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Press Clippings for the period of March 31 to April 7, 2014
Revue de presse pour la période du 31 mars au 7 avril 2014

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

AJC in the News – L'AJJ défraye les manchettes

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Super agency for federal tribunals raises concerns

BY KATHRYN MAY, OTTAWA CITIZEN, APRIL 2, 2014

OTTAWA – The Conservative government's plan to create a new super administrative agency to manage operations of federal tribunals has raised concerns about political influence and the independence of the quasi-judicial bodies which rule on cases ranging from human rights and competition to labour relations.

The legislative overhaul of tribunals, which is buried in the omnibus budget bill tabled last week, will separate the corporate and support services from the panels' decision-making work as part of the push to improve efficiency in government.

This means that budgets, facilities and other resources, including some 450 public servants, will be pooled and managed centrally at a new Administrative Tribunals Support Services of Canada, which will be based in the National Capital Region and operate under the justice portfolio. Tribunals' regional offices will also be turned over to the new ATSSC.

The new agency will be headed by a deputy minister, called a chief administrator, who will report to the minister of justice. The chief administrator will be appointed by the government to serve "at pleasure" for five-year terms that can be renewed.

Errol Mendes, a law professor at the University of Ottawa, argued a bill that fundamentally changes a critical piece of Canada's administrative justice and legal system shouldn't be rammed through in budget legislation without proper analysis and debate.

He flagged concerns about the chief administrator's direct reporting relationship to the minister, which could open the door to political meddling in tribunals' work – even if done "covertly" by starving tribunals of resources. On top of that, the government controls the appointment of tribunal members, who serve "at pleasure."

"I don't trust this government to give the tribunals complete independence in administrative support or in appointing people on merit," Mendes said.

The move is reminiscent of a similar tribunals service operated by the United Kingdom and is in keeping with the Conservatives' efforts to streamline "back office" operations to eliminate duplication and beef up efficiency.

Within the bureaucracy, the changes are being presented as a way to improve efficiency, modernize and streamline tribunal operations by sharing services such as hearing rooms, human resources and finance personnel. The new service is touted as a "shared service agency" for tribunals, just as Shared Service Canada provides IT services for all departments.

Justice officials say it's difficult to estimate savings or how many jobs could be affected until the new agency is up and running.

They have been assured the tribunals' adjudicative and decision-making independence will be protected and in fact "access to justice" will be improved by pooling resources, especially for small tribunals. Although the ATSSC will be part of the Justice portfolio, all tribunals will remain in their current ministerial portfolios.

"Its creation will in no way diminish the independence of the tribunals which will continue to make independent decisions and maintain control over their rules and procedures. Chairs and members of the tribunals will remain in place but all staff, including counsel, currently working on these tribunals will report to the new organization," said Justice Deputy Minister William Pentney in an internal memo to staff.

Lisa Blais, president of the Association of Justice Counsel, said the union was briefed on the changes and so far members have raised no concerns about the tribunals' independence.

Rather, Blais said she was worried about the move affecting the quality of services as resources are centralized.

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Unions launch grievance against new federal rules on employee performance

BY KATHRYN MAY, OTTAWA CITIZEN APRIL 6, 2014

OTTAWA – Federal unions are challenging the Conservative government's new performance management regime, which has been touted as a "new beginning" to make Canada's public servants more productive and efficient while weeding out poor performers.

The Professional Institute of the Public Service of Canada has filed a policy grievance on behalf of 17 unions against key provisions of employees' new mandatory performance agreements, saying these violate collective agreements. The regime came into effect last week.

The challenge is the first since unions signed an unprecedented solidarity pledge several months ago to develop common bargaining strategies when each begins talks with the government during what's expected to be a watershed round of collective bargaining in the coming months.

With the pledge, unions vowed to reject any clawbacks of sick leave and existing disability benefits. PIPSC Vice-President Shannon Bittman said unions also agreed to protect employee contract rights under the new performance management regime.

"A win for us, would be a win for everyone, said Bittman. "Performance management is an issue, along with sick leave, that all the bargaining agents are working together and collaborating on a common position."

Treasury Board President Tony Clement argued revamped sick leave and performance management go hand-in-hand in the government's drive to improve efficiency.

He announced plans for a tougher performance management a year ago and infuriated many public servants when he said the 0.06-per-cent dismissal rate in the public service – compared to five to 10 per cent rate in the private sector – "means there are more public servants dying at their desks than being dismissed for underperforming."

The grievance filed with the Public Service Labour Relations Board argues the directive's provision that gives managers the right to withhold pay increments for workers who aren't up to scratch is a violation of the union's contract with the government.

Each classification for a public service job typically has five steps or pay increments between the minimum and maximum level of pay for the job. Until now, employees

generally moved up a step every year and automatically received an increase until they hit the maximum rate, whether they were a star or poor performer.

PIPSC also wants the government to drop the four "core competencies" or behaviours it expects from employees on the job: showing integrity and respect; thinking things through; working effectively with others; taking initiative and being action-oriented.

Bittman argued that badly behaved employees should be handled by disciplinary proceedings and behaviour should have no bearing on their performance appraisals.

She said unions worry that assessing behaviour opens the door to "disguised discipline" and "double jeopardy" for employees who have already paid the price and been disciplined, only to get punished again with a poor performance review.

"If someone has already been disciplined for behaviour or their conduct in workplace, that shouldn't be held against them again in their performance appraisal," said Bittman.

Some managers acknowledge a grey zone between behaviours and competencies when assessing employees but argue that "how" the job gets done can be as relevant as how well one does the job. The employee, for example, who is disciplined for being chronically late, could have missed key meetings that should be considered when appraising performance.

Departments have been training managers for the April 1 launch of the directive, when all employees will start meeting with managers to hammer out mandatory agreements on what is expected of them on the job. They face mid- and year-end assessments.

Another controversial change is the 18-month time limit Clement put on managers to deal with under-performers. Managers must decide in that time if workers can be brought up to speed or whether they should be demoted or dismissed.

Another change was that employees on probation must be assessed and not simply made full-time employees after their year of probation has expired.

Bittman said unions support performance management as long as the objectives are "measurable, attainable and reasonable." She questions whether the training was sufficient, especially when some departments couldn't afford it because of the operating budget freeze.

Asked to respond to PIPSC's legal challenge, Clement's office replied: "Our government is committed to standing up for Canadian taxpayers. Public sector wages and benefits are the government's largest investment each year.

"Good employees should have the opportunity to become great employees, while unsatisfactory performance should not be encouraged nor rewarded."

Harper lifts curtain on victims bill of rights

SEAN FINE, Globe and Mail, April 3, 2014

Crime victims would have their rights in the justice system guaranteed by law, and enforceable through a complaints process within federal government offices, under the proposed Canadian Victims Bill of Rights introduced in Parliament by the Conservative government on Thursday.

But the bill is as notable for what it does not do as what it does. Victims groups had called for new rights for victims to participate directly in the justice system, and to enforce those rights. The bill falls short of what they asked for, some victims advocates said Thursday.

Justice Minister Peter MacKay promised in the fall that the bill of rights would put victims "at the heart" of the justice system, and by that measure, the bill is a failure, said Steve Sullivan, executive director of Ottawa Victim Services, and the country's former victims ombudsman. "It falls really short of that promise," he said in an interview.

The bill is key to the Conservative government's tough-on-crime agenda. In more than 30 crime bills since 2006, the government has touted its desire to tilt the country away from accused rights and toward the protection of victims. But the government appears to have been mindful of concerns in the legal community – among prosecutors as well as defence lawyers – that an already overburdened system could become even more bogged down if victims were given greater rights in court.

"I think we've found a balance of making sure victims have this effective voice, but not creating additional burdens and complications," Prime Minister Stephen Harper said. He and his wife Laureen, along with Justice Minister Peter MacKay and Public Safety Minister Steven Blaney, attended the launch of the bill at a seniors centre in Mississauga, Ont.

