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Press Clippings for the period of March 24 to 31, 2014
Revue de presse pour la période du 24 au 31 mars 2014

Here are a few articles and opinion pieces that might be of interest to AJC members
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Partisanship bill a big worry for federal lawyers

Yamri Taddese, Law Times, March 24, 2014


Lisa Blais

Amid concerns about a new lifelong gag order for government lawyers who've seen top-secret documents, the union that represents Department of Justice counsel says it's paying more attention to a partisanship bill that will affect 40 lawyers.

While the federal government quietly amended secrecy provisions on March 12 to cover Department of Justice lawyers who have looked at sensitive documents, the president of the Association for Justice Counsel says the changes will likely have few implications for counsel already bound by solicitor-client privilege.

"I could tell you quite frankly that we had no expressions of concern from members unlike other pieces of legislation that have affected them," says Lisa Blais, president of the association. As a drug prosecutor herself, Blais says she's "mindful that our members

deal with sensitive material, [including] terrorism cases where confidential informants are used."

While she understands the reason for the secrecy order as there have been "lapses" in the past with information reaching people it shouldn't, there's no justification behind the proposed bill C-520, according to Blais.

If passed, Conservative MP Mark Adler's private member's bill would require those who apply for certain government positions to disclose their political affiliations and activities for the last 10 years. While the bill, dubbed the supporting non-partisan agents of Parliament act, targets political links, it's overkill in that it threatens to "politicize public service," says Blais.

Forty government lawyers are part of the targeted positions, she notes, calling the proposal a form of a "witch hunt" that will create a chilling effect on lawyers.

If someone makes a complaint against any of those lawyers for acting in a partisan manner — something Blais says "has yet to be defined" — they'll face an investigation by Parliament.

"That's much, much more of a concern to us because we feel that it will create a chilling effect on the work our lawyers would do. Some might think twice about criticizing government initiatives or policies when it's perfectly within the context and the parameters of their job. . . . They may feel that they'll be subject to a complaint," she adds.

The union is at a loss as to why a bill like C-520 is necessary, according to Blais.

"There are already safeguards and provisions under other legislation that will investigate true and legitimate complaints of partisanship," she says.

To date, the union isn't aware of any complaints about lawyers who have acted in a partisan manner while working for agents of Parliament, according to Blais.

Last month, the agents of Parliament targeted by the bill sent a letter to Pat Martin, chairman of the standing committee on access to information, privacy, and ethics, to express their concerns. Their first concern, they said, is that the disclosure requirement would affect the hiring process.

"If an individual had declared prior politically partisan positions and, due to reasons of merit was unsuccessful in obtaining a position in the office of an agent of Parliament, the decision not to hire that individual could be challenged under [other legislation] on the basis that the declaration impacted the hiring process," the letter said.

"Second, there is no definition of what constitutes partisan conduct, no threshold of evidence that would be required to request an examination, and no remedial action for the manager or any redress mechanism for the employee."

The Office of the Privacy Commissioner of Canada is looking into the matter, said spokeswoman Valerie Lawton.

“We are continuing our work to examine this proposed legislation,” she said.

“We await news on next steps to be taken on this bill by Parliament. Our current work is directed toward providing analysis and recommendations to Parliament through a possible appearance before committee.”

Harper Government Under Fire Over $482 Million In Outside Legal Fees

Althia Raj, Huffington Post Canada, March 27, 2014

OTTAWA – The Conservative government has spent $482 million on outside legal fees since it came to power in 2006. And more than $447,045 to defend the Prime Minister, his staff and ministers, according to documents tabled in the House of Commons.

“It’s just a shocking number,” Liberal MP Sean Casey told The Huffington Post Canada Wednesday.

“They closed Veterans [Affairs]’ district offices and saved $5 million bucks, [but] over the past eight years, they’ve spent half a billion on outside lawyers. It’s pretty stark.”

Casey, the Grits’ justice critic who requested the departmental costs, said the $481,927,263 spent since April 2006, and shared between 27 departments and their agencies, is proof of how many lawsuits and appeals the Conservative government has initiated while in power.

The top spender was the Office of the Director of Public Prosecution, which spent roughly $30 million a year on non-government lawyers to conduct federal prosecutions for a total of $245 million. Other departments that relied heavily on outside legal services include: Foreign Affairs ($80 million), Canada Revenue Agency ($40.6 million), Aboriginal Affairs and Northern Development ($25 million), Correctional Service Canada ($17.4 million), Fisheries and Oceans ($12.2 million) and Natural Resources ($9.2 million).

Although the Department of Justice employs approximately 2,500 lawyers who defend the government on all types of matters, it also relies on private-sector law practitioners to carry out its mandate, spokeswoman Carole Saindon said Wednesday.

NDP ethics critic Charlie Angus said the government should use its very large in-house legal team rather spend half a billion dollars on outside law firms "while telling Canadians that the cupboard is bare."

"It shows, I think, a disrespect for taxpayers and a disrespect for the legal expertise that we have in [the bureaucracy]," he said.

Angus requested the information about the use of private legal counsel by ministers and their staff.

He found that the vast majority of outside legal services used by Tory cabinet ministers and those under their employ were used to defend against probes by Commons' Ethics Commissioner Mary Dawson or investigations by Information Commissioner Suzanne Legault, who looks into abuses of the Access to Information regimen.

At Public Works and Government Services Canada, for example, $194,988 was paid between 2011 and 2013 to Paul K. Lepsoe, the Conservative Party of Canada's former lawyer. Lepsoe's work was related to an ethics probe involving former minister Christian Paradis as well as an investigation into whether his political staff improperly interfered in the handling of Access to Information requests.

"A lot of the money is being spent on ethics problems and interfering on access to information," Angus said.

"When they are using outside law firms to deal with their ethical messes, I don't think the taxpayers should be paying the extra amount for it," he added.

Angus pointed to a $10,500 fee paid to provide legal advice to David Van Hemmen, the executive assistant to Nigel Wright, Harper's former chief of staff who was implicated in the Senate scandal by the RCMP.

The Prime Minister's office, however, said it is common practice to seek outside legal advice when someone employed by Crown is being challenged by another part of the Crown.

"Under long-standing government policy, ministers of the Crown and their staff can receive legal assistance and/or indemnification for lawsuits against them within the scope of their official duties," Harper's director of media relations Stephen Lecce wrote in an email.

Documents suggest former Liberal prime minister Paul Martin used taxpayers' money to pay for outside legal help: $20,461 for a assistance with an ethical investigation and $16,214 to fight a civil action brought forward by Warren Kinsella.

Aboriginal Affairs, the only department that responded to queries about its outside legal fees, said it believes litigation should be a last resort and noted that the majority of its legal costs – two-thirds of its $106 million bill in 2012-2013 – was incurred by hiring Department of Justice lawyers.

“Our government treats taxpayers’ money with the utmost respect,” said Erica Meekes, the press secretary for Aboriginal Affairs Minister Bernard Valcourt.

No government department conducted any studies to determine whether whether it would be cheaper to employ in-house lawyers rather than hire pricey outside firms, the documents show.

The Canadian Taxpayers Federation’s Gregory Thomas said he finds $482-million price tag surprising.

“When you are talking about half a billion dollars on something as intangible as legal fees, I think this is something that the government operations committee and the public accounts committee should be doing a special study of …. And they should be asking the government to justify these expenses,” he said.

Several departments, such as Foreign Affairs Minister John Baird’s office, which spent $14,787 in 2013 in outside legal fees, did not provide any details to justify the expense, other than to say it was for “Ministerial Legal Advice.”

“Because it’s legal advice, there is a cloak of silence around it. What were the billing rates? How many hours were billed? How good was the advice? … And what is the process for picking the law firms?” Thomas asked.

“Why doesn’t the Auditor General do an examination of the value for money that taxpayers are getting for all this advice?”

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Federal budget bill targets right to strike, public service union charges

BY JASON FEKETE AND JORDAN PRESS, OTTAWA CITIZEN MARCH 28, 2014

OTTAWA — Canada’s largest federal public sector union says changes included in the government’s new sweeping budget bill would erode workers’ right to strike by effectively ripping up agreements over what is considered an essential service.

The changes in the budget implementation bill go to the heart of a court challenge filed this week by the Public Service Alliance of Canada over the government's move to block strikes by federal workers deemed to be offering "essential" services. The union says in its court challenge that major reforms to the Public Service Labour Relations Act that were introduced in last fall's budget legislation (Bill C-4) violate federal workers' freedom to strike and freedom of association as guaranteed in the Charter of Rights and Freedoms.

On Friday, the government tabled its latest budget bill, containing proposed changes that PSAC says would nullify existing agreements identifying which jobs and services are "essential." The budget bill arrived just as PSAC and the government are in the middle of negotiations over new collective bargaining agreements.

"It's changing the rules while the game is being played," PSAC president Robyn Benson said.

The changes are among a wide range of measures in the omnibus legislation, which now faces a political battle to become law. Over the past two years, the opposition parties have used procedural tricks to hold up passage of budget bills once it became clear the government wasn't willing to amend them.

The 375-page budget bill contains changes that would affect cellphone users, Bitcoin and digital currency transactions, online casinos, Americans living in Canada, three suspended senators — Mike Duffy, Pamela Wallin and Patrick Brazeau — and even the names of two branches of the Canadian Armed Forces.

Budget bill changes would make it more difficult for some immigrants coming to Canada to qualify for the Guaranteed Income Supplement (GIS) provided to low-income seniors, a move the Conservatives say will save $700 million annually. The government wants to double the amount of time needed to live in Canada to qualify for the GIS, to 20 years from 10.

There will also be a crackdown on Canadian companies that abuse the temporary foreign worker program: they will soon face heavy fines from the federal government.

Details of the fines will be contained in regulations the government has to enact once the budget bill becomes law. A spokeswoman for Employment Minister Jason Kenney said penalties will severe.

