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**BREAKING THE CONTRACT:**

**The Defeat of the Environmental Components of the "Contract With America" and  
Its Implications for Ontario**

Prepared by:

**Mark S. Winfield, Ph.D.**  
Director of Research

Canadian Institute for Environmental Law and Policy  
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## **BREAKING THE CONTRACT:**

### **The Defeat of the Environmental Components of the "Contract with America" and Its Implications for Ontario**

#### **I. INTRODUCTION**

The past 18 months the government of Ontario has undertaken a dismantling of environmental laws, policies and institutions without precedent in the history of the province, as it implements its June 1995 "Common Sense Revolution" election platform. In the eyes of many, it seems impossible to halt or alter government's direction. However, at the same time that the Ontario government has been implementing its program, a similar environmental agenda, pursued by the Republican majorities in both houses of the 104th United States Congress under the rubric of the "Contract with America" has been defeated.

The Congressional election of November 1994 resulted Republican majorities in both the House of Representatives and the Senate for the first time in more than 50 years. The House Republicans rapidly moved to re-write key federal environmental statutes following the election. After this rapid start, however, the environmental legislation related to the Contract stalled. By the end of the 104th Congress in October 1996 only three pieces of significant environmental legislation had been passed, two of which were compromise bills reflecting proposals that had originated with the Administration of President Bill Clinton. None of the Republican Contract environmental proposals had been enacted into law.

This paper seeks to explore the reasons for this very different outcome to that seen in Ontario. In particular, it examines the reasons why the high levels of latent public support for environmental protection, and opposition to the weakening of environmental laws and policies, present in both Canada and the United States, were successfully translated into a meaningful force in the legislative process in the American experience. It then attempts to draw lessons from the "Contract with America" episode which may be applicable to the current situation in Ontario.

#### **II. THE CONTRACT AND THE ENVIRONMENT**

The election of Democratic Presidential candidate Bill Clinton, and Democratic majorities in both the House of Representatives and Senate in November 1992<sup>1</sup> was expected to lead to major environmental initiatives. Environmental protection had been a major focus of the Clinton platform, and Vice-President Albert Gore's concern for the environment was widely known.<sup>2</sup> The election outcome was seen partially as a repudiation of the de-regulatory environmental policies of the preceding Republican

Reagan and Bush administrations.

The combination of a Democratic President and Congress was expected to clear the way for the re-authorization of a number of important environmental laws, including the *Federal Water Pollution Control Act* (the *Clean Water Act*), the *Endangered Species Act* (ESA), *Resource Conservation and Recovery Act* (RCRA), and the *Comprehensive Environmental Response, Liability and Compensation Act* (CERCLA (the "Superfund" law)). There were also proposals for the reform of the 1872 mining law and the use of federal lands in the Western U.S., and to elevate the Environmental Protection Agency (EPA) to the status of a cabinet-level department.<sup>3</sup>

However, the Clinton Administration was unable to move any of these initiatives forward during the 103rd Congress. The Administration's environmental agenda was regarded by many to have been too ambitious, and executive branch was seen to have failed to lobby hard enough for the bills it supported.<sup>4</sup> The Republican minorities in the House and Senate, and divisions among the Congressional Democrats, also played a significant role the Congress' failure to enact any significant environmental legislation.<sup>5</sup>

The Republican candidates for the House of Representatives entered the November 1994 Congressional election on a platform entitled the "Contract with America." Although the environment was not specifically mentioned in the Contract, many of its components had clear implications for environmental legislation, regulations and policies. In particular, the Contract reflected a number of themes which had emerged from the Republican side of the 103rd Congress.

These included the so-called "triple treat" to environmental protection of: 1) ending "unfunded mandates" imposed by the federal government on state and local governments; 2) expanding the definition of federal action constituting "takings" and thus requiring compensation to private property owners; and 3) requiring that federal agencies undertake comparative-risk and cost-benefit analyses before issuing regulations. These elements had been included a number of Republican legislative proposals during the Congress.<sup>6</sup>

The November 1994 election resulted in Republican majorities in both the House of Representatives<sup>7</sup> and the Senate<sup>8</sup> for the first time in 50 years. However, the election was marked by very low voter turnout,<sup>9</sup> and polling results indicated that more than 70 per cent of Americans did not know what the "Contract with America" contained.<sup>10</sup> Despite these indications that their mandate might not be as strong as it initially seemed, the House Republicans used their new majority to pass the legislation necessary to implement the Contract commitments within the first 100 days of the 104th Congress. A number of bills introduced by Republican members related to the environment were consolidated into H.R.9, the *Job Creation and Wage Enhancement Act*, and passed by the House of Representatives on March 3, 1995.

H.R.9 included limitations on the congressional imposition of "unfunded mandates" on states and local governments, regulatory "reform" measures including the reduction of paperwork and the provision of "regulatory flexibility," and provisions for payments to property owners affected by federal regulations. The latter component, often referred to the bill's "takings" provisions, would have created rights to receive compensation from the federal government for governmental actions concerning wetlands, endangered species, or western water contracts where those actions affected the value of any portion of real property or the right to use or receive water.

The bill also required that federal agencies develop extensive risk assessments and cost-benefit analyses for every proposed "major rule" associated with human health, safety and the environment.<sup>11</sup> Surprisingly, a significant number of House Democrats voted in support of the Republican bill.<sup>12</sup> Republican members of the House and Senate also introduced several proposals for the re-authorization of the *Clean Water Act* and *Endangered Species Act*.

