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ASSOCIATION OF JUSTICE COUNSEL
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Press Clippings for the period of March 3 to 10, 2014
Revue de presse pour la période du 3 au 10 mars 2014

Here are a few articles and opinion pieces that might be of interest to AJC members
Voici quelques articles et chroniques d'opinion qui pourraient intéresser les membres de l'AJJ

The AJC in the News/L'AJJ défraie les manchettes

*** This week, the AJC is quoted in two articles from the *Ottawa Citizen* and *Canadian Lawyer* magazine's Legal Feed website.**

*** Cette semaine, l'AJJ est citée dans deux textes : le *Ottawa Citizen* et la page web du magazine *Canadian Lawyer*.**

Bill that aims to uncover public servants' political history has 'feel of a witch hunt'

KATHRYN MAY, OTTAWA CITIZEN, MARCH 6, 2014

OTTAWA – The union representing lawyers working for Canada's parliamentary watchdogs say a Conservative MP's bill to compel employees in those agencies to disclose their past political activities will politicize the public service and risks "witch hunts" for partisan bureaucrats.

Lisa Blais, president of the Association of Justice Counsel, said the union has nearly 40 members working for the agents of Parliament who are targeted by Conservative MP

Mark Adler's private member's bill. The bill would force employees to make a public declaration of their political activities going back a decade. If passed, the legislation would extend to current employees to disclose their political pasts.

It would also allow any MP or senator to demand an investigation into any concerns about an employee's "partisan" conduct or behaviour.

"What is this government trying to achieve? This is overkill," said Blais. "It is not only concerning because it has all the feel of a witch hunt but it is completely unnecessary. It also makes the public falsely assume there is a huge problem here when there is not. "

Blais said the bill is unfair and "redundant" because the public service is already governed by an "elaborate regime" of statutes, codes and processes to safeguard the political neutrality of Canada's public service. She said the bill flies in the face of hiring rules based solely on the merit and competence of candidates for the job.

A meritorious and non-partisan public service has been the cornerstone of Canada's bureaucracy and the Westminster parliamentary system for more than a century. This means anyone applying for a job must be assessed only on their competence and qualifications. They cannot be asked about any political activities.

Once hired, however, they must follow the provisions of the Public Service Employment Act (PSEA) and the values and ethics code, which regulate and govern political activity. Under existing law, public servants can engage in political activities as long as these don't affect or seem to affect their ability to do their work in a "politically impartial manner."

Employees working for most of the agents of Parliament are covered by the PSEA, and Adler's bill would turn this principle on its ear because all applicants and successful candidates would have to disclose any past political affiliations. Blais said this would have a "chilling effect" that could make it difficult to recruit people to work for the parliamentary watchdogs or the broader public service.

"So right off the top, you are disclosing your political leanings and past actions. No matter how well-meaning you were in exercising your democratic right, you are given a scarlet letter in the competition process," said Blais.

The Public Service Commission, the public service's merit watchdog, refused to discuss the bill and potential implications for public servants but posted a statement on its website outlining concerns.

"For more than 100 years, a non-partisan public service has been ensured by the merit-based appointment system," said the statement. "The federal public service benefits from a workforce hired on merit, comprised of engaged citizens with a wide range of backgrounds and experience and who, once appointed, must perform their duties in a politically impartial manner."

The commission argues that forcing employees to disclose their political pasts is "at odds" with existing legislation and suggests it will be used in the selection process.

"The fact that we do not ask for information on political affiliation is, the commission believes, essential in ensuring confidence on the part of the public and applicants in the impartiality and fairness of the merit-based system."

David Zussman, a former PSC commissioner, said there have been few instances of improper political activity among public servants over the years. However, he argues that the bill, if passed, would face a constitutional challenge. The courts have been clear since the Osborne decision in 1991, which established that public servants have political rights and can engage in some activities.

Ralph Heintzman, a research professor at the University of Ottawa who headed Treasury Board's first values and ethics office, said the bill is a blatant partisan manoeuvre aimed at leaving Canadians the impression that some of these officers have been partisan while in office.

"This bill is a pre-emptive partisan strike against any criticism of the government by officers of Parliament, including criticism of the government's own partisan excesses, as in its alleged election offences, he said.

Canada's parliamentary watchdogs include:

- Auditor General of Canada
- Chief Electoral Officer
- Official Languages Commissioner
- Privacy Commissioner
- Information Commissioner
- Senate Ethics Officer
- Conflict of Interest and Ethics Commissioner
- Lobbying Commissioner
- Public Sector Integrity Commissioner

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Crowns get green light to expand pro bono work

Charlotte Santry, Canadian Lawyer Magazine, March 5, 2014

Crown lawyers in three provinces are now able to carry out pro bono work with far less exposure to legal claims and less risk of running into conflicts of interest.

Bill Basran says his time at Vancouver's wills clinic has been 'an enormously gratifying experience.'

Three year-long pilot schemes allowing Department of Justice lawyers to volunteer at legal clinics in British Columbia, Alberta, and Ontario have received official approval.

Crown counsel can only volunteer for departmentally approved activities and have traditionally been restricted in the level of insurance coverage they can obtain for pro bono work. It has also been difficult for government lawyers to rule out potential conflicts of interests, due to the enormous scope of legal cases involving the federal government.

