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Press Clippings for the period of March 9 to 16, 2015
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Here are articles and opinion pieces that might be of interest to AJC members
Voici quelques articles et textes d'opinion qui pourraient intéresser les membres de l'AJJ

OTTAWA CITIZEN

Raises for MPs and senators beat those offered to public service unions

Kathryn May, Ottawa Citizen, March 12, 2015

MPs are in line for a 2.3-per-cent raise in pay, about five times the increase the Conservative government is offering employees in the public service.

Under legislation, MPs' yearly salary increases are tied to the average wage settlements negotiated in private-sector companies that have more than 500 employees. That means they are automatically entitled to the average 2.3 per-cent wage hike private sector employers gave their employees in 2014.

The secretive Board of Internal Economy, a group of MPs who oversee the administration of the House of Commons, has been advised of the increase and it's expected that all MPs will soon be notified of the raise, which kicks in April 1.

The board doesn't have to accept the increase. For example, MPs faced a three-year wage freeze between 2009-10 and 2012-13, in the aftermath of the financial crisis.

Senators, whose salary increases are tied to those of MPs, will also get a raise.

With the increase, the base salary of an MP will jump from $163,700 to $167,400. The raise for senators, who now earn a base salary of $138,700, will be slightly higher in percentage terms: By law, senators must be paid $25,000 less than MPs. That means senators will earn $142,400 in base salary starting April 1, a 2.7-per-cent increase.

The increase will also extend to the additional salaries MPs and senators earn for extra tasks, from deputy whips and committee chairs and up.

For example, the prime minister will earn an additional $167,400, on top of his MP pay, for a total salary of $334,800. Ministers, the Speaker and the leader of the Opposition will make $247,500.

The formula for parliamentarians' wage increases is spelled out in the Parliament of Canada Act. It links MPs' raises to the average increases negotiated by unions for large private sector firms with more than 500 employees. The data are collected by the labour program at Employment and Social Development Canada.

With an election scheduled this year, the pay hike is timely because it will also boost severance and pension payments for those who are leaving politics, whether they decide not to run or whether they lose their seats in the election.

Compensation is a sensitive issue in Ottawa these days, given Treasury Board President Tony Clement's longstanding vow to bring the pay and benefits of public servants in line with those of the private sector.

Interestingly, the private-sector increases the MPs are linked to have outstripped the average wages negotiated by unions with similarly large employers in the public sector every year since 2010.

A Treasury Board official wouldn't say what wage benchmarks the government uses when negotiating with federal unions.

"Minister Clement is focused on making the cost of government more affordable and accountable to taxpayers," said Heather Domereckyj, Clement's press secretary.

Meanwhile, in the federal public service, employees have yet to get a raise for 2014-15.

The 6,500 executives in the public service are still waiting to hear whether they are getting a raise, with only a few weeks left in the 2014-15 fiscal year. They got a one-per-cent raise last year, less than the 1.5-per-cent raise unionized employees received and the 2.2-per-cent hike MPs got.

The 17 federal unions are still in bargaining, where the big issue is surrendering accumulated sick leave, and there's no deal in sight yet. So far the government has offered them a 0.5-per-cent raise in each of the next three years.

Ron Cochrane, co-chair of the union-management National Joint Council, said the drive to rein in public sector pay and benefits is "hypocritical" because it's all aimed at public servants while the MPs and senators "coddle" themselves.

"It's 'do as I say,' not 'do I as I do,'" said Cochrane. "They have the Cadillac benefits and forget about making any comparisons for themselves and just try and take away the long and hard-earned benefits earned in collective bargaining.

"That's a poor way of leading by example … If they want to set an example, they shouldn't be taking from their own employees and keeping it for themselves, especially when the base salary is nearly three times the average in the public service."

The abolition of severance payments for voluntary departures from the public service was a key piece of the Conservatives' promise to bring federal benefits in line with the private sector. It rankles unions that a similar severance package for MPs who voluntarily decide not to run has remained intact.

Some of the 44 MPs who have decided to bow out in the next election will be entitled to severance-pay lump-sum payments worth half of their salaries.

The government's decision to eliminate severance pay for public servants who voluntarily quit, leave or retire from the public service was the first major concession extracted from unions, despite a long battle to save it.

Public servants accumulated one week of pay for every year worked, which they could collect when they voluntarily left, resigned or quit the public service. The Conservatives abolished it and are now cashing out employees for the severance pay they earned in order to wipe the $6 billion liability off the books. The move is expected to eventually save $500 million a year.

Aaron Wudrick, federal director of the Canadian Taxpayers Federation, said the severance paid to public servants and MPs for voluntary departures can't be compared. He argued the severance package is an incentive to ensure MPs who want to leave actually finish their terms, thereby avoiding the cost and disruption of byelections.

MPs are entitled to various allowances if they resign, decide not to run or are not re-elected, depending on their age and years of service.

Those who have less than six years of pensionable service when they leave are entitled to both severance – half a year's pay – and a withdrawal allowance, which is a lump-sum payment of what they paid into the pension plan, with interest.

MPs who have six years of service and are under the age of 55 are entitled to severance but those who are 55 or older aren't. They can start collecting their pensions.

In this round of bargaining, the government wants to abolish accumulated sick-leave benefits for unions as part of its drive to reduce absenteeism and replace it with new disability plans. Clement has said his mandate to reform sick leave and disability management is limited to public servants and doesn't extend to MPs.

MPs currently get unlimited sick leave. They are required to submit regular attendance reports when the House is sitting but illness and absences for official business are considered as "days of attendance."

But few perks spark controversy like pensions. Wudrick said Canadians have long envied public servants' pensions and those of MPs are even better.

The Conservatives brought in sweeping changes to pensions for both MPs and public servants that will force them to pay more and work longer before they can retire with full pension benefits. Both are expected to foot half the bill for their pension contributions by 2017 – MPs now pay 14 per cent – and the retirement age is increasing from age 55 to 65.

The changes for MPs, however, don't come into effect until January 2016, after a new Parliament is elected — which is a big incentive for long-serving MPs to reconsider whether they want to seek re-election in 2015.

"They have come a long way to bring those down … they were outrageous before and now they are generous compared to the ordinary Canadian," said Wudrick.

By the Numbers

- **2.3 per cent:** Pay increase MPs will get as of April 1.
- **0.5-per-cent:** Pay increase the government has offered its public sector unions in each of the next three years.
- **$163,700:** Current base salary of an MP
- **$167,400:** New salary of an MP as of April 1.
- **$138,700:** Current base salary of a senator.
- **$142,400:** New salary of a senator as of April 1.
- **$334,800:** Total amount the prime minister will earn as of April 1.
- **$247,500:** Salary that ministers, the Speaker and leader of the opposition will make as of April 1.

Public servants: Women outnumber men two-to-one for disability claims

Kathryn May, Ottawa Citizen, March 5, 2015

Women in the public service go on disability leave at almost twice the rate of men, a problem some experts say should be addressed as part of the government's new disability management scheme.

The federal disability insurance plan, managed by Sun Life Financial, is the biggest in Canada. A Sun Life report obtained by the Citizen shows women have ended up on long-term disability at rates vastly disproportionate to their numbers in the public service for more than a decade, especially for mental health conditions.

"It's a crisis, a toxic mix of gender, age and work strata … and it can no longer go unnoticed. The government has an obligation and duty to care," said Joseph Ricciuti, president of SEB Benefits and HR Consulting.

"In the meantime, the poor disability-claims numbers speak for themselves and will continue to impact women in the workforce, who are the hardest-hit and paying the socio-economic price."

The Sun Life report shows 11,670 federal employees are now on disability collecting benefits for anywhere from a few months to 25 years or more. The plan's membership hit a peak in 2010, when it covered about 242,000 public servants. (The bureaucracy has been shrinking with the Conservatives' downsizing, falling to about 219,400 today, while the average age of those covered increased from 43.8 years old to 44.6.)

In absolute numbers, 1,968 women were approved for disability in 2013 compared with 864 men. Women on disability have outnumbered men by at least two-to-one every year for the past decade.

Some of this difference can be explained because there are more women than men in the public service: women today account for about 55 per cent of the workforce.

But even accounting for this, the rate of approved claims per 1,000 women is still 80 to 90 per cent higher than the rate per 1,000 men for the period between 2006 and 2013.

In 2013, the rate of approved claims per thousand for women was 92 per cent higher than for men.

Experts have scratched their heads for years over what's behind the gender imbalance, but the issue doesn't appear to be among the reasons the government is overhauling the way sick leave and disability are managed in the public service. Its overhaul is the first major change in nearly 45 years.

Shannon Bittman, vice-president of the Professional Institute of the Public Service, said unions hoped the issue would be addressed when Treasury Board launched its $5.6-million disability management initiative several years ago in a bid to get a handle on absenteeism and improve workplace health.

The main reform from that initiative is the government's current offer at the bargaining table to scrap sick leave and replace it with a short-term disability plan, a move unions say won't fix the problem.

"If they are truly interested in the health of their employees and ensuring they have a healthy workplace, then I find it difficult to comprehend why they are not trying to get to the root cause of why this happening," Bittman said. "Unless we identify the causes, we are blindly going for solutions."

This week, the giant Public Service Alliance of Canada upped the ante at contract negotiations with a "mental health" proposal aimed at getting at those root causes.

The government has four separate disability plans covering federal employees. The plan managed by Sun Life Financial is the largest and covers all unionized federal workers.

The report shows the largest numbers of men and women go on disability in mid or late career, with most claims clustered around those aged between 45 and 59. The average age for women approved for disability in 2013 was 46 years, compared with 49 for men.

By far the biggest driver of claims is mental health, led by depression and anxiety.

These claims have doubled since the 1990s, when they accounted for 24 per cent of claims. They represented nearly half of all claims by 2012, dipping to about 45 per cent in 2013 when Sun Life took steps to tighten up claim approvals. The next closest cause of claims is cancer, which accounted for about 14 per cent of claims.

In 2013, 47 per cent of all claims approved for women were for mental health conditions. Among men, claims for mental illness accounted for 39 per cent.

Linda Duxbury, a professor at Carleton University's Sprott School of Business, said she would expect women's claims to be 20- to 30-per-cent higher because there are more of them and women always report more. But she said an almost two-to-one difference "is much higher than what I consider normal and there is something serious underlying there."

Duxbury worries the problem is too often dismissed as a gender issue, blamed on women who can't cope with menopause, child or elder care, or with juggling the demands of home and work.

Linda Duxbury, business professor at Carleton University's Sprott School of Business, says an almost two-to-one difference 'is much higher than what I consider normal and there is something serious underlying there.'

"If I was the government I would want to know what is behind those numbers. Is it gender and age? Or is it the position or level or years of service?" she said.

