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Ottawa Report by Elizabeth May, Saanich-Gulf Islands MP

Contempt and the Afghan Detainees

Whatever happened to those contempt charges? What happened to release of Afghan detainee documents? One of the most aggravating things about the current state of Canadian journalism is the spotty and fragmented way in which stories are covered—or rather not covered.

When my last book was published, detailing the crisis in Canadian democracy, very little of what I documented was actually new or unknown. But the trend to accumulating power in the Prime Minister's Office had led to such random and erratic news items, that no-one could connect the dots.

The same thing is happening again with the story of the issue which arguably brought down the Harper government for contempt in March 2011. Although Bev Oda's 'Not' played a role, paramount in several rulings from the former Speaker was the refusal of the Harper government to release documentation of the treatment of Afghan prisoners.

Speaker Milliken's ruling on the matter was historic in confirming that the Prime Minister does not have the right to keep information from the House of Commons. Yet, when Minister of Foreign Affairs John Baird announced in late June that the government was going to do just that, the issue appeared to die with nary a whimper.

To refresh memories, we go back to the brave diplomat Richard Colvin who was subpoenaed to testify to a House of Commons committee back in November 2009. His evidence was that 'Our detainee practices [were] unCanadian, counterproductive and probably illegal.'

He detailed that Canadian forces detained a much larger group of Afghans than our allies, detaining six times more civilians than the British and 20 times more than the Dutch, with no way to track where these people went or how they were treated. His evidence was that Canadians would take into custody taxidrivers or street vendors and hand them over to Afghan forces for questioning. It was his belief that the probability was high that many of these detainees were subject to torture, or even death.

Colvin was made the subject of personal attacks by the government and held up as a Taliban dupe. The House of Commons asked, through Liberal MP John MacKay, for the release of all documents so that Colvin's allegations could be examined. On the grounds of national security, the Prime Minister refused. The stand-off led to Speaker Milliken's clear ruling in April 2010 that, *prima facie*, the government was in contempt. He gave both sides the opportunity to negotiate a compromise.

The result was the creation of the Panel of Arbiters, based on a Memorandum of Understanding (June 15, 2010) signed by the Prime Minister, the former Leader of the Official Opposition (Michael Ignatieff) and the former head of the Bloc Quebecois (Gilles Duceppe). The NDP refused to participate. The panel was comprised of three retired judges, one of whom died in March 2011, and two who remained to file a report, Claire L'Heureux-Dube and Frank Iacobucci. The jurists were to frequently consult with an Ad Hoc Committee of Parliamentarians (Conservative, Liberal and Bloc MPs).

What occurred on June 22, 2011 did make it to the front page of the *Globe and Mail*, but seems to have sunk without a trace: the panel released their report, clearly indicating they did not believe their work was wrapped up.

Their covering letter made it clear that there had been some communication with the Harper government throughout April and into May in which it acknowledged that with the end of the 40th Parliament and the election, the Speaker's ruling 'ceased to exist.' The judges wrote,

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Email: islandtides@islandtides.com. Website: http://www.islandtides.com

'We considered that it would not be appropriate to cease our work before completing what the Panel undertook...' Nevertheless, their letter closed, 'We understand that no further work is now expected of the Panel.'

With that, 4,000 pages of heavily censored documents were given to every member of parliament, leaving an estimated 40,000 more pages still unreviewed and in the government's files.

Minister of Foreign Affairs John Baird announced that $12 million had been spent and that was quite enough. 'I suspect,' he said, 'that if we went on for 12 years and spent $120 million that some would say that wasn't enough.' Certainly Stephane Dion, who had been a member of the Ad Hoc Parliamentary Committee said it had not been enough, as did Bob Rae, and NDP MP Jack Harris, who called the whole process a 'farce.'

Most disturbing to me was Baird's framing of the issue as the handling of 'Taliban prisoners.' I had the image in my mind so clearly from Colvin's testimony that these were not enemy combatants. They were random people in the wrong place at the wrong time. Then I learned that if Canada had thought the prisoners were Taliban, there was an entirely different detention process. Those detainees identified as possible Taliban were not turned over to Afghan authorities at all; they were delivered to the US forces in Afghanistan. By definition, handing Afghan detainees over to the local authorities for questioning meant Canada did not think they were Taliban.

So, after more than 18 months of controversy, devastating allegations, an historic finding of contempt, the slate is wiped clean by the election. The order for the production of documents passed by the House has ceased to exist. The Speakers' order is null and void and, while historic, is history.

As one journalist said to me 'Who will care now? No one is going to request the production of the remaining documents now.'

To which, I replied, 'I do, and I will.' ✐

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