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Federal public service unions not satisfied with Trudeau government's first budget

Though the government says it wants to improve services, PSAC says without more staff, 'the services are simply not going to be there.'

Derek Abma, The Hill Times, April 4 2016

The unions representing federal public servants say there were some welcome investments and gestures in the Trudeau government's first budget released two weeks ago laying out how it will spend \$290-billion this year, yet they also found it fell short on several fronts.

The Public Service Alliance of Canada (PSAC), which represents about 140,000 federal employees, first responded to the budget that came down March 22 with a press release that congratulated the Liberal government for its "move away from austerity and its commitment to invest to improve the lives of Canadians, at least in the immediate future."

Speaking to the *The Hill Times* last week, though, PSAC national executive vice-president Chris Aylward said there are a number of things he would have liked to have seen addressed more specifically in the budget, such as whether the government intends to roll back tens of thousands of job cuts made under the former Conservative government.

"With all this talk about service and improving services, if [the government does not] staff up, then the services are simply not going to be there," he said. "To say that they're going to invest—and they've said that, that they're investing in public services—is one thing. But if they're not going to resource the departments, and basically scale back and reverse the 30,000 job cuts that the Conservatives made, then Canadians are simply not going to get the services."

The Treasury Board website shows there were 257,034 federal employees as of March 31 last year, down almost 26,000 from a peak of 282,980 in 2010. A spokesman for PSAC said the 30,000 job cuts the union regularly refers to is an estimate of full-time equivalents based on departmental reports filed in Parliament.

In response to questions about how the budget affects the public service, Jean-Luc Ferland, a spokesman for Treasury Board President Scott Brison, highlighted by email measures such as:

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\$17.8-million over five years to the Treasury Board Secretariat to create a “client-first service strategy” and complete the migration of government websites to Canada.ca; \$11.5-million to expand the “open government” strategy; \$12.9-million to enhance the access-to-information process; and \$88-million over the next two years to improve tax collections.

He did not address to what extent public service job numbers might be affected by this budget.

Mr. Aylward said it was encouraging that the government committed \$38.5-million over two years to improve food safety. However, he said this will not have its desired effect without bolstering staff numbers at the Canadian Food Inspection Agency (CFIA).

“If they don’t put more food inspectors in, especially in slaughter houses, I think we’re facing another major food crisis in this country, as far as food safety is concerned,” he said, referring to the listeria outbreak at in 2008 at a Maple Leaf Foods plant that resulted in the deaths of 23 people and sickened many others.

While specific numbers were not put forward, Mr. Aylward said there are indications that in the budget that more staffing is on the way for the Canada Revenue Agency (CRA), Veterans Affairs, and Service Canada.

The budget said the government would provide an additional \$185.8-million to CRA over five years, and bump up its budget by \$14.6-million annually on an ongoing basis, to improve services. It also committed to spending \$73-million over the next two years for employment insurance call centres, and increase funding to Service Canada by \$19-million over the next year in order to process more EI claims and offer more support to people looking for work. It also said it was putting \$78.1-million toward reopening Veterans Affairs service offices in Charlottetown, Sydney, N.S., Corner Brook, N.L., Windsor, Ont., Thunder Bay, Ont., Saskatoon, Brandon, Man., Prince George, B.C., and Kelowna, B.C., opening another office in Surrey, B.C., expanding outreach to veterans in the North, and hiring more case managers to ensure a client-to-case-manager ratio of no more than 25 to 1.

Mr. Aylward expressed concern over budget’s assertion that it is “committed to eliminate poorly-targeted and inefficient programs, wasteful spending, and ineffective and obsolete government initiatives.” He said there is a lack of information on what programs the

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government considers to fall into this category or how it will determine which ones are considered “inefficient” and “wasteful.”

“What we’re asking for is that a transparent process takes place identifying the affected programs or spending, and we’re asking for access to that information to assess the impact changes could have on services and the work of our members,” he said.

Mr. Aylward added that he would have preferred to see the government go further in reducing the extent to which it relies on outsourcing for government operations. He noted that budget indicated that it would cut \$221-million in spending on “professional services, travel and government advertising, starting in 2016–17.”

The PSAC VP said there is \$10.9-billion spent on outsourcing each year, and the reductions announced in the budget are “a very insignificant amount of money.”

The Toronto Star reported last week that the bulk the \$221-million in cuts, or about \$170-million, will come from outsourcing, with smaller amounts being chopped from travel and advertising. The same article quoted Mr. Brison as saying \$221-million is “a significant figure but it’s actually very realistic,” adding, “We need to do more work in order to present and legitimately defend a larger figure. We’re comfortable with the \$221-million figure at this time.”

Mr. Aylward said he has some concern about potential job losses from the government’s plan to spend \$75.2-million over two years to create government-wide platform for managing data on human resources, financial management, and information management. The budget said this amalgamation of these systems “is expected to result in significantly lower annual costs to operate and maintain these functions, and will help deliver better services to Canadians.”

Mr. Aylward said the transition to a new pay platform for government workers called Phoenix, which started being rolled out in 2009 and was supposed to be completed this year, has resulted in more than 1,500 job losses.

Debi Daviau, president of the Professional Institute of the Public Service of Canada (PIPSC), said the combination of these systems is not necessarily a bad idea. She said it’s indicative of the

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government's intention to expand Shared Services Canada beyond the realm of information technology, as was the original intent.

"[Shared Services] was not just supposed to be IT initially," she said. "It was supposed to be kind of a corporate-service department. When you talk about HR and financial and whatever, I think that's probably a sign that those activities, if they're able to fix Shared Services, might be then transferred under the same umbrella."

She said she would support measures that "centralize the systems ... and not necessarily the people."

Ms. Daviau said, however, that Shared Services must be fixed correctly, and she has concerns about this even with the additional \$383.8-million the government committed to Shared Services in the budget over the next two years. PIPSC, which has a membership of more than 57,000, represents about 3,500 employees of Shared Services.

She said her concerns about Services Canada's ability to turn itself around follows a meeting of the House Public Accounts Committee in March in which agency officials told Members they could not commit to finalizing the government IT modernization plan— which includes merging email systems, data centres, and networks—by the 2020 deadline.

"They asked the question, 'Did you have a plan?' [Shared Services officials] said no. They said, 'Do you have a plan today?' No. They still don't have a plan. So why do you want to sink hundreds of millions of dollars a black hole? There needs to be some idea or concept of where they want to go, and I think they need to be open about that so that Canadians can decide if this is worth their tax dollars."

She added, however, that this new investment into Shared Services "could be good and could be bad. ... It's not that Shared Services or standardization of IT is a bad idea, but when you enter into a major shift like that, there needs to be facts, evidence, expertise, and planning that goes into that. The Conservative government did it overnight, threw a department together, put good people there, by the way, right to the very top of this department ... but gave them an impossible task."

Ms. Daviau said Shared Services, to date, has lacked a plan and structure to fulfill its mandate.

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She said she considered the possibility that the government would dismantle Shared Services, and assumes most its employees would revert back to the federal departments they were seconded from and, for the most part, have continued to do much of their work for.

