer to a wide array of organizations: community groups, non-governmental organizations (NGOs), labour unions, Indigenous groups, charitable organizations, faith-based organizations, professional associations, and foundations.<sup>8</sup>

CSOs in Canada provide much of the “social infrastructure” that binds together our communities, our cities, our workplaces, and our country.<sup>9</sup> Whether we are talking about veterans, faith groups, international development bodies, scientific institutions and facilities, environmental protection advocates, unions, cultural institu-

tions, sports associations, or Indigenous organizations, they enhance the quality of our lives, the health of the built and natural environment, and the vitality of our communities and neighbourhoods. They strengthen our cultural heritage, encourage people to connect, and protect our collective interests.

Charities are a specific type of non-profit organization recognized under the federal *Income Tax Act*. Charities must be non-partisan, and are acknowledged by law and the courts as being in the public good because they engage in the small number of activities that qualify as “charitable purposes” or “charitable objects.” Once an institution is legally recognized as charitable, there are considerable financial and reputational benefits flowing from that status.

csos, whether they are charitable or not, contribute to a rich and diverse Canadian society that values human rights and encourages participation on a wide range of issues of public concern.

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## Indigenous organizations

Many Indigenous organizations in Canada are set up as non-profit corporations and some have charitable status under the *Income Tax Act*. Indigenous peoples — whether they are organized as First Nations governments or social justice organizations — are treated as a distinct subset for the purposes of this article. They transcend the definitions of “civil society organizations.” Their status and their missions derive from unique political, economic, and social structures, including treaties and modern land claims agreements, and from Indigenous cultures, spiritual traditions, histories, and philosophies, especially with respect to rights to their lands, territories, and resources. The United Nations Declaration on the Rights of Indigenous Peoples states that governments must respect and promote these rights. As the previous chapter explains, many of the tactics used by the federal government have been deployed in spades against Indigenous peoples, despite the UN declaration.

csos represent an important vehicle by which we express our views and seek to influence public policy and discourse. And yet the relationship between csos and the federal government is at an all-time low as a result of sustained and concerted efforts to undermine science, environmental work, anti-poverty work, international co-operation, environmental protection, Indigenous groups, and the people who work with them. One consequence has been a decline in the capacity of csos in Canada to make a difference for vulnerable communities and equality-seeking groups:

The influence of civil society advocates for the economic interests of lower-income Canadians has also weakened in recent decades.... Antipoverty groups, women’s organizations, advisory bodies and think-tanks, the traditional champions of the

interests of the disadvantaged, have lost public funding and literally disappeared from the public forum.... Charitable civil society organizations that advocate egalitarian policies have been harassed by tax officials for their political activities.<sup>10</sup> Those CSOs that have survived government attacks now live and work with the “chilling effect” created by such attacks on individuals and collectives with aims and policies that do not align with Canada’s federal government.<sup>11</sup>

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## **A word about what the research says (and what it does not say)**

This chapter discusses research that synthesizes five years of case documentation involving advocates, CSOs, and their champions. It does not purport to analyze all Canadian non-profits or charities. Nor does it assert that the sector as a whole is under attack or at risk. It does take stock of what Canadian society may be losing and what it has already and definitively lost under the current government. Sadly and worryingly, the research is not comprehensive. Incidents involving ideologically motivated funding cuts, CRA scrutiny, public vilification and intimidation, privacy invasions and surveillance have been brought to our attention at a rate much higher than Voices-Voix is capable of documenting. In addition, several groups have asked us not to publish information about them out of concern for their reputations and future funding from government and private foundations.

The research is consistent with the thesis that has been advanced by both conservative and progressive writers that the Conservative government is actively and consciously seeking to dismantle the pan-Canadian consensus in favour of social progress, tolerance, and human rights. The claim that progressive organizations have been selectively targeted by the federal government for defunding, or that the audits of the Canada Revenue Agency are politically motivated, has been met with either flat denials or with the argument that such decisions fall within the legitimate purview of a duly elected government. These responses deserve closer scrutiny before analyzing the cases in more detail.

The research discussed in this chapter provides 108 examples of progressive organizations and advocates documented in 70 case studies and the cases speak for themselves. For the vast majority of organizations, this treatment at the hands of the federal government is unprecedented. A growing body of research supports the thesis that progressive organizations are being specifically targeted, either because of their focus on environmental protection, equality and human rights, their opposition to key Conservative policy planks such as the development of the oil sands, or because of their support for Indigenous rights.

The Harper government is democratically elected, albeit with a plurality of the popular vote, and it is arguably doing what it set out to do, or at least what it might have been expected to do. As Canadians, we may not all agree with the policy directions of the government of the day, but our constitutionally protected rights and freedoms should provide a platform to express our dissent without fear of reprisal.

It is only fair to point out that the withdrawal of funding (especially core funding) from the non-profit sector began with the Liberal Party of Canada, years before the Conservatives took power, and has also taken place under provincial governments of various political persuasions, including the New Democratic Party (NDP). For those CSOs that find themselves under siege or enhanced scrutiny today, there is something qualitatively different and more troubling about the current environment. The reasons go well beyond the legitimate policy choices of a democratically elected government.

First, while defunding (one of the government's primary tactics) may not be illegal, the courts are looking carefully at decisions that appear to be politically motivated and at whether they are being made with an open mind.<sup>12</sup> The most egregious funding cuts have targeted the very people who most need the protection of the state, including people with HIV/AIDS, immigrants and asylum seekers, children, veterans with disabilities, and members of Indigenous organizations. In one case, the consequences were so serious that the Federal Court of Canada told the government that cuts to health care constituted cruel and unusual treatment, referring to a section of the Canadian Charter generally reserved for torture cases (the *Canadian Doctors for Refugee Care* case is discussed in greater detail below).

Second, there is mounting evidence that defunding is but one of a series of cascading and interdependent strategies designed to strip CSOs, advocates, and Indigenous organizations of their fundraising capacity, charitable status, reputations, and privacy. Charitable organizations enjoy a relatively high degree of trust among Canadians.<sup>13</sup> Despite such confidence — or perhaps because of it — the Harper government has sought to undermine their reputations and credibility, characterizing them as liars, propagandists, radicals, or threats to national security.

Non-profits that receive funding from foundations in other countries have been targeted as well. While the Canadian government actively courts external investment in Canadian business and views international investment in the private sector in a positive light, the same cannot be said for the non-profit sector. CSOs that receive funding from non-Canadian sources have been branded as unpatriotic, seditious, or working against Canadian interests.<sup>14</sup>

Finally, the combined impact of these strategies has been considerably more damaging than any one of them in isolation. As noted earlier, researchers have found that the relationship between the federal government and non-profits has created a “chill” on advocacy.<sup>15</sup> In many instances, organizations have simply dis-

appeared. The consequences can be worse than advocacy chill and other forms of direct or indirect prior restraint. In a small number of cases, groups have been accused of money laundering, or of posing a threat to national security. Several have been placed under surveillance or had their personal and health information disclosed inappropriately. Others have been accused of money laundering and supporting terrorism, leading to serious concerns about the criminalization of dissent.

These attacks have taken place against the backdrop of systemic marginalization of the Charter of Rights and Freedoms by the federal government.<sup>16</sup> The Conservative government has instructed its own lawyers to ignore the Charter in a significant number of cases, allowing manifestly unconstitutional draft legislation to make its way to Parliament.<sup>17</sup> There have been multiple Supreme Court of Canada decisions that have highlighted serial shortfalls in compliance with the Charter. Organizations and advocates that defend human rights and freedoms are considerably more vulnerable in such an environment. IRFAN Canada is the organization that was listed as a terrorist organization on the eve of a hearing challenging the CRA's decision to strip the organization of its charitable status. One immediate consequence of the listing was that the organization is no longer entitled to hire and pay a lawyer to defend it in court.

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## Disabling civil society

Hostile or invasive regulatory environments, including those leading to penalties, create a chilling effect on fundamental freedoms. According to a 2001 Supreme Court of Canada decision:

The concept of chilling effect is premised on the idea that individuals anticipating penalties may hesitate before exercising constitutional rights. In a constitutional democracy, not only must fundamental freedoms be protected from state action, they must also be given “breathing space.”<sup>18</sup>

When CSOs are threatened, their resources cut, or they are placed under enhanced regulatory scrutiny, debate and dissent are stifled. Their “breathing space” is reduced and, as noted by the Supreme Court of Canada, our constitutional democracy is thereby weakened.

The concept of an “enabling” environment goes beyond avoiding restrictions on a group’s existence, function, and growth, and extends to establishing conditions that actively facilitate the work of CSOs.<sup>19</sup> In May 2012, Maina Kiai, the UN special rapporteur on the rights to freedom of association and peaceful assembly, noted that the “right to freedom of association obliges states to take positive measures

to establish and maintain an enabling environment.”<sup>20</sup> He further noted: “associations should enjoy, *inter alia*, the rights to express opinion, disseminate information, engage with the public and advocate before governments and international bodies for human rights.”<sup>21</sup> Finally, Kiai underscored that the ability for associations to access funding and resources is integral and vital to freedom of association.<sup>22</sup>

Voices-Voix is not alone in expressing concern about the quality of the enabling environment for civil society actors in Canada and the narrowing “breathing space” for constitutional democracy. Amnesty International, Human Rights Watch, Lawyers Rights Watch Canada, the Council of Canadians, and the Broadbent Institute, to name only a small number, have observed the deteriorating state of democracy in Canada and the ideological leanings of the current government that are supporting incursions into fundamental freedoms.<sup>23</sup> The British Columbia Civil Liberties Association (BCCLA) has filed complaints about alleged illegal surveillance of activists with oversight bodies of the Canadian Security Intelligence Service (CSIS) and the Royal Canadian Mounted Police (RCMP).<sup>24</sup> Additionally, as will be discussed below, the Office of the Privacy Commissioner of Canada and the Canadian Human Rights Tribunal have found that Aboriginal advocate Cindy Blackstock’s privacy rights were violated and that the government of Canada retaliated against her because of a discrimination complaint filed against the government related to the underfunding of First Nations children in care.

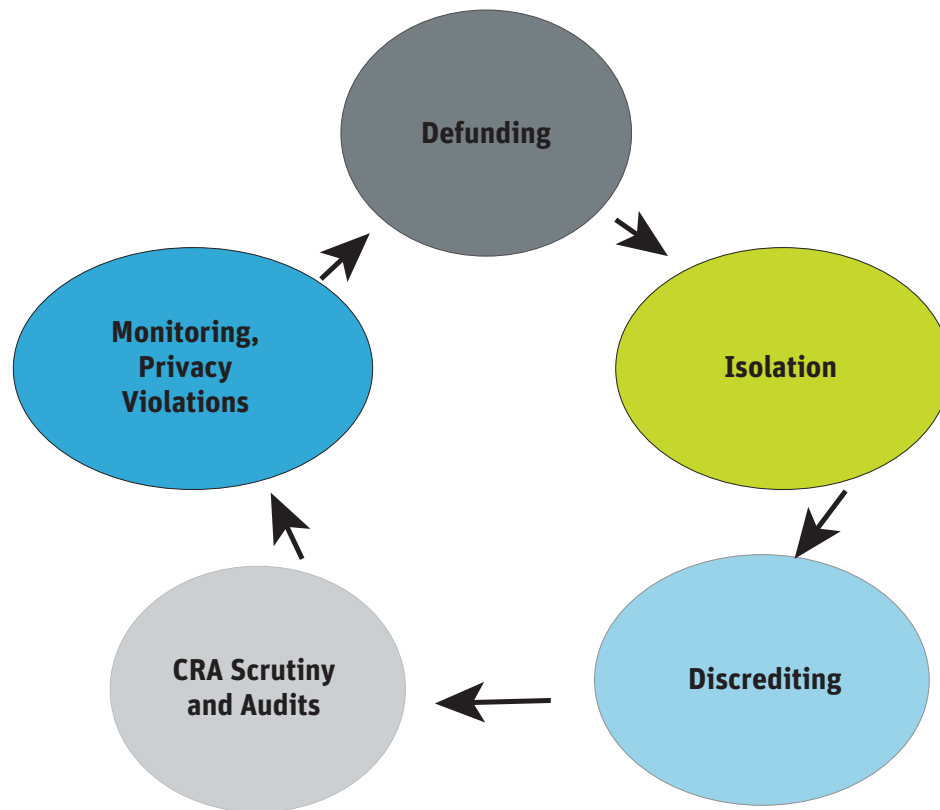
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## Mutually reinforcing tactics

Organizations engaging in “expressive activities” (civic/advocacy groups, labour, human rights, women’s rights, and environmental groups), together with other CSOs working in development and housing issues, account together for 22% of the non-profit sector in Canada.<sup>25</sup> They are also prominently represented on the list of organizations targeted by mutually reinforcing tactics: funding cuts, isolation and disengagement, enhanced scrutiny, and direct rhetorical attacks on their credibility and, in some cases, the lawfulness of their activities.

The first funding cuts to human rights groups and progressive policy think-tanks began in 2006 and defunding continues to this day. Defunding goes hand in hand with disengagement by public servants who distance themselves from the organizations with which they had previously been traditional partners in policy development, research, and service delivery. Once organizations are no longer seen as partners but as threats, the justification for placing them under surveillance or enhanced scrutiny follows. This tactic has come in several forms: the charities directorate of the Canada Revenue Agency has cracked down on Canadian charities,

**FIGURE 1** Undermining CSOs in Canada

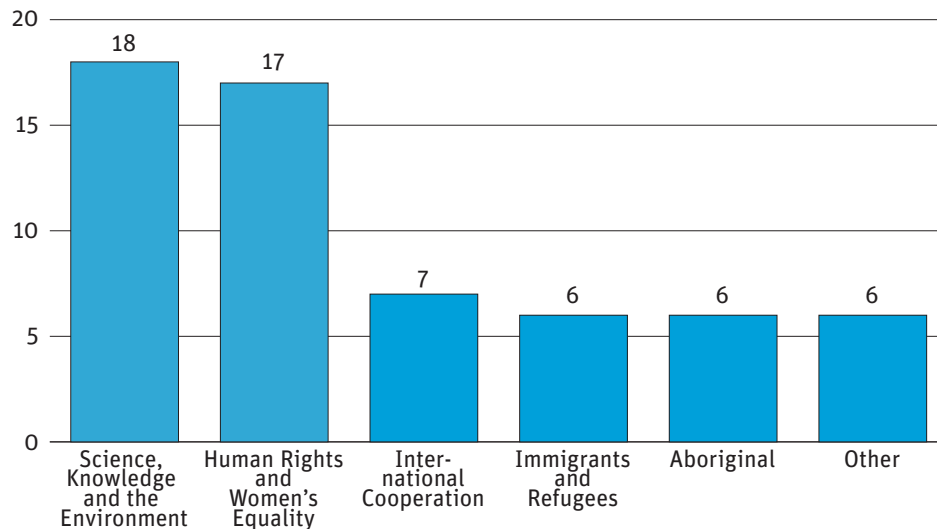


subjecting them to selective audits and, in some cases, revoking or annulling their charitable status, resulting in diminished financial and fundraising capacity, while individual advocates and organizations opposing the government’s agenda have found themselves subject to official monitoring, surveillance, and privacy violations. Finally, and in some cases concurrently, the federal government has used rhetorical attacks to convince the Canadian public that CSOs, advocates, and social justice groups are not working in the best interests of Canadians.

With the possible exception of CRA scrutiny of progressive charities, many of these strategies are not novel when viewed in isolation. However, the emerging pattern of their concerted deployment and combined effects against progressive CSOs is a new and disturbing development in this country.



**FIGURE 2** Federal Funding Cuts: Who is Targeted?



**SCIENCE, KNOWLEDGE AND THE ENVIRONMENT** Atlantic Centre of Excellence for Women's Health • British Columbia Centre of Excellence for Women's Health • Canadian Council on Learning • Canadian Foundation For Climate and Atmospheric Sciences • Canadian Policy Research Networks • Canadian Women's Health Network • Centre for Research and Information on Canada (Canadian Unity Council) • Community Access Program • Ecology Action Centre • Experimental Lakes Area • ForestEthics • Foundation for Canadian Studies UK • Mada al-Carmel • National Network on Environments and Women's Health • Polar Environmental Atmosphere Research Laboratory • Prairie Women's Health Centre of Excellence • Sharryn Aiken (Queen's University) • Sierra Club of British Columbia

**HUMAN RIGHTS AND WOMEN'S EQUALITY** Antidote • Canada without Poverty • Canadian HIV/AIDS Legal Network • Canadian Research Institute for the Advancement of Women • Centre for Equality Rights and Accommodation • Canadian Child Care Federation • Childcare Advocacy Association Canada • Court Challenges Program • Feminist Alliance for International Action (FAFIA) • National Association of Women and the Law • National Network on Environments and Women's Health • New Brunswick Coalition for Pay Equity • Réseau québécois d'action pour la santé des femmes • Rights & Democracy • UNPAC • Victoria Status of Women Action Group • Women's Legal Education and Action Fund (LEAF)

**INTERNATIONAL COOPERATION** Alternatives • Canadian Council of International Cooperation (CCIC) • Development and Peace • KAIROS Canada • Match International • Mennonite Central Committee Canada • North-South Institute

**IMMIGRANTS AND REFUGEES** Afghan Association of Ontario • Canadian Arab Federation • Eritrean Canadian Community Centre of Metropolitan Toronto • Hospitality House Refugee Ministry • Palestine House • South Asian Women's Centre

**ABORIGINAL RIGHTS AND ISSUES** Aboriginal Healing Foundation • First Nations Child and Family Caring Society • First Nations Statistical Institute • National Aboriginal Health Organization • Quebec Native Women's Association • Sisters in Spirit (Native Women's Association of Canada)

**OTHER** Canadian Conference of the Arts • Canadian Broadcasting Corporation (CBC) • Franke James (and Nektarina Non Profit - arts) • Katimavik (youth programs) • LifeLine (reintegration of prisoners) • Dennis Manuge (clawback of federal disability benefits for veterans)

## Defunding CSOs

Government funding matters enormously to the non-profit sector in this country. It accounts for 39% of revenue for Canadian non-profits.<sup>26</sup> For civic and advocacy groups, the CSOs discussed on this chapter, government financial support rises to 47%.<sup>27</sup> Environmental groups, development and housing organizations, and cultural and recreation groups depend on government funding to the tune of 50%, 54%, and 64% respectively.<sup>28</sup> Efforts to undermine CSOs, not surprisingly, often begin with “defunding” them.

Between 2010 and 2015, Voices-Voix documented 60 cases where funding has been lost or threatened, or where promised funding was withheld.

The 2006 cuts to Status of Women Canada and the Court Challenges Program of Canada have had severe repercussions for Canadian groups fighting discrimination. The government also eliminated the universal child care program and cut funding to the Canadian Policy Research Networks and the Centre for Research and Information on Canada (Canadian Unity Council).

A second major wave of cuts took place in 2009 and 2010. Most affected organizations work in environmental and climate science, research, and advocacy. Other groups affected included women's health, Canadian studies, and policy research organizations. The next largest category comprises mainly human rights groups and women's equality organizations, including those focused on anti-poverty work, social justice, and child care.

International co-operation organizations that had partnered with the Canadian government in its overseas development programming for decades, including Oxfam Canada and CCIC, were also targeted. Between 2009 and 2010, more than 20 community-based and immigrant and refugee organizations were defunded. Again, these case studies researched and developed by Voices-Voix include only a fraction of those groups that were targeted.<sup>29</sup>

The impact on Indigenous organizations has been massive, affecting many organizations that have provided community-based services, research, and support for Indigenous communities for decades. These cuts go to the heart of the communities' ability to address the federal government's plans for them.

At the individual level, advocates, academics, and artists have discovered that funding for projects or research has been challenged or withdrawn because the federal government disapproved of their work. Sharryn Aiken, an associate professor at Queen's University's faculty of law, co-organized a conference on peace in the Middle East. The conference had received funding from the Social Sciences and Humanities Research Council (SSHRC), a federal funding organization. The conference became controversial and was accused of having an "anti-Israel tilt." The Harper government tried to intervene by asking SSHRC to rethink its grant to the conference. Aiken herself was then targeted by anonymous and invasive information requests.

Individuals who have been advocates for veterans with disabilities like Dennis Manuge have protested federal claw-backs of benefits and inadequate pensions. Manuge was subject to the unauthorized disclosure of his personal health information by federal officials.

Furthermore, defunding of groups has now damaged a vast swath of Canadians who are served by them: children, veterans, immigrants and refugees, women, min-

orities, and Indigenous peoples. These are the very vulnerable groups that CSOs and individual advocates are likely to defend.

### **Isolating CSOs: Disengagement**

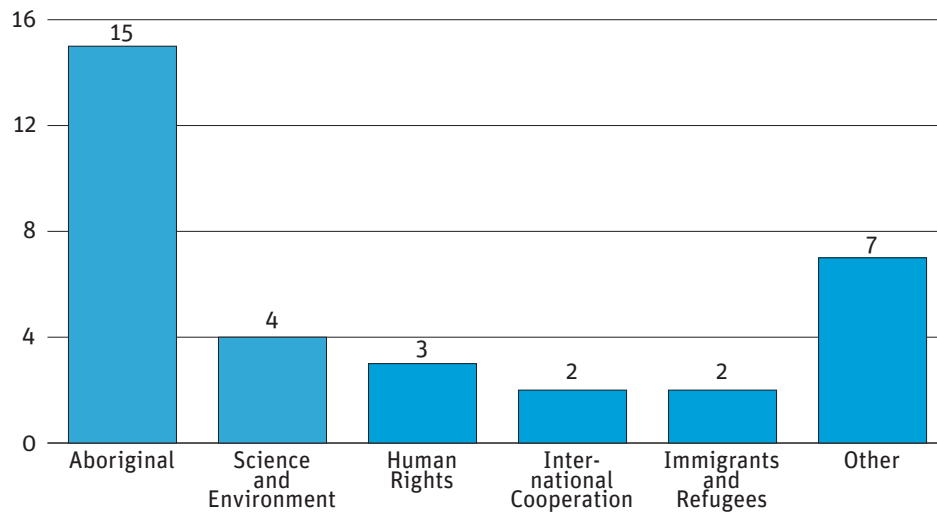
By 2010, during the second Harper Conservative minority government, opportunities for input — much less exchange and policy dialogue — began disappearing from one federal department after another. Long-standing consultations were cancelled. Civil servants were discouraged and, in some cases, barred from communicating with NGOs. According to civil society leaders consulted for this report, civil servants could no longer attend events sponsored by non-profits or, if they did, they were not allowed to speak on the public record. Non-profit leaders would occasionally be invited to share their experiences or comment on programs or policy, but public servants were instructed not to comment or provide feedback on submissions. One CSO leader, who asked not to be named, described the situation this way:

It was a reflection of the arrogance of a government that felt if something was important, they already knew about it and if they didn't know about it, it couldn't be that important. And it echoed the contempt the government increasingly communicated about the advice it received from its own departmental staff — and for evidence, knowledge, research and policy dialogue generally. This dynamic reversed the policy of previous governments and scuttled the consensus that flowed from the recommendations of the blue ribbon panel that honoured engagement with civil society and promoted the value of a plurality and diversity of voices.

These developments exacerbated the “advocacy chill” and fueled self-censorship.<sup>30</sup> Organizations that criticized the government or offered policy alternatives were the first to be isolated or cut off. CSOs that did no policy work or advocacy often enjoyed greater access and funding, although even this could be tentative and circumscribed. Organizations inclined to devote resources to policy and advocacy work found themselves second-guessing their decisions. With the government unwilling to engage, some decided to redirect scarce donor dollars to areas of potentially greater impact, focusing on service delivery or directing efforts at the public or at corporations.

There are some signs that the government may be backtracking on its disengagement, at least as far as international development organizations are concerned. Following extensive consultations in 2014, the minister for international development, Christian Paradis, announced a new International Development and Humanitarian Assistance Civil Society Partnership Policy on February 5, 2015.<sup>31</sup> Much of the non-profit community remains skeptical, however, not least because the strat-

**FIGURE 3** Discrediting CSOs



**ABORIGINAL RIGHTS AND ISSUES** Algonquins of Barriere Lake • Defenders of the Land • Gitxaala First Nation • Grassy Narrows First Nation • Indigenous Peoples Solidarity Movement • Innu of Labrador • Pikangikum First Nation • Six Nations of the Grand River • Stz'uminous First Nation • Tsilhqot'in First Nation • Tobique First Nation • Tsartlip First Nation • Wagmatcook First Nation • Wet'suwet'en First Nation (Likhts'amsiyu Clan) • Yinka Dene Alliance

**SCIENCE, KNOWLEDGE AND THE ENVIRONMENT** ForestEthics • Greenpeace Canada • Sierra Club of British Columbia • Sierra Club of Canada

**HUMAN RIGHTS** Canadian Doctors for Refugee Care • Rémy Beaugard • Rights & Democracy

**INTERNATIONAL COOPERATION** IRFAN Canada • KAIROS Canada

**IMMIGRANTS AND REFUGEES** Canadian Arab Federation • Palestine House

**OTHER** Sean Bruyee • Council of Canadians • Dennis Manuge • National Council of Canadian Muslims • Oxfam Canada • Steven Schnoor • Tides Canada Foundation

egies and tactics that have been documented by Voices-Voix and many others do not appear to have abated.<sup>32</sup>

### Discrediting CSOs: Rhetorical attacks and public vilification

Voices-Voix has documented 33 instances of official statements that label advocates, CSOs and their champions as “radical ideologues,” liars, extremists, security threats, enemies of the state, or supporters of terrorism (see *Figure 3*).

Inflammatory and even libellous statements have served to prime the Canadian public to believe that organizations are getting what they deserve. The strategy, presumably, is that Canadians are more likely to support — or at least not to oppose — measures taken against groups that are perceived as anti-Canadian and will be more likely to support defunding, scrutiny, and surveillance of such groups.<sup>33</sup>

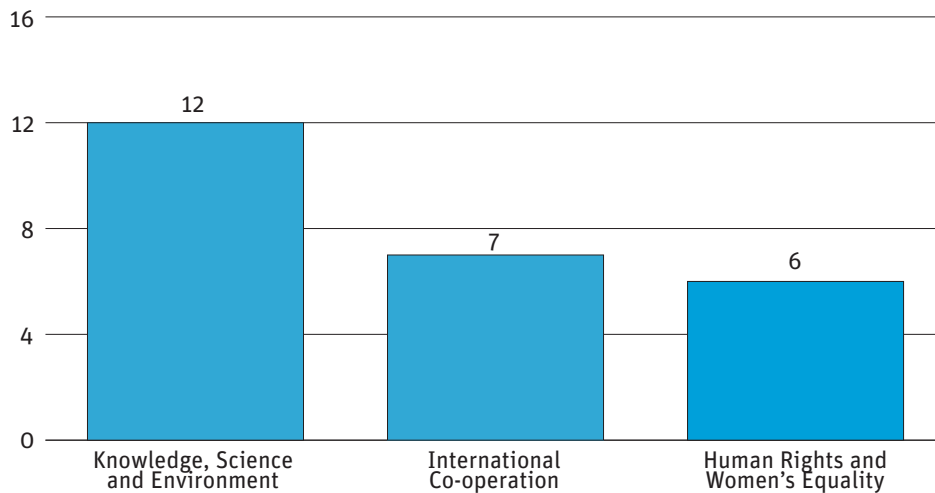
In the environmental arena, an early warning sign came in a 2007 meeting at which environmental groups were accused by government officials of “being in bed” with the Liberals.<sup>34</sup> In 2009, former minister of the environment Jim Prentice initiated a campaign to change the internationally negative image of the oil sands. Significantly, a public strategy was deployed to demean those who were “exposing the environmental disaster unfolding in Northern Alberta. Shoot the messenger and undermine the message.”<sup>35</sup>

The campaign got into full swing in January 2012, when Joe Oliver, then natural resources minister, publicly and infamously accused “environmental and radical groups” of being funded by “foreign special interest groups” seeking to undermine Canada’s economy. The next month, *The Globe and Mail* reported that the Conservative government’s new anti-terrorism strategy regarded “eco-extremists” as a major threat.<sup>36</sup> In 2015, it has become clear that environmental and Indigenous groups have been identified as among the most likely to be targeted by Bill C-51.

Human rights organizations and advocates have also been in the government’s sights. Rights & Democracy was undermined by an attack on the agency’s president, Rémy Beaugard, carried out by a clutch of federally appointed agency board members. According to Ed Broadbent, a former president of Rights & Democracy, the government appointments, “are bringing what can only be described, it seems to me, as Middle East politics, directly into the heart of the centre. Never was there such interference before.”<sup>37</sup> In January 2010, in the midst of ferocious criticism of his management, Beaugard died of a heart attack.<sup>38</sup> He was subsequently vindicated by an independent forensic audit and was awarded a posthumous merit salary increase. It was too little, too late. His widow, Suzanne Trépannier, told *Voices-Voix* that she believed the stress of the public attacks against Beaugard and his professional reputation were instrumental in his death. Rights & Democracy was completely defunded and has since been shut down.

In *Canadian Doctors for Refugee Care v. Canada (Attorney General)*, 2014 FC 651, a group of medical doctors, including leading community and family practitioners in Canada, advocated for the re-establishment of government-funded health care to vulnerable and ill refugees that had been available in Canada since the late 1950s. They were labelled as “activists” who had “purposely altered” the facts.<sup>39</sup> The Federal Court observed that public statements from federal government officials were designed to lead the Canadian public to believe that activists are helping “bogus” claimants seeking “gold plated” health care.<sup>40</sup>

**FIGURE 4** Charitable Organizations Targeted



**KNOWLEDGE, SCIENCE AND THE ENVIRONMENT** Canadian Centre for Policy Alternatives (CCPA) • David Suzuki Foundation • Ecology Action Centre • Environmental Defence • Équiterre • ForestEthics • Foundation for Canadian Studies • Pembina Foundation • Sierra Club Canada Foundation • Tides Canada Foundation • Tides Canada Initiatives Society • West Coast Environmental Law Research Foundation

**INTERNATIONAL COOPERATION** Alternatives • CoDevelopment Canada • IRFAN Canada • Oxfam Canada • Physicians for Global Survival • Steelworkers Humanity Fund Inc. • United Church of Canada

**HUMAN RIGHTS AND WOMEN'S EQUALITY** Amnesty International (Canada) • Canada Without Poverty • Mennonite Central Committee Canada • Dying with Dignity Canada • PEN Canada • UNPAC

### **CRA scrutiny and audits: The charity chill<sup>41</sup>**

While the period between 1985 and 2005 reveals strategies aimed at reducing the impact of CSOs, the more aggressive use of CRA guidelines is a new approach in Canada. Voices-Voix has documented 25 cases of charitable organizations coming under enhanced scrutiny by the CRA (see *Figure 4*).<sup>42</sup> Many of them have also been the targets of rhetorical attacks discussed in the previous section.

About half of Canada's non-profits are registered charities under the *Income Tax Act*. By law, they are subject to scrutiny through the CRA charities directorate. Charitable status is important because it confers the state-sanctioned “seal of approval” connoted by charitable status, as well as exemptions from certain taxes and the ability to issue tax receipts to donors, who can then deduct a percentage of donations from their own taxable income.

Progressive organizations and those whose agendas differ from the federal government's views have suddenly found themselves subject to enhanced scrutiny through political audits by the CRA. As the list of case studies above shows, science, knowledge, and environmental organizations again supply the largest number of political activities audit targets, apparently because of their advocacy for the environmental

protection that Ottawa has so conspicuously ignored. A recent report by the Environmental Law Centre of the University of Victoria points out that the revocation of these organizations' charitable status "has the potential to eliminate a significant portion of civil society that speaks for clean air, clean water and a healthy biosphere."<sup>43</sup>

By law, Canada's charities must devote "substantially all" of their resources to charitable purposes. While partisan activities (activities associated with political parties) are prohibited, other political activities are permitted to a degree.<sup>44</sup> The CRA's charities directorate has issued the following policy guidelines:

We usually consider substantially all to mean 90% or more.... Therefore, as a rule, we consider a charity that devotes no more than 10% of its total resources a year to political activities to be operating within the substantially all provision.<sup>45</sup>

Since at least 2012, the CRA has shown increasing hostility to any activities it could interpret as political. Even as its overall budget shrank, the CRA received an additional \$8 million for 2012–14, later increased to \$13.4 million allocated for use until 2017, dedicated in large part to enhancing investigation of selected charities with a new team of auditors. At the end of 2014, 60 political activities audits were reportedly underway or had been concluded.<sup>46</sup>

Many CRA audit targets appear to have come under scrutiny as a result of their campaigns to protect the environment. In particular, such scrutiny appears to be linked to pro-oil lobbyists. Since 2012, Ethical Oil, a non-profit with links to the Conservative Party of Canada, has filed formal complaints with the CRA against at least six leading environmental charities:

- Environmental Defence (audit began in 2011; complaint filed by Ethical Oil in March 2012)
- The David Suzuki Foundation (audit began in May 2013; complaint filed by Ethical Oil in April 2012)
- Pembina Foundation (audit began in December 2013; complaint filed by Ethical Oil in April 2013)
- Sierra Club Canada Foundation (complaint filed by Ethical Oil in December 2012; audit began in May 2015)
- Tides Canada Initiatives Society (audit began in 2011; complaint filed by Ethical Oil in August 2012)
- Tides Canada Foundation (audit began in 2011; complaint filed by Ethical Oil in August 2012)

While some of the audits began prior to the CRA 2012 special project, Environmental Defence says that complaints by the conservative group Ethical Oil have influenced the direction and tone of investigations.<sup>47</sup> Many of the audited groups have criticized Ottawa's support for oil extraction and pipeline development in Alberta. The case of The David Suzuki Foundation is especially disturbing. The allegations contained in the complaint by Ethical Oil, submitted by a Calgary-based law firm, proved baseless in terms of the political activities audit, which came up empty. The foundation was, in fact, told that it could engage in additional political activities without falling afoul of the CRA guidelines.

Political activities audits have expanded beyond environmental groups. Human rights and anti-poverty groups, including some that are supported by the labour movement, such as CoDevelopment Canada, the Canadian Centre for Policy Alternatives, and the Steelworkers Humanity Fund Inc., are under the gun. By mid-2015, the CRA was spending more money chasing Canadian charities than pursuing international financing of terrorist activities.<sup>48</sup>

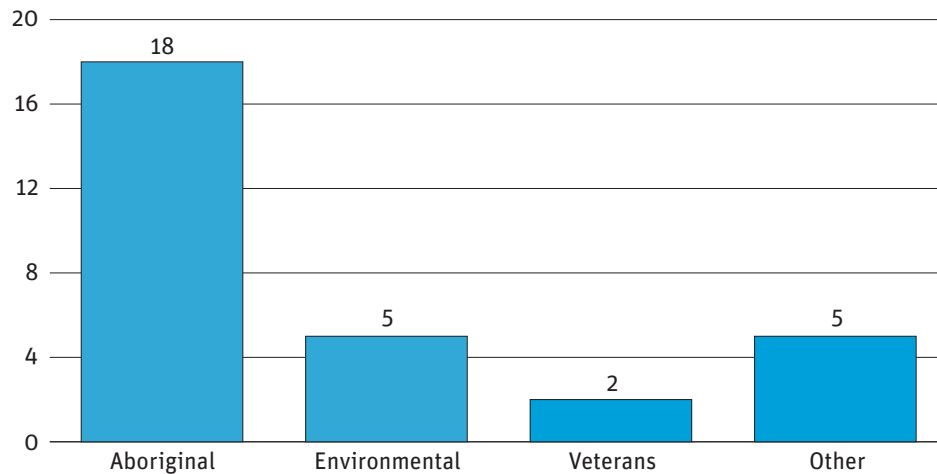
In 2014, more than 400 academics across several disciplines signed an open letter calling for a moratorium on political activities audits.<sup>49</sup> A report from the Broadbent Institute confirmed that conservative groups seemed immune to CRA scrutiny.<sup>50</sup> Although Minister of Revenue Kerry-Lynne Findlay is on record stating that "CRA audits occur at arm's length from the government and are conducted free of any political interference," the CRA admits that it acts on media attention about charities, as well as on complaints.<sup>51</sup>

The case study of the United Nations Platform for Action Committee (UNPAC) is anomalous in that it does not involve a political activities audit, but it does highlight the ideological role of the CRA's charities directorate in scrutinizing non-profit organizations. In 2010, UNPAC sought charitable status for their work on women's human rights and equality rights. According to a board member interviewed by Voices-Voix, the charities directorate wrote to UNPAC in 2012, indicating that the proposed charitable objects (largely focused on gender equality) should be replaced by "economic development" and employment-related training, neither of which is charitable in nature. UNPAC ultimately decided to close its doors. According to two former UNPAC officers, the organization was experiencing financial issues, but a significant factor in the decision to close was the change to the organization's mission that would have resulted from the CRA's proposed changes.

The audit of Dying with Dignity Canada (DWD), the organization that helped to spearhead the successful legal challenge to the ban on physician-assisted death, resulted in the annulment of its charitable status. Physicians for Global Survival (PGS) lost its status in part due to the allegation that it did not devote "all" of its resources to charitable activities.<sup>52</sup> The international development organization



**FIGURE 5** Surveillance and Privacy Violations



**ABORIGINAL**<sup>54</sup> Algonquins of Barriere Lake • Cindy Blackstock (placed under surveillance after her organization filed a discrimination complaint about First Nations children) • Defenders of the Land (listed as “domestic group of concern”) • Gitxaala First Nation • Grassy Narrows (Asubpeeschoseewagong) First Nation • Idle No More • Indigenous Peoples Solidarity Movement (listed as “domestic group of concern”) • Innu of Labrador • Pamela Palmater • Pikangikum First Nation • Six Nations of the Grand River • Stz’uminous First Nation • Tsilhqot’in First Nation • Tobique First Nation • Tsartlip First Nation • Wagmatcook First Nation • Wet’suwet’en First Nation (Likhsts’amsiyu Clan) • Yinka Dene Alliance

**ENVIRONMENTAL** Dogwood Initiative • EcoSociety • ForestEthics • Greenpeace Canada • Sierra Club of British Columbia

**VETERANS** Sean Bruyera (veteran’s advocate, privacy violation) • Dennis Manuge (veterans advocate, privacy violation)

**OTHER**<sup>55</sup> Amir Attaran (privacy violation/intrusive information requests by unknown persons after making statements critical of the government of Canada) • Council of Canadians (listed as “domestic group of concern”) • Errol Mendes (privacy violation/intrusive information requests by unknown persons after making statements critical of the federal government) • LeadNow (listed as “domestic group of concern”) • Oxfam Canada (listed as “domestic group of concern”)

Alternatives has been told that it should never have received charitable status in the first place.<sup>53</sup>

### Surveillance and privacy violations

Since 2015, Voices-Voix has documented 30 cases involving monitoring and privacy violations, mainly carried out by the RCMP and CSIS, along with Aboriginal Affairs and Northern Development Canada in the case of First Nations Aboriginal groups and activists (see *Figure 5*).

Aboriginal organizations are particularly vulnerable. In 2007, the First Nations Child and Family Caring Society (Caring Society) and the Assembly of First Nations alleged systemic and discriminatory underfunding for social services for children on reserve.<sup>56</sup> Despite various federal procedural manoeuvres to keep the Canadian Human Rights Tribunal (CHRT) from considering the complaint, the Federal Court ordered the CHRT to proceed. The case before the CHRT included an amendment alleging retaliation by government officials against Cindy Blackstock, the head of

the Caring Society. Blackstock claimed surveillance and reprisals by Aboriginal Affairs and Northern Development Canada and Justice Canada as a result of having filed the original complaint.

Blackstock alleged that her privacy had been breached by government officials, who repeatedly accessed and monitored her social media feeds, in particular her personal Facebook page. She claimed that screenshots of these online postings, many of which were of a personal nature, were widely distributed within both departments. She also claimed that her public appearances were monitored. The federal privacy commissioner agreed with Blackstock and recommended that the Department of Aboriginal Affairs and Northern Development, and Justice Canada cease these activities unless a connection to “legitimate government business” could be shown.<sup>57</sup>

An incident of alleged retaliation occurred during a 2009 Chiefs of Ontario meeting at the minister’s office. Blackstock was invited by one of the chiefs to attend due to her expertise in child welfare. However, once at the door, the minister denied her entry to the meeting in front of attendees and Blackstock was forced to wait outside. On June 5, 2015, the CHRT released its decision on the allegations of reprisal against Blackstock.<sup>58</sup> The tribunal found that Blackstock’s complaint of retaliation with regard to her exclusion from the chiefs meeting at the minister’s office was substantiated and awarded \$20,000 in damages — half of which was for pain and suffering and the other half for wilful and reckless conduct by Aboriginal Affairs. The tribunal did not find that the monitoring and cataloguing of her private Facebook page, nor the monitoring of her public appearances, amounted to retaliation under the *Canadian Human Rights Act*.<sup>59</sup>

Like Blackstock, veterans arguing for improved federal benefits have found their private information was disclosed inappropriately. The federal privacy commissioner has condemned the unauthorized disclosures as “alarming” and “seemingly with no controls.”<sup>60</sup>

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## Conclusion

As the Supreme Court of Canada has reminded us, democracy requires “a continuous process of discussion.”<sup>61</sup> The 70 Voices-Voix case studies discussed in this chapter, concerning 108 organizations and advocates, illustrate the human costs of federal government attacks on dissent and debate. The government has used the tactics discussed here to considerable effect, narrowing the “breathing space” that CSOs in Canada need in order to thrive. At the very least, the disabling environment

has undermined and weakened progressive organizations in this country, but also produced the outrage and activism that Voices-Voix represents.

The selective rhetorical attacks, monitoring, surveillance, and privacy violations continue apace. Indeed, when Voices-Voix issued its 2015 report *Dismantling Democracy*, the minister of public safety suggested that Voices-Voix and its supporters were siding with terrorists, stating: “It is not a free and democratic Canada they want... the group in question is defending IRFAN-Canada, a listed terrorist organization in Canada. We will not take lessons from this organization nor from the opposition.”<sup>62</sup>

If there are reasonable grounds to believe that an organization is breaking Canadian law, the law sets out what government action might be appropriate in any given case and, even then, government responses must be subject to the Canadian Charter of Rights and Freedoms. Nowhere in our law or the Constitution is there authorization for wholesale or pre-emptive vilification, regulatory harassment, surveillance, or scrutiny. That the government has sought to arrogate such powers, spanning such a wide range of public interest issues, has set alarm bells ringing for CSOs across Canada. It is time that those alarms were heard by the wider Canadian public.

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## Endnotes

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**2** “Defunding” was a term used by former minister of citizenship and immigration Jason Kenney. In many instances, it involves refusing or reducing grant application funding, rather than cutting off funding mid-stream. However, for organizations that have historically partnered with the government to deliver programs, and have done so for many years, defunding effectively means either an end to their existence or a radical change in orientation in order to survive.

**3** In 2013, Voices-Voix created the Dissent & Democracy research network (the Network) to undertake the ongoing work of researching and writing up cases. Launched at McGill University in October 2013, the network links academics and legal practitioners who are interested in how the federal government has used funding, regulatory measures and public rhetoric to shape and control the public space available for discourse and dissent about public policy. Resulting case studies produced by this group explore the regulatory, constitutional and structural relationships between the Canadian state and civil society. They also examine the role of democratic institutions, knowledge organizations and the public service in maintaining those relationships. Since 2013, these studies have been peer-reviewed by the editorial board of the research network, and in many instances, developed in consultation with the affected organizations or individuals. As a reflection of the shared work and effort, the network operates on a no byline policy.

**4** Voices-Voix, *Dismantling Democracy: Stifling Debate and Dissent in Canada*, Report, June 2015, accessed June 17, 2015, [http://voices-voix.ca/sites/voices-voix.ca/files/dismantlingdemocracy\\_voicesvoix.pdf](http://voices-voix.ca/sites/voices-voix.ca/files/dismantlingdemocracy_voicesvoix.pdf) provides an overview of the broader canvas.

**5** Many of the groups listed may fall into two or more categories but are generally only listed once.

**6** See: Voices-Voix Video Series, Accessed June 17, 2015. <http://voices-voix.ca/en/video>.

**7** Figures from 1999 show that the Canadian non-profit and voluntary sector made a net contribution to the country’s output of \$61.8 billion (Canadian), equivalent to 6.8% of our gross domestic product (GDP) including hospitals, universities and colleges. When one adds the value of volunteer effort, approximately \$14 billion, or 1.4% of GDP, the sector’s total contribution to GDP is 8.5% (Michael H. Hall et al., *The Canadian Nonprofit and Voluntary Sector in Comparative Perspective*, Report (Toronto: Imagine Canada, 2005), 7). In 2007, the contribution without the value of volunteer effort was 7.0% (again, including hospitals, universities and colleges) reaching \$100.7 billion (Statistics Canada, *Satellite Account of Non-profit Institutions and Volunteering 2007*, Report no. 13-015-X, December 2009, Accessed June 17, 2015, <http://www.statcan.gc.ca/pub/13-015-x/13-015-x2009000-eng.pdf>, 9).

**8** “Defining Civil Society,” The World Bank, last modified July 22, 2013, accessed June 17, 2015. <http://go.worldbank.org.proxy3.library.mcgill.ca/4CE7Wo46Ko>.

**9** The term “social infrastructure” is defined by the Mowat Centre as “short-hand for the broad array of social services, programs and benefits that provide insurance against risk and protection for the vulnerable in Canada.” (Thomas Granofsky et al., “Renewing Canada’s Social Architecture,” Mowat Centre Ontario’s Voice on Public Policy, May 13, 2015, accessed June 17, 2015, <http://mowatcentre.ca/renewing-canadas-social-architecture/>). In this chapter, the term is wider and includes the organizational platforms that people and communities use to collectively express themselves, represent their interests, advocate for change, and undertake research.

**10** Keith Banting and John Myles, “Framing the New Inequality: The Politics of Income Redistribution in Canada” in *Income Inequality: The Canadian Story*, eds. David A. Green et al. (Montreal: Institute for Research and Public Policy, 2015, forthcoming), 22.

**11** See, e.g., Trish Hennessy, “Chill Effect: Stephen Harper’s War on Freedom of Speech,” in *The Harper Record*, ed: Teresa Healy (Ottawa: Canadian Centre for Policy Alternatives, 2008), accessed June 17, 2015, [http://voices-voix.ca/sites/voices-voix.ca/files/ccpa\\_-\\_harper\\_war\\_on\\_free\\_speech.pdf](http://voices-voix.ca/sites/voices-voix.ca/files/ccpa_-_harper_war_on_free_speech.pdf); Susan D Phillips and Steven Rathgeb Smith, “Between Governance and Regulation: Evolving Government Third Sector Relationships,” in *Governance and Regulation in The Third Sector: International Perspectives*, ed. Susan D Phillips and Steven Rathgeb (New York: Routledge, 2011) 19–20; Shawn McCarthy and Oliver Moore, “David

Suzuki laments Tory-imposed chill on green groups,” *The Globe and Mail*, April 12, 2012; Blake Bromley, “Does the Government Have in Hand in Which Charities get Audited?” *Huffington Post*, November 7 2014, accessed June 17, 2015, [http://www.huffingtonpost.ca/blake-bromley/advocacy-chill-cra\\_b\\_5578547.html](http://www.huffingtonpost.ca/blake-bromley/advocacy-chill-cra_b_5578547.html); Gareth Kirby, “An Uncharitable Chill: A Critical Exploration of How Changes in Federal Policy and Political Climate are Affecting Advocacy-Oriented Charities” (Master’s Thesis, Royal Roads University, 2014).

**12** See e.g., *Canadian Arab Federation v. Minister of Citizenship and Immigration*, 2013 FC 1283, [2013] FCJ No. 1400 [*Canadian Arab Federation*].

**13** David Lasby, and Cathy Barr, *Talking About Charities 2013: Canadians’ Opinions on Charities and Issues Affecting Charities*, Publication, Edmonton: Muttart Foundation, 2013, accessed June 17, 2015, <http://www.muttart.org/sites/default/files/survey/3.Talking%20About%20Charities%202013.pdf>.

**14** Donald Gutstein, “Shooting the Messenger: Tracing Canada’s Anti-Enviro Movement,” *DesmogCanada*, May 14, 2015, accessed June 17 2015, <http://www.desmog.ca/2015/05/14/shooting-messenger-tracing-canada-s-anti-enviro-movement>.

**15** See note 11. See also Rachel Laforest, “Rerouting political representation: Is Canada’s social infrastructure in crisis?” *British Journal of Canadian Studies* 25(2) 181:190–1; see also Susan D. Phillips, “Incrementalism at its best, and worst in Canada: Regulatory reform and relational governance in Canada,” in *Governance and Regulation in the Third Sector – International Perspectives*, eds. Susan Phillips and Steven Rathgeb Smith, (New York: Routledge, 2011).

**16** Pearl Eliadis, *Speaking Out on Human Rights: Debating Canada’s Human Rights System* (Montreal-Kingston: McGill-Queen’s University Press, 2014).

**17** “Edgar Schmidt,” *Voices-Voix*, April 30, 2013, accessed June 17, 2015, <http://voices-voix.ca/en/facts/profile/edgar-schmidt>; “Department of Justice,” *Voices-Voix*, September 12, 2014, accessed June 17, 2015, <http://voices-voix.ca/en/facts/profile/department-justice>.

**18** *Dunmore v. Ontario (Attorney General)*, 2001 SCC 94 at para 148, [2001] 3 SC R 1016, L’Heureux-Dubé J., concurring [*Dunmore*].

**19** The definition of an enabling environment and the text set out here is drawn mainly from the work of CIVICUS. See Pearl Eliadis, Nikki Skuce, and Fraser Reilly, *Silencing Voices and Dissent in Canada*, Report, 2013, accessed June 17, 2015, <http://socs.civicus.org/?p=3825>.

**20** Maina Kiai, *Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association*, Report no. A/HRC/20/27, May 21, 2012, accessed June 17, 2015, [http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A.HRC.20.27\\_En.pdf](http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A.HRC.20.27_En.pdf), 15.

**21** *Ibid*, 16.

**22** *Ibid*, 17.

**23** See: Maude Barlow, *Broken Covenant: How Stephen Harper Set out to Silent Dissent and Curtail Democratic Participation in Canada*, Report, Ottawa: Council of Canadians, 2015, accessed June 17, 2015, <http://canadians.org/sites/default/files/publications/report-broken-covenant.pdf>; Amnesty International, *Report 2014/15: State of the World’s Human Rights*, Report, London: Amnesty International, 2015, 98; Amnesty International, *Human Rights Agenda for Canada: Time for Consistent Action - Amnesty International’s Human Rights Agenda for Canada*, Report, December 2013, 11–12, <http://www.amnesty.ca/news/news-releases/time-for-consistent-action-amnesty-international%E2%80%99s-human-rights-agenda-for-canada>; Human Rights Watch, *World Report 2014: Canada*, Report, accessed June 17, 2015, <http://www.hrw.org/world-report/2014/country-chapters/canada?page=1>; Lawyers Rights Watch Canada, *The Shrinking Space for Dissent in Canada*, Report, May 27, 2014, accessed June 17, 2015, [www.lrw.org/canada-the-shrinking-space-for-dissent-in-canada-report/](http://www.lrw.org/canada-the-shrinking-space-for-dissent-in-canada-report/).

**24** Allegations about tactics such as monitoring, surveillance and inappropriate information sharing with third parties or other government agencies have been made by the British Columbia Civil Liber-



ties Association. See: “Re: Surveillance of Canadian Citizens and Information Sharing with the National Energy Board,” British Columbia Civil Liberties Association to Ian MacPhail, Chair, Commission for Public Complaints against the RCMP, February 6, 2014, Accessed June 17, 2015, <https://bccla.org/wp-content/uploads/2014/02/RCMP-Complaint-.pdf> “Re: Surveillance of Canadian Citizens and Information Sharing with the National Energy Board,” British Columbia Civil Liberties Association to Shayna Stawicki, Security Intelligence Review Committee, February 6, 2014, accessed June 17, 2015, <https://bccla.org/wp-content/uploads/2014/02/SIRC-Complaint.pdf>.

**25** Hall, *The Canadian Non-Profit*, 12.

**26** *Ibid.* This figure excludes hospitals, universities and colleges.

**27** *Ibid.*, 17.

**28** *Ibid.* This includes both provincial and federal funding.

**29** Afghan Association of Ontario; Alberta Network of Immigrant Women; *Association féminine d'éducation et d'action sociale*; Bloor Information and Life Skills Centre; Brampton Neighbourhood Services; Centre for Spanish Speaking Peoples; Community Action Resource Centre; Davenport-Perth Neighbourhood Centre Toronto; Elspeth Heyworth Centre for Women Toronto; Eritrean Canadian Community Centre of Metropolitan Toronto; Hamilton's Settlement and Integration Services Organization; Inter-Cultural Neighbourhood Social Services Mada Al-Carmel Arab Centre; Northwood Neighbourhood Services; Ontario Association of Interval and Transition Houses; Palestine House; Riverdale Women's Centre (Toronto); South Asian Women's Centre; Tropicana Community Services; Womanspace Resource Centre (Lethbridge, Alberta), York-Weston Community Services Centre Toronto.

**30** See note 11.

**31** Foreign Affairs, Trade and Development Canada, *Minister Paradis Launches Civil Society Partnership Policy*, *Foreign Affairs Canada*, N.p., 5 Feb. 2015, web, 18 June 2015.

**32** This text is drawn in part from the case study “Official Development Assistance,” *Voices-Voix*, April 23, 2015, accessed June 17, 2015, <http://voices-voix.ca/en/facts/profile/official-development-assistance>.

**33** See, e.g., the defamation of Steven Schnoor by a Canadian diplomat for a film on extractive industries in Latin America; see also the case studies on Aboriginal communities and environmental groups (accused of being security threats – see Annex 1); ForestEthics was allegedly referred to as an “enemy of the Government of Canada”; IRFAN-Canada was listed by the government as a terrorist entity in 2014 on the eve of a court hearing. The issue is still before the courts.

**34** Fiona Morrow, “Grant cut called ‘vengeful’ act by Baird,” *The Globe and Mail*, September 4, 2008, accessed June 17 2015, [www.theglobeandmail.com/news/national/grant-cut-called-vengeful-act-by-baird/article659216/](http://www.theglobeandmail.com/news/national/grant-cut-called-vengeful-act-by-baird/article659216/).

**35** Gutstein, “Shooting the Messenger”.

**36** See Shawn McCarthy, “Ottawa’s new anti-terrorism strategy lists eco-extremists as threats,” *The Globe and Mail*, February 10, 2012, accessed June 17 2015, [www.theglobeandmail.com/news/politics/ottawas-new-anti-terrorism-strategy-lists-eco-extremists-as-threats/article533522/](http://www.theglobeandmail.com/news/politics/ottawas-new-anti-terrorism-strategy-lists-eco-extremists-as-threats/article533522/).

**37** *Ibid.*

**38** Joe Friesen, “Head of democracy group dies suddenly at age 66,” *The Globe and Mail*, January 9, 2010, accessed June 17, 2015, [www.theglobeandmail.com/news/national/head-of-democracy-group-dies-suddenly-at-age-66/article1208794/](http://www.theglobeandmail.com/news/national/head-of-democracy-group-dies-suddenly-at-age-66/article1208794/).

**39** Nicholas Keung, “Impact of refugee health cuts: Confusion unnecessary costs and compromised care,” *Toronto Star*, September 28, 2012, accessed June 17 2015, [www.thestar.com/news/canada/2012/09/28/impact\\_of\\_refugee\\_health\\_cuts\\_confusion\\_unnecessary\\_costs\\_and\\_compromised\\_care.html](http://www.thestar.com/news/canada/2012/09/28/impact_of_refugee_health_cuts_confusion_unnecessary_costs_and_compromised_care.html).

**40** *Canadian Doctors for Refugee Care v. Canada (Attorney General)*, 2014 FC 651 [*Canadian Doctors for Refugee Care*].

**41** This section is drawn from “Canadian Charities and the Canada Revenue Agency,” Voices-Voix, December 11 2014, accessed June 17, 2015, <http://voices-voix.ca/en/facts/profile/canadian-charities-and-canada-revenue-agency>.

**42** One conservative organization, the Canadian Constitution Foundation, publicly stated that it too was undergoing an audit. It is unclear, however, whether that audit was routine, part of the CRA special project on political activities, or whether the organization was simply added as a token conservative group. See Kelly Grant, “Canada Revenue Agency annuls Dying with Dignity’s charitable tax status,” *The Globe and Mail*, January 20, 2015, accessed June 17, 2015, [www.theglobeandmail.com/news/politics/cras-political-activity-audit-strips-dying-with-dignity-of-charitable-tax-status/article22534463/](http://www.theglobeandmail.com/news/politics/cras-political-activity-audit-strips-dying-with-dignity-of-charitable-tax-status/article22534463/).

**43** Dora Tsao et al., *Tax Audits of Environmental Groups: The Pressing Need for Law Reform*, Report, (Victoria: Environmental Law Centre, University of Victoria, 2015), accessed June 17, 2015, [www.elc.uvic.ca/wordpress/wp-content/uploads/2015/03/Tax-Audits-of-Environmental-Groups\\_2015Mar25.pdf](http://www.elc.uvic.ca/wordpress/wp-content/uploads/2015/03/Tax-Audits-of-Environmental-Groups_2015Mar25.pdf), 4.

**44** *Income Tax Act*, RSC 1985, c 1 (5th Supp), ss. 149.1(1), 149.1(6.1), 149.1(6.2) [*Income Tax Act*].

**45** Canada, Canada Revenue Agency, *Political Activities Policy Statement*, Ref. CPS-022, September 2, 2003, accessed June 17, 2015, [www.cra-arc.gc.ca/chrts-gvng/chrts/plcy/cps/cps-022-eng.html](http://www.cra-arc.gc.ca/chrts-gvng/chrts/plcy/cps/cps-022-eng.html), 9. The 10 percent figure applies to large organizations. For small charities with less than \$50,000 annual income, up to 20 percent of total resources may be permitted.

**46** Dean Beeby, “Revenue Canada targets steelworkers for political activities,” *CBC*, April 12, 2015, accessed June 17, 2015, [www.cbc.ca/news/politics/revenue-canada-targets-steelworkers-charity-for-political-activities-1.3026863](http://www.cbc.ca/news/politics/revenue-canada-targets-steelworkers-charity-for-political-activities-1.3026863).

**47** Althia Raj, “CRA Got Few Complaints About Charities’ Politics Prior To 2012,” *Huffington Post*, December 5, 2014, accessed June 17, 2015, [www.huffingtonpost.ca/2014/12/05/canada-revenue-agency-charities\\_n\\_6279178.html](http://www.huffingtonpost.ca/2014/12/05/canada-revenue-agency-charities_n_6279178.html).

**48** “Audits More Charities than Terrorists: Canada Revenue,” *Blacklock’s Reporter: Minding Ottawa’s Business* (blog), May 14, 2015, accessed June 18, 2015, [www.blacklocks.ca/audits-more-charities-than-terrorists-canada-revenue/](http://www.blacklocks.ca/audits-more-charities-than-terrorists-canada-revenue/). According to the article, the CRA is spending \$13.5 million auditing 60 targeted charities, whereas the agency is spending only \$3 million combating terrorist financing.

**49** “A Petition of Academics Against the CCPA Audit,” Louis-Phillipe Rochon and Mario Seccareccia to The Honourable Kerry-Lynne D. Findlay, Minister of National Revenue, September 11, 2014, accessed June 18, 2015, [www.progressive-economics.ca/2014/09/11/a-petition-of-academics-against-the-ccpa-audit/](http://www.progressive-economics.ca/2014/09/11/a-petition-of-academics-against-the-ccpa-audit/).

**50** Broadbent Institute, *Stephen Harper’s CRA: Selective Audits, “Political” Activity, and Right-Leaning Charities*, Report, October 2014, Accessed June 18, 2015, [www.broadbentinstitute.ca/sites/default/files/documents/harpers-cra-final\\_o.pdf](http://www.broadbentinstitute.ca/sites/default/files/documents/harpers-cra-final_o.pdf).

**51** Dean Beeby, “Academics’ open letter calls for moratorium on political tax audits,” *The Canadian Press*, September 14, 2014, accessed June 18, 2015, [www.cbc.ca/news/politics/academics-open-letter-calls-for-moratorium-on-political-tax-audits-1.2765967](http://www.cbc.ca/news/politics/academics-open-letter-calls-for-moratorium-on-political-tax-audits-1.2765967).

**52** Letter from Daniel Huppé-Cranford, Director, Compliance Division, Charities Directorate CRA to Physicians for Global Survival (Canada), July 24, 2014. Copy on file.

**53** See, e.g., “Alternatives,” Voices-Voix, March 27 2011, accessed June 18, 2015, <http://voices-voix.ca/en/facts/profile/alternatives>.

**54** Unless otherwise indicated, the listed groups were allegedly placed under RCMP and/or CSIS surveillance as a result of threat assessments due to opposition to the Northern Gateway or related issues. Com-

plaints have been filed with the RCMP and CSIS oversight bodies by the British Columbia Civil Liberties Association and the allegations have not been proven.

**55** *Ibid.*

**56** The human rights case brought by the Caring Society to the Canadian Human Rights Commission was not based on defunding in the sense of lost project funding, but rather based on systemic discrimination due to chronic underfunding of child welfare and related services for First Nations children on reserve.

**57** “Findings Under The Privacy Act: Aboriginal Affairs and Northern Development Canada Wrongly Collects Information from First Nations Activist’s Personal Facebook Page,” Office of the Privacy Commissioner of Canada, November 21, 2013, accessed June 18, 2015, [https://www.priv.gc.ca/cf-dc/pa/2012-13/pa\\_201213\\_01\\_e.asp](https://www.priv.gc.ca/cf-dc/pa/2012-13/pa_201213_01_e.asp).

**58** *First Nations Child & Family Caring Society of Canada et al. v. Attorney General of Canada (for the Minister of Indian and Northern Affairs Canada)*, 2005 CHRT 14 [Caring Society].

**59** *Ibid.*, at para 68.

**60** Office of the Privacy Commissioner of Canada, “Investigation Finds Veteran’s Personal Information Was Mishandled,” news release, October 7, 2010, Office of the Privacy Commissioner, accessed June 18, 2015, [https://www.priv.gc.ca/media/nr-c/2010/nr-c\\_101007\\_e.asp](https://www.priv.gc.ca/media/nr-c/2010/nr-c_101007_e.asp).

**61** *Reference re Secession of Quebec*, [1998] 2 SCR 217, at para 68, 161 DLR (4th) 385 [Quebec Secession Reference].

**62** Canada. *House of Commons Debates*, 16 June 2015 (Hon. Steven Blaney, Minister of Public Safety and Emergency Preparedness, CPC). <http://www.parl.gc.ca/HousePublications/Publication.aspx?DocId=8051705&Language=E&Mode=1>.

## Annex 1

**TABLE A1** Voices-Voix Case Studies

Case Study	Other CSOs, Advocates Affected	Federal Government Tactics
Aboriginal Communities and Environmental Groups	Algonquins of Barriere Lake Council of Canadians Defenders of the Land Gitxaala First Nation Grassy Narrows First Nation Greenpeace Indigenous Peoples Solidarity Movement Innu of Labrador Oxfam Canada Pikangikum First Nation Six Nations Stz'uminous First Nation Tsilhqot'in First Nation Tobique First Nation Tsartlip First Nation Wagmatcook First Nation Wet'suwet'en First Nation (Likhts'amsiyu Clan) Yinka Dene Alliance	Surveillance • Organizations infiltrated and monitored as possible security threats (beginning in 2006).  Vilification and Smearing • In 2012, environmentalists were equated to radicals and extremists.
Aboriginal Healing Foundation	120 community organizations directly affected	Defunding • \$199 million redirected to Health Canada in 2010. • Organization closed in 2014.
Afghan Association of Ontario		Defunding • \$610,000 cut in 2011
Aiken, Sharryn		Defunding (attempted) • In 2009, the federal government sought to influence SSHRC to withdraw a grant for a conference on "paths to peace" in Israel and Palestine.  Surveillance • Subject to invasive freedom of information requests.
Alternatives		Defunding • Approximately \$2.4 million cut (2009)  Charitable Audit • CRA advises that Alternatives should not have charitable status in the first place (2012). • In July 2014, the CRA informs Alternatives that it will recommend the annulment of its charitable status.
Attaran, Amir		Invasive information requests (2011)
Beauregard, Rémy	Rights and Democracy	Vilification and Smearing • Rhetorical attacks on reputation by federal appointees (2009) (2010 reports would later exonerate Beauregard of all wrongdoing).

**TABLE A1** Voices-Voix Case Studies con't

Case Study	Other CSOs, Advocates Affected	Federal Government Tactics
Blackstock, Cindy	First Nations Child and Family Caring Society	<p>Defunding</p> <ul style="list-style-type: none"> <li>• Caring Society lost federal funding</li> </ul> <p>Surveillance</p> <ul style="list-style-type: none"> <li>• The Office of the Privacy Commissioner of Canada concluded that Blackstock's had been placed under surveillance and that her privacy rights were violated (2013).</li> </ul> <p>Reprisals</p> <ul style="list-style-type: none"> <li>• Between 2008 and 2009, federal officials barred Blackstock from meetings.</li> <li>• The Canadian Human Rights Tribunal Ruled in 2015 that these activities were a reprisal for filing a human rights complaint.</li> </ul>
Bruyea, Sean	See also: Veterans	<p>Privacy Violation</p> <ul style="list-style-type: none"> <li>• Sensitive medical and personal information shared among departmental officials.</li> </ul> <p>Vilification and Smearing</p> <ul style="list-style-type: none"> <li>• Evidence of a smear campaign against him (2010).</li> </ul>
Canada Without Poverty	See also: Canadian Charities and The Canada Revenue Agency	<p>Defunding</p> <ul style="list-style-type: none"> <li>• Loss of 55% of its funding (2007).</li> </ul> <p>Charitable audits</p> <ul style="list-style-type: none"> <li>• Subject to crippling CRA political activities audit lasting years.</li> </ul>
Canadian Arab Federation		<p>Defunding</p> <ul style="list-style-type: none"> <li>• CIC cancels funding in 2009, upon judicial review the federal court upholds this decision in 2013.</li> </ul>
Canadian Broadcasting Corporation (CBC)		<p>Defunding</p> <ul style="list-style-type: none"> <li>• The 2012 federal budget announced cuts of \$115 million to the CBC/Radio-Canada (2012).</li> <li>• The CRTC eliminates the Local Programming Improvement Fund, representing \$40 million in loss of funding for CBC/Radio-Canada.</li> </ul>
Canadian Charities and the Canada Revenue Agency	<p>Alternatives</p> <p>Amnesty International Canada</p> <p>Canada Without Poverty</p> <p>Canadian Centre for Policy Alternatives</p> <p>CoDevelopment Canada</p> <p>Environmental Defence (audit began in 2011; complaint filed by Ethical Oil in March 2012)</p> <p>Équiterre</p> <p>Pembina Foundation (complaint filed by Ethical Oil in April 2013; audit began in December 2013)</p> <p>PEN Canada</p> <p>Sierra Club Canada (complaint filed by Ethical Oil in December 2012; under audit as of May 2015)</p> <p>The David Suzuki Foundation (complaint by Ethical Oil in April 2012; audit began in May 2013)</p> <p>The Ecology Action Centre</p> <p>Tides Canada Foundation (audit began in 2011; complaint filed by Ethical Oil in Aug. 2012)</p> <p>Tides Canada Initiatives Society (audit began in 2011; complaint filed by Ethical Oil in Aug. 2012)</p> <p>United Church of Canada (KAIROS)</p>	<p>Enhanced scrutiny</p> <p>Political Activities Audits</p> <p>Revocation of Charitable Statuses</p> <ul style="list-style-type: none"> <li>• Some 52 organizations have been chosen for audits under the new program, with at least another 8 on the way (as of 16 October 2014).</li> </ul>

**TABLE A1** Voices-Voix Case Studies con't

Case Study	Other CSOs, Advocates Affected	Federal Government Tactics
Canadian Conference of the Arts	Royal Conservatory of Music Writer's Union of Canada National Ballet of Canada National Theatre School	Defunding <ul style="list-style-type: none"> <li>• Budget cuts with short transition (March 2012).</li> <li>• CCA ceases operations on October 30th 2012.</li> </ul>
Canadian Council for International Co-operation	KAIROS	Defunding <ul style="list-style-type: none"> <li>• Restructuring requiring 2/3 of employees to be laid off (July 2010).</li> </ul>
Canadian Council on Learning		Defunding <ul style="list-style-type: none"> <li>• Funding not renewed by Conservative government in 2009 (represented 95% of its overall budget).</li> <li>• CCL dissolves in 2012.</li> </ul>
Canadian Doctors for Refugee Care	Interim Federal Health Care Program	Defunding <ul style="list-style-type: none"> <li>• Ruled contrary to section 12 of the Canadian Charter of Rights and Freedoms (government currently appealing the decision).</li> </ul> Vilification and Smearing <ul style="list-style-type: none"> <li>• Doctors are called “activists” and accused of misleading, or even lying to, the public.</li> </ul>
Canadian Foundation for Climate and Atmospheric Sciences	Approx. 175 research projects and networks cut back or shut down. See also Polar Environment Atmosphere Research Laboratory (PEARL)	Defunding <ul style="list-style-type: none"> <li>• CFCAS' federal mandate and funding were terminated (2012).</li> </ul>
Canadian HIV/AIDS Legal Network		Defunding <ul style="list-style-type: none"> <li>• 16 out of 20 proposed activities were rejected by Health Canada (2010).</li> </ul>
Mennonite Central Committee Canada	PEN Canada	Political Activities Audit <ul style="list-style-type: none"> <li>• Warning letter from CRA about possible charitable status revocation because of alleged partisan political activities (2012).</li> </ul>
Canadian Policy Research Networks (CPRN)		Defunding <ul style="list-style-type: none"> <li>• Funding cuts by the Conservative government (2006).</li> <li>• CPRN closes its doors in 2009.</li> </ul>
Centre for Equality Rights in Accommodation		Defunding <ul style="list-style-type: none"> <li>• Funding cut completely (2010).</li> </ul>
Centre for Research and Information on Canada	Canadian Unity Council See also: Foundation for Canadian Studies UK	Defunding <ul style="list-style-type: none"> <li>• Funding cuts (2006).</li> <li>• Seized operation in 2009.</li> </ul>
Childcare Advocacy Association of Canada (CCAAC)	Feminist Alliance for International Action (FAFIA) Status of Women Canada	Defunding <ul style="list-style-type: none"> <li>• Entire budget was cut in 2009.</li> </ul>
Community Access Program		Defunding <ul style="list-style-type: none"> <li>• \$15 million in funding was not renewed (2009).</li> </ul>
Court Challenges Program	Women's Legal Education and Action Fund (LEAF)	Defunding <ul style="list-style-type: none"> <li>• Entire budget cut and program abolished (2006).</li> <li>• Funding restored for linguistics rights part of CCP (2008).</li> </ul>
Development and Peace		Defunding <ul style="list-style-type: none"> <li>• Was told that there will be \$20.5 million decrease in funding over five years (2012).</li> <li>• The number of countries to be reduced to 7 from 33.</li> </ul>

**TABLE A1** Voices-Voix Case Studies con't

Case Study	Other CSOs, Advocates Affected	Federal Government Tactics
Dying with Dignity Canada		Charitable audit <ul style="list-style-type: none"> <li>Charitable status annulled after aggressive CRC audit (2015).</li> </ul>
Eritrean Canadian Community Centre of Metropolitan Toronto	26 other Ontario organizations	Defunding <ul style="list-style-type: none"> <li>70 percent of budget terminated (2011).</li> </ul>
Experimental Lakes Area		Defunding <ul style="list-style-type: none"> <li>Field station is officially closed (2013).</li> <li>Scientists silenced, disparaged as “activists.”</li> </ul>
First Nation Child and Family Caring Society	Cindy Blackstock	Underfunding
First Nations Statistical Institute		Defunding <ul style="list-style-type: none"> <li>Funding reduced by half in 2012 and then completely by 2013–2014.</li> </ul>
ForestEthics	Tides Canada	Defunding (threatened) <p>Vilification and Smearing (2012)</p> <ul style="list-style-type: none"> <li>PMO official alleges ForestEthics is against the government of Canada and the people of Canada (2012).</li> <li>August 2013, ForestEthics files a lawsuit against the federal government and the National Energy Board.</li> </ul>
James, Franke	Nektarina Non Profit	Defunding (2011)
Hospitality House Refugee Ministry	KAIROS Interim Federal Health Care Program	Defunding (2012)
IRFAN-Canada		Charitable status revoked (2011) <p>Smearing and Vilification</p> <ul style="list-style-type: none"> <li>IRFAN listed as terrorist organization.</li> </ul>
KAIROS Canada	Eleven churches and religious organizations committed to environmental justice and human rights	Defunding (2009) <p>Smearing and Vilification</p> <ul style="list-style-type: none"> <li>Accused of being anti-Semitic and having a leadership role in the boycott of Israel.</li> </ul> <p>Political Activities Audit</p> <ul style="list-style-type: none"> <li>One or more member churches subsequently subject to a political activities charities audit (United Church of Canada).</li> </ul>
Katimavik		Defunding (2012–2013)
LifeLine	St-Leonard’s Society of Canada (SLSC)	Defunding (2012)
Mada al-Carmel		Defunding (2010)
Manuge, Dennis	See also: Veterans	Defunding <p>Privacy violation</p> <ul style="list-style-type: none"> <li>Medical records were accessed by public servants (2002–2010).</li> </ul>
Match International		Defunding <ul style="list-style-type: none"> <li>Funding cuts represented 75 percent of their total budget (2010).</li> </ul>
Mendes, Errol	Amir Attaran	Vilification and Smearing <ul style="list-style-type: none"> <li>Conservatives accused Mendes of being a Liberal flack (2008).</li> </ul> <p>Privacy violation/ intrusive freedom of information requests (2011)</p>

**TABLE A1** Voices-Voix Case Studies con't

Case Study	Other CSOs, Advocates Affected	Federal Government Tactics
National Aboriginal Health Organization (NAHO)	First Nations Statistical Institute Aboriginal Healing Foundation Sisters in Spirit documentation project	Defunding (2012)
National Council of Welfare	Canada without Poverty Caledon Institute	Defunding • After Bill C-38, funding was completely cut (2012). • Loss of key information on low-income groups in Canada.
National Network on Environments and Women's Health	Atlantic Centre of Excellence for Women's Health British Columbia Centre of Excellence For Women's Health Canadian Women's Health Network Prairie Women's Health Centre of Excellence Réseau québécois d'action pour la santé des femmes	Defunding • 2012 budget cuts result in the elimination of Women's Health Contribution Program.
National Round Table on the Environment and the Economy		Defunding (2012)
New Brunswick Coalition for Pay Equity	Status of Women Canada	Defunding • Informed in April 2010 of the impending funding cuts.
Oxfam Canada	Canadian Mennonite Relief Forest Ethics Physicians for Global Survival Sierra Club Canada Foundation Tides Canada United Nations Platform for Action Committee	Charitable Status Audit • The CRA Charities Directorate tells Oxfam that to keep its charitable status, the group can work to "alleviate" poverty but not "prevent" it (April 2013).
Palestine House	KAIROS Alternatives Rights & Democracy Mustafa Barghouti George Galloway	Defunding • Loss of approx. \$1 million in funding (2012).  Smearing and Vilification • Said to be an extremist, terrorist organization and supporter of terrorist groups (2011).
Pamela Palmater	Cindy Blackstock	Surveillance and Privacy Violations • ATIP requests reveal that she was monitored by CSIS, RCMP and Aboriginal Affairs and Northern Development Canada (2011-2012).
PEN Canada	Canadian Mennonite	Charitable audit & status revocation (2014)
Physicians for Global Survival (PGS)	Tides Canada Canadian Mennonite	Charitable audit & status revocation • PGS received a letter from the CRA informing the organization that its status as a registered charity had been revoked (2012).
Polar Environment Atmosphere Research Laboratory	Canadian Foundation for Climate and Atmospheric Sciences (CFCA)	Defunding • Partially shut down after federal government failed to renew its budget (2012) • Funding renewed in 2013, but 30 percent short of the amount needed to operate full-time.
Québec Native Women		
Réseau québécois d'action pour la santé des femmes (RQASF)	National Network on Environments and Women's Health Environmental Defence David Suzuki Foundation	Defunding • \$175,000 per year from Heritage Canada.



**TABLE A1** Voices-Voix Case Studies con't

Case Study	Other CSOs, Advocates Affected	Federal Government Tactics
Rights and Democracy	Rémy Beaugard	Harassment  Defunding • Shutdown (2012).
Sierra Club Canada Foundation	Tides Canada David Suzuki Foundation Environmental Defence	Threat of Charitable Status Revocation  Political activities audit (2015)  Smearing and Vilification • Equated to radicals who are trying to hijack the system for their own radical agenda.
Sierra Club of British Columbia	EcoAction Community Funding Program The Ecology Action Centre	Defunding (2008)  Smearing and Vilification • Environmental groups labelled 'extremists', 'adversaries', and 'enemies' by the Harper government.
Sisters in Spirit	Native Women's Association of Canada	Defunding (2010)
Steelworkers Humanity Fund		Political activities audit.
South Asian Women's Centre	26 other Ontario immigration agencies, including: Bloor Information and Life Skills Centre Eritrean Canadian Community Centre of Metropolitan Toronto Afghan Association of Ontario	Defunding • 67 percent of SAWC's overall budget cut (2011).
Status of Women Canada	Antidote Canadian Research Institute for the Advancement of Women Feminist Alliance for International Action (FAFIA) New Brunswick Coalition for Pay Equity National Association of Women and the Law Victoria Status of Women Action Group Sisters in Spirit	Defunding • \$5 million in cuts (2006). • Some funding reinstated afterwards.
Schnoor, Steven		Vilification and Smearing • The Canadian ambassador to Guatemala allegedly stated that Schnoor's films lacked credibility and were fabricated. • An Ontario judge ruled that the ambassador had in fact slandered Schnoor (2009).
Tides Canada Foundation		Charitable Status Audit (2012)  Smearing and Vilification • Tides Canada was accused of "laundering" funds for "radical" organizations that engage in "non-charitable" activities (2012).
Tides Canada Initiatives Society (forthcoming)		Political Activities Audit
United Nations Platform for Action Committee (UNPAC)		Defunding  Refusal of charitable status • CRC claimed that UNPAC was "too political" (2010). • In June 2014, UNPAC closed its doors.

**TABLE A1** Voices-Voix Case Studies con't

Case Study	Other CSOs, Advocates Affected	Federal Government Tactics
Universal Child Care Program	Canadian Child Care Federation Child Care Advocacy Association of Canada	Cancellation of program (2006)
New Veterans Charter	Sean Bruyea Dennis Manuge	Defunding (2006) • Several offices closed across Canada  Smearing and Vilification  Privacy Violations (October 2010)
Women's Legal Education and Action Fund (LEAF)	Status of Women Canada	Defunding • After Court Challenges Program is cancelled LEAF lost significant source of funding (2006).

