Inside Policy

The Magazine of the Macdonald-Laurier Institute

APRIL, 2014

Power to the people

Michael Chong wants to restore power to parliamentarians. Are MPs ready to make history by embracing his Reform Act?

Robin Sears profiles Michael Chong

Tom Flanagan argues against a caucus role in leadership review

Also in this issue: ***Stanley Hartt*** *on how PM Harper may be best-placed to provide critical advice to Israel;* ***Nick Hann*** *proposes a concession model for Canadian airports;* ***Brian Dijkema*** *makes the case for a new approach to labour policy;* ***Mike Priaro*** *calculates that Alberta has the largest crude oil reserves in the world;* ***Dean Karalekas*** *says Canada needs a Taiwan Relations Act;* ***Brian Lee Crowley*** *prescribes a fix for Canada's health care system;* ***Andrew Davenport*** *explains why Iran's leaders are nervous about developments in Ukraine;* ***Jeffrey Phillips and Laura Dawson*** *look at the implications of Mexico's energy reforms*

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The Magazine of the Macdonald-Laurier Institute

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Editor's message

He is also well aware that scores of very sincere efforts to reform Parliament have led to little, if any, real change. Neither fact, however, has discouraged the indefatigable Chong from his effort to convince fellow MPs to support a series of very significant — some have termed them "revolutionary" — parliamentary reforms.

Chong's goal of restoring power to elected representatives has been opposed by successive prime ministers who, often despite past promises to the contrary, simply couldn't resist the temptation to consolidate and enhance "the Centre's" power. His bill, introduced last December and expected to come up for debate soon, has captured the imagination of those who have long dreamed of parliamentary reform. Ever since the bill was introduced, speculation in Ottawa has focused on whether the current crop of MPs will earn themselves a place in history by ending "the Centre's" chokehold on power.

In this issue of *Inside Policy*, three articles examine the emerging debate. To begin, **Robin Sears** provides an insightful and in-depth profile of the tenacious MP, in which early and ample evidence of Chong's integrity and independent-mindedness are revealed — e.g., he was appointed to Stephen Harper's first cabinet in 2006 but resigned nine months later over his opposition to a government motion recognizing "the Québécois as a nation within a united Canada." (Chong regarded the motion as endorsing ethnic nationalism.) We are also pleased to present a commentary by **Michael Chong** in which he explains the rationale behind the proposals in his bill.

Meanwhile, **Tom Flanagan** offers an argument against the leadership review aspect of Chong's proposed reforms. Noting that most modern parties have empowered their members to choose the party leader, Flanagan warns that Canadians would be rightly appalled to see prime ministers overturned by caucus cliques — as has happened in other jurisdictions.

This issue of *Inside Policy* also includes an excellent selection of articles on a broad range of public policy challenges. **Stanley Hartt**, who was part of the delegation when the Prime Minister visited Israel, explains how the government's strategy of resolute support for Israel may leave Stephen Harper best-positioned, at a difficult moment, to impart counsel which would be suspect coming from anyone else.

Nick Hann explains how moving from a not-for-profit model to a concession model for Canadian airports can lead to numerous benefits, including helping to stem the tide of Canadians crossing into the US in pursuit of cheaper airfares.

Brian Dijkema writes that we should develop a new approach to labour relations, one that fosters both competition and cooperation rather than confrontation.

Mike Priaro has analyzed the nature and accessibility of Alberta's crude oil reserves and explains his startling conclusion that Alberta's reserves are the largest on Earth.

Brian Lee Crowley writes that our health care system is broken and offers some thoughts — a prescription? — on how to fix it.

As you'll see from the Table of Contents on the right, this issue has many other compelling articles.

James Anderson, Managing Editor

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Prime Minister Stephen Harper with Israeli Prime Minister Netanyahu in Israel

A funny thing happened on the way to the peace process

Stanley Hartt examines the origins of the Arab-Israeli conflict and explains how the Prime Minister's strategy of resolute support for Israel is both sincere and prudent. Hartt suggests that as the US continues to play its brokering role, it is a trusted and unconditional friend such as Stephen Harper who may be best-positioned, at a difficult moment, to impart counsel which would be suspect coming from anyone else.

Stanley H. Hartt

Even as US Secretary of State John Kerry was preparing his framework for Middle East peace talks, a first-time visitor to the region showed up in Israel with several hundred of his friends and admirers. Stephen Harper, Canada's Prime Minister, was not there to assert what so many on the left of the political spectrum continue to imagine as Canada's "traditional" role as "honest broker." Rather, he set out a refreshingly unique approach to how a world leader could make an actual difference in resolving one of the globe's most intractable international disputes.

Harper's starting point was one of principle: Israel, the only functioning democracy in the area, is beset by a conflict that began with Israel's Declaration of Independence on May 14, 1948 and which continues to this day. Democracies that do not support and sustain one another increase the dangers to themselves in this perilous era. Moreover, the foundation for Israel's democracy was based on Resolution 181, adopted by the General Assembly of the United Nations on November 29, 1947, after the horrors of the Holocaust created a moral imperative for the international community to establish a Jewish homeland in the British mandate territory theretofore known as Palestine. Following the unprincipled manoeuvering which characterized the French and British administrations of the territories entrusted to them by the League of Nations in the period between the two World Wars, and the conflicting promises made regarding the eventual fate of the region, it seemed only proper to attempt to reconcile Zionist aspirations with what might have been avoided had, say, the Balfour Declaration been honoured.

When Israel defended its infant independence against its vastly more numerous and better-equipped Arab neighbours — using a combination of courage, home-made weapons and ingenuity — the world saw its people as underdogs. Building a modern, innovative, technologically-advanced State and making the desert bloom with revitalized arable land were generally seen as admirable achievements. It is hard to pinpoint precisely when the notion that this tiny nation, under constant threat and repeated attack from across its fragile borders, began to be singled out as an obstacle to peace.

In the Suez Crisis of 1956, Israel proposed to join with the UK and France to force the reopening of the canal after Egypt's President Nasser had nationalized it. The United Nations' response, inspired in good measure by Canada's then-Secretary of State for External Affairs, Lester

B. Pearson, was the establishment of the United Nations Expeditionary Force, to which our reputation as peacekeepers undoubtedly owes its origins. But in the Six Day War and the Yom Kippur War that followed, Israel had not yet been burdened by the opprobrium that now surrounds its strategic attempts to enhance its security while continuing to demonstrate openness to a lasting, peaceful resolution with its neighbours.

International reservations undoubtedly gained momentum as Israel dealt for decades (and still does) with suicide bombings, rocket attacks and continued threats to its perimeters in a context where "land for peace" had become the premise of international efforts to bring about the ultimate resolution. Israel's various incursions into Lebanon and Gaza, the two Intifadas, and a settlements policy born not out of intransigence but as a strategic reflection of facts on the ground, were not seen as the minimal efforts at self-defence which any country in similar circumstances would take to preserve its existence. Nothing to date has persuaded its Arab interlocutors to chin themselves to the huge concessions needed on their side to achieve the goal of peace, namely recognition of the State of Israel and its Jewish character, abandoning the so-called "right of return" and an agreement on the status of Jerusalem which acknowledges that it will continue to be the capital of Israel.

The standard to which some academics and self-declared "progressive" religious groups hold Israel and the lengths to which they have gone to castigate it for its strategies of self-preservation has taken on an air of one-sided bias, not even-handedness. As the Prime Minister noted in his Knesset remarks, what should we call "criticism that selectively condemns only the Jewish state and effectively denies its right to defend itself while systematically ignoring — or excusing — the violence and oppression all around it?"

The journalists accompanying Mr. Harper had criticisms about the size of his delegation and the cost of the gesture of support he was intentionally and conspicuously offering to the people of this land, which is holy to all three Abrahamic religions. The sincerity of the emotions he conveyed in his moment of private prayer at the Western Wall which surrounded Judaism's ancient temple, the poignancy of his wreath-laying at the Yad Vashem Holocaust memorial, the significance of having named in his honour a bird sanctuary in the Hula Valley in northern Galilee, right up beside the Golan Heights and near the Lebanese border, visited annually by some 500 million birds of all manner of species on their annual migrations between the steppes of Eastern Europe and Asia to and from Africa, and the gravitas of receiving an Honourary Doctorate from Tel Aviv University, were all overshadowed by the constant decrying of what the media perceived as an absence of "even-handedness". They asked repeatedly why his public remarks did not reproach his hosts for strategies perceived as making peace more difficult to bring about, some of which are listed as contrary to Canadian policy according to an official Department of Foreign Affairs, Trade and Development website, all the while assuming that remonstrating his hosts' misconduct was what Canada needed to do to "position" itself to play a more conciliatory role.

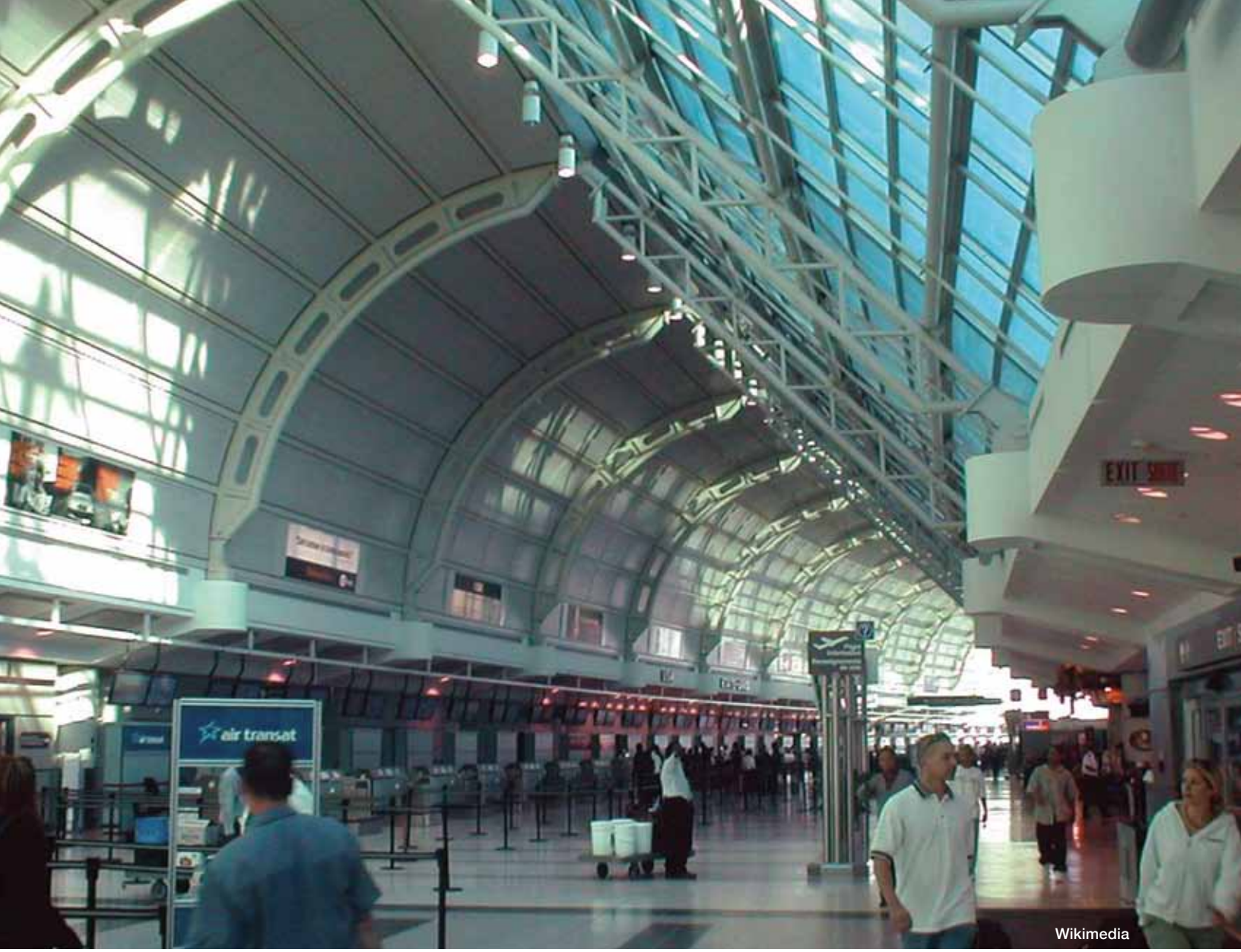
Canada has never been, and never would be, the natural international go-between to urge Israel and its Arab neighbours to finally resolve this conflict. For decades now, that role has, frustratingly for them perhaps, belonged to the United States. From the Oslo Accords, signed on the White House lawn in 1993 with President Clinton presiding, to the Camp David Summit in 2000, to the July, 2002 "Road Map" for peace, to the direct talks initiated by Secretaries of State Hillary Clinton and John Kerry, the US has owned this process and is the only nation with the influence and power which can be brought to bear on both sides to instill the political will, and the hope, for a breakthrough to success.

But this is not a game of musical chairs, where Mr. Harper has developed his principled stance merely because the role of intermediary is occupied. What the hand-wringers, who nostalgically hope for some "honest broker" function to be played by Canada, are missing is that mediators do not proceed by telling both sides to a dispute that they are right. In fact, successful mediators do the very opposite. Because in virtually any circumstance where mediation is necessary, the third-party attempting to assist the parties to reach an agreement has absolutely no power to force them to concede anything (especially highly-charged political concessions like those which must be on the table here), a good mediator needs to demonstrate to the parties why they should want to resolve matters for their own sake. A skilful mediator makes it abundantly clear to each party — usually not in the glare of public or media scrutiny and not necessarily even in the presence of the other party — what the weaknesses of their position are and what will happen if that party declines to present meaningful proposals, including the most difficult compromises. It is by stressing their need to make concessions, not by endorsing the negotiators' self-righteous pretentions, that any successful intermediary generates progress.

Not seeing this conflict as one in which both sides have equivalent moral value to their positions, Mr. Harper has resorted to a far more subtle approach. Should Mr. Kerry produce a "heads of agreement" document worthy of further discussions, and should some momentum develop towards an alignment of the forces required for an historic breakthrough, Mr. Harper will be the one person in the world who has declared himself an unconditional friend of Israel and its Prime Minister, having said, in his address to the Knesset, "…through fire and water, Canada will stand with you."

Such a trusted and unconditional friend can be one who, at a difficult moment, tactically and politically, can impart wisdom which would be suspect coming from anyone else, and quietly and privately convey to his friend his views on which objectives might be achievable, which concessions might be manageable and where the path to harmony might lie. That sort of trust is not gained by rote, public criticisms of a friend's failures or by equating the positions of two parties, one of whom is attempting to preserve his nation's existence while the other believes it is possible to produce a desirable outcome by threatening to drive the first into the sea. Embracing the doctrine of moral equivalence in circumstances such as these simply does not get the job done.

Stanley Herbert Hartt, OC, QC is a lawyer, lecturer, businessman, and civil servant. He currently serves as counsel at Norton Rose Fulbright Canada LLP. Previously Mr. Hartt was chairman of Macquarie Capital Markets Canada Ltd. Before this he practised law as a partner for 20 years at a leading Canadian business law firm and was chairman of Citigroup Global Markets Canada and its predecessor Salomon Smith Barney Canada. Mr. Hartt also served as chairman, president and CEO of Campeau Corporation, deputy minister at the Department of Finance and, in the late 1980s, as chief of staff in the Office of the Prime Minister.



Toronto Pearson International Airport

A new model for managing Canada's airports

Nicholas Hann explains how moving from a not-for-profit model to a concession model for Canadian airports can lead to numerous benefits, including: a multi-billion dollar yield to taxpayers; continued essential capital investment; and reduced reliance on fees and charges from airlines and passengers. Hann suggests the change would also help stem the tide of Canadians crossing into the US in pursuit of cheaper airfares.

Nicholas Hann

Canada's national airports exist in an uneasy no-man's land between government control and commercialization which increasingly seems to be satisfying no one.

Since the National Airports Policy implemented between 1992 and 1994, the Canadian Federal Government has retained ownership of Canada's 26 largest and most significant airports by remaining as the landlord while leasing the facilities to non-share capital airport authorities who are responsible for financial and operational management.

As the landlord under 60 year leases, the federal government collects significant ground rents from the airports but exercises limited other forms of control or influence. The Canadian Airport Authorities are structured as private not-for-profit entities controlled by boards representative

of stakeholder interests but directly accountable to no-one. This model, with its lack of clear incentives either from a public policy perspective or in terms of efficiency maximization, has led to a patchwork of differing performance around the country. Some Canadian airports, notably Vancouver International, perform quite well on international metrics within the constraints of the not-for-profit model, and have established successful global subsidiaries. Others, notably Toronto Pearson, have experienced slow growth, have very high debt ratios and charge airlines some of the highest landing fees worldwide.

Canadian airports are funded through the aeronautical revenues they charge airlines using the airport, through commercial revenues generated from the provision of retail and other services to airport users and, increasingly, through Airport Improvement Fees levied on passengers using the airport. They finance their capital expenditures through borrowings in the debt markets taking into account the strength of their revenue streams, their monopolistic position in the marketplace and the implicit support they enjoy as quasi-governmental functions.

To understand this last point, consider whether the federal government could ever allow a major national airport to fail. Canadian airports have large short term and medium term capital needs but typically have underutilized balance sheets, lag international peers in profitability and rely unduly upon aeronautical charges to airlines rather than commercial revenues. This model is coming under increasing pressure in a world in which both airlines and passengers make routing decisions based on cost rather than airport proximity alone and where Canadian airports are increasingly competing for business with US and other international and regional airports. In 2012 over 5 million Canadians chose to cross the border to fly from a US airport rather than use higher cost Canadian facilities.

In a paper published by the Frontier Centre in August 2012, Mary-Jane Bennett is consistent with much current thinking when she concludes that "The not for profit model has constrained rather than enhanced growth and represents little more than an intermediary step before privatization."

The Canadian Airports model stands in contrast to experience in much of the rest of the developed world where responsibility for investment and management has been transferred to the private sector by means of long term concessions. This concession model combines the benefits of retention of public ownership with an improved and more transparent regulatory framework than exists today in Canada and the transfer of the risks and benefits of efficient operation and management to a private sector partner.

Over $32 billion of similar airport concessions have been successfully undertaken worldwide over the past 20 years in the United Kingdom, Europe and Australia and much has been learned about the benefits achievable.

The most striking illustration of the difference between the current not-for-profit model and a concession structure is the immediate value which could be unlocked for Canadian taxpayers. The present value of the ground lease payments, discounted at the current Government of Canada bond rate, is in excess of $8.6 billion. In addition, the surplus value of Canada's seven largest airports, calculated at the average multiple of operating revenues for airport concessions over recent years is some $7 billion. In other words, private investors would be willing to write an upfront cheque of over $15.6 billion for the rights to operate Canada's largest airports at the current levels of efficiency. These dollars could be allocated to other priorities such as deficit reduction or further infrastructure investment to improve Canada's competitiveness.

To further illustrate this unlocking of value from the not-for-profit model, Vancouver International Airport, which on many measures is Canada's best, had net assets as at the end of 2012 of some $1.16 billion. While it is not clear to whom these assets belong under the current ownership and governance model, a concession would value the airport at almost twice as much — almost $2.3 billion.

Now consider the effects that a fully valued balance sheet and a profit-maximizing incentive could have on improved efficiency and operational performance of the airport. A striking difference between Canada's not-for-profit airports and international concessions is the proportion of revenues which comes from commercial revenues. Internationally, this is as high as 65 percent for some airport concessions and averages well over 50 percent. In Canada, by contrast, Vancouver International still relied on aeronautical fees and Airport Improvement Fees for 57 percent of its revenues in 2012 and Toronto Pearson took 75 percent of its revenues from these sources.

This greater reliance on commercial revenues earned by providing services airport users are willing to pay for allows for dramatic reductions in landing fees and other charges which increase airfares and lead to airlines and customers seeking other alternatives. In the United Kingdom, aeronautical fees have decreased significantly since privatization in 1987 under an inflation minus regulatory price cap. Landing fees at Heathrow Airport are now one-third of those in New York City despite tight capacity constraints. There is significant room for improvement in Canada, with Toronto's 2012 per passenger charges amounting to over US $58 and Vancouver's to more than US $34, both high by international standards.

The benefits of concession models can be even more significant for smaller regional airports as for international hubs. Since Macquarie Group's investment in 2001, Bristol Airport in the United Kingdom has seen airline charges decline by 15 percent per annum, driving a 22 percent per annum increase in passengers and growth in commercial revenues of almost 35 percent. The move from a not-for-profit model to a concession model therefore has the potential to release a $15.6 billion surplus to the Canadian taxpayer, support continued essential capital investment, reduce excessive reliance on fees and charges from airlines and passengers and reverse the trend away from using Canadian airports to cheaper alternatives.

Canada's national airports would represent an attractive long term investment opportunity for infrastructure investors amongst whom Canadian pension funds are global leaders. Investors such as the Ontario Teachers' Pension Plan, which has significant investments in international airport concessions, have the capital and expertise to transform the Canadian airports sector in conjunction with management and staff from Canada's best performing airports released from the constraints of the not-for-profit model.

Nicholas Hann is a Senior Managing Director and leads the Infrastructure Team of Macquarie Capital Markets Canada.

Cooperation and competition should be part of a new Canadian approach to labour policy

Brian Dijkema writes that the world of labour relations is changing even in the absence of proposed revolutionary changes such as the removal of the Rand formula. What is needed, he argues, is not policy that aims to tear down or maintain unions in their current form, but which allows workers the greatest leeway to choose the labour relations environments that best serve their individual and collective interests.

Brian Dijkema

For the last few decades, labour policy in Canada has resembled Aesop's mountain in labour. We've heard a lot of rumblings, seen a lot of smoke and hot air, but we have not seen a major restructuring of the ground.

A variety of initiatives from the federal Conservatives, as well as controversial proposals on right to work in Ontario and Alberta, have renewed the rumblings, complete with fire and brimstone rhetoric about "attacks on labour" from the union movement.

But while the rhetoric and the old union versus non-union policy framework have remained unchanged since the 1970s, the 'on-the-ground' realities of labour relations in Canada have changed drastically. These changes open the door to a new policy framework on labour relations that can move Canadian labour relations in a more innovative, competitive, direction.

What are these changes?

First, co-operation between unions and employers is more the norm than the exception. The data show that time lost due to strikes and lockouts has been on a steady decline since the 1970s and is currently near an all-time low.