Emmanuelle Tremblay, president of the Canadian Association of Professional Employees (CAPE), said she was pleased by the government's affirmation in the budget that it would be implementing a "results and delivery" approach to governance. She interpreted this as indicating the need for more program evaluators across various departments, which is an occupation represented by her organization.

"I hope [department heads] will get the signal [from the government] that departments actually have to staff those evaluation shops that they have been leaving dwindling for the past few years," she said. "There were jobs that, if not cut, were not filled. I know in my old department [of Foreign Affairs], the evaluation team had been significantly diminished."

The budget document said: "By focusing on outcomes for Canadians and making evidence-based decisions that are anchored in meaningful data and indicators, the Government is moving to a culture of measurement and impact, and is putting in place the tools to deliver on priorities, align resources to programs and activities that deliver real value for Canadians, and provide meaningful information to Canadians and Parliament."

Ms. Tremblay added that with more attention given to the impact of government programs on Canadians, the public might get a better appreciation of the work that's done by members of her organization, which represents more than 10,000 federal workers.

"I think that, for my membership, that it could be a good news story in that we're able to actually show Canadians the value of public services, and also how it has an impact on the economy," she said.

Ms. Tremblay added that she was disappointed the budget did not commit to bolstering the federal Translation Bureau, which is responsible for translating, from one official language to another, various materials such as memos, legislation, and text for websites.

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“The Translation Bureau has basically lost a third of its staff over the past four, five years,” she said, noting she represents about 850 translators, interpreters, and terminologists at the bureau.

She said the department has increasingly turned to subcontractors, and is now implementing desktop translation software. As a result, the quality of translation is suffering and will continue to get worse, she said.

“It has an impact on the way we deal with official languages in the delivery of public services and also the right of employees to work in the language of their choice,” Ms. Tremblay said.

Public service prepares for new era of change, challenges

Contract talks could test sunny ways between Liberals, public service unions

Julie Ireton, CBC News, March 30 2016

There are great expectations about what last week's federal budget directives will mean for the people who craft government policy and programs.

But while some pundits see it as an exciting new era of autonomy, growth and collaboration for the public service, others foresee new tensions — and a degree of risk — for the worker bees within the bureaucracy.

The federal public service lost about 30,000 workers over the past five years and more will retire in the years ahead.

In last week's budget, the government proposed a path to develop programs across several departments, but it's unclear what the human resources plan is to help make it happen.

Liberals doing things differently

Genevieve Tellier, professor of political studies at the University of Ottawa, said while the past 10 years saw a more centralized approach to policy development, the Liberals appear to be doing things differently.

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But Tellier said she's not sure if all bureaucrats — especially the younger generation, many of whom have only worked under the previous government's tight control — will easily or quickly adapt to a new reality.

"I think it's easy in the short run for a new government to say, 'We will change things, it's going to be a more bottom-up process than top down-process,'" said Tellier. "But in two, three years, will they deliver? Will the government be happy with that? Will they stick to that? Will the public service develop new ideas and be more productive?"

For now, unions representing government workers are cautiously optimistic.

Emmanuelle Tremblay, president of the Canadian Association of Professional Employees, said she even agrees with some of the government's proposed cuts.

"They're proposing cuts to [government] advertising and I think if we can actually use that money to provide the support that our analysts need, to produce the right policy advice so that decisions are made, based on evidence, we'll definitely get our money's worth," said Tremblay.

Tremblay worked in the public service herself up until a little more than a year ago. She said at the time, many of her co-workers felt they were "spinning their wheels." She thinks the Liberal approach is one of collaboration.

"What is important is also the focus on accountability," said Tremblay. "People think that public servants would fear that, maybe some public servants would fear that. I represent economists, statisticians, and I think these people are eager to see the result of their work actually taken into consideration."

Storm clouds, sunny ways

In the midst of the government's plans for new spending and programs it must continue to negotiate more than 50 contracts with its unions. The big ticket item on the table continues to be the controversial and costly sick leave plan.

Christo Aivalis, a professor at Queen's University whose research focuses on labour, said he'll be watching very closely to see how the government approaches the current round of bargaining.



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"They're quite positive on the broad strokes of the budget, but there's a few things coming out of Scott Brison and Bill Morneau that are a little bit more cautious around how they approach public servants," said Aivalis.

That cautious tone could forecast stormy weather — not sunny ways — in the relationship between public service unions and management, Aivalis said.

"The Liberal government still wants concessions in bargaining. Scott Brison is saying there's not a whole lot of money. It means there's going to be a lot of tension there."

La Loi sur l'accès à l'information ne sera pas réformée avant 2018

Jim Bronskill, Le Devoir, le 31 mars 2016

Les libéraux fédéraux admettent que leur réforme promise de la Loi sur l'accès à l'information devra attendre — au moins deux ans.

Un réexamen complet de la loi, ardemment souhaité depuis longtemps par le Commissariat à l'information du Canada, ne commencera pas avant 2018, a annoncé jeudi le président du Conseil du Trésor, Scott Brison. En attendant cette réforme en profondeur, le gouvernement pourra apporter certaines modifications à la pièce, à partir des promesses libérales et des consultations qui sont déjà entamées.

Les libéraux avaient notamment promis en campagne électorale d'accorder au Commissariat à l'information du Canada le pouvoir de contraindre le gouvernement à publier certains documents. Ils souhaitaient aussi étendre l'application de la Loi sur l'accès à l'information aux cabinets ministériels et aux institutions administratives qui soutiennent le Parlement et les tribunaux.



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Un comité des Communes a récemment amorcé l'étude de la Loi sur l'accès à l'information, qui n'a pratiquement pas été modifiée depuis son entrée en vigueur il y a 33 ans.

Le gouvernement libéral a par ailleurs annoncé jeudi une série de consultations publiques sur la transparence au sein de l'appareil gouvernemental. À compter du 1er mai, Ottawa sollicitera les commentaires des Canadiens « *sur la meilleure façon de mettre en oeuvre ses engagements pour améliorer la Loi sur l'accès à l'information* ». Le ministre Brison donnera le coup d'envoi de ces consultations le 6 avril en organisant une visioconférence « *avec des spécialistes réputés et des chefs de file* ».

Le fruit de ces consultations sera publié cet été, indique-t-on.

« *Les Canadiens nous ont élus avec un mandat de rendre le gouvernement plus ouvert et plus transparent* », a indiqué jeudi le ministre Brison, qui convient que « *l'information du gouvernement appartient* » aux Canadiens. « *J'ai hâte de les voir participer à ces consultations alors que nous franchissons une autre étape vers la réalisation de notre engagement de rendre l'information du gouvernement ouverte par défaut.* »

L'« *information ouverte par défaut* » signifie que les documents doivent être rendus publics « *sauf exception* », et non exceptionnellement, au gré des fonctionnaires ou des parlementaires.

M. Brison a expliqué jeudi, dans le cadre, justement, du Forum canadien du dialogue ouvert, à Ottawa, que la vaste réforme promise par les libéraux se fera finalement en deux temps : d'abord, un projet de loi sera déposé « *bientôt* » pour apporter certaines modifications à la Loi, puis une réforme en profondeur suivra en 2018, afin de s'assurer que « *les choses soient faites correctement* ».