"My point is: Don't assume it's gender just because it looks like a gender problem. If you have scotch and water you get drunk; if you have vodka and water or rye and water you get drunk — so people conclude that water is the problem.

"So don't blame it on gender because it's easy. The fix is very different if the job is the problem, and so are the consequences."

That gender gap was even more pronounced among the younger, under-40 population, where claims in 2013 were fewer but the rate of disability among women compared to men was closer to three-to-one for some age groups, such as those between 35 and 39, and between 40 and 44.

The number of claims is higher among all workers over age 45, but the gap between men and women narrows.

Duxbury said the reasons aren't clear, but those under age 40, especially women, are typically dealing with family responsibilities and small children, while older workers may be dealing with burnout from work stress.

There's been much speculation over what's wrong with the federal workplace that was once dubbed the "depression capital of Canada."

A Statistics Canada report found that Canada's public servants are absent — including on disability — more than workers in the private sector, and that much of that difference can be explained because they are unionized, a higher proportion are women, and they are older than the rest of the labour force.

Sir Cary Cooper, an international expert on workplace issues at Britain's Lancaster University Management School in England, said the pattern of more women on disability is similar in all developed countries, whether in private or public sectors, especially for mental health claims.

The big shift began more than a decade ago as countries lost their manufacturing jobs and work became more knowledge-based. Almost overnight, claims shifted from physical to mental ailments.

Cooper said women are more likely to admit a problem in the workplace and seek help than men. Women are still largely the front-line caregivers and those in their mid-40s are at the peak of family, work and financial demands. They are shooting for promotions, putting kids through college, and still "hitting the glass ceiling" while getting paid less than men.

For public servants, however, Cooper said a big job stress is the lack of clarity and autonomy in their work.

Cooper said the only way to reduce mental health claims is to audit the practices and culture of departments, which is what the Mental Health Commission of Canada's national standard for a psychologically healthy workplace was designed to do.

The government's own executives have pressed to adopt that standard in all departments as part of the ongoing Blueprint 2020 plan to modernize the public service. The mental heath demand that PSAC tabled at negotiations last week calls for the standard to be enshrined in employees' contracts.

"You have to get at what is causing this. Is it bullying, harassment, a long hours culture, poor management, people overloaded with work, inflexible work culture, women hitting the glass ceiling? Unpack that and you save a lot of money by dealing with it rather than redefining the benefits," said Cooper.

Duxbury expects an audit would find big problems with middle managers in the public service, who are mostly women. She calls them "stress sandwiches" between the upper and lower ranks who set the workplace's tone and culture.

Those middle managers include what the government calls the nearly 33,000 Ex minus 1 and 2s, the managers and supervisors in training for the executive jobs. They are typically between 46 and 48 years old.

Stephanie Rea, a spokeswoman for Treasury Board President Tony Clement, noted that women have higher claims for different illnesses. "For instance, there are more claims from women for cancer, and men significantly outnumber women for claims related to back pain," she said in email.

She said the department doesn't have the data to examine a possible correlation between occupation groups and long-term disability.

"We do, however, know that disability increases with age, a phenomenon that exists across the Canadian population as a whole."

To the unions, now locked in a standoff at the bargaining table over surrendering sick leave, it's all evidence of problems that must be addressed. Clement is proposing a new short-term disability plan that includes fewer paid sick days, more case management and earlier rehabilitation.

The unions have pushed for years for more case management and rehabilitation to get people back to work faster and off the path to disability. But they argue the government can do that without taking away existing sick leave.

"If the problem is a toxic workplace, which I think it is, then absenteeism is a symptom and the government is confusing the symptom with the problem," said Duxbury.

By the numbers for 2013

- **11, 670**: Number of unionized federal workers on active disability claims
- **219,400**: Number of unionized public servants covered by the federal disability insurance plan
- **44.6:** Average age of public servants in the plan
- **3,777**: Number of claims lodged by male and female public servants
- **2,832**: Number of claims approved for disability
- **1,968**: Number of women approved
- **864**: Number of men approved.
- **12.9**: Incidence rate or number of claims per 1,000 plan members. For women, 16.5 of every 1,000 were approved for claims. For men, 8.6 of every 1,000 were approved.
- **44.8**: Percentage of total disability claims for mental health conditions

Source: *Sun Life Financial report on the Federal Government Disability Insurance Plan.*

Public servants face credit checks, fingerprinting in new security screening regime

Don Butler, Ottawa Citizen, March 15, 2015

Unions representing federal public servants are up in arms over the government's plans to do credit checks of new and current public servants as part of its revamped security clearance screening process.

In an email, Treasury Board spokeswoman Lisa Murphy confirmed that mandatory credit checks are part of the government's new standard on security screening that came into effect last Oct. 20.

"An assessment of the trustworthiness and reliability of all individuals accessing sensitive information and/or assets must be undertaken to protect the interests and security of the government of Canada," Murphy said.

"A credit check will be reviewed as part of that assessment, in addition to other information to assist in assessing an individual's reliability and trustworthiness."

That other information could include fingerprints. A criminal record check is part of the new assessment and "may include an RCMP requirement to obtain the individual's fingerprints if deemed necessary by the functions of the position," Murphy said.

According to one source, who likened the new screening policy to a "gun registry for public servants," RCMP Commissioner Bob Paulson sent a letter in January to all government departments and agencies informing officials that all future security checks will require fingerprinting. The RCMP did not respond to Citizen questions about Paulson's letter.

The new security screening measures were adopted at a time of heightened security concern. By coincidence, they came into effect the same day that Martin Couture-Rouleau ran down and killed Canadian soldier Patrice Vincent and two days before Michael Zihaf-Bibeau stormed Parliament Hill after killed a sentry at the National War Memorial.

The new policy has alarmed the two main unions that represent federal public servants: the Public Service Alliance of Canada and the Professional Institute of the Public Service of Canada.

PSAC president Robyn Benson issued a statement expressing concern that the credit checks "will be an unwarranted gross violation of personal privacy" that could put people's livelihoods in jeopardy without cause.

"We are also fearful that the policy could be applied in an arbitrary way," Benson said.

Meanwhile, PIPSC president Debi Daviau said her union is very concerned about the "invasive nature" of the government's new security policy.

"The fingerprinting of employees who haven't any criminal record is particularly troubling and, given this government's addiction to the outsourcing of IT services, a major privacy breach waiting to happen," Daviau said in an interview. "How does the government propose to protect the private information of its own employees?"

PIPSC has filed six policy grievances on behalf of different employee groups it represents in response to the new screening procedures.

The grievances allege that the new procedures will result in an "impermissible breach of privacy" in violation of collective agreement clauses that oblige the employer to respect the Privacy Act and section seven of the Charter of Rights, which guarantees the right to life, liberty and security of the person.

PIPSC is also grieving the failure of the employer to consult the union prior to introducing and implementing the new screening standard.

It wants the standard revoked until proper consultation takes place and is seeking an order prohibiting the reintroduction of any elements that are determined to be "overly privacy invasive."

The new screening standard replaces a policy that had been in effect for more than two decades. Administered by Treasury Board, it applies to new hires by virtually all federal departments and agencies as well as current employees whose security status changes or is renewed.

Treasury Board's Murphy said the new policy standardizes security screening processes across all departments and agencies to ensure "consistent and fair screening practices."

She said the information gathered during security screenings will be protected by the provisions of the Privacy Act, which lays out how federal departments and agencies should handle personal information. The Office of the Privacy Commissioner of Canada oversees compliance with the act.

The new policy says security screening is "a fundamental practice that establishes and maintains a foundation of trust within government, between government and Canadians, and between Canada and other countries." A valid security status or security clearance is a condition of employment with the federal government.

One of the screening activities described in the policy is "financial inquiry," done to assess whether an individual poses a security risk "on the basis of financial pressure or history of poor financial responsibility."

It says financial inquiries include, as a minimum, a full consumer credit report from a credit reporting agency, providing information on an individual's credit history, liens, judgments and bankruptcy. It does not include a credit score, the policy says.

As part of the screening process, the RCMP is responsible for maintaining a national repository of criminal history records and using it to see whether an individual has a criminal record. The Canadian Security Intelligence Service (CSIS) is responsible for conducting appraisals of reliability and loyalty to Canada.

The new policy says personal information collected on security screening forms will be disclosed to security screening service providers in government, such as the RCMP and CSIS, and some outside government, such as credit bureaus, "in order for the verifications, inquiries and assessments required for security screening to be conducted."

The policy lays out three different levels of security screening.

One is reliability status screening, which must be conducted for everyone employed by or working in federal departments and agencies. Enhanced screening is required for those with reliability status who perform security and intelligence functions or duties that support those functions.

Another is secret clearance, which builds on reliability status screening and is conducted for positions requiring frequent and unsupervised access to government information, assets, facilities or IT systems categorized as secret.

The third, top secret clearance, is reserved for those with frequent and unsupervised access to top secret information, assets, facilities or IT systems.

Screening for reliability status and secret clearance must be renewed every 10 years. For top secret clearance, renewal is necessary every five years. Those who work for companies that win government contracts also need to undergo screening to obtain site access clearance, which can be valid for up to 10 years.

While those applying for security clearance must provide consent for the collection and disclosure of their personal information, those who refuse would likely lose their security status or clearance, which could result in termination of employment or cancellation of a contract.

Grieving the new security policy

Here is the text of the policy grievance the Professional Institute of the Public Service of Canada has filed on behalf of six employee groups it represents:

The institute grieves that the employer's "Standard on Security Screening" effective October 20, 2014 results in an impermissible breach of privacy in violation of Articles

5.01 and 6.01 of the collective agreement, including the obligation on the employer to exercise its management rights in a manner which does not violate the Privacy Act and section 7 of the Canadian Charter of Rights and Freedoms. The Institute also grieves that the introduction and implementation of this standard occurred without consultation in breach of Article 37.

The Institute seeks a declaration of breach and a revocation of the Standard until consultation occurs in a manner required under the collective agreement.

The Institute also seeks an order prohibiting the employer from reintroducing its Standard with any aspects that have been determined to be overly privacy invasive and in breach of the collective agreement.

CBC news

Tony Clement concern about electronic information access queried

CBC News, Dean Beeby, Canadian Press, March 8, 2015

Treasury Board President Tony Clement's dire warning about why the government can't release certain electronic data under access to information requests seems to have left his senior staff mystified, newly disclosed documents show.

In an interview late last year, Clement said that some database requests under the Access to Information Act can't be released in their original electronic format because the numbers could be manipulated and "create havoc."

At the time, Clement was responding to complaints that requests for electronic data often produced records in paper form that couldn't be scrutinized by a computer for patterns.

"That's the balancing act that we have to have, that certain files, you don't want the ability to create havoc by making it changeable online," he told The Canadian Press in an interview.

But emails from Clement's senior staff show the statement left them puzzled about why their minister would make the claim.

