

AJC in the news/L'AJJ fait les manchettes

MACLEAN'S

HOME BLOGS CANADA WORLD CULTURE BUSINESS OPINION HEALTH ENVIRONMENT TECHNOLOGY TRAVEL
Hot Topics Syria TIFF 2013 Politics Senate reform Book of Lists Ebooks

Strapped federal criminal law policy section not sustainable: report

Yet Conservatives pursue criminal-law agenda without deep research and analysis

John Geddes, MacLean's, August 18, 2014

The federal Justice Department's criminal law policy section is growing demoralized. It has lost several top lawyers but not replaced them, and has weathered budget cuts to the point where "it is not operating in a manner that is sustainable." These are just some of the findings of an evaluation of the once-influential section, posted quietly to the department's website earlier this summer. The internal report undoubtedly reflects the frustrations of bureaucrats coping with dwindling resources. More than that, though, it suggests the Conservatives are pursuing their high-profile criminal law agenda without getting the sort of deep research and analysis the section previously provided.

In its look at the section's research and statistics division, the report notes a shift, under the Conservatives, away from ambitious studies to quicker scans of research already done by others. The research staff shrank from 35 in 2008-09 to 17 in 2012-13. Federal lawyers working on criminal law policy "are now relying less on large-scale research studies that examine broad policy questions," says the report. Instead, they are "increasingly looking to secondary or existing research." Study done in-house now tends to be "more condensed, and expected within a much shorter turnaround." In previous eras, the division wrote "formal briefing notes" to advise politicians, but now it typically provides, according to the report, mostly "oral briefings, email replies and shorter memos."

The evaluation is based largely on interviews with officials in the department and outsiders who work with the section, including officials from the provinces, the RCMP and the Canadian Bar Association. It also takes into account data on workloads and budgets. From 2009-10 to 2012-13, the period under scrutiny, the section's spending fell 21 per cent, from \$8.1 million to \$6.4

million. Over that stretch, it struggled to keep pace as the Conservatives tabled a remarkable 45 pieces of legislation that reformed the Criminal Code. The section is also called on to advise Ottawa's lawyers when criminal law issues end up being argued in court, as they have been in some highly publicized recent Charter of Rights and Freedoms challenges.

The report is studiously neutral on the Tory approach. It doesn't hint at why a government pressing ahead with an ambitious and often controversial law-and-order agenda might starve the policy section that would logically provide crucial supporting expertise. But critics of Prime Minister Stephen Harper's criminal law thrust—especially his government's propensity for imposing mandatory minimum prison terms that eliminate a judge's sentencing discretion for a raft of crimes—see this as more than a story of budget cuts. David Daubney, a senior lawyer in the section up to his retirement in 2011, says the Conservatives were simply not “interested in hearing what the evidence said,” and thus didn't have much use for the section's research.

He sees it as increasingly sidelined. “They have hardly any, it seems, role to play in terms of trying to make a real contribution to the development of public policy in the area of criminal law,” Daubney said. Material available on the Justice website does indicate sharply diminished research activity. For instance, of 23 posted studies, surveys and other documents on youth crime, only one dates from after the Tories came to power in 2006. And even though mandatory penalties are a pillar of Harper's policy, the last big federal report on the subject—a critical look at experience with mandatory sentences in other countries—dates from just before the Conservatives took office. (A rare steady stream of newly published documents over the past few years has been on victims of crime, a top Conservative priority.)

→ Leonard MacKay, president of the Association of Justice Counsel, the union for more than 2,000 federal lawyers, was careful not to accuse the Tories of intentionally marginalizing the section. Still, MacKay wouldn't rule it out. “I can't say one way or another what they are thinking,” he said. “But that's certainly an argument that can be made, that they don't require comprehensive research and the opinion [of the section] is, oftentimes, not acceptable to this government.”

MacKay said he was surprised an official government internal report was so blunt in concluding that cuts have left the section “not operating in a manner that is sustainable” and that “multiple lines of evidence indicated that the demanding environment is beginning to have a negative impact on staff morale.”

“These are things we've been saying ourselves,” he said. “But sometimes, our statements are seen as a little bit political, because we speak as a union for lawyers in the federal government.”

In an emailed response to questions from Maclean's, the Justice Department pointed out that the evaluation report found that the section “is achieving its expected outcomes.” The department didn't comment directly on the report's conclusion that the policy section can't go on as it is, but did note that it is “currently engaging in targeted staffing to better meet its changing needs.”