La Loi sur l'accès à l'information permet à tout citoyen, moyennant 5 \$, de demander une copie de documents gouvernementaux — des relevés de dépenses et rapports de vérifications comptables en passant par de la correspondance et des notes internes écrites par de hauts



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fonctionnaires. En vertu de la loi, les ministères doivent répondre à la requête dans les 30 jours, ou alors fournir les motifs raisonnables d'un retard.

Le système fait toutefois l'objet de critiques constantes pour les nombreux retards dans le processus et les mailles trop larges de ses filets, qui permettent à des agences et ministères d'esquiver les requêtes.

Major review of access laws put off for two years, Brison says

Kathryn May, Ottawa Citizen, March 31 2016

The Liberal government kicked off its new strategy for open government Thursday but a key election promise for a major review of the antiquated Access to Information Act will be put off until 2018.

Treasury Board President Scott Brison said the government is overhauling the act in two stages and will first begin with quick fixes by introducing legislation this year to make good on some of the reforms promised during the election campaign.

They include ending fees for processing information requests; giving the information commissioner the power to order release of documents and extending the act to the offices of the prime minister, ministers and administrative institutions that support Parliament and the courts.

Brison argued the two-phase approach was more sensible than trying to review the act all at once. He said this allows the government to move quickly on some reforms now and proceed with a "deeper dive" review based on the results of planned consultations with MPs and Canadians.

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"We don't want to hold up progress (on reforms) that can occur more quickly in the first phase by waiting and outing them all together," he said following a speech at the Canadian Open Dialogue Forum in Ottawa on Thursday.

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Brison said the government is launching two consultations. One is seeking Canadians input on a new open government strategy and another on reforming access to information laws. People can offer their views on what should be in the strategy at open.canada.ca.

The results of those consultations will be released in the summer.

A parliamentary committee is also studying the Access to Information Act, which has not been substantially updated since it took effect almost 33 years ago.

Brison argued Canadians' input is critical to any reforms especially when the government is making open data, information and open dialogue the cornerstones of its open government strategy.

"We take seriously the importance of open dialogue on public policy and we believe we can believe we can move forward with some changes more quickly ... but that doesn't obviate the need for deeper consultations in 2018," he said.

The Liberals have promised to make government "open by default," a shift Brison says will be "monumental" culture change for the public service.

The onus will now be on government to explain why information can't be released compared to now when it is up to Canadians to make the case for why they are entitled to information.

The previous government made progress in releasing data and making it available online. The Liberals want to expand that and give Canadians access to the information used to make policy decisions.

Canadians, interest groups and other stakeholders have long demanded more transparency and access to government data. All governments are also under pressure to include citizens early and at every stage of developing the policies and programs that will affect them.

Brison said the open government strategy will also be central to better policy-making and his drive to attract more millennials to work in the public service.

Brison wants to turn around the demographics of the public service workforce which is aging as baby boomers retire in coming years. The average age of new hires joining the public service is now 37.

He also wants to make it easier to move people from all sectors in and out of government and embolden public servants to take more risks.

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“I see this agenda of open government as a real opportunity to engage a new generation of citizens and public servants,” said Brison.

Brison said a big problem is the government still operates in “silos” despite many efforts over the years to remove barriers and improve co-operation among departments.

He said the Liberals are partly responsible for public servants’ risk aversion after implementing more controls and rules in aftermath of the sponsorship scandal. He said the Conservatives “doubled down” and created more fear among public servants of making mistakes.

“We want intelligent risk-taking in government and you won’t get great public policy if you create a fearful cover-your-ass culture,” said Brison.”

Documents prepared for the prime minister say existing access to information regime is antiquated, time-consuming, expensive to manage and was drafted long before digital technology. Access to information requests have climbed steadily and hit more than 61,000 in 2014-15. The cost has also climbed from 5.6 million in 1983 to \$61 million in 2014-15.

Has the PS bilingual bonus had its day?

Kathryn May, Ottawa Citizen, March 29 2016

For years, successive commissioners of official language have urged the government to eliminate the \$800 bilingual bonus paid out to employees in bilingual posts and put the money to better use promoting bilingualism.

Despite that sentiment, it seems that only the Canadian Security and Intelligence Service has actually done it. CSIS quietly eliminated the bonus on April 1, 2013, for non-unionized employees to save money as part of the Conservatives’ 2012 budget cuts. The details, released only recently by the Liberals, show cutting the bonus saved the spy agency \$1.4 million a year. It was a small part of the \$25 million in savings the agency generated during its strategic review.

Official Languages Commissioner Graham Fraser has said the \$60 million spent on the bonus is not achieving the objectives intended 35 years ago when it was introduced as an incentive for public servants to learn a second language and compete for bilingual jobs.

“There is a general recognition and agreement with successive commissioners of official languages, who have said that this was not an effective way of encouraging the use of both languages and that it was discriminatory because it was not given to many bilingual public

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servants because they were not in jobs designated as bilingual positions,” Fraser told MPs at a recent parliamentary committee hearing.

“If that \$60 million were redirected to language training or to various other programs, it would be a much more effective promotion of linguistic duality.”

There seems to be a consensus that the bonus has had its day. The \$800 bonus, which was a substantial payment back in the 1970s, isn’t enough of a boost to act as an incentive. It also discriminates against those who aren’t in bilingual jobs.

Critics say it is unfair, if not divisive, to pay employees the same \$800 regardless of level of proficiency, salary, or how often they use the second language. Others question paying out extra money to bilingual public servants while taxpayers are footing the bill to teach many of them English and French in the first place.

The late Max Yalden was the first language watchdog to criticize the bonus as unnecessary and ineffective. In his 1979 report, he wrote a section on the bonus called Bilingual Bonus: Take the Money and Run.

“True to form it is still with us, like an over-extended houseguest who cannot take a hint. Unloved, but unbudgeable.,” he wrote.

When Victor Goldbloom was language commissioner he proposed a “humane” phase-out.

He suggested those getting the bonus would continue to collect it but the government would limit future wage increases for those receiving the bonus, until the \$800 is finally overtaken by salary gains elsewhere in the public service. He also questioned why the government designated so many jobs bilingual.

The government has a long history of paying employees extra for working in English and French. The first supplement goes back to the 19th century for employees who could write in both languages.

Today’s bonus has its roots in 1967 when the government decided to give secretaries, stenographers and typists a differential worth seven per cent of their salary to compensate them if their jobs required them to use French and English.

That was the situation when Keith Spicer was named Canada’s first official languages commissioner after the Official Languages Act was passed in 1969, establishing language rights and obliging public servants to serve Canadians in both languages.

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The bonus was introduced in 1977 as a temporary incentive to lure more people into bilingual jobs, but the plan was extended and continues today. By 1987, the joint-management National Joint Council negotiated the terms of the bilingual bonus in a directive for all departments and that directive became part of employees' collective agreements.

CSIS didn't respond to questions about how the bonus was eliminated or number of employees affected. By all accounts, CSIS was braced for resistance and complaints. The Official Languages Commission, however, received no complaints, nor has it followed up to see whether the loss of the bonus has undermined the agency's bilingualism.

"Creating an environment that uses and respects French and English in the workplace remains a priority," said CSIS spokesperson Tahera Mufti. "For the Service, we have found that we are able to support and encourage bilingualism among our employees through a variety of other tools."