"It's a headscratcher for me. Any idea what the minister is referring to?" wrote one staffer after checking the morning headlines on Dec. 23.

"It’s a speculative thing, no actual occurrence to date … I can’t think of what has not been released due to this perspective," wrote another — Patrick McDermott, senior manager for open government systems at the Treasury Board secretariat. "What prompts this comment now is a mystery to me."

For several years, Clement has been touting the Harper government’s proactive online posting of federal databases for free downloading, partly to encourage businesses to mine the data for profit. Canadian corporations trail their counterparts around the world in capitalizing on so-called "big data."

The Open Data Portal now offers more than 240,000 free datasets, the vast majority from Natural Resources Canada, apparently without any concern that someone might use them to spread "falsehoods."

At the same time as pushing this data, though, federal departments have come under fire for failing to deliver individual, non-published datasets requested under the Access to Information Act in their original format, often recreating them in censored paper versions.

Departments have offered different explanations for delivering in paper format, but Clement’s comment was the first time a government official claimed the paper copies were designed to foil any statistical mischief.

"I’m a bit surprised that the [minister] would raise this — everyone in the OG (Open Government) community … is aware of the risk that data/info may be misused/applied/quoted etc. .. but that’s just the nature of the beast," McDermott wrote.

"The trick is to rebut the ‘falsification,’ not speculatively prevent it from happening in the first place."

Documents give differing version

Copies of the Treasury Board emails and other related materials were released under the Access to Information Act.

The background documents give a different explanation for refusing to release some electronic datasets in their original format: cost.

Some datasets contain details such as personal information that must be removed under the law, and recreating a dataset in a new digital version with the problematic information removed can be time-consuming.

"Would be costly to run a parallel system and create new version of documents with severances," says one email. "Our ATIP group has indicated if they had an actual data sheet with no severances — they would release."

Regulations under the Access to Information Act do not guarantee that someone making a request receives records in the preferred format. Instead, the head of each institution can

determine that converting the information to the preferred format is unreasonable, say the documents.

A spokeswoman for Treasury Board did not comment directly on the released emails from Clement's senior staff.

"Data and information held by the government of Canada must meet privacy, confidentiality and security standards before it can be released in open formats," Lisa Murphy said in a statement.

"Datasets must also undergo basic quality checks before being released by departments, to ensure that data meets release criteria and global standards for open data."

"It is not possible for the government of Canada to release every dataset in its inventory on open.canada.ca, as some do not meet these criteria and standards," she wrote.

Ottawa set for rematch in top court over judicial appointment

SEAN FINE, The Globe and Mail, March 15, 2015

The Conservative government is facing a rematch in the Supreme Court of Canada after the unprecedented rejection last year of a judge it wished to appoint to the country's highest court.

At a hearing next month, the court will consider the legality of another senior judicial appointment – this one of Justice Robert Mainville to the Quebec Court of Appeal last June. A government victory would provide a way around last year's Supreme Court ruling that Justice Marc Nadon was not eligible for a Quebec seat on the Supreme Court because he came from the Federal Court of Appeal. A defeat would be a second embarrassment in two years for Prime Minister Stephen Harper. The Supreme Court's 6-1 ruling was the first time in a common-law country a top court has overturned an appointment to its own bench.

Demonstrators in Toronto joined others across Canada to protest the government's proposed anti-terrorism legislation. Protesters say Bill C-51 threatens civil liberties.

The issues in the Mainville case are strikingly similar to those in the case of Justice Nadon last year. Justice Mainville also was a member of the Federal Court of Appeal,

and some observers said his appointment to the Quebec court appeared to be an attempt to make him eligible for the Supreme Court.

“There’s a legal adage we teach first-year students: ‘In law, one may not do indirectly what she may not do directly,’” said Maxim St-Hilaire, a law professor at the University of Sherbrooke.

The case, like the previous one, pits the federal cabinet’s appointment power against rules meant to protect Quebec’s unique system of civil law.

And the combatants are the same, too. Toronto lawyer Rocco Galati, who initiated the challenge that unseated Justice Nadon from the Supreme Court, brought the case against Justice Mainville. And the Quebec Attorney-General’s office has taken it up, as it did with the Nadon case.

The impact of the Nadon case was enormous, all of it without precedent in Canada. The court operated one judge short for 10 months because Justice Nadon stepped aside when the case was launched. The Prime Minister publicly accused Supreme Court Chief Justice Beverley McLachlin of improper conduct in the case.

And after The Globe revealed the Prime Minister’s secret list of candidates, which included Justice Mainville, for the spot that was meant for Justice Nadon, the government cancelled parliamentary involvement in the selection of Supreme Court judges. Two judges, including a replacement for Justice Nadon, have since been chosen.

Justice Nadon had been on the Federal Court’s appeal and trial divisions for 20 years when Mr. Harper named him to one of the three Supreme Court seats reserved for Quebec. But the court ruled Federal Court judges are ineligible for those seats under a law aimed at preserving current legal and social knowledge among the court’s Quebec’s judges.

If Justice Mainville’s appointment to the Quebec Court of Appeal is ruled to be legal, it could allow governments to skirt the Nadon ruling by appointing Federal Court judges to the Quebec court to render them eligible for the Supreme Court.

Justice Mainville had sat on the Federal Court’s two divisions since 2009, and had been a member of the Quebec bar since 1976. Canada’s 1867 constitution said judges for Quebec courts must be chosen “from the bar” of that province. The wording is similar to the clause in the Supreme Court Act at issue in the Nadon case: Quebec judges on the Supreme Court must be chosen “from among the advocates of that province,” or a specified court.

The Quebec Court of Appeal ruled Justice Mainville eligible for the Quebec court, saying that, since Confederation, the clause has been understood to include qualified candidates who have been away from the Quebec bar.

Mr. Galati is appealing the ruling, saying the case is about government trying to evade the Nadon ruling. “It makes a farce of Nadon,” he said in an interview.

Few legal observers last year expected Mr. Galati to bring down a Supreme Court judge. Once again, many scholars are casting him as an underdog.

Paul Daly, who teaches law at the University of Montreal, believes a government victory is so likely that the Supreme Court could rule during the hearing or soon after.

“A lot of people suggested the Nadon decision put the Federal Courts in a bad light,” he said in an interview. “I don’t think that’s accurate, but I think [the ruling] might have given rise to the idea that Federal Court judges are less able to protect the civil law tradition. I expect the Supreme Court to dispel that idea” in its Mainville decision.

But Prof. St-Hilaire is adamant Mr. Galati will win.

“In sum, I see this case as a test for our law’s fidelity to fundamental principle and important struggles of our [pre-Confederation] past,” he said in an e-mail. The principle is respect for Quebec’s civil law tradition, and the pre-Confederation struggles were to establish that principle.

No matter what happens, the Supreme Court has no room for Justice Mainville because its Quebec seats are filled.

Justice Mainville was sworn in to the Quebec court, but has not heard any cases pending the outcome of the case.

Ottawa to give juries bigger role in determining life without parole

Sean Fine, The Globe and Mail, March 11, 2015

The Conservative government is moving to give juries an important role in determining whether convicted killers receive a life sentence without the possibility of parole, under a bill introduced in Parliament on Wednesday.

Juries would have to decide, among other things, if a planned and deliberate killing was “brutal” – though the law does not offer any criteria for determining that. If the answer is yes, the jury would be asked if it wishes to make a non-binding recommendation to the judge for a sentence of life without parole.

And if a judge accepts the recommendation, life without parole would mean freedom is impossible, even on appeal to cabinet after 35 years, except in cases of terminal illness or other humanitarian grounds, Justice Minister Peter MacKay told reporters.

"This means essentially they will take their last breath behind bars," he said of the bill. The bill spells out, however, that a prisoner can be released after 35 years if cabinet decides that the "fundamental purpose" of the sentencing has been achieved.

Mr. MacKay said the purpose of the bill is to protect Canadians from repeat offenders, denounce serious crime and insulate victims from repeated parole hearings. He also said the bill would affect mostly offenders who under current rules are denied release because the National Parole Board deems them too dangerous. He said he did not know how many released murderers kill again.

The Life Means Life Act would be the biggest change in sentencing since the abolition of capital punishment in 1976.

The current penalty for first-degree murder is an automatic life sentence, with the first chance at day parole after 22 years, and full parole after 25 years. But the new law would make a life sentence without any parole mandatory in cases of especially brutal murders, killings of police or prison guards and killings in the course of a sex assault, act of terrorism or kidnapping. Judges would have discretion to order life without parole in planned and deliberate killings that are not especially brutal.

The bill would also make some cases of second-degree murder eligible, if the killer had previously been convicted of a murder. Judges would have discretion in those cases. Currently, judges may set parole at 10 to 25 years for second-degree murder, after receiving a non-binding recommendation from a jury.

Legal observers say the jury's role in determining whether a life sentence without parole is applied is a marked departure from Canadian sentencing traditions. "This is revolutionary in Canadian criminal procedure, asking juries to answer these specific questions," Queen's University law professor Allan Manson said.

Juries were not asked for recommendations when Canada had the death penalty prior to 1976. But as of 1960-61, judges had to ask juries if they wished to recommend clemency.

Archie Kaiser, who specializes in criminal law at Dalhousie's Schulich School of Law, called the jury's proposed new role a "sad echo" of the death-penalty cases. "Maybe this sad echo is appropriate, as the bill introduces a new kind of sentence, which will be seen by many as equivalent to death." He called the jury's role "another, more retributive expansion of jury powers into the normally judicially controlled sphere of sentencing."

The jury's finding of a "brutal" murder triggers a review by the judge, no matter what the jury's recommendation is. The judge must decide if the killing was "of such a brutal nature as to compel the conclusion that the accused's behaviour in the future is unlikely to be inhibited by normal standards of behavioural restraint."

The bill provides for a review by the public safety minister after 35 years, if the prisoner requests one. The minister could ask the parole board to assess the offender's case. But the minister may conduct that review on his own, without asking for the assessment. Either way, the minister would then make a recommendation to cabinet, which is responsible for the ultimate decision.

And the bill would take away the possibility of escorted absences, except for medical reasons or court hearings, until after the 35-year point. No unescorted absences would be allowed. Currently, all lifers except those in maximum security prisons may receive absences, escorted or unescorted, for a variety of reasons, including work, as a stepping stone to a gradual release.

'Life means life' bill will be 'very difficult' to defend against Charter challenge: U of O law prof

Rachel Aiello, The Hill Times, March 11, 2015

The federal government introduced its latest law and order bill this afternoon. In the foyer of the House of Commons, Justice Minister Peter MacKay announced Bill C-53, the "Life is Life" Act.