Under the new policy, lawyers will be insured to work at the three legal clinics in Vancouver, Edmonton, and Ottawa, on specific areas of law screened by the government to minimize conflicts. Justice Minister Peter MacKay announced the move during a speech at the University of Calgary's law faculty on Friday.

He said: "Accessibility to justice has become increasingly important in the complex society we live in today.

"Through this initiative and policy, many Justice Canada lawyers here in Alberta and across the country, can now volunteer their considerable legal skills and knowledge in providing pro bono legal services to Canadians."

The three approved projects are:

- The Wills Clinic operated by Access Pro Bono B.C., located at the Justice Access Centre at the Vancouver Courthouse. Trained pro bono lawyers and articling students draft and execute simple wills, representation agreements, and powers of attorney for seniors living with low incomes and people who have terminal illnesses.

- The Edmonton Community Legal Centre, which provides a variety of pro bono legal information and advice to people living with low incomes. Justice lawyers volunteering at the centre are limited to providing pro bono legal advice on landlord and tenant matters.

- Law Help Ontario at the Ottawa Court House, which provides pro bono legal help to unrepresented people living with limited means who are suing or being sued in civil court. Department of Justice lawyers volunteering at the clinic are limited to providing pro bono legal advice to non-family civil litigants in Small Claims Court and the Ontario Superior Court.

The pro bono policy document explicitly prohibits volunteer work in the areas of criminal law, habeus corpus matters, and “any other matter involving the Minister of Justice and Attorney General of Canada.”

Volunteering will normally take place outside of working hours, except “on an exceptional basis,” it says.

The development has been several years in the making. In the past few years, some law societies have started providing no-fee liability insurance to Crown lawyers who participate in pro bono activities approved by their law societies.

The insurance is now available to lawyers in Ontario, Alberta, B.C., and Saskatchewan.

This has opened up the possibility of pro bono work, but the department has also needed to work with pro bono organizations on practicalities such as avoiding conflicts of interest, explains Bill Basran, director general of the Department of Justice’s B.C. regional office and who has been closely involved with the project.

Basran has been volunteering at the Vancouver wills clinic and describes his time there as “an enormously gratifying experience,” that has involved helping people to put their affairs in order at the end of their life.

The department now wants to expand the pro bono scheme to other cities and is considering opening clinics in Toronto and Saskatoon.

“We’ve received a lot of interest from Justice lawyers across the department,” he says.

Lisa Blais, president of the Association of Justice Counsel, says her organization “applauds the attempt to increase access to justice” and looks forward to the program being expanded.

The unavailability of insurance had previously been the biggest concern of ACJ members, regarding pro bono work, she states.

Whereas pro bono files sometimes contribute towards performance targets for lawyers in private practice, this has not been written into the policy for the Crowns.

“It would be up to individual managers to consider that type of contribution in performance appraisals,” says Blais.

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Raises for MPs, senators more than double average wage boost for public sector unions

JORDAN PRESS, POSTMEDIA NEWS MARCH 7, 2014

OTTAWA — While the federal government speaks of fiscal restraint and cutting spending to return to a balanced budget, MPs are about to get a wage increase of 2.2 per cent.

And senators, whose salary increases are tied to what MPs earn, will take home 2.5-per-cent more this year than last, starting April 1.

For the fiscal year 2014-15, MPs will earn a base salary of $163,700, and senators will earn $138,200.

The increases are more than double the one-per-cent pay raise MPs are giving senior civil servants in the House of Commons administration. One per cent is also the average wage increase for public service unions, according to federal data on wage settlements.

MPs didn't have to lift a finger to get this raise: After MPs allowed a wage freeze to end, existing federal legislation automatically kicked in to provide an annual boost on April 1. A notice of the increase went out to MPs this week from the House of Commons board of internal economy, just prior to the March parliamentary break.

Federal legislation requires senators to be paid $25,000 less than MPs, meaning a pay increase in the Commons punches up pay in the Senate (and makes the percentage increase, though not the wage figure, slightly higher).

"They are, as a group, receiving a real wage increase because inflation won't be at 2.2 per cent," said economist Mike Moffatt from the Ivey School of Business at Western University in London, Ont. However, the average Canadian has seen an increase in the last year of about 2.38 per cent in their average hourly rate, and 2.17 per cent in their average weekly rate, according to federal labour data.

Raises will also be doled out on the bonuses that are paid to cabinet ministers, house leaders, the Opposition leader, whips, deputy whips and committee chairs, along with the Speaker in the Commons and the Speaker in the Senate.

For example, MPs who are committee and caucus chairs will earn a bonus of $11,500 in the coming fiscal year, an increase of $200 from the $11,300 they earned in the last fiscal year. Whips for the government and the Official Opposition will receive a bonus of $29,400, an increase of $600 from the $28,800 they earned last year.

The increase in base salary for the 306 MPs in the House of Commons and to 93 senators, and bonuses paid out to the Speaker of the Commons, his deputies, house leaders in the Commons and deputies, whips and committee chairs, will cost almost $1.5 million. That number will go up when the Senate determines how much more it will pay in bonuses to senators performing extra duties.

Moffatt said the increase is actually small relative to what Canadians earning six-figure salaries have received. But those high-income earners have seen their wages increase faster than Canadians who earn at or below the median income in the country, he added.

The parliamentarians' increase is based on the average increases negotiated for large private-sector unions in 2013, according to data collected by the labour program connected with Employment and Social Development Canada. (The Parliament of Canada Act requires increases to be tied to that particular figure.)