CSIS was created in 1984 as a separate employer to replace the disbanded and disgraced RCMP Security Service. As a separate employer, the bonus and bilingual policy didn't automatically apply to CSIS but management decided to adopt it and at first only paid the bonus to those in administrative support jobs.

The government has a network of language "champions" in departments who also support eliminating the bonus and recommended it be included in the Blueprint 2020 plan underway to modernize the public service. Their recommendation, however, wasn't included in the plan.

In a 2014 report, the champions said the bonus should be "repurposed" to "targeted investments in innovative, low-cost technologies" that would help employees learn and maintain a second language in the workplace. It suggested a review of CSIS experience and how it promotes the use of French and English without the bonus.

"We appreciate that this is a complex issue, however, this recommendation is linked to broader strategic considerations such as how language training takes place in the future; how retention of language competencies are managed, and how recruitment takes place in the future," said the report.

So why does the bonus live on? Senior bureaucrats say it is because the bonus is enshrined in the collective agreements of employees and the unions won't give it up.

Recently, MPs on the official languages committee asked Treasury Board bureaucrats whether the "stagnant" bonus would be increased or abolished. Sally Thornton, assistant deputy minister at Treasury Board, said any changes would have to be negotiated with the unions.

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She noted, however, that 95 per cent of employees today meet the bilingual requirements of their jobs compared to 76 per cent 30 years ago.

The unions have long argued it is only fair that employees with extra language skills get paid more.

But Ron Cochrane, the NJC's co-chair, said the bonus became part of employee contracts because the government's outdated classification system — which determines salaries — doesn't recognize language as a "compensable factor."

The classification standard only rates skills that are common to all jobs and language is not one of those. With no other way to compensate employees for having to know two or three languages, the bonus was enshrined in contracts.

(The government spent a decade and a couple of billion dollars to develop a new classification standard that would have fixed that but it ran into so many problems the government scrapped the project in 2002.)

The NJC reviews directives every few years and Treasury Board has never proposed getting rid of the bonus.

"The bilingual bonus has become a lightning rod for those who feel it is a poor investment," said Cochrane. "I see it not only as payment for an acquired skill that would not otherwise be recognized but a beacon for missed opportunities. It reminds me of the expression, 'penny wise, pound foolish.'"

Cochrane agrees the bonus isn't working as intended. It has become devalued and is no longer an incentive.

He said it initially triggered an industry of language training. That has been significantly reduced with years of budget cuts, shutting the door to federal careers for unilingual Canadians. For example, new recruits into the foreign service used to get language training but now must be fluent at the highest levels to even apply.

"Given the increased number of positions that have been designated as bilingual since the bonus was introduced, there should be a demand for more training and higher incentives and not less training and the removal of any incentives," said Cochrane.

BY THE NUMBERS



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\$60 million: Cost of bilingual bonus a year.

34: percentage of the 11,469 federal offices and service locations that provide bilingual services to the public.

43.3: percentage of jobs in core public service that are bilingual.

68: percentage of core public service positions in National Capital Region that are bilingual.

68.1: percentage of anglophones in core public service

31.9: percentage of francophones in core public service

Supreme Court Hearing May Resolve Critical Questions in Canadian Patent Law

Joshua Sealy-Harrington, JD Supra Business Advisor, March 29 2016

The Supreme Court of Canada (SCC) recently [granted AstraZeneca Canada Inc. et al. \(AstraZeneca\) leave to appeal](#) from the Federal Court of Appeal's decision upholding the invalidity of AstraZeneca's Nexium patent. This appeal will address a number of critical questions in Canadian patent law, and the SCC's rulings on these questions will provide some much-needed clarity. In particular, the SCC's position on the controversial "promise doctrine" (one of the many critical questions at stake in the appeal) will be of great interest as the validity of the promise doctrine is at the core of many cases that are presently before the Canadian courts. This doctrine is also the subject of Eli Lilly and Company's C\$500-million claim against the Government of Canada, which alleges, in part, that Canada's adoption of the promise doctrine violates the intellectual property standards set out in the North American Free Trade Agreement.

BACKGROUND

The SCC's decision to grant leave to appeal in the Nexium dispute was preceded by two prior Federal Court judicial decisions, namely:



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1. The [trial judgment](#) of Justice Rennie (*Nexium FC*), which held that the Nexium patent was invalid because it lacked utility
2. The [appeal judgment](#) of Justice Dawson, with Justices Ryer and Webb concurring, (*Nexium FCA*), which upheld Justice Rennie's holding that the Nexium patent lacked utility

Technically speaking, the outcome in *Nexium FC* turned solely on the issue of utility. Further, in its [Memorandum of Argument seeking Leave to Appeal](#), AstraZeneca sought leave in respect of two issues, both relating to utility: (1) whether a “promise of the patent” utility doctrine properly exists and (2) what the correct applicable standard for patent utility in Canada is.

However, despite the above focus on utility, the *Nexium FC* reasons in their entirety engaged additional critical questions in patent law, which may also be addressed by the SCC on appeal if the SCC considers those questions worthy of appellate guidance.

CRITICAL QUESTIONS FOR SCC CONSIDERATION

Three critical questions may be considered by the SCC in the Nexium appeal:

1. Whether a patent must be as useful as it promises (the controversial “promise doctrine”)
2. Whether a patent's promise (with respect to utility) and inventive concept (with respect to obviousness) should receive the same interpretation
3. Whether the proper disclosure requirement for soundly predicted utility is limited to new use patents

Must a Patent Be as Useful as it Promises?

The first critical question the SCC may consider in the Nexium appeal is the validity of the “promise doctrine”, which provides that a patent can only satisfy the utility requirement if it is as useful as it promises to be in its specification. As this issue was central to *Nexium FC* and *Nexium FCA*, it is likely that it will, at a minimum, be explored by the SCC in the Nexium appeal.

The controversy surrounding the promise doctrine is not surprising. In effect, the promise doctrine can hold that a patent is not useful in law despite that patent being useful in fact. For example, in *Nexium FC*, Justice Rennie held that the Nexium patent was useful in fact because it was an effective proton pump inhibitor, but ultimately held that the Nexium patent was not useful in law because, in Justice Rennie's view, it promised “an improved therapeutic profile

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such as a lower degree of interindividual variation” and failed to deliver on that promise. In other words, despite being useful for some purposes, Justice Rennie held that the Nexium patent lacked utility because the patented invention was not as useful as the patent promised it to be. To many, this places too onerous a burden on innovators, and improperly invalidates patents despite those patents meeting the statutory requirement of utility.

To others, the promise doctrine represents an important balance in patent law, which prevents innovators from “overpromising” about the utility of their patents. The lower court *Nexium* judgments reflect this perspective. According to Justice Rennie, the promise doctrine promotes the “policy objectives of patent law which serve to create consistency and clarity in the bargain struck between innovators and the public.” The Federal Court of Appeal upheld Justice Rennie’s utility analysis on appeal.

It will be interesting to see how the SCC resolves this important issue of patent law and policy.

Is a Patent’s Promise the Same as its Inventive Concept?