## Annex 2

### The Hit List: Civil Society Organizations, Advocates and Human Rights Defenders

Aboriginal Healing Foundation  
 Afghan Association of Ontario  
 Aiken, Sharryn  
 Algonquins of Barriere Lake  
 Alternatives  
 Amnesty International Canada  
 Anglican Diocese, The  
 Antidote  
 Atlantic Centre of Excellence for Women's Health  
 Attaran, Amir  
 Beaugard, Rémy  
 Blackstock, Cindy  
 Bloor Information and Life Skills Centre  
 British Columbia Centre of Excellence For Women's Health  
 Bruyea, Sean  
 Caledon Institute  
 Canada Without Poverty  
 Canadian Arab Federation  
 Canadian Broadcasting Corporation (CBC)  
 Canadian Centre for Policy Alternatives  
 Canadian Conference of the Arts  
 Canadian Council for International Co-operation

Canadian Council on Learning  
Canadian Doctors for Refugee Care  
Canadian Foundation for Climate and Atmospheric Sciences  
Canadian HIV/AIDS Legal Network  
Canadian Mennonite  
Canadian Policy Research Networks  
Canadian Research Institute for the Advancement of Women  
Canadian Unity Council (see Centre for Research and Information on Canada)  
Canadian Women's Health Network  
Centre for Equality Rights in Accommodation  
Centre for Research and Information on Canada  
Childcare Advocacy Association of Canada  
CoDevelopment Canada  
Community Access Program Co-operation  
Council of Canadians  
Court Challenges Program  
David Suzuki Foundation, The  
Defenders of the Land  
Development and Peace  
Dying with Dignity Canada  
Ecology Action Centre, The  
Environmental Defence  
Équiterre  
Eritrean Canadian Community Centre of Metropolitan Toronto  
Experimental Lakes Area  
Feminist Alliance for International Action (FAFIA)  
First Nation Child and Family Caring Society  
First Nations Statistical Institute  
ForestEthics  
Foundation for Canadian Studies UK  
Franke James  
Gitxaala First Nation  
Grassy Narrows First Nation  
Greenpeace  
Hospitality House Refugee Ministry  
Indigenous Peoples Solidarity Movement  
Innu of Labrador  
IRFAN-Canada  
Kairos

Katimavik  
LifeLine  
Mada al-Carmel  
Manuge, Dennis  
Match International  
Mendes, Errol  
National Council of Canadian Muslims  
National Aboriginal Health Organization  
National Association of Women and the Law  
National Council of Welfare  
National Network on Environments and Women's Health  
Native Women's Association of Canada (see Sisters in Spirit)  
Nektarina Non Profit  
New Brunswick Coalition for Pay Equity  
Oxfam Canada  
Palestine House  
Palmater, Pamela  
Pembina Foundation  
PEN Canada  
Physicians for Global Survival  
Pikangikum First Nation  
Polar Environment Atmosphere Research Laboratory  
Prairie Women's Health Centre of Excellence  
Québec Native Women's Association  
Réseau québécois d'action pour la santé des femmes (RQASF)  
Rights and Democracy  
Sierra Club Canada Foundation  
Sierra Club of British Columbia  
Sisters in Spirit  
Six Nations  
South Asian Women's Centre  
Steelworkers Humanity Fund  
Steven Schnoor  
St-Leonard's Society of Canada (see LifeLine)  
Stz'uminous First Nation  
Teztan Biny (Fish Lake) First Nation  
Tides Canada  
Tides Canada Initiatives Society  
Tobique First Nation

Tsartlip First Nation  
United Church of Canada  
United Nations Platform for Action Committee (UNPAC)  
Victoria Status of Women Action Group  
Wagmatcook First Nation  
Wet'suwet'en First Nation (Likhts'amsiyu Clan)  
Women's Legal Education and Action Fund (LEAF)  
Yinka Dene Alliance



# Scapegoating Canada's public sector

How the government used the crisis to attack unions, slash the public service and increase privatization

Howie West

“Whether Canada ends up as one national government or two national governments or several national governments, or some other kind of arrangement is, quite frankly, secondary in my opinion.... And whether Canada ends up with one national government or two governments or 10 governments, the Canadian people will require less government no matter what the constitutional status or arrangement of any future country may be.”

— *From a speech by Stephen Harper to a National Citizens Coalition dinner in 1994*

THE CONSERVATIVE GOVERNMENT led by Stephen Harper has had two key related goals since ascending to power. One is to hold on to that power. The other is to make government smaller and less important in the lives of Canadian people. Although multifaceted attacks on the Canadian collective are clothed in messages of individual liberty and security, the reality is that a great many Canadians are worse off after a decade of ideological Conservative government.

A 2009 study by the Canadian Centre for Policy Alternatives showed that public services make a significant and unparalleled contribution to standards of liv-

ing in Canada. The study found that Canadian families benefit from public services worth an average of about \$41,000 a year, or 63% of the median family income. Even households earning between \$80,000 and \$90,000 a year receive a benefit from public services that is equivalent to about half their income. Hugh Mackenzie, the study's author, calls it "the best deal we're ever going to get," and Canada's "quiet bargain."<sup>1</sup>

Public services reduce inequality, provide stability, and promote economic, social and environmental security. They are demonstrably more efficient, less expensive, of higher quality and more accountable than privatized services. If unregulated market forces and private sector incursion into the public sector was as effective as neoliberals contend, the public sector would not have been called upon to manage and organize every major challenge of the last 100 years, from the Great Depression to Second World War mobilization to post-war reconstruction to the recent public "stimulus" measures provided to mitigate the effects of the 2008 recession.

Unfortunately, the Harper government started to cut public sector expansion as soon as it could after the most recent recession had eased, but before a full recovery. As described elsewhere in this book, the government undermined federal revenue streams by introducing massive tax and public service cuts, weakening public interest legislation and regulation, and downloading responsibilities to other levels of government right up until Parliament shut down in June 2015. None of these cuts were essential to maintaining Canada's generally positive fiscal position and some likely contributed to extending the post-crisis recession.

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## **An attack on public services**

According to Treasury Board data in March 2015, 25,318 positions have been cut from core public services and agencies since 2011.<sup>2</sup> Statistics Canada estimates 50,000 jobs have been cut over the same period in the broader federal public administration,<sup>3</sup> while departmental spending reports show even more cuts are planned. The government steadfastly refused to be transparent about the real impact of these cuts, assuring the public they were to "backroom" positions within the public sector. But we know, from research done by the Parliamentary Budget Officer and others, the cuts decrease service quality and undermine the ability of public service workers to do their jobs.<sup>4</sup>

Important environmental and human rights protections have been eliminated along with the public service workers who regulate and enforce them. The ability of workers and seniors to collect employment insurance and old age benefits, of statisticians to collect statistics, of veterans to access services to which they are



entitled, and of regulators to protect the food supply have all been seriously compromised. So has the ability of future governments to reinvest in these and other areas due to a severely constrained capacity to raise tax revenues. Cuts to the GST and corporate tax rates, as well as boutique tax measures like income splitting, can theoretically stimulate investment and spending, but in practice they deprive Canadians of more valuable economic security.

What is a small taxable child allowance compared to an affordable, universal child care program; an expensive public transit tax credit to increased support for public transit; a children's fitness tax credit to increased funding for sports and recreation programs; tax credits for affordable housing to support for community-based housing and homelessness initiatives? How does one square a tax credit and vouchers for education and training with funding cuts for literacy programs? In virtually all these areas and others, direct program spending has been found to be much more effective, better targeted, less costly and more accountable than tax incentives.

The first cuts to public sector jobs were announced in the 2010 budget, but not implemented until 2012. Although most cuts have been completed, the Parliamentary Budget Officer has determined that another 8,900 jobs will be eliminated by 2017, bringing the total to 35,000.<sup>5</sup> The government initially maintained that only administrative and “backroom” jobs would be cut, but that has not been the case. The ability of the public service to meet the requirements of the Canadian public and Indigenous communities has been clearly compromised.<sup>6</sup> In addition, correctional, health care and other regulatory costs and burdens are being shifted to provinces and municipalities.<sup>7</sup>

The reality is, while there are now fewer public employees, and these workers are over-extended, Canadian demands for the services they provide are increasing.<sup>8</sup> A demographic snapshot of the public service released by the government in 2013 shows that between 1983 and 2013, the Canadian population expanded by almost 38.4%, while the size of the public service over this period only increased by 4.8%. The federal public service now comprises 0.75% of the Canadian population.<sup>9</sup>

In addition, the aura of austerity is so prevalent that departments are not spending the money they have been allotted by Treasury Board. Lapsed spending — money that is returned to government coffers — has grown considerably in some cases. The Public Accounts of Canada show that across all of government, departments lapsed \$7.3 billion in 2013–14 and \$10.1 billion in 2012–13. That is money that could have been used to provide much need programs.<sup>10</sup> The Parliamentary Budget Officer has said that year-end results show the government is cutting more deeply than announced without a clear explanation of the consequences.<sup>11</sup>

Federal program spending has also not kept up with growth in gross domestic product (GDP). Real GDP has increased by almost 110.6% since 1983, while federal program spending has only increased by 52.4%. In 2013, there was an increase of 1.7% in real GDP and a decrease of 0.6% in federal program spending, which decreased as a proportion of GDP from 18.8% in 1983 to 14% in 2011–12.<sup>12</sup> The 2012 federal budget forecasted a further drop to 12.7% by 2016–17.

Some cuts have been very noticeable. Staff at Veterans Affairs has been cut by 24%, with an additional 1% cut planned by 2016–17.<sup>13</sup> Departmental performance reports show that about 900 positions have been eliminated across Veterans Affairs, with 33% coming out of the section that administers pensions and awards, and 372 positions cut from the health and rehabilitation branches. These are not “backroom” positions — a term implying the jobs are unnecessary to begin with. For comparison, Internal Services lost only 71 positions during the same period.<sup>14</sup>

Employment insurance (EI) services have also been deteriorating because of the cuts. Funds to operate Citizen Centred Service, a business line within Employment and Social Development Canada, will have been cut in half from their 2011 levels by 2017, with staff cuts of 2,100 positions to that business line alone. Department reports show that between 2011 and 2013 there were over 26 million blocked calls where citizens couldn’t get through to the EI helpline and over a million instances of people hanging up.<sup>15</sup> The government hired additional staff in the past year, but it is not nearly enough to repair the damage caused by the cuts.<sup>16</sup>

Canada Post has started eliminating home delivery to over five million Canadians and plans to eliminate 6,000 to 8,000 postal worker jobs in the next few years. The cut in service was justified on the basis that Canada Post had experienced continued financial losses. Yet over the last 17 years, the Crown corporation has created revenue for the government every year except two. By December 2013, losses were \$110 million on annual revenues of \$5.8 billion.<sup>17</sup> The 2014 Canada Post budget figures showed a \$194 million profit. In the first quarter of 2015, the corporation posted a pre-tax profit of \$24 million.<sup>18</sup>

If money were truly an issue for Canada Post or this government, the corporation could have acted on its four years of intensive research and study into offering financial services, which concluded that postal banking was a “proven money-maker.” The Harper government refused to entertain the concept; the government supported Canada Post’s plan to increase postal fees and eliminate door-to-door delivery instead.<sup>19</sup> Canadians, especially persons with disabilities and restricted mobility, should not be forced to go further than they need to for their mail when it is not necessary.

Changes to federal labour legislation are making it more difficult for public service unions to protect their members’ rights and bargain on their behalf. Bill C–59,

for example, gives the government the power to unilaterally amend provisions in collective agreements, as Treasury Board President Tony Clement did to eliminate the current sick leave system in the federal public service. Although the unions were willing to bargain changes to better protect recent hires, the Harper government wants to impose a system that will make workers either go to work sick or not be paid for potentially long periods of time. The government announced, as it tabled the 2015 federal budget, that these changes to sick leave benefits would save \$900 million, though no one really knows where this number comes from. We do know that without it the government would not have been able to declare the deficit had been eliminated as planned, and on the backs of workers, by 2016.

Bill C-4, a previous budget implementation bill in 2013, similarly undermined the collective bargaining process. The bill changes the *Canada Labour Code* regarding health and safety and the definition of “immediate danger,” undermining the rights that workers in federal jurisdictions have to refuse unsafe work. Given a number of Supreme Court decisions, starting in 2007, in support of collective bargaining, there is a good chance these changes are also unconstitutional and violate the Canadian Charter of Rights and Freedoms. Federal unions have already mounted court challenges against C-4 and C-59, but such cases take years to pursue and considerable damage to workers’ rights and labour relations is done in the meantime.

The current government has also made use of private member’s bills to change federal labour legislation. Bill C-525, which was sponsored by Conservative backbencher Blaine Calkins and supported publicly by anti-labour groups like Labour-Watch, makes it harder for workers to organize federally. Even an employer group (FETCO) complained about this backdoor lawmaking tactic, saying the standard tripartite consultation process was a much more successful means of introducing new labour legislation.

Even though new university graduates maintain they would still like to work in the public service their actual ranks are shrinking.<sup>20</sup> The number of employees under the age of 35 has declined to 17% of the public service as of March 2014, compared to 21.4% in March 2010.<sup>21</sup> This is at a time when youth unemployment is at about 14% and underemployment levels are worse.

Across-the-board budget cuts mean the use of contractors and temporary service agencies has decreased across government as a whole. However, contracting costs are still high and some federal government departments like Shared Services Canada and the Department of Defence have become overly dependent on contractors.<sup>22</sup> The 2014–15 Main Estimates show the government plans to spend \$9.84 billion on contracting out for professional and special services in the 2014–15 fiscal year.<sup>23</sup> Temporary contracting costs the government more money. It also undermines

the federal public service staffing goals of prioritizing value and merit.<sup>24</sup> Contracting out marginalizes workers, leaving them disillusioned, with little opportunity for job security, advancement or equitable wages and benefits.<sup>25</sup>

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## Social impact financing

On November 8, 2012, the federal government elaborated on a 2012 budget promise to implement social impact bonds (SIBs).<sup>26</sup> They are a process of privatizing funding of public social services similar to the way public-private partnerships privatize public infrastructure. SIBs allow banks and private finance to profit from the delivery of public services. Private investors pay social agencies to deliver services. In turn, the government agrees to pay the investor back, with a profit, regardless of whether or not the services are delivered or program objectives are met.<sup>27</sup>

On October 3, 2013, the government announced a social impact financing initiative for literacy programs worth \$6 million, arguing the private sector must play a major role in delivering social programs.<sup>28</sup> Large financial institutions like the Royal Bank of Canada, which has invested \$20 million, would like to see increasing investor opportunities for social financing.<sup>29</sup> They are convinced it will be profitable. The first social impact bond in Australia returned investor profits of 15% a year. Investors in social impact initiatives in the U.K. have seen returns as high as 68% and 225%, demonstrating that the projects were either cutting corners on the services they were supposed to provide or were just an inefficient use of taxpayer dollars from the start.<sup>30</sup>

All this is happening despite recent polling showing 82% of Canadians agree that “when private companies get contracts to provide government programs, the public loses control over services people depend on,” and 69% agree that “allowing a few people to profit from services meant for all of us weakens our country’s principles and core values of caring and sharing.”<sup>31</sup> Donald Savoie, one of Canada’s foremost experts on how government operates, puts it this way:

The notion that public administration could be made to look like private-sector management has been ill conceived, misguided and costly to taxpayers. Management in the private sector has everything to do with the bottom line and market share. Administration in the public sector is a matter of opinion, debate and blame avoidance in a politically charged environment.<sup>32</sup>

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## Diminished regulations

We find another prong of the government plan to undermine the public sector in its threefold attack on the ability of Canada's regulatory regime to protect the public interest. In the first (if possibly least obvious) case, corporate free trade deals undermine public services in general and in particular the ability of governments to legislate and regulate on behalf of their population.<sup>33</sup> Second, government cuts have diminished the ability of public service workers to enforce existing regulations. And thirdly, the government's own ideological war on regulatory capacity is creating unrealistic and arbitrary criteria around the creation of regulations.

The *Red Tape Reduction Act*, the centerpiece of the government's broader Red Tape Reduction Plan, enshrines a one-for-one rule in law. The act received royal assent and passed into law on April 23, 2015. The one-for-one rule means that for every new regulation that imposes an administrative burden on business one must be removed. The government boasts that it is the only country in the world to legislate against the growth of regulations.<sup>34</sup> But most people do not share the government's ideological aversion to regulations, which generally respond to a public need. Polls have shown that 90% of Canadians believe the government should do more to protect the environment and public health and safety.<sup>35</sup> This means creating more regulations. Although the one-for-one rule has to date only been used for small administrative adjustments it has the capacity to undermine the public interest.

A far more important problem than proliferating rules is that regulations that already exist are not being properly enforced. Government cuts have left the public sector with too few employees to make sure rules are being followed. For example, between 2010 and 2017, Environment Canada will have cut or plans to cut 21% of its staff, and 338 employees from the climate change division alone. A further 30% of the staff at Fisheries and Oceans Canada that were responsible for the *Species at Risk Act* — and the recovery and protection of all aquatic species in Canada — were cut.<sup>36</sup>

In February 2014, the Federal Court declared that the ministers of environment and of fisheries and oceans acted unlawfully in delaying for several years the production of recovery strategies for four at-risk species threatened by industrial development including the proposed Northern Gateway pipeline and tanker route. The departments' reasons for not meeting their legal obligations included staff shortages and not enough capacity.<sup>37</sup> More than \$100 million in cuts were made at Fisheries and Oceans Canada for water protection despite recommendations from public service experts that spending should be increased for both environmental and economic reasons.<sup>38</sup>

The Canadian Food Inspection Agency (CFIA) will have lost 1,407 full-time staff positions between 2012 and 2016. That's 20% of the regulator's workforce. Cuts of 720 positions came from programs that mitigate the risks to human health from animals, fruit and vegetables. Programs that regulate food packaging and production facilities as well as food product regulation saw staff cuts of 429 positions.<sup>39</sup> In 2014, there were 60% fewer ground meat inspections than there were in 2013. That means less checking for fat content, filler and fraudulent species claims. There will be no inspection of cooking oils. Fewer than half of the independent food retailers inspected in 2013 were slated for inspection in 2014.<sup>40</sup>

The Harper government dismantled Canada's wheat marketing board and its world-class grain regulatory system, which ensured Canadian grain quality commanded "international respect." Now international buyers complain of diminished quality resulting in a loss of business for Canadian farmers.<sup>41</sup> Staff at the Grain Commission has been cut from 680 regulators in 2012 to 408 in 2015 — about a 40% cut.<sup>42</sup> (See Slater chapter.)

The consequences of poor or absentee regulation were exposed on a terrifying scale in the 2013 train derailment at Lac-Mégantic, which could have been avoided.<sup>43</sup> In a 2013 report, Canada's auditor general found that "despite the fact that federal railways were required 12 years ago to implement safety management systems for managing safety risks and complying with safety requirements, Transport Canada has yet to establish an audit approach that provides a minimum level of assurance that federal railways have done so."<sup>44</sup> Transport Canada is not able to provide the kind of oversight and enforcement to ensure that existing regulations are adhered to.<sup>45</sup>

A recent analysis by the Department of Transportation's Pipeline and Hazardous Materials Safety Administration estimated that a failure to upgrade existing regulations would lead to the equivalent of 10 major accidents, costing more than US\$18 billion (\$24 billion) in damages and including fatalities, over the next 20 years.<sup>46</sup> Proper enforcement means having public service workers on the ground examining what is really happening and ensuring that companies do not cut corners.

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## Privatization and P3s

Privatization is "the transfer of responsibility and control from the public sector to the corporate and voluntary sectors, or to families and individuals."<sup>47</sup> Public-private partnerships (P3s) — multi-decade contracts that include private sector financing, management, and ownership of vital public services and infrastructure — are a cloaked form of privatization, and successive governments have a long history

of supporting their growth. The Harper government committed to P3s in a big way for infrastructure renewal.<sup>48</sup>

The \$14 billion New Building Canada Fund (NBCF) demands that all provinces, territories and municipalities seeking money for infrastructure projects over \$100 million participate in a P3 screening process. This can take anywhere from six to 18 months to complete — a significant and unnecessary delay for a community in need of new water infrastructure today. The government also created the \$1.25 billion P3 Canada Fund, which subsidizes the development of P3 projects for water and wastewater, green energy, public transit and post-secondary education in provinces, territories, municipalities and First Nations communities. This fund and the P3 screening for the NBCF are managed by PPP Canada, a government organization created to support the growth of P3 projects.

The value-for-money celebrated by P3 advocates is an illusion. P3s result in higher costs, lower quality and a loss of public control.<sup>49</sup> P3s are riskier and frequently less innovative, with costs handed down over many years.<sup>50</sup> Public sector accounting processes create the illusion that P3s are paid for by the private sector, when the debt is only postponed to another time, another government, and a future generation. For instance, the British Columbia government estimates its current contractual obligations to P3 partners to be more than \$50 billion.<sup>51</sup> P3 consortiums borrow money from international investment banks at higher interest rates than governments can. The Ontario auditor general found that P3s cost Ontario taxpayers \$8 billion more than traditional public financing would have cost on projects since 2003. About \$6.5 billion is due to higher private sector financing costs.<sup>52</sup>

Over the average 25- to 30-year lifespan of a P3 contract, the public pays much more than it would have if the government borrowed the money directly to finance a traditional design/build contract.<sup>53</sup> This privatized, hidden debt erodes the government's flexibility to provide public services, as more and more public money becomes tied up paying private providers, guaranteeing private profits, and institutionalizing private, for-profit monopolies.<sup>54</sup>

Because private-sector contracts become the property of the contractor, the public is not allowed to view the books of their P3 partner, even though the public ultimately bears responsibility for the costs. At the same time, the public rightly expects governments to deliver services, regardless of whether P3 projects or their funders meet their obligations.

Citizens and their governments bear the ultimate risk for the provision of public services. P3s fail regularly and must be bailed out by the public.<sup>55</sup> Businesses must make money for their shareholders and, as recent experience shows, will not hesitate to take quick action, including filing for bankruptcy and liquidation, to protect investor interests.

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## Conclusion

The Harper government's attack on the public sector and its workers clearly has little to do with cost savings, efficiency or better value for money. The track record shows that public services outcompete their privatized versions, that regulations are by and large developed for good reasons, often to do with public safety, and that undermining collective bargaining rights is not only unconstitutional, but also undesirable from the employer's perspective.

Legislative and regulatory changes ushered in after the 2008 crisis were more likely based on ideological motivations than any inherent need for public sector reform. The goal was to shrink the government under the guise of responding to economic necessity. The government's actions in that respect have left the country poorer and much more poorly protected from an environmental or public health standpoint.

Public services and the legislation that governs them have been substantially weakened by this government, compromising our ability to help unemployed workers, provide services to Indigenous communities and veterans, or to slow climate change and protect the environment. The list of those who have been harmed is much longer.

The ranks of the public service have been decimated, sometimes arbitrarily, and sometimes as a corollary to the de-legislation and deregulation of government obligations. At the same time, revenue has been slashed through the implementation of tax cuts that primarily benefit the wealthy, and designer tax breaks that provide very little stimulus in the form of relief to families.

The policies described above cut to the very nature of our democracy, which begins to look very much like what Sheldon Wolin calls "managed democracy and the specter of inverted totalitarianism." It's a society where a reverence for free markets creates the very antithesis to government focussed on collectivist goals and the welfare of all its citizens.<sup>56</sup> As the prime minister once said, the constitutional shape of this society, the number of governments there are to administer it, are redundant as long as there is less government overall.

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# Government for the people, not by the people

Populism and parliamentary governance  
under Stephen Harper

Clark Banack<sup>1</sup>

(O)ur recent Speech from the Throne set out our vision for the future. And, friends, when we say “vision,” we don’t mean some ivory tower theory. That’s what passes for vision among elites in Ottawa. For something to be called “visionary” in Ottawa, it has to be a new government program with a billion-dollar price tag. And, usually, completely impractical to boot, with no benefits for ordinary taxpayers or working Canadian families. No, friends, our government’s vision is about securing real prosperity for real people.... So that Canadian families who work hard, pay their taxes, and play by the rules, so they can benefit, so they can get ahead...

That’s why Laureen and I first left our home here in Calgary. We didn’t go to Ottawa to join private clubs or become part of some “elite.” That’s not who you are; it’s not who we are. We are in Ottawa only so the government of Canada can serve you...To secure a prosperous Canada, for our generation, for our children’s...For those unsung Canadians...The cab drivers, the small business owners, the farmers and foresters and fishermen, the factory and office workers, the seniors who have spent their lives contributing...Those honest, decent, hard-working Canadians, old

and new. These are the Canadians for whom we strive, and we in this party won't ever forget it.

— *From Stephen Harper's address to the Conservative Party of Canada convention, November 1, 2013*<sup>2</sup>

STEPHEN HARPER'S ADDRESS to the 2013 Conservative Party convention was laced with a clear populist message that called out "elites" in various incarnations for continually hampering the party's efforts to secure "real prosperity for real people.... Canadian families who work hard, pay their taxes, and play by the rules." *Globe and Mail* columnist Lawrence Martin immediately charged Harper with hypocrisy, suggesting that his penchant for siding with large corporations over unions, appointing judges ill-disposed to the Charter, and, above all, centralizing and expanding executive power "at a rate heretofore unseen," reeks of a government that is, at root, no friend of "the little guy."<sup>3</sup> This chapter seeks to make sense of this alleged hypocrisy, focusing especially on Harper's use of populist democratic rhetoric, on one hand, while consistently centralizing executive political power on the other. There is a logic behind Harper's behaviour in this regard, but it only becomes apparent when one grasps the manner by which his ideological worldview interacts with his populist conception of society. Once this interaction comes into view, so too does a version of technocratic populism that understands the bypassing of parliamentary deliberation as an *enhancement* of democracy rather than a *curtailment*.

Many observers have pointed to the irony inherent in the use of such populist democratic language given the Harper government's clear contempt for the House of Commons, the institution that sits at the centre of our representative democracy. The consistent utilization of ironclad party discipline (controlled largely by an unelected Prime Minister's Office), tactics to stonewall both legislative committees and the parliamentary press gallery, massive omnibus bills, empty answers in Question Period, and even repeated prorogations to stall parliamentary inquiry and delay a confidence vote, are some of the most glaring offences committed by this government against Canada's parliamentary system. Such behaviour is especially peculiar given the party's strong links to the now defunct Reform Party of Canada, whose populist founder Preston Manning promised to greatly enhance democracy in Canada by loosening the grip of party discipline within Parliament and employ various mechanisms of direct democracy to restore "the common sense of the common people' to a more central position in federal politics."<sup>4</sup>

Given the Harper government's record on such matters, Martin's general charge of hypocrisy against Harper for "playing the populist card" while simultaneously displaying blatant contempt for the House of Commons seems quite legitimate. Academics have also observed this trend. James Farney notes that Harper has aban-

done traditional populist talk of ensuring “the people” have more say in political decision-making, but continues to speak of protecting “the people’s” interests by clamping down on the entitlements claimed by “elites and special interests.”<sup>5</sup> In addition, David Snow and Benjamin Moffitt have offered an impressive consideration of the broader sociocultural dimensions of Harper’s populist rhetoric.<sup>6</sup> Yet most academics tend to conclude that the use of such rhetoric is simply a cynical gimmick aimed at broadening their electoral base while ensuring unity between the fiscal and social conservative wings of the party.

There is little doubt that the Conservatives employ such populist rhetoric to aid in their quest for re-election. Recent research in the field of political psychology has confirmed populist discourse that sets up a simple “Us vs. Them/Good vs. Evil” mentality is incredibly effective at stimulating the emotional sides of our brains and subsequently motivating our electoral behavior in ways that do not always coincide with our rational self-interest.<sup>7</sup> This is a truth that the Harper Conservatives are surely aware of.

Yet, it is an oversimplification to assume Harper’s tendency toward populist discourse is *solely* an inauthentic electoral ploy. Similarly, it is a mistake to declare Harper’s efforts toward this centralization as being *solely* the product of an authoritarian personality. Harper may very well be a “controlling” fellow but a closer consideration of his ideological position reveals a deeper populist democratic logic at work. This logic is tied up in a broader neoliberal worldview that subsequently colours his approach to parliamentary governance. In its simplest formation, neoliberalism is an ideology that suggests individuals are best-off living under a retrenched state that allows the market to operate largely unregulated. As his comments above suggest, Harper essentially conceives of society as being divided between the “real people” and those left-leaning “special interests” that seek to block the advance of neoliberalism by enhancing the welfare state. This conception generates a technocratic populist outlook wherein preventing such “special interests” from hampering a neoliberal agenda that benefits “the people” becomes a central political goal. Because such “special interests” can potentially capture the House of Commons, it becomes an institution that should be legitimately bypassed in the interests of “the people.”

The remainder of this chapter will expand on this argument by first using three political movements from Canadian history to explore the meaning of the term populism and its ambivalent relationship with representative democracy. I will then sketch the manner by which the Harper government is operating from a distinct neoliberal populist foundation from which a particular democratic logic flows. It is in unpacking this logic that we can begin to make better sense of the party’s behaviour with respect to Canada’s Parliament.

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## Populism and representative democracy

Populism has become a contested concept among academics whose efforts to provide a comprehensive definition inevitably encounter an array of distinct political movements or popular political leaders that share little in common beyond the label “populist.” Much of what has been written about populism recently, especially by journalists thinking about the Harper government, tends to equate populism with either: (a) attempts to present the leader in a “folksy” way; (b) opportunistic campaign promises meant to garner the support of “the ordinary citizen” (seeking to lower cell phone and cable bills, for instance); or (c) grassroots movements that demand reduced party discipline and enhanced mechanisms of direct democracy capable of extending decision-making powers to the masses. Certainly a good number of populist campaigns have been built upon one or all of these elements. But writers focusing solely on grassroots movements or a “folksy” appeal to the electorate miss the real essence of populism as a particular strand of democratic thought.

Peter Wiles has suggested that populism refers to any creed or movement founded upon the belief that “virtue resides in the simple people...and in their collective traditions.”<sup>8</sup> Yet, such a definition fails to get to the heart of the overt and active political nature of populism. Following Francisco Panizza, I suggest a complete definition of populism must also allude to the constitution of such “simple people” as a single political actor driven by “an anti–status quo discourse that simplifies the political space by symbolically dividing society between “the people” and its “*other*.”<sup>9</sup> Cas Mudde and Cristobal Rovira Kaltwasser agree. They define populism as “a thin-centred ideology that considers society to be ultimately separated into two homogenous and antagonistic groups, ‘the pure people’ and the ‘corrupt elite.’”<sup>10</sup> And, as David Laycock has noted, this outlook generates an anti-establishment sentiment built upon a “democratic morality according to which the stifling of the people’s will...is a normatively unacceptable political practice.”<sup>11</sup> Although there are variations among divergent populist movements regarding who constitutes “the people” and “the elites,” they share at their foundation the overarching goal of radically altering the existing political reality. Their aim is to prevent “the elites” (however constituted) from continually ignoring the interests of “the people” (however constituted).

Despite this shared “democratic morality” that underlies all populist thought and action, distinct populist movements have put forth very different solutions to the problem of “elite” control. Each of these solutions has varied in terms of how well they coincide with widely accepted standards of contemporary representative democracy.<sup>12</sup> A quick review of the approaches to solving this problem by three dif-



ferent movements identified by Laycock in his various studies of populist movements in Canada illustrates this point nicely. Indeed, each of the United Farmers of Alberta (UFA), who ruled Alberta from 1921–1935, the Alberta Social Credit League, who governed from 1935–1971, and the federal Reform Party of Canada, which roamed the federal opposition benches throughout the 1990s, was built upon the simple notion that the ordinary people were being exploited in some way by a cadre of elites. More fundamentally, they each shared a sense that this problem arose because political institutions traditionally relied upon to translate citizen preferences into public policies (such as legislatures or political parties) had been compromised by such elites.

Yet the three movements diverged sharply when it came to implementing reforms aimed at overcoming this problem. For Henry Wise Wood, president of the UFA, the people's interests were consistently overlooked because traditional political parties were strongly susceptible to elite control. Thus, reasoned Wood, political parties had to be replaced in the legislature with occupationally based groups that answered directly to citizens active in locally organized deliberative and educational forums.<sup>13</sup> In other words, Wood's response to the problem of "elite" control was not to abandon or bypass representative government but to transform it by ensuring meaningful local control over the people's representatives by ordinary engaged citizens.

William Aberhart, founder of the Alberta Social Credit League that won power from the UFA in the midst of the Great Depression in 1935, exhibited a similar populist concern with the power held by elites at the expense of the people. However, Aberhart abandoned the UFA's insistence on intense grassroots deliberation in favour of a top-heavy technocratic populism built around his faith in the complex workings of social credit economic theory. The movement continued to rely upon thousands of grassroots supporters who helped to spread the message of social credit economics to the unconverted. However, as Laycock demonstrates, that participation was restricted to mass education and organizational tasks. Supporters were not encouraged to participate in more meaningful avenues wherein they could "critically assess their problems, or develop their own solutions."<sup>14</sup> In fact, Aberhart also relegated "the people's" representatives within the legislature, his own MLAs, to the sidelines. He preferred instead to allow non-elected social credit "experts" to install social credit legislation and thereby solve the Depression that was harming regular citizens.<sup>15</sup>

Aberhart did strive to maintain an ongoing connection with "the people," but this was done not through the legislature, wherein he rarely spoke, or through the mainstream press, with which he bitterly feuded, but rather through his popular weekly religious-based radio program. This overall approach to democracy implied that the deliberative political life stressed by the UFA was largely unnecessary.

Rather, Aberhart's actions suggested, "the people's" desire that the Depression's end could be answered simply with the implementation of social credit economic reforms. The result was a "model of benevolent technocracy," delivering a form of populism far different from the participatory model advanced by the UFA.<sup>16</sup>

At first glance, Aberhart's version of populism seems far removed from the approach to democratic governance offered by federal Reform Party founder Preston Manning. Indeed, his efforts in the 1990s to bring the "common sense of the common people" to bear on political decision-making forums seemed to resemble the participatory hopes of the UFA. Throughout his tenure, Manning advocated reforms meant to ensure that MPs were beholden to local interests thereby preventing "elites" from capturing the legislature. Yet, a strong skepticism about the capacity of Parliament to ever become fully "democratized" also permeated the Reform Party. Thus, the party demanded an additional round of structural reforms meant to cut out the parliamentary "middle men" all together. These were the direct democracy tools of recall, initiative, and referenda that would allow ordinary people a significant voice in the decision-making process without being mediated by traditional political parties. Parties were, after all, too easily captured by "special interests."<sup>17</sup>

Yet, at the heart of Reform's "populist" conception of the political power structure in Canada was a unique neoliberal conceptualization of political reality. In their view, a newly articulated cadre of "elites" were harming "the people." The Reform party did not single out the political influence of Central Canadian grain buyers, industry tycoons, or wealthy bankers, as had the UFA and Social Credit. As Laycock demonstrates, Reform's contemporary brand of "new-right" conservatism ensured that the enemies of "the people" were now defined as those "special interests" that "support the welfare state, oppose major tax cuts, and propose that social resources should be allocated on the basis on non-market principles."<sup>18</sup> Direct democracy was therefore meant to construct a direct connection between "the people" and the "results" they seek by curtailing any potential distortion of "the people's" preferences by intermediary political institutions. Reform opposed any effort to place non-market-based impediments between individuals and their basic political desire for a smaller, less intrusive state.

The result was a model of governance wherein direct democracy mechanisms would be utilized to ascertain the people's preferences and bring them to bear on national policy debates. But this would be done, Laycock notes, in a way that bypassed "the social processes and political institutions that serve to moderate individual interests in light of community needs." Such deliberative institutions, whether they be community groups, larger social movement organizations, trad-

itional political parties, or Parliament itself, are too easily captured by the welfare-state apologist “special interests.”<sup>19</sup>

This is not to say that Manning was insincere in his desires to engage citizens in the democratic process in meaningful ways. However, underlying the party’s simultaneous commitment to both follow the will of “the people” and work toward reducing the size and scope of the welfare state was the implicit assumption that the latter goal was something clearly desired by “the people.” Anyone who was opposed to such an ideological position was understood as being either the victim of “special interest” manipulation or, worse, a “special interest” themselves. Thus, despite a deeper initial commitment to citizen engagement than one finds in Alberta Social Credit, the Reform party maintained an overarching ideological or “technocratic” assumption that drastically reduced the need for the kind of deliberation that the UFA sought to nourish at the grassroots level, or of the kind that is meant to occur in Parliament. It was simply assumed that a neoliberal-inspired attack on the welfare state was unquestionably the path best suited to meet the needs of “the people.”

This desire to circumvent traditional political institutions arises because the debate they house is seen to be at best redundant or at worst easily manipulated by the forces that harm “the people.” It is in precisely this strain of technocratic populism where one finds the central link between Alberta Social Credit, Reform, and now the Harper Conservatives. What binds all three parties together is their shared interest in ascertaining the general will of “the people” directly, whether it be by interacting within citizens in Bible study groups (Social Credit), holding a referendum (Reform), or simply abiding by results of the general election (Harper Conservatives), then attempting to prevent this “will” from being manipulated or overshadowed within traditional institutions such as the legislature. In other words, traditional representative democracy becomes an arena that must be bypassed to a large degree to prevent “the people’s” will from being distorted by “special interests.”

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## **Technocratic populism and contempt for Parliament**

Originally a Reform MP, Harper became leader of the Conservative Party in 2004 shortly after the merger between the Progressive Conservative and Canadian Alliance (formerly Reform) parties. Although talk of direct democracy faded quickly under his leadership, Harper promised enhanced government transparency, increased freedom for MPs to represent constituents, and significant policy influence for party members. Yet, as numerous critics have noted, traditional forms of party

discipline and executive control have remained intact. Indeed, Richard Johnston notes the Conservatives have clearly shed any of the Reform party's "anti-system" leanings. They can now be classified as a "pro-system" party that is "willing to work with the Westminster model" by running candidates across the country and employing strict party discipline thereby "signaling that it is serious about seeking power."<sup>20</sup> Similarly, Tom Flanagan's organizational comparison of the former Reform Party and the current federal Conservatives demonstrates that, while certain "populist" elements remain (such as a focus on grassroots fundraising, a "flat" party organization, and the efforts to display Harper as a man of simple and common tastes), the Conservatives have abandoned those aspects that provide members meaningful power to dictate policy.<sup>21</sup>

It is certainly true that the Harper Conservatives are not a pure populist party in the sense of Reform, a party whose central appeal was built primarily upon their demands that "ordinary people" should be given more voice in the policy process. But most comparisons between the two parties largely overlook the manner in which the Harper government is operating by way of a familiar neoliberal populist foundation, what Sawyer and Laycock have labeled a "market populism," from which a particular democratic logic flows.<sup>22</sup>

In essence, the Harper Conservatives abide by a particular technocratic or ideological conception of political life that rests on two central and interrelated assumptions. First, the Harper government sees a clear and unmistakable solution to the problems that hamper the economic well-being of ordinary citizens in the form of neoliberal economic orthodoxy.<sup>23</sup> That is, "the people" will best be served by a re-trenched state that allows the market to operate free of the regulation called for by such anti-market "elites." Second, political reality is authentically divided between "ordinary people" and a particular sect of "elites" who continually work to impede the well-being of "the people" from being realized. In fact, as Harper's address to the 2013 Conservative convention suggests, he employs a clear neoliberal definition, initially employed by the Reform Party. He conceives of "the people" as the hard-working and ordinary middle class, those "honest, decent, hardworking Canadians" who "pay their taxes and play by the rules." The "elites," on the other hand, are those same left-wing, welfare state-proponent "special interests" found within the academy, the judiciary, the bureaucracy, the unions, the environmental groups, and so on.<sup>24</sup>

This conceptualization clearly goes beyond the level of rhetoric for the Harper Conservatives. Harper's policies and practices all speak to a clear pattern of demonizing and attempting to render impotent the same kinds of left-wing "special interests" that were targeted by Reform. For example, government funding cuts to the CBC, the National Film Board, various arts groups and women's organizations,

in addition to the government's ongoing attack on both organized labour and the Canadian Wheat Board, its insistence that the Canadian International Development Agency (CIDA, now folded into the Department of Foreign Affairs, Trade and Development) tie international aid to Canadian economic interests abroad, its silencing of government scientists who challenge the government's official line on climate change, and, of course, its vilification of environmentalists, Aboriginals, and concerned citizens who dare question the safety of oil pipelines all speak to this agenda.

To argue that Harper is a neoliberal who utilizes "people vs. elite" rhetoric is certainly not new. However, most observers tend to focus their analysis at the negative implications of the neoliberal policies implemented by Harper on various groups within society. They overlook the manner by which these tenets work together to produce a technocratic democratic logic that helps to explain the Harper Conservative's continual dismissal of Parliament as a legitimate and worthwhile institution.

This logic is clearly evident in the party's actions. Indeed, as has been documented by a number of his critics, Harper insists on rigid discipline from his MPs while relying upon a highly partisan public relations team to produce speaking points for them on all matters, large or small. In addition, the Conservatives routinely stonewall Parliament and parliamentary committees that request information on government decision-making. They even stooped to the level of producing a secret guidebook, later leaked to journalists, which instructed MPs on a variety of tactics that could subvert or derail the work of parliamentary committees that raised uncomfortable questions for the government.<sup>25</sup> Harper also employs impressively lengthy omnibus bills containing a whole host of measures that traditionally would proceed through the House of Commons individually thereby limiting the capacity of MPs and their committees to investigate and debate them. More recently, word leaked of an "enemies list" meant to warn incoming Conservative cabinet ministers of troublesome bureaucrats who push left-leaning "pet projects" rather than tow the government's neoliberal line.<sup>26</sup>

Of course, such a list of parliamentary transgressions remains incomplete without briefly alluding to Harper's notorious penchant for proroguing the House of Commons. Surely the most egregious offence occurred in late 2008 when Harper requested a prorogation of Parliament from the Governor General in order to delay a confidence vote and buy time to persuade the public such a move was democratically illegitimate. That a prime minister would grasp at an opportunity to retain power is not surprising, but the arguments Harper used during this parliamentary "time-out" clearly spoke to his suspicion of parliamentary democracy in general. Harper, alongside prominent Conservative cabinet ministers and supportive academics, took to the airwaves to directly question the democratic nature of the

responsible government system that would allow “party leaders” rather than “the people” to choose the government.<sup>27</sup> And, after being found to be in “contempt of Parliament” in 2011 by a special parliamentary committee after repeatedly refusing to hand over government documents related to the cost estimates of a controversial purchase of fighter jets, Harper brushed off the historic ruling with a quip about it representing “parliamentary games that regular people outside Ottawa did not care about.”<sup>28</sup>

Although these represent only the most obvious of many offences, it is clear that supporters of parliamentary democracy have something to complain about when it comes to the behaviour of Harper’s Conservatives. Surely they are not the first party to use the opportunities available to governments, especially majority governments, to largely bypass Parliament on certain issues. Nor have such efforts been without controversy within the Conservative caucus itself (which retains elements still loyal to Reform Party ideals related to enhancing the power of back-bench MPs to represent their constituents).<sup>29</sup> Yet it is too simplistic to suggest that Harper’s “authoritarian” personality or his “nastiness” leads to such outcomes.<sup>30</sup> This misses the deeper way in which this pattern of “anti-parliament” behaviour fits into the technocratic and populist logic of Harper’s overall worldview.

The Harper Conservatives, in subscribing to the notion that neoliberalism is the panacea for what ails “the people,” assume the central interests of “the people” are clear-cut and pre-political and therefore beyond the realm of deliberation meant to occur in Parliament. Surely Harper understands that society is made up of a plurality of groups with distinct hopes and dreams. But according to the logic of neoliberalism it is only by working to ensure authentic market freedom that the government can provide each individual the best possible chance to pursue these distinct hopes.

Transposing such a worldview onto Parliament generates something akin to what David Pond coined a “neoliberal theory of representation.” At its root is a familiar right-wing conception of the “legitimation crisis” currently faced by representative democracies. This crisis is understood to arise due to the enhanced power anti-market “special interests” hold over the public sector. This prevents “the government from acting effectively in response to the popular will, as expressed in the ballot box on election day.” Thus, Pond continues, the government must reconnect directly with taxpayers in a way that bypasses such “special interests” in order to restore democratic legitimacy to the system.<sup>31</sup> It is precisely this logic that lies at the root of the Harper government’s approach to parliamentary democracy. From the Harper Conservatives’ perspective, “the people” have consented to the Conservative platform in the general election. Parliament itself is an institution inherently susceptible to being captured by “special interests” by way of the vari-

ous mechanisms available to MPs to challenge the plans of the government. It is therefore justifiably bypassed.

A further illustration of this outlook is seen in the way the Harper Conservatives bypass much of the mainstream press. It is argued the media's left-leaning sympathies ensure a particular "filter" on coverage that plays into the hands of the "special interests" and therefore against the interests of "the people."<sup>32</sup> The Harper Conservatives therefore attempt to take their message directly to "the people" by seeking out local journalists and Internet bloggers. This is reminiscent of Aberhart's attempts to bypass not only parliament but also the mainstream media by way of his radio program in the 1930s.

Taken together, the Harper government's approach to parliamentary governance is nearly a carbon copy of the model of "benevolent technocracy" Laycock identified in the populist actions of Aberhart's Social Credit. In both cases it is understood that the needs of the "people" can clearly be answered through the implementation of a particular economic program (social credit for Aberhart, neoliberalism for Harper) and thus deliberation, whether it occurs between individual citizens in the public sphere or elected representatives within a parliament, is simply not required. Moreover, given the very real possibility that "elites" ("big-shot" bankers for Aberhart, the welfare proponent "special interests" for Harper) may "capture" such deliberations, it is best to avoid them altogether for the sake of "the people."

Rather, the democratic legitimacy required to implement the appropriate economic theory is assured by regularly held elections that generate a clear "general will" that approves such action. The democratic legitimacy of such action is further enhanced through efforts to bypass the mainstream press, which is also easily captured by "the elite," and establish a direct connection between the leader and "the people" (maintained by Aberhart through his radio program, Harper by his connection with local presses). The parliamentary principle of "responsible government," which demands MPs within the House of Commons hold the government to account in between elections, is treated as an outdated and undemocratic convention that interferes with "the will of the people." Thus, bypassing Parliament is, in the end, a method employed to enhance rather than curtail authentic democracy, or so the logic goes.

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## Conclusion

There is little doubt the Harper Conservatives routinely employ populist rhetoric. This is a strategy that helps the party gain supporters and maintain party unity in a time wherein broad structural changes in the economy have left large swaths of

the middle class feeling insecure and often unheard. Of course, other parties offer electoral platforms, built atop distinct ideological foundations, that reach out to the same voters with promises to implement policies that will better meet their needs. However, the Conservatives stand alone among current federal parties in tying their distinct ideological position (neoliberal) to a broader theory of democratic renewal that addresses the legitimization crisis present in so many contemporary representative democracies.

For “Canadian families who work hard, pay their taxes, and play by the rules,” only the Conservatives’ dedicated efforts to head-off the “special interests,” the argument goes, can truly ensure “the people’s” needs are being given the highest priority. In other words, the Harper Conservatives offer a clear ideological package that appeals to what Laycock has labeled “the democratic imaginary” of potential supporters. They do this just as the Reform Party, Alberta Social Credit, and the UFA did before them.<sup>33</sup>

However, Reform and the UFA sought to employ distinct reforms that increased the avenues of access open to ordinary Canadians. The Harper Conservatives have instead followed the model of Aberhart and embraced a strategy of simply representing the needs of “the people” in a way that does not rely upon direct democracy or parliamentary deliberation. Rather, in an extension of the democratic logic that was often blurred within Reform, the Harper Conservatives have fully embraced a technocratic faith in neoliberalism as the panacea for ordinary Canadians’ economic insecurities. Direct democracy, therefore, is simply not needed.

Nor, it appears, is parliamentary deliberation. In fact, such deliberation is often deliberately bypassed in the hopes of *enhancing* not curtailing democracy in Canada. Political observers concerned with the representation of diverse voices in this country — the very voices that often speak for the victims of neoliberal policies — may find such “bypassing” troubling. It is, however, the logical extension of the unique ideological and populist worldview adhered to by the Harper Conservatives. It is “government for the people” but it is surely not “government by the people.”

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## Endnotes

- 1** The author would like to thank all those who commented on earlier versions of this paper, especially Morgan Boyco and Teresa Healy. Also, the title “Government for the People, not by the People,” was shamelessly lifted from a conversation on this topic with Roger Epp.
- 2** Stephen Harper’s address to the Conservative Party of Canada convention on November 1, 2013 was accessed through iPolitics. <http://www.ipolitics.ca/2013/11/01/verbatim-stephen-harpers-speech-to-the-calgary-convention/>. Accessed Nov 9, 2013
- 3** Lawrence Martin, “As a Populist, Harper is no Chretien,” in *Globe and Mail*, November 5, 2013. <http://www.theglobeandmail.com/globe-debate/as-a-populist-harper-is-no-chretien/article15246438/#dashboard/follows/>. Accessed November 6, 2013.
- 4** Preston Manning, *The New Canada*, (Toronto: Macmillan Canada, 1992), 26.
- 5** James Farney, “Canadian Populism in the era of the United Right,” in *Conservatism in Canada*, edited by James Farney and David Rayside, (Toronto: University of Toronto Press), 43–58.
- 6** David Snow and Benjamin Moffitt, “Straddling the Divide: Mainstream Populism and Conservatism in Howard’s Australia and Harper’s Canada,” in *Commonwealth and Comparative Politics*, Vol. 50, No. 3 (July 2012), 271–292.
- 7** See, for instance, Drew Weston, *The Political Brain: The Role of Emotion in Deciding the Fate of the Nation*, (New York, NY: Public Affairs, 2008) and George Akerlof and Rachel Kranton, *Identity Economics: How Our Identities Shape Our Work, Wages, and Well-Being*, (Princeton, N.J.: Princeton University Press, 2011).
- 8** Peter Wiles, “A Syndrome, Not A Doctrine: Some Elementary Theses on Populism,” in G. Ionescu and E. Gellner ed., *Populism; Its Meaning and National Characteristics*, (London: The Macmillan Company: 1969), 166–179.
- 9** Francisco Panizza, “Introduction: Populism and the Mirror of Democracy,” in F. Panizza ed., *Populism and the Mirror of Democracy*, (London: Verso, 2005), 3.
- 10** Cas Mudde and Cristobal Rovira Kaltwasser, “Populism and (liberal) democracy: a framework for analysis,” in C. Mudde and C. Rovira Kaltwasser ed., *Populism in Europe and the Americas: Threat or Corrective for Democracy*, (New York: Cambridge University Press, 2012), 8.
- 11** David Laycock, “Populism and the New Right in English Canada,” in F. Panizza ed., *Populism and the Mirror of Democracy*, (London: Verso, 2005), 173.
- 12** The ambivalent nature of the relationship between populist political thought and the concrete practices of liberal democracy is explored at length in Mudde and Rovira Kaltwasser, “Populism and (liberal) democracy: a framework for analysis.”
- 13** Henry Wise Wood lays out his conception of “Group Government” in a series of articles initially published in *The UFA*. See: H. W. Wood, “The Significance of Democratic Group Organization — Part One” in *The UFA*, March 1, 1922, 5, H. W. Wood, “The Significance of Democratic Group Organization — Part Two,” in *The UFA*, March 15, 1922, 5, H.W. Wood, “The Significance of Democratic Group Organization — Part Three,” in *The UFA*, April 1, 1922, 5, and H.W. Wood, “The Significance of Democratic Group Organization — Part Four,” in *The UFA*, April 15, 1922, 25, 27. Laycock provides an excellent analysis of Wood’s thought in this regard in chapter 3 of: David Laycock, *Populism and Democratic Thought in the Canadian Prairies, 1910 to 1945*, (Toronto: University of Toronto Press, 1990).
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- 15** Aberhart’s treatment of his Cabinet Ministers and MLAs is examined in: C.B. Macpherson, *Democracy in Alberta*, (Toronto: University of Toronto Press, 1953), 169–173, 194–198.

**16** Laycock, *Populism and Democratic Thought in the Canadian Prairies*, 258.

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**18** Laycock, *The New Right and Democracy in Canada*, 10.

**19** *Ibid*, 109.

**20** Richard Johnston, "Situating the Canadian Case," in A. Bittner and R. Koop ed., *Parties, Elections, and the Future of Canadian Politics*, (Vancouver: University of British Columbia Press 2013), 285.

**21** Tom Flanagan, "Something Blue: The Harper Conservatives as Garrison Party," in J. Farney and D. Rayside ed., (Toronto: University of Toronto Press., 2013), 85–88.

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**27** See: Brian Laghi, Steven Chase, Gloria Galloway, and Daniel Leblanc, "Harper Buys Time, Coalition Firms Up," in *Globe and Mail*, November 20, 2008, A1 and Tom Flanagan, "Only Voters Have the Right to Decide on the Coalition," in *Globe and Mail*, January 9, 2009, A13. An Excellent collection of essays that explore the debate around Harper's request for Prorogation in 2008 from a variety of angles can be found in: Peter Russell and Lorne Sossin ed., *Parliamentary Democracy in Crisis*, (Toronto: University of Toronto Press, 2009).

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**31** David Pond, “Imposing a Neo-Liberal Theory of Representation on the Westminster Model: A Canadian Case,” in *Journal of Legislative Studies*, Vol. 11, No. 2 (Summer 2005), 177.

**32** Josh Wingrove, “Tories decry new law for media after standoff over reporters’ access to Harper speech,” in *Globe and Mail*, October 16, 2013. <http://www.theglobeandmail.com/news/politics/tories-decry-new-law-for-media-after-standoff-over-reporters-access-to-harper-speech/article14898556/#dashboard/follows/>. Accessed October 17, 2013.

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# A party for new Canadians?

The rhetoric and reality of neoconservative citizenship and immigration policy

John Carlaw<sup>1</sup>

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## Introduction

THE 2011 FEDERAL election saw the Conservatives complete their long march from Reform Party roots to majority government. With this victory former citizenship and immigration minister Jason Kenney declared them the “party of new Canadians.”<sup>2</sup> Former Conservative and Reform stalwart Tom Flanagan wrote that the party had found a new “ethnic pillar” of electoral support.<sup>3</sup> While the extent of these claims has been challenged, some have argued they offer a positive model to other conservative parties worldwide.<sup>4</sup> In some ways, the Conservatives have accommodated the party to Canada’s modern demographics. In government, they have maintained immigration levels for permanent residency and reached out to new Canadians and “ethnic voters” in a variety of ways<sup>5</sup> as they seek to achieve Stephen Harper’s goal of making the Conservatives Canada’s “natural governing party.”<sup>6</sup>

However, rather than serving as a positive model, the party is better viewed as having taken a creative yet cynical, incremental approach to achieving a majority government and shifting the gravity of Canadian politics to the right. The Conservatives have fostered and in other ways maintained and even deepened exclusionary inclinations held over from their Reform (1987–2000) and Canadian Alliance

(2000–2003) predecessors. Theirs is a highly ideological and *disciplinary* approach to politics aimed at gaining a stable “minimum connected winning coalition”<sup>7</sup> rather than seeking social consensus. The Conservative victory and time in power is best seen as the long-term culmination of a process of “Invasion from the Margin” — the right margin — of Canada’s political system, as Flanagan once framed the Reform project.<sup>8</sup> The Conservative government’s policies adversely affect many actual and aspiring immigrants and have weakened democracy in policy-making in these fields. It has also attempted to change the nature of public debate on citizenship, immigration and Canadian identity in troubling ways. Such trends are evidenced in the 2014 *Strengthening Canadian Citizenship Act*.

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### **The politics of forging a “minimum winning coalition”**

The Conservatives’ approach to achieving a majority government and a “minimum winning coalition” has involved a great deal of strategic thinking and a creative form of neoconservative politics by Canada’s political right. By the late 1990s, Stephen Harper argued that the “three sisters” of Canadian conservatism needed to be reunited: Western populists, traditional Tories of Central and Eastern Canada, and Quebec nationalists.<sup>9</sup> But even after forming the new Conservative Party in 2003 their efforts in Quebec have foundered. In the 2000s, they gradually increased their efforts to incorporate “ethnic voters” into the Conservative political tent. Such voters in the 2011 election were ultimately counted by Flanagan — who served as a Conservative campaign manager to the mid-2000s — as a new “third and essential pillar” of electoral support to replace that of Quebec.

The party’s inherited baggage and policy stances from the Reform days had alienated many “ethnic voters.” According to Flanagan, however, the Conservatives’ electoral success is attributable to hard work rather than any significant policy innovations. This work involved “the patient effort of establishing contact — visits...to ethnic events; recruiting multicultural candidates and political organizers; printing political materials in [other] languages.” These, Flanagan noted, were steps “easy to enumerate,” but took years to achieve.<sup>10</sup> Flanagan remarked that they may “have a different skin colour” and different first language than “core” Conservative voters. But he touted the character of some new Canadians for their religiosity and their economic and social conservatism.<sup>11</sup> Perhaps best of all, he asserted that they make few demands on government, allowing a coalition of such voters with the party’s traditional base to be “connected.”<sup>12</sup> Thus the political project on offer by the Conservatives is that of assimilation to neoconservative and social-conservative thinking, with nods to diversity and multiculturalism.

In the same piece, Flanagan outlined the exclusionary nature of politics for the Conservative Party in a way that helps to account for the nature of many of their policies. Flanagan argued that “rational actors” – basically intelligent and strategic politicians – will seek “a minimum winning coalition (MWC), that is, a coalition barely large enough to win,” noting that the “theorem is counterintuitive, for politicians normally speak as if they would like to have everyone’s support.” However, Conservative strategy runs counter to the notion of brokerage politics, whereby one would feel the need to reach out to most of the Canadian population to win votes by appealing to or seeking to generate social consensus. Instead, Flanagan argues, “if the purpose of a coalition is to deliver *benefits to the included at the expense of the excluded*, it follows that the winning coalition should be as small as possible if it is to maximize benefits to the participants per capita” (emphasis added). Under this logic the new “coalition” the Conservatives had achieved in 2011 was “ideal.” Canada’s first-past-the-post political system and its multiple parties gave the party a majority government with 39.6% of the popular vote. It was the perfect size because larger coalitions would be too difficult to manage, having to accommodate too many members.<sup>13</sup> Rather than attempt to balance complex policy areas, winners and losers could and must be chosen.

Flanagan noted the party had focused much of its efforts on relatively few seats in the suburban Greater Toronto Area (GTA). He remarked that in such areas this “increase in ethnic support released a treasure trove of seats.”<sup>14</sup> Indeed, as Soroka et al note, nationally the Conservative base in 2011 had not changed greatly from 2008 in terms of the source of its votes or its proportion of the popular vote. However, the Conservatives achieved “fundamentally different” results in terms of seats. And there had been a marked pre-2008 shift in vote intentions in their favour, similar to other groups of Canadians.<sup>15</sup> However, casting their message narrowly in specific ridings unlocked their “treasure trove.” They did this in part by shifting significant financial resources for communications and polling from safe Conservative ridings to those they sought to win.<sup>16</sup> In addition, as Kenney had long argued they should, the Conservatives decided to “show up” to this political contest after decades on the sidelines and sought to forge strong interpersonal relationships with diverse communities.<sup>17</sup> There was more marketing to this conservative populist approach than a progressive shift in party thinking.

The party’s long-term project in the 2000s has been painted in highly instrumental and even paternalistic terms. Flanagan notes that the Conservatives’ task was not to offer “a potpourri of new benefits” to new Canadians. Rather, it was “*to help them realize* that their convictions and interests would be better represented by the Conservatives than by any other party” (emphasis added).<sup>18</sup> Flanagan has framed these efforts as a top down and “clientalist” form of politics revolving around rela-

tionships with community leaders. These relationships require a process of “cultivation” to mobilize “ethnic voters” at election time.<sup>19</sup> This attitude might help explain how the Conservatives occasionally find themselves in hot water. In one instance they were criticized for a patronizing campaign event where they asked people to arrive “in costume” to ensure better photo-ops.<sup>20</sup> They also unwittingly invited an anti-immigrant group to a meeting of the standing committee on citizenship and immigration, as the group’s discourse apparently rang true to some of their constituents.<sup>21</sup> These efforts built upon an exclusionary foundation. One of the party’s first major outreach efforts came in 2005 by appealing to “conservative values” opposing marriage equality. In this instance, Stephen Harper sought a divisive “wedge issue” to reach out to “ethnic voters” through their own media outlets.<sup>22</sup>

Conservative documents and statements present the need to reach out to such voters for predominantly electoral reasons. For the Conservatives, it is all about the numbers. An accidentally shared 2011 PowerPoint presentation by the party entitled *Breaking Through: Building the Conservative Brand* presents diversity as “the new reality,” even though Canada has been a diverse society for decades. In the presentation, ridings targeted for a potential media buy are described as “Target Ridings – Very Ethnic” with a message that “There Are Lots of Ethnic Voters,” that “There Will be Quite a Few More Soon,” and that “They Live *Where We Need to Win*” (emphasis added). The key message for the party has been the “Need to Positively Brand CPC [Conservative Party of Canada] in Target Communities.” The party would do this through paid media advertising in the “ethnic press.”<sup>23</sup> Such an approach grafts support onto the party’s base rather than changing core principles. For the Conservatives, “ethnic voters” are units to be moved or won, although at least one slide does acknowledge a need “to develop mutual trust, respect and understanding.”<sup>24</sup>

Unfortunately large numbers of (im)migrants and refugees have been perceived by the Conservatives as groups that can be excluded or their lives and existence made more difficult and precarious. The Conservatives’ overall preference for a “winner-take-all” coalition is emblematic of their divisive approach to governing. For example, they have euphemistically asserted that 20% of the “ethnic vote” is inaccessible to them<sup>25</sup> because of “foreign policy issues.”<sup>26</sup> The federal government’s unequivocal and uncritical support for the state of Israel, despite the suffering of Palestinians, has troubled many Canadians, particularly those of Arab and Middle Eastern background. Groups representing such Canadians have seen their organizations targeted by the government both verbally and in terms of funding cuts (see Eliadis chapter).<sup>27</sup> With such an approach perhaps it is not surprising that according to an exit poll the Conservatives only received the support of 12% of Muslim voters in the last election.<sup>28</sup> As described later in this section, refugee claim-



ants have also been subject to an unrelenting series of discursive and legislative attacks. When taken together, it can be seen that these are not the calculations of consensus or brokerage politics in the fields of citizenship and immigration.

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## Forging a new “Canadian common sense” and reconfiguring Canadian nationalism

The Conservatives recognize and in many ways have accommodated themselves to a popular consensus and demographic realities favouring expansionary immigration policies and multiculturalism. Such perspectives are considered by many to be central to Canadian identity.<sup>29</sup> But within this context they have taken the initiative to shift popular understandings of Canada to make it a more hospitable place for neoconservative policies and practice. The Reform Party had been held back by its reputation and the vocal intolerance of some of its members.<sup>30</sup> But over the course of the 1990s, the leadership of the party, particularly Stephen Harper and Tom Flanagan, worked to cleanse the party’s platform of its most offensive statements on immigration and multiculturalism.<sup>31</sup> Nonetheless, as Kirkham noted, though the party became “less vitriolic” about immigrants and refugees, it continued to foster a belief that the system was “out of control”<sup>32</sup> and thus in need of some form of remedy or reform to restore order. Important elements of this tone remained through the Canadian Alliance and Conservative incarnations of the party.

By 2000, the Alliance version of the party recognized the positive contributions of immigrants and promised to maintain immigration levels in their platform.<sup>33</sup> This policy remains, but it also obscures other significant policy shifts. It is one that helps to inoculate the party from criticisms of being “anti-immigrant,” despite the negative impacts of their policies on many immigrants and migrants, particularly the most vulnerable. They have maintained a law-and-order discourse, though cleansing it of its most openly xenophobic elements. By 2004, the Conservatives became even more publicly bullish on the benefits of immigration to Canada. Their platform presented the Conservatives as a party that “recognizes Canadian society has been built by successive waves of immigration from all sectors of the globe, and that immigration tremendously enriches our economy and national life.” As the party sought to court immigrants and the “ethnic vote” more aggressively, their 2004 platform’s right-populist discourse was shifted to target “special interests” that “prevent immigrants from contributing their best to Canadian society.”<sup>34</sup> Their claims against special interests had shifted from those in favour of immigration during the Reform period *to those who stand in the way of immigrants’ success.*

Potential Conservative voters have been invited to see themselves as “legitimate” and “hard working” immigrants and citizens. They are asked and encouraged to accept the scapegoating and marginalization of other groups. This approach marks a major change in tone from Reform’s early days where immigration itself was a core concern, to the detriment of the party’s electoral prospects.<sup>35</sup> But the Conservative discourse still functions within the realm of right-wing populism, as it maintains and even deepens a vision of “criminals and false refugees who are abusing the system”<sup>36</sup> and who pose a security risk (see Banack chapter). The Conservatives couple these strategies with aggressive assertions of Canadian nationalism. In 2008, their platform was called “True North Strong and Free,” and in 2011, the platform “Here for Canada” struck similar tones.<sup>37</sup> The party also asserted their proactive duty to reframe Canadian identity in a manner that emphasizes a highly Anglicized and militaristic reading of Canadian history.<sup>38</sup>

The party’s efforts to redefine Canadian nationalism and to define the party and Canada itself along neoconservative lines have been highly significant for contemporary citizenship, immigration and multiculturalism policy. In 2000, Harper bluntly expressed his rejection of Pierre Trudeau’s “Just Society” vision of Canada. He argued that it “defies the nature of our culture, our economy and our geography and is inexorably failing as our history unfolds.”<sup>39</sup> However, as Abu-Laban and Gabriel have noted, whatever its limitations, part of that vision of Canada saw the recognition of collective demands of underserved and underrepresented groups, including those outside the dominant Anglophone and Francophone culture.<sup>40</sup> It represented both a more inclusive vision and definition of Canadian citizenship than the norms of Anglo-conformity that had preceded it.<sup>41</sup> For Harper, however, Canada needed “to reassert the fundamentals of its true nationhood” based on the Anglo-American experience. He urged Canada to “no longer be obsessed by a narrow statism at home or an insecure neutralism abroad.”<sup>42</sup> Harper’s Conservatives have since sought to place Canada firmly within a community of English-speaking nations, emphasizing traditional ties to Britain and the United States, instead of its connection to the larger and more diverse global community. This latter position would reflect the demographic shifts Canada has undergone, but a key theme of Conservative governance is to reassert such a lost heritage aggressively. It is consistent with nativist imperial visions of Canada as the heir to a distinct Anglo-nationalism or culture that both harkens back to nostalgia for the British Empire and sees the United States as a model.<sup>43</sup>

Such appeals reveal an attempt to construct a highly regressive form of Canadian nationalism, which new and old Canadians are invited to share. Many of these were well summarized and epitomized in Kenney’s speech as citizenship and immigration minister to the 2011 Conservative convention. Canadians are encouraged, for

example, to ignore the fate of Afghan detainees, dismissed as “Taliban prisoners,” despite the controversy around the handover of detainees by Canadian soldiers to likely torture.<sup>44</sup> We are encouraged to forego any critical appraisal of Canada’s actions abroad in favour of blind nationalism. We are asked to dismiss “left-wing elites” in favour of hard-working Canadians. The Conservatives have worked assiduously to incorporate new Canadians within this imaginary. The party’s Reform predecessor once rejected immigration for its asserted negative effects on Canada’s demographics. In Kenney’s speech, the transition from this position is evidenced in immigrants joining Canada’s list of heroes. They are now among the “practical visionaries who united our country,” “brave soldiers, in every generation,” as “immigrants who have left everything to help build it.”<sup>45</sup> However, such claims and constructions of Canadian identity underplay if not ignore Canada’s colonial past and its contemporary legacies. The Conservatives’ desire to assert a dominant Canadian identity from an idealized past has strongly permeated the party’s political imaginary, together with its citizenship and immigration policies.

These efforts form part of what Arat-Koc has described as a “re-whitening” of Canadian identity, particularly after September 11, 2001. They are influenced by and perpetuate the “clash of civilizations” discourses popularized by Samuel Huntington after the end of the Cold War. In this view, “the West” is pitted against “the rest”<sup>46</sup> in a manner that downplays dissent within countries. Such themes are visible in the “Discover Canada” citizenship guide’s rhetoric concerning “barbaric cultural practices.”<sup>47</sup> The enforcement of a monarchical patriotism is also seen in citizenship ceremonies as officials police oaths to the Queen more strongly than before. Despite having their dictates overturned in court, the government has also sought to ban those swearing the citizenship oath from wearing any form of face covering despite little evidence of a widespread practice or problem.<sup>48</sup> These, as well as recent changes to the *Citizenship Act*, further militarize Canadian identity. They draw stark ideological lines and obscure changes in policy that are detrimental to new and potential Canadians’ interests.

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## Neoconservative governance in citizenship and immigration policy

Divisive polemics and policies have been constant, emanating from Kenney’s and, subsequently, Immigration Minister Chris Alexander’s Twitter feeds, speeches, government press releases, and in legislation. For example, Canada Border Services Agency (CBSA) recorded raids on undocumented workers for the television program *Border Security*.<sup>49</sup> In addition, the government has falsely labelled those

on a highly publicized “most wanted” list as “war criminals” who should be deported.<sup>50</sup> It exerted intense pressure on departmental officials, despite the misgivings they expressed about both initiatives.<sup>51</sup> The Conservatives have also sought to sow outrage about the rights of some children born in Canada to non-citizen parents. They have identified these children as “anchor babies” to be used to gain advantage for their families. While investigating and promoting the possibility of removing birth-right citizenship, the Conservatives say this is a major societal problem, despite little evidence to that effect.<sup>52</sup> The mix of themes of abuse, criminality, patriotism and societal risk are further expressed in the names of government legislation under the Conservatives. These bills include:

- *C-4: Preventing Human Smugglers from Abusing Canada’s Immigration System Act*
- *C-31 Protecting Canada’s Immigration System Act*
- *C-43 Faster Removal of Foreign Criminals Act*
- *C-24: Strengthening Canadian Citizenship Act*
- *S-7: Zero Tolerance for Barbaric Cultural Practices Act*

The Conservatives’ discourses are designed to restructure debate and include a mix of appeals to immigrants, divisive language and a reframing of Canadian identity along militaristic, neoliberal and neoconservative terms.

While the Conservatives have maintained overall immigration levels above 250,000 per year in terms of permanent residents, there have been significant shifts in the immigration system overall. There was a stark decline in the number of refugees offered protection. The decline was greater than 26% from 2006 to 2013 in terms of permanent residents. This reduction would be far steeper were it not for the government’s decision to work through the claims backlog that it created by refusing to appoint claims adjudicators to the Immigration and Refugee Board earlier in the Conservative’s mandate in order to manufacture a crisis in the refugee system, which was then used to help justify draconian changes, some of which the courts have since ruled unconstitutional. The number of claims made within Canada per year declined more than 50% from 2006 to 2013. The Conservatives have also overseen an explosion in the temporary categories of residents in Canada, most notably through the Temporary Foreign Worker Program (TFWP). While these areas are explored separately later in this section, they are worth briefly considering together.

Citizenship and immigration policy is not just about those permitted to become citizens. It is also about those who cannot make it to Canada, whether to seek ref-

**TABLE 1** Permanent Residents, New Asylum Claims and Temporary Foreign Workers in Canada

<b>Permanent Residents</b>							
<b>Category/Year</b>	<b>2006*</b>	<b>%</b>	<b>2010*</b>	<b>%</b>	<b>2013**</b>	<b>%</b>	<b>% change (2006 to 2013)</b>
Economic Class	138,248	54.9%	186,916	66.6%	148,037	57.2%	7.1%
Family Class	70,516	28.0%	60,223	21.5%	79,586	30.8%	12.9%
Refugees	32,499	12.9%	24,697	8.8%	23,968	9.3%	-26.3%
Other (a)	10,375	4.1%	8,846	3.2%	7,028	2.7%	-32.3%
<b>Total Permanent Residents (b)</b>	<b>241,640</b>		<b>280,689</b>		<b>258,619</b>		<b>7.0%</b>
<b>New asylum claims submitted in Canada***</b>	<b>22,910</b>		<b>23,350</b>		<b>10,380</b>		<b>-54.7%</b>
<b>Temporary Foreign Workers(TFWs)*</b>	<b>2006</b>		<b>2010</b>		<b>2012 c)</b>		<b>% change (2006 to 2012)</b>
Entries of TFWs to Canada	138,450		179,075		213,573		54.3%
On Canadian Soil Dec. 1st	160,743		281,928		338,221		110.4%
On Canadian Soil Dec. 1st, Low Skill Pilot Project	2,277		29,067		30,267		1229.2%

**Sources** \*CIC Facts and Figures 2012; <http://www.cic.gc.ca/english/pdf/research-stats/facts2012.pdf>

\*\*CIC Preliminary data for 2013 ; i. <http://www.cic.gc.ca/english/resources/statistics/facts2013-preliminary/01.asp>;

\*\*\*UNHCR <http://www.unhcr.org/5329b15a9.html>, p. 22 and UNHCR <http://www.unhcr.org/4d8c5b109.html>, p. 15

**Notes** (a) By far the largest category of "other" are humanitarian and compassionate grounds cases; the other categories never exceed a total of 159 (2006) in any of these years

(b) Due to rounding totals may not equal 100%; Each year there are 1 to 7 permanent residents under "category not stated"; These have been omitted from the categories listed but are included in the total

c) 2012 data is used for temporary foreign workers as the totals in the 2013 preliminary data are not readily comparable with prior years' figures

uge, to work or to reunite with their family. It is also about those who are here with diminished rights and protections. Unlike temporary foreign workers, many of whom are filling permanent labour market needs, a permanent resident accrues rights including freedom from fear of deportation or visa expiry, the right to live and work without being confined to a single employer or sector, and the right to access social services. Citizenship adds to that greater security of tenure, the right to vote or run for office, and to hold a Canadian passport. In the case of temporary residents, many if not most of these freedoms and rights are denied. The Conservatives have greatly eroded a more permanent model of settlement and made pathways to citizenship more difficult to achieve.

Under the Conservative government, growing numbers of people live in Canada with immigration statuses that offer them less than a secure existence despite contributing to Canada in homes, workplaces and communities. Growth in temporary categories of entry greatly exceeds the modest growth in the number of permanent residents. Such changes represent a further shift away from a pro-

ject of nation-building, where immigrants arrive as permanent residents, to one of temporariness and precarity.<sup>53</sup> There has been particularly strong growth in what have been characterized as low-skill categories in which workers have no access to permanent residency in Canada despite permanent labour market needs.<sup>54</sup> These dynamics are not unique to Conservative policy, but this government has entrenched and expanded them greatly — in some cases exponentially. Thus, conservative populist discourses of acting in the interests of “ordinary people” and “hard working immigrants” often founder against the reality of policies that make (im)migrants’ lives unnecessarily more difficult. In some cases these policies suit the needs of business at the expense of labour and human rights for many on Canadian soil.<sup>55</sup> Discourses of fraud, immigration abuse and militarism obscure rather than address these realities.

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## **The *Strengthening Canadian Citizenship Act***

Several of the themes discussed above are illustrated in the Conservatives’ *Strengthening Canadian Citizenship Act*. With a nod to Canada’s armed forces, and while invoking the War of 1812, Immigration Minister Alexander introduced major changes to Canada’s *Citizenship Act* at Fort York, Toronto in February 2014. The bill changed terms of citizenship that had been relatively constant for more than 30 years. It addressed the problem of “lost Canadians” who, for technical legal reasons to do with prior legislation, unexpectedly found themselves not to be Canadian citizens. Overall, however, the bill increases the barriers to acquiring citizenship and formally introduces inequalities among those who possess it. It increases ministerial power and includes a symbolic attempt to marry Canadian citizenship to militarism, juxtaposing it to terrorism and related acts in the popular imagination. These measures are supported by rhetoric about “strength” and values, though their main attributes weaken access to citizenship. The significance of this rhetoric can be broadly grouped under the following headings:

### **Making citizenship and its associated rights more difficult to obtain**

- Increasing the length of time one must have legally resided in (been physically present) Canada to qualify to apply for citizenship to four out of the previous six years, rather than three of the last four years.
- Increasing residency requirements by eliminating any credit for legal residency in Canada prior to being granted permanent resident status. Previously, up to one year of residency could be credited.

- Broadening the age of the population required to be tested on knowledge of Canada and language ability from persons aged 18–54 to those aged 14–64 years.
- Requiring proof of language proficiency as part of the application for citizenship. Previously language proficiency was tested at the end of the process, allowing new immigrants to use the processing time, which averages two to three years, to continue to improve their language ability.

### **Increased ministerial power and reduced ability to challenge government decisions**

- Reducing the discretion and role of citizenship judges, who once were able to grant citizenship on a flexible basis to those demonstrating a practical understanding of English or on compassionate grounds. Formal written tests are now entrenched as the primary proof of language ability, to the disadvantage of those not educated primarily in English, and affecting the most vulnerable due to the difficulty and expense of such testing.
- Giving the minister more power to revoke citizenship for reasons of fraud. Those affected have less recourse to dispute government decisions. Previously such decisions were taken by citizenship judges, and those the government sought to strip citizenship from had the right to have their case heard in Federal Court.<sup>56</sup>
- Eliminating appeal to the Federal Court as a right when a citizenship application is refused. All challenges to ministerial decisions or those of civil servants can only proceed to the Federal Court if leave is granted for judicial review based on an error of law in the decision, which is discretionary. Such applications for leave are very complex, costly to prepare, and lengthen the process considerably. If leave is granted and judicial review is unsuccessful, the matter could only proceed to the level of the Federal Court of Appeal if the judge refusing the judicial review certifies a question of general importance, a very stringent legal test.
- Granting the immigration minister rather than governor-in-council appointees the power to grant citizenship unilaterally to alleviate hardship or reward exceptional service to Canada.
- Granting the government the power to strip citizenship from dual citizens as outlined below.

## Inequality of citizenship and potential “banishment” of dual citizens

- Introducing an “intent to reside in Canada” clause that implies reduced mobility rights for Canadian citizens who have been granted citizenship through naturalization. In applying for citizenship, one must satisfy decision-makers that you intend to reside in Canada. New Canadians run the risk of later revocation if their career or life circumstances take them abroad. Those born in Canada face no such requirement, and no such threat of revocation of citizenship due to residency abroad.
- Permitting the revocation of citizenship for dual citizens, including dual citizens who are Canadian by birth or parentage, for serving as a member of a group in an armed conflict against Canadian forces. Those losing their citizenship in this way are rendered a “foreign national” and face deportation from Canada. This would be subject to a judicial revocation process, but no criminal conviction is required in the case of such group membership.
- Allowing the immigration minister to revoke citizenship for convictions of “treason or high treason,” a terrorism offence, or aiding the enemy in battle or espionage.<sup>57</sup> Citizenship may be stripped if the minister “has reasonable grounds” to believe that a person might have another citizenship, putting the onus on the person whose citizenship is being removed to prove they do not have another citizenship.

The Conservative government is creating tiers of citizenship based de-facto on birth, as one set of standards will exist for those with a single citizenship — mostly those born in Canada — and another for those with multiple nationalities. Prominent immigration scholar Audrey Machlin has argued this marks the retrieval of the medieval practice of “banishment.” It is both arbitrary and without a positive social purpose given that all citizens are subject to criminal law. Its arbitrariness is in selecting only a few crimes that “offend Canadian values” while excluding many others.<sup>58</sup> For his part, former citizen and immigration minister Kenney has introduced the notion of “de facto renunciation of Canadian citizenship.” Minister Alexander declared citizenship a “privilege, not a right.” However, it is the rights of dual citizens that are most at risk.

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## Symbolic change

The *Strengthening Canadian Citizenship Act* also continues a trend of attaching Canadian citizenship to the military. The government is reducing the length of



time to acquire citizenship by one year for those that serve in the armed forces, although citizenship is generally considered a prerequisite for such service.<sup>59</sup> This link, which would likely involve few cases, is consistent with earlier changes to citizenship ceremonies. These ceremonies are designed now to encourage the formal recognition of a member of the armed forces, which is invited to attend, if not to formally oversee, citizenship ceremonies.