The bill does not give victims the power to complain to a court that their rights were ignored, Mr. Sullivan noted. It does not give them the right to sue anyone for a violation of their rights. It does not give them the right to directly address a court, in writing or in person, on issues that affect them, such as plea bargains.

The bill is, however, also a grab bag of specific rights. Victims would have the right to request that an accused in a stalking or sex assault case not be permitted to cross-examine them personally. Victims under 18 could make that same request in any case. A judge would be required to accept the request. And victims under 18 would have the right to a publication ban on their name, if they request it. Currently, that right exists only if they are victims of youth crime. And the victims' rights bill also changes the Canada Evidence Act to say that any witness could be compelled to testify against a spouse.

“We suggested they go further,” said Heidi Illingworth, executive director of the Canadian Resource Centre for Victims of Crime, a non-governmental agency created in 1993 by the Canadian Police Association. She pointed to Britain, where victims can ask an independent agency to review a prosecutor’s decision to drop charges against an accused. In the United States, victims can file an action in court if, for instance, their right to make a victim impact statement or express a view on a plea bargain has been overlooked.

In the contentious area of plea bargains, the Canadian bill of rights sets out only to ensure victims are informed, so they don’t show up in court expecting a trial.

As for complaints to provincial government bureaucrats – such as the prosecutors who deal with most of the country’s criminal cases – provinces would deal with complaints under systems they already have in place, such as an ombudsman’s office. The federal government promised to help with any costs to bolster those complaint mechanisms.

The bill set out rights in four major areas – information, protection, participation and restitution.

With the exception of restitution, those rights were set out in the Canadian Statement of Basic Principles accepted by the federal and provincial governments in 2003 and 1985. The new bill also would add some wrinkles: Victims would have the right to receive up-to-date photos of offenders when they are released from prison. Victims would have wider rights to request testimonial aids (such as a screen to testify behind). Parole boards could require offenders not to live near a victim.

Benjamin Perrin, a senior fellow at the Macdonald-Laurier Institute for Public Policy, said some of the bill’s provisions could have a dramatic impact on victim rights, but added that he was disappointed that the bill specifically denies victims the right to be observers at judicial proceedings.

William Trudell, who heads the Canadian Council of Criminal Defence Lawyers, said the bill “raises expectations, to be dashed. Victims are being used.”

Le gouvernement Harper présente sa Charte des victimes

Hugo de Granpré, La Presse, le 4 avril 2014

(Ottawa, Ontario) La nouvelle Charte canadienne des droits des victimes, présentée hier par le gouvernement fédéral, a été bien reçue par des experts, groupes de pression et partis de l'opposition. Mais Ottawa devrait en faire plus, croient certains d'entre eux, qui espèrent convaincre le fédéral d'y apporter des changements.

Le projet de loi C-32, déposé hier à la Chambre des communes et annoncé par le premier ministre Stephen Harper et le ministre de la Justice en banlieue de Toronto, contient cette Charte ainsi que des modifications à certaines lois, dont le Code criminel et la Loi sur le système correctionnel et la mise en liberté sous condition. Il est le fruit d'une consultation pancanadienne.

Le document d'une soixantaine de pages prévoit une nouvelle définition de ce qu'est une «victime», à savoir; une personne qui a subi des dommages «matériels, corporels ou moraux» ou «des pertes économiques» à la suite d'une infraction. Il établit un processus de plaintes, qui devra être mis sur pied par tout organisme fédéral en lien avec le système de justice pénale. Il réitère aussi l'importance de tenir les victimes informées du cours des enquêtes ou du processus judiciaires et de protéger leur sécurité.

Le projet énonce ainsi qu'une photo récente du délinquant devra être fournie à la victime lorsqu'un délinquant sera libéré. Il permet à la Commission des libérations conditionnelles de limiter la possibilité du délinquant de résider près de chez sa victime lors de sa libération. Il élargit la liberté d'expression des victimes en leur permettant d'inclure des dessins et des poèmes dans leur dénonciation pour exprimer le préjudice qu'elles ont subi. Il stipule même que le vieux principe selon lequel une personne ne peut témoigner contre son conjoint ne s'appliquera plus. «C'est difficile d'être contre, parce qu'il n'y a rien là-dedans qui me renverse au point que je voudrais refuser de l'envoyer en comité», a réagi la porte-parole de l'opposition officielle en matière de justice, la députée néo-démocrate Françoise Boivin.

Certaines lacunes ont néanmoins été évoquées. Les limites du processus de plaintes, qui n'est pas exécutoire et qui ne s'applique qu'aux institutions fédérales, ont été mentionnées par des experts et groupes de pression. Certains ont aussi déploré le fait que la Charte et les changements proposés ne s'appliquent qu'aux institutions fédérales, et non pas aux instances provinciales, pourtant chargées de l'application de la loi et de l'administration de la justice. L'absence d'un organisme ayant la tâche de coordonner et d'évaluer l'efficacité des mesures en place, comme aux États-Unis, a aussi été soulignée.

«Il n'y a pas de leadership ou une initiative pour avoir quelque chose de coordonné à travers nos dix provinces, nos trois territoires et le fédéral. Et je trouve cela triste», a réagi Irvin Waller, professeur de criminologie à l'Université d'Ottawa.

«C'est quand même un effort important du gouvernement fédéral, a noté Arlène Gaudreault, présidente de l'Association québécoise Plaidoyer-Victimes. Mais je ne suis pas certaine que ce projet de loi-là mette en place toutes les conditions nécessaires.»

«Notre association et d'autres groupes allons travailler pour bonifier le projet de loi, dans la mesure où nos commentaires seront entendus», a-t-elle ajouté.

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Critics brand victims bill of rights as political cynicism

Defence lawyers say legislation is calculated political ploy

Colin Perkel, The Canadian Press, April 4, 2014

MISSISSAUGA, Ont. – Crime victims would have more say as their cases wind their way through the justice system under a new Conservative government bill that veteran lawyers immediately denounced as crass politics.

The long-awaited legislation, part of the government's ongoing law-and-order theme, aims to fix what Prime Minister Stephen Harper said Thursday was a broken part of the system.

"The rights of criminals have received far more attention than the rights of their victims," Harper said at a seniors' centre.

"Justice is not only for the accused; it is also for the victims."

The proposed law — similar to one passed in Ontario almost 20 years ago — would ensure victims are given information about cases in which they are involved, such as a copy of a bail or probation order, or details of a criminal's parole.

Other measures would mandate judges to take into account the safety of victims during bail proceedings, and the harm an accused has caused during sentencing.

Several defence lawyers branded the legislation as a calculated political ploy that victims of crime had fallen for.

"The (bill) is an example of a community that has sold itself to the Conservatives for a mess of porridge," said Clayton Ruby.

"They need rehabilitative programs and services, and compensation from the government, and they've dropped all those expensive demands in favour of shallow symbolism."

Other measures include a standardized victim-impact form that could also be used by review boards deciding what should happen to someone found not criminally responsible by reason of a mental disorder.

Another section would give victims the right to ask a court to consider ordering restitution for offences where financial losses are easy to calculate.

Frank Addario, another Toronto-based criminal lawyer, said the Conservative government's agenda is to position itself as tough on crime, even though it knows its measures have little real-world effect.

"It's cynicism masquerading as policy," Addario said.

"We did not need a new law for government to tell itself that it should communicate with victims about criminal cases."

Several victims rights advocates were on hand for the announcement, including former pro-hockey player Sheldon Kennedy, who was sexually abused by his minor-league coach.

"I'm not naive to think that we're going to flip a switch and everything's going to be better," Kennedy said.

"But being able to have this announcement…is going to start the process of trying to be better at the way we handle victims, not only through the court process, but really understanding the damage that happens to victims."

Some critics wondered who would pay for a new complaints mechanism that federal departments involved in the justice system would have to set up for those victims who feel their rights have been infringed.

The money, they said, would be better spent on victim services than on a whole new bureaucracy.