The second critical question that the SCC may consider in the Nexium appeal is whether a patent’s promise (a concept which, as discussed above, relates to the utility inquiry) is the same as a patent’s inventive concept (central to the obviousness inquiry). The relationship between these two concepts was not as critical to the Nexium trial judgment as the promise of the patent. Accordingly, the SCC may be less likely to explore this issue on appeal. However, this issue may nonetheless be considered by the SCC since the relationship between the promise of the patent and the inventive concept may materially influence the interpretation of the Nexium patent’s promise, and, in turn, the outcome on appeal.

The relationship between the promise of the patent and the inventive concept is ambiguous in the jurisprudence. In *Nexium FC*, Justice Rennie noted that the “stark contrast” in the construction of the patent’s promise and inventive concept between the parties — two “highly sophisticated litigants” — was “alarming”. In *Nexium FCA*, Justice Dawson held that a patent’s promise need not be “virtually coterminous” with its inventive concept, but provided no further guidance in respect of the interpretive principles underlying the construction of either concept. Accordingly, commentary from the SCC in this regard would be welcome.

Is Proper Disclosure of Sound Prediction Only Required for New Use Patents?

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The third critical question that the SCC may consider in the Nexium appeal is whether proper disclosure for sound prediction of utility is only required in the context of new use patents, which Justice Rennie held in *Nexium FC*. This critical question is least likely to be considered by the SCC as this holding in *Nexium FC* was in the alternative, and as the Federal Court of Appeal did not comment on this issue in *Nexium FCA*. That being said, Justice Rennie’s view that the law regarding proper disclosure is “unsettled” and his thorough exploration of this topic in *Nexium FC*, may identify sufficient ambiguity in the jurisprudence such that appellate intervention is warranted. Indeed, the SCC in 2012 cast doubt on there being a requirement for proper disclosure in sound prediction cases (see *Teva Canada Ltd. v. Pfizer Canada Inc.*).

By way of background, the utility requirement for a patent can be satisfied in two different ways:

1. By demonstrating (i.e. directly proving) the patent’s utility
2. By soundly predicting (i.e. indirectly estimating) the patent’s utility

Courts have arguably sought to counterbalance the flexibility provided to innovators by the doctrine of sound prediction. An innovator is free to rely on studies and experiments not disclosed in its patent to prove that the patent’s utility was demonstrated. But some courts have held that, where an innovator relies on a sound prediction of utility — a lower threshold of proof — that innovator must disclose the evidence underlying that prediction in its patent specification, a higher threshold of disclosure.

As with the above critical questions, the issue of proper disclosure is ambiguous in the jurisprudence. Those ambiguities are canvassed by Justice Rennie in *Nexium FC*, where he refers to multiple authorities supporting the proper disclosure requirement in all cases of sound prediction and multiple authorities supporting the proper disclosure requirement only in “new use” cases, for example, where the innovator seeks to patent an old drug on the basis that they have uncovered a new use for it.

Despite the issue of proper disclosure being peripheral to the core ruling in *Nexium FC*, its resolution by the SCC would assist in clarifying the law.

Given the many critical questions outlined above, the SCC’s Nexium appeal will be watched closely and with great interest both within Canada and around the world.

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Election 2015 saw large influx of third-party spending: Elections Canada

Kyle Duggan, iPolitics.ca, March 30 2016

Elections Canada reported Wednesday that third-party interest groups spent five times more on the 2015 federal election than on the last national contest, investing more than \$6 million on ad space and air time in the 78-day campaign.

Ad spending reported so far totals \$6,045,962 – with three reports still yet to be uploaded to the Elections Canada website (Voters for Honest Politicians, Time Is Now, and Michelle Good's total advertising expenses were not included here for that reason).

Compared to the 2011 election, that's up by roughly \$5 million from some \$1.25 million in total third-party ad spending, and marks a departure in the amount of money spent by interest groups in elections over the past decade.

In 2015, 115 third parties registered with Elections Canada – up by more than half from 2011, when 55 registered with Elections Canada. In 2008, 64 had registered. Not only did twice as many third parties get involved, but the election period was significantly longer than elections past – one of Canada's longest on record – and that brought the spending limit up considerably.

Third-party spending was limited at \$439,410.81 in total for a group, and \$8,788.22 for a given riding. In 2011, the limits totalled \$188,250 for a national campaign and \$3,765 per electoral district.

The top spenders in 2015 were largely unions. Many of those groups hadn't spent anything in 2011, or not nearly as much. By comparison to party spending, in the 2015 election, the Conservative Party's spending reports show they spent \$17,250,996 on TV and radio ads. The deadline for other parties to report is June 19, 2016.

Third parties have to submit a filing immediately after incurring election advertising expenses of \$500 or more. They offer mixed levels of detail on spending patterns, but some give a clear indication of which ridings groups were targeted or offer a glimpse of the strategy behind how they spent their election dollars.

The United Steel Workers, according to Elections Canada filings, spent most of their money on radio ads in October in municipalities including Edmonton, Regina, London, Hamilton, St.

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Catherines, Sudbury, and Kamloops, but also took out ads in the Toronto Star and online ads in Spadina Fort York, Toronto Centre and University Rosedale. Public Service Alliance of Canada spent a good chunk of its change on bus and bus shelter ads in places like Hamilton, Scarborough, Ottawa and Winnipeg, along with newspaper advertising in various markets.

Let's Build Canada, a construction union umbrella group, took out TV ads on the Weather Network across Canada and in various newspapers as well. Friends of Canadian Broadcasting spent on TV and Globe and Mail ads.

Some third party groups that [generated a lot of press](#) in the lead-up to the election, like Engage Canada and Working Canadians, were absent from the list for not spending in the election writ-period.

Third-party spending ahead of the writ period doesn't have to be registered or fall within campaign limits.

The Liberal *Real Change* Platform went as far as calling the lack of a pre-writ spending limit a political financing "loophole" that allows for "unlimited spending in the period before an election is called."

"That creates an uneven playing field," it reads.

Democratic Institutions Minister Maryam Monsef's mandate letter states she's tasked with reviewing the limits of the "amounts political parties and third parties can spend during elections" and must "propose measures to ensure that spending between elections is subject to reasonable limits as well."

The Globe and Mail – Politics Insider - Profile

Jody Wilson-Raybould: The justice minister without precedent

She isn't just a trailblazer, she's a force of nature, reports Erin Anderssen. Is she up for the toughest job in the country?

Erin Anderson, the Globe and Mail, April 1 2016

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There's a family story about a young Jody Wilson, out playing with her sister, Kory. In an empty yard across from their house, they stumbled on a beehive. Kory, who is 14 months older, stopped short, suggesting they leave the bees to their business. But five-year-old Jody forged ahead, seeking confirmation of the occupants. She returned home swollen with stings.

Talking to the people who know her well, one gets the feeling that Canada's new Justice Minister and Attorney-General has never really stopped poking at beehives. In Grade 7, for a speech contest, she shared stories of the countless stitches acquired on her childhood adventures on Vancouver Island. When the sisters graduated from law school in 1999, their mother, Sandy, had their baby shoes bronzed to mark the milestone: Kory's were pristine; Jody's were creased and worn.