The provisions of H.R.9 were widely interpreted as being likely to make it virtually impossible for the U.S. federal government to take action to protect the environment.<sup>13</sup> The bill was described, for example, as a "legislative neutron bomb" which left environmental legislation in place, yet made it impossible to enforce.<sup>14</sup> In addition, there were accusations, from Democratic members of Congress and Clinton Administration officials, that industry lobbyists had played a direct role in the drafting of specific provisions of the bill to reverse judicial and administrative decisions against their clients' interests.<sup>15</sup> The Republican proposals for the re-authorization of the *Clean Water Act* and the *Endangered Species Act* were also widely seen as being likely to significantly weaken the provisions of both statutes.<sup>16</sup>

The unfunded mandates component of the Contract legislation was quickly passed by the Senate and signed into law by President Clinton on March 22, 1995. However, the legislation was seen as a largely symbolic, rather than substantive gesture to state and local governments. It did not provide funding for unfunded mandates, or prohibit their establishment. Rather, the statute created procedural hurdles within the Congress for any bill that would impose new mandates exceeding certain financial thresholds on state, local, or tribal governments, or on the private sector.<sup>17</sup>

Progress on the remainder of the House Contract legislation slowed considerably in the Senate, as H.R.9 was broken down into separate bills. The reduced pace of progress was partially a function of the more deliberative character of the Senate. In addition, a number of Democratic Senators indicated their intention to use the filibuster<sup>18</sup> and other procedural tools available within the Senate to block the key Republican environmental bills.<sup>19</sup> Even some Republican Senators, most notably John Chafee of Rhode Island, the new Chairman of the Senate Environment and Public Works Committee, publicly criticized elements of the House's Contract legislation, asserting that it took a "meat axe" approach to regulatory reform.<sup>20</sup>

The initial response of environmental non-governmental organizations (ENGO's) to the Contract initiatives was weak. U.S. Environmental groups found themselves out-lobbied by industry and unprepared for the pace at which the House moved to pass the Contract legislation.<sup>21</sup> However, as the significance of the Republican proposals became more apparent, other legislative priorities were abandoned in favour of opposing the Contract initiatives, with the Senate being the primary focus.<sup>22</sup> There was also a major effort to press the Administration to adopt a more aggressive stance towards the Republican proposals.<sup>23</sup>

The early responses of the Clinton Administration to the Contract legislation were confused and ineffective. This reflected the uncertainty within the Administration as to how to react to the results of the November 1994 Congressional election. The outcome was widely interpreted as a repudiation of the Administration's first two years in office, and serious consideration was given to moving in the direction of the Republican legislative proposals.<sup>24</sup>

The first formal indication of an intention to resist the Contract environmental initiatives occurred on April 7, 1995, when Mr. Clinton stated that he would veto any bill that would undermine the protection of clean air and water or weaken toxic waste standards.<sup>25</sup> The President's veto threat was re-iterated specifically in relation to the H.R.9 requirements for "risk assessments" and "cost-benefit" analyses for all new environmental and health rules and regulations, and the bill's "takings" provisions, on April 22 - Earth Day.<sup>26</sup>

The President's veto threats were the result of intense debates within the administration. Mr. Clinton had been under very strong pressure from Democratic members of Congress, EPA Administrator Carol Browner, Interior Secretary Bruce Babbitt and, most importantly, Vice-President Gore to respond aggressively to the Republican initiatives. Mr. Gore and others within the Administration, and on the Democratic side of Congress, had argued that Mr. Clinton was missing a key political opportunity in not exploiting the "serious strategic mistake" made by the House and Senate Republicans in sponsoring such legislation.<sup>27</sup> This view was bolstered by public opinion surveys which indicated that while the American public favoured de-regulation in general, it was strongly opposed to environmental de-regulation.<sup>28</sup> In addition, there was substantial evidence that the members of the public were largely unaware of the contents of the Republican proposals, and reacted very negatively when they learned of them.<sup>29</sup>

As the Contract legislation bogged down in the Senate or in conference between the Houses of Congress,<sup>30</sup> the Republican majorities in both Houses began to focus on the appropriations process for the 1996 federal budget. The tactics of reducing the overall budgets for key environmental agencies, and of attaching "riders" to budget appropriations bills prohibiting agencies from using authorized funds for specific activities, such as the listing of new "superfund" sites under CERCLA, offered a number of advantages from the Republicans' perspective. In particular, appropriations bills could not



be filibustered in the Senate, were not required to be the subject of detailed study by congressional committees, and would ultimately put the President in the position of having to sign appropriations bills with riders attached, or face the possibility of having no funding at all approved for the agencies in question.

The Republicans scored an early success using this new approach, attaching a rider prohibiting the listing of new species as "endangered" under the *Endangered Species Act* and the taking of action to protect the habitat of endangered species to the the 1995 defense supplemental appropriations bill enacted on April 10, 1995.<sup>31</sup> However, this approach soon began to prompt a stronger response from the Administration.