"I don't think this bill was necessary because basically what's needed is education and properly funded victim services across the country," said Bill Trudell, chairman of the Canadian Council of Criminal Defence Lawyers.

Harper made no mention of a proposed change to the Canada Evidence Act — contained in a few paragraphs in the 68-page bill — that would give prosecutors free hand to force spouses to testify against each other.

The lawyers said they did not expect the measure would have much impact given that spousal testimony comes into play in relatively few cases, and compelled evidence may be unreliable anyway.

Harper did say he was aware of widespread concern that giving victims more rights could bog down an already overloaded criminal justice system but said the legislation avoided that pitfall by not creating "victims as litigants."

The Assembly of First Nations said the government had not properly consulted First Nations about the legislation.

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5 things to know about the Victims Bill of Rights

The Canadian Press, April 4, 2014

OTTAWA – The Conservative government unveiled its long-awaited victims' rights bill on Thursday. Here are five things to take away from the legislation:

1. People could be compelled to testify in court against a spouse. The Canada Evidence Act currently gives spouses the right to refuse to testify, except in certain specific cases such as sexual assault or crimes against youngsters. The provision is based on the notion that a married couple is one person in the eyes of the law.

2. Victims would be able to find out much more about the offender. The bill would allow victims to ask for a copy of a bail order, details on an offender's correctional plan, a probation order or the details of a conditional or work release. They would also be able to ask for a copy of a recent photograph of the offender.

3. Victims would have the right to have the courts consider making a restitution order in all cases and to have such orders registered as a civil court judgment against the offender if the money isn't paid.

4. Victims would have the right to read an impact statement in or outside the court, or behind a screen. The court would also allow the victim or the person speaking on their behalf to carry a photograph of the victim taken before the crime, as long as it doesn't interfere with the trial.

5. The court must inform victims, if they ask, of any plea agreements reached between the accused and the Crown. Only two provinces — Ontario and Manitoba — have laws governing the role of victims in the plea agreement process. Ontario provides victims with access to information about any pre-trial plea arrangements. Manitoba gives victims the right to ask for information about "the possibility of discussions between the Crown attorney and an accused person, or his or her legal counsel, on a resolution of the charge."

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Senate to pass feds' controversial elections overhaul bill by end of June: Carignan

The government majority in the Senate has set the end of June as the deadline to pass one of the most controversial bills the Conservatives have introduced in eight years.

By TIM NAUMETZ, Hill Times, April 2, 2014

PARLIAMENT HILL—The government majority in the Senate has set the end of June as the deadline to pass one of the most controversial bills the Conservatives have introduced in eight years—election amendment legislation that critics claim will deny tens of thousands of electors the right to vote and prohibit Elections Canada campaigns and advertising to promote voter involvement.

Conservative Senator Claude Carignan, leader of the government in the Senate, said the government set the timetable to vote final passage of Bill C-23 through Parliament "before the summer" to ensure Canada's Chief Electoral Officer Marc Mayrand has enough time to put in place whatever changes are required because of the new law before the next general election—currently scheduled to take place in the fall of 2015.

"The goal is by the end of June," Sen. Carignan, the government leader in the Senate, told The Hill Times on Wednesday after he was asked when the Senate Conservatives expect to give the legislation final passage prior to royal assent.

Sen. Carignan made the comment a day after the Cabinet minister in charge of the legislation, Minister of State for Democratic Reform Pierre Poilievre (Nepean-Carleton, Ont.), personally addressed the Conservative Senate caucus to brief it on the legislation and pave the way for Senate consideration of the bill before the House of Commons has completed its committee hearings and a final debate and vote.

"These are important changes to the electoral system, so we want to ensure the chief electoral officer has time to put the changes in place before the election of October 2015," Sen. Carignan said.

NDP MP David Christopherson (Hamilton Centre, Ont.) countered that the government's real motive to rush the legislation through the House into the Senate and then quickly pass it into law is to shorten the time for public scrutiny that could increase opposition to many of the measures.

“Once it leaves the House of Commons, Canadians don’t care, if it goes down the hall it might as well go out the window,” Mr. Christopherson said.

“Look what’s happening, exactly as we predicted, that’s one of the reasons why we slowed this bill down [with a brief filibuster],” he told The Hill Times. “We know that the more Canadians look at this bill, the more they don’t like it. The government also realizes that conversely if they want to get through with as little damage to their body politic as possible, speed is of the essence, so that’s where we’re clashing.”

Even though the government has reportedly signalled it might amend the bill to quell a virtual uprising over a section that would eliminate the practice of vouching for thousands of electors who otherwise have insufficient official ID that satisfy requirements for proof of address, and in some cases their names, opposition MPs said the government’s plan to quick-start Senate debate and hearings and get the bill into law before the fall is too hasty for such important legislation.

Mr. Poilievre also indicated on Wednesday that reports might have been incorrect to indicate he was open to amendments—at least to replace vouching with a new system for electors without sufficient ID rather than offering no special measures at all.

“I’ll let you know in a month when the committee actually reviews its amendments,” Mr. Poilievre told reporters. “And I think the bill’s terrific the way it is, the Fair Elections Act [the government title for the bill] is common sense, it is reasonable, and I think everyday Canadians would say that it’s fair to expect that someone bring their ID when they show up to vote.”

Liberal MP Kevin Lamoureux (Winnipeg North, Man.) said he expects the Conservatives will limit debate again, once the legislation returns to the Commons from the Procedure and House Affairs Committee.

“Given their behaviour on this legislation, it would be an ongoing tragedy to see them use time allocation to force the bill through third reading inside the chamber,” said Liberal MP Kevin Lamoureux (Winnipeg North, Man.).

“I would challenge the minister, I’d love to debate him anywhere in Canada, you just give me the date and time and I’d love to debate him, third reading time allocation, sadly I’m expecting that to happen,” he said.

The government imposed a motion limiting debate on the bill after only three days of debate after Mr. Poilievre introduced it in the House on Feb. 4, and the Procedure and House Affairs Committee had held only seven witness hearings up to Tuesday, with an hour of evidence by Mr. Poilievre and another entire meeting with an appearance by Mr. Mayrand.

On March 4, the government used its majority on the committee to pass a motion setting 5 p.m. on Thursday, May 1, as the deadline to end the committee hearings, as well as a final clause-by-clause committee approval of the bill, before sending it back to the Commons for final debate and passage.

Before then, a two-week Parliamentary recess that begins April 11 for the Easter period will interrupt the committee work.

To compensate for the hasty treatment of the bill, the committee is holding extraordinary evening hearings this week and next, but also limiting the time available for individual witnesses and associations by scheduling up to six different appearances during the two-hour time period for each meeting.

Although Elections Canada would need to prepare new literature and information bulletins and packages to inform political parties and candidates about many of the changes, the legislation would prohibit Mr. Mayrand from passing any information on to the public other than directions about how to vote, when to vote and where to vote, as well as information for electors with disabilities.

Mr. Mayrand has told the committee that recommendations he has proposed for improving election laws—including stronger investigative powers with the ability to compel evidence from witnesses and other individuals with judicial permission—are more important than speeding the bill through Parliament.

Bruce Anderson: Conservatives will only lose fighting Sheila Fraser

BRUCE ANDERSON, special to The Globe and Mail, April 4, 2014

For a long time, it hasn't been fashionable to appreciate the work of public servants. Rather, the trend is to bemoan their pensions, benefits, travel expenses, and to imagine they earn too much and achieve too little.

This is often unfair, and generally counter-productive. It demotivates people we should want to have fired up on our behalf. And it makes it harder to attract good people to public service. We'll end up with weaker talent or paying more to find people willing to endure the constant criticism.

This week, Michael Horgan, the deputy minister of Finance, announced his retirement after a career spanning 36 years. I've met him on a number of occasions over the years, and know him to be extraordinarily bright, decent and hard working. We need lots more like him.

Another (former) public servant, retired auditor-general Sheila Fraser, was in the news this week as well. Unlike most public servants, Ms. Fraser became famous and popular.