When considered in the context of the more militarist and monarchist vision of Canada promoted by the government more generally, it is clear that the new *Citizenship Act* is also part of a symbolic reordering of the country. It is a reordering that emphasizes a more exclusionary vision of unquestioning conservative patriotism rather than responding to genuine issues of public policy and social integration. In fact, it does the opposite. It delays and even prevents the inclusion of many immigrants as full members of Canadian society. And the Conservatives are already using the act's provisions around the stripping of citizenship as an ideological weapon against opposition parties. Kenney's ministerial staff generated and circulated simplistic graphics on Twitter attacking opposition leaders for their lack of support for citizenship-stripping provisions, implying the parties are "soft" on terrorism.<sup>60</sup> Such political tactics only diminish debate about important societal questions.

These changes compound other regressive trends when it comes to citizenship acquisition for new Canadians. As Elke Winter has noted, prior changes by the Conservative government have already seen applicants spend hundreds of dollars to obtain expensive private sector certification of language skills up front for their applications. No longer does the government accept the passing of the citizenship exam or an interview with a citizenship judge as sufficient proof of language attainment. These provisions add years to processing times, in part due to often arbitrarily distributed and complex residency questionnaires. The Conservatives in government have also introduced a more complex citizenship guide and set of test questions, and have made the passing grade more difficult to achieve. While Canada is still considered a world leader in naturalization of its citizens, these decisions have predictably increased the failure rates among vulnerable populations and for groups for whom English is a second language.<sup>61</sup>

While the Conservative government previously cut the permanent resident landing fee in an effort to court immigrant voters and their families, changes brought in 2014 saw fees for a grant of citizenship triple from \$100 to \$300. In January 2015, these fees rose yet again to \$530. There is, in addition, a \$100 "right of citizenship" tax on successful applicants.<sup>62</sup> No waivers are offered for refugees or those in financial need. Overall, citizenship has become an ideological battleground and Canada a less welcoming place. Those whose citizenship will be delayed or denied are left unable to join any electoral "coalition," Conservative or otherwise.

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## Conclusion

In an effort to grasp the nature of the governing Conservative Party, this chapter has traced the shifts of neoconservative discourses and policy concerning citizenship and immigration in Canada. Turning to its title, are the Conservatives a party *for* immigrants? There is more continuity with the party's Reform and Canadian Alliance predecessors than generally assumed. There have also been significant innovations. The Conservatives have promoted a form of conformist, militarist nationalism coupled with the rhetorical inclusion of new and "ethnic" Canadians. They have creatively adapted nationalist-neoconservative discourses to Canada's multicultural context. This, along with their aggressive outreach efforts helped them achieve a "minimum winning coalition" large enough to achieve a majority government for the first time in 2011.

The Conservatives' political project does not necessarily need majority support among the Canadian population. They do not aim at social consensus, but rather to define and shift the country's common sense and political direction in a divisive and rightward direction. On the one hand, the Conservatives have invited immigrants to see themselves as part of an outwardly confident multicultural conservative political imaginary. On the other, new and "ethnic" Canadians are also invited to ignore predecessor party histories and contemporary policy impacts. These are histories that betray some of the base instincts and negative impacts Conservative policies have and will likely continue to have on many immigrants and migrants, particularly the most vulnerable.

These policies, in particular the SCCA, make citizenship harder to obtain and easier to take away. They emphasize temporary over permanent migration, and express constant harsh rhetoric about the nature of many new and aspiring Canadians as fraudulent or even terrorist (or "bogus" in the case of refugee claimants).

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## Endnotes

- 1** While any errors remain his own, the author wishes to thank Gunjan Sondhi and Geraldine Sadoway for their feedback and advice on an earlier draft of this chapter.

- 2** “Minister Jason Kenney’s Speech at the Opening Ceremonies of the Conservative Convention,” *Jason Kenney: Conservative MP for Calgary Southeast*, June 9, 2011, <http://www.jasonkenney.ca/news/minister-jason-kenneys-speech-at-the-opening-ceremonies-of-the-conservative-convention-june-9-2011/>.
- 3** Tom Flanagan, “The Emerging Conservative Coalition,” *Policy Options*, no. June-July (2011): 104–8.
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- 5** For a critical look at the implementation of earlier Conservative campaign promises see Karl Flecker, “Conservative Colours: The Harper Conservatives and the Colour-Coding of Canada,” in *The Harper Record* (Canadian Centre for Policy Alternatives, 2008), 167–85, [http://www.policyalternatives.ca/sites/default/files/uploads/publications/National\\_Office\\_Pubs/2008/HarperRecord/Harper\\_Conservatives\\_and\\_the\\_Colour\\_Coding\\_of\\_Canada.pdf](http://www.policyalternatives.ca/sites/default/files/uploads/publications/National_Office_Pubs/2008/HarperRecord/Harper_Conservatives_and_the_Colour_Coding_of_Canada.pdf); For a critical look at the Conservatives’ approach to “community historical recognition” please see Matt James, “Neoliberal Heritage Redress,” in *Reconciling Canada: Critical Perspectives on the Culture of Redress*, ed. Jennifer Henderson and Pauline Wakham (Toronto: University of Toronto Press, 2013), 31–46.
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- 9** Flanagan, “The Emerging Conservative Coalition,” 104.
- 10** *Ibid.*, 106.
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- 13** *Ibid.*, 107.
- 14** *Ibid.*, 104–8.
- 15** Stuart Soroka et al., “Capturing Change (and Stability) in the 2011 Campaign,” *Policy Options*, no. June (2011): 77.
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- 17** Marci McDonald, “True Blue,” May 2014, <http://thewalrus.cahttp://thewalrus.ca/true-blue/>.
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- 21** Jennifer Ditchburn, “Commentators from an Online Forum Were Not Allowed to Speak after Committee Members Found Mentions of ‘Chinafication’ and ‘Arabization’ on Their Website.,” *The Toronto Star*, September 26, 2012, [http://www.thestar.com/news/canada/2012/09/26/conservatives\\_drop\\_immigration\\_committee\\_witnesses\\_after\\_complaints\\_of\\_disgusting\\_website.html](http://www.thestar.com/news/canada/2012/09/26/conservatives_drop_immigration_committee_witnesses_after_complaints_of_disgusting_website.html).
- 22** Flanagan, “The Emerging Conservative Coalition,” 106.
- 23** Kasra Nejatian, “‘Breaking Through- Building the Conservative Brand in Cultural Communities’ (Letter and Presentation),” March 3, 2011, <http://www.cbc.ca/news/politics/inside-politics-blog/2011/03/the-kenney-letter-and-breaking-through.html>.
- 24** Jason Kenney, “Conservative Party Political Training Conference 2007 Ethnic Outreach,” March 2007, <http://v1.theglobeandmail.com/v5/content/pdf/ethnicOutreach.pdf>.
- 25** Donald Barry, “Canada and the Middle East Today: Electoral Politics and Foreign Policy,” *Arab Studies Quarterly* 32, no. 4 (Fall 2010): 193.
- 26** Flanagan, “The Emerging Conservative Coalition,” 106.
- 27** Civil society groups such as the Canadian Arab Federation (CAF) that have vocally criticized Canadian complicity or active support in the suffering of Arab peoples abroad and their mistreatment and marginalization within Canada have been strongly disciplined by the Conservative government. They have seen their funding cut and been tarred with a brush of anti-Semitism charges for criticizing the state of Israel. For a discussion of the case of the CAF see Wafaa Hasan, “How Do We Speak? The Casting out of the Canadian Arab Federation,” in *Targeted Transnationals: The State, the Media, and Arab Canadians*, ed. Jenna Henneby and Bessma Momani (Vancouver; Toronto: UBC Press, 2013), 197–219; Mississauga’s Palestine House also saw its funding to offer settlement services withdrawn. Its head saw itself as “the latest victim” of the Harper government’s assault on institutions criticizing Israeli policies. See Haroon Siddiqui, “Hitman Jason Kenney Strikes Again,” *The Toronto Star*, February 15, 2012, [http://www.thestar.com/opinion/2012/02/15/hitman\\_jason\\_kenney\\_strikes\\_again.html](http://www.thestar.com/opinion/2012/02/15/hitman_jason_kenney_strikes_again.html).
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- 33** Canadian Alliance, “A Time for Change: An Agenda of Respect for All Canadians- The Plan (Canadian Alliance 2000 Election Platform),” 2000, 22, [http://www.poltext.capp.ulaval.ca/upload/can2000all\\_plt\\_en.\\_14112008\\_173717.pdf](http://www.poltext.capp.ulaval.ca/upload/can2000all_plt_en._14112008_173717.pdf).
- 34** Conservative Party of Canada, “Demanding Better: Conservative Party of Canada Platform 2004,” 2004, 32, [https://www.poltext.org/sites/poltext.org/files/plateformes/can2004pc\\_plt\\_en.\\_14112008\\_171920.pdf](https://www.poltext.org/sites/poltext.org/files/plateformes/can2004pc_plt_en._14112008_171920.pdf).
- 35** Reform’s early statements and platforms were overtly hostile to immigration and multiculturalism. They argued that immigrants should be completely self-sufficient, that definitions of family and the ability to sponsor be narrowed while immigration “should not be based on race or creed, as it was in the past; nor should it be explicitly designed to radically or suddenly alter the ethnic makeup of Canada, as it increasingly seems to be,” clearly expressing disgust with the demographic shifts in Canadian society since the 1960s that accompanied the end of “White Canada” immigration policies. They targeted the Multicultur-

alism Ministry for dismantling and took aim at the “special interests,” the “Career politicians and immigration advocates” and “Bogus refugees and other illegal entrants” they claimed were ruining Canada’s immigration system and harming the country. See: Reform Party of Canada, “Platform and Statement of Principles,” 1989, 23–4, [http://www.poltext.capp.ulaval.ca/upload/can1989r\\_plt\\_en\\_12072011\\_125440.pdf](http://www.poltext.capp.ulaval.ca/upload/can1989r_plt_en_12072011_125440.pdf).

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**37** Conservative Party of Canada, “The TRUE NORTH STRONG AND FREE: Stephen Harper’s Plan for Canadians,” 2008, [https://www.poltext.org/sites/poltext.org/files/plateformes/can2008pc\\_plt\\_eng\\_13112008\\_193556.pdf](https://www.poltext.org/sites/poltext.org/files/plateformes/can2008pc_plt_eng_13112008_193556.pdf); Conservative Party of Canada, “Here for Canada: Stephen Harper’s Low-Tax Plan for Jobs and Economic Growth,” 2011, 32, [https://www.poltext.org/sites/poltext.org/files/plateformes/can2011pc\\_plt\\_en\\_12072011\\_114959.pdf](https://www.poltext.org/sites/poltext.org/files/plateformes/can2011pc_plt_en_12072011_114959.pdf).

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# **LABOUR AND MIGRATION**



# Welcome! (But don't get comfortable)

The permanence of Canada's temporary migration program

Karl Flecker

“‘HELP WANTED’ SIGNS are everywhere. When it starts to affect our ability to go to Tim Hortons and get a double-double, it ceases to be a laughing matter.”<sup>1</sup>

The Harper government's first minister of citizenship and immigration, Monte Solberg, offered this quip to the media during a trip in oil-dependent Alberta, setting the tone for how labour market and immigration policies would change in Canada. It was certainly a simplistic reason for expanding Canada's Temporary Foreign Worker Program (TFWP), but the symbolism was powerful. It hit on worries about getting your “Timmies,” and stoked fears that companies were having trouble getting the oil out of the ground and growing the economy at a time of economic instability.<sup>2</sup>

This chapter examines how the Harper government massively increased the number of temporary work permits granted to employers, facilitated the undercutting of labour rights, promoted wage suppression, advanced wedge politics within the labour movement, and encouraged xenophobic and anti-immigration sentiment across the country. Herein lies the more sophisticated elements of the government's real economic action plan.

The TFWP had always been a relatively obscure and small program. Early into its first mandate, the Harper government purposefully expanded the program to

epic proportions with incremental and silent administrative and policy changes. This quiet determination to fundamentally alter Canada's labour and immigration policy framework soon grew bolder. From 2010 to 2013, a spate of legislative reforms solidly shifted Canada away from a policy of permanent economic immigration toward one that favoured the temporary migration of a disposable workforce.

Through the transformation, there was little concern on the government's part for workers' rights or employment standards. Not only were employers soon benefiting from a near doubling of the number of temporary permits that were granted between 2006 and 2013, they were also encouraged to use migrant labour in every occupational sector.<sup>3</sup> Employers could offer lower wage rates, and this led to across-the-board wage suppression. Employers were also given unprecedented influence in determining who became a permanent resident and, ultimately, a citizen. The power granted to the corporate sector during this time frame was significant. By 2014, numerous cases of exploitation and widespread abuse of migrant workers had become increasingly commonplace and impossible to ignore.

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## The early years: building a flexible labour force

After forming a minority government in 2006, Prime Minister Harper boasted his intention was “to create the best educated, most skilled, and most *flexible* workforce in the world” (emphasis added).<sup>4</sup> The government created this flexibility, in large part, by giving employers rapid and unfettered access to temporary work permits for workers sourced from abroad. Harper's first budget implementation bill committed the government to “making improvements to the Temporary Foreign Worker Program to respond to employer needs.”<sup>5</sup> These improvements included:

- Reducing TFWP processing delays and rapidly responding to employer claims of regional labour and skill shortages;
- Expanding the online TFWP application system;
- Maintaining lists of occupations with alleged (but unsubstantiated) shortages; and
- Producing an employer-friendly guidebook on how to navigate the TFWP efficiently.

With a dozen key words, buried in the 477-page omnibus budget plan of 2007, the government gave the green light to widen the TFWP: “Employers may recruit workers for any legally recognized occupation from any country.”<sup>6</sup>

Since the changes were made under the guise of “internal administrative efficiencies of an employer-driven program,” the government made these changes by avoiding public awareness or parliamentary review.<sup>7</sup> This profound merger of immigration and national labour market policies went largely unnoticed by the general public. However, it did send a clear message to employers and labour brokers that a friendly federal government was in town, willing to facilitate access to an international labour pool for every single job in the country under the TFWP.

In Budget 2007, the Conservative government allocated \$50.5 million to support the TFWP. A former director of the TFWP unit revealed that less than 2% of this money was earmarked for compliance measures.<sup>8</sup> This meager percentage was allocated to the Canada Border Services Agency (CBSA) to provide security clearance processing of temporary workers — not to monitor or enforce labour standards. No budget funds were allocated to ensure the veracity of employment contracts. In fact, no formal monitoring of employers using the TFWP occurred until 2009. Even then, these initiatives were voluntary and limited to employers who consented after their work permits had been issued.

Harper went further by establishing the Occupations Under Pressure lists (OUP). There were lists of specific occupations where workers were allegedly deemed to be in short supply. Inquiries made to senior government staff by this author for details on the process and criterion of establishing these lists revealed there was no requirement for employer claims to be verified. Neither were stakeholders such as unions, trade councils or training colleges consulted.<sup>9</sup> Rather, the process simply relied on employer claims they could not find workers. The OUP lists were used with fast-track TFWP programs in British Columbia in advance of the Winter Olympics, for example. As well, fast-tracking was used in Alberta for tar sands extraction. In this case, employers had access to Expedited Labour Market Opinions (ELMO) as a first step in obtaining a temporary work permit.<sup>10</sup> Although public servants were instructed to process employer applications within 10 days, 85% of employer requests were positively assessed in just three to five days.<sup>11</sup>

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## **Across-the-board growth**

The general public equates the TFWP with seasonal farm workers and nannies that help with elder care and child care work. In reality, the TFWP contains many different options for employers to access temporary work permits and migrant workers. This includes country-specific reciprocal agreements, like youth exchange programs, academic exchanges, or short-term cultural/artistic employment contracts (see Mertins-Kirkwood chapter). Temporary work permits are also provid-

**TABLE 1** Entries of Temporary Foreign Worker Work Permit-Holders by Sub-Status; and Presence of Temporary Residents Not Subject to Labour Market Impact Assessment by Sub-Status

Category	2006	2007	2008	2009	2010	2011	2012	2013
Low-Skill Workers Total	36,833	50,816	61,700	51,138	45,579	45,545	52,294	55,651
High-Skilled Workers Total	28,331	33,013	<b>35,182</b>	<b>29,101</b>	<b>25,338</b>	<b>24,501</b>	<b>28,297</b>	<b>27,672</b>
International Mobility Programs Total*	83,989	94,356	<b>113,162</b>	<b>136,198</b>	<b>156,396</b>	<b>187,241</b>	<b>219,395</b>	<b>250,424</b>

**Source** Government of Canada, "Overhauling the Temporary Foreign Worker Program," Tables 2 and 3 (figures do not include permanent resident applicants).<sup>12</sup>

ed for low-wage work under a low-skill program, but employers such as universities can also obtain temporary permits for high-level research and study purposes. Even the Bank of Canada has used the TFWP to bring in specialists with developing currency that is difficult to counterfeit. Multinational corporations can accommodate the temporary transfer of senior executives or specialized workers using a pathway called the intra-company transfer (ICT) visa option. Employers can also obtain work permits as part of bilateral or multilateral trade and investment agreements (NAFTA, FTA or GATS). All told, the number of temporary workers in Canada has increased dramatically during the Harper years.

## Growth of precarious work, shrinking wage security for all

The increase of temporary work permits under the Low Skilled Worker Pilot Program deserves particular attention.<sup>13</sup> This program gave employers temporary work permits for a maximum of 24 months in occupations requiring, at most, a high school diploma or a maximum of two years on-the-job training. The program caters to hotel cleaning, food services and meat packing plant jobs. Industrial farm operators, as well as the food and restaurant industry, among others, had long been petitioning for enhanced access to low-skilled workers. The Conservative government grew this particular program for employers from just under 5,000 issued work permits to more than 25,000 by 2011.<sup>14</sup>

Migrant workers entering Canada under this program are very vulnerable (to wage exploitation, poor working conditions) because their status in Canada is dependent on one employer: they may work for no one else. The threat of deportation is frequently used to impose lower wages and poor working conditions. Often limited in English or French language abilities, and with little awareness of their



rights, many of these workers face exploitation and abuse by unscrupulous brokers and bad bosses. Equally disturbing is the number of work permits issued for jobs that do not describe the type of work a person is doing. The number of individuals with these open work permits grew the fastest under the Conservative government. More than a third of all permits issued in 2012 were denoted as job “level not stated.”<sup>15</sup> These two categories together illustrate how little oversight exists under the Harper government’s watch.

Eventually, the media began to report an increasing number of employers feigning labour shortages in order to hire low-skilled workers. Workers’ organizations began reporting stories of workers having little choice but to accept lower wages than those promised or be deported after incurring massive debts to come here.<sup>16</sup> At the same time, unemployed members of the national workforce reported being passed over on jobs in the hospitality, long-term care and services sectors so that employers could gain access to a compliant and vulnerable labour pool. With youth unemployment levels continuing to hover consistently at twice the national average, parents began to question why migrant workers were filling entry-level jobs their children could do.

In response to the growing media attention and public backlash, the Harper government made a series of politically opportune announcements of reforms between early 2010 and July 2013. These included:

- A promise to establish a list of disingenuous employers;
- Increased rigour assessing employer applications and shorter processing times;
- Ineligibility periods for employers found breaking labour standards;
- Time limits on work permits;
- Ability for employers to pay workers less than prevailing wage rates;
- Voluntary compliance audits;
- Changes to advertising guidelines of job postings;
- Requiring English and/or French for all jobs;
- Requiring employers to declare their applications will not lead to layoffs or outsourcing;
- Granting inspectors site visit powers without warrants; and
- Extending time frames for investigations.<sup>17</sup>

The reforms were strategically promoted to give the appearance of a crackdown on employer abuse. The reality was quite different.

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## Unpacking the 2010–2013 TFWP reforms

Late in 2009, with the media reporting on employment abuses at Denny’s restaurants<sup>18</sup> and many others associated with the TFWP,<sup>19</sup> Jason Kenney, then minister of citizenship and immigration, frequently boasted his government would establish a list on the CIC website of “disingenuous employers” – those who have broken the rules. It was his government’s “duty to migrant workers, employers, and all Canadians, to ensure that the program is fair and equitable.”<sup>20</sup> However, the so-called “bad boss” list was not established until 2011 and had no employers listed on it until late 2014.<sup>21</sup> Currently, this list has the names of only five employers on it. Perhaps this is due to the fact that there were no government workers responsible for monitoring employers. In contrast, during this time, thanks only to access to information requests, it was discovered that 200 federal workers were assigned to speed up the processing of TFWP applications for employers.<sup>22</sup>

The Conservative government steadfastly refused to be transparent regarding staffing levels within the TFWP unit. When the numbers finally came to light in 2014, the number of investigative staff in the period 2010–2014 was revealed to be woefully inadequate for the size of the program.<sup>23</sup> For example, in 2012, there were only 14 investigators at a time when more than half a million temporary work permits had been issued. The ratio of investigators to issued work permits translates into caseloads ranging from 12,228 to 45,150 per public sector worker during this period. This fact alone casts serious doubt on the possibility of any rigorous assessment taking place.

Any government claims that employers caught violating program rules would face a two-year ban should be judged against regulatory amendments that were quietly enacted. They proposed if a migrant worker “entered into or extended an employment agreement with an employer whose name appears on the [bad boss] list maintained on the Department’s (CIC) website,” border officials could deny the migrant worker entry into Canada.<sup>24</sup> Kenney’s notion of “fair and equitable” meant migrant workers could be barred from Canada because of their employers’ actions.

The government placed a four-year cap on the period of time a migrant worker could remain in Canada, after which they must leave for four years (referred to as the “four over four rule”). By doing so, the Conservative government made it clear that migrant workers were welcome to serve employers but may not get comfortable here. This hard line is estimated to have affected a first wave of at least 70,000 individuals, and this number will grow over time.<sup>25</sup> Migrant rights advocates anticipate this will lead to a significant spike in individuals slipping into undocumented status rather than return to their home country. Such policies increase worker vulnerability and contribute to downward pressure on wages as unscrupulous

employers take advantage of the growing number of undocumented persons who become desperate for any type of work.

Another highly controversial reform involved transforming the Expedited Labour Market Opinion (ELMO) into the Accelerated Labour Market Opinion (ALMO). In late April 2012, at a fabrication plant in Nisku, Alberta, a province where employers, at that time, had already been given well over 60,000 work permits, then HRSDC Minister Diane Finley announced employers would be immediately given rapid access (10-day processing of applications) for high-skilled migrant workers. “This improvement is a direct result of consultations that were held with employers,” said the minister.<sup>26</sup> What she left unsaid was that this change had neither been publicly debated nor discussed in Parliament.

The Conservative government hid details of the reform by waiting a month before releasing the specifics in a government release late on a Friday afternoon. In addition to the fast-track application process the government permitted employers using the ALMO window to pay migrant workers up to 15% less than *prevailing wage rates*.<sup>27</sup> While exploitative of migrant workers, this measure also provides a clear example of the government’s efforts to use the TFWP as a tool for suppressing wages. Recall that, in 2007, the Harper government invited employers to use the TFWP to recruit internationally for all occupational sectors. The “pay less” component of ALMO, introduced in 2012, meant that once an employer obtained a temporary work permit, they also received the ability to negotiate lower wages rates for *all* of their employees.

The ALMO reform meant if an employer had migrant workers in their employment, they could now negotiate a lower wage scale for all employees (migrant or not) doing the same job in the same workplace. In workplaces where no migrant workers were present, wage suppression would still take place. Consider two welding shops in one town: Shop A employs migrant workers and Shop B does not. The owner of Shop A can negotiate a 15% wage reduction for all its welders. Shop B will be affected by their competitor’s lower wage rates and would be forced to follow suit in order to remain competitive.

The ALMO rule applied not only to high-skilled occupations but also allowed for a 5% wage reduction for low-skilled occupations. This incremental two-step policy manoeuvre (opening all sectors to temporary foreign workers in 2007 followed by a “pay less” policy in 2012) successfully introduced a wage suppression policy across the entire labour force.

Ultimately, ALMO proved a political disaster for the government.

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## Access to information stirs the pot

The Harper government has consistently stonewalled, obfuscated or misrepresented its TFWP reforms. In 2012, the Alberta Federation of Labour (AFL) successfully obtained a detailed listing of employers who had obtained work permits for high-skilled migrant workers under the ALMO initiative. The nearly 500-page document was also published online by the *Globe and Mail*. The discovery that nearly 5,000 employers across the country had been given approval for temporary work permits in just eight months since the ALMO program was launched was explosive news.<sup>28</sup>

Researchers found that nearly half of the approvals were highly questionable. Minister Finley had announced ALMO was intended to be used to import high-skilled workers such as managerial, professional and technical occupations, yet nearly half of the Harper government approvals went to “fast-food restaurants, convenience stores, gas stations and other businesses across the country that almost exclusively employ low-skilled workers.”<sup>29</sup>

In an embarrassing effort to glide over the hole in the ice the access to information request had opened, Kellie Leitch, then newly appointed minister of labour, argued “these workplaces could have been in desperate need of highly skilled managers.”<sup>30</sup> Kenney also made a serious misstep. In response to a question in Parliament from NDP leader Tom Mulcair, the immigration minister tried to convince the House of Commons the 15% “pay less” rule, which was part of the ALMO initiative, did not exist.<sup>31</sup> Later that same afternoon, at a press conference in Ottawa, he announced the end of the ALMO program due to cross-country outrage, making his misstep in Parliament particularly embarrassing for the government.

As the TFWP numbers surged upward, so too did public awareness of inherent problems in the program. Early in 2010, the Alberta Ministry of Employment and Immigration released a report based on an inspection of over 400 worksites employing migrant workers. The provincial government report found that 74% of employers had violated their employment standards rules.<sup>32</sup>

By summer of that same year, Alberta’s employment and immigration minister, Thomas Lukasak, concluded the TFWP was no longer working well for his province, saying, “It’s a temporary solution to a permanent problem. Why not consider some permanency for this workforce? I always joke (that) the only group that really benefits from the current TFWP is Air Canada, because they are flying people in and out.”<sup>33</sup>

Alberta was not unique. In Saskatchewan, 40% of employers with migrant workers were not in compliance with the province’s employment standards: 55% were not in compliance on farms, and 78% were not in compliance in restaurants.<sup>34</sup>

Former Canadian auditor general Sheila Fraser was equally blunt in her 2009 review of the TFWP. Fraser's report to Parliament laid the blame squarely on the government, saying: "there has been no systematic follow-up by either CIC or HRSDC to verify that employers are complying with the terms and conditions under which the LMO application was approved, such as wages to be paid and accommodations to be provided."<sup>35</sup>

The government formally agreed with the auditor general's recommendations, but an evaluation of the TFWP-LMO streams dated October 2012 and obtained under a freedom of information request stated that: "it has not been possible to determine the extent to which employers comply with the requirements of the Program or respect TFW rights because there has been very little monitoring of employers to assess trends in compliance."<sup>36</sup>

Although Kenney would repeatedly claim his government was cracking down on the growing number of abuses that regularly came to public attention from 2009 onward, the facts show otherwise. Access to information requests reported by Press Progress on June 20, 2014 revealed that "[n]ot one single inspection was carried out in the first four months of that year at businesses that employ temporary foreign workers," despite 43 inspectors being on staff within the TFWP unit that year.<sup>37</sup>

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## Unpacking the 2014 reforms

By late 2014, public sentiment about the TFWP was clear. Over 50% of people felt the program was being abused "frequently" or "all the time."<sup>38</sup> The TFWP was no longer obscure. It was now synonymous with exploitation, fraud and corporate abuse.

Employers did not help themselves. Restaurants Canada President Garth Whyte claimed continued access to the TFWP was essential for his sector. He claimed "hiking wages to \$100/hour wasn't enough" to lure Canada's 1.3 million unemployed to work in a kitchen. Canadian Federation of Independent Business (CFIB) President Dan Kelly suggested Canadian workers are "too lazy" to commit to a paying job. He said "foreign workers have a better work ethic" because "they're going to show up to work on time, they're going to work a full week without disappearing."<sup>39</sup> Public sympathy for the plight of employers was unmoved.

By this point seven in 10 Canadians thought the TFWP was being abused by the employers who weren't doing enough to hire Canadians.<sup>40</sup> Prime Minister Harper and Minister Kenney, the key government spokesperson on this file, were quick to take political advantage of the perceived culprit. From June to October 2014, the Harper government aggressively stepped up its accusations against employers as the source of the TFWP problems.<sup>41</sup> A culpable and convenient scapegoat deflected

what nearly a decade of Conservative government policy had created with its “flexible” labour force agenda.

The government had one more strategy left to play. It would roll out another set of extensive reforms targeting employers as the culpable stakeholder, while repeatedly offering the specious commitment that Canadians would get first crack at available jobs. The list below summarizes key reforms introduced by the Harper government in the middle of 2014, included under the heading “Overhauling the TFWP: Putting Canadians First”:<sup>42</sup>

- Divide the TFWP into two distinct programs;
- Report more data publicly;
- Restrict employers’ access to the TFWP;
- Introduce new labour market impact assessment processes;
- Introduce caps on low-wage work permits;
- Refuse applications in areas of high unemployment;
- Reduce the duration of work permits and length of stay periods;
- Change federal/provincial & territorial immigration agreements;
- Require transition plans for high-wage position;
- Improve labour market information;
- Impose stronger enforcement and tougher penalties;
- Increase detection of abuse;
- Raise the fees; and
- Improve rights awareness systems.

While some of these reforms appear to hold promise, the Harper government rolled them out in a politically self-serving manner. Close examination reveals that implementation measures once again tend to favour employers rather than workers.

### **When the numbers are against you, change how you count**

To stanch criticism of how large the temporary worker controversy had grown, the Conservative government split the TFWP into two distinct programs. One stream retains the name TFWP and is intended to be the last resort for employers to fill jobs

for which there are no qualified members of the national workforce available. Little has changed to protect workers brought to Canada under this stream: the majority remain tied to one employer, and are stuck in low-skill occupations earning low wages. These workers originate from developing countries and are predominantly racialized. The second category is called the International Mobility Program (IMP) and is intended to “advance Canada’s broad economic and cultural national interests.”<sup>43</sup> The majority of these workers are expected to take high-skilled occupations earning higher wages.

These programs fundamentally alter how temporary work permits are counted and how changes over time can be compared. The new two-part system also gives the majority of employers an exemption from having to undergo the new Labour Market Impact Assessment (LMIA) process. The government’s own report, titled *Overhauling the TFWP: Putting Canadians First*, released in July 2014, includes two telling tables. The total number of temporary work permits granted to employers (and not subjected to a LMIA) as of December 1, 2013, was in excess of 630,000.<sup>44</sup> Meanwhile, the number of TFWP workers in the country on December 1, 2013 is presented as being just 83,740.<sup>45</sup> According to this depiction, it stood at only 65,487 in 2006 when the Harper government first came to power. Now the growth of the TFWP program looks marginal. This sleight of hand and categorical nuance allows the Conservative government to disingenuously sidestep the very real criticism of the size of the program.

In addition, the government claimed more data would be reported publicly, including the names of corporations that receive approved LMIA’s beginning in the fall of 2014. At time of writing, nothing has been posted on the governments LMIA web pages.

### **High unemployment rates no barrier to foreign hires**

Under the new rules, employers in areas of high unemployment, particularly for jobs in accommodation, food services and the retail trade sector, will not be able to access the new TFWP program. Specifically, government documents state that: “any applications for positions that require little or no education or training will not be processed in economic regions with an unemployment rate at or above six percent.”<sup>46</sup>

Yet the Harper government let employers access the TFWP within a First Nation community in Alberta where the unemployment rate was well above the 6% cut-off.<sup>47</sup> A similar situation exists in Saskatchewan because the federal government omitted the unemployment rates for First Nation communities in its data collection. Arthur Sweetman, an economist and policy expert at McMaster University,

said this is because the program is using “EI regional unemployment rates, (which) completely ignores Aboriginals living on reserves. It’s as if they don’t exist.”<sup>48</sup>

### **Reducing work permit duration hurts migrant workers**

Work permits are now valid only for one year, but can be subject to renewal. Shortened work terms means less income for migrant workers. Often low-skilled workers are charged thousands of dollars in illegal fees based on the length of their employment contracts. Workers who accepted four-year agreements prior to the rule change, but now face shortened contracts, will likely be forced to pay the remaining three-year debt to unscrupulous brokers. Many will return home with far less, or slip into an undocumented status. Given there is no exit protocols built into the TFWP system, and poor information available on the whereabouts of these workers to begin with, there is a strong likelihood a large percentage of those with work permits in Canada will become undocumented.<sup>49</sup> This reform punishes migrant workers, adds to labour force precarity, and misses the mark in dealing with unscrupulous labour brokers.

### **Federal–provincial/territorial immigration agreements short of useful**

For the vast majority of the labour force, employment standards fall under the jurisdiction of the provinces and territories. The Harper government’s plan to reform intergovernmental immigration agreements avoids using this policy space to strengthen compliance measures in tandem with sub-national counterparts and international covenants. The Conservative government’s plan is to change the existing agreements by “limiting their scope,” not expanding them.<sup>50</sup> As a result:

- No effort will be made to address housing arrangements for migrant workers where inadequate, unsafe, and unsanitary housing stock has been a routine problem for agricultural workers and live-in caregivers;
- Nothing will be done to enhance provincial pathways to permanent residency for low-skilled migrant workers via provincial nominee programs;
- No vision will be applied to promote intergovernmental measures that could assist refugees to undertake jobs that employers claim need filling;
- Returning to a robust policy of permanent immigration for all classes of workers, in partnership with provinces and territories, and that focuses on national building versus catering to employers’ labour force needs, is avoided; and



- The government will continue to ignore a number of international standards that constructively support labour migration, including the 1990 UN Convention on the Rights of all Migrant Workers and Members of their Families ratified by nearly 50 countries.

Likewise the Conservative government ignores incorporating protections from the eight fundamental International Labour Organization conventions that govern human rights at work, and it will not consider adopting guidance from the non-binding ILO multilateral framework on labour migration.<sup>51</sup> Failing to pursue such measures amounts to willful policy ignorance.

### **A pyramid on the shoulders of migrant workers**

In 2013, when the Harper government initially tabled its discussion document for TFWP reforms, it included a proposal to bar employers who had criminal convictions related to human trafficking, sexually assaulting an employee, or causing the death of an employee. When the time came for implementing these reforms, the government dropped this proposal, arguing it was “too rigid and cumbersome” to be enforced.<sup>52</sup>

The Harper government argued there can be acceptable situations for employers to be in non-compliance with their new rules, including “changes in economic conditions that affect all employers, good faith errors [and] unintentional accounting or administrative errors.”<sup>53</sup> Chris Roberts, national director of social and economic policy with the Canadian Labour Congress, pointed out that part two of the *Canada Labour Code* does not excuse the failure of employers to provide a safe work environment in an economic downturn. Nor does the Canadian legal system operate on the premise that ignorance is a valid defence for breaking the law.<sup>54</sup>

The government’s reforms call for rule-breakers to have their LMIAs suspended. If this actually happens, affected migrant workers will no longer have a valid work permit, nor will they have legal status to remain in Canada. Vulnerability for workers increases, while the consequences for the employer are less significant.

The establishment of a \$1,000 fee per LMIA is long overdue, but there are no measures to counter the likelihood that unscrupulous employers and brokers will download this expense in the form of illegal fees or by garnishing wages.<sup>55</sup> In addition, the \$1,000 fee applies only to the newly defined TFWP. The IMP stream, which accounts for the vast majority of granted work permits, has processing fees of only \$230 per worker. The government claims this measure ensures those using the program will pay to manage it.<sup>56</sup> However, documents acquired by freedom of informa-

tion request show that labour market opinion processing costs ranged from \$224 in 2007 to \$337 in 2009.<sup>57</sup>

The Harper government's compliance framework is depicted as a pyramid. Different levels of rule-breaking must be documented before an employer faces any sanctions. There are six stages of investigation before an employer is publicly identified as being in non-compliance with the new rules. The new rules state that if employers are found to have migrant workers in an unauthorized capacity, they can be fined an Administrative Monetary Penalty (AMP) up to \$50,000 and/or jailed for up to two years. Intentional misrepresentation, or withholding or providing false information in contravention of the program rules can earn you a \$100,000 fine and five years' imprisonment (or both). Being found guilty of human trafficking results in fines up to \$1 million and imprisonment for up to life (or both). Additionally, the government claimed breaking the rules has the potential for an employer to be temporarily banned from the TFWP.<sup>58</sup>

In order for these financial penalties to come into play, the government has instituted a scoring system for rule-breaking. Violations deemed less serious earn fewer points than those deemed harmful to the labour market or individuals. Additionally an employer's history and the severity of the violations affect the total number of infraction points assigned. The system is complex and there is no evidence adequate staffing resources are in place to implement the compliance framework.

If TFWP rules are found to be broken, the minimum AMP is \$500 and the maximum is \$100,000. Syed Hussan with Migrant Workers Alliance for Change gives the real-life example of a migrant worker owed \$195,000 in unpaid wages. Under the new compliance framework, that worker would see their employer fined \$750.<sup>59</sup>

A 2012 internal government evaluation of the TFWP found that 40% of employers had at least one corrective measure to make.<sup>60</sup> This indicates how rampant violations are with this program, yet the government's financial penalty system fails to send a message that it is committed to cracking down on abuses. The penalty system operates on a sliding scale granting latitude for violators who are individuals or small business versus large corporations. Firms deemed to be "small" include corporations with up to \$5 million in annual gross revenues. As a result, franchise operations like Tim Hortons or McDonald's would face the minimum levy of \$500 for the lowest grade infraction. No fees collected will go to migrant workers. Fines will go to government coffers, but not before employers can request an administrative and judicial review.<sup>61</sup>

Lifetime employer bans from the TFWP are not contemplated. Only in cases where at least five sanction points are allotted does a one-year ban come into effect, climbing to a maximum 10-year ban for eight allocated sanction points. This

point system trivializes serious violations of labour standards and human rights for migrant workers.

### **Caps structure and policy incoherence**

The reforms establish a cap system (30% of the workforce in a year) limiting the number of low-wage migrant workers an employer can have within their workforce. Each year the cap will become more limiting reaching 10% by 2016. The policy intent is to alter the employer's dependence on low-wage workers and provide an incentive to recruit, hire, train and/or improve working conditions. The Harper government will consider reducing the cap beyond 10% after 2016.<sup>62</sup> This is a bold boast, but an incoherent one, given that the fine-based penalty system is not structured to shift corporate behaviour away from the TFWP.

### **Thin protection measures**

The Harper government reveals a minimal commitment to advancing meaningful protections for migrant workers. Their 40-page overhaul document has just five paragraphs detailing “protection of TFWS.”<sup>63</sup> Little is offered. The government's position reiterates that TFWS have the same rights and protections as Canadian workers under employment standards and occupational health and safety laws, yet reforms offer nothing to address well documented abuses of these laws.

The Harper government promises to provide an information package outlining rights and responsibilities that workers will receive, upon arrival, from CBSA officials at their port of entry. Despite the experiences of migrant rights groups documenting numerous and significant migrant worker abuses, and unions' familiarity with workplace rights protections for workers, neither sector was invited to contribute to these information packages.

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## **Conclusion**

From the moment the Harper Conservatives took power in 2006, their government moved swiftly, and with stealth, to expand a small migrant workers program into a tool serving almost exclusively the interests of employers. From 2006 to 2015, the government has manoeuvred the TFWP to contribute to wage suppression, worker displacement, unemployment and the undercutting of all workers' rights.

The Conservative government accepted the arguments of employers that labour and skills shortages existed, despite considerable evidence to the contrary. Immi-

gration policy has been both fundamentally altered and merged with a pro-business national labour force agenda at the expense of Canada's role as a welcoming nation to newcomers destined to become citizens. The mat at the door of the country could read: "Welcome, but don't get comfortable."

During the early years of the Harper government, Parliament and the public were bypassed, while "internal administrative changes" were implemented allowing the TFWP to grow to epic proportions. When reforms had to be announced, they were nothing more than window dressing hung with political opportunism. The courage of migrant workers, their allies, investigative journalists, and some unions in persistently exposing the realities of these policy choices can be credited for increased public awareness of the ugly side of temporary migration schemes.

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# The hidden growth of Canada's migrant workforce

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DEBATES AROUND INTERNATIONAL labour mobility in Canada have focused on the Temporary Foreign Worker Program (TFWP), which is accused of distorting the domestic labour market and permitting the widespread abuse of precarious foreign workers. The Harper government has systematically expanded the program to the point where entire industries now depend on it, and recent reforms have done little to placate opposition.

Although this debate is important, it overlooks a significant aspect of international labour mobility policy in Canada. The TFWP facilitates the entry of less than half of all migrant workers into Canada. The rest enter the country through Canada's International Mobility Programs (IMP), which encompass a wide variety of treaty obligations and other lesser-known pathways to the Canadian labour market.

Crucially, whereas the TFWP requires employers to prove (at least superficially) that a skills shortage exists before they can hire a migrant worker, the IMP allows migrant workers to enter the country on a temporary basis with no regard for domestic labour market conditions. Intra-corporate transferees, youth exchange workers, and others have sidestepped the migrant worker debate entirely.

This chapter begins by outlining the structure of Canada's IMP, followed by a brief investigation of their potential social and economic consequences. As a disclaimer, the lack of reliable, comprehensive data about the IMP makes it difficult to draw firm conclusions about the impact of their associated sub-programs. Nevertheless, the data that are available point to a number of issues that have been undeservedly ignored to this point.

The chapter then shines a light on the evolution of the IMP under the leadership of Prime Minister Stephen Harper. It concludes that the Conservative government is turning to the IMP to escape the increasingly public pitfalls of the TFWP without making any real changes to the underlying logic of the migrant worker regime. Indeed, the deliberate and unprecedented expansion of the IMP under Harper is reason enough to investigate these programs more closely.

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## **What are the International Mobility Programs?<sup>1</sup>**

The International Mobility Programs (IMP) encompass all of Canada's international labour mobility initiatives that are not a part of the Temporary Foreign Worker Program (TFWP). The IMP label was created in June 2014 as part of an internal reorganization by Employment and Social Development Canada (ESDC), which administers the various programs that make up the IMP.

The IMP comprises four sub-programs, alternately referred to as pathways or streams: the International Experience Canada program (IEC), the International Student Program (ISP), the Provincial Nominee Programs (PNP), and Canada's commitments under international free trade agreements (FTAs). Each of these streams facilitates the entry of migrant workers into Canada under certain circumstances and for certain purposes. Workers entering the country through these programs can only do so on a temporary basis, although in limited cases they are offered pathways to apply for permanent residency and, eventually, citizenship.

The International Experience Canada program is an amalgamation of youth mobility agreements (YMAS) with 32 partner countries. It provides temporary work and travel permits to young people (typically 18 to 35) in one of three categories: working holiday, young professional, or international co-op. Work permits granted through IEC are generally "open," which means the worker is not tied to any one employer, industry, or location. Permits are non-renewable and typically limited to 12 months. The IEC is reciprocal, which means Canadian youth receive comparable rights to work and travel in partner countries.

The International Student Program is made up of two related initiatives. The Off-Campus Work Permit Program provides work permits to international students

who are enrolled full time at a Canadian educational institution. The Post-Graduation Work Permit Program provides similar work permits to international students who have recently graduated but wish to stay in Canada. Neither program offers a pathway to permanent residency, but work permits granted through the ISP are open, which means workers are not bound to a single job or location.

The Provincial Nominee Programs are different in each province, but they are all designed to “fast track” economic immigrants into the labour force where short- and long-term needs are identified by the province. The PNPs provide a pathway to permanent residency eventually, but workers are tied to a single employer for as long as they are a temporary resident.

The most expansive and complicated aspect of the IMP is the set of commitments Canada has taken under various international treaties and trade agreements. Workers from countries with which Canada has signed a bilateral, plurilateral, or multilateral agreement often receive mobility rights that go beyond those offered through the TFWP and the rest of the IMP.

Although there is a large degree of variability, these agreements tend to cover four categories of workers: business visitors, investors and traders, professionals and contractors, and intra-corporate transferees. In all cases, these workers are not offered a pathway to permanent residency and, in almost all cases, their work permits are tied to a single employer. Under some agreements, the spouses of these workers also receive mobility rights. Like the IEC, Canada’s commitments under international agreements are reciprocal.

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## **Social and economic consequences of the International Mobility Programs**

The TFWP has been a breeding ground for migrant worker exploitation and labour market distortion (as explored in this section), and its social consequences have not gone unnoticed. In 2014, backlash to the program from across the political spectrum reached such a fever pitch that Jason Kenney, the minister responsible for the program at the time, was forced to significantly reduce the scope of the TFWP with a plan to phase out its most contentious aspects entirely.

Despite the ongoing controversy surrounding Canada’s international labour mobility regime, however, little attention has been paid to the IMP, which are essentially a set of sister programs to the TFWP. In terms of potential labour market distortion, the IMP provide just as much cause for concern as the TFWP, although, as we shall see, they are not nearly as open to the exploitation and abuse of individual migrant workers.

The most important difference between the various streams of the IMP and those of the TFWP is the lack of a Labour Market Impact Assessment (LMIA). An LMIA is a labour market test administered by Employment and Social Development Canada (ESDC). An employer who wishes to hire a migrant worker through the TFWP must first receive a positive LMIA from ESDC.

As part of their application, the employer is required to provide a variety of information, including “the number of Canadians that applied for their available job, the number of Canadians the employer interviewed, and [the reasons] why those Canadians were not hired.”<sup>2</sup> The LMIA replaced the ESDC Labour Market Opinion (LMO), a comparable but less rigorous assessment process, in June 2014 as part of broader TFWP reforms. Fees for employers were also raised in 2014.

Taken together, the new LMIA process and associated fees are meant to discourage employers from hiring abroad when suitable workers are available locally. Unfortunately, the revamped process has done little to dissuade unscrupulous employers from recruiting as many cheap, exploitable migrant workers as the program allows.<sup>3</sup>

Nevertheless, for all its flaws, the LMIA process is at least *intended* to minimize the potential labour market impact of the TFWP. The International Mobility Programs, on the other hand, have no such requirement. All streams of the IMP are LMIA-exempt, which means migrant workers entering Canada through these programs can work anywhere and in any industry, regardless of local labour market conditions.

This lack of foresight has troubling consequences for the domestic labour market. Whereas the TFWP is designed to address short-term labour shortages in regions and industries where there is genuine need — keeping in mind that this has not always been the case in practice — the IMP opens the doors completely to foreign competition. Migrant workers entering Canada through most streams of the IMP can compete for work anywhere, even if unemployment is high or wages are artificially low. Indeed, the influx of migrant workers to Canada has had a demonstrably negative effect on unemployment in certain areas,<sup>4</sup> while suppressing wages in certain industries.<sup>5</sup>

Youth employment is one area in particular where the IMP has worrying implications. Young Canadians already suffer from an unemployment rate nearly twice the national average, yet in 2012 almost 60,000 young migrant workers entered the Canadian labour market through IEC.<sup>6</sup>

Because their work permits are open, ESDC cannot collect useful data on these workers so we cannot say definitively where and in which occupations they work. Anecdotally, we know that young migrant workers are concentrated in low-skill service occupations like retail, fast food, and tourism. Indeed, IEC is marketed dir-

ectly to employers in these industries.<sup>7</sup> Unfortunately, these are also areas where young Canadians are looking for work in growing numbers.<sup>8</sup>

In theory, Canadian youth working abroad should offset any migrant workers entering Canada, since all of our youth mobility agreements are reciprocal. Unfortunately, in practice, young people leaving Canada to find work are vastly outnumbered by young people coming here from countries like Ireland and Spain where youth unemployment is even higher.

Another concern unique to the International Mobility Programs is their legal basis in international treaties (excluding the International Student Program and the Provincial Nominee Programs). The TFWP is a domestic labour mobility program, which means it is controlled and operated entirely by the government of Canada. As needs change or public pressure mounts, ESDC is able to modify the program like it did in 2014. Free trade agreements, on the other hand, cannot be changed unilaterally.

For example, both the North American Free Trade Agreement (NAFTA) and the recently-concluded Canada–European Union Comprehensive Economic and Trade Agreement (CETA) prevent Canada from imposing a numerical quota on migrant workers from those countries, provided they meet all eligibility criteria. Even if it wanted to, the government of Canada cannot change those terms. The youth mobility agreements that are the basis of the International Experience Canada program are similarly restrictive, although they can be terminated unilaterally with only a few months' notice.

Taken together, the International Mobility Programs facilitate the entry into Canada of a wide variety of migrant workers without regard for their social and economic impact. Unfortunately, without better data, it is difficult to say precisely what that impact is. Yet given the high-profile problems with the TFWP, which has led to public outcry and government back-peddalling, the potential labour market impact of the IMP undoubtedly deserves greater attention.

There is one crucial caveat to this discussion. Although the IMP is more unwieldy and, as we shall see, much bigger than the TFWP, migrant workers entering Canada through the International Mobility Programs are at far lower risk of abuse. In particular, the lack of an LMIA is extremely beneficial to migrant workers.

A worker who enters Canada through the TFWP is bound to their employer, which means they must leave the country if their contract is terminated. Employers are granted an inordinate amount of power by this arrangement, which has been the source of significant abuse. Under the IMP, on the other hand, a worker with an open work permit who loses their job can simply apply elsewhere. The capacity to switch employers greatly increases individual bargaining power.

**TABLE 1** Labour Mobility Agreements Signed Before and Under Harper

	Before Harper (Before 2006)	Under Harper (2006 to Present)
Youth Mobility Agreements (International Experience Canada program)	11: Austria, Belgium, Denmark, France, Germany, Ireland, Japan, Korea, Netherlands, New Zealand, United Kingdom	21: Australia, Chile, Costa Rica, Croatia, Czech Republic, Estonia, Greece, Hong Kong, Italy, Latvia, Lithuania, Mexico, Norway, Poland, Slovakia, Slovenia, Spain, Sweden, Switzerland, Taiwan, Ukraine
Free Trade Agreements (with temporary entry provisions)	3: North America (Mexico, United States), Chile, Costa Rica	8: European Free Trade Association (Iceland, Norway, Liechtenstein, Switzerland), Peru, Colombia, Jordan, Panama, Honduras, Korea, European Union* (28 member states)
Total	14	29

\* The Canada-European Union Comprehensive Economic and Trade Agreement (CETA) was concluded in September 2014, but it has not yet been signed or ratified.

Moreover, the kinds of workers who enter Canada through the IMP are typically well off to begin with, which further insulates them from abuse. An American computer services professional working in Canada under the NAFTA provisions is far less vulnerable than a precarious Mexican farm worker who entered the country through the TFWP.

## Growth of the International Mobility Programs

Stephen Harper’s Conservative government did not create all of the various streams of the International Mobility Programs. However, under its purview, the IMP has been deliberately and systematically expanded. The number of new pathways for migrant workers to enter Canada has increased dramatically over the past decade, while existing pathways have been widened. According to the government, these “transformational reforms” have been necessary to ensure a migration regime that makes sense “economically.”<sup>9</sup>

The proliferation of new international treaties under the Harper government has been staggering. Canada has had youth mobility agreements in place since at least 1956, when the government of Prime Minister Louis St. Laurent first completed a deal with France. Over the next half-century, Canadian governments signed ten more YMAS, bringing the total number of partner countries to 11 by the time Stephen Harper came to power. Since 2006, however, Canada has signed 21 YMAS and renegotiated a handful of existing deals, effectively tripling the scope of the International Experience Canada program (see *Table 1*).

The story for free trade agreements is similar. With the exception of the multi-lateral General Agreement on Trade in Services (GATS), which has a broad membership but limited application to mobility, Canada only had three labour-related free trade agreements in place (covering four countries) when Harper came to power. Since then, his government has signed or concluded eight new agreements covering workers from 37 countries.

Not only has the number of labour mobility agreements grown significantly under this government, but the scope of those agreements has evolved as well. For example, the temporary entry provisions in NAFTA, which came into force in 1994, only cover professionals in 63 specific occupations. The 2008 Canada–Colombia FTA, on the other hand, covers professionals in *all* occupations with only a handful of exceptions.

Most of the FTAs completed by the Harper government also include provisions covering spouses, which means migrant workers in some categories can bring their families with them. Unlike most workers entering Canada through these FTAs, spouses are typically eligible for open work permits that allow them to seek employment in any industry regardless of local labour market conditions.

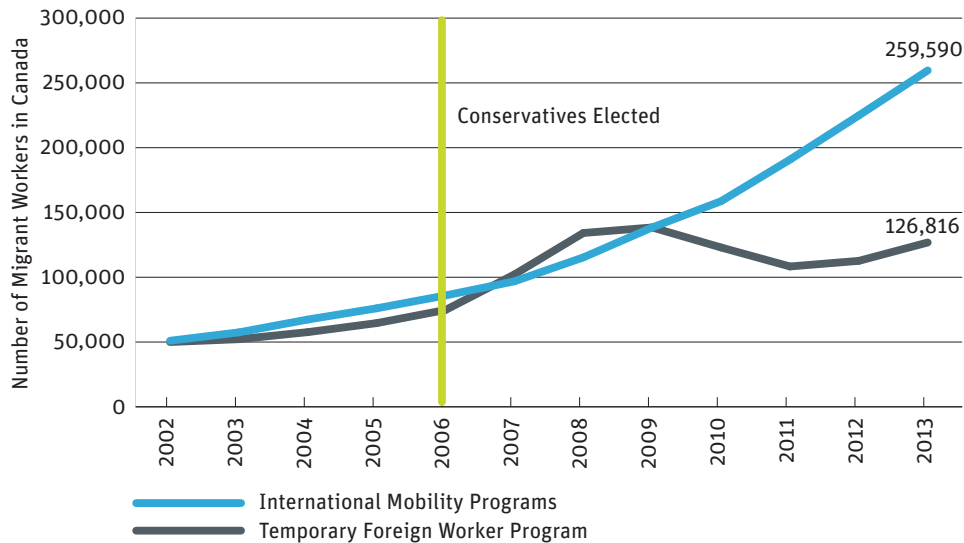
At the domestic level, the Harper government has made significant changes to every aspect of the IMP regime. In 2008, it increased the duration of work permits received under the Post-Graduation Work Permit Program from one to three years. The Provincial Nominee Programs have also undergone systematic reforms under this government with the express purpose of expanding economic immigration to Canada.

Altogether, the changes made to the International Mobility Programs through reform and expansion indicate a deliberate strategy of increasing international labour mobility into Canada. The Harper government has been forthcoming about this strategy of “economic immigration” (a misnomer, since migrant workers are by definition temporary). Statistically speaking, it has been a huge success.

Since Harper came to power, the number of migrant workers entering Canada every year has swelled from 65,000 to 85,000. The total number of migrant workers in the Canadian workforce has increased at an even faster pace in the same time period – from 160,000 to 386,000 – due in part to workers staying in Canada for longer periods at a time. When Harper was first elected, migrant workers made up approximately 1% of the Canadian workforce; today the figure is about 2%.

More revealing is the breakdown between the IMP and the TFWP (see *Chart 1*). Although it receives the majority of the public’s attention, the TFWP facilitates the entry of a minority of migrant workers into Canada. In 2006, only 47% of the migrant workforce in Canada had entered the country through the TFWP, with the rest made up of workers who entered Canada through the IMP. Over the course of

**CHART 1** Growth of Canada's Migrant Workforce Under Harper Government



Harper's administration, that gap has steadily widened. The TFWP now makes up only a third of the Canadian migrant workforce; the IMP contributes two-thirds.

In fact, almost all of the growth in the migrant workforce under the Harper government can be attributed to the expansion of the International Mobility Programs. Since 2006, the IMP has more than tripled, from 86,000 to 260,000 workers. Meanwhile the TFWP has grown from 75,000 to 127,000 workers. The total number of migrant workers in Canada as part of the Temporary Foreign Worker Program has actually been in slight decline since 2009, when it peaked at 142,000.

Growth within the International Mobility Programs, on the other hand, has been significant across the board. The number of workers entering Canada through free trade agreements, such as NAFTA, has increased 148% since 2006. "Reciprocal employment," which includes most of International Experience Canada, is up 121%. Most notably, "research and studies related" employment, which includes the International Student Program, is up a whopping 504%.

Compared to this massive growth in so-called "economic immigration," immigration in other categories has paled. For example, entries to Canada in the "humanitarian" category, which is predominantly made up of refugees, are down 43% since 2006.



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## Conclusion

The Conservatives in power have clung to a narrative of robust job creation and “sound economic stewardship” for close to a decade. Yet the government’s approach to international labour mobility has had a number of predictably problematic side effects that are inconsistent with this messaging.

Instead of supporting the domestic labour force, the Harper government has attacked organized labour (see Braley-Rattai chapter) while exposing Canadian workers to greater competition from abroad. Far from improving the living standards of most Canadians, Harper’s “sound economic stewardship” has exacerbated social and economic inequality in Canada by pushing down wages for many workers across the country.

By backtracking on the TFWP, the government showed a willingness to listen to Canadians while defending a job creation narrative. Yet the systematic and simultaneous expansion of the International Mobility Programs reveals its true agenda. Far from indicating a change of course, what the data show is a relentless commitment to increased international labour mobility at any cost.

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## Endnotes

**1** For a more thorough treatment of Canada’s international labour mobility initiatives and their impact on the Canadian labour market, see Hadrian Mertins-Kirkwood, “Labour Mobility in Canada: Issues and Policy Recommendations,” Canadian Labour Congress Research Paper (October 2014). Link: <http://canadianlabour.ca/issues-research/labour-mobility-canada-issues-and-policy-recommendations>.

**2** Employment and Social Development Canada, “Ensuring Canadian Workers Come First: Restricting Access to the Temporary Foreign Worker Program,” November 12, 2014. Link: [http://www.esdc.gc.ca/eng/jobs/foreign\\_workers/reform/restrict.shtml](http://www.esdc.gc.ca/eng/jobs/foreign_workers/reform/restrict.shtml).

**3** It is too soon to tell whether employers have voluntarily turned away from the Temporary Foreign Worker Program to any statistically significant degree. However, based on news reports and anecdotes, many employers have absorbed the increased costs or passed them on to workers and consumers while engaging in a dedicated lobbying campaign to overturn the reforms. Many employers in industries reliant on the TFWP have even threatened to shut down their businesses rather than raise wages or train new employees.

**4** Robert Knox, “Who Can Work Where: Reducing Barriers to Labour Mobility in Canada,” C.D. Howe Institute Backgrounder 131 (June 2010).

**5** Alberta Federation of Labour, “Minimum-wage TFW list shows program undermining Canadian wages,” August 29, 2013. Link: [http://www.afl.org/minimum\\_wage\\_tfw\\_list\\_shows\\_program\\_undermining\\_canadian\\_wages](http://www.afl.org/minimum_wage_tfw_list_shows_program_undermining_canadian_wages)

**6** Citizenship and Immigration Canada, “Total entries of foreign workers by yearly sub-status,” *Facts and figures 2012*, August 21, 2013. Link: <https://web.archive.org/web/20130821003239/http://www.cic.gc.ca/english/resources/statistics/facts2012/temporary/05.asp>.

**7** Foreign Affairs, Trade and Development Canada, “For Canadian Employers - Hiring Short-Term Young Foreign Workers,” October 29, 2014. Link: [https://web.archive.org/web/20141029105336/http://www.international.gc.ca/experience/canadian-canadien\\_employers-employeurs.aspx?lang=eng](https://web.archive.org/web/20141029105336/http://www.international.gc.ca/experience/canadian-canadien_employers-employeurs.aspx?lang=eng).

**8** Erika Tucker, “Youth exchange program next ‘stink bomb’ for Tories: policy expert,” Global News, July 4, 2014. Link: <http://globalnews.ca/news/1428372/youth-exchange-program-next-stink-bomb-for-tories-policy-expert>.

**9** Jason Kenney, “The government’s vision for an immigration program focused on job creation, economic growth, and prosperity,” Citizenship and Immigration Canada, speech delivered on April 4, 2012. Link: <http://news.gc.ca/web/article-en.do?nid=667119>.

# Canada's managed migration policy

Working for business, not people

Harsha Walia<sup>1</sup>

IN 2009, THE Conservative government oversaw the largest immigration raid in recent Canadian history, during which Canada Border Services Agency (CBSA) officers stormed farms, factories and homes to detain more than 100 non-status workers in Ontario. Two years later, the federal government announced the “four in and four out” rule that now bars the renewal of work permits for foreign workers who have been working in Canada for four years. As a result of this policy, an estimated 70,000 low-wage migrant workers are facing the possibility of expulsion from 2015 onwards. This is one of the largest mass deportations in Canadian history.

These mass raids and deportations are emblematic of a pattern of tighter controls, increased deportations and inflammatory anti-immigrant rhetoric by the Conservative government that further erodes the myth of benevolence in Canada's immigration policy. Canada currently accepts more migrants under temporary permits than those who can immigrate permanently. Permanent residency for refugees, skilled workers and family members is restricted, citizenship is becoming harder to get and easier to lose, while the migrant worker program is exploding.

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## From permanent residency to permanent precarity

The number of family-class immigrants dropped by 10,000 in the first four years of the Conservative government.<sup>2</sup> According to Avvy Yao-Yao Go, director of the Metro Toronto Chinese and Southeast Asian Legal Clinic, 30 years ago, family-class immigrants “made up the majority of all immigrants. Today, they account for less than 20% of the total intake.”<sup>3</sup>

The Conservative government has instituted a quota of 5,000 applications (not acceptances) on the sponsorship of parents and grandparents.<sup>4</sup> This comes after a complete two-year moratorium on reunification with parents or grandparents.<sup>5</sup> To even qualify, the government has imposed stringent income requirements and families have to sign a 20-year financial undertaking. For two decades, sponsored parents and grandparents cannot access social assistance without returning it.

As an alternative to family sponsorship, the government is lauding its new “quick” super visa initiative, a temporary visa that requires the purchase of *private* Canadian health insurance. Approval rates for this super visa are substantially higher for applicants from the U.S. and Europe than for those in many countries in Africa, Asia and the Middle East.<sup>6</sup>

All this makes family reunification a privilege for the wealthy and those from western countries, preventing thousands of low-income racialized children from meeting their grandparents. It also further entrenches poverty for low-income immigrant families who are unable to afford child care and have typically relied on grandparents to perform child care and domestic labour.

For other family sponsorships, such as reunifying with partners or children, there are similar barriers. As of August 2014, children over the age of 18 can no longer come to Canada as a dependent family member. Sponsored spouses, where the couple has been together for less than two years and has no children together, must now arrive on a two-year conditional probation residency. If during those two years the relationship ends, the sponsored spouse can lose their permanent residency status. Immigrant women in abusive relationships become more vulnerable as their legal status is contingent on staying with abusive partners.

The situation is equally dire for refugees. According to a 2014 *Embassy* magazine report, the number of refugee claims has decreased by 50%.<sup>7</sup> The *Toronto Star* further notes that the number of accepted refugees has dropped by 25%.<sup>8</sup> Between 2006 and 2011, CBSA, which is tasked with immigration enforcement, carried out 83,382 deportations.<sup>9</sup>

Due to the Conservative government’s “Refugee Exclusion Act,” formally known as the *Protecting Canada’s Immigration System Act*, refugees contend with a discriminatory two-tier system based on nationality (see Carlaw chapter). Coun-

tries like Mexico are classified as “safe,” making it essentially impossible to seek asylum irrespective of one’s individual circumstances. Swept aside by successive immigration ministers as “bogus” claims, Canada fast-tracks deportations of refugees from these “safe” countries. The government has also imposed visa requirements targeting refugee claimants from Mexico and the Czech Republic by suggesting they are “system-abusers,” while announcing a biometric entry system for all visa holders.

The “Refugee Exclusion Act” also sanctions mandatory detention upon arrival for refugees classified as “irregular arrivals,” including children over the age of 16. This comes on the heels of the detention of 76 Tamil women and children aboard MV Ocean Lady. Another 492 Tamil asylum seekers aboard MV Sun Sea were incarcerated for months in jails and detention centers across B.C.’s Lower Mainland.

The Global Detention Project has documented an average of 11,000 migrant detentions per year over the past ten years, including up to 807 children detained each year behind razor-wire fences and barred windows.<sup>10</sup> According to the End Immigration Detention Network, migrant detainees spent a total of 183,928 days (more than 503 years combined) in immigration detention last year simply for administrative offences.<sup>11</sup> Some are incarcerated indefinitely. Until migrant justice organizers launched a campaign to secure his release, one Iranian refugee was detained for six years because he refused to sign documents consenting to his own deportation.

According to a groundbreaking report, fewer migrants are being released from detention each year with a national release rate average of just 15%.<sup>12</sup> Over one-third of migrant detainees are crammed in provincial prisons, including maximum security facilities, where they sometimes spend up to 18 hours a day in cells.<sup>13</sup>

One of these detainees was 42-year-old Mexican refugee Lucia Vega Jimenez. An undocumented hotel worker in Vancouver, she was detained by CBSA after transit police racially profiled her based on her accent and believed “she wasn’t originally from Canada.”<sup>14</sup> Even when Lucia showed CBSA officers her scars from past incidents of domestic violence, they proceeded with processing her for deportation. She hanged herself while incarcerated in CBSA custody and died shortly after. There have been at least 11 other documented deaths in immigration detention custody in Canada since 2000, the latest one in June 2015.<sup>15</sup> Abdurahman Ibrahim Hassan, a 39-year-old Somali man, died in CBSA custody after being denied adequate medical care and then being “restrained” by officials.

On top of escalating deportation and detention rates, many refugees face limited legal options including very short timelines to file claims, with no right to appeal. Drastic cuts to the Interim Federal Health Program mean they have no access to basic health care.<sup>16</sup> In a rare move for the profession, doctors across Canada occupied federal MP’s offices to protest these cuts.

According to Canadian Doctors for Refugee Care, these cuts “place the pregnancies of refugee women at serious risk, cause denial of treatment for sick children, and deprive refugees with cancer of coverage for chemotherapy.”<sup>17</sup> Even though the Federal Court of Canada handed down a monumental decision calling the cuts unlawful and unconstitutional, the government is appealing the decision. The Harper government has spent more than \$1.4 million in taxpayers’ money on legal fees to fight this in court.

For the few refugees and migrants who do become permanent residents or citizens, the battle for secure legal status does not end there. The “Immigrant Criminalization Act,”<sup>18</sup> formally known as the *Faster Removal of Foreign Criminals Act*, which passed in 2013, allows for deportations of thousands of permanent residents who have been convicted for minor offences, including traffic offences.<sup>19</sup> Additional changes to the *Immigration and Refugee Protection Act* mean permanent residents who came as refugees can lose their status if the Immigration and Refugee Board decides they are no longer refugees.

Finally, the new “Stealing Citizenship Act,” formally known as the *Strengthening Canadian Citizenship Act*, makes it possible to revoke citizenship from dual nationals or even from Canadian-born children who have the possibility of accessing dual citizenship.<sup>20</sup> In a shocking precedent, Ottawa-born Canadian passport-holder Deepan Budlakoti is facing deportation. For almost half a year, Deepan was denied the right to work in Canada and he still remains in legal limbo with regard to his citizenship.<sup>21</sup>

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## Racialization of poverty

As the legal status of migrants becomes increasingly precarious, so too does their economic security. Buried within the Conservative government’s latest omnibus budget implementation act, passed into law in 2014, are provisions to deny social assistance to a majority of refugees. This law amends the *Federal-Provincial Fiscal Arrangements Act* that currently forbids provinces from imposing a minimum residency requirement before a refugee claimant can become eligible for social assistance. Provinces can now impose individual residency requirements for eligibility for social assistance benefits.

These changes deepen poverty for those who are already marginalized. Many refugees arrive in Canada after suffering violence and trauma. Their work permits in Canada often take months to process. To top it off, cuts to legal aid in almost every province mean refugees need financial resources to pay for the legal support necessary for their refugee hearings. Lack of social assistance for refugees is par-

ticularly punitive as it means that refugees will be forced to live without any source of income in a new country when they need assistance the most.

Amnesty International has argued that this “worsens the lives of refugee claimants, who are already in situations of extreme precariousness, and that restricting their access to social assistance violates Canada’s protection obligations under the Refugee Convention.”<sup>22</sup>

Living with precarious legal status also means an increased likelihood of being in temporary or casual work, and a decreased likelihood of being able to assert labour rights. According to recent statistics by Food Banks Canada. Of the 833,098 individuals accessing food banks in 2013, over 11% were recent immigrants. This is more pronounced in major urban centers: according to a CBC report, “almost half the people lining up at the Fort York Food Bank in west-end Toronto are recent immigrants.”<sup>23</sup>

The latest Canadian Labour Market and Skills Researcher Network study similarly finds that, primarily due to de-skilling, more than 36% of immigrants who have been in the country for less than five years live in poverty.<sup>24</sup> A recent male immigrant with a university degree earns 48% of what his Canadian-born counterpart earns.<sup>25</sup>

This is further corroborated by statistics from the National Household Survey illustrating that immigrant families make up 36.6% of all low-income neighbourhoods and 40% of very-low-income neighbourhoods.<sup>26</sup> During the recent period of recession, both the unemployment rate and the poverty rate of very recent immigrants were more than double those of the Canadian-born population. Taken together, this points to a trend of increased impoverishment among recent immigrants.

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## Ideology of migrant exclusion

As current Immigration Minister Chris Alexander told Parliament, “By making changes to the system, our government is ensuring immigration is protected from those who are seeking to abuse taxpayer-funded health care, welfare, and other social benefits.”<sup>27</sup> Here we see the ideological foundation of these various changes.

Family-class immigrants and refugees are considered economic burdens draining the public system. Hence, their entry is either restricted or tied to conditions such as signing financial undertakings and denial of public health care and social assistance. Numerous studies indicate that migrants use social assistance less than the Canadian population.<sup>28</sup> Furthermore, such comments erase the immense subsidy to the Canadian economy that migrants provide: for example, grandparents performing child care and domestic labour so that mothers can enter the paid workforce.

Moreover, the idea that migrants are only worthy if they can contribute to the paid workforce is morally repugnant and dehumanizing. The Conservative government has ended the Federal Skilled Worker Program and has implemented a new “expression of interest” system instead. Like an online dating system, employers cherry-pick from a pool of immigration applicants those they want to come to Canada permanently as workers. Those who are favoured are wealthier English-speaking migrants with university degrees in one of only 24 accepted occupations.

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## Canada’s model of managed migration

It is this racism and classism that sanctions the migrant worker program of indentured labour. The number of temporary migrant workers in Canada has tripled from 101,100 to 300,210 over the past decade.<sup>29</sup> The number of non-permanent residents who entered Canada in 2013 (460,663) exceeded the number of permanent immigrants of all types landed that year (258,953).<sup>30</sup>

Temporary permit programs do include high-skilled workers in the International Mobility Program whose rights are significantly better protected than the increasing number of workers coming under the “low-skilled” temporary foreign worker categories. Lower-skilled occupational categories are included in the Seasonal Agricultural Workers Program and the Live-In Caregiver Program (LCP), for example. Kendra Strauss reports:

The number of [Temporary Foreign Worker] positive labour market opinions doubled between 2005 and 2012 in sectors like manufacturing and mining, oil and gas, and increased more than seven-fold in construction. Even more striking, though, is the increase from 4,360 to 44,740 during the same period in accommodation and food services positions.<sup>31</sup>

Those under Temporary Foreign Worker work permits are indentured to a single employer. They do not have guaranteed access to social services or labour protections despite paying for them. They work long hours and are often paid less than minimum wage. They often have to live in housing provided by their employer and are not granted permanent residency upon arrival. Migrant workers are incredibly isolated as a result. As migrant worker Noé Arteaga puts it, “It’s modern day slavery.”<sup>32</sup>

Women coming to Canada under the LCP are particularly impacted by the structural violence of the Temporary Foreign Worker Program (TFWP). Although employment standards stipulate a maximum work week of 40–48 hours, in reality being a live-in caregiver means she can be called on by the employer at any time. Women are exposed to labour violations including unpaid or excessive work hours, additional job



responsibilities, confiscation of travel documents, disrespect of their privacy, and sexual assault. As one migrant domestic worker remarks, “We know that, under the LCP, we are like modern slaves who have to wait for at least two years to get our freedom.”

Low wages and program requirements mean that caregivers cannot sponsor their children for three to seven years. Live-in caregivers also do not have the right to access post-secondary education.

In addition to the supply of cheap labour provided by migrant women under the LCP, the program serves a critical function in the economy. Canadian parents can pay a private daycare \$700 to \$1,000 per month per child.<sup>33</sup> By comparison, depending on the province, the cost of one live-in caregiver under the LCP is \$1,300 to \$1,800 per month. By facilitating the replacement of domestic labour for middle-class and rich women through the LCP, the state is absolved of the responsibility to create a universal child and elder care program that benefits all women and families.

An important report by the Metcalf Foundation argues that the plight of migrant workers is a “Made in Canada” problem. Migrant workers are underpaid, overworked and denied basic rights like decent housing, health and safety precisely because of immigration and labour laws and policies. “Since migrant workers don’t enjoy the same legal status and protections as permanent residents, they are at higher risk of abuse by employers who take advantage of their vulnerability,” writes Fay Faraday.<sup>34</sup> One of her report’s main recommendations is that all workers of all skill levels should have access to apply to immigrate and arrive with permanent residency status.

Canada’s model of managed migration, which favours temporariness over permanency, is not, as some might contend, a reflection of a “broken” immigration system. The denial of permanent residency to migrant workers — overwhelmingly persons of colour — is precisely what makes them precarious and exploitable. These workers represent the ideal workforce for state and capitalist interests: commodified and exploitable, flexible and expendable. “It’s not that global business does not want immigrant labour to the West,” author David McNally observes. “It simply wants this labour on its own terms: frightened, oppressed, vulnerable.”

Other countries are taking note. While Canada is often cast as a liberal counterpoint to aggressive U.S. immigration enforcement tactics, the U.S. has pointed to Canada as the model to implement for U.S. migration policy.

Employment authorization programs put forward as part of comprehensive immigration reform policy in the U.S. are based on the Canadian temporary foreign worker program. Immigration expert David Fitzgerald notes in the *Washington Post*:

People look to Canada as a model for their success at making temporary workers truly temporary. But the way they are prevented from staying is by socially isolat-

ing them to an extreme degree, controlling their movements and systematically preventing them from interacting with Canadian society. From a labour rights perspective, it's troubling, but it's appealing to policy-makers because it keeps the workers temporary.<sup>35</sup>

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## Conclusion

The devaluation of migrant labour is reinforced by the devaluation of the racialized bodies performing that labour. Though their labour has secured billions of dollars in profit for industry and is a major subsidy to the economy, the naming of migrant workers as “foreign” or “temporary” signals their non-belonging. Such terminology has little to do with how long these workers have lived and worked and built community in Canada; rather, it signals their position as permanent outsiders. It is no coincidence that migrant workers are systematically underemployed and have lower earnings relative to Canadian workers and even recent immigrants with permanent residency status.

This reality stands as a stark counterpoint to the myth of Canadian benevolence and the veneer of Canadian multiculturalism. Indeed, for the few skilled workers Canada is willing to accept as permanent residents, the Conservative government has openly vocalized a preference for immigrants that are “culturally compatible” (read: white).<sup>36</sup>

Canada has perfected a system of managed migration to ensure the steady supply of cheap labour while entrenching racialized citizenship. With growing anti-immigrant sentiment, fear-mongering about race-based demographic changes, and panics about job losses, migrant workers become the perfect pretext for maintaining a pool of cheap disposable labour. In addition to ensuring cheap labour, the ability to deny permanent residency to predominately racialized temporary workers ensures the undisturbed centrality of whiteness in colonial Canada. Racism underpins the many myths and justifications given for the increasing denial of permanent residency to migrants.

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## Endnotes

**1** This work is based on previous writings including “No safe haven: Canada’s ‘managed migration’”; “Transient servitude: migrant labour in Canada and the apartheid of citizenship”; and “Why everyone should care about the Temporary Foreign Worker Program”. Published in *Rabble.ca*

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# The Harper government's war on labour

Solutions in search of a problem

Alison Braley-Rattai

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## Introduction

IN 2011, STEPHEN Harper led his Conservative Party to a majority government in the House of Commons. Very soon afterward, the extent of the government's antipathy toward unions became apparent. Between June 2011 and June 2012, Lisa Raitt, then labour minister, sponsored (or threatened to) back-to-work bills impacting Canada Post workers, three separate bargaining units at Air Canada, and workers at CP Rail. Then, in December 2014, Bill C-525 received royal assent. This act amends the way federally regulated workers in both the public and private sectors can form unions, making it more difficult to do. Finally, on June 30, 2015, the irremediably flawed Bill C-377 passed third reading in the Senate. This act amends the *Income Tax Reporting Act* by singling out unions to create unparalleled reporting requirements.

The justification for these pieces of legislation shows little rational connection to their purported ends. Of course, policy-makers may articulate their policy goals poorly and choose means that ill serve their goals, just as *unintended* consequences may flow from *conscious* decisions. However, the consistent assault by the Harper government on the statutory framework governing labour relations can-

not be understood as the result of poor analysis. Rather, these decisions can only be understood with reference to the overriding force of ideology that sees virtually no legitimate role for organized labour in Canadian society. For the Harper government, the long game is what matters, which in this case is a transformation of the role of unions within the public sector and broader Canadian economy.

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## Everyone back to work

In June 2011, Lisa Raitt, then federal labour minister, introduced back-to-work legislation to end rotating strikes and a total lockout at Canada Post. At the same time, she sponsored back-to-work legislation for Air Canada customer service agents. Three months later, Raitt threatened back-to-work legislation to deal with Air Canada's dispute with its flight attendants. Two days prior to the beginning of a lawful strike, the minister referred that matter to the Canadian Industrial Relations Board under an "emergency" provision, for which she was accused of trying to buy time until it was possible to pass back-to-work legislation.<sup>1</sup> In March 2012, Raitt again introduced legislation to ensure that neither the unions representing pilots and baggage handlers at Air Canada nor the employer could access their statutory right to strike/lockout. One year and several legislative interventions later, Raitt legislated workers at CP Rail back to work after several days of picketing.

The frequent use of legislation to override the statutory instruments available to labour (and employers) in the summer of 2011 through to the spring of 2012 is remarkable. Economist Ian Lee calls it "the new normal" for labour relations.<sup>2</sup> Back-to-work legislation is not novel. Its increased use during the 1970s onward is well established by Panitch and Swartz.<sup>3</sup> However, the Harper government's response to collective worker action may be new in *degree* if not in *kind*. The manner of the government's interventions represents "an audacious willingness to intervene into labour-management relations" and to "push the goalposts a little further."<sup>4</sup>

### Canada Post

A two-week rotating strike by the Canadian Union of Postal Workers (CUPW) in the spring of 2011 was the longest job action allowed by the government in any of the cases enumerated above. In part, CUPW was concerned about the possibility of legislative action and chose a rotating strike to avoid stopping mail delivery. It is only when Canada Post locked out its workers that mail delivery ground to a halt. Within days, Bill C-6 was being debated in a marathon filibuster session in

the House of Commons. Minister Raitt said the legislation was meant to protect the “fragile economic recovery.”<sup>5</sup>

Two things are relevant here. The first is that with rotating strikes lasting just two weeks, there was hardly time to gauge their economic impact. Moreover, Raitt’s rationale was at odds with the Canada Post’s own stance during negotiations with the union. Canada Post said it was losing money precisely because the public was using other means of mail delivery. Whatever the economic loss for Canada Post, owing to either the rotating strikes or the lockout, it could hardly be considered significant across the economy. Economist Jim Stanford said he did not know of any economists “who were losing sleep over the impact of either work stoppage on the national GDP,” citing other, far more serious threats to the general economic recovery about which the Conservatives were remarkably unconcerned.<sup>6</sup>

The second thing of note has to do with motivation. According to a former minister responsible for Canada Post, “there is no way Canada Post would ever order this lockout without the agreement of the government.”<sup>7</sup> If the goal was ensuring mail delivery to prevent damage to the fragile economy then it did not make sense to permit a lockout. Having permitted one, it would make even less sense to turn around and legislate it away. This has led to speculation the actual goal was to provide the Conservatives with “cover” to order workers at Canada Post into binding arbitration. There, through legislative fiat, the government would have more control over the final terms and conditions of a new collective agreement.