In late May the Congress completed passage of H.R.1158, the 1996 appropriations bill for the Environmental Protection Agency and a number of other federal Departments. Specifically with respect to the environment, in addition to cutting funding for the implementation and enforcement of the *Clean Air Act* and rescinding \$1.3 billion in funding for upgrading water treatment plants, the bill included a rider permitting the "salvage" logging of forests on federal lands without environmental safeguards or public review. These provisions, along with the bill's proposed cuts to educational and social programs, prompted the first veto of President Clinton's Administration on June 7, 1995.<sup>32</sup>

Following the veto, conflict over the budgetary process became increasingly intense. ENGO's placed increasing efforts on bringing grassroots pressure to bear on Republican members of Congress in their home districts. In addition, an Environmental Information Centre was established in Washington with the support of a number of major foundations to specifically to work against the Republican initiatives.<sup>33</sup>

The Administration, for its part, encouraged state and local officials whose programs and agencies would be affected by the proposed cuts to the budget of the EPA to emphasize these implications to their local members of Congress. This was a significant resource, as approximately one third of the EPA's budget consisted of transfers to support the operations of state and local environmental agencies.<sup>34</sup> Information on the effects of proposed reductions in the EPA's budget in each Congressional district was distributed by the Administration to members of Congress as well.<sup>35</sup>

However, the Mr. Clinton continued to send mixed signals on environmental matters. Most notably, he signed a 1995 budget rescissions bill<sup>36</sup> on July 27 which included policy riders permitting "salvage" logging in national forests, banned the protection of endangered species through the establishment of habitat conservation areas in Tongass National Forest, exempted grazing permits on federal lands from environmental impact assessment requirements, blocked the implementation of *Clean Air Act* requirements for automobile emissions testing, and barred the listing of new hazardous waste sites for clean-up under the "Superfund" program.<sup>37</sup>

In this context, the House vote on a second EPA appropriations Bill (H.R.2099) emerged as a critical watershed. In addition to proposing a 30 per cent reduction in the EPA's budget, the bill contained 17 riders which would have barred the Agency from using funds to enforce regulations limiting pesticide residues in food, emissions from oil refineries and hazardous waste incinerators, the runoff of storm water and sewage into rivers and lakes, and requiring accident prevention plans in chemical plants. On July 28 51 House Republicans joined with the Democrats to vote to remove the riders from the bill.<sup>38</sup>

The House Republican leadership succeed in having the vote overturned and the riders restored on July 31 by virtue of a tie vote. Following this vote, Vice-President Gore announced that Mr. Clinton would veto the bill. At a subsequent press conference the President denounced the bill as a "polluters' protection act" and the vote as a "stealth attack" on the environment.<sup>39</sup>

The July 28 vote marked the emergence of a serious split within Republican ranks between conservative elements from the South and West, and more moderate members based in the Northeast and Midwest.<sup>40</sup> Leading members of the moderate group began to publicly distance themselves from the environmental aspects of the Contract. Representative Sherword L. Boehlert of New York, for example, stated that "Republicans will be in power for another generation if they do two things: soften some of the hard edges, and don't turn their back on the environment."<sup>41</sup> Without the support of such a significant portion of their caucus, it would be difficult, if not impossible, for the Republican leadership to muster the two-thirds majority of both Houses necessary to overturn Presidential vetos.

Other aspects of the Contract legislation remained bogged down in the legislative process. On July 20 Senate Republican Leader Robert Dole was compelled to withdraw his regulatory reform bill, S.343. The bill would have implemented many of the contract proposals to require risk assessments and cost-benefit analyses of proposed regulations contained in H.R.9. However, after three attempts, Mr. Dole was unable to gather the sixty votes needed to close debate on the bill in the Senate.<sup>42</sup>

The struggle between the Administration and the Congressional Republican leadership over appropriations continued through the fall, culminating in Mr. Clinton's veto of a Budget Reconciliation Bill (H.R. 2491/S.1357) on December 6 and vetos of H.R. 1997, the Department of Interior appropriations bill, and H.R. 2099, the EPA appropriations bill, on December 18. The budget reconciliation bill proposed to open the Arctic National Wildlife Refuge to oil drilling, exempt agricultural operations from conservation requirements and ban payments to farmers for wetlands conservation. Among other things, the Department of Interior and EPA appropriations bills would have barred the adding of new species to the endangered species list, prohibited the listing of critical habitat for species already listed, and prohibited the listing of new Superfund clean-up sites.<sup>43</sup>

The Republicans had been increasingly on the defensive with respect to the environment throughout the fall of 1995, and the Clinton Administration more and more aggressive in its attacks on the Republican Agenda.<sup>44</sup> Public opinion surveys showed continuing strong public support for environmental protection over the weakening of environmental regulations, typically by margins of two to one.<sup>45</sup> This gap tended to be even wider when specific issues, like to protection of the Arctic National Wildlife Refuge from oil drilling, were raised.<sup>46</sup> By late 1995 survey results indicated that more the 50 per cent of Republican supporters did not trust their own party to protect the environment. In contrast, 72 per cent of Democrats said they trusted their party's stance on environmental issues.<sup>47</sup>

The defensive posture of the Republicans on environment matters was reflected in an October 1995 memo from the House Republican leadership, advising members to "build credibility" on environmental issues before the November 1996 election campaign began in earnest. This was to be achieved by showing visible support for local environmental initiatives in their districts.<sup>48</sup> In early November, House Speaker Newt Gingrich publicly acknowledged that the Republican leadership had "mishandled the environment all spring and summer," by trying to roll back environmental regulations too drastically.<sup>49</sup> More generally, the Republicans were described as being engaged in "frantic, if dubious, damage control" on the environment.<sup>50</sup>

