

DAY OF DISSENT

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Check against Delivery

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Keynote Remarks

Thank you to Lawyers' Rights Watch Canada for inviting me to this event, and to the other organizers and sponsors, Amnesty International, the BC Civil Liberties Association, the Council of Canada and SFU Continuing Studies.

In light of the title of today's event, Day of Dissent, we must ask, what has happened to these words - the simple and powerful words like "advocacy" and "dissent" and "activism"? Words that were once the ramparts for free expression, free assembly and free association – for Ghandi, King and Mandela, and more recently the Arab Spring and, in my home province, the Maple Spring?

The current Government of Canada is transforming these words and they have acquired something of the whiff of sulphur of late.

Some Caveats

Despite what I have to say today, I must begin by expressing sympathy for a government that is trying to make fundamental changes in policy and working to control its message.

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I have been a lawyer and, I am proud to say, an advocate. But I have also worked as a civil servant for a decade and know how difficult it is to implement new policy in an open and safe environment for discussion among senior public servants, let alone the challenges of steering the large – still large – ship of government in new directions during a time of significant downsizing.

I have nothing against the long tradition of conservatism in this country. I deliberately sought a position as an advisor in the Mulroney government in the early 1990s and a few years later, joined the Ontario public service on the day that the Harris government was sworn in.

So, what you are about to hear is not a partisan position or a reflexive reaction against a conservative agenda: in a democratic society we have to accept the reality that policy positions we do not like may prevail from time to time, and we have to work within that system. The Harper government is democratically elected. Not surprisingly, it is implementing the program that it said it was going to implement.

That too is fair game and part of our democratic process.

However, what I will talk about today is something that goes well beyond the fair or foul play of partisan politics. Even as a former public servant, it seems to me that the current environment shows, at the very least, reckless disregard for the public space available for advocacy and dissent – again – preconditions for the meaningful exercise of fundamental rights. It is shutting down civil society and subjecting it to terms and conditions that it would never dream of imposing on the private, for profit sector.

This is a somewhat alarming development in a country like Canada, especially on the eve of the 64th anniversary of the Universal Declaration of Human Rights.

And while Canadians may think of themselves as champions of human rights, leading the way in the international community, forging a strong consensus for human rights and tolerance at home, there are serious doubts today about whether this is still accurate.

There has been a long-standing and nonpartisan consensus in Canada about the importance of human rights and tolerance, a consensus shared by left and right alike, and one that all the polls and surveys have consistently shown to be supported by the vast majority of Canadians.

I suggest to you that this consensus and the structures that support it are being steadily, deliberately dismantled.

In 2006, Ray Pennings and Michael Van Pelt published a signal article in the journal *Policy Options*, called “Replacing the Pan-Canadian Consensus”. The authors argue that the consensus about tolerance and human rights is giving way to an agenda that is less interested in and committed to both.

Thomas Walkom of the Toronto Star memorably dubbed it the “new, grim consensus,” and it is being implemented at the federal level through a number of fronts, each of which targets advocacy and dissent.

In response to these concerns, in the spring of 2010, a group of people came together because a growing and shared unease that something more was going on than a new government’s growing pains and policies.

Voices-Voix www.voices-voix.ca is a non-partisan coalition of NGOs, lawyers, human rights activists and civil society organizations.

To date, 218 Canadian organizations have publicly subscribed to Voices-Voix and are members of the Coalition. To date, 4,765 individuals have signed the Voices-Voix Declaration, which calls on the Government of Canada to:

1. Respect the right to freedom of opinion and expression
2. Act in accordance with Canada's democratic traditions
3. Commit to transparency in all its actions.

Voices began documenting instances where dissent and advocacy have been suppressed and has sought to trace the narrative arc of these developments, the trajectory, if you will, of the new, grim consensus.

Voices began with a focus on the defunding of civil society organizations – and especially longstanding development partners, like Kairos, Match International, CCIC and, more recently, Peace and Development.

Voices-Voix has identified 114 cases of organizations, academics and individuals who have been targeted, vilified or selectively defunded since 2010. Civil society organizations are overwhelmingly the focus, but public servants and public service, as well as academics, have been caught up.

Four additional fronts have opened up in our mapping of the assault on diverse voices, on advocacy, on democratic dissent and on the fabric of progressive civil society, bringing the total to five

1. The vilification of human rights leaders and civil society leaders, in part through the demonization and delegitimization of advocacy and dissent;
2. A pincer movement designed to crush funding of Civil Society Organizations and the constriction of the legal and public space in which these organizations operate;
3. A two-track strategy of either ignoring or directly interfering with the work of Parliamentary agents and arm's length organizations, further concentrating power in the hands of the Prime Minister's Office.
4. The 'death of evidence' that would otherwise be used to support progressive CSOs and track the progressive realization of rights. We have seen the shutting out and shutting down of knowledge and research and data, and the public infrastructure that supports these vital resources, and
5. The systematic marginalization of human rights and the Canadian Charter of Rights and Freedoms is both a byproduct and target of these planks.