"Our Government remains committed to keeping our streets and communities safe for Canadians and their families while also ensuring that the rights of victims remain at the very heart of our criminal justice system," Mr. MacKay said. "I am proud that our government has introduced this new legislation, which would ensure that those who commit the most heinous crimes in Canada face the full force of the law and are kept behind bars for life. Our government will continue to make principled decisions that reflect the values of Canadians and ensure that the most dangerous offenders in Canada cannot pose a risk to Canadians or their families."

It follows up on one of the Conservatives' October 2013 Throne Speech promise to change the law to make it so a life sentence means a sentence for life.

The opposition parties have indicated they will wait until they see the bill to make any judgments, but in his post-caucus scrum on Wednesday, NDP Leader Tom Mulcair (Outremont, Que.) said, "This applies to so few people, and judges already have the power to declare someone a dangerous offender. … This is more about Stephen Harper playing politics than it is any real issue."

Previously, Liberal House Leader Dominic LeBlanc (Beauséjour, N.B.) told The Hill Times the measure "may well be one where the message and the desk thumping doesn't actually relate to the text of the legislation," questioning whether the "actual measure will reflect the sound-bite they're after."

Carissima Mathen, an associate professor of law at the University of Ottawa and a constitutional and criminal law expert has said that removing all discretion from sentencing judges would be "very difficult" to defend against a Charter challenge.

"It seems pretty clear that removing all discretion from sentencing judges would probably be very difficult to defend against a Charter challenge, because sentencing is supposed to be tailored to the individual," she said in an earlier interview with The Hill Times. "The idea that there is no possibility that at some point in time it would be in society's interest to release you, to have that applied sort of universally, is a tough sell."

This new bill seems to draw some similarities to a private member's bill Conservative MP Colin Mayes introduced last year. It's currently being studied in the House Justice and Human Rights Committee.

Introduced April, 2014, Mr. Mayes' (Okanagan-Shuswap, B.C.) bill, C-587, Increasing Parole Ineligibility, "Respecting Families of Murdered and Brutalized Persons Act," would amend the Criminal Code to ensure that anyone convicted of abducting, sexually assaulting, and then murdering that person will be sentenced to life without a chance of parole until the person has served between 25 and 40 years in prison. The bill would give judges discretion as to the length of time without parole based on the specific case.

"While some may believe that the current thresholds for parole represent an appropriate period of incarceration for a violent offender who abducted, raped, and murdered their victim, many Canadians consider this to be insufficient in instances of extreme violence and murder," Mr. Mayes said when he appeared before the committee on Feb. 23.

The government bill would end parole for those convicted of murders involving sexual assault, kidnapping, terrorism, a police or corrections officer, or other "heinous" offence, and give Cabinet power to approve or deny parole in these instances (rather than the National Parole Board) only after 35 years.

This, despite the Office of the Correctional Investigator noting that 99 per cent of offenders released on day parole do not reoffend, and 97 per cent of those on full parole do not reoffend.

When he spoke on the bill in September 2014 at second reading, Liberal MP Wayne Easter (Malpeque, P.E.I.) said that the bill adds to the "completely disjointed approach to amending the Criminal Code." Mr. Easter, who voted in favour at second reading of Bill C-587, said the bill is a "solution in search of a problem," and if he were a cynical person, "this private member's bill is a solution in search of a fundraising letter."

Stan Stapleton: The hope of parole serves a purpose

Stan Stapleton, Contribution to the Ottawa Citizen, March 9, 2015

***Stan Stapleton**, formerly a correctional officer and program officer for over 30 years, currently serves as the president of the Union of Solicitor General Employees (USGE) which represents 7,000 federal Correctional Service of Canada employees.*

Public safety is clearly on the minds of Canadians. And for good reason, given recent domestic and international events. So, it perhaps comes as no surprise that the federal government would introduce the possibility of keeping some of Canada's most egregious offenders in jail – for good. As someone who has worked extensively in several federal correctional facilities, I can appreciate the sentiment.

Offenders who have been convicted of disturbing crimes leave little room for sympathy – no matter how difficult their life circumstances. As a long time program officer in a maximum security institution, I actively worked with offenders – known as "lifers" – who were serving 25-year sentences, sometimes less. And while their crimes may have been heinous, these individuals are fully aware that, because of their actions, not only did they rob their victims of a future, but they also robbed themselves of one.

Despite the severity of the crimes, Canada has been a leader in terms of keeping recidivism rates among this cohort very low. By the time most lifers are eligible for parole, they are often in their 50s or 60s. In my experience, those who are deemed fit for life on the outside are most concerned about adapting to a world that has rapidly evolved without them, not with recommitting a crime. They are genuinely motivated by the prospect of a few years outside of the "pen", where preparing a meal, taking a walk, and connecting with what family remains, are possible.

Take that hope away and the risks of suicide and violence against staff and other prisoners begins to rise. Without the hope of parole, they quite literally have nothing to lose. And the prospect of incarcerating older, more frail offenders who pose minimal risk – after decades in prison – has the potential to divert resources from those who actually benefit from rehabilitation.

Of course, offenders who do not demonstrate the capacity or willingness to rehabilitate never escape the tight grasp of Canada's Parole Board which can deny parole or set very strict conditions for an offender's release. Violate those conditions and offenders can find themselves back behind bars very quickly.

Few Canadians know that there are approximately 8,800 offenders under supervision by Correctional Service Canada in communities across Canada. An additional approximately 13,000 individuals are currently incarcerated. The overwhelming majority of these offenders will be released back into the community, even if the legislation changes.

Without the work of those employed by Correctional Service Canada (CSC), including thousands of parole officers, program officers, institutional teachers and other correctional staff who work to facilitate an offender's transition to life on the outside, Canadians would be much less safe. Unfortunately, CSC was hit hard by the federal Deficit Reduction Action Plan adopted two years ago and many employees report that they are having to do their jobs in a much leaner environment, despite the high stakes. Costs are being curtailed at almost every level. This includes increasing the number of offenders that parole officers must supervise in institutions and in community correctional facilities.

Whatever the fate of the proposed legislation, it won't – in my view – result in safer streets. That job is left to those who work day in and day out with offenders. Investing in the agencies which are at the front lines of that work is crucial. It's time for Canadians to better understand the nature of this work and its tremendous value in keeping Canadians safe.

Les Premières nations pourraient contester C-51 devant les tribunaux

JOËL-DENIS BELLAVANCE, La Presse, le 12 mars 2015

Les Premières nations avisent le gouvernement Harper qu'ils ont la ferme intention de contester le projet de loi antiterrorisme devant les tribunaux s'il est adopté dans sa mouture actuelle.

Le chef national des Premières nations, Perry Bellegarde, a lancé cet avertissement ce matin durant son témoignage devant le comité parlementaire qui étudie le projet de loi C-51.

Il a soutenu que le gouvernement Harper n'a pas respecté ses obligations constitutionnelles de consulter les peuples autochtones avant de déposer son projet de loi qui accordera notamment de nouveaux pouvoirs au Service canadien de renseignements et de sécurité (SCRS) et permettra le partage d'informations liées à la sécurité nationale entre diverses agences et organisations gouvernementales.

Selon M. Bellegarde, le projet de loi C-51 donnera le feu vert aux forces de l'ordre pour épier les gestes des peuples autochtones qui s'opposeraient à certains projets de développement des ressources naturelles qui empièteraient sur leur territoire.

« La seule option qui s'offre au gouvernement fédéral est de retirer ce projet de loi et de consulter les Premières nations adéquatement. Nous n'avons pas été consultés même si ce projet de loi a un impact sur nos droits », a dit le chef national Perry Bellegarde.

« Nous refusons d'être considérés comme des terroristes sur nos propres terres », a-t-il ajouté.

Plus tôt cette semaine, le ministre de la Sécurité publique, Steven Blaney, a dit jugées « ridicules » les craintes de plusieurs groupes et experts selon lesquelles le projet de loi mettrait en péril les manifestations pacifiques au pays.

D'autres témoins ont aussi taillé en pièce plusieurs dispositions du projet de loi devant le comité jeudi matin.

L'avocat Paul Champ a soutenu que la clause permettant un plus grand partage d'informations entre les agences et organisations du gouvernement entraînerait inéluctablement des violations importantes des droits de la personne. Il a soutenu que des informations erronées qui ont été partagées dans le passé ont conduit des individus tout droit vers la torture dans le passé en citant notamment le cas de Maher Arar.

« Ce projet de loi transformera tous les employés du gouvernement en espions », a-t-il laissé tomber.

La directrice de Greenpeace Canada, Joanna Kerr, a exprimé ses vives inquiétudes au sujet des clauses du projet de loi sur le droit de manifester ou d'exprimer sa dissidence.

Selon elle, le projet de loi est trop vague en ce qu'il accorde aux autorités trop de discrétion pour arrêter des dissidents politiques légitimes.

Elle a souligné que des changements sociaux importants tels que l'obtention du droit des votes pour les femmes n'auraient pas eu lieu sans le droit de participer à des manifestations massives non violentes.

La ségrégation raciale aux États-Unis n'aurait pas pris fin sans les sit-in, les marches, les manifestations publiques et la résistance pacifique, a-t-elle aussi souligné.

« Tous ces mouvements, et ceux dirigés contre l'esclavage et l'apartheid entre autres, ont utilisé des moyens pacifiques, mais soi-disant illégitimes, pour affronter des lois injustes

et défier les conceptions sociales du bien et du mal. Ils ont réussi à accélérer le changement qui était nécessaire de toute urgence », a-t-elle affirmé.

« Pensons-nous vraiment que les intérêts de la sécurité nationale peuvent être assurés en limitant les options offertes à la société civile de manifester contre l'injustice, la corruption, le racisme ou la pollution ? C'est exactement ce que le projet de loi C-51 suggère au nom de la sécurité nationale », a-t-elle encore dit.

Les députés conservateurs du comité ont rétorqué que seuls les groupes ou les individus qui comptent causer des dommages aux infrastructures ou représentent une menace à la sécurité nationale sont visés par ces mesures.

En tout, le comité parlementaire de la sécurité publique doit entendre une cinquantaine de témoins. Le gouvernement Harper soutient que ce projet de loi est nécessaire pour donner les outils aux forces de l'ordre pour contrer la menace terroriste. Le NPD s'oppose farouchement au projet de loi, jugeant certaines clauses dangereuses, tandis que le Parti libéral compte l'appuyer, bien qu'il souhaite des mécanismes de surveillance plus robustes pour encadrer le SCRS.

Niqab welcome in federal public service: Clement

By Elizabeth Thompson, iPolitics, March 11, 2015

Muslim women can't wear a niqab at a citizenship ceremony but they are perfectly free to wear them working for Canada's public service, says Treasury Board President Tony Clement.

In an interview with iPolitics, Clement said what counts for him as the head of the federal public service is how well someone gets the job done – not what they are wearing.