The deepening budget crisis arising from President Clinton's refusal to accept the Republican's proposals had resulted in a six day shutdown of the U.S. federal government beginning on November 13, and second, two-week shutdown ending in early January. The protection of the environment, along with the defense of Medicare, Medicaid, and educational programs emerged as the central themes of the Administration's position, and its developing platform for re-election.<sup>51</sup> The outcome of the government shutdown over the Christmas period was widely interpreted as a victory for the Clinton Administration.<sup>52</sup> However, there were major disruptions in the operations of the Environmental Protection Agency.<sup>53</sup>

The budget impasse was eventually resolved on April 26, 1996 with the President's signature on a final 1996 budget bill (H.R.3019).<sup>54</sup> The bill included an appropriation of \$6.5 billion for the EPA, \$900 million less than the President's original budget request, but \$800 million more than the original Republican congressional proposals. The bill also included contentious riders that allowed timber sales in the Tongass National Forest in Alaska, transferred the Mojave National Preserve to the Bureau of Land Management, and limited funding for listing species and designating critical habitat under the *Endangered Species Act*. However, the budget bill granted the President the authority to waive enforcement of these riders, which he did.

As for the remainder of the House Republicans' Contract environmental initiatives, on March 6, 1996 the Republican leadership postponed indefinitely further consideration of their environmental regulatory reform initiatives.<sup>55</sup> Faced with what was widely

perceived to be a defeat over the budget, growing public opposition to their proposals, the continuing presence of block of approximately 60 moderate Republicans in the House opposed to the Contract environmental initiatives,<sup>56</sup> and the upcoming elections in November 1996, the Republican leadership choose instead to focus on rehabilitating the Party's image on environmental issues. In particular, they adopted a more compromising approach to environmental issues with an eye to building some record of achievement going into the election. This was seen to be especially important in light of the failure to pass any of the Contract legislation, and Clinton's Administration's apparent intention to campaign against the "do nothing" 104th Congress.<sup>57</sup>

In the end, only three major pieces of environmental legislation were enacted by the end of the Congress in October 1996. None was related to the "Contract with America" platform. Rather, two of the three bills reflected proposals which had originated with the Administration. On August 6 Mr. Clinton signed a bill amending the *Safe Drinking Water Act* to authorize \$7.6 billion over seven years for a revolving loan fund to improve water systems throughout the U.S..<sup>58</sup> Reflecting proposals made by the EPA in March 1995, the bill also replaced a requirement that the Agency regulate 25 additional drinking water contaminants every three years with a provision that required the agency to focus on contaminants that posed the greatest risk of harm and that were most likely to occur in water systems.<sup>59</sup>

The second bill, signed by President Clinton on August 3, was more controversial. The *Food Quality Protection Act*, passed by a vote of 379 to 42 in the House, and a unanimous vote in the Senate, amended the *Federal, Food, Drug and Cosmetics Act* to remove the "Delaney Clause" requirement that pesticide residues in processed food pose no risk of cancer. Instead, the bill created a unified standard for raw and processed foods and required that there be reasonable certainty of no harm due to the presence of pesticide residues.<sup>60</sup> This proposal had first been advanced by EPA administrator Carol Browner in April 1994,<sup>61</sup> and had been strongly opposed by many environmental organizations.<sup>62</sup>

The third piece of legislation, signed on September 30, was buried within the *Omnibus Consolidated Appropriations Act*. Subtitle E of the act, entitled "*The Asset Conservation, Lender Liability and Deposit Insurance Protection Act of 1996*" provides significant new protections from liabilities under CERLA and portions of the RCRA to banks, other lenders, a broad variety of fiduciaries, and involuntary governmental holders of property contaminated with hazardous substances. The amendments were enacted with no public discussion, and virtually no Congressional debate.<sup>63</sup>

President Clinton was re-elected on November 5, 1996, having run of a platform that stressed the protection of the environment, along with educational programs, Medicare and Medicaid. However, the Republicans retained a reduced majority in the House of Representatives and expanded their majority in the Senate.<sup>64</sup> The Republicans' willingness to pass compromise legislation on environmental issues in the late stages of

the 104th Congress was widely seen to have blunted some of the political costs associated with the earlier Contract proposals.

The environmental legislative agenda for the 105th Congress remains unclear. Given, on the one hand the defeats suffered by the Administration on its initial environmental proposals to the 103rd Congress and on the other, the losses suffered by the House Republicans on the Contract proposals and continuing presence of a significant block of moderate Republicans in the House and Senate, compromise legislation may be expected to emerge in a number of areas. The long overdue re-authorization of the CERCLA "superfund" provisions, the *Clean Water Act*, *Endangered Species Act*, and *Resource Conservation and Recovery Act* are likely to be a particularly important in this context.

The leading Administration environmental personnel, including EPA Administrator Carol Browner, have been re-nominated by President Clinton to serve during his second term. The Administration has also indicated its intention to strengthen emission standards under the *Clean Air Act* for ground level ozone and particulate matter.<sup>65</sup>

### **III. ANALYSIS OF KEY FACTORS IN THE DEFEAT OF THE CONTRACT ENVIRONMENTAL LEGISLATION**

The critical factor in the defeat of the Contract environmental legislation was the willingness of the Clinton Administration and Democratic members of Congress to utilize the institutional features of the American system of government to block the Republican initiatives. The checks and balances provided by the U.S. separation of powers system offered numerous means to delay or halt progress on the Contract legislation, once the decision had been taken to use them for this purpose.

