

Canada's Speaker rebukes government for withholding Afghan detainee documents

Keith Jones
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The Speaker of Canada's House of Commons ruled Tuesday that Stephen Harper's minority Conservative government has violated parliament's core constitutional rights by refusing to obey a Common's order to hand over all documents pertaining to the fate of Afghans captured by the Canadian Armed Forces (CAF).

For months the government has balked at turning over the documents claiming that to do so would "compromise Canada's security, national defence and international relations."

Its real concern is that the documents provide incontrovertible proof that the government and CAF knew full well that the alleged Taliban insurgents whom the CAF has transferred to the Afghan secret police have been tortured and abused, if not "disappeared."

Under the Geneva Conventions, it is a war crime to transfer prisoners to any persons, group, or agency that there is valid reason to believe will abuse them and moreover, in the event that such a transfer takes place those who turned the detainees over are obligated to free them from harm.

Speaker Peter Milliken's lengthy, long-awaited decision cited numerous authorities and precedents in upholding parliament's absolute and unfettered right to receive from the government any document it deems necessary to perform its function of scrutinizing the actions of the government and holding the government to account. (Under Canada's British-derived parliamentary system the government is "responsible" to parliament and can govern only if it commands the "confidence," i.e. majority support, of the elected MPs.)

The Speaker rejected without equivocation the government's claim that parliament is impinging on the rights of the executive by demanding uncensored copies of all documents relevant to the Afghan detainee issue. Rather it is the Conservative government that has laid claim to new powers by refusing to hand over the documents and by justifying this refusal with an interpretation of parliament's relation to the government that "subjugates the legislature to the executive."

"It is the view of the Chair [the Speaker]," Milliken declared, "that accepting an unconditional authority of the executive to censor the information provided to Parliament would in fact jeopardize the very separation of powers that is purported to lie at the heart of our parliamentary system and the independence of its constituent parts. ...

"[T]he procedural authorities are categorical in repeatedly asserting the powers of the House (of Commons) in ordering the production of documents. No exceptions are made for any category of Government documents, even those related to national security. ... Bearing in mind that the fundamental role of Parliament is to hold the Government to account ... I cannot agree with the Government's interpretation that ordering these documents transgresses the separation of powers and

interferes with the spheres of activity of the executive branch."

Stripped of parliamentary politesse and legalese, Milliken has ruled that the government is seeking to usurp fundamental rights of parliament.

But even as the Speaker repudiated the government's position, he pleaded to parliament—that is to the three opposition parties who together hold a majority of the seats—to seek a compromise with Harper.

"[T]he House and the government have, essentially, an unbroken record of some 140 years of collaboration and accommodation in cases of this kind," said Milliken. "It seems to me that it would be a signal failure for us to see that record shattered in the third session of the Fortieth Parliament because we lacked the will or the wit to find a solution to this impasse."

In seeking to defuse the confrontation between parliament and the government, the Speaker is following the advice of various constitutional experts and of the editorial board of the *Globe and Mail* and other influential newspapers

There is much concern in the ruling class that a clash between the government and the opposition over the respective powers of parliament and the executive could destabilize and further undermine the popular legitimacy of Canada's governmental system.

Having rejected the government's stand on the Afghan documents, Milliken could have allowed a motion finding the government and the Justice and Defence Ministers in contempt of parliament to come rapidly to a vote.

Instead, the Speaker announced that he would wait two weeks before allowing the motion to proceed so as to allow for "one further effort to arrive at an interest-based solution to this thorny question."

The last time a like motion was adopted was in 1913. In the current context the passage of such a motion would gravely compromise the government's legitimacy and probably trigger an election—an election in which the Canadian government and the CAF's complicity in war crimes and the increasingly manifest crisis of Canada's bourgeois democratic institutions would figure large.

There is no stomach within Canada's ruling elite for such an election

"Failure," to reach a compromise declared John Ibbitson, the *Globe and Mail's* Ottawa bureau chief, "will come in the form of a bitter election that would damage the country. The Liberals, NDP, and Bloc would campaign on Conservative autocracy; the Conservatives would campaign in defence of protecting our troops in Afghanistan from betrayal on the home front. That would be one ugly election."

