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Press Clippings for the period of May 19 to 25, 2015
Revue de presse pour la période du 19 au 25 mai, 2015

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

OTTAWA CITIZEN

Gov't rejected alternative short-term disability plan, union says

Kathryn May, Ottawa Citizen, May 21, 2015

One of the 18 federal unions has been proposing for years a new short-term disability plan to replace sick leave, but Treasury Board negotiators have repeatedly rejected the scheme out of hand.

Milt Isaacs, president of the Association of Canadian Financial Officers, came out swinging against Treasury Board President Tony Clement's allegations that "obstructionist" unions are "stonewalling" negotiations in a highly contentious round of collective bargaining now underway. ACFO represents the 4,500 federal financial officers.

"Nothing can be further from the truth," said Isaacs. "We had a proposal that wasn't even given a second look and it was patterned after a plan in the private sector, which is what Clement argues he wants."

ACFO tabled a proposal for a new short-term disability plan at the previous two rounds of collective bargaining and brought it up again in this round for "discussion."

Isaacs said ACFO proposed a short-term disability plan similar to the one it negotiated a decade ago for the finance officers working at Nav Canada, which he insists helped reduce absenteeism and get ill employees back to work faster.

Nav Canada is a privately run, not-for-profit corporation that took over Canada's air navigation system from Transport Canada – along with its employees — during the Liberals' massive downsizing of the 1990s.

ACFO proposed a plan that would get rid of annual sick leave and simply pay employees their salary when they fall ill for 65 days and then drop payment to 70 per cent of salary for the next 65 days.

Isaacs said the government never considered the proposal, rejecting it as "too rich."

He maintains Clement is wrong when he claims unions are unwilling to look at changes to the existing sick leave regime and the way disability is managed in departments. He said all the unions have offered other proposals but Clement has dug in on the plan he wants and won't brook any major changes from the proposal he has tabled.

So far, Clement has improved the offer once. The last proposal offered six days of paid sick days a year. After those days are used, employees have a week-long unpaid waiting period before qualifying for short-term disability.

Public servants now get 15 days a year of paid sick leave which they can roll over and bank from year to year. Clement wants to stop any further carryover and abolish the existing bank which has about 15 million days of sick leave.

"They won't consider any proposals … What we get back is incremental changes to his proposal which has gone from awful to somewhat awful, so we take offence to comments that we are obstructionist. That is not fair at all. The budget put a gun to our heads. We are doing everything to find a solution but making this round a political game is getting in the way."

The 18 unions signed a landmark solidarity pact for this round of bargaining to ensure they present a common front in bargaining over sick leave. They agreed not to make any concessions on existing sick leave benefits that are now enshrined in their contracts.

Isaacs said the pact is aimed at making sure the changes negotiated to sick leave don't leave public servants worse off than they are now.

"We aren't dismissive of short-term disability but we are dismissive of what has been proposed because it has significantly less value from what they have now and will not serve the employer's needs in getting people back to work any quicker or as more productive."

"If they want to diminish what I now have in a contract they have to give me something in exchange that has value, but what they are proposing is significantly less value."

The unions have said from the start they want to fix any abuses or problems in the existing system and have urged the government to turn over its business case for a whole new system.

Clement wouldn't comment on whether the government was open to different short-term disability models other than the one he tabled.

"Minister Clement has been clear, he wants to reach a negotiated agreement on the sick leave and short term disability plan that is fair for the employer, the employee, and

taxpayers. As the collective bargaining process is confidential, we will not comment on proposals on the table, nor negotiate through the media," said Stephanie Rea, Clement's director of communications.

Negotiations with the 18 unions have been underway for about a year and talks are still focused on non-monetary issues and have yet to shift to the more contentious money issues, such as sick leave benefits.

The government, however, has tightened the circle on the unions with various legislative changes to collective bargaining. The most recent setback for the unions came when the government booked $900 million in savings for this year by eliminating sick leave.

The budget implementation bill, once passed, will also give the government the power to effectively implement whatever sick leave deal it wants. Clement has said he wants a deal before the election.

Government scientists get permission to meet with union at workplace

By Kathryn May, Ottawa Citizen, May 24, 2015

Environment Canada has changed its rules and will allow scientists to meet with their union at the workplace to discuss collective bargaining – as long as it not related to strike or job action.

The department notified the Professional Institute of the Public Service of Canada, which represents federal scientists across government, that it has revised its guidelines for union activities and will allow PIPSC to hold meetings at the department's offices.

The union must give the department at least five days' notice and a copy of its agenda when booking a room for a meeting.