A wide range of public opinion survey data indicated that the Republican environmental initiatives were at odds with public sentiment from the outset. In particular, as in Canada, while the environment had fallen in stature as a top of mind public concern, the level of underlying public support for environmental protection over de-regulation remained strong.

The strength of this latent public concern for environmental protection and support for environmental regulation was central to the success of the ENGO's, Congressional Democrats, and Vice-President Gore in convincing President Clinton that there was political and, eventually, electoral advantage to be gained by responding aggressively to the Republican proposals. This permitted the mobilization of the full institutional resources of the Executive Branch to oppose the Contract initiatives.

In particular, the threat and exercise of the presidential veto was essential to the Clinton Administration's success in blocking the Republicans' legislative and budgetary

proposals on the environment. The importance of the veto was greatly enhanced by the emergence of significant blocks of moderate Republican members in both the House and Senate. The presence of these groups made it impossible for the Republican leadership, even with the support of some conservative Democrats, to gather the two-thirds majorities required to override Presidential vetos.

In addition to the application of the veto, the profile of the Presidency was used to draw media attention to the implications of the Contract proposals. The resources of the EPA and Department of the Interior were also employed to highlight likely impacts of the Republican initiatives in individual states, and even in individual congressional districts. Representatives of state and local governments were enlisted to highlight the likely consequences of the Contract proposals to members of Congress as well. These tactics were effective enough to prompt complaints from Republican members that the EPA was engaged in illegal lobbying to defeat their proposals.<sup>66</sup>

A second institutional factor in the defeat of the Contract environmental legislation was the Senate. In general, the Senate takes a more deliberative approach to the development of legislation than the House of Representatives. The Senate's first response to the House contract legislation, H.R.9, was to disaggregate the bill into its component parts for study by the relevant Senate committees. The slower legislative process in the Senate gave the Administration and environmental NGO's an opportunity to organize a response to the House Contract legislation. Both had been caught unprepared for the speed with which the House had moved to pass the Contract proposals.

The Senate's procedural requirements in the consideration of Bills also provided the opponents of the Contract legislation with a number of opportunities. Although the Democrats lost their majority in the Senate in the November 1994 elections, the Senate's rules provide individual members much greater opportunity to delay or block legislation than those of the House of Representatives. The use of the filibuster is particularly important in this context, as it permits members to delay legislation, and other Senate business, indefinitely. These factors tend to have a moderating influence on legislation, as any member with a strong objection to a proposal has the potential to block its passage, and that of other legislation as well.<sup>67</sup>

Without the support of the institutional and political resources of the Executive Branch, and the opportunities for delay provided to the congressional Democrats and moderate Republicans by the Senate, it is unlikely that ENGO's would have been able to prevent the passage of the Contract environmental legislation. However, environmental organizations played a major role in drawing media and public attention to the Republican proposals, and in explaining the implications of their contents. In addition, ENGO's enjoyed some successes in mobilizing individual supporters to convey concerns to members of Congress in their home districts.

This form of grassroots pressure appears to have been a particularly significant

factor in the behavior of the block of moderate northeastern and midwestern Republicans. However, the efforts of national organizations at this type of local organizing also prompted bitter responses from locally-based groups, who felt that they had been cut out of the national policy development process by the Washington-based national organizations over the years.<sup>68</sup>

Industrial lobbyists were initially highly successful in getting the Republican Congressional leadership to incorporate their concerns into the Contract legislative proposals. However, once their role in the drafting of the Republican legislation was exposed, the role of these lobbyists became a major liability for the Party. In the end, the Republicans, rather than the industrial interests, suffered the bulk of the political costs for these arrangements. The case that the behavior of industrial interests, when given the opportunity, demonstrated that they could not be trusted to protect the environment, and that therefore a strong role for government was required, was not pursued by the ENGO community as vigorously as it might have been.

#### **IV. IMPLICATIONS FOR ONTARIO**

The outcome of the 104th Congress holds a number of lessons relevant to the current situation in Ontario. There are some significant parallels between the two experiences. Like the House Republicans and the Contract, the government of Ontario has moved rapidly to implement the proposals contained in its June 1995 "Common Sense Revolution" election platform.<sup>69</sup> The situation with respect to public opinion and the environment in Canada is also remarkably similar to that prior to the election of the 104th Congress in 1994. Although the environment has fallen significantly as a top-of-mind concern since the early 1990's, deep public sentiments in favour of governmental action to protect the environment remain in evidence.

In fact, Canadian public opinion survey data indicates even stronger public support for environmental protection, even in the face of weak economic conditions and government budget cuts, than in the United States. In a September/October 1996 survey, for example, 74 per cent of Canadian respondents stressed the need to protect the environment, even if it costs jobs, compared with only 65 per cent of American respondents.<sup>70</sup> Similarly, while in the U.S. respondents typically favoured environmental regulation over de-regulation by margins of two to one, in a June/July 1996 survey, only 3 per cent of Canadian respondents favoured weakening environmental regulations while cutting government budgets. 82 per cent supported making environmental laws stronger, while 13 per cent favoured the status quo.<sup>71</sup>

The challenge to opponents of the environmental components of the "Common Sense Revolution," is to translate these latent public sentiments in favour of environmental protection into a meaningful force in the legislation and policy-making process, as occurred in the United States. However, there are a number of barriers to the

achievement of the same result in Ontario.