However, large public sector unions on average have received less than half the increase MPs will receive. The increase to parliamentarians is also larger than what smaller unions and non-unionized workers usually receive, Moffat said.

In the private sector, "the point of having higher salaries is either to reward people or retain them," said Moffatt, who has done research on income in Canada. "I suspect for a lot of (MPs), they would take these jobs for half the money. For a lot of them, it's not about the money in the first place."

Several MPs who are members of the internal economy board declined to comment, referring queries to the office of the Speaker of the House of Commons or the Senate.

It's the second time in as many years that MPs and senators are receiving a salary increase, after having their wages frozen between fiscal years 2009-2010 and 2012-13.

As with last year, this spending increase will be reported when the government tables its supplementary estimates, a listing of extra spending not included in the government's initial spending projections for a fiscal year.

Getting a raise?

- How much an MP earned in the last 12 months (to end of March 2014): $160,200

- How much an MP will earn in the next 12 months: $163,700

- How much a senator earned in the last 12 months: $135,200

- How much a senator will earn in the next 12 months: $138,700

- That works out to about how much per week for an MP? $3,148

- And about how much per week for a senator? $2,667

- And the average weekly salary for Canadians for February 2014 is: $895.98

• The rate of inflation is: 1.7 per cent

• The percentage increase for MPs is: 2.2 per cent

• The percentage increase for senators is: 2.5 per cent

• The average wage settlement for public sector unions in 2013 is: 1 per cent

• The pay increase being given to top civil servants in the House of Commons administration: 1 per cent

• How much Stephen Harper will earn as prime minister starting April 1 (base salary plus prime minister's bonus): $327,400

• How much Official Opposition leader Thomas Mulcair will earn starting April 1 (base salary plus Opposition leader's bonus): $242,000

• The median income for full-time workers in Canada according to the National Household Survey: $47,868

• Approximate date when Thomas Mulcair will earn the median income based on his new salary and bonus: June 12

• Approximate date when Stephen Harper will earn the median income based on his new salary and bonus: May 24

• How much suspended senators Mike Duffy, Pamela Wallin and Patrick Brazeau will earn as senators: $0

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Treasury Board to start first round of collective bargaining next month

ABBAS RANA, The Hill Times, March 3, 2014

Federal public service employees and the Treasury Board are starting their first round of collective bargaining of the year next month with bad blood on both sides and balance of power tilted in favour of the Stephen Harper government because of new powers attained through Bill C-4, and both sides acknowledging that the negotiations will be challenging.

“I’m a born optimist so I’m hoping we’ll have some difficult negotiations that will lead to a successful conclusion,” Treasury Board President Tony Clement (Parry Sound-Muskoka, Ont.) told The Hill Times last week.

The first round of negotiations will start next month in which the Treasury Board will negotiate with the Program and Administrative (PA) Services Group consisting of about 75,000 employees responsible for secretarial services, administrative services, clerical functions and data processing. Both sides will have a team of 12 members each and will meet once or twice each month in Ottawa. Treasury Board served a notice of the start of negations to Public Service Alliance of Canada (PSAC) recently and both sides are now in the process of finalizing the exact details of the logistics of these negotiations. The PA Services Group is part of the massive Public Service Alliance of Canada (PSAC) union that represents about 180,000 public service employees.

In addition to the PA Group contract negotiations, 26 other groups of public service employees are also going to start to negotiate their contracts at various dates with the Treasury Board this year.

These negotiations will be held in the post-omnibus Budget Implementation Bill C-4 era, which public service unions describe as “life threatening,” and an “attack on the constitutional right to collective bargaining.” The 300-page Bill C-4, already passed by Parliament, contained some labour relations measures, which have significantly strengthened the hand of the Treasury Board in the collective bargaining negotiations. Bill C-4 has given sweeping powers to the government in how it conducts its business with the bureaucracy in terms of what an essential service is, how employees can make grievances and how collective bargaining will be negotiated if there is no agreement between the government and the unions. With C-4 labour relations measures in place, the government has the exclusive right to designate essential services and limit the use of arbitration for resolving contentious issues between the government and the employees.

After the introduction of Bill C-4 in Parliament in the fall, labour unions launched a lobbying campaign to try to convince all the parties to reconsider removing labour relations measures from the budget bill. Labour unions were especially miffed that before the introduction of these measures, the federal government did not consult them. These unions made their cases in the House Finance Committee and Senate Finance Committee, but since the Conservatives have a majority in both Houses of Parliament, the lobbying effort failed to achieve desired results.

The 17 public service unions announced late last year that they’re exploring their legal options in an effort to challenge the constitutionality of this legislation in the Supreme Court.

In an interview last week, Robyn Benson, president of Public Service Alliance of Canada, told The Hill Times that before going to the Supreme Court to challenge Bill C-4 labour relations measures, unions are waiting for the outcome of a case in which the Saskatchewan Federation of Labour has taken the government of Saskatchewan to the Supreme Court on almost the same legislation as the Harper government has proposed.

The provincial essential services law in Saskatchewan states that employers and unions must agree on which workers are essential so they can't go on strike. The law further says that if the two sides disagree, employers can dictate who essential workers are.

The Supreme Court is likely to start hearings on this case in the spring and the public service unions intend to apply for the intervener status.

Mr. Clement last week, however, disagreed that the labour relations measures in C-4 has put the public service employees at a disadvantage compared to the Treasury Board.