Last week, PIPSC president Debi Daviau led scientists, who claim they have been muzzled by the Conservative government, in a string of outdoor protests at labs and science-based departments across the country, saying it was largely because the union could no longer get inside to meet with members as it once did.

"This is an important victory but it's one we should not have had to fight for," said Daviau.

The change of heart doesn't seem to have extended across government. PIPSC said Heath Canada has since cancelled a union meeting that was previously scheduled on-site.

PIPSC represents more than 15,000 scientists, researchers and engineers across government and scientists' right to speak publicly about their work has been a big issue for the union.

The union came to the table in this current round of collective bargaining with an unconventional package of proposals that would embed "scientific integrity" in scientists' contracts and stop the government from what PIPSC says is meddling in their work.

A key proposal is the "right to speak" and PIPSC is seeking a clause guaranteeing scientists the right to express their personal views while making clear they don't speak for government. Another big demand is professional development, allowing scientists to attend meetings, conferences and courses to maintain their professional standards.

Daviau said it was frustrating that the union couldn't get access in the workplace to its members to update them on collective bargaining. Some private businesses also do not allow union meetings in the workplace.

PIPSC said it used to have regular on-site noon meetings at Environment Canada's Gatineau office, but that longstanding practice was reversed in this round of bargaining and the union was unable to book a room for meetings with employees.

It claims it was similarly denied access at Environment offices in Burlington and Dorval, National Defence in Montreal, the National Research Council in Ottawa and in Tunney's Pasture, where Health Canada is located.

Treasury Board policy leaves it up to management to decide who can use the premises on a "case by case" basis.

With the revised guidelines, unions can use Environment Canada's facilities for joint consultation, annual general meetings; election of union officials; and updates on collective bargaining. Meetings called to discuss strike, a strike vote or job action will not be allowed on-site.

And management's approval for the meeting which will depend on the availability of space.

Unions can't use a department's facilities for desk drops; set up tables or kiosks in the hall; use the email network for a strike vote or any kind of job action; or hang anything that could damage federal property.

'Climate of fear' keeps numbers low at protest by federal scientists: union

ANAÏS VOSKI, OTTAWA CITIZEN, May 19, 2015

A "climate of fear" kept many federal employees from participating in Tuesday's public protest against the muzzling of scientists, the president of the Professional Institute of the Public Service of Canada (PIPSC) charged.

The three largest federal unions, including PIPSC, the Public Service Alliance of Canada (PSAC) and the Canadian Association of Professional Employees (CAPE), organized the protest and said they were expecting hundreds of people.

However, only a few dozen showed up for the lunch-time event outside Tunney's Pasture.

Debi Daviau, president of PIPSC, said the low turnout was because employees were warned by management not to participate – a charge the government denied.

"Some departments have sent out emails to all employees warning them about the many things they were not entitled to do. They are, however, entitled to participate in a demonstration outside on their lunch hour, but that's only because they (managers) can't tell them what to do during their off-hours," Daviau said.

She said the government's "climate of fear" scared scientists away from speaking out.

Scott French, a spokesman for Minister of State for Science and Technology Ed Holder, declined comment on whether any employees were warned not to participate, as the union claimed. "I cannot confirm if that took place, I have no knowledge of that," he said.

Shared Services Canada did send out an email to employees back in March, stating: "At present, none of the bargaining units representing employees in the core public administration are in a legal strike position.

"Employees are free to participate in lawful activities of their employee organization, on their own time," it said, but noted they were expected to report for work as scheduled "and be present at their prescribed time and place of work."

Protests Tuesday were also organized in cities across the country, such as Montreal, Quebec City and Vancouver.

PIPSC says that federal scientists cannot speak freely to the news media about their findings and are constrained in their ability to share their research with the public or collaborate with their peers outside government.

It also says government scientists are facing "dramatic" budget cuts in the next two years.

"We're reaching out to Canadians to make sure that they know about the devastating cuts to these valuable science programs. The work that scientists do directly impacts Canadians' lives, so it goes well beyond what the public is aware of in terms of the environment," said Daviau.

As a result, federal unions are now including the issue of "scientific integrity" in ongoing negotiations with the government over a new contract.

Jim Elder, a retiree who showed up at the protest, said the scientists work not just for the government, but for the Canadian people.

"I think it's very important to formulate policy based on real facts, and these are people we hire to find those facts, which is why I'm concerned when I read reports that they're being muzzled," Elder said.

"Scientists actually work for the people of Canada, so I think their job is to tell us, and the media is the best channel to talk to the people."

