

# 1: THE CONSERVATIVE GOVERNMENT AND ITS CRIME AGENDA

## THE 2006 ELECTION

In preparation for the 2006 federal election, Stephen Harper's Conservative Party issued its agenda for criminal justice. Titled *Stand up for Security*, the document was very detailed.<sup>1</sup> It asserted that the Liberal record on safety and security had been weak, and that Liberals had put Canada on the road to drug legalization. Mr. Harper pledged to "crack down on crime."

The Conservative Party claimed that the homicide rate and other crimes were up,<sup>2</sup> and promised to deliver "serious time" for "serious crime":

*A Conservative government will protect our communities from crime by insisting on tougher sentences for serious and repeat crime and by tightening parole. We will ensure truth in sentencing and put an end to the Liberal revolving door justice system. The drug, gang, and gun-related crimes plaguing our communities must be met by clear mandatory minimum prison sentences and an end to sentences being served at home. Parole must be a privilege to be earned, not a right to be demanded.*

The plan promised specific measures that would introduce mandatory minimum sentences for drug and other offences, reduce the use of conditional (non-custodial) sentences, create "three-strikes-you're-out" legislation for dangerous offenders, mandate consecutive sentences for multiple

## FEARMONGER

murders, prevent courts from giving extra credit for time served in remand,<sup>3</sup> and create a reverse onus for bail hearings on some firearms offences.<sup>4</sup>

Another branch of the plan promised fundamental and sweeping changes to the correctional system. “Faint hope” applications (allowing offenders serving life sentences to apply for an earlier eligibility date for parole) would be abolished. Statutory release (allowing offenders to be released under supervision at two-thirds of their sentence) would be replaced by “earned parole.” Parole provisions would be toughened up. A constitutional amendment would prevent federal prisoners from being able to vote in elections.

The campaign platform also promised to place more police on the streets, invest more money in victims services and youth crime prevention programs, repeal the long-gun registry, get tougher on sex offenders, enact a national drug strategy, and treat young offenders more like adults (by ensuring anyone fourteen years or older charged with serious violent or repeat offences is automatically sentenced as an adult, and by adding deterrence and denunciation to sentencing principles for youth), thus sending more of them to prison for longer sentences.

The Liberal Party’s campaign platform, while generally strong in areas of human rights and social programs, appeared to vie in harshness with the Conservative plan when it came to criminal justice.<sup>5</sup> It too claimed that homicides were up in 2004, without acknowledging that crime rates had been trending down. Liberals were concerned about drug trafficking and gang violence. An earlier Liberal effort to decriminalize marijuana was not mentioned. Except for a promise to fund a *Gun Violence and Gang Prevention Plan* and a *Rural Community Safety Plan*, there was no real commitment to prevention or treatment in the context of criminal justice.

The Liberals’ platform showed that they could be just as tough-on-crime as the Conservatives. Their platform promised fewer conditional sentences, more law enforcement, stronger laws on the investigation of drug-impaired driving, and harsh penalties for auto theft and street racing. Liberals also outdid the Conservatives by promising to *double* mandatory minimums for gun-related crimes (their emphasis).

The New Democrats also recognized the dangers of being seen as soft on crime.<sup>6</sup> They claimed that violent crime had increased over twenty

## THE CONSERVATIVE GOVERNMENT AND ITS CRIME AGENDA

years, and also noted the homicide statistics for 2004. They described gun violence as a crisis, and produced a lengthy criminal justice platform. The three pillars of the plan were: to mete out tougher sentences on gun crime, and generally provide “firm punishment and deterrence”; to fund more law enforcement; and to fund more preventive programs, especially with respect to communities and youth. This platform thus made prevention an explicit part of its plan.

Unlike the Liberals and Conservatives, the New Democrats promised extensive investments in housing, child care, education and training, employment, youth programs, and community-based efforts—all in the context of criminal justice as part of “Ending Violence.” The New Democrats also proposed a “non-punitive rule” with respect to adult use of marijuana, while supporting drug addiction programs. Like their rivals, though, they pandered to the tough-on-crime vote by promising mandatory minimum sentences, tougher sentencing for youth who use guns, and new laws dealing with methamphetamine production.