She set off brazenly from there, serving for four years as a Crown attorney in the courtroom trenches of Vancouver's Downtown Eastside; slogging, for another five, through negotiations with the province and Ottawa as a member of the British Columbia Treaty Commission; and then running, in 2009, for the post of B.C. regional chief, eventually winning two terms in the rough-and-tumble arena of aboriginal politics.

The beehive-poking moment they still talk about in B.C. is known as her "With all due respect, Mr. Prime Minister" speech: While addressing a gathering of government officials and aboriginal leaders in 2012, she stared down Stephen Harper, seated in the front row, and rebuked Ottawa for its "neo-colonialism."

But, for Ms. Wilson-Raybould, the turning point came one year later, during the Idle No More protests, as she was sitting in the prime minister's office in the Langevin Block. With a crowd chanting outside, and acting in her capacity as B.C. regional chief, she presented a detailed strategy for First Nations self-government. Mr. Harper all but ignored it.

So, when Justin Trudeau came calling, Jody Wilson-Raybould was ready to listen. Five months ago, after winning the newly created riding of Vancouver Granville with 44 per cent of the vote,

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she was sworn in as Canada's justice minister. It was arguably the defining moment of a day that was itself remarkable for the unprecedented ethnic and gender diversity of the country's new cabinet. People wept – in their seats at Rideau Hall, in their living rooms in British Columbia, and across the country – as the first aboriginal Canadian was named to run the department that had designed, more recently than many Canadians like to remember, the laws and legislation that created residential schools, stripped this country's aboriginal women of their rights based on whom they married, and effectively rendered indigenous people second-class citizens through the Indian Act. As the new minister would point out two weeks after the cabinet swearing-in, during a speech at Simon Fraser University: Just over half a century ago, she wouldn't have even been allowed to vote.

There is a tendency, at such a historic tipping point, for the symbolism of Ms. Wilson-Raybould's appointment to become a distraction from the person taking office, drifting uncomfortably close to tokenism. A woman! A First Nations woman! But, the emotional weight of her appointment aside, in the last 30 years "expectations have never been so high for a minister of justice," suggests Adam Dodek, a legal scholar at the University of Ottawa.

After a long career fighting proudly for indigenous rights, she is now sitting on the other side of the table, as the representative of the Crown. It will be impossible to make everyone happy, not least herself. And the success or failure of the new government in which she sits is riding, in no small part, on how well she does her job.

Making history was easy by comparison. Jody Wilson-Raybould, it's safe to say, has just confronted her biggest nest of bees.

A LONG LINE OF TRAILBLAZERS

It's Monday morning, and the head of Canada's legal system is running late. When she finally sits down in a boardroom in the Justice Building, she smiles upon learning that her sister shared the bee story, and volunteers that she herself was in the emergency room almost every week,

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growing up. But, Ms. Wilson-Raybould points out, “I have a changed a lot since I was a kid. I am not a huge risk-taker any more.”

The message is clear: When it comes to rewriting Canada’s laws, she’ll step carefully.

When the Prime Minister told her that she was getting the justice portfolio, she says, two thoughts immediately ran through her mind.

The first was the importance of her appointment for the nation’s indigenous people.

The second: physician-assisted death. Of all the responsibilities on her plate, and there are many, this is certainly the most pressing – drafting the legislation that will detail how Canadians suffering from debilitating or terminal illnesses will be able to direct a doctor to help them die. One of the first actions out of her office was to request a six-month extension to a deadline set by the Supreme Court, which last February struck down the country’s prohibition on doctor-assisted dying – and gave Parliament a year to pass new legislation, or see the court decision itself become law. In the end, the court gave the Liberals another four months, until June.

But that’s only the top item on her to-do list. Ms. Wilson-Raybould is also tasked with legalizing marijuana; improving outcomes for aboriginal and mentally ill people in the justice system; unravelling laws passed by the previous government, including those involving mandatory minimum sentences; and reviewing all outstanding court cases involving the Crown, to decide whether – and how – they should continue.

With the retirement of Justice Thomas Cromwell in September, and the pending retirement of Chief Justice Beverley McLachlin (who is mandated to step down by fall, 2018), she has two key judicial appointments to oversee, on top of the ongoing number of lower-court vacancies that the Justice Department must regularly fill. Along with Carolyn Bennett, the Minister of Indigenous and Northern affairs, Ms. Wilson-Raybould has been put in charge of the inquiry into the murders and disappearances of hundreds of indigenous women.

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And, as the country's attorney-general, she also serves as the legal adviser to all her colleagues around the cabinet table. "You could have no policy ambitions in the job," says Prof. Dodek. "That [alone] could absolutely consume the minister's time 24/7." But Ms. Wilson-Raybould has a list "that touches on some of the most critical social issues in our country."

According to Prof. Dodek, you'd have to go back to Jean Chrétien in 1980 to find a justice minister with such an ambitious mandate – and his one job was to bring home the Constitution and enact the Charter. Indeed, one could argue, Prof. Dodek suggests, that Mr. Chrétien had the lighter load.

But while Ms. Wilson-Raybould may be a novice MP, she's hardly new to complicated problems, or political hurdles. She comes from the Musgamagw-Tsawataineuk/Laich Kwil Tach people of northern Vancouver Island, and bears the name Puglaas, bestowed upon her in a potlatch ceremony when she was 7. It means "woman born of noble people" – she comes, in fact, from a long line of trailblazers – and it carries the expectation of leadership in her clan.

"We were brought up to believe in ourselves" she says, recalling her childhood with her sister, "and to know where we come from."

How else to see where you're meant to go?

A THREAD OF DESTINY

During the election campaign last fall, in one of those rhyming sequences that make historians delight, a 32-year-old video resurfaced in which the father of the future justice minister spars with the father of the future prime minister. They are sitting across from each other at the 1983 constitutional conference on native issues in Ottawa. Bill Wilson, then vice-president of the Native Council of Canada, tells Pierre Trudeau, "I have two children on Vancouver Island, both of whom, for some misguided reason, say they want to be a lawyer. Both of whom want to be the prime minister."

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He then pauses for effect. “Both of whom, prime minister, are women.”

At that, the mostly male audience guffaws loudly – a telling sign of the times. The camera turns to Mr. Trudeau, leaning back in his chair. “Tell them I’ll stick around until they’re ready,” he quips.

There’s another pause for more laughter. “I’m informed,” Mr. Wilson says, “that one of them could be out here on a plane this evening.”

Like many good tales, the truth isn’t so tidy. As it happened, Jody and Kory were watching the exchange live in a school assembly, red-faced about being singled out. Neither particularly recalls dreaming of being prime minister, and Mr. Wilson acknowledged in a recent interview that he was actually thinking that Kory, the more serious, scholarly student, would be the one catching that flight to Ottawa.

“I think my sister was the smarter one,” Ms. Raybould-Wilson says, smiling. “I was a jump-off-the-roof sort of kid. I got into trouble all the time.” Stories abound. Her mother recalls how her younger daughter liked to climb to the very top of the playground swings. And how, on the first day of Grade 3, she was marched to the principal’s office for refusing to do her work. The reason her mom remembers that day so clearly? She was the teacher.