Second, collective bargaining is no longer the sole prerogative of traditional trade unions. A wide variety of alternative bargaining arrangements have emerged in the last decade. Among these are: alternative unions whose approach to collective bargaining differs both philosophically and structurally from traditional trade unions; human resource departments that mimic the collective bargaining process; creation of private, for profit, organizations which mimic many of the functions formerly performed by trade unions (i.e., labour supply pools, employer organizations); and the emergence of more professional associations and colleges which regulate professions, and which, even incidentally, affect wages, bargaining, and labour standards. Collective bargaining is, in short, a diverse field, even while the main legal framework remains wedded to the traditional union versus non-union arrangement.

Two further changes are well known. Union density (the proportion of paid workers who are union members) in Canada has been trending down for some time, and is hovering at around 31.5 percent. This number stands alongside a second trend: namely, an increase in the already large gap between union densities in the public sector — currently around 75 percent — versus those of the private sector — currently around 18 percent.

But beneath those trends lies a less discussed trend: the consolidation of unionized workers into fewer, larger, traditional trade unions via mergers and acquisitions. As Stats Canada notes:

Unionized workers are highly concentrated in a small number of large unions […] 46.6 percent of covered workers in national and international unions belong to just eight unions each covering at least 100,000 workers.

In sum, four percent of unions represent almost half (47 percent) of Canadian workers. And, if one includes the second tier of unions by size, that concentration increases: 11 percent of Canadian unions represent 72 percent of the unionized workforce.

This consolidation, combined with the unwillingness — expressed in "no-raid" pacts — of most of these unions to compete for the loyalty of members on the basis of service leads to a trade union movement which is virtually monolithic in form and message. And that message has, overwhelmingly, been anti-conservative. Unions tend to see small "c" conservative policy, and the parties that espouse these policies, as their enemies. They have been willing to spend large sums and mobilize to counter them and to install parties more in line with their views.

It should be no surprise that the feeling is mutual.

This antipathy displays itself in policy by way of proposals and legislation which aim to use regulation to directly shape how unions and individual workers — and even non-members — interact, either via the way dues are collected, how workers can join a union, or how and to whom unions should report their financial transactions.

A recent spate of proposals and legislation are indicative. Federal bills C-377 and C-525, and the recent Ontario Progressive Conservative

and Alberta Wildrose parties' "right-to-work" proposals all aim directly at unions themselves.

The difficulty with this approach is that, all too often, it lends itself to instability in labour policy. The potential for large swings in labour policy — depending on the party currently in power — increases as the common ground between labour and certain segments of political power disappears. Political power, while it might last for considerable periods of time, is never fully secure, and the absence of a consensus on labour policy often resembles a pendulum. The replacement of the NDP Bill 40 — introduced by Bob Rae's NDP government — by Bill 7 by the Progressive Conservative government of Mike Harris in the 1990s is but one example. The recent elections in British Columbia also underscore the point. In an economic world where political and labour stability are key factors in investment decisions, this instability can mean lost investment, lost employment and lost government revenues.

A better approach recognizes the value of collective bargaining while simultaneously recognizing that major changes in the world of labour relations are already underway under our current regime — and without government intervention. In short, this suggests the need for a policy which encourages competition between the plurality of means of collective bargaining and employer/employee relationships already in existence in the Canadian economy.

Cardus recommends that labour policy should focus on three parallel tracks:

That, insofar as possible, government should refuse to craft policies which deliberately favour a particular method of workplace organization, labour worldview, or labour organization at play in Canadian economic life. Rather, government should enact policy which levels the playing field between the competing views and let civil society determine the most appropriate method. Particular efforts should be made to eliminate laws which allow labour monopolies, or labour oligopolies, or which encourage rent-seeking by labour organizations.

Two examples of this are the Saskatchewan government's Bill 80, which eliminated provisions that gave a few unions a monopoly on collective bargaining in the construction industry, and a private member's bill in Ontario (Bill 73) that aimed to eliminate the ability of a few private sector unions to control public procurement.

We suggest government remove barriers that deliberately penalize one method of organizing workers — whether that be individual contracts, traditional trade union arrangements, alternative unions, or employee associations — and let workers vote with their feet. The government should reevaluate the labour relations regime which currently oversees public sector bargaining, with a view to re-asserting the primary role of the state as government rather than employer in situations where a necessary state monopoly exists. The government should consider its role in the creation of the labour monopolies that exacerbate their fiscal concerns — health care and education for instance — rather than trying to use labour relations policy to solve what are, in effect, unnecessary government monopolies.

The government should concentrate on improving and easing the ability of existing workers' organizations to work towards policy goals where there is a modicum of consensus. Both the right and left agree that workplaces should involve workers as much as possible — i.e., be democratic — while also being accountable primarily to their members. This should be true for all methods of organizing workers, union or otherwise. A policy platform that best fits the framework described above will evaluate each policy through the lenses of competition and cooperation.

We suggest government remove barriers that deliberately penalize one method of organizing workers — whether that be individual contracts, traditional trade union arrangements, alternative unions, or employee associations — and let workers vote with their feet.

The facts on the ground suggest that the world of labour relations is changing even in the absence of proposed revolutionary changes such as the removal of the Rand formula. What is needed is not policy that aims to tear down or maintain unions in their current form, but which allows workers the greatest leeway to choose the labour relations environments that serve their individual and collective interests best. A policy that encourages the greatest amount of competition among these various means of organizing workplaces would lead to much more innovation in the world of labour relations than any proposal looking to maintain the status quo, or that aims to upset it by revolutionary measures such as right to work. In short, the ideal would be a policy regime wherein the state encourages the positive aspects of workplace organization where there is a high degree of consensus, while attempting to remain neutral about the ways workers choose to organize themselves.

Currently many unions have an unhealthy fear of markets and categorically deny the possibility of a vital union movement in which competition is present. They note that employers will inevitably take advantage of a competitive union world. But unions, like employers, need to come to terms with the notion that competition and cooperation — between employers and unions, between a variety of unions, and between a variety of employers — are integrally linked. As noted economist Paul Rubin has said: "Cooperation is the heart of economics; competition is a tool for obtaining better cooperation."

The framework and policy proposals developed by Cardus suggest a way forward for labour relations in Canada. Such an approach would see the state allow the full range of players in the labour relations "market" — including the variety of labour relations models present on the ground today — to compete toward the goal of greater innovation, greater productivity and a fair distribution of the wealth generated by economic activity.

Brian Dijkema is Program Director, Work and Economics at Cardus, a think tank dedicated to the renewal of North American social architecture. Prior to joining Cardus, he worked in labour relations in Canada, including work on international human rights and particularly labour, economic, and social rights in Latin America and China.

Iran's leaders keep a wary eye on Ukraine

Raised expectations, followed by dashed hopes, led to Ukrainian President Viktor Yanukovych's recent ouster. Here, Andrew Davenport draws parallels to the interim nuclear deal struck between the Obama Administration and Iran late last year. Davenport asks how the Iranian people will respond if the agreement fails and they face a return to the bleak, isolated outlook they have lived under for so long.

Andrew K. Davenport

With each passing day, the "Ukraine model" seems to take on new meaning. An example of a courageous uprising in the face of authoritarianism and deep-rooted corruption has been eclipsed by the significance of Ukraine's strategic position as a frontline state facing the nostalgic ambitions of Vladimir Putin for a reconstituted Soviet Union.

As East-West relations recalibrate around the fast-paced developments of the past several weeks and months and the west hopefully musters more courage than they've displayed of late in standing up to Putin and his agenda, we shouldn't lose sight of the remarkable accomplishments of the Ukrainian people that preceded the current standoff. Against long odds, power was wrested away from the disgraced, ineffectual leadership of former President Viktor Yanukovych. Ukraine's population successfully translated years of frustration into real, democratic change. Critical mass was realized in Ukraine as the result of specific events. Most particularly, it was Yanukovych's economic and political turn towards Russia, after flirting with the EU for years over plans for integration and a formal Association Agreement, that unleashed the discontent and revolutionary spirit of the Ukrainian people. Expectations were raised for a brighter, more prosperous tomorrow based on a lesser dependency on the country's stale, extortionary relationship with Russia. The benefits of Western integration were fairly well advertised before Yanukovych's eleventh-hour decision to move in the other direction. The people of Ukraine were sold on the Association Agreement, knew it was in their best interests, they expected the deal to be signed and, in their disappointment, they demanded considerably more.

There are parallels in the current dynamic developing in Iran that ought to be of concern to President Rouhani and Ayatollah Khamenei. So much so that even the Iranian authorities have expressed concern. Iran's Justice Minister, Mostafa Pourmohammadi, publicly chastised Iranian newspapers over their coverage of these events and expressed anxiety over the possibility of Iranians being influenced by the graphic imagery of a leader being deposed and political prisoners going free. "Their country is not comparable to our country and our system," he said. "We have to be very careful to preserve this atmosphere…what happened in Ukraine, some newspapers put up headlines as if a domestic event took place."

His concern is well placed. Although unintended, and strangely unanticipated, the Obama Administration's interim nuclear deal struck with Iran late last year led to a cavalcade of the world's most prominent engineering, telecommunications, energy and financial firms lining up to renew business relationships with their Iranian counterparts. The scale of this market interest has led both Treasury Under Secretary David Cohen and Secretary of State John Kerry to have to suppress enthusiasm, lecturing the markets that "Iran is not open for business."

Critics of the interim agreement properly describe the deal as a windfall for Tehran that risks undercutting the negotiating position of the P5+1. At minimum, these events demonstrate the naiveté behind the Obama Administration's belief that it was possible, in the first place, to carefully calibrate the economic benefit that would flow to Iran as a result of the concessions they made. Although these are legitimate concerns, the many corporations now publicly demonstrating their interest in Iran and the public spectacle of executives competing for face time with Iranian business leaders could have an interesting silver lining. As President Yanukovych of Ukraine recently discovered, there is great power in the raised hopes and expectations of a people. The expressed interest of these companies, and the premature victory lap being taken by President Rouhani, has created a tantalizing prospect for the long-suffering Iranian people. If a deal is not achieved and these companies are sent home, the Iranian people's hopes will have been raised, only to be dashed at the last moment. A similar intolerably frustrating experience was cast upon the people of Ukraine and awoke in them a revolutionary spirit that led to the toppling of an entrenched leader.

President Rouhani and the mullahs would be wise to observe Ukraine closely. Billions of dollars in economic opportunity is being presented to Iranians in an accidental "road show" of what is available to them on the other side of successful negotiations. Corporate visits to Iran and other preliminary marketing efforts are more than merely relationship-building exercises. Many of these companies have a credible track record of large-scale, even multi-billion dollar, investments in Iran. These companies are brand name, market leaders in their industries and offer dynamic, high-tech investment opportunities and jobs for the Iranian economy.

After years of economic, diplomatic and cultural isolation, it could be a tremendous shock to Iran's youthful population for these companies to be sent home — like Ukraine, at the 11th hour of high profile negotiations. Although seemingly unintended, the effect of this sequence could be profound.

If negotiations fail, it will take considerable effort by the Obama Administration, having unleashed this market enthusiasm, to ensure that it is properly extinguished. It will be incumbent on allied nations to ensure that the Iranian leadership is forced to confront head-on the frustrations of its people concerning what is likely to be a very unpopular retrenchment by the conservative elite. President Yanukovych's decision to take his country to the "water's edge" of expanded opportunity, before pulling back, sent shockwaves through a fed up population. With expectations raised, the Iranian people may also vociferously object to returning to the bleak, isolated outlook they have lived under for so long.

Andrew Davenport is chief operating officer of RWR Advisory Group, an economic and geopolitical risk consultancy.

Michael Chong speaking in the House of Commons

Michael Chong: A very unusual politician

Robin Sears profiles Conservative MP Michael Chong, whose private member's bill aimed at giving MPs and political party caucuses more power has captured the imagination of those who have long dreamed of parliamentary reform. Sears finds a man who is resolutely dedicated to restoring power to elected representatives, a goal that has been opposed by successive prime ministers who could not resist the temptation to consolidate and enhance "the Centre's" power.

Robin V. Sears

Everyone knows that legislative power in all the developed democracies has been on a long slow slide. The peoples' elected representatives are losing everywhere to executive-led governments, their political staffs and officials. Imperial presidents and all-powerful prime ministers are now the norm. It is common knowledge, after all, that American presidents are more powerful than ever through the use of executive orders empowering them to kill on command and to trump legislation with a simple signature.

Well, actually no, according to Michael Chong, that conventional wisdom is wrong.

It is, in his view, a quite Canadian problem.

As his many speeches and articles concerning his revolutionary *Reform Act* point out, and as he will hammer a skeptical interviewer with statistics at length, Canada has slid further and faster down the slope of untrammelled executive branch power than any of the sister democracies, even the Westminster-born Commonwealth cousins.

One statistic alone is breath-taking. In this Parliament of nearly six hundred recorded votes, MPs broke with their party whips one percent of the time! Opposition rebels and government clapping seals alike did as they were told 99 percent of the time.

This is the highest level of party discipline anywhere, the worst in the parliamentary world, and the worst in Canadian history. The next lowest level of independence is the United Kingdom at nearly 10 percent, with the top five 'dissident' U.K. MPs making a rebellious vote nearly one in five times. While this is a decline from the pre-war era in the U.K., it is still eight times our parliamentarians' demonstrated backbone. Independent voting is a reasonable indicator of political power. If you don't feel empowered to vote freely, you don't ask questions freely, you don't push for change in decisions and drafts of bills that offend you, and you don't use your pulpit as a Member of Parliament to try to move either other members' or public opinion.

The success of the highly-torqued "House of Cards" stereotype of political character — egotistical, tone deaf, emotionally manipulative, treacherously disloyal, with loose sexual and professional ethics — is grounded by its clever tapping into the average voter's judgement of the political class. The autocratic use of executive power merely reinforces those prejudices.

Chong points out that while some may rue the "Congressional deadlock" in Washington, it would be nonsense to see it as proof of declining legislator power. Presidential executive orders are the weak product of a Congress frustrating the legislative power of presidents, not proof of presidential power. Australia may look bizarre to us with its regular caucus-led beheading of leaders and prime ministers, but as proof of legislator power it is incontestable. Chong points out their turnover rate in dispatched leaders is not much higher than ours, but their system is much less damaging as the battle is joined and resolved and the healing begun within weeks — ours take years of destructive infighting to resolve.

Much flows from our astonishing level of Soviet-style voting behaviour, and many are the implements of torture available to the House Leader, the Whips and the PMO — collectively termed as simply 'the Centre' — to enforce their writ. First, it means that parliamentary scrutiny over controversial government bills is by definition hobbled. Filibusters, heated late-night debates, MPs' use of standing orders and private members' bills — even Question Period — have mostly become caricatures of independence in the face of implacable executive branch and Leader's Office control.

It means that the angry call from the "Centre" to an MP who has grumbled in Caucus, or worse to the media, about his or her hesitation concerning some legislative excess, is usually greeted with the instant cavilling response one might expect from a long-term prisoner or a monastic penitent being called to account by a Father Superior. The costs of disobedience are high: expulsion.

It means that bureaucrats do not feel free to say much to questioning government MPs concerned about the implications of this bill or that new regulation. And they are wise to say nothing at all to Opposition members' queries, for fear that any repetition would be career-limiting.

And it also means that the normal parliamentary brakes on government's getting out of control cannot even slow down let alone prevent a majority government determined to impose its will about something foolish or dangerous. Much muttering in the government caucus, and loud anger among opposition MPs has done nothing to slow this government's determination to tilt the electoral playing field through a "reformed" *Canada Elections Act*, for example.

The NDP's frustrated efforts to, at least, insist that Canadians outside of Ottawa get a chance to offer witness about the Harper government's relentless ambition are pointless beyond drawing attention to their powerlessness. The government's reform of electoral finance eviscerated their opponents' competitiveness for a decade. Now they are doubling down on their built-in advantages through clever tweaks in the rules of the electoral game.

The bizarre decision by the leader of one caucus in one House of Parliament to fire the leader of the caucus of another House is dubious constitutionally, but was hailed by fans of 'bold politics' as proof of a commitment to democratic reform. More sensibly, Justin Trudeau's stunt, firing "his" senators, should have been seen for what it was — just the latest example of 'bossism' creeping into our democracy. The Senate, notwithstanding its limited democratic role in its sadly shrunken condition today, is a constitutionally independent Chamber not accountable to the leader of the third party in the House.

The idea that the Senate should not be represented in the Cabinet of Canada is similarly dubious, according to most experts on our unwritten and vaporous constitutional conventions. So Boss Harper's decision to oust the Government Leader in the Senate from his Cabinet is the same autocratic pig smeared this time with blue lipstick instead of Trudeau's crimson. This testosterone-poisoned politics of swagger drives the behaviour of junior staffers, veteran MPs and most visibly the scarce-bearded short pants kids in the Langevin Block. The success of the highly-torqued "House of Cards" stereotype of political character — egotistical, tone deaf, emotionally manipulative, treacherously disloyal, with loose sexual and professional ethics — is grounded by its clever tapping into the average voter's judgement of the political class. The autocratic use of executive power merely reinforces those prejudices.

Sir John A. is surely still spinning in his grave over the impertinence of ramming an entire Parliamentary session's legislation into one Budget bill on which you then severely limit debate. The expectations of parliamentarians about this form of bullying are so crushed that, unhappy government parliamentarians' typical pushback is usually a blushing, "Well, the Liberals started that game. Maybe our guys were a little over the top."

Occasionally, the exceptional political rebel is offered as the norm: "Yes, but, look at Jack Layton, or Irwin Cotler, or Elizabeth May — they stood up to power. They fought for a cleaner politics." One could grumble that those cited are usually examples merely of ambition well-veiled, or partisan knifemanship well concealed, more than monk-like virtue. Politicians like them, including Michael Chong, nonetheless try to adhere to the standards of a vanishing era of honesty, disclosure, cross-tribal respect, powerful arguments and vigorous rebuttal — persuasive rhetoric not dependent on adolescent insult for impact.

Chong's life has been one of those quintessentially "Canadian" journeys — a complex mix of ethnicities and culture, tragedy and redemption, youthful excess and hard-won adult victory — that make so many of this country's second generation immigrants such impressive leaders. Deprived of his mother by a tragic car accident as a young child, and of his father in young adulthood, bent to a stern academic discipline by his Hong Kong father and the Calvinism of his Dutch mother, he exploded into the kind of louche excess typical of a small town undergraduate left to feast on the endless temptations of a big city university.

A short, chunky but muscular frame supports a head of big hair and a giant smile. A personality so constantly 'on,' so defiantly optimistically swatting at the surrounding dragons with a wooden sword that the cynical consiglieri of his tribe and their opponents, tried to dismiss him with knowing smirks. Dumped early on from Cabinet for his apostasy over the Harperite conversion to Quebec 'nationhood,' he was quickly tagged as one of those young fools who think that principle should drive government decision-making.

Reflecting on his short Cabinet career one admiring but still somewhat stunned old friend observed, "He could have been one of the most senior cabinet ministers in this government by now, he would probably have been seen as a potential leader, but…"

Chong's work in the creation of Canada's first historical education and advocacy organization, The Dominion Institute, combined with the values of his immigrant success story, and his bitter experience of "speaking truth to power" early in his career, no doubt all contributed to the *Reform Act* crusade he launched last year.

At its core the private member's bill has a very simple but compelling thesis — the peoples' elected representatives need to reclaim their sovereignty. MPs need to stand up to all those who have sliced away their authority and autonomy, and Canadians and democracy and effective accountable government will be the beneficiaries. The initial reaction was along the lines of "It would be nice if we could abolish Canadian winters, too…"

But slowly, and now with some gathering momentum his reform crusade has picked up admirers and quiet supporters in all the clans and families of the tribes that make-up Parliamentary life. Some are more discreet than others. He smiles at the hand-written notes of encouragement he now receives from some former Cabinet colleagues and senior staffers who would barely have nodded to him in the corridor in recent years. He is gracious to the now more respectful pundit class who were chorus leaders in their derision over his dismissal in the Quebec nationhood battle.

Despite his youth and his modern Canadian immigrant story, Chong is an old style and old school politician. He has represented Wellington-Halton Hills, just outside suburban Toronto for a decade. His voters are the people of the towns he grew up in, and today he is based in the little town of Fergus. Despite the demands of three young sons and of Ottawa life, he spends a lot of time talking to the former schoolmates, neighbours, and friends who make up his constituency. He is known as a strong community MP and could probably be re-elected even in the face of a Tory collapse.

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He pushes back gently, at the common doorstep complaint that "you don't work for us, but for your boss." He has the patience of a committed young civics teacher as he carefully, but unpatronizingly points out why it is not true that the Boss is his boss, to whom he does feel accountable and why, and what he is trying to do to challenge the rule of the bosses.

Like a small town merchant preparing for the opening of market day, he prepares his lines of argument with care. First, he lays out a row of shiny Constitutional proofs, and piles on top of them the solid if dull 'constitutional conventions' — such as "governments alone can determine what votes necessarily trigger an election."

He rhetorically discards the bruised and discolored deviations, culling the bad apples that have found their way into the market — the idea that leaders are accountable to parties not MPs, that MPs are forbidden to make common cause across party lines — and finally unveils his creation, the *Reform Act*. He leans back in silence with a smile, as if to say, "It's really clear now, isn't it…?"

Central to his reform case is the importance of writing down the rules. It is bizarre, he points out, that courts that used to merely verbally lay down the law, have for decades, even centuries, been forced to write and defend their judgements against precedent and statute. Several hundred page decisions carefully sift previous decisions, current implications and potential future impacts.

Yet, the powers of a prime minister, how he is chosen — and Chong would add, more crucially, how he is dismissed — are merely an evolving menu of gambits invented by circumstance and chosen on the basis of the needs of a party and candidate at a moment of decision.

He points out that the Liberal party has had five leaders since Paul Martin and only two of them were elected by their parties, one by

Australian Labor Party leader Julia Gillard (L) overthrew Prime Minister Kevin Rudd in 2010, and was later overthrown in 2013. Mr. Rudd was then reinstated.

convention and one by an amorphous national electorate called simply 'supporters.' Stephan Dion's ascension was the bizarre outcome of a bitter, delegated convention. Justin Trudeau was the crowned prince of thousands of self-proclaimed "Liberal supporters." Messrs. Graham, Ignatieff, and Rae were chosen first by their caucuses alone. Chong argues this amply demonstrates the range of leadership selection methods used today.