"There's a lot of rhetoric going on right now. The fact of the matter is that we both have to bargain in good faith and I certainly intend to do so," said Mr. Clement.

Ms. Benson told The Hill Times last week that if the federal government did not treat the public service employees in these negotiations fairly, they would pay the price in the next federal election.

"Our members are Canadians, they live and work and shop in the communities and they will certainly be talking to their friends, their families and their neighbours and they'll be talking about what this government is doing. So, we will take whatever steps are necessary to have a fair and equitable collective agreement and we'll take whatever steps are necessary to have a fair and equitable collective agreement and we'll take whatever steps are necessary when the election comes," said Ms. Benson.

But Mr. Clement said that his party is not worried about how these negotiations will affect them in the next federal election.

"I don't really think that threats really work in these things. My job is to offer fair and reasonable changes…and at the same time respect the taxpayers. So, I'm going to do my job, I'm not going to be deterred by the union rhetoric but I don't think that anyone should think that the status quo is working because it most certainly is not."

NDP MP Françoise Boivin (Gatineau, Que.), a labour lawyer who represents a riding of 5,000 federal public service employees, said the federal government has demonstrated it doesn't "respect" public servants and cited the Bill C-4 measures that have tilted the balance in favour of the Harper government.

"With all the measures that they started removing, it's really negotiating from top to bottom instead of equals at a table like employer-employees. It's really top down. It's bizarre negotiations. They're supposed to be partners but they're not partners. This government is not partnering with the employees. They think they're a nuisance."

Liberal MP Gerry Byrne (Humber-St. Barbe-Baie Verte, Nfld. and Labrador) also agreed that the federal public service employees will be entering the fresh round of negotiations from a weaker position.

“A level playing field has been made very much lopsided in favor of the federal government as one of the two bargaining entities,” said Mr. Byrne.

Mr. Byrne added that the altering of labour relations and program and services cuts by the Harper government since 2011 will affect the Conservatives in the next federal election. He cited the example of closings of nine veterans affairs offices across the country where about 89 Veterans Affairs Canada employees lost their jobs but this news resonated with thousands of Canadians.

“Obviously, the federal public service employees have a franchise, they have the franchise to vote, and they have the franchise to express their opinions. I’m certain they’ll express their point of view at the ballot box and I don’t think it will necessarily be a positive outcome for the Conservatives,” said Mr. Byrne.

“Thousands of people rallied to that issue,” Mr. Byrne said referring to the Veterans Affairs Canada service centre closures. “So, that’s an example of literally just a few dozen jobs [lost] but commanded the attention of tens of thousands of people. This is not an issue about the public service unions against the government, this is an issue about the people against the federal government and that’s a key difference.”

Meanwhile, Ms. Benson said that although she expects some hiccups in these negotiations, labour unions will do their best to achieve a positive outcome.

“Yes, this government is trying to curtail collective bargaining, it’s trying to curtail democracy but from myself as president and membership, we’re prepared to negotiate a fair and equitable collective agreement.”

Time short for unions, Clement to reach deal on benefit cuts

KATHRYN MAY, OTTAWA CITIZEN, MARCH 3, 2014

OTTAWA — The clock is ticking for federal unions and pensioners to find a deal that will allow them to save face in giving up benefits worth $7.4 billion to the government’s bottom line.

The unions and the federal Conservatives could not be farther apart when they meet for one last round of talks under the auspices of the National Joint Council. Treasury Board President Tony Clement has already booked the $7.4 billion he expects to save over six years by making retirees pay more for the Public Service Health Care Plan while limiting

their access to the plan. He also issued an ultimatum — reach a deal quickly or face legislation.

It makes for a lopsided round of negotiations and it's hard to imagine what the government could offer to the unions and retirees in exchange for what they consider such a major concession, especially if Clement is bound by the projected savings. Retirees and unions have to show their members they got something of value to compensate for such a loss.

Last week, Clement made it clear he wants an agreement out of the meeting called by the partners committee, which governs the plan. At the table, are presidents of the largest unions, three senior bureaucrats and the National Association of Federal Retirees — known as FSNA.

Some argue the tone and success of these negotiations could affect the much-anticipated round of collective bargaining to negotiate the 17 contracts that expire in 2014. The hot button issue is replacing sick leave with a new short-term disability plan, and the savings are a fraction of what's at stake in these talks.

Clement insists the talks are "real negotiations" and he's ready to "make trade-offs" but won't budge on his cost-sharing demand, which will make retirees pay 50 per cent of the plan's contribution costs rather than the 25 per cent they pay now. He warned the window for deal-making was small and an agreement would have to be reached before the imminent tabling of the budget implementation bill, which will force changes.

For Clement, it's a fairness issue. He thinks it's unfair that taxpayers subsidize the voluntary supplemental health coverage of retired public servants — to the tune of $3 taxpayer dollars to every $1 from retirees. He felt two years was too short a time to work in the public service to get access to the plan and wanted that threshold increased to 10 years. He did settle on six years.

The unions and retirees have argued it's a cost issue and suggested trading some plan's benefits for savings without touching pensioners' costs and access. They argue the plan's benefits are middle of the road compared to other large employers and that was intentional to ensure public servants, when they retire, have access and the existing 25/75 cost sharing ration remained.

But the two sides have been in a stalemate since last summer when Clement blindsided the committee with the cost-sharing proposal. The trajectory of those closed-door talks, which have dragged on for two years, don't bode well for a compromise the unions and retirees can sell to their members.