There are also changes to safety rules, including harmonizing vehicle safety standards with the United States — though to a level too low for the Opposition New Democrats. And, if passed in its current form, the budget bill would reverse the government's previous decision to tax parking at hospitals.

"Our past experience has taught us that the devil lies in the details. It's buried on page 216, the worst aspect of this bill, or buried on page 181. One doesn't know until one starts to cast through all the different aspects," said NDP finance critic Nathan Cullen, shortly after the bill was tabled.

Liberal critic John McCallum said the bill was crammed with items "that have nothing to do with the budget."

"This is inappropriate because in some cases, like food safety or rail safety, these are important issues that should be properly debated and being part of the budget implementation bill, it will tend to get rammed through Parliament."

The Conservative government's budget bill includes measures to officially implement a controversial tax-information sharing agreement with the United States that has sparked a number of concerns it could violate Canadian privacy laws.

The agreement will see Canada begin regularly sharing large amounts of financial information with the Internal Revenue Service (IRS) in the U.S. on the estimated one million Americans and dual citizens living here. The agreement is part of an effort by the United States to crack down on offshore tax evasion.

Canadian banks and other financial institutions will be forced to report, through the Canadian government, financial information on accounts held by U.S. citizens.

However, a number of groups expressed concerns that having Canadian banks or the federal government share with the IRS the personal information of Americans living in Canada (either residents or dual citizens) could potentially violate Canadian privacy laws.

Opposition parties said Friday they would like to see the changes pulled out of the bill so they can be individually debated.

"This is a distressing aspect of the (budget) legislation, simply because the sovereignty of Canadians is at stake," said the NDP's Cullen.

- *With files from Patrick Smith, Ottawa Citizen.*

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Public sector unions call for 'one united voice' against Conservative government

By CHRIS PLECASH, The Hill Times, March 29, 2014

Union leaders representing federal public servants are calling for a united front against the Conservative government's ongoing efforts to weaken collective bargaining rights and reform compensation following the latest federal omnibus budget bill.

Representatives from the Public Service Alliance of Canada (PSAC), the Canadian Union of Postal Workers (CUPW), and United Food and Commercial Workers (UFCW) appeared at the Broadbent Institute's inaugural Progress Summit on Saturday to discuss the Conservative government's hard-line approach to collective bargaining and rally union activists to develop strategies for revitalizing the public support for organized labour.

"It's clear that Conservative policies are targeting the balance of power," Elizabeth Woods, PSAC representative for the National Capital Region, told a packed room at the three-day progressive political conference in Ottawa. "We have never been under such a harsh attack. The very existence of the union is being challenged."

The panel came on the heels of the Conservatives' tabling of another omnibus budget implementation bill that includes significant changes to how the federal government negotiates with public sector unions.

Bill C-31, the government's latest omnibus budget implementation bill, builds on changes to the Public Service Labour Relations Act included in Bill C-4, last fall's 2013 budget implementation bill. Bill C-4 amended the act, giving federal employers the ability to designate public sector services as essential without the input of the Public Service Labour Relations Board.

PSAC is challenging Bill C-4 on the grounds that it violates freedom of association, but it hasn't stopped the government from going further in Bill C-31. The latest omnibus bill, tabled Friday in the House of Commons, sets out "transitional provisions" in cases where a federal employer reclassifies a public service as essential.

The clauses included in recent federal budget bills are just the tip of the iceberg when it comes to the Harper government's efforts to weaken collective bargaining in Canada. Panelists pointed to other legislation, like Conservative private members' bills C-377, which would impose rigid finance disclosure on unions; and C-525, which aims to tighten the union certification process.

The Conservative government has also taken steps to freeze public sector salaries and repeal existing benefit agreements, while recent cuts to the federal budget have eliminated more than 19,000 federal public service positions.

The federal government also announced plans to phase out Canada Post's home delivery service beginning this year, a move that Canadian Union of Postal Workers national president Denis Lemelin warned would eliminate between 6,000 and 8,000 Canada Post jobs in the years ahead.

Mr. Lemelin said the decision to cut home delivery, done without consultation with CUPW, has been "a real blow" to organized labour. The next step, he warned, is that the government will contract out mail services.

“This is a very good example of what the Harper government is doing, working with a private company to serve the population. We know where this leads — privatization and the lowest common denominator for benefits,” Mr. Lemelin said.

Panelists said it’s becoming increasingly difficult to mobilize workers and the public against federal labour policies, in part because people are scared to speak out.

Ms. Woods of PSAC said many civil servants are under psychological stress now that they find themselves in direct competition with their colleagues when positions are cut.

“We asked our [members] what the biggest challenges are. I was told: members don’t feel respected as civil servants and citizens, [and] those bills and acts are considered unfair,” she said. “More than ever it’s difficult to recruit people to show action in the workplace.”

The panelists agreed that there needs to be renewed effort to communicate the importance of collective bargaining to union members and the public, and counteract the stereotype that the public service is over-compensated.

“If we talk with one strong, united voice, we may be heard,” said Roxane Larouche, director of UFCW’s national communications office. “Recruitment is done through communication. If we want to be strong, we have to be in partnership with everyone and we have to work together to have a strong labour movement.”

Mr. Lemelin agreed, but stressed the importance for organized labour to offer an alternative to the current situation of austerity and government messaging aimed at discrediting unions.

“You have to offer something to people. It’s a mistake to say we’re against something without offering people a different society,” he said. “The Harper government thinks it is a big machine, that its majority can do anything. We have to give hope, meet with people, and make sure that [change] is possible if you get involved.”

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Unions, federal government reach deal on health-care benefits for retirees

BY JASON FEKETE and KATHRYN MAY, OTTAWA CITIZEN MARCH 26, 2014

OTTAWA — The Conservative government and federal unions have struck a deal on reforming health-care benefits for retired public servants, one that will save taxpayers billions of dollars but also see some improvements for unions and pensioners over the government's initial proposal.

The Harper government announced in the 2014 budget its plans to overhaul the Public Service Health Care Plan for retirees, by doubling the premiums for retired bureaucrats (moving to a 50-50 cost-sharing with government) and limiting their eligibility for the plan by increasing from two to six the number of years of service required to qualify.

Federal public sector unions have been fighting many of the government's proposed changes and, this week, submitted their own counter-proposal, which would phase in the cost-sharing over four

years, exempt low-income seniors from the premium increases and include a handful of other improvements over the Conservatives' initial plan.

On Wednesday, Treasury Board president Tony Clement announced the government has approved a negotiated settlement with the unions on health-care benefits for retirees. The new plan will see retired federal public sector workers pay 50 per cent of the premium costs — sharing it equally with the government — up from the 25 per cent of the costs retired bureaucrats now pay for the health-care plan.

But that 50-50 cost-sharing will be phased in over four years Also, low-income pensioners will not be subject to the 50-50 cost-sharing measures, and will continue to pay 25 per cent of the benefit costs.

A total of six years or more of pensionable service will now be required for retired bureaucrats to be eligible for the plan, up from the current two years of service. The federal government has also agreed to eliminate the annual deductible for the plan.

Clement indicated Wednesday that the agreed changes will save the government $6.7 billion, which suggests the concessions to unions are worth hundreds of millions of dollars over several years.

In the February budget, the Conservative government estimated that cost-sharing with retired employees on the health plan and increasing the minimum years of service to six would save $7.4 billion over six years.

"We thank all parties for negotiating in good faith to reach a fair, fiscally responsible, and sustainable agreement, resulting in benefits for federal employees, retirees, and the taxpayer," Clement said in his prepared speaking notes.

LeDroit

Entente de principe sur le régime de soins de la fonction publique

PAUL GABOURY, Le Droit, le 26 mars 2014

Une entente de principe sur les modifications au Régime de soins de santé des retraités fédéraux a été conclue entre les représentants du gouvernement, les syndicats et les associations de retraités. Ces changements incluent entre autres une hausse des cotisations pour les retraités et une augmentation des années de services requises pour y avoir droit.

Dans le budget de février dernier, le gouvernement Harper avait indiqué son intention d'imposer une hausse de cotisations aux retraités fédéraux, afin qu'elles représentent 50 % des coûts de leur régime de soins de santé. Il avait aussi avancé que les employés fédéraux devraient désormais compléter six années de service, au lieu de deux, pour avoir droit à ce régime de soins de santé.

Le président du Conseil du Trésor, Tony Clement, n'a pas tardé à faire part de sa satisfaction à l'annonce de cette entente. « Il s'agit d'une entente équitable et raisonnable, qui profite aux employés, aux retraités et aux contribuables, a déclaré le ministre Clement. Nos efforts visant à moderniser la fonction publique font partie de notre engagement pour une gestion rigoureuse sur le plan financier et une restriction des dépenses. »

L'entente est intervenue alors que le gouvernement menaçait d'imposer son régime en votant une loi, explique l'Alliance de la fonction publique du Canada (AFPC). « Nous ne sommes pas d'accord. Mais le Conseil du Trésor nous a fait comprendre qu'il fallait en arriver à un accord, faute de quoi le gouvernement imposera ces modifications par voie législative. Dans ce contexte, nous avons conclu une entente qui prévoit quelques importantes améliorations », explique le syndicat.

Modifications prévues

À compter du 1er janvier 2015, les cotisants au régime actifs ou retraités n'auront plus à verser la franchise de 100 $ par famille ou de 60 $ par personne.

Dès le 1er octobre 2014, de nouveaux avantages s'ajouteront, comme la correction de la vue au laser, avec plafond à vie de 1000 $. Le plafond des frais de services psychologiques, de son côté, passera de 1 000 $ à 2 000 $.

Tel que l'avait annoncé le gouvernement dans le budget, les retraités actuels et futurs paieront 50 % des primes du Régime de soins de santé de la fonction publique (RSSFP). L'augmentation sera mise en vigueur progressivement, sur une période de quatre ans, à compter du 1er avril 2015.