Admittedly, this is speculation. We will likely never know exactly what transpired behind the scenes between the government and Canada Post. But speculation continued through the process. For example, the back-to-work legislation did more than just impose binding arbitration. The bill contained legislated wage increases that were less than those offered by Canada Post. Moreover, the government appeared to want to control the “neutral, third party” process through its choice of arbitrator. The first one quit after CUPW challenged his inability to speak French. More significantly, the second arbitrator chosen by Raitt was dismissed by a judge because his former roles as a Canada Post lawyer and Conservative Party candidate put the appearance of impartiality in doubt.

## **Air Canada**

At the same time that Canada Post workers were being legislated back to work, Air Canada passenger agents were as well. The Conservative government prepared legislation even as the midnight hour struck in the first few seconds of a lawful strike that would last a total of three days before the two sides reached an agreement. Here, the argument about aiding the fragile economic recovery rings even

less true because Air Canada is a privately owned, non-monopoly corporation. Even if it were the job of the government to get Canada Post's mail going again (a position disputed by the International Labour Organization's committee on freedom of association),<sup>8</sup> it is not at all clear how it would be the government's right or responsibility to intervene at Air Canada — not once, not twice, but three times!

There is no doubt that a work stoppage at Air Canada would have proven highly inconvenient to many people. That is, it should be noted, the point of a strike in the private sector. The government, in banning an otherwise lawful strike, negated the very statutory framework through which private actors deal with labour relations.

Most labour relations experts agree that government intervention in labour disputes in this ad hoc way increases bad outcomes down the line. George Smith, a former director of employee relations at Air Canada, had this to say:

The government has managed to pull a fast one by hiding behind the economic impact, and the assumption of the pro-Conservative folks was that this is harmful to unions, not management. That is a false assumption.<sup>9</sup>

Professor Laurel Sefton MacDowell agrees, saying this “intervention and threatening and warning from the beginning...it's being very disruptive, and it's actually creating problems, not solving problems.”<sup>10</sup>

In conclusion, the government's ad hoc intervention into labour relations in 2011–12, supposedly to aid a fragile economic recovery, lacked the support of experts, stakeholders engaged in the negotiations of collective agreements, and economists. Ultimately, these actions disregarded the statutory framework because it recognizes a legitimate space for organized labour where the government does not.

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## Changing the framework: Bill C–525

At other times, the government chose to change the basic framework. Bill C–525, a private member's bill, received royal assent on December 16, 2014, and came into force six months later.<sup>11</sup> The act changes the way that unions are formed under federal jurisdiction from what was a “card-check” system to a “vote-based” system. With card-check systems the labour board will certify a bargaining unit (i.e., a group of people whose job duties are such that it is possible for them to be covered by a single collective agreement) once a certain number of membership application cards have been signed. The board takes the signed cards as proof of the employees' desire to join a union and certifies the relevant union as the representative of that bargaining unit. The threshold varies among jurisdictions from a low of 40% to a high of 65%. Aside from some contingency — like the employer chal-



lenging the make-up of the bargaining unit or raising doubts about the legitimacy of the cards — there is no further barrier to certification. Historically, all unions in Canada were certified using this process.

By contrast, vote-based systems incorporate card-check to the extent that a certain number of signed cards are still required, and the threshold also varies by jurisdiction. This triggers a secret ballot vote supervised by the relevant labour board. At present, five provincial jurisdictions and (now) the federal jurisdiction require a secret ballot vote.<sup>12</sup> The remaining four provinces and the territories employ card-check certification with some variations.

### **Not so free, not so secret votes**

The evidence is clear that card-check systems result in higher levels of unionization than do vote-based systems.<sup>13</sup> It is why unions and their supporters favour card-check, while employers (and increasingly governments) favour vote-based certification. Proponents of each approach contend that their preferred system better reveals the true intentions of employees as to whether or not they really want to form a union.

There is good reason to believe that the average person would be inclined to prefer a vote-based system. In a liberal democracy there is a strong connection between the secret ballot and legitimacy. A secret ballot assures the voter's ability to freely register their true intention to vote for X, Y or Z, so a vote-based system for unionization sounds like it should better reveal employees' "true intentions." This assumption is far from assured.

Card-check systems reduce the time lapse between when the union applies for certification and actual certification. Requiring a vote gives the employer time to catch wind of the process and to engage in acts that might interfere with it. For instance, the certification vote itself generally takes place on the employer's property. While the content of the actual ballot is secret, an employer can see who showed up to vote, and they can come to conclusions, whether rightly or not, about how they voted. In a smaller workplace, this might be particularly problematic.<sup>14</sup>

When the newly unionized Walmart in Jonquière, Quebec was closed, one of its workers identified that she had not voted in the certification process, apparently to appear "non-committal."<sup>15</sup> Such a stance suggests that workers view non-voting as a strategy to avoid being labelled "pro-union." Most candidates vying for votes in a municipal, provincial or federal election are unlikely to know the identity of the voters, or have any real leverage against them one way or the other. As a result, the analogy between a secret ballot vote for union certification and that in a provincial, federal or even municipal election is limited.

The disadvantage of the card-check system is that employees can feel *compelled* to sign cards. Blaine Caulkins, the MP who sponsored Bill C-525, said that “[a]nyone who operates under the belief that bullying, threats, or even blackmail is a mutually exclusive act operates under complete and willful blindness.”<sup>16</sup> What this statement ignores is that the union simply does not have the same ability to compel workers as the employer. We need to understand what counts as a threat or undue influence in the employment context.

For example, when workers at the Jonquière Walmart held a successful certification drive with the United Food and Commercial Workers (UFCW), rather than allow an arbitrator to resolve an impasse in negotiating its first collective agreement, Walmart closed its doors citing business reasons. The UFCW challenged the closure as being motivated by anti-union animus, and a violation of Quebec labour law. After nearly a decade in the courts, including two stints at the Supreme Court of Canada, the union ostensibly won: Walmart was deemed to have broken the law. However, the store is still closed. Despite the compensation Walmart will be forced to pay, with their enormous financial resources this is still a victory for the company. And with anti-union “trailblazers” like Walmart leading the way, other employers do not need to do or say very much to signal that the road forward might be rocky if workers decide to certify a union.

A similar chill is created when union organizers are fired. These organizers may get reinstated if they pursue an unfair labour practice claim, but by then the damage is often already done. This illegal union avoidance tactic appears to make good business sense. A comprehensive look at Canadian employer responses to certification drives concluded that “overt opposition to union certification was the norm.” Additionally, 12% of employers revealed that they had engaged in practices *they believed to be illegal* during the certification drive.<sup>17</sup>

### **Committee amends the bill**

Under the original wording of Bill C-525, those who did not cast ballots counted *against* unionization instead of making the wishes of those who cast a ballot decisive. When it came to *decertifying* the union, however, those who did not cast a ballot did *not* count. In other words, the true intentions of those not wanting the union counted as truer than those who did.

Wisely (or strategically), the committee considering the bill after second reading thought better of these imbalances and corrected them. This was despite the fact Bill C-525 received a total of only four hours of consideration in committee, prompting committee member Jinny Jogindera Sims to call the process “a farce.”<sup>18</sup> As it stands, Bill C-525 requires a threshold of 40% of cards signed to trigger a vote,

and a count of 50% plus one to trigger certification. Decertification is triggered by a comparable process.

Still, we are left wondering what problem Bill C-525 was meant to solve. Caulkins says it has to do with a “mountain of complaints” received about the card-check process, but this is not supported by the evidence provided at the committee stage. The majority of witnesses focused their attention on other issues; for example, that the original drafting of the bill was unprecedented and could violate Canada’s commitments under international labour law. These concerns were incorporated into the amendments to the legislation mentioned above.

Witnesses also pointed out the lack of evidence to indicate the card-check process actually promoted intimidation or coercion by the union. Finally, it was pointed out that this ad hoc approach to labour relations was a rejection of the broad tripartite consultative system that had worked well for Canada’s industrial relations landscape for nearly half a century. Those in favour of the bill simply reiterated the assumption that votes were more democratic, without grappling with the reasons provided for why that assumption is problematic in this context.<sup>19</sup>

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## **Making union business everyone’s business: Bill C-377**

One observer has referred to Bill C-377 as “the bill that nobody wants.”<sup>20</sup> The legislation, which passed into law this summer, is so deeply flawed that the Senate — not known for its rebellious streak — originally refused to approve it. Former Conservative Senator Hugh Segal condemned the policy as being deeply imbalanced and ill thought-out,<sup>21</sup> calling it “badly drafted,” even “flawed, unconstitutional and technically incompetent.”<sup>22</sup> Segal led the defeat of this bill in its original form, when 16 Conservative senators joined ranks with the rest and voted for significant albeit inadequate amendments. With Segal’s resignation from the Senate in June 2014, some believed it was only a matter of time before the legislation would be reintroduced without amendments. Bill C-377 passed third reading in the Senate on June 30, 2015.

### **What does this bill do?**

Bill C-377 is a private member’s bill that amends the *Income Tax Act* to require labour organizations (and only labour organizations) to disclose detailed information of their accounts on a publicly accessible website under the auspices of the Canada Revenue Agency. This bill places tax reporting requirements on labour organizations unparalleled by those required by any business, charity or local or-

ganization. The legislation leaves open the disturbing possibility that the “form” and “particulars” of the reporting requirements could be changed by regulation (i.e., without further parliamentary oversight).

The government’s justification for the bill was that those who pay union dues have a right to know where their money is going. Notably, legislation in most jurisdictions already requires that members be given audited financial statements upon request. And most of us with any union experience know that a key element of virtually every union meeting is a treasurer’s report that is subject to questioning and ratification by the membership. The bigger question is this: why should the government police the internal organization of a private association? The two-part answer here reveals the depth of anti-union feeling in this government.

First, private associations are funded by dues that are deducted at the source by the employer and cannot, therefore, be voluntarily withheld. Since this is a unique aspect of labour organizations, there is no comparison between a labour organization and most other private associations.<sup>23</sup> Members cannot withhold their dues if they are dissatisfied with the level of accountability or transparency of their union leadership. Some workers have opted not to become union members, but because they are covered by the terms and conditions of the collective agreement, and owing to the benefits they receive, they must nevertheless pay union dues. This provides an opening for the government to intervene to rectify the alleged problem of some non-member dues-payers not knowing how their contributions are spent. Even if this were the case it would not explain why the *general public* rather than merely the dues-payers have a right to know the internal accounts of the union. The government’s argument here is that since the dues are tax deductible, the public is also, in a sense, “funding” the union. Therefore, they too ought to know where virtually every union dollar is spent.

The bill’s limits reveal how deeply insincere this rationale is. The universal position among labour unions is that the term “labour organization” in the legislation would be read broadly enough to include all the organizations with which unions, with duly signed collective agreements, are affiliated, such as the Canadian Labour Congress. Yet the term is restrictive enough to exclude professional associations for which dues are also mandatory (e.g., various medical associations and law societies). Russ Hiebert, the MP who sponsored the bill, testified that the term was intended to exclude them.<sup>24</sup> For this reason, arguments about the mandatory nature of dues appear frivolous. So, too, is the tax deduction argument, since the bill does not apply to any other organization that receives “public funding” in the form of tax deductions. Certainly, businesses that receive more benefits than unions could ever claim are not subject to the bill.

## Supporters and detractors

They say you can tell a lot about someone by the company they keep. In this case, the same applies to Bill C-377. The legislation is supported by a handful of associations, none of which represents organized labour, and virtually all of which have a history of engaging in anti-union activities.<sup>25</sup> MP Hiebert says it is modelled on similar legislative initiatives in the U.S., where proponents explicitly stated the point of such measures is to cripple the labour movement. Such anti-union rhetoric is virtually absent in the Canadian debate, likely because it would not play as well here as it does south of the border.<sup>26</sup> But what is similar is the attempt to manufacture consent for Bill C-377 through methodologically flawed polls like those sponsored by the anti-union group LabourWatch between 2003 and 2013.

A 2011 poll conducted for LabourWatch by NANOS Research indicated that 83% of the Canadian population supports greater reporting requirements for unions. But the methodology was sufficiently flawed to have been the subject of a complaint to the Marketing Research and Intelligence Association (MRIA), which included accusations the firm used leading questions and suppressed results suggesting Canadians viewed unions favourably.<sup>27</sup> A complaint panel determined that the questionnaire was flawed, although NANOS was not found to have violated MRIA's code of ethics. According to one report, the MRIA's initial recommendations to NANOS included that they inform LabourWatch of the flaws and seek the group's permission to release those results that went previously undisclosed. LabourWatch did not comply.<sup>28</sup>

If the justifications for the bill are weak, the problems and concerns expressed by labour groups, as well as those with merely a professional interest, are legion. After several weeks of study, a Senate committee reported that the vast majority of witnesses and submissions raised concerns about the bill. Detractors included not only labour organizations, but professors, five provincial governments, the insurance and accounting industries, and the federal privacy commissioner. As a whole, the witness pool could hardly be considered a hotbed of labour activism.

The committee wrote that first among the concerns raised by these groups and individuals was “the constitutional validity of the legislation both with respect to the division of powers and the Charter.” The report also listed “the protection of personal information, the cost and need for greater transparency, and the vagueness as to whom this legislation would apply.”<sup>29</sup> Pending the outcome of the 2015 federal election, the legislation could very well be challenged in court.

The point that this bill singles out unions for unparalleled treatment has been made over and over again. Testifying before a House of Commons standing committee on finance, former federal privacy commissioner Jennifer Stoddart suggested

the (much more modest) reporting requirements that now exist for registered charities would likely be acceptable here. She argued that these requirements would “result in a more balanced, yet equally effective outcome.”<sup>30</sup> It is clear, however, that the Conservative government does not believe these reporting requirements *would* yield equally effective outcomes.

That the point of the bill is to single out labour organizations for special treatment is made clear by its title: *An Act to amend the Income Tax Act (requirements for labour organizations)*. Despite this, the bill’s proponents have consistently failed to recognize or address the discrepancy between the requirements for labour organizations and those for other, similar organizations. Unlike the reporting requirements for charities, no tax implications flow from the requirements in this bill. Thus, even the more modest reporting requirements would likely not render this bill constitutional on a division-of-powers analysis.<sup>31</sup>

Labour organizations believe this bill, with the enormity of its reporting requirements, is an attempt to bankrupt unions or divert their resources from the substantive work they do — to “tip their hand” during negotiations, since employers would have access to the union’s information when the opposite is not the case. Former Canadian Labour Congress president Ken Georgetti summed it up this way:

Bill C-377 is a solution in search of a problem. It wrongly violates Canada’s Constitution and the Charter of Rights and Freedoms.... It relates not to the tax authority of the federal Parliament but the regulation of trade unions or labour relations. It causes Canada’s privacy commissioner concern and it offends the intent of federal and provincial privacy laws. It creates an unfair advantage for non-union construction contractors and an uneven playing field in the labour market. It ignores the basic facts of the democratic structures of trade unions and the legal frameworks within which trade unions already operate.<sup>32</sup>

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## Conclusion

Canada’s present statutory labour relations scheme was decades in the making and represents an attempt to balance diverse interests in a hotly contested, emotionally charged and wide-reaching policy area. Whatever one thinks about labour organizations, we should be wary of legislation that makes large-scale changes to this statutory framework without adequate input, without an electoral mandate — both C-525 and C-377 were private member’s bills, not government legislation — and against the advice of a wide array of stakeholders and disinterested experts. The sheer variety of opposition to Bill C-377 is further proof that the Conservative government is not interested in thoughtful, evidence-based policy. This will become

more apparent as the law winds its way through a potential constitutional challenge. If the government was searching for a problem, it appears it has found one.

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# Hollowing out the middle

Recasting federal workforce development programs under the Harper government

Donna E. Wood<sup>1</sup>

ALL DEVELOPED COUNTRIES invest in workforce development. These are measures designed to attract and retain talent, solve skills deficiencies, improve the quality of the workplace, and enhance the competitiveness of local firms. They are also meant to incorporate the disadvantaged, integrate immigrants, and help the unemployed find work. Government intervention is necessary to improve market efficiency, promote equal opportunity, and ensure social and geographic mobility among citizens.

As a domain that straddles both social and economic policy, workforce development is particularly complicated in Canada. This is because our Constitution is ambiguous on whether this is an area of federal or provincial responsibility. Most programs, like postsecondary education and apprenticeship, are clearly under provincial control, but there is less certainty around measures to help the unemployed. Before the Second World War, it was accepted that these kinds of programs were under provincial responsibility. Often the federal government helped financially. After the devastation of the Depression in the 1930s, the federal government and all the provinces agreed, in 1940, to a constitutional amendment transferring significant responsibilities to Ottawa through a national unemployment insurance program.

By the 1990s, Ottawa dominated the policy area through a network of about 500 Canada Employment Centres across the country, delivering both income sup-

port and employment services. In 1996, the federal Liberal government offered to transfer responsibility for employment services back to the provinces.<sup>2</sup> Ottawa kept responsibility for income support. It did this by concluding a series of agreements paid for out of money contributed by employers and workers to the employment insurance (EI) fund. Ottawa's intention was to show "flexible federalism" following the Quebec referendum on sovereignty.

When the Harper Conservatives came to power in 2006, the job was half done, with devolved labour market development agreements or LMDAs signed in eight jurisdictions. There were co-managed agreements in the remaining five.<sup>3</sup> The new government aspired to have "the best educated, most skilled, and most flexible workforce in the world." To achieve this goal, not only did the government need to figure out what to do, but the equally important question of who should do it also needed to be worked out.

This chapter looks at the Harper government's record in workforce development since 2006. Unlike other assessments, it does not look at changes to the number of jobs created, the quality of those jobs, the income they provided, the unemployment rate, or the participation rate. Instead, this chapter gathers evidence in order to assess the impact of what we might call the *Conservative Jobs Agenda* on political institutions, discourse, and democracy in workforce development matters. In late 2014, the *Jobs Agenda* was touted by Minister Jason Kenney as having "fixed the paradox of too many people without jobs and too many jobs without people."<sup>4</sup>

The chapter concludes that, beyond the successful completion of devolution to the provinces and territories, the *Conservative Jobs Agenda* has been just a wishful boast. By eliminating pan-Canadian institutions that provided information to the public, democracy has been diminished. The government has made dramatic reductions to a variety of programs. Discourse and debate have been confined to the privileged few, with limited opportunities for engagement between governments, business, labour, Aboriginal organizations, training institutions, and unemployed Canadians. These results are particularly disturbing at a time of weak employment, declining participation rates, and ageing demographics when — more than ever — all governments and stakeholders from across Canada need to work together.

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## The Liberal legacy

The period between 1995 and 1997 was a time of transformation in workforce development programming in Canada. Under a renamed *Employment Insurance (EI) Act*, the newly elected federal Liberal government tightened access to EI income support. It also reduced funding for employment support services for disadvan-

tagged groups (women, persons with disabilities, Aboriginal people and visible minorities) by about half.<sup>5</sup> In addition, the government offered to devolve EI-funded employment services to interested provinces and territories. One by one, jurisdictions accepted the transfer of federal staff, resources, and assets. Alberta, New Brunswick, Quebec, Manitoba, Saskatchewan, the Northwest Territories and Nunavut were the early movers, with devolved LMDAs signed by 2000. After protracted negotiations and delays, Ontario finally came on board in 2005.

Initially, British Columbia, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, and Yukon signed co-managed LMDAs where Ottawa continued to deliver the programming directly. When later these five jurisdictions wanted to take on devolved agreements, Ottawa balked. By the early 2000s, as the federal budget got balanced and the threat of Quebec secession eased, the Liberal government had come to regret its lost capacity to intervene directly in the labour market. By this time it had also become evident that those most in need of employment services (immigrants, persons with disabilities, older workers, social assistance recipients, youth, and Aboriginal people) were not being adequately served due to EI funding restrictions.

In response, the Liberal government fashioned supplementary federal-provincial agreements for these under-represented groups. However, the design it selected would have sanctioned the re-insertion of federal staff into the direct delivery and management of labour market services. Provinces like Alberta and Quebec with devolved LMDAs saw this federal action as a threat to the coherent, provincially managed system they had built post-devolution. Although they wanted the additional federal funding, they vehemently objected to the federal Liberal plan.

As this played out on the federal-provincial front, the Liberal government also took action to recapture leadership through a variety of federal-only initiatives. It established specialized research institutes and programs, including the Canadian Millennium Scholarship Foundation (1998), Canada Research Chairs (2000), the Canadian Council on Learning (2004), the Foreign Credential Recognition Program (2004), and the Workplace Skills Initiative (2004). National sector councils grew to more than 30 bodies. An updated youth employment strategy was introduced. Existing Aboriginal, disability and literacy programs were affirmed and expanded. Many provinces contested these unilateral federal actions, and intergovernmental discord increased.

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## **Conservatives complete shift of power and responsibility to the provinces**

The 2006 Conservative campaign platform articulated a new approach to intergovernmental relations called “open federalism.” This approach captured the no-

tion of strong provinces, restoring the constitutional balance, clarifying federal-provincial roles and responsibilities, working co-operatively with the provinces, limiting the federal spending power, and addressing the fiscal imbalance. Upon assuming power, one of new government's first actions to implement this vision was in workforce development. The 2007 federal budget outlined "a new labour market training architecture that...clarified roles and responsibilities...and recognized that provinces were best placed to deliver this programming."<sup>6</sup>

The federal government offered co-managed jurisdictions devolved LMDAs. In addition, the Harper government offered an additional \$500 million annually so that each jurisdiction could enhance the services on offer to unemployed social assistance recipients, persons with disabilities, Aboriginal people, and immigrants (as well as low income earners) through labour market agreements (LMAs). These highly flexible agreements (to March 2014) allowed provinces to decide who to serve, the interventions they would make, and how to manage and organize the services.

This new funding for non-EI clients came from the Consolidated Revenue Fund, and was a partial replacement for the programming for women, persons with disabilities, social assistance recipients and visible minorities that the Liberal government had cut in the 1990s. LMAs were also introduced for a very practical reason. LMDA allocations had not changed since 1996. As it was impossible to increase the LMDA funding that the Liberals had set in 1996 without opening up the eight devolved LMDAs, additional LMA funding was needed to move the five remaining jurisdictions toward devolution. By 2008–09, provincial governments were in control of over three-quarters of workforce development programming in about 1,000 locations. The federal government transferred over 2,600 of their staff to the provinces.

So taken were the federal Conservatives with decentralization that Budget 2007 even offered to enter into negotiations with provinces on devolving federal youth, older worker, and disability programming. Aboriginal employment programming was the only responsibility they were not prepared to re-assign.

This basket of bilateral federal-provincial labour market agreements, including a renewed targeted initiative for older workers and labour market agreements for persons with disabilities, was rolled out in the winter of 2008 with great political fanfare and signing ceremonies for ministers in each province and territory. All told, by that year, there were 49 bilateral labour market agreements in place. This represented an annual federal transfer of about \$2.7 billion to the provinces and territories out of total federal spending of about \$3.5 billion on active labour market programming.

In response to the economic downturn and the increase in the unemployment rate that began in 2008, the 2009 federal budget committed additional funding over two years to some of these agreements. This complex policy domain had be-

come even more complex, but provinces and territories, pre-occupied with putting the new programming into place, were pleased with the flexibility the agreements afforded. Ottawa was pleased that federal-provincial harmony had been restored. The federal government was also happy to be out of most direct program delivery, as that meant fewer federal civil servants on the payroll.

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## Hollowing out Ottawa

The Harper government acknowledged the provinces were now mostly in charge. As a result, the government did not support the institutions that the Liberals had put in place to provide national leadership on labour market issues. In 2007, the Canadian Labour and Business Centre, established in 1984 as a centre for business-labour dialogue and consensus building, was closed. Next up was the Canadian Millennium Scholarship Foundation and its research arm in 2008. The Canadian Policy Research Networks was disbanded in 2009, and the Canadian Council on Learning was closed in 2012.

For a while, the 30-plus national sector councils seemed to be safe. Indeed, early in their mandate, the Conservatives set up new sector councils in agriculture and forestry. However, with a small-government mindset and an aversion to funding non-government organizations, over time, Conservative politicians could not see the relevance of the councils. All national sector councils lost their federal funding in 2013. A small amount of money is still available under the much diminished “sectoral initiatives” program.

The Workplace Skills Initiative was meant to increase awareness of the importance of skills development in the workplace among business and labour groups. The initiative was also intended to bring small and medium-sized enterprises together through human capital development projects. It had a quicker death. By 2010, all funds had disappeared.

A 40-year national role in pan-Canadian literacy matters has effectively disappeared. Funding at a local level ended in 2006. By 2015, also gone was funding for national and provincial/territorial literacy coalitions. This resulted in the closure of the Canadian Literacy and Learning Network, and Copian, a national clearinghouse. Remaining literacy funds in the federal budget are routinely underspent.

For most of the past nine years, the Conservative government no longer even saw itself as playing a co-ordinating role through the Forum of Labour Market Ministers (FLMM), set up in 1983 as a multilateral forum to promote inter-jurisdictional co-operation and establish common goals on labour market issues. All intergovernmental agreements described earlier in this paper were announced bi-

laterally through press releases in each jurisdiction; there was no collective meeting for ministers to discuss approaches or show pan-Canadian solidarity.

Diane Finley was the minister of human resources and social development for a short period in 2006–07 and then re-appointed in October 2008 until July 2013. During her tenure, Finley was reluctant to meet collectively with her provincial counterparts and avoided intergovernmental meetings, whether in labour market or social services matters. Over her entire six years in charge, she agreed to a single FLMM multilateral encounter – in 2010. This was despite growing concerns over unemployment (especially among youth), the impact of EI changes on provinces, a Temporary Foreign Worker Program out of control, barriers to labour mobility, the lack of useful labour market information, and rising skills and labour shortages in some parts of the country. Jason Kenney, minister from 2013–2015, was more engaged.

Labour market information (LMI) deficiencies were a regular topic of discussion between informed stakeholders and the media during 2013 and 2014. For example, a federal jobs report released with the 2014 budget contradicted Statistics Canada. In addition, there were problems with the accuracy of monthly labour market data. In 2013, TD Economics noted that “when it comes to labour market information we are currently operating in a data vacuum and flying in the fog without instruments.”<sup>7</sup>

The only pan-Canadian report on workforce development is the annual Employment Insurance Monitoring and Assessment Report (MAR). There is little comparative information in it, either between provinces or over time, and little analysis. The Conservative government has made some investments in labour market surveys and a national LMI portal, but has taken little action on key recommendations from a 2009 advisory panel report on labour market information chaired by Don Drummond. In July 2015, the FLMM finally announced the creation of a new Labour Market Information (LMI) Council. However, no details have been provided on its role or composition.

In 2015, there are no pan-Canadian institutions dedicated to research on workforce development, skills, and learning issues. There are no mechanisms to bring the views of business, labour and community organizations to government in a structured and ongoing way. Instead, provinces are creating their own institutions focusing on their individual needs. The B.C. Centre for Employment Excellence, the *l'Observatoire compétences-emplois* in Quebec, and the Ontario Centre for Workforce Innovation are examples of provincial institutions. Not only is there no pan-Canadian perspective, the smaller provinces are left behind. With limited in-house research capacity among governments, feeble intergovernmental connections, and no dedicated research institutes, Ottawa has effectively eliminated informed pan-Canadian discourse on workforce development matters.



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## Making EI smaller and less responsive

Most Canadians see employment insurance (EI) as the foundation for employment programming in our country. Certainly, this part of our social safety net has been getting smaller under both the Liberals and Conservatives. In 1990, 83% of the unemployed received EI benefits; after the Liberal reforms, by 1998, it had dropped to 42%. As important, EI payments to individual claimants became smaller as the wage replacement rate was decreased from 60% in the 1990s to 55% at present. The Harper government has continued the EI dismantling trajectory started by previous Liberal governments. When the Conservatives came to power in 2006, 48.5% of the unemployed were in receipt of EI benefits; by 2013, the proportion was a full 10% lower at 38.4%.<sup>8</sup>

The most substantial changes to EI undertaken by the Harper government occurred in 2013. Program recipients were required to take any job deemed “suitable” and to use “reasonable and customary efforts” to obtain employment, even if the job was unrelated to their career, paid less money, and involved a long commute. All of these changes were introduced without any formal input or consultation with relevant stakeholders, including provincial governments, now responsible for helping EI recipients get these jobs. Included as part of an omnibus budget bill that provided little time for discussion, the changes have increased the pressure on workers to accept low-wage and low-skilled jobs. More importantly, the program has shifted from one where beneficiaries have rights to now being viewed as people out to cheat the system.<sup>9</sup>

The EI appeal process was also changed unilaterally, with an explicit objective of reducing the number of appeals by 25%. Not even business and labour, whose members fund 100% of the program, were consulted. Effective April 1, 2013, all appeals for EI, the Canada Pension Plan, and Old Age Security were consolidated under a newly formed Social Security Tribunal, with decision-making centralized in Ottawa. Previously, three-person boards of referees representing workers, employers and government heard EI appeals across the country, with members responsive to local labour market conditions. This is all gone, including a right to a hearing.<sup>10</sup> It took until November 2014 for the new tribunal to become fully operational; by then, it was dealing with a backlog of 11,000 cases.

Also restricting access to EI are cuts to the number of civil servants responsible for program management. Employment and Social Development Canada, the federal department responsible for EI, had the highest number of absolute staff cuts and the second highest proportional staff cuts of all federal departments. The department lost 5,716 full-time equivalents (FTEs) between March 2012 and April 2016, or 24% of staff.<sup>11</sup> These cuts have led to significant delays in EI processing, and 14.1

million “blocked calls” to the EI helpline in 2011–12. In December 2014, the Conservative government finally responded to the problems by announcing the hiring of 400 additional civil servants.

A 2014 report by the Parliamentary Budget Office (PBO) concluded that if we count the 2013 EI premium rate decisions and breaks provided to small business, future contributions will be higher than required to pay for expenses. This will leave the EI account available to contribute \$3.2 billion to the government’s balanced budget objective in 2016–17.<sup>12</sup> After Budget 2015, the press had become fully engaged with this issue. Reporters gave extensive coverage to the inappropriateness of using the EI surplus as the way for the Harper government to achieve its first set of balanced books since 2007.

There are other uses for an EI surplus, more consistent with EI program objectives. One would be to extend access to benefits to more of the unemployed by reducing the qualifying number of hours of insurable employment. A second would be to enhance benefits by increasing the wage replacement rate. A third would be to increase EI funding available for active measures to improve employment services and allow for more longer-term training. Other than their response to the economic downturn, the government has not increased EI funding allocations to provinces, territories, and Aboriginal organizations since 1996.

None of these ideas is on the table with the Harper government. Between 2010 and 2011, the Mowat Centre, an Ontario public policy think-tank, convened an EI task force to review the system. The group ultimately made 18 recommendations on how to improve Canada’s support system for the unemployed. In June 2013, the Atlantic premiers created a panel to look at the impacts of changes to employment insurance, which released a report containing eight recommendations a year later.<sup>13</sup> There has been no response from the federal government to either of these reports.

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## **Neglecting federally managed Aboriginal and youth programming**

In 1996, the Liberal government determined that not all labour market programming was to be devolved to the provinces. The most significant responsibilities retained were programs for Aboriginal people and youth. These are managed today directly by Service Canada offices across the country through time-limited contractual arrangements with designated organizations.

Resources and authority for Aboriginal employment and training programs (as well as child care on reserve) were placed under the direct control of local Aboriginal labour market agencies in the early 1990s. This ensured that services for

Aboriginal people were locally designed, flexible and culturally sensitive. When the Conservatives came to power in 2006, they kept the basic infrastructure but changed the program focus through new five-year contracts that officially ended March 2015.

Today, these services are delivered by 85 Aboriginal organizations (offering 600 points of service) under the Aboriginal Skills and Employment Training Strategy (ASETS). Since 2003, ASETS programming has been supplemented with funding for targeted projects in high-demand areas. The current program is called the Skills and Partnership Fund (SPF). Despite consultations carried out in 2013 and 2014, the Harper government has not renewed ASETS, but instead announced a second “extension.” The project-based SPF fund was “renewed” in the 2015 federal budget to 2020. Some suspect a deliberate plan to phase out the ASETS infrastructure that has been put in place over the past 25 years.

The ASETS and SPF account for about 12% of federally funded labour market programming. Budget 2013 gave some new money through the First Nations Job Fund to enable ASETS holders to provide employment services to First Nations youth living on reserve. Other than this and a two-year funding expansion in response to the economic downturn in 2009, there has been no increase in ASETS allocations since 1999. This is despite the growth in the Aboriginal population and ever-increasing federal accountability requirements. Without this federal funding, employment services for Canada’s most disadvantaged citizens would not exist at all. ASETS organizations are struggling to survive.

While provinces would like to take on federal youth programming, the Conservative government has not followed through on its 2007 offer to devolve the programs. Despite a youth unemployment rate of 13.7% in 2013 (2.3 times the adult unemployment rate), youth programming on this government’s watch has diminished. Summer hiring of students in the federal public service has declined by more than a third since 2009.<sup>14</sup> Federal hire-a-student offices closed in 2011. Federal funding for Katimavik ended in 2012.

In 2013–14, \$30 million in Skills Link funding, a program for youth facing barriers to employment, went unspent, which is about 17% of the strategy’s total budget for the year.<sup>15</sup> Delivered by third-party contractors under short-term, one-year agreements, contract processing delays during 2013 and 2014 were endemic. Projects recommended by regional Service Canada offices sat on the minister’s desk for months awaiting approval. Many organizations previously funded were denied, with no explanation. Delays have meant staff layoffs and closed offices. The organizations remaining in business have lost credibility with employers. Most significantly, without services, youth with multiple barriers continue to be disengaged from the workforce.

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## Putting employers in charge of immigration programming

The Harper government has not focused efforts on developing the skills of unemployed Canadians by expanding active employment measures for groups such as Aboriginal people, youth, and the disabled. Instead, and as described in detail elsewhere in this book, the government has turned to non-Canadians to meet employer needs by expanding the Temporary Foreign Worker Program (TFWP), and changing permanent entrant priorities.

Unlike other immigrant programs that have quotas and targets, the TFWP is demand-driven by employers. Starting in 2007, extra staff in Citizenship and Immigration Canada and Service Canada were hired through an additional \$51 million investment over two years to “to ensure that hiring foreign workers is easier, faster, and less costly for employers.”<sup>16</sup> The changes involved expedited processing times for labour market opinions from Service Canada staff, shorter advertising times for employers to seek local labour, extension of the length of time that a temporary foreign worker could stay in the country from one to four years, and an ability for foreign workers to be paid as much as 15% below accepted market rates.

By lowering employers’ constraints on hiring TFWS, the Harper government reduced the incentives to search for and train domestic workers to fill job vacancies. By keeping wages down, the TFWP has distorted local labour markets and created a vulnerable workforce with little to no labour mobility (see Walia chapter). As a result of media coverage demonstrating that temporary workers were taking jobs away from Canadians, the Conservative government announced major changes in June 2014. It also started to link the TFWP changes with the EI program reforms, reinforcing efforts to ensure a low-wage, compliant labour force. TFWP changes continued to create controversy into 2015, especially in Western Canada.

Recent changes to immigration processing under the federal Express Entry program (EE) also reflect Conservative government efforts to transform immigration policy into workforce development policy. Under a new points system, applicants with confirmed jobs are ranked higher than those with education and language skills. A tougher line has been taken on refugees and family reunification. These new immigration policies that serve employers’ short-term needs represent a U-turn from long-standing Canadian immigration practices that once focused on selecting the best citizens, as opposed to the best workers.

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## Reasserting authority at the centre: the Canada Job Grant

Two years into its majority mandate, the Harper government had become disillusioned with provincial management of employment services as LMA spending and

reporting was delayed and federal visibility and relevance diminished. In response to employer complaints about the ineffectiveness of provincially run “resume factories,” as well as government concerns over employer under-investment in training, the federal government took back control by designing and imposing a Canada Job Grant (CJG).

This grant was introduced in the 2013 federal budget with no consultation with the provinces or evidence of effectiveness. Ottawa had been sending \$500 million to the provinces every year through the LMAs to provide services for the unemployed. The CJG basically required that 60% of that money be used instead to share the cost that employers take on to train their existing staff.

Provinces unanimously rejected the federal changes. They pointed to the success of LMA programming over time and raised concerns over the diminishment of services for their most vulnerable citizens.<sup>17</sup> Over the winter of 2014, Canadians saw advertisements on TV urging them to apply for a program that did not yet exist. But Ottawa was not to be dissuaded. Budget 2014 threatened that if agreement could not be reached with the provinces, “the Government of Canada will deliver the Canada Job Grant starting April 1, 2014 through Service Canada, engaging employer networks through Regional Economic Development agencies.”

The provinces eventually caved, based on minor modifications that mitigated a requirement for a provincial funding contribution. By September 2014, all jurisdictions with the exception of Quebec (where agreement was reached to roll over their LMA) had signed onto six-year bilateral Canada Job Fund Agreements (CJFAs) to replace the LMAs. By doing so, provinces lost the capacity – expressly stated as a goal by the Harper government in 2007 – to design labour market programming that best meets their needs.

By repurposing existing funding to focus on those who already have jobs, the ultimate result of the CJFAs will be to reduce opportunities for the unemployed and those with low and basic skills. By spring 2015, many provinces had committed all of the available federal money and put new applications on hold until 2016. Independent tracking confirms that almost all the money allocated to date is for training people who are already employed, not new hires. It is the unemployed who are losing out.<sup>18</sup>

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## Acting unilaterally or pretending to consult

This chapter has described many areas where the Harper government changed workforce development programs without any consultation. It placed new work expectations on EI clients, introduced a new Canada Job Grant, set up the First Nations Job Fund, expanded the TFWP, and established a new Social Security Tribunal.

Budget 2013 also announced — again unilaterally — that the government of Canada planned to renegotiate the almost \$2 billion per year allocated to provinces and territories through the LMDAs. The government’s intention was to “reorient training towards labour market demand.” These non-time-limited agreements, dating back to 1996 under the Liberals and reconfirmed as part of the country’s labour market architecture by the Conservatives in 2007, provide the core infrastructure under which provinces and territories deliver workforce development programming today.

Given the Canada Job Grant fiasco, Ottawa has initiated some consultation on LMDA renewal and other workforce development matters. Looking back at parliamentary consultations, certainly the Conservative government has kept the House of Commons standing committee on human resources, skills and social development and the status of persons with disabilities (HUMA) busy. Since 2011, there have been six dedicated HUMA studies and reports on labour and skills shortages (2012), apprentices (2013), persons with disabilities (2013), older workers (2014), Aboriginal persons (2014), and LMDA renewal (2015). All told, 337 witnesses appeared and 90 submissions were received.<sup>49</sup> This was a lot of effort on the part of all who testified, listened, and reported out.

Despite detailed recommendations from these studies, the government response has been mostly perfunctory. The response to the 18 recommendations on Aboriginal programming was simply a listing of what was already being spent in the area; there was no response to the substance of the recommendations. The response to the 19 recommendations on LMDA renewal was a bit more extensive.

The government also opened a second channel of communication on ASETS and LMDA renewal through a series of cross-Canada roundtables. During the fall of 2013, federal officials held 15 regional engagement sessions with stakeholders on ASETS renewal. Between April and July 2014, Parliamentary Secretary Scott Armstrong, accompanied by the EI commissioners for workers and employers, held roundtables in 11 cities on LMDA renewal. The third channel was a National Skills Summit, hosted by Minister Kenney, in Toronto on June 25, 2014.

All of these consultations were by invitation only and segmented into either ASETS or LMDA renewal. There was no crossover, despite the fact that under federal rules, provinces, territories, and Aboriginal organizations are expected to deliver similar labour market programming. Many organizations only found out about the consultations after the fact. Invitations to the LMDA roundtables were extended mostly to business, unions and post-secondary education institutions. Sometimes the provincial minister attended. Other stakeholders, including the almost 1,500 third party contractors that deliver employment programs across the country, would have liked to have been involved. ASETS-holders who attended the consultations felt that the conversations were pro forma and that their views were not heard.

There has been no report from the National Skills Summit. A thematic ASETS report was written in April 2014, and a cursory LMDA roundtable report was released in February 2015.<sup>20</sup> Federal-provincial negotiations are underway on “retooling” the LMDAs, but little information is available. The 2015 omnibus budget bill (C-59) quietly expanded the definition of who is eligible for LMDA funding. To date, no public announcements have been made. All was handled in secret.

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## **By the numbers: changes in spending under the Harper government**

*Table 1* summarizes the Conservative government’s spending on workforce development matters since assuming power in 2006. I start in 2008–09 to give time for Conservative priorities to show up in budget documents and compare this to planned spending in 2015–16. I include a column called “inflation calculator” to assess the value of 2008 spending against 2015 costs.

The following observations can be made: First, program funding overall has decreased. If the government had simply adjusted for inflation they would have provided \$400 million more in programming dollars. Second, allocations to provinces and territories and Aboriginal organizations have taken the hardest hit. They have been flat-lined for almost 20 years with no increases even to account for inflation. Allocations to federally managed youth and literacy programs have also gone down. The only areas to have shown slight increases are federally managed programs for disabled people and apprentices.

Third, with the demise of the national sector councils and the Workplace Skills Initiative, pan-Canadian co-ordination, research, and engagement activities have disappeared. And this does not include funding previously provided to research organizations that are accounted for in a different spot in the federal budget. Pan-Canadian research has been replaced with province-only activities. The bottom line is there have been no new Conservative government initiatives in workforce development matters. The Canada Job Grant is a minor re-profiling of existing funding.

This conclusion is confirmed by the international comparative data. The OECD has been collecting and publishing comparable data on labour market policies for well over two decades. Active labour market measures are roughly comparable to workforce development programming as described in this paper. The OECD average of country spending on active measures as a proportion of GDP in 2011 was 0.6%. In 1996, the OECD calculated that Canada allocated 0.45% of GDP to active measures, already below the OECD average. By the time the Harper Conservatives took over in 2006, this had been reduced to 0.3%, a dramatic drop. Six years later,

**TABLE 1** Comparing Federal Workforce Development Planned Spending on Transfers Under the Conservative Government in 2008–09 Versus 2015–16<sup>21</sup>

Program Name	Control	2008/09 (000s)	2015/16 (000s)	Inflation adjusted	Comments
Youth Employment Strategy	Federal	239.5	237.3	266.3	Decrease
Literacy & Essential Skills	Federal	29.0	21.5	32.2	Decrease
Opportunities Fund (for disabled persons)	Federal	26.7	44.6	29.7	Increase
Sector Councils	Federal	28.0	5.7	31.1	Just about disappeared
Foreign Credential Recognition	Federal	18.0	21.4	20.0	Flat lined
Workplace Skills Initiative	Federal	30.0	0	33.4	Program gone by 2010
Apprenticeship Incentive Grant	Federal	99.0	114.5	110.0	Slight increase
Aboriginal Skills and Employment Strategy (ASETS) from general revenue	Aboriginal	249.3	249.7	277.2	Decrease
ASETS from EI fund	Aboriginal	94.0	94.0	105.5	Decrease
Aboriginal Skills & Employment Partnership (ASEP); became Skills & Partnership Fund (SPF)	Aboriginal	37.7	15.0	41.9	Decrease; program renewed in 2015 at \$50m/year
First Nations Jobs Fund	Aboriginal	not offered	59.3	n/a	New program 2013
Labour Market Development Agreements (LMDAs from EI)	Provincial	1,950.0	1,950.0	2,168.1	Decrease
Labour Market Agreements (LMAs); became Canada Job Fund Agreements (CJF)	Provincial	500.0	500.0	555.9	Decrease; CJF now focused on employed vs. LMA focus on unemployed
Labour Market Agreement for Persons with Disabilities (LMAPD)	Provincial	222.0	222.0	246.8	Decrease
Targeted Initiative for Older Workers	Provincial	37.3	24.0	41.5	Decrease
Total planned spending		\$3,560.5	\$3,559.0	\$3,959.0	Same spending overall but \$400.6 million loss to inflation

in 2012, the total was smaller still at 0.24%. While on average, across the OECD, 4% of the labour force participated in active measures, Canada's rate was one of the lowest among all OECD countries at less than 1%. Specifically citing this underinvestment, the OECD reminded Canada in 2015 that strong labour market institutions and policies are the cornerstone of effective activation policies.<sup>22</sup>

This OECD evidence is the exact opposite to what Canadians heard from Minister Kenney when he was in charge. The minister was often quoted saying “gov-



ernments are investing a whole lot of tax dollars in skills development and job training, in fact, more than virtually any other developed country in the world.”<sup>23</sup>

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## Conclusion

Under the Harper government, the following changes in workforce development have occurred: a further shift of power and responsibility to the provinces and territories; a hollowing out of the centre; an EI program getting increasingly smaller; diminished services for Aboriginal people and youth; a shift to employer control through the Canada Job Grant and immigration programming; a deterioration of the federal-provincial relationship; and feeble engagement efforts with those most impacted, including business, labour, employment services organizations, training providers, and unemployed and underemployed Canadians.

The reforms to political institutions have been dramatic. The Conservative government made the right decision in 2007 to finish what the Liberals started in devolving design and delivery responsibility for active measures to the provinces and territories, and in allocating additional federal funding to them to improve employment programs for vulnerable workers. Today, all 13 provinces and territories provide Canadians with access to relatively similar workforce development programming consistent with OECD research that identifies local flexibility as key to successful labour market outcomes. Federal-provincial evaluations indicate a high level of satisfaction with provincial management. Likewise, retaining Aboriginal control through ASETS to ensure that labour market programming is locally designed, flexible, and culturally sensitive is also the right approach, supported by federal evaluations as well as HUMA testimony. It is unfortunate that Budget 2015 did not solidify this choice.

However, federal youth programming would be better managed by the provinces, joined to a coherent structure that consolidates all federal-provincial labour market agreements under a single accountability framework that moves away from reporting on Ottawa-developed indicators for each agreement, toward a more cooperative and shared federal-provincial governance structure whose key focus is policy learning. In that regard, Canada would be well advised to look at the successful co-ordination mechanisms in employment matters developed over the past 20 years in the European Union — a federal political system with striking similarities to Canada.

There are also many areas where a robust federal presence is required in workforce development, including research, labour market information, mobility, and the exchange of best practices. These have all been significantly weakened under

the Harper government. The solution here would be to look at a revitalized Forum of Labour Market Ministers that also provides institutionalized ways to receive input on an ongoing basis from business, labour, training providers, experts, Aboriginal organizations, citizens, and the unemployed. The establishment of an arms-length research, information and analysis organization similar to the Canadian Institute for Health Information would provide an evidence base for improved decision-making. While provincial research organizations have their place, to be effective they need to link to pan-Canadian comparative assessments. The recently announced Labour Market Information Council may play this role; however, no details are available.

Transparency, collaboration and opportunities for democratic input and discourse on labour market issues on a pan-Canadian basis have all become much more limited under the Harper government. Although the Canada Job Grant was a unilateral imposition, it did serve as a catalyst in forcing provinces and territories, as well as other stakeholders, to consider actions needed to modernize the country's workforce development programs.

However, it is difficult to understand what the rush has been to review the LMDAs, non time-limited funding arrangements that have been around since 1996. What is needed instead is a thoughtful and deliberative conversation on workforce development matters that goes beyond federal-provincial funding instruments. The narrow consultation processes on ASETS and LMDA renewal that took place in 2013–2014 were missed opportunities for a broader, more open, and thoughtful engagement.

Workforce development is an area that no country can get wrong for long. As outlined in this paper, the Harper government has made some good choices and some bad ones. We can only hope that the current negotiations with the provinces yield ideas to strengthen the programs already in place, before the federally funded programs Canadians have come to rely on deteriorate even further.

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## Endnotes

**1** I would like to thank Tom Klassen and Brigid Hayes for their comments on earlier versions of this paper. All opinions expressed are mine. Unless attributed otherwise, information was taken from my previous publications, insight from interviews with key informants, and a review of federal budget, expenditure, EI, and other documents. Press coverage and research reports were also very helpful.

**2** When the term “province” is used in this paper, it generally also includes territorial governments.

**3** With devolved LMDA agreements, federal staff, service delivery contracts, assets, and programming dollars transferred to the provinces. With co-managed agreements, federal staff in regional offices continued to manage the programs, with provincial input. While there is a review provision, none of the LMDA agreements have defined time limits.

- 4 Government of Canada, “A review of 2014 at Employment and Social Development Canada,” December 23, 2014 press release. Link: <http://news.gc.ca/web/article-en.do?nid=916879>
- 5 See Ursule Critoph 2003, ‘Who Wins, Who Loses: the Real Story of the Transfer of Training to the Provinces and its Impact on Women’ in *Training the Excluded for Work: Access and Equity for Women, Immigrants, First Nations, Youth and People with Low Income*, Marjorie Griffin Cohen (ed), UBC Press Vancouver.
- 6 See Finance Canada (FC) (2007), *Budget 2007*, pg. 130–132 and pg. 212–214, available at <http://www.budget.gc.ca/2007/pdf/bp2007e.pdf>.
- 7 See TD Economics, 2013, *Jobs in Canada, Where, What and for Whom*, available at <http://www.td.com/document/PDF/economics/special/JobsinCanada.pdf>.
- 8 This is called the beneficiaries-to-unemployed or B/U ratio, see the latest Employment Insurance Monitoring and Assessment Report 2013/14, available at [http://www.esdc.gc.ca/en/reports/ei/monitoring2014/chapter2\\_2.page](http://www.esdc.gc.ca/en/reports/ei/monitoring2014/chapter2_2.page).
- 9 See Ann Porter, 2015, ‘Austerity, Social Program Restructuring and the Erosion of Democracy: Examining the 2012 Employment Insurance Reforms’, *Canadian Review of Social Policy Volume 71*, Spring 2015.
- 10 *Ibid.*
- 11 See David MacDonald and Kayle Hatt, 2014, *At What Cost? The Impacts of Rushing to Balance the Budget*, Canadian Centre for Policy Alternatives, available at <https://www.policyalternatives.ca/publications/reports/what-cost>.
- 12 See Parliamentary Budget Office, October 2014, *Response on the Financing of Employment Insurance and Recent Measures*, available at <https://www.policyalternatives.ca/publications/reports/what-cost>.
- 13 See <http://www.mowateitaskforce.ca/> and <http://www.cap-cpma.ca/images/AdvisoryPanelFinalReport.pdf>.
- 14 See Kayle Hatt, 2014, *Help Not Wanted, Federal Public Service Cuts Have Hit Students Hard*, Canadian Center for Policy Alternatives, available at <https://www.policyalternatives.ca/publications/reports/help-not-wanted>.
- 15 See Employment and Social Development Canada, *Departmental Grants and Contribution Lapses from 2009–2010 to 2013–2014*, internal document.
- 16 See Finance Canada (FC) (2007), *Budget 2007*, pg. 217, available at <http://www.budget.gc.ca/2007/pdf/bp2007e.pdf>.
- 17 A federal-provincial evaluation released in March 2013 confirmed the province’s position, see [http://www.esdc.gc.ca/eng/publications/evaluations/labour\\_market/2013/march.shtml](http://www.esdc.gc.ca/eng/publications/evaluations/labour_market/2013/march.shtml).
- 18 Brigid Hayes noted in May 2015 on her blog “what I’ve seen is 11,707 people to be trained of which 10 appear to be new hires”, see <https://brigidhayes.wordpress.com/2015/05/11/canada-job-grant-an-amazing-success-but-for-whom/>.
- 19 All of this information is available on the HUMA website, see <http://www.parl.gc.ca/CommitteeBusiness/CommitteeHome.aspx?Cmte=HUMA&Language=E>.
- 20 See *Retooling Labour Market Development Agreements - Stakeholder Consultations Report – Roundtables*, available at [http://www.esdc.gc.ca/eng/consultations/various/retooling\\_lmda.shtml](http://www.esdc.gc.ca/eng/consultations/various/retooling_lmda.shtml). The ASETS roundtable report is an internal ESDC document.
- 21 Numbers are from the *EI Monitoring and Assessment Report* and Human Resources and Skills Development Canada (now Employment and Social Development) *Report on Plans and Priorities Supplementary Tables*. Inflation adjusted reflects the increase in consumer prices over the period and are from the Bank of Canada inflation calculator. This table identifies **planned** spending; **actual** spending in many areas

has been lower as a result of Conservative efforts to bring in a balanced budget for 2015/16. Youth Employment Strategy numbers do not include spending by other federal departments (\$81.6 million in 2015/16).

**22** See OECD *Employment Outlook 2015 How Does Canada Compare?* released July 2015 at <http://www.oecd.org/canada/Employment-Outlook-Canada-EN.pdf>.

**23** The Canadian Press, “Canada Job Grant applications accepted in B.C.,” in *Capital News*, October 24, 2014. Link: <http://www.kelownacapnews.com/national/vancouver/280366332.html>

# **SOCIAL POLICY**



# Tough on crime, weak on results

The Harper government's emphasis on prison time is ineffective and expensive

Paula Mallea

SINCE 2006, THE Canadian federal government has pursued a tough-on-crime agenda that puts us at odds with the rest of the western world. Canada used to be admired for evidence-based criminal justice policies that produced tangible results like a lower crime rate, safer communities and more humane and fair-minded treatment of offenders. That reputation is being steadily eroded under the Conservative government.

Three short examples serve to illustrate the government's over-emphasis on punishing offenders, its penchant for using the courts to oppose programs and laws it disagrees with, and its unwillingness to support efforts at prevention, rehabilitation and treatment.

First, the government has increased sentences in many areas of criminal law, but among the most draconian and inexplicable are those related to young offenders. Canada's previous legislation, *The Youth Criminal Justice Act*, was praised around the world and produced excellent results largely by curtailing the use of incarceration. Over five years between 2003–04 and 2008–09, the number of youth in custody had

dropped 42% without increasing the crime rate. The new law, *Sébastien's Law*, will ensure that more young people go to prison, increasing the likelihood of recidivism.<sup>1</sup>

Canada was also known for effective and compassionate public health treatment of drug users. Experts flocked to Vancouver to take lessons from Insite, a safe injection site proven to save lives and improve the health of the community. Our government, though, fought all the way to the Supreme Court of Canada in an effort to close Insite down. When it lost the case, the government immediately enacted a series of regulations that will make it very difficult for new sites to be established in cities that sorely need them.

The Conservative government has made much of its prosecution and punishment of sex offenders, but prevention programs seem never to be pursued. A failure to do so practically guarantees the creation of more victims. Circles of Support and Accountability (COSA) were established so that trained volunteers could help sex offenders reintegrate upon release from prison. The government's own report (a \$7.5 million, five-year analysis) found that COSA produced a "dramatic" reduction in repeat sex crimes. Recidivism rates were 70–83% lower after treatment. COSA was reducing victimization — a core priority for this government. And every dollar spent on COSA saved \$4.60 in the justice system, medical costs, loss of productivity, and pain and suffering — another core priority for this government.

How to explain, then, the federal government's decision to remove its funding from COSA, ensuring the closure of many of these offices? In this, as in so many aspects of criminal justice, the logic is missing and the policy is regressive.

These are just some examples of how Canada is reverting to policies that jeopardize public health and safety. The government is also enacting long prison sentences in worse prison conditions at a time when even the United States is beginning to see the folly of the tough-on-crime approach. In an unlikely alliance between Republicans and Democrats, the U. S. government is starting to remove mandatory minimum sentences and provide amnesty for many long-term prisoners. Canada is doing the reverse.

For nearly 10 years under this government, criminal justice bills have comprised a disproportionate share of the legislative agenda in Canada: about 20% of all bills in the 41st session of Parliament related to crime. This is hard to explain in a country where the crime rate has been steadily falling for 25 years.

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## Government tactics

The Conservative government has used a number of tactics to pursue its tough-on-crime agenda. Former justice minister Rob Nicholson increased sentences by using



“For a federal government so dedicated to law and order, the Harper Conservatives seem to be having trouble with the law part of the equation.”

– *Editorial, The Globe and Mail, September 7, 2014.*

his executive authority, bypassing debate and the legislature. Non-violent crimes like betting, bookmaking and keeping a common bawdy house are now designated by regulation as “serious crimes.”

The government has also appointed tough-on-crime advocates to important administrative posts. Former police officers were appointed to the Parole Board and successful parole applications have dropped significantly. Law enforcement personnel were also placed on panels that make recommendations for judicial appointments over the strong objections of the chief justice of the Supreme Court of Canada, the Federation of Law Societies of Canada, and the Canadian Judicial Council.<sup>2</sup>

Private members’ bills (PMBS) have become a favoured way of pushing forward crime laws with less scrutiny by Parliament. Twenty-five out of 30 crime bills in 2014 were PMBS.<sup>3</sup> The government has backbenchers front controversial pieces of legislation that are not subject to the normal levels of scrutiny, often resulting in sloppy drafting. For example, laws relating to parole changes and gang recruitment were moving right along through the system before serious and easily detectable errors were found.

As another way of getting crime bills passed without the usual scrutiny, the government refuses to provide estimates as to their cost. Members of Parliament are often voting in a vacuum when it comes to the financial implications of new measures. In 2011, as a result of the failure to provide estimates for the cost of crime-related and other legislation, the government was found in contempt of Parliament for the first time in Canadian history.

Overdependence by government on huge omnibus bills (and on the invocation of closure and limited debate) has also enabled the passage of tough-on-crime laws, quickly and without adequate scrutiny. Bill C-59, for example, is ostensibly a budget implementation bill. But contained in its 157 pages is a measure that will retroactively erase the RCMP’s alleged illegal destruction of gun registry records. According to the Information Commissioner, this sets a precedent that would allow for cover-ups of more serious crimes like infractions against the *Elections Act* or alleged fraud by senators.

Crime bills are given titles designed to promote the belief, not necessarily the reality, that laws will tackle violent crime or help victims. *Sébastien’s Law: The Protecting the Public from Violent Young Offenders Act* is not targeted to violent offenders, but to all young offenders. *The Penalties for Organized Drug Crime Act* has

little to do with fighting organized crime, but everything to do with incarcerating small-time drug users.

Finally, fearmongering continues to be used as a tactic. In an autumn 2014 speech to supporters, the Prime Minister mentioned “risk,” “danger,” “criminals,” “victims,” “violence” and “evil” 15 times (and an equal number of times in French). More recently, the emphasis has been on terrorism, but the intention is the same – to scare Canadians into accepting incursions on their rights and privacy, and to justify harsh treatment of offenders.

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## Characteristics of Conservative crime legislation

### Redundant and opportunistic laws

New offences for “auto theft” and “speed racing” have been enacted, but these activities were already covered by laws against theft, dangerous driving and criminal negligence. High media coverage of such infractions, though, gave the government the opportunity to show it was “doing something” about crime.

When shopkeeper David Chen was unaccountably prosecuted for his citizen’s arrest of a shoplifter, he was predictably acquitted. The Prime Minister and two cabinet ministers used the event to pose for a photo-op with Mr. Chen to demonstrate their support for a “new” law preventing such a prosecution in future. But the chances of there being a future prosecution in such circumstances – given the not guilty verdict – were essentially zero.

In 2007, Graham James, a notorious hockey coach convicted of sexually assaulting his players, quietly obtained a pardon. When this hit the news in 2010, the public was horrified. The Conservatives were quick to tighten up the pardon process, but in a classic case of overkill they made it much harder or impossible for *all* offenders to obtain pardons (now called “record suspensions”). It is important to note that without a pardon former offenders are virtually unemployable.

At the time of writing there is a backlog of 22,300 applicants for pardons. The Parole Board has stopped altogether processing people with records for indictable offences. It has, however, been accepting the money of applicants (7,000 of them) without processing their applications. As one observer says, “[T]his isn’t tough on crime, this is crime.”<sup>5</sup>

### Longer prison sentences

The Conservative government claims that long sentences will help victims, deter offenders and others, mete out punishment appropriately and restore the pub-

“Good criminal law principles prefer broad categories of offences rather than particular offences addressing possibly transient concerns, news stories or public hysterias. [The law] must display a principled, rational, coherent structure rather than a series of ad hoc responses to particular concerns.”

— Catherine Latimer, executive director of the John Howard Society.<sup>4</sup>

lic’s faith in the justice system. Evidence shows long sentences do not help victims (as victims’ rights advocates have noted), do not deter crime (as the research amply demonstrates), tend to punish offenders to the point of bitterness and anger (leading to recidivism upon release), and the provision of better public information is more effective than indiscriminate harsh sentencing as a means of shoring up public faith in the system.

Most Conservative crime legislation lays down new, longer sentences. Mandatory minimums remove from judges the discretion to treat each individual on his or her merits and on the facts. Since the Harper government came into power in 2006, the number of offences for which mandatory minimums apply has doubled from 29 to about 60.

Under the *Criminal Code*, judges are required to consider “all available sanctions other than imprisonment that are reasonable in the circumstances.” They are to ensure that sentences are not “unduly long or harsh” if “less restrictive” sanctions are appropriate. Mandatory minimums represent a direct contradiction to this law. Judges are often unable to follow the dictates of the current tough-on-crime agenda while also hewing to their obligations under the *Criminal Code*.

There are scores of cases where a mandatory minimum will be unjust. If your son is caught growing six marijuana plants in the basement, he will face a minimum six months in a provincial prison, whereupon he will have a criminal record for at least five years. If your daughter grows six plants in her rented apartment, she will go to prison for a minimum of nine months and will acquire a similar record. Your son or daughter may be first-time offenders, and the drug offences are both victimless and non-violent, but according to the government, incarceration is the only appropriate response to their behaviour.

The government has imposed increased mandatory minimums for gun crimes. A three-year sentence was enacted in 2008 for possession of a loaded prohibited gun, largely due to some high-profile events in Toronto that involved firearms. Five years was to be the minimum for a second offence. On April 14, 2015, the Supreme Court of Canada struck down the law as cruel and unusual punishment. The Court gave the example of a person who inherits a firearm and does not immediately get a licence for it — such a person would be facing a mandatory penitentiary sen-

tence. The Court also said evidence suggests that mandatory minimum sentences do not deter crimes.

In a further effort to increase prison time, a new “two-for-one” law said an offender who had spent time in custody before conviction would only receive one day’s credit (rather than two) for every day on remand. The Supreme Court was quick to see the inequity — based on simple arithmetic — in one-for-one and overturned the law.

“House arrest” was designed to allow certain offenders to serve their sentences outside prison. The government has removed that option for many offenders by adding 38 offences to a list in order, it said, to deal with serious violent offenders. (It should be noted that house arrest has never been available for violent offences, nor for offenders who could have been sentenced to more than two years.) These new offences include forging passports, bribing judicial officers, perjury, giving contradictory evidence with intent to mislead, and stopping mail with intent. House arrest will no longer be available for someone who breaks into a shed and steals a bicycle.

Both Correctional Service Canada (CSC) and Statistics Canada agree that house arrest is an effective, affordable way to punish offenders. Participants in the program reoffend less often than those who have been incarcerated (15% as compared to 30%), and house arrests save the taxpayer about \$66,700 per year per offender.

Prison sentences are also being increased at the “back end” of the criminal justice system. Provisions for release from prison have been repealed or made less accessible. For example, the “faint hope” clause provided a very slim opportunity for offenders serving life sentences for murder to apply for parole at 15 rather than 25 years. The process was rigorous, requiring approval by a judge and then by unanimous verdict of 12 citizens. This virtually assured that an offender released after 15 years in prison was unlikely to reoffend, and in fact only 1.3% ever did.

The “faint hope” clause provided an incentive for offenders to work hard toward early release. This hope has been eliminated. With it goes any incentive for offenders to obey prison rules or participate in rehabilitative programs.

General parole provisions have also been changed to ensure that fewer offenders are released, resulting in severe overcrowding in prisons. Accelerated parole review has been repealed altogether. (This was a way of releasing first-time non-violent offenders at one-sixth of their sentence without the usual lengthy parole process.) Now the system is clogging up, ensuring many short-term offenders never get considered for parole at all. Women are especially disadvantaged since they comprise the majority of first-time, non-violent offenders.

The number of other successful parole applicants has dropped steadily under the Conservative government. Successful day parole numbers fell from 74% to 66% between 2005–06 and 2009–10. Successful full parole applications went from 45%

in 2005–06 to 29% today.<sup>6</sup> In his 2014 report, the auditor general of Canada said the numbers released on parole had dropped 14% since 2009. As a result, the overall prison population has increased 9% since March 2010.

Because of budget cuts, many inmates are having trouble gaining access to rehabilitation programs. Consequently they are unable to apply for parole. Thus, offenders are more likely to be released from prison without having received programs in anger management, literacy, drug addiction treatment, assistance with mental illness, and so on. This does not bode well for success upon release.

There were a couple of new crime bills before Parliament at the time of writing that will also increase sentences. Bill C–53 would require certain offenders to serve 35 years before applying for parole. Bill C–56 provides a new definition of “person-at-risk” that will require some offenders to serve all but six months of their sentence before being released on statutory release.

Bill C–56 is especially dangerous because it will result in the most difficult offenders (those who have not been granted parole) being released with a very short term of supervision. Many of these inmates will be released directly to the street from medium-security (64% of those released on statutory release) and maximum-security (11%) institutions. According to the auditor general, this constitutes “a grave public safety risk.” Anyone who has worked in these institutions would agree.

This Conservative model of lengthy sentencing has been largely rejected in the western world. Norway incarcerates about 61% as many people per 100,000 of population as Canada. Yet only about 20% of Norwegians reoffend upon release, compared with anywhere from 40% to 60% in Canada.<sup>7</sup>

## Harsher prison conditions

Under the *Corrections and Condition Release Act* (CCRA) of 1992, the correctional system is required to incarcerate offenders but also to assist with their rehabilitation and reintegration into society. The protection of society is paramount. This includes guards and other prison workers. CSC is also required to use “least restrictive measures” in achieving these goals.

In 2006, the Harper government commissioned a sweeping review of the CSC. It ignored the requirements of the CCRA (and *Criminal Code*) by recommending harsher treatment of offenders. The prison system tried this approach in the 1970s and 1980s. The us-vs.-them (guards vs. inmates), antagonistic approach coupled with extremely harsh treatment produced an extraordinary level of violence, including riots and murders. Former Liberal MP Mark MacGuigan undertook the task of visiting the penitentiaries and made his findings and recommendations public.

“Imprisonment in Canada, where it is not simply inhumane, is the most individually destructive, psychologically crippling and socially alienating experience that could conceivably exist within the borders of the country.”

“Society has spent millions of dollars over the years to create and maintain the proven failure of prisons. Incarceration has failed in its two essential purposes – correcting the offender and providing permanent protection to society.”

— *Mark MacGuigan, chairman of the House of Commons sub-committee on the penitentiary system in Canada, in a report to Parliament in 1977.*

Subsequent to his 1977 report, MacGuigan’s recommendation of a “dynamic-security” approach, with guards and inmates talking to one another and showing respect, was put into practice. This succeeded in calming the waters somewhat, and in producing less recidivism. Such improvements are now being reversed and the penitentiary system is again becoming harsh and callous. This is at a time when the prison population is growing by leaps and bounds. Inmates are also older (fewer are being granted parole), sicker (cramped conditions encourage the spread of infectious diseases and also contribute to violent behaviour) and more demanding of attention (due to increased numbers of mentally ill, drug-addicted and formerly abused inmates).

Despite the concerns of guards and nurses, many prisons are now operating with reduced nursing hours. There are questions about who will provide nursing services on late-night shifts and who will supervise the administration of medications. Needle exchanges have been rejected, despite the pleas of the prison ombudsman. A safe tattooing pilot program was also cancelled, with the use of dirty needles resulting in costly and dangerous HIV and HCV infections. Mental illness is now a profile feature of many inmates, but the government is failing to provide appropriate treatment, and has just closed a much-needed forensic psychiatric hospital in Atlantic Canada.

Successful rehabilitation programs have been curtailed or cancelled. Cherished prison farms were closed. (The government said the farms did not teach skills that would be useful on the outside.) Prisoners, CSC personnel and experts disagreed. Punctuality, dependability, the ability to organize and communicate, the requirement to take responsibility for the animals, problem solving — all these skills were acquired through the farm programs.

The metal workshop at Stony Mountain Penitentiary in Manitoba was also closed. Other programs like drug treatment, anger management, literacy and mental health treatment are experiencing long line-ups. Many offenders will be released

without treatment of any kind. And *Lifeline*, a program that provided in-reach and outreach services and support to lifers, has been terminated, a situation deplored by the prison ombudsman.

Some of the former rights that are being withdrawn are the very things that make prison bearable and rehabilitation possible. Inmates now have to pay more to make telephone calls to family and friends. Visits are more constrained or cancelled due to ramped-up surveillance of visitors. The government has cancelled funding for all part-time chaplains, thus ensuring only Christian inmates have access to an important rehabilitative option. Despite the growing diversity of the prison population, all 80 full-time chaplains are Christian except for one imam.

The ability of inmates to earn enough money to pay for essentials like telephone calls, shampoo, soap and stamps has been curtailed because their pay has been reduced. They are less able to send money to their families, or save anything against their release date. Lower pay (or no pay) also provides less incentive to get involved in work programs. Inmates at the “high” end of the pay scale now pay 30% of their income toward their room and board. Yet the rate of \$6.90/day already took into account room and board and had not been increased in 30 years.

Those inmates who work for CORCAN (a CSC agency where inmates make textiles, furniture, chairs and printing work for sale) are now paid nothing.<sup>8</sup> (They used to be paid \$1.40/hour after deductions for food and housing.) Yet if these inmates refuse to work, they are judged to have failed to meet the terms of their correctional plan. This can jeopardize parole and may result in transfer to a higher security facility.

The tough-on-crime approach has created a serious increase in double-bunking in the penitentiary system. Double-bunking is not safe or humane, and it is inconsistent with our international obligations. The prison ombudsman, Howard Sapers, reported in 2012 that assaults among inmates had risen 15% in three years, while the inmate population rose from 13,500 to 14,400. Use of force by guards rose 37% in five years.

Over 20% of federal inmates were double-bunked in 2012–13.<sup>9</sup> The proportion of Aboriginal and visible minority prisoners has outstripped that of Caucasians, whose numbers are declining. The Auditor General reported in 2014 that over half of institutions were at or exceeding rated cell capacities.

Prison guards fear the violent outcomes of these changes. They warn that working conditions are increasingly dangerous. They say people need to realize most of the inmates will be released one day. It is important to ensure they are less likely to reoffend rather than more likely. Robert Finucan, regional president of Ontario’s correctional officers union, says, “This government is lying to you, and it’s doing nothing to ensure the safety of Canadians, quite the opposite.”<sup>10</sup>

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## Probable outcomes of the tough-on-crime agenda

Mary Campbell, a former director general of the corrections and criminal justice directorate at Public Safety Canada,<sup>11</sup> says the current government is doing nothing to address crime. With 29 years of experience in the corrections system, she is in a good position to know. The government, she says, is giving lip service to victims while exercising a penchant for nastiness and meanness of spirit. “Tough” should mean “effective.” Taking TVs away from inmates and reducing their caloric intake from 2,000 calories a day to 1,000 provides additional punishment, but does not help victims.

Canadian courts will continue to overturn bad laws despite the Conservative government’s efforts to defend them. Some of these — like the mandatory minimums on gun laws and the two-for-one law — are drafted in haste in the Justice Department with half the usual staff in what Campbell likens to a sausage factory.

The government will also continue to go to court to fight laws they don’t like or defend those being challenged as unconstitutional: the new prostitution law, the law allowing for indefinite incarceration for certain “high risk” offenders, and laws that include expanded police powers and surveillance mechanisms (like the controversial Bill C-51, known as *The Anti-Terrorism Act*) are just some examples.

In an effort to avoid unfair sentences, judges and others in the justice system will find ways to circumvent them. For example, one new law orders judges to impose a victim surcharge on offenders of \$100 for summary offences, \$200 for indictable offences or 30% of any fine imposed. There is no discretion to waive the surcharge.

Judges have found creative ways to avoid undue hardship. Some give offenders fifty years or so to pay the surcharge. Some impose extremely small fines so the 30% surcharge amounts to a few cents. Recently, a Superior Court judge in Ontario found that the surcharge was “a far cry from being grossly disproportionate,” but a closely reasoned opinion from a lower court has called it “a tax on broken souls.”<sup>12</sup>

Police and prosecutors are also likely to adjust information or even turn a blind eye in order to avoid unjust punishments. Faced with new mandatory minimums, for example, police may send a marijuana grower home with a warning. Prosecutors may forget to mention that a grower had more than five plants.

A significant outcome of the tough-on-crime agenda is the staggering financial cost of increased incarceration. The Parliamentary Budget Officer estimated costs in the billions of dollars for just one or two of the new provisions. Also, where mandatory minimum sentences apply, accused persons will fight to the last motion and appeal to avoid the long prison sentence. This will cause backlogs in the courts and will cost millions more.



One unsettling possible outcome is that the federal government may act on its “smaller government” ideology and privatize the prison system. The government recently hired Deloitte and Touche to study prisons in seven countries. The resulting 1,400-page report was kept secret from the prison ombudsman, who fears it may be used to promote for-profit prisons. Private prison firms from the United States have also been lobbying in Ottawa for contracts.

There can be little doubt that privatization would be a highly regressive move. One private firm, MTC, ran the prison at Pentaguishene until it was turned over to public management in 2006. It was determined at that time that public prisons produce better security, health care and recidivism rates than private prisons. They also cost less. Horror stories about corruption and violence in private prisons in the United States are rife.

The human costs of a tough-on-crime agenda will also be high, as offenders face lengthy separation from their friends and families, producing fractured communities. Crowded prison conditions with high numbers of mentally ill, drug-addicted and otherwise impaired individuals, combined with fewer programs and less likelihood of achieving parole, are already producing more violence in the prison system. Diseases will spread more rapidly, and suicides and self-harm incidents are on the rise. Aboriginal men and women are already suffering disproportionately.

Recidivism will begin to increase, thus jeopardizing rather than improving public safety. Cambridge criminologist Friedrich L sel compared scores of studies in a dozen countries and concluded that high recidivism is caused by long sentences, strict discipline, deterrent “shock incarceration” programs and regular sanctions like the withdrawal of privileges.<sup>13</sup>

Canada’s tough-on-crime agenda will no doubt erode our international reputation. The Conservative government’s antagonistic attitude to the courts has attracted notice at the highest levels. After the prime minister impugned the integrity of the chief justice of the Supreme Court of Canada, the International Commission of Jurists called upon him and now former justice Minister Peter MacKay to apologize. They never did.

The Bertelsmann Foundation’s *Sustainable Governance Indicators* for 2014 says Canada’s ranking (20th out of 41 developed countries) has been jeopardized since 2011. The German report states that the tough-on-crime agenda shows a lack of commitment to evidence-based decision-making at a time when the crime rate has been declining. It concludes that “political calculations in this case trumped evidence.”<sup>14</sup>

Canada has ratified the United Nations’ 1984 *Convention on Torture*, but, inexplicitly, not the *Optional Protocol to the Convention against Torture*, which is directed toward oversight of prisons. The UN says any use of segregation (solitary confinement) for more than 15 days is torture. In Canada, the average stay is over

40 days. About 50% of 15,000 federal inmates spend some time in segregation, many for long periods. That number is rising.

The Canadian government continues to ignore recommendations from the UN, former justices of the Supreme Court of Canada and the prison ombudsman to address our widespread use of solitary confinement. Amnesty International is encouraging the federal government to address the issue, saying Canada can hardly claim credibility internationally on the issue of torture when it practises it at home.

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## Conclusion

The headlong rush to be tougher on crime has given Canadians dozens of ill-considered laws with lengthy sentences. It has impaired efforts by prison authorities to rehabilitate inmates. It is also consuming a colossal amount of public money while encouraging largely negative results, with a likely decrease in public safety.

Eric Gottardi, chair of the criminal section of the Criminal Bar Association, sums up the situation this way:

Law and order sounds good, tough on crime catchphrases sound good. There's not a lot of political capital in being seen as soft on crime. But we need to understand that these policies really, long term, make us all less safe, not more safe.<sup>15</sup>

A final very disturbing aspect of the Conservative government's approach to criminal justice is the apparent lack of respect for the rule of law. During committee hearings on Bill C-51, Conservative MP Diane Ablonczy even used air quotes when talking about "the rule of law" and " 'principles of fundamental justice,' whatever that is." Contempt for the proper and objective application of the law is becoming the norm, and it is now creeping into legislation.

Bill C-51 will give judges the power to secretly authorize actual law-breaking by the Canadian Security Intelligence Service, including the potential for authorizing Charter violations. This is unheard of. The retroactive exoneration of alleged wrongdoers contained in Bill C-59 has already been mentioned. Canadians need to be seriously concerned about these developments. Such legislation is dangerous and not easily reversed.

There is good news, though, in the shift in public attitudes toward the tough-on-crime agenda. Pollster Frank Graves says 42% of Canadians would prefer to see a focus on crime prevention compared to 14% preferring a focus on punishment.<sup>16</sup> People are getting tired of being scared into giving up their rights. They are also beginning to recognize that a tough-on-crime agenda is actually against their best interests.

Most of us are willing to commit a little sociology<sup>17</sup> in order to prevent the likelihood of crime. Most of us recognize that almost all offenders will be released from prison, and some of them will end up living next door. We need to ensure they leave prison less likely to reoffend. We know how to do this — the evidence is there. The time is ripe for a more informed debate on criminal justice in Canada.

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## Endnotes

**1** It will do so by requiring judges to consider denunciation and deterrence when sentencing, and to consider adult sentences for serious crimes. Judges may now also consider previous interventions like programs for substance abuse or mental health issues, or even police warnings. This will ensure that children will no longer participate in such programs, and/or that they will “lawyer up” at the first hint of a tough prosecutorial stance. Publication bans will also be lifted in certain cases. All of these measures have been proven to produce increased risk of recidivism.

**2** The prime minister’s antipathy to the courts and the Charter is now well known. It began long before his government came to power. He wrote in 2000 that he was concerned about “biased ‘judicial activism’ and its extremes” as well as the “serious flaws” in the Canadian Charter of Rights and Freedoms.

**3** Bruce Cheadle, “Vic Toews: Tories Backing Record Number of Private Members’ Bills,” *The Canadian Press*, in *The Huffington Post*, May 9, 2013. Konrad Yakabuski, “Bills promote backbenchers from ‘nobodies’ to ‘pawns’,” *The Globe and Mail*, September 8, 2014.

**4** Yakabuski, *op. cit. Ibid.*

**5** Michael Ashby, “Parole Board of Canada and the Pardon Backlog,” *iPolitics*, March 31, 2015.

**6** [http://pbc-clcc.gc.ca/infocntr/factsh/parole\\_stats-eng.shtml#5](http://pbc-clcc.gc.ca/infocntr/factsh/parole_stats-eng.shtml#5), accessed August 18, 2014.

**7** Doug Saunders, “Hurt the criminal or hurt the crime,” *The Globe and Mail*, May 26, 2012.

**8** Donovan Vincent, “Cut to prisoners’ pay prompts court fight against federal government,” *The Star*, August 13, 2014.