"If you are in your place of work or privately in your home or in your private life, what you wear is of no concern to the state," Clement explained. "But the state does have a

concern on citizenship and citizenship is a public demonstration of loyalty and allegiance to Canada and its values and its principles and that's where the niqab is inappropriate."

Clement said to his knowledge hijabs and niqabs "are frequently worn" in the public service.

"I'm sure we have employees in the public sector who wear a niqab – I'm sure we do."

"If you're carrying on your job and doing your job well then I don't think we have a problem with that.

The one exception, he said, might be if a hijab or a niqab posed an operational or safety problem.

"I can't talk about bona fide occupational requirement – if there is an occupational requirement that requires something that might be different."

Clement's comments come as debate is raging over the Conservative government's rhetoric about Canada's Muslim community as it seeks to counter Islamic terrorism. In an election year when fear and security have become issues in the wake of the October attacks on St. Jean-sur-Richelieu and Ottawa, the government has been accused of feeding that fear in the promotion of its sweeping anti-terrorism legislation, Bill C-51, among other choices.

One flashpoint is its decision to prohibit Muslim women from wearing a niqab during citizenship ceremonies because it covers the lower half of their face.

Tuesday the issue became a lightning rod for a clash between Prime Minister Stephen Harper and Liberal Leader Justin Trudeau a day after Trudeau delivered a speech defending the right of women to choose to wear niqabs and drawing parallels between the Harper government's attitude towards Muslims and racist policies decades ago that sought to exclude groups like Jews and Sikhs from Canada.

"We all know what is going on here," he told the crowd. "It is nothing less than an attempt to play on people's fears and foster prejudice, directly toward the Muslim faith."

"This is not the spirit of Canadian liberty, my friends. It is the spirit of the Komagata Maru. Of the St. Louis. Of 'none is too many.'"

Responding Tuesday to a question from Trudeau, Harper shot back, saying "almost all Canadians oppose the wearing of face coverings during citizenship ceremonies."

"Why would Canadians, contrary to our own values, embrace a practice at that time that is not transparent, that is not open and frankly is rooted in a culture that is anti-women. That is unacceptable to Canadians, unacceptable to Canadian women."

While Trudeau accused the government Monday of trying to divide Canadians, Clement said it is Trudeau who is dividing people.

“For a man who was saying that he represented not dividing Canadians, he was dividing Canadians and Canadians actually aren’t divided on the question of the niqab. It’s 90 per cent in favor of our position that a formal, public government of Canada citizenship ceremony is not the place for a niqab.”

“I believe that represents the values of Canadians. I believe it is a strong statement in favor of women’s equality and that is a fundamental aspect of Canadian citizenship that we recognize women’s equality.”

“He is seemingly, now, on the side where that is all discounted. His position is much more divisive, in my estimation, and I think he’ll pay a political cost for that.”

While the greater Toronto area, home to Canadians from many different ethnic backgrounds, is expected to be a key battleground in the upcoming federal election, Clement said he doesn’t think Trudeau’s position will tip the balance in favour of the Liberals in those ridings.

“Even in these ridings where new Canadians live and work and play, it’s overwhelming in terms of their view that the niqab is inappropriate at that particular ceremony. Other parts of your private life, that’s a different story.”

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Port du niqab: oui dans la fonction publique, non pour la citoyenneté

La Presse, La Presse Canadienne, le 11 mars 2015

Une femme peut porter un niqab pour exercer un emploi dans la fonction publique, mais pas au moment de prêter serment de citoyenneté, selon le président du Conseil du trésor.

C'est la ligne que Tony Clement a tracée au cours d'une mêlée de presse, mercredi, à la sortie du caucus du Parti conservateur.

La question du port du voile était revenue sur le tapis la veille, alors que le premier ministre Stephen Harper a déclaré en Chambre que le signe ostentatoire était enraciné dans une «culture misogyne».

Il avait profité d'un droit de réplique à une question du chef libéral Justin Trudeau pour critiquer celui-ci sur sa prise de position en faveur du port du niqab lors des cérémonies de citoyenneté canadienne.

Les conservateurs et les libéraux s'accusent mutuellement depuis quelque temps de diviser les Canadiens sur les questions de la religion et de l'ethnie.

Le débat sur le port du voile a été provoqué par la décision du gouvernement Harper de contester un jugement de la Cour fédérale qui accordait à une femme le droit de prêter serment à visage couvert après s'être formellement identifiée.

Le chef du Nouveau Parti démocratique (NPD), Thomas Mulcair, s'est rangé derrière la décision du tribunal ontarien il y a deux semaines.

Il avait alors accusé le gouvernement de «diaboliser» les musulmanes et déclaré que celles-ci étaient «souvent des boucs émissaires pour des débats politiques», et qu'il trouvait cela «navrant».

Pressé de questions par les journalistes, mercredi, M. Mulcair a refusé à plusieurs reprises de dire s'il jugeait acceptable qu'une employée de l'État porte un niqab dans le cadre de ses fonctions.

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Fonds de grève des fonctionnaires en vue des négociations avec l'État

Michel Corbeil, Le Soleil, le 12 mars 2015

(Québec) Le Syndicat de la fonction publique du Québec a entrepris une tournée auprès de ses membres pour constituer un fonds de grève en vue de l'affrontement qui se prépare avec l'État-employeur.

Jointe mercredi, la vice-présidente responsable du dossier au SFPQ, Maryse Rousseau, a résumé la volonté des 31 000 adhérents. «Les gens disent qu'on est prêt, qu'on est sérieux. On se donne les moyens pour aller à la guerre.»

Ces moyens passent par un vote visant à autoriser le prélèvement d'une cotisation syndicale spéciale. Elle équivaut à 0,7 % du salaire et s'ajoute à la contribution de base de 1,3 %, qui constitue le fonds de défense habituel.

Pour le syndiqué, le somme totalise environ 30 $ par paye - leur salaire est versé toutes les deux semaines. Le SFPQ a insisté sur le fait que l'exercice est démocratique. Ce n'est pas imposé par le syndicat, mais endossé par un vote, a souligné Mme Rousseau.

Les consultations ont débuté en février et se poursuivront jusqu'à la fin avril. Le Syndicat ne dévoilera pas le résultat avant que le bilan final ne soit complété. Cependant, les 6000 membres que le SFPQ compte à l'Agence du Revenu se sont déjà prononcés en sa faveur.

La syndicaliste a pris soin de souligner que, «si nous en avons besoin (pour conduire des débrayages), nous avons l'argent. Si nous n'en avons pas besoin, nous rembourserons avec intérêts.»

Avec le seul Fonds de défense professionnelle, si une grève était déclenchée, «les gens au SFPQ recevraient [...] 20 $ par jour. En conseil de négociations, ils se sont dits [...] on va fourbir nos armes», a expliqué la vice-présidente. Le montant a été fixé 100 $.

Situation variable

Le SFPQ n'est pas un poids lourd du Front commun qui a entamé les négociations avec Québec. Il représente 38 000 syndiqués d'un gouvernement qui en emploie environ un demi-million, réseaux de la santé et de l'éducation compris.

La question d'une caisse pour pallier la perte de salaire en raison de débrayage est à géométrie variable parmi les groupes qui ont entrepris les pourparlers pour renouveler les contrats de travail.

Le SPGQ (plus de 25000 membres) s'est doté d'un Fonds de grève, mais sans passer par une cotisation spéciale, mais par une formule de «prêts et marge de crédit». Ce sont les syndiqués qui voteront pour utiliser l'argent, a précisé le président Richard Perron.

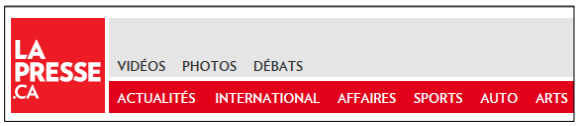
«Oh que oui! que nous sommes prêts pour aller à la guerre. C'est la première fois que le Syndicat est aussi sérieux», syndicat qui ne fait pas partie du Front commun parce qu'il estime avoir un énorme rattrapage salarial à faire.

Les grandes centrales syndicales - CSN, FTQ et CSQ - n'ont pas connaissance chez leurs affiliés «d'opérations semblables à celle du SFPQ». Ainsi, à la CSN, Louis-Serge Houle a précisé que la centrale n'a pas recours aux cotisations spéciales parce que le Fonds de défense professionnelle suffit.

L'Association professionnelle des ingénieurs du gouvernement du Québec (1500 membres) n'a pas de fonds de grève. Son président Michel Gagnon a souligné que, lors des deux dernières séries de négociations, la grève des heures supplémentaires s'est avérée un moyen de pression suffisant «tout en respectant les services essentiels», a-t-il insisté.

L'État-employeur et les syndicats sont «à des années-lumière» d'un accord salarial. Québec propose des hausses de rémunération de 3 % sur cinq ans, dont le gel salarial pour les deux premières années. L'alliance syndicale réclame trois hausses consécutives

de 4,5 % par an. Le SPGQ n'a pas chiffré ses demandes et revendique que les négociateurs patronaux «s'asseyent et évaluent la complexité de travail de nos membres».



Sortir le papier des palais de justice

JEAN-FRANÇOIS CODÈRE, La Presse, March 12, 2015

«Si on demandait à un avocat du XVIIe siècle de venir plaider dans nos palais de justice, il saurait presque exactement quoi faire tellement ça n'a pas changé.»

C'est avec cette constatation, exagérée en apparence, mais pas dénuée de vérité, qu'Amir Tajkarimi tente de faire comprendre l'état archaïque des procédures employées dans les palais de justice québécois. Et du même coup, de vendre la solution conçue par son entreprise, Lexop.

Difficile de le contredire. En cette époque d'informatique en nuage, de mégadonnées, de téléphones intelligents et de tablettes, l'immense majorité des procédures judiciaires dépend encore du papier.

«Si on enlève quelques salles d'audience et bureaux, le palais de justice, c'est un gros entrepôt de papier, estime M. Tajkarimi. Ça coûte cher à entretenir et ça ralentit les procédures.»

Lui-même avocat, c'est en 2010, alors qu'il travaillait au défunt cabinet Heenan Blaikie, que l'idée lui est venue. Exaspéré des délais engendrés par l'utilisation du papier, il souhaite créer une plateforme pour à tout le moins faciliter les échanges procéduraux entre avocats.

Pour ce faire, il commence par embaucher un concepteur de sites web, Jean-Olivier Bouchard, qui deviendra éventuellement l'un des cofondateurs de Lexop.

«Il commençait à me coûter cher, dit en rigolant M. Tajkarimi, et il était aussi intéressé de son côté à en faire une entreprise.»

Un autre associé, davantage spécialisé dans la programmation, Nima Jalalandi, se joindra éventuellement au groupe. Les trois cofondateurs ne se concentrent toujours pas à temps plein sur Lexop. M. Tajkarimi est pour sa part employé de la Banque Nationale depuis 2012.