The issue of how free government scientists are to speak about their work has been raised many times. A report last October by the non-profit group Evidence for Democracy suggested that Canadian government scientists face considerable restrictions on talking to the media.

But French, the science minister's spokesman, said "government scientists and experts are readily available to share their research with the media and the public," and he cited statistics on the number of news media inquiries fielded by agencies and departments last year.

"Overall, Canadian federal departments and agencies produce over 4,000 science publications per year," he said in an emailed statement. "Canada, meanwhile, is ranked number one in the G-7 for our support for scientific research and development at our colleges, universities and other research institutes."

Bargaining between the unions and the government has focused on the Conservatives' plan to revamp sick leave, which has overshadowed other issues the unions are proposing at the bargaining table.

The unions have tried to change the channel by pressing for issues such as bringing integrity back to government science, as well as improving health and wellness in the workplace.

PIPSC's bargaining demands are aimed at dealing with the ongoing spending cuts in science and "interference" in the integrity of scientific work. Its bargaining proposals are among the first in the scientific community and have attracted attention around the world.

– *With files from Kathryn May, Ottawa Citizen.*

LeDroit

Les syndicats unis pour protéger la science publique

Paul Gaboury, Le Droit, le 19 mai 2015

Les trois principaux syndicats du secteur public fédéral ont dénoncé mardi le musellement des scientifiques canadiens et les tentatives d'obstruction du gouvernement Harper au processus de négociation collective.

Des manifestations étaient organisées dans plusieurs villes à travers le pays, en ce 19 mai, dans le cadre de la campagne nationale lancée par les syndicats pour changer de gouvernement lors des prochaines élections fédérales le 19 octobre prochain.

Au pré Tunney à Ottawa, environ 250 personnes s'étaient réunies sur le coup de midi pour entendre les présidentes de l'Institut professionnel de la fonction publique, de l'Alliance de la fonction publique et de l'Association canadienne des employés professionnels.

Debi Daviau, de l'Institut professionnel, a déploré le manque de respect du gouvernement envers les scientifiques à qui il limite le partage de leurs recherches et la collaboration avec leurs collègues.

La présidente Daviau a aussi déploré les coupures draconiennes de 2,6 milliards $ à la science publique fédérale et l'abolition de 7500 postes qui auront été imposées aux 10 ministères et organismes à vocation scientifique d'ici 2017.

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NÉGOCIATIONS COLLECTIVES DES FONCTIONNAIRES SCIENTIFIQUES

Une clause pour ne plus être muselés

Marie Vastel, Le Devoir, le 20 mai 2015

Les fonctionnaires scientifiques réclament haut et fort le droit de discuter de leurs recherches, tant sur la scène internationale qu'avec les médias. Et pour se faire entendre, ces travailleurs de la fonction publique ont pris la rue dans quelques villes canadiennes mardi.

À la veille d'une nouvelle ronde de négociations avec Ottawa, l'Institut professionnel de la fonction publique a manifesté pour sa principale demande : une « politique d'intégrité scientifique ». Une sorte de clause pour la « liberté d'expression des scientifiques de la fonction publique », explique Peter Bleyer de l'IPFP.

Pourquoi réclamer une telle politique pour la première fois cette année ? « On n'avait pas pensé que c'était nécessaire, a avoué M. Bleyer au Devoir mardi. On aurait pensé qu'il y aurait un changement de cap de la part du gouvernement, que la raison l'emporterait. » Mais ses membres demeurent muselés, a-t-il accusé.

Cette politique d'intégrité leur garantirait donc le droit de parole avec les décideurs publics et les médias, et faciliterait leur collaboration avec des collègues de l'international en éliminant les obstacles par exemple à la participation à une conférence à l'étranger.

« Les syndicats, normalement, on met de l'avant des positions pour l'intérêt de nos membres. Mais dans ce cas-ci, c'est vraiment l'intérêt public aussi qu'on défend, a fait valoir M. Bleyer. Nos scientifiques font un travail de recherche, d'analyse. Et il faudrait quand même que cette analyse-là soit considérée par ceux qui développent les politiques publiques. Nos membres ne pensent pas que c'est à eux de décider des politiques, mais ils doivent savoir que ceux qui décident de ces politiques-là ont vu leur recherche, ont considéré leur recherche. Ça fait partie prenante de l'intégrité du processus scientifique. »

À Ottawa, Montréal, Québec et Vancouver, des fonctionnaires ont manifesté pour réclamer ce droit de partager le fruit de leurs recherches.