**9** From March 2003 to March 2013, the prison population grew by 16.5% at the same time that the crime rate was falling.

**10** <http://thinkpol.ca/2015/05/24/>

**11** *CBC Radio One*, “The 180,” October 20, 2013

**12** Sean Fine, “Victim fines spur break between lower and higher courts,” *The Globe and Mail*, May 26, 2015.

**13** Doug Saunders, *op. cit.*

**14** Bertelsmann Stiftung, “Sustainable Governance Indicators 2014.” Link: <http://www.sgi-network.org/2014/Canada>. See also Andy Radia, “Since Harper majority, Canada slips in international governance ranking: report.” *Yahoo! News*, May 8, 2014. Link: <https://ca.news.yahoo.com/blogs/canada-politics/since-harper-majority-canada-slips-international-governance-ranking-164507743.html>.

**15** Sunny Dhillon, “B. C. rights group says mandatory minimums don’t deter crime,” *The Globe and Mail*, September 8, 2014.

**16** Jeffrey Simpson, “Who can calm middle-class fears? We’ll find out in a year,” *The Globe and Mail*, October 4, 2014.

**17** Meghan Fitzpatrick, “Harper on terror arrests: Not a time for ‘sociology.’” *CBC News*, April 25, 2013.  
Link: <http://www.cbc.ca/news/politics/harper-on-terror-arrests-not-a-time-for-sociology-1.1413502>.

# ***Mad Men* family policy**

The Harper record on taxation and child care

Kate Bezanson<sup>1</sup>

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## **Introduction**

I BEGIN THIS chapter with the problem that Canada has no coherent family policy and that nine years of Conservative government approaches to federalism and social policy have made building family policy harder. I then explore the contested political topic of families, particularly what families stand for in political discourse and in policy proposals. Turning to the policy level, I consider the kinds of policies related to families that animate recent public debates. I begin to deconstruct why certain policies, particularly those related to tax credits and rebates, have such resonance and therefore must be taken seriously. I conclude that families require meaningful support that fosters real choices between equivalent high quality options, from affordable child care to family-oriented labour market policies.

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## **Federalism and a patchwork approach to families**

Canada has a patchwork approach to family policy. This patchwork reflects at least four variables:

- a general preference for policies in which the work of caring for people is done privately in households or paid for in the market;

- a philosophical orientation that values “liberty and property at the expense of solidaristic and child-centred values,”<sup>2</sup> as evidenced by a significant tolerance for high rates of child poverty;
- a constitutional inheritance that largely locates the delivery of social support and goods in the hands of provinces/territories; and
- a political and policy process that dichotomizes families, particularly mothers, as either labour market actors *or* caregivers.

Our decentralized political structure is most often cited as the explanation for our “patchwork” approach. Under the federal Conservatives, policy choices related to families reflect a more rigid understanding of federalism.<sup>3</sup> “Open federalism,” a term employed by Prime Minister Stephen Harper, involves a strong adherence to the constitutional division of powers between federal and provincial/territorial governments.<sup>4</sup> This vision views social reproduction as provincial and local, and understands the federal role as related to commerce, the military and corrections.<sup>5</sup> This is illustrated in the preference to build common identity by celebrating symbols such as the military and the monarchy, and not using social programs to foster pan-Canadian identity.

Open federalism has consequences: first, it has reduced fiscal room for existing and new social policy initiatives; second, it locates the costs of caregiving in families or in markets; and finally, it has made variations in services and support among provinces and territories more acceptable. While ensuring a minimal role for the federal state in the “messy, fleshy stuff”<sup>6</sup> of social and labour market policy and regulation, open federalism also promotes policies aimed at one specific nuclear family form.<sup>7</sup> This cementing of boundaries weakens the development of a coherent approach to family policies. Given a federal shift away from expert and research-led policy formulation, this weakening likely means that how well a policy proposal is *sold* can determine federal support for families. The Family is a powerful political invocation that often stands in for other policy goals. How families are talked about matters because what we say affects what we get.

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## What we say is what we get

In the lead-up to the 2015 federal election, families were front and centre. A key Conservative campaign slogan was “stand up for families,”<sup>8</sup> Liberals “put them first”<sup>9</sup> and the New Democratic Party (NDP) “gives them a break.”<sup>10</sup> References to middle class families were particularly prominent, although working families also regularly emerge.<sup>11,12</sup> Back on the Liberal and NDP policy menus were proposals

to reinvigorate a national system of early learning and care, while increased cash payments to families with children, a selection of family related tax breaks, and family income tax splitting were served on the Conservative side. What happens in the field of child care hinges in many ways on this discursive, fraught, often bitter fight about what families are and what they represent.

Ideas matter in the construction of social policy.<sup>13</sup> Ideas about families, often nostalgic, are prime terrain in the fight about the politics of redistribution in Canada. Framing political strategy around families is not unique to any one government. The Conservative government's framing, however, naturalizes an imagined, usually nuclear and typically heterosexual family as *the* site for collective identity. This version of family values accepts the idea that the welfare state has been instrumental in fostering family breakdown, leading to a host of social ills.

The Conservative policy perspective is out of step with contemporary social risks.<sup>14</sup> Recent federal policy resonates with the discourse about families, particularly with the imagined family. Evocative and compelling, this family discourse acknowledges the difficulties and hardships faced by this small unit, and offers recognition and reward. It appears to resonate with a powerful cultural family form ideal, even if that family form bears little resemblance to actual lived experience. It also rewards the family unit as the source of identity, and decreases the potential for social solidarity. Families increasingly experience what Brigid Schulte has called "the overwhelm."<sup>15</sup> This refers to rising cultural expectations of parents (particularly of mothers), alongside workplaces that retain an adult worker ideal, and social support and transfers that are insufficient.

The need for careful, inclusive, solidaristic and comprehensive family policy remains pressing. The practicality of the tax credit is easily understood at the individual level. Federal-provincial policies and programs are often more challenging to explain in comparable terms that engender trust.

Canada does not have a comprehensive approach to family policy. Instead, it has what Stoney and Doern call the "tax boutique" approach.<sup>16</sup> The tax boutique attends to a broad age group of children: in music, sports and, indeed, up to age 17 in the recently expanded Universal Child Care Benefit (UCCB). Income splitting, called the Family Tax Cut, extends to a broader age distribution, making it appealing to households whose children are no longer in need of early childhood education and care. Conservative cash-for-care policies erode support for publicly funded child care and parental leaves.

The deployment of family ideals sharpens an already sharp-edged political landscape.<sup>17</sup> It contributes to an existing judgmental motherhood culture, adding populist tropes such as "choice" and "fairness" to promote policies whose consequences often limit options and equity. The Conservative government's family

rhetoric is in part neoliberal and in part socially conservative. It does not matter to Prime Minister Harper's neoliberal market-orientation if the work of caring for people is done privately in homes or paid for in the market. The federal government looks to the market for solutions, through efforts like the Child Care Space Initiative and the recently announced Employers for Caregivers plan.<sup>18</sup>

The socially conservative orientation of the Harper government is, however, concerned with the effects on the family of having two adult workers. As a result, it supports some state spending that often aligns with breadwinner/caregiver divisions of labour. When these neoliberal and socially conservative approaches to families are combined, they often encourage competing negative outcomes. These include greater incidence of female poverty, low levels of child care, and increased pressures on work-life balance. Such outcomes stem from policies that aspire to a one-earner family form in an economy that largely requires two-earner households.<sup>19, 20</sup> Ideas about families inform approaches to federalism and redistributive politics: they have material consequences. Similarly, a commitment to certain kinds of market-based policies fosters certain kinds of orientations to family.

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## Cash-for-care and tax policies

The kinds of family-related policy tools enacted and proposed by the current federal government skew rewards to higher-income households and even to certain provinces with a density of higher-income families. Although middle class families are not the primary beneficiaries, they do receive some benefit and are often cast as the intended target of policy. Policies like the UCCB, income splitting and other tax credits do more than just provide cash in hand. They are not mere bribes. These policies do acknowledge that it is hard, costly and a sacrifice to raise kids. They tacitly recognize the work that is involved in caring for dependent others. These policy options recognize women's unpaid work. All of this may be especially powerful in a climate where some families — the middle class included — experience “the overwhelm” acutely.

Women's labour market attachment is very sensitive to changes in family policies, and women's and children's risk of poverty and decreased lifetime earnings can result from neoliberal and socially conservative policies. But these outcomes may have an abstract or intangible quality, especially when compared to cash conferred on a family unit. The UCCB and income splitting, when combined, appear to play on cultural parenting ideals and insecurities. They continue to ensure that the work of caring for people is located in the home while guaranteeing low wages for predominantly female workers in the paid care sector.<sup>21</sup>



The UCCB, originally called the “Choice in Child Care Allowance,”<sup>22</sup> was introduced in 2006 by the minority Conservative government and served as a replacement for the negotiated frameworks with provinces establishing a national system of early childhood education and care. “The central purpose of the UCCB,” according to Prince and Teeghoosian, was initially to “provide a symbolic endorsement of the decision by some parents — mostly mothers — to provide full-time care for their children at home.”<sup>23</sup> Initially, \$100 a month was given to families with children under the age of six. This taxable benefit was enhanced in 2015. Families with children under five now receive \$160, while families with children aged 6–17 now receive \$60 per month. According to the Parliamentary Budget Officer, the extension to families in the latter category means that 51% of UCCB benefits will go to families with children who are likely to be “babysitters, not babysat.”<sup>24</sup> A “social policy dinosaur,”<sup>25</sup> this policy gives all families, regardless of income, a monthly cheque. Certain types of families get greater after-tax benefit than others: in general, “one-earner couples end up with larger benefits than two-earner couples with same total income.”<sup>26</sup> The UCCB is also subject to provincial tax, so the amount each family receives varies across the country. The expansion is funded in part by the removal of another tax credit, the Child Tax Credit, worth about \$300 annually.<sup>27</sup> This means the total tax credit to eligible families is reduced by that amount.

The UCCB costs a great deal (an estimated \$4.4 billion in 2015).<sup>28</sup> It has little to do with child care, aside from its name. It is deceptively complex, despite its presentation as a simple cash-for-care benefit: families may receive a cheque for \$100, but they don’t know until they file their taxes how much of that remains in their pockets. The money might be better spent enhancing the existing non-stigmatizing Canada Child Tax Benefit — a benefit that is indexed to income, significantly and disproportionately benefits those with lower incomes, and phases out at quite high levels of income.<sup>29</sup> But a universal payment such as the UCCB is popular and hard to dismantle once in place. Moreover, policies like the UCCB, reminiscent of the postwar “baby bonus,” have some limited potential to foster solidarity around a policy that is received by tax-filing parents. Notably, only one of the other two federal parties has suggested eliminating it, in addition to proposing a national system of early childhood education and care.

Such cash-for-care policies do not pay enough for caregivers to exit the labour market. They are wildly insufficient to pay for child care, and because they are presented as “choice” in child care — giving parents cash to do with as they want — they discourage the creation of formal child care spaces and services.<sup>30</sup>

The UCCB expansion was announced at the same time as the much anticipated and debated “Family Tax Cut.” Taken together, these amount to a policy package

aimed at restoring a *Mad Men*-era male breadwinner family form, at least for high-income earners. Income splitting, called the “Family Tax Cut,” came into effect for the 2014 tax-filing year. McInturff and Macdonald summarize the policy as such:

It allows married and common law couples with children under the age of 18 to transfer up to \$50,000 in earned income from one spouse to the other, for a maximum tax benefit of \$2,000 per year. In households where one spouse earns significantly more than the other, and is therefore taxed at a higher rate, income splitting allows that higher-earning spouse to transfer income to the lower-earning spouse. The result is that the higher-earning spouse will pay taxes at a lower rate. There is no benefit to couples that earn similar amounts. Single parents do not benefit by definition. It is also important to note that the income transfer is purely nominal – no actual transfer of income is required. There is no direct benefit to the lower-earning spouse.<sup>31</sup>

Increased dependence on a male wage increases women’s insecurity in the short term and over the life course. Moreover, it creates a context in which return to the labour market is potentially a financial liability to families because of tax breaks for single-earner households. Tax savings go mainly to higher-income men, and the lower-income earner is “liable for the tax but has no entitlement to the underlying income or resources,”<sup>32</sup> assuming that resources are equally shared within households. Policies such as income splitting reprivatize the work of social reproduction by failing to invest in early learning and care while making an exit from the labour market, or reliance on the market or informal provision of care, among the few options available to families. Moreover, single mothers, one of the poorest groups in Canadian society, receive no support.

Tax policy can be a vehicle for recognizing unpaid labour, but it can also shore up a nostalgic and class-biased vision of familial life. The work of Lisa Philipps on tax policy makes a strong case against income splitting and similar policies, but argues convincingly about the need to encourage redistribution *within* the household, which gives unpaid caregivers more control over household economic resources. Philipps argues for repealing spousal and other dependent credits delivered to the primary earner and potentially replacing them with a refundable credit paid directly to caregivers. This credit would reach single caregivers and those living in lower-income households. Extreme caution should be exercised in relation to policies that might increase the “motherhood gap” in which Canadian women incur “larger wage penalties unrelated to their skills, education and experience,” and related to the length of time spent away from paid work. However, more nuance is needed as the “overwhelm” can’t be fully addressed by focusing sights too narrowly on child care provision and labour market attachment.

Paying attention to the resonance of cash-for-care and tax policies does *not* mean supporting them as they currently exist. But in striving for universal, culturally appropriate,<sup>33</sup> high quality, affordable early learning and care, there is a larger conversation about supporting families in all their myriad forms.

There is middle ground. It will matter materially to families that the political and policy conversation avoids creating a rigid dichotomy between child care and cash-for-care options. It will also mean confronting the reality that universal earner policy models overvalue labour market access at the expense of supporting unpaid work. Building coherent, inclusive, equality-informed policies related to diverse families, which also attend to disparities in social citizenship among provinces and territories while still respecting provincial autonomy, is a difficult but important task.

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## Conclusion

The current political conversation about child care largely revolves around competing visions of familial life. This conversation is about more than ideas: the kinds of policies introduced federally over the last nine years have immediate material implications (high-income families and single-earner families benefit more) and long-term material implications (women's exit from the labour market, lack of child care, and continued low wages in the care sector).

As Kofman notes, it is cheapest to have the work of caring for and maintaining people done within families.<sup>34</sup> Provinces and sometimes municipalities often limit public services and other support and thereby have care work done (usually by women) in families. Constitutionally, matters of social reproduction (health, labour law, education, etc.) are provincial responsibilities. Federally, tax policy choices around families and child care tilt toward a male breadwinner model with no federal leadership around child care provision. There is considerable provincial/territorial variation.<sup>35</sup> Taken together with a persistent framing of the family unit as the site for collective identity, the conflicts over child care in particular are depoliticized and expressed as an individual problem at a household level. Tax policy provides a context that appears to value motherhood and unpaid work without meaningfully supporting diverse care needs.

If we place too narrow a focus on the conservative elements of recent federal family-related policies, we might fail to acknowledge that families in all of their forms require considerable support and investment, including cash and services. As well, families would benefit from a more general redistribution of support, including labour market flexibility, and improvements in wages and work conditions

for those in paid care work. We do not want to risk provoking and losing a fight between a narrowly cast vision of child care versus parental care.

The unfolding federal political conversation is poorly served by presenting social investment approaches alone. It is too rigid to focus on child care as a labour market support or activation mainly to mothers.<sup>36</sup>

Canadian and provincial/territorial welfare states increasingly require unencumbered workers with limited state supports for social reproduction, leaving markets, the voluntary sector and families to provide for human needs. These families do not readily benefit from the family support proposals that frame current federal initiatives and inform processes of tax transfers. Canada is facing a care crisis, not just for children, but for all people needing care. The social and economic costs of that crisis are diffused, but they are real and accumulating.

As we reinvigorate a national conversation about child care, we should be mindful of the need to build comprehensive policies related to families as they actually are, not as some ideal of what one might wish them to be. This requires policies that recognize and value unpaid work while robustly supporting a comprehensive national system of early learning and care as well as other family-related policies such as parental leave. These policies must assist in the balancing of competing responsibilities for income generation and the provision of care, and they must do so in ways that foster strong and healthy communities. Such policies may begin to draw closer the existing polarized terrain in order to meaningfully support all households with children.

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## Endnotes

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- 35** Provinces are more poorly positioned to take on increased social spending costs on their own as many have fared very poorly since the 2008 recession, facing substantial budget deficits. The federal government projects a surplus in 2015, yet views most matters of social reproduction as provincial and municipal.
- 37** See Findlay, “Nurturing ‘Social Movement Intersectionality,’” under review.



# Whose priorities?

Artwork by Rusa Jeremic, Photographed by Nancy Reid





# The Harper government's reorienting of Status of Women Canada

Jane Stinson

THE HARPER GOVERNMENT'S reorientation of the women's program at Status of Women Canada (SWC) is clear. In 2006, the first Harper (minority) government changed the mandate of the federal organization's women's program. Funding for research and advocacy was eliminated. Twelve of 16 regional offices were closed.

This case study shows how, by 2015, funding that used to go to women's organizations, as well as research and advocacy about women, now goes primarily to programs led by, or partnered with, business groups with a much narrower, primarily economic focus. This shift moves the focus toward getting women working in non-traditional, resource and high-tech industries and away from the work of research and advocacy.

Conducting research means discovering new knowledge, insights and perspectives. It brings forward factual information even though it may be inconsistent with government policies. Research provides analysis that can identify underlying structural problems that need to be addressed in order to fix surface problems. The practice of advocacy allows people to use research findings to make a strong and compelling case for lasting, systemic changes rather than superficial, band-aid

solutions. Governments are often important if not key players in bringing about these solutions.

The loss of funding from SWC has caused many feminist organizations (especially national ones) to shut down. This has severely undermined the physical and intellectual spaces where women once gathered to develop alternative, feminist voices, policies and practices. As a result, women's organizations and feminist perspectives have been shut out of policy development federally and have less presence and capacity to engage in making change at the provincial and local levels as well.

This chapter reviews what has transpired with SWC's women's program funding since the Harper government was re-elected in 2008. It analyzes the programs funded in 2013–14 (the most recent data at the time of writing) in order to show who the money is going to now.

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## **Background: 2008–2011**

The Harper government reoriented SWC's women's program funding in phases. First, the mandate of SWC was changed in 2006. In the years that followed, SWC began to deny many long-standing feminist organizations project funding. It was a clear statement that women's organizations — including those SWC helped create — could no longer rely on this federal program for funding.

Women's groups across the country spoke out. Federal opposition party women's critics raised questions in the House of Commons and the standing committee on the status of women (FEWO) investigated funding decisions made by SWC.<sup>1</sup> Committee members grilled the minister about how SWC funding decisions were made, and heard from representatives of women's organizations denied funding. By May 5, 2010, 12 women's groups reported that Status of Women Canada had denied their funding request for the first time in their histories.<sup>2</sup> By June 10, 2010, the list had grown to 28 organizations.<sup>3</sup>

Parliament provided an opportunity for women's organizations to ask the standing committee on the status of women to investigate, generate public attention and press for changes. The pressure brought by women's organizations and opposition parties, and the publicity the hearings generated, caused the government to make a few changes to the women's program mandate.

For example, the government reinserted the term "equality" into the mandate of Status of Women Canada. It allowed a continuous intake of funding applications, rather than only accepting them at specific deadlines. After cutting funding to long-standing women's organizations four years earlier, the government fund-

ed 34 groups for the first time and argued it was “increasing funding for Status of Women to its highest levels ever.”<sup>4</sup>

After the Conservatives won a majority government in the 2011 election, with the balance of government-to-opposition members on committees shifted in their favour, parliamentary committees in general stopped calling attention to and questioning government decisions as they had during the minority years.

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## Current Status of Women Canada program funding

My research shows that business and men’s organizations have derived the greatest benefits from the dramatic change in funding by Status of Women Canada.<sup>5</sup> In 2013–14, the women’s program at SWC had three priority areas:

- Ending violence against women and girls;
- Improving women’s and girls’ economic security and prosperity; and
- Encouraging women and girls in leadership and decision-making roles.

These three themes provided a framework for specific projects under the “Targeted Funding” program, as well as projects funded under the “Continuous Intake” stream. As *Table 1* shows, more than half of funding went to increasing economic security and prosperity, 40% to ending violence against women, and only 2% to increasing women’s role in leadership and decision-making positions.

### Women’s economic security and prosperity

Within the theme of economic prosperity and security for women, two-thirds of the \$9.3 million went to projects with business-oriented organizations (see *Table 2*). These grants were intended to fill jobs by increasing women’s recruitment, retention and advancement in non-traditional jobs and in the advanced technology sector.

Most of the \$1.7 million in project funding for “women into technology” went to industry groups such as the Calgary Council for Advanced Technology, and Comunitech Corporation in Ontario’s Kitchener-Waterloo-Cambridge region. The remaining \$4.4 million for “women into non-traditional employment” went to a combination of industry and women’s groups.

All of these projects were geared to developing strategic alliances with employers and sector stakeholders to advance the employment of women and develop pilot projects. Industry sector action plans made rare mention of women’s organizations as key stakeholders.

**TABLE 1** SWC Projects Funded in 2013–14

Themes	Amount Funded	% of Total
Increasing women's economic security and prosperity	\$9,313,494	58%
Ending violence against women and girls	\$6,263,997	40%
Encouraging women's leadership and decision-making	\$370,000	2%
Total	\$15,947,491	100%

Source Calculated by the author

**TABLE 2** SSWC Projects Funded Under Theme of Increasing Women's Economic Security and Prosperity, 2013–14

Project Goals	Amount Funded	% of Total
Advancing women in non-traditional occupations	\$4,427,207	48%
Women in technology	1,760,861	19%
Increasing economic options for women	\$1,787,992 <sup>e</sup>	18%
Improving prosperity for immigrant women	1,337,434	14%
Total	\$9,313,494	100%

Source Calculated by the author

The remaining third of the funding envelope under the economic prosperity theme (for smaller amounts of money over a shorter time period) was divided between projects that engaged women and communities in developing plans for women to access jobs or other economic options, and projects to enhance the economic prospects for immigrant women. Both areas included projects that were geared to helping women entrepreneurs.

### Violence against women and girls

Less than half (\$6.3 million) of the total SWC women's program funding in 2013–14 went to address violence against women and girls (see *Table 3*). Within this theme over one-third of the total amount went to community-based organizations, primarily sexual assault and rape crisis centres, to enhance co-operation and collaboration between service providers dealing with sexual violence. Over one-third went to community-based projects addressing cyberbullying of young women and girls. The remaining portion (almost a quarter) went to five diverse projects received through the continuous intake stream.

**TABLE 3** SWC Projects Funded Under Theme of Preventing or Responding to Sexual Violence Against Women and Girls, 2013–14

Project Goals	Amount Funded	% of Total
Preventing or responding to sexual violence against women and girls through access to community services	\$2,439,191	39%
Preventing and eliminating cyberviolence (e.g., cyberbullying, Internet luring, cyberstalking) against young women and girls	\$2,408,740	38%
Continuous intake	\$1,416,066	23%
Total	\$6,263,997	100%

Source Calculated by the author

Responding to sexual violence against women and girls is a laudable objective, but no funding was provided in 2013–14 for the pressing problem of murdered and missing Aboriginal women. Even when the money went to women’s organizations here, it was largely for enhancing the provision of social services.

A federal-provincial/territorial initiative with adequate federal cash transfers to provinces for social services could do much more to address violence against women. For example, by working together the parties might share and learn from models and pilot projects across the country in order to identify best practices to enhance co-ordination and co-operation of service providers involved in violence against women.

The single largest project dealing with violence against women went to organizations of men – the White Ribbon Campaign, which worked in partnership with the Toronto Argonauts football team to deliver a gender-based violence prevention initiative in secondary schools in the Greater Toronto Area. In 2013–14, the campaign received almost \$1 million from Status of Women Canada: \$600,000 for the project with the Toronto Argonauts and an additional \$300,000 to “build a community of practice among nine organizations currently receiving funding from Status of Women Canada to address violence against women and girls by engaging men and boys.”<sup>7</sup> The project received three times as much money as the new Network of Women’s Shelters & Transition Houses, which is “advancing the co-ordination and implementation of high quality services for women and children accessing shelters in Canada through collaboration, knowledge exchange and adoption of innovative practices.”<sup>8</sup>

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## Conclusion – looking back and looking forward

The changes in program funding by Status of Women Canada under the Harper government show a reorientation toward an individual, entrepreneurial, business-orientated focus for project funding and away from funding women's organizations geared to meeting women's needs in a collective manner. It is important to have industry and sector employment plans that include diverse women. But this does not need to be the main focus of SWC.

There used to be federal sector councils, which brought together key stakeholders (employers, unions, sector advocacy organizations) to develop employment plans. Rather than strengthening sector councils and ensuring an intersectional, gendered component in all plans, the Harper government dismantled them. These councils need to be brought back, and they should develop plans to ensure women, and other under-represented groups (e.g., Aboriginal, racialized, disabled, LGBTTI) are in higher-paying jobs in all sectors and regions of the country. This would accomplish two goals: first, to create and sustain diverse workforces; and second, to free up money for SWC to support feminist programs and women's organizations.

Similarly, there is a tremendous need to tackle the problem of violence against women and fund appropriate programs to that end. But more should be done in conjunction with provincial/territorial social services across the country. The Harper government has walked away from federal-provincial/territorial tables where pan-Canadian initiatives could be proposed and developed, that would provide substantial benefits to women and girls across the country.

There is much to do to create greater equality for women. For example, a federal agency devoted to improving the status of women could play a key role in driving this change. Government could also spearhead a major public discussion about policies and actions needed to create greater equality for women, as it did almost 50 years ago when Canada launched the Royal Commission on the Status of Women.

Federal commitment to intersectional gender equality is essential to help (re)build a network of grassroots, regional, provincial/territorial and national women's and feminist organizations working to advance equality for diverse women. In order to do this, government will need to engage with women, their organizations and others to reverse the damage done in the past decade, and to reimagine what this and other federal programs should look like in the 21st century.

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## CASE STUDY

# The Harper government and the Canada Social Transfer

Jennifer D. Mussell

IN THE WORLD of Canadian social policy, provinces are responsible for some exceptionally costly expenditures. In order to mitigate the effects of disparities in financial capacity both horizontally (among provinces) and vertically (between the provinces and the federal government), the Canadian government developed a series of arrangements to help fund provincial social programs. These include the Canada Social Transfer (CST), an annual fiscal transfer from the federal government to the provinces to support programs in post-secondary education, social assistance and social services, as well as early childhood development, early learning, and child care.<sup>1</sup> By limiting its potential for growth, the Harper government has significantly contributed to the dismantling of the CST as a useful tool for social policy.

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## Brief history of the social transfer

The precursor to the CST was the Canada Assistance Plan (CAP), a cost-sharing program covering welfare and other related social services. The overall objective was to ensure that provincial welfare programs provided adequate support to all persons in need. The CAP was a 50/50 cost-sharing program. Provinces would establish the amount they wanted to spend and this would be matched by the federal government. This program had five conditions attached to the receipt of funds, which gave the federal government a significant role in the development of provincial social policy. The CAP ensured a countrywide standard for welfare and social services, and thus for the social rights of all Canadians, without interfering in provincial policy jurisdiction.

Beginning in 1990, however, as the era of fiscal retrenchment was dawning, the federal government limited the growth of CAP expenditures in the three richest provinces: Alberta, British Columbia, and Ontario. By 1995, CAP was on the federal chopping block. The Liberal 1995–96 federal budget eliminated the CAP and replaced it with the Canada Health and Social Transfer (CHST), which would later be divided into the Canada Health Transfer (CHT) and the Canada Social Transfer (CST). The CHST not only eliminated four of CAP’s five conditions on funding, it cut approximately \$7 billion from the federal government’s yearly transfers to provinces. In effect, the 1995–96 budget signaled the federal government was stepping back from provincial social policy. Provinces would have fewer federal dollars to put toward their social programs, but they would also have fewer federal standards with which to comply. This is the model upon which the CST is currently based.

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## What is the role of the CST?

For advocates of strong social policy, social transfers have the potential to be tools for social policy development, and for the guarantee of Canadians’ basic social rights. With adequate funding, conditions, and measures for ensuring accountability, the CST could contribute to the growth and improvement of social programs that benefit those in need. Unfortunately, *need* rarely factors into debate on the CST. And under the Harper government it has moved further and further from the conversation.

Shortly after taking office in 2006, the Harper government defined its approach to relations with the provinces as “open federalism,” which was based on, among other things, “respecting areas of provincial jurisdiction,” and “keeping the federal government’s spending power within bounds.”<sup>2</sup> Rather than taking into account the needs of citizens or provinces, the CST under the Harper government is oriented toward diminishing its relevance as a tool for improving provincial social

policy. This has been displayed through the most recent policy contribution to the CST: the application and extension of automatic escalators.

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## Limiting growth through automatic escalators

The Harper government has shown consistent interest in the rate at which the CST grows even if social transfers are not high among government priorities. In 2009, an automatic yearly increase of 3% was applied to the social transfer that would last until 2014. Then, in 2014, the original five-year arrangement was extended to 2024, at which time it will be reviewed. This decision by the federal government means that the total amount transferred from the federal government is intended to increase by 3% each year until 2024. Until then, it is unlikely there will be very many discussions of the CST.

The idea behind automatic escalators is not new. For instance, the 1996 federal budget set out projections for CHST values until 2002–2003, and planned for a five-year funding arrangement to begin in 1998. However, the Harper government has shown unprecedented commitment to the concept. The 10-year arrangement for increases to the CST covers a much longer period than any previous automatic escalators.

The fixed rate of 3%, which is essentially non-negotiable as long as the escalator remains in place, is problematic for two key reasons. First, it does not account for inflation (i.e., the CST is actually growing by a proportion smaller than 3% when yearly increases in the cost of living are considered). Furthermore, in some years, 3% barely exceeds the rate of inflation and thus growth in the social transfer is minimal.

Second, the 3% escalator does not account for changing demographics within the country. Since 2008, Canada's population has increased steadily at a rate of approximately 1% per year.<sup>3</sup> Thus, the per capita rate at which the CST grows is certainly less than the promised 3%. Additionally, one of the key provincial expenditures that the social transfer is intended to support is social assistance. Between 2008 and 2012, the total number of social assistance beneficiaries in Canada increased from 1,641,494 to 1,868,565.<sup>4</sup> Stagnating rates of growth in the CST, which are expected given consistent inflation and population growth, imply the provinces are less equipped to handle increasing numbers of welfare recipients.

Effective social policy must allow for increases in spending when necessary. It must allow for the needs of provinces, and most of all people, to be met. A 10-year automatic escalator impedes the social transfer from meeting the actual needs of the provinces and people it is intended to serve. By putting in place a decade-long plan for CST rates, the Harper government has delayed any possibility for the prov-

inces to make viable claims of the federal government for need-based increases to pay for social programs.

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## Rejection of need as a guiding principle

While the automatic escalator is highly flawed, there has been another recent and worrying development in the Canada Health Transfer, the CST's sister program. In 2016–2017, the 6% automatic escalator on the CHT will end and growth in the CHT will be tied to gross domestic product (GDP) growth (see Newitt and Silnicki chapter). This essentially means that the CHT will continue to grow, but at a rate which fluctuates with Canada's economic performance. This is an absolute rejection of *need* as a guiding principle for the transfer. It would be a serious detriment if this formula were also applied to the CST.

As long as the automatic escalator legislation remains in place, it will impede efforts to reorient the CST toward the actual needs of Canadians. If the trend of insufficient long-term legislated escalators continues, the CST will deteriorate as an effective tool for guaranteeing social policy is equally distributed across the country. Canadians must ensure that discussions about the social transfer remain on the table even when governing parties do not prioritize them. This is a policy instrument that has the potential to guarantee social rights to all Canadians, most importantly to those in need, and it must not be allowed to be disabled beyond repair.

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# Truth without reconciliation

The Harper government and Aboriginal peoples after the apology

James FitzGerald

The legacy of Indian Residential Schools has contributed to social problems that continue to exist in many communities today.... Years of work by survivors, communities, and Aboriginal organizations culminated in an agreement that gives us a new beginning and an opportunity to move forward together in partnership.

— *Prime Minister Stephen Harper, June 11, 2008*

WHEN PRIME MINISTER Harper delivered the government's historic apology to the Aboriginal peoples who had been victimized by Canada's residential school program, some hoped it would make possible a new relationship between Canada and its First Nations.<sup>1</sup> These hopes were dashed by the following years of government inaction and policies that undermined the spirit and objectives of reconciliation. Over this time, the Harper government worked to extricate itself from as many responsibilities to Canada's Aboriginal peoples as it could.

This chapter explores just three examples of these efforts: the removal of funding for the successful Aboriginal Healing Foundation; the unwillingness to acknowledge a national on-reserve housing crisis epitomized by the October 2011 state of

emergency in the Northern Cree community of Attawapiskat; and several new laws designed to ensure the Aboriginal relationship to the federal government was not based on an equal partnership, as recommended in the 1996 Royal Commission and 2015 Truth and Reconciliation Commission report, but on continued dependence.

We can conclude from these examples that the period from 2008 to 2015 marks a decisive failure of the federal government to continue on the path of reconciliation and basic commitments to the physical security, economic development and overall well-being of Aboriginal peoples within Canada.

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## Residential schools and the Aboriginal Healing Foundation

Canada's history has been marked by practices of both physical and cultural genocide directed towards Aboriginal peoples. Physical genocide is the deliberate mass killing of a group of people because of their ethnicity. Cultural genocide is destruction of the practices, customs, and language that allow a given group to exist. The 2015 *Final Report of the Truth and Reconciliation Commission of Canada* identifies the culmination of these practices in the creation of the residential school system. The report identifies that physical and mental violence were key tools in this process and contributed to a substantial loss of life, and cycles of sexual and physical abuse within Aboriginal communities.<sup>2</sup>

From the 1830s to 1996, the federal government, with co-operation from various Christian churches, operated hundreds of residential schools across the country.<sup>3</sup> These schools were part of a conscious effort to assimilate generations of First Nations, Inuit and Métis peoples into Canadian society — a process described as “cultural genocide” by Justice Murray Sinclair.<sup>4</sup> Over the course of its operation, the residential school system took an estimated 150,000 children<sup>5</sup> from their homes and subjected them to mental, emotional, physical and sexual abuse by church officials.<sup>6</sup> There are an estimated 80,000 survivors of the program living in Canada,<sup>7</sup> many of whom testified to being separated from their siblings and forbidden from practicing their religions or speaking their respective languages.<sup>8</sup>

The intergenerational impacts of the residential schools program are apparent in the loss of culture, and transmission of sexual, physical and mental abuse problems within Aboriginal communities. This is of special importance to policy-makers. It is estimated that due to the intergenerational and inter-communal nature of the abuse, 373,350 Aboriginal people have experienced trauma resulting from the school program.<sup>9</sup> A number of lawsuits emerged in the 1990s in relation to the violence Aboriginal peoples had suffered, much of it eventually documented in the Royal Commission on Aboriginal Peoples (1996), which made 440 recommenda-

tions for fundamentally changing the relationship between Aboriginal and non-Aboriginal peoples in Canada.

Toward that end, in January 1998, the Chrétien government launched Canada's Aboriginal Action Plan, which included a \$350-million healing fund to be administered by the Aboriginal Healing Foundation (AHF).<sup>10</sup> The foundation began allocating money that spring to various community-based projects and organizations working to counter the intergenerational cycles of abuse that reverberated from the residential school system. At its peak in 2010, the AHF was supporting 134 Native-run healing centres.<sup>11</sup> In the 2005 federal budget, the Martin government committed \$40 million to the foundation, extending projects to March 31, 2007. That year, the AHF received an additional \$125 million from the Indian Residential School Settlement Agreement for former students. These funds extended the timeframe of the AHF to 2012.<sup>12</sup>

However, no further funding was allotted the AHF in subsequent federal budgets, despite a consultants' report in December 2009 showing the programs were producing results.<sup>13</sup> Since March 31, 2012, 11 healing centres have closed. By March 31, 2014, 134 projects had been concluded and, as of September 2014, the AHF has ceased all operations.<sup>14</sup>

Budget 2010 committed \$199 million to Health Canada for government-run programs in mental health and emotional support services for former residential school students and their families.<sup>15</sup> But this decision ignored the 2009 recommendations of Indian and Northern Affairs Canada (now Aboriginal Affairs and Northern Development Canada) that funding should be put back into the AHF due to differences between Health Canada's specialized programming and the foundation's targeted and more engaged role.<sup>16</sup>

Over its 16 years of operation, the AHF has funded 1,346 projects that facilitated the healing of an estimated 111,170 people.<sup>17</sup> The Harper government's disregard of the foundation's commendable track record, and the recommendations of public service experts, reflects a preference, during this period, for austerity over evidence-based policy. But there is more to it than that.

The Health Canada programming is unable to replicate the effectiveness of community-based engagement, and does not take into account the value of Indigenous cultural practices and the independence of AHS fund programs from ministerial priorities and government directives.<sup>18</sup> This is not surprising, as there was no harm or risk assessment done at the federal level before winding down programs with survivors. The AHF programming shifted discussions of healing away from monetary compensation toward a more holistic model of healing based on cultural practices working with western medical and psychological approaches. The shift in fund-

ing to Health Canada, more than a cost-cutting exercise, reflects a strategy on the part of the Harper government to take healing out of the control of First Nations.

Furthermore, the cessation of funds to the AHS is part of a larger approach by the federal government to influence treaty, funding and land claims negotiations in favour of federal objectives. The Harper government has made a decisive move toward piecemeal negotiations with individual First Nations rather than holistic accords. The use of results-based measurement to determine the effectiveness of band council governance and federally funded Aboriginal programs decisively controls the scope of these activities. The weakening of support services weakens the negotiating position of Aboriginal peoples, specifically around treaty and comprehensive claims negotiations. The desired goal is to foreclose Aboriginal treaty rights and claims to unceded lands via cash settlement as opposed to the granting or expansion of lands through treaty litigation.

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## Canada and the Aboriginal housing crisis

The Harper government's response to the on-reserve and off-reserve Aboriginal housing crisis reveals two different tactics directed at Aboriginal peoples. First, the federal government is attempting to assimilate Aboriginal peoples into Canada's structures of individual property rights, debt and credit-based accumulation by gradual reforms to on-reserve property ownership. Second, the accusation of fiscal mismanagement has been used to impose new oversight and restrictions onto First Nations band councils and chiefs while deflecting government responsibility. These two processes culminate in a policy environment that targets funding based on narrowly defined results while increasing federal scrutiny through third-party auditors. The narrative of corrupt chiefs also serves to delegitimize First Nations government.

The fallout from Attawapiskat produced a mixed environment for federal–Aboriginal relations and intensified divisions between Ottawa and numerous First Nations. The absence of a formal national solution to the on- and off-reserve housing crisis for Aboriginal peoples is indisputably connected with trends of poverty, chronic illness and increased rates of incarceration and victimization faced by Aboriginal men and women.<sup>19</sup>

The Assembly of First Nations estimates that there was a need for approximately 80,000 additional houses on reserve in 2005.<sup>20</sup> In the 2006 census, Statistics Canada reported a major increase from a decade earlier in the number of Aboriginal people living in substandard housing,<sup>21</sup> noting that in total 29% of Aboriginal

### Attawapiskat Housing Crisis

On October 28, 2011, Attawapiskat First Nation Chief Theresa Spence declared a state of emergency in regard to on-reserve housing conditions. On December 2, the federal government placed Attawapiskat under third-party management to review funding on housing, infrastructure and education from 2005–2011. Then on December 11, Chief Spence travelled to Ottawa to meet with the prime minister and the minister of Aboriginal affairs. Chief Spence met with the Liberals and New Democratic Party while Assembly of First Nations officials met with Prime Minister Harper. The third-party audit revealed a lack of documentation for \$104 million spent by Attawapiskat, at a cost to Canadian taxpayers of \$411,015.62. Infrastructure and housing remain in a state of crisis in Attawapiskat and on-reserve Aboriginal communities across Canada.

homes (and 45% of homes on reserve) needed major repair where the percentage was 7% in the rest of Canada.<sup>22</sup>

The crisis is not just confined to the number of stable homes on reserve, but to the lack of adequate sewage, power and heating infrastructure. In fact, the number of homes is a mugs game as it hides the number of homeless Aboriginals in urban settings, and those that live on reserves in unsafe or overcrowded dwellings. The state of emergency declared in Attawapiskat in the winter of 2011 (see box) revealed the sizable failures of the federal government to respond to the national housing crisis that encompasses much of Canada's northern territories and reserve communities.<sup>23</sup>

The Harper government developed numerous strategies to engage the problem, but all frame Aboriginal communities as dependents of federal funds rather than partners in Confederation. First, the government emphasized potential financial mismanagement of First Nations by placing band councils, like the one in Attawapiskat, under third-party management, putatively to ensure that federal dollars were not being misappropriated. (Federal Court Justice Michael Phelan later ruled this was unreasonable.)<sup>24</sup> The Harper government claimed that since 2006, \$90 million had been spent on Attawapiskat — a figure that merges funding for education, infrastructure and housing. This allowed the government to claim that if there was a housing crisis in the community, it was because Chief Theresa Spence, who many considered a hero for her hunger strike, had simply been misappropriating federal funds. By shifting the blame in this way, the government

could frame the public and media debate in terms of fiscal accountability rather than treaty rights to self-government.

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## Legislating dependence: Bills C-27, S-8 and S-2

The debate created by the Attawapiskat crisis eventually produced two pieces of legislation: Bill C-27, *the First Nations Financial Transparency Act*, and Bill S-8, *the Safe Drinking Water for First Nations Act*. Bill C-27 makes the allocation of federal funding to First Nations a matter of public record. Band councils must submit fiscal statements to Aboriginal Affairs and Northern Development Canada (AANDC) where these records are displayed on the department's website.<sup>25</sup> Not only does this make First Nations fiscal resource allocation hostage to heated and sometimes overtly racist public opinion, the legislation transforms what was a Nation-to-Nation discussion to one based exclusively on effective project management gauged as such by independent auditors.

As the title suggests, Bill S-8 makes public works projects in Aboriginal communities, in particular water and wastewater infrastructure, a government priority at the level of regulation, but in ways that impinge on First Nation jurisdiction. The bill creates new standards, but commits no further funding to building or upgrading water systems, which are in catastrophic shape across the country. A 2007–2009 assessment by AANDC found that of 807 water systems tested, 39% were declared high risk, 34% medium risk, and 27% low risk.<sup>26</sup> The same study found there were 108 communities under drinking water advisories, 105 under boil water advisories, and 12 under do not consume advisories. The 2013 federal budget allocated \$70 million over 10 years for the Building Canada Plan to address housing shortages in Canada's North, but this left many reserves out in the cold.<sup>27</sup> The measure also fails to address the treatment of health problems resulting from long-term exposure to environmental contaminants.

Further to these two bills, the Harper government has been attempting for a number of years to transform First Nations title on reserves to increase the ownership of private property. Bill S-2, *the Family Homes on Reserves and Matrimonial Interests or Rights Act*, tabled in 2013, expanded rights to title and succession around separation, loss or divorce. The act on its surface appears to ensure the protection of first nations women and familial succession rights. However, the rights also de-center the community as a source for regulating property, which feeds into a framework, supported by the Harper government, of individual over collective ownership, with the ultimate goal being private ownership of on-reserve housing.<sup>28</sup>

Private ownership policy works to inscribe private property relations within the framework of a reserve system. This legal shift from collective band council ownership to individual property rights allows First Nations homeowners to use their homes as collateral when seeking bank loans, mortgages and other credit-based financing (e.g., to start businesses or support themselves and their families). This process works in conjunction with the long-term leases used within band membership.

A key part of the proposed act, and the general policy process, is the ability of non-Aboriginals to own real estate and other forms of property on Aboriginal land. Individual ownership further binds First Nations peoples to the Canadian economy and deepens the penetration of resource extraction and labour force engagement. Debt financing as a development framework fails to take into account the cycles of poverty, abuse and economic instability faced by on-reserve populations. The privatization of reserve property avoids the sociological context while offloading federal responsibilities for development.

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## Conclusion

In the six years following the historic June 2008 apology to Aboriginal peoples, the Harper government has sought to use the Aboriginal housing and water crises to assert more control over First Nations band councils and chiefs, increase their dependence on Ottawa, and further integrate private property regimes into Aboriginal communities. The strategy conflicts with the recommendations of both the 1996 Royal Commission and 2015 Truth and Reconciliation Commission recommendations for reorienting federal–Aboriginal relations to correct persistent social, economic and political imbalances.

Instead, the government used the state of emergency declared around Attawapiskat from 2011 onward as an opportunity to shift this debate from one of national bureaucratic crisis — the unwillingness to take First Nations issues seriously — to one of financial mismanagement and corruption in First Nations. The passage of legislation like the *First Nations Financial Transparency Act* has further subjugated First Nations communities to the scrutiny of AANDC and the federal government. Likewise, Bill S–2 is another step in transforming the economics of First Nations communities by using debt, property ownership and mortgage tools to solve a national crisis that cannot improve unless the government is willing to work with First Nations as equals.

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# The need for federal leadership in public health care

Melissa Newitt and Adrienne Silnicki

THE RIGHT TO access public health care regardless of where you live or how much you earn is a deeply held Canadian value that was enshrined in law to support greater equity and justice for all. People in Canada are proud of and depend on the public health care system. In contrast, the Harper government has shown a distinct lack of leadership in maintaining and improving the quality of public health care in Canada, suggesting frequently this is purely a provincial responsibility. This article outlines the dynamics and consequences of this federal policy stance, with a focus on the government's decision to let the 2004 Health Accord expire.

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## Federal leadership already lacking

Inaction on the health file goes further back than the Harper government — to the funding cuts by the Chrétien and Martin governments in the 1990s and 2000s. Federal transfers to individuals and the provinces were cut by 1.9% of GDP during this time as part of the Liberal government's higher priority of slaying the deficit. These deep cuts most directly affected public health care and social assistance, forcing

the provinces to find their own cost savings. Some provincial governments turned to privatization, or stopped covering some health care services such as vision care and physiotherapy. Others decided to contract out hospital support work such as laundry and cleaning. Patients were sent home early from hospital to save on the cost of medication and additional care.<sup>1</sup>

In Ontario, the government expanded the use of public-private partnerships to build and run hospitals and for-profit diagnostic clinics for MRIs and CT scans.<sup>2</sup> Similarly, in British Columbia, the provincial government attempted to open the door to contracting-out and privatization of public health care services.<sup>3</sup> Though these reforms were sold as cost-saving measures, health care became more expensive in most provinces. According to Pat Armstrong, “between 1990 and 1996, private expenditures for health care increased 43% in Saskatchewan, and 33% in Manitoba. In Quebec, private health care spending as a proportion of total health care spending increased from 25% in 1989 to 30.9% in 1998.”<sup>4</sup>

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## Not just a provincial responsibility

The Harper government claims repeatedly that health care is solely a provincial responsibility, but this is not the case. The *Canada Health Act* lays out clear roles and responsibilities for the federal government to ensure the provision of public health care for all people in Canada.<sup>5</sup> These responsibilities are based on five principles in the act: Canadian health care must be publically administered, accessible, comprehensive, portable, and universal. This is meant to ensure that no matter where a person lives in Canada they can access similar levels of high-quality public care. Toward that end, the federal government can withhold transfer payments from provinces that allow private insurance for medically necessary services, or tolerate extra-billing or user fees.<sup>6</sup>

It is widely recognized the health act is not working as it should. Care differs greatly across regions. Some provincial residents have access to more medications than others. Some provinces have more hospital beds per capita than others. Even wait times for certain procedures vary greatly across regions. Partly this has to do with less funding. Originally, the federal government agreed to contribute 50% of the funds required to implement public health care nationwide.<sup>7</sup> Today, only 20% of the overall funds spent on health care are federal. Total health care spending has not kept pace with inflation and continues to subtly erode the minimum funds required to maintain public health care services.<sup>8</sup>

Beyond these clear legislated roles, the federal government is the only order of government in a position to drive universal programs and a national vision for the

future of health care. Where is federal leadership in preparing for the needs of an aging population, or in promoting the system-wide adoption of regional innovations (e.g., lower wait times)? Without this leadership, Canada is simply 13 separate health care systems administered individually, unable to share information, and showing increasing regional disparity.

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## The 2004 Health Accord

The Health Accord was a 2004 agreement between the provinces, territories and federal government to work together to fix and strengthen health care over a 10-year period. It created and promoted new national standards (e.g., common goals around wait times, home care, prescription drugs, and team-based primary care), the use of best practices across the country, and provided increased, stable and predictable funding after the deep budget cuts of the 1990s.

While the Health Accord was imperfect, it was nonetheless a positive step toward adequate funding and rigorous national standards to ensure the integrity and sustainability of public health care in Canada.<sup>9</sup> For example, on wait times, eight out of 10 Canadians received treatment within the timelines set in 2005 for five chosen procedures.<sup>10</sup> In other areas, however, including home care, drugs, and primary care, progress has been poor because the governments set only loose goals, with no financial strings attached. Access to these services still depends on where you live and your ability to pay.<sup>11</sup>

Throughout the 2011 federal election campaign, the Conservatives had promised to renegotiate this important agreement. But once elected, the majority Harper government abandoned this commitment and the Health Accord was allowed to expire in 2014.<sup>12</sup> At the same time, the government eliminated the Canada Health Council,<sup>13</sup> an independent body that monitored the performance of the health care system and recommended improvements to the provinces, territories and the federal government.<sup>14</sup> Without the council there is no comprehensive evaluation of the success of health service delivery in Canada, and a lack of data about changes in health outcomes over time.

Further evidence of the Harper government's aim to dismantle national medicare comes from its abandonment of the national pharmaceutical strategy within the 2004 accord. According to the Health Council of Canada, the pharmaceutical strategy was integral to the renewal and sustainability of the entire health care system. Instead of insisting on value-for-money for prescription drugs, the Harper government agreed to extend patent protections on brand name drugs — a move that will increase drug costs to Canadians by between \$850 million and \$1.6 billion a year.<sup>15</sup>

Without the Health Accord there is no vision in Canada for the provision of public health care, no plan to grow the system to include much needed services like a national drug plan or a strategy to care for seniors. There is no discussion of the inclusion of a more adequate approach to mental health challenges, vision care or dental care. Funds are transferred from the federal government to provinces and territories with no strings attached. Provinces and territories are free to spend these health care dollars on any expense; there is no mechanism to ensure these funds are spent on the provision of health care. There are no targets to improve access to care, wait times, electronic file management, access to medications, or the number of health care professionals in each province or territory. With no national leadership, the health care system is rudderless.

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## The health care situation today

On top of the expiry of the Health Accord, the federal government has actively cut federal funding to public health care. In December 2011, the Harper government announced a major cut to the Canada Health Transfer (CHT) of \$36 billion over 10 years beginning in 2017.<sup>16</sup> In addition, the equalization portion of the CHT was eliminated in 2014. This decision reduces transfers by another \$16.5 billion over five years.<sup>17</sup> The approach taken so far by the government will effectively shift more federal debt onto the provinces, undermining their ability to provide care at a time when the Canadian population is aging and there is increased demand for health care services.<sup>18</sup>

In general, there has been a startling change in the administration of our national health care system. As a result, the federal government is no longer able maintain its role as guardian of national standards. For example, if you live in PEI you will have a much easier time accessing a hospital bed than if you live in Ontario, since there are 4.3 beds available for every 1,000 people in PEI and only 2.5 available for every 1,000 people in Ontario.<sup>19</sup>

The government's new funding formula ties health care transfers directly to GDP such that when the economy does poorly there will be less money for public health care. There are a number of problems with this arrangement. First, when the economy does poorly there is an increased strain on the public health care system, but at this time the system will have fewer resources. Second, under the *Canada Health Act*, funding is used to hold the provincial and territorial governments accountable for their delivery of health care services to Canadians.

If the funding is tied to GDP there is also no way for the federal government to ensure that funds transferred to the provincial and territorial governments are used for health care. By decreasing its contribution to health care the federal gov-

ernment decreases the impact of any financial penalties it may need to inflict upon provinces and territories for not abiding by the *Canada Health Act*. It is already evident that without the ability (or willingness) to enforce the act, we get more private for-profit health care provision, the enactment of user fees and double-billing, and the inevitable decrease in quality of care that is a part of an unregulated system.

Never in Canada's history has the funding of social programs, including health care, been tied to the success of the Canadian economy. Social program provision is meant to meet the changing needs of the Canadian population, not to fluctuate based on the nation's success in the global economy. This unstable and unpredictable funding scenario is in direct conflict with the values laid out in the *Canada Health Act*. The lack of federal leadership on health by this government is, however, not an oversight. It is part of a strategy to privatize health care in Canada. Stephen Harper told the *Globe and Mail* in 2002, "the biggest single thing is alternative delivery within the universal, public insurance system.... [T]he existence of a wider range of private providers, that is what we're talking about."<sup>20</sup>

Over the past two terms in office, the Harper government has decreased the role it plays in health care by jettisoning or ignoring its responsibility for marginalized and vulnerable groups including Indigenous peoples, refugees, and Canada's veterans. Indigenous peoples in Canada consistently show health outcomes far below those of other people.<sup>21</sup> Rates of preventable communicable disease remain high and many communities have gone years without clean drinking water. The situation is intolerable and requires action from the federal government, which is directly responsible for health care provision for Indigenous peoples within Canada.

Beyond this abdication of responsibility, the federal government has also cut health care to people who have come to Canada as refugees. In 2012, the federal government announced cuts to the Interim Federal Health Program through which all refugees in Canada receive care. Some of the cuts were retracted due to public pressure and some services are now available as a result of a 2014 Supreme Court ruling that found the cuts unconstitutional, forcing the federal government to create a temporary program to provide some care. Still, refugees have lost access to coverage of medications, vision and dental except if the illness is a public health concern. And people arriving from countries not considered to be sources of valid refugee claims will receive no care at all unless there is a public health concern.<sup>22</sup>

The federal government is also responsible for providing health care to veterans, the RCMP and Canadian Armed Forces members. However, in recent years, this too has been jettisoned onto the provinces and territories. The federal government continues to look after veterans of the First and Second World Wars, and the Korean War. But those termed "modern" veterans have been told they are now a provincial responsibility. The provinces have never planned for veterans' long-term

care and were unprepared for this unforeseen change in policy that puts pressure on already strained resources.<sup>23</sup> While the federal government saves \$25 million a year from this move, the provinces and territories must find new room in their budgets to cover the cost of this care.<sup>24</sup>

A modern public health care system in Canada must include a national drug plan and a national seniors care strategy. Canada is the only country in the world with a public health care system that does not include medications. A remarkable 25% of all people in Canada have no coverage at all for the drugs prescribed by their doctors; they must access personal funds in order to be healthy, while the cost of medications in Canada continues to skyrocket above the amounts paid by people living in other OECD countries.<sup>25</sup>

There is an immediate need for the federal government to create a national formulary for medications, take on bulk purchasing, and ensure safe prescribing and drug approval practices. Furthermore, it is evident to most Canadians there is a need for improved care for seniors. The current patchwork of care leaves many aging Canadians struggling to navigate a poorly organized system of care that often includes user fees, extra payments and long waiting lists.

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## Conclusion

A national strategy is required to ensure that all aging people in Canada can access the appropriate care regardless of where they live or their ability to pay. This means access to the continuum of care: hospital, home care, long-term care, palliative and hospice care. National standards and funds are needed to make this happen. Achieving this will take federal leadership, which has been absent under the Harper government. It will also require stable funding, national standards and stricter enforcement of the *Canada Health Act* — a package that could be presented to the provinces through a new Health Accord.

But on top of reinforcing Canada's existing public health care system, there is clearly room for improvement and expansion into other areas: a national drug plan, seniors care strategy, increase in support for Indigenous peoples, and the reinstatement of appropriate care for people seeking refuge in Canada are all within the government's responsibilities and financial capabilities.



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# Housing first, but affordable housing last

The Harper government and homelessness

Carey Doberstein and Alison Smith

THE HARPER GOVERNMENT has a mixed record on homelessness and affordable housing. On one hand, the government came to support evidence-based policy innovations such as Housing First. On the other, and perhaps more importantly, it still refuses to acknowledge the federal role in addressing the affordable housing crisis in Canada. In other words, since taking the helm in 2006, Prime Minister Harper's record on homelessness is characterized by incremental policy changes to existing programs launched by his predecessors, accompanied by scaled-back funding in critical areas such as the Homelessness Partnering Strategy (HPS). The government's overall record on homelessness in Canada is, therefore, of a holding pattern, which serves to manage homelessness without making any meaningful progress toward ending it.

Two main programs constitute the Harper government's policy on homelessness and affordable housing: the Investments in Affordable Housing (IAH) program and the HPS. Both share significant characteristics with predecessor programs introduced by the Liberal government in the late 1990s and early 2000s. All of the Harper government's measures represent a limited re-entry by the federal government into the area of homelessness and affordable housing after the Chré-

ten government made drastic cuts to the construction of new social housing in the mid-1990s. Prior to these cuts, the federal government played a major role in the provision of affordable housing in Canada, partnering with provincial housing agencies to build tens of thousands of units of affordable housing *annually* across the country.<sup>1</sup> Today, there are over 600,000 units of social housing across Canada, the vast majority of which were built between the end of the Second World War and the early 1990s.

Under the Liberals, annual construction of new social housing was reduced to nearly zero by 1996. But the expenditures cleared from the government's balance sheet soon appeared at the local and provincial level in the form of exploding health and social services costs when the homelessness crisis appeared in the late 1990s.<sup>2</sup> Indeed, leading researchers in Canada pinpoint the origins of the homelessness crisis in Canada to the massive federal government cuts to affordable housing provision in the 1990s and the welfare retrenchment that followed.<sup>3</sup> Following this crisis, which was in large part the Liberal government's creation, the federal government tiptoed back into the area of affordable housing with the Affordable Housing Initiative (AHI) from 2001–2011. Under this initiative, the government entered into bilateral agreements with all provinces to provide relatively modest contributions to affordable housing projects.

The AHI directly invested in affordable housing in partnership with provincial governments. But the program was very modest, with \$124 million invested annually by the federal Liberal government. The AHI has since been renamed the Investment in Affordable Housing (IAH) program, and the available funds were doubled by the Harper government in 2011 to \$250 million annually until 2019. Though a substantial increase from previous Liberal government commitments to affordable housing, this is still *orders of magnitude* less than what is required to address the problem. For example, the entire province of British Columbia receives \$30 million annually from the Harper government to invest in affordable housing through the IAH.<sup>4</sup> To put this in context, the provincial government's contribution alone to affordable housing in B.C. in 2013 was \$421 million, meaning the federal government commits *less than 7%* of the total expenditures related to housing.<sup>5</sup> Experts and advocates argue that the expanded IAH under the Harper government is not even half of what is required to adequately address Canada's vast affordability deficit.<sup>6</sup>

The HPS, in contrast, is not an affordable housing program; rather, local investments typically include homelessness services such as drop-in centres, addictions programs, and other supportive measures. In fact, municipalities are not permitted to use HPS funds toward the construction of affordable housing, which the federal government (back to Chrétien's days) maintains is the primary responsibility of the provinces. These HPS funds therefore may not be used by municipalities to

make up for inadequate provincial government spending on affordable housing. In any case, the funds allocated to each municipality via HPS are insufficient to actually construct housing, which costs from \$150,000 to \$200,000 per unit to build.<sup>7</sup>

The HPS is likewise a manifestation of the Conservatives' perspective on the role of the federal government as facilitator or catalyst, not the primary funder, with respect to homelessness and housing. In 2007, the HPS replaced the National Homelessness Initiative (NHI), created by the Liberal government in 2000, though this was initially little more than a name change. The fundamental features of the program remained the same: the federal government offers a small pot of money to 61 designated cities and communities across the country to assist them with devising homelessness plans, and funding projects and programs that respond to the unique conditions of homelessness at the local level. HPS dollars must be matched by investment at the local level, either from provincial, local or community partners, and thus become a mechanism to spur further investment from other orders of government. Notably, the HPS bypasses the provincial governments entirely (unlike the IAH), and the federal government engages directly with municipal governments and community organizations. As municipalities are the constitutional responsibility of the provinces, direct federal engagement with local governments has not been without controversy.<sup>8</sup>

Through two phases of the HPS (the first for two years and a renewed program for three years), the federal government transferred \$135 million annually to the local level from 2009–2014. This is a slight reduction from the contribution of the preceding NHI under Liberal governments. The HPS was recently renewed by the Harper government until 2019, a five-year commitment, which represents the longest phase of guaranteed funding for local communities under this program, though at a further reduced annual investment of \$119 million. The federal government divides these limited dollars among 61 cities, and there is a separate envelope for dozens of urban Aboriginal communities within the designated cities. The money does not go far: for example, Metro Vancouver receives just \$8.2 million annually from HPS. To put this in context, just *one* of the affordable housing projects currently being constructed in Vancouver with 147 units required \$45 million in capital expenditures and will cost nearly \$1 million annually to operate. This project is funded by the province, the City of Vancouver and the Streethome Foundation.

Not only is the investment from the Harper government's HPS lower than what experts estimate is required to address homelessness in a systematic way, but its value has in fact eroded considerably since the program was first introduced in 2000. Just to keep up with inflation, the HPS should have been raised to \$165 million per year. As a result, there is effectively a \$45 million per year gap from what

the already paltry investments were under the homelessness initiatives of previous Liberal governments.

Though armed with precious few resources, a key strength of the Harper government's early version of the HPS was that it preserved flexibility for cities to organize HPS governance and allocate investments (with the exception of maintaining the pre-existing "no affordable housing" restriction).<sup>9</sup> The federal government deferred to the local level on how to prioritize investments (e.g., what share of funding should go to homelessness prevention efforts versus temporary shelters). This has since changed, as the Harper government became more prescriptive with respect to how cities prioritize and invest their HPS dollars since 2013. In particular, the government has shifted toward the Housing First philosophy. The new policy prescription demands that HPS cities and communities allocate at least 65% of their funds toward projects aligned with Housing First principles. Harper sacrificed the flexibility that once defined the program, and his own historical preference to not dictate social policy in provincial and local jurisdictions.<sup>10</sup> This policy shift corresponds with the conclusions of a major cross-city study conducted by the Mental Health Commission of Canada called *Chez-Soi/At-Home*, described in greater detail below.

The Harper government also announced in 2015 it would be funding nationally co-ordinated point-in-time counts across countries.<sup>11</sup> The government will be making new funding available to communities who wish to conduct a point-in-time count of the homeless population, though it is not mandatory. Point-in-time counts are a valuable source of information about the local homeless population, and while they are not well suited to understanding hidden forms of homelessness such as couch-surfing, they provide community groups and advocates with crucial data regarding the chronically homeless population. The Harper government should be applauded for this, and for recognizing the evidence behind Housing First.

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## **Housing First under the Harper government**

According to the Homeless Hub and the Canadian Observatory on Homelessness, Housing First is "a recovery-oriented approach to homelessness that involves moving people who experience homelessness into independent and permanent housing as quickly as possible, with no preconditions, and then providing them with additional services and supports as needed."<sup>12</sup> Many advocates and academics argue this move toward Housing First is a significant break with past responses to homelessness taken by the federal government.<sup>13</sup> Tim Richter, head of the Canadian Al-



liance to End Homelessness, said “the policy shift...is going to radically overhaul Canada’s response to homelessness.”<sup>14</sup>

Earlier policy and programmatic responses to homelessness are sometimes referred to as “treatment first”<sup>15</sup> or the “staircase” model.<sup>16</sup> These responses require that homeless individuals be “ready” for housing; they must first address any addictions or mental health issues they are living with. Individuals are expected to do this either in an emergency shelter or while in transitional supported housing. Once these issues are addressed, the person is deemed suitable to be admitted into social housing. Housing in this approach is often abstinence-based, meaning treatment for addictions must first be completed and the person must remain clean and sober to maintain their housing.

Housing First, in contrast, puts safe, secure, affordable housing at the beginning rather than at the end of an individual’s transition out of homelessness. Barriers to accessing and keeping housing, such as sobriety, are eliminated.<sup>17</sup> Intensive wraparound services are then offered by service providers with the aim of helping the person become more stable and ultimately to re-integrate into the community. Individuals are offered several types of social support — all recover-oriented — and choose which among them they feel they need. Where possible, people are also able to choose the neighbourhood and apartment where they want to live. This is, of course, very much dependent on the local housing market and availability of adequate and affordable housing.

Because individuals have choice in where they live, Housing First programs tend to use a “scatter site” model of housing. Rather than congregate housing, which places many high-needs or low-income people in a single purpose-built social housing complex, Housing First typically places individuals in private market apartment buildings. To ensure people are not evicted due to an inability to pay their rent, Housing First programs often rely heavily on rent supplements, which ensure that a person will only pay approximately 30% of their monthly income on rent.

This approach was first broadly implemented in New York City through the Pathways to Housing program in 1992.<sup>18</sup> As is the case with other Housing First programs across Canada and the U.S. that have built on the New York model, Pathways prioritizes chronically homeless individuals living with serious mental health issues and/or addictions. In Canada, the first Housing First program to be broadly developed and implemented is Toronto’s Streets to Homes program. Implemented under Mayor David Miller in 2005 following the eviction of a number of people from Tent City, Streets to Homes has been a Canadian and worldwide leader not just on how to house people, but also how to provide them with appropriate support. Though the program has demonstrated success in helping many chronically homeless people access and maintain housing,<sup>19</sup> the severe lack of safe, adequate,

affordable housing in Canada's largest city makes it difficult for the program to do more than manage homelessness.

Despite the recent rhetoric from political leaders about the novelty of Housing First, many long-time advocates for the homeless in Canada argue that the idea of putting housing at the centre of the solution to homelessness is not such a new idea. Advocates in Toronto ran projects that guaranteed safe and permanent housing to homeless individuals in the 1980s, a notable example being Homes First.<sup>20</sup> Likewise, the Federation of Non-Profit Housing Providers of Montréal (FONHM)<sup>21</sup> has long believed in the importance of putting housing at the beginning of an individual's transition out of homelessness, and has conducted studies and reports regarding the success of the approach of permanent (social) housing with support since the 1990s.

That safe, permanent housing is important to ending homelessness is thus neither a revolutionary idea nor is it, in principle, terribly controversial. But, as is often the case with social policy, the devil (for some) is in the details of implementation. Because Housing First promises to "rapidly rehouse" people experiencing chronic homelessness, there is a significant, if not exclusive, dependence on the for-profit private sector for housing. The reality in Canada is that social housing waiting lists are extremely long in many large urban centres, and the application process can be confusing or overwhelming. In Toronto, for example, there are more than 90,000 people on the wait list for affordable housing. It is so large that Michael Shapcott of the Wellesley Institute observes, "if the affordable housing wait-list [in Toronto] was a separate community, it would be the 24th biggest city in Canada."<sup>22</sup> Much of this public housing is also in terrible repair, with some units literally falling apart from years of neglect.<sup>23</sup> In Montreal, the wait time for housing is estimated to be approximately 11 years. According to the Municipal Housing Office of Montreal, there are 22,000 households waiting for access to low-income housing, but only 2,000 units become available per year (due to people moving out, for example).<sup>24</sup>

Housing First programs in Canada and the U.S. build strong relationships with local landlords of private market apartment buildings. The programs often pay the first and last month's rent or damage deposits for the individual, and sometimes guarantee to cover the costs of any damages that might be incurred to the unit. These strong relationships, and a promise to deliver rent and damage costs in a timely and reliable way, ensure that formerly street-involved people have rapid access to whatever private market housing is available, as opposed to long applications and wait times for social housing.

The idea that public money is channelled to for-profit private market landlords in Housing First programs has resulted in opposition across Canada, notably in Vancouver, Toronto, and Montreal. Many housing workers and analysts advocate

the use of social housing instead, arguing that it is a better long-term investment in ending homelessness. They argue rent supplements, while cost-effective in the short term, can add up to more than the capital and operating costs of developing new social housing in the long term.<sup>25</sup> Advocates also worry there is no guarantee that private landlords will continue to agree to house previously homeless individuals, some of whom are dismissively referred to as “hard to house.”<sup>26</sup> They argue that the best way to guarantee permanent, low-income housing for homeless individuals is for the government to invest heavily in more dedicated non-profit social or affordable housing.

The Conservative government, however, was not much interested in investing heavily in the construction of new social housing. And Prime Minister Harper now has powerful evidence that Housing First, including the use of private market apartments, can be an effective antidote to chronic homelessness. In 2007, in response to a landmark Senate report regarding mental health,<sup>27</sup> the federal government established the Mental Health Commission of Canada (MHCC).<sup>28</sup> The MHCC was allotted a budget of \$150 million, of which \$110 million would go to a cross-country study of Housing First. This study, the At Home/Chez Soi pilot project (AHCS), tested the Housing First approach in a variety of environments and with different populations, including youth and Aboriginal people, through a randomized controlled experiment in five Canadian cities: Vancouver, Winnipeg, Toronto, Montreal, and Moncton.

Over 2,000 participants were recruited from shelters and from the streets in these cities to participate in the study. There were general eligibility requirements such as age and citizenship, but it was also required that participants were diagnosed with a severe mental illness. Just over half of the 2,000 participants from the five cities were randomly selected to receive the Housing First “treatment.” Depending on their needs (classified as high, moderate, or particularly high), study participants in the treatment group were given varying degrees of social support. For the researchers to fully test the independent effect of Housing First as a response to homelessness, the remaining participants in AHCS were in the control group, or the “treatment as usual” group. For these homeless individuals, nothing changed — they still had access to all the services and supports that were available in their home community, such as shelters, detox, and counselling — but they were left to navigate the system and try to find housing on their own. The progress of the two groups was tracked closely with interviews every three months for a four-year period from 2009–2013. Interviews of the participants continue today to monitor the success of the Housing First intervention.

AHCS relied almost exclusively on private market apartments and rent supplements, though the Portland Housing Society (PHS) in Vancouver was able to nego-

tiate for a portion of the Vancouver participants to be housed according to Housing First principles in social housing. PHS housed 107 individuals in a congregate social housing building, and the results of congregate versus scatter-site housing are compared in Vancouver's final report of the study. The results of these two groups were similar for many indicators measured by the study, such as quality of life and housing stability. This points to the potential of congregate social housing, combined with the Housing First philosophy, for ending homelessness.<sup>29</sup>

The results of the overall study indicate that for the "high needs" Housing First group, there was a net savings of \$9.60 for every \$10 of public spending. These savings came from a number of sources, including correctional facilities and emergency medical services, all of which were tracked closely over the four-year study. For the moderate needs individuals, the savings were \$3.42 for every \$10 of public spending. The AHCS final report also notes that 10% of the Housing First treatment group was comprised of people with particularly high needs and barriers; for that population, the savings associated with the Housing First intervention were \$21.72 for every \$10 of public spending.

These scientific findings have directly shaped the federal government's abrupt policy shift toward Housing First in the HPS in 2013. Indeed, this move is well supported by research, notably as an effective intervention for the most chronic homelessness. As a result of the shift, the 10 biggest Canadian cities supported by HPS funding must now dedicate at least 65% of their HPS funding dollars to Housing First programs. Many big cities, such as Toronto and Calgary, have long been doing Housing First and are thus not overly affected by this change. But groups in other big cities, such as the RAPSIM<sup>30</sup> in Montreal or the PHS in Vancouver, prefer to offer a broader array of housing options to homeless individuals.

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## Analysis of the Harper government's reforms

The Harper record on homelessness and affordable housing is decidedly mixed. In policy terms, the shift toward Housing First principles for especially vulnerable populations is supported by leading research (and many community groups across the country). But the policy is woefully under-resourced, which likely fatally undermines its effectiveness.

It is thus important to distinguish between Housing First principles and the criticisms of the Harper government's approach to homelessness. Many of those who are critical of the HPS policy shift by Harper continue to support Housing First principles given the strength of the evidence regarding its effectiveness when properly resourced. The At Home/Chez Soi project adhered to the gold standard of research:

it was a randomized controlled experiment in terms of isolating the effects of rapid re-housing and support on individual outcomes. The results are unequivocal. It is far more effective and less expensive in the long run to rapidly re-house a chronically homeless individual with support services than it is to let them cycle through the shelter system or live on the streets. Such approaches bring additional costs associated with police and bylaw enforcement and increased emergency room visits, all without offering a path out of homelessness. As the minister of state (social development), MP Candice Bergen, was eager to expound the achievements of this major pilot study and the adoption of Housing First principles under the HPS, but she failed to acknowledge that the resources the federal government is offering to support and implement the policy are inadequate. At the same time that the Harper government announced the new policy, it simultaneously reduced the expenditures associated with the program. How are communities supposed to do more to end homelessness with fewer resources?

The Harper government reforms that institutionalize Housing First policies at the federal level are also consistent with a conservative vision of those who are deemed to be “worthy” of social investment and the (many more) who are not. The At Home/Chez Soi project had a great influence on the subsequent policy change, so it is revealing to notice that the study focused on chronically homeless individuals with mental illness. This clientele is privileged in the Housing First model. Indeed, these are very vulnerable people, yet other individuals and families who are homeless or precariously housed due to poverty, abuse or victimization, or discrimination (especially among Aboriginals and the LGBT population) derive little benefit from the typical Housing First model. Many of these individuals do not need elaborate wraparound supports. What they need is simply a safe, affordable place to call home. The Harper government policy framework does not seem concerned with them. The merely “poor” folks are essentially responsible for themselves.

While Housing First models work well for some very vulnerable populations, particularly those suffering from mental illness, they are inadequate as a comprehensive housing and homelessness strategy. Implemented on its own, without accompanying investments in health, social assistance and, most importantly, housing, the Housing First model has a harder edge: it looks like very narrowly circumscribed, hyper-targeted social policy, which is consistent with a neoliberal vision that carves out a small set of “deserving” poor and excludes a much larger segment of the “non-deserving” poor. If, however, Housing First programs were adequately funded and accompanied by adequate investments in social or affordable housing, we might then begin to make meaningful progress toward eliminating homelessness in Canada.

Provinces and municipalities are not waiting around idly; they are a key source of policy experimentation. Metro Vancouver is a leader in producing an innovative regional response to homelessness, Toronto is lauded for its Streets To Home program, and Calgary for its “system of care” approach and use of sophisticated real-time data on service users.<sup>31</sup> In September 2014, Montreal Mayor Denis Coderre unveiled an innovative plan on homelessness, which includes establishing a watchdog position to protect the rights of homeless people. Likewise at the provincial level, BC Housing is investing in building more affordable and supportive housing units than ever before. The Alberta Interagency Council on Homelessness brings provincial agencies associated with homelessness under one decision-making body geared toward coherent policy across policy systems. The Quebec government recently brought over one dozen ministries together to develop an innovative and inclusive multi-sectoral policy to end homelessness.

Municipalities, in partnership with their provincial governments, have responded to homelessness differently, reflecting the unique circumstances and conditions on the ground. While substantially greater federal government resources are essential, a national policy or program that encourages homogeneity in response is not ideal. For example, rental vacancy rates in the private housing market vary between cities. This will affect the cost-effectiveness of rental supplement programs versus purpose-built non-profit social housing. The vacancy rate in the City of Vancouver in 2014 was 0.5%. In an extremely tight real estate market such as this, individual rental supplements for expensive and privately owned rental units are not the most cost-effective way to end homelessness.<sup>32</sup> Beyond contextual differences of local real estate economics, there are continuing differences in opinion across the country on what is the “best” investment: rent supplements or purpose-built social housing. Many in the Montreal policy community, for example, prefer social housing, despite having a higher vacancy rate (2.8%) than most other big cities in Canada.

At current federal investment levels, local resources are so few that the rent supplement model is the only choice, despite its limitations. Non-profit purpose-built social housing, in contrast, has high up-front capital costs, but provides benefits over a long period provided governments maintain the buildings appropriately. Rent supplements to an individual in the private market are lower up front, but are continual and may actually *inflate* prices at the low end of the real estate market. Falvo finds that purpose-built social housing is more cost-effective in the long run than other approaches: an investment of \$100 million toward non-profit purpose-built social housing would create 24,000 “affordable housing years” versus 17,000 with rent supplements, and 14,000 with an affordable housing tax credit given to individuals.<sup>33</sup>

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## Conclusion

Despite notable efforts at the subnational level, our major cities are not any closer to reducing the scale of homelessness in Canada. The most recent homeless counts in Vancouver, Toronto and Calgary, for example, show the numbers of individuals and families in temporary shelters and on the streets are stubbornly consistent since 2008. Many cities have used ingenuity and partnership to stop the hemorrhaging, but the fundamental trauma, so to speak, remains untreated.

While all governments have a role in ending homelessness, it is the federal government, with its broad revenue base and redistributive capacity, that is best equipped to address the problem. As the Harper government engages with the provinces on its Investment in Affordable Housing plan (IAH), and municipalities through the Homeless Partnering Strategy (HPS), both interventions are so underfunded that they cannot possibly be considered a “National Housing Strategy.” The \$250 million per year the IAH receives, for example, represents 0.09% of the \$279-billion federal budget in 2014.

Worse yet, the Harper government allocates more money annually to its communications staff (\$268 million) than to its HPS (\$119 million).<sup>34</sup> These communication professionals are indeed hard at work: with the strong rhetorical backing of evidenced-based Housing First policy, the Harper government and its ministers expound Canada as a “global leader on homelessness.”<sup>35</sup> While effective for a small portion of the homeless population, Harper’s version of Housing First as a policy response to homelessness is little more than an enormous, unfunded mandate. Adopting an innovative policy without the commensurate financial resources simply will not work.

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**ECONOMY**



# Leaner and meaner

Government spending from stimulus to austerity

Tamara Krawchenko and Christopher Stoney

THE GLOBAL ECONOMIC crisis of the late 2000s has had lasting implications for the structure of government spending and taxation. In response to the crisis, governments across the world, including Canada, adopted stimulus policies to strengthen investment, and consumer and business confidence. The federal government's Economic Statement in October 2007 proposed \$60 billion in broad-based tax cuts over two years. However, this was a full year before the crisis hit. This initial infusion was later followed by the Economic Action Plan (outlined in the 2009–10 budget), which retroactively referenced the earlier tax cuts, and committed to further financial stimulus measures and added infrastructure stimulus to the mix. As the action plan stated, these measures were to be “timely, targeted and temporary,” except in one important way — the tax reductions were intended to be permanent.<sup>1</sup>

This decision to reduce taxes was instrumental in creating the shift within the federal government's economic planning from stimulus to austerity. Shortly after the post-crisis stimulus spending came a new period of belt tightening. This was a choice, not a necessity: the commitment to deliver a balanced budget by 2015–16 was timed to coincide with the election scheduled for October 2015. And it was difficult to ignore that a major cause of the deficit-to-be-slayed was another politically attractive policy decision in 2006 to cut two percentage points from the GST — “a decision that still casts a long shadow over Ottawa's books.”<sup>2</sup>

Government spending was cut back and departments were asked to continue to deliver programs and services with fewer resources. In addition, the public service itself faced major cuts. As described by the Parliamentary Budget Officer, “data from the 2014–15 Reports on Plans and Priorities suggest that over the next three years, the total population of the Federal Public Service is set to fall to levels last seen in 2006–07.”<sup>3</sup> Since March 2010, more than 20,000 full-time equivalent positions have been eliminated in the federal public service.<sup>4</sup> On the revenue side, according to the 2015 budget, the Harper government has lowered taxes every year since coming into office.<sup>5</sup>

While the shift from stimulus to austerity sets the overall narrative in government spending and restraint over the past several years, it is not the whole story. Individual ministries have seen growth or decline in their budgets that sets them apart from broader trends. This chapter provides a high-level analysis of the public accounts of Canada over several years. In doing so, it identifies the government’s priorities, in particular its support for a natural resource–based export-driven economy — an ambition Prime Minister Harper has widely articulated as he seeks to orient Canada as a “global energy superpower.”<sup>6</sup> Our analysis of the data also illustrates that while the Harper government is *leaner* (having to do more with less) it is also *meaner* in the sense that major programs and services that are important to Canadians have been cut.