She spoke bluntly and fearlessly about how our dollars were being abused by the Chretien government through its sponsorship program.

When in 2004 Ms. Fraser made the case that Canadians were being ripped off, it was only a matter of time before the Liberal Party was kicked out of office. In the evidence she tabled and the way she made her case, she earned a reputation as someone who could be trusted to tell it like it is.

This week, she weighed in on the Fair Elections Act, joining a large chorus of critics, but with a voice that will stand out. She seldom discusses politics, and appears to carry no partisan ambition. Asked by the Chief Elections Officer to provide an evaluation of the bill, she found it nothing less than an "attack on democracy."

How the Conservatives respond to her critique of their bill is no trivial matter.

Democratic Reform Minister Pierre Polievre has said the bill is terrific as it is. He allows that it's possible someone might find a flaw and a way to improve it. But he seems not to have heard of any yet. His cocksure style makes it easy to imagine the government will do little but pay lip service – actually more like curled lip service – to ideas from outside the Conservative Party tent.

Some Tory partisans seem tempted to dismiss Ms. Fraser as someone with no relevant expertise. As rebuttals go, this is a terrible choice, and will backfire badly if they persist with it.

Up to now, many Canadians didn't think this bill would make much of a difference in their lives or to the health of our democracy. Few regular voters were as irate as were editorialists, politicians, political activists and academics.

The first, and often the biggest, challenge for critics of a government initiative is to get the public to pay attention. Once that's done, it's quite a bit easier to get people to oppose a change.

The importance of Ms. Fraser's intervention lies in a) her ability to attract attention among otherwise disengaged voters and b) draw on a remarkable level of trust that she earned through her public service.

These days, combatants in so many debates work hard to find trusted third-party voices. Few come with as much credibility as Ms. Fraser, someone known for having a clear eye for shenanigans or worse.

If the Conservatives are wise, they will drop the combative, know-it-all-ness that has marked their approach to this bill and embrace the need for amendments and a broader consensus. And sooner, rather than later.

Bruce Anderson is the chairman of polling firm Abacaus Data, a regular member of CBC The National's "At Issue" panel and a founding partner of i2 Ideas and Issues Advertising.

Despite pension plan changes, report says federal employees still overpaid

JULIAN BELTRAME, Canadian Press, April 2, 2014

Federal employees are still far ahead of their private sector counterparts in terms of total compensation thanks to their pension benefits, says a C.D. Howe Institute report issued Wednesday.

The paper, by pension expert Malcolm Hamilton, calculates that recent changes to public pension plans still haven't gone far enough to even the playing field and that total compensation of government employees is about $4-billion higher than Ottawa calculates.

The report compares what is called "fair value" in compensation and finds that the guaranteed pension benefits paid out to retired public servants put them in a class of their own.

Last year, the government enacted changes to phase in increases to employee pension contributions so they equal that of the employer – a so-called 50-50 cost sharing model– and raised the minimum retirement age for new employees.

"Bringing public sector pension contributions more in line with the private sector is the right thing to do," Treasury Board President Tony Clement said at the time.

While public service unions railed against the changes, Hamilton says the changes hasn't closed the gap – if anything, it has widened.

"Over 15 years they are going to push up the contribution rate by about five per cent of pay, but since they've started doing this the value of the pension benefit has gone up by 20 per cent of pay because of falling interest rates ... so you figure out how fast we're advancing," Hamilton said.

Hamilton says the richer public service pensions could have been justified in the past by generally lower salaries, but comparison studies show that is no longer the case for the lower and middle ranks.

Those at the top, such as deputy ministers, still generally receive lower salary scales than industry managers but they are compensated by generous pension benefits.

“Steady pay increases (since 2006) and rising pension costs mean that federal employees are probably significantly overpaid by now,” Hamilton says. “And while salaries for senior-level mandarins may still lag those in the private sector, they have some extraordinary pension benefits.”

Hamilton, a former partner of the Mercer pension consulting firm, says at the heart of the miscalculation is that the government essentially guarantees a 4.1 per cent real rate of return on retirement savings.

He says anyone in the private sector looking for such a guarantee in today’s low interest rate environment would likely get about one per cent.

The remedy, Hamilton says, is to lift the guarantee. A well-managed plan may indeed obtain a long-term four per cent rate of return, but taxpayers shouldn’t have to bear the burden if it doesn’t.

“They are being given something very valuable for free,” Hamilton said. “The way to fix it isn’t to gut the pension plan, the way to fix it is to move the risk to them (the employee plan) so they get the advantages of risk-taking as well as the burden.”

According to the report, total compensation to public employees is likely $4-billion annually greater than the $24-billion the government estimates, including $4-billion in pension contributions.

LeDroit

Les fonctionnaires fédéraux demeurent surpayés

La Presse Canadienne, le 4 avril, 2014

La rémunération totale des fonctionnaires fédéraux devance de beaucoup celle des employés du secteur privé grâce à leurs prestations de retraite, selon un rapport de l'Institut C.D. Howe publié hier.

L'étude, réalisée par Malcolm Hamilton, un expert du secteur des retraites, conclut que les récents changements apportés aux régimes de pension de l'État ne vont toujours pas suffisamment loin pour rendre la situation équitable, Il estime aussi que la rémunération totale des employés gouvernementaux est supérieure d'environ 4 milliards $ à ce que prétend Ottawa.Le rapport compare une notion appelée « juste valeur » en terme de rémunération, et conclut que les prestations garanties versées aux fonctionnaires à la retraite les placent dans une classe à part.

L'année dernière, le gouvernement Harper a mis en place des changements visant à augmenter graduellement les cotisations des employés de façon à ce qu'elles atteignent la parité avec celles de l'employeur, et il a augmenté l'âge minimal de la retraite pour les nouveaux fonctionnaires.

À l'époque, le président du Conseil du Trésor, Tony Clement, avait plaidé qu'il était nécessaire de ramener les cotisations des employés de l'État à un niveau qui se rapproche de la pratique dans le secteur privé.

Bien que les syndicats de la fonction publique aient dénoncé ces changements, M. Hamilton note que les modifications n'ont pas réduit l'écart public-privé - il s'est au contraire accru, selon lui.

« Sur une période de 15 ans, (Ottawa) va augmenter le taux de cotisation d'environ 5% du salaire, mais depuis que ces mesures ont été mises en place, la valeur des prestations de retraite a augmenté d'environ 20% du salaire, en raison de baisses des taux d'intérêt (...) donc, vous imaginez à quelle vitesse nous avançons », souligne M. Hamilton.

Selon ce dernier, un régime de prestations plus lucratif dans la fonction publique aurait pu être justifié par le passé en raison de salaires généralement inférieurs, mais des études comparatives démontrent que ce n'est plus le cas pour les employés situés aux échelons inférieurs et moyens.

Ceux qui se trouvent tout au sommet, comme les sous-ministres, bénéficient de salaires généralement inférieurs à ceux des cadres d'entreprises, mais sont compensés par de généreuses prestations de retraite.

« Des hausses de salaire régulières (depuis 2006) et des augmentations du coût du régime de retraites signifient que les employés de la fonction publique fédérale sont aujourd'hui probablement surpayés de façon significative. Et si les salaires des hauts fonctionnaires sont plus bas que ceux versés dans le secteur privé, ils ont droit à d'extraordinaires prestations de retraite », soutient M. Hamilton.

How Much Do Canadian MPs And Senators Make?

Althia Raj, Huffington Post, April 1, 2014

OTTAWA – Whether you think they deserve it or not, members of Parliament and senators are getting a pay raise today.

The base salary of a member of Parliament jumps to $163,700 from $160,200, a 2.2 per cent increase. Senators will receive a 2.58 per cent increase to $138,700 from $135,200. By law, senators make $25,000 less than MPs.