Les retraités actuels qui reçoivent le Supplément de revenu garanti (avec un revenu inférieur à 16 728 $ pour une personne seule et 22 080 $ pour un couple) continueront de payer seulement 25 % des primes. Les mêmes seuils de revenu s'appliqueront aux retraités qui n'ont pas encore 65 ans.

Il faudra par ailleurs avoir six années de service, sauf exception, pour avoir droit aux avantages du régime à la retraite.

En vertu d'une lettre d'entente, les parties s'engagent à poursuivre les négociations sur le RSSFP. Le gouvernement a consenti à ne présenter aucune modification négative avant mars 2019, a précisé l'AFPC.

CBC news |

Public sector, feds reach deal on retiree health benefits

Association of retirees say it was like negotiating with a 'gun to our head'

By Karina Roman and Hannah Thibedeau, CBC News, March 26, 2014

Treasury Board president Tony Clement announced today that the government has reached a deal with its public sector unions to double the amount retired federal employees pay in premiums for health benefits.

Clement made the announcement at a news conference Wednesday.

However, public service union leaders and the group representing retirees argue the deal was not negotiated in good faith, considering the government had outlined its plan in the 2014 budget and threatened to make the changes through legislation.

"The reason we agreed to this deal is to mitigate the harm to our members. We did not agree to this deal as a negotiated deal," said Sylvia Ceacero, the executive director of the National Association of Federal Retirees (FSNA) in an interview with CBC News.

Ceacero said the association has considered challenging the deal in court.

"We had a gun to our head ... so that leaves the potential for some sort of legal action if our organization so feels it could be beneficial to our members."

The Conservative government announced in its Feb. 11, 2014, budget that it would transition from the government currently paying 75 per cent of benefit costs under the Public Service Health Care Plan to equal cost sharing.

Clement said both parties bargained in good faith.

"I'm certain that we, in terms of our public communications, we did concentrate the minds just as they did as well. Their position was publicly communicated as well," he said.

"Quite frankly, we both put some water in our wine," but that's something that happens in any negotiation, Clement said.

$6.7B in savings

The new 50-50 cost-sharing plan is expected to save the government significant cash. The savings are estimated to be $6.7 billion over six years.

The deal also changes the eligibility from two years of service to six.

In the budget, the government said the change was to move toward comparable plans of other large employers in the public and private sectors.

The new cost-sharing formula is expected to be phased in over four years beginning April 1, 2015. It will exclude low-income pensioners. Current retirees with incomes that make them eligible for the Guaranteed Income Supplement (GIS) will continue to pay 25 per cent of the premiums.

The FSNA's Ceacero said they had asked that the low-income threshold be $30,000 under which 65 per cent of their members fall. But she said the Treasury Board said no. The GIS threshold is just under $17,000 for a single person and just over $22,000 for a couple.

For retiree Susan Barker, it's not the additional cost, but the fact it affects both current and future retirees that bothers her. Barker worked for 30 years in the public service in Ottawa and now lives in Windsor.

"It's reneging on the deal. It's not an ethical thing to do. I'm angry," Barker said in an interview with CBC News. "We were often told we received a lower salary than the private sector because our benefits were better. Now it's being cut back on us."

The president of the Professional Institute of the Public Service of Canada, which represents some of the retired employees, said she is not telling members it's a good deal.

"It was a success were able even to convince the government to negotiate," said Debi Daviau in an interview with CBC News.

But the union adds the government did make some concessions.

Starting next year, all health-care plan members (active and retired) will no longer have to pay the annual deductible for health claims, currently set at $100 per family or $60 for a single member.

And three new benefits will be added beginning Oct. 1, 2014:

- Laser eye surgery will be partly covered under the plan, with a lifetime cap of $1,000.
- Repairs and replacement parts for CPAP (sleep apnea) machines will be covered up to $300 per year.
- The limit on psychological services will increase to $2,000 from $1,000.
- In his news conference Wednesday, Clement also hinted at more savings to be found in the public service, something the national president of the Public Service Alliance of Canada said does not bode well for upcoming bargaining on new collective agreements.

"None of us thought it would be a walk in the park," said Robyn Benson. "We're all very prepared for a difficult set of negotiations."

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Public-service retirees unhappy with agreement over health benefits

BY KATHRYN MAY & JASON FEKETE, OTTAWA CITIZEN MARCH 26, 2014

OTTAWA — The association representing retired public servants is considering a legal challenge to a $1.3-billion deal it signed with the Conservative government that will double the premiums pensioners pay for their health benefits.

Gary Oberg, president of the National Association of Federal Retirees – known as FSNA – said his association only agreed to the deal to stave off a worse one that the Conservative government had planned to impose by legislation.

He said the association, which represents many of the 500,000 retired public servants, military and RCMP who belong to the benefits plan, will discuss next steps at a board of directors meeting, including whether to take legal action.

“We have not cut ourselves off (from) the possibility of legal action,” he said.

“This was not a negotiated deal but we have agreed to what was offered to mitigate the harm to our members because if we had not done so the government would have

legislated to the lowest common denominator, which would have been less than what our members are going to receive now."

Treasury Board president Tony Clement announced Wednesday the government had approved the package of concessions and improvements recommended by the partners committee that oversees the Public Service Health Care Plan, saving the government about $6.7 billion over six years.

The FSNA is a member of the committee and was at the table during the negotiations that led to the deal.

Federal unions and the FSNA have long argued they negotiated the deal with a "gun to their heads" because Clement made it clear he would resort to legislation if needed.

The government had already booked $7.4 billion in savings in the February federal budget by announcing plans that would force pensioners to pay 50 per cent of premiums for their health benefits rather than the 25 per cent they pay now. Clement also wanted to change the eligibility rules for the plan to prevent retirees from joining unless they worked in the public service for six years rather than the existing two-year threshold.

The 17 federal unions have been staunch supporters of the retirees' desire to stop the changes, but they unanimously gave their blessing to the proposal and have so far not indicated any plans to explore legal options.

Ron Cochrane, co-chair of the joint union-management National Joint Council, said the unions' strategy was to negotiate the best deal it could to soften the blow for pensioners when it became clear that Clement wasn't going to budge on his two big demands: the 50-50 cost sharing and the new six-year threshold that would limit the number eligible to join the plan.

"No union has had the stress and pressure of these unions in trying to make a silk purse out of sow's ear," Cochrane said. "It's no way to negotiate an agreement."

Oberg said the 50-50 cost-sharing is at the heart of the FSNA's objection to the deal. The association has questioned whether the government can change the rules of retirement benefits promised to employees while working.

The courts have dealt with this issue in several cases, including one involving Weyerhaeuser Company Ltd. and General Motors of Canada, where courts ruled that the companies were bound to continue health-care benefits during retirement.

"The principle here is they are changing and shifting the promise they made to their employees when they are now retired and that's an unconscionable thing to do," said FSNA executive director Sylvia Ceacero.

Oberg said the FSNA wanted any retirees earning less than $30,000 to be exempt from the premium increase. Under the agreement, any retirees with incomes less than $16,728 for a single person or $22,080 for a couple – the income threshold to qualify for the Guaranteed Income Supplement – will be spared the increase.

But he said the FSNA's position was rejected outright because, with the savings already booked, the government wouldn't have been able to generate enough savings to balance the books by 2015.

The agreement announced Wednesday is just one step in heated negotiations that now switch to hammering out new collective agreements for 17 public sector unions. At the same time, the federal government says it still believes more savings can be found within the bureaucracy by fixing "some back-office inefficiencies."

The coming round of collective bargaining will coincide with the run-up to the 2015 federal election. One of the government's top priorities in negotiations is to replace existing sick leave benefits with a new short-term disability plan.

Clement said Wednesday he sees "no reason" why the federal government and unions can't have friendly, constructive negotiations in the coming months on new collective agreements. "A lot of people… said that it was impossible for us to reach a deal on (the health benefits), that it was not likely to happen and that we were headed for a clash," Clement said.

"I'm going to always try to find a way to find the deal that works. We do believe very strongly on sick leave that we have to change a system that isn't working either for individual employees or for the taxpayer. But there's going to be lots of time for those discussions in the months ahead."

Robyn Benson, PSAC's national president, said her union needed to make the best out of a difficult set of circumstances on the health benefits after Clement threatened to impose worse outcomes in the budget bill.

Clement, however, said both sides gave a little to achieve an agreement that works for the government, unions and taxpayers.

"It was a deal that is fair," he said. "Quite frankly, we both put some water in our wine, and that's the nature of negotiated settlements."

Benson said she's hopeful the government will negotiate fair and equitable collective agreements with PSAC's members in the coming months, but is serving notice they intend to negotiate enhancements for their members with no clawbacks.

"I think this government is incapable of doing any kind of discussions without threats, it seems to be the bullying tactic," she said.

Agreement at a glance:

– The 50-50 cost-sharing will be phased in over four years, starting April 1, 2015. The government believes retirees' monthly contributions to the benefits plan will increase to about $48 a month from the current $24 a month.

– Also, low-income retirees eligible for the Guaranteed Income Supplement (income of approximately $16,728 for an individual, and $22,080 for a couple) will not be subject to the 50-50 cost-sharing measures, and will continue to pay 25 per cent of the benefit costs.

– Beginning April 1, 2015, new retired bureaucrats (with some exemptions) will require a total of six years or more of pensionable service to be eligible for the plan, up from the current two years of service.

– Effective Jan. 1, 2015, the annual deductible for the plan will be eliminated. Plan members will no longer have to pay the first $60 for single coverage or $100 for family coverage per calendar year.

– Starting Oct. 1 2014, a number of benefit enhancements will be introduced, including: reimbursement for laser eye surgery with a lifetime maximum benefit of $1,000; increasing the annual maximum benefit for psychological services to $2,000 (from $1,000); and repairs and replacement parts for sleep apnea machines covered up to $300 per year.

