

# Effective Opposition vs. Efficient Government

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D E R R E K   K O N R A D †

I am pleased to be here representing the Canadian Association of Former Parliamentarians (CAFP), an association that has hundreds, indeed thousands of years of political and parliamentary experience.

It is rapidly becoming a formidable organization in the field of democratic and parliamentary issues.

I had been planning to speak about the need for political nomination reform as the Association has recently undertaken a study of political nominations as currently practiced. The abuses that characterized early elections in Canada have largely been eliminated due to the professional work of Elections Canada. They have not been entirely eliminated from the system however, they have simply migrated downward to the riding associations as recent headlines demonstrate.

Nomination reform is not my topic today. You will however be hearing from the Canadian Association of Former Parliamentarians on that topic in the near future. What I will be speaking about is an epic procedural battle that took place in the House of Commons over the Nisga'a Treaty. The Nisga'a Treaty created a land base for the Nisga'a First Nation and provided for a form of self-government.

The Reform Party opposed the Treaty because it established self-government for the Nisga'a in the same legislation that created the reserve. Constitutional experts who appeared before the Standing Committee on Indian and Northern Affairs expressed concerns because reserves, once created, become constitutionally protected. By joining the two elements in a single piece of legislation, the governance provisions may not be subject to legislative amendment in the future, if and when changes are found to be desirable.

The dynamics of Parliament, both in the House and in committee do not allow for meaningful participation by opposition parties. Frequently, legislation is introduced to committee with the statement that the government will not consider amending the legislation. The Nisga'a legislation was one such bill.

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† Derrek Konrad, Former member of Parliament, Prince Albert.

So, what is a principled opposition to do?

Since reasoned argument based on facts is not going to effect change, extraordinary measures must be taken in order to raise the profile of an issue, to mobilize the public and to put pressure on the government to adopt proposed amendments.

Prior to the development of the House strategy, the Reform Party launched information blitzes in British Columbia and Members of Parliament held public meetings on the issue throughout the province. At the same time the government, the Nisga'a and their supporters ran their own campaigns in support of the treaty. The net effect was that British Columbians were well informed about the issue while the rest of Canada was largely ill informed.

A strategy would be required that would draw the attention of Canadians from coast-to-coast. It was determined that stalling the bill in committee would not be an effective strategy.

So what strategy would draw the attention of Canadians and the government? Amendments introduced in the Commons at Report Stage were thought to be the most effective means of raising the temperature and the more the hotter. A former clerk of the House of Commons was brought in as a consultant to help draw up a number of substantive amendments.

Our strategy called for limited resistance in committee but to let the legislation pass without offering total resistance, in effect a strategic retreat. After we let the bill go, congratulations were extended to the Reform members who, I must admit, felt both exultant and somewhat hypocritical. Little did the government know what was in store.

Over 600 amendments were prepared and submitted to the Speaker's office. This was done on a Thursday to keep the government unaware of what was up until it was too late to do anything about it. After the clerks had finished combing through the amendments, they were left with 471 that were deemed "substantive." Buried in the amendments was the one Reform really wanted. It divided the land claim from the self-government provisions. All other amendments were to pass unopposed if that one amendment was adopted.

The party's strategy was designed to break the government's resistance to our proposal and as such was comprehensive. The usual practice when voting is to have the Speaker introduce an amendment and then ask if he can dispense with the reading. A single "Nay" requires the reading of the entire amendment. Each amendment was read in full and none were disposed of on division. Each amendment was subjected to a roll call vote.

The entire process took 42 hours. On a personal level, I got a 2 hour break after 24 hours of continuous voting. My wife tells me that several minutes after falling asleep I sat up, cried out “Nay!” and fell back.

The Nisga’a vote was the longest recorded vote in the history of the British Commonwealth.

So, what were the results of this historic vote?

Public attention from across Canada was focused on the issue.

The government did not cave in and the legislation passed without amendment.

The government ultimately amended Standing Order 76.1 to give the Speaker the authority to disallow the tactic in the future.

Does it matter?

The power to influence the government and raise the profile of issues through tactical battles has been diminished. In view of the fact that, according to a well placed source, reasoned debate doesn’t cut it, the loss of this procedural tactic is significant. As new tactics are developed they are tried and immediately disposed of by governments dedicated to enacting their legislation without amendment or effective opposition.