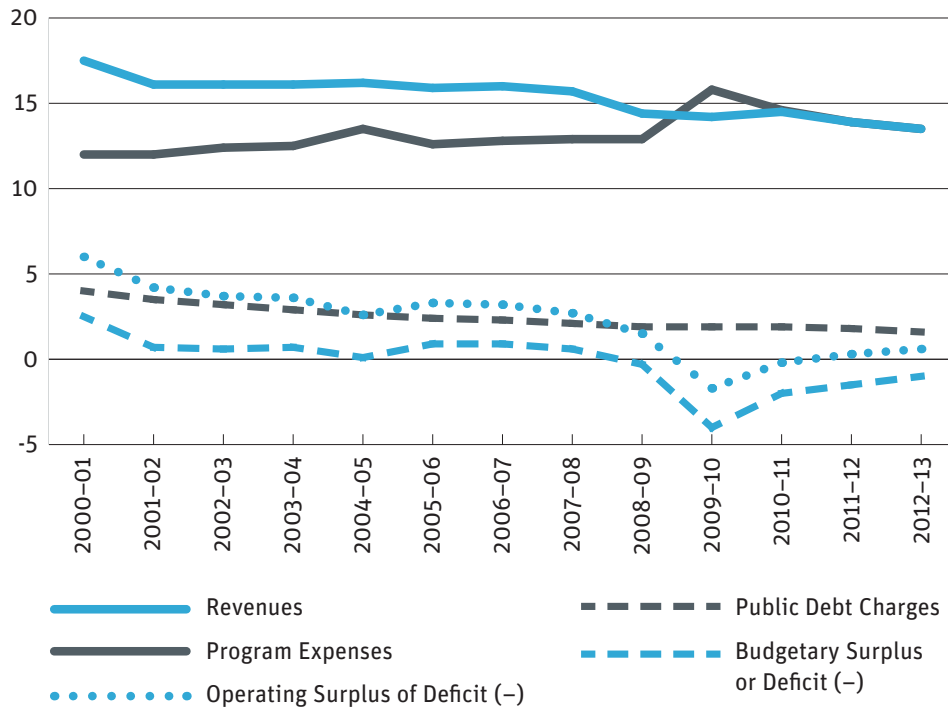
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## The big picture

The 2008 financial crisis prompted governments to adopt a range of spending measures to boost short-term growth (raise aggregate demand) and foster the conditions for long-term recovery by encouraging investment and innovation. Milton Friedman’s famous line, “we are all Keynesians now,” was revived, forcing neoliberal and fiscally conservative governments, including the one in Canada, to intervene in the economy in ways they were not predisposed to do (see Bernard chapter).<sup>7,8</sup> Canada’s stimulus measures fell under the government’s Economic Action Plan (EAP) and included tax cuts and credits, and major investments in infrastructure projects across the country, including for social housing.<sup>9</sup> It should be noted that, compared to many other countries, the dollar-value size of Canada’s stimulus measures was relatively small.<sup>10</sup> While some aspects of the EAP continue to be marketed to Canadians<sup>11</sup> (despite the program’s wrap-up), 2010 ushered in a period of spending restraint and a focus on deficit reduction. And so, within a few years, government policy shifted from stimulus to austerity.

As illustrated in *Figure 1*, government revenues as a percentage of GDP have been steadily declining since the 2000–01 budget year, while program expenses

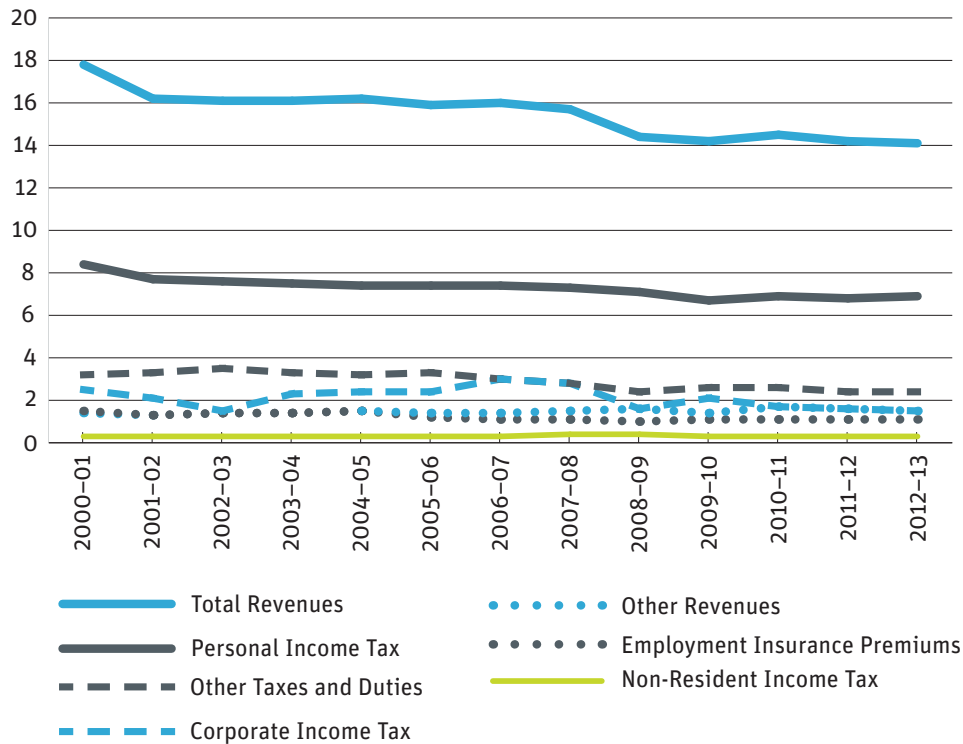
**FIGURE 1** Federal Government Fiscal Transactions as a Percentage of GDP, 2000–2013<sup>13</sup>



as a percentage of GDP show a steady increase. Program expenses jump around the time of the 2008 economic recession, demonstrating that the government increased spending while the economy as a whole was contracting (i.e., economic stimulus). Debt and deficit (operating and budgetary) trend lines largely run counter to program expenses. As our need to ramp up spending increased due to economic stimulus, Canada headed into a budgetary deficit that we are still recovering from. The 2015 budget announced a return to a balanced budget in time for an October election, along with further tax-cutting measures.<sup>12</sup>

On the revenue side, we can see that government coffers are smaller as a result of economic choices. *Figure 2* charts various revenue streams as a percentage of GDP for the years 2000–2013, most of them showing a downward trend. The biggest contributor to government revenues (personal income taxes) has declined as a percentage of GDP. However, between the 2010–11 and 2012–13 fiscal years, it flattens out with a range of 6.9–6.8% of GDP. Employment insurance contributions have also declined (from 1.7% of GDP in 2000–01 to 1.1% in 2012–13). And, as Finance Minister Joe Oliver indicated, further cuts in EI premiums are planned, specifically for small

**FIGURE 2** Federal Government Revenues and Fiscal Transactions as a Percentage Of GDP, 2000-2013<sup>15</sup>

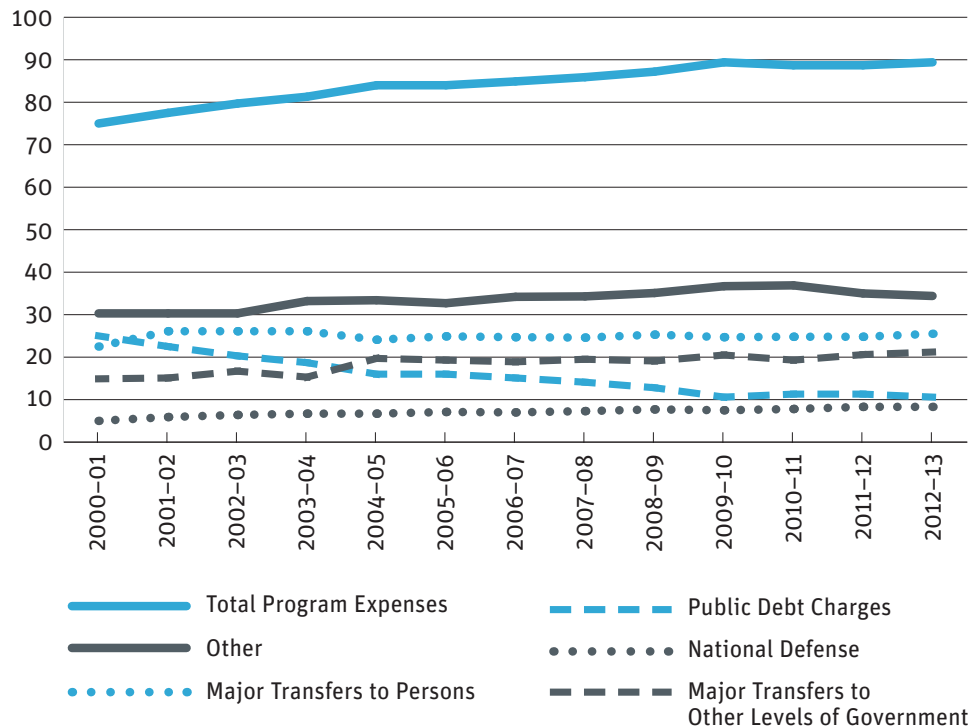


businesses.<sup>14</sup> Unlike personal income taxes and EI contributions, corporate income taxes as a percentage of GDP show variability. In 2000–01 they were 2.6%, while over the past three years available (2010–11 to 2012–13) they are flat at 1.9% of GDP.

Expenses tell another side of the story. *Figure 3* shows government expenses as a percentage of all government spending for the years 2000–2013. In other words, for each year, the expense items sum to 100% of all government spending. One of the most noticeable trends over this period is the increase in total program expenses as a percentage of total spending. Program expenses are by far the greatest area of government spending – and increasingly so. In the 2000–01 fiscal year, these accounted for 74.8% of total government expenses; in 2012–13 that number was 89.4%. Also noticeable is the declining trend in the amount spent on public debt charges as a percentage of all government spending, from a high of 25.2% in 2000–01 to 10.6% in 2012–13. Major transfers to other levels of government have steadily increased as a percentage of all government spending, from 14.2% in 2000–01 to 21.2% in 2012–13, while major transfers to persons have seen little variability, from



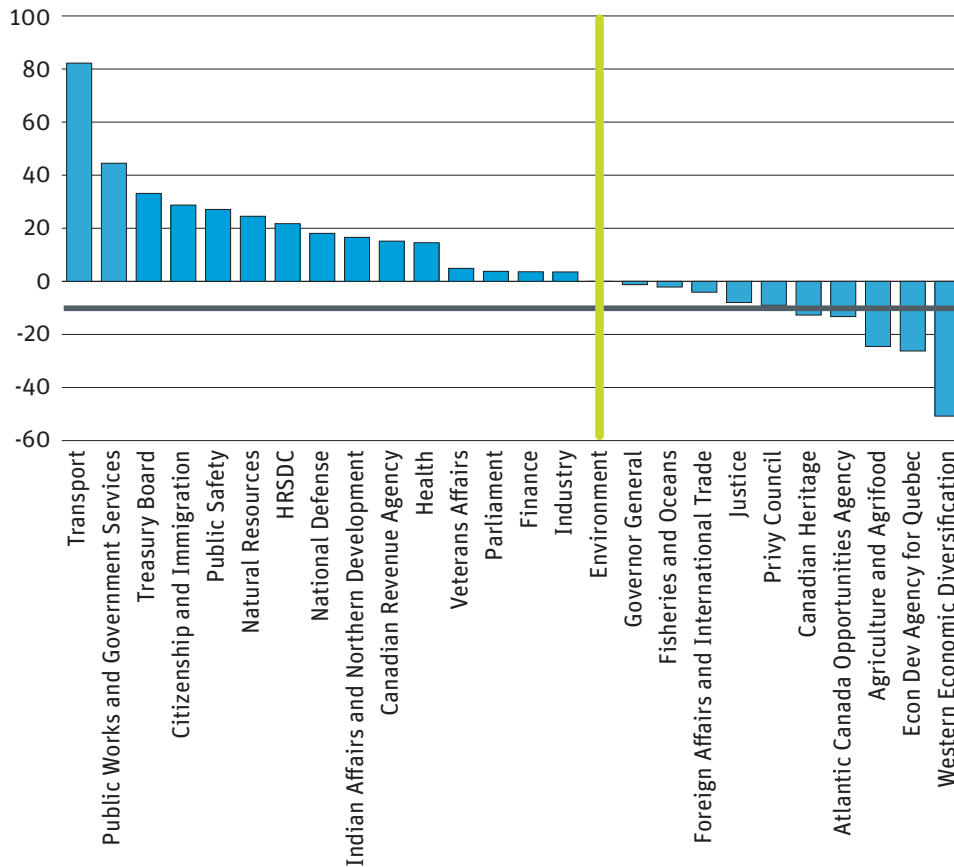
**FIGURE 3** Federal Government Expenses as a Percentage of Total Spending, 2000–2013<sup>13</sup>



24.9% in 2000–01 to 25.5% in 2012–13. National defence spending has been on the rise — from 5.6% in 2000–01 to 8.3% in 2012–13 (see *Figure 4*).

This big picture view of public accounts demonstrates a Conservative fiscal preference for lean government and limited spending. This is consistent with Prime Minister Harper’s commitment to “open federalism,” with its tenants of smaller government and adherence to the constitutional divisions of power.<sup>17</sup> But these tenants do not hold fast in all areas. The Conservative government has been particularly interventionist in the areas of trade, infrastructure and natural resources development. These have been major areas of spending and have concentrated resources in certain regions in a way that is highly purposeful and interventionist. The political and calculated nature of this policy focus would be more aptly described as *strategic* than *open federalism*.<sup>18</sup> Ministry level spending data further illuminates these government priorities.

**FIGURE 4** Net Federal Expenditures by Ministry  
(Percentage Change From Fiscal Year 2006–07 to 2012–13)<sup>19 20</sup>



### Spending priorities by ministry

Ministries contain within them departments, agencies and commissions. *Figure 4* shows the percentage change in net ministerial expenditures for the fiscal years 2006–07 to 2012–13. The green line in the middle of the chart depicts the percentage change across all ministries (11.26%) for these years. Those ministries to the left of the line saw net changes in their expenditures between these years that were below average, while those to the right of the line were above average. The top three ministries that saw the greatest percentage change in expenditures between 2006–07 and 2012–13 were Transport (82.23%), Public Works and Government Services Canada (44.5%) and the Treasury Board (22.14%).

These figures need to be read with a degree of caution. The data contrasts two years, but it does not show the variation *within* these years, and some ministries

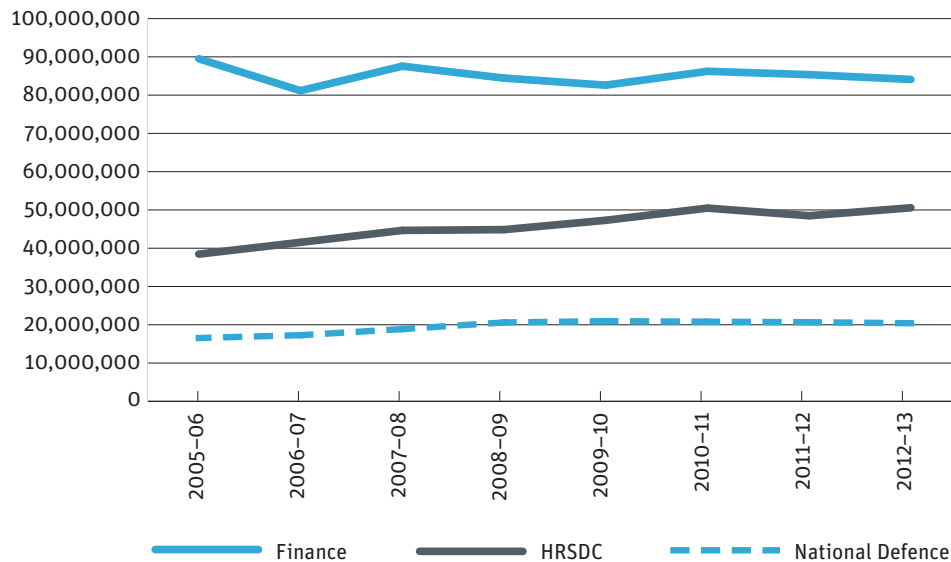
can see highly fluctuating budgets. For example, some entities may have major capital expenses related to renovations of historical buildings; the Privy Council ministry budget can include expenditures related to royal commissions or Canadian elections (it includes the Office of the Chief Electoral Officer); the Ministry of Finance's budget can fluctuate because of transfer payments to provincial and territorial governments. Nonetheless, it is possible to glimpse government spending priorities through our analysis of spending during the Harper years.

The Ministry of Transport saw the largest percentage change increases over this period, a large part of it due to expenditures at Infrastructure Canada, which was responsible for infrastructure stimulus spending following the 2008 economic recession as well as that related to the 2010 G20 and G8 summits. The department is also responsible for infrastructure investment to support trade through the Asia-Pacific Gateways and Corridors Initiative, the Ontario-Quebec Continental Gateway and Trade Corridor, and the Atlantic Gateway and Trade Corridor.<sup>21</sup> These initiatives involve a significant partnership between all levels of government to develop ports, airways, railway lines and major highways across Canada. In addition to facilitating economic growth and capital accumulation, infrastructure spending has allowed the government to — some would argue excessively — exploit the political and promotional opportunities associated with major capital projects.

While the gateway and corridor programs represent major regional investments, traditional regional development bodies have seen significant cuts to their operating budgets. Western Economic Diversification, the Economic Development Agency for Quebec, and the Atlantic Canada Opportunities Agency all have net negative ministerial expenditures as a percentage change between 2006–07 and 2012–13. Meanwhile, the Harper government created two new regional development bodies in 2009, the Canadian Northern Economic Development Agency and the Federal Economic Development Agency for Southern Ontario. The northern agency falls under the portfolio of Health Canada while the southern one falls under Industry Canada. These initiatives are influenced by the Organization for Economic Cooperation and Development's (OECD) “new regionalism,” and focus on regional innovation systems and clusters, place-based policy and multi-level governance, policy learning and knowledge transfer.<sup>22</sup>

Public Works and Government Services Canada (PWGSC) has seen large budgetary increases over this period largely due to the creation in 2011 of Shared Services Canada (SSC), which is tasked with consolidating the government's information technology infrastructure. This is a massive undertaking: SSC's 2012–13 budget is approximately \$1.7 billion.<sup>23</sup> The Treasury Board Secretariat (TBS), a central agency responsible for government comptrollership and financial management, saw major expenditure increases between 2009–10 and 2011–12 in large part due to costs

**FIGURE 5** Top Three Largest Ministries by Net Expenditure (Thousands of Dollars), 2005–06 to 2012–13, CPI Adjusted<sup>32 33</sup>

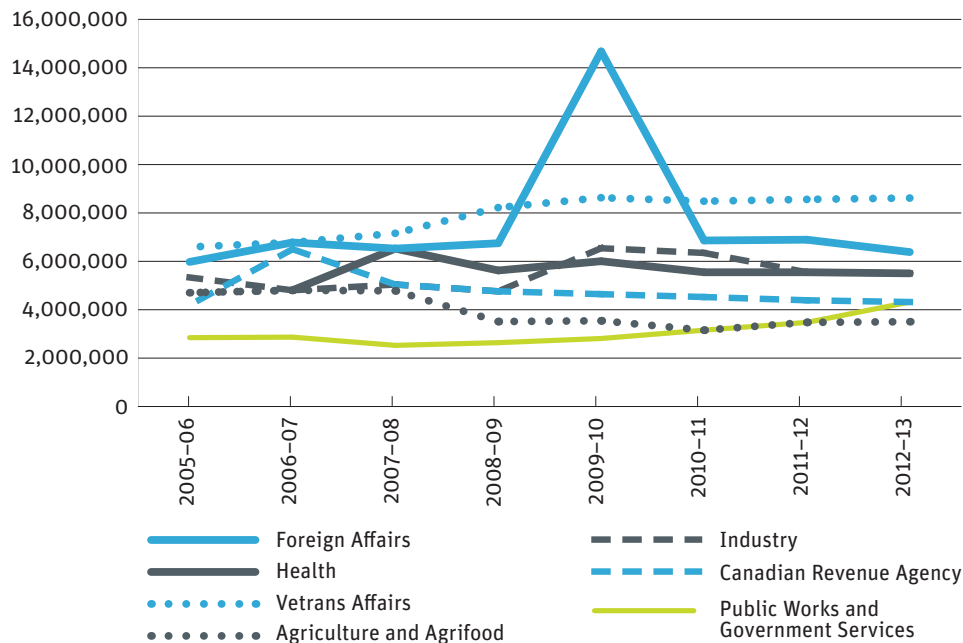


associated with the government’s Strategic and Operating Reviews (SORs), which led to major government cutbacks across departments.<sup>24</sup> Controversially, the management consulting firm Deloitte was given a \$20 million contract to advise the government on how to save money (the Deficit Reduction Action Plan).<sup>25</sup> The SORs also provided the government with an opportunity to achieve significant reductions in departmental spending while maintaining and increasing discretionary spending in line with political priorities at the centre.

Citizenship and Immigration saw expenditures grow over the past several years. The Conservatives have made reforms to Canada’s immigration system a major priority, with “economic and labour force needs the central goal of our immigration efforts.”<sup>26</sup> Some of these new programs have been widely criticized, such as the Temporary Foreign Worker Program related to accusations of exploitative labour practices.<sup>27, 28, 29</sup> The fact that Public Safety would see budgetary increases under this government is hardly surprising. Every budget since the Conservatives came to power has stressed a “tough on crime” agenda (see Mallea chapter). This emphasis on law and order has much broader implications: it has reoriented the government’s approach to social policy and has led — in the words of Michael J. Prince — to a “night watchmen state” under a “Hobbesian Prime Minister.”<sup>30</sup>

While the percentage change in expenditures between years gives an indication of relative and changing priorities and growth in different ministry’s budgets, it does

**FIGURE 6** Top Ten Largest Ministries by Net Expenditure (Thousands of Dollars), 2005–06 to 2012–13, CPI Adjusted (Excluding Finance, HRSDC and National Defence)<sup>34 35</sup>



not indicate the *size* of expenditures. The three largest government ministries by expenditure are Finance, followed by Human Resources and Social Development Canada (HRSDC, now known as Employment and Social Development Canada) and National Defence (see *Figure 5*). Between the 2010–11 and 2012–13 fiscal years, expenditures in these ministries flattened out and, in the case of Finance, exhibit decline. The Ministry of Finance includes the newly created (2009) entity PPP Canada (Public Private Partnerships Canada), which, as the name suggests, advocates and supports the use of PPPs, or P3s, in public procurement and infrastructure development. P3s are meant to share the burden of risk between public and private partners and generate efficiencies. While research suggests such claims may be overstated,<sup>31</sup> P3s provide significant opportunities for advancing private sector capital accumulation consistent with other aspects of the government’s political priorities.

Expenditure trends for the next ten largest ministries show much greater variability. *Figure 6* includes data for the years 2005–06 to 2012–13 for the top ten largest ministries (excluding Finance, HRSDC and National Defence). One of the most obvious expenditures is the huge infusion of cash the Department of Foreign Affairs and International Trade (now DFATD) as part of the planning and preparations for

the G8 and G20 summits held in 2010. Transport Canada (and namely the Department of Infrastructure Canada within it) saw massive expenditures linked to Canada's economic stimulus plan. While these have significantly decreased over the 2011–12 and 2012–13 fiscal years, they remain much higher than their pre-stimulus levels. Another ministry to note is Public Safety and Emergency Preparedness Canada, which has seen year-over-year growth in expenditures. This portfolio includes the Department of Public Safety, the Canada Border Services Agency, and the Canadian Security Intelligence Service, with priorities relating to national security, border services, crime and emergency management.

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## Conclusions

This overview of ministry-level expenditures has been very brief and there are many more stories to be told from this data. For example, in shifting resources toward ministries that reinforce the government's "energy superpower" agenda — such as infrastructure that will bring raw materials to market more quickly — other social programs have suffered from a declining overall revenue source. This creates an opening for opposition parties to present alternative government priorities — to shift from the new normal of austerity to other forms of stimulus spending in what are still uncertain economic times for the country.

The Harper government has made its priorities clear. With parliamentary elections scheduled for October 2015, the 2015 budget announcement took on a decidedly rallying tone. The prime minister promised more tax cuts for Canadians in addition to a balanced budget.<sup>36</sup> However, in order to achieve that balance, \$3 billion was taken from the federal contingency fund, and a list of new programs and "boutique" tax credits were delayed well into the next mandate. Some commentators suggested this was part of a "scorched earth" strategy, limiting the options for future governments and opposition parties wishing to set a more expansive and progressive program for the federal government.

One thing is certain: as our analysis here shows, the Harper government has molded and reshaped government around its strategic priorities and interests. Some departments, agencies and commissions have risen to prominence, while others have declined in significance. As the saying goes, "institutions are sticky."<sup>37</sup> Whether the Conservatives form a government in October, or a new configuration is ushered in, it may be some time before the force of these institutional logics changes course.

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# Gender and austerity in post-crisis Canada

How the government is leaving women behind

Sophie O'Manique<sup>1</sup>

IN TIMES OF economic turmoil, governments can choose a range of measures to stabilize the economy. Defined simply, implementing austerity entails slashing government spending in order to curb a deficit that is thought to be destabilizing the economy. Engaging in stimulus entails pumping money into the economy, generally in the form of infrastructure projects and/or tax cuts, to stimulate growth. The Harper government's response to the 2008–09 global economic crisis involved the implementation of both austerity and stimulus measures. The impact of these policies was felt differently along gendered, racialized and class lines, in part because both the stimulus and austerity adhered to the government's preference for neoliberal restructuring of the state.

It has been shown that women in particular feel the impacts of neoliberal restructuring to a more severe degree than men.<sup>2</sup> For example, as Spike Peterson notes, “women are more dependent on the state for relatively secure employment and for public services.”<sup>3</sup> This phenomenon has been widely observed in the context of the European debt crisis.<sup>4</sup> In the United States, while men were the primary beneficiaries of post-crisis stimulus spending aimed at the auto manufacturing, construction and banking sectors, low-income women lost out as government

slashed services in an effort to lower the deficit. Although the economic crisis that hit Canada in the wake of the U.S. sub-prime mortgage crisis in 2008 was far milder than in the U.S. and Europe, the response of the Harper government was similarly gender-blind to the detriment of gender equality in Canada.

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## Inequality and intersectionality

Since no single country has achieved gender parity in terms of employment, income or representation in national parliaments, feminist scholars have stressed the importance of intersectional analysis.

Intersectionality is the idea that there are different axes of oppression that combine or intersect to create unique experiences and oppressions. In the words of Marianne Marchand and Anne Runyan, “Feminist scholars have repeatedly shown that gender not only operates at various levels but also intersects with class, ethnicity, race, nationality, age and sexuality to produce and reproduce an intricate web of inequalities between and among men and women.”<sup>5</sup> An intersectional approach to policy formulation and analysis accounts for the real world implications of that policy on different individuals.

In 2013, the World Economic Forum ranked Canada 20th worldwide in its Global Gender Gap Report.<sup>6</sup> The report measures health outcomes as well as economic and political participation in order to grasp the degree of gender inequality in a given country. Canadian women fare far better than women elsewhere in the world in relative terms. But a pay gap persists (women working full time earn 70 cents for every man’s dollar), women make up only 24% of parliamentarians, and they are over-represented in lower income tax brackets and under-represented in higher income tax brackets and positions of power.<sup>7</sup> It is important to keep in mind that these general statistics capture a range of experiences, and that some women in Canada fare far better than others.

These trends are exacerbated along intersectional lines. For example, we can take the measure for child poverty as indicative of the poverty of their parents. While in Canada 14.3% of children live in low-income households, 38.2% of children living in households headed by a single mother are characterized as low-income.<sup>8</sup> Even more concerning is the fact that a staggering 50% of First Nations children live in low-income households.<sup>9</sup>

In the lead up to the recession, women’s employment in Canada was far more precarious than for men. The Canadian Centre for Policy Alternatives (CCPA) estimates that while 30% of men were in “non-standard work arrangements,” the figure sat at 40% for women.<sup>10</sup> This has implications not only for a given worker’s

capacity to earn a living wage, but also for their access to unemployment insurance should they lose their job.

The precarious nature of women's work in Canada is echoed in unemployment insurance figures. The unemployment insurance scheme in Canada is not particularly generous, and has been made less so with recent reforms undertaken by the Conservative government. In 2008, soon after the onset of the crisis, only 39% of unemployed women were actually receiving unemployment benefits.<sup>11</sup>

Finally, the bulk of unpaid care work in Canada remains a burden borne primarily by women. A Statistics Canada study done in 2010 estimates that women spend on average twice as much time per week as men on domestic labour.<sup>12</sup> These figures demonstrate that inequality along gendered and racial lines is a significant issue in Canadian society. There is an apparent need for policy that is sensitive to the intersectional nature of persistent structural inequalities.

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## How post-crisis cuts affected women

While the Harper government inherited a healthy surplus when it was elected in 2006, the 2008–09 crisis and recession plunged Canada back into deficit, with the last seven years of federal governance characterized by both stimulus (spending and tax cuts) as well as cuts to the public sector. Programming targeted at low-income or vulnerable groups has not been spared the knife, with some arguing it was specifically targeted.<sup>13</sup>

Soon after taking power, before the onset of the crisis, the government made significant cuts to groups and programs targeted at improving the status of Canadian women. On the day the government was inducted, it threw out the former Liberal government's plan for a national universal daycare program, replacing it instead with a \$100 credit per child, per month.<sup>14</sup>

The cost of daycare in Canada varies from province to province, and the national average is misleading, given the Quebec government's commitment to providing affordable, subsidized child care. In Ontario, where the average cost of having a toddler in daycare for a month sits around \$900, the federal benefit makes a marginal difference. In late October 2014, the Harper government increased this credit to \$160 per month. Although the change took place in January 2015, it was paid out retroactively in July, in the form of Revenue Canada cheques to eligible families, mere months before the October election.<sup>15</sup>

The Harper government's initial round of cuts also included a major blow to the budget of Status of Women Canada, a federal government organization set up in 1976 to administer programming and provide policy recommendations. The organization had its budget slashed by 43% in 2006, resulting in the closure of 12 of

its 16 offices.<sup>16</sup> Further, Status of Women Canada had the word “equality” removed from its mandate and website based on declarations from Bev Oda, then heritage minister, that even though statistics prove otherwise women in Canada were already equal to men.<sup>17</sup> Federal funding cuts to the National Association of Women and the Law forced the organization to close its doors.<sup>18</sup>

These cuts were initially premised on a false belief that the fight for gender parity had been successful and so the federal government’s gender-based institutions were effectively obsolete.<sup>19</sup> Given the ease with which the cuts were made, the stage was set for an even tougher response to the crisis that would be largely blind to the unique challenges faced by marginalized groups in Canadian society.

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## Gendered implications of stimulus spending

Despite the degree to which the Canadian and U.S. economies are integrated, Canada fared better than expected in the wake of the U.S.-centred sub-prime mortgage crash.<sup>20</sup> This is not to say that Canada was immune from the global economic recession. Daniel Béland and Alex Wadden highlight that from November 2008 to January 2009, GDP fell 2.5% and exports 26%.<sup>21</sup> Further, over the course of the year, unemployment rose from 6.1% to 8.3%.<sup>22</sup> Given these declines, the Conservative minority government was under pressure from an ideologically more liberal opposition to implement policies to cushion the economic blow dealt to Canadians.<sup>23</sup> The 2009 budget included a \$30 billion dollar stimulus package.<sup>24</sup>

Cutting taxes was central to the crisis response plan, which is hardly surprising considering low taxes are a longstanding Conservative priority.<sup>25</sup> But the Ad-Hoc Coalition for Women’s Equity and Human Rights noted early on who benefited most from the 2008 tax plan: “77.8% of tax expenditures (cuts) go to taxpayers in the top three quintiles, while only 21.2% of tax cuts go to the lowest two quintiles.”<sup>26</sup>

The 2009 Economic Action Plan (EAP) outlined \$160 billion of “tax relief” over five years.<sup>27</sup> While tax cuts were to be directed primarily at the lowest two income brackets, the budget included “tax relief” for all income brackets,<sup>28</sup> so while those most in need of a tax break were getting one, so too were those sitting at the top of the socioeconomic ladder. The 2009 budget increased the basic personal amount that one can earn before being taxed from \$9,600 to \$10,320 — this amounts to \$720 over the course of the year, or a 7.5% increase in income. Meanwhile, the top of the second personal income tax bracket was increased from \$75,769 to \$81,452 (a 7.5% jump), meaning that more income would be taxed at the 22% rate instead of the 26% rate.

The 7.5% figure applied across the board, highlighting that these tax cuts were not implemented for the purpose of redistribution. For many Canadian women, tax cuts have little to no positive financial impact given that 40% of Canadian women do not earn enough to be required to pay taxes on income, compared with 24% of Canadian men.<sup>29</sup> Part of the tax restructuring program in 2009 was also a drop in the Goods and Services Tax (GST) from 7% to 5%. From an intersectional standpoint, arguments can be made both for and against this policy.<sup>30</sup> While sales taxes are regressive in that they hit all tax brackets at the same rate, organizations like the CCPA have argued that this 2% drop is more to the benefit of the affluent in that low-income individuals are not making expensive purchases.<sup>31</sup>

Cuts to income tax rates have been accompanied by cuts to corporate tax rates. While the federal corporate tax rate was 28% in 2000, as of 2012 it has been reduced to 15%. These cuts, premised on the idea that cutting the corporate tax rate should stimulate job creation, translate into very significant losses in revenue, though it is unclear exactly what these are as the government apparently does not have the capacity to calculate the amount.<sup>32</sup>

Kathleen Lahey and Paloma de Villota note that permanent cuts to corporate taxes overwhelmingly benefit men, since women are under-represented in top positions in Canadian firms and as primary shareholders.<sup>33</sup> The economists posit that women “receive no more than 10% to 20% of the compensation benefits that might flow from these tax cuts.”<sup>34</sup> Finally, tax cuts come hand in hand with cuts to public expenditures, to the overwhelming detriment of those who are marginalized and depend most on services provided by the government.

Generally, infrastructure projects are part and parcel of stimulus packages as a means of creating employment and, subsequently, stimulating spending. The 2009 EAP included the introduction of various infrastructure improvement schemes and recommitment to others like the \$33 billion Building Canada Plan first introduced in 2007. Infrastructure spending has been directed toward heavy construction projects like road, highway and bridge improvements, water and wastewater systems and public transit.<sup>35</sup> Lahey and Villotta note that,

All of the occupations involved in infrastructure projects continue to be nontraditional for women and unquestionably traditional for men: women account for a mere 2–7% of construction, trade and transportation workers; 12% of engineers; 22% of primary industry workers; and 31% of manufacturing workers.<sup>36</sup>

These statistics demonstrate the extent to which stimulus spending in Canada has been gender blind. It is also important to note that only 8.3% of federal infrastructure stimulus spending went to public transit, a service that is overwhelmingly consumed by those in lower income brackets.<sup>37</sup>

Finally, 2009 also marked the introduction of the Home Renovation Tax Credit, a temporary \$3 billion tax relief effort to encourage home renovations and stimulate employment and spending.<sup>38</sup> This effort favours the affluent in that in order to claim the tax benefit one would have to own a home, and have the income to renovate. Further, such an effort stimulates employment in a sector of the economy that is predominantly male.

Facing pressure from the opposition parties to soften the blow that the recession had dealt to those at the bottom of the socioeconomic ladder, the 2009 EAP also included a provision to increase the duration that one could access employment insurance from 45 to 50 weeks.<sup>39</sup> Less than 50% of unemployed Canadians actually qualified for EI in 2007, meaning that federal funds to expand the EI program could not be accessed by those who were most marginalized. Because Canadian women are more likely than men to occupy more precarious positions of employment, only 39% of unemployed women qualified for EI in 2009 compared to 45% of unemployed men.<sup>40</sup>

Lahey and Villota posit that women received \$530 million less than men from the government's modest post-crisis restructuring of EI.<sup>41</sup> Then EI eligibility was tightened again in 2012 with reforms aimed at seasonal workers. While such reforms are unlikely to exacerbate the gendered differential in EI eligibility, they result in even fewer of Canada's unemployed being able to collect it.<sup>42</sup>

As Canada moved toward the 2015 federal election, the Harper government introduced a new round of tax cut measures. In October 2014, the government unveiled its plan for income splitting. The idea was first introduced in 2006 when the minority Conservative government allowed pensioners to split their collective income for tax purposes. The policy has been controversial in Canada, even among members of the Conservative party.

While, in general, income taxes are paid on an individual basis, income splitting allows married and common law couples to split their joint income — one partner can share up to \$50,000 of income with the other — regardless of who makes more money. The idea is that in a family where one parent is the sole earner, by distributing income equally the sole earner would find themselves in a lower tax bracket and effectively would pay the least taxes possible.

By design, income splitting favours the traditional family unit made up of a sole breadwinner and a parent who stays at home to care for children. This tax relief measure will have no impact for single-parent families (the majority of which are headed by women) or family units in which both parental incomes fall into the lowest tax bracket.

The adoption of income splitting exemplifies the Harper government's commitment to traditional family structures (see Bezanson chapter), upper income brackets

and gender-blind policy formulation. While it is couched in the language of progressive taxation and “giving working families a break,” a CCPA study done in early 2014 estimates the top 5% of families would see more of a benefit than the bottom 60%.<sup>43</sup> Further, the benefit for the bottom 60% of families would likely be around \$50 a year, while the wealthiest 5% would receive an average tax benefit of \$1,100 annually.

Income splitting amounts to a tax benefit for those who don’t need it and will likely translate into lost revenues and cuts to services for those most in need. In response to wide concern that the extension of income splitting to Canadian families would work to deepen inequality in Canada, the Harper government announced, in late October 2014, that it would place a \$2,000 cap on the tax credit that anyone could receive. It was a token gesture considering how few families in Canada are likely to receive even \$100 from this new tax credit.

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## Gender and austerity in the Canadian context

The move toward austerity in Canada in the post-crisis years has entailed the dismantlement of social programming built over decades. The 2010 budget marked a shift away from stimulus spending, based on the premise that the worst of the crisis was over, and proposed “an aggressive plan to bring federal finances back to balance,” despite the fact that, as Bryan Evans and Greg Albo note, “the actual state of the Canadian economy and public finances measures comparatively well against other large economies.”<sup>44</sup>

Between 2010 and 2015, the federal government balanced its budget through an array of cuts across the board while downloading responsibilities to provincial governments. As the burden of the crisis had been borne by those at the bottom of the socioeconomic ladder, so would the recovery come at their expense, with major cuts to organizations like Canada Without Poverty, The Aboriginal Healing Foundation, The Canadian HIV/AIDS Legal Network, The National Network on Environments and Women’s Health, Sisters in Spirit, Status of Women Canada, and the Canadian Childcare Federation, among others.

The gendered effects of austerity, however, extend far beyond cuts to the operating budgets of women’s groups. This becomes quite clear when we look at the health care sector. The Conservative government’s 2013 plan to scale back federal transfers for the provision of health care will put more financial pressure on the provinces to deliver services with fewer resources.

In many cases, health care restructuring in Canada has shifted the burden of care work, once taken on by public sector professionals, to the private sphere and to the home, where it is most often picked up by women.<sup>45</sup> Efforts to cut costs have

also resulted in a nursing shortage in hospitals and health care facilities across the country.<sup>46</sup> And the adoption of a two-tiered health care system in provinces like Alberta and Quebec — with others moving in this direction — puts further financial pressure on provincial governments, with significant implications in terms of equity in Canada.

The move toward a two-tiered health care system inevitably produces a situation where those who can afford access to private health care receive it more quickly than those whose access is limited to the public system. Health is socially determined, and life expectancy varies across income, gender and race. For example, life expectancy for Aboriginal people in Canada is 10 years less than that of the general population.<sup>47</sup> This corresponds with different rates of poverty, as previously mentioned in the case of Aboriginal children versus the general population. Given that racialized groups and women overwhelmingly occupy lower income tax brackets, while the affluent in Canada are overwhelmingly white and male, the onset of two-tiered health care represents a redistribution of life chances to the affluent and is likely to widen the gap between the haves and the have-nots in terms of life expectancy.

Another clear example of the gendered effects of austerity is the situation of First Nations women. The standard of living of Canada's First Nations, Métis and Inuit peoples is so out of sync with national averages on every indicator that it has attracted international attention at the United Nations. Life expectancies are significantly lower, rates of poverty and unemployment significantly higher, the suicide rate six times higher and the incidence of mental health issues, diabetes and HIV/AIDS drastically higher than that of the general Canadian population.<sup>48</sup> Further, Aboriginal women are 3.5 times more likely to experience domestic violence than non-Aboriginal women.<sup>49</sup>

In June 2012, the Harper government, through the auspices of Health Canada, cut all funding to the National Aboriginal Health Organization (see FitzGerald chapter), which aimed at meeting the unique health needs of Aboriginal people in Canada, effectively forcing the not-for-profit organization to shut down.<sup>50</sup> The cut saved Health Canada only \$4.4 million. The Harper government has made further cuts to Sisters in Spirit, The Native Women's Association of Canada, The Aboriginal Healing Foundation, The First Nations Child and Family Caring Society, and The First Nations and Inuit Tobacco Control Program.<sup>51</sup> The impact of these cuts on debt reduction is marginal. But they are representative of the extent to which policy formulation under the Harper government is blind to the inequalities that race and gender generate.



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## Conclusion

Seven years after the onset of the crisis, we can begin to see the impact of the downturn and subsequent policy responses on Canadians. Income inequality has been on the rise since the 1980s, but today, Canada's top 20% of earners control 50% of all wealth.<sup>52</sup> The Conservative government's corporate and income tax cut policies, combined with cuts to the public sector, are likely to exacerbate this phenomenon rather than rein it in.

While the number of individuals who qualify as low income (after tax) has returned to near crisis levels of around 9% (after reaching its pinnacle at 9.5% in 2009) the number of female lone-parent families that now qualify as low income has actually increased over the last couple of years.<sup>53</sup> In 2009, 21.5% of female lone-parent families in Canada were low income; the figure in 2011 sat at 23%.<sup>54</sup> Meanwhile, in 2011, only 5.9% of two-parent families qualified as low income.<sup>55</sup>

The extent to which the recession and the government's response have squeezed Canadians is also evident in a report by Food Banks Canada in 2011 that outlined a 26% increase in the number of people turning to food banks over the course of the recession compared with pre-crisis levels.<sup>56</sup> As Canada moves along its path to recovery in the post-crisis context, what is drastically needed is an approach to policy that keeps the marginalized in mind — an approach the current government has proven unwilling to consider.

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# Safe, but for how long?

Canada's incomplete response to the last global financial crisis

Ian Roberge

THE HARPER GOVERNMENT was re-elected in 2008 in the midst of the worst financial crisis since the Great Depression.<sup>1</sup> The government has taken credit for the country's economic performance since then, presenting Canada as a success story that other countries should emulate. It's true that Canada was praised internationally; in 2009, the late Jim Flaherty was even named Minister of Finance of the Year by the magazine *Euromoney*.<sup>2</sup> But the story is not that simple. The Harper government's record in financial services sector policy is much more nuanced. Whereas the government responded appropriately to the immediate challenges posed by the crisis, it does not seem to have learned anything from it, and has not pushed for substantive policy reform. As a result of inaction, Canadian preparedness for a future crisis is uncertain.

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## How the crisis affected Canada

The global financial crisis was not global per se. The crisis epicentre was in the United States and there were strong repercussions in the United Kingdom and Europe, particularly in Southern Europe where the financial crisis turned into a sover-

eign debt crisis. However, Canada was not the only country in the world to fare well. Australia also came out of the crisis successfully. Many Asian countries recuperated swiftly having made substantive policy changes after the 1997 crisis. Brazil, like many emerging economies, also rebounded quickly. The Harper government needed to manage the crisis in Canada, and it generally did so successfully. That being said, the crisis has highlighted important weaknesses in the Canadian financial services sector.

Canada went through the worst financial crisis of its history in 2007, an event referred to as the asset-backed commercial paper (ABCP) crisis. An ABCP is a short-term investment backed or collateralized by other financial assets such as mortgages. The ABCP market collapsed in August 2007 and trading was stopped on \$32 billion worth of investments when it became clear that the paper was partially backed by U.S. subprime mortgages. Private sector actors and governments organized quickly to minimize the damage and contain the costs of the crisis. But large institutional investors, such as Quebec's Caisse de dépôts et placements, and individual investors alike still faced important losses.

The Caisse owed \$13 billion worth of paper when the market froze.<sup>3</sup> Coventree Capital Inc. went bankrupt when it was unable to sell the commercial paper it was holding. Scotiabank bought out the Dundee Bank of Canada, which was threatened by a loss of liquidity.<sup>4</sup> Canadian banks may not have needed a bailout during the crisis—a message often repeated by the government—but the crisis still hit markets and firms hard. The ABCP crisis was resolved collegially when actors agreed to restructure paper that came to maturity in the short term with paper that would come to maturity much later, up to 2017. With the settlement, most individual investors were reimbursed. The ABCP market, in turn, has rebounded in recent years and the restructured notes have been trading well. The overall cost of the crisis years later is still difficult to ascertain. Though investors appear to be more prudent, the ABCP market remains minimally regulated.

How and why did this crisis emerge? The basic response to this question is that there was no regulatory oversight, and that self-regulation did not work. The Office of the Superintendent of Financial Institutions (OSFI), the federal regulator responsible for regulating banks, argued that commercial paper did not fall under its jurisdiction as an investment vehicle, despite the fact that banks sold and bought the product. Provincial regulators, in turn, argued they are not responsible for bank solvency.<sup>5</sup> It is also important to remember that Dominion Bond Rating Services (DBRS), Canada's only bond rating agency, declared ABCP safe right up to the point when the market collapsed. This game of hot potato with ABCP securities is a classic case of regulators failing to live up to their responsibility.<sup>6</sup>



Above and beyond the ABCP crisis, Canada experienced the global financial instability that took hold in the fall of 2008. Even though Canadian banks were generally financially healthy coming into the crisis, they still had to deal with the credit squeeze that followed. The Harper government has claimed on numerous occasions that it did not have to bail out Canadian banks during the crisis. The government's assertions are at best incomplete. Most importantly, the government had to intervene to ensure liquidity on Canadian markets. David Macdonald, an economist with the Canadian Centre for Policy Alternatives, demonstrates that three of Canada's big five banks would have gone bankrupt without the government's intervention.<sup>7</sup>

The Harper government bought insured mortgage pools to ease liquidity, and the cash and loan support provided to banks was much higher than what was publicly acknowledged. The government also came to the rescue of firms by allowing for regulatory flexibility. For instance, the OSFI adjusted its Minimum Continuing Capital and Surplus Requirements — the minimum risk-adjusted capital that a firm must hold over its actuarial liabilities — in 2008 to ensure Manulife, which had gotten into trouble, had the credit needed to avoid financial difficulties.<sup>8</sup> The Harper government should be congratulated for these interventions, which helped shield Canadian firms from the worst of the crisis. The rhetoric about the superiority of the Canadian financial services sector, though, is undoubtedly exaggerated.

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## Credit where credit is due

There are three accepted explanations for Canada's good performance during the crisis. The Conservative government deserve only limited credit in each case.

Firstly, we can say that Canadian financial sector policies have been effective.<sup>9</sup> But most of them predate the Harper government. The last major policy reform in Canada happened in 2001, under a Liberal government, and addressed bank mergers among other issues. The Conservatives were under pressure in 2007 to allow mergers, but resisted the temptation — a retrospectively important decision, since it prevented Canadian banks from becoming larger and more integrated into the U.S. marketplace. Policy-makers have also generally resisted much of the deregulation that took place in the United States in the pre-crisis period.

The second accepted explanation for Canada's crisis performance is that Canadian banks are well-managed, prudent and risk-averse. "Faced with the world's worst financial crisis since the Great Depression, Canada remained an oasis of relative financial stability while Europe and the United States succumbed to the pressures of rapidly depreciating assets, indebtedness, and frozen credit markets," says University of Ottawa professor Patrick Leblond.<sup>10</sup>

Canadian banks are said to be prudent because they are less exposed to market-based activities (e.g., securitization) than their counterparts elsewhere: they still heavily rely on consumer deposits as central liabilities. This explanation is only partly true, as proven by the ABCP crisis. More critically, Canadian resilience is explained by market structure as much as by good planning or design: they were just as lucky as they were good.<sup>11</sup> Before the crisis, Canada also had capital requirements (the amount a bank must hold as a percentage of its risk-weighted assets) above the international standard, which also encouraged prudence.

But are Canadian banks better managed? They did quickly return to profitability after the crisis. PricewaterhouseCoopers estimates that Canadian banks made over \$30 billion in 2013.<sup>12</sup> Canadian bankers, however, are not necessarily better managers than bankers elsewhere, so this explanation is of limited value. As an example, CIBC is often referred to as “the bank most likely to walk into a sharp object.”<sup>13</sup> CIBC had to pay \$3 billion in 2005 to settle claims related to its participation in the Enron scandal. Canadian banks, at a minimum, are not beyond reproach.

The third, most frequently provided explanation for Canada’s mild crisis is that the mortgage industry here is not organized in the same way as in the United States and that it is much safer.<sup>14</sup> In Canada, mortgage lending is dominated by the big five banks and there has never been a large subprime market, though one was in the midst of being developed in the lead-up to the global crisis. Mortgage rules were relaxed in 2006 so that it became possible to obtain a mortgage without a down payment and the amortization period was also brought up to a maximum of 40 years.

After the crisis, the government re-tightened mortgage rules on four different occasions. The government reintroduced a 5% minimum down payment, and the maximum amortization period has been brought back down to 25 years. There is still concern about a housing bubble in Canada’s larger cities, fuelled in part by long-lasting low interest rates. But the Bank of Canada has tried to downplay it,<sup>15</sup> and the Harper government has become a lot more prudent in the way that it addresses mortgage policy.

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## Regulatory gaps

It’s clear the Harper government intervened effectively to ease liquidity pressures and ensure firm stability during the crisis. Canada’s strong policy-making and regulatory system also provided a solid foundation for the country’s relatively painless recovery, as recognized by the International Monetary Fund among other international observers.<sup>16</sup> The federal auditor general noted there was good co-operation and co-ordination among all government actors in the management of the

## The Creation of a National Securities Commission

The Harper's government's main policy initiative in response to the global financial crisis has been its attempt to create a national securities commission. As finance minister, the late Jim Flaherty tried to make it a legacy project, sending the proposed *National Securities Act* to the Supreme Court in 2009 to test its constitutionality. At the same time, Quebec and Alberta contested the legislation in their respective courts of appeal.

In late 2011, the Supreme Court rejected the legislation, noting that the provinces were already occupying the jurisdictional space, and that the federal government had not put a convincing argument forward on why it needed to take over the responsibility. The Harper government pursued its efforts nonetheless, with some slight adjustments to its plan to take into account the Court's decision. The Co-operative Capital Markets Regulatory System is now set to come into force in mid-2016 with the co-operation of five willing provinces and one territory: British Columbia, Saskatchewan, Ontario, New Brunswick, Prince Edward Island and Yukon.

While the debate about a national securities commission has been recurring throughout the 20th century, it is only peripherally related to the global financial crisis. Both advocates and detractors have used the crisis to support their claims. Proponents argued the creation of a national securities regulator (in lieu of provincial regulation) was necessary to protect Canada from market turmoil. Opponents turned the Harper government's own argument on its head, pointing to Canada's success as proof the current system worked.

It is much too early to tell whether the new system will be more efficient, whether there will be more provinces and territories joining in than the current six, and whether it will do a better job than provincial regulators did of protecting investors.<sup>21</sup>

global financial crisis.<sup>17</sup> The OSFI, in particular, works closely with financial institutions to prevent problems from arising.<sup>18</sup> Still, there are important issues to consider when examining the efficacy of Canada's regulatory structure.

Following the global financial crisis, the United States and the EU established systemic risk regulators to identify potential threats to the whole of the financial services sector whereas previously regulation tended to focus on single institutions.<sup>19</sup> Canada does not have a systemic risk regulator, and there are no plans for reform. There are two committees composed of policy-makers and regulatory authorities that monitor the Canadian system: the Senior Advisory Committee (SAC) is

responsible for policy and the Financial Institutions Supervisory Committee (FISC) is responsible for regulatory issues. The SAC and FISC are said to provide enough oversight to identify systemic risk issues.

A second issue that needs more attention pertains to the OSFI. The office's close working relationship with Canadian banks is important, but it also raises some concerns. The OSFI is not a transparent organization — its compliance mechanisms for firms are opaque — which makes it difficult to assess its performance, to analyze the justness of the office's interventions and to hold it to account. The possibility of regulatory capture or regulatory arbitrage is usually dismissed out of hand in Canada, but the international experience is not so reassuring.<sup>20</sup>

Following the global crisis, the U.K. government completely revamped its regulatory infrastructure, with the central concern that it should be accountable to parliament, firms and citizens. The comparison is not perfect, as the crisis affected the U.K. much more severely than Canada; the U.K.'s regulatory infrastructure had proven to be ineffective. But the U.K.'s efforts show that it is possible to consider reforms where accountability and transparency are top of mind.

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## Conclusion and recommendations

The Harper government reacted appropriately to the global financial crisis. The post-crisis response is more disappointing in that the government has only made incremental policy adjustments. Yes, the government moved quickly to adopt new international banking regulation and, as noted, re-tightened mortgage rules, but whether these are sufficient to help prevent or mitigate a possible future crisis is more doubtful. Critically, the government needs to thoroughly review its financial sector regulations and democratize how financial policy is developed.

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## Updating Canada's regulatory framework for financial services

The Harper government does not seem to have learned from the global financial crisis. The rhetoric of success has prevented policy learning or a thorough assessment of existing policies and practices. There has been no willingness on the part of the Harper government (as there was in the United States, U.K. and EU) to review the whole of financial services sector policy, to gauge lessons from the Canadian experience and that of other countries. As noted, the last such review happened in 2001, and financial markets have considerably changed since then.

A review of Canada's financial sector regulation should be broad and inclusive with the aim of preparing Canada for future crises. Among the topics that should be considered are the following:

- Supervisory and regulatory infrastructure: Does Canada need a systemic risk regulator? How can regulators (federal and provincial) better co-ordinate to ensure the proper exchange of information?
- Supervisory and regulatory philosophy: The OSFI acts as a referee with market players, but should it be more proactive to prevent potential problems on markets?
- Market competition (and too-big-to-fail): The federal government has long sought to increase competition in the industry. What can be done now to foster more competition? How will the government react if one of the big five banks gets into trouble?<sup>22</sup>
- Consumer protection: What are the measures available to ensure Canadians are better served by their financial institutions?
- Digital banking and digital currencies: How will the government address *bitcoins* and other digital currencies that might eventually threaten financial stability?

### **Financial services sector policy-making needs to be democratized**

It is striking the extent to which the Canadian system is built on trust. We may grumble about banking and credit card fees, but by and large we have become passive about the financial services sector. When it comes to financial policy-making or regulation, we are totally absent from the process. Canadians are expected to simply accept that their government acts properly, and that banks are wise and prudent. Journalist and author Bruce Livesey forcefully argues that neither the banks nor our governments deserve that trust.<sup>23</sup>

The creation of a regulatory users' committee would provide Canadians, at the very least, with the opportunity to participate in regulatory decision-making whereas now they are completely absent from the process. This is not necessarily unusual (finance is a technical field). But other countries have made efforts to better include citizens in policy-making. A users' committee exists in the EU, for instance, to help inform policy-making and regulation in the interests of consumers and other small end-users.

Broadening the consultation and review process in this way would support the work of the OSFI and other regulators. Getting popular participation in the regulatory process is important because decisions made at this level have a direct impact on the safety and stability of the sector. This is where the action most often takes place to prevent and mitigate potential crises, and somebody should have the responsibility to speak directly on behalf of consumers. There is the Financial Consumer Agency of Canada, but its mandate is limited to increasing consumer protection, awareness and financial literacy.

Parliamentary oversight is mostly circumstantial and limited. Effective integration of a users' committee could enhance decision-making and help ensure the OSFI and other regulators become more transparent and accountable. The OSFI says opacity is desirable, since it provides for efficient and effective regulation. It further argues that making too much information public could affect activities on markets by creating an uneven playing field. The creation of a user's committee provides a venue to hold OSFI accountable in a way that still protects sensitive information.

The committee could also have some input in terms of regulatory priorities that would take into account customer concerns. Though finance is complex, participants could be fully trained to make sure they provide an informed contribution. There are precedents for integrating users' committees in other fields, such as the health sector, especially at the provincial level, and there is no reason to believe that such a system would not make a difference when it comes to finance. The creation of a users' committee is not a panacea for popular participation, but it provides, at least, an avenue for participation. Current arrangements make it hard to see who defends the interest of consumers, especially in the regulatory process.

How ready are Canadian policy-makers and regulators for the next crisis? The question is important since the timespan in between financial crises seems to be shrinking. Past success is no guarantee of future success. The next crisis may again surprise us.

Governments in general do not spend enough time looking forward; they are consumed by the crisis of the moment, which blurs their view of the future. The U.S. government had difficulty acting in 2007–08, even when the crisis was imminent. Canada's next government may well want to spend some time imagining Canada's future financial services sector. It should do so by integrating Canadians into the decision-making process. Without some creative thinking, Canada may well get caught flat-footed when the next crisis hits, and the impact could be much worse than what we have just experienced.

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## Endnotes

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- 15** David Parkinson. "Bank of Canada's Poloz dispels speculation of housing bubble." *Globe and Mail*, April 28, 2015. <http://www.theglobeandmail.com/report-on-business/economy/economic-strengths-to-overtake-oil-gloom-poloz-says/article24149175/>

- 16** IMF. *Intensity and Effectiveness of Federal Bank Supervision in Canada – Technical Note*. Canada Financial Sector Assessment Program, 2014. <http://www.imf.org/external/pubs/cat/longres.aspx?sk=41406.o>.
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- 20** Regulatory capture refers to the pressures that a private sector actor can exercise over the regulator. Regulatory arbitrage refers to the possibility for a private sector actors to play regulators off each other to obtain a better regulatory condition. The United-States saw both regulatory capture and regulatory arbitrage in the lead-up to the global financial crisis.
- 21** For the full story about the creation of a national securities commission, please see Ian Roberge, 'Politics over Policy: Multilevel Public Management of the Financial Services Sector in Canada.' *Making Multi-level Public Management Work: Stories of Success and Failure from Europe and North America*, edited by Denita Cepiku, David K. Jesuit and Ian Roberge, 103–117. Boca Raton: CRC Press, 2013.
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# A dance of partisan ideology and electoral politics

The politics of economic policy in the Great Recession

Prosper M. Bernard, Jr.<sup>1</sup>

THE CANADIAN ECONOMY endured the shockwaves triggered by the global financial earthquake better than most other affluent democracies. It avoided double-digit unemployment, a real estate bust, collapse of financial institutions, huge stock market capitalization losses and a credit crunch. The fact that Canada's financial sector remained stable while financial turmoil afflicted other economies was owed to the minimal exposure of banks to capital market disruptions and to decades of prudential regulatory rules. As a result, bank write-downs amounted to about 0.8% of GDP in Canada in 2008, much lower than the 4% reported in the United States and Europe that year.<sup>2</sup>

Furthermore, the 2008–09 domestic recession had a milder downside and quicker recovery in contrast to the 1981–82 and 1990–91 Canadian recessions. While unemployment reached a high of 8.3% in 2009 and dropped the following year, the jobless rate reached 11% in 1982 and 10.3% in 1991 and continued to rise the next year. The real GDP growth rate trended down similarly in the 1990–91 and 2008–

09 recessions, but the rebound was stronger in the recent cycle (3.2% in 2010 in contrast to 0.9% in 1992).<sup>3</sup>

As the effects of U.S. financial meltdown travelled to other countries, the Harper government, in November 2008, remained confident that Canada would be able to ride out macroeconomic disruptions without direct government intervention. The government's neoliberal economic philosophy undoubtedly shaped its initial response to the looming recession, which was to assume that against a backdrop of fiscal probity, a sound banking sector and a vibrant consumer base, markets would self-correct smoothly and quickly. In effect, the government's economic strategy since 2006 had prioritized strengthening market governance; it believed strong Canadian markets would keep the destabilizing effects of the global financial crisis at bay.

Therefore, it surprised many when Harper decided, in late January 2009, to use a sizable amount of public resources to stimulate the economy. What is more, the government's *Economic Action Plan* (EAP) would prove to be one of the largest stimulus packages among affluent OECD countries by the time it wound down in 2011–12 even though the Canadian recession was one of the least severe.

What explains this policy *volte-face*? What accounts for the high price tag of the stimulus package? I argue that the policy shift and level of counter-cyclical spending were shaped significantly by electoral motivations. The desire to secure a parliamentary majority, fend off an increasingly unified political opposition and assuage growing economic anxiety in civil society compelled the Conservatives to deviate temporarily from their partisan ideology. In response to these three forms of electoral pressures, Harper opted to pursue an expansionary fiscal policy despite it being inconsistent with what his party had done in the previous years and would do again after winning a majority in 2011. Rather than signifying a fundamental shift in Conservative economic philosophy, the EAP was done out of electoral necessity, with the influence of partisan ideology never fully muted.

After elaborating on the content of the *Economic Action Plan* and the government's financial sector support this chapter will analyze the relative influence of partisan ideology and electoral politics along the trajectory of the recent business cycle, a domestic political cycle that left a noticeable imprint on Harper's economic agenda from 2006 to 2014. Specifically, during the run-up to the 2008–09 recession, partisan ideology weighed largely on economic policy actions. Electoral motives assumed greater importance in the government's political calculus once the political consequences of the recession were internalized. Then, with the specter of the recession receding, and bolstered by a parliamentary majority, the Conservatives returned to their partisan ideological ways after temporarily sidelining but not fully neglecting them.

**TABLE 1** Composition of Canada’s Stimulus Plan (C\$ million)

	2009–10	2010–11	2011–12	Total
Reducing The Tax Burden For Canadians	3,020	3,180	--	6,200
Helping The Unemployed	3,348	5,005	--	8,353
Building Infrastructure To Create Jobs	6,021	7,462	1,051	14,534
Advancing Canada’s Knowledge Economy and Creating Better Jobs	1,550	1,469	250	3,269
Supporting Industries And Communities	10,979	2,023	--	13,003
Total Federal Stimulus Measures	24,918	19,140	1,301	45,359
Provincial and Territorial Stimulus	8,553	7,679	2,164	18,395
Total Economic Action Plan Stimulus	33,471	26,819	3,465	63,755

**Source** Department of Finance Canada. 2012. *Economic Action Plan: Jobs, Growth and Long-Term Prosperity*. Catalogue No.: F1-23/3-2012E. Ottawa: Government of Canada, p. 290.

## The Economic Action Plan and financial sector support

The Harper government unveiled its stimulus package, the *Economic Action Plan* (EAP), in late January 2009. The stated goal of the EAP was to deliver “timely, targeted and temporary” stimulus in the form of tax cuts and public spending.<sup>4</sup> The \$63.8 billion in stimulus money was disbursed between 2009–10 and 2011–2012, with more than half of the total amount spent during the first year (see *Table 1*). Stimulus money was distributed to five areas of the economy as follows:

- **Tax cuts:** the EAP implemented permanent tax reductions totalling \$6.2 billion with the lion’s share going to personal income tax relief. This stimulus-related tax relief measure represented a small slice of the permanent tax relief for individuals, families and businesses that the Conservatives had been phasing in since 2006. According to the government’s estimates, individual and family tax cuts were to total around \$160 billion over the five fiscal years beginning in 2008–09. Moreover, the reduction of corporate tax rates, among other business-related tax cuts, was expected to amount to \$60 billion during the same time frame.
- **Unemployment assistance:** \$6.1 billion was allocated to cover the cost of extending Employment Insurance (EI) benefits; the rest of the funds went to active labour market programs such as job retention, and training and skills development for young and older workers, the long-term unemployed, students and Aboriginal people.

- *Public infrastructure and housing construction*: \$7 billion of the \$14.5 billion channelled to this area was used to support home ownership and construction as well as renovate social housing. The balance financed federal, provincial, territorial and municipal infrastructure projects. Of the total amount allotted to this area, roughly \$8.2 billion was invested at the sub-national level.
- *Expanding the knowledge-based economy*: with the aim of “helping build Canada’s capacity for innovation,” the EAP used roughly \$3.3 billion to upgrade the facilities of universities and colleges, invest in clean energy technologies, and increase research activities in federal laboratories.
- *Support industries and communities*: several sectors of the economy — specifically, forestry, small business, agriculture, mineral exploration, tourism, shipbuilding, aerospace, automotive and culture — received up to \$11.4 billion in an effort to avert business closures and layoffs. The rest of the funds in this area were used to “bolster [industries’] competitiveness and position themselves for long-term success” at home and abroad, and to diversify the economic base of communities across the country.

The Harper government also sought to alleviate the effects of the global credit squeeze on Canada by ensuring sufficient liquidity in the financial system. Ottawa earmarked \$200 billion to the Extraordinary Financing Framework (EFF) for the purpose of ensuring continued lending to consumers and businesses. Under the EFF, the Bank of Canada offered short-term collateralized loans to Canadian banks, which peaked at \$41 billion in December 2008. The EFF also created the Insured Mortgage Purchase Program (IMPP), which was used by the Canada Mortgage and Housing Corporation (CMHC) to buy \$69 billion worth of mortgage-backed securities (MBSS) from banks. These and other programs, according to the government’s assessment, enabled Canadians to have “access to financing at a reasonable cost during the global credit crisis.”<sup>5</sup>

Between October 2008 and July 2010, Canadian banks received \$114 billion in liquidity support and asset purchase assistance. This represented 7% of Canada’s GDP in 2009, equivalent to \$3,400 per person.<sup>6</sup> The amount of aid that Canada pledged to support the country’s banking system as a percentage of 2010 GDP between 2008 and 2010 was among the lowest in rich OECD countries. However, contrary to conventional wisdom, Canada’s actual expenditure was not at all exceptionally low but rather similar to moderately high bank rescue efforts seen in Spain, Austria, France, Germany and the United States.<sup>7</sup>

Critics of this policy, such as David MacDonald of the Canadian Centre for Policy Alternatives, have questioned why the government provided such a high amount

of financial assistance if Canada's banks, according to statements by public officials, were fit enough to withstand the global financial crisis.<sup>8</sup> That Canadians were largely unaware of such a large "bailout," as MacDonald refers to the financial support the industry received, suggested that the Harper government wanted to cover up the fact that banks were in worse shape than what the public had been told.

To be sure, the Harper government did not wish to draw attention to its sizable intervention in the banking sector. After all, it did not square well with the Conservatives' minimalist state rhetoric and there was little public support for it.<sup>9</sup> However, the facts suggest the banks were in better shape than Macdonald proposes. A more compelling reason for the intervention is that the government sought to encourage banks to supply credit to the economy in order to sustain home purchases and construction, and in general steady consumer spending levels at a time when individual instinct called for consumption cutback.

Because Ottawa has not revealed the net cost of aiding banks one can only estimate such a figure.<sup>10</sup> The actual loss on public funds spent, I estimate, has been very low, a development also seen in several other countries recently.<sup>11</sup> All EFF-related short-term loans to banks were paid back in full by 2012. In addition, about \$59 billion worth of MBSS purchased through IMPP have matured as of March 2014, yielding more than \$1.6 billion in net revenue, which is expected to reach \$2.5 billion by the time the program ends in 2015.<sup>12</sup>

The low ratio of cost to return related to assisting the banking sector is owed to the fact that neither were the EFF's beneficiaries in serious financial trouble nor were the capital market assets the government purchased or temporarily possessed "toxic." Thus, one should question whether Ottawa's sizeable aid to banks was necessary and whether the public interest would have been better served if part of the aid given to banks had been redirected to economic stimulus programs. Still, the evidence suggests that such assistance has not burdened the government's efforts to rectify the post-crisis negative budget balance.

Important adjustments were made to the stimulus package once it was launched. First, the size of the stimulus increased to \$63.7 billion (amounting to 4.4% of GDP in 2008) as a result of the multi-billion-dollar rescues of General Motors Canada and Chrysler Canada in 2009, which is credited with saving about 20,000 jobs.<sup>13</sup> In exchange for the \$13.7 billion loan (two-thirds of which Ottawa provided and one-third by Ontario), the automakers agreed to not shrink their Canadian-based production and research and development activities. By some estimates, each job saved in Chrysler (now FCA Canada) cost taxpayers \$90,000, while in GM the bill was \$474,000 per job.<sup>14</sup>

An adjustment was also made with regard to how the stimulus money was distributed. Originally, the legislation that created the EAP sought to restrict the expan-

sion of the protective and redistributive roles of the government while enhancing the government's market facilitating function. However, in the months that followed the release of the EAP, pressure from the public and opposition parties forced the government to change how it allocated stimulus funds among the five policy domains. The largest adjustment involved increasing the amount of stimulus funds designated to support the unemployed by more than \$2 billion from 2009 to 2010. Further, the share assigned to modernizing public infrastructure declined by \$1.9 billion.

Finally, the size of the provincial and territorial share of stimulus spending increased from the initial estimate of \$14.9 billion to the final amount of \$18.4 billion. This was owed in large part to Ontario's auto bailout contribution. Of that amount, \$10.2 billion went toward infrastructure improvements, \$3.2 billion was invested in activities conducive to broadening regional knowledge economies, and \$5.5 billion was used to promote local development and diversification.

The use of counter-cyclical policies by the Conservatives is evidence that Keynesianism remains alive in public policy discourse. However, unlike the responses to previous Canadian recessions, the crisis management efforts of the Harper government focused much more on aiding the financial sector and inducing a market-led recovery via tax reductions, home construction and limited public infrastructure spending. Such efforts also entailed restricting the expansion of social programs. As a result, Canadians had access to a social safety net that provided minimal protection against labour market disruptions. What was included and excluded from the EAP was, as argued below, largely influenced by the dance between partisan ideology and electoral politics.

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## The dance of partisan ideology and electoral politics

Partisan ideology and electoral politics have a tendency to pull and shove political actors in different directions. Such is the nature of Canadian politics during the Harper era. A political cycle — entailing a movement in the relative importance of partisanship and electoral politics — occurred in conjunction with the recent business cycle. Partisanship gained prominence in the Harper government's political calculus in the pre-recession years; electoral politics became an important motivating force in the government during the recession; partisanship returned to the forefront in the post-recession years.

The break in the hold of partisanship (around December 2008) can be attributed to the Conservative response to the coalition-building efforts of opposition parties and to the public's growing anxiety about the state of the economy. These electoral pres-

sures rendered the pro-market, minimalist state strategy that Harper had promoted since 2006 a political liability as the global financial crisis reached Canada's shore.

### **Partisan ideology in pre-crisis years**

The economic strategy of the Conservative government and the party's pro-market, free enterprise partisan ideology were closely aligned before the recession. In 2006, the newly installed minority government released *Advantage Canada*, an industrial strategy that emphasized reducing taxes, regulation and government debt, and investing in human and physical capital as a means of "freeing businesses to grow and succeed" and "creating new opportunities and choices for people to strive."<sup>15</sup> The plan envisioned a government that sought to enhance market governance largely by way of self-extraction from the economy — that is, curbing public expenditures, deregulation and letting people and companies keep more of the revenue they earned. As Markus Sharaput says, the aim was "getting government out of the way of the market."<sup>16</sup>

Consistent with the objectives of *Advantage Canada*, the government enacted a series of tax reforms starting in 2006. These included a two percentage point cut in the Goods and Services Tax (GST) and a tax credit for first-time home buyers. A number of tax expenditures and reductions were also implemented to support families with children, such as the Universal Child Care Benefit and Child Tax Benefit.

Among the new tax measures designed to assist low-income Canadians were the Working Income Tax Benefit, the Age Credit (for seniors) and a reform that increased the ceiling of the two lowest income tax brackets. Moreover, the corporate income tax rate was to be phased down from 22.1% in 2007 to 15% in 2012. By 2010, according to Finance Canada, 34% of personal income tax relief went to Canadians with incomes below \$40,970 and 44% went to Canadians earning between \$40,970 and \$81,940.<sup>17</sup>

The pre-crisis years were also defined by another partisan-influenced economic policy. J. Lawrence Broz argues that government partisanship influences the scale of a country's asset boom. "Right-wing governments preside over financial booms, funding credit expansions and asset-price appreciation...in line with their pro-market ideology," Broz observes.<sup>18</sup>

Indeed, the Conservatives actively promoted homeownership and consumerism by means of credit expansion, housing market deregulation and low interest rates. The results of such policy choices were that the homeownership rate reached an estimated 70.2% (a historical high) in 2010, house prices increased at a higher rate in the second half of the 2000s relative to the first half, and the ratio of debt to household disposable income surpassed previous records, rising to about 150% at

the end of the 2000s.<sup>19</sup> With so much riding on the real estate market, it is no wonder the EAP and EFF ended up including several provisions aimed at shoring up the housing market and providing tax relief to households.

### **A swing to electoral politics**

The Conservatives slowly warmed to the idea of loosening the fiscal spigot to stimulate the economy as political pressures from society and opposition parties mounted. In early October 2008, Harper remarked that “direct intervention and bailouts... would demonstrably ruin our fiscal credentials and undermine the strengths that we do have in our economy.”<sup>20</sup> Although the prime minister, along with other world leaders, agreed during the mid-November G-20 summit to undertake stimulus spending, the Conservatives’ late-November budget contained no spending provisions to relieve a languishing economy. After wavering on the idea, a stimulus package was finally announced in late January 2009, and by the end of 2011 proved to be one of the largest stimulus packages carried out by advanced industrialized countries.

The policy correction was owed in part to changes in mass politics. The global financial crisis impacted public perceptions of the economy. In August 2008, 74% of Canadians described the economy as being “good;” by November, the number had dropped to 66% and trended further down to 47% by January. By early November, a large majority (72%) expected an economic recession to come in the next few months. Canadians were also becoming increasingly pessimistic about the business environment. Specifically, 43% observed that sluggish consumer spending affected the companies they worked for, and 23% believed that their employers were going to shrink their labour force in the next three months.<sup>21</sup>

The declining economic mood of Canadians, however, did not bring about immediately a change in their preference for a government response. In late October 2008, only 45% believed that government intervention would be good for the economy. On fiscal matters, 82% supported spending cuts and 57% did not want the government to run a deficit.<sup>22</sup> However, by mid-January, 53% of Canadians wanted the government to engage in stimulus spending in order to counteract the recession even if it created a deficit in the current fiscal year. Support for a counter-cyclical deficit was stronger among British Columbians (57%), Atlantic Canadians (57%) and Ontarians (56%).<sup>23</sup> Moreover, while only 42% of Canadians advocated a government plan to rescue automakers, 52% of Ontarians did.<sup>24</sup>

The other political pressure on the Conservatives came from opposition parties. The return of the Conservatives as a minority government in Autumn 2008 galvanized support for a coalition among the Liberals, NDP and Bloc Québécois. The Conservatives realized that the opposition parliamentary coalition would put the



government's current economic strategy in its crosshairs, arguing that it was out of touch with the escalating hardships brought upon Canadians by the crisis. The opposition seized on the fact that 55% of Canadians believed that the prime minister did not have a plan to address the effects of crisis and that 52% felt that the Conservatives failed to mitigate their worries about the crisis.<sup>25</sup>

The absence of a crisis management plan in the November federal budget prompted the opposition to strategize on how to defeat the government — a move that Harper countered by proroguing Parliament in early December. Michael Ignatieff's standing rose in public opinion polls during that month. Whereas 44% of Canadians believed that Harper was the best leader to steer the economy out of the recession (down six points from previous weeks), 32% (an eight point gain) said that Ignatieff would be most effective in this endeavour.<sup>26</sup> In sum, the convergence of these two electoral pressures forced the Conservatives to ease up on their partisan ideological stance by the end of January lest they should become increasingly vulnerable to electoral retribution in the near term.

The EAP produced large payoffs for the Conservatives. Harper's crisis management plan helped reverse the increasingly negative economic assessment of the public. By late May 2009, 53% of Canadians agreed that the economy was "good," up from 41% in March. The level of job anxiety was receding — from 27% in March to 24% in May. Furthermore, a majority of Canadians (61%) by early spring were crediting Harper's government for turning the economy around.<sup>27</sup>

The stimulus plan was also leveraged for its credit-claiming opportunities, which the Conservatives exploited by sidelining normal administrative procedures and staging a highly visible promotional campaign of the EAP. This was most evident with respect to the \$4 billion allocated to the Infrastructure Stimulus Fund (ISF), which represented 10% of total infrastructure stimulus funding.

The ISF's review and funding process was the subject of criticism for a number of reasons. First, by emphasizing "timely" infrastructure spending, the federal government prioritized "shovel-ready" proposals at the expense of promoting long-term objectives such as improving industrial competitiveness and adjustment. Second, the fast-track review process through which ISF money was disbursed skirted normal regulatory assessment and public consultative channels. Close to 93% of the approved projects avoided environmental scrutiny.<sup>28</sup> Third, in contrast to other intergovernmental arrangements, which accommodated federal decentralization, the ISF was administered in a highly centralized manner, with ultimate discretion resting with the federal government.

The last two criticisms draw attention to the politicized nature of stimulus spending. Christopher Stoney and Tamara Krawchenko observe that, in contrast to the Australian and U.S. governance structure used to administer infrastructure money, Can-

ada's lacked sufficient transparency and oversight.<sup>29</sup> The absence of such institutional checks raised suspicions that electoral considerations influenced project selection.

A report produced by the *Globe and Mail* uncovered evidence that Conservative ridings received 38% more infrastructure money than opposition-controlled ridings in Ontario and thus were more likely to experience job creation or maintenance.<sup>30</sup> The government's attempts to refute allegations of partiality lacked credibility because, as the Auditor General of Canada observed, "the information collected from Economic Action Plan programs on jobs could not be collected on a consistent basis."<sup>31</sup>

Furthermore, the publicity of infrastructure spending took on an unusually partisan tone. In a number of instances, the launching of projects was topped by photo shots of Conservative politicians handing out oversized promotional checks that contained the party logo and name of the MPs. In addition to party branding, the Harper government sidestepped standard non-partisan communication protocols ("Common Look and Feel Standards") and instead marketed the EAP in a self-serving manner using the mass media.<sup>32</sup>

To be sure, past governments also distributed infrastructure money to serve their political interests. However, what is noteworthy about this episode is that the Harper government made little effort to close the gap between its rhetoric of sound public administration practices and its handling of infrastructure programs. Accountability, transparency, policy output maximization and cost-benefit assessment were deliberately compromised in this policy area to make it possible for the Conservatives to channel electoral politics to their advantage.

Partisan ideology, however, was not completely cast aside as the Conservatives coped with the Great Recession. While Harper was willing to augment public infrastructure spending he was much less compromising with regard to expanding social spending.

As indicated above, the EAP extended regular unemployment benefits for an additional five weeks. However, in the spring of 2009, as unemployment grew, a showdown between the minority government and the opposition emerged in response to calls to enhance the Employment Insurance (EI) program's compensatory profile, which had been significantly scaled back as a result of a series of marketization reforms that started in the early 1990s.