CBC news

PSAC launches legal challenge of budget bill's anti-strike provisons

Public sector union argues omnibus legislation violates freedom of expression and association

By Karina Roman, CBC News, March 27, 2014

The Public Service Alliance of Canada is launching a legal challenge of last fall's federal budget legislation that put limits on the right of federal workers to strike if the government deems their work to be an essential serivce.

Canada’s largest public sector union is taking the federal government to court over provisions in last fall's omnibus budget legislation that limit strikes by federal workers deemed by the government to provide essential services.

The Public Service Alliance of Canada filed its court challenge with the Ontario Superior Court on Tuesday.

PSAC, with the support of more than a dozen other public sector unions, wants parts of Bill C-4 thrown out, claiming that they violate workers' charter rights: freedom of expression and freedom of association.

The documents filed this week ask the court to declare the provisions are of no force or effect.

They also demand that if the court finds that union members' charter rights have been violated, it must order the "reopening of any collective agreements negotiated while the above provisions…were in force, to allow the parties to exercise their right to collectively bargain with full recourse to the right to strike."

Bill C-4 included amendments to the Public Service Relations Act that make it illegal for any bargaining unit to strike if 80 per cent or more of the positions in that unit are declared necessary for providing an essential service.

It also says the government has the "exclusive right to determine that a service is essential and the number of positions required to provide that service."

PSAC argues that violates its members' right to associate, which includes the right to strike.

"The designation of employees under the Act is so extensive that it renders the freedom to associate and strike meaningless," the union's application says.

PSAC says the former process to determine what was an essential service was fair and worked well.

The union also argues the new law goes too far when disputes go to arbitration. The arbitration board is now required to base its decision on the government's ability to pay for wage increases and whether the benefits unions are bargaining for are necessary to attract more employees to the federal public service.

Treasury Board President Tony Clement defended the measures when the bill was introduced last fall.

"A democratically elected government should have the right to identify what Canadians consider 'essential services,'" Clement's office said in an email to CBC News at the time.

The public service unions have also threatened to fight the changes to the Canada Labour Code, also embedded in the omnibus bill, but Tuesday's court filing does not include that challenge.

Bill C-4, also known as Economic Action Plan 2013 Act No. 2, received royal assent on Dec. 12.

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Union takes federal government to court over who has right to strike

Jason Fekete, Ottawa Citizen, March 27, 2014

OTTAWA — The country's largest federal public sector union is taking the Conservative government to court over legislative changes in last fall's budget bill that block strikes by federal workers considered to offer "essential" services.

The court challenge from the Public Service Alliance of Canada, filed this week in Ontario Superior Court, comes as the Harper government is set to introduce its spring budget bill as early as Friday to implement measures in the February budget.

In its court challenge, PSAC says the sweeping reforms to the Public Service Labour Relations Act (PSLRA) introduced in Bill C-4 (the fall 2013 budget implementation bill) violate federal workers' freedom to strike and freedom of association as guaranteed in the Charter of Rights and Freedoms.

PSAC, which represents approximately 140,000 federal public sector employees, is asking the court to declare that the provisions introduced in the budget bill are of no force or effect.

The union is also asking the court, under workers' protected Charter rights, to reopen any collective agreements negotiated while the new provisions were in force, in order to allow PSAC's members to exercise their right to collectively bargain with "full recourse" to the right to strike.

"Bill C-4 amended the PSLRA to dramatically increase the authority vested in the employer with respect to the determination of essential services, stripping the (Public Service Labour Relations Board) of a number of powers it previously exercised," PSAC argues in its challenge.

"The PSLRA, as amended by Bill C-4, imposes significant limits on the freedom of employees to associate and engage in strike activity, violating the subsection 2(d) (Charter) rights of both the PSAC and its members."

Last fall's budget implementation bill introduced changes allowing the government to reserve the "exclusive" right to decide which jobs will be designated "essential," which means that employees in those jobs can't strike.

The amendments to the Public Service Labour Relations Act made it illegal for a bargaining unit to strike if the government deemed 80 per cent or more of the employees

in that unit as providing an essential service. Instead, those bargaining units can now go to arbitration to settle impasses.

Under the previous rules, the unions and government negotiated the number of employees who were considered essential. If the two sides couldn't agree, the matter was turned over to the Public Service Labour Relations Board to decide which jobs would be considered essential in the event of a strike.

The union says the legislative changes give the government the power to designate "a greater number of employees than is necessary" as essential during a strike if the labour action is having an impact on government operations.

Effectively, the new rules therefore prohibit more employees from participating in a strike than is necessary to maintain the essential services, PSAC says in its court challenge.

Along with PSAC, applicants listed in the court challenge include members of PSAC bargaining units representing the Canada Border Services Agency, Parks Canada and the core public administration.

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iPOLITICS

Harper's 2015 wedge issue: bashing Big Labour

By Tasha Kheiriddin, iPolitics, March 27, 2014

The relationship between the federal government and its public sector employees blew hot and cold this week, with the announcement of both a deal and a lawsuit between the two parties. These latest developments are only an early glimpse of what Canadians can expect in the run-up to the October 2015 federal election.

On March 26, Treasury Board President Tony Clement proudly proclaimed that the government had come to an agreement with public sector unions on funding health benefits for retirees. The deal will see retirees' annual contributions to their health benefit plan double from an average of $261 to $500, or 50 per cent of the premium. Ottawa will still pay 75 per cent of premiums for low-income retirees who receive the Guaranteed Income Supplement. Savings for the feds? Almost $7 billion over 6 years.

The day before, however, the Public Service Alliance of Canada (PSAC) filed a lawsuit over the right to strike. In last fall's omnibus budget bill, the federal government eliminated that right for any bargaining unit where 80 per cent or more of the positions

constitute an “essential service”. Furthermore, according to the law, “the employer has the exclusive right to determine that a service is essential and the number of positions required to provide that service.”

PSAC claims this guts workers’ rights to both freedom of association and to strike, and wants the offending provisions of the law struck down.

Then on Thursday came word that Ottawa has more than just the rank and file in its sights. It is reviewing the compensation of 7,000 top civil servants. The goal? To find more savings to achieve a balanced budget (or rather, a larger surplus) by fiscal 2015-16. The size of that surplus will determine how many promises the Conservatives can make — and how much credit they can take for restoring fiscal discipline to Ottawa.

Riling the labour movement will help the Conservatives if unions step up support for their natural political ally: the NDP. Stopping the bleed of NDP votes to the Liberals would help deny the Liberals seats, particularly in Quebec and the 905.

Cutting the size and benefits of the bureaucracy looms large in that equation, as reported earlier this year by Canadian Press. But the downsizing is not just a matter of dollars and sense — it’s also a matter of principle, and a set-up for a serious wedge issue in the next election.

Last fall, at its national convention, the federal Conservatives debated a slew of resolutions designed to curb union power, including that of federal public service unions. Six of the resolutions passed — including some supporting the government bringing public sector benefits “in line with those of the private sector” — and others on broader issues, such as ending mandatory union dues and membership.

Riling the labour movement will help the Conservatives if unions step up support for their natural political ally: the NDP. Stopping the bleed of NDP votes to the Liberals would help deny the Liberals seats, particularly in Quebec, where the NDP gained the bulk of its caucus, and the 905, where vote splits helped several Conservative candidates sidle up the middle to victory.

But the plan could backfire if unions, particularly those representing the public sector, decide to help the Liberals on the assumption that they are more likely to be their new bosses in Ottawa. That relationship would require an expression interest on the part of the Liberal party, however, and there’s no major indication of that — yet.

At the Liberals’ recent convention in Montreal, not a single resolution mentioned unions, or evinced concern about the curtailment of their powers. As for Liberal Leader Justin Trudeau, his connection to unions has revolved more around hefty speaking fees, such as the $20,000 he controversially charged the Ontario Public Service Employees Union for an appearance at their Ontario 2020 conference in 2010, when he was already an MP.

If the Liberals were smart, they’d get out ahead of this issue and start building bridges with Big Labour. NDP Leader Thomas Mulcair is not a ‘union man’ himself, and though his party may be their traditional home, there’s no guarantee that in a Stop-Harper election, unions might not be ready to switch horses — if they smell a win.

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Ivison: Top civil servants on radar for cuts to help balance federal budget

John Ivison, National Post, March 26, 2014

OTTAWA — The mandarins who run Canada's public service may be next in line to see their pay and benefits come under scrutiny as the Conservative government moves to balance the federal budget.

Treasury Board President Tony Clement said a committee examining compensation for the 7,000 people in the upper ranks of the bureaucracy has made a number of recommendations to him and the Prime Minister.

"We haven't made any decisions yet but I'm always looking ways to increase accountability throughout the whole system," Mr. Clement said in an interview. "We have a highly motivated executive cadre but at the same time part of the way we get the system to modernize itself is that we all have to make some kind of sacrifice.''

He was speaking after announcing that the government had reached a deal with 500,000 retired federal public servants that would double retirees' contributions to their health plan.

The Conservatives had announced in the budget that they intended to increase the share of benefit costs paid by current and future retirees from 25% to 50%, saving the federal government around $7.4-billion over six years.

Mr. Clement said that to get the agreement, the government "put water in its wine" – granting concessions for low income retirees eligible for the Guaranteed Income Supplement, who will continue to pay 25% of benefits. This will reduce savings by around $700-million over the six year period.

For the average federal public service retiree, with a pension of $30,000, the new agreement will see health care contributions rise from $24 to $48 a month.

The agreement adds retirees to the ranks of those who have had their pay and benefits cut as part of the government's deficit reduction program.

Mr. Clement is currently involved in negotiations with public sector unions about ending the practice of banking sick days and replacing the current system with a short-term disability plan. The Conservatives have already reduced the numbers in the public service

by 20,000 and increased pension contributions for bureaucrats and MPs. The 2012 budget called for the elimination of 600 executive positions.