D'abord l'échéancier

Le premier produit de Lexop est donc une plateforme qui permet aux avocats impliqués dans une cause d'établir rapidement l'échéancier. Il s'agit d'une étape qui est incontournable pour tous les dossiers ouverts à la cour et où il se perd beaucoup de temps, estime M. Tajkarimi.

«Un avocat peut gagner jusqu'à 65% de temps sur cette étape, fait-il valoir. Souvent, c'est une étape qui prend tellement de temps que les avocats ne le facturent même pas à leurs clients. Ils se disent qu'ils ne peuvent pas facturer leur client parce qu'ils n'arrivent pas à trouver une date avec l'autre avocat, ils ont des remords éthiques.»

La plateforme Lexop permet notamment d'utiliser une signature électronique, ce qui élimine la nécessité d'imprimer chaque document, de le signer à la main puis de l'envoyer par télécopie.

Les avocats peuvent s'abonner gratuitement au service. Chaque dossier négocié par l'entremise de ce canal leur coûte ensuite 32$.

Il a fallu près de quatre ans de développement pour mener cette seule plateforme à bon port. Et beaucoup d'effort pour simplifier l'interface au maximum.

«Les avocats n'aiment pas trop le changement, constate M. Tajkarimi à propos de sa propre profession. S'il faut plus que trois clics, ils abandonnent. Et si tu donnes la moindre raison à un avocat de ne pas employer un logiciel, il va l'exploiter et ne pas s'en servir.»

C'est peut-être d'ailleurs pourquoi, selon lui, le vaste chantier d'informatisation de la justice québécoise, qui s'est étalé de 1999 à 2012, a finalement été voué à l'échec. Le projet, qui a coûté 75 millions de dollars, a fini par être abandonné, faute de progrès.

«Il faut que ça se fasse de façon modulaire, croit M. Tajkarimi. On donne un petit coup, les gens l'adoptent, on passe à une prochaine étape et on répète. Si on essaie de tout faire d'un coup, c'est trop gros.»

Une autre étape

C'est d'ailleurs l'approche qu'emploie Lexop. Maintenant qu'elle a livré une plateforme pour la négociation des échéanciers, elle veut s'attaquer au dépôt de documents.

«C'est incompréhensible qu'en 2015, on doive encore aller au palais de justice pour déposer un document, s'indigne M. Tajkarimi. Les États-Unis ont le système PACER depuis longtemps, et la Cour canadienne de l'impôt offre elle aussi le dépôt électronique maintenant.»

Le moment est idéal, selon l'entrepreneur, qui est à la recherche d'investisseurs pour embaucher des employés et accélérer le développement des prochaines étapes.

«Le nouveau code de procédure qui va entrer en vigueur en septembre encourage noir sur blanc l'utilisation des technologies.»

Andrew Coyne: Imperious Conservatives and runaway Supreme Court set to collide

Andrew Coyne, Postmedia columnist, March 9, 2015

Between an imperious federal government and a runaway Supreme Court, we are headed for a legal and constitutional imbroglio.

The Harper government, it is widely observed, has taken with increasing frequency, if not glee, to stuffing the bills it presents in Parliament with measures that are in self-evident violation of the constitution. Not only is the government making no apparent effort to "Charter-proof" legislation, that is by seeking the advice of Justice department lawyers on its constitutionality in advance of its introduction, as it is required by law to do, it seems if anything to be taking advice on how to offend it.

It is impossible to read the several dubious provisions of Bill C-51, the Conservatives' anti-terrorism legislation — allowing the police to detain people on suspicion an act of terrorism "may" be about to occur; permitting intelligence officers to break the law, bizarrely, with the permission of a judge; banning the promotion of terrorism "in general" — in anything but this light.

Still more blatant is the bill, still to be introduced but already popularly known as the Throw Away the Key Law, requiring those convicted of certain crimes to be jailed until they are dead, without chance of parole. The inclusion of a right to appeal for clemency to the Minister of Public Safety after 35 years, supposedly in response to "legitimate constitutional concerns," must be regarded as something of a flip of the finger in the direction of the Supreme Court. How they must have laughed in the Prime Minister's Office as they drafted it.

But if the government has seemed to go out of its way of late to insert rights violations in legislation, the Court has seemed equally determined, in its recent decisions, to find violations of rights that aren't there. The issue, as I've written before, isn't that the Court has been overturning laws with greater frequency, or to more radical effect. If the legislation under challenge plainly contradicts the constitution, that is its job – the job Parliament assigned it to do.

Rather, it is the shoddy reasoning, the slapdash approach to precedent, the curiously selective research, that has many legal scholars, not necessarily given to Court-bashing, raising the alarm. Whole conferences have been given over to the deficiencies of the

Nadon and Senate references. The discovery of a right to strike in the Charter's right to association, as in the Saskatchewan Federation of Labour decision, or a right to die in the right to life, in the assisted suicide decision, only cements the impression of a court that has given up even pretending to apply the law as it finds it.

Between passing laws that aren't constitutional and striking down laws that are, the two have already succeeded in doing immense damage, not only to their own reputations, but to democracy and the rule of law. But it seems almost certain to get worse.

In the past, one might have accused governments of drafting legislation they knew to be unconstitutional, hoping to bask in any short-term popular approval — for what is popular and what is lawful are not always the same — while leaving the Court to clean up the constitutional mess afterward. But the current government's rhetoric, as much as its record, suggests it has something else in mind: a deliberate strategy of confrontation.

It is hard to escape the feeling it is baiting the Court, daring it to take one step too far. And the Court, for its part, seems only too willing to oblige. For all the Harper government's efforts to undermine its credibility, the Court, with its recent string of rulings, has done its best to undermine it on its own.

Even so, I can't imagine the government would think it would win a straight-up battle for popular opinion with the Court. The percentages don't support an explanation rooted in simple partisan advantage-seeking. Rather, I think it is aiming for a much larger target: the Charter.

It is no secret that many Conservatives have long chafed at the notion that acts of Parliament should be subject to constitutional override. It wasn't the Court's judgment they questioned — it was the whole concept of judicial review. For these Conservatives, the remedy, short of abolishing the Charter, has always been the notwithstanding clause: Section 33, allowing governments to pass legislation in defiance of the Charter, provided they declare openly they are doing so, and with the stipulation that the legislation must be renewed every five years to remain in effect.

While the clause has been occasionally invoked at the provincial level — or, under the Levesque government in Quebec, routinely — it has never been used by any federal government. Even provincially, it has been so rarely used of late as to be in danger, with the passage of time, of becoming a dead letter.

The stated ambition of many judicial conservatives, then, such as the panel of legal scholars that appeared at last week's Manning Conference, has been to revive it: not merely to invoke the clause in this or that case, but as often as possible, and thus to re-establish the primacy of Parliament, as they see it, over the Charter, and the Court.

I do not think it is too far-fetched to suppose that that is the Harper government's objective. They will pick their opportunity carefully. They will not do so, I do not think, over the assisted suicide decision, where they are on the wrong side of public opinion. But on something unassailably popular, like a crime bill, or an "Anti-Terrorism Act"? And once they've broken the taboo, it is not hard to see them doing it again, and again, until the point has been made.

And the Supreme Court, thanks to its increasingly erratic judgments, is handing them the fuel with which to light this constitutional blaze.

Cohen: Communism memorial a monumental folly

Andrew Cohen, Ottawa Citizen columnist, March 10, 2015

That the proposed Memorial to the Victims of Communism is a monumental folly is no longer in question. Its location and design have been denounced by virtually every independent authority. No wonder it has ignited a swelling chorus of derision.

Critics include the Institute of Planners, the Royal Architectural Institute of Canada and the Ontario Association of Architects. They include a member of the memorial jury (Shirley Blumberg), the original designer (Zuzana Hahn) and a leading Ottawa architect (Barry Padolsky).

The most notable are the chief justice of the Supreme Court of Canada and the mayor of Ottawa, as well Paul Dewar, the NDP MP for Ottawa Centre, and Catherine McKenna, the Liberal Party candidate in the riding.

Quick now, what sensible person doesn't oppose this calamity? It leaves only two questions: how did this happen and what can be done about it?

Don Butler ably explains its origins in an article in Citizen last weekend. In forensic detail, he describes the mismanagement, partisanship and deception that produced the wrong monument in the wrong place.

Look closely, and count the benefits to Stephen Harper.

First, in insisting the monument lie just west of the Supreme Court – in what was long planned as a judicial precinct – it allows Harper to poke a stick in the eye of the high court.

Oh, no, you say. How petty! Yet it's consistent with a prime minister who has attacked the integrity of the chief justice, which was unprecedented. For that Harper neither explained nor apologized.

Building a monument – stark, brutal, harsh – is a perverse response to the chief justice, who has mused about "a sense of bleakness and brutalism that is inconsistent with a space dedicated to the administration of justice."

But why would Harper care? He dislikes Ottawa and loathes the court, which has handed his government a string of rebukes.

Second, in authorizing a monument where there was supposed to be a new home for the Federal Court of Canada, Harper diminishes the judiciary. It must give him particular pleasure to displace a building that was to be named after Pierre Elliott Trudeau.

Third, the monument allows Harper to appeal to his "base", which includes many of the estimated eight million Canadians who are thought to be victims of communism. This is the strongest reason for the memorial; the others are fringe benefits.

It is sad to watch this play out as advocates of the memorial, many tied to the Conservatives, press on amid the mounting ridicule. They are deaf to the damage to their cause, and to history, and to what a memorial should be in Canada, our unconscious country.

This farce has an ugly side. When backers of the memorial learned of plans to build a monument to victims of the Holocaust in LeBreton Flats, one of them exclaimed: "We want one as big as the Jews!" – and in as prominent a place.

Is there a way to stop this lunacy?

There is talk of a resolution in Ottawa City Council condemning the memorial, which Jim Watson has called "a blight." The city should express its opposition.

What else can citizens do? Complain to Pierre Poilievre, the minister responsible for Ottawa. Tell him the government should revisit this. Let other Conservatives know, too, like MP Royal Galipeau, who has a sense of history.

Get on Facebook. Sign the Change.org petition now circulating. Appeal to heritage and historical organizations (understanding that some funded by the government, like Historica Canada, will say nothing.)

No, this is not the greatest issue facing Canada, which is why it is easy to ignore. Some will say it's a local issue. It is not. This is a question of how we remember in a country without memory (which, curiously, has drawn the attention of the New York Times.)

It is a textbook example of bad governance. And because memorials of stone endure, it will remain forever, making all Canadians its victims.