Specifically, the Bloc Québécois, with the support of the Liberals and NDP, proposed dropping the eligibility requirement to 360 hours of prior work (equivalent to 45 standard eight-hour work days) and applying it throughout the country. Under the current system an individual could become eligible after 420 hours of accumulated work in high-unemployment regions or after 910 hours in low-unemployment regions. Such regionally differentiated eligibility standards meant

that it was “twice as hard to qualify for EI in Western Canada as it [was] elsewhere in the country” even though unemployment was rising.<sup>33</sup>

The proposal to establish a lower and single national threshold for EI eligibility drew fire from Harper. “They are suggesting that what we should do is bring in an EI system where any Canadian, anywhere in the country, in perpetuity, could work 45 days and collect EI benefits for a period up to a year...this is an absurdity,” the Prime Minister remarked.<sup>34</sup>

However, aware that the Liberal party was planning to leverage EI reform to defeat the Conservatives, the government sponsored Bill C-50 (enacted in late 2009), which increased, until September 2010, the maximum number of weeks that recently unemployed individuals could receive benefits. The fallout of this policy tussle was that spending on Employment Insurance benefits increased by 41% in 2009 when the unemployment rate reached its highest level, but then decreased by 4.5% in 2010 even though the jobless rate remained high.<sup>35</sup>

The dispute over EI reform shows the limitation of reducing the politics of the EAP to vote-maximizing efforts by the Conservatives and catering to the wishes of the opposition. Clearly, if that were the case, Harper would have expanded EI generosity and reaped the political gain that presumably would have come with such a policy move. Instead, the Conservatives judged that expanding public infrastructure spending was less damaging to its pro-market, anti-statist credentials than enlarging the welfare state for an indefinite time. The government, after all, could and did advertise infrastructure projects as pro-growth endeavours designed to encourage future private sector investment.

### **...And back to partisanship**

Partisan-motivated economic policies re-emerged after the Conservatives secured a legislative majority in March 2011 and the spectre of the recession receded.

Expansionary austerity has been the cornerstone of Harper’s post-recession economic strategy. Inspired by free-market conservatism, the strategy calls for scaling back the public sector and unfettering private markets in order to spur economic growth and job creation. Since 2012, Ottawa has cut federal spending, cut public service jobs, and announced reforms to the Old Age pension and Guaranteed Income Supplement programs. The government has also introduced balanced-budget legislation to curtail the fiscal latitude of future governments during good and hard economic times. As a result of undertaking austerity measures, by 2015 Harper will preside over the leanest federal government in over 50 years as measured in terms of total spending as a percentage of GDP.<sup>36</sup>

The other component to expansionary austerity involves enhancing market competition and growth. The tax reduction schedule that the Conservatives announced before the crisis — which so far has brought total federal revenues in 2006–07 from 16% as a percentage of GDP to 14.1% in 2012–13 — has been touted as an effective measure to promote consumer spending and job creation. To spur competition, the dollar amount of goods that could be brought back to Canada duty free from a one-day U.S. trip was increased from \$50 to \$200. Further, the Conservatives have sought to diversify Canada's trade relations by pursuing trade deals with the European Union and Asian markets.

Expansionary austerity has had mixed results. From the standpoint of fiscal consolidation, the Conservatives had nearly balanced the books ahead of the October 2015 election. However, the expansionary side of the strategy has delivered modest results. Unemployment has slowly trended down from 7.6% in March 2011 to 7% in August 2014, still well above the 5.9% rate in September 2007. The GDP growth rate has not reached 3% since 2011.<sup>37</sup> Household consumption expenditure levels in the post-crisis period are well below pre-crisis levels. These and other macroeconomic indicators illustrate that the recovery has been slow and the economy still has much further to go before it surpasses its pre-crisis performance.

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## Conclusion

The fact that the Harper government's post-crisis economic policy has failed to produce robust expansion is not a surprise if one considers how expansionary austerity has performed in other countries that have adopted it. Its poor record is largely owed to its untimely implementation and absence of expectations-driven growth. As witnessed throughout Europe, the execution of austerity measures too early in the recovery phase deprives the economy of needed stimulus via government spending. What is more, government austerity has not translated into a significant uptick in the economic expectations of Canadians, which the strategy is intended to generate by signalling deference to market governance.

Although many economic observers have questioned the timing and logic of the expansionary austerity strategy, the Conservatives are unlikely to compromise on their partisan ideology.<sup>38</sup> While Canadians would like to see a faster economic recovery and job growth, a consistent majority has advocated the current government strategy.<sup>39</sup> Moreover, while opposition parties quibble about certain aspects of these austerity measures and tax cuts, none has put forth an alternative plan of action that competes against the government's plan. In sum, the politics of economic policy today are different from those during the Great Recession.

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## Endnotes

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**ENVIRONMENT**





# Misplaced priorities

Corporate power, deregulation and the threat to public safety

Bruce Campbell<sup>1</sup>

CANADIANS EXPECT THEIR governments to take the necessary regulatory measures to protect their health, safety and environment. They do not trust corporations, focused as they are on making profits for their shareholders, to regulate themselves.

Probably few people are aware of the extent that self-regulation has taken hold in Canada. We only discover it when the process breaks down, as it did on July 6, 2013 in the Quebec town of Lac-Mégantic. The train derailment and explosion that early morning left 47 dead, revealing a deeply flawed rail safety regime in which a series of regulatory failures multiplied the chances of a catastrophe.

Though corporations often say they like regulatory certainty, most have a knee-jerk aversion to rules that cut into profits and interfere with business. They will push governments to deregulate their activities, and have had varying levels of success in that regard in Canada.

Deregulation is the process of reducing or eliminating existing regulations, preventing the development of new regulations, and diminishing the capacity of government agencies to develop, administer and enforce regulatory programs. Conservative ideology asserts (without much evidence) that by lowering costs to business deregulation increases profits, which leads to more investment, which in turn leads to faster economic growth and job creation.

True to form, the Harper government has aggressively deregulated over its mandate, with an emphasis on helping the oil patch get projects and pipelines built faster (see Kinney chapter). It has simultaneously outsourced its primary responsibility to regulate in the public interest, devolving ever more power to companies to make their own judgments about risks to public safety.

To help advance its deregulation agenda the Harper government severed the traditional independence of the public service as a dispassionate source of evidence-based policy advice. The new role of civil servants was to implement, without question, decisions already made on the basis of ideological preconceptions and industry demands.

In 2011, the government set up the Red Tape Reduction Commission, modelled on former Ontario premier Mike Harris's similarly named commission in the 1990s. The federal commission's conclusions were incorporated into regulatory policy, the Cabinet Directive on Regulatory Management (CDRM), which took effect in the spring of 2012.

While lip service is paid to health, safety and the environment, short-term costs to business (red tape) were, in practice, the sole test for determining whether a proposed regulation would be accepted. The Prime Minister's Office is the ultimate gatekeeper, determining which proposed regulations go forward and which do not.

The CDRM broke new ground with its so-called one-for-one rule, mandating departments to repeal at least one existing regulation for every new rule proposed to Treasury Board. The one-for-one rule progressively lowered the ceiling on the number of regulations without properly considering the safety implications. Treasury Board President Tony Clement boasted that Canada was the first industrialized country to legislate such a rule.

How did the confluence of corporate power and ideologically driven deregulation play out in the lead-up to the Lac-Mégantic disaster?

The oil industry is unquestionably the most influential business lobby in Ottawa. In light of rapidly expanding bitumen and shale oil production, but long pipeline approval delays, its people furiously pressed the flesh to ensure the flow of oil-by-rail was not disrupted (or costs increased) by more and tougher regulations.

The rail industry is also no slouch on Parliament Hill. In 2008, lobbyists rewrote the rail operating rules with Transport Canada's blessing, paving the way for companies to run their freight trains with just a single operator. Several years later, despite union objections and resistance within Transport Canada, the industry exerted its influence to make sure the Montreal, Maine and Atlantic Railway (MMA), a company with an atrocious safety record, could run its unit oil trains, through Lac-Mégantic and other communities, with a single operator.

In the months leading up to the accident, the rail lobbyists repeatedly petitioned politicians and bureaucrats, arguing that strengthened regulations for the transportation of oil were unnecessary. As internal government documents show, the Harper government appeared willfully blind to the growing danger posed by the monster surge in oil-by-rail, fixated instead on its goal to make Canada an “energy superpower.”

The government failed to heed repeated warnings about unsafe tank cars and the volatility of the oil inside them. It ignored cautions by the National Research Council regarding single-person train operations, and starved Transport Canada of the regulatory resources needed to cope with the oil-by-rail boom. Reports from the auditor general of flaws in the rail regulatory regime — in practice, companies were largely free to regulate themselves — fell on deaf ears.

In the aftermath of Lac-Mégantic, the federal government has taken measures to try to restore public confidence in the regulatory regime. It has also sought to obscure the full extent of regulatory failure — a failure that originates in the collusion between powerful corporate interests and an ideological fixation on deregulation as the pathway to a strong economy.

As the distance grows between us and the accident, as media attention and memories fade, and as its fundamental causes remain hidden there is a danger the myth of the “good corporate citizen” will be resurrected as a justification for letting company shareholders determine the balance between safety and profit.

Without a reversal of these priorities — public safety before private profits — another tragedy is just a matter of time.

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## Endnotes

**1** This article first appeared in the September-October 2015 issue of the *Monitor*, a bimonthly publication of the Canadian Centre for Policy Alternatives.



# Burning down the house

Environmental policy dismantling by the Harper government

Nigel Kinney<sup>1</sup>

POLICY DISMANTLING TAKES place when a government cuts, reduces, diminishes and/or eliminates a policy or multiple policies.<sup>2</sup> Examples include budget cuts, departmental staff reductions, a drop in the number of regulations — as well as changes in the penalties for breaching them or the ability to enforce them — or the termination of a program. The motivations for such actions can include a program or policy outliving its usefulness, the ascertained failure (or success) or inefficiency of that program, or simply because of an ideological bias against it. The Harper government tends to frame the debate sparked by policy dismantling using the second motivation — efficiency. But as this chapter will show, by focusing on the repeal and replacement of the *Canadian Environmental Assessment Act* (CEAA), references to inefficiency are often just a tactic used by the government to hide underlying ideological reasons for change.<sup>3</sup>

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## The repeal and replacement of the CEAA

The Conservative government's 2012 budget met great opposition the moment it was tabled. More than 150 pages of the 425-page omnibus bill were devoted to the repeal and replacement of the CEAA. Environmentalists protested that this would

lead to the end of substantive environmental assessments. Peter Kent, then environment minister, argued that the “changes will make the process more predictable and timely, reduce duplication, strengthen environmental protection, and enable meaningful consultation with Aboriginal peoples.”<sup>4</sup> In other words, CEAA reform was framed as being entirely about making the law more efficient.

The government was technically correct when it said the budget did not include any cuts — there was even a slight increase in funding for the Canadian Environmental Assessment Agency — but this ignored some of the expiring budgetary grants. Interestingly, those grants were designated for review panel support and Aboriginal consultations, both areas touted by the government as focal points for increasing effectiveness and efficiency. In the end, the agency’s total budget was reduced by a drastic 43%.<sup>5</sup> Environmentalists point out how additional significant cuts to Fisheries and Oceans Canada, which also conducts and analyses environmental assessments (EAs), further undermine the role of the agency.

There are three reasons why the new CEAA makes an ideal case study in ideologically driven policy dismantling: 1) it represents the largest case of environmental policy dismantling to date in Canada; 2) the use of omnibus legislation is representative of the government’s preferred process for changes in environmental policy; and 3) EAs have long been considered the backbone to any environmental policy, making the dismantling all the more troubling. While EAs are far from the most exciting of topics, they are a critical means of protecting the environment.

The government’s mantra for the replacement of the CEAA was “one project, one review,” with the aim of ending the “duplication and overlap” in provincial and federal environmental assessments, which was allegedly holding back economically important resource projects.<sup>6</sup> We can test the government’s efficiency argument by breaking it down into its parts with respect to EAs: their timeliness; whether provincial assessments have an equally high standard as federal EAs; and whether all projects will still require either a federal or provincial EA under the new CEAA. One might consider a cost-benefit analysis as well, but the majority of expenses for EAs reside with the project proponent and not the evaluating agency. Neither provincial nor federal governments suggested that cost was an important issue needing to be addressed in CEAA reform.<sup>7</sup>

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## Overlap and duplication

The key feature of the government’s “one project, one review” approach to the new CEAA is to allow for the substitution of a provincial EA for a federal EA, with a ministerial declaration of “equivalency,” in cases where projects might otherwise re-

quire both.<sup>8</sup> This change stems from the government's arguments, both in the seven-year review of the CEAA and in the 2012 budget bill, that the "duplication and overlap" in federal and provincial assessments is inefficient.<sup>9</sup> We should test that statement by first determining if there are differences in standards between provincial and federal EAs, and then whether all projects will still be required to undergo at least one EA under the reformed CEAA.

All provinces and territories have some form of EA legislation in place. For the Harper government's argument about efficiency to be true, the provincial EAs must be to an equal standard if they are to be "substituted" or deemed "equivalent." Arlene Kwasniak, professor of law at the University of Calgary, has dissected and refuted this claim. Kwasniak could also not find the large amount of "overlap" the government claims to exist.

Overlapping of partial procedures is not a product of poorly designed policies, but a reality of Canada's Constitution, which distributes responsibilities among the federal and provincial governments. Overlap is not inherently negative either. Think of a new hydroelectric dam project (energy is a provincial jurisdiction) that would obviously impact local fisheries (federal jurisdiction) and, therefore, require different types of environmental assessments. Far from the "major problem" the government claims, this overlap is actually quite a rare occurrence: Kwasniak finds that during fiscal year 2007–08, only one-fifth of 1% (0.2%) of the 6,938 provincial and federal EAs overlapped.<sup>10</sup> The Canadian Environmental Assessment Agency found similar numbers in 1995–96 when 98% of federal EAs were not subject to provincial assessments as well.<sup>11</sup>

It should also be noted that in the current electronic age duplication in general is not as onerous as it once was. As Kwasniak points out, despite government statements to the contrary, "having to obtain a federal authorization and a provincial authorization to carry out a project is not duplication,"<sup>12</sup> since this is also representative of the constitutional authority of both levels of government. Importantly, the government has not provided any empirical evidence of duplication being an issue.<sup>13</sup> Industry, namely the oil and gas sector, has been more forthcoming in its complaints, but these stem from a misunderstanding of the accountability of the process.<sup>14</sup> Kwasniak explains:

it is not the fact of federalism that is the problem of inefficient duplication. *Nor is it the fact that provincial interests and mandates differ from federal mandates and interests.* It is the fact that either a single jurisdiction with more than one agency involved in an EA, or multiple jurisdictions involved in an EA, require the same or similar information of industry and industry finds this to result in inefficient duplication.<sup>15</sup>

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## Difference in standards?

While there is not much evidence of overlap and duplication, it is still worth examining if the government is correct in asserting that substituting a provincial assessment is more efficient than requiring a project to complete separate assessments. It is important to view provincial EAs as acceptable substitutes or equivalents to federal EAs only if they are of the same standard.

Once again, the government's claims do not hold upon close examination. A defining example of the problems between assessments is found in the case of the New Prosperity Gold-Copper Mine Project in British Columbia. The proposed mine was originally approved by the B.C. government in January 2010. Then, in November that year, the federal government rejected the project based on a federal EA.<sup>16</sup> There were seven major issues with the provincial assessment, all of which can be attributed to the different priorities and jurisdictions of the provinces.

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## Neglected projects?

The final question to consider is whether there will be projects that fall through the cracks – that are not covered by either a federal or provincial EA – under the new CEAA. The answer can be found in the change from a *category* to a *list* approach for determining which projects must undergo an assessment by the federal agency. In the first, all proposals that fall into certain categories must have an assessment; those that do not are still screened to see if a federal assessment should be carried out. The new *list* approach significantly reduces the number of projects that are automatically assessed or screened to see if an EA is necessary – by 90%, according to one environmental law firm.<sup>17</sup> This represents a major shift from assessing all projects to only assessing major projects.

There are risks to using this approach for assessing efficiency. The first is that by focusing assessments only on large projects, the government is not accounting for the possibility that small projects (or the accumulation of small impacts from multiple projects) may have a large impact in the end. Second, by switching to a *list* approach, it is very likely the federal government will fail to provide EAs for all projects that fall under its jurisdiction.<sup>18</sup>

It is clear the arguments for greater government efficiency of the EA process do not hold up under closer inspection. There is no empirical evidence that the new CEAA will provide more efficient assessments while still attaining the goals of the program, which include making sure major industrial projects do not burden the natural environment or nearby communities. This begs the question of whether the government has changed the goals of the CEAA, or at least its interpretation of them.



**TABLE 1** New Timelines of CEAA 2012

New Timelines Enacted as Part of 2012 CEAA			
	New Time Limit	Time Range	Average Time <sup>21</sup>
“Standard” EAs	365 Days	72–308 Days	125 Days
NEB Hearings	548 Days	91–515 Days	219 Days
Panel Review	730 Days	72–921 Days	250 Days

Source Canadian Environmental Assessment Agency (2010).

## Timelines

The government’s second central argument with respect to enhanced efficiencies (after eliminating duplication and overlap) is to reduce the completion time of EAs. Imposing a deadline seems like an easy way to increase efficiency, but this is only the case if the EA is completed to the same standard as without a time limit. But as *Table 1* shows, nearly all of the EAs completed during the second half of 2009 already fit within the new timelines. This does not suggest the change is merely about optics, as taking time away from the EA process has important consequences.

First, the new tighter deadline does not account for possible delays by the proponent. Absent mitigating factors, such as increased finances, staff or expertise at the environmental assessment agency, there is also a greater possibility the goals of the EA will be compromised: the imposed deadlines cannot expect to increase efficiency without sacrificing some quality.

The Canadian Environmental Law Association (CELA) says, “(t)he overall purpose of the CEAA is to safeguard the public interest, and if this takes a bit more time in relation to particularly significant, complex or controversial projects, then this is time well-spent, particularly since this allows informed decisions to be made about such projects.”<sup>19</sup> Also of concern is the fact that the government presented no evidence during the seven-year review and associated committee hearings, or the 2012 budget speech, to support its belief that faster EAs will mean better EAs.<sup>20</sup>

In summary, the new CEAA, which shifts the agency’s focus from assessing all projects to only large projects, provides solutions to a nonexistent problem. We have seen that duplication in the approvals process is not the significant issue the government claims it to be, and also that most EAs already conclude within the timelines established in the new CEAA. However, those which do not will almost certainly be for the largest projects — the ones most likely to have significant environmental impacts.

The most important result of the new CEAA is, therefore, to provide the Harper government, through the minister of the environment, the tools to fast-track ma-

major projects supported by industry under the guise of greater efficiency and timeliness. By putting one set of priorities (major project approval) significantly ahead of the other (environmental protection), the government's true, ideological motivations for CEAA reform come to light.

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## Seven-year statutory review of the CEAA

The CEAA was amended in 2003 to require that Parliament undertake a “comprehensive review of the provisions and operations” of the act after seven years.<sup>22</sup> When, in 2009, the time came to plan this statutory review, the minority Conservative government repeatedly delayed.<sup>23</sup> It delayed again the tabling of a parliamentary committee report on the CEAA, which was eventually presented in March 2012. Alone these delays are not evidence of ideological bias: for this we must look at the content of the committee report and how it was completed.

The committee's statutory review was “ineffectual, unduly limited by arbitrary timing constraints, and largely driven by ideology rather than rational, evidence-based analysis,”<sup>24</sup> says CELA (which had helped develop the original CEAA) in its assessment of the seven-year review. The group also found the committee hearings were “largely designed to solicit or foster anti-CEAA sentiment among certain industrial sectors whose projects trigger federal EA requirements at the present time.” This was in sharp contrast to previous hearings, which were more inclusive of different viewpoints.<sup>25</sup>

The government's ideological opposition was evident in hearings marked by insufficient public consultation, inadequate notifications and substantial uncertainty about the committee's focus. Producing even greater controversy at the time, but now all too familiar in the committee stage of legislation since 2011, was the premature termination of CEAA hearings after only nine meetings, before many notable witnesses could testify.<sup>26</sup> Some of the more significant voices that did not make appearances included the National Energy Board (NEB), Canadian Nuclear Safety Commission, Department of Fisheries and Oceans, and the Major Projects Management Office, as well as many non-governmental stakeholders who participated in the CEAA's implementation such as CELA and West Coast Environmental Law. The minister of the environment did not even present the government's proposals for reform.

The most cited source in the final report was the Canadian Association of Petroleum Producers, followed by the Canadian Hydropower Association, Mining Association of Canada, and Canadian Energy Pipeline Association.<sup>27</sup> The recommendations that emanated from the committee had the energy sector's fingerprints all over

them. This influence becomes unmistakable when comparing the committee's findings with the Energy Policy Institute of Canada's 2012 report, *Canadian Energy Strategy Framework: A Guide to Building Canada's Future as a Global Energy Leader*. Some of the language in the committee's recommendations for shorter and binding timelines, elimination of assessments of alternatives, substitution of provincial for federal assessments, and only requiring assessments for larger projects is lifted verbatim from this industry paper.<sup>28</sup> Both the NDP and Liberals included scathing dissents in the final report citing the committee's lack of credibility and comprehensiveness.<sup>29</sup>

Despite important omissions, but substantial input from the energy industry, the committee felt it had enough information to conclude the CEAA was "outdated" and needed "significant changes" in order to make the federal EA process "more efficient" and less "duplicative and complicated."<sup>30</sup> However, the committee's recommendations do very little to improve on the stated inefficiencies.<sup>31</sup> Many were based on debatable anecdotes presented by the resource extraction industries. In fact, the only views quoted in the final report to Parliament are from witnesses who supported the recommendations; there was not a single opposing view.<sup>32</sup>

When the CEAA reform legislation was included in the 2012 omnibus budget bill it included all 20 of the recommendations from the standing committee's statutory review. While there was at least some public consultation during those hearings, as weighted as it was with voices supportive of the government, there would be none for the legislation proper.

Gibson points out that during the budget debate the government constantly "emphasized its commitment to removing barriers to economically desirable ventures."<sup>33</sup> This conflict between economic expansion and environmental caution was exemplified by the battle related to the EA for the Northern Gateway pipeline. The proposed pipeline had been stalled for months in the protracted federal-provincial EA process. The government took swift action to pass the new CEAA while striking down all of the opposition's amendments. The government immediately started enforcing key regulations that had yet to be published in order to finalize the Northern Gateway pipeline assessment.<sup>34</sup>

In 2013, Greenpeace published a letter from the Energy Framework Initiative (EFI) to the government that further confirms the review of the CEAA was on ideological rails. In it the EFI, which represents all the major oil and gas associations, asked the government to overhaul six environmental statutes that it found "outdated," producing "a position of adversarial prohibition."<sup>35</sup> In under a year, five of the six statutes the EFI listed, including the CEAA, had been replaced or overhauled to industry preferences.

The Harper government has taken an increasingly neoliberal position in the energy sector when it comes to regulations; its ideological position on environ-

mental protection measures is not outright opposition, but more accurately a preference for economic growth over other considerations in cases of conflict. We see this again in the leaked Oil Sands Advocacy Strategy report, which labelled energy companies, the NEB, Environment Canada, and business and industry associates as “allies.” In contrast, the government considered the media, environmental and Aboriginal groups as its “adversaries.”

An open letter from Joe Oliver, then natural resources minister, describing how “environmental and other radical groups...threaten to hijack our regulatory system to achieve their radical ideological agenda,”<sup>36</sup> explicitly recognizes the government’s own ideological justifications for pushing back against what it sees as overly strenuous government intervention in the energy sector.

A final piece of evidence of ideological motivations is found in the timing of the 2010 amendments proposed for the CEEA and the legislation to implement them in 2012. The Harper government made these changes in a quick and quiet manner to avoid as much public criticism and backlash as possible. According to Gibson:

The more plausible explanation for pushing the legislation quickly through Parliament is that the government knew its agenda of weakening assessment law and other environmental provisions was controversial, waited until it had a governing majority (achieved in 2011) and used the omnibus budget bill, in the context of economic worries arising from global financial system turmoil, as the legislative vehicle offering the fewest openings for effective opposition.<sup>37</sup>

This strategy of stealth would prove useful to the government when dismantling many other environmental policies. Examples include the weakening of the Fisheries Act and Navigable Waters Protection Act, both also included in the 2012 omnibus budget. Bauer *et al* call the strategy “arena shifting,” a form of blame avoidance.<sup>38</sup> In the case of the CEEA reforms, the government shifts varying degrees of burden to the provinces (decentralization), thus attempting to deflect the blame for unpopular decisions related to provincial EAs.

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## The broader implications of policy dismantling

The dismantling of the CEEA is obviously only one aspect of what many political and civil society actors have referred to as the Harper government’s attack on science. The dismantling actions have certainly been successful in obstructing environmental research, but the evidence does not suggest this is because the government believes the climate science is incorrect or (more pertinently to this article) that there are rational policy objectives behind recent legislative and regulatory

changes to Canada's environmental protection rules. Rather, the government's view, which is exposed by the dismantling, is that if business believes environmental regulations to be too burdensome then they must go. In other words, the government is acting on ideological motivations unrelated to finding greater efficiencies.

Harper's environmental dismantling has the potential to impact every Canadian intimately — from the greater likelihood that unwanted mega-projects will be approved without a proper environmental assessment process to the unaccounted (but costly) impacts on quality of life due to environmental degradation and climate change. If the climate scientists' models hold even partly true, future generations may look back in horror at the deliberate weakening of environmental protections for what we can show to be purely ideological reasons.

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## Endnotes

- 1** An enormous thanks to my senior supervisor, Dr. Michael Howlett, who has been instrumental in his guidance throughout my academic career. A special thanks to my partner Anne Lena Ouellet for her help and patience in the editing of this piece.
- 2.** Michael Bauer, Andrew Jordan, Christoffer Green-Pedersen, and Adrienne Heritier. "Dismantling Public Policy: Preferences, Strategies, and Effects." *Oxford University Press*. Oxford, U.K. 2012, 5.
- 3.** To analyze the government's motivations for environmental policy dismantling, I use Peter deLeon's simple framework for policy termination. DeLeon's reason for writing his article was to discover if political motivations were outweighing and even excluding the "rational" program evaluation methods of economy and efficiency. In other words, is ideology becoming the overwhelming, or in many cases, the only evidence supporting dismantling. For more information on the framework see: Peter DeLeon "Policy Evaluation and Program Termination." *Review of Policy Research* 2, no. 4, 1983: 631–647.
- 4** Peter Kent's testimony at Subcommittee on Bill C-38 (Part 111) of the Standing Committee on Finance on May 7, 2012.
- 5** Shawn McCarthy and John Ibbitson. "Ottawa to Unveil Sweeping Changes to Environmental Oversight." *The Globe and Mail*, April 16, 2012.
- 6.** The language has been used since 2009, ranging from CEAA amendments in the 2010 budget, 2011 seven-year review, 2012 standing committee, and CEA Act, 2012.
- 7.** Only mentioned in seven-year review of CEAA, but as pertaining to the costs for the project proponents and not the government.
- 8.** Government of Canada. "Jobs, Growth, and Long-term Prosperity. Economic Action Plan 2012." Federal Budget for FY 2012–13.
- 9.** Canadian Environmental Law Association. "Legal Analysis of the Report of the Standing Committee on Environment and Sustainable Development Regarding the Canadian Environmental Assessment Act." 2012, 14.
- 10.** Arlene Kwasiak. "Environmental Assessment, Overlap, Duplication, Harmonization, Equivalency and Substitution: Interpretation, Misinterpretation and a Path Forward." 20 *Journal of Environmental Law & Practice* 1. 2009, 4.

- 11 *Ibid*, 10.
- 12 *Ibid*, 23.
13. Not in the seven-year CEEA review, standing committee on CEEA or in the budget and relating speeches.
14. See Jacques Whitford's paper "Environmental Assessment Crisis in Canada: Reputation versus Reality?"
15. Arlene Kwasniak. Op. Cit., 25.
16. Mark Haddock. "Comparison of the British Columbia and Federal Environmental Assessments for the Prosperity Mine." *Northwest Institute*. July 2011, 3.
17. Blakes Law. "Environmental Law Bulletin." July 2012.
18. Arlene Kwasniak. Op. cit., 8.
19. Canadian Environmental Law Association. "Bill C-38 Federal Budget Bill Review and Implications." June, 2012, 12.
20. *Ibid*, 12.
21. All data from Government of Canada, Canadian Environmental Assessment Agency. "Effectiveness of the Environmental Assessment Track Process under the Canadian Environmental Assessment Act," p. 19. Data had to be adapted as the new definition of "standard" EAs does not fit exactly with the section 25 panel review that I attributed the data to. Excludes screenings, which have been dramatically reduced after the 2010 amendments to the CEEA
22. Canadian Environmental Law Association. "Legal Analysis of the Report of the Standing Committee on Environment and Sustainable Development Regarding the Canadian Environmental Assessment Act." 2012, 3.
23. Robert Gibson. "In full retreat: The Canadian government's new environmental assessment law undoes decades of progress" *Impact Assessment and Project Appraisal*, 30, no. 3, September 2012, 181.
24. Canadian Environmental Law Association. "CELA Analysis of CEEA 7-year Review." March 2012, 4.
25. *Ibid*, 4.
26. West Coast Environmental Law. "The 7-year Review of CEEA- allegedly completed in just 7 weeks". January 10, 2012.
27. House of Commons. "Statutory Review of the Canadian Environmental Assessment Act: Protecting the Environment, Managing our Resources." 2012. [http://publications.gc.ca/collections/collection\\_2012/parl/XC50-1-411-01-eng.pdf](http://publications.gc.ca/collections/collection_2012/parl/XC50-1-411-01-eng.pdf)
28. Energy Policy Institute of Canada. "Canadian Energy Strategy Framework: A Guide to Building Canada's Future as a Global Energy Leader," 2012. <http://www.canadasenergy.ca/wp-content/uploads/2012/08/Final-Documents-Aug-1.pdf>
29. House of Commons. Op. Cit. See NDP and Liberal Party Dissenting Reports.
30. Quotes were used by CELA from the official committee report.
31. Robert Gibson. "In full retreat: the Canadian government's new environmental assessment law undoes decades of progress." *Impact Assessment and Project Appraisal* 30, no. 3, September 2012, 179.
32. Op cit. CELA, 4.
33. Robert Gibson. Op Cit., 180. Emphasis added.
34. *Ibid*, 181

- 35.** Greenpeace. “Published letter from EFI to Ministers Kent and Oliver.” Can be found at: [http://www.greenpeace.org/canada/Global/canada/pr/2013/01/ATIP\\_Industry\\_letter\\_on\\_enviro\\_regs\\_to\\_Oliver\\_and\\_Kent.pdf](http://www.greenpeace.org/canada/Global/canada/pr/2013/01/ATIP_Industry_letter_on_enviro_regs_to_Oliver_and_Kent.pdf)
- 36.** Joe Oliver. “Open Letter From the Minister of the Environment.” 2012.
- 37.** Robert Gibson. Op. Cit., 181
- 38.** Michael Bauer, Andrew Jordan, Christoffer Green-Pedersen, and Adrienne Heritier. Op. Cit., 43.





# A monopoly of knowledge

The dissolution of the libraries of  
Fisheries and Oceans Canada

Andrea Zeffiro

A WIKIPEDIA PAGE dedicated to “destroyed libraries” provides a condensed historical timeline of about 40 libraries and archives intentionally destroyed by human action.<sup>1</sup> Most of the examples are intimately tied to political unrest, and how such hostile acts often accompany human suffering and atrocities. Then, amidst historical precedents during the First and Second World Wars, and the destruction of libraries during the Balkan and Iraq wars, is an entry that seems, at first, to be an anomaly: the destruction of the libraries of Fisheries and Oceans Canada by the federal government. Its inclusion, however incongruous, captures the essence of the Harper government’s complicity in the systematic obliteration of internationally renowned Canadian scientific and environmental research collections. The eradication of bodies of knowledge, and cultural and historical records, is a strategy of ideological warfare.

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## Under the banner of budget cuts

In the fall of 2013, the Department of Fisheries and Oceans (DFO) announced the closing of seven of its nine libraries. The initiative was part of a series of library and archive closures throughout various federal departments, instigated by the Harper government in 2012, and presented to the Canadian public under the banner of

**FIGURE 1** Number of items from the library's collection retained for consolidation in another regional library

i	St. Andrews Biological Station, St. Andrews, NB	33,587
ii	Northwest Atlantic Fisheries Centre, St. John's NL	22,721
iii	Pacific Biological Station, Nanaimo, BC	20,506
iv	Pacific Region Headquarters Library, Vancouver, BC	16,730
v	Eric Marshall Aquatic Research Library, Winnipeg, MB	38,699
vi	Maurice Lamontagne Institute Library, Mont-Joli, QC	0*
vii	Mère Juliette Library, Gulf Fisheries Centre, Moncton, NB	25,897

\* As the Maurice Lamontagne Institute Library has not yet closed, no publications have yet been sent to another regional library.  
**Source** Q-110: Order Paper on DFO Library Closures<sup>12</sup>

**FIGURE 2** Number of items deposited in other federal government collections

St. Andrews Biological Station, St. Andrews, NB	0
Northwest Atlantic Fisheries Centre, St. John's NL	0
Pacific Biological Station, Nanaimo, BC	0
Pacific Region Headquarters Library, Vancouver, BC	0
Eric Marshall Aquatic Research Library, Winnipeg, MB	0
Maurice Lamontagne Institute Library, Mont-Joli, QC	0
Mère Juliette Library, Gulf Fisheries Centre, Moncton, NB	0

**Source** Q-110: Order Paper on DFO Library Closures<sup>12</sup>

budget cuts.<sup>2</sup> In the last two years, two dozen federal departmental libraries and archives across the country have closed.<sup>3</sup>

When the DFO closures were made public, the department guaranteed that its collections would be consolidated at the Institute of Ocean Sciences in Sidney, British Columbia and the Bedford Institute of Oceanography in Dartmouth, Nova Scotia. The Canadian public was assured the most important materials and records would be preserved digitally.<sup>4</sup>

Very little evidence exists to substantiate the government's claims that materials were organized or prepped for digitization. With each DFO library closure came witness accounts of the process: materials were removed chaotically and rapidly, devoid of any formal record-keeping as to where the items were transferred, and

**FIGURE 3** Number of items offered to libraries outside the federal government

Number of items offered	Libraries	Number accepted
St. Andrews Biological Station, St. Andrews, NB 33,504	New Brunswick Museum, University of New Brunswick, Atlantic Salmon Federation, Huntsman Marine Science Centre, New Brunswick Community College, Save Ocean Science, Bay of Fundy Ecosystem Partnership	Unknown
Northwest Atlantic Fisheries Centre, St. John's NL 28,177	Memorial University, Marine Institute, St. John's Public Libraries	0
Pacific Biological Station, Nanaimo, BC 250	Union of British Columbia Indian Chiefs	Unknown
Pacific Region Headquarters Library, Vancouver, BC 0	Not Applicable	0
Eric Marshall Aquatic Research Library, Winnipeg, MB 2,820	University of Manitoba	187
Maurice Lamontagne Institute Library, Mont-Joli, QC 194	Ministère Agriculture, Pêcheries et Alimentation du Québec, Université du Québec à Rimouski	34
Mère Juliette Library, Gulf Fisheries Centre, Moncton, NB 19,122	Université de Moncton, Dalhousie University, Crandall University, University of Prince Edward Island, Département des pêches et aquaculture du Nouveau-Brunswick	Unknown

Source Q-110: Order Paper on DFO Library Closures<sup>12</sup>

bystanders reported seeing materials taken from shelves and placed directly into dumpsters.<sup>5</sup>

According to a secret document obtained by *Postmedia News*, the closures and consolidations of DFO holdings will save the federal government a meager \$443,000 a year.<sup>6</sup> The memo reveals that the goal of the closures and consolidations was to cull documents, not preserve or share them digitally.

An order paper released in October of 2013, in response to questions posed by Liberal MP Lawrence MacAulay, raises further questions as to where the 84,067 items offered by DFO libraries to libraries outside of the federal government have been placed (see *Figure 3*).<sup>7</sup> The order paper makes clear that few efforts were taken in tracking the movement of library holdings, and that despite assurances from the federal government none of the items offered by DFO libraries were accepted to Library and Archives Canada (LAC).

Thus, while budget cuts were cited as the rationale behind the closures and consolidations of federal departmental libraries, it is difficult to consent to such reasoning given four omissions.

First, the decision to close some libraries and consolidate others was made without any clear study or assessment of how these changes to federal libraries and archives might impact the communities that rely on the collections (e.g., researchers, scientists). Also lacking was any kind of formalized statement or engagement in public dialogue on how the reduction of knowledge might also impact the Canadian public at large.

Second, formal plans regarding the de-accession of the numerous collections were inconsistent. In certain instances where plans were in place, departments were assured that material of historical value would be transferred to LAC, but it remains unclear what has been relocated. Third, the savings from closing and consolidating libraries and archives are incomparable to the tens of millions of dollars of taxpayer money that went into building and sustaining these institutions and collections.

Fourth and finally, digitizing records will present ensuing problems if the technology to read and access materials is rendered obsolete in the future. The maintenance and care of physical records doesn't pose the same risk to access.

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## Monopolizing knowledge

The closures and consolidations of federal departmental libraries are not the result of isolated bureaucratic decisions made in haste to save money. The Harper government had already cut funding to scientific research, muzzled Canadian scientists and dismantled government bodies and agencies issuing environmental and scientific research and evidence.<sup>8</sup> Since 2006, the federal government has monitored and restricted the flow of scientific information between scientists, and between scientists and the public at large, while curtailing scientific research into climate change, fisheries and anything remotely connected to the Alberta tar sands or resource expansion in the Arctic.

In an editorial in *The New York Times*, Verlyn Klinkenborg compares the silencing of Canadian scientists by the Harper government to American scientists being asked to toe the party line on issues such as climate change and endangered species during the George W. Bush years. For Klinkenborg, however, “nothing came close to what is being done in Canada.”<sup>9</sup> The disassembling of libraries and archives is a continuation of the Harper government's efforts to undermine the value of evidence-based scientific, environmental and technical research in policy decision-making.<sup>10</sup>

The cumulative changes enacted on scientific and environmental modes of knowledge acquisition, production and distribution are a measure of what Can-

adian political economist Harold Innis referred to as a monopoly of knowledge.<sup>11</sup> For Innis, those individuals or groups monopolizing certain kinds of information have the power to define legitimate knowledge and determine reality. In the absence of information and an informed public, reality becomes a measure in upholding the ideologies of those in power. Attacks on knowledge, and on the ability to acquire, produce and distribute knowledge freely, are ultimately assaults on democratic governance.

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## Scientific and cultural amnesia

The dissolution of libraries and archives will have long-term effects on Canadian society, invariably reaching far deeper than the Harper government's immediate monopolization of scientific knowledge. As one scientist observed: "All that intellectual capital is now gone.... It's the destruction of our cultural heritage. It just makes us poorer as a nation."<sup>12</sup> The "stuff" lost in the rapid and chaotic dismantling of scientific and cultural repositories constitutes irreplaceable collections of intellectual capital.

For instance, DFO libraries contained journals, monographs and reports in addition to original research data and records (e.g., grey literature), including documents with rare knowledge dating back to the 1800s.<sup>13</sup> These were internationally renowned libraries and archives that established Canada as a world leader in environmental science and protection.

Environmental scientist Rachel Carson used the library at St. Andrews Biological Station (SABS) in St. Andrews, New Brunswick — Canada's oldest permanent marine research facility — to research her pioneering book, *Silent Spring*.<sup>14</sup> The Eric Marshall Library at the University of Manitoba's Freshwater Institute housed tens of thousands of reports, maps, charts and books, including material dating back to the 1880s. It was recognized as having one of the finest environmental science and freshwater book collections in the world.<sup>15</sup> Both of these libraries are no more.

Given both the intellectual and monetary investments that went into building these libraries and archives, it seems absurd, not to mention suspect, that the federal government would choose to close, cull and scatter these collections. The loss of federal libraries and archives is a loss of memory. Societies simply cannot function properly without the collective memory of their archives.<sup>16</sup>

This notion of the archive as memory is more than a metaphor. The documents and artifacts that constitute an archive extend communication over time and space. Without these linkages, without the capacity to revisit the past in order to make

sense of the present or make assessments for the future, we lose our ability to make critically informed decisions.

According to French philosopher Jacques Derrida, “[e]ffective democratization can always be measured by this essential criterion: the participation in and access to the archive, its constitution, and its interpretation.”<sup>17</sup> If we are barred access to libraries and archives, if these vestiges of historical and intellectual record are dismantled, then we lose our fundamental right to cultural heritage.

The inclusion of the DFO library closures in a Wikipedia timeline chronicling the destruction of libraries by human action, while seemingly dramatic, is actually quite appropriate. The annihilation of an intellectual and cultural past is a strategy of ideological warfare — an effort to control the future by obliterating our collective understanding of the past.

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## Endnotes

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# From food sovereignty to food insecurity

How changes to the Canadian Wheat Board and seed policy leave farmers worse off

Ann Slater

BETWEEN 2008 AND 2014, Canada's federal government, led by Prime Minister Stephen Harper, has not acted in the interests of the farmers who grow food in Canada or the people who eat the food we grow. Uniquely Canadian institutions, developed over the past century to rebalance power between farmers, buyers of farm produce and input suppliers, have been destroyed or severely weakened. Trade agreements and changes to Canada's agricultural policies and laws have handed more power and control to an ever-dwindling number of multinational seed, chemical, grain, and food processing companies. In common with changes made in other sectors of Canadian society, the fundamental shift in the agricultural landscape was done with little transparency, without regard for basic democratic processes, through the use of omnibus bills, and by showing disdain for those who question the federal government's direction.

Once it received a majority of seats in the House of Commons on May 2, 2011, the Conservative government moved quickly on a campaign promise to take away the single-desk marketing power of the Canadian Wheat Board (CWB). In doing so, it set out to destroy an institution that had worked in the interest of Prairie grain

farmers for over 75 years. Although the prime minister and his agriculture minister, Gerry Ritz, had been hostile toward the CWB during their pre-majority mandates and in the 2011 election campaign, they had still indicated that farmers would decide the board's future, as law required. Farmers took them at their word, but only two days after the election, Minister Ritz announced the new government would end the CWB's single desk as soon as possible.<sup>1</sup> In his opinion, the federal election had served as the only vote needed on the future of the CWB.

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## The Canadian Wheat Board prior to 2012

The Canadian Wheat Board was established in 1935 to give farmers collective market power in dealings with grain companies. The government of the time, led by Conservative prime minister R.B. Bennett, believed the creation of the CWB was necessary to prevent the collapse of Prairie economies. Through the CWB all farmers, whether they were close to railways or not, had an opportunity to sell grain. Price pooling under the CWB meant that grain farmers jointly shared the risks and rewards of price fluctuations. Farmers received an initial payment based on the projected price as well as the volume and grade (quality) of their goods, and if grain sold higher than the projected price a final payment was received at the end of the year. In the few instances when prices dropped after the initial payment, resulting in a loss, the government covered those losses.

The CWB prior to 2012 was not a grain company. It had no shareholders, negligible assets and no grain-handling infrastructure. Its most significant asset was its legislated mandate to sell all of the wheat, durum wheat and barley grown in Western Canada through its single desk. All of the proceeds of grain sales, net of operating costs, were returned to farmers each year. The *CWB Act* did not permit retained earnings; revenues were distributed back to farmers. The CWB's sales were worth approximately \$5 billion per year.<sup>2</sup> Under the single desk there were no competing sellers to undercut each other's prices to gain buyers. It gave farmers market power in an international grain trade dominated by a handful of multinational grain companies. The system provided fair returns to the greatest number of farmers.

The CWB did a lot of things beyond selling grain, which it did very well in over 70 countries. It supported public interest research, ensured that farmers were able to load producer cars to ship their grain as an alternative to using elevators owned by grain companies, ensured access to elevators for all grain farmers, defended farmers in trade challenges launched by the United States against Canada, and advocated on behalf of farmers in negotiations or disputes with rail companies.

Canadian wheat has the excellent reputation it does around the world because the CWB paid close attention to quality, provided superior service to customers, and co-ordinated timely and efficient movement of grain from Prairie farmers' fields to international ships in Canadian ports. From 1998 until December 2011, the CWB was run by a board of directors made up of 15 people, 10 of them elected by farmers. The debate about ending the single-desk authority of the CWB was long-standing in political and agricultural circles, but farmers across the Prairies consistently elected pro-single desk farmers to represent them on the CWB board.

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## Farmers denied a say in the future of their CWB

Section 47.1 of the *Canadian Wheat Board Act* required a binding plebiscite (vote) of farmers before any substantive changes to the CWB's single-desk authority could be initiated. Despite repeated calls from agriculture organizations, Canadian citizens, and civil society organizations to let farmers decide on the future of the CWB, Prime Minister Harper and Minister Ritz remained steadfast in their commitment to ignore the *CWB Act*. The Conservative government did not provide farmers with the freedom to choose via plebiscite whether or not the CWB should sell grain on their behalf via the single desk. Instead the Conservative government chose to act on behalf of the grain companies to facilitate changes that would lead to farmers receiving less for future hard-won grain harvests.

The CWB conducted its own plebiscite in the summer of 2011 regarding whether or not the board should retain its single-desk authority: 62% of farmers voted in favour of keeping the single desk for wheat and 51% supported keeping the single desk for barley. Even though the vote took place during the busy summer season, was not binding, and was boycotted by organizations that supported the government's initiative to destroy the CWB, it still drew a turnout of 56% of affected farmers.

Bill C-18, *An Act to Reorganize the Canadian Wheat Board and to Make Consequential and Related Amendments to Certain Acts*, dubbed the *Marketing Freedom for Grain Farmers Act*, was introduced in the House of Commons on October 18, 2011.<sup>3</sup> Not only did the federal government deny farmers a vote on the future of the CWB, it also used closure to limit debate on Bill C-18, which passed second reading on October 24 and was referred to committee. Usually, an agricultural act like Bill C-18 would be referred to the standing committee on agriculture and agri-food. Determined to destroy the CWB as quickly as possible, the government created a special ad hoc committee to review this specific act. The committee adopted its report on November 3, 2011, presenting it to the House of Commons the follow-

ing day. After passing third reading on November 28, the bill proceeded quickly through the Senate and received royal assent on December 15, 2011.

As the government moved Bill C-18 through Parliament, the Friends of the Canadian Wheat Board (FCWB) challenged its legality in Federal Court, alleging the bill ignored the requirements laid out in the *CWB Act* and described above. On December 9, 2011, Justice Douglas Campbell declared that the introduction of Bill C-18 under the circumstances violated the rule of law. The federal government ignored this and proceeded with the bill while also appealing the ruling. On June 18, 2012, the Federal Court of Appeal overturned Justice Campbell's decision.<sup>4</sup> A FCWB class action suit continues to address the fundamental injustice in the Harper government selling valuable CWB assets paid for by farmers.<sup>5</sup>

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## Marketing freedom for grain companies

With the passage of Bill C-18, Prairie grain farmers were thrown back into a system of grain sales and handling dominated by a handful of companies. Currently, the top three grain companies — the privately held Richardson and Cargill, plus Viterra, which is owned by Swiss-based Glencore — own 60% of Canada's grain terminal capacity and 59% of the Prairie elevator capacity, according to Canadian Grain Commission statistics.<sup>6</sup> *The Marketing Freedom for Grain Farmers Act* eliminated the farmer-elected members of the board, but left the government-appointed directors in place. Under the legislation the remaining directors are required to either privatize the CWB or liquidate it by the end of 2017. Although the legislation declares the CWB is not a Crown corporation, the current CWB is subject to final control by the ministers of agriculture and finance.

The process to privatize the CWB has been quick and quiet. An attempt by the Farmers of North America (FNA), a private business owned by James Mann of Saskatoon, to purchase the CWB's assets received a lot of media attention in the farm press during the late summer and early fall of 2014. Although FNA's proposal was turned down by the CWB, the FNA initiative highlighted the lack of transparency in the privatization process and the intentions of the federal government to complete the privatization ahead of the 2017 deadline.<sup>7</sup> In April 2015, the government gave the assets of the CWB to Global Grain Group (G3), a joint venture between multinational agricultural firm Bunge and SALIC Canada Ltd, a subsidiary of the state-owned Saudi Agricultural and Livestock Investment Company. No money changed hands. However, the deal requires G3 to invest \$250 into the company, and to hold 49.9% of the shares in a trust that provides units to individual farmers proportion-

ate to the quantities of grain they sell to the company. After seven years, G3 can unilaterally buy out the farmers' shares.<sup>8</sup>

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## Losing more than a single desk

Ideal planting, growing and harvest weather conditions during the 2013 season led to a bumper harvest across the Prairies. During the winter of 2013–2014, the chaos in the movement of grain in Western Canada received a lot of media attention. The federal government said the bottlenecks in the system were caused by a lack of infrastructure and poor service by rail companies.

Prior to 2012, the single-desk CWB would have co-ordinated the movement of the huge stockpiles of grain from farmers fields to ships waiting in port. Even in years with a bumper harvest all farmers would have seen some of their grain move, whether they were close to rail lines and ports or further inland. Through its co-ordination of logistics and its role as a farmer advocate with clout, the influence of the CWB helped ensure non-board commodities, such as canola, oats and pulses, were also moved efficiently through the transportation system to the benefit of farmers. Ships waiting in ports would have relied on the CWB to ensure the correct grade and quantity of grain was delivered in a timely fashion, reducing or eliminating demurrage charges, and often paying a bonus to the CWB and farmers for providing grain quickly.

Bottlenecks in the movement of grain benefit the grain companies. They are able to use them to justify charging a large basis, thereby devaluing farmers' grain.<sup>9</sup> When they control the movement of grain out of elevators and inland terminals, grain companies are able to “hold” grain to push the price paid to farmers down and to increase the price charged to grain buyers. The result is more money in the pockets of the grain companies.

On the Canadian Wheat Board Alliance blog, and in presentations to farmers, Ken Larsen has reported on information from CWB audits showing that under the former CWB farmers and local Prairie businesses received 85–95% of grain prices at port. He has also reported that, by February 2014, elevators were only returning 40% of the port grain prices to farmers.<sup>10</sup> The losses to farmers are mounting from basis deductions, captive supply and unequal access to delivery, loss of pricing transparency and market knowledge, and mounting debt in the face of rising interest costs on bills that cannot be paid until stored grain is sold.

In 2014, Prairie grain farmers were reporting highly inequitable treatment by grain companies, with opportunities to deliver and sell grain being offered or denied based on other commercial relationships.<sup>11</sup> For example, farmers who pur-

chase inputs like seed or fertilizer from the grain companies were being given the opportunity to sell grain while other farmers had to look further afield for a grain buyer or continue to store unsold grain on their farm. By destroying the farmer-friendly CWB the Conservative government has facilitated a move back to a “company store” mentality whereby farmers are pushed to buy inputs from the grain companies so they are able to sell grain after the harvest.

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## Rising seed costs

The destruction of the CWB was harm enough on its own, but it is unfortunately only one of the initiatives undertaken by the Harper government to undermine farmers and consolidate the power of global agribusiness corporations.

To plant a seed is the most fundamental act of agriculture. For millennia, farmers have been the keepers of seed – choosing and saving seed from each harvest for their next year’s planting or to share with other farmers. Over time the use of farm-saved seed has declined in Canada. For some crops like corn, farmers switched to purchasing seed several decades ago because they wanted the agronomic and yield benefits that come with hybrid varieties.<sup>12</sup> In other cases, farmers have been pushed into purchasing seed each year by the use of contracts, gene patents and plant breeders’ rights (PBRs). For crops like wheat, planting farm-saved seed has remained a common practice. Using farm-saved seed allows farmers to keep control over one of their major expenses. When farmers have control over an input there are fewer opportunities for global seed companies to make money selling that input to farmers.

Seed costs are rising faster than other farm expenses. This trend began long before Stephen Harper became prime minister, but the policies implemented by his government will give seed companies more control over seed and will provide less protection to farmers from poor seeds and poor varieties. In 1981, seed costs were about 2.5% of total farm expenses. By 2011, the amount paid for seeds had risen to over 4.5%. However, in Saskatchewan, a province where saving seed for crops like wheat continues to be a common practice, the overall costs of seed for all crops went up seven fold from 1981 to 2011.<sup>13</sup>

The Alberta government tracked seed prices for wheat, barley and canola from 1994 to 2011. They found that the price of wheat and barley seed remained fairly steady over that time span, but the price of canola seed started to increase significantly year after year starting in about 2001.<sup>14</sup> The first varieties of herbicide-tolerant genetically modified (GM) canola were introduced in 1996 and 1997.<sup>15</sup> Prior to this, farmers had regularly saved canola seed, but with the patent protection on

GM canola seeds farmers began purchasing seed for one of the major crops on the Prairies.<sup>16</sup> Patents on gene sequences are one tool seed companies use to protect their intellectual property rights over seeds. PBRs are another tool plant breeders use to restrict access and/or charge royalties for the use of their “property” – seed.

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## A new regime of plant breeders’ rights

On December 9, 2013, Minister Ritz introduced more legislation that will have a profound effect on farmers. The omnibus Bill C-18, also known as the *Agricultural Growth Act*, amends nine different federal agricultural laws including the *Plant Breeders Rights Act (PBR Act)*, the *Seeds Act*, the *Debt Mediation Act* and the *Health of Animals Act*. The amendments to all nine acts covered in Bill C-18 needed careful and thoughtful analysis by farmers and their farm organizations, but out of necessity the National Farmers Union focused on the changes to the *Plant Breeders Rights Act*. In doing so, it initiated a broad discussion around how the move to UPOV ‘91 will restrict farmers’ customary right to save, re-use and sell seed grown on their farms.

The UPOV Convention is an international entity that establishes rules that recognize, ensure, and define the intellectual property rights of breeders of new plant varieties.<sup>17</sup> Countries may join UPOV by agreeing to adopt one of its model laws, with UPOV ‘91 being the newest and most restrictive. Canada joined UPOV in 1991 after we adopted the UPOV ‘78 model law. The amendments to Canada’s *PBR Act* in Bill C-18 bring Canada under UPOV ‘91, giving plant breeders and seed companies more rights and making it more difficult for farmers to use farm-saved seed.

The move to UPOV ‘91 under Bill C-18 extends the period during which PBR holders can charge royalties on seed from 18 to 20 years and it enables the option of end-point royalties (EPRs) – royalties charged on the whole crop instead of on purchased seed alone. Under UPOV ‘78, PBR holders have the exclusive right to sell seed, produce seed for sale, and collect royalties on the sale of seed. In Bill C-18 those rights are extended to cover all production, reproduction, conditioning (cleaning and treating), stocking (bagging and storing), importing and exporting of PBR-protected varieties of seed.

UPOV ‘91 gives governments the option to include a “farmers’ privilege” to save seed within their PBR laws. The federal government says this privilege has been entrenched in Section 5 of Bill C-18. However, Section 50 enables the Governor in Council (i.e., cabinet) to put limits on the farmers’ privilege provisions. The UPOV guidance documents advise governments to avoid granting the farmers’ privilege too widely and to place limits on the types of crops or varieties, the size of farms,

the value of the crop, and the area or crop grown when the farmers' privilege is included in national laws.<sup>18</sup>

Global seed companies and their Canadian lobby organization, the Canadian Seed Trade Association (CSTA), have long advocated for Canada to adopt UPOV '91. At a CSTA meeting in November 2013, Minister Ritz promised he would soon introduce legislation to bring Canada under UPOV '91. In an open letter to Minister Ritz following the meeting, CSTA President Peter Entz said his organization "is absolutely committed to you and the Government of Canada as the legislation makes its way through the parliamentary process.... CSTA and its members look forward to continuing our productive working relationship with you and your staff."<sup>19</sup>

On December 9, 2013, the day Bill C-18 was introduced in Parliament, a new agricultural organization called Partners in Innovation appeared on the public stage. This "Astroturf," or fake grassroots group, includes the CSTA and other organizations like Cereals Canada, the Grain Growers of Canada (GGC), the Grain Farmers of Ontario (GFO), the Canadian Horticultural Council (CHC), and the Canadian Federation of Agriculture (CFA). Partners in Innovation claims to represent farmers but a close look shows that it is really a mouthpiece for multinational seed and chemical companies. The CSTA board, for example, has representatives from seed and chemical companies like Bayer CropScience, Monsanto Canada, and Syngenta Canada. Members of the Partners group have received sponsorships and funding from some of the same corporations.<sup>20</sup>

Both Partners in Innovation and members of the Conservative caucus worked hard to show their disdain for farmers and citizens who questioned the benefits of Bill C-18. On June 4, 2014, the Conservatives introduced a motion to limit the debate on the bill at second reading to five hours. During that debate, Minister Ritz and his parliamentary secretary, Pierre Lemieux, both referred to the National Farmers Union as a "small splinter group." In response to a question from NDP MP Jean Crowder, Minister Ritz said, "I am not interested in hearing from people in downtown Vancouver or downtown Montreal."<sup>21</sup>

The seed industry and the government say that the move to UPOV '91 is the only way that Canadian farmers can receive the benefit of new varieties. The National Farmers Union contends that more restrictions on farmers' seed-saving are not necessary for the development of useful new varieties. The new exclusive rights granted in Bill C-18 will encourage seed companies to sell seed they import from other countries, rather than developing new varieties specifically suited to Canada's varying climates.

Public interest plant breeding has developed some of Canada's most important crops, including most of Canada's wheat varieties. However, the current government has severely curtailed the work of Agriculture and Agri-Food Canada's pub-



lic plant breeders; they are still allowed to develop germplasm, but can no longer continue development of wheat to the final variety stage.<sup>22</sup> Instead, the germplasm will become the property of private corporations who will be able to claim exclusive rights to any varieties they develop from it, and will be able to collect royalties from farmers when the seed is used.

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## Beyond UPOV '91 and the end of the CWB

With the end of the single-desk Canadian Wheat Board, farmers have lost a powerful ally that helped them receive a better price for their hard work. At the same time, the move to UPOV '91 will lead to higher seed costs for farmers, making it more difficult to earn a decent living. As such, both the *Marketing Freedom for Grain Farmers Act* and the *Agricultural Growth Act* are clear examples of how the Harper government has put Canada's farmers in a more precarious position.

Changes to the variety registration system have left farmers with less confidence that the varieties they purchase are reliable and suited to their climate. Trade deals, such as the Canada–European Union Comprehensive Economic and Trade Agreement, have given intellectual property rights holders, including seed companies, powerful new enforcement tools while poking holes in Canada's supply-managed dairy sector. Well-respected regional agricultural research centres have been closed and agricultural researchers laid off. The Prairie Farm Rehabilitation Administration's community pasture program, established in 1935 to rehabilitate land damaged by drought and soil erosion, was ended in the March 2012 federal budget.

The list is long of the damage done to rural landscapes and farmers between 2008 and 2015 through decisions and actions taken by this federal government. The interests of farmers, those who eat the food we grow, our environment, and our democratic process have all been trampled over in the rush to benefit global agribusiness, seed and chemical companies.

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## Endnotes

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- 3 *An Act to reorganize the Canadian Wheat Board and to make consequential and related amendments to certain Acts*, short title "*Marketing Freedom for Grain Farmers Act*" <http://www.parl.gc.ca/LegisInfo/BillDetails.aspx?Language=E&Mode=1&billId=5169698>

- 4** National Farmer's Union Factsheet: <http://www.nfu.ca/issues/canadian-wheat-board>. Accessed November 12, 2014.
- 5** *Farmers to move forward with Wheat Board case*. <http://www.cwbafacts.ca/constitutional-and-classaction/>. Accessed November 12, 2014
- 6** *Response to Canadian Transportation Agency's Fact Finding Questions for Stakeholders for advice to the Minister of Transport on the movement of Western grain by rail*. Submitted by the NFU on June 20, 2014. p. 9.
- 7** NFU. *CWB to sell itself, in secret and not necessarily to the highest bidder*. October 2014. [www.nfu.ca](http://www.nfu.ca)
- 8** Erik Atkins. "Canadian Wheat Board deal with U.S., Saudi group ends an era." *The Globe and Mail* (April 15, 2015). Link: <http://www.theglobeandmail.com/report-on-business/us-saudi-firms-to-buy-former-canadian-wheat-board/article23966156/>
- 9** *Basis* is the difference between a futures market price for a commodity and its local cash price. Basis levels are set at the prerogative of the grain buyer and are not subject to government regulation.
- 10** *Region Five (Manitoba) Report*, Ian Robson. *The Union Farmer*, Fall 2014. Vol. 20 Issue 3. p.8.
- 11** *Response to Canadian Transportation Agency's Fact Finding Questions for Stakeholders for advice to the Minister of Transport on the movement of Western grain by rail*. Submitted by the NFU on June 20, 2014. p. 8.
- 12** Hybrid varieties are created by deliberately crossing two specific parent varieties from the same species through traditional plant breeding techniques. The combination of the two specific parents provides greater disease resistance, yield and uniformity. Seed from hybrid varieties that are not otherwise protected can be saved and planted in subsequent years but the crop will not have the same characteristics as the original variety. Farmers end up purchasing hybrid varieties each year because of they do not necessarily know which two parents created the hybrid and because of the additional work in making the correct cross.
- 13** *The Price of Patented Seed – The Value of Farm Saved Seed*. National Farmers Union Factsheet, January 2014.
- 14** *Ibid.*
- 15** Genetically modified seeds are patent protected because they contain patented gene sequences. Due to the presence of these patented gene sequences, farmers are not able to save the seed from genetically modified plant varieties.
- 16** The Supreme Court of Canada ruling in the *Schmeiser vs Monsanto* case increased farmers' risk of being sued as a result of planting contaminated non-GM seed and provided more encouragement to purchase canola seed.
- 17** In English, UPOV = the International Union for the Protection of New Varieties of Plants.
- 18** *Bill C-18 and Farmers' Privilege What's the Whole Story*, Union Farmer Newsletter, February 2014. Vol. 62 Issue 1.
- 19** Open Letter from Peter Entz, President CSTA to Minister Ritz, November 27, 2013 Manitoba Cooperator.
- 20** *What is behind the Partners in Innovation PR Campaign?*, National Farmers Union, June 2014.
- 21** Hansard, - 96 (June 4, 2014). <http://www.parl.gc.ca/HousePublications/Publication.aspx?Language=E&Mode=1&Parl=41&Ses=2&DocId=6644110>. Bill C-18 Time Allocation Motion
- 22** *Presentation by the National Farmers Union to the House of Commons Standing Committee on Agriculture and Agri-Food regarding Bill C-18, the Agricultural Growth Act*, October 9, 2014.

## CASE STUDY

# Agriculture Canada to remove Health Canada from safety assessment of some GM foods

Lucy Sharratt

A RADICAL SHIFT in Canada's policy over regulating the safety of genetically modified (GM) foods is close to being finalized. Following stakeholder consultations beginning in 2011, Agriculture Canada proposes to allow a level of GM contamination in grain imports to Canada. The policy would permit a "low level presence" (LLP) of some GM foods that have not been approved by Health Canada. This would mean that Canada's regulation of GM foods would no longer be applied to all the GM foods that Canadians eat. It would put an end to the current "zero tolerance" policy for GM foods not approved by Health Canada.

The new LLP policy would mean that even if Canada's regulators have not yet assessed the safety of a GM grain for food or feed, a percentage of that GM product could be still legally allowed — if the contamination comes from a country whose regulatory system Health Canada has determined to be trustworthy. The policy

would not apply to products that have never been authorized anywhere in the world, such as food system contamination from experimental field trials (as has happened in the past, and is called “adventitious presence”). The acceptable percentage of “low level presence” is a currently proposed 0.2% along with *a second, higher percentage not yet announced*. But what is the purpose behind creating exceptions to Canada’s domestic food safety assessment?

Canada would be the first country in the world to adopt such an LLP policy, and that is the point. The federal government argues that this policy would “provide a model that could be adopted globally.”<sup>1</sup> Canada needs other countries to accept a low level presence of GM contamination in our *exports*. Canada and the U.S. were the first adopters of GM technology in food and farming and our regulations were designed to facilitate commercialization. However, we are now out of step with most of our trading partners, the majority of which have not yet approved the same GM crops that Canadian farmers are growing. The result is, increasingly, the rejection of Canadian exports due to GM contamination.

The federal government also argues that the policy is needed because Canada will soon be at risk from contaminated imports. But Canada and the U.S. continue to be first adopters and Canada has not yet faced any LLP occurrences from outside our borders. On the contrary, according to a UN Food and Agriculture Organization survey, Canada, the U.S. and China are the origins of most LLP events globally.<sup>2</sup>

Canada’s grain shipments can become contaminated with trace amounts of dust or other remnants from the GM crops grown and shipped here (e.g., GM corn, canola and soy). Such shipments can be quarantined at foreign ports and turned away. The current policy proposal puts “low level presence” at 0.2% detection for this type of scenario. At this percentage, the health risk is assumed to be “negligible.” This assumption is based on a product approval from a foreign government that is trusted by Health Canada, based on their responses to a yet-to-be-written “questionnaire.” This is not the only number at play however.

It is not just trace amounts in shipping containers that hold up Canada’s exports. In 2009, widespread contamination of GM flax was discovered in our flax exports reaching 36 countries (at a cost to industry of over \$29 million).<sup>3</sup> This type of contamination from the field would be subject to a so-called Threshold Level percentage of allowable LLP that is not yet been named, but that is likely to be much higher (the industry is proposing 5%).<sup>4</sup>

Whatever the percentage, this higher “low level presence” would be allowed if Health Canada has already conducted an as yet undefined “LLP risk assessment” in anticipation of possible contamination. Rather than fully approving these GM foods as safe for consumption, however, Health Canada would conduct some form of partial evaluation based on an X% contamination scenario. This “LLP risk as-

assessment” is presumably a response to the public expectation of a domestic risk assessment, and that Health Canada does have a mandate for health protection.

In summary, in addition to accepting a 0.2% LLP based on trust in a foreign government’s regulatory system, the proposal puts forward an undefined “LLP risk assessment” for X% of GM contamination. In this way, the proposal actually follows the logic of our existing system where Health Canada assesses the safety of GM foods without disclosing what products it is assessing or what data is being evaluated, and where products are released onto the market with no labelling for the public.

In this proposal, safety is assumed rather than assessed. If Canada is to persuasively argue on the global stage that “LLP is a trade issue, not a safety issue,” then we must put a policy in place for ourselves first.<sup>5</sup> Canada insists that other countries should accept LLP from Canada as safe because Health Canada has approved the GM product (GM flax, for example). To lend authority to our argument, Canada must also accept such GM contamination from other countries.

International agreements provide full flexibility for countries to maintain zero tolerance for unapproved GM crops. Indications — including from a UN Technical Consultation on LLP that was partly funded by the Canadian government in 2014 — are that Europe, Japan and many countries in Africa are not ready to forego domestic safety assessments to open their borders to GM contamination.<sup>6</sup> For all these extreme and complicated changes, the implementation of an LLP policy would not actually achieve the trade goal of opening markets to GM-contaminated exports from Canada.

But this is a policy with a long-range view. It was over 10 years ago that Monsanto withdrew its applications for approval of GM wheat in both Canada and the U.S. because international markets were not willing to bear the risk of GM contamination. In their 2014 statement, expressing “support for the future commercialization of biotechnology in wheat,” organizations representing the grain trade in Canada, the U.S. and Australia emphasized the need for “expediting the adoption of reasonable low level presence (LLP) policies” to “ensure that trade can continue uninterrupted for commodities like wheat that may contain traces of existing biotech traits approved in accordance with international guidelines by an exporting country.”<sup>7</sup> LLP would pave the way for Canada, the U.S. and/or Australia to approve GM wheat because it would remove the threat of trade disruption from expected GM contamination.

An LLP policy would legalize, normalize and expand GM contamination, which would become the norm in international trade and would gradually increase over time. An alternative to the LLP policy is focusing on efforts to protect trade through enhanced segregation of GM and non-GM crops and/or by simply ensuring export

market approvals before new GM crops are introduced (as proposed in a private members bill defeated in the House of Commons in 2011).

However, improving segregation or slowing down the commercialization of GM crops is not on the table. In fact, the LLP policy for food and feed has also opened the door to discussions over an additional policy for LLP in seed. Allowing contamination in seed would threaten Canada's non-GM seed stocks and the future of organic and other non-GM farming and trade. Developing an LLP policy on seed is a process that has already been initiated by Agriculture Canada.

Accepting "Low Level Presence" is a trade-driven proposal that would change how Health Canada determines GM food safety. It has wide-ranging and serious implications for the future of GM crops, the international reputation of Canada's agri-food industry, our future ability to segregate GM and non-GM crops, and, arguably, the trust that Canadians have in government food safety regulation. For two decades, the biotechnology industry and the Canadian government have asked the public to trust federal regulation of GM foods. Now Canadians are being asked to accept an absence of that safety assessment.

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# **SECURITY, FOREIGN POLICY AND TRADE**





# More secure, but not safer

A review of national security policy from 2008 to the present

Monia Mazigh

IN THE LAST seven years, the federal government has introduced and enacted a range of new laws dealing with anti-terrorism, national security, surveillance and related areas. In general, we can say these new policies have provided Canada's police forces, customs and border agents, and intelligence agencies with additional powers and funds to address perceived weaknesses in the state's current security capacities. The \$400 million allotted for national security in the 2015 federal budget contrasts noticeably with the cuts, since 2008, in many other departments, as described elsewhere in this book.

At the same time, there has been virtually no movement on recommendations made in the 2006 Arar Commission report for more effective public and political oversight and review of national security activities. The result of the new Harper-era security legislation is, as exposed in this chapter, a dangerous imbalance between the ability of the state to collect large amounts of personal information and to define, monitor and attempt to neutralize perceived threats, on the one hand, and the public's ability to hold state agents accountable for their decisions — and mistakes — on the other.

The policy choices of this government do not make Canada a safer place to live, but they have undermined privacy protections and civil liberties to a very worrying extent.

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## Recent context for new security measures

After the September 11, 2001 terrorist attacks in New York City and Washington, D.C., Canada promptly followed the United States in introducing new anti-terror legislation, including Bill C-36, the *Anti-Terrorism Act*. The governments of both countries claimed the legislation — the PATRIOT Act in the U.S. — would be necessary to safeguard against future terrorist attacks. Canadian business lobbies also feared economic losses if Canada failed to reciprocate the U.S. policy response. Very little time was given in either country to voices that questioned this logic or raised concerns about the impacts of the new security measures on privacy and human rights.

Despite opposition in Canada among some politicians and several civil liberties groups, Bill C-36 went through Parliament and became law within three months. The legislation was to be reviewed after three years, and it included a five-year sunset clause on two specific provisions, the first granting police new powers of preventative arrest, the second permitting investigative hearings in cases where the state believes a terrorist act is about to be committed. In both cases, issues of privacy and Charter rights were secondary to greater public safety. The International Civil Liberties Monitoring Group (ICLMG) formed in 2002 to make sure these rights would be top of mind in any public discussion related to the “war on terror.”

Many events unfolded in the post-9/11 years that would push the Canadian national security debate in this direction. Almost immediately, the case of Maher Arar — a Canadian citizen who was detained in September of 2002 at a New York airport then rendered to Syria where he was tortured — seized the attention of the Canadian public.<sup>1</sup> His case was followed by troubling reports that at least three other Canadians — Abdullah Almalki, Ahmed El Maati and Muayyed Nureddin — had been detained and tortured abroad with the knowledge and participation of Canadian security agencies (see Box).

Two public inquiries ensued: the Commission of Inquiry into the Actions of Canadian Officials in Relation to Maher Arar (the Arar Commission), and the Internal Inquiry into the Actions of Canadian Officials in Relation to Abdullah Almalki, Ahmad AbouElmaati and Muayyed Nureddin (the Iacobucci Inquiry). The first, which completely exonerated Arar in 2006, would produce a long list of recommendations for how the government might avoid national security blunders by

## Information Extracted Through Torture

In 2008, Supreme Court Justice Frank Iacobucci released the final report from his commission of inquiry into the jailing and alleged torture of three Canadians: Abdullah Almalki, Ahmad El Maati and Muayyed Nureddin. After the results of the Arar Commission were released, Justice Iacobucci was asked to review the nature of Canadian intelligence sharing with countries including the U.S., Syria and Egypt. His commission also sought to determine if Canadian officials were complicit in furthering the alleged abuse.

In 2009, Parliament passed a motion, moved by NDP MP Don Davies, calling on the Canadian government to issue an apology to the three men, compensate them, and correct the misinformation the government and security agencies had spread about them and their families. The Canadian government never acted on this motion.

The parliamentary public safety committee report on which Davies's motion was based also calls on the government to urgently implement the recommendations made by Justice Dennis O'Connor in the December 2006 Arar Commission report, which called for a new system of checks and balances for the agencies tasked with national security investigations in Canada.

Despite these tragic cases, which highlight the risks to innocent people of the unfiltered sharing of information (some of it tainted by torture), in September 2011, the Canadian government issued directives to the RCMP and CBSA to use and share information extracted through torture.<sup>26</sup>

addressing accountability and transparency deficits, and through additional checks and balances on when and how information on Canadian residents is shared with foreign governments.<sup>2</sup> The Iacobucci Inquiry similarly found, in 2008, that the actions of Canadian state agencies had indirectly contributed to the detention and torture of the three men listed above.<sup>3</sup>

As all this was happening, technological advances continued to change how we communicate — and how the state collects information on those communications. Smartphones and social media use became widespread during this time, creating privacy issues related to who (beyond ourselves and our friends) was reading our emails, Facebook postings or tweets. As the Edward Snowden revelations confirmed (see Box), we also had to ask who was listening to our phone conversations, monitoring our Skype calls, watching what we download, and maintaining large databases of personal information that may or may not be useful to national security agencies.<sup>4</sup>

Further context is provided by the ongoing Canada–U.S. perimeter security talks, launched officially in a February 2011 joint report called *Beyond the Border: A Shared Vision for Perimeter Security and Economic Competitiveness*. Under the plan, the two countries would further integrate their border security, law enforcement and counter-terrorism operations, conduct joint investigations to target security threats, and jointly determine what constitutes a threat to begin with. The agreement includes a plan to share biographical information on citizens, permanent residents and others when they enter one country and thereby exit the other.<sup>5</sup>

Considering all of this, we will now review developments in Canada’s national security policy since 2008, specifically recent anti-terrorism legislation, and the extent to which it ignores lessons learned in the last decade by tilting the balance even further away from proper oversight and privacy protections.

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## The anti-terrorism legislation

### **Bill S–7: *Combating Terrorism Act***

As mentioned, the preventative arrest and investigative hearings provisions in the first *Anti-Terrorism Act* in 2001 were allowed to expire on March 1, 2007, based on a five-year sunset clause built into Bill C–36. The minority Conservative government urged that these provisions be renewed, but all three opposition parties were against the idea. On February 27, 2007, the House of Commons voted 159–124 to let these post-9/11 judicial experiments end.<sup>6</sup>

In early 2012, now with a majority of seats in the House of Commons, the Harper government introduced Bill S–7, the *Combating Terrorism Act*, in the Senate. The bill proposed to restore the expired provisions of Bill C–36 and introduced new crimes for leaving Canada to join or train with a designated terror group. “It is highly likely that these provisions, while unnecessary, could target innocent individuals, lead to violations of rights and freedoms and bring into disrepute the administration of justice in Canada,” warned the ICLMG in a press statement.<sup>7</sup>

Bill S–7 moved to the parliamentary committee stage in late 2012 and was sent back to Parliament, without any amendments, for a final vote on April 24, 2013 — mere days after the Boston Marathon bombing. The legislation passed with 183 votes for and 93 opposed.

### **CSE, the G20 and the Snowden revelations**

In early 2014, CBC reported on a leaked document from former NSA analyst turned U.S. whistleblower Edward Snowden showing that the Communications Security Establishment Canada (now CSE) used information from the free Internet service at certain Canadian airports to track the smartphones and laptops of thousands of passengers for days after they had left the terminal.<sup>30</sup> Theoretically, CSE is bound by law to only collect foreign intelligence and not to target Canadians.

The Canadian government vehemently denied that CSE collected the data, but later admitted they were collecting metadata (e.g., the location and telephone numbers someone has called), claiming the authority to do so. The CBC article was one of a series on the Snowden revelations. Another, from November 2013, described how Canada had spied on the G8 and G20 summits in Toronto in 2010 on behalf of the U.S.<sup>31</sup> In December that year, CBC reported Canada had conducted further espionage for the NSA in 20 countries, including Canadian trading partners.<sup>32</sup>

### **Bill C-24: *Strengthening Canadian Citizenship Act***

Until recently, a Canadian citizen could be stripped of his or her citizenship on the basis of crimes that were considered threats to Canada's national security (e.g., terrorism or espionage) or demonstrations of disloyalty to Canada such as treason.

With the royal assent of Bill C-24 in June 2015, Canadian citizenship can now be revoked from dual citizens if the person: served as member of an armed force or organized armed group engaged in an armed conflict with Canada; was convicted of treason, high treason, spying offences and sentenced to imprisonment for life; or was convicted of a terrorism offence or an equivalent foreign terrorism conviction and sentenced to five years or more in prison.

Under this law, which creates a two-tiered citizenship system, Canadians who were not born in Canada or who have dual nationality and are convicted of any of these offences may be deported to countries they may never have visited, or where due process does not exist. Shortly after C-24 became law, media outlets reported that the government had begun the process to revoke the citizenship of dual Iranian-Canadian Hiva Alizadeh, who was found guilty and convicted for terrorist activities in 2014.<sup>8</sup>

The British Columbia Civil Liberties Association (BCCLA) and the Canadian Association of Refugee Lawyers have said the citizenship legislation is likely unconstitutional and plan on challenging C-24 in court.<sup>9</sup>

### **Bill C-44: *Protection of Canada from Terrorists Act***

Introduced in 2014, Bill C-44 amends the *CSIS Act* by giving the Canadian Security Intelligence Service more powers of surveillance and by allowing surveillance operations on Canadians suspected of terrorist activities within or outside Canada. Canada's spy agencies, including CSIS and the Communications Security Establishment (CSE), will be able to share this information on suspected terrorists with "Five Eyes" partner countries the United States, United Kingdom, Australia and New Zealand.<sup>10</sup>

In 2013, a Federal Court judge, Richard Mosley, slammed CSIS and CSEC (now CSE) for deliberately hiding from the court (when they applied for a warrant to intercept the communications of two Canadians overseas) the fact they would be seeking help from foreign intelligence allies. The judge explained his frustration that there is a very likely possibility that such "unwarranted" co-operation with foreign intelligence could lead to the arrest and harm of the suspects by the foreign agencies.<sup>11</sup>

Bill C-44, which became law in April 2015, further provides CSIS informants with "greater protection" in that, with a few exceptions, they may not be identified in court proceedings.<sup>12</sup>

### **Bill C-51: *The Anti-Terrorism Act 2015***

This highly controversial omnibus security bill was introduced in Parliament in January 2015 and became law, with almost no amendments, in June. The bill substantially increases the powers of CSIS to engage in secret, judicially approved counter-terrorism actions within and outside of Canada, going as far as to allow CSIS to apply before a judge to approve violations of the Charter of Rights and Freedoms in the pursuit of its covert objectives. It also adds many concerning "novelties" to Canadian anti-terrorism legislation.