But the 7,000 executives in the upper echelons of the public service have been shielded from most of the cuts. In fact, the pay of most executives has increased markedly on the back of bonuses given to those who have managed to cut most.

The return for taxpayers may well have been worth the pact – the target for the government's deficit reduction plan was 5% of the $88-billion in direct spending. In the event, a motivated executive identified savings equivalent to 6.9% of the program spending budget.

However, critics in the public service unions suggest that the government has allowed executives to rubber-stamp their own pay raises, while freezing salaries further down the scale.

One Conservative said there was a conscious decision not to take on the senior ranks of the public service during the deficit reduction process.

But with the budget on the verge of moving back into the black, Mr. Clement appears to have decided that getting more value for money from the public service requires taking a closer look at executive ranks that have swollen by more than 70% since the Liberal cuts of the 1990s.

Defenders of the Sir Humphreys at the top of the bureaucracy will point out that, while most rank and file public servants are paid more than they would be in the private sector, most at the executive level are paid less. Those at the most junior executive rank – the EX1s who account for more than half of the 7,000 – received a total compensation package of $166,000, around 6% less than the private sector. Pay packages at the deputy minister level rise to $418,000, but that is less than half what those people are deemed able to make in business.

Mr. Clement disbanded the "executive compensation and retention" committee that used to be chaired by Carol Stephenson, a former dean of the Ivey School of Business at Western University.

"It was a farce. There was no retention issue at the EX level – once they're there, they're there for life," said one source.

Mr. Clement said he has now "reformulated" the committee under the leadership of Greater Toronto Airport Authority chair, Vijay Kanwar.

Mr. Clement would not comment on the recommendations made by Mr. Kanwar's committee and the latter was not available for comment Wednesday.

People familiar with the system suggest the criteria for bonuses and "at risk" pay should be overhauled to more accurately align performance and pay.

At the end of each performance cycle, deputy minister complete a "self-evaluation assessment," which theoretically drives up the chances of getting a generous bonus.

"The success ratio in achieving bonuses is a joke," said one source. "One minister gave his deputy minister a failing grade and the deputy minister still got a maximum bonus."

Bill C-23, Fair Elections Act, Criticized By Professor Paul Thomas

Althia Raj, Huffington Post, March 31, 2014

OTTAWA — The Conservative government's proposed changes to the election law will weaken the public's trust in the electoral process and could lower voter turnout, a leading public policy expert says.

Paul Thomas is an emeritus professor at the University of Manitoba, a widely published expert on Canadian politics and a member of a commission that advised Parliament on recent federal electoral boundary changes in Manitoba.

He joins a long lists of experts who warn that there are problems with the proposed Fair Elections Act and that it risks disenfranchising many voters. Research in other countries shows that political attacks on election agencies weaken public trust and lead to lower turnout rates, Thomas says. That's part of the message he plans to deliver to MPs when he addresses a Commons committee studying the act on Monday evening.

"This should not happen in Canada, which has one of the strongest reputations in the world for staging fair and free elections under the supervision of Elections Canada, the oldest independent and impartial national election body among established democracies," Thomas says, according to speaking notes shared with The Huffington Post Canada.

The government's election law is under review by a committee with a majority of Conservative MPs. The bill has been attacked by every opposition party, and all of the expert testimony so far has been critical of the Tories' proposal. Democratic Reform Minister Pierre Poilievre, however, says his bill is "excellent."

He told CTV's "Question Period" on Sunday that it is "still too early to say" whether the government will contemplate any major alterations.

"I feel comfortable defending everything there," he told CTV. "I think it's a very fair and reasonable elections reform package."

Thomas says he's very concerned that the government is ramming changes through Parliament that affect Elections Canada and the democratic process without consulting the arms-length electoral body itself or opposition parties.

Several countries have recognized that such fundamental laws should not be changed "hastily and unilaterally" by the governing party, he says. In Britain, most election laws require advance consultation with the national Electoral Commission, a practice he recommends that Canada adopt.

In New Zealand, changes to the Electoral Act require the support of 75 per cent of the members of the House of Representatives.

"[It] lessens the perception that the governing party is changing the law to gain partisan advantage," Thomas notes.

Thomas believes it's wrong for the government to eliminate voter information cards used by some citizens in 2011 to help prove their address. He is also critical of the elimination of vouching, a practice that allows someone without sufficient identification to cast a ballot if someone they know vouches for them.

The government has not presented any hard evidence of voter fraud, he says, and the elimination of the two measures "does not strike the right balance between upholding the constitutional right of Canadians to vote and the highly remote risk of voter impersonation."

Thomas believes it is wrong for the Tories to restrict Elections Canada's ability to communicate and promote electoral democracy. He notes that the Conservatives supported a unanimous motion in 2004 calling on Elections Canada to expand its activities to ensure accessibility for disabled voters and to encourage young Canadians to vote.

He is critical of the government's decision to bring the commissioner of Elections Canada under the Director of Public Prosecutions, in a department headed by a minister. Thomas warns that this could jeopardize the commissioner's independence.

Thomas wants the government to scrap a loophole created in the bill that would allow political campaigns to contact donors without counting the expense towards their spending caps. He says it is difficult to image how fundraising calls would not involve an appeal for votes and he believes the calls could also be used by political parties to attack their political opponents. There is "no conceivable way that Elections Canada with its present authority could monitor and enforce compliance with the provision," he adds.

He calls for several other changes to the bill, among them:

– Giving the commissioner of Elections Canada the authority to seek court orders forcing potential witnesses to testify.

– Extending privacy laws to political parties (at the moment, almost no rules govern how the parties use the data they collect on voters).

– Developing codes of conduct with Elections Canada to guide the behaviour of party candidates, paid staff and volunteers.

Thomas says these changes would help political parties comply not just with the letter but with the spirit of the Canada Elections Act.

Thomas, however, is unlikely to change the government's mind. Poilievre told CTV that he disagrees with similar proposals put forward by Marc Mayrand, the head of Elections Canada. But the minister said he will listen to committee testimony.

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Ending vouching, voter ID cards could disenfranchise 520,000 in next election, says elections expert Neufeld

TIM NAUMETZ, Hill Times, March 27, 2014

PARLIAMENT HILL—The government came under its most severe criticism yet Thursday over controversial plans to amend federal election law, with a former chief electoral officer for British Columbia accusing the Conservatives of attempting to "tilt the playing field" in their favour.

Former B.C. elections chief Harry Neufeld, who has also advised developing countries building impartial electoral systems around the globe, said measures that would eliminate vouching for voters with insufficient ID and prohibit an Elections Canada voter information card as proof of address would deny at least 250,000 electors their right to vote.

Combined with another measure in the election legislation, Bill C-23, that would increase the number of partisan supervisors nominated for polling stations, the change "makes people wonder whether this process is really being administered in a completely neutral

way," Mr. Neufeld said after an hour of testimony at the Procedure and House Affairs Committee hearing expert witnesses on the controversial legislation.

Mr. Neufeld predicted court challenges from electors who would be unable to cast ballots in the next election if the legislation passes and said the government should "either amend it or pull it."

Conservative MPs on the Procedure and House Affairs committee repeatedly focused on a report from Mr. Neufeld's audit of the 2011 election - which found widespread "irregularities" in the way rushed poll officials handled voter vouching, where neighbors, acquaintances or relatives of electors could vouch for them, but no evidence of voter fraud.

"To me, it appears like they are trying to tilt the playing field in one direction," Mr. Neufeld said after reporters several times asked him what he thought was the government's goal.

Asked which direction, Mr. Neufeld said: "Their direction."

Mr. Poilievre (Nepean-Carleton, Ont.) ignored opposition questions about Mr. Neufeld's statement during Commons question period, and also brushed aside other observations Neufeld made, including the fact that neither Mr. Poilievre nor anyone else asked him about his report or consulted him as the government drafted the legislation.

The bill includes other measures the opposition says would benefit the Conservatives, including an increase of at least $1-million in the campaign spending limit for political parties, with increases as well for candidate spending, but an exemption for fundraising costs while soliciting past donors for new contributions during an election.

"Mr. Neufeld is entitled to author recommendations; he is not entitled to author the law, that is left to Parliamentarians," Mr. Poilievre said in the House.

"At no time did I ever agree with his recommendations. I don't agree with them, and that is why they're not in the bill, but I do agree with the facts that are put down in the report, which found 50,000 irregularities linked to vouching in the last election. We deal with that problem by ending the process of vouching and making the reasonable request that people bring one of 39 pieces of identification that will demonstrate their address and their identify," he said.

Chief Electoral Officer Marc Mayrand has pointed out during committee testimony that many approved ID documents, such as utility bills with addresses, are not available to hundreds of thousands of voters, while others, such as student cards or aboriginal status cards, might have photo but not an addresses.

The only single ID documents that are acceptable to prove identity and address are government issued identification, such as or similar to driver's licences with a photo and address or a health card with photo and address.

A Conservative MP the government brought in to lead the committee questioning of Mr. Neufeld on Thursday, Erin O'Toole (Durham, Ont.), Parliamentary Secretary to Trade Minister Ed Fast (Abbotsford, B.C.), rejected Mr. Neufeld's assessment of motives.

"Certainly I don't agree with that," Mr. O'Toole told The Hill Times after the committee meeting. "I spent my questions on vouching, which his own report says is deeply, deeply flawed, and almost impossible to fix, which is why I would say the majority of jurisdictions in Canada have moved away from, or never experimented with, an area that he acknowledged in there has rampant errors."

Mr. O'Toole pointed also to a Supreme Court ruling that confirmed the 2011 election of Conservative MP Ted Opitz (Toronto-Centre, Ont.), after an Ontario Superior Court judge overthrew his election because of more than 50 irregularities in vouching records and other errors. The Supreme Court reduced the number of incorrect vouching irregularities that would have had an effect on the outcome, and noted there was no evidence of fraud.