Jody was a clever, if indifferent, student. Her high-school academic adviser, Tim McKinnon, tells of a parent-teacher meeting at which he and Sandy Wilson insisted that Jody, over her protests, take subjects that would keep her options open in university. “Let’s get you through high school, Jody,” he remembers joking. “Then, if you want to be a ditch digger after that, fine.”

He says now, “Had you looked at Jody’s grades in high school, would you say she was bound for great things? Maybe not ... but in my experience over a long career, it’s an attitude toward life,

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it's energy – and a feeling about yourself and your abilities – that makes people successful. And that's certainly worked out in Jody's case.

Lively youth aside, her story is woven with a thread of destiny. Ms. Wilson-Raybould comes from a prominent family of the We Wai Kai Nation, and she has a home on the Campbell River on the Cape Mudge reserve, not far Comox. Her paternal grandmother, Ethel Pearson, helped to start the B.C. Native Courtworkers Association, and was active in fighting for Bill C-31, which restored status to indigenous woman who had lost it when they married non-indigenous men. Her father was the second indigenous person to graduate from UBC's law school. (His cousin Alfred Scow was the first, and became the first indigenous judge appointed to the B.C. Provincial Court.)

Mr. Wilson became a prominent indigenous leader and activist, and served as spokesman for the Native Council of Canada in 1983, to push for Section 35 of the Constitution Act, an amendment that affirms indigenous rights, and would later guide his daughter's work as regional chief. Her accomplished sister was recently named executive director of aboriginal initiatives and partnerships at the British Columbia Institute of Technology.

Her family, however, was not spared the hand of the law. Many of Ms. Wilson-Raybould's relatives attended residential school. Her father, one of the youngest in his family, escaped only because, when officials came to get him, his own father, by then a well-off businessman in Comox, refused to let him go. Her grandmother, Ms. Pearson, although a respected elder, was among the indigenous women stripped of native status – her second marriage was to a white man. In contrast, Ms. Wilson-Raybould's non-native mother gained status by marrying Bill Wilson, shortly after they graduated from high school together in Comox.

The marriage didn't last long; Jody was born in Vancouver while her father was midway through law school, and she doesn't remember a time when her parents were together. After the split, the two girls moved around with their mother, who worked as a grade-school teacher, before they settled back in Comox, to be close to their extended family.

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They didn't have a lot of money, but Ms. Wilson worked hard to keep the family afloat; her daughters didn't feel deprived. When a full-time teaching job wasn't available, their mother worked as an in-patient clerk at the local hospital, making sure the girls got to their competitive swimming practices and kept up with their studies. When they were in high school, she slept on the living-room couch so they could have their own bedrooms.

Mr. Wilson would visit from Vancouver, but credits his former wife with raising the girls to be who they are today. From his family, though, they acquired much of their knowledge of indigenous politics. Ms. Wilson-Raybould recalls him taking them, even as young girls, to his meetings with provincial indigenous leaders and chiefs, where they would sit under the table as the debates unfolded. In the kitchen on the reserve, or at their grandmother's home in Comox, treaty rights and the Indian Act were regular topics of discussion. "As much as we wanted to go out and play with our friends," she recalls, "we were told to sit and listen to the discussions taking place, whether around the land question or self-government."

She says it was clear from a young age that, guided by her roots, an activist family and the expectations of a strict single mother, she'd better make something of herself. In a school where she and her sister were among the few aboriginal students, Mr. McKinnon says, Jody was known for holding her own, defending herself if she felt a teacher was in the wrong, or confidently debating her classmates. "She would say whatever the hell she wanted to say," recalls Mr. McKinnon, who served as her academic coach throughout high school. "She could definitely hold her own."

Looking back on that time, the minister says, she realizes she was insulated from a lot of the problems that plague many First Nations people; although they may have been struggling financially, the people of Cape Mudge shared "a strong sense of community." She recalls few direct personal experiences with racism, beyond the story of a day in elementary school, when she was called down to the office so that a dental hygienist could check her teeth. Upon

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learning that only the indigenous students were receiving the check-up, Sandy Wilson marched down to the office herself. Her daughters' teeth were her business.

That was the last time Jody and Kory were singled out.

A VOICE FOR SELF-GOVERNMENT

"I loved being in court," she recalls of her nearly four years, starting in 2000, as a crown attorney at the Vancouver Criminal Courthouse in the Downtown Eastside. "I loved being able to articulate arguments in front of a judge, and having to think on my feet."

After a brief stint in traffic court, she spent long days juggling just about every kind of legal matter – guilty pleas, bail hearings, judge-only trials. She witnessed firsthand a grim Canadian reality: the disproportionate number of aboriginal defendants, and those poor and fighting addictions, who become entangled in the justice system – often on a relatively minor first offence – and then get stuck in a revolving door of charges, jail stints and probation violations.

"She was a very competent person," recalls defence lawyer Chris Johnson, who faced her in court. He describes her as a "firm but fair" prosecutor. "She is no pushover, but she would consider different ways to resolve matters, and certainly always listen."

She was also the only indigenous lawyer working for the Crown at the time. "I was sorry to see her go," says Mr. Johnson. "She added a completely new perspective that [we] didn't have before, or much since."

In 2003, Miles Richardson, then head of the treaty commission trying to settle land claims in B.C., offered her a job as a senior adviser. Ms. Wilson-Raybould became a lead voice at the table, eventually rising to the position of an elected member of the commission, and then acting chief commissioner.

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It was during this time that she met Tim Raybould, a Cambridge PhD and long-time consultant with the Westbank First Nation on Lake Okanagan. They were married seven years ago in a traditional ceremony at Cape Mudge. Now that she is based in Ottawa, he will spend half his time there, too. (They don't have children, but are close to Kory's three daughters, whom they regularly take on vacations to such places as Florida and Las Vegas.)

Mr. Raybould also became his wife's first controversy – when it was discovered he had registered as a lobbyist this year on behalf of Westbank and of the First Nations Finance Authority, a not-for-profit that provides loans and financial advice to indigenous communities. Critics quickly called this a conflict of interest; in an e-mail to The Globe, the minister said her husband registered officially to “be very transparent” about his long-time career advising First Nations governments on policy matters. “I take my ethical obligations very seriously.”

She'd been at the Treaty Commission for seven years when a chief from Cape Mudge nominated Ms. Wilson-Raybould for the position of regional chief – a role in the big leagues of aboriginal politics that would vault her onto the executive committee of the Assembly of First Nations (AFN). She won the vote by a significant margin, and, at 38, officially started a life in national politics.

She stayed for two terms, the only woman at the AFN table. It wasn't always easy. She got used to having an idea that she put forward being ignored, and then picked up by a male chief and suddenly being deemed worthy of attention. “For me, as long as it gets talked about, all the better,” she says. “But in my experience, sometimes some voices are listened to more than others.”

While negotiating treaties, she recognized that First Nations would have a better bargaining position if they were self-governing, and became an expert in the subject. She and her team drafted three connected documents, totalling 900 pages, that former prime minister Paul Martin, who has known her for years, calls “as good as anything I have read on governance.” It included a carefully researched binder of best practices, a self-assessment for band councils to

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determine how well-prepared they are to be self-governing, and a guide to begin the steps toward self-government.