The institutional structure of Canadian government provides far fewer points at which legislation can be blocked than the U.S. legislative process. In the United States the Republican proposals had to pass the Senate and avoid a presidential veto in order to become law. The government of Ontario, with its majority in the Legislature, has faced, by comparison, few significant institutional barriers to the adoption of its legislative and budgetary proposals.

Opposition members of the Legislature can, at best, slow the passage of Legislation, and draw public attention to the consequences of the government's actions. However, there is no way in which opposition members can block the passage of legislation along the lines of the filibuster in the U.S. Senate. This particularly true in light of changes to the procedural rules of the Legislature brought in the by New Democratic Party government in response efforts to delay the passage of legislation by the then Progressive Conservative opposition.

Furthermore, despite the efforts of the individual opposition environment critics, focus on the environment has tended to be lost as the legislative opposition attempts to respond to the myriad of proposals being brought forward by the government across all policy fields. In the long term, however, the effects of sustained opposition attention on an issue should not be discounted. Governments often move in response to themes identified by the Legislative opposition as a means of weakening their opponent's electoral appeal.

The consequences, on the other hand, of there being no meaningful opposition party presence on environmental issues is becoming increasingly obvious at the federal level in Canada. Despite the strong commitments in the Liberal party's "Red Book" platform,<sup>72</sup> the environment has disappeared from the national political agenda and the federal government seems to be prepared to abandon to the provinces what substantive environmental functions it has. Virtually no one in Parliament speaks to this, and there is no sustained coverage of national environmental issues in the media.

The government caucus is a second potential constraint on a majority government in Canada. Although open caucus revolts have been rare in the Canadian experience, there is evidence that strong expressions of concern within caucus can affect the direction of a government. To date members of the government caucus in Ontario do not appear to have questioned the government's approach to environmental matters. This situation could change however, if caucus members began to hear a significant number of complaints regarding the government's policies from their constituents.

The structures of federalism have also provided some checks and balances within the Canadian system of government in addition to those established by the principles of responsible government. The presence of concurrent federal legislation and, until recently,



the conditional nature of some federal funding arrangements with provincial and territorial governments, for example, have provided constraints on policy, legislative and budgetary initiatives by provincial governments.

In the environmental field, the presence of federal legislative and regulatory requirements and federal enforcement capacity has provided for a limited "backstopping" function where provinces have been unable or unwilling to take action to protect the environment. There have been longstanding concerns that without such a federal presence, a "race to the bottom" could occur among provinces seeking to attract investment from environmentally damaging industries.<sup>73</sup>

Unfortunately, in the current context, the federal government seems unwilling to perform this role in Ontario or elsewhere in Canada. Rather, driven by concerns over national unity and a desire to demonstrate its willingness to "reform" Canadian federalism,<sup>74</sup> the federal government appears to be prepared to formally surrender most of its substantive environmental protection functions, particularly in the areas of national standard setting, environmental law enforcement and environmental assessment, to the provincial and territorial governments.<sup>75</sup> Under these circumstances, it is highly unlikely that the federal government will use its institutional resources to respond to the government of Ontario's initiatives in the same fashion that the Clinton Administration employed the capacity of executive branch to reply to the Contract proposals.

State and local governments played a significant role in the defeat of the Contract proposals in the United States, by communicating their concerns regarding the implications of the Republican legislative and budgetary proposals for state and local programs and activities to their Congressional delegations. The condition of budgetary and institutional dependence on the provincial Legislature of local governments in Ontario, on the other hand, makes them unlikely candidates to challenge the province's direction despite the significant impact of provincial initiatives on their programs and operations. However, there has been some recent public criticism of the provincial government from municipal governments, particularly regarding the devolution of responsibility for the provision of social services and physical infrastructure.<sup>76</sup>

The situation of environmental NGO's in Ontario is significantly weaker than their U.S. counterparts in terms of research and communications capacity and membership base. Ad hoc efforts have shown some success in communicating the impact of the Ontario government's initiatives to the public.<sup>77</sup> This has prompted symbolic responses from the government, most notably the removal of the government's first Environment Minister, Brenda Elliott, in August 1996<sup>78</sup> public defenses of the government's environmental record by the Premier,<sup>79</sup> and the delay of the implementation of some proposed regulatory changes by the Ministry of Environment and Energy. However, the government's substantive direction has remained unchanged.

Finally, opponents of the environmental aspects of the "Common Sense Revolution"

face a significant challenge in that the number of opportunities to convey concerns over the implications and consequences of the government's actions through the media are far more limited than those available in the United States. This is a consequence of both a smaller market with fewer outlets, and the "downsizing" of major media organizations. Many have eliminated the positions of their environment reporters over the past few years, with the consequence that coverage of environmental issues has occurred on an increasingly ad hoc basis. This results in little sustained and well-informed coverage of specific issues.

## **V. CONCLUSIONS**

The decisive factor in the defeat of the "Contract with America" legislative proposals on the environment was the Clinton Administration's decision to pursue the political opportunity offered by disjuncture between public opinion and the Republican initiatives. This permitted mobilization of the institutional and political resources of the Executive Branch to counter the Republican proposals. In effect, the widely held public sentiments in favour of strong environmental protection were translated into a meaningful force in the legislative process. Public concern for the environment became significant political asset to the Administration, and a serious electoral threat to the Congressional Republicans to which they were compelled to respond.

Opponents of the environmental components of the "Common Sense Revolution" seek to bring about a similar outcome in Ontario. The U.S. experience demonstrates, non-governmental organizations will not be able to achieve this acting alone. The participation of actors, with either the institutional capacity to block initiatives, or to present an electoral threat to the government on the issue, will be required.