The New York Times
Wednesday, March 11, 2015 | Today's Paper | Video | 51°F | S. & P. 500 +0.16%

Canada's Antiterror Gamble

By CRAIG FORCESE and KENT ROACH, Contribution to The New York Times, March 11, 2015

Craig Forcese *and* ***Kent Roach*** *are law professors specializing in antiterrorism law at, respectively, the Universities of Ottawa and Toronto.*

OTTAWA — The Canadian Parliament is debating the country's most significant national security reform in over a decade. The proposed act, known as Bill C-51, would supplement antiterror laws enacted following 9/11. Responding to United Nations Security Council resolutions calling for the criminalization of terrorism, that legislation — passed without partisan rancor — modified Canada's criminal code, creating a host of new terror offenses.

In contrast, Bill C-51, proposed in January by the Conservative government of Prime Minister Stephen Harper, is a highly politicized response in a parliamentary election year to the October terrorist attacks in Ottawa. With Conservatives controlling the House of Commons, it is widely expected to pass before Parliament breaks in June.

Bill C-51 has many moving parts. Taking a breathtakingly broad view of national security, it facilitates information-sharing among federal institutions, with no robust limits on how that information may then be used (or misused). This is a remarkable development for a country that in 2007 agreed to pay millions to compensate a Canadian citizen who suffered foreign torture as a result of inaccurate intelligence-sharing.

The legislation would also augment police powers to preventively detain or restrict terror suspects. But when it comes to antiterrorism, its main goal is to enhance the covert powers of Canada's security services.

Canada has a national police force and a mostly domestic intelligence service, the Canadian Security Intelligence Service (C.S.I.S.). These organizations haven't always worked well together. Spies and police have been known to unproductively chase the same targets. And spying has complicated police efforts to bring charges in open court: The C.S.I.S. often tries to protect its sources and methods in criminal proceedings that demand full disclosure.

The investigation into the 1985 Air India attack, when a bomb exploded on a plane en route from Toronto to New Delhi, killing 329 people, is a prime example of this disorganization. In 2010, a judicial commission of inquiry found that efforts to detect and prevent this attack had been undermined by a fundamental lack of cooperation between

Canada's spies and police, and urged reform. Bill C-51 rejects these calls, giving primacy to the C.S.I.S. and empowering it to carry out investigations without police assistance.

Bill C-51 would authorize the C.S.I.S. to "take measures, within or outside Canada, to reduce" national security threats. The government argues that this would enable a range of valuable actions, like allowing C.S.I.S. agents to speak with parents of potential terrorists. But the real endgame could be much more concerning. If the bill is passed, the C.S.I.S. could have the capacity to do things like block the return of Canadians fighting abroad; remove Web postings it found threatening; drain bank accounts; engage in disinformation campaigns; or bypass traditional police channels in order to detain suspects. The only limits explicitly spelled out in Bill C-51 are acts that would cause "death or bodily harm," willfully obstruct justice or violate sexual integrity.

The bill's main safeguard would be judicial warrants, required when potential agency actions would contradict Canadian law or contravene rights enshrined in the country's Charter of Rights and Freedoms. But this safeguard is imperfect. C.S.I.S. warrant proceedings are secret and one-way: The target of the requested warrant is not represented. Such proceedings always run the serious risk of wrongly penalizing an innocent person. This trade-off may have been (barely) acceptable when requests were limited to surveillance. But Bill C-51 could see Canadian Federal Court judges asked to authorize lawbreaking or unconstitutional behavior by a covert agency whose mandate would extend beyond spying.

If foreign governments have thus far eschewed commenting publicly on the proposed legislation, two features should stand out for the international community. Bill C-51 would permit C.S.I.S. interventions beyond Canada's borders. And it would even empower Canadian courts to authorize C.S.I.S. conduct that violates "any other law, including that of any foreign state."

Polite Canadian judges might be reluctant to authorize C.S.I.S. breaches of foreign statutes. But where international operations are concerned, judicial reticence may not matter. Bill C-51 would only require warrants in cases of potential violation of Canadian law or its national Charter, which almost never apply outside the country. Thus there would be little judicial oversight of C.S.I.S. activities abroad.

To make matters worse, Canada's independent security review mechanisms are outdated. The Security Intelligence Review Committee (SIRC), starved of staff and resources for a decade, is mandated to track an operation only within the C.S.I.S., even as that agency works with the country's armed forces, border control officials and foreign partners. Canadian lawmakers rarely have access to classified national security information, which means that they are generally flying blind with respect to the details of active operations. Bill C-51 includes no provisions to correct this, or strengthen external watchdogs like the SIRC.

Bill C-51 faces stiff opposition from the New Democratic Party, and has ignited the concern of civil liberties groups, lawyers and academics. But the prospects of a course-correction are dim. The Conservatives are eager to pass antiterror legislation before general elections in October; once enacted, Bill C-51 would presumably take effect

immediately. So far, the party has signaled no serious interest in amendments, even as protests mount.

Ahead of the 2006 federal elections, Conservatives ran on a platform of building a true foreign intelligence service. Instead of doing so, the party's political leadership is now attempting to reshape a domestically focused security agency into one with enhanced foreign powers. Only partially overseen by judges and even less accountable to national review bodies, it would be authorized to act beyond the law both at home and abroad.

What could go wrong?

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Stratospheric law-school fees raise bar for access to justice

By Aaron Lemkow, contribution to the Halifax Chronicle-Herald, March 11, 2015

Next month, I will finish my law degree at Dalhousie University with a student debt of around $35,000. This makes me rich in comparison to many students, some of whom have six-figure debts. Think I'm joking? The program costs more than $17,000 a year and most entrants have already completed at least one university degree.

This is not just a student problem. It is a societal problem because it is a major obstacle to access to justice. If law students are shackled with debt, they will be less able to offer affordable legal services.

Access to justice is a huge problem. Chief Justice Beverley McLachlin of the Supreme Court of Canada has remarked that "the Canadian legal system is sometimes said to be open to two groups — the wealthy and corporations at one end of the spectrum, and those charged with serious crimes at the other (who are covered by legal aid)."

Overall, an estimated 85 per cent of Canadians' legal service needs are unmet. This is not surprising, as the average cost of a Nova Scotia lawyer with five years' experience is just under $200 an hour. For most Nova Scotians, hiring a lawyer for a complex case can mean a second mortgage or sacrificing retirement funds. If you go to trial and you lose, you can also be on the hook for a sizable chunk of the other side's costs.

Almost everyone will need a lawyer at some point. Spouse divorcing you? Might need a lawyer. Business partner renege on a deal? Might need a lawyer. Trouble with the law? Might need a lawyer. These situations can happen to anyone, regardless of culpability. And if you think that legal aid will pick up the tab, think again: Nova Scotia Legal Aid's monthly income cutoff for a single adult is $1,067. Working full-time at minimum wage pays approximately $1,747 per month. The middle class — even the working class — need not apply.

Some matters can be heard in Small Claims Court and other Nova Scotia courts have simplified some of their procedures. Unfortunately, this only goes so far. Legal disputes with greater consequences often involve more complex legal and factual issues. Many courageous and highly intelligent people attempt to navigate the legal system on their own, only to give up in frustration. Pretty understandable, since law schools spend three years educating students about the law and even this does not fully qualify them to practise.

Fortunately, there are some promising developments, like the Canadian Bar Association's recent Legal Futures Initiative. New rule changes in the profession may spur innovation and affordability, such as "unbundling" legal services and incorporating new technologies into legal practices. However, these changes will have limited long-term effects unless legal education costs are brought under control. This is because they often require a level of financial flexibility that law graduates simply do not have. They face higher debt loads and fewer career opportunities than the previous generation of lawyers. Law graduates, along with all millennials, will also pay higher taxes to cover rising health-care costs and deal with the fallout of climate change. Not a lot of room for manoeuvre.

More affordable legal education will cost more money and Nova Scotia is not exactly flush with cash, but governing is about priorities. The current provincial government has openly mused about cutting the province's top income tax bracket. It has not mused about cheaper legal education. Rest assured that subsidizing legal education does not subsidize lucrative legal careers, as those with higher incomes pay higher taxes through our progressive tax system.

I repeat: a $35,000 law school debt is at the low end of the spectrum. I come from a fairly comfortable background, but hesitated about law school for years because of the costs. For most potential applicants from low-income backgrounds, where historically disadvantaged groups are disproportionately overrepresented, the price tag is beyond reach. So not only are more and more law graduates shackled with high debts, they are also a poor representation of our diverse and vibrant society.

Ask yourself: Is access to justice worth paying for? Affordable legal education is no silver bullet, but it is an essential part of the solution.

Aaron Lemkow *lives in Halifax*

Ottawa thief throws eye at lawyer

Gary Dimmock, Ottawa Citizen, March 8

Ottawa lawyer John Hale was quick on his feet in Court Room No. 2 on Friday and, as always, had his eye on the ball.

Upset that he wasn't credited more for time spent in custody, his client, an Ottawa thief who lost his left eye to cancer while at the Innes Road jail removed his ocular prosthetic and threw it at the lawyer, who caught it after a single bounce off the counsel desk.

"That's the thing about this business, there's always something new that happens," said Hale, who joked that it was a "new form of retainer." Told it was a good catch, he said modestly, "I could see it coming."

His client, a thief who steals to feed a drug habit, was sentenced Friday to 18 months. He served about 102 days in pre-trial custody and was credited for 153. He thought he deserved more but he was confused about the process.

Jesse Whitlock, 32, is going back to jail. The lawyer gave the fake eyeball to a police guard for fear his client, who has mental-health issues, would flush it down a toilet in protest.

How Whitlock lost his left eye was reported in the Citizen last year. At the time, Whitlock accused doctors at the Ottawa-Carleton Detention Centre of ignoring his vision problems until it was too late to save his eye from an aggressive form of cancer.

A retinal surgeon agreed Whitlock's left eye may have been saved if the choroidal melanoma had been identified sooner, but wouldn't blame other doctors for missing it because the cancer is so rare in patients as young as Whitlock that they wouldn't have been looking for it.

Whitlock said he complained in February 2013 about seeing flashes in the eye to a doctor at the Innes Road detention centre.

Whitlock, who was in jail at the time for stealing a car and leading police on a chase, says the jail doctor told him it could be caused by dust.

"I was total 3 1/2 months blind with a full-blown, Stage 5 cancer in my eye in jail before I got it removed," said Whitlock. "They wouldn't have had to take my eye if they had

taken the matter more seriously. They could have just zapped it out. It would have saved my eye," he told the Citizen at the time.

Meanwhile, Whitlock has outstanding break-and-enter charges in Gatineau.

Conditional sentence for gun crime not appropriate: judge

By Shannon Kari, Legal Feeds Blog, Canadian Lawyer, March 11, 2015

A 65-year-old businessman with health issues and no prior criminal record has been sentenced to 21 months in jail for the illegal possession of a loaded handgun, stored in a dresser in the bedroom of his Toronto-area home.