> *To the prospect of the leader-controlled party being rallied to defend his title, against the wishes of his caucus colleagues, he points out that it would be a strange caucus that defied the wishes of its own constituents to keep a leader, when their own status was genuinely in the hands of those same voters. He also points to the disastrous effect of a leader refusing to stand down when he had lost the control first of the party and then much of his caucus, as in the case of Jean Chrétien .*

He argues that at the core of much of the disenfranchisement of Parliament's authority is this fluid and unwritten approach to leadership selection. And he points out that because the rules are not clear and the power of the leader and his praetorian guard is so formidable, the battle to replace a leader is long and messy and in the end inevitably damages the health of the party. He points to the bitter decade in the wilderness that the divided Conservative family endured, made more debilitating and difficult to climb out of by the revolving door of leaders.

The Liberal party's triumphant convention in Montreal this spring was in the eyes of one pleasantly surprised veteran, "The first I can recall since 1979 that was not poisoned by leadership conspiracies and backbiting." The party's earlier descent into near terminal irrelevance was similarly fuelled by decades of bitter leadership struggle.

Chong argues that the elected men and women of the legislature should be able to review the position of their leader. With proof in the form of signed petitions in sufficient number, followed by a majority secret ballot, they should be able to begin the process to dump a leader. The party beyond the House can endorse or even reject the choice. But that would be a nuclear weapon seldom wielded and not likely to succeed unless their Caucus members have signaled to the party that they should do so.

To the prospect of the leader-controlled party being rallied to defend his title, against the wishes of his caucus colleagues, he points out that it would be a strange caucus that defied the wishes of its own constituents to keep a leader, when their own status was genuinely in the hands of those same voters. He also points to the disastrous effect of a leader refusing to stand down when he had lost the control first of the party and then much of his caucus, as in the case of Jean Chrétien. Pointing to the Australian example, he says, compare the damage that did for more than a decade versus the Rudd/Gillard/Rudd leadership battles that were destabilizing but quickly resolved.

The second leg of his reform stool is a withdrawal of the leaders' power to accept or reject a candidate chosen by local party members. This power, initially granted in 1970 has been strengthened by several amendments to the *Canada Elections Act*. The initial defence was to ensure that the party was jointly liable for any offences involving expenses or the issuance of tax credits for donations. Later, it was seen as a way of letting parties ensure that no nominations were 'seized' illegitimately by a faction swamping a local meeting.

In fact, it has become a means for party leaders and their lieutenants to nudge candidates perceived as weak off a slate in favour of a new star, of promoting candidates such as women or minority representatives who could not otherwise prevail over local favorites, or even punishing MPs who have fallen out of favor, such as Garth Turner and Helena Geurgis. Most recently it has been used to quash candidates who have given offence to the leader and his team, as in the case of Christine Innes in Toronto — who was banished for unproven and ambiguous allegations.

Chong argues there is a far more effective range of choices that protect the party brand, while respecting local party democracy. He envisions a "nomination referee" or judge chosen by party activists in advance, responsible for the integrity of the nomination process, and the adjudication of disputes. This group of individuals, he argues, would be less easily bossed around by leaders' teams, and could even be elected as a group by a party to cover groups of ridings or even whole provinces. A cynical observer might predict that party leaders would seek to gain control of the judges panel, too, but his conception does at least add one additional barrier to party autocracy.

A third leg in his reform platform is to prevent the arbitrary expulsion of a caucus member by the leader, requiring again a petition signed by members and a majority secret vote. This would empower internal critics, make a leader's life more difficult and have those critics' anti-establishment rants make reporters and their owners happy as it would help to sell newspapers. It seems less likely to be a valuable defence for apostasy since even a failed attempt to expel a member would be highly damaging to his or her reputation. Chong also proposes that caucuses elect their chairs and all parliamentary committee chairs. Again, perhaps useful, but not impossible for a leader to put his thumb on, nonetheless.

Michael Chong is one of those indefatigable figures that occasionally emerge in any political system, with a vision for one important change in the system, that they pursue for years in the face of all obstacles. As one sage veteran, who had monitored such efforts among gay rights campaigners and peace activists over the years observed, "At first everyone laughs at them, and they try to kill their efforts by ignoring them. Then if they stick to it, after a few years people stop laughing and they attack them for fear they are getting traction. Finally, when the tide turns they climb on board and pretend they were supporters all along."

One can see that Chong is now between the last two phases of this journey with criticism from party legalists and conservative pundits now replacing his earlier dismissal. But this criticism comes simultaneously with the new mash notes from party bosses. This attention convinces him that he has begun to see a path to victory. He has effectively back-footed the champions of the status quo by making them defend a 99percent discipline rate as having anything to do with democracy.

The cause of democratic reform moves in very long cycles, sometimes taking a generation or more to move from hopeless to inevitable. The struggle to win votes for those without property, for women, for American blacks, and for prisoners rolled slowly through the democracies from 1832 in the United Kingdom to the 1960s. The efforts of the CCF to clean up political financing laws in Canada took from 1933 to 1972. But the reform process accelerates in its final phase as its merit becomes impossible to deny, and more and more former opponents grudgingly concede.

Chong's efforts to begin to restore the power of citizen-led democratic choice seemed hopeless at the beginning of the 'all-power-to-the-Centre' Harper era. As even the prime minister's own supporters begin to writhe against the often gratuitous discipline that he imposes, it becomes harder to defend the need for such overlordship.

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Though it is highly unlikely that his bill will pass this Parliament — still completely in the grip of such an ideology and its enforcers — Chong has probably moved the bar, in public opinion, in favour of greater legislator power. He may have set the stage for the next parliament to enact reforms that make the House of Commons of tomorrow look more like the Commons of such legislative giants as Laurier, Diefenbaker, MacEachen and Douglas.

It might be a dream too far to hope that his efforts begin the process of rebuilding the appeal of political parties as agents of community decision-making, attracting the best and brightest not only to compete for power, but to promote the most compelling visions for their towns and for the nation.

The *Reform Act* is certainly is not all that will be required to reverse the leader-dominated politics of the 21st century. That has its roots in the power of television, marketing, technology and the massively expensive and powerful dark arts of modern political persuasion. Reforms are possible there too, but these are not those.

By planting his time-bomb at the centre of every democratic leader's power base — his elected lieutenants — Chong has performed an important service. Change here will force change elsewhere. You may quibble with his choice of tools and levers, but no serious defender of representative democracy can claim the status quo ante is healthy or accountable to its citizens.

And tyrants never forget that the greatest risks to their primacy, and democracy's greatest achievements, are always built on the foolish dreams of optimistic local visionaries, like those of Michael Chong, M.P.

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Restore Canada's Parliament by returning power to MPs

Centralization of power – since 1970 – has led to decline of Parliament

*Conservative MP Michael Chong outlines the rationale for the reforms he set out in his Private Members' Bill, "*An Act to amend the Canada Elections Act and the Parliament of Canada Act (reforms)*." The short name of Bill C-559 is* Reform Act, 2013.

Michael Chong, M.P.

The rules governing Canada's Parliament, and those governing the election of MPs and party leaders, have changed significantly over the years. These changes, occurring over many decades under different parties and leaders, have weakened the role of MPs and centralized power in party leaders. Some of the changes came about in the evolution of the unwritten conventions that govern Parliament; others were implemented through legislation like the *Canada Elections Act*. This state of affairs should surprise no one as the books, academic papers and journals written about this problem of centralization of power in Ottawa are too numerous to mention.

With each passing decade, the problem has only gotten worse. Continual changes hand more power over to party leaders, eviscerating the role of the only elected representative Canadians have at the federal level: their Member of Parliament. Individual MPs find it increasingly difficult to exercise their role as elected representatives within parliamentary parties due to the almost complete power of party leaders.[1] As a result, the collective ability of the elected legislature to hold the executive to account has weakened, leaving in place a PMO with almost unchecked power in between elections.

Three changes that have weakened parliament

Of all the changes that have weakened MPs and Parliament, three stand out:

- Changes to the *Canada Elections Act* in 1970 gave party leaders the power to approve party candidates and control party nominations. In fact, Canada is the only Western democracy where party leaders, by law, have a "veto" over party candidates and the power to replace a local electoral district association.
- Parliament's unwritten rules have changed over the years in a way that has advantaged party leaders and disadvantaged MPs,

weakening the power MPs used to wield within parliamentary parties. The governance and power structure of these parliamentary parties are important because it is parliamentary parties, and not individual MPs, that directly control the agenda and activities of Parliament.
- The role of the parliamentary party in reviewing the leader has been little used, and the rules opaque. This has weakened the accountability of party leaders to MPs.

The problem of the centralization of power in the party leaders in Ottawa has had a real consequence. Canadians are losing faith in their democratic institutions. Recent public opinion research reveals that only 55 percent of Canadians report being satisfied with the way democracy works in Canada,[2] a 20 percent drop from 2004.[3] Voter turnout during federal elections has reached an all-time low, demonstrated in the last federal election when four out of ten Canadians chose not to vote.[4] Studies have found that many Canadians are disengaged because they feel that politicians work for someone else, and are therefore indifferent to their views.[5] Canada's democratic institutions are losing their legitimacy.

Reform Act, 2013

To address this real problem, the *Reform Act*, 2013 was introduced in the House of Commons in December, 2013. It proposes three simple reforms:

- First, it would restore local control over party nominations, by replacing the "party leader" with a locally elected "nomination officer" for the purposes of approving party candidacy in an election.
- Second, it would increase the power that MPs wield within parliamentary parties by requiring the election (as opposed to the appointment) of the caucus chair and mandating that an expulsion of a caucus member only be carried out by a secret-ballot vote of caucus (currently, a member can be expelled by the leader).
- Third, it would reinforce the accountability of the party leader to the parliamentary party by specifying the rules for the caucus to review the leader.

If the bill becomes law, the Prime Minister and other party leaders would still be immensely powerful. However, these reforms will rebalance power in Ottawa, putting a check on the power of party leaders, and by extension the PMO. By giving the people's elected MPs a greater say, these reforms will restore Canada's Parliament to the way it once successfully worked for decades in Canada. A greater diversity of views will be allowed and MPs will be able to vote more freely in the House of Commons, whether on principle or on behalf of their constituents.

What about "problem" candidates?

Some have suggested that by restoring local control over party nominations, a plethora of problem candidates will result. This ignores the fact that the current system already produces "problem" candidates in every election. There is no evidence to suggest that the numbers of these candidates would be any different under *Reform Act* rules. Furthermore, under the *Reform Act*, nothing prevents a local electoral district association, through the locally elected "nomination officer", from reviewing and removing a local party candidate if something goes wrong.

New powers for MPs?

The *Reform Act* maintains the current power of registered political parties and their members to elect and review a leader, as they currently do. Some have suggested the bill creates a new power for MPs, the power to review the leader. This suggestion reveals a misunderstanding of how Parliament works. The bill simply recognizes the current power of the parliamentary party to review and remove the leader, and the current power of the parliamentary party to select an interim leader.[6] These current powers are part of the unwritten conventions of Parliament. However, unlike other Westminster parliaments these conventions have never been written down.[7] The *Reform Act* simply proposes to put these conventions down on paper to make them clear and transparent.

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Interim leader rules need clarification

The lack of clarity regarding the rules for changes in party leaders between party leadership races is of concern. Few things are more important in a democracy than how transitions in power take place. For example, if a Prime Minister were to immediately resign or suddenly die while in office, the rules for determining the interim party leader — and hence the Prime Minister — are not clear to many MPs. This is troubling since, by unwritten convention, it is up to Members of Parliament to select the new leader, and more usually, members of the majority caucus in the House of Commons. In turn, the Governor General would appoint that person as Prime Minister. The *Reform Act* would put these unwritten conventions down in writing to ensure clarity and transparency, especially important during a crisis.

Greater stability

Westminster parliaments that operate under the rules proposed in the *Reform Act* (United Kingdom, Australia and New Zealand) are just as stable as the current Canadian Parliament. The length of time between leadership changes is no different under either system.[8] In fact, the *Reform Act* would create more stability, because parties would less likely be decimated by leadership crises. Because the current rules regarding the review of the leader by caucus are unclear and unwritten, a leadership crisis in caucus tends to be a long, drawn out affair that damages the party.[9] Under *Reform Act* rules, when a leadership crisis occurs, a decisive decision is made: the caucus comes together and makes a quick decision, either voting to sustain or remove the leader.

Conclusion

Democracies around the world have produced the greatest prosperity and most stable societies. This is no accident. Economic prosperity and stability have flowed from the strength of these democratic institutions. In Canada, it will be the health and strength of our Parliament that will determine whether or not we maintain and sustain our economic prosperity and stability in the 21st century. In the long run, restoring democratic checks and balances on power are vital to our future peace, order and good government.

Michael Chong has served as the MP for the riding of Wellington—Halton Hills since 2004. He served as Minister of Intergovernmental Affairs and Minister of Sport, as well as the President of the Queen's Privy Council for Canada from February 6 to November 27, 2006.

Endnotes

1. The Samara Institute has done some excellent work documenting these difficulties, in the form of exit interviews with departing Members of Parliament.
2. Anderson, Kendall, et al., "Lost in Translation or Just Lost?: Canadians' Priorities and the House of Commons", Samara Democracy Report #5, Samara Institute, February, 2013. p.2.
3. Anderson, Kendall, et al., "Who's the Boss?: Canadians' Views on Their Democracy", Samara Democracy Report #4, Samara Institute, 2012. p.1.
4. Bastedo, Heather, et al., "The Real Outsiders: Politically Disengaged Views on Politics and Democracy", Samara Democracy Reports, Samara Institute, December, 2011. p.2.
5. Bastedo, Heather, et al., "The Real Outsiders: Politically Disengaged Views on Politics and Democracy", Samara Democracy Reports, Samara Institute, December, 2011.
6. For example, Stephane Dion was replaced by Michael Ignatieff on December 10, 2008. In yet another example, Alberta Premier Alison Redford was replaced by Dave Hancock on March 23, 2014. In all these cases, this transition in power was not decided by the party membership or at a party convention, but by the party caucus.
7. For example, the United Kingdom Conservative Party has codified this power in the Fresh Futures document. Although this document is not a part of the Conservative Party's constitution, it is a precedent setting document (The Fresh Futures document has been confirmed by a staff member of the 1922 Executive Committee as a precedent setting document. The Fresh Futures document is also referred to in the UK Library of Parliament document, Leadership Elections: Conservative Party. United Kingdom, House of Commons Library, Leadership Elections: Conservative Party, Standard Note, SN/PC/1366, 7 December 2005, pp. 7-9). In the United Kingdom Labour Party, the caucus power to review the leader is codified in the Labour Party's constitution (Labour Party Rule Book, Chp. 4.2.B.ii). The New Zealand National Party (Constitution and Rules of the New Zealand National Party, S.82b) and the New Zealand Labour Party (Constitution and Rules, 2013, Rule 308 B) have also codified this important leadership review mechanism in their respective party constitutions.
8. During the ten year period of 2003-2013, the Liberal parliamentary party had seven leaders: Chrétien, Martin, Graham, Dion, Ignatieff, Rae, Trudeau. During the five year period of 1998-2003, the Conservative Party of Canada and its predecessor parties had five leaders: Manning, Day, Harper and Clark, Mackay.
9. The 2001-1002 leadership crisis in the Canadian Alliance took the party from 25percent to low single digits in the polls in Ontario. By the time that crisis was resolved, the party was no longer a national force in Canadian politics, one reason it was forced into a merger with the Progressive Conservatives. The 2003-2008 leadership crisis in the Liberal Party took the party from majority government to third party status in the House of Commons. It is also interesting to note that while the Progressive Conservatives lost government and won only 2 seats in the 1993 Canadian election, the UK Conservatives won a fourth majority government with 336 seats in the 1992 UK election. About 17 months before the 1992 UK election, the caucus reviewed and removed Prime Minister Margaret Thatcher. She was replaced by John Major.

Don't let party caucuses unseat leaders

Tom Flanagan

Conservative MP Michael Chong's proposed *Reform Act* has attracted a lot of support from pundits and politicians. They seem to like Mr. Chong's idea that 15 percent of caucus should be able to demand a review in which the leader could be unseated by a subsequent majority vote of caucus (he is reportedly considering raising the threshold for a review to 20% of caucus). The proponent and supporters are doubtless well-intentioned, but this is a bad idea and Parliament should take a pass on it.

It is not as if Canadian party leaders are hard to turn out of office. The Governor-General can demand a resignation for improper conduct, as happened to Social Credit Premier Bill Vander Zalm in British Columbia. Or, as occurs more frequently, a leader may be forced to resign by opposition within the party organization. All parties have periodic review mechanisms for their leaders, which often lead to changeovers. Paul Martin pushed out Jean Chrétien by systematically taking over constituency associations. Chrétien dumped Martin from the cabinet but then announced his retirement before having to face a hostile review from a party organization now largely controlled by Martin supporters. Joe Clark underwent a review, got lukewarm support, called a leadership race, and was defeated by Brian Mulroney. Similar examples abound at the provincial level.

Caucus already has the ability to unseat a leader if enough members feel strongly enough about the issue, but it may require temporarily leaving the caucus and even bringing down a government in a confidence vote. That's more or less what happened to John Diefenbaker in 1963, when his cabinet split over the issue of arming missiles with nuclear warheads, and Social Credit then withdrew its support for his minority government. More recently, Stockwell Day was brought down as leader of the Canadian Alliance when a baker's dozen of his caucus members left to form the Democratic Representative Caucus, sitting in loose coordination with the Progressive Conservatives. Rather than resign immediately, Day asked for another leadership race, which was won by Stephen Harper. Again, provincial examples of leaders being unseated by opposition within caucus are also easy to cite, e.g., the fall of Progressive Conservative Premier Ed Stelmach in Alberta in 2011, triggered by the resignation of Finance Minister Ted Morton; and the ouster of Alberta premier Alison Redford just this March.

It is risky, however, for caucus to exercise its power to overturn a leader. Openly opposing the leader may end political careers, split the party, even cause the government to fall. Because the risks are so high, members are usually reluctant to engage in such confrontational tactics. And that's a good thing for the political system, because leaders can't lead effectively if they are constantly looking over their shoulder. All leaders know their time will be short if they can't win, or at least move their party forward, in an election. It's not helpful if they also have to expend valuable energy putting down frequent mutinies. The mischievous aspect of Chong's proposal is that it upsets the existing balance between risk and reward by creating an approved process for the caucus to dump the leader. It offers a dose of courage, not in a bottle, but in a procedure.

All national parties have constitutions requiring their leader to be chosen not by their parliamentary caucus but by party members, either voting directly for a leadership candidate, or indirectly through delegates to a convention, or through some combination of the two. It makes little sense to have the leader chosen by a democratic process involving tens or even hundreds of thousands of people, but then allow a few dozen caucus members to fire the leader when they feel like it.

But, one might ask, why must the leader be chosen by the party members? Why shouldn't the caucus elect the leader, as used to be done in the nineteenth century and is still done by some parties in Australia and New Zealand? The answer is that we have moved on from the "Golden Age of Parliament" to an era of mass democracy. Voters now expect to take part in choosing the country's chief executive officer. Indeed most voters, when they mark Liberal or Conservative or NDP on their ballots, are thinking mainly of the party and the leader, not of the local candidate. That is, they are thinking about choosing an executive government.

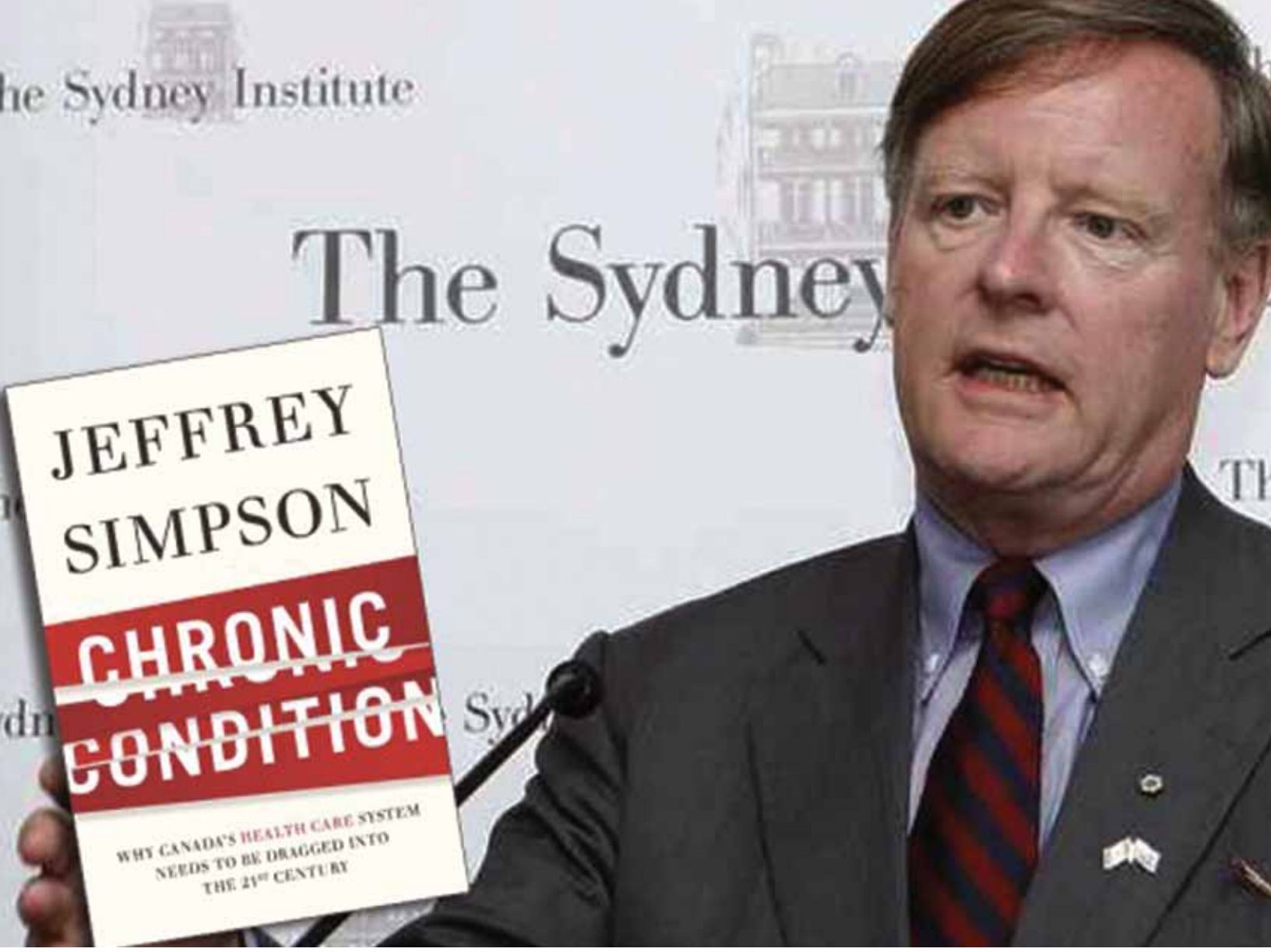
There was a time when conventional wisdom held voters to be incapable of making such a momentous choice. That led to the American Electoral College as a mechanism for indirectly electing a president, and the early parliamentary system of responsible government as a way of indirectly electing a prime minister. But that time is long gone.