There are \$5.2 billion in cuts at the federal level, legislative rollbacks of rights, and excessive muzzling of public servants and scientists in the public service. These factors make it difficult to assess or determine the impacts of the cuts. As many of you know Kevin Page, the Parliamentary Budget Officer, one of our case studies, has had to threaten to go to court to get the information his office needs to do their jobs. And he was supposed to part of the accountability solution!

Of the 114, Voices has documented about 70 of these cases, which we call our **hit list**.

This is not, by any means, a comprehensive survey of what is going on.

New incidents come to our attention every day and we are simply not able to track and document them all. I also have say that several organizations have asked us not to document their cases, for fear of further damaging their ability to sustain vital work or, put another way, to allow them to live to fight another day.

1. Demonizing Dissent

Organizations and people associated with or funding the environmental movement, who engage in advocacy, or simply tell the truth have labeled as "terrorists" and/or as operating under the influence of foreign agents and working against Canada's interests.

In 2010, those who opposed entirely counterfactual mandatory minimum sentences – sentences which have since, by the way, been the target of judicial refusals to apply them – have been associated with support for child pornography.

Aboriginal leader Cindy Blackstock has found herself under government surveillance because she has advocated for the rights, safety and equality of First Nations children.

Activism and advocacy themselves are suspect.

In the case of the HIV/AIDS Legal Network, the federal government said that it cut funds on the grounds of activism, or potential activism or, worse, because of human rights. Activism to support human rights was once the bedrock of any democracy that aspires

to the name. They have become dirty words now, however, seemingly unworthy of the taxpayer's support.

Canadian Doctors for Refugee Care, an association of medical doctors protesting the defunding of medical care and other health services for refugees, were accused by the government as liars, dissemblers and, worse, "activists," when they reported publicly on the impact of the health funding cuts on ill men, women and children following the partial elimination of the interim federal health program. Among the so-called activist dissemblers, it bears noting, is the head of family medicine at St. Mike's in Toronto.

2. Defunding Democracy

If social movements are indeed democracy by another name, then we are losing ours.

In Canada, since the 1970s, the nonprofit sector has relied on three principal sources of funding.

First is access to charitable status, which confers important tax benefits. We do not have the wealth or philanthropic base of our neighbours to the south and the charitable foundations that do exist in this country do little beyond the sorts of good works and bricks and mortar projects for which they are principally known. There are notable, if unsustainable exceptions, because they are too small to have much in the way of large-scale impact.

But, still, charitable support is important. Under this government, the charitable status of progressive, respected organizations has been threatened, including the organization Tides Canada. One must note that conservative organizations have not been touched.

The second source has been government. Also unlike our neighbours to the south, we believe, or used to believe, that government, acting in partnership with the nonprofit sector can and should have a critical role in public policy and public services.

That does not appear to hold true any longer. Women's groups that are engaged in research, advocacy and pay equity have lost significant parts of their funding. This is due in part to Status of Women funding rules being changed so that groups advocating

for the protection of women's human rights through research and policy are no longer supported. Three quarters of the Regional offices have been closed and programs that support research and advocacy on women's rights have ended. There may well be worthy organizations that have been funded but no information about new funding has been posted on their web site as of November 30, 2012.

Cuts from CIDA and other government departments have crippled many international development organizations, including Kairos, Alternatives, and the CCIC. The other shoe has dropped recently, with the announced new policy directions at CIDA whereby private sector partnerships were announced after the nonprofits were dumped.

Other key civil society organizations like the Centre for Equality Rights in Accommodation, CERA, and Canadian Feminist Alliance for International Action, also saw their funding affected.

The pincer movement of loss or threatened loss of charitable status on one side, and lost funding from government is crushing dozens of civil society organizations.

And most recently, we have the federal Bill C-377, which in the guise of fiscal legislation, is about to impose heavy reporting obligations on the union movement, including on contracts and funds disbursed over \$5,000. Big brother is, indeed, watching. And it is doing so in what the Canadian Labour Congress has argued is a completely unconstitutional move, infringing on the federal division of powers.

3. Democratic Institutions

Last year, seven independent Parliamentary agents, including former Auditor General Sheila Fraser, complained publicly that their work, recommendations and requests were being ignored by this government. Kevin Page's travails as Parliamentary Budget Officer have been much in the news for similar reasons.

But there are worse things than being ignored.

Outspoken heads of important oversight bodies have been fired or sidelined when their messages have become controversial or inconvenient.

- Paul Kennedy was removed as head of the Commission for Public Complaints (CPC) regarding the RCMP, after he advocated a more powerful and independent Commission.
- RCMP Chief Superintendent, Marty Cheliak who headed the Canadian Firearms program was removed from his functions.
- Linda Keen at the Canadian Nuclear Safety Commission was fired for shutting down a nuclear reactor for safety reasons.
- Munir Sheikh resigned from StatsCan following the misrepresentation of his position to the Canadian people.
- In 2012, StatsCan's high-profile chief economic analyst Phil Cross resigned too, saying that internal debate at Statscan was being suppressed in relation to questions about the long form census.
- The first, outspoken Veterans Ombudsman, Pat Stogran, was fired for being a strong advocate for veterans.