For example, Bill C-51 expands the definition of activities that "undermine the security of Canada" for the purposes of increasing the types of personal information that a long list of government departments, including the RCMP, CSIS and Canada Border Services Agency, may collect and share with each other and with foreign agencies.<sup>13</sup> "Terrorism" is only one of nine enumerated activities that would fit the description of a threat, which also includes activities that could impact on the "economic or financial stability of Canada."<sup>14</sup> Environmental groups and Indigenous peoples rightly worry that protests against provincial or federal energy policies (e.g., oil and gas pipelines) may lead to terrorism files being opened on well-meaning activists.

Moreover, the new legislation gives government officials the responsibility for the “detection, identification, analysis, prevention, investigation or disruption” of these new activities listed as posing a threat to the “security of Canada.”<sup>15</sup> These new responsibilities are very troubling as not all officials are trained in collecting and interpreting such information. Arbitrary judgment, lack of understanding, and subjectivity can open the doors to more cases of abuse.<sup>16</sup>

Since there are no robust review mechanisms for any federal agency or department engaged in counter-terrorism or national security activities, one can only expect that the new powers granted by C-51 will lead to more victims like Arar, Al-malki, El Maati and Nurreddin, among others.

### **The “No-fly” list**

The federal government claims the legal framework of Canada’s “no-fly” list first emerged with the introduction, two months after the 9/11 attacks, of Bill C-42, the *Public Safety Act* (2001), which amended the *Aeronautics Act*. However, Bill C-42 was withdrawn after being criticized, replaced by Bill C-7, the *Public Safety Act*, on May 6, 2004 (royal assent). And it was only in June of 2007 that the Passenger Protect Program, commonly known as the “no-fly” list, was officially implemented.

The “no fly” list is based on an obscure legal framework. It consists of a list of Canadian citizens prevented from boarding domestic or national flights because the government believes they pose a threat to aviation security. People are put on or removed from the list based on the recommendations of a high-level Specified Persons List Advisory Group made up of officials from the RCMP, CSIS, CBSA, Transport Canada and Justice Canada.

Canadian authorities are allowed to share the “no fly” list with other countries. No prior notice to the concerned individuals is required before this happens, and there is no judicial process to challenge one’s place on the list. Individuals can appeal their inclusion to an Office of Reconsideration, but they can never know why they were put on the list in the first place, nor can they cross-examine the witness whose information may have been responsible for their being listed.

The Passenger Protect Program was expanded by Bill C-51. In addition to individuals considered to pose a threat to aviation security, the “no fly” list now includes those suspected of travelling to commit alleged terrorist offences. Bill C-51 also now allows the minister of public safety to delegate the listing power to any single official in his or her department. A person’s listing can be appealed to the Federal Court, but once again there is no independent means to test the minister’s evidence, and no provision of a “special advocate” — a cleared lawyer who can see

the evidence and mediate between the state and suspected individual — as there is in the security certificate process.<sup>17</sup>

### **Bill C-13: *Protecting Canadians from Online Crime Act***

This bill, which came into force in March 2015, was supposedly introduced by the government to target cyberbullying. In reality, Bill C-13 extends police surveillance powers to the online arena by granting them increased access to the electronic communications of citizens when there are reasonable grounds to “suspect” those communications are related to a crime. This is similar to when a phone line can be tapped, but it is a low threshold for permitting surveillance according to many experts.<sup>18</sup>

This legislation, whose constitutionality was immediately called into question based on a June 2014 Supreme Court decision that extended privacy protections to online data, also creates new warrants that allow authorities to collect “transmission data” through a software program and “tracking data” through a tracking device, again on a standard of reasonable suspicion. Bill C-13 grants immunity from lawsuits and even criminal charges to telecommunication companies that voluntarily hand over data (e.g., subscriber details, emergency contacts and other information) to the government.

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## **Review mechanisms and parliamentary oversight**

In his second report as part of the Arar Commission, issued in December 2006, Justice O’Connor identified 17 federal agencies that are involved in security and intelligence gathering. Canada has two security intelligence review bodies: the Security Intelligence Review Committee (SIRC), for CSIS, and the Office of the CSE Commissioner, for the Communications Security Establishment. An Office of the Inspector General of CSIS, which used to review CSIS activities and was mandated to provide independent advice to the Minister of Public Safety, was abolished by the government in 2012.

According to Justice O’Connor, there is an urgent need for independent review of the national security activities of other agencies and departments including the Canada Borders Services Agency, Citizenship and Immigration Canada, Transport Canada, the Department of Justice, and the Financial Transaction and Reports Analysis Centre of Canada (FINTRAC). He explained in his Arar Commission report how “a review body assesses the activities of an organization against standards such as



## The Omar Khadr Case

The Omar Khadr case is one of the most troubling of Canada's history in the so-called Global War on Terrorism.<sup>27</sup> Khadr was 15 when he was arrested in Afghanistan by U.S. authorities, charged with murdering a U.S. Army sergeant and being an illegal enemy combatant after suffering severe wounds as a result of a firefight. He was transported to the notorious U.S. prison in Guantanamo Bay, Cuba in 2002.

Canada is the only Western country that did not ask the U.S. administration for the repatriation of Canadian citizens detained in Guantanamo Bay. To the contrary, in 2003, Canadian security agents interrogated Khadr at the U.S. prison with full awareness that he was a youth who had been denied the right to legal counsel and subjected to sleep deprivation to "soften him up" for questioning. In 2008, the Supreme Court of Canada ruled that Canadian officials had acted illegally by sharing intelligence about Khadr with his U.S. captors.

On October 25, 2010, Khadr pleaded guilty to murder in violation of the laws of war, attempted murder in violation of the laws of war, conspiracy, two counts of providing material support for terrorism, and spying. He later recanted, claiming the plea bargain was the only way for him to be repatriated to Canada. Under the plea deal, Khadr would serve at least one year in Guantanamo Bay before being transferred to Canada where he would stay out the remainder of his prison sentence.

In 2010, the Supreme Court found the Canadian government had violated Khadr's constitutional rights by interrogating him in Guantanamo Bay knowing he had been abused. Former Canadian Senator Roméo Dallaire became an outspoken advocate for Khadr's rights as a former child soldier. In July 2012, Dallaire set up a petition in order to put pressure on then public safety minister Vic Toews to honour the plea bargain deal that was reached with Khadr in 2010.

On March 24, 2012, *The New York Times* reported on the continued delays in Khadr's repatriation, attributing them to the Canadian government.<sup>28</sup> The petition initiated by Senator Dallaire gathered 35,000 signatures. Khadr was transferred into Canadian custody on September 29, 2012 to serve the remainder of his sentence in Canada. Corrections Canada repeatedly refused to let journalists interview Khadr in Canadian prison. Toews justified this by claiming an interview could interfere with Khadr's treatment plan, pose a security risk or be otherwise disruptive.

In July 2014, an Alberta Appeal Court ruled that Khadr should be treated as if he had been sentenced as a youth, and he was transferred to a provincial prison as a result. The federal government appealed that decision to the Supreme Court of Canada.

On May 7, 2015, Khadr was freed on bail under strict conditions. However, about a week later, the Supreme Court swiftly dismissed the Conservative government's assertion that the former Guantanamo Bay prisoner should be dealt with as a hardened offender deserving of more time in an adult federal penitentiary.<sup>29</sup>

lawfulness and propriety and delivers reports, which often contain recommendations, to those in government who are politically responsible for the organization.”<sup>19</sup>

Justice O’Connor made further recommendations for improving the review bodies for the RCMP and CSIS. Unfortunately, none of the Arar Commission recommendations have been adopted by the government. In recent years, opposition MPs and one Conservative senator have attempted to introduce legislation to correct the oversight deficit, but these, too, were shot down by the government.

For example, Bill C-551, introduced by Liberal MP Wayne Easter in November 2013, would have established a parliamentary committee to oversee all national security activities. In June 2014, another Liberal MP, Joyce Murray, tabled Bill C-622, which would have amended the *National Defence Act* and the *Intelligence and Security Committee of Parliament Act* to impose greater judicial and parliamentary scrutiny over CSEC (now CSE).<sup>20</sup> U.S. whistleblower Edward Snowden’s revelations increased the concern that the spy agency has been operating in total secrecy while collecting Canadian Internet user data without any warrant. Former defence minister Peter MacKay denied the allegations that CSEC was contravening the laws and kept repeating that the Office of the CSE Commissioner never found a single case of abuse or misconduct by the agency.

Former Conservative Senator Hugh Segal offered the last attempt to convince the government of the urgency and importance of adopting an oversight strategy when he introduced Bill S-220 in the Senate. Segal’s private member’s bill would have created a committee of parliamentarians on national security and intelligence oversight, composed of members of differing political stripes from both the House of Commons and the Senate who would be sworn to an oath of secrecy for life.

Under Segal’s plan, chosen parliamentarians would be empowered to review national security activities. They could examine the effectiveness of anti-terrorism activities and facilitate a more consultative process between national security agencies, Parliament and the public.<sup>21</sup> Unfortunately, as mentioned, this initiative was defeated by the Conservative government.

A media report in the summer of 2015 confirmed the existence of a secret deal between CSIS and CBSA to share information without the need for political approval, which only confirmed once again the need for more accountability of national security in Canada.<sup>22</sup>

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## Conclusion

This chapter does not attempt to cover every piece of Canadian security and intelligence policy, nor could it ever hope to describe the full impact that the meas-

ures taken by the government since September 2001 have had on human lives, and especially on the most targeted communities. We summarize this legislation to draw attention to how calls in the latter part of the last decade for a better balance between human rights and privacy, on the one hand, and real security, on the other, have been ignored, while even more dangerous and unnecessary legislation was tabled.

These new laws are portrayed by the Conservative government as a crucial means of fighting “jihadi terrorism” and generally protecting the safety of Canadians. Evidence showing how existing legislation is sufficient toward these ends, or how proposed amendments would be unconstitutional or violate fundamental Charter rights, is routinely ignored in Parliament or the Senate.<sup>23</sup> Absent good arguments, the government has resorted to disturbing rhetoric.

“Prime Minister Stephen Harper never tires of telling Canadians that we are at war with the Islamic State,” wrote the *Globe and Mail*, in a February 2015 editorial about C-51. “Under the cloud of fear produced by his repeated hyperbole about the scope and nature of the threat, he now wants to turn our domestic spy agency into something that looks disturbingly like a secret police force.”<sup>24</sup>

In March of this year, Snowden said Canada has one of the “weakest oversight” frameworks for intelligence gathering in the Western world.<sup>25</sup> It is crucial that Canada correct this imbalance, to put the protection of civil liberties and privacy at the heart of national security policy, and to create a regime of transparency and accountability within the police and intelligence agencies. The implementation of the recommendations of Arar Commission would be the obvious first step in that direction.

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# Adrift at sea

## Defence policy after Afghanistan

Stewart Webb

THE CANADIAN FORCES were ill equipped at the start of the Afghan war and continued to suffer from what one former top general called the “decade of darkness” under successive Liberal governments. When the Conservatives formed a minority government in 2006, many expected funding taken out of military budgets in the 1990s would be reinvested, and aging equipment replaced. True, the Harper government has participated in several of the major conflicts that have erupted around the globe since 2008, but it’s fair to say hopes of defence policy coherence, and an infusion of new resources to match, have been dashed.

In 2008, a couple of years after taking office, the Harper government laid out the *Canada First Defence Strategy* (CFDS), which illustrated its defence commitments to Canada, the Arctic and the international community.<sup>1</sup> The CFDS also outlined procurement objectives to replace Canada’s aging defence equipment, but the strategy did not provide a plan for how Canada would act on the international stage aside from supporting its partners. Defence policy was essentially put on autopilot.

Specific military intervention in support of Canada’s NATO allies has been the hallmark of the Harper government’s foreign and defence policy. The Conservatives have been more reluctant than their opposition days would have suggested to deploying troops in global hot zones. Prime Minister Harper, who for years as opposition leader bemoaned the fact that Canada had not joined the U.S. in its 2003

invasion of Iraq, admitted in 2008 that, had he been prime minister at the time, Canada would have participated, but that it would have been a mistake.<sup>2</sup>

This metamorphosis can be explained by the reluctance of the public to support missions where the men and women of the Canadian Armed Forces would be placed in danger. Canada and its allies experienced heavy losses in Afghanistan as the Conservatives settled into power; the nature of the conflict changed significantly, and the government's willingness to deploy the Canadian Forces abroad tapered.

Nonetheless, the Harper government chose to keep Canada engaged in a new role in Afghanistan, and to participate in the Libya, Mali and Ukraine conflicts. At the same time, Canada's international peacekeeping record has diminished in spite of a rising number of active United Nations personnel and missions. While these decisions can be traced back to the CFDS, there is little sense of policy direction nationally or on the world stage. Military procurement has been a disaster.

Instead of providing a guiding light on the world stage, Canada has entered interventions with its allies with a hands-off approach, disengaged from the UN, and seemingly adrift at sea.

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## Where is the white paper on defence?

When the Canadian Forces were deployed in Afghanistan in the fall of 2001, the impact of years of budget cuts and stalled procurements became apparent. Canadian soldiers arrived in the Afghan desert wearing dark green forest camouflage; the more appropriate uniforms had been sold for surplus. The lightly armoured ILTIS jeeps had to be quickly replaced, as they were extremely vulnerable to improvised explosive devices (IEDs), a cheap but fatal Taliban defence.

In response to the "decade of darkness," the Conservatives made promises in opposition and after forming government that they would reverse years of inadequate spending and put the Canadian Forces at the vanguard of 21st century militaries. First stop was the Arctic. The threatening effects of global climate change, and the dispute between Canada and Denmark concerning Hans Island, prompted a focus on Canada's North. New equipment for the Rangers and three new ice-breakers would help Canada secure its Arctic border. The mantra "use it or lose it" became a policy initiative that separated Conservative proposals from past policy.<sup>3</sup>

In 2008, the Harper government introduced the Canada First Defence Strategy (CFDS). The CFDS outlined a 20-year investment plan to rebuild the Canadian Forces, promising better training and new equipment to meet domestic and international missions, while also providing stimulus to the Canadian economy in response to the 2008 crisis.



Beyond investment, the CFDS described in broad strokes how and where the Canadian Forces would operate: they would protect Canada from domestic terrorism during the Olympics, continue to provide support for NORAD, and assist Canada's international partners in overseas missions. The CFDS did not go as far as providing examples of what future missions might entail, nor did it attempt to describe the current geopolitical or security climate. The natural place for this kind of analysis is a defence white paper, not an Economic Action Plan.

A white paper demonstrates that a government has examined the global nuances and set a course for foreign and defence policy to work in tandem with a mission objective. Unfortunately, Canada has not had a defence white paper since the Chrétien government in 1994. As a likely result, the Harper government's policies have been more reactionary to conflict than preventative. Diplomacy and development endeavours have been pushed aside when they could have been productively employed in a combined effort.

Without a white paper, the government locked itself out of meaningful public debate on the future of the Forces. It also opened the Harper Conservatives to criticism from commentators such as former Progressive Conservative prime minister Joe Clark that the government had no "coherent or consistent approach to defence policy."<sup>4</sup> According to military historian Jack Granatstein in 2012, "as Canadian troops withdrew from Afghanistan, it became evident that the government had given little thought as to where or how to apply this sophisticated and expensive military capacity next."<sup>5</sup>

Three years later, there is still no indication of a coherent defence or foreign policy, and certainly no sign that a white paper is being planned. Canada participated in missions in Libya, Mali and, most recently, Ukraine and Eastern Europe by acting within a larger coalition. However, these conflicts need a broader approach to rectifying the violence and civil unrest, with a more carefully thought out space for the use of development policy and diplomacy.

Instead, the government chose to project strength and purpose through photo-ops. There were potential political and electoral gains from such a strategy, but high-profile images and flashy big-ticket purchases for the military detracted from meaningful discourse on how Canada would go about rebuilding Afghanistan or taking action in future conflicts. As the former prime minister Clark put it, the Harper government "quickly embraced the American habit of shuttling cabinet members into and out of Afghanistan, to offer direct encouragement to Canadian troops, of course, but also for 'photo-ops' that would incubate and encourage a more macho characterization of Canada's role in the world."<sup>6</sup>

Regrettably, this practice did not end with Afghanistan. After NATO's Libya intervention, Canada was the only country that held a victory parade and fly-by.<sup>7</sup>

Four years after the air campaign began, Libya is still in the chaos of civil war. In the case of Canada's assistance to Ukraine, James Bezan, parliamentary secretary to the minister of national defence, was flown in at the last minute for an announcement related to the delivery of non-lethal military aid.<sup>8</sup>

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## **Afghanistan and beyond: the crescendo and diminuendo of violence**

After taking power in 2006, the Harper government soon realized how unpopular the continuation of the combat mission in Afghanistan was becoming — and how different, with a strong upsurge in Taliban activity. NATO's International Security Assistance Force (ISAF) responded in September that year by launching Operation MEDUSA, an attempt to root out Taliban forces from their strongholds. The intensification of operations produced a marked increase in allied casualties.<sup>9</sup> In Canada, the government established the Highway of Heroes to foster a sense of national pride in the mission, but the public was beginning to want Canada to pull out of Afghanistan or move toward a non-combat role.

In 2008, the Independent Panel on Canada's Future Role in Afghanistan issued the Manley Report, named after its chair, John Manley, which stated that Canada should refocus on reconstruction and training of the Afghan National Security Forces (ANSF). When the Afghan mission was extended in 2010, Prime Minister Harper incorporated these recommendations. The training mission was deemed a “non-combat” mission and the Canadian public supported it as such. By the end of 2010, 138 Canadians had been killed in action in Afghanistan.<sup>10</sup>

But obviously even a non-combat mission in a warzone can be dangerous, as our ISAF partners were finding out. The insurgency had changed tactics yet again. The Taliban put operatives into training and recruitment centres or extorted others to carry out attacks on their behalf. The objective was not only to target ISAF personnel, but also to erode Afghan interest in signing up to fight the Taliban. This tactic had the further effect of placing a wedge between ISAF personnel and their recruits: suspicions that new trainees were actually Taliban supporters increased with every “green on blue” attack. Calls for allied troop withdrawal grew louder in all countries involved each time a soldier was sent back in a casket.

Training ANSF personnel was an integral part of ensuring that the Afghans could provide their own security so the ISAF could stand down. Unfortunately, decades of war left a mark on the country. According to Pakistani journalist Ahmed Rashid, writing in 2011, 86% of Afghan soldiers were “illiterate and drug use is still an endemic problem.”<sup>11</sup> A year later, the Associated Press reported their own

finding that more than 95% of the recruits for the ANSF were illiterate.<sup>12</sup> According to the Department of National Defence (DND), by April 2012, “the Afghan national security forces had 119,707 of their personnel enrolled in literacy programs that employ nearly 2,800 Afghan teachers in 1,551 classrooms.”<sup>13</sup> ISAF not only had to train the ANSF, but also to teach its personnel basic literacy skills.

The goal of building a credible military and security force was impeded by the requirement to bring personnel to a professional and specialized level. This was not just a Canadian issue; it was a combination of problems with the ISAF training program and the socio-economic conditions in Afghanistan after decades of war. U.S. Major General Michael T. Flynn, in a report for the Centre for a New American Security, outlined that even after the 2014 ISAF withdrawal additional training and equipment would be needed for the Afghan Air Force, as well as special operations forces, medical personnel, counter-IED (improvised explosive devices) capability and intelligence collection.<sup>14</sup> A similar lack of specialized training was afflicting U.S. programs in Iraq, and still afflicts Iraqi forces today.

Canada did not suffer any casualties during its post-2010 training mission, unlike many of its partners, possibly due to the nature of Canada’s contribution to the wider NATO Training Mission–Afghanistan (NTM-A). It was later revealed that the focus of Canada’s efforts, located in Kabul with satellite teams in Mazar-e-Sharif and Herat, was to,

assist the Afghan leadership and instructor cadre with tasks such as curriculum design and development of teaching skills. The task force also included senior officers who were integrated into the NTMA command team, and a significant contingent of experienced staff personnel who served at NTM-A Headquarters.<sup>15</sup>

As such, Canadian Forces personnel were not exposed to potential Taliban fighters posing as raw recruits, since they were training the leadership and instructor cadre who were cleared and had demonstrated their commitment to the Islamic Republic of Afghanistan.

### **NATO over Libya: a tale of two lessons**

The Afghan war was not the only conflict that Canada and NATO decided to contend with. The Middle East radically changed with the widespread democratic uprisings of the Arab Spring. Protests began in Libya in 2009, but violence did not erupt until 2011 when unrest hit the capital of Benghazi. Government airstrikes and cluster munitions were used on the civilian population.<sup>16</sup> Clashes between Colonel Gadhafi’s security forces and protesters escalated into a full-blown civil war.

There were many factions within the rebel coalition that formed the National Transitional Council in February 2011. On March 19 that year, a multinational coalition formed to carry out UN Security Council Resolution 1973, which aimed for “immediate ceasefire in Libya including an end to the current attacks against civilians,” which the security council said “might constitute crimes against humanity.” A no-fly zone was imposed over Libya, and on March 25, a NATO coalition took charge of the mission dubbed Operation Unified Protector.

Canada not only participated in the mission, but Lieutenant-General Joseph ‘Charlie’ Bouchard would later command it.<sup>17</sup> NATO’s objective was to enforce the no-fly zone, ensure there was a naval blockade to interdict potential arms supplies or smuggling, and to do what it could to ensure that civilian casualties were limited during the conflict. As a first step, NATO took out Libyan anti-air assets on the ground to give allied planes full and free coverage of the skies. Once this was done, coalition aircraft went after government targets, including vehicles, to minimize the conflict.

With the air campaign over, it soon came out that Canada’s CF-18 fighter jets, now safely back home, had conducted 946 sorties, or 10% of all NATO air sorties.<sup>18</sup> This engagement was disproportionate to other coalition members, raising real concerns of wear and tear on the CF-18 fleet in the Royal Canadian Air Force.<sup>19</sup>

The fleet is nearing the end of its lifecycle. Canada acquired 138 CF-18s between 1982 and 1988, and at the time of operations in Libya only 77 remained serviceable. Prior to the Libya mission, the CF-18s had already used up 73% of their flying hours, which is about 8,000 hours per aircraft.<sup>20</sup> Because combat missions can add up to three times the strain of regular flights, Libya could have added 9,000 hours total — or 1,500 hours per fighter jet.<sup>21</sup> Even though Canada has 77 CF-18s, not all of them are mission capable because of regular or unscheduled repair.

The real impact of the Libya mission on Canada’s fleet is unknown. Yet lifecycle concerns did not deter the government from deploying six more CF-18s, and dozens of support personnel, to Eastern Europe to be of use to, and provide training for, Ukraine in its civil war and conflict with Russia.<sup>22</sup> Canada has deployed a further six CF-18s to Kuwait to assist in the degradation of the Islamic State of Iraq and al-Sham (ISIS).<sup>23</sup> Whether or not one agrees with Canada’s participation in these missions, we should be wary of the operational readiness of the CF-18 fleet.

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## The consequences of Libya: Mali

The unrest in Libya did not end with the overthrow of the Gadhafi regime. The Libyan governing authority is split into two competing factions, as various militias and

militant groups continue to operate in the country. Canadian military intelligence predicted that chaos would continue with the regime change.<sup>24</sup> Although the mission is deemed to be a just war, there was little follow up by its members or the UN to ensure that the freer Libyan state and people would not slide into perpetuating violence.<sup>25</sup>

The violence did not end at the border, either. Gadhafi had welcomed ethnic Tuaregs from North Africa to Libya. Some were employed in the oil and gas industry, others found themselves in the Libyan military and Gadhafi's Islamic Legion. The ethnic Tuareg population is spread across North Africa, but there is a history of conflict involving the Tuareg in Mali since its independence. The catalyst for the 2012 conflict was the fall of the Gadhafi regime. According to the United Nations, based on reports by neighbouring countries, "rocket propelled grenades, machine guns with anti-aircraft visors, automatic rifles, ammunition, grenades, explosives (Semtex), and light anti-aircraft artillery (light calibre bi-tubes) mounted on vehicles" are being smuggled out of Libya.<sup>26</sup> The migration of people and weapons is destabilizing Mali and the Sahel region.

Before the fall of Gadhafi, the Malian state endured three conflicts with the ethnic Tuareg population in the north. In January 2012, a fourth erupted. The displaced Tuaregs returned to Mali to find worse socioeconomic conditions than when they and their families had left. According to USAID figures in 2004, the three largest Malian cities in the north suffered poverty rates of between 77% and 92%.<sup>27</sup> There are few socio-economic development projects in northern Mali, and even these are eroded by bribery and corruption.

A catastrophic drought in 2010 compounded the stress of extreme poverty and ethnic disengagement, leading to the 2012 rebellion, in which we saw the secular Tuareg group, the National Movement for the Liberation of Azawad (MNLA), unite with Islamic extremist groups such as Al-Qaeda in the Islamic Maghreb, and Ansar al-Dine. The insurgent coalition proved successful against the poorly armed and trained Malian army. But by the time France decided to intervene, the insurgent coalition was no more. The Islamists betrayed the MNLA, forcibly removing them before taking position outside the Malian capital of Bamako.

In the Canadian media, Mali was portrayed as "Africa's Afghanistan" and there was speculation on what Canada's involvement could be. The Harper government did not send soldiers, but it did send a C-17 Globemaster to fill an important strategic lift capability lacked by French forces. Canada's contribution would be to transport heavy armoured vehicles and supplies and assist with the logistics involved with this task.

This was very much a non-combat role (the insurgents did not have the capacity to bring down a C-17) — a support mission that was politically safe for the Harper

government. It also had economic dimensions. Mali is the third largest gold producer in Africa with Canadian investment playing a part in the industry. In 2012, following the military coup, Canada was one of the first countries to provide bilateral aid and continues to support the long-term development of the country.<sup>28</sup> It is highly likely that another conflict will erupt in the future and that it will be compounded by the effects of global climate change, the lack of development in the north, and long-term mediation issues between the Tuaregs and the national government.<sup>29</sup>

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## **New insurgents on the block: Islamic State of Iraq and Al-Sham**

The emergence of the Islamic State of Iraq and al-Sham (ISIS) was surprising for many defence analysts. The initial gains of ISIS, with the capture of Mosul and the nearby Iraqi military base, were only the beginning of a series of massive gains in Iraq as well as Syria. Today, ISIS maintains a sizable amount of territory across both countries and has waged operations in Libya, Egypt and Tunisia. The western “degradation” campaign, to which Canada is a partner, has had little success against the nimble and opportunistic tactics of ISIS.

Canada has committed six CF-18s for air strikes on ISIS targets. We have also sent 69 members of the Canadian Special Operations Regiment to conduct an “advise and assist” mission. Although these contributions are portrayed to the media and the Canadian public as part of a “non-combat mission,” Canada lost one soldier early on in a friendly fire incident and has been engaged more than once by ISIS insurgents where Canadian Forces personnel had to fire back.

The mission’s threat level was forecasted as “low,” but that does not mean zero. Brigadier-General Michael Rouleau stated that 80% of the mission occurs many kilometers behind enemy lines. The other 20% consists of advising the Iraqi military on how to set up defences to halt the ISIS advance, and then assisting in operational planning.

The real issue with Iraq is, as it was in Afghanistan, training. The Iraqi military is different from what it was before the 2003 U.S.-led invasion. That army was dismantled and the newly trained forces lack specialization. The U.S. and its allies were more concerned with the number of personnel in the Iraqi forces than their quality, quite similar to the Afghan training model. For example, there is a lack of Explosive Ordnance Disposal (EOD) technicians to disarm IEDs. An overall lack of specialists has taken its toll on the effectiveness of the Iraqi military. With a force consisting of 225 fighters, a single Abrams tank, a pair of mortars, two artillery

pieces and about 40 armoured Humvees, it took 30 days for the Iraqis to make the 40 km trek from Baghdad to Beiji to recapture the city and its oil refineries.<sup>30</sup>

It is clear that the Canadian Forces will not be assisting in the training of the Iraqi military in this current climate. It is an election year and the friendly-fire death of Sgt. Andrew Joseph Doiron has soured the Iraq mission for many Canadians. Defence Minister Jason Kenny has outright stated this would be a U.S. responsibility, thus backing Canada away from any meaningful participation and wounding Canada-U.S. relations in the process.<sup>31</sup> It would be useful in these moments to be able to reference a Canadian anti-terrorism strategy, but like the missing defence white paper, nothing approaching what is needed currently exists.

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## **Ukraine: photo-ops from the “New Cold War”**

The crisis in Ukraine first appeared to be a civil uprising against a seemingly corrupt government. The Russian annexation of Crimea escalated the conflict to what is sometimes called a hybrid war requiring non-conventional responses.<sup>32</sup> Ukraine is facing a state-sponsored insurgency that aims to destabilize the government’s influence over its citizens through the deployment of Special Forces, propaganda campaigns, the development of local militias, and even cyber warfare. Economic sanctions were introduced against Russia as a counter-measure along with an increased NATO presence in Eastern Europe to signal support of the alliance’s newer members, but also Ukraine.

Canada’s support for the NATO mission has consisted of sending six CF-18s and 200 support staff to Eastern Europe to participate in training exercises and to patrol Eastern Europe. Canada has also sent soldiers to Poland to conduct airborne and infantry exercises with U.S. and Polish allies. A Canadian frigate is taking part in the Standing NATO Maritime Group One in the Eastern Mediterranean and the Baltic Sea.

Most recently, the Harper government promised to send 200 soldiers to Eastern Ukraine to provide training for Ukrainian forces. This training mission is different from those in Afghanistan and Iraq in that it includes providing expertise in countering IEDs and mines, and may also include instructions on logistics and military policing.<sup>33</sup> It is markedly more than what Canada has committed to countering the spread of ISIS.

While there is no doubt that elements of the Russian military are operating in Eastern Ukraine, the Harper government has used Russia in the past to portray itself as being the tough guy on the international stage.<sup>34</sup> In 2007, 2009 and 2010, the government claimed that Russian strategic TU-95MS “Bear” bombers entered Can-

adian airspace. NORAD officials contradicted and downplayed these claims, stating the Russian bombers were on routine missions and did not enter U.S. or Canadian airspace. Similar Canadian grandstanding has taken place in the Ukraine conflict.

MP James Bezan, as parliamentary secretary to Minister Kenney, told the House of Commons that since arriving in the Black Sea, “Royal Canadian Navy sailors have been confronted by Russian warships and buzzed by Russian fighter jets.”<sup>35</sup> Kenney repeated the claims the next day. When confronted about the matter, the Department of National Defence referred to NATO, which contradicted the government. NATO officials affirmed the aircraft was flying at a higher altitude. There were also conflicting reports of a previous fly-by incident in 2013.<sup>36</sup> Such claims and counter-claims strain Canada’s relationship with its allies and cheapen the work of the Canadian Forces, all seemingly for domestic and partisan tricks.

The crisis in Ukraine has been molded at home to fit the Harper government’s public relations narrative. None of Canada’s allies have, like Bezan, made last-minute arrangements to be on board Air Force cargo planes to deliver non-lethal military and humanitarian aid to Ukraine.<sup>37</sup> In his recent book, former prime minister Clark challenges the political opportunism: “In the six decades after the end of the Second World War, this country’s international policy was *Canadian*, not partisan.”<sup>38</sup>

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## Peacekeeping

Canada has participated in a multitude of conflicts within the past decade, but, as we have seen, without a coherent defence or foreign affairs policy direction. One of the clearer features of the Harper government’s defence posture has been its disengagement from the United Nations.

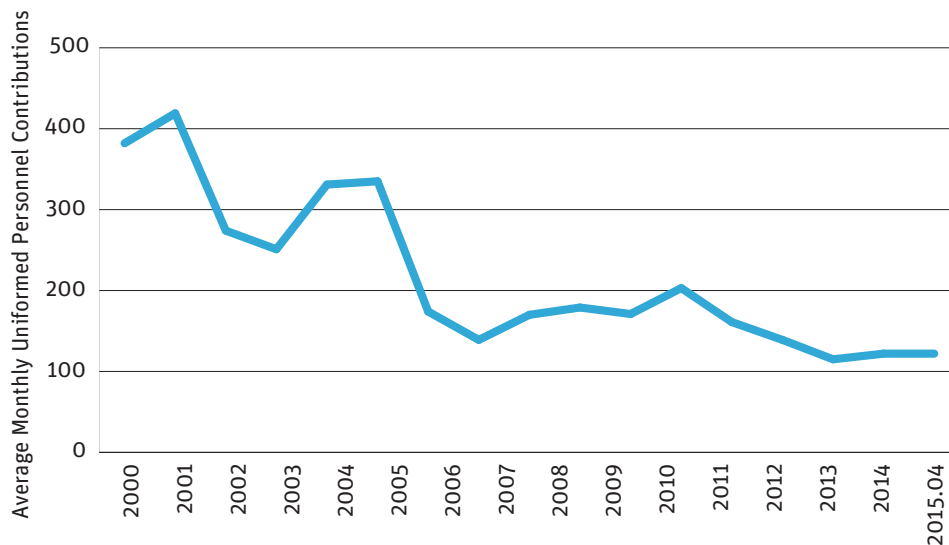
Canada’s participation in UN peacekeeping operations dropped sharply after 2001, as shown in *Figure 1*. This could be explained by the concentration of operations in Afghanistan. But for a country that prides itself on its peacekeeping heritage, Canada’s 68th place world ranking in terms of contributions to peacekeeping efforts will not sit well.

Now compare Canada’s decline in participation with the steady increase over the same period in global participation in UN peacekeeping missions (*Figure 2*). There is a growing need for peacekeeping and the missions are more intense than they have ever been. And yet, in 2006, as a sign of Canada’s change of heart, the Harper government rejected a request for participation in a Lebanon peacekeeping mission.<sup>39</sup>

Looking only at numbers, however, we miss the transformation in peacekeeping itself over the past 15 years. The current peacekeeping mission in the Demo-



**FIGURE 1** Canadian Peacekeeping Contributions  
(Averaged Over The Year)



SOURCE UN Peacekeeping

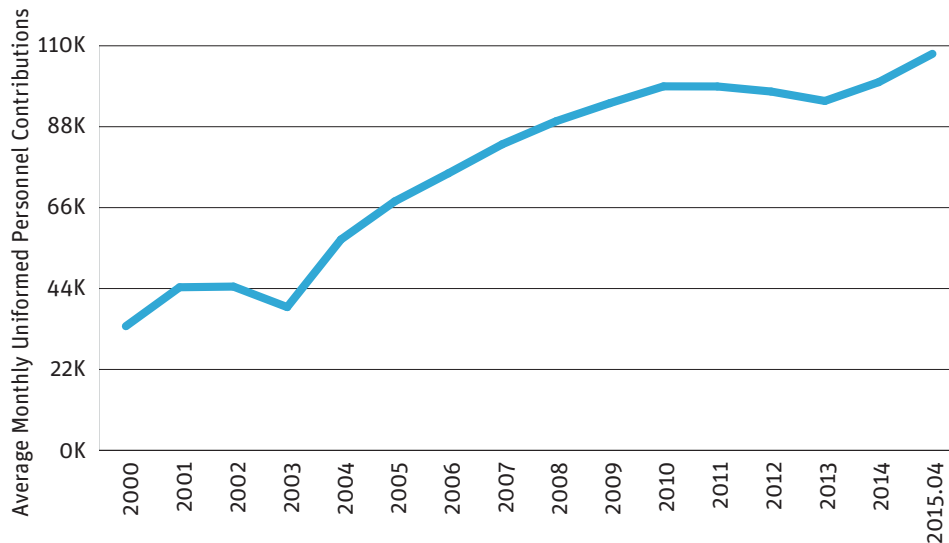
cratic Republic of the Congo (DRC), for example, does not fit the classic model of inter-state conflict where the UN provides a buffer between government forces. It is instead a conflict fueled by rebel groups and the shadow of ethnic divisions in Rwanda, with UN peacekeepers taking active measures against the M23 and other rebel groups in DRC. As such, it is more like a counter-terrorism exercise.

Peacekeeping missions in Mali and Somalia also more closely resemble counter-terrorism and counterinsurgency models as per recent trends.<sup>40</sup> It is fine to criticize the Harper government for wanting to transform the reputation of the Canadian Forces from peacekeeper to warfighter. However, by doing so, we miss an opportunity to discuss how Canada's experience with counterinsurgency—in Kandahar, for example—might be passed on to others in the interests of peacekeeping.

Canada once had a centre that trained international military personnel on the secrets of peacekeeping operations. It was called the Lester B. Pearson International Peacekeeping Training Centre, located in Cornwallis, Nova Scotia. But like so many other government programs, this one did not survive post-2008 government cuts to the public sector. The Harper government closed the centre in 2013.<sup>41</sup> Not only will its lessons not be passed on, they may be forgotten.

In 2010, the UN reached out to Canada for help in DRC, asking if Lieutenant-General Andrew Leslie could head the 25,500-strong peacekeeping (or peace enforcement) force in the country. The Harper government continued its disengage-

**FIGURE 2** Global Peacekeeping Contributions  
(Averaged Over The Year)



SOURCE UN Peacekeeping

ment from UN peacekeeping by declining the UN request — the second time since 2008.<sup>42</sup> The mission would have required only a few dozen Canadian Forces personnel, but the government decided its full concentration would be on Afghanistan.

## Conclusion

Prime Minister Harper's historic support for the U.S. invasion of Iraq, if later admitted to be a mistake, helped cement the belief a Conservative government would create a warrior-centric model for the Canadian Forces. If the peacekeeping record suggests this transformation is happening (if not complete), the lack of a cohesive foreign and defence strategy to replace Canada's historical UN-focused engagement suggests a lack of focus, even seven years into the Canada First Defence Strategy.

The changing situation in Afghanistan in 2006, especially the marked increase in wounded and casualties, led the Harper government to intervene in future conflicts in a manner that would ensure the risks were low. Canada has provided logistical support for the French in Mali, conducted and planned airstrikes in Libya and Iraq, and is offering training to government forces in Eastern Europe and Afghanistan. Canada is providing specialized training to Ukrainian soldiers, but has refrained from imparting the same skills to the Iraqi army for reasons no one has explained, but which leave the latter ill-equipped to handle the ISIS threat.

Haughty promises of reversing Liberal defence cuts and fixing procurement failures have proven empty. The Harper government has demonstrated it can develop an economic plan on defence procurement, but that it has no interest in the difficult task of producing a white paper on defence policy to provide an objective and guidance for that procurement. Instead, high profile and politically opportunistic photo-ops provide the illusion that the Conservatives are the only party that truly supports the military.

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# White hats, black hats

The Harper government's policy toward Israel

Dennis Gruending

STEPHEN HARPER WAS pursuing voters in Markham, Ontario on day 12 of the federal election campaign in April 2011. That same evening in Ottawa, several hundred people gathered at the Peace Tower Church not far from Parliament Hill to pledge fealty to Israel and praise Harper as that country's Canadian benefactor. The event, called Canada Celebrates Israel, was one of four held in Canadian cities within a few days. The rallies featured three Israeli politicians who are members of the Knesset Christian Allies Caucus, as well as prominent Conservatives and a cast of Evangelical Christians from Canada.<sup>1</sup>

Though the Prime Minister wasn't physically present at these rallies, he made sure organizers knew where his priorities lay. Jim Abbott, a longtime Conservative member of Parliament who had chosen not to run again in 2011, brought greetings from the federal government. Stockwell Day, the recently retired former Treasury Board president, provided a message on videotape (he had attended the Canada Celebrates Israel event in Montreal the previous evening). According to the *Canadian Jewish News*, Day "earned wide applause when he said Israel, as a Jewish state, has 'an aboriginal right to exist' and that the Hebrew scriptures, written as far back as 1,000 years BCE, provide historically accurate evidence of the Jewish presence in what is now Israel."<sup>2</sup>

In strictly historical terms, the majority of people living in Palestine (west of the Jordan River) in 1948 were Arabs (both Muslims and Christians) and their ancestors had lived there as well. Estimates are that at least 726,000 Palestinians were displaced from the lands within what became the borders of Israel in 1948.<sup>3</sup> Unfortunately, for those who prioritize scripture over facts, none of this is important. In Ottawa, those attending the Canada Celebrates Israel rally were asked to stand and recite in unison a Canada–Israel declaration projected on a screen in the church. The declaration read in part:

Whereas we the undersigned, friends of Israel, affirm the eternal and steadfast love of God for Israel and the Jewish People as clearly decreed in the Word of God.... We affirm the noble stand that our Prime Minister, the Right Honourable Stephen Harper, has taken in support and solidarity of Israel.... We affirm the Abrahamic Covenant of God with Israel, and His promises, and in the giving of the land to the Jewish People as their everlasting homeland and eternal inheritance: “I will give you this land as an everlasting possession to your descendants after you.” (Genesis 17:8)<sup>4</sup>

Most Canadians would agree that the state of Israel has the right to exist peacefully among its neighbours. The Harper government’s foreign policy, on the other hand, has been to act as cheerleaders for the Israeli government no matter how its actions may disturb that peace, and no matter the hardship they bring to the embattled Palestinians. Harper has pledged to stand by Israel “through fire and water.” His former foreign affairs minister John Baird put it in equally (and literally) black-and-white terms after a trip to Israel in 2012: “I took a pad of paper and drew a white hat on one side and a black hat on the other. Under the white hat, I wrote ‘Israel’ and under the black, ‘Hezbollah.’”<sup>5</sup>

This policy shift contradicts Canada’s historical position on the complex realities of the Israel-Palestine relationship, with international repercussions for Canada’s standing in the world, and domestic consequences for any organization that publicly disagrees with the government.

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## Harper in Israel

When Stephen Harper made a trip to Israel in January 2014, he was accompanied by 30 Conservative MPs and Senators. However, his 208-member entourage included a far greater number of people representing the religious wing of his conservative coalition, including 21 rabbis. It is difficult to imagine any Canadian prime minister taking that many Catholic priests on a visit to Rome, or Anglican clerics on a visit to London.<sup>6</sup>



Frank Dimant, the CEO of B'nai Brith Canada, was also on the tour. Dr. Stephen Scheinberg, a long-time national officer of B'nai Brith, has written how, under Dimant's leadership, the organization has moved from its earlier pluralism toward Conservative partisanship while making common cause with Christian fundamentalists.<sup>7</sup> In August 2014, Dimant announced he was going to nominate Harper to become a recipient of the Nobel Peace Prize.<sup>8</sup>

Also present in the Canadian delegation were officials from the Council for Israel and Jewish Advocacy (CIJA). That organization has replaced the 90-year-old Canadian Jewish Congress (CJC), which was dissolved amid bitter recriminations in 2011. The CJC had been liberal and non-partisan while CIJA, as its name implies, is essentially a single-issue organization created to support Israel. The events coordinator for the Jewish Defence League (JDL) of Canada was also there. The JDL was created in the United States in 1968 with the self-described purpose of protecting Jews from anti-Semitism. Its tactics, however, have been extreme. The *National Post* has reported that "(i)n its 2000–01 report on terrorism, the Federal Bureau of Investigation described the group's U.S. wing as a 'violent extremist Jewish organization,'" and that "(m)embers have been linked to numerous violent acts in the U.S. and Israel since the JDL was founded."<sup>9</sup>

There was also broad representation in the government's entourage from among evangelical Christians, including the Evangelical Fellowship of Canada, the Christian Missionary and Alliance Church (of which Harper is a member), a group called Crossroads Christian Communications, and the International Christian Embassy Jerusalem–Canada. This last organization is not really an embassy at all, but rather a conservative Christian group whose main reason for being is to provide support for Israel. There were no progressive Jews, Catholics or mainline Protestants on the junket, which was criticized by groups such as Independent Jewish Voices for the way it was organized and executed.

Prime Minister Harper used every opportunity on his trip to eulogize Israel and to speak darkly about some of its Arab neighbours. In a speech to the Knesset, Harper said that Israel is a close friend, a beacon for democracy, and a Jewish homeland for people who had long been persecuted. "Through fire and water, Canada will stand with you," he said. During his trip, Harper pointedly refused to make any criticism of Israel for continuing to build settlements on Palestinian land, although Canada remains on record as opposing this activity, which the United Nations claims to be illegal.<sup>10</sup>

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## Foreign policy and Israel

It has been the policy of Canadian governments since 1948 to recognize Israel, but also to support repeated calls by the United Nations for a second independent state in land west of the Jordan River. This land was allocated by the League of Nations to Great Britain in 1923 as “mandate Palestine.” It can be argued that Canada’s foreign policy has tilted in favour of Israel over the years, but that at least it contained some nuance and flexibility. All of that ended when the Conservatives formed government in 2006. The Harper government quickly adopted Baird’s white-hat-versus-black-hat approach. This is a perspective that lauds Israel, but dehumanizes Palestinians and demonizes Arab states and non-state actors in the region.

In June 2006, hostilities erupted between Israel and Palestinian groups based in Lebanon. The conflict killed an estimated 1,200–1,300 people in Lebanon and 165 in Israel, left hundreds of thousands homeless in Lebanon and severely damaged civil infrastructure. Despite widespread criticism regarding the scope and ferocity of the Israeli attack, Prime Minister Harper described the bombardment and invasion of Lebanon as a “measured response.”<sup>11</sup>

Other major Israeli military exercises in Gaza (in 2006, 2009 and 2014), which resulted in even more deaths than the Lebanese invasion, would also expose the significant shift in Canadian foreign policy in the region.

Israel made a surprise attack upon its neighbours in 1967, moving deeply into Palestinian territory and initiating a prolonged and military occupation in the West Bank and the Gaza Strip. The first Palestinian *Intifada*, or “uprising,” against the occupation began in 1987 and lasted through 1993. The actions began with general strikes, boycotts and civil disobedience, but escalated into a long and violent standoff. Over a six-year period, Israeli forces killed an estimated 1,200 Palestinians while Palestinians killed 100 Israeli civilians and 60 military personnel.

In 1996, Israel decided to withdraw its army and Jewish civilians from Gaza, including Jewish settlements. However, many of those settlers then moved to the West Bank. In Gaza, the Israeli military continued to control all access by land, sea and air, including by means of a naval blockade. In the words of Oxford professor Avi Shlaim, a former member of the Israeli army: “Gaza was converted overnight into an open-air prison.... The living conditions in the strip remain an affront to civilized values [and are] a powerful precipitant to resistance and a fertile breeding ground for political extremism.”<sup>12</sup>

Israel launched military attacks upon neighbouring Gaza in 2006, 2009 and 2014. The Harper government’s position in each of these conflicts was simply that Israel had a right to defend itself. This implies that Israel is the victim rather than

a perpetrator of violence in the region. In the July 2014 conflict, after the Israeli bombing of a UN school in Gaza that killed at least 17 displaced Palestinians who were sheltering there, Harper said: “(w)e hold the terrorist organization Hamas responsible for this. They have initiated and continue this conflict and continue to seek the destruction of the state of Israel.”<sup>13</sup>

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## Canada and the international community

Shortly after the Canadian election in May 2011, Prime Minister Harper stood alone among G8 leaders meeting in France in his opposition to a joint statement calling on the Israelis and Palestinians to negotiate a two-state solution based on Israel’s borders before the 1967 six-day war. President Obama’s position was that the pre-1967 borders of Israel should form the basis for new peace negotiations. He added that Israel and the Palestinians would have to swap land to take into account the many West Bank settlements created by the Israelis since 1967.<sup>14</sup>

Israeli Prime Minister Benjamin Netanyahu had already flatly rejected that proposal and Israeli newspapers reported that he spoke to Harper about the matter. Since the G8 works on the basis of consensus, upon Harper’s insistence the group’s final statement removed any reference to the 1967 borders.<sup>15</sup>

As Prime Minister, Harper rarely referred to the two-state policy, but some of his MPs were not as discreet. Among those accompanying the prime minister on his visit to Israel in 2014 was James Lunney, a past chair of the Canada–Israel Interparliamentary Group. Lunney travelled to Israel frequently and, in an op-ed in the *Jerusalem Post* in October 2013, the MP called for a re-examination of the two-state solution. Lunney described it as akin to “trying to hammer a square peg into a round hole” – even though a two-state solution remains official Canadian government policy.<sup>16</sup> *Globe and Mail* columnist Jeffrey Simpson has suggested the Harper government “insists that it favours a two-state solution, but everyone knows it will do or say nothing to nudge Israel in that direction, or to chastise Israel for doing next to nothing to move in that direction.”<sup>17</sup>

In November 2012, the United Nations Security Council passed a resolution to upgrade the status of the Palestinian Authority to non-member observer. This designation is similar to the standing accorded to the Vatican. The vote, which passed by a margin of 138–9, was largely symbolic and did not mean the Palestinians would be admitted to the UN. John Baird flew to New York to oppose the resolution “in the strongest terms.” He warned the move would be destructive to a negotiated peace deal between Israel and the Palestinians, and that it would affect the Palestinian–Canadian relationship.<sup>18</sup>

It is widely believed that Canada's foreign policy stance on the Israel–Palestine conflict was the reason why, in 2010, Canada lost out to Germany and Portugal for a two-year, no-veto seat on the UN's Security Council. The *Globe and Mail* described the loss as a “humiliating rejection” for Canada and a “deep embarrassment” for the prime minister.<sup>19</sup> Paul Heinbecker, Canada's former ambassador to the UN, described it as a “painful loss” and said many of Canada's decisions — including decreased African aid, its support of Israel, and its stance on climate change and peacekeeping — were unpopular with the international community.<sup>20</sup>

The Harper government, on the other hand, wore this repudiation at the UN as a badge of honour, proof that its position was one of principle in opposition to an international organization the government has accused of anti-Semitism and of appeasing terrorists.

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## The attack on human rights organizations at home

For the Harper government, it was not enough to show unwavering support for Israel in international fora and in public statements. The government has, over the past several years, actively attempted to silence or vilify critics of Israeli policy toward the Palestinians.

During a Peoples' Social Forum held in Ottawa in 2014, Alex Neve, the secretary general of Amnesty International Canada, described his concerns with the government's “pervasive and deepening campaign” against key pillars of freedom of expression in Canada. “The space to dissent and advocate on issues such as human rights, environmental rights and social justice is shrinking,” Neve said. “I lament that this is happening in Canada.”<sup>21</sup>

Amnesty is one of a number of groups involved in Voices-Voix, a coalition that keeps a running tally of those organizations and individuals who have been harassed and bullied by the government (see Eliadis chapter). Among them is KAIROS, an ecumenical social justice coalition, and the International Centre for Human Rights and Democratic Development. The latter organization was created in 1990 by then prime minister Brian Mulroney at arm's-length from government and with a mandate to support democracy-enhancing projects internationally.

In November 2009, the Canadian International Development Agency (CIDA) informed KAIROS it would not approve a grant request over the next four years. At the time, KAIROS was given no reason for the decision, but the organization was told later that it did not meet the government's changing priorities for delivering development assistance. KAIROS, which acts on behalf of 11 of Canada's major churches or church-based organizations, and its predecessor groups had received

money from CIDA for 35 years to support partners working in regions experiencing some of the world's most serious human rights violations.

On December 16, Immigration Minister Jason Kenney spoke at a global forum in Jerusalem and made the stunning claim that KAIROS and several other groups had lost their funding because they were anti-Semitic. KAIROS and its church sponsors were outraged, stating the minister's charges were false. "Two points need to be made: Criticism of Israel does not constitute anti-Semitism, and CIDA was developed to fund international aid and not to serve political agendas," said the group.<sup>22</sup>

Despite Kenney's claims of anti-Semitism, the government largely stuck to its story that dumping KAIROS was the result of CIDA's changing aid priorities. But one year later, that explanation was publicly debunked in a manner most embarrassing to the government, and especially to Bev Oda, former minister responsible for CIDA. In October 2010, *Embassy Magazine* obtained and published the documents prepared for Oda regarding the KAIROS grant application. They showed the application had actually been recommended for approval by CIDA's president and acting vice-president. Oda also signed the memorandum, recommending that the project be approved, but a handwritten notation inserted the word "NOT" into the final sentence. As a result, the document read as follows: "Recommendation — That you sign below to indicate you NOT approve the contribution of \$7,098,758."<sup>23</sup>

Oda and CIDA's then president Margaret Biggs were called to testify before a parliamentary committee in December that year. Biggs acknowledged under questioning that she had recommended the minister approve the KAIROS proposal, and Oda told sceptical MPs that she did not know who altered the memorandum. But she recanted in the House of Commons in February 2011, claiming, "The 'Not' was inserted at my direction."<sup>24</sup> In other words, she had lied to the government. Her admission fueled calls for her resignation — demands that became louder when some of her personal spending habits while on government business came under fire. Oda left politics in 2012, avoiding her likely demotion from the cabinet.

The Centre for Human Rights and Democratic Development (Rights & Democracy) suffered a similar fate to KAIROS under the Harper government. The government started its attack on the organization through allegations against its president, Rémy Beauregard, during and following a particularly tense meeting in January 2010 in which recently appointed members of the agency's board of directors made accusations about financial mismanagement. These new members also asserted that Rights & Democracy was funding terrorist groups in the Middle East. Beauregard died of a heart attack in the early hours of the following day.

A *Globe and Mail* story following Beauregard's death quoted sources as saying the government's new appointments to the board had dramatically altered the organization's direction, placing Beauregard under increasing stress. One of those

appointments was Aurel Braun, a professor at the University of Toronto. He became the board's new chair and, along with some other board members, alleged widespread mismanagement under Beaugard.<sup>25</sup>

Four Rights & Democracy board members appeared before a parliamentary committee on April 1, 2010. Jacques Gauthier, the new vice-chair, talked about a “dysfunction” at the organization that, he said, had to do with “accounting issues and accountability.” Braun described “a private fiefdom using public money” and said that far too much of that money “has gone to terrorist front organizations.” They were also harshly critical of three small grants of \$10,000 each to rights monitoring groups in the Middle East. One of them was Israel-based and two were Palestinian.<sup>26</sup>

By the time they appeared before the parliamentary committee in that April meeting, new members of the board at Rights & Democracy had hired the accounting firm Deloitte to investigate how the agency's money had been spent. The board promised that Deloitte's audit would be ready within five weeks, but more than five months passed without their releasing the report. Paul Wells of *Maclean's* magazine asked several times why the report had not been made public.<sup>27</sup>

The House of Commons standing committee on foreign affairs and international trade made four requests to see the audit and, in December 2010, finally ordered Rights & Democracy to provide the report or face parliamentary censure. The organization argued that it could not present the report publicly because that might interfere with a lawsuit by three former directors who had been fired and were suing the agency. The committee eventually agreed that the report, or perhaps an abridged version of it, would be presented at an in-camera meeting on December 16.

That meeting never occurred. The government cancelled it at the last minute and so the audit, which had cost \$253,000, was not tabled. It was, however, released in its entirety on the *Globe and Mail's* website. Reporter Daniel Leblanc wrote, “The audit did not come to damning conclusions regarding the agency's financial management.”<sup>28</sup> Wells, in a column for *Maclean's* titled “Rest in peace, Rémy Beaugard,” wrote:

[The audit] shows what Beaugard's defenders have long asserted: that the agency was run without scandal, and without unusually lax management, even before his arrival; that he was taking clear steps to improve its management; and that specific claims against him and his staff from Gauthier [Rights & Democracy vice-president] and others hold no water. In short, that Rémy Beaugard died while fighting back against an unfounded witch hunt perpetrated by scoundrels who today stand unmasked and humiliated.<sup>29</sup>

The attacks on KAIROS and Rights & Democracy had one thing in common. They were based, at least in part, on information and complaints from an Israel-based

group called NGO Monitor. In February 2010, Wells reported that Gerald Steinberg, the Israeli political scientist who runs the organization, had published an op-ed in the *Jerusalem Post* congratulating the Canadian government for its actions against both aid groups. “Steinberg’s list of organizations he regards as anti-Israel is long,” wrote the *Maclean’s* columnist. “In one publication he decries CIDA aid to what he calls ‘extremist political groups’ opposed to Israel, among which he counts Médecins du Monde, Oxfam, and the Mennonite Central Committee of Canada.” Wells added that NGO Monitor “diligently chronicles international criticism of Israel’s human rights record and portrays it as an attack against Israel’s right to exist.” He described Steinberg as a friend of Braun, who had earlier attempted (unsuccessfully) to have Steinberg speak to the board at Rights & Democracy.<sup>30</sup>

The idea that the pacifist Mennonite Central Committee (MCC) could be labelled an extremist group is mind-boggling, but MCC was another of the church-based organizations to have its funding cut back by CIDA. The same fate befell a long list of secular development aid agencies that have lost either part or all of their CIDA funding. KAIROS chose to fight back against government bullying and the allegations of anti-Semitism. The resulting publicity has invigorated the organization and public support for it. Many other groups chose to remain silent about their similar treatment. Rights & Democracy was closed down entirely by the government in 2012.<sup>31</sup>

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## Conclusion

The white-hats-versus-black-hats campaign waged by the Harper government in its approach to questions of Israel and the Middle East is deliberately simplistic, with domestic and international repercussions. Not only does this kind of language consciously avoid both history and current reality, but it has led to important human rights and development organizations being deprived of the public finances they rely on to do good work in areas including the Middle East.

A growing number of church-based and other groups who have dared to criticize government policies regarding Israel, human rights or environmental policy now find themselves the targets of costly and intimidating financial audits by the Canada Revenue Agency (CRA). The audits are a thinly disguised attack by the government that spreads a chill among organizations that have much to contribute to the debate about Canada’s domestic and foreign policy. The government’s intention is to stifle healthy debate in Canada, and that diminishes an increasingly fragile democracy.

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# Investor versus state

Canada's trade and investment treaties are undermining democracy and regulation at home and abroad

Scott Sinclair<sup>1</sup>

WHEN THE NORTH American Free Trade Agreement (NAFTA) came into force 21 years ago, there was plenty of debate about its likely impact on jobs, energy and sovereignty. The environmental movement of the day nearly scuttled the deal on fears it would severely curtail the ability of governments to set strong environmental protection and conservation policies. But these groups were split down the middle by a government proposal for what we can now conclusively call a useless environmental side-agreement, paving the way for NAFTA's ratification.

Unfortunately, at the time much less attention was paid to an obscure investor–state dispute settlement (ISDS) provision in the treaty's investment chapter. It set up a process through which foreign investors could choose to settle disputes with government through binding private arbitration instead of national courts. The rationale for granting this extraordinarily sweeping right to foreign investors was that Mexican courts were prone to corruption and political interference. But to date, only a handful of the 78 investor–state lawsuits filed under NAFTA challenge the decisions of Mexico's courts.

Instead, foreign investors have used NAFTA's ISDS process to target a broad range of government measures in North America — especially in the areas of environmental protection and natural resource management — on the grounds that

they violate the treaty's broadly worded investor protections. Canada has faced 36 ISDS claims, more than any other developed country in the world.<sup>2</sup> Since 2005, we've been hit by 70% of all NAFTA investor lawsuits.<sup>3</sup> One particularly egregious case, in which Canada lost, provides an excellent example of why countries around the world are turning their backs on excessive investor rights in treaties like NAFTA.

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## Environmental policies declared illegal

The federal government repeatedly claims that NAFTA and other free trade and investment deals “do not compromise the environmental protection measures that Canada has implemented.”<sup>4</sup> Contradicting this claim in March 2015, a NAFTA tribunal ruled that a joint federal-provincial environmental assessment, which led to a U.S. firm being denied a permit to build a massive quarry in a sensitive coastal area in Nova Scotia, violated the company's NAFTA investor protections. The U.S. investor, Bilcon, is now seeking over \$300 million in damages from the federal government.

In 2007, after three years of extensive study and public consultation involving all interested parties, a joint federal-provincial environmental assessment panel recommended against the quarry and related marine terminal due to their negative environmental and socioeconomic effects. The governments of Nova Scotia and Canada accepted that recommendation, denying approval for the controversial project. It was a rare move for a federal panel, illustrating the seriousness of the environmental concerns.

Bilcon did not appeal any decisions related to the project thorough the domestic courts, even though it had the right to pursue a federal court review of the environmental panel's finding. Instead, and with the help of Canadian lawyer Barry Appleton, it bypassed the Canadian courts and went directly to NAFTA investor-state dispute settlement. The NAFTA tribunal ruled 2-1 that both the environmental assessment process and the subsequent decision to block the project violated the firm's NAFTA guarantees to minimum standards of treatment and national treatment.

Though no Canadian court had ruled on the matter, the NAFTA tribunal determined that the environmental assessment panel had violated Canadian law. The majority on the tribunal felt the criterion of “community core values,” which it construed as the primary basis of the environmental assessment panel recommendation against the project, was outside the panel's legal mandate. They also condemned the environmental panel's decision to recommend against the project outright without suggesting changes that might have mitigated its negative impacts and allowed Bilcon to proceed.<sup>5</sup>

The minimum standard of treatment protections in NAFTA and other treaties have been rightly criticized as inherently subjective, allowing arbitrators to apply their own preferences and prejudices. Without a doubt, the Bilcon ruling validates these concerns. The tribunal, chaired by a German jurist, was not qualified to judge whether or not Canadian law had been broken. According to many experts, the majority's interpretation of Canadian law was almost certainly wrong. The tribunal "lacked, with the exception of the dissenting member, even a basic understanding of the legal context within which the decisions it was asked to rule on where made," according to environmental law professor Meinhard Doelle.<sup>6</sup>

NAFTA chapter 11 gives private for-profit arbitrators the power to usurp the role of the Canadian courts, which were precluded from ruling on this matter because of the investor's own decision to bypass them. This travesty of justice exemplifies how the ISDS regime privileges foreign investors, elevating them above citizens, legislatures and the courts in violation of the basic principle of equality before the law.

Yet, as the tribunal's dissenting member also stressed, even if federal environmental assessment legislation had not been followed to the letter (which was unproven), this should never have been deemed a violation of NAFTA's guarantees of minimum standards of treatment under customary international law. It is the position of all three NAFTA governments that such standards should be interpreted cautiously and only in cases involving the most egregious state conduct.

The Bilcon majority's ruling that the federal and Nova Scotia governments violated NAFTA's national treatment (non-discrimination) rule is also deeply worrying. It equates cases where investors are treated differently to full-fledged discrimination based on nationality. Governments frequently treat investors differently for perfectly legitimate reasons. An investment in an environmentally sensitive region, for example, may be treated differently than an investment in another less fragile or more highly industrialized area, whether the investor is a foreign corporation or a Canadian entity.

The NAFTA tribunal scrutinized examples of what it considered to be comparable projects involving Canadian investors in quarries or marine terminals that had either not been subject to full environmental assessment, approved with mitigation measures or approved outright. This satisfied two arbitrators, with the third again disagreeing, that Bilcon had been treated less favourably in violation of the national treatment rule.

Deciding if the proponents (investors) of completely unrelated projects were treated better or worse is difficult and inherently subjective. The tribunal's decision to equate different, allegedly less-favourable treatment with nationality-based discrimination is troubling. This ruling demonstrates in graphic terms how ISDS enables private arbitrators to hold elected governments to impossible standards

of consistency whereby any difference in treatment can be likened, at the arbitrator's discretion, with nationality-based discrimination. Democratic regulation is paralyzed by such presumption.

The environmental assessment panel did its job thoroughly and professionally. It acted well within the legal mandate established jointly by the provincial and federal governments. Its well-reasoned and considered recommendations were welcomed by the majority of residents and acted upon by both levels of government. But the NAFTA ruling has now tainted this all-too-rare victory for environmental protection.

While Bilcon did not get to build its massive quarry, the NAFTA ruling won by the U.S. investor has blown a huge hole in the Canadian environmental assessment process. The dissenting member of the tribunal objected to the majority's ruling as being a "significant intrusion into domestic jurisdiction" that "will create a chill on the operation of environmental review panels." Fittingly, he described it as "a remarkable step backwards" for environmental protection.<sup>7</sup> Unless this ISDS threat is removed, the prospect of second-guessing and punitive monetary damages will cripple future environmental assessment panels, which have already been considerably weakened by Canada's current federal government (see Kinney chapter).

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## Global backlash to investor "rights"

Cases like this NAFTA lawsuit from Bilcon are fuelling a growing global backlash against ISDS. Alarmed by increasingly aggressive corporate recourse to investor-state arbitration to challenge public policy and regulatory measures, many governments around the world are seeking to extricate themselves from this anti-democratic feature of modern trade and investment treaties. Opposition is strongest within Latin America, where Ecuador, Bolivia and Venezuela have withdrawn from the World Bank body responsible for administering investor-state arbitrations and are terminating their bilateral investment treaties.

Brazil has never ratified a treaty that included ISDS; Argentina, which still faces billions of dollars in unresolved claims from its 2001 financial crisis, is a vocal critic. South Africa intends to end the use of ISDS in its trade and investment treaties. After being hit with a series of contentious claims, India has expressed similar misgivings. Indonesia has also indicated it will let its existing treaties that include ISDS expire.

The former Australian government, after a thorough independent review, officially spurned ISDS, although the subsequently elected conservative government has reversed that stand. Even in Europe, where ISDS was conceived in the post-col-

onial era, the German and French governments have indicated they would prefer that ISDS be left out of impending commercial treaties with the U.S. and Canada.

Despite a bruising experience under NAFTA chapter 11, Canada is oddly (to put it mildly) moving in the opposite direction to much of the world and global public opinion on ISDS. For example, the current federal government boasts it has concluded or negotiated over two dozen Foreign Investment Promotion and Protection Agreements (FIPAs), including a controversial and highly imbalanced pact with China, which the federal cabinet quietly ratified in the fall of 2014.<sup>8</sup> New trade agreements inked with South Korea and the European Union also include comprehensive investment protection chapters and ISDS, as does the impending Trans-Pacific Partnership Agreement (TPP).

The federal government has also pressured the provinces into agreeing to Canadian ratification of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (ICSID Convention), which will make tribunal awards even easier to enforce, in part by removing the right of domestic courts to review tribunal decisions on procedural grounds, such as conflict of interest or corruption.<sup>9</sup>

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## **The use of ISDS by Canadian mining companies**

None of this is radically inconsistent with the trade policy of past governments. In fact, most of the trade and investment treaties concluded by the Conservatives since 2006 were started by the previous Liberal government. Perhaps we can say that, consistent with the Conservative's 2006 platform, this government has sped up the rate at which it negotiates investment treaties. Public statements suggest its main objective is to create a "predictable" investment climate in countries where Canada has mining or energy resource interests, and the record of Canadian ISDS cases abroad backs this up.<sup>10</sup> Unfortunately for those countries, and for Canada, the government's staunch support for the ISDS regime fundamentally weakens the democratic space and development options of present and future governments (see Engler case study).

The inclusion of ISDS in pacts with major capital-exporting countries such as the EU, China and South Korea is especially troubling and will certainly accelerate the growth of ISDS claims against Canada. The Canada–EU Comprehensive Economic and Trade Agreement (CETA) actually contains expanded protections for investors regarding fair and equitable treatment, which is the most often invoked article in NAFTA chapter 11 disputes, and the most successfully used in global investment disputes. The CETA also expands the grounds, beyond NAFTA, upon which foreign investors can challenge financial regulation.<sup>11</sup> Under NAFTA

chapter 11's most-favoured nation obligation (NAFTA Article 1103), U.S. and Mexican investors will be able to take advantage of CETA's beefed-up investor protections. If completed, the pending Trans-Pacific Partnership agreement will further boost investor rights, while deepening the pool of investors eligible to use ISDS.<sup>12</sup>

Supporters of this aggressive expansion of investor rights and ISDS often point out that governments do not always lose, with respondent states prevailing in about half of cases. What they neglect to mention is that investment protection treaties and ISDS are completely one-sided. Governments can be sued, but there are no corresponding obligations for foreign investors or mechanisms to hold them — frequently wealthy multinational companies — accountable for their behaviour. In a brilliant analogy, Manuel Perez Rocha at the Institute for Policy Studies likens ISDS to, “playing soccer on half the field. Corporations are free to sue, and nations must defend themselves at enormous cost — and the best a government can hope for is a scoreless game.”<sup>13</sup>

Another commonly heard argument is that it would be impossible to persuade developing countries to accept ISDS if Canada and other developed countries did not fully embrace it as part of their overall trade agenda. In reality, Canadian investors have had very little success winning cases using ISDS, notably against the U.S. but also in cases involving developing countries.

This is generally a good thing. High-profile cases pursued by Canadian investors abroad are bringing Canada and Canadian firms into disrepute. For example, Pacific Rim challenged the El Salvador government for its moratorium on gold mining (enacted to protect the country's scarce water), drawing global criticism. In the summer of 2015, Gabriel Resources, another Canadian firm, decided to sue the Romanian government over its decision to block the environmentally destructive and publicly unwanted Rosia Montana gold mine. There are far more appropriate options than ISDS for foreign investors to manage risk, including private and publicly backed risk insurance.

ISDS supporters also argue that some NAFTA tribunals have ruled in favour of the state's right to regulate, proving concerns about regulatory chill are unjustified.<sup>14</sup> It's true that some NAFTA tribunals have rejected investor challenges to government regulation.<sup>15</sup> The Methanex ruling in particular has been praised, even by critics of NAFTA chapter 11, as a well-reasoned defence of the state's police powers and right to regulate.<sup>16</sup>

The fact remains, however, that tribunals, unlike domestic courts, are not bound by the law of precedent. The basic defect in ISDS is that arbitral tribunals have complete freedom to interpret broadly worded investment protections as they see fit. And if they stray from reasonable interpretations, or concoct rationales to support their own biases or prejudices, they are completely beyond the reach of domestic



courts and legislatures. This radical judicial autonomy may make sense in commercial arbitration, where both parties have provided explicit consent to submit a specific matter to dispute settlement. But it is perverse where states have unwisely provided unconditional consent to submit any matter, including those that concern public law, policy and regulation, to final, binding arbitration.

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## Conclusion

We now have two decades of experience with ISDS through NAFTA chapter 11 and in Canadian investor lawsuits filed against foreign governments. Clearly, the broadly worded investment rights in these treaties, of which Canada has dozens in place and as many more waiting to be ratified, give foreign investors a coercive tool to deter legitimate public interest regulation and to seek compensation when governments have the courage to proceed with regulation despite this intimidation. Democratically elected governments are being forced to pay to govern.

Canada is already one of the world's top targets under ISDS, and the number and frequency of claims are growing rapidly. The majority of these disputes deal with sensitive regulatory or policy matters. Current trends, unless checked politically and legally, will only worsen. Canadians and their elected officials should be deeply concerned. Unfortunately, in stark contrast to opinion in much of the world, there is surprisingly little political debate about the corrosive influence of NAFTA chapter 11 and ISDS on public policy and democracy in Canada. Instead, prevailing trade and investment policy is entrenching ISDS even more deeply.

As Naomi Klein argues persuasively in her latest book<sup>17</sup>, meeting humanity's global challenges, including reining in multinational financial firms or addressing the existential threat posed by rapid climate change, will require more (and more assertive) government intervention and regulation. Extreme investor rights agreements are relics of an era when market fundamentalism — the belief in the virtues of fully liberalized markets — was the prevailing political wisdom. It is time to move on.

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## Endnotes

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## CASE STUDY

# Canada as mining superpower

Yves Engler<sup>1</sup>

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### The case of Burkina Faso

CANADIAN MINERS WERE among the first foreign miners in Burkina Faso and they now dominate the impoverished West African country's main export industry, holding nearly \$2 billion in assets in 2015.

In 2010, IAMGOLD opened a major open pit gold mine in northern Burkina Faso, which gobbles up the arid region's water. To make way for the Toronto company's Essakane project, the government forced 13 villages to relocate.<sup>2</sup> The government and IAMGOLD promised to provide new land, houses and jobs to the over 10,000 people displaced, a pledge that was only partially fulfilled.<sup>3</sup>

Before IAMGOLD began its operations, most people in the area were small-scale miners who descended underground to hammer gold from rock. Miners had been living off of Essakane for over a quarter-century, but when IAMGOLD is finished extracting, sometime around 2025, the area is likely to become a ghost town.

Ottawa provided support for IAMGOLD's operations in 2011. As part of its Corporate Social Responsibility Strategy for the Canadian International Extractive

Sector, Ottawa financed “a job skills training project in 13 communities to meet labour market demands in a variety of sectors, including the mining sector and its sub-sectors.”<sup>4</sup> The initiative was run by the Toronto company and Plan Canada. Ottawa put \$5.6 million into the project while IAMGOLD invested \$1 million and Plan Canada spent \$900,000.<sup>5</sup>

The project was the signature initiative in a controversial effort to strengthen the bonds between mining companies and non-governmental organizations. According to the head of training programs at Burkina Faso’s education ministry, Adama Traore, the goal of the CIDA-funded project was to “respond to the needs of the mining company,” and that “a number of graduates are expected to go directly into jobs at the mining company.”<sup>6</sup>

The Plan Canada–IAMGOLD training took place in a charged political context. To scare its workers, IAMGOLD closed the Essakane mine in May 2011.<sup>7</sup> The company’s CEO, Steve Letwin, warned the miners: “I have zero tolerance for strikes that are illegal. And, as they [the workers] will find out, will not tolerate anything that has a negative impact on our stakeholders.”<sup>8</sup> In March 2012, *Bloomberg* reported that 100 people protesting the terms of their contract and a lack of local employment at the Essakane mine were scattered by the police.<sup>9</sup>

These protests partially explain why the company saw the CIDA-funded job training as helpful. The day *Bloomberg* reported protests at the mine, the *Globe and Mail* quoted Letwin describing youth unemployment in the community as a major obstacle for the company, arguing that “over the course of time, they’re [youth] going to want more of a take,” which could mean “increased taxes and royalties” for IAMGOLD.<sup>10</sup>

The second largest miner in Burkina Faso, SEMAFO is an outgrowth of Benoit La Salle’s work for Plan Canada, a subsidiary of Plan International, “one of the world’s largest development organizations.” SEMAFO “was created in 1995 during my first visit to Burkina Faso as part of a mission with the NGO-Plan,” said LaSalle. “I am the president of the administration council of Plan Canada and a director of Plan International. So, after the Plan-organized visit to Burkina Faso provided me an opportunity to get close with national authorities, I decided to create SEMAFO to participate in the development of Burkina Faso’s mining industry.”

As Plan Canada’s designated Francophone spokesperson, La Salle got to know former Burkina Faso president Blaise Compaoré in the mid-1990s. “The president turned to me and said that I should come back to his country with Canadian expertise to help his country develop its mining sector,” La Salle told another reporter.<sup>11</sup> La Salle procured mining expertise while Compaoré granted the Canadian a massive stretch of land to prospect. “The land package we have is way beyond what you’d see anywhere else in the world,” La Salle boasted.<sup>12</sup>

While the president of the country backed Canadian miners, they backed the Compaoré government. During a visit to the African nation in March 2014, IAMGOLD's Letvin, who had previously been made Officer of the National Order of Burkina Faso, thanked the prime minister for expanding the company's concession.<sup>13</sup> At a September 2014 Gold Forum in Australia, SEMAFO lauded the government as "democratic and stable."<sup>14</sup>

A strong backer of the mining industry, Compaoré was ousted by popular protest in October 2014 after he attempted to amend the constitution to extend term limits. In 1987, Compaoré seized power by killing Thomas Ankara, "Africa's Che Guevara," who oversaw important social and political gains during four years in office. Two years after Ankara's death, Compaoré, who was part of a triumvirate, claimed his co-rulers were plotting to overthrow the government and had them executed. He then won a largely uncontested presidential election in 1991.

After ending Compaoré's 27-year rule, community groups and mine workers launched a wave of protests against foreign-owned mining companies. Vancouver's True Gold Mining shuttered its Karma gold project for five months when local residents damaged its equipment. Protesters also forced Ottawa's Orezone Gold to close and targeted IAMGOLD's Essakane mine. SEMAFO's director of corporate affairs, Laurent Michel Dabire, told a *Bloomberg* reporter, "the insurrection has really been a catalyst for serious social movements in the mining sector.... They think 'if we can chase somebody who's been in power for 27 years, we can chase the managing director.'" Dabire added that Quebec's leading miner was looking to fund a new police unit that would focus on protecting mining interests in the country.

In the aftermath of Compaoré's ouster, Canadian companies relied on military and foreign influence to protect their mining licenses. A December 2014 *Business Monitor Online* analysis, titled "Mining Audit Poses Little Risk to Established Players," concluded: "foreign pressure will also be brought to bear. Burkina Faso is heavily dependent on foreign aid, much of it from Canada, the home jurisdiction of most of the miners that would be hurt by significant review. The political influence of the military — which will likely continue under any future government — will prevent the introduction of aggressively populist legislation."<sup>15</sup>

Four days after Compaoré was ousted, Canada suspended development monies to the government until a "legitimate and accountable civil authority has been re-established." Three weeks later, Ottawa restarted aid to Burkina Faso, which had been added to Canada's list of priority aid recipients earlier that year. "We are satisfied that a legitimate and accountable civil authority is leading Burkina Faso toward what we hope will be peaceful and democratic elections in 2015," said Christian Paradis, then minister of international development.<sup>16</sup>

Yet the interim Burkina Faso regime was little more than “a masked military junta,” according to Christopher Abbott, a junior research fellow at the NATO Council of Canada. Ottawa was little concerned with the constitution or democracy, but rather focused on the authorities’ mining policy. When the military killed at least 10 people protesting Compaoré just before he was overthrown, then foreign minister John Baird called on “all sides to exercise restraint and avoid resorting to further violence,” even though the violence was largely meted out by the Compaoré regime.<sup>17</sup>

Only four months before the popular revolt, Trade Minister Ed Fast visited Burkina Faso to open an office of the Canadian Institute of Mining, Metallurgy and Petroleum.<sup>18</sup> During his visit, Fast also concluded negotiations on a Foreign Investment Promotion and Protection Agreement (FIPA). The agreement would protect Canadian miners from popular discontent. Harper’s Conservative government negotiated the FIPA with the Compaoré government then signed it with the unelected transition administration that took over after the president was ousted.

The West African nation was represented at the April 2015 FIPA signing ceremony in Ottawa by Prime Minister Yacouba Isaac Zida, who was deputy commander of the presidential guard when Compaoré was ousted by popular protest. A U.S.- and Canadian-trained Lieutenant Colonel, Zida was one of five military men in the cabinet overseeing Burkina Faso’s transition toward elections after Compaoré’s 27-year rule.<sup>19</sup>

While the caretaker government was supposed to move aside after an election planned for the fall of 2015, the investment treaty will live on for at least 16 years. According to the FIPA, “the termination of this Agreement will be effective one year after notice of termination has been received by the other Party.” The subsequent line, however, reads that “in respect of investments or commitments to invest made prior to the date when the termination of this Agreement becomes effective, Articles 1 to 42 inclusive, as well as paragraphs 1, 2 and 3 of this Article, shall remain in force for a period of 15 years.”

In other words, any elected government, even if they cancel the FIPA, will be effectively bound by the accord, which gives Canadian corporations the right to sue Burkina Faso internationally – for example, if changes to mining policy negatively affect Canadian extractive industry profits – for another decade and a half.

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## Endnotes

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## ON THE RECORD

This book, which builds on the 2008 collection *The Harper Record*, continues a 25-year tradition at the Canadian Centre for Policy Alternatives of periodically examining the records of Canadian federal governments during their tenure. As with earlier CCPA reports on the activities of the Mulroney, Chrétien and Martin governments while in office, this book gives a detailed account of the laws, policies, regulations and initiatives of the Conservative government of Prime Minister Stephen Harper while in minority (from 2008 to 2011) and majority (from 2011 to 2015).

The 36 writers, researchers and analysts who have contributed to this book probe into many aspects of the Harper government's administration over the last two Parliaments. From the economy to the environment, social programs to foreign policy, health care to tax cuts, the tar sands to free trade deals, and many other areas, these chapters dig through the facts and key moments for this government over the past seven years, highlighting in particular its policy response to the global financial crisis and Great Recession.