A system in which the parliamentary caucus acts as an electoral college for the prime minister is highly conducive to what Karl Marx called "parliamentary cretinism." Exhibit A is the caucus of the Australian Labor Party, which overthrew Prime Minister Kevin Rudd in favour of Julia Gillard in 2010, then overthrew Ms. Gillard in 2013 and reinstated Mr. Rudd to lead them into the impending election. In the aftermath of the 2013 election, Labor has had to reap what it sowed — three years of Liberal majority government.

Or consider what happened in New Zealand in 1997. When Prime Minister Jim Bolger was out of the country attending a Commonwealth meeting, one of his ministers, Jenny Shipley, organized a caucus coup against him that made her prime minister. Fittingly, she led the National Party to defeat by Labour in the next election. Australia and New Zealand are wonderful countries, but such Third World antics are unworthy of a mature democracy. Canadians would be rightly appalled to see prime ministers overturned by caucus cliques in such a cavalier way.

Empowering party members to choose the leader builds popular support, thus giving the leader not just legal but also political authority to lead the party and the elected caucus. This is critical to giving voters a meaningful choice between parties with different policies, programs, and personnel. Otherwise, elections would just mean choosing representatives with little idea of what comes next. Look at the factional, personalized politics of many city councils (not just Toronto) to get an idea of what democracy can be like without responsible political parties. The House of Commons should discuss the *Reform Act* seriously to expose the fallacious thinking that underlies this aspect of the bill, then either amend it or let it die on the order paper.

Tom Flanagan is a Distinguished Fellow in the School of Public Policy, University of Calgary, and a former campaign manager for conservative parties.



STRAIGHT TALK WITH JEFFREY SIMPSON

Why is Canada settling for a middle of the pack health care system?

As part of its Straight Talk series, MLI interviewed Globe and Mail *national affairs columnist Jeffrey Simpson about the challenges facing Canada's health care system. Simpson, the author of Chronic Condition, an award-winning book about medicare, suggests Canadians should come to terms with the fact that we do not have the best health care system in the world. He suggests a number of areas where reform is urgently needed. The interview has been condensed and edited for clarity.*

MLI: Many Canadians consider our health care system to be the best in the world. Is it?

Simpson: Well, for many years Canadians were led to believe by political people and health policy experts that we had the best health care system in the world, or at least among the best, and if you read the Romanow Report of 2002, he said our public health care system compares favourably with other public health care systems in the world. That was a staple of political discourse by people of all political parties. It wasn't true then and it isn't true now, but Canadians wanted to believe it. It made their hearts pump when they heard they had the best because they had elevated it to this great national symbol, and who doesn't want to believe that your most important national symbol is the best in the world?

Furthermore, it was either stated directly or it was assumed that not only did we have the best, but the Americans had a terrible system, and that appealed to our moral superiority vis-a-vis the United States, which is a terrible flaw in the Canadian character, but is rather deep. So, for all of those reasons we did think we had the best health care system in the world and I think that perspective now lies pretty much in tatters, but for a long time it was the defining framework for how we approached the problem.

MLI: What does the evidence tell us now about how we rank in terms of health spending, and what we are getting for the money?

Simpson: No one should look at any one study and hang a definitive conclusion on it because every study asks different questions, weighs the answers differently, uses different methodologies, etc. Some studies, for example, concentrate on patient satisfaction; others concentrate on outputs: how many of this and how many of that? How many operations? How many doctors, etc.? Others have a blend of questions, so I'm simply observing that if you look at all the international evidence, comparative evidence, the studies all tend to point generally in the same direction. That's from the Organisation for Economic Co-operation and Development, that's from the Euro-Canada Barometer, that's from the Commonwealth Fund in the United States, that's from the Bloomberg Fund, etc. They all say, if you leave the US aside, which I always do because it's based on a different set of principles of how to organize health care, we're in the top five from a spending point of view, which is no bad thing because we're a wealthy country. Wealthy countries always spend more on health care. That's not the problem. The problem is that when you look at these studies, they demonstrate that our outcomes in terms of quality and numbers put us somewhere in the middle of the pack. You've got this gap between the amount we spend and the outputs. The other big spenders in these surveys — Germany, the Netherlands, France, Switzerland, Denmark — they tend to get top of the line results.

So, that's the problem. It's not that we're spending a lot on health care — although the rate at which we were increasing the spending was a problem until the last couple of years — it's that we weren't getting the outcomes that were commensurate or should be commensurate with the amount that we're spending.

MLI: How would you describe the fiscal situation in the provinces in terms of health care?

Simpson: Well, the numbers are quite clear. Once Roy Romanow did his report and said we needed to spend a lot more money on health care to buy change, and once that diagnosis was accepted by the then Prime Minister Paul Martin and the premiers at the time, they decided to put $41 billion, indexed at 6 percent a year I might add, into health care for the next 10 years. So, once that money started flowing we were spending from 2004 to 2010 about 7 percent a year more on health care, year after year. Then, of course, we had the recession of 2008 that was quite brutal, so all of the provinces' and the federal government's finances went from being in surplus, as it was when Mr. Martin signed that deal, to being in deficit, and in some cases substantial deficit. Governments responded [by saying] whoa, whoa, we can't just drive up health care spending as we have for years. So, now across the country on average it's going up by 2.5 percent. In Alberta they had a 9.5 percent increase in health care every year from 2000 to 2010 — so they doubled their health care budget.

Now, they had population growth to be sure; then there was inflation, so half of that was population growth and inflation, but still, every year they were pouring maybe 4.5 percent in real terms after inflation into health care; now it's down to 3.5 percent in total. In Ontario, tracking the national average, it was 7 percent and now it's down to two. In some of the Atlantic provinces it's zero. So, we now are increasing spending at 2.5 percent, but if you take population growth and inflation out, we're actually flat-lining.

The question at the moment is this: Can we put the health care system on a track whereby for the next 10 or 15 years we can keep health care growing at 2 to 3 percent a year? Because if we can, that's manageable and won't be damaging other parts of the provinces' spending pattern for education, roads, and so on. Or are we in a four or five year period of restraint and there will be a lot of built up pressure from provider groups like doctors' associations and from nurses and patient advocates and whatever? Then, after four or five years of restraint, boom, we'll be back up again where we were before? It's very important, therefore, right now that we bake into the system changes of assumptions, of procedures, of systems, and of governance that make sure we can hold this health care spending juggernaut to 2 or 3 percent a year; that's the great question at the moment.

MLI: And that would be in line with federal health transfers as well, correct?

Simpson: Well, the federal government under Stephen Harper basically said we don't think we can afford [Paul Martin's formula of transfers indexed at 6 percent for 10 years] so when we come to the end of [the agreement] we'll go to nominal GDP, which will probably be 3.5 or 4 percent — that's a guesstimate. Now, that doesn't sound like much, you're going from 6 to, let's say, 3.75, but that is a lot. If you do that year after year the provinces will be out multiple billions of dollars. It is interesting, the Parliamentary Budget Office in September of 2013 took a look down the road at federal and provincial fiscal situations and they said that the federal one was good. You don't know if there's going to be another recession or whatever, but on present assumptions it was quite good. There were going to be surpluses. But the provinces — this is the word of the Parliamentary Budget Office, not me — the provinces' fiscal situation as we move down the track was unsustainable. The principal reason why it was unsustainable, said the PBO, was this reduction in transfers from the federal government to the provinces for health care. So, I predict soon after or even before the expiration of this 10-year period, you'll see the provinces ramp up their demands that the federal government give them more money for health care.

MLI: Is there also an opportunity there for the provinces in terms of implementing reforms, as the Harper government seems a lot less interested in how they deliver health care than the Liberals were? And if so, what reforms do you favour?

Simpson: I believe that this reduction in spending we are seeing will actually produce more change and more reform than when you

were pouring 7 percent more into the program [each year]. I've been all across the country many times since the book, Chronic Condition, came out and I've been in touch with many, many different groups and three things have happened, all of which are positive.

Number one, nobody thinks we have the best health care system in the world. Anybody who stands up on a public platform and says that just gets people in the white coats coming to escort them off the stage and into some institution somewhere. So, we now can have a frank conversation and that's very, very helpful. People in the system are having a frank conversation; observers are having it, and so are political people. I've heard ministers of health say that we don't have the best health care system in the world, that we have an underperforming system. I tell you, five to 10 years ago they were scared to say that publicly because they thought they'd be hung from a lamppost. Now they say it, so we can have a serious debate.

Secondly, the doctors know, the hospital administrators know, the government people know, the civil servants know we don't have the money to pour into the system. If you think you've got a problem and you think the answer to that problem is to spend more money or use your collective bargaining agreement to get more money for yourself — forget it. That's not going to happen, but that was the dynamic some years ago.

The third, which follows from the first two, is that you're getting a whole lot of people who are saying, okay how do we improve quality if we're not going to be able to buy it with a lot more money? How do we change the system to make it better for patients in a constructive way? In other words, there's a lot more creative thinking going on right now on the ground than I've seen in the previous 10 or 15 years. It's being forced by the fact that these other options — living in the la-la land that we had the best system and believing we could throw a lot more money at it and that would produce results — they are off the table now, so this is good.

I see evidence, for example, in simple things. You know the population is aging. People are transfixed by this now because if you're over 80 years old the average amount of money that's spent on you for health care is $20,000 to $25,000 as opposed to people who are 60 to 65, which is a few thousand dollars. We're going to have a lot more people who are over 80 and even 90 in the years to come, so how do you prepare a system to deal with that? Well, one thing you do is you try to keep as many people as you can out of hospitals; being treated at home or in institutional settings, which is much less expensive and often better for them. So, now all the systems across the country are trying to do that; it saves the system money. If I don't have to be in a hospital taking a bed, but can be treated at home, I'm saving the system a lot of money because to be in a hospital for a day is like $1500.

So, budgets, when you look at how they're being allocated now, are putting the marginal dollar on community, that is to say local, care as opposed to in the hospitals.

So, that's the kind of good thing that is happening at the moment and there are many others across the country. In Saskatchewan, we have this cascading wait time problem. You wait to see your general practitioner; then you wait to see the specialist. If you need surgery you have to wait to see the surgeon and then they have to wait to get the OR time — it's a terrible problem except for acute situations. If you have a heart attack, boom, you're on the operating table. The system is very good at that. So, Saskatchewan said, let's try three things. Let's put some more money into day surgeries here. Let's get the surgeons to pool their lists. (I've got to tell you, this is so annoying: You're a surgeon and I'm a surgeon, you've got your list and I've got my list. Your list is bigger than my list — a little bit of testosterone going on here). And thirdly, they are saying we are not going to do these surgeries in the hospital unless we absolutely have to. They are being farmed out to private clinics who will be paid by the state under contract.

One thing I found absurd, when I went and spent time in hospitals, is that you have these operating rooms, beautifully equipped and well-staffed, and the neurosurgeons are struggling with the oncological surgeons who are fighting with the orthopedic surgeons for operating time and the patients are backing up and waiting except for the emergencies. I couldn't figure out why repetitive orthopedic surgeries, knee replacements, hip replacements and that sort of stuff, is being done in these ORs in big acute care hospitals. They should be farmed out to clinics in the big cities — you can't do this in rural areas — where they do nothing but that under contract with the state and they're privately organized. This is what other countries do. The patients don't care whether they are getting it done in the hospital or whether they are getting it done in the private clinic as long as the quality is assured, which the state is capable of doing. So, these kinds of initiatives are creeping into the system, not in the province of Ontario where there's still an ideological resistance to this, but it's happening in other provinces and these are good steps.

MLI: Is there a perception that the *Canada Health Act* is more restrictive than it really is in terms of health reform?

Simpson: Yes, absolutely, because of the defenders of the status quo over a long period of time.

Medicare has a large ideological component to it. I'm quite agnostic. I'm not pro-a big expansion of private care and I'm not adverse to public medicare. On the contrary, I just want to know what works.

The *Canada Health Act* says that the system should be publicly administered. It doesn't say publicly delivered, it says publicly administered and financed. So, the *Act* is agnostic on whether you, I, and three or four other people sell our services to the government and raise the money to have a clinic, as long as it's paid for by the public sector and the public sector is administering the rules. They are agnostic on who is delivering. This is what they do in Sweden, which is a classic social democratic country.

The *Act*, properly understood, has within it a fair bit of flexibility. Unfortunately the defenders of the status quo in the past have had the upper hand and [they have argued private clinics] will cut corners because they have to make profits, so patient safety will be put at risk, and if you do that it'll be the slippery slope towards US-style medicine where they check your wallet before your pulse: "This is against Tommy Douglas, he'll be rolling in his grave". The deal that Tommy Douglas struck with the striking doctors of Saskatchewan — actually he didn't, his successor did, Woodrow Lloyd — was that we will have a public

system in which the public purse will pay and access will be guaranteed on the basis of need, not money. You, the physicians, will continue to be privately organized individuals selling your services under a fee basis to the government. So, right from the beginning the doctors were private entrepreneurs, and most of them still are. If my doctor is billing the state as an individual entrepreneur, but five of them get together to do something collectively and sell their services to the state, all hell breaks loose and it's the end of medicare? I don't get it.

MLI: Do you think there is merit to the idea that patients should pay some small portion of their care?

Simpson: You know, that's a great question which has never really been debated in Canada. I thought about it a lot, I read a lot of literature about it. I spent some time in Sweden. I was very impressed by the Swedish system and in Sweden they've had the so-called user-fees or co-payments forever. It was interesting asking the Swedes, why do you have them? And as an old journalist I know when people are wondering "why waste my time with that question?" For them, it's a straightforward proposition that it deters frivolous use. They don't get a lot of money from user fees because once you exempt poor folks, the disabled, people with chronic conditions who absolutely have to use the medical system on an on-going basis such as diabetics on dialysis, once you exempt all of those people and then seniors over a certain age, you don't raise much money. So, it's seen as being a deterrent.

I looked at that [idea] hard, but at the end of the day I said, you know, you don't raise all that much money; it's administratively cumbersome, or can be; physicians feel a bit uneasy about it because cheques are going back and forth (although in the modern age of computers you can get around that), but it presumes that there's a fair bit of moral hazard in the system, that is to say, the frivolous use of a free good. I have no doubt that there's some of that and that there's over-testing by physicians and that some patients overuse the system. But, you know, I don't think most people get up in the morning and say, "oh, it would be fun to go to the hospital and hang around today, that would be kind of the way I'd like to spend today". I just don't think there's that much moral hazard; therefore, I don't think the administrative hassle which, as I say only gets you a small amount of money, is worth it. But I respect the fact that the Swedes have done it — most countries don't.

MLI: How did it come off the table in terms of something we could even discuss in Canada?

Simpson: Well, it was never really there from the beginning. I mean, right from the beginning it was going to be a British National Health Service-style system in terms of no payment. Now, after the NDP in Saskatchewan that brought medicare to the province was defeated, the Liberal government of Premier Ross Thatcher introduced user fees. They proved to be politically very unpopular and when the Liberals were subsequently defeated, the NDP took them off the table, and we've never really had any serious discussion about it since. We had a discussion in the 1970s about whether doctors should be able to charge extra fees to certain patients in individual specialties, but we've never had a national debate about it. I think given the *Canada Health Act* it would be difficult because it does proscribe those sorts of fees.

MLI: Is there any room for private insurance in Canadian health care?

Simpson: Seventy percent of the money that we spend on health in the country is public and 30 percent is private, so there's already lots and lots of private insurance. Two-thirds of all the drug costs in this country are private and only one-third is public or roughly 63/36. I like to tell folks that if we cross the street and get hit by a car, and, let's say for the sake of argument fracture our pelvis or something, the ambulance comes and you pay. Then you go into the hospital and you're covered while you are in the hospital. You leave and all of the sudden, depending on what drug plan you have, you've got private insurance or no private insurance for your drugs. Then, you get some crutches to hobble around on — you pay for those. You need physio — you pay for that. So, there's lots of private insurance in the system. The question really is, should we have private insurance for what are defined as core services, for example, in the hospital or for doctors? The answer there is probably no because the international evidence — and I looked at this pretty carefully — about having a kind of parallel private system where within a hospital there's a private wing or doctors work both private and public, which happens in Australia and in New Zealand, the international evidence is quite mixed as to what it brings. It does bring advantages for those who use private facilities. It reduces your wait times quite a bit. It can produce quality improvements in the sense that there's money flowing into a particular part of the system; however, it can also take health workers out of the public system and that makes the collective wait time problem worse. So, it's a kind of mixed bag, let's put it that way.

You can read ideologically into that whatever you want and people do; in my case, I've tried to look at the evidence, which is mixed.

MLI: What impact do you think the Chaoulli decision has had and will have on Canadian health care?

Simpson: You know, the Chaoulli decision is one of the great mysteries of Canadian health care because it's been on the books now from the Supreme Court for some years. The majority of the court essentially said because of the right to "security of the person" in the Charter, if the state can't deliver timely service to you or service on a timely basis and, therefore, imperils your health or comfort, you should have the right to buy private insurance. I thought, and so did many other people who came out and made comments after that, that would kind of open the door to more private insurance for these basic medical services of doctors in hospitals. That has not happened; Chaoulli is sitting there on the books and nothing has happened. In fact, in the province of Quebec, where they did have a little more private delivery than elsewhere, governments have actually closed some clinics under contract with the state. I have friends who tell me that there are some court cases winding their way up through different provincial court systems that are using the Chaoulli precedent and, of course, Brian Day who runs a private clinic out in British Columbia is behind or participating in one of these appeals and that it may come back; therefore, the door may open again. In theory it's open because the Supreme Court made the decision that it did in Chaoulli, but it's been very interesting that no provincial government and no group of physicians has chosen to go through this open door.

My opposition to Chaoulli was quite different. I don't think the Supreme Court should even have touched the case. This issue of health

care has been the most debated and most discussed perhaps in an inconclusive and unsatisfactory way, of any issue I have known in the last 20 years. We've had commissions, we've had legislative committees, we've had election campaigns, federal and provincial, that have featured this — we've had a huge amount of public discussion about health care. As I say, maybe we haven't been able to come to good and satisfactory conclusions, but the political process largely has certainly discussed this at great length.

I don't think it's a legal question at all. I think it's a political question, I think it's an economic question, I think it's a social question, and the court had no particular expertise to bear on this. It's a classic example in the age of the Charter where you legalize, essentially, a non-legal question and that's what they did.

I think that was a mistake because they overturned the lower court and the Court of Appeal who had spent weeks looking at the health care evidence and then in their judgments they just kind of cherry-picked pieces of the international and domestic evidence that suited where they wanted to go and I've actually had the occasion of saying to them in a certain way — I won't say how — I said, look, you know, you're very smart people. The nine of you are very smart people whom I greatly respect, but you are not experts in health care. I've got a whole drawer full of people who know a lot more about health care than any of you do and I would frankly count on their judgment about what to do with the health care system rather than yours. What you did, because someone appealed under the Charter, is you put this in the Procrustean bed of the Charter because you feel comfortable with that. Well, it doesn't fit.

MLI: How do we proceed from here? You have mentioned all of the commissions, all of the talk. Practically speaking, how do we fix the system?

Simpson: What would I do? Well, the first thing about what to do is to get straight that this is an immensely complicated system with many different pieces to it. It is a public system and it involves two levels of government, so that adds another layer of complication. Anybody who thinks there is a silver bullet that if we only did this, things would get magically better, doesn't know what they are talking about. It requires a lot of changes over many aspects of the system.

The good thing at the moment, as I've said before, is there's now an understanding that change has to come not from spending a great deal more money, and that change must come. This is partly because the public demands it, and partly because the population is aging, and partly because there isn't a lot of money to sort of salve everybody's conscience, because what happened was people said:

"How come we spent all this money when the system is not materially better?" One of the reasons is the providers helped themselves and did very well, thank you. The physicians and the nurses did extremely well as could have been predicted, but unfortunately wasn't. So, that's not going to happen again.

You need to do a whole bunch of things and I'll tick four or five off. Let's look at the federal government for example. We have at the moment among the highest drug prices in the world, okay, for generic drugs and for brand name pharmaceuticals. One of the reasons for that is that every province has its own formulary and they go out and negotiate with the drug companies the prices for the drugs that the formulary needs. Well, there are fewer than one million Nova Scotians, but there are 35 million Canadians.

We would get a better price if we had one purchaser for pharmaceuticals as other countries, including federal countries, do. Their drug prices are lower so we should have one federal agency that buys the drugs.

Second thing, and this is not any secret, if you are a provincial premier you know that the cost for your seniors' drug plan is going to go up sharply because you're going to have more seniors — a lot more. So, what are you going to do about your drug costs? If you continue to finance drugs the way we have in the past you'll just raise the tax dollars for it, but what happens in five, 10, or 15 years is you have more people taking drugs and fewer people in the workforce to tax, so you're shifting the burden inter-generationally onto your children. So, we need to have a social insurance mechanism so that people pay throughout their life the way they do for pensions for drugs they're going to need when they are seniors, because 85 percent of seniors take drugs.

You have to have an understanding with the physicians and nurses that this sort of shooting up of their salaries and then a period of restraint, shooting up and restraint, is not fair to them; it is not good for the state. Here's the deal: For the next decade if we're going to keep health care at 2 to 3 percent your income is going to go up at the rate of inflation adjusted for population — no more, no less. We're not going to slice you back, we're not going to give you big raises — this is what we can afford. Everybody got that? Doctors say, "we're going to go to the States." Bye. See you later, okay?

You like the mess down there? Good luck. We have a lot of physicians coming to this country who are pretty well trained who we can train up to high levels and the labour market, the way it worked in doctors' favour for getting wage gains in the 1990s, doesn't work anymore and the same for nurses. So, don't use that scare tactic that the Ontario Medical Association and others sometimes resort to.

Third, at the margin, all the provinces should be putting additional money into community care, not hospitals.

Fourth, we do need private delivery of publicly-paid for services on a more flexible basis, with quality, timing, and cost being monitored, obviously.

But, the point being: that there's no one thing that needs to be done. There's a wide range of things that have to be done to make this system better, commensurate with the money that we are spending which, I repeat, is at the high end of the world's scale.