The federal government, which has some institutional capacity to counter to the provincial government's initiatives, appears unlikely to pursue a response similar to that of the U.S. Administration, due to the sensitivity of environmental matters in relation to national unity issues. This is despite the obvious opportunity for the federal Liberal government to differentiate itself from the Progressive Conservatives, particularly in Ontario, in the upcoming federal election. Municipal governments also seem unlikely sources of opposition, due to their condition of institutional and financial dependence on the province, although this may change in the context of the extent of the "downloading" of responsibilities onto local governments which the province is pursuing.

The most likely actors in the defeat of the environmental components of the "Common Sense Revolution" will be the government caucus and the legislative opposition parties. Backbench members of the government caucus may be moved to challenge the government's direction in caucus if they sense discontent from their constituents. Indeed, one of the most effective tools used against Republicans in U.S. was to bring pressure to bear on members from individual constituents in their home districts.

It is also critically important that the focus of the Legislative opposition on the environment be strengthened. As was the case with the Clinton Administration and the Congressional Republicans, the disjuncture between the government's direction and public opinion on environmental protection offers an obvious political opportunity to opposition parties, if they can be persuaded to pursue it. Although its capacity to block the actual passage of legislation is limited, the legislative opposition can enhance the significance of an issue simply by maintaining a focus on it. Such attention, if sustained, makes the question part of the framework of issues to which the government must eventually respond in an electoral context.

The U.S. experience with the environmental components of the "Contract with America" demonstrates that the latent levels of public support for strong environmental protection systems can be mobilized to defeat attempts to dismantle existing laws and institutions. The challenge to opponents of the "Common Sense Revolution" is to bring about the same outcome in Ontario.

## ENDNOTES

- 1.Senate standings following the 1992 election: Democrats 57; Republicans 42. House: Democrats 259; Republicans 175; Independent 1.
- 2.See A.Gore, The Earth in Balance: Ecology and the Human Spirit (New York: Plume Books, 1993).
- 3.J.E. Slatterfield, "High Hopes and Failed Expectations: The Environmental Record of the 103d Congress," ELR News & Analysis, 2-95, 25 ELR 10102.
- 4.Ibid., p.10102.
- 5.Ibid.
- 6.Ibid.
- 7.The House Standings following the election were: Republicans 236; Democrats 198; and Independent 1.
- 8.Senate Standings following the election were: Republicans 53; Democrats 47.
- 9.Voter Turnout for the 1994 Congressional Election was 37%. Turnout for the 1992 Congressional and Presidential Election has been 55%. New York Times November 9, 1994.
- 10.J.Mathews, "Green Sweep," The Washington Post December 18, 1994.
- 11.For a detailed overview of the provisions of H.R.9 and H.R.1022 see J. Pendergrass, Paul Locke, and James McElfish, "The Environment and the Contract," ELR News and Analysis, July 1995, 25 ELR 10350-10366.
- 12.Ibid.
- 13.See, for example, Breach of Faith: How the Contract's Fine Print Undermines America's Environmental Success (Washington, D.C.: Natural Resources Defense Council, February 1995).
- 14."Earth to Congress," The New Republic May 8, 1995.
- 15.See, for example, S.Engelberg, "Business Leaves the Lobby and Sits at Congress's Table," The New York Times March 31, 1995.
- 16.See, for example,G.Whetson and Sharon Baccino, The Year of Living Dangerously: Congress and the Environment in 1995 (Washington D.C: Natural Resources Defense Council, December 1995).

17. Pendergrass, Locke and McElfish, "The Environment and the Contract," pp. 10351-10352.
18. See T. Lowe and B. Ginsberg, American Government (New York: W.W. Norton & Co, 1990), pp.220-222 for a detailed discussion of the "filibuster."
19. ELR News & Analysis, 4-95, pg. 10209.
20. Ibid.
21. G. Lee, "Environmentalists Try to Regroup," The Washington Post, April 22, 1995.
22. ELR News & Analysis, 4-95, pg. 10209.
23. Ibid.
24. B. Woodward, The Choice (New York: Simon & Schuster, 1996), Chapter 1. On the first two years of the Clinton Administration see B. Woodward, The Agenda (New York: Simon and Schuster, 1994).
25. ELR News & Analysis, 6-95, pg. 10312.
26. A. Devroy, "Clinton Issues Broadside on Environment," The Washington Post April 22, 1995.
27. Ibid.
28. See, for example, "Gregg Easterbrook, "A Green Comeback?: Bob Dole Rethinks the Politics of Pollution," The Washington Post July 9, 1996.
29. "Earth to Congress," The New Republic May 8, 1995.
30. Conference is the process whereby which the different versions of bills passed by the House and Senate are reconciled before being passed on to the President for signature. See Lowe and Ginsberg, American Government, p.223.
31. Public Law 104-6.
32. A. Mitchell, "With First Veto, Clinton Rejects Budget-Cut Bill," The New York Times, June 8, 1995.
33. G. Lee, "Environmental Groups Launch Counterattack After Losses on Hill," The Washington Post August 19, 1996.
34. See New Directions in North American Environmental Reform (Montreal: Commission for Environmental Co-operation, December 1996), p.26.

35. Find Source.

36. A "Rescissions" bill rescinds spending authority previously authorized through the budget appropriated for a given year.