"This is a case where we've taken Mr. Neufeld's report, we've seen the Supreme Court decision and its clarifications, and are making changes to eliminate some areas that are prone to major irregularities, like vouching," Mr. O'Toole told The Hill Times.

"There is a change, sometimes the people that are accustomed to the old ways of doing things resist change the most, and I think that's the case," he said.

Mr. Mayrand and Mr. Neufeld have both pointed out his audit of four federal electoral districts for the 2011 election and three federal byelections in 2012 found no evidence of fraud.

"The majority of errors were documentation, people just got confused," Mr. Neufeld said Thursday.

"They couldn't figure out who a vouchee and who a voucher was, sometimes they recorded it as the mother of a son, and they didn't know who it was that was being vouched for," he said. "Quite frankly, I think in a lot of cases, there's an oral oath process that the person who votes must go through, and they would administer that and there's 20, 30 people waiting in line, and they would take shortcuts and forget about the documentation."

"In some cases they would know who it was and they would say 'it's just not worth the trouble of going all this administrative, bureaucratic process for somebody that lives across the street from me,'" Mr. Neufeld told reporters.

His report recommended improvements in the administration of vouching and training, and the approval for all electoral districts of the Elections Canada voter information card as proof of address.

Despite Mr. Poilievre's concerns over the findings from the report, Mr. Neufeld said the Cabinet Minister did not question him about it or even contact him.

“I was waiting for that call, and it never came,” Mr. Neufeld said in response to opposition questions at the Committee hearing.

Elections Canada conducted a pilot project of voter information cards as proof of address for selected aboriginal reserves, senior citizen residences and long-term care facilities, as well as university campuses with a high incidence of mobility among students for the 2011 federal election.

The results of the special allowance for voter information cards as ID in those polling stations, combined with elimination of vouching, which was used for an estimated 120,000 electors in 2011, showed that elimination of the vouching system and the voter card as ID could affect more than 500,000 voters, and at the minimum deny 250,000 the right to vote, Mr. Neufeld said.

“Four hundred thousand people who were allowed to use the VIC card last time would not be allowed to use it this time, 120,000 people who were allowed to vouch last time would not be allowed to vouch this time,” Mr. Neufeld said. “That math is 520,000 people.”

“Now, some of them may, with a really vigorous advertising campaign, get the ID they need, but I’d say generously you might get half of those people to show up with ID, but you’re looking at least at a quarter million people who won’t be able to vote,” he said.

Harper says he will ‘respect’ Supreme Court’s blocking of Nadon

STEVEN CHASE, The Globe and Mail, March 25, 2014

Prime Minister Stephen Harper says he will respect the Supreme Court ruling that declared Marc Nadon, his latest appointment to the highest bench, as not legally qualified for the job – the strongest signal to date that Ottawa will not attempt to buck the decision.

“We’re obviously going to respect the decision. We will respect not just the letter of the decision but the spirit of the decision as well,” the Prime Minister told reporters in The Hague, where he had just wrapped up a nuclear security summit.

In his first public comments on last week’s ruling, the Prime Minister said he did not anticipate this outcome. The court said Mr. Nadon, who’d served on the Federal Court of Appeal, could not be appointed to fill one of Quebec’s guaranteed slots on the Supreme

Court because he lacked current standing before the Quebec bar or as a member of a Quebec court.

Mr. Harper said the legal opinions that Ottawa had sought on whether Mr. Nadon lacked standing had not suggested the appointment would be a problem.

“This issue had been raised with us a very hypothetical and we had commissioned expert opinion on it, which [ran] completely contrary to the decision,” he said.

The Prime Minister, who is in the middle of a European trip, begged off further answers on the matter, saying his government doesn’t know what it will do next on Nadon.

“We’re still examining the decision. We haven’t taken a decision on who the candidate will be. We haven’t even taken a decision on taking the decision – the process.”

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Supreme Court ruling on Judge Marc Nadon exposes flaws in system

Andrew Coyne, PostMedia Columnist,, March 24, 2014

Reacting to last Friday’s 6-1 decision by the Supreme Court ruling Judge Marc Nadon ineligible to join them, the Harper government claimed to be “genuinely surprised” at the result. It shouldn’t have been — not because the Court was right, but because this is just the sort of flaky decision the Court is capable of.

Strictly speaking, the Court was not asked to rule on Judge Nadon’s appointment, per se, but rather on the broader question of eligibility it raised. Is it sufficient, that is, for a judge to have been a member of the bar in the past, as in Judge Nadon’s case, or must he be one at the time of his appointment?

Section 5 of the Supreme Court Act would seem quite straightforward on this point. “Any person,” it reads, “may be appointed a judge who is or has been a judge of a superior court of a province or a barrister or advocate of at least 10 years standing at the bar of a province.” Is or has been. Seems clear enough, right?

But then Section 6 adds a wrinkle to this general eligibility criterion. “At least three of the judges,” it stipulates, “shall be appointed from among the judges of the Court of

Appeal or of the Superior Court of the Province of Quebec or from among the advocates of that province." Again, clear enough: at least three judges must be from Quebec.

The purpose is equally clear, and well known: to ensure the Court has a certain number of judges with knowledge of the province's distinctive civil law system. Or rather, that was what it was about, until the Court's majority started in on it. In those two words in Sec. 6, "from among," the majority found an exception to the general eligibility rule in Sec. 5: While in every other province both current and former judges or advocates are eligible, in Quebec they must be active currently.

A section reserving three of the judges for Quebec was thus converted to the altogether different purpose of excluding a whole category of jurists from Quebec. Of course, it's possible to read "from among the advocates of that province" to mean "from among the current advocates." But if that was Parliament's intent, you'd think it would have said so, not hidden it in the text for six future judges to discover.

It's especially implausible when the passage is seen in context, reading Sec. 5 and Sec. 6 together. Sec. 5, after all, speaks of "any person," not "any person outside Quebec." It says "a province," without specification: not "a province, other than Quebec." Indeed, as Judge Michael Moldaver notes in his dissent, the principle of "currency," applied in isolation, leads to an absurdity: to be appointed as a judge from Quebec, it would be enough to have practised law in the province for a single day. That's obviously not on: the majority agrees the 10-year minimum should apply. And where does it get that idea? From Sec. 5 — the same section that allows "has beens" on the Court. "With respect," Judge Moldaver writes, "this amounts to cherry-picking. Choosing from Sec. 5 only those aspects of it that are convenient — and jettisoning those that are not — is a principle of statutory interpretation heretofore unknown."

Unsupported either by statute or logic, the majority's interpretation cannot even appeal to the legislative record. While the principle of reserving a number of the judges to Quebec was part of the original legislative bargain that created the Court, and while the majority correctly quotes a raft of sources on how critical this was, not only to its proper functioning but to its perceived legitimacy in the province, it provides no similar citations in support of the claim that appointments to the Court from Quebec are and always have been restricted to current members of the bar or bench, or were ever intended to be. It doesn't because it can't: as Judge Moldaver notes, "there is nothing in the historical debates that suggests any such thing."

In other words, the Court made it up, as it so often does in these cases (see: Secession Reference). To compound the offence, it then forbade the federal government from passing legislation clarifying that both current or former bar members were eligible, on the grounds that this would amount to amending the Court's composition, as entrenched in the Constitution — "amending," that is, its own freshly minted interpretation of it. I'm not ordinarily one to cry "judicial activism," but this surely fits the description.

But, as I say, what else did the Harper government expect? It knew the appointment would be controversial, and that Judge Nadon's credentials would be challenged: that's why it commissioned opinions from former Supreme Court judges Ian Binnie and Louise Charron, as well as the constitutional scholar Peter Hogg, all of whom vouched for his

eligibility. In which case, why do it? It would be one thing if it was some world-beating legal superstar, but for Judge Nadon — a semi-retired maritime law specialist? The willingness of the prime minister to risk such a debacle, for such an undistinguished choice, is another mark against his judgment. That his government refuses to rule out reappointing Judge Nadon — perhaps after sitting for a day on the Quebec Superior Court — is sheer lunacy.

Judge Nadon should not have been put in this position. The Court should not have been put in this position. The country should not have been put in this position. If ever there were an argument for a more robust process of legislative review of such appointments, this is it. As with other recent controversies — the Senate scandals come to mind — this isn't just a matter of Stephen Harper's judgment, but of a system that trusts so much to one person's discretion.

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Nadon, ou comment nommer les juges

Chronique d'Yves Boivert, La Presse, le 25 mars 2014

Que va faire Stephen Harper ? Maintenant que la nomination du juge Marc Nadon a été déclarée illégale par la Cour suprême, quelles sont ses options ?

Le premier ministre pourrait-il « contourner » la décision de vendredi, comme le craignait hier Thomas Mulcair ?

Le juge Nadon, redevenu juge semi-retraité de la Cour d'appel fédérale, pourrait démissionner et demander sa réinscription au Barreau. C'est une formalité pour les anciens juges. Avocat, il deviendrait techniquement admissible à la Cour suprême et le premier ministre pourrait le nommer.

Le pourrait-il vraiment ? La Cour suprême a pris soin de préciser qu'elle ne se prononce pas sur la question. Un doute subsiste donc quant à ce stratagème.

Si le juge Nadon tentait de redevenir avocat pour une journée, on imagine bien que Rocco Galati, l'avocat d'immigration de Toronto qui a déclenché la contestation l'an dernier, déposerait une nouvelle requête.

Est-ce que vraiment le gouvernement fédéral et le juge Nadon voudraient se soumettre à un autre examen par la Cour suprême ? C'est très douteux.