In order to be effective, opposition parties need some extraordinary tools in their toolboxes. Without them, Parliament is in danger of sinking to the level of theatre as the government dominates all aspects of the legislative arena. Parliament must be about more than speaking (and not listening). The need for efficiency should not completely trump democracy.

Minister Valeri said earlier today that if he were re-elected in a majority government, collaboration and co-operation would continue. This is not a strength of the system; rather, it exposes a weakness in the system as it depends on good will rather than on procedural rules that empower legislators as they attempt to influence government.

Is there room for optimism? Not if governments continue to bulldoze all legitimate procedural tactics to pressure the government. Principled opposition to proposed legislation needs an outlet for expression and the prospects don’t look encouraging.



Q & A WITH VIC TOEWS, DAVID  
MCLAUGHLIN†, AND DERREK KONRAD

*I'd just like to ask one question concerning the original intent of Parliament, and how things might have changed.*

*When Parliament first came to Canada, 150 years ago or so, we saw a great need for MPs and MLAs, because it was so far to travel to get to the places where decisions were made. We've seen a big change in the world since then, obviously, with technology and the means of transportation.*

*I am wondering if more citizen involvement in setting priorities and making the decisions of government is going to be part of a solution for a lot of these problems in terms of direct citizen involvement in government-appointed boards. We see a lot of that in Manitoba with the Premier's economic advisory council, post-secondary education councils—things like that. So do you see any role for that, at both the provincial and federal government levels, any growth in the future for direct citizen involvement in setting government priorities?*

**Vic Toews:** Yes, I think it's very important. I was a part of a provincial government who believed in that, in environment, in business, and in other areas. I think it's very important. What we have to be careful of, though, is that we do not let these committees in fact, take away the responsibility of the leadership to make decisions.

There has to be (and I think one of the speakers mentioned it), a balancing of discussion with efficiency, and as much as I may not like particular government initiatives during this parliament or otherwise, we still have to recognise that the government needs to get its agenda done. Ultimately, our response, then, will be, if we don't like it, we can defeat the government and bring it down.

Is it worth it, in any particular case, to bring a government down? That's for the Opposition to decide. But is there room for more citizen involvement? Yes. Does that take away from the responsibility of the elected leaders to eventually make those decisions? No. Elected leaders are ultimately accountable to the people for those decisions.

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† David McLaughlin, Deputy Minister, Commission of Legislative Democracy, New Brunswick.

**David McLaughlin:** I'd just like to echo that. I think Vic is exactly right, and this shows the dilemma in trying to find a balance, because it certainly is very faddish, in many ways, to complain about our politicians, the political class, and blame the institutions—and there are some good reasons for doing so.

But at the same time, in the system we have, we elect people to represent us and to take decisions on our behalf. And that basic premise from all the research I've seen in looking at different models of citizen engagement, citizen involvement—I haven't seen this kind of take back the night kind of thing from the public, saying we want to do this job. In fact that's what they elect people for.

So there is a basic principle at play here. I think you also need to make a distinction between involving citizens in the legislature or Parliamentary side, versus the executive branch, and we're trying to come up with a few ways of doing that. The petitioning process, for example, is one way. It's not something that people think of, but in fact when we looked at some of the activities of political engagement that New Brunswickers do, compared to other Canadians, based on some StatsCan research and our own knowledge and views, we found that New Brunswickers tended to sign more petitions. So maybe we are on to something that we can use as one particular lever in some way.

But involving the public and citizens in the executive branch and government decisions—school boards, district education councils, regional health authorities—that's all part of that devolution of authority, in a way, to either give people, or empower people, with some appropriate level of decision-making authority, and also, of course, for government to hear from people so they can make some decisions.

You have to be careful, though, because at some point you are going to cross a line, and the people that are going to be taking decisions are the people who are going to be spending your money and my money, and they're not exactly accountable. This is a challenge when it comes to spending tax dollars, versus raising tax dollars—the whole taxation without representation thing. So it's always a balance in some fashion.

**Derrek Konrad:** I'd like to say that that fits in with Dr. Schwartz's comments about cost-benefit analysis, and the need for alternatives. So frequently, the political party that forms government has an endgame in mind, and hasn't looked sufficiently at the cost, the harms, and the benefits that would accrue from a particular piece of legislation. Public hearings, of course, would add information, opinion, and emotion. All of these things are needed in coming to a decision.