Ontario Superior Court Justice Ken Campbell agreed there were personal mitigating circumstances in the case of Panagiotis (Peter) Boussoulas, but concluded that any form of conditional sentence would be inappropriate.

"The important message must be sent to the public that whatever their reasons, individuals must not unlawfully arm themselves with dangerous loaded firearms, or they will face serious custodial circumstances," said Campbell, in the March 9 ruling.

Boussoulas will also be subject to a two-year term of probation, after he is released from custody.

The Superior Court judge rejected arguments by defence lawyer Randall Barrs that his client should receive a suspended sentence and a period of probation.

Boussoulas is going to appeal both the conviction and sentence. "the moral turpitude here is quite low," says Barrs, who adds that his client was granted bail this week pending appeal, by a judge of the court of appeal.

The sentencing ruling was issued as the lower courts await the Supreme Court of Canada's decision on whether mandatory minimums in the Criminal Code for illegal possession of a loaded weapon are unconstitutional. In November 2013, the Ontario Court of Appeal struck down the minimums in R v. Nur.

The provisions imposed a minimum three-year sentence for a first conviction and five years for a subsequent finding of guilt.

The 21-month-jail term set out by Campbell is actually one of the lowest sentences imposed for this offence since the mandatory minimums were struck down in Ontario.

Provincial Court Justice David Cole handed down the equivalent of a 22-month sentence in R v. Ishmael, along with 475 hours of community service and two-years probation. The Ontario Court of Appeal, in R v. T.A.P., imposed a global sentence of two years less day, of which 21 months was to be served in the community, to a 45-year-old aboriginal woman with no prior criminal record.

A survey of reported cases since Nur was released indicates the gun possession sentences are normally at the level of the previously enacted mandatory minimums, or higher.

Vince Scaramuzza, who was defence counsel in Ishmael, says judges take gun offences very seriously.

"We may not have mandatory minimums, but the sentences are still very close to where it was," says Scaramuzza.

The sentence imposed on his client was in part because he was a young adult, with no criminal convictions and strong family support, he says.

In the prosecution of Boussoulas, the court heard he owned a successful manufacturing business he operated with his two sons. In 2010, police raided a rental property owned by Boussoulas and discovered a large marijuana grow operation inside. Boussoulas admitted buying a .45 calibre Colt handgun illegally, but said it was to protect his family after receiving threats because of his potential involvement as a witness in the marijuana prosecution.

The handgun was discovered by police in December 2011 while executing a search warrant at the family home, based on information the defendant's son Christopher, was in unlawful possession of firearms.

There were 18 members of the Toronto Police emergency task force unit involved in the 12:15 a.m. execution of the search warrant. Many of the officers wore balaclavas or night vision goggles, as they entered the large residential home. Campbell was told police believed evidence would be destroyed if the "dynamic entry" took place during the daytime. The Colt handgun was the only weapon recovered.

Campbell concluded that police acted "quite reasonably" in the raid and that a "knock and announce" method of executing the search warrant could have "compromised the safety" of the officers and the Boussoulas family.

On appeal, Barrs says the validity of the search warrant and information from a confidential informant will be at issue. The defence lawyer also questions the way the warrant was executed.

"It is the middle of the night, you are in bed with your wife, and the next thing you know, the door is knocked down, an army is coming through, and everyone is handcuffed," says Barrs.

Campbell described Boussoulas as "a hard-working, contributing member of society" and a good family man. However, even for a first offender, a sentence of close to two years is a starting point, the judge stated.

"The criminal possession of handguns remains an all too prevalent threat to the people of Toronto," wrote Campbell. "The public must be adequately protected."

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10 Lessons You Weren't Taught In Law School

By Jeena Cho, Lawyerist website (, March 11, 2015

Jeena Cho *is a bankruptcy lawyer in San Francisco, California who also teaches mindfulness and meditation to lawyers. Her second book, The Anxious Lawyer will be published this year.*

It is often said law schools fail to prepare students for the actual practice of law.

Yes, law school does a good job at training you to "think like a lawyer" and spot issues, do legal research, draft legal documents, and put together a legal argument. But there are so many practical things that law school doesn't teach you, especially a number of soft skills. This includes things like social grace, communication, language, personal habits, friendliness, optimism, and resilience.

Here are ten critical skills missing from many law school curricula.

1. How to Handle Conflict

Most of the time, your client will be in a conflict with someone else. Your role is to represent the client in the conflict with competence. Most people don't enjoy being in conflict. Conflict is uncomfortable, triggers stress responses, and can make you angry. Because of our desire to win, it often brings out the absolute worst in all of us.

Law schools should teach ways of engaging in conflict that are constructive, healthy, and maintains civil relationships with opposing counsel. This can be done by valuing emotional intelligence, tact, and grace over aggression. Law schools should teach students that they are a part of the larger legal community, and today's opposing counsel may be tomorrow's judge, co-counsel, co-worker, or your best referral partner. Students should never think about an interaction with a particular lawyer as a single transaction.

Law students should also learn different conflict styles and be familiar with their own conflict style. Graduates should come with a toolbox full of different ways of living with, working through, and managing conflict. It's not enough to teach or talk about civility as an abstract concept. Students should also understand that conflict isn't inherently bad, and can be used as an opportunity to grow and strengthen a relationship.

2. How to Forgive

I used to walk around with a rolodex of every terrible thing that people said or did to me. This included classmates, bosses, co-workers, judges, opposing counsel, clients, family, and friends.

That's a lot of baggage to carry around.

When you're in the conflict management business, people are bound to step on your toes and piss you off. How do you let go of these feelings of anger, resentment, hostility and revenge? How do you stop these experiences from consuming you?

The answer lies with forgiveness. Forgiveness doesn't mean you forget about what the other person did (that's probably unwise anyway). It doesn't mean you have to kiss and mak eup. It's not about repairing the relationship, although, in certain situations, it can certainly involve that. And it doesn't mean letting the other person off the hook or condoning their behavior.

The primary beneficiary of forgiveness is yourself.

Law schools can foster an environment where forgiveness is a valued skill by encouraging professors to discuss it in the classroom and give students the opportunity to practice it. To forgive each other can enhance the moral of the student body and increase social bond.

3. How to Have Difficult and Uncomfortable Conversations

I could not have imagined the incredibly difficult conversations I would have with my clients over the years. There are the usual uncomfortable calls to remind a client about an unpaid invoice, quoting a fee, or telling her that you lost a Motion for Summary Judgement.

We constantly deal with incredibly delicate issues and are charged with delivering life altering news yet we don't receive any training on how to do this. We also don't receive any training on ways to manage our own internal challenges of being in these difficult situations.

It took me many years to figure out how to manage these difficult conversations with grace, authenticity, and compassion — key ingredients needed to make a good lawyer.

4. How to be Present

As lawyers, our time is the commodity we trade for money. The more fully present we can be in each moment, the better we will be as lawyers. Luckily, being in the moment is a trainable and learnable skill.

Some law schools are, in fact, teaching contemplative lawyering skills, which includes mindfulness — learning to be in the present moment without preference or judgment.

As lawyers, we must be agile and able to pivot as information is gathered. If our mind is completely preoccupied with thoughts about the future or the past, we can't be fully be present to process the information available to us, hindering our ability to be agile and pivot when necessary.

5. How to Maintain Physical and Emotional Health

As lawyers, we have a duty to provide competent representation to a client. And to do that, we must maintain our mental, emotional, and physical health.

The key to maintaining your mental, emotional, and physical health is self-care. You must be self-aware enough to recognize and care for your mental health, which requires noticing when you are experiencing stress or anxiety. In order to care for your emotions, you must be able to recognize when you are experiencing negative emotions and find healthy ways of working through them. Maintaining your physical health requires a balance of exercise, rest, and a healthy diet.

Law schools should bring more awareness to this and start teaching law students tools for self-care. This would help many of the problems which is so prevalent in our profession — burnout, depression, alcohol and substance abuse.

6. How to Be Compassionate

When I say compassionate, what I am referring to is our innate feeling of wanting to help when witnessing someone else's suffering. What I am not referring to is sympathy, being soft, or let's hold hands and sing Kumbaya.

In our line of work, we often witness a lot of pain. Rarely do clients come into our office to share happy news. In many ways, our relationship to our clients is very intimate. We gain inside information about our client that she wouldn't share with anyone else. Therefore, our ability to handle the suffering of our clients without losing ourselves is a critically important skill.

Maintaining a healthy balance between our client's difficulties and ourselves is a skill that can only come with practice. It's important to know how to be compassionate with our client's suffering while being compassionate towards ourselves. This is an essential part of self-care. If we can't recognize that we're hurting and take time to care for

ourselves, we begin to deplete our mental and emotional reserve. When lawyers continue to push ourselves without refilling our reserve, he or she will experience burnout.

7. How to Manage Personal Finances

Law students often graduate with $150,000 or more in student loan debt. Rarely do these students seriously think about what repaying that amount of debt looks like. When I taught a Solo Practice Management course, I was surprised at how few students could answer questions these basic questions:

- How much do you owe?
- What will be your monthly minimum payments?
- How much do you have to earn to be able to repay that loan within a reasonable amount of time?
- If your gross income was $100,000, what would be your net income?
- What is your anticipated monthly living expenses?

As a bankruptcy attorney, I'm seeing an increased number of graduates (some law school graduates) who clearly had little or no understanding of what it will take to repay the debt. Even one-day course on personal finance would go a long way in giving students basic tools to help understand and manage their financial futures.

8. How to Manage Law Firm Finances

For most lawyers, the practice of law is a business. It's a profit driven activity, yet there is little or no emphasis on the business end of the law practice. This includes things like law firm finance, understanding overhead, hiring/managing staff, how to price your services, as well as marketing and advertising. Some basic knowledge of law firm finance would not only benefit students who are going into solo practice, but also those who go on to work in a law firm.

9. How to Create and Sustain Your Own Brand

Long gone are the days where most law student graduates find a nice associate job, make partner seven years later, and retire at the same firm. Lawyers must actively market and brand themselves. They must also grow and learn to leverage their network. They must figure out their own networking style and understand what works for them. This doesn't happen overnight. It's a skill law students should be encouraged to hone from their first day in law school.

Law students should be familiar with social media and proper ways to use it to promote themselves. Too often, law students don't pay enough attention to networking during law school.

10. How to Collaborate With Others (Nicely)

During my first year in law school, I was doing legal research for a Research & Writing class. When I went to the library to pull the book that I needed, I was horrified to find that the pages I needed had been torn out of the book. Stories like this are all too familiar

in law school. I don’t know if law school attracts students who enjoy aggressive competition, or if law school trains them to become this way, but we must equip students with more tools than one.

Law students should understand that even in adversarial situations, cooperation is often critical in moving a case forward towards a resolution. Students should also know you can zealously represent your clients without demonizing the other side. And at the end of the day, you can safely enjoy a beer with opposing counsel.