The Speaker pointed to several possible mechanisms to resolve the impasse, including having a small number of MPs who have sworn to

uphold national security scrutinize the documents.

Such a procedure would deny the public access to much of the most pertinent and damning evidence of the government's and CAF's complicity in torture.

The opposition parties were quick to embrace the Speaker's call for a compromise. In fact, they have made several similar suggestions over the past five months.

Speaking to reporters Wednesday, Liberal leader Michael Ignatieff said he was "willing to reach out" to the government, adding that if the government and opposition acted in "good faith" he was confident "they can find a solution in a couple of hours."

All of the opposition parties supported the decision, made by the Liberal government of Paul Martin, that the CAF should deploy to Kandahar and take a leading role in the Afghan counter-insurgency war. They have used the Afghan detainee issue to embarrass the Conservative government. But none, including the social democratic NDP, is ready to tell the truth to the Canadian people—Canada's government has been involved in war crimes and this is not the result of excesses but has arisen inexorably from the neo-colonialist character of the war Canada is waging in Afghanistan.

Although the opposition parties are eager to come to agreement with the government, it is by no means certain that the Conservatives are willing to meet them half way.

The Conservatives have gone to truly extraordinary lengths to try to derail the Commons' investigation of the Afghan detainee issue and a parallel inquiry launched by the Military Police Complaints Commission (MPCC), a quasi judicial body established by parliament.

The government has suppressed documents or massively redacted them, often to the point that they are incomprehensible, and done so for the past five months in unprecedented defiance of a Commons' resolution.

Witnesses have been threatened with prosecution under Canada's national security laws. Richard Colvin, a senior diplomat who testified that the government and military ignored and suppressed his warnings that the Afghan secret police considered torture standard operating procedure, was vilified and slandered.

Last December the government prorogued or shut down parliament for two months so as to prevent the Commons' committee charged with investigating the Afghan detainee issue from functioning.

On Tuesday a senior government lawyer told the MPCC, all of whose members have the highest security clearance, that they would not be allowed to see documents a CAF commander had withheld from the MPCC based on his determination that military police would not have seen them during their course of duties.

Moreover, Harper and the Conservatives have sought to incite the military against the opposition, repeatedly charging that the opposition's probing of the Afghan detainee issue is disloyal and putting the 3,000 CAF troops who continue to serve in Afghanistan at risk.

When Liberal leader Ignatieff asked Harper during Wednesday's Question Period if his government will abide by the ruling, the prime minister refused to be pinned down.

"Mr. Speaker," said Harper, "we look forward to both complying with your ruling and with the legal obligations that have been established by statutes passed by this Parliament. The fact of the matter is, the government cannot break the law, it cannot order public servants to break the law, nor can it do anything that would unnecessarily jeopardize the same of Canadian troops."

Harper, who was notably absent from the Commons when Milliken

delivered his ruling, thus continues to argue that there is a conflict between the government's obligations to parliament and its need to protect national security and Canada's international relations.

Andrew Coyne, one of Canada's best-known conservative columnists and the national affairs editor for the weekly *Maclean's*, has become increasingly critical of the Harper government's flagrant violation of parliamentary norms.

In his blog Wednesday he wrote, "The means of addressing" the government's "national security concerns have always been available to it. That it has refused to engage the opposition on these raises two distinct scenarios. Either it is simply too bloody-minded to give an inch to its political foes, on whatever matter, or the documents contain something truly awful, so scalding to the national conscience that it would be prepared to go to almost any length to suppress them. Either, that is, it is behaving completely irrationally, in a way that can only be harmful to its own best interests. Or it is behaving all too rationally."

Whatever the outcome of the current dispute between the opposition and the government and between parliament and the executive, the Afghan detainee issue has already graphically demonstrated the link between the Canadian ruling elite's embrace of imperialist war as a means of asserting its predatory interests on the world stage and its increasing turn to anti-democratic measures and authoritarian forms of rule.

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