Jeffrey Simpson is The Globe and Mail's national affairs columnist, and an author who has won many of Canada's leading literary prizes. In January, 2000, he became an Officer of the Order of Canada.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Why health care's broken and how to fix it

Canadians like to think they have the best health care system in the world. But, in the view of MLI managing director Brian Lee Crowley, this is a "statement about values" that "apparently transcend any assessment of the quality of care actually received." Crowley believes the current centrally planned system — supported by ever-increasing amounts of federal funding — has failed and considers it inevitable that Canadian medicare will be reformed to deliver better care more efficiently.

Brian Lee Crowley

One of the most cherished beliefs held by Canadians is that we have "the best health care system in the world." This belief has been remarkably resistant to evidence, but when even Jeffrey Simpson, voice par excellence of the Canadian establishment, points out in his latest book that it is utterly contradicted by the data, we know something important is shifting in the Canadian political and policy firmament.

After all, we know that Canada's actual performance is only mediocre when compared to many other western industrial democracies, in terms of indicators such as waiting times, access to the latest technologies, access to physicians, paraprofessionals and specialists, and coverage of health services beyond hospital and physician care. And we also pay over the odds for this under-performing system, especially when you adjust for the age of our population, which is still relatively young compared to most of Europe and Japan.

But what I have come to understand about our commitment to the Canadian health care system is that it is resistant to facts because the

statement about it being the best system in the world isn't actually a statement about facts. It is a statement about morals, beliefs and desires. It encapsulates a belief that Canadians have that there is something especially morally worthy about our system that elevates it beyond mere criticism of outcomes. Our system is based on values, and especially values of equity and fairness that apparently transcend any assessment of the quality of care actually received.

What is great about our system, then, if my reading is correct, is that its intentions are good and pure and any falling short in practice, while deplorable, is really only an accident caused by insufficient reverence for the intentions. Oh, and of course an inexplicable unwillingness by governments, and especially Ottawa, to fund the system adequately.

Most people in the health care establishment share the analysis of the Romanow Commission, more than a decade ago, that there is nothing wrong with the Canadian health care system that more money won't fix. Ottawa's job was, through a vague and unspecified "leadership" role, to rescue the health care system from its torpor and decline, and to make the reality of the system equal to its moral intentions.

One is reminded of Dorothy, believing she could put on the ruby slippers, close her eyes and wish really hard to be home in Kansas and the ruby slippers of good intentions, federal leadership and more money would magically take her there.

But magical thinking is not going to make disappear the factors that are re-shaping the Canadian health care system. Some day we must face the reality that, a decade after Romanow, the federal health accord and record high levels of federal cash contributions to health care that were supposed to buy us reform, the system is essentially what it was, except it's 10 years older, more expensive than ever, and the money got us almost nothing in the way of reform. We have not abolished the factors driving reform, merely masked them for a decade, at great cost in terms of lost momentum and wasted cash.

There are many, many things shaping the system and guaranteeing that it will be quite different in the future than it has been in the past, but three key factors can be identified to be discussed in the following order:

- central planning doesn't work (which is why "leadership" cannot fix the system);
- what we've learned about federal "leadership" in areas of provincial responsibility (there's leadership and then there's leadership);
- the moral and economic sustainability of the system.

The failure of central planning

The Berlin Wall fell for a reason, and that reason is that no matter how hard you try to isolate yourself from the real world there are certain realities that you cannot escape, even if your intentions are good. You may have highly ethical reasons to want to be able to fly, but they will not allow you to overcome the law of gravity.

The impossibility of central planning is one of those realities, but not nearly enough attention is paid to what we learned about the failures of central planning in Eastern Europe and elsewhere, for we learned that there are systemic reasons why it fails, reasons that have nothing to do with the specific circumstances of Eastern Europe. It is doomed to failure by its own inherent contradictions and flaws, no matter how beautiful the theory that disinterested Platonic administrators will take from each according to their means and give to each according to their need.

What we learned was that centrally planned economies couldn't feed themselves, couldn't clothe themselves and couldn't house themselves. And the most fundamental reason why, we discovered, was that central planning made impossible demands on central planners. It demanded that they know things that they couldn't possibly know.

A centrally planned system will always fail because it can only take account of what the people at the top know and think is important, whereas our system of liberal capitalism in the West is based on the idea of decentralised information and control, of the rule of law, individual decision-making and competition – not for purposes of social Darwinism, but to ensure that many people in many places in many circumstances are rewarded for trying experiments to discover what works best and then offering those improvements to consumers.

It demanded that they know how many shoes people would want, in what styles and sizes and where they would need them. It demanded that planners know whether people would prefer more shoes or fewer if they had to make a choice between them and say coats or cars or food. And it repeated this across every possible area of human activity. The centrally planned system failed because it could only operate on the basis of what planners knew, which was always much less than what people knew about their own particular circumstances.

A centrally planned system will always fail because it can only take account of what the people at the top know and think is important, whereas our system of liberal capitalism in the West is based on the idea of decentralised information and control, of the rule of law, individual decision-making and competition – not for purposes of social Darwinism, but to ensure that many people in many places in many circumstances are rewarded for trying experiments to discover what works best and then offering those improvements to consumers. Our society and the various industries and activities within it operates on more information than any individual or committee or ministry can gather and analyse and act on.

That is the secret of the West's prosperity – we have discovered the key to making use of the information in the heads of all our people. The chief difference between the central planners and us was our ability to integrate more information in our decisions, even though no one in authority possessed all the information at some central point and sent us instructions on how to act. The idea that such a fully informed

control centre can exist and direct our activities successfully is what economists and information theorists call the synoptic delusion, the delusion that killed central planning.

But while we might have escaped the delusion of central planning for the most part in the West, the Canadian health care system is a lonely remaining outpost of its logic, and that is why more money and more leadership cannot rescue the system because the system itself is premised on an idea that does not work, although it can be kept afloat by ever increasing cash infusions. But as Margaret Thatcher once so sagely observed, the problem with socialism is that eventually you run out of other people's money.

Am I correct that our system is a lonely holdover of the central planning mentality? Consider this: Our provincial ministries of health not only pay for necessary care, but also govern, administer and evaluate the services they themselves provide. They define what constitutes "medically necessary services" and then pay for virtually all such services provided in Canada. They forbid the provision of private insurance for these services. They negotiate payment schedules with the powerful provider groups. They often set the budgets for nominally private health care institutions, appoint the majority of their board members, and have the explicit or implicit power to override management decisions, a power that they employ with gay abandon.

(T)he fact (is) that much of the system is driven by what governments are willing to pay for. If government is willing to pay for heart surgery, but drugs are paid for by consumers, there will be tremendous pressure to keep heart surgery facilities open and resistance to moving to drug-based therapies.

Anyone who doubts that provincial governments consider themselves, and are considered by the electorate to be, the governing mind behind the entire health care system failed to observe a Manitoba provincial election of a few years ago. In that campaign the quality of toast in hospitals was a major election issue, and it was clear that the parties thought that they could and should be able to affect this matter, and the electorate thought that this was a credible claim.

A different but equally powerful example occurred several years ago in Nova Scotia, where I used to live. There, the CEO of the local hospital was nominally an independent authority, but his budget came almost exclusively from the provincial government (I think the next biggest source of revenue was parking fees!). He had been given strict instructions that he was not to run a deficit, and he got into some difficult labour negotiations – then the phone rang and it was the premier of the province telling him to settle with his workers even if it meant a deficit that he had been instructed to avoid. In those circumstances, no one can be expected to take any responsibility or initiative, because your decisions will always be second guessed by those in political power, so it is better to make them take responsibility up front by deferring to them rather than trying to act in a managerially rational way.

Now consider how fast knowledge is expanding in the health care world, and the incredible balancing acts that need to be undertaken to make the system work. We have to think about innovation, new technologies, orphan drugs, insured services, doctor shortages, how to organise practices, how the pie should be sliced up between doctors and nurses and others, how to make better use of paraprofessionals, and so on.

Consider that the whole stock of human knowledge is now generally judged to be doubling roughly every five years or so, in areas as diverse as management, genetics, insurance, information technology, pharmaceuticals, chronic disease management, nanotechnology, etc. How credible is it that provincial bureaucrats can acquire all this information in a timely manner, assess it and then integrate it in a thoughtful way into their decision-making given the institutional constraints I've described? We never talk about this and yet I believe it is the single biggest problem facing the Canadian health care system and it is by definition going to get worse as the body of knowledge relevant to health care expands exponentially, but the capacity of the managers of the system and the incentives that surround them remain those of central planning that can only act on the knowledge of the people in charge, no matter how good their intentions.

Just think how likely it is that Henry Ford would have been allowed to introduce the assembly line if his proposed reform had to be negotiated with all the existing car companies and factory workers, all of whom were at the table to protect their interests. Would any of us have personal computers if some bureaucrat in a ministry who still used a typewriter had had to decide to shift productive resources to their manufacture?

How would innovation be affected if a Ministry of Pharmaceuticals had to study all proposed drug innovations in advance, decide which ones it thought worthy of pursuing, and then negotiate with industry about whether permission should be given to proceed, remembering that many competitors have reasons to prevent innovations that might render redundant some of their products.

Let me open a brief parenthesis about innovation. In most industries, technological innovation is a cost reducer, not a cost driver, but this seems to be less the case in health care than elsewhere. This is driven, in my view, by three key factors. In many cases the new technologies are not substitutes for existing techniques, but are additive — solving problems that we were unable to solve before, and yet not allowing us to dispense with already existing techniques and technologies. Second, innovation only helps to reduce costs when you can shift activities from old, less technology-intensive approaches to new, more technology-intensive ones.

But in the politicized health care system I am describing for you, these shifts of resources out of old approaches and institutions and into new ones is severely hampered. Consider the real world example I observed in Nova Scotia of the government building a new hospital in a community but not closing the old one, not because the old one made a significant contribution to the quality of health care, but because the government was not willing to take the political heat for closing the outdated facility.

Finally, there is the fact that much of the system is driven by what governments are willing to pay for. If government is willing to pay for heart surgery, but drugs are paid for by consumers, there will be tremendous pressure to keep heart surgery facilities open and resistance to moving to drug-based therapies.

The important decisions about our health care are not the macro ones taken by distant bureaucrats in office towers in our provincial capitals. They are the micro ones taken by patients and doctors and other professionals about what is good right now for the flesh-and-blood person before them who is sick and needs care. Empowering patients to get the best care and giving them incentives to do so in the most cost-effective way possible is applying the lessons of the West's success and rejecting central planning.

The whole point is that central planning encourages delusions of grandeur in which officials come to believe that there is a right solution to every problem. The point is that there is no one right answer to these questions, and everything depends on circumstances. The system cannot be run successfully from the centre.

The failure of federal leadership

In the decades prior to the 1990s, welfare spending was out of control, in large part because of the way Canada paid for it. Ottawa used its spending power to entice the provinces into what was essentially a poorly designed one-size-fits-all national welfare system. The system was very effective at capturing people on welfare dependence, and was consequently very expensive, in cash terms, in lost productivity, and in lives blighted by being trapped behind the welfare wall. We saw the number of people on welfare rise in each recession, but it never declined in subsequent recoveries. It was a one-way up escalator, not a roller coaster.

The provinces had little incentive to reform because they could pass a lot of their costs along to Ottawa. As a result, by the mid-90s, well over 10 percent of the Canadian population was in receipt of welfare benefits, including in our then-wealthiest province, Ontario. This lovely system was the fruit, in other words, of one kind of federal "leadership."

As everyone knows, when Ottawa decided to fix its deficit problem, it did so in part by cutting transfers to the provinces. This has become known as "downloading" and every provincial politician decries it. This is wrong — "downloading" gets a bum rap and is actually an example of the right kind of federal leadership at work.

It get a bum rap because cutting transfers was only one half of what Ottawa did with respect to welfare, and that's why welfare reform worked. Ottawa also said to the provinces, in exchange for you accepting less money, that money will come as a block grant with no strings attached. We are getting out of the business of using the federal spending power to try to design and impose a uniform national welfare system.

It was this combination of reduced transfers plus freedom for the provinces to design their own welfare system that unleashed a wave of hugely innovative welfare reform across the country. Many of the reforms were ultimately adopted by all the provinces, but there were also important differences in focus. BC, for example, put the accent on time limits for welfare. Alberta's priority was getting employable young people into work. Ontario's focus was workfare. It is very important to note that provinces chose different policies because of what they judged were the most important aspects of their local circumstances, what the advocates of "federal leadership" usually refer to misleadingly as a "patchwork" that should be eliminated by the imposition of uniform national standards.

The overall result was that we cut the number of people on welfare in half at the same time as we saw a very significant fall in the number of people living in poverty and the number of people on low-incomes.

The common objection to such reform, that it unleashes a race to the bottom, whereby provinces compete with each other to abandon good quality services so as to cut taxes and spending, was not at all borne out in the evidence — and I can assure you that this is a matter that has been carefully researched. It wasn't so much that spending on welfare declined overall, as that we got much better value out of the money and it was focused on those who needed it most.

We make a mistake when we seek the kind of federal leadership that concentrates on imposing a one-size fits all solution to our health care sustainability problem or that simply throws money at the problem and relieves those responsible of the need to think more carefully about reform.

What we need instead is to create a set of circumstances in which provinces are given the room and indeed the authority to experiment, but where it is clear that they cannot pass along the costs to Ottawa, but rather must live within their means. Remember that welfare reform did not involve ending federal transfers. It cut and then capped transfers, so that provinces could see that any improvements in their situation would come from their own actions, not from lobbying for more federal money to bail them out of the difficulties created by a dysfunctional but centrally-imposed system. If it is true that behaviour is driven by incentives, then these new incentives were healthy and constructive ones.

If we are to apply these lessons to health care reform, Ottawa needs to do two things. First, it needs to stop increasing the amount of money it gives to the provinces for health care. As long as the provinces believe that the easiest response to rising costs is simply to pass the blame to Ottawa and lobby for more money, no change will occur. Happily, Ottawa has already begun to heed this advice and when the extension of the health accord ends in 2017, provinces can look forward to federal transfers that will grow in line with nominal GDP growth with a 3 percent floor and no more.

But equally importantly, Ottawa needs to give provinces more room to experiment with how they run health care. That means at the very least changes in the way Ottawa interprets the *Canada Health Act*, and particularly its five principles. On this point, a 2013 Macdonald-Laurier Institute (MLI) paper by health law expert

Michael Watts, titled *Debunking the Myths: A broader perspective of the Canada Health Act*, provides evidence that this is happening as well. Put that together with the individual empowerment of Canadians by the Supreme Court's 2005 Chaoulli decision that individual rights trump government policy when it endangers the health and well-being of the individual, and we have now, largely unwittingly, created a new framework for experimentation and therefore the breaking up of the old central planning mentality.

In another 2013 MLI paper titled *Health Care Reform from the Cradle of Medicare*, Janice MacKinnon, former NDP Finance Minister of Saskatchewan under Roy Romanow, lauds her province's recent experiments with using private sector clinics to provide publicly-insured services.

These kinds of baby steps toward the unbundling of the old central planning edifice, the separation of the functions of purchaser and provider of health care services will, if the old central planning reflexes are not allowed to reassert themselves, result in a system that is more experimental, more open to innovation, more entrepreneurial and, crucially, more oriented toward better care for patients, who inevitably will become more powerful voices within the system, especially as the Boomers, who have been assertive about everything they have wanted in life, age and become the major users of the system.

Moral and economic sustainability

As stated at the outset, Canadians' faith in the health care system in the abstract is in fact a form of endorsement of its moral or ethical foundation: that no one should be deprived of needed medical care on the basis of ability to pay.

But here is the main ethical problem the system now faces. Of all the major determinants of health, we know that the health care system itself is in fact a relatively minor one. Much more important are things like education, community viability, quality of family life, personal habits and behaviour and individual and collective prosperity. Almost all of these things depend, among many other things, on public investments, in things like schools and infrastructure, that raise our standard of living.

Health care spending already consumes basically half of provincial spending, and that is the level of government that provides many of those vital programmes and investments that underpin prosperity, itself far more important to our health than health care per se. To be more specific, government health spending is on trend to exceed half of total available revenues in six of the provinces by 2017, up from only a quarter of revenue in the early 1970s.

If health care spending continues to rise at its current rates, if in the real world you cannot raise taxes without real consequences to Canada's competitive standing, and if excessive public borrowing eventually crowds out programme spending, as we learned in the 1990s but seem to be forgetting again, the only alternative to genuine system reform is to cannibalise other public spending. If you project current spending trends into the future we can easily foresee health care spending squeezing our universities, transport, schools and all the rest.

So what are the ethical considerations involved in devoting the solid majority of all provincial spending to a consumption good consumed in the vast majority by the population over 65, at the cost of spending on other real investments in people that pay large social dividends, such as education, infrastructure, and environmental protection?

And since the genuine investment goods we will be forgoing would pay the greatest benefits to the young (since they will live as long as the useful life of the investments themselves), this will be the cause of major intergenerational conflict. We cannot impoverish the rising generation to pay for the health care of the old.

I am not suggesting this will be the outcome, because clearly the inevitable adjustments will occur. But the adjustments are made more difficult and painful by the politicised nature of our system.

It may be inevitable that real reform will happen, but I am personally always amazed by how much effort it takes to make the inevitable happen. To make it happen will require a slow, incremental, ginger adjustment in the cost curve of public health care that can only be achieved by innovation, competition, and looking to the better-off to cover more of the costs of their own care. If we do that we will not only move our system toward sustainability, but we will quite likely be able to adjust the public health care coverage to ensure access to dentistry, drugs and other services for those on low incomes.

What will reform look like? The details remain to be seen but the principles should be clear:

- Public money will be concentrated on health services that confer the greatest public benefits and where individuals are least likely to be able to obtain appropriate and cost-effective insurance on an equitable basis;
- Contracting out and privatization will be used to introduce autonomy and accountability where appropriate, as well as to stimulate private investment and reward innovation in all aspects of health care, including in treatments, administration, timeliness, and quality. This is not the widely decried American model, as opponents of reform insist. It is in fact the Swedish model of health care reform, whose benefits are described in the 2013 MLI paper, *A European Flavour for Medicare: Learning from experiments in Switzerland and Sweden*, by Swedish policy analyst Mattias Lundbäck;
- Government will focus its efforts on ensuring that no one suffers economic hardship to obtain needed medical care, that access to care is universal, that maximum information is made available on the performance of the health care system and its various components and that the transition to a new system be carried out under the watchful eye of an arm's length authority to ensure that quality and access are fully maintained under the new arrangements.

That is what the 21st century holds for our health care system.

Brian Lee Crowley is managing director of the Macdonald-Laurier Institute. This commentary is based on a keynote talk he delivered to the national conference of the Canadian Association of Healthcare Reimbursement in 2013.

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The future of war

John Thompson notes that the nature of war has changed and suggests that "In a world that is now over three times more populated than it was in 1940, Canada's soldiers, sailors and airmen face the prospect of interesting times ahead. They had best be prepared." But the challenge, writes Thompson, is determining just what type of conflict they should be prepared for?

John Thompson

The 20th Century might not have belonged to Canada, but we sure got noticed. The Canadian military began the century by ending the Battle of Paardeburg in February 1900 with a decisive night assault that forced the surrender of 4,000 Boers. Canadian CF-18s ended the century 99 years later dropping bombs on Serbs over Kosovo — it was not NATO's finest moment but the Canadians performed with the consummate workmanship that they usually bring to warfare.

During these 100 years Canada was in five wars and dozens of other violent episodes while wearing blue berets on UN service. Including members of the Merchant Marine and the valiant Newfoundlanders, some 117,000 Canadians fell in war since 1900.

So how will the 21st Century shape up? So far we have 13 years of war in Afghanistan, a brief shooting war in Libya, anti-piracy patrols off Africa and the death of an Army officer when Hezbollah used him as a human shield in Lebanon. We've been busy.

Max Boot, in his excellent survey *The Savage Wars of Peace, Small Wars and the Rise of American Power* (Basic Books, 2002) observed "the past is an uncertain guide to the future but it is the only one we have." In a world that is now over three times more populated than it was in 1940, Canada's soldiers, sailors and airmen face the prospect of interesting times ahead. They had best be prepared.

Spending 20 or more years on new military equipment programs is already a wasteful luxury. Soon it will be a criminal short-coming. Maintaining military parity in the coming decades is going to be a wild ride.

But what should they be prepared for?

The famed British strategist Colin S. Gray pointed out in *Another Bloody Century: Future Warfare* (Weidenfeld and Nicolson, 2005) that war is the province of uncertainty and nothing is so hazardous for the pundit than predicting how it might unfold. The only safe prediction about war is that there will be war.

Canada's fundamental interests have not changed much since 1945, or indeed since 1867. We remain a long thin linear strip of settlement, spanning over 6,000 kilometres from Halifax to Victoria with a vast largely empty wilderness to the North. Distance and ocean space is a part of our defence from every direction except the south… almost all of us live close to the American border.

Distance is also our our handicap whenever we try to deploy resources. Should it become necessary to rush a battalion of regular troops to Toronto, the nearest are five hours travel by road — and they are seldom fully combat ready or at full strength.

Defence of our sovereignty remains problematic. Our intrepid rifle-armed Canadian Rangers not withstanding, fighter planes and warships demonstrate and enforce our will over our air and ocean space. These are big beats and the quality platforms are getting expensive.

Our solution to our defence dilemma was always to resort to collective security. We rejoiced under the mantle of the British Empire and then placed our hopes in the U.S. with the 1940 Ogdensburg Agreement for mutual cooperation. It has served us well but can we be so sure that the Americans will be as robustly healthy and friendly to us in the next 75 years as they were in the last?

Canada is one of the few nations that can be confident of its supplies of food, fresh water and fuel in the coming decades. The US might come to envy us for these assurances, as may other nations.

Collective security also represents the hard-won lessons of two massive world wars, and was confirmed repeatedly through NATO and UN Peacekeeping.

Although many Canadians feel the latter was some sort of international 'do-goodism,' Professor Sean M. Maloney's *Canada and UN Peacekeeping: Cold War by Other Means 1945-1970* (Vanwell, 2002) decisively argued that this was naked Canadian self-interest — keeping a lid on trouble spots abroad before we got into another massive conflict.

Afghanistan, Libya, and our continuing involvement in collective defence arrangements are not some archaic policy hold-over, but a continuing practice that serves us well.

However, dealing ourselves into various trouble spots means putting expensive chips on the table: troops, ships and aircraft. There is also the danger that any hand might find us having to ante up into a larger risk.