On imagine aussi que le gouvernement pourrait nommer M. Nadon à la Cour supérieure du Québec pour une semaine, puis le nommer à la Cour suprême. La Loi sur la Cour

suprême dit en effet que seuls les juges de la Cour supérieure, de la Cour d'appel ou les avocats peuvent être nommés à l'un des trois postes de juge réservés aux Québécois à la plus haute cour.

Ce genre de manœuvre serait une manière de tourner en ridicule les institutions judiciaires, et je serais extrêmement surpris de voir le juge Nadon s'y prêter.

J'ose espérer que malgré toute l'hostilité des conservateurs, il reste au gouvernement assez de dignité pour ne pas jouer ces jeux absurdes.

C'est fini pour le juge Nadon.

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Quoi faire alors ? Le premier ministre peut reprendre la liste confectionnée par le comité parlementaire l'automne dernier, et choisir un nouveau candidat.

En principe, en effet, le ministre de la Justice, après consultations, soumet une liste de huit candidats à ce comité. Le comité est formé de trois conservateurs, un néo-démocrate et un libéral. Ils analysent les dossiers et en retiennent trois pour le premier ministre, qui a le dernier mot.

À l'étonnement général, Marc Nadon a donc été retenu dans la liste des trois meilleurs candidats du Québec.

Stephen Harper peut encore choisir parmi les deux autres.

Légalement, cependant, il peut faire fi de ce processus, qui n'est pas inscrit dans une loi. Pourvu qu'il choisisse parmi les juges de la Cour d'appel ou de la Cour supérieure, ou les avocats québécois, il a le champ libre.

Il peut aussi décider de prendre tout son temps, ce qui embêterait bien entendu la Cour suprême, privée de son neuvième juge depuis six mois. Il pourrait relancer tout le processus.

Et voilà qu'en novembre, le juge Louis LeBel, de Québec, doit prendre sa retraite. Stephen Harper doit donc choisir deux juges québécois cette année.

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À la fin de 2014, Stephen Harper aura nommé sept des neuf juges de la Cour suprême.

Ça ne les a pas empêchés de contrarier le gouvernement conservateur dans plusieurs dossiers-clés : Omar Khadr, le site d'injection pour toxicomanes Insite de Vancouver, le projet de commission canadienne des valeurs mobilières, la légalité de la prostitution et maintenant la légalité de la nomination du juge Nadon – une première en 139 ans.

C'est en quelque sorte une indication de l'indépendance de ces juges – et de la qualité des nominations.

Mais avec le juge Nadon, au-delà de la « légalité » d'une nomination émanant de la Cour fédérale, on semblait entrer dans un nouveau territoire politique. Celui de nominations controversées, peu prestigieuses et marquées idéologiquement. Comment expliquer autrement l'apparition au saint des saints d'un juge semi-retaité absent des radars ?

La décision de vendredi constitutionnalise les trois sièges québécois à la Cour suprême et formalise l'importance de la spécificité « juridique et sociale » du Québec. Il est ironique qu'il ait fallu un avocat de Toronto pour en arriver là ! Ce n'est en effet qu'après la requête de Galati que le procureur général du Québec s'est joint au recours.

Au-delà de cette très importante question, toutefois, tout ceci nous ramène à une autre question constitutionnelle cruciale : comment nommer les juges ?

L'après-commission Bastarache au Québec est rassurant. Le gouvernement du Parti québécois a été exemplaire dans ses nominations de juges à la Cour du Québec.

On ne peut pas en dire autant à tous les niveaux de nominations fédérales, où malgré plusieurs choix excellents, tout semble encore se jouer dans un clair-obscur politique.

Quant à ce comité parlementaire qui « sélectionne » les candidats à la Cour suprême, la preuve est faite : il ne fait tout simplement pas le travail et ne garantit pas l'excellence des nominations.

Il faut le jeter et le redessiner avant qu'il ne préside à une dégradation de la Cour suprême.

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Opinion: The Supreme Court's faulty logic on Nadon

Grant Huscroft, contribution to National Post, March 25, 2014

The Supreme Court of Canada's decision in the Nadon Reference is as bad a decision as the Court has made in recent memory.

Marc Nadon, a Quebec-born and -educated lawyer with almost 20 years of legal experience in Quebec and 20 years experience as a judge of the Federal Court of Canada and the Federal Court of Appeal, was declared ineligible for appointment to one of three seats reserved for Quebec on the Supreme Court of Canada. The majority of Justices

went out of their way to portray the judgment as constitutionally required in order to protect Quebec's interests.

How did this come about?

Let's start with the common ground. Everyone agrees that the Supreme Court Act provides that current and former superior court judges are eligible for appointment to the Supreme Court, along with current and former members of the bar of at least 10 years standing. There is no dispute that Nadon is eligible to be appointed to the Court on these criteria. In fact, there is a long history of appointing Federal Court Judges to the Supreme Cout.

The wrinkle is that another provision of the Act provides that at least three judges of the Supreme Court shall be appointed from among the judges of the Quebec superior courts or the Quebec bar.

According to the majority of the Court, this provision operates to disqualify Nadon, for he is neither a Quebec superior court judge nor is he currently a member of the Quebec bar.

In short, according to the majority, the moment he accepted appointment to the Federal Court in Ottawa, Marc Nadon ceased to be a Quebec lawyer for purposes of Supreme Court eligibility.

Was this result required by the language of the law or principles of statutory interpretation? The short answer is no, as Justice Michael Moldaver explained in his dissenting opinion.

Justice Moldaver's opinion has been all but ignored in the commentary praising the majority's decision. But his opinion is forceful and must be reckoned with.

Justice Moldaver describes the majority as engaging in "cherry-picking" of the appointment criteria, applying only aspects of the law that are "convenient" and "jettisoning those that are not." The Court's approach to statutory interpretation, as he describes it, is "heretofore unknown."

The result is absurd, according to Justice Moldaver, because Judge Nadon would become eligible for appointment to the Supreme Court if he were to rejoin the Quebec bar for as little as a single day.

Think about that for a moment. This, we are told, was a major constitutional moment in the Supreme Court of Canada, but all that was at stake was a single day. The majority of the Court explicitly refused to address this point, no doubt out of embarrassment.

The majority attempts to buttress its decision by inventing an "underlying purpose" to the appointment requirements they are enforcing. The law, they say, is designed to ensure not just that the Supreme Court has expertise in Quebec law, but also that Quebec's legal traditions and "social values" are represented on the Court.

Judges are supposed to put their values aside when they adjudicate. Aren't Quebec judges expected to do the same?

If this is the purpose of the law, it operates imperfectly by excluding Nadon: As a lawyer born and educated in Quebec, he must surely have the relevant "social values" — unless he is somehow no longer Quebecois by virtue of his federal work.

But this is all makeweight stuff in any event. As Justice Moldaver writes, importing social values into the law is "unsupported by the text and history of the Act."

For its part, the majority offers no explanation of the social-values concept it says is so important. But it is implausible to suppose that there is some uniform set of social values that Quebecers share, and odd to suppose they are properly relevant to the task of judging in any event.

After all, judges are supposed to put their values aside when they adjudicate. Aren't Quebec judges expected to do the same?

At the end of the day, the Court's judgment denies Marc Nadon a seat on the Court and embarrasses the government. But the consequences go much further.

In purporting to respect Quebec entitlement to representation on the Supreme Court, the Court has thrown the Federal Courts and their Quebec judges under the bus.

The Federal Courts, like the Supreme Court, are required to have minimum numbers of judges from Quebec — at least 10 on the trial division and five on the Federal Court of Appeal. That is so because the Federal Court requires competence in Quebec Civil Code law (one of the things that many assume Judge Nadon lacks) and must also be seen to be legitimate in Quebec.

Following the Court's decision in the Nadon Reference, Quebec lawyers with aspirations to sit on the Supreme Court of Canada are far less likely to be willing to serve on the Federal Courts.

To say the least, this is a bad outcome. How unfortunate that the Court believed it to be required by our Constitution.

Grant Huscroft is Professor of Constitutional Law at the Faculty of Law at Western University.

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Marc Nadon ruling makes you wonder if the government is listening to its lawyers

STEPHEN MAHER, POSTMEDIA Columnist, MARCH 21, 2014

NDP justice critic Francoise Boivin says Stephen Harper's appointment of Marc Nadon to the Supreme Court was problematic from the start. Canada's high court ruled Friday that Nadon is not eligible to join their ranks.

There was a slapstick quality to the Supreme Court's rejection Friday of Stephen Harper's nominee for the Supreme Court of Canada.

Other prime ministers have faced difficult decisions when the stakes were higher, but none have ended up looking, as this prime minister does today, like a man who has just stepped on a rake.

This looks to be a preventable embarrassment, and, like a number of other recent legal decisions, it raises questions about whether the government is listening to its lawyers.

In a 6-1 ruling, the court told the prime minister that Marc Nadon, his nominee for the top court, is not eligible to sit thereon.

The ruling is the topper most of a growing pile of cases where judges have told the prime minister that he can't do things he wants to do.

The federal Justice Department — with an annual budget of $662 million and a staff of 4,588 — is the largest law firm in Canada, but it is either not giving good advice to the government or the government is not listening to the advice it is getting.

That may be because the Tories have promoted people who will give them the kind of advice they want, or more specifically, not give them the kind of advice they don't want.

It is hard to know, because legal advice to the government is covered by solicitor-client privilege, and it's not the kind of thing governments tell the truth about.

"We ought to have known that this was dumb because our lawyers advised us against it," is something no government will ever say.

Here's what Stephen Lecce, spokesman for the prime minister, said Friday: "We are genuinely surprised by today's decision. Prior to Justice Nadon's appointment, the Department of Justice received legal advice from a former Supreme Court justice, which was reviewed and supported by another former Supreme Court justice as well as a leading constitutional scholar. None of them saw any merit in the position taken by the Court."

We don't know, and likely never shall, what the government's own lawyers advised, but they may have warned of troubles, because there must have been a reason for the government to commission a legal opinion from former Supreme Court Justice Ian Binnie.