Des recherches saluées aux États-Unis

Une permission qui leur est trop souvent refusée, selon un biologiste d'Halifax qui a attendu de prendre sa retraite avant de dénoncer publiquement le bâillon qui lui étaitimposé. Une conversation avec un journaliste est bien souvent interdite, tout comme un voyage à l'étranger, a déploré en entrevue avec la CBC Steve Campana.

Pourtant, certaines découvertes canadiennes font les manchettes ailleurs. M. Campana et son équipe ont découvert par exemple comment déterminer l'âge d'un homard ou d'une crevette, ce qui pourrait aider à gérer les pêches. La recherche n'a pas pu être publiée au Canada. Mais lorsqu'un collègue de M. Campana en a discuté lors d'une conférence aux États-Unis, « les médias se sont rués sur lui. Les résultats de cette histoire ont été publiés par 127 médias dans 25 pays différents. Voilà que nous avions fait bien paraître la

science menée chez Pêches et Océans, et personne n'en a jamais entendu parler ». Pour M. Campana, tout cela n'est qu'une simple « question de contrôle » du fédéral, car quand Ottawa muselle même de simples faits, « ça n'a simplement aucun sens ».

Les négociations entre Ottawa et ses multiples syndicats s'enveniment depuis quelques semaines. L'IPFP n'a notamment plus le droit de se réunir dans des locaux du gouvernement pour discuter avec ses membres, selon M. Bleyer.

Le bureau du président du Conseil du Trésor, Tony Clement, n'a pas répondu au Devoir. Le gouvernement tente de son côté de modifier le régime de congés de maladie des fonctionnaires. Un régime d'invalidité de courte durée remplacerait ces journées cumulables. Les syndicats refusent.

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Politics This Morning: Scientist muzzling situation 'dire'

By Bea Vongdouangchanh, The Hill Times, May 20, 2015

"It's very serious. We've seen a drastic change in how scientists can communicate to the public. The situation now for government scientists is dire," Ms. Gibbs told The Hill Times, noting there are implications not just affecting the scientists, but all Canadians. "These current [communications] policies mean that the experts that we pay with our tax-payer dollars are being prevented from sharing their expertise with the public. That means not only do we not have access to this information that we've paid for, but it means that we're not as informed as we should be about so many important issues from air quality to water supply to food safety."

Three of the biggest public service unions protested yesterday at Ottawa's Tunney's Pasture area, which houses government departments. The Public Service Alliance of Canada, the Canadian Association of Professional Employees and the Professional Institute of the Public Service of Canada, are speaking out against the federal government muzzling their own scientists, interfering with the development of public science and the collective bargaining process in general. They're also trying to put "science integrity measures" into their bargaining agreements.

Ms. Gibbs said it's a new "unique" approach to making open communication and direct contact between scientists and media a priority.

“I think it’s great. It’s a new approach, and has the potential to really improve things,” she said, noting that other solutions, such a standard government-wide communications policy or legislation to give government scientists independence to speak about their work are good, but can be undone with future governments. “What is so great about possibly getting something into the collective agreement is once it’s in there it’d be very very hard for future governments to get it out.”

PIPSC president Debi Daviau said in a statement that the federal government does not respect the country’s public scientists. “Right now our scientists are constrained in their ability to share their research and collaborate with their peers,” Ms. Daviau said. “They're frequently ‘missing in action’ at international conferences. They can't speak freely to the media and the public about their work. These are all essential elements of performing science in the public interest and that's how you protect our country's environment and the health and safety of Canadians.”

Ms. Gibbs said the government has a bad reputation when it comes to this issue and should use the protest to “turn that reputation around.”

Ed Holder (London West, Ont.), Minister of State for Science and Technology, said in the House last year that scientists are not being muzzled. “Scientists have and are readily available to share their research with Canadians,” he told the House. “Canadian federal departments and agencies produce over 4,000 science publications every year. Fact. Environment Canada fielded nearly 2,500 media enquiries and published about 700 peer-reviewed articles this past year. Fisheries and Oceans Canada fielded 1,600 media enquiries and published 500 peer-reviewed articles last year. When it comes to science and technology, on this side of the House, we are interested in the facts.”

CBCnews

Steve Campana, Canadian biologist, 'disgusted' with government muzzling

Fisheries and Oceans Canada biologist speaks out only after retirement

CBC News Nova Scotia, May 19, 2015

A recently retired Fisheries and Oceans Canada biologist says the muzzling of federal government scientists is worse than anyone can imagine.

Steve