Besides the usual uncertainties that cloud strategic crystal balls, there are other considerations. The pace of technological development is accelerating and this always presents as many new risks as opportunities. We have not seen the full maturity of the 'industrial revolution' wrought by computers as this has already segued into a secondary revolution based on robotics. The revolutions in life sciences, genetics and nanotechnology are only beginning.

Spending 20 or more years on new military equipment programs is already a wasteful luxury. Soon it will be a criminal short-coming. Maintaining military parity in the coming decades is going to be a wild ride.

The world is getting crowded. David Kilcullen's provocative "*Out of the Mountains: The Coming Age of the Urban Guerrilla*" (Oxford, 2013) reminds us that over half of humanity now lives in cities, and that major cities — with over ten million inhabitants — are spreading like mushrooms. If the Canadian military needs a new area for training exercises, they would be strongly advised to impose themselves on Montreal, Toronto or Vancouver.

Kilcullen, Boot, Gray and others also remind us that we are likely to be exchanging shots with a rapidly changeable cast of characters. Fighting a uniformed, regular military that respects the laws of war is becoming increasingly rare.

Some Canadian corporal 20 years from now may encounter a gunman and have split seconds to decide whether he is facing a terrorist, a local defence militia, a political paramilitary, a gangster, or someone who is all of the above at once. We just have to hope that fight does not occur here.

John Thompson spent 13 years in the Canadian Forces, five in the Canadian Institute of Strategic Studies, 23 in the Mackenzie Institute and is currently VP, Intelligence with Strategic Capital Intelligence Group. A frequent lecturer and media commentator, he can also be found at the Royal Canadian Military Institute.

Gulf of Mexico oil drilling rig

Mexico's energy reforms offer both competition and opportunity

Though many details regarding Mexico's energy reforms are still to come, it is widely expected that Mexico will become more stable and prosperous, yielding new opportunities for Canadian entrepreneurs, as well as increased competition in the crude oil export market.

Jeffrey Phillips and Laura Dawson

On December 20, 2013, Partido Revolucionario Institucional (PRI) President Enrique Peña Nieto signed into law landmark energy reforms that will open up Mexico's hydrocarbons and electricity sectors to private investment. The reforms have been met with enthusiasm from the foreign investment community, despite the fact that many of the specifics are still being developed by Mexican legislators.

In total, Mexico's reforms include changes to banking, education, competition, telecommunications, and tax collection. If successful, the reforms will increase economic opportunities for Mexicans and build the country's stock of social capital. As a trading partner, Mexico will become more stable and prosperous, yielding new opportunities for Canadian entrepreneurs.

Of particular interest to Canada are the energy reforms that will grant foreign companies exploration and extraction rights, effectively ending Mexico's national energy monopoly. The state corporation Petróleos Mexicanos (Pemex) becomes just one competitor among many and foreign companies are allowed to partner with Pemex in every stage of the value chain. A more open and vibrant energy sector should provide opportunities to Canadian companies, particularly service companies, but increased Mexican crude oil output will also compete with Canadian exports to the United States in future years.

Even though Mexico has undertaken the constitutional changes necessary to carry out the reforms, passage of secondary laws to establish a new contracting regime will not be easy. The opening up of the oil and gas sector effectively ends Pemex's 75-year monopoly. Consequently, the reforms have sparked political opposition and protests in the streets. This is not surprising given the intrinsic link between Mexican national independence and the energy sector. The day in 1938 when President Lázaro Cárdenas ejected U.S. and British oil companies and nationalized Mexico's oil reserves is celebrated each year as a national holiday.

Mexico is a large but not particularly efficient producer of crude oil. Ranking as the world's 10th largest producer and 12th largest exporter, about half of Mexico's oil is exported, mostly to the United

States. Pemex is currently the only company authorized to conduct exploration and development in the oil and gas sector.

The need for reform is clear. Mexico's easily accessible oil reserves have been depleted and Pemex lacks the capacity and technology to develop tight oil from its shale and deep-water sources. Over the past eight years, crude oil production has decreased by a million barrels per day despite record levels of investment.

Pemex is unable to satisfy demand for gasoline and diesel and must import 49 percent of its domestic consumption as well as 65 percent of its petrochemicals and 33 percent of its natural gas. Inefficiencies in the energy sector diminish Mexico's export returns and make energy-intensive manufacturing unprofitable.

So far, only the broad strokes of the reforms have been released, with details to be worked out through secondary legislation that legislators are aiming to complete by the end of April 2014. Nonetheless, opportunities exist in the medium- to long-term for Canadian companies to provide the much needed capital and technological expertise to help develop Mexico's substantial unconventional resources, build pipeline infrastructure, and increase extraction from mature wells. The new laws will allow for service, production-sharing and profit-sharing models, as well as licenses similar to concessions.

However, reserves remain the property of the state while still in the ground. Mexican officials say that new players will be able to record Mexican reserves as future benefits in notes to their financial statements, but not claimed as assets. Local content will also be part of the picture, but as yet there are no details.[1]

While most of the focus for opportunities has been on the deep-water and shale resources, Canadian companies are well situated to capitalize on opportunities in the mid-stream and downstream areas, in particular, pipeline infrastructure. Demand for natural gas in Mexico is increasing and expected to double by 2025, but the country lacks the necessary infrastructure to move the gas around (part of the reason why natural gas is so expensive in Mexico).

Although large U.S. extraction companies will likely be the first to gain, Mexico is not a new market for Canada. Canadian companies have been active in a number of areas such as geophysical services and mapping, drilling and support services, pipelines, and field machinery and equipment. There are currently around 80 to 100 Canadian companies operating in the Mexican oil and gas sector.

TransCanada, for example, has had a presence in Mexico since the mid-1990s, a presence that is growing as the country seeks to connect supply of natural gas to demand markets. TransCanada has active pipeline projects in Mexico and its total investment in the country will be approximately $2.6 billion by the end of 2016.[2]

The energy sector reforms are expected to create substantial economic benefits for Mexico and North America writ large. Shortly after the reforms were signed into law in December 2013, Standard & Poor's raised Mexico's sovereign long-term foreign currency credit rating up to BBB-plus. Mexico's credit ranking is now second only to Chile's in Latin America.

As a result of the reforms, the Mexican government expects:

- the creation of half a million jobs by 2018 and 2.5 million jobs by 2025;
- an additional one percent in GDP growth by 2018 and two percent by 2025;
- an increase in oil production from the current 2.5 million barrels per day to 3.5 million in 2025; and
- lower costs of electricity and gasoline.

The American bank BBVA Compass forecasts that the multiplier effect from energy investments spurred by the reforms will generate $1.2 trillion in economic activity in the Texas-North Mexico region over the next 10 years.[3]

From a continental perspective, reversing the decline in Mexican oil production would contribute to North American capacity as a whole and bolster continental energy security and stability. North America could emerge as an "energy bloc" wherein lower energy costs strengthen manufacturing competitiveness, lower shipping costs, and support industrial production in a number of sectors.[4]

Moreover, with emerging market demand for oil increasing and U.S. demand recovering, Mexico's Undersecretary for North America, Sergio Alcocer, sees Canada and Mexico sharing new growth as "energy partners rather than competitors."

The timeline for moving the reforms forward is ambitious by any political measure and there are serious challenges in the months ahead, not the least of which is an increasingly contentious political climate. Nonetheless, real progress is being made and as delegations of top business leaders from the United States continue to meet regularly with Mexican officials, it would be a shame for Canada to be left on the sidelines.

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Endnotes

1. Schmidt, Katherine. March 7, 2014. 'Changing a Symbol of National Pride'. Upstream Magazine. Available at: http://www.upstreamonline.com/hardcopy/features/article1354395.ece

2. TransCanada. 'Report — TransCanada in Mexico.' July 2013.

3. BBVA Research. January 22, 2014. 'Economic Watch — United States: Opportunities from Mexico's Energy Reform.'

4. Heidrich, Pablo and Jorge Madrazo. January 2014. 'Mexico's Energy Reforms: What do they mean for Canada?' The North-South Institute. Available at: http://www.nsi-ins.ca/wp-content/uploads/2014/01/2014-Mexico's-Energy-Reforms-What-do-they-mean-for-Canada.docx.pdf

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The case for mandatory minimum sentences in Canada

In exploring how mandatory minimums and fines are being treated by the judiciary, authors Lincoln Caylor and Gannon Beaulne note that it should go without saying that judicial independence is a cardinal value in Canada. They argue that judges who ignore the rule of law and make decisions according to their personal views of justice in the face of clear legislation to the contrary are not honouring the independence of the judiciary. Rather, they are assaulting the justice system and offending the duties of their office.

Lincoln Caylor and Gannon G. Beaulne

In 1863, Sir James Fitzjames Stephen, the father of Canada's first Criminal Code, wrote that the sentence is the gist of the criminal proceeding: "It is to the trial what the bullet is to the powder."[1]

This statement remains true today. Sentencing is a vital part of the criminal law's fact-finding, decision-making process.[2] For many (if not most) offenders in Canada, it is the only significant decision that the criminal justice system will make.[3] For this reason, when it comes to sentencing policy, the stakes are high.

Canadian courts have historically borne the primary responsibility for ensuring that a given sentence fits the seriousness of the impugned

conduct. In this respect, Canada is not unique. As in many other common law jurisdictions, the Parliament of Canada has preferred to define criminal offences in broad language, capturing a wide array of conduct with varying degrees of moral culpability. It often only sets high, rarely-imposed maximum penalties. Although these maximum penalties are mandatory, the yoke of this parliamentary circumscription of judicial discretion in sentencing has rested lightly on judges' shoulders.

The first Criminal Code came into force on July 1, 1893. Originally, only six offences carried mandatory terms of imprisonment.[4] By 1927, this number had increased by seven.[5] Between 1928 and the 1970s, Parliament gradually increased the number of mandatory minimums in the statute books. In 1976, it passed Bill C-84 abolishing the death penalty and establishing a mandatory minimum of life in prison for murder and high treason.[6] It also made its first foray into gun control that year, passing mandatory minimums for offences involving firearms.[7] In 1995, the Chrétien government introduced Bill C-68 and, thus, spearheaded one of the largest enactments of mandatory minimums in Canadian history. The following year, it passed Bill C-27 which created a new offence for aggravated procuring and living off the avails of child prostitution with a five-year minimum term in prison.[8] Thus, a total of 29 offences carried mandatory minimum terms of imprisonment by 1999.[9]

In 2008, Prime Minister Stephen Harper's minority government introduced Bill C-2. This bill increased the length of certain mandatory minimums already on the books, and it imposed escalating minimum penalties for repeat offenders who have used firearms in committing an offence.[10] Finally, on October 24, 2013, the Harper government passed Bill C-37, doubling the amounts of victim fine surcharges and making them mandatory for all offences.

How some judges are undermining mandatory sentencing tools

In the past 20 years, Parliament has steadily increased the number of mandatory sentencing tools in Canada's statute books to historic highs, most notably by passing new mandatory minimum sentences and by making the victim fine surcharge mandatory for all offences. This has led to a concomitant reduction in the freedom accorded to sentencing judges to impose whatever sentence he or she deems most appropriate in the case's circumstances. Perhaps unsurprisingly, it has also led to a variety of creative attempts by some judges to avoid applying mandatory sentencing tools, as required by law and the duties of their office.

Parliament is indisputably entitled to enact mandatory minimums. But the courts in Canada have the power to strike down any statutory provision that violates the rights and norms of Canada's Constitution. This dialogue between Parliament and the courts has generated an interesting body of case law, particularly under section 12 of the Canadian Charter of Rights and Freedoms. This section provides: "Everyone has the right not to be subjected to any cruel and unusual treatment or punishment."[11]

In the seminal 1987 case of R. v. Smith, the Supreme Court of Canada struck down a mandatory minimum of seven years in prison for the importation of any amount of narcotics set out in section 5(2) of the *Narcotics Control Act*. The majority of the Court determined that this mandatory minimum constituted cruel and unusual punishment.[12] Writing for the majority, Justice Lamer found that a mandatory minimum will constitute cruel and unusual punishment where it is "so excessive as to outrage standards of decency" or "grossly disproportionate to what would have been appropriate."[13]

Parliament is indisputably entitled to enact mandatory minimums. But the courts in Canada have the power to strike down any statutory provision that violates the rights and norms of Canada's Constitution. This dialogue between Parliament and the courts has generated an interesting body of case law, particularly under section 12 of the Canadian Charter of Rights and Freedoms. This section provides: "Everyone has the right not to be subjected to any cruel and unusual treatment or punishment."

More recently, in the landmark decisions of *R. v. Nur* and *R. v. Smickle* both released in 2013, Ontario's highest court found that a mandatory minimum sentence of three years in prison upon conviction of possessing a loaded restricted or prohibited weapon under section 95 of the Criminal Code violated section 12 of the Charter and could not be saved under section 1.[14] Writing for the Court in both decisions, Justice Doherty found that, although the mandatory minimum was not cruel and unusual punishment in either offender's particular circumstances, section 95 became unconstitutional when applied to a reasonable hypothetical scenario—for example, an otherwise law-abiding gun owner who stores his gun at the cottage rather than at home, as required by law.[15]

These cases offer good examples of Canadian courts exerting legitimate constitutional pressure on mandatory minimums which are out of proportion with the gravity of a given offence. Under section 12, Canadian courts can — and indeed must — ensure that the laws in the statute books are kept within the strict boundaries of the constitutional rights and principles recognized in Canada. There is a disconnect, however, between the idea that the courts should guard against violations of the Charter and the apparent view of some academics, the media and even members of the judiciary that all mandatory sentencing tools qua intrusions on judicial discretion interfere with a judge's ability to impose a just sentence.

In recent years, some judges have, without identifying a breach of section 12 or any other constitutional right, purported to grant "constitutional exemptions" to individual offenders to circumvent a mandatory minimum that would otherwise apply. The case-by-case remedy of a constitutional exemption developed under section 24(1) of the Charter. It functions to exempt a particular individual or situation from the application of a law the constitutionality of which have not been challenged. It was never intended, however, to help judges

sidestep the application of mandatory minimums that have not been found to be unconstitutional.

Laudably, in 2008, the Supreme Court shut the door on this misuse of constitutional exemptions in *R. v. Ferguson*.[16] Writing for a unanimous court, Chief Justice McLachlin observed that the vaunted "flexibility" of a constitutional exemption would, in the circumstances of a valid mandatory minimum, come at the expense of undermining the rule of law and the values that underpin it.[17] She cautioned that the laws in the statute books must not be left to drift apart from the laws as applied.[18] The message in Ferguson is clear: statutory provisions containing mandatory minimums should either be applied or struck down.

> *(T)he policy underlying any given mandatory minimum is a function of Parliament's answer to an important question: "What sentence would be appropriate for the least morally culpable person whose behaviour still satisfies the offence's elements?"*

The judicial response to mandatory victim fine surcharges under section 737 of the Criminal Code provides another example of the creative evasion by some judges of mandatory sentencing tools. Although section 737 only came into force in October 2013, the judiciary has already developed an impressive repertoire of ways to avoid applying mandatory victim fine surcharges. For example, some judges have:

- simply refused to apply them;
- granted years or even decades to pay;
- interpreted section 737 as only applying to offences committed after the amendments;
- imposed a fine of only $1 to effectively defeat Parliament's intent;
- concluded that they are an unconstitutional tax; and
- found that they violate section 12 of the Charter.

The constitutional status of mandatory victim fine surcharges is currently unclear. Hopefully, as with constitutional exemptions, an appeal-level decision will soon bring clarity to a sentencing regime that, to paraphrase Justice Kevin Phillips of the Ontario Court of Justice, some members of the judiciary are creatively sabotaging.[19]

In defence of mandatory sentencing tools

The rule of law is a fundamental postulate of our constitutional structure.[20] It requires that all laws be certain, accessible, intelligible, clear and predictable.[21] In Ferguson, the Supreme Court found that the rule of law weighs heavily against permitting courts to grant constitutional exemptions to avoid applying mandatory minimums. It unanimously accepted that allowing the laws in the statute books to diverge from the laws as applied would create uncertainty and unpredictability and, thus, exact "a price paid in the coin of injustice."[22] This reasoning extends beyond constitutional exemptions.

Mandatory minimums reflect the lowest possible sentence for the least culpable offender. Put differently, the policy underlying any given mandatory minimum is a function of Parliament's answer to an important question: "What sentence would be appropriate for the least morally culpable person whose behaviour still satisfies the offence's elements?"

Of course, Parliament is neither omniscient nor infallible. It can, and certainly has, imposed inappropriately severe sentences in the past, as the Supreme Court in Smith ultimately determined the Diefenbaker government had in passing the seven-year minimum sentence contained in section 5(2) of the *Narcotic Control Act* in 1960.[23] This is not a frailty of mandatory minimums. After all, Canadian judges have certainly reached inappropriately severe — or, more frequently, inappropriately lax — sentences as well.

So long as they remain within the boundaries of section 12, mandatory minimums do not intrude on a judge's ability to set an appropriate sentence. Rather, they simply establish a certain and predictable range in which judicial discretion is to be exercised. Thus, mandatory minimums which do not violate section 12 actually promote proportionality insofar as they set a strict sentencing range commensurate with the range of possible moral culpability for a given offence. In so doing, they also render sentencing for that offence more certain, accessible, intelligible, clear and predictable.

Parliament is tasked with the responsibility of updating Canada's sentencing laws as necessary to ensure that they reflect the demands of justice. This responsibility is vital to the health of our criminal justice system. For example, Parliament abolished the death penalty in 1976. Although clearly restricting judicial discretion in sentencing, this decision has not been maligned as an intrusion on judicial discretion in sentencing. Studies show that most Canadians think that Canada's sentencing regime is too lenient on offenders.[24] It is hardly surprising, then, that Parliament has imposed higher sentencing floors for certain offences.

Judges who seek to undermine or circumvent mandatory sentencing tools might imagine that they are defending the independence of the judiciary by preserving judicial discretion in sentencing.

It goes without saying that judicial independence is a cardinal value in Canada. But judges who ignore the rule of law and make decisions according to their personal views of justice in the face of clear legislation to the contrary are not honouring the independence of the judiciary. Rather, they are assaulting the justice system and offending the duties of their office. In refusing to flout the express will of Parliament in the context of mandatory victim fine surcharges, Justice Phillips put this point eloquently:

While my judicial independence is very important, in the sense that I must be able to decide cases without fear or favour, such independence does not mean that I should conduct myself as if unmoored from legislative directives. Put another way, I can't just do whatever I want. The rule of law requires consistency of application. Judges effectively thwarting the will of parliament is a recipe for arbitrariness. Arbitrariness is antithetical to the rule of law.[25]

Judicial discretion does not extend to override a clear statement of legislative intent.[26] A sentencing judge's discretion has always been subject to precedent and valid Acts of Parliament.

Judges are legally and ethically bound to apply Acts of Parliament and to uphold the rule of law. These duties are inherent in the position, and they are also set out in numerous sources.[27] Judges who undermine or circumvent mandatory minimums act contrary to the office that they have sworn to uphold. Ignoring mandatory minimums is no more acceptable than would be ignoring mandatory maximums. Today, the public would react with outrage if a judge purported to impose a death sentence. However, setting aside the obvious differences, imposing such a sentence would be no different from a constitutional law perspective than refusing to apply a mandatory minimum or surcharge that passes constitutional muster. This is true regardless of how justified sentencing judges think themselves in refusing to apply the law.

Eminent constitutional scholar Kent Roach has expressed a concern that mandatory minimums will cause the range of sentencing for specific offences to shift upwards.[28] It is unclear whether this is true — or, if it is, whether it is unwelcome—but it does not engage with the key question of whether the sentencing range created by the mandatory minimum for the specific offence in question reflects the gravity of the offence and captures the moral blameworthiness of the least culpable offender. If it does, a shift upwards should be treated as a necessary correction of the previous sentencing range. If it does not, section 12 of the Charter and section 52(1) of the *Constitution Act*, 1982 provide the cure. In both instances, no rule of law or proportionality problem would arise.

Conclusion

It is inarguable that mandatory sentencing tools should be carefully scrutinized by the courts for proportionality measured against the clear boundaries set by the constitution and its written and unwritten principles. However, insofar as they suggest that the mere act of curtailing judicial discretion by imposing mandatory penalties is problematic, critics are missing the point. Sentencing laws, like all laws, must be certain, accessible, intelligible, clear and predictable. If mandatory minimums which are not grossly disproportionate are imposed, they promote justice. If grossly disproportionate mandatory minimums are imposed, they do not promote justice and, thus, should be struck down. No middle ground can be maintained.

A rule of law problem arises each time a judge ignores a law in the statute books without striking it down as unconstitutional. So far, Canada's highest court has done an admirable job of defending the rule of law against attacks justified on the ground of preserving judicial discretion in sentencing. But the current debate about mandatory sentencing tools highlights that more court battles will likely arise in the future. The rule of law must remain paramount. Neither Parliament nor judges can be permitted to exercise absolute discretion in the realm of criminal sentencing. Each branch of government must hold the others to account. While this is a difficult balance to strike, it is indispensable for protecting individual rights and the principles which lie at the core of Canada's political and legal systems.