And let us not forget Rights and Democracy – left in tatters after what some commentators describe as a hostile takeover and the tragic death of Remy Beauregard in January 2010. It limped along for a further two years in a spectacular parade of bureaucratic bungling, incompetence and tens of thousands of dollars spent in vain to try to find something – anything – to tarnish Beauregard after his death. The organization shuttered in April 2012.

4. Attacks on knowledge, research and data

Knowledge organizations that provide research and evidence-based policy have also suffered.

The Law Commission of Canada has disappeared (again). Canadian Policy Research Networks, one of Canada's leading non-partisan think tanks closed its doors in 2009. The Canadian Council on Learning is gone.

Statistics Canada's mandatory long-form Census, once Canada's main source of reliable and robust statistical data, was abolished in 2010. The National Round Table on the Environment and the Economy, the National Council on Welfare and the First Nations Statistics Institute were chopped in 2012.

Sisters in Spirit's documentation project on missing and murdered women – a topic that I know is very current right now in British Columbia, is gone.

Without good research, policy is overtaken by what Daniel Kahneman would call the "fast thinking" of impression, cognitive ease and intuition. The federal government's omnibus Bill C-10, the *Safe Streets and Communities Act* is a prime example. Despite a consistently high margin of Canadians who feel that criminals get inadequate sentences, mandatory minimum sentencing frameworks have failed in other countries. Experts have predicted that Bill C-10 will also fail the needs of the fastest-growing prison populations in Canada – women with mental disabilities and Aboriginal persons – running contrary to Canada's traditions of fairness, compassion and equality.

The result, as one Ottawa-based researcher recently put it, has been a shift from evidence-based policy making to decision-based evidence making.

Environmental data is disappearing fast. Huge cuts at Environment Canada and at major research institutions are slowly shuttering many leading Canadian centres of excellence. Among the list of victims are the Environmental Lakes Area, Canadian Foundation for Climate and Atmospheric Sciences and of course the NRTEE.

The resulting loss of reliable and robust data about the state of Canadian society has direct implications for equality rights and the rights of vulnerable groups and communities in Canada. It is much more difficult to meet international requirements to provide evidence of progressive realization of economic and social rights without the reliable and robust data that would have been offered by a mandatory census.

5. Human Rights

This year is the 30th Anniversary of the Canadian Charter of Rights and Freedoms. But you would never know it to look at the federal government's programs this year, especially in Justice Canada.

In 2006, the federal government shut down the Court Challenges Program which had supported successful Charter cases against discriminatory laws and practices.

In 2009, Kenneth Roth, head of Human Rights Watch, told a Montreal audience that Canada's international foreign policy record had declined in stature. Canada's ratification of the Convention on the Rights of Persons with Disabilities in 2010 was a welcome relief but it was the exception, not the rule.

Our standing in the Global Integrity Report index dropped in 2010, largely as a result of weaker accountability and conflict of interest factors. In 2011, Amnesty International released a report urging Canada to get "back on track."

A healthy respect for human rights depends on a lot of things that are not only about human rights, the rule of law, good governance, a robust civil society or the political will to sustain the institutions that protect them.

IT IS ABOUT ALL THESE THINGS

These critical ingredients are nourished by an informed, independent and balanced media and by governments that both understand and champion human rights.

CONCLUSION

If dissent is indeed under attack, if opposition is being silenced, and if civil society is in fact under siege, then democracy all of its modern aspects, is in peril.

Voices-Voix came together because a group of concerned citizens who were proud to be advocates realized that there was a common story starting to play out on all these varied fronts. And because sharing those experiences could build and deepen our common understanding of this new and very troubling new reality, this “new, grim consensus.”

What is at stake is the ability to protect human rights and to promote social justice and a sustainable society – both here within Canada and abroad, and to do so without political interference, intimidation or manipulation.

Sadly, the pattern has only become more entrenched and wider in scope and reach.

As Alex Neve pointed out last year, Voices’ work has become a valuable, though obviously very disturbing, online compendium of the rapidly growing number of instances of individuals and groups who have been punished or singled out because of their advocacy and dissent.

Although we all have our different perspective, we stand for a Canada where voices need to be supported, nurtured and encouraged as part of a country where participation is enabled, not discouraged.

Recently, Voices submitted a report to the Universal Periodic Review in anticipation of Canada’s upcoming review in February 2013. Lawyers and citizens should be disturbed by what is happening and by the deterioration not only of fundamental rights and liberties but also of many of the foundations on which our reputation for democratic governance stands.

I believe that conservatives and liberals, unionists and corporate captains, environmentalists and entrepreneurs should all care about this.

We need to reclaim advocacy and dissent.

Thank you for your attention.