It's not like the charge of the Light Brigade: away we go down into the valley of death and leading everyone with us. It is a question of “let's get it right.” Leadership doesn't necessarily mean you have to rule. In fact,

in the election I won, one of the candidates said that once you're elected, you rule, and I thought, my stars, have we gone back to the monarchy, where the monarch rules rather than governs (which has an entirely different connotation)?

I would definitely be in favour of politicians taking account of what the public has to say.

**Vic Toews:** Just a little further on that issue. I think getting back to the basics of what Parliament was (and perhaps there are better people in the room to talk about that, such as Dean Edwards who taught me first year law, being the historian that he is). But essentially, what Parliament was intended to do was to hold the executive accountable, and what we have now is a pyramid where the executive is dictating to the entire Parliament through things like party discipline and the handing out of various perks. So we need to, I think, look at what parliament was originally intended to do: to hold the executive accountable, especially for funding matters, as Prince John did (is that right, Dean Edwards?).

But that, in fact, is something that we are now seeing through this whole “sponsorship issue”; a re-examination of what Parliament is, and who is accountable to whom. The public has a very important role to play in that, but when it comes to the funding side of it, it’s the elected legislators, who have to hold the executive accountable for that.

*Mr. Toews, how would your party go about changing the selection processes of the Supreme Court of Canada judges, seeing as a few moments ago you were saying that you weren't happy or satisfied with the way it was being done now?*

*How would you put some teeth into it, so that it would truly change the way Supreme Court of Canada judges are selected? Are you talking about a different appointment system, or perhaps even an election system, where the parliamentarians, perhaps, could elect the judges, or maybe even the people, as were talking about earlier: on election ballots, or through a referendum, or something like that? What exactly is your party planning to do or propose if you get elected into power?*

**Vic Toews:** A much more moderate proposal than electing. I don't think that electing the judiciary has been a part of our Canadian political and judicial history. It has worked in the American context I don't think that anyone can say that the American judges are any less diligent about their work than Canadian judges, but I think we have to look at our cultural context, our value context, our democratic context.

It is not just my party that is upset about the way judges have been appointed. In fact, here is another example of the workings of a minority

government: the chair of the Justice Committee just sent a letter, of course approved by all Justice Committee members, criticising Minister Cotler for going back on his commitment to in fact take seriously the recommendations that parliamentarians made before the last election, in terms of a greater public input.

I see this as more of a gradual process. I know that some of the polling has indicated that 75 per cent of Canadians want to see judges elected. It's a very powerful temptation simply as a leader to say, "Look, 75 per cent of my constituents are going that direction; I've got to get ahead of that pack."

I think there is a responsibility on us to say, "well, what are the consequences of election?" And frankly, at this point, all my party has been saying is that we want to see a more open, public, process when it comes to the appointment of Supreme Court of Canada judges.

Canadians have a right to know who these individuals are. These individuals are setting the most important social policy in Canada. Not only are they setting social policy, but preventing parliamentarians from setting social policy. So Canadians have a right to know who these nine individuals are. Most people in this room would be unable to name all nine. Some would probably not be able to name any. But I think that is a first step. That may sound like very small, baby step, but I think it's an important step: to reacquaint Canadians with this very, very powerful institution. I'm not prepared at this time to even suggest that we look at electing judges. I am certainly not in favour of that.

*So, for example, what type of vote and public process are you talking about?*

We have to look at the context of the Constitution. I don't want to pass laws that violate the Constitution, as they did back in 1913 when Manitoba brought forward a series of referendum laws which attempted to bind the Lieutenant Governor-in-Council with the result of the referendum—that was unconstitutional.

What I'm suggesting is, let the Prime Minister make the choices, and then those individuals come in front of the Justice Committee or some other parliamentary committee to tell us—not just simply me as a person, but me as a representative of the people, and the people watching TV at home—to say, what do you bring to the table? Why should you be put in this position, this most powerful position in our country?

When I put that proposal to the Justice Minister, when he came to explain why had picked two individuals and why they were going to the



bench, he said, that's a lot like asking somebody: "when did you stop beating your wife?"

I've been puzzling for the last four or five months the relevance of that kind of response. To ask someone what qualifications, what strengths they bring to the bench, I think, is the most fundamental question you could ask of any candidate to any position—be it a municipal councillor, a university professor, or a police officer.