Lincoln Caylor and Gannon G. Beaulne, lawyers at Bennett Jones LLP in Toronto, are developing a forthcoming MLI paper on mandatory minimum sentences. *The authors would like to thank Stephanie Romano, student-at-law at Bennett Jones LLP, for her assistance.*

Endnotes

1. Sir James Fitzjames Stephen, "The Punishment of Convicts" (1863) Cornhill Magazine 189, as quoted in R v Gardiner, [1982] 2 SCR 368 at para 107, 140 DLR (3d) 612 [Gardiner].
2. Gardiner, ibid.
3. Ibid at para 110.
4. Nicole Crutcher, "Mandatory Minimum Penalties of Imprisonment: An Historical Analysis" (2001) 44 Crim LQ 279 at 280 [Crutcher]. These offences were prize fighting, frauds upon the government, stealing post letter bags, stealing post letters, stopping the mail with the intent to rob and corruption in municipal affairs.
5. Ibid at 281-286. During this period, Parliament introduced new mandatory minimums for offences including being a keeper or inmate of a common bawdy house, insurance fraud, injuring persons by "furious driving" while impaired, stealing an automobile and, for the first time, certain drug offences.
6. Ibid at 293-300.
7. Ibid at 299-300.
8. Ibid.
9. Ibid at 304.
10. Lisa Dufraimont, "R v Ferguson and the Search for a Coherent Approach to Mandatory Minimum Sentences under Section 12" (2008) 42 SCLR 459 at 464.
11. Canadian Charter of Rights and Freedoms, s 12, Part I of the *Constitution Act*, 1982, being Schedule B to the *Canada Act* 1982 (UK), 1982, c 11.
12. R v Smith, [1987] 1 SCR 1045 at para 53, 40 DLR (4th) 435 [Smith].
13. Ibid.
14. R v Nur, 2013 ONCA 677, 117 OR (3d) 401 [Nur]; and R v Smickle, 2013 ONCA 678, 5 CR (7th) 359.
15. Nur, ibid at para 167. The Supreme Court may provide further guidance on the constitutionality of mandatory minimum sentences in the near future since Nur is currently under appeal and the expectation is that Smickle will follow the same route.
16. R v Ferguson, 2008 SCC 6 at para 35, [2008] 1 SCR 96 [Ferguson].
17. Ibid at para 69.
18. Ibid at para 70.
19. Andrew Seymour, "Brockville judge criticizes colleagues who skirt victims fine surcharge law", Ottawa Citizen (December 11, 2013).
20. Roncarelli v Duplessis, [1959] SCR 121 at para 44, 16 DLR (2d) 689. See also Reference re Secession of Quebec, [1998] 2 SCR 217 at para 70, 161 DLR (4th) 385.
21. Ferguson, supra note 16 at paras 68-69.
22. Ibid at paras 70, 72, 75.
23. *Narcotic Control Act*, 1960-61 (Can), c 35, s 5(2). See Smith, supra note 12.
24. Julian V Roberts, Nicole Crutcher & Paul Verbrugge, "Public Attitudes to Sentencing in Canada: Exploring Recent Findings" (2007) 49 Canadian Journal of Criminology & Criminal Justice 75, 83.
25. R v Kelly, [2013] OJ No 5581 at para 5.
26. 2010 SCC 6 at para 45, [2010] 1 SCR 206.
27. See e.g. *Canadian Judicial Council, Ethical Principles for Judges, Ottawa: Canadian Judicial Council; Ontario Court of Justice, Principles of Judicial Office, Toronto: Ontario Court of Justice; and Courts of Justice Act*, RSO 1990, c C43, s 80. See also Scott Shapiro, "Legality without the Rule of Law? Scott Shapiro on Wicked Legal Systems" (2012) 25 Can JL & Juris 183 at 190; and Justice Renee M Pomerance, "The New Approach to Sentencing in Canada: Reflections of a Trial Judge" (2013) 17 Can Crim L Rev 305 at 320, 322. For example, in its code of conduct entitled Ethical Principles for Judges, the Canadian Judicial Council states: "The judge's duty is to apply the law as he or she understands it without fear or favour and without regard to whether the decision is popular or not. This is a cornerstone of the rule of law."
28. Kent Roach, "Searching for Smith: The Constitutionality of Mandatory Sentences" (2001) 39 Osgoode Hall LJ 367 at 399-404.

MY MEDICINE
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My name is
Doug Curtis
I'm from Calgary
and I live with
Parkinson's

I was diagnosed with Parkinson's at the age of 39. I was a vibrant working playwright and actor, but over the next eight years I became totally incapacitated. I tried to manage the disease with exercise and medication but eventually my symptoms could no longer be controlled. The outlook was bleak but I was lucky enough to participate in a clinical trial for a new medicine. The results have been amazing – my life has been transformed. There's no cure for Parkinson's but treatment is getting better and there is hope.

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Taipei city night with famous landmark, 101 skyscraper, under blue and dramatic colorful sky in Taiwan, Asia.

Canada needs a *Taiwan Relations Act*

Author Dean Karalekas, an adjunct professor at Taiwan's National Chengchi University suggests that Taipei is starved for international attention and would be extremely responsive to overtures from Canada aimed at boosting bilateral relations. Karalekas makes the case for a Taiwan Relations Act *modeled on one passed by the US Congress in 1979 and on one currently being explored by Japanese lawmakers. Karalekas argues that allowing fear of Beijing's reaction to deter us from enhancing relations with Taiwan would be misguided and points to Singapore as an example of a country that has managed to maintain relations with both Beijing and Taipei.*

Dean Karalekas

In its early years, the Harper government vowed to make democracy promotion a larger part of its foreign policy agenda, and its approach to the People's Republic of China (PRC) reflected that intention. The turn toward Beijing that began in late 2008, and intensified in 2009, has had many questioning the underlying philosophy guiding policy. The Harper government's failure to enunciate a concrete China policy is not necessarily a bad thing — at best, it approximates in effect the strategic ambiguity embraced by Washington on the Taiwan Strait issue, and thus can lead to greater stability in the region. Unfortunately it can also lead to an ad hoc approach that does disservice to the importance of this relationship.

Canada's greatest advantage in its relationship with the PRC is, in fact, not one for which the government can take much credit: it is on the people-to-people level, with a great many Canadians having strong personal or professional ties with China. This, more than any official

banquet or high-level summit, reflects Canadian values and helps us to reach out to the people of China, who in the lack of a representative government, are the true subjects of our ties.

As Canadians, we like to think of our country as one whose foreign policy is driven primarily by the ideals of liberal internationalism, but historically we have failed to live up to these ideals when it comes to our government's foreign policy as regards the Middle Kingdom. If we are to rectify that situation, then the time has come to re-examine our approach to dealing with Beijing, and specifically our approach to Taiwan. It is for that reason that this discourse on Canada-Taiwan ties begins with a focus on our relationship with China.

By being more proactive in developing closer ties with Taipei, Ottawa would not only be practicing principled foreign policy, but it would increase our leverage with both Beijing and Taipei. China, it must be remembered, needs Canada more than Canada needs China.

It is in Canada's interests to have Taiwan remain in the American orbit. Like us, Taipei should continue to develop good relations with Beijing: like us, Taiwan should have a strong economic relationship with China, something short of outright dependence, as this leads to trust-building and reduced tensions. But Taiwan must not be so ostracized in the international community that it is left with no choice but to fall into the PRC orbit. There are many reasons for this, inter alia its key position in the First Island Chain.

And yet this is what many in the American commentariat would let happen when, like John J. Mearsheimer writing in The National Interest last month, they recommend a pre-emptive selling out of Taiwan to China in exchange for some goodwill from Beijing. This "Abandon Taiwan" school of thought emerges every few years, only to be shouted down by cooler, and more principled, heads. The observations of writers in the Abandon Taiwan School are not wrong, however: only their conclusions. It would perhaps be far more profitable to adopt an "Embrace Taiwan" approach as a means of instructing China, rather than attempting to mollify it.

In determining Taiwan policy, there are a few aspects of the situation that must be kept in mind. For one thing, and by now this point should be obvious, it is inextricably linked with China policy. Beijing's insistence on nations having a "One China" policy and its contention that Taiwan is rightfully a part of China — historically false, although that is an argument for another day — make this fact a necessity. In practice, this has meant a gradual reduction in the profile of Taiwan-Canada ties at a pace with the growth of the Ottawa-Beijing relationship.

Another is that we cannot treat Taiwan as a homogeneous set of needs, intentions, and political and international aspirations. "Taiwan wants independence," we read, or "Taiwan has always been a part of China." Neither of these statements is accurate in that the polity's diversity and its competing identities, beliefs and hopes for the future make analysis difficult, and while exegetically useful at times, such simplifications can lead to the implementation of counterproductive policy.

That the nation's China and Taiwan policy are inseparable is a two-way street, and thus our ties with Taipei can be used to rectify certain deficiencies in our relationship with Beijing. Taking a broad perspective, since the 1990s, the argument has been that engaging China would turn that country into a responsible international stakeholder, and that our support of its economic growth would act as a catalyst for concomitant political liberalizations — after all, we had just witnessed the fall of European communism, and thus surely the end of the one-party state in Asia was likewise inevitable. We now know this was never the case, and we are left with an addiction to cheap manufactured goods and the uncomfortable dissonance of knowing that we assisted an authoritarian state to hone its ability to more efficiently oppress its own people.

By being more proactive in developing closer ties with Taipei, Ottawa would not only be practicing principled foreign policy, but it would increase our leverage with both Beijing and Taipei. China, it must be remembered, needs Canada more than Canada needs China. For one thing, its relationship with Canada confers international respectability on the regime, and as Bruce Gilley rightly points out, a moral agenda of liberal internationalism, on which much of our Canadian identity depends, is wholly consistent with China's needs.

Likewise with Taiwan: a de facto independent country — a democracy, no less — effectively ostracized from the international community. Taipei is starved for any international attention and therefore would be extremely responsive to overtures from Canada aimed at boosting bilateral relations.

What form could such overtures take? Overt support for Taiwan's inclusion in the Trans-Pacific Partnership, for one, as well as opening negotiations — albeit through the necessary Track II channels — on the sort of regulatory and procedural bilateral agreements that, while they barely make the news in Canada, are trumpeted loudly and proudly in recognition-starved Taiwan. These latter would be more symbolic than substantial, but then such is the language of diplomacy in East Asia.

The centerpiece of Ottawa's relationship with Taipei should be serious consideration devoted to the enactment of a *Canadian Taiwan Relations Act* (TRA), similar both to the one passed by the US Congress in 1979 and to one being considered right now by lawmakers from Japan's Liberal Democratic Party.

Of course, unlike the American TRA (and presumably the Japanese one being debated), this would not entail the sale of arms to Taiwan — Canada is not in the business of selling weapons — or even a directive for future governments to assist in the defense of the island should the Chinese attack. Rather, it would focus more on soft-power

aspects of the relationship, such as the initiation of military exchanges, intelligence-sharing, and public diplomacy.

Military exchanges would not run counter to Canada's One China policy — indeed, the ROC's closest military partner is Singapore, with the two sharing a high degree of cross-training and exchanges, including active-duty Singaporean soldiers training on Taiwanese soil. Obviously, Singapore's neutrality on the cross-strait issue has not led to blowback from China — Singapore is the PRC's biggest ASEAN trade partner, and is often held up by leaders in Beijing as an example of a democratic system for which China may strive. Clearly, Singapore has been able to resist Chinese pressure to sever all ties with Taiwan: surely Canada can do likewise, and slowly begin to institute modest military exchanges that would serve both as a confidence-building measure with our Pacific partners and as a message to Beijing about its actions in the region's littoral.

The benefit of these exchanges would be more on the person-to-person level and the transfer of experience, rather than of technology. There are a number of areas in which the ROC military would benefit from Canadian operational expertise, including but not restricted to command-and-control integration and cross-environmental joint operations.

The ROC military is currently on the cusp of major structural changes, including changes to the relationship it has with Taiwan's wider society. The major expression of this is in the stated goal of ending conscription and establishing an all-volunteer force. At the current time, the ROC is looking to the US military for a blueprint on how to make this transition. This overreliance on the American model is something of a default fallback position for many institutional initiatives in Taiwan. But for a number of reasons, including the relative economic resources, sizes and makeup of the militaries, as well as their primarily defensive nature, the Canadian Forces stands as a much better potential role model for Taiwan to emulate. Indeed, there are many more valuable and practical lessons that the Republic of China's military could learn from the armed forces of Canada than it could from the military of a global superpower, which has a very different mandate and a very different ethic.

In terms of intelligence sharing, Taiwan is already an integral component of our allies' efforts in the region, with the radar installation atop central Taiwan's Leshan Mountain — based on the USAF Pave Paws early warning radar system — going operational last year, as well as a history of supporting signals intelligence operations monitoring Chinese communications and activity.

China's espionage activities in Canada are perhaps more pervasive than any other country's, and are focused not — as is the mandated limit of many Western nation's intelligence agencies — solely to detect threats to the state, but to give Chinese businesses an unethical leg up by stealing industrial and corporate secrets from Canadian businesses. Taiwan is also on the receiving end of China's espionage efforts, but it has far more counter-intelligence experience and capacity to identify and deal with this particular threat — experience that Canada could leverage to protect its own citizens.

Indeed, even more robust intelligence gathering on Chinese firms of the sort Communications Security Establishment Canada is alleged to have conducted on actors in the Brazilian mining sector would not be amiss. These firms are, by the very fact of their success, akin to — if not overtly linked to — arms of the Chinese Party-State, and therefore valid targets against whom protection should not be deemed unethical.

Cultural exchanges are perhaps the most important aspect of our relations with Taiwan, as they should be in China as well. It is the citizen-centred, as opposed to government-centred, ties that confer legitimacy on our relationships abroad, and this is especially true in the Taiwan/China scenario. It has been said that as Canadians, our people are our best ambassadors: this is doubly true for the Taiwanese people, who are not constrained by the geopolitical necessities tying the hands of ROC government representatives.

More attention therefore must be paid to track II and III channels, making it easier for individuals and private groups to engage in cooperative engagements, cultural activities and exchanges of academics, businesspeople, nongovernmental organizations and individuals, the better to influence social change in line with our values — values that, by and large, this generation of Taiwanese already share. Furthermore, a Canadian Taiwan Relations Act (or indeed, even just raising the idea up the flagpole) would send a strong message to China about Canadian expectations regarding its responsible use of power.

China is the world's second largest economy: it is developing a blue-water navy, and — if the analysts are to be believed — it is poised to become the globe's next superpower. And yet its recent actions in the South and East China Seas, as well as its intentions on making Taiwan the next Tibet, speak to a worldview that is a century out of date. Canadians have never been squeamish about speaking truth to American power, so we should not shrink away from telling other powerful nations, including China, that we expect more mature and responsible behavior from them.

Ottawa must endeavor to maintain positive, fruitful relations with both Taiwan and China, driven by policy which reflects our values as Canadians. If China has reasonable objections, then these must be taken into account. But the emphasis is on the word reasonable.

Because of its precarious international position, Taipei is not going to initiate closer ties with Canada. It behooves Ottawa therefore to take the first step. Ultimately, there is only one argument against adopting such a principled foreign policy vis-à-vis Taiwan, and that is "it would upset Beijing." And that's not good enough.

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Alberta's crude oil reserves largest on Earth

Crude oil reserves in the province of Alberta's bitumen sands have widely been considered third, and sometimes second, largest on earth. However, recently developed in situ thermal recovery techniques indicate that Alberta's recoverable crude oil reserves are the largest on earth. And results from recent commercial pilots indicate very large new reserves in Alberta's bitumen carbonates. Author Mike Priaro explains the nature and accessibility of Alberta's reserves.

Mike Priaro

Over 200 years ago the first Europeans noted bitumen seeps along the banks of the Athabasca River in northern Alberta. The local Aboriginal people had long used bitumen to waterproof canoes. Bitumen is crude oil with a specific gravity greater than fresh water and is a semi-solid fluid at room temperature that does not flow at commercial rates to a wellbore under normal reservoir conditions.

Shallow, bitumen-saturated unconsolidated sands or hard-rock carbonate (limestone and dolomite) reservoirs are now known to underlie 54,132 square miles of land in northern Alberta.

Depending on depth beneath surface, bitumen is extracted either by surface strip-mining or by various in situ techniques using wells.

In the surface mineable area, estimated at 1,854 square miles, bitumen reservoirs lie less than 250 feet below surface and bitumen is economically extracted by strip-mining with recovery exceeding 90 percent. The eight surface strip-mining projects currently operating and under active development in Alberta are: CNRL Horizon; Suncor Fort Hills; Imperial/ExxonMobil Kearl; Shell Muskeg River; Shell Jackpine; Suncor; Syncrude; and Total Joslyn North. The just-commissioned Kearl project and the in-development Fort Hills project are the first surface strip mines without upgraders. Kearl is the first to use a solvent process to separate bitumen from sand.

At greater depths bitumen extraction is done in situ using enhanced recovery techniques of cyclic steam stimulation (CSS) or steam-assisted gravity drainage (SAGD). SAGD is currently the technique of choice for almost every in situ project under development, in-approval, or planned The Alberta Energy Resources Conservation Board (ERCB) forecasted1 bitumen production doubling to 3.8 million bbl/d from 2012 to 2022 with an ever-increasing percentage of in situ production.

Recovery factors measure how efficiently original-oil-in-place (OOIP) is recovered by production technology. Improvements in technology such as co-injection with air and chemical additives, use of solvents, inclined and horizontal drilling, and fracturing of the formation have been highly successful, improving CSS recovery factors to 40 percent from previous rates ranging from 25-30 percent.2,3 Recovery factors for SAGD typically exceeding 50 percent4 and sometimes reaching 70-80 percent[5] are well-documented but are not yet adequately recognized by the ERCB1.

In 2013, the ERCB estimated 1,270 billion bbl of OOIP in Alberta's bitumen sands deposits, 406 billion bbl of OOIP in Grosmont bitumen carbonates and another 168 billion bbl OOIP in other bitumen carbonate formations such as the Nisku to give total bitumen OOIP in Alberta of 1,844 billion bbl1. The ERCB recognized an average recovery factor of only 25 percent in only the bitumen sands to estimate Alberta reserves of 315 billion bbl1.

Pictured: Alberta's Bitumen Deposits and Areas. Source; ERCB ST98-2013.

The ERCB estimated[1] that seven percent of the OOIP in the bitumen sands is ultimately accessible by surface strip mining and 93 percent by in situ methods. Applying a recovery factor of 90 percent to strip mine-accessible bitumen sands and a recovery factor of 45 percent to in situ-accessible bitumen sands to total OOIP of 1,270 billion bbl indicates 575 billion bbl of technically recoverable reserves in Alberta's bitumen sands, after deducting six percent shrinkage.

Bitumen-saturated carbonate formations lie just below Alberta's bitumen sands. In the 1980s, pilot projects in the Grosmont carbonate using CSS in vertical wells produced promising amounts of bitumen. However, those trials ended in 1986 when the price of oil dropped. Since then, application of recently-developed technologies such as horizontal drilling, SAGD and 3-D seismic have dramatically improved recovery factors in both Alberta's bitumen sands and carbonates. OSUM Oil Sands Corp. and Laricina Energy, both applying the new technologies in the bitumen carbonates, recently completed successful commercial-scale pilots. Both are now proceeding to step-by-step full-scale development of their bitumen carbonate leases. Grosmont carbonate core tests show recovery factors of 30 to 60 percent[6] under SAGD which compares favourably to bitumen sands core tests. The ERCB estimated an additional 424 billion bbl of OOIP in Alberta's tight oil shales and siltstones1. These contain conventional light crudes in a variety of different formations but little development has occurred to-date and no technically-recoverable reserves are yet booked.

Applying 45 percent recovery to Alberta's bitumen carbonates OOIP totaling 574 billion bbl indicates crude oil reserves in the bitumen carbonates of 243 billion bbl after deducting six percent shrinkage. Applying 10 percent recovery to OOIP of 424 billion bbl in Alberta's tight oil shales and siltstones indicates 40 billion bbl of crude oil reserves. Adding these reserves to the previously calculated 575 billion bbl of crude oil reserves for strip mining and in situ bitumen sands indicates total technically-recoverable reserves of oil in Alberta of 858 billion bbls as shown below:

Alberta's technically-recoverable oil reserves

Alberta bitumen and oil deposits	OOIP (billion bbl)	Recovery factor (percent)	Technically-recoverable oil reserves (billion bbl)	Oil reserves after 6 percent shrinkage (billion bbl)
Bitumen sands strip mining	89	90	80	75
Bitumen sands in situ	1,181	45	531	500
Bitumen carbonates in situ	574	45	258	243
Tight oil shales and siltstones	424	10	42	40
Totals:	2,268	—	912	858

A 2009 US Geological Survey study[7] estimated mean OOIP of 1,300 billion bbl in Venezuela's Orinoco oil belt and applied a 45 percent recovery factor for Orinoco heavy oil and shrinkage of six percent to estimate technically-recoverable reserves of 550 billion bbl. The US EIA currently estimates a much lower figure of 298 billion bbl for Venezuela's proved reserves.[8]

OPEC listed Saudi proved oil reserves of 260 billion bbl in 2012[9]. With total production of 125 billion bbl since the discovery of oil in Saudi Arabia and original-oil-in-place of 716 billion bbl, the Saudis claim a recovery factor of about 54 percent. The Saudis have not made any significant revisions to oil reserves since 1988 — a cause for concern. Diplomatic cables leaked by Wikileaks in 2011 warned the US that oil reserves in Saudi Arabia might in fact be 40 percent lower than claimed by OPEC. Others have questioned Saudi Arabia's remaining oil reserves. For example, in a 2012 paper[10], Dr. Mamdouh G. Salameh estimated Saudi proved reserves at the end of 2011 at only 60-85 billion bbl based on original recoverable reserves of 185-210 billion bbl.

As summarized below, Alberta's remaining crude oil reserves are the largest on earth, by far, using a comparatively conservative average recovery factor:

Largest crude oil reserves on earth

Jurisdiction	Original-oil-in place (billion bbl)	Remaining crude oil reserves (billion bbl)	Average recovery after shrinkage (percent)
Alberta	2,268	846	37
Venezuela	1,300	550	42
Saudi Arabia	716	260	54

More rapid increases in production of Alberta's bitumen are, or will be, constrained by factors including:

- lack of take-away capacity in the form of pipelines, rail terminals, safe trackage, and tank cars;
- lack of access to tide water and safe, environmentally-acceptable marine terminals;
- lengthy environmental approvals processes for pipelines;
- environmentalists and First Nations (Native Aboriginals) opposition to increasing air, water and greenhouse gas emissions and land disturbances of extraction operations;
- environmental concerns about risks of dilbit spills in inland and coastal waters from pipelines and marine tankers;
- shortages of skilled labour to construct and operate new projects;
- cost escalations due to labour, engineering and process equipment manufacturing shortages;
- physical difficulties and costs transporting massive upgrader and other process modules to northern Alberta;
- costs and availability of diluents;
- insufficient bitumen crude upgrading and refining capacity;
- lack of Canadian domestic capital and lack of diversity in markets resulting in discounted prices;
- recent competition from U.S. light, tight oil production; and
- growing resource nationalism in Canada regarding export of raw bitumen, low royalties levied on raw bitumen, and royalty reductions granted for costs of diluent in dilbit.

Mike Priaro, B.Eng.Sc. (Chem. Eng.) worked in facilities, production, operations and reservoir engineering, as engineering consultant, area superintendent, and engineering management in Alberta's oil patch for 25 years for companies such as Amoco and PetroCanada. He was awarded Lifetime Membership in APEGGA in 2009. He is the author of "A 'Canada-First' Canadian Energy Strategy."