The Supreme Court Act states that "at least three of the judges shall be appointed from among the judges of the Court of Appeal or of the Superior Court of the Province of Quebec or from among the advocates of that Province."

That was negotiated with some difficulty in 1875. Quebec was nervous about letting English judges muck around with Quebec's separate legal system, so the law set aside seats for Quebec lawyers.

Nadon was once a Quebec lawyer, but he has been sitting on federal courts since 1994. Binnie saw no problem appointing a federal judge who had been a Quebec lawyer.

Until now, Harper's nominations to the top court appear to have been selected for their legal expertise, not politics.

Nadon, though, seems to have come to the government's attention when he sided with the government in a split decision concerning terrorist/child soldier Omar Khadr, a special interest of Howard Anglin, the prime minister's senior legal affairs adviser.

After Nadon was nominated, though, Toronto lawyer Rocco Galati challenged the appointment. Quebec joined in and the government referred the question to the Supreme Court. It also quietly amended the Supreme Court Act, sneaking a couple paragraphs into a budget implementation bill.

On Friday, the court ruled that "a current judge of the Federal Court of Appeal is not eligible for appointment."

Sorry, prime minister. No Nadon.

How will the government react? Harper has had his will repeatedly thwarted by the courts, and he doesn't seem to react positively to thwarting.

His government has fired or denounced a number of watchdogs, the better to keep the rest of them in line.

He can't fire judges, though, and the bench has emerged as the biggest challenge to his authority.

On Thursday, the Supreme Court ruled that a 2011 tough-on-crime parole eligibility law is unconstitutional. Courts have overturned mandatory minimums for gun crimes, rejected a government attempt to shut down a safe injection facility and thrown out prostitution laws. They seem likely to reject the government's Senate reform plans as unconstitutional, and may open the door to assisted suicide.

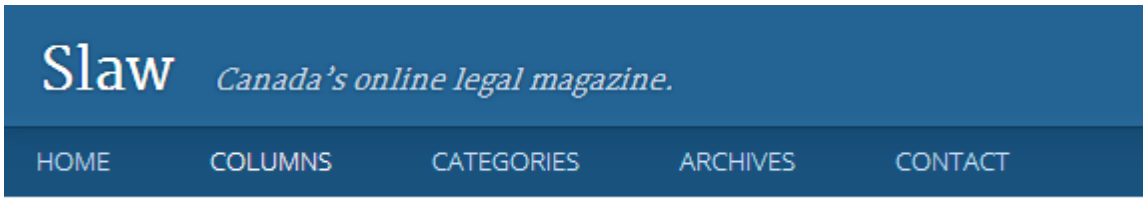
Some of these rulings are a delayed reaction to a legislative agenda that appears to be based on values (and populist political appeal) rather than the best evidence, or the likelihood that a given law can withstand a constitutional challenge.

Former justice department lawyer Edgar Schmidt launched a lawsuit last January, claiming that the government was preventing its senior legal servants from properly applying constitutional checks to its laws.

If Schmidt is right, the government is wasting a lot of time and money pushing ahead with laws it ought to know the courts will strike down.

If that's the case, then, like a man who leaves a rake lying around where he might step on it, Harper has nobody to blame but himself.

smaher@postmedia.com



One Shared Legal Future, Too Many Solitudes

By Adam Dodek, Professor at Ottawa University, March 24, 204

We often talk about the "Two Solitudes" within the legal profession: the silos between the academy and the profession. However, a recent talk by the Treasurer of the Law Society of Upper Canada Thomas Conway made me realize that this dichotomy is wrong. There are not two solitudes within the legal profession, there are many more.

As the Director of the Cavanagh LLP Professionalism Speaker Series at the University of Ottawa's Faculty of Law, I invited the Treasurer to speak about "The Law Society of Upper Canada: Promoting the Public Interest and Facing the Challenges of a Changing Legal World".

Conway was remarkably candid (and optimistic). He asserted (rightly in my belief) that we have seen more changes in the regulation of the legal profession in Ontario over the past decade than we have in the previous 200 years. He likened the Canadian justice system to the city of Detroit: collapsing under its own weight and citizens forced to turn to self-help.

He talked about the fundamental change in the role of the Law Society of Upper Canada brought about by the passage of the Access to Justice Act in 2006 which amended the Law Society Act to provide, inter alia, that:

1. The Society has a duty to maintain and advance the cause of justice and the rule of law.
2. The Society has a duty to act so as to facilitate access to justice for the people of Ontario.
3. The Society has a duty to protect the public interest.

Historically, the Law Society had two mandates regarding the lawyers that it regulated: (1) ensuring competency; and (2) ensuring ethical behaviour. Conway wants the Law Society to take on a third role: leadership in access to justice and in public interest.

He ended with a call for members of the legal profession to embrace and shape the change.

The nearly 100 members of the audience were composed of mostly students, some faculty members, with some healthy representation from members of the Ottawa bar – public and private – attracted by the topic, the speaker or the free accredited ethics and professionalism CPD.

In the Question and Answer period, Conway was peppered with questions from students about the Legal Practice Program (LPP) and the increase in fees for students.

It is understandable that students are concerned and angry about being forced to shoulder the lion's share of the burden for the LPP. In a prior post, I argued that the burden of training the next generation of lawyers should be more evenly shared amongst members of the legal profession. To its credit, the LSUC is partially subsidizing the cost of the LPP. Every member will pay $25 in fees towards reducing the licensing fee for students by $500 each. I think the profession should do more.

Conway appeared sympathetic to this position but he is a realist. He told the students the cold hard truth: there is very little sympathy for the plight of law students, articling students or LPP students out there in the profession. If anything, Conway understated the harshness of feeling "out there". The law schools are blamed for much of what ails the legal profession these days, including even the demise of Heenan Blaikie!

Frequent comments on Twitter blame the law schools for churning out more lawyers than the market can supposedly absorb (conveniently ignoring the legal profession's chronic failure to address the shortage of legal services to the vast majority of Canadians).

No students asked Conway about how Convocation would deal with the issue of accreditation of Trinity Western University's proposed law school with its discriminatory Community Covenant

There are actually multiple solitudes in the legal profession: a very fragmented bar consisting of large law firm lawyers, smalls and soles, in house counsel, criminal defence

lawyers, government lawyers, etc. Then there are law students and articling students. And finally those of us in the academy (who are far from united on most any subject).

When I listened to the law students speak passionately about student debt and impact of fees on equity groups, I couldn't help but wonder how many of their predecessors who are now practicing lawyers had once voiced similar concerns and how many of these current students would remain vocal once they were "in" the profession.

Conway ended his address with a call to "embrace and shape the change" in the legal profession. He is absolutely right that we have a shared future in the legal profession; whether we are able to face it together is another challenge.

The Nadon Decision and the Wonderful Elasticity of Language

By Jean-Marc Leclerc, March 25, 2014

What struck me most about the Supreme Court of Canada's Nadon decision was the simplicity of the underlying issues. "How should s. 5 and s. 6 of the Supreme Court of Canada Act be interpreted?" These questions go to basic issues of statutory interpretation involving the very composition of the Court. Yet the issue prompted a diversity of views from intelligent people – six on behalf of the majority, versus possibly four others (if the legal opinions of former Justices Ian Binnie and Louise Charron and scholar Peter Hogg are included together with Justice Moldaver's dissent).

The only questions the Supreme Court was asked to decide involved pure issues of statutory interpretation. At the risk of oversimplifying the analysis, this is how I saw the differences between the majority and the dissent.

In its approach to statutory interpretation, the majority engaged in a broad canvassing of many different factors, ranging from the plain meaning, differences in wording, and the legislative purpose. All of this was fed with references to legislative debates, the history of the Court itself, even recent constitutional debates. The majority's analysis is a rich and deep exercise in statutory interpretation.

The dissent addressed these factors too. But for Justice Moldaver, the real kicker was the absurdity inherent in the majority's decision. It meant that Justice Nadon could be appointed to the Quebec bar for one day only, and thus qualify under the majority's test.

For Justice Moldaver, the "practical sense" of the decision drove his conclusion: "It makes no practical sense," he concluded.

The majority very pointedly decided not to deal with the absurdity criticized by Justice Moldaver – because it was not a question the Court was asked to decide. Adding to the intrigue, this absurdity was the second of two questions about which Ian Binnie, a former Justice of the Court, was asked to give an opinion to the Department of Justice. Louise Charron, another former Justice of the Supreme Court, also said "there is no question" that she agreed with the answer and Peter Hogg said that he was in "complete agreement" with Ian Binnie's conclusion. If the "one day" issue comes before the Supreme Court, how will those strongly-held opinions stack up?

Some media reports suggest the government is not ruling out renaming Justice Nadon to the Supreme Court. Regardless of one's stance on the issue, there can be no doubt that there would be great legal risk if Harper stuck with the Nadon appointment by taking the "appointment to the Quebec Superior Court for a day" route. Statutory interpretation is undoubtedly a rich and diverse exercise that can lead to vastly different results, depending on one's perspective. Practical sense matters for some. Overall context matters more for others. The first two questions the government asked in the Nadon reference were squarely decided against it. Some tea leaves strewn through the majority's reasons (citing the importance of "civil law training and experience on the Court" and to the need to ensure "the legitimacy of the Supreme Court as a general court of appeal for Canada") suggest the Court might well indeed decide a one day appointment is not enough. Is the Prime Minister willing to roll the statutory interpretation dice one more time? I know I wouldn't risk my political capital.

Jean-Marc Leclerc is a lawyer practicing civil litigation in Toronto at Sotos LLP*. He has a broadly-based practice in a number of areas, including class actions, franchise, banking, appeals, and public interest litigation. He formerly clerked at the Federal Court of Appeal and the Supreme Court of Canada. He has also been a sessional instructor at Queen's University, where he taught appellate advocacy.*