The amount of money that certain parliamentarians receive on top of their base salary due to their positions is also going up. The Prime Minister, for example, will receive an extra $163,700, for a total salary of $327,400 in 2014. The Speaker of the House of Commons, Opposition Leader and cabinet ministers will get an extra $78,300. Ministers of state, parliamentary secretaries, other party leaders, House officers and committee chairs and vice chairs will also earn smaller amounts on top of their base salaries.

In a note to MPs on March 6, Speaker Andrew Scheer said their $3,500 pay raise for 2014 is "based on the index of the average percentage increase in base-rate wages for a calendar year in Canada resulting from major settlements negotiated in the private sector," as published by Employment and Social Development Canada.

The Board of Internal Economy is the secretive committee that oversees the administration of the Commons, including MP pay. Laura Smith, a senior advisor to Conservative Whip John Duncan, said he is bound by the board's confidentiality requirements and cannot discuss why MPs decided to give themselves a raise.

"He can only talk about the decision, not the deliberation itself," Smith said. She noted that the raise was statutory. Duncan is one of the Board's official spokespersons.

Last year, MPs received a 1.6 per cent salary increase after going without a raise for three years. The Board had agreed to a 1.5 per cent salary bump in 2009 but then imposed a wage freeze for 2010, 2011 and 2012 in the wake of the economic crisis.

The pay increase represents a cost the House of Commons of $1,171,900 for fiscal year 2014–2015. The Senate would not say how much its raise would cost the upper chamber.

Senate staffers are also in line for a small raise, but the federal government has asked the chamber to wait until it has negotiated salary with House of Commons staff before giving their own employees a salary bump.

Bill an attack on democracy: Sheila Fraser

By Joan Bryden, Canadian Press, April 3, 2014

OTTAWA - Sheila Fraser, the former auditor general who became a virtual folk hero for exposing the sponsorship scandal, is training her sights on what she sees as a new abuse by the federal government: its controversial overhaul of Canada's election laws.

Fraser, who co-chairs an advisory board created by chief electoral officer Marc Mayrand last fall, told The Canadian Press she believes Bill C-23, if allowed to pass without significant amendments, would constitute an attack on Canada's democracy.

Among other things, the proposed legislation would disenfranchise thousands of voters, undercut the independence of the chief electoral watchdog, impede investigations into wrongdoing, give a financial advantage to rich, established parties and undermine Canadians' faith in the electoral system, she said.

And she urged Canadians to speak up against the sweeping bill.

"Elections are the base of our democracy and if we do not have truly a fair electoral process and one that can be managed well by a truly independent body, it really is an attack on our democracy and we should all be concerned about that," Fraser said in an interview.

"When you look at the people who may not be able to vote, when you look at the limitations that are being put on the chief electoral officer, when you see the difficulties, just the operational difficulties that are going to be created in all this, I think it's going to be very difficult to have a fair, a truly fair, election."

The Harper government has so far been impervious to the near-universal condemnation of the bill by federal and provincial elections watchdogs, academics and electoral experts at home and abroad.

On Wednesday, Democratic Reform Minister Pierre Poilievre said the bill is "terrific" just the way it is. Other Conservatives brushed off critics as ill-informed, resistant to change or downright hysterical.

But Prime Minister Stephen Harper may find it harder to shrug off Fraser's scathing critique. As Opposition leader, he was one of her most ardent fans 10 years ago when she concluded that civil servants "broke just about every rule in the book" in administering the Chretien government's sponsorship program.

"Her competence and her courage have shone a bright light on the mismanagement, incompetence and corruption that this Liberal government has been trying to hide for

more than a decade," Harper said in a 2004 speech, referring to Fraser as "the mother of all accountants" and praising her for not pulling any punches.

"(She) did not say that she thought that something smelled fishy. She identified the fish."

Fraser is equally blunt about the fishy smell she believes is emanating from the so-called Fair Elections Act.

She said it appears to be motivated by a desire to rein in Elections Canada, which has been a thorn in the side of the Conservatives.

The independent agency nailed the Conservative party for the illegal in-and-out scheme used to exceed its spending limit in the 2006 election, exposed illegal over-spending by former cabinet minister Peter Penashue, has charged Harper's one-time parliamentary secretary Dean Del Mastro with filing a false campaign return and failing to report campaign expenses, and is still investigating complaints about robocalls that misdirected primarily non-Conservative voters to the wrong polling stations in the 2011 election.

Fraser pointed to the bill's proposal to hive off the elections commissioner, who investigates alleged wrongdoing and enforces elections laws, from Elections Canada, thereby separating the regulation and enforcement functions of the agency and making it more difficult for investigators to tap the expertise of elections officials. She also noted that the bill fails to give the commissioner the power to compel witness testimony.

"Those provisions say to me that this is really a bit of an attack on Elections Canada and I find that really unfortunate because I really do believe Mr. Mayrand has done his job with great integrity, has certainly not shown the bias that some would like to claim he has and I just think it's really terrible the way he's been treated by government."

As a former independent officer of Parliament, Fraser is particularly troubled by the limitations the bill would impose on the chief electoral officer's independence. Among other things, it would prohibit him from communicating with Canadians on anything but the mechanics of how, when and where to vote and it would prohibit the elections commissioner from talking about investigations.

"Independent officers of Parliament and the government is now restricting what they can say? It's just so inappropriate," she said.

The bill would also require the chief electoral officer to seek prior Treasury Board approval to enter into contracts with people with specialized or technical knowledge — including the advisory board which Fraser now co-chairs.

"It's just offensive that the chief electoral officer can not have an advisory group without having to get approval from ministers. It's just astounding to me."

Not only that, she said it could create "operational headaches" if Elections Canada must get prior approval to hire the thousands of temporary specialists and elections officials needed to run an election.

It's crucial to the credibility of Elections Canada that the chief electoral officer have the independence to say and do what he feels necessary to ensure the integrity of the electoral system, Fraser argued.

"Not only for Elections Canada but for all the agents of Parliament, the credibility of what these agents do is really based upon their independence and that they are viewed by the public as being objective, that they base their rulings, opinions, whatever they may do based on fact, that they run, in the case of Elections Canada, a fair elections process.

"And if that independence from government is attacked or is viewed as not being there, I really think those institutions lose the credibility and the respect that they have from the public. And then if people start to doubt about the elections process, where does that leave us in this country?"

The former auditor general is also troubled by a provision that would allow political parties to exempt from their campaign spending limits any money spent to raise funds from people who've donated at least $20 over the previous five years. She said that amounts to a giant loophole that would allow well-established parties to spend untold millions more during campaigns but would be "unfair" to new parties, which have no history of past donors.

Moreover, she questioned how pitches for donations can be distinguished from pitches for support and how Elections Canada could monitor and verify that the exemption was not being abused, given that the bill does not give the agency the power to audit party books or demand to see their records, invoices or receipts — a power successive chief electoral officers have long sought.

"There's such a fuss being made about lunch money and what (politicians) spend for travel and (yet) the political parties get more than $30 million (in rebates and tax credits) and there's no real accounting back," Fraser said.

"In this era when everybody's talking about increased transparency and accountability, why would they not be subject to some kind of audit?"

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Conservative Sen. Hugh Segal wants both side to compromise on Fair Elections Act

GLEN MCGREGOR, OTTAWA CITIZEN, APRIL 4, 2014

OTTAWA – Conservative Senator Hugh Segal says he thinks criticism of the proposed Fair Elections Act is overblown but is urging both the government and opposition to soften their positions and pass a law that will have broader public support.

"I think everybody should take a Valium," Segal said of the intense debate surrounding the electoral reform bill that critics warn could disenfranchise thousands of voters.

"It's not as good as some people say. It's certainly not as bad as some people say."

Segal dismissed as "an overreaction" the opposition to provisions in the bill that end the practice of vouching — allowing electors to vouch for the identity of another person who doesn't have identification documents.

"The notion that we're going to be keeping hundred of thousands of people from voting is fiction. It's the worst kind of creationism."

But Segal thinks the government will need to moderate its hardline position against amendments in order to win acceptance of the bill.