By all accounts, the showdown began when the committee suggested some improvements to the plan's coverage for acupuncture, sleep apnea machines and birth control.

Little did the partners committee — which includes government representatives — know when they fired off a proposal for these three "minor" changes that Clement would counter with a such a big demand.

“He offered peanuts for an elephant, a concession that amounts to the biggest saving in the budget. How can you move the goalpost and somehow meet in the middle?” said one union official.

At the time, the partners committee was in the throes of managing some major changes to the plan and decided it should hold off on a review of the plan that was supposed to be completed by March 2011.

The members decided there was too much uncertainty to start rewriting the plan. The economy was still unsettled from the 2008 recession; Sun Life Financial was newly hired to administer the plan and the new health card for the plan had just been introduced and had yet to generate the savings and efficiencies expected. The governance of the plan was also undergoing an overhaul.

The committee knew the review would be a major job. The plan had remained largely unchanged since the 1990s and some benefits had slipped behind those offered by similar large employers. That was confirmed by a 2010 benchmark study by Morneau Shepell.

Instead, it recommended to Clement that the review be delayed for two years and the existing plan remain in force with three minor adjustments it argued were in line with those offered by other employers:

-Expand the coverage of prescribed contraceptives to include non-oral methods and products.

-Expand the coverage for acupuncture from physicians to include doctors of Chinese medicine and trained acupuncturists capped at $300 a year.

-Expand the reimbursement of sleep apnea machines (Continuous Positive Air Pressure machines) to include repairs, replacement parts and servicing up to a maximum of $300 a year.

A year went by before Clement responded. He said the government would make the changes for acupuncture and sleep apnea machine but rejected extending coverage for non-oral contraceptives.

The refusal to expand birth control sparked much speculation among unions over whether the rejection was an ideological decision to pander to the Conservatives’ social-conservative base, but the stopper was the 50-50 cost sharing and limited access.

The unions and retirees argued such major changes warranted opening up the plan for a broader discussion of improvements. They countered with a proposal to immediately proceed with the minor improvements and then open up the plan to discuss benefits, such as the proposed retiree cost-sharing and access to benefits.

Clement refused. Sources say he offered a list of possible improvements the unions and retirees could choose from but he wanted a “consensus” by Jan. 24 built around his

proposed changes. He promised to protect low-income pensioners who may be unable to afford the increase and would consider a transition or possible phase-in of rates.

Two weeks later, the budget was introduced with Clement's proposal.

Today, Clement won't comment whether he's still willing to give on acupuncture, sleep apnea machines or anything on that "list" of possible improvements other than to say he "is being fair and reasonable in bargaining."

Tim Hudak's low-wage agenda is hiding in plain sight

Toronto Star, March 4, 2014.

Comment by Sid Ryan, President of the Ontario Federation of Labour

Tim Hudak's alleged reversal of his controversial support for American-style "right-to-work" laws lacks all credibility. It is the sort of cagey claim that is reminiscent of Toronto Mayor Rob Ford's now notorious statement: "I do not use crack cocaine, nor am I an addict of crack cocaine." Of course, Mayor Ford was intentionally deceiving voters about his drug habits, while the truth fell somewhere between the questions reporters asked and the careful wording of Ford's qualified answer.

On Feb. 21, Hudak, the leader of Ontario's Progressive Conservatives, promised the Toronto business community that his party would not "change the so-called Rand Formula" that protects union dues collection and guarantees union resources for representing their members. The media eagerly reported that Hudak had "reversed his position," "flip-flopped," done a "U-turn" or "bowed to unions," but nothing could be further from the truth. Like Mayor Ford, the reality of Mr. Hudak's intentions lies in what he didn't say. His promise comes with a wink and a nudge.

Let's be clear: overturning Justice Ivan Rand's 1946 decision was never explicitly part of Hudak's message because, as he ominously boasted to his business audience, "Our agenda is a lot bigger, and a lot more ambitious, than that." So, his pledge not to undo this foundational labour policy is neither a retraction nor a reassurance. It intentionally leaves the door wide open to accomplish his anti-worker agenda through a variety of other means.

For 18 months, Hudak's Tories have been promising to import the meanest, most divisive anti-worker laws that the United States has to offer. While he has cloaked his strategy with murky and misleading doublespeak about the need for "flexible labour markets" and "labour law modernization," Hudak's intensions have always been clear: eliminate the organized opposition of workers and implement a low-wage, regulation-free haven where corporations can rake in profit at the expense of Ontario workers, communities and the environment.

Even if workers were to mistakenly believe Hudak's pledge to not tear up the Rand Formula, they most certainly cannot trust him to leave workers' rights intact. Hudak's party has promised to make it more difficult to join a union and possible for individual workers to opt-out of their collective agreement. These measures would divide workplaces and have the net effect of gutting the entire basis of the Rand Formula, while allowing him to remain true to his word.

Hudak has also made clear that he would take his anti-labour agenda much, much further. He has promised to freeze public sector wages, gut pensions for public sector workers and reduce public services through staff reductions that would hit schools and hospitals.

He would follow Alberta Premier Alison Redford in removing the third-party arbitration system that supports fair collective bargaining for front line emergency personnel who do not have the right to strike, like police and fire fighters. He would curtail workers' from using union dues for workplace training and he would silence his opposition by restricting unions from engaging in political advocacy.