Ms. Wilson-Raybould was aware of the need for good governance that was accountable to the people. As she would later say in her public speech at the 2012 Crown-First Nations gathering, “Too many of our people don’t trust their own governments, and quite frankly,” she added, looking pointedly at Mr. Harper, “they don’t trust yours, either.”

Her impatience with the slow progress being made – and what she perceived as indifference from Ottawa – came to a head during the Idle No More meeting in 2013. With the protesters gathered outside on Parliament Hill, she and a number of other chiefs met with the prime minister, over the objections of many people in the First Nations community. When it came time for Chief Wilson-Raybould to speak, she laid out her self-governance initiative, proposing a “reconciliation framework” that would guide programs in each government department.

In his concluding remarks, she says, Mr. Harper conceded that, although Ottawa knew it had to change the Indian Act, nobody had any good ideas on how to go about it. “But I had just presented the solution that was developed in our region,” she recalls. “For me, that created an incredible level of frustration.”

By the time Justin Trudeau sat down with her in July, 2013, during an AFN meeting in Whitehorse, she was considering her future path. The two spoke privately for more than an hour, talking about their visions for the country, reminiscing about their political fathers – the first of several conversations. Seven months later, she co-chaired the party’s biennial convention in Montreal; six months after that, she was acclaimed the Liberal candidate in Vancouver Granville.

For all her years in national indigenous politics, she had never belonged to a party before. “Why do you want to do that?” her mother recalls asking, in reference to her daughter’s decision to run for federal office. “She said, ‘I have done all I can. I have to get to a higher level.’”

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Says the minister herself: “If you want to see change, if you want your voice heard, you need to be sitting at the table.”

THE SEARCH FOR BALANCE

From her fourth-floor office, the minister has a clear view, across Ottawa’s Wellington Street, to the Supreme Court. Sitting at her desk a few days into her new job, Ms. Wilson-Raybould picked up the phone and called Chief Justice McLachlin. “I am not sure this was appropriate,” she says now, but she wanted to offer her “thanks to the court.”

She recalls telling the Chief Justice, “I really respect a lot of the decisions you have made with respect to indigenous rights. I hope it’s okay to say that.”

Chief Justice McLachlin assured her: “It’s always okay to give a compliment.”

Their exchange is telling evidence of the shift in philosophy at the Justice Department. It’s safe to say that under the Conservatives, whose policies were often frustrated by rulings from the court, such pleasantries were rare.

Even within the context of the Liberal government’s ambitious, and decidedly liberal, new agenda, Ms. Wilson-Raybould brings a unique vision to the justice portfolio. Although she is only the third woman to hold the job, she brings something even more change-making to her new post: her indigenous background. “There are things that she will see and questions she will ask and perspectives she will have that even the most well-intentioned non-First Nations wouldn’t see,” says Kim Campbell, the country’s first woman justice minister. (Anne McLellan was the second.) “That diversity bodes well for expanding the scope and the understanding of justice.”

On that subject, Ms. Wilson-Raybould speaks repeatedly about balance. When talking about justice policy, she refers to ensuring the “balance between individual choice and protecting

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[the] vulnerable.” When it comes to sentencing, she talks about ensuring “that our approach doesn’t discriminate against people.”

She stresses the need for consensus-building and compromise, referring, in a speech at UBC last month, to the way her ancestors settled disputes – a sharp contrast, she said, to the “partisan” environment in Ottawa. “I don’t think I will ever get used to the type of politics and etiquette in the House of Commons,” she said, “particularly during Question Period.”

In that same speech, she also discussed the need to build “off-ramps to the system” – that would address the factors that lead to criminal behaviour, and would prevent young people (too often young, indigenous men, she specifies) who commit non-violent first offences, from becoming trapped in the system. Part of her mandate from the Prime Minister includes the expansion of restorative-justice measures as an approach to less-serious criminal cases.

In her recent meeting with her provincial counterparts, meanwhile, she requested input on best practices that could be shared nationally. “We can take a more holistic community approach,” says Ms. Wilson-Raybould. Asked to name what she considers a successful program, she cites Vancouver’s Downtown Community Court, where the government provides services related to health, justice and social needs in one location.

In addition, she is expected to reverse the Conservative policy of mandatory minimum sentences. “I think it’s very important,” she says, “for judges to be able to reflect on what they hear, and make decisions based on the reality for the person who has come before them.”

A sense of how she plans to go about her agenda may be in part revealed by some of the people she consulted after taking the post. Along with Mr. Martin and Ms. Campbell, they included former justice minister Irwin Cotler.

In interviews, all three made the case that Ms. Raybould-Wilson’s background is a chance to find new solutions to problems that have plagued Canada for decades. “The justice portfolio is

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the most fun you can have as a lawyer. It is really at the heart of what so much of government is about,” says Ms. Campbell. “But it also requires you to reach out and really understand the social significance of what you are doing.”

She advises Ms. Wilson-Raybould to be patient, to build trust among her colleagues, and to choose her battles wisely. In general, she says, every minister has to remember that her views and opinions may be at odds with others around the cabinet table. But Ms. Wilson-Raybould’s job is that much easier, she says, because many of the deliverables outlined in the justice mandate were promised during the election. She also has at her service a department of newly emboldened lawyers charged with tackling an exciting agenda with an “evidence-based” approach.

Mr. Martin argues that, as the voice of the Crown, the new justice minister’s background – and her fiercely held views about indigenous rights – is a strength she brings to the job, inasmuch as it provides a deep understanding that has been lacking in Ottawa. Referring to the long line of white men who preceded her, says Martin, “Nobody – nobody – asked the question, ‘Does he have a conflict of interest?’”

Not long ago, a father, a second-generation Chinese-Canadian, stopped Ms. Wilson-Raybould at Pearson Airport in Toronto to tell her that her appointment is an empowering symbol of the future for his young daughter. Ms. Wilson-Raybould is mindful of her responsibility to mark the way for others, and says that she approaches her cabinet position, and her role as an MP, “through the lens of my own experience, my own feeling of injustice.”

And like many Canadians, she has her own memory of a loved one’s death. She sat with her maternal grandmother through the last days of life, when the effects of a stroke had put her into palliative care. The minister is reluctant to give full details, but her mother explains that Ms. Wilson-Raybould took a break from law school at UBC to travel back to Vancouver Island, barely leaving her grandmother’s bedside for a week. “It’s something I have to do,” her mother recalls her saying when she urged her daughter to go back to school. Finally, her mom told her,

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“Honey, I don’t think she will go with her granddaughter sitting beside her,” and Ms. Wilson-Raybould reluctantly took the ferry back to school. Her grandmother passed away in her sleep not long after.

“Being there for her was something important to me,” she says, acknowledging that the experience has had an impact on her views of physician-assisted dying. “For me, it stressed the need to provide the most comfort to people when they are nearing the end of her life, whatever form that takes.”

Adds Ms. Wilson-Raybould, “As minister, but just generally as a member of Parliament, and also as a human being, I think we’re all on a quest to achieve justice, and in order to do that we need to recognize the incredible diversity that exists out there, and create the legal and political space to ensure that all people can benefit and thrive.”

Even if that means poking a beehive or two along the way.