Footnotes

1. ERCB Report ST98-2013.
2. Source; Imperial Oil, http://www.imperialoil.ca/Canada-English/files/News/N_S_Speech060608.pdf
3. Source: Current Overview of Cyclic Steam Injection Process, Alvarez, Johannes and Han, Sungyun, Texas A&M University, Department of Petroleum Engineering. Journal of Petroleum Science Research, Volume 2 Issue 3, July 2013.
4. See: https://www.cnrl.com/operations/north-america/north-american-crude-oil-and-ngls/thermal-insitu-oilsands/
5. Source: Cenovus, Telephone Lake Project, Volume 1 — Project Description, December 2011, page 4-25, http://www.cenovus.com/operations/docs/telephone-lake/Volumepercent201/V1_Sec4.pdf
6. Source; Macquarrie Equity Research, February, 2010, pg. 26. See: http://www.sunshineoilsands.com/uploads/files/macquarie_report_01_10.pdf
7. Source: US Geological Survey study, An Estimate of Recoverable Heavy Oil Resources of the Orinoco Oil Belt, Venezuela; See http://pubs.usgs.gov/fs/2009/3028/pdf/FS09-3028.pdf
8. Source: US Energy Information Administration. See: http://www.eia.gov/cfapps/ipdbproject/IEDIndex3.cfm?tid=5&pid=57&aid=6
9. OPEC Annual Statistical Bulletins. See http://www.opec.org/opec_web/en/publications/202.htm
11. Source: The Shifting Sands under Saudi Oil Prowess, Dr. Mamdouh G. Salameh. See; http://www.usaee.org/usaee2012/submissions/OnlineProceedings/Conference.pdf
12. Note: Cumulative bitumen production of 12 billion bbl to the end of 2013 was deducted.

STRAIGHT TALK WITH JEANNE FLEMMING

Canadians would be shocked by extent of criminality in this country

Following the money to the bad guys: In this instalment of Straight Talk*, MLI speaks with Jeanne Flemming, former director of the Financial Transactions and Reports Analysis Centre of Canada, or FINTRAC, about the dangers that organized crime poses to Canada, and how we can better use financial transactions data to stop it.*

MLI: Do Canadians appreciate how vulnerable we are to transnational economic crime?

Flemming: It is my belief that Canadians are extraordinarily naïve. By this I mean that we collectively have taken to heart our "good guy" image, which certainly exists, but because we are trapped in that vision we fail to entertain the notion that there are bad guys among us who use our strong financial institutions and non-financial businesses and professionals (casinos, money services businesses, lawyers) for nefarious purposes. Canadians do not fully appreciate the prevalence and impact that organized crime activity has on our society. I believe Canadians would be shocked to know just how much criminality exists in this country. We only have to look at the recent revelations of corruption in Quebec to get a

glimpse of the extent to which this element has already undermined our institutions. Does anyone believe that these events are unique to Quebec?

It is the mandate of the regime of which FINTRAC is but one player to protect our institutions. Once your institutions are corrupted, a country is in trouble.

MLI: How was FINTRAC created and why?

Flemming: FINTRAC was created in 2000 *through the Proceeds of Crime (Money Laundering) and Terrorist Financing Act (PCMLTFA).* Its mandate was to receive, collect, analyse, and disclose financial transactions related to money laundering to the appropriate authorities if the intelligence met certain legal criteria. During the 1980s, the desire to develop a global anti-money laundering strategy crystallized in 1988 with the adoption of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances. Enveloped within this approach was the concept of "proceeds of crime" and the removal of these funds from the criminal element, which was added to Canada's Criminal Code at the time. The Criminal Code provision would now provide another tool to investigators to attack criminal enterprises by creating offences for money laundering activity.

If police were to be successful in pursuing money laundering cases, they would need information about financial transactions. Unless financial institutions and other reporting entities provided the information, police could not get access to financial records without judicial authorization.

The financial sector would be required to provide financial transaction data. The focus at this time was on cash transactions flowing from the drug trade whether in the form of large transactions or suspicious transactions. And if you are going to collect financial data you need a central institution to do so. Thus the concept of the Financial Intelligence Unit (FIU) was born with the US leading the way with the creation of the first FIU in 1990.

This global system was directed by the Financial Action Task Force (FATF), a spawn of the G-7/8, which provided policy direction to the creation of the FIUs worldwide. Canada was late getting into the FIU business and needed "encouragement" from the FATF to create an FIU, which was finally done in 2000.

MLI: How does FINTRAC Work?

Flemming: It is important to understand that FINTRAC is only one element of a regime created to fight money laundering, and later terrorist financing, although it is often seen as the "face" of the regime as it is the only new institution created to do so. Therefore, it is often expected to bear the burden of the "success" of the whole regime.

Let me explain the "regime." Canada's fight against money laundering and terrorist financing is supported by many entities. The Department of Finance is mandated to manage the legislation and regulations setting out the regime, its players, and their respective roles. Outside of government, the so-called reporting entities must provide certain information on financial transactions to FINTRAC. These include banks, financial institutions, casinos, securities firms, money services businesses, and others. FINTRAC's role is to receive the financial transactions data from these reporting entities and through analysis turn it into intelligence, which is disclosed to recipients designated in the legislation if it meets certain legal criteria.

FINTRAC receives some 60,000 electronic financial transactions records daily. It has a regulatory compliance role to play with the reporting entities to ensure they live up to the letter and the spirit of the legislation. FINTRAC analysts take this data along with other data that is collected within the law and finds patterns and relationships that tell a story about the transactions, their beneficiaries, their movement and locations. When FINTRAC reaches the required legal threshold it must make a tactical disclosure to the appropriate designated recipient.

My point in describing the "regime" is to underline three issues that continue to perplex many people: a) no one player carries the burden of the regime; b) no one player "owns" the regime; and c) there is no strategic plan within the regime to ensure all work together to further mutually defined goals. Furthermore, as there is no "owner" of the system, the reporting of performance is fragmented and never provides a holistic view of its success or even where it can be strengthened.

The next players in the regime are the many designated recipients of the financial intelligence that FINTRAC produces. Some would be the RCMP, Sûreté du Québec, Ontario Provincial Police, municipal police forces, Canada Border Services Agency, Canada Revenue, Canadian Security Intelligence Service, and so on. These are the investigating bodies who then turn financial intelligence into evidence to pursue cases, no easy task.

The next phase in the regime focuses on the prosecution services, whether federal or provincial, which may or may not lay charges, plea bargain as they see fit, and prosecute criminals. The complexity of the criminal justice system is quite overwhelming but defence lawyers are astute and understand how to manage the system to the best advantage of their clients.

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Although evaluations have been attempted, in my view they have reflected the fragmented nature of the regime by reporting on each player individually without a mechanism to provide a horizontal view. So, as much as parliamentarians and others would like to determine the success of FINTRAC, it is impossible to do so without an in-depth horizontal view, which is lacking to date.

MLI: From FINTRAC's perspective, what is the difference between money laundering and terrorist financing?

Flemming: Money laundering arises when the proceeds of crime are utilized in any fashion. Therefore, by definition one is looking at actions that have already taken place. From FINTRAC's perspective, their intelligence is attempting to put together the "transaction story" to aid investigators following the money, in finding the evidence, or by showing the methods used to transfer money in an organized crime group. By comparison, with terrorist financing, FINTRAC is looking at financial transactions and the patterns that emerge in order to throw light on terrorist groups to provide financial intelligence to investigators for them to thwart actions that might occur, or for them to understand more completely the inner workings of terrorist groups. I am not sure parliamentarians or Canadians understand the difference.

To give credit where it is due, Canada did a fine job in creating a world-class FIU. By being forward-looking Canada is one of only two or three countries that includes electronic fund transactions in its legislation. The US is just catching up with us now — Australia was the leader. This data includes all financial transactions coming or going from the country $10,000 and over.

MLI: How did 9-11 change things?

Flemming: It is trite to say that it changed everything, but it certainly did in the intelligence world. For FINTRAC, it changed its mandate by adding counterterrorist financing to its responsibilities in 2001. This was no easy element to add as FINTRAC was barely up and running when this occurred. And, the terrorist financing piece was simply "glued" on to the original legislation rather than being thoroughly thought through.

All over the western world similar changes were underway with the FATF leading the way with new policies that FIUs would have to adapt to their regimes.

The other huge change was the sense of vulnerability that arose in the west, particularly in the US, which had to come to grips with an attack on its home territory. I'm not certain Canadians have the same perception of our vulnerability, as our "good guy" myth seems to trump realities. The terrorist threat is real.

Lastly, those events shifted the public's perception of the privacy balance, that is, most people in western countries were more willing to trade privacy for safety.

MLI: Do we have the right international system in place to address money laundering and terrorist financing?

As I noted, the current international system to attack money laundering, in particular, was set in place in the 1980s to fight drugs and remove the cash generated through drugs. Two issues flow from this approach: a) the methods used to launder money have changed dramatically due to technological changes and globalization, and b) one has to question the drug policies around the world as abolition has proven ineffective and likely has caused more harm than any good it may have done.

Furthermore, with the creation of cybercurrencies or digital currencies such as bitcoin we have entered a new era that I would argue we are unprepared for. In the most recent Budget the federal government, to its credit, has signalled that it will address the issue of digital currencies. The FATF recommendations certainly do not address cybercurrencies, as they were not dreamt of in the 70s.

What we have in place via the FATF policies is the "lowest common denominator" of policies that could be agreed upon. With varying interests the international agreement world is one of continual compromise. Further, there are now approximately 180 countries who have set up FIUs according to the FATF standards to have an acceptable FIU, that is, they have passed legislation that meets the FATF criteria.

Within that multitude of countries with FIUs one can find sophisticated operations, those with little or no capacity to execute their legislative responsibilities, those that are corrupt, and many who use their FIU as "window dressing" to show the world they are FATF compliant. Meeting the complex standards set out by the FATF is difficult for most countries and impossible for many.

MLI: Do we have the right regime in place for Canada?

Flemming: Canada has mostly complied with the FATF standards although it's fair to say that we were never "legislative leaders" and our regime has many gaps and holes. For example, lawyers are not covered by the system yet most if not all sophisticated schemes used by organized criminals to move money around the world require the expertise of lawyers as intermediaries to create the corporate structures and other entities required to bridge the criminal and the legitimate economies. The lawyers are fighting the Canadian government in court. Dealers in luxury goods such as art works, antiques, and high-end cars are not covered under the PCMLTFA, nor are pay loan companies, owners of white label ATMs, and many others.

To give credit where it is due, Canada did a fine job in creating a world-class FIU. By being forward-looking Canada is one of only two or three countries that includes electronic fund transactions in its legislation. The US is just catching up with us now — Australia

was the leader. This data includes all financial transactions coming or going from the country $10,000 and over. A positive step was taken several years ago with the FATF's inclusion of tax evasion as a predicate offence in its standards, which Canada adopted. Another promising step was made in last year's Budget giving the Canada Revenue Agency (CRA) access to that financial transaction data. On a less promising note, the CRA just disbanded its Special Enforcement Program aimed at taxing the criminal element.

To go back to the original purpose of the global system, that is, to remove the proceeds of crime, we should be looking more at the methods to remove these proceeds such as through the tax system, civil forfeiture, and other methods.

One of the greatest impediments in Canada to a better regime, as mentioned previously, is the lack of a strategic planning process among the various players to provide a coordinated operational approach.

One has to wonder what is wrong with a system where large organized crime groups continue to thrive. Even the RCMP testified in Italy several years ago that the Rizzuto organization was part of a consortium to build a bridge between Sicily and Calabria at Messina. To do that you need access to many millions if not billions of dollars. It's hard to argue that we have the right regime in place when known career criminals can bid on such a project.

Lastly, one could question the "teeth" of the legislation in Canada. Canada's approach regarding those who must report financial transactions to FINTRAC has been more service oriented than enforcement. While the rest of the western world has laid many criminal charges against banks, casinos, and others, not a single criminal charge has been laid in Canada. Indeed, in the US in January of this year two bitcoin operators faced money laundering charges while in Canada we are just thinking about addressing the issue. Are Canadian banks, casinos, and so on more honest and respectful of the law than others? I don't believe so. Why are we so reluctant to prosecute? Is it a failure of will or the legislation? I believe it's a failure of will.

On the civil side, a look at Canada's record is no more encouraging. The Department of Finance and FINTRAC take a very gentle approach to administrative penalties and to date the numbers have been few with small amounts lodged against the erring reporting entities. Again, is there a failure in the legislation? I believe it is a lack of will to enforce.

MLI: Have we struck the right balance in terms of access and privacy?

Flemming: The balance between an individual's right to privacy and government's desire for more information is always a difficult one to strike for policy-makers. Canadians' expectation of privacy is one of the highest in the western world. Why is this? Is this expectation reasonable? I leave this issue for others to debate. All I can say is that equation is always shifting as it did after 9-11 when individuals were willing to trade off privacy for safety.

MLI: How do you react to concerns of the Privacy Commissioner that FINTRAC is keeping too much personal data?

Flemming: I would begin by stating that the Privacy Commissioner (PC) has been put in the very awkward position of providing the oversight for FINTRAC as a result of legislative changes in 2006. Given that the PC's role is to restrict to the extent possible Canadians' information being used for a variety of purposes it must be difficult to oversee an intelligence organization whose role it is to ferret out information (within the law). I would

certainly agree that FINTRAC, like all intelligence organizations, needs some oversight but to place that burden on the PC is neither helpful nor wise.

Regarding the issue that FINTRAC is keeping too much personal data, the PC was commenting on the unfortunate reality that the reporting entities often send in inappropriate information that they were instructed to avoid. An example would be social insurance numbers, which FINTRAC has no legal right to possess.

Information arrives electronically to FINTRAC with no human review as the volume is simply too great. The easiest way to fix this problem is to somehow force the reporting entities to not send it. Given that they are already instructed not to do so and given that there are some hundreds of thousands of potential reporting entities this has not worked.

FINTRAC's goal is to protect information and to ensure inappropriate information is not used. So they sequester the information. The PC agrees that the information is sequestered and has never been used by FINTRAC. So, in my view, a cost-benefit analysis shows it does not make sense to go to the considerable expense of removing this information.

(T)he government must begin to see the regime as a whole system in terms of its management. It is not productive to strengthen one part of the regime as it did in the most recent Budget with a significant increase in FINTRAC's allocation, while starving those in the regime who use FINTRAC's financial intelligence. An increase in the volume of work from FINTRAC will not help when the RCMP and the Public Prosecution Service are being cut back. This makes no sense.

MLI: What challenges emerge from handling so much data?

Flemming: The first challenge is a practical one, that is, the IT challenge both on the side of the reporting entities who must put their transaction reports into electronic format to submit them to FINTRAC and on FINTRAC's side in receiving such volumes. The next challenge familiar to anyone dealing with large data sets is the data integrity. The PC worries about certain types of information sliding through while FINTRAC has to concern itself with the integrity of the approximately 1.6 million transactions received each month.

The next challenge is creating and maintaining the analytic capacity to manipulate the data to produce financial intelligence that meets the legal test set out in the legislation prior to disclosure. While much of the data analysis is supported by technology, intelligence analysts still must apply their analytic skills to convert data into usable intelligence that meets the legal threshold. Protecting the data from internal and external inappropriate use is a constant challenge and FINTRAC is justifiably proud of its record in doing so, as verified by the PC with the one exception referred to previously.

MLI: Are law enforcement and security agencies equipped to follow up the leads from FIUs?

Flemming: When FINTRAC was created I think it was a huge challenge for both law enforcement and security agencies to understand and deal with the resulting financial data. Through education, usage, and strategic secondments between and among the various players I believe that challenge has been mitigated for the most part.

The volume of intelligence on money laundering going to law enforcement in particular is an ongoing challenge. The police in particular serve so many different needs that it is often a fact that the urgent takes priority over the important. For example, when the Olympics took place in Vancouver, the security of the Games overtook the demands of money laundering caseloads. Society views local criminality as a greater threat than organized crime.

The threat to our institutions through organized crime is neither well understood nor well communicated by politicians nor the police. Turning intelligence into evidence is not an easy task for law enforcement and is an ongoing challenge in a world where many expect instant results. Many believe every disclosure from FINTRAC should lead directly to a conviction. To expect such a result is simplistic at best and foolish at worst.

Furthermore, the government must begin to see the regime as a whole system in terms of its management. It is not productive to strengthen one part of the regime as it did in the most recent Budget with a significant increase in FINTRAC's allocation, while starving those in the regime who use FINTRAC's financial intelligence.

An increase in the volume of work from FINTRAC will not help when the RCMP and the Public Prosecution Service are being cut back. This makes no sense.

I must comment on Mr. Vito Rizzuto's recent funeral in Montreal. If you were not aware you would have thought that he was a high level dignitary given the media coverage. However, one could argue that that man and his criminal organization caused more harm to his community and this country than anyone else I can think of. They are alleged to have corrupted all the local governments in and around the Montreal area and caused countless deaths and made huge sums of money — most of which likely was tax free and still untouchable somewhere in the world.

My questions are: Why as a society do we not see these groups for what they are? And why are politicians unable to provide the resources law enforcement needs to take on these groups? I can tell you that what I saw in the cases developed by FINTRAC and passed on to law enforcement scared me.

MLI: FINTRAC has been around since 2000. What have we learned?

Flemming: A great deal! We have learned the power of financial intelligence as both a tactical and strategic tool used to attack organized crime and terrorist financing. However, it is still in its infancy, having only been used worldwide for some 23 years and in Canada for a mere 14 years. Nothing moves without money.

We've learned that organized crime and terrorist groups are exceedingly complex entities requiring sophisticated operations to work effectively. We've learned that the creation of the global regime to combat these threats has impacted these groups, who have had to work harder and create ever more complex transactions to keep the cash flowing.

We've learned about the intricate linkages between the legitimate economy and the illegitimate one. We've learned that technology is changing the nature of organized crime. We've learned that "connecting the dots" among and between law enforcement and security agencies is extremely difficult and is likely among the many advantages provided to organized crime and terrorist organizations.

Another interesting fact has arisen since the inception of FINTRAC and the current regime. Money laundering has three phases: a) placement (putting cash into the system); b) layering (moving proceeds around to cover its source); and, c) integration (making it "disappear" into the legitimate economy).

Most of those who are required to report have learned to be on the lookout for the first step, that is placement, and have become reasonably adept at reporting.

However, I would posit that few if any are looking at the next two steps. Some reporting entities have told me that they consider it a mistake for them to be required to report as they do not take cash. This gives money launderers an easy way to move money around if they can get it into the system in the first place.

MLI: What changes to legislation or to operations do you think would be most effective in helping take advantage of FINTRAC's work and to prosecute more cases?

Flemming: Some important changes have been made in the recent Budget by providing certain FINTRAC transaction information to CRA for tax administration purposes. Some work needs to be done to make this happen but I believe this is a major positive step in using the financial data housed in FINTRAC for public policy purposes. Further, the recent parliamentary review of the regime could bring forward more positive changes.

The restrictions placed between the use of strategic and tactical intelligence bears some reviewing.

We need a national "champion" to educate the public regarding the regime rather than the narrow focus on one or two aspects of the regime as is done when left to the parliamentarians or the media. We need leadership within the regime to speak for the regime as a whole rather than allow its various pieces to defend each of its more limited mandates. It is a regime that stands or falls as a regime. We need performance measures that span the regime. We need a strategic operational plan for the regime that forces it to work horizontally to achieve mutually defined goals.

We must get away from the simplistic notion that a money laundering prosecution is the acid test to measure the success of the regime. Perhaps at its inception the "prosecution" measure was sold to pass the legislation, but that was and is not helpful.

A set of horizontal measures could provide a better, more holistic view of just what is going on.

Lastly, the political class must be educated to the reality of what is happening under our noses and have the fortitude to stand up and support law enforcement to the level required to take action before the events of Montreal are replicated across the country.

MLI: How can the international effort to tackle money laundering and terrorist financing be improved?

Flemming: From a policy perspective, as this is an international system designed by the FATF it might be time for them to review its mandate in an electronic, almost cashless world. It might be timely, as some have suggested, to review drug strategies as the "war on drugs" has been a dismal failure.

From an operational perspective I think the FATF has taken an important step forward in launching a new round of evaluations of the various regimes around the world looking this time at effectiveness of performance rather than the strictly legal perspective.

Domestically I would conclude with a question: Rather than look at the cost of assigning more resources to organized crime and economic crime I would turn it around and ask, what is the cost of not doing so?

Recommendations

The Canadian public and politicians need to look past the nation's "good guy" image to see the real threat of organized crime here, and properly resource the law enforcement needs to take on these groups.

Canada needs a new oversight regime for FINTRAC that does not rely on the Privacy Commissioner, whose office is ill-suited to the task.

We need leadership within the anti-money laundering and terrorist financing regime, of which FINTRAC is only a part, to speak for the regime as a whole rather than allow its various pieces to defend their more limited mandates.

Jeanne Flemming was the director of FINTRAC from 2008-2012. She retired in 2012 after 35 years of service.

"With over 40 years of experience, I can confidently say that Northern Gateway's emergency response will be world class."

- Dr. Ed Owens, expert on shoreline response

Meet the expert:

Dr. Ed Owens is a world renowned authority on shoreline response planning and cleanup operations, and has consulted for the UN, World Bank, and Environment Canada.

Northern Gateway is committed to protecting B.C.'s waters. That's why we will plan, prepare for and implement international emergency response best practices.

— *LEARNING FROM EXPERIENCE* —

Northern Gateway has consulted with dozens of experts, including Dr. Ed Owens, an oil spill specialist who has acted as a consultant to the UN, the Arctic Council, and more. With over 40 years of experience, he was instrumental in helping us develop our marine emergency response program.

"I have worked closely with Northern Gateway to develop programs for enhanced spill response along all marine transportation routes. These programs will help ensure the environmental safety along the shipping routes."

Northern Gateway will implement some of the safest marine operations practices from around the world to help prevent a marine spill from ever occurring. We are also preparing for the most effective response possible in the unlikely event of a marine emergency.

— *EXCEEDING EXPECTATIONS* —

Our marine emergency response practices go well beyond Canadian requirements. As Owens puts it:

"By placing emergency response capacity at various key locations along the proposed route, valuable time will be saved in the unlikely event of an oil spill – and in a marine emergency situation, response time is critical. But having the right equipment in the right places is not always enough. A world class response capability requires an experienced response team at both the management and operational levels, and integrated training to ensure that timely decisions make the best use of the equipment and resources."

— *IMPORTANT CONDITIONS* —

This past December, the Joint Review Panel recommended that the project be approved, subject to 209 conditions – including ones that require Northern Gateway to implement effective spill response measures. We are working towards meeting these conditions, the same way we are working hard to meet the five conditions set out by the Province of British Columbia.

In short, Northern Gateway is committed to doing everything possible to build a safer, better project.

NORTHERN GATEWAY

Learn more at ***gatewayfacts.ca***

Working in partnership with B.C. and Alberta First Nations and Métis Communities, and leading energy companies in Canada