These measures would draw Ontario into a race to the bottom led by America's 24 right-to-work states that now boast some of the lowest wages in the land. It is an agenda that no Ontario worker can afford and a scheme that would not only divide workplaces and communities, but has already divided the Tory party itself.

If there is anything to be learned from the American example, it is that the advocates of these extremist policies do not waiver or retreat from their low-wage agenda. They view economic re-engineering as a game of chess and if public outcry prevents them from doing it in one move, they will try it in three.

Hudak's scheme is cribbed right out of the Republican playbook and just like Mayor Ford, he certainly won't let the truth get in his way.

Modernizing the justice system starts at law school

By Ali Abel, University of Calgary Law School, March 3, 2014

When looking at the future of the Canadian justice system, law students play an important role in shaping it into a modern, accessible system for Canadians across the country. Students making a difference goes to what underpins the practice of law – civic duty, patriotism, and community spirit and service.

Providing access to justice to all Canadians was at the core of federal Justice Minister Peter MacKay's speech for the 2014 William A. Howard Memorial Lecture, which he delivered to a standing room only crowd at the Faculty of Law on Feb. 28. Among other things, he highlighted the role of new and young legal practitioners as well as the federal government in securing that access.

"I have served in many roles where public and community service is important," said the minister, who also holds the post of federal Attorney General. "It helps to contribute to the best interests of clients, constituents and the broader Canadian public."

MacKay went to school with the full intent of becoming a trial lawyer, but soon discovered there was room for improvement within the justice system. He learned that having the opportunity to make changes, to make the system more effective, inclusive and accountable is very satisfying. And he encouraged students to be open-minded about change.

"Do not hesitate to change course," he said. "There is nothing wrong with realizing there is a different path you want to choose as a law student."

MacKay acknowledged that much needs to be done to ensure access to justice for all, stating that "we are seeing a sharp rise in unrepresented accused and our system too often loses track of its essential purpose – to enable Canadians to have access to justice." He pointed out that greater collaboration across provincial and territorial boundaries is required, and that the government needs to open doors to graduates to be called to the Bar across Canada.

The minister also noted the importance of pro bono work, for both new and seasoned legal practitioners, in helping to ease the access to justice crunch. He commended the work by our own Pro Bono Students Canada-Calgary chapter at the Faculty of Law. During the lecture, MacKay announced the creation of a new federal Policy on Pro Bono Legal Services by Justice Lawyers, developed in response to a widespread desire among Justice Canada lawyers to participate in pro bono legal services as a way to directly give back to their communities.

"Accessibility issues will be a work in progress," said MacKay. "I'm very encouraged by the work of my own department in helping to make the changes required, and for making access to justice a reality for many Canadians."

As Tim Hudak learned, the era of union bashing has run out of steam

Jim Stanford, Special to the Globe and mail, March 3, 2014

Eighteen months ago, Ontario's Progressive Conservatives planted a very provocative flag in the ground of Canada's labour relations landscape, with a proposal to implement U.S.-style restrictions on unions (including a prohibition on dues check-off, known euphemistically in America as "right to work"). But suddenly and surprisingly, just as debate over the idea was really heating up, Ontario PC leader Tim Hudak abandoned the plan. Speaking to business leaders in Toronto last week, he pledged to preserve current rules (codified in the famous Rand Formula) if he wins the next election.

Conservative strategists hoped their labour policy would be an effective wedge issue in the next campaign. It allowed the Conservatives to capitalize on public enmity about union fat-cats, pensions, and strikes. And it could cleave the electorate neatly between union-haters (owned by the Tories) and union-lovers (split between Liberals and the NDP).

So why did the Conservatives surrender before the election even started? There are several answers to this question, with important implications for parallel strategies by Conservatives in other jurisdictions to push the anti-union button.

Mr. Hudak's party did not help its own cause, with explanations of the issue that were badly formulated, confusing, and contradictory. They provided few specifics, preferring broad rhetoric about ending "forced unionism" and ushering in "worker choice." But in reality there is no forced unionism: workers must give majority approval before a bargaining unit is formed (whether by secret ballot or signing membership cards), and they can decertify their union the same way if they aren't happy with the service. The Rand Formula doesn't make unions compulsory; it merely prevents free-riding, whereby workers could get the benefits of a union contract without paying for it. The Conservatives' now-deposed labour critic Randy Hillier muddied the waters further, with wild proposals for combining individual and collective contracts.

Mr. Hudak's declaration of war also sparked a surge of political activism by unions and their members. For example, hundreds of union volunteers helped NDP candidate (and Unifor leader) Wayne Gates prevail over the Conservatives in the recent Niagara by-election – one week before Mr. Hudak threw in the right-to-work towel. This union activism could clearly swing the outcome of many key ridings in the GTA, southwestern Ontario, and the north.

Not even employers rallied behind Mr. Hudak's plan to ban the Rand Formula. Indeed, the Toronto business leaders in his audience applauded when he announced his reversal. Corporate Canada has been quietly telling Conservatives at all levels they don't want the disruption and uncertainty that would result from the wholesale dismantling of existing collective bargaining rules.