"The success of this legislation will depend upon the ability of both sides to put a little bit of water in their wine because, in the end, if the only people supporting it are the government and there are no amendments brought in of any kind, it probably won't be as effective as if there was some multi-partisan presence."

The bill is currently being studied by a House of Commons committee, which has heard testimony from current and former elections officers that is nearly unanimous in its condemnation of the bill, particularly over its elimination of the vouching process and provisions that effectively muzzle the chief electoral officer.

Once the bill is passed by the House, it will be up to Segal and his Senate colleagues to amend it, if they choose. Segal believes there is plenty of time to change the bill before the end of the parliamentary session at the end of June.

While neither Democratic Reform Minister Pierre Poilievre nor Prime Minister Stephen Harper have shown any indication they are willing to accept substantial amendments, Segal believes there will be willingness to modify the bill as more testimony is heard.

"If you're open-minded to some measure of amendment, you want to wait until all the views are in and all the hearings are finished. I think there's a lot of room for a lot of people to look at where improvements might be appropriate, but I actually think the bill is a pretty good bill to begin with."

Media reports suggest that Poilievre told the Conservatives caucus in the Senate in a private meeting this week that he's willing to reconsider the provisions that end vouching. The report has triggered speculation that Senate Conservatives might flex their muscles and oppose the government, as they did with a private member's bill on labour union financial disclosure that passed through the House with government support but was rejected by the Upper Chamber.

Segal wasn't at the meeting with Poilievre and says he doesn't see much concern about the proposed law from other Conservatives in the Senate. "It wasn't my sense there are many people on my side who are deeply troubled by the bill."

Segal is a member of the Elections Canada advisory panel convened by Chief Electoral Officer Marc Mayrand last year to provide him advice on electoral reform and engaging younger voters.

The co-chair of that panel, former auditor-general Sheila Fraser, made headlines this week when she went public with a vocal condemnation of the Fair Elections Act as anti-democratic.

"Sheila Fraser, as the co-chair, has decided to express her own points of view on the present legislation and good luck to her," Segal said. "She has the right do that, but that to my understanding is not why the advisory board was put together."

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thestar.com

No reason for Harper to be surprised by Nadon debacle

By Irwin Cotler, Special to The Toronto Star, April 3, 2014

When the Supreme Court found Justice Marc Nadon ineligible for one of its Quebec seats, the government should have welcomed the court's authoritative pronouncement and immediately put in motion a plan to fill the vacancy that has existed since August 2013 and ensure adequate Quebec representation on the nation's highest court. Instead, the statements of the prime minister and justice minister in the wake of the rejection of their Supreme Court nominee are as puzzling as they are problematic, as confusing as they are contradictory.

To begin, the government expressed its "genuine surprise" at the decision, suggesting this outcome was not foreseeable. Yet, by seeking legal opinions on the question — and subsequent efforts to retroactively amend provisions of the Supreme Court Act to prospectively authorize Nadon's candidacy — the government thereby itself acknowledged that the matter was not clear-cut. Clearly, the possibility of this outcome was present in the mind of the government during the process; yet, it took the risk to proceed in this way and has only itself to blame for doing so.

Where the matter becomes particularly puzzling is in the statement of the prime minister himself this Tuesday that "Obviously it's a big surprise to discover that there is one completely different rule for Quebec than for the rest of Canada." It is difficult to see

how this can come as a surprise when the Supreme Court Act has had, since 1875, separate provisions for Quebec judges in section 6, labelled “Représentation du Québec,” and the prime minister’s own press release upon Justice Nadon’s appointment indicates a legal opinion was sought relative to his eligibility.

Similarly, the justice minister’s echoing statements of surprise are in fact themselves surprising given his own acknowledgement of the novelty of the situation — in his words, “[t]here has not been an appointment from the Federal Court directly to the Supreme Court of Canada from Quebec.”

The prime minister in Question Period asserted this week that all parties agreed during consultations regarding Nadon’s eligibility. If one assumes he is referring to the work of the selection panel, its operations are confidential; I was not a part of that process for this cycle and have no knowledge of what was discussed. I would assume the same is true for the prime minister, who does not serve on such panels. By breaching confidentiality the process becomes politicized in a way that is wholly undesirable and one would expect the prime minister and justice minister to show great restraint in this regard.

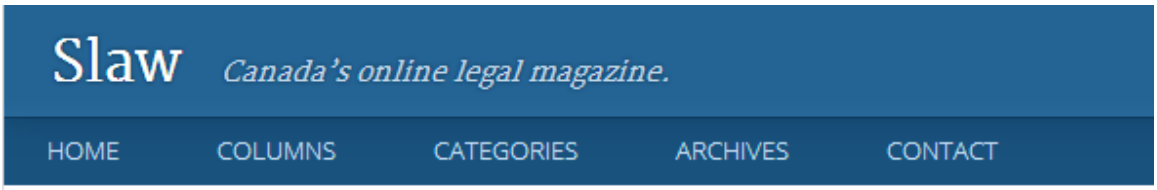
If the references of the prime minister and justice minister regarding consultation are to the public ad hoc hearing wherein Justice Nadon faced questions from parliamentarians — on which I sat — there is no issue of unanimity — there were no votes nor should there be. If the suggestion is somehow that those with concerns should use that hearing to voice them — after the nominee has already been announced by the justice minister — the unacceptable resulting politicization would tarnish the court’s excellent reputation and the justice minister himself cautioned against this at the hearing’s outset.

Perhaps most confusing and contradictory about the government’s response to this whole affair is its insistence that “the government will respect the letter and spirit of this ruling,” yet it refuses to rule out Nadon’s reappointment, which could be accomplished by, for example, something as unadvisable as first appointing him to a judgeship in Quebec and then appointing him to the Supreme Court of Canada.

Moreover, it is tough to reconcile respect for “the letter and spirit of this ruling” with subsequent statements of the justice minister that the ruling creates “a double standard” or that somehow the court’s timing is to be criticized for issuing the ruling during the Quebec election. Regardless of the government’s opinion on the court’s ruling or timing, it is the law of the land and the government should show respect for the work of the nation’s highest court — and not itself engage in the type of politicization it so readily denounces of the opposition.

In sum, the real surprise is that as we approach two weeks since the decision was released the government has yet to announce a next step or whether a new justice will be nominated — let alone in place — before the court’s spring session begins on April 14 — or if Quebecers will go an entire year being under-represented at the Supreme Court, being forced to wait until the fall term commences in October, with yet another Quebec vacancy looming on the horizon. Fortunately, there are outstanding Quebecers who are eligible for appointment and would serve our nation’s highest court — and the country as a whole — with great distinction.

Irwin Cotler is the former Minister of Justice and Attorney General of Canada. He is a Professor of Law (Emeritus) at McGill University.



"Why Is the Law Society Donating to Political Parties?": Some Answers and Questions

By Amy Salyzyn, March 31, 2014

"Why is the @LawsocietyLSUC donating to political parties? Why is my membership fee used to support the Conservatives." This tweet by Ottawa criminal defence lawyer Michael Spratt caught my eye on an otherwise slow Tuesday in February. It had never crossed my mind that the Law Society might be in business of making political donations. The concept seemed strange, if not a bit troubling.

The tweet linked to an article published in the Law Times just over a week earlier on February 10, 2014. Although mostly detailing Elections Ontario data about donations made by law firms to political parties, the article also reported:

Among legal organizations, the Law Society of Upper Canada and LawPRO were generous donors last year. The law society gave $9,000 to both the Conservatives and the NDP and donated some $3,000 to the Liberals. LawPRO matched the law society's donations to the Conservatives and the Liberals.

After reading this article, I conducted an informal (and highly unscientific) poll of Ontario lawyers asking their thoughts about the Law Society making donations to political parties. The individuals I talked to uniformly shared my surprise and concern. On behalf of the Law Society,

Roy Thomas, Director of Communications, explained over email:

Contributions are only made through the purchase of tickets to attend events hosted by the parties and/or elected politicians. Tickets are purchased within the permitted limits described in the Election Finances Act.