The Bloc Québécois argued for prevention and rehabilitation programs as opposed to punishment-oriented measures. Its platform said it favoured decriminalizing small amounts of marijuana, and focusing on rehabilitation and drug prevention programs rather than imprisonment, especially for young offenders.<sup>7</sup>

The Green Party argued for tackling the root causes of crime, and for a stronger role for restorative justice.<sup>8</sup> They wanted to regulate marijuana like alcohol and tobacco, and argued for higher penalties for gun-related crimes.

There was a swift response to the Conservative approach from experts in the field. They argued that higher incarceration rates do not drive down crime rates, that deterrence as a principle of sentencing does not work, and that mandatory minimum sentences are counterproductive and expensive. They deplored the dearth of investment in prevention and rehabilitation, and predicted a huge increase in numbers of prisoners and an urgent need for more prisons as a result.

There were some unlikely opponents to the Conservatives’ tough-on-crime agenda. The Correctional Service of Canada, which administers the federal penitentiary system, responded to the Conservative campaign platform in an analysis obtained by the *Toronto Star* and reported on just before

## FEARMONGER

the 2006 election.<sup>9</sup> It said that the tough-on-crime agenda would dramatically increase prison populations. It asserted that mandatory minimum sentences (a linchpin of the Conservative agenda) do not have a deterrent effect upon offenders. It said that “the expense of long incarceration drains funds away from needed social programs that do prevent crime.” And it maintained that the Conservative approach would “hit Aboriginal people the hardest, violate Charter rights of inmates, and likely not make for safer streets.” The advice of the Correctional Service appears to have been ignored.

Another interested observer watching the Harper government’s five-year effort to overhaul criminal justice offered a passionate response. Calling the agenda “dumb on crime,” Conrad Black, a high-profile supporter of Prime Minister Harper and an ex-inmate, expressed strong feelings about the tough-on-crime agenda:<sup>10</sup>

*Canada’s vocation is as the world’s great liberal pioneer, to be tough on crime by treating its causes, reducing the unnecessary and hideously expensive demonization and segregation of the non-violent, and not...to be “dumb on crime” by stigmatizing and tormenting trivial offenders, and assuring that greater numbers of young and of native people are ground to powder in the criminal system. The government is in hot pursuit, without a warrant, of higher costs, more crime, more misery, and deeper roots among the most reactionary and uninformed voters. It is bad policy and shabby politics, and the government has those votes anyway so it is not clear why it is alienating the rest of us, who want a justice system based on decency, efficiency, and results, not oafish posturing.*

The platform was given an unfortunate boost just before the 2006 election. The tragic death of Jane Creba, gunned down on Boxing Day in downtown Toronto by a young gang member, was seized upon by the Conservative Party as proof that guns, gangs, and drugs are becoming a more serious threat to Canadians. Conservative adviser Tom Flanagan, regrettably, saw it as a way of improving the party’s chances at the polls.

## THE CONSERVATIVE GOVERNMENT AND ITS CRIME AGENDA

He said, "Our internal polling had already established criminal justice as the issue area where we had the strongest lead over the Liberals, and Jane Creba's tragic death helped to make our position more salient to voters."<sup>11</sup>

The Conservatives won the 2006, election and formed a minority government. The thirty-ninth Parliament ran from April 3, 2006, to September 7, 2008. In the first session, fully 24 per cent of all Senate and House of Commons bills were related to crime (sixteen of sixty-eight bills). Nine of the sixteen bills received royal assent by the end of the session, among them a bill repealing conditional sentencing for certain offences and one creating the new offence of street racing.

During this first session, Justice Minister Vic Toews justified his efforts to impose more mandatory minimum sentences by saying that they had caused a "significant drop in crime" where they had been used in the United States.<sup>12</sup> Yet as early as 1970, Texas congressman George H. W. Bush supported a vote to repeal virtually all mandatory minimum sentences for drug offences. This legislation was supported by both Democrats and Republicans. Mr Bush said, "Contrary to what one might imagine, this bill will result in better justice and more appropriate sentences... We will undoubtedly have more equitable action by the courts, with actually more convictions where they are called for, and fewer disproportionate sentences."<sup>13</sup> He did so for reasons that have been followed in many other states over the ensuing forty years. Experienced practitioners, policy analysts, and researchers agree that mandatory minimum sentences are "a bad idea."<sup>14</sup> As the Correctional Service of Canada and many others have said, they provide no deterrent and they are very expensive.

