

OPEN LETTER TO PRIME MINISTER HARPER

We, the undersigned academics, write to express our concern about the violation of the rule of law by your government through retroactive amendments to the *Elimination of the Long Gun Registry Act* (ELRA). We would like to stress that this particular piece of legislation is merely one example of your government's violation of this vital constitutional principle.

Amendments to the ELRA inserted in the Omnibus Budget Bill C-59 retroactively exempt the long-gun registry from the *Access to Information Act* and *Privacy Act* requests, back to Oct. 25, 2011 which is when the bill to end the registry was introduced. However the ELRA did not receive Royal Assent until April 2012, which is when it became law.

An essential building block of a democracy is the rule of law or constitutionalism. The Constitution states that *Canada is founded upon principles that recognize the supremacy of God and the rule of law*. The rule of law is so important and fundamental to a robust democracy that it is being exported to some developing countries. Canada, together with other democratic states and multi-lateral institutions including the United Nations, the World Bank and the International Monetary Fund, has poured billions of dollars in foreign aid for promotion of this concept.

The rule of law is a hallowed principle that some trace back eight hundred years to the Magna Carta. At its core, the rule of law protects citizens from arbitrary and abusive use of government power. It has several elements including that: no one is above the law; the judiciary is independent and impartial; public law must always be exercised in accordance with the rule of law; laws are knowable; and laws are clear, public and stable.

The last two points relate to our concern: a government should not decriminalize its own actions if they were illegal at the time they were committed. This requirement precludes laws that are retroactive as they would re-write history. The insertion of clauses to effect retroactive changes to the ELRA is a dangerous precedent which will have far-reaching and disturbing consequences.

The values underpinning the rule of law are ancient and their violation is not justiciable on its own. However, this will be judged in the court of public opinion: citizens will be justifiably alarmed that their government has taken actions that have profound, negative implications for the practice of Canadian democracy. We urge you to repeal the relevant provisions retroactively inserted into the ELRA and bring your government's conduct in line with the Constitution and the rule of law.

In closing, we would like to quote the Supreme Court's comments in the Quebec Secession Reference ([1998] 2 SCR 217 at para 67)

"[d]emocracy in any real sense of the word cannot exist without the rule of law...Equally, however, a system of government cannot survive through adherence to the law alone. A political system must also possess legitimacy, and in our political culture, that requires an interaction between the rule of law and the democratic principle."

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Acronyms:

OC Order of Canada

CRC Canada Research Chair

FRSC Fellow of the Royal Society of Canada