The Law Society's goal in participating in these events is to advance the knowledge of the government and the opposition regarding the agenda of the regulator and justice issues

more broadly. This includes the duty to act so as to facilitate access to justice contemplated in the Law Society Act. It is also an opportunity to increase awareness of the Law Society's distinct role as regulator among government's legal stakeholders.

Put simply, the Law Society bought face-time with political parties in order to advance its agenda as a lawyer regulator and promote justice issues: far from nefarious goals. Although it is difficult to quantify or itemize the benefits the Law Society might reap by attending such events, ensuring that one is in the right room with the right people is central to the government relations strategies of many business and industries. In other words, there seems to be practical logic behind the Law Society's efforts here.

It also bears mentioning that the Law Society's donations of $21,000 represent a small proportion (0.021%) of the just over $100 million in "direct expenses" incurred by the Law Society annually. The Law Society is not spending a large amount of money on these activities, relatively speaking.

Case closed? Maybe not.

What makes the news of the Law Society's donations to political parties strange and concerning is, of course, the Law Society's status as an independent regulator of lawyers. As a number of legal ethics scholars have observed, the concept of lawyer independence and what it requires tends to be nebulous.[1] It seems plausible, though, that one of the minimal requirements of a regulator who claims to be independent is to refrain from donating to political parties.

By way of a comparator, it wouldn't seem like a good idea to most of us for the Office of the Superintendent of Financial Institutions (OSFI), the independent agency that regulates the banking industry in Canada, to exchange money for access to political powerbrokers at fundraising events for political parties. We would want to the regulator to be above the political fray. Indeed, given the status of the OSFI as a government agency, I assume that such payments would not be permitted by law. The irony in this case is that it seems that it is Law Society's very independence from government that enables it, as a matter of law, to make political donations.

Adding another layer to the issue is the fact that the Ontario Bar Association—the body traditionally associated with having an advocacy mandate to advance the interests of the legal profession in Ontario—is also reported to have made donations ("$8,100 to the Liberals, $7,700 to the Conservatives, and about $4,300 to the NDP"). Are lawyers benefited by having multiple organizations engage with political parties to advance their interests? Does the Law Society's activity on this front take it too far outside of its functions as articulated in section 4.1 of the Law Society Act, namely "to ensure that,

(a) all persons who practise law in Ontario or provide legal services in Ontario meet standards of learning, professional competence and professional conduct that are appropriate for the legal services they provide; and

(b) the standards of learning, professional competence and professional conduct for the provision of a particular legal service in a particular area of law apply equally to persons who practise law in Ontario and persons who provide legal services in Ontario.

Even if we do see advocacy as a proper function of the Law Society, there still remains the question of whether or not political donations should be part of this advocacy function. Government relations can mean attending fundraising events, but it doesn't have to.

Ultimately, the question here isn't whether or not the Law Society can donate to political parties: this isn't illegal and the Law Society clearly has the money to expend on such activities. But should the Law Society be doing this? What is gained and what is lost when the Law Society, as an independent regulator, exchanges money for access to politicians? If the implication here is that making donations is simply a cost of doing business for organizations that wish to advance the public interest and/or the interests of their constituents in relation to the legislative agenda, what message is being sent to the public about our legal system? Given the concerns raised above and the surprise that many members of the Law Society have had when they learned about these political donations, discussion about the desirability of future political donations deserves a place on the agenda.

Amy Salyzyn *is a J.S.D. candidate at Yale Law School. Prior to commencing her graduate work, Amy received her J.D. from the University of Toronto Law School, served as a judicial law clerk at the Court of Appeal for Ontario and practiced at a Toronto litigation boutique. Amy's doctoral dissertation involves a comparative study of the regulation of the legal profession in England, the United States, Canada, and Australia. Her research interests include legal ethics, gender and the law, law and technology and civil justice reform.*

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[1] See, e.g. Alice Woolley, Understanding Lawyers' Ethics in Canada (LexisNexis Canada Inc., 2011) at 7; Richard Devlin & Porter Heffernan, "The End(s) of Self-Regulation" (2008) 45(4) Alta L Rev 169.

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Ontario lawyers weighing in on Trinity Western Featured

Charlotte Santry, Law Times, March 31, 2014

More than 100 lawyers, groups, and members of the public have weighed in on the debate over whether the Law Society of Upper Canada should accredit Trinity Western University's planned law school.

Students at the private Christian university's law school, set to open in 2015, would have to sign a community covenant with a provision on abstaining from "sexual intimacy that violates the sacredness of marriage between a man and a woman."

The LSUC has been consulting on whether to accredit Trinity Western's law program ahead of Convocation debates scheduled for April 10 and 24.

Controversy has centred on the impact of the covenant on the lesbian and gay community.

Many of the responses to the LSUC's consultation reflect the concerns. The consultation that ended on Friday attracted more than 100 submissions.

Gilbertson Davis LLP lawyer Lee Akazaki's 51-page contribution calls on the LSUC to not accredit the school unless it changes or rescinds the covenant.

Akazaki wrote: "TWU's community covenant requires, as a condition of admission to the law school, that students collaborate in an overt practice of systemic discrimination.

"Collaboration with such practices denigrates LGBTQ members of the law society and calls into question the ethical soundness of bar candidates who are prepared to sign the covenant to secure a spot in a law school."

The covenant is therefore "incompatible with the education and well-being of modern lawyers as ethical professionals," he wrote in his submission.

In a 2001 case, Trinity Western University v. British Columbia College of Teachers, the Supreme Court of Canada ruled the college couldn't reject the university's accreditation on the basis of discrimination.

But according to the Criminal Lawyers' Association's submission, the case is distinct from the "more far-reaching" issues facing the LSUC.

"Furthermore, since that decision, Charter cases have continued to evolve in keeping with the changing mores of Canadian society," the association stated.

Toronto-based lawyer and consultant John Rider has written to the LSUC warning the legal community not to "shy away" from voicing concerns on the basis that "the university in question is litigious."

Expanding on this to Law Times, he says: "The law society needs to have the courage to stand up and say the school shouldn't be accredited because they're discriminating against their potential candidates. They're specifically excluding members of the LGBTQ community."

If the university were to bring an action against the LSUC, the regulator should "vigilantly fight it," Rider adds.

However, Anne-Marie Langan, a lawyer at Rural Legal Services in Sharbot Lake, Ont., believes the law society should grant accreditation.

Her submission to the LSUC states: “By not accrediting TWU on the basis that the school promotes traditional Christian values about human sexuality, you would be discriminating against those who hold those views and want to attend a school that promotes those values.”

Christopher Moon, a senior corporate and commercial lawyer at Davis Webb LLP in Brampton, Ont., believes it would be inappropriate to “punish” graduates on the basis of their school’s philosophy.

Moon says: “We have a diversity of religions that are entitled to have private universities. If the people they put out adhere to the requirements, denying them the entitlement to practice is contrary to where we should stand as a country.”

A wide range of other lawyers and legal associations have contributed to the consultation with most of them speaking against accreditation.

Whether Trinity Western graduates could practise in Ontario if the LSUC decided not to accredit the school would depend on several factors, a law society spokesman explained.

To be licensed in the province, lawyers must have graduated from an accredited law school.

If a Trinity Western graduate were called to the bar in another province and wanted to transfer permanently to Ontario and become a member of the LSUC, this “would appear” to be impossible under Bylaw 4, the spokesman said.

But that wouldn’t prevent a Trinity Western graduate called to the bar elsewhere from providing legal services in Ontario for up to 100 days in a calendar year. They wouldn’t have to advise the law society they were providing legal services on a temporary basis.

Trinity Western has already received conditional approval for its proposed program from the Federation of Law Societies of Canada’s approval committee.

The British Columbia government has also approved the application, although the decision may be subject to a court challenge as Toronto law firm Ruby Shiller Chan Hasan has raised more than $15,000 through a crowdfunding campaign to help mount a pro bono case.