Questions were raised almost immediately about the cost of Mr. Harper's crime agenda. It was apparent that more offenders would be incarcerated, but the government offered no estimates of the numbers of new inmates or of the expected added expense. Minister of Public Safety Stockwell Day claimed that the prison population would increase by about three or four hundred inmates.<sup>15</sup> His communications director said he plucked this number out of the air. Over time, the Conservatives offered various estimates from \$90 million to \$2 billion—all without providing a basis for their figures.

In the second session of Mr. Harper's first government (from October 16, 2007, to the election call on September 7, 2008), ten of sixty-five bills—15

## FEARMONGER

per cent—related to crime. Of these, 40 per cent received royal assent, including Bill C-2, the *Tackling Violent Crime Act*, which included a number of separate pieces of legislation that had all died on the order paper when the first session ended.

Bill C-2 came into law in a circuitous way. The Conservatives first allowed their crime initiatives from the first session to die on the order paper. Then a month later they put forward the omnibus bill (C-2) containing five of the same measures. Some of these laws had previously been studied at length and carefully amended by all political parties in committee. Nevertheless, they were reintroduced in Bill C-2 in their original, unamended form.

These measures included laws relating to mandatory minimum sentences for certain firearms offences, an increase in the age of consent relating to sexual exploitation of children, new drug-impaired driving measures, and a reverse-onus provision for bail hearings on certain offences. Also included was a measure known to be highly unpalatable to the opposition—the new “three-strikes-you’re-out” dangerous offender provision. Many parliamentarians did not want to see this law pass because of its apparently arbitrary nature, and because of its similarity to discredited three-strikes legislation in the United States. Many also believed that the law was too broad and would result in some offenders receiving the “dangerous offender” designation who did not deserve an indeterminate sentence of incarceration.

To encourage the opposition to vote for the legislation, Prime Minister Harper made Bill C-2 the subject of a confidence motion. The opposition parties thus had to vote for the bill unless they were prepared to bring on an election they did not want. They also knew they could not vote against publicly popular crime measures without risking the wrath of the voting public at some later date. Bill C-2 became law on February 28, 2008.

During this second session, the Conservatives introduced a number of other bills, including one that would overhaul the *Youth Criminal Justice Act* and another that would impose mandatory minimum sentences for drug offences. As in 2007, most of these bills died on the order paper when Mr. Harper called an early election in September 2008.

Early on, the Harper government had commissioned a sweeping review of the Correctional Service of Canada. The review panel, struck in April 2007, was given a mere fifty working days (later extended to six months)

## THE CONSERVATIVE GOVERNMENT AND ITS CRIME AGENDA

to produce its report.<sup>16</sup> The thirteen-item agenda would have represented a monumental task even if the panel had had adequate time and a research staff. It had neither.

The panel relied on a series of visits to federal prisons and interviews with corrections officials, representatives of the guards union, and some community-based justice partners. Virtually no experts in penology, criminology, criminal law, or other related fields were consulted.

The review panel was chaired by Rob Sampson. Mr. Sampson had been minister of correctional services in the Conservative government of Michael Harris in Ontario. As such, he was responsible for an effort to privatize Ontario prisons. This experiment failed when the Penetanguishene “super-jail” was returned to public sector management by a subsequent Liberal government after five years of being run by a Utah-based company.<sup>17</sup>

Other review panel members included a victims’ rights advocate, a retired deputy police chief, the chief of a British Columbia First Nation, and a former chair of the National Parole Board. Only the latter could be said to have any familiarity with the operation of the correctional system. None of the five panelists had expertise in the area, nor did they have any training in assessing evidence about what works in corrections.

The resulting report, *A Roadmap to Strengthening Public Safety: Report of the Correctional Service of Canada Review Panel 2007*,<sup>18</sup> produced 109 recommendations. It did so without making reference to the considerable history of correctional policy and practice, and without a single reference to human rights. The report also ignored the many high-level commissions of inquiry which have looked into correctional policy and practice, including the Ouimet Report (1969), MacGuigan Report (1977), and Arbour Report (1996).

It was thus not surprising that the *Roadmap* recommended harsher treatment of inmates and less attention to the human rights of prisoners. As Craig Jones, former executive director of the John Howard Society of Canada said, “the die was cast for a specific outcome and specific recommendations as a consequence of the choice of members, their terms of reference, and their submission deadline.”<sup>19</sup>

In a hard-hitting critique of the *Roadmap*, Michael Jackson and Graham Stewart said that its conclusions illustrate the “dangers of creating major ‘transformative’ policy virtually overnight by a largely unqualified group

## FEARMONGER

under a heavy cloud of political expediency."<sup>20</sup> They pointed out the many ways in which the *Roadmap* recommendations infringe upon the human rights of offenders.

The *Roadmap* was immediately adopted as government policy by Minister of Public Safety Stockwell Day. There were no further consultations. The *Roadmap* became the foundation for the Correctional Service's *Transformation Agenda*, reinforcing the Conservative government's determination to incarcerate more offenders for longer terms, and to make their time in custody more difficult.

Conrad Black was incensed at the recommendations of the *Roadmap*, calling them repressive:<sup>21</sup>

*The Roadmap is the self-serving work of reactionary, authoritarian palookas, what we might have expected 40 years ago from a committee of southern U.S. police chiefs. It is counter-intuitive and contra-historical. The crime rate has been declining for years, and there is no evidence cited to support any of the repression that is requested. It appears to defy a number of Supreme Court decisions, and is an affront, at least to the spirit of the Charter of Rights.*

Despite many well-documented criticisms, the recommendations of the *Roadmap* have been enshrined in Conservative crime legislation. Accelerated parole review is no longer available to first-time, non-violent penitentiary inmates, producing the anomalous result that these inmates are unlikely to be granted parole at all. There is no longer a possibility of day parole at one-sixth of a federal sentence. The "faint hope" application has been repealed, meaning offenders serving life sentences have no possibility of applying for an earlier release at the fifteen-year mark.

Many other changes are being made at the Correctional Service of Canada that do not require legislation. The new *Transformation Agenda* reported in 2009 upon efforts, based on *Roadmap* recommendations, to "fundamentally transform federal corrections."<sup>22</sup> For example, in the first two years of the program steps taken to improve drug interdiction in the prisons included the hiring of thirty-two new security intelligence staff and

## THE CONSERVATIVE GOVERNMENT AND ITS CRIME AGENDA

twelve new detector-dog teams, and the purchase of x-ray machines and other drug detectors. Plans for the next two years (2008–2010) included the hiring of fifteen more dog teams and sixty-five more intelligence staff—for a total of ninety-seven new staff. These measures have a negative impact upon offenders' visits with family and friends, visits that are an important part of rehabilitation and reintegration.

This considerable effort and expenditure of resources dwarfs the meagre response to the need for mental health care in federal institutions. The Correctional Investigator (prison ombudsman) Howard Sapers says access to mental health care must be a top priority, since the number of inmates with mental illness is rising at an alarming rate. About 25 per cent of new admissions to the federal system have a mental illness. The Correctional Service has responded by hiring fifty-seven new staff (less than 60 per cent of those hired to collect intelligence about drugs), with no plan to hire more.

A number of other knowledgeable voices objected to the plan to incarcerate more people for longer. Toronto Police Chief Bill Blair said that prison should be reserved for "truly dangerous" criminals. "We're not talking hundreds or thousands here, we're talking a relatively small number of people," he said.<sup>23</sup> Those who commit crimes are "all human beings, they're all different. Some of them are going to respond positively if you give them better opportunities, better choices ... We have to have hopeful redemption for those individuals to get them on the right path."

Rick Hansen, Calgary's chief of police, also said that we are sending too many of the wrong kind of people to jail.<sup>24</sup> He cited people who are on drugs, are mentally ill, or are not taking their medications. He wanted substance abusers to go to secure detoxification facilities, not to prison. He wanted others to be diverted as well.

No notice appears to have been taken of these experienced voices.

## THE 2008 ELECTION

In the run-up to the 2008 election, Conservative campaign promises included an extensive and detailed list of longer prison sentences, fewer conditional sentences, and fundamental changes to the *Youth Criminal Justice Act* which would result in harsher sentences including more

## FEARMONGER

custody.<sup>25</sup> The Conservatives placed very little emphasis upon preventive or rehabilitative programs.

The Liberal Party in 2008 took a more measured approach, emphasizing preventive programs.<sup>26</sup> It promised to attack the “root causes” of crime, alleviating poverty and putting resources into housing and education. It again pledged more support for the RCMP. It supported some changes to the *Youth Criminal Justice Act*, but not the complete overhaul represented by Conservative proposals. Significantly, it promised to restore the Law Commission of Canada (abolished by the Harper government), and to assign it the immediate task of reviewing the sentencing provisions of the *Criminal Code*. Such a review has long been recommended by experts on sentencing.