37. *Public Law 104-19* (FY 95 Rescissions Bill).

38. The vote was 212-206. 51 Republicans, 160 Democrats and 1 independent voted against the riders. 175 Republicans and 31 Democrats voted in favour.

39. ELR News & Analysis 9-95, pg.10496.

40. On the split in Republican ranks see Paul Roberts, "A Green Coup?" The New Republic, November 20, 1995.

41. Quoted in Dan Morgan, "Republicans Defect to Kill Curbs on EPA," The Washington Post, July 29, 1995.

42. ELR News and Analysis, 9-95, p.10496.

43. For a detailed description of the contents of these bills see Whetstone and Baccino, The Year of Living Dangerously: Congress and the Environment in 1995.

44. See, for example, AP, "Gore Assails GOP Environmental 'Jihad,'" The Washington Post, October 6, 1995; and Al Kamen, "Clinton Attacks Republican Environmental Proposals," The Washington Post, November 5, 1995.

45. Whetstone and Baccino, The Year of Living Dangerously, pg.6.

46. Kamen, "Clinton Attacks Republican Environmental Proposals."

47. Gary Lee, "GOP is Warned of Backlash on Environment," The Washington Post, January 24, 1996.

48. Howard Kurtz, "Memo to Members of House GOP: Go Plant a Tree," The Washington Post, October 21, 1995.

49. Tom Kenworthy and Gary Lee, "Divided GOP Falters on Environmental Agenda," The Washington Post, November 24, 1995.

50. Roberts, "A Green Coup?," pg.26.

51. Bob Woodward, The Choice, p.320.

52. Ibid, pg.349.

53. Commission on Environment Cooperation, New Directions in North American Environmental Law Reform, pg.35.
54. *The Omnibus Recessions and Appropriations Act*, 1996 (Public Law 104-134).
55. John E. Yang, "Regulatory Overhaul Put Off in House," The Washington Post, March 6, 1996.
56. On this group see J. Mathews, "An Opening for Environmentalists," The Washington Post April 16, 1996.
57. ELR News & Analysis 9-96, 25 ELR 10486.
58. The bill passed by a vote of 392 to 30 in the House, and 98 to 0 in the Senate.
59. See Reinventing Environmental Regulation, (Washington, D.C.: Executive Office of the President, March 1995).
60. For a detailed description of the bill see "Legislation Replaces *Delaney Clause* with Risk Assessment: Includes Other Weakening Amendments," NCAMP's Technical Report, Vol. 11, No. 6/7, June/July 1996.
61. See "Clinton Administration Proposes Pesticide Reform Legislation: Seeks To Replace Delaney Clause with Risk Assessment-Based Standard," NCAMP's Technical Report, Vol. 9., No.5, May 1994.
62. See "Congress Enacts A Faustian Food Safety Bargain," Journal of Pesticide Reform, Fall 1996, Volume 16, Number 2.
63. See William W. Buzbee, "CERCLA's New Safe Harbors for Banks, Lenders and Fiduciaries," ELR News & Analysis, 12-96, pp.10656-10663.
64. The Senate Standings following the election: Republicans 55, Democrats 45. The House Standings: Republicans 225; Democrats 204; undecided 6.
65. "E.P.A. Advocating Higher Standards to Clean the Air," The New York Times, November 26, 1996.
66. John Cushman, Jr., "E.P.A. Chief Is Accused Of Lobbying," The New York Times, March 4, 1995.
67. Filibusters can be ended by a "cloture" motion. However, such a motion requires 60 votes to pass.
68. See generally Mark Dowie, Losing Ground: American Environmentalism at the Close of the Twentieth Century (Cambridge, M.A.: The MIT Press, 1996).

69. On the environmental aspects of the Ontario government's initiatives since June 1995 See M. Winfield and G. Jenish, The Common Sense Revolution and Ontario's Environment: A First Year Report (Toronto: Canadian Institute for Environmental Law and Policy, June 1996).

70. Cited in R. Corelli, "How Very Different we Are," McLean's November 4, 1996, pg.38.

71. The Environmental Monitor 1996-2 (Toronto: Envirionics Research Ltd., August 1996)

72. Creating Opportunity: The Liberal Plan for Canada (Toronto: Liberal Party of Canada, 1993), esp. ch.4.

73. See, for example, K. Webb, Pollution Control in Canada: The Regulatory Approach in the 1980's (Ottawa: Law Reform Commission of Canada, 1988).

74. See, for example, R. Speirs, "Environmental safety sacrificed for 'harmony,'" The Toronto Star, July 2, 1996, and M. Mittelstaedt, "Pollution foes attack federal plan," The Globe and Mail, November 20, 1996.

75. See Canadian Council of Ministers of the Environment, "National Accord on Environmental Harmonization" and "Sub-Agreements on Standard Setting, Inspections, and Environmental Assessment" November 1996. The "National Accord" was approved in principle by the CCME on November 20, 1996.

76. M. Mittelstaedt and J. Rusk, "Ontario shakeup a real rattler," The Globe and Mail, January 18, 1997.

77. See, for example, M. Mittelstaedt, "Voters, Harris, split on green issues," The Globe and Mail July 15, 1996.

78. J. Rusk, "Cabinet shuffle a tune-up, Harris says," The Globe and Mail, August 17, 1996.

79. M. Mittelstaedt, "Environmental regulations need overhaul, Harris says," The Globe and Mail, November 14, 1996.