But the biggest problem for Mr. Hudak's crusade was a deeper sentiment in Canadian public opinion regarding unions and the role they play in society. No matter their warts, unions ultimately reflect their members: typical Canadians just trying to earn a decent income, support their families, and (hopefully) retire with some security, in an economy which rewards the rich and powerful more than ever before. Unions (like wage-earners in general) have been on the defensive for years. Wage gains have been small, strikes are historically rare, and even much-maligned public sector contracts have been rolled back substantially. In such a lopsided context, it's simply impossible to convince most voters that unions are really Public Enemy Number One. And many Canadians innately understand that if the only institutional voice speaking for working class priorities is silenced, then the whole social contract will become even more tattered in the years ahead. Unions, to their credit, effectively emphasized their broader social impacts in their responses to Mr. Hudak.

And therein lies the danger for other Conservatives (including federally) who have been sowing similar political ground. Attempts to delegitimize unions (as with the failed federal Bill C-377, which treated unions almost on par with organized crime), tilt the bargaining field further in employers' favour, and snatch away negotiated benefits (like the health benefits Ottawa is now clawing back from retirees) all appear increasingly mean-spirited. They offend moderate Conservatives (who understand the important institutional role of collective bargaining), anger unions and their members, and reinforce the impression that Conservatives do not speak for average working people.

In short, the effort to blame trade unions as the scapegoat for all economic and fiscal ailments is running out of steam. Mr. Hudak's platform will continue to emphasize other anti-union initiatives, but they will resonate awkwardly in the wake of his Rand Formula flip-flop. And other Conservatives should beware the political rock – a deep, innate sympathy for institutions which help to share the wealth – that their Ontario counterparts just drove into.

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What Went Wrong With Our Public Service

Donald Savoie, author, Huffington Post, March 3, 2-14

Donald J. Savoie is shortlisted for the Shaughnessy Cohen Prize for Political Writing for Whatever Happened to the Music Teacher? How Government Decides and Why.The Shaughnessy Cohen Prize winner will be announced at the Politics & the Pen Gala in Ottawa on April 2. www.writerstrust.com

I decided to write this book because I became convinced that the public service has lost its way.

The Canadian public service has witnessed three major developments - the first, in its early years, when it was designed to help develop the country's basic public service infrastructure and the second, when it expanded on all cylinders with the arrival of Keynesian economics. We are now living the third and by far the most challenging development. We have tried to make the public sector look like the private sector but failed. We have introduced one major management reform measure after another but none have lived up to even modest expectations. We are seeing a public service collapsing under its own weight, producing performance and evaluation reports feeding accountability and oversight requirements that do not resonate with Canadians or even Parliament.

The public service does not need yet another vision exercise from on high, another management reform package that does not respect its traditions and values. It can however regain credibility by being accountable the old fashioned way and answering simple questions that matter to Canadians. The Canadian government spends about $10 billion a year on consultants. Why? The Canadian public service added about 70,000 positions between 1999 and 2011. Why? In some departments, there are nine management levels between a Director and the Minister. Why? Front line managers have seen their operations reduced substantially in recent years while units in Ottawa have multiplied and grown. Why? Vaguely worded reports designed to deflect criticism and manage the blame game do not measure up.

- Donald J. Savoie

New Public Management, New Public Governance, and recent public sector reforms have created new constituencies. In the process, front-line workers have become no one's constituency.

Those who in the past would have spoken on their behalf - the local member of Parliament, the local media, and local community groups - have been shunted aside by more powerful forces. Misguided, costly, and ineffective accountability requirements, the work of agents of Parliament (the blame generators), the rise of permanent campaigns, and the need to control communications have reshaped how Ottawa decides, how it spends, and how it delivers public services.

Governments operate in a vastly different world today than even thirty years ago. It is no exaggeration to say that we are witnessing at the same time the politicization of the public service and the bureaucratization of the body politic. Jonathan Rose summed it up when he observed, "You've got bureaucrats who are doing the government's partisan work and also political staffers who are doing bureaucrats' work. So there's this blurring of lines between the two."

Parliament, it seems, has simply given up and turned over its responsibilities to its agents. MPs have been left to pursue what they prefer to pursue - search for scandals, for administrative miscues, for the $10,000 spent on booze at a reception.

The government has countered with report after report that serve little purpose other than enabling politicians on the government side and public servants to say to the media, "Look at these reports. You will see that all is fine." Policy making relies less and less on objective advice provided by public servants. It has become a matter of political opinion and has merged with communications.

Public servants have become sympathetic to the plight confronting politicians on the government side. Realizing that what their political bosses value is the ability to defuse politically dangerous issues, they have drawn on their experience to offer political advice. Yet politicians do not view their senior public servants in the same positive light as they did thirty years ago.

Paul Tellier, former clerk of the privy council, argued in 2009 that "the trust between Canada's politicians and bureaucrats has never been more strained and steps must be taken to lower the temperature and rebuild frayed relations." Another former senior federal official maintains that "we are living in a time of unprecedented divide between the political and bureaucratic in Ottawa."

Policy units and units charged with responding to new accountability requirements secured the bulk of the new positions established as the prime minister and his courtiers shifted focus away from expenditure cuts to other issues in the years after the 1994-97 program review.

The prime minister pursued his priorities - for example, the Millennium Scholarship Fund - and Jocelyne Bourgon, the clerk of the privy council, pursued her own priorities, which were to strengthen Ottawa-based policy, evaluation, and monitoring units.