The New Democratic Party in 2008 dropped its controversial suggestion of a “non-punitive rule” for adult marijuana use.<sup>27</sup> It recommended longer sentences for a number of offences, while offering to create new positions for police officers. In addition, it promised preventive measures such as a permanent youth gang diversion strategy and programs within the prison system to offer training, rehabilitation, and drug addiction treatment.

The Bloc Québécois again argued against the young offender amendments, but wanted to step up enforcement against gangs, abolish day parole at one-sixth of a sentence, and eliminate statutory release altogether.<sup>28</sup> They wanted to abolish 2-for-1 credit for remand time, as well. In this way, they positioned themselves as tough on crime, except for young offenders.

The Greens dropped their advocacy for marijuana regulation and referred only in general terms to women’s rights, pay equity, the Kelowna Accord, and other matters that did not directly affect criminal justice.<sup>29</sup>

Opposition parties appeared again to be positioning themselves so that no one could accuse them of being “soft on crime.” At the same time, they were making an effort to support progressive measures for prevention and rehabilitation.

Shortly after Mr. Harper won the 2008 election with another minority, he prorogued Parliament. Little legislative activity had occurred. The second session began on January 26, 2009, and ran until Mr. Harper again prorogued on December 30, 2009. During the 2009 session, his government introduced a number of crime measures, both new and old. Twenty of the

## THE CONSERVATIVE GOVERNMENT AND ITS CRIME AGENDA

seventy bills (29 per cent) in this session related to crime. Only three (15 per cent) received royal assent before prorogation.

The most notable of the three crime bills that did become law during this session of Parliament was Bill C-25, known as the “Truth in Sentencing” law. This law removes the convention of providing two days of credit for each day an offender spends in remand (“2-for-1”) when calculating a sentence.<sup>30</sup> The 2-for-1 credit was typically provided for two reasons: conditions in remand are especially harsh, allowing for no programming or treatment, and the time spent there is “dead time”: it does not count toward parole after sentencing.

The new law reduces the credit to 1-for-1, which looks equitable to the untrained eye, but which actually produces a mathematical inequity between similar offenders, depending on whether or not they are granted bail. The offender who is granted bail will end up serving less time overall than the identically positioned offender who fails to obtain a release on bail pending trial (see Chapter 4).

Although this inequity was canvassed thoroughly in committee, opposition parties did not block the legislation. The new law results in offenders spending more time in prison, causing additional expense to the correctional system. The bill was voted on and passed without any financial estimates being provided. Parliamentarians had no idea what Bill C-25 was likely to cost, and nothing more was heard about costs in 2009. The Liberals made a formal request to the Parliamentary Budget Office to provide estimates, but no report was received until mid-2010.

Shortly before Prime Minister Harper prorogued Parliament on December 30, 2009, Justice Minister Rob Nicholson accused the Liberal-dominated Senate of holding up his crime legislation. He said, “I have a busy criminal law agenda but, [after] getting it stuck in the Senate and having it bogged down there for month after month, I know the game that they are playing.”<sup>31</sup> He said that Liberal senators were “trying to stall these things and they are doing the dirty work for the Liberals in the House of Commons.”

Prime Minister Harper also claimed that the Senate had been obstructionist:<sup>32</sup>

*Our government is serious about getting tough on crime. Since we were first elected, we have made it one of our highest*

## FEARMONGER

*priorities. The Liberals have abused their Senate majority by obstructing and eviscerating law and order measures that are urgently needed and strongly supported by Canadians.*

Incensed by this characterization of the actions of the Senate, Senator James S. Cowan penned a letter to the Justice Minister setting out in detail how the crime laws had not been obstructed by the Senate, but had been delayed by the government's own actions. Legislation had not been brought forward in a timely fashion. As well, delays had been caused by the Prime Minister's decisions to call an early election and to prorogue Parliament twice. It was not the fault of the Senate. He then made a serious accusation:<sup>33</sup>

*It is difficult to take a law-and-order agenda seriously when it is argued with so little respect for facts. Justice above all depends upon truth. As our country's Minister of Justice and the Attorney General of Canada, your first allegiance must always be to the truth, far beyond any political or partisan gamesmanship. Our system of justice depends upon it. How can Canadians have any confidence in their justice system, if the person responsible for that system...is prepared to play fast and loose with the truth?*

As Senator Cowan pointed out, seventeen crime bills had been introduced by the government during 2009. Some of these were back for the second time after dying on the order paper when Prime Minister Harper took the country into the 2008 election. Two of those were passed by the Senate and were now law.