The goal is to raise $30,000 to pay for disbursements.

The Ontario Bar Association has also entered the debate. On Friday, March 21, its council adopted a motion calling on the LSUC to adopt a “non-discrimination requirement” for all current and future law programs.

The motion doesn't indicate the OBA believes Trinity Western's covenant to be discriminatory, although it arose "in the context of TWU's request for accreditation," an OBA spokesman said.

LeDroit

Divulgateurs: le NPD réclame la réintégration d'une fonctionnaire

Paul Gaboury, Le Droit, le 1er avril 2014

Le Nouveau Parti démocratique exige une meilleure protection des divulgateurs au sein de la fonction publique et la réintégration immédiate de Sylvie Therrien, une fonctionnaire congédiée pour avoir révélé l'existence de quotas dans le traitement des dossiers des prestataires de l'assurance-emploi.

Le député néo-démocrate du Pontiac et critique du Conseil du trésor, Mathieu Ravignat, a d'ailleurs déposé un projet de loi pour renforcer la protection des fonctionnaires qui sonnent l'alarme sur des actes répréhensibles au sein de la fonction publique fédérale.

Le projet de loi vise à faire passer de 60 jours à 18 mois le délai de prescription pour ceux qui se disent victime de représailles et à donner plus de pouvoirs d'enquête au Commissaire à l'intégrité du secteur public.

Son collègue, le député Robert Aubin, critique en matière d'assurance-emploi, a salué le courage de la fonctionnaire Sylvie Therrien qui a révélé l'existence des quotas imposés aux enquêteurs fédéraux par le gouvernement conservateur.

«La réponse du gouvernement a été de s'en prendre à la personne plutôt que de s'attaquer véritablement aux dysfonctionnements portés à l'attention du public. Des milliers de Canadiens ont signé une pétition de soutien à Mme Therrien et demandent au gouvernement de lui redonner son emploi. Le gouvernement conservateur traite avec mépris ses fonctionnaires», a déclaré le porte-parole en matière d'assurance-emploi, Robert Aubin.

Le député Ravignat a poursuivi en reprochant tant aux libéraux qu'aux conservateurs d'avoir agi comme si l'argent de l'assurance-emploi leur appartenait en adoptant des mesures pour forcer les travailleurs à travailler pour de moindres salaires, tout en réduisant l'accessibilité aux prestations d'assurance-emploi.

Self-representation rising in B.C., chief justice warns

David Dias, Canadian Lawyer, April 3, 2014

In his first annual report since assuming his post at the British Columbia Court of Appeal, Chief Justice Robert Bauman cites statistics that show rising levels of self-representation at the appeal court level.

Last year, the number of civil and criminal appeals heard in the province involving self-represented litigants rose, respectively, by seven per cent and four per cent. The court saw 24 per cent of civil appeals and 11 per cent of criminal appeals involving at least one self-represented litigant.

“These are extremely troubling statistics,” Bauman writes. “They demonstrate just how challenging access to justice is to many British Columbians, even in the Province’s highest Court.”

Laura Track, legal director at the West Coast Legal Education and Action Fund — a not-for-profit advocating for women’s equality through legal initiatives — says it “boggles the mind” how litigants without any legal training can attempt to make the complex legal arguments required at the court of appeal level.

“It’s difficult enough to represent yourself at a trial, where you’re presenting the facts of your case. But at the Court of Appeal, you’re trying to show that the judge below erred in law,” she says. “Despite their best efforts, quite a lot of court time is used inefficiently because the litigant is simply not prepared to make these kinds of complex legal arguments.”

The issue is most acute in family law cases, where 38 per cent of appeals heard involve a self-represented litigant. West Coast LEAF has argued that deteriorating access to justice in family law impacts women disproportionately.

“Without adequate legal representation, women are losing custody of their children,” Track told Legal Feeds in February. “They’re giving up valid legal rights to support a fair division of property. They’re being victimized by litigation harassment, where an abuser uses the litigation process to continue patterns of abuse and coercion and control.”

Bauman cites groundbreaking work done by the National Action Committee on Access to Justice, chaired by Supreme Court of Canada Justice Thomas Cromwell.

The committee, struck in 2008, issued its final report last October. The report calls for increased funding to legal aid — which is generally only available to those earning less than $18,000 per year — and measures to reduce the cost of legal services and the length of proceedings.

While the report lays out issues and principles, it leaves implementation in the hands of government. West Coast LEAF, meanwhile, has proposed increased funding that would allow a number of women's groups — on a pilot-project basis over two or three years — to hire in-house counsel.

Laws governing Nunavut prisons could contravene Charter: report

Charlotte Santry, Canadian Lawyer, April 2, 2014

The laws governing Nunavut's correctional services may be non-compliant with the Charter of Rights, says a report highlighting the "appalling" state of a prison housing mainly Inuit inmates in the northern territory.

The report was written by two lawyers at the federal Office of the Correctional Investigator. It warns the state of disrepair and overcrowding at Baffin Correctional Centre are "nothing short of appalling."

Cells are covered in mold, the report says. Inmates are forced to share permanently stained underwear, and some have to sleep on mattresses on concrete floors, due to a lack of beds. Security is poor, and holes in exterior walls have been used to smuggle drugs into the facility, according to the report.

Photos provide a glimpse into the dingy conditions.

Just over two thirds of inmates at the centre are on remand status, presumed innocent, while the remaining 30 per cent are convicted prisoners. The two groups are not separated, "contrary to human rights standards," states the report.

The findings are based on a three-day site visit during March 12-14, 2013. The report is dated April 2013 but was just posted on the Nunavut Department of Justice's web site yesterday.

The Office of the Correctional Investigator's executive director and general counsel Ivan Zinger also reviewed the legislative framework governing the prison.

The Nunavut Corrections Act and related regulations have remained "practically unchanged" for about 25 years, the review found, adding: "Both are now deficient in many key areas."

For example, the legislation is "silent" on Inuit principles of justice, language, cultural and spiritual rights, and ceremonial and dietary requirements. There are several references to practices that "may be inconsistent with the Charter or evidence-based correctional policy," the report says.

These include:

- **Use of a strait-jacket for up to 24 hours;**
- **Use of chemical restraint (without consent);**
- **No correspondence or visits while in segregation;**
- **Prohibition to grow a beard or long sideburns; and,**
- **Prohibition to have long hair inconsistent with health and safety.**

Zinger also found there were no statutory provisions to ensure access to a fair and expeditious complaint and grievance system, without fear of negative consequences.

"Overall, the legal framework is outdated and requires to be modernized to reflect today's correctional reality and best practices," the report states.

Toronto lawyer James Morton, head of the litigation group at Steinberg Morton Hope & Israel LLP, regularly works in Nunavut. He agrees Nunavut's legislative provisions need to be updated, having simply been adopted from Northwest Territory laws when the jurisdictions formerly separated in 1999.

"They were based on the Northwest Territories in the 1970s and nobody's gone back and amended them," says Morton.

There is "no question" that the 30-year-old Baffin Correctional Centre is over-crowded, he adds.

However, many of the inmates will be used to crowded housing and public facilities, he argues. "While we should be improving the plant, and there are certainly issues that are real, the impact emotionally on prisoners is less [than if they were from other parts of Canada.]"

Stephen Mansell, Nunavut Department of Justice's director of policy and planning, said in an e-mailed statement "extensive" work was underway to address the legislative concerns in the report.

Amendments to the Corrections Act are due this year, and the Corrections Division "does not implement the outdated sections of the Act," he said.

Since the report was written, a new facility has helped to relieve some of the overcrowding. Minor renovations at the Baffin centre have been carried out. An "overcrowding relief structure" in Iqaluit is expected to be completed later this year and is hoped to further alleviate overcrowding at Baffin and allow for the completion of outstanding renovations and repairs, Mansell added.

The Office of the Correctional Investigator had no comment when contacted by Legal Feeds.