Don Drummond, for example, praised Bourgon for rebuilding the policy units in departments after they had been "weakened" in the 1994-97 program review exercise. The policy units, together with program evaluation and internal audit units, were indeed rebuilt between 2000 and 2010, when a substantial number of new positions were added to them. But this did not prevent Drummond in 2011 from writing about Ottawa's dismal policy capacity.

It bears repeating that while these units were being rebuilt in Ottawa, the regional and local offices delivering front-line services were not rebuilt; in fact, they have been losing staff. Policy, planning, and monitoring units are much more "visible" to the clerk of the privy council than point-of delivery offices are. In the process, the Ottawa system is losing sight of the music teacher types operating on the front lines of public service delivery.

Front-line managers and their employees do not figure prominently in the work of central agencies or in the head offices of line departments and agencies, other than as producers of information. To answer Harold Lasswell's question - who gets what, when, how? - Ottawa's bureaucracy has been able to get more than in years past.

Attempts to make public sector management look like that of the private sector have made the Ottawa bureaucracy more expensive. Managers took advantage of their new-found authority to move funds between votes and activities to add to their salary and operations budgets. C

onsider the following: The core federal public service grew by 34 percent over the past ten years to 282,955 from 211,915 (2001-11). The bulk of the growth was in Ottawa-based units designed to serve the bureaucracy and accountability requirements, to generate policy advice, and to manage communications and media relations. The expansion of the federal government's bureaucracy outpaced population growth over the same decade at a rate of three to one.

Harper's strategic and operations review in the summer of 2011 was set up in part to deal with this growth.

It begs the question: Why, with all the ambitious public sector management reforms of the past thirty years, were all these public servants hired in the first place? It will be recalled that the federal government transferred a number of labour-intensive activities to provincial governments and third parties in the 1990s (for example, airports and ports).

And this leads to a second question: Why did the Harper government see the need to spend $20 million on outside consultants to assist in identifying spending cuts? And a third: Why were all those new employees hired in policy evaluation and other head office units that are not up to the task?

Yet another question: Are we to accept that significant cuts to the government's expenditure budget are possible only when the prime minister and his courtiers take charge and when the cuts are initiated in the immediate aftermath of the government winning a majority mandate? (e.g., the Chrétien-Martin 1994-97 program review and Harper's strategic and operational review 2011-12).

How partnerships ain't all they cracked up to be

Editorial by Gail J. Cohen, Canadian Lawyer, March 3, 2014

There's never been a legal story in Canada that's had the impact of the death of Heenan Blaikie. In a world of social media, constant connection, and instant messaging, we all watched the breakdown unfold almost in real time. It was the biggest law firm collapse in Canadian history and almost everyone I know is either personally affected or knows people personally affected by it.

There has been and will be much written about the failure of this national law firm, which at its peak boasted more than 500 lawyers, but I'm going to focus on the concept of law firm partnership. Once the Holy Grail of lawyerdom (for those not focused on becoming judges, of course), partnership in a law firm is still a badge of honour, worn proudly by most but understood by few.

The partnership model may not be totally broken but it is not holding up well, particularly in larger firms that are daily embroiled in the fight to stay alive under pressures of both economic and client expectations. No one may want to say it, but greed and partnership do not go hand in hand — and it's all about the money nowadays. As one colleague said to me: "For some partners, the 'for better or for worse, for richer or for poorer, in good health and in bad, till death do us part' is always added with the postscript 'or until a competitor law firm offers me an extra $50k.'" Not to mention the practice-related and geographic differences that exacerbate the 'why should I be supporting those partners who bring in less than I do?" attitude. Heenan founding partner Roy Heenan repeatedly said that rivalries and inter-office conflicts, particularly between the Toronto and Montreal offices, killed his firm.

Trust is inherent in a partnership and the greed factor makes that next to impossible in a large or complex partnership because the trust has to extend outside the business relationship. Beyond a certain number, some say it's probably 150, people can't know each other well and therefore will never be able to build that trust. As well, far too many partners see a disconnect between their individual interests and group interests thus even if no one actively dislikes each other, it is not an opportune foundation to build and maintain trust.

Large firms simply don't lend themselves to the type of equality needed for a traditional partnership to flourish. Firstly not all partners are created equal, some have access to

more information than others, there are now gradations of partnerships where you're a partner in name but not really an owner — and may never become one either. As another colleague said to me: "People have to want to behave as partners, as equal owners in the business. How really true is that of most major law firms? True, everyone wants to divide up the pie, but most partners don't truly take control of their business, relying on others to do the lifting."

That brings us to law firm management. Not every partner can have a say in how things run. And many law firms are still run by lawyers — they're not called managing partners by mistake. But lawyers are not managers. Most are not even trained in business and are probably the worst choices to lead large, multimillion-dollar operations like large, complex law firms. Some firms have moved to a model of executive committees and a few even are run by business professionals, however, there continues to be underlying stresses and strains because lawyers don't like being managed. Partners even less so. Change is inevitable and lawyers are not good at change. They need to become better at it, especially in Canada, if they want to survive.

As the 2013 Peer Monitor Report on the State of the Legal Profession states: "Plainly, to be successful in today's world, most every firm of any significant size must respond to the changing competitive realities of the market by centralizing many of the decisions previously made in more collegial ways and by embracing a consistent strategic vision that is uniform across the firm and that drives decisions and actions in all of its practice areas. At the same time, a firm must preserve the essential qualities that nourish and support great lawyering, including structures that preserve the independence of professional judgment and the autonomy of lawyers to act in the best interest of their clients."