The fifteen other bills that were "urgently needed" died on the order paper when Prime Minister Harper chose, for reasons that remain unclear, to prorogue Parliament again in December 2009. By that date, only three of the bills had made it to the Senate.<sup>34</sup> None of the other twelve bills in the session had been passed by the House of Commons before prorogation, and most of them had never been brought before the House at all.

In the third and final session of the fortieth Parliament, which began on March 3, 2010, fully 38 per cent of the total legislative agenda (twenty-eight

## THE CONSERVATIVE GOVERNMENT AND ITS CRIME AGENDA

of seventy-three bills) was devoted to cracking down on crime. Of those twenty-eight bills, ten had received royal assent (36 per cent) and become law by the time the government fell on March 25, 2011—eight of them on March 23. Among these were bills abolishing the “faint hope” provision and accelerated parole reviews.

During 2010, the government made further changes to the criminal justice system without passing legislation. Justice Minister Nicholson chose the summer recess to pass regulations increasing sentences and providing for additional surveillance opportunities, saying these changes targeted organized crime.<sup>35</sup> He was able to make the changes by executive decision of the federal cabinet, without debate and without the need to pass legislation.

The new regulations established longer sentences; a broader use of wiretaps; permission to seize proceeds of crime; and tougher bail, parole, and sentencing conditions. It was a simple matter of adding a number of existing *Criminal Code* offences to the “serious crimes” category. These included: keeping a common gaming or betting house; betting, pool-selling, and book-making; committing offences in relation to lotteries and games of chance; cheating while playing a game, or in holding the stakes for a game, or in betting; keeping a common bawdy-house; and a number of offences related to illegal drugs.

Long-time observer Lawrence Martin said that the measures were less about tackling organized crime than about going after the “small-time players.”<sup>36</sup> As he noted, under the new regulations, “Canadians can be headed off to the slammer for five years or more for selling a few ounces of marijuana, bookmaking on a game of checkers or operating a prostitution ring with two hookers.” At the same time, the new surveillance opportunities were substantial.

Other ways of influencing the crime agenda without passing legislation have also been employed. For example, Conservative supporters or sympathizers have been appointed to important posts affecting the administration of criminal justice. Dozens of recent appointees to the National Parole Board are people who have close links to, or have donated money to, the Conservative Party.<sup>37</sup> While it is not unusual for any party in power to use such posts as patronage appointments, in this case it appears that the appointments have had a tangible effect upon parole board decisions.

## FEARMONGER

National Parole Board data show steady drops in the percentage of successful day parole or full parole applicants since the Conservatives came to power in 2006. For day parole, the number fell from 74 per cent to 66 per cent between 2005–06 and 2009–10. For full parole, the difference was from 45 per cent (2005–06) to 41 per cent (2009–10).

The panels that determine who should be recommended for judicial appointments have also been redesigned. Partisan political appointments to these panels can be said to compromise the independence of the judicial system, and putting law enforcement officers on them sends another clear signal. Public Safety Minister Vic Toews has nonetheless appointed police officers to these panels, despite the strong opposition of Chief Justice of the Supreme Court Beverley McLachlin, the Canadian Judicial Council, the Federation of Law Societies of Canada, and Ontario's Chief Justice and Attorney General.<sup>38</sup> The Chief Justice and the Canadian Judicial Council warned that the independence of the judiciary was "in peril" and that it must be free to make rulings "irrespective of political or ideological considerations."<sup>39</sup>

The opposition, meanwhile, has seemed unable to stop the barrage of crime legislation. It was not until 2011 that Liberal leader Michael Ignatieff announced his party's opposition to a centrepiece of the Conservative crime agenda. He said the Liberals would vote against the new mandatory minimum sentences for drug offences.<sup>40</sup> Saying, "This bill isn't tough on crime, it's dumb on crime," he went on:

*We're all in favour of cracking down on serious criminals, but this bill doesn't distinguish between massive grow-ops and a first-time offender with a small amount. What's more, the Conservatives won't tell us what the fiscal implications of this bill are. How many billions will it cost? How many mega-prisons will have to be built? For these reasons we just can't support it.*

With this, the Liberals joined the New Democratic Party and the Bloc Québécois in opposing the bill. It was the first potentially effective resistance to the tough-on-crime agenda. Now that the Conservatives enjoy a majority in Parliament, however, any such resistance will be moot.

## THE CONSERVATIVE GOVERNMENT AND ITS CRIME AGENDA

It was only in 2010 that Parliament and the Canadian public received their first inkling about the colossal costs of the new crime laws, thanks to the Parliamentary Budget Officer, Kevin Page. He published calculations for just one piece of crime legislation (Bill C-25) and found that it would result in 4,189 additional headcounts in the federal prison system (close to ten times Mr. Day's estimate for his entire crime agenda).<sup>41</sup> Mr. Page's estimate of the cost for this one law was \$5.1 billion over five years, which would more than double the Correctional Services budget.

This new information commanded the attention of the opposition and of the public, and in late 2010 the Liberals requested full financial estimates for three files: the crime legislation, corporate tax cuts, and the fighter jet purchase. The Conservative government refused to provide this information, saying it was the subject of cabinet confidence. Speaker Peter Milliken was asked for a ruling, and he found that in refusing to provide the information, the Conservative government was in *prima facie* contempt of Parliament. The matter was sent to committee for deliberation. It confirmed the Speaker's *prima facie* finding. A motion of non-confidence was passed by the House of Commons on March 25, 2011, bringing the government down and propelling Canada into an election.

## THE 2011 ELECTION

In their 2011 campaign document entitled "Here for Canada," Mr. Harper's Conservatives accused the opposition of promoting a soft-on-crime ideology that apologizes for criminals.<sup>42</sup> They said Conservatives share the "common-sense beliefs of law-abiding Canadians," and that is why tackling crime is one of their highest priorities. Crime was one of five main areas that the platform addressed.<sup>43</sup>

The platform again placed heavy emphasis upon increased sentencing and the creation of new criminal offences. Elder abuse would be tackled by adding "vulnerability due to age" to the list of aggravating factors in sentencing. There would be a new mandatory minimum sentence to tackle the industry in contraband tobacco. Victims would be assisted by a mandatory surcharge on offenders (which goes to the provinces to provide victim services), and by an increased Employment Insurance benefit for parents of murdered children. There would be new laws to combat human trafficking.

## FEARMONGER

The centrepiece of the platform was a promise to resurrect eleven pieces of crime legislation, bundling them into an omnibus bill, and passing them within the first 100 days of their new mandate.

With respect to its approach to corrections, the Conservative platform talked only about eliminating illicit drugs from prisons. It did not talk about treating addictions or mental illness, or funding further programming aimed at rehabilitation. It did not refer to harm reduction as a potential approach to the health issues surrounding intravenous drug use in prison.

Missing from the Harper crime strategy was any reference to the risk factors for crime. There was no promise to fund preventive programs or to support communities in their efforts to reduce crime. Instead, the platform justified its heavy emphasis on punishment by claiming that “in recent years the scales of justice have tipped too far in favour of the rights of criminals at the expense of law-abiding citizens.”

The Liberal platform did not propose specific crime measures, instead talking in more general terms about “stronger, safer communities.”<sup>44</sup> It said criminals must be punished but “more prisons alone will not make our communities safer and stronger.” It claimed that “the Harper government’s narrow preoccupation concerning our communities has been punishing crime, and exploiting fear.” In this way, the Liberals began to distinguish their approach to criminal justice from that of the Conservatives.

In a section entitled “Stronger, Safer Communities,” the Liberals talked at length about poverty and homelessness and what can be done about them. The platform referred to mental illness and disability as hampering citizens’ ability to participate fully and safely in Canadian life. It recognized the importance of community activity in creating a safer context, and said that the federal government needed to be a stronger supporter of volunteers, non-governmental organizations, and community action, even when they express opinions contrary to the government’s. Respect for others’ views was an overriding theme.

The platform explained how a Liberal government would change the long-gun registry to make it more palatable to gun owners and more useful to law enforcement agencies. (The Conservatives promised again to scrap the registry.) The Liberal platform promised to do a better job of managing the

## THE CONSERVATIVE GOVERNMENT AND ITS CRIME AGENDA

RCMP. It also promised to set up a national task force to try to find out what happened to the 580 Aboriginal women who have been reported missing or murdered, and what can be done to prevent further tragedies of this kind.

On the whole, the Liberal platform recognized the complexity of the issues and did not offer simplistic solutions.

The New Democratic Party set out the five first steps that an NDP government would take, if elected. None of them had to do with crime. In discussing the crime agenda, it emphasized “prevention, policing, and prosecution.” It promised more support for crime prevention within communities, especially for programs directed at youth. This included increased support for the National Crime Prevention Centre and for the Youth Gang Prevention Fund.<sup>45</sup> It said it would fund a Correctional Anti-Gang Strategy, aimed at stopping gang recruitment within prisons. Adopting a recommendation of the Prison Ombudsman, it promised to provide treatment for mentally ill prisoners.

The platform also promised 2,500 new policing positions, said it would create new offences for home invasions and carjackings, and would make gang recruiting illegal. It would also support a stronger citizen’s arrest law.

Although the New Democratic Party officially supports the legalization of marijuana, party leader Jack Layton was less than clear about this fact during the campaign. He said it was an important issue to debate, and claimed there was nothing positive about the Conservative approach, “which is to put a criminal cast on absolutely everything...they don’t like.”<sup>46</sup>

Mr. Layton was particularly adamant that safe injection sites like InSite, in Vancouver, should be established across the country.<sup>47</sup> He said that InSite’s approach had been shown in study after study to be effective at reducing crime related to the drug trade:

*It really fits in with that notion of prevention. To try to drive people further and further into an underground world simply accelerates and magnifies the amount of crime that you are going to have associated with it.*

On the whole, New Democrats attempted to show that they were not “soft on crime,” while placing the emphasis more on prevention and

## FEARMONGER

rehabilitation. Mr. Layton said it was ridiculous that “Mr. Harper seems to think preventing crime is being soft on crime.”<sup>48</sup>

Both the Liberal and New Democratic leaders broadened their progressive stances during the campaign, and particularly during the debates.<sup>49</sup> They both promised to provide more assistance to victims and to work harder on prevention. Michael Ignatieff, the Liberal leader, said that the prime minister was promoting the politics of fear. Mr. Layton talked about tackling the underlying issues related to crime: housing, violence against women, the plight of Aboriginal people, and so on. Both opposition leaders appealed to evidence rather than to ideology as the driver of their public policy development.

The Bloc Québécois platform talked about justice rather than retribution only, and used strong words to condemn the Conservative approach.<sup>50</sup> They said it was “demagogic, alarmist, and dogmatic.” The priority of the Bloc was to provide rehabilitation and reintegration for young offenders. They wanted to get tough on organized crime, street gangs, and white collar criminals. They did not wish to see judges turned into “prison sentence dispensing machines.” In this way, the Bloc tried to appeal to its full range of voters as well.

The Greens were not preoccupied with the criminal justice file in 2011.<sup>51</sup> They wanted to legalize and tax marijuana, while initiating a national campaign to discourage its use (as with tobacco). They wanted to prosecute white collar crime. Otherwise, their platform on criminal justice was thin.

As the campaign progressed, criminal justice issues dropped off the radar screen. The prime minister convinced voters that they should fear a possible opposition coalition and argued that, to avoid such a result, Canadians should give him a majority government. When election day arrived on May 2, 2011, voters accepted his argument that Conservatives were better managers of the economy. They gave him his majority, thus allowing him unfettered power to advance his agenda.

Eleven outstanding crime bills will be bundled in the new omnibus bill. They include heavy mandatory minimum sentences for drug crimes and sexual assaults against children, and an increase in sentences for young offenders. For a long list of offences, there will be no more conditional sentencing (house arrest). Pardons will be harder to obtain and will not

## THE CONSERVATIVE GOVERNMENT AND ITS CRIME AGENDA

be available to some offenders. Offenders serving time outside Canada will find it harder to obtain a transfer back home. More tools will be provided to law enforcement to fight high-technology crime and terrorism. And mega-trials will be streamlined.

The Harper government can now pass all this without fear of effective opposition. The new opposition NDP will be impotent to do more than recommend changes in committee and exert moral suasion on the Conservatives. Unless Mr. Harper's own members of Parliament or Senators vote against the tough-on-crime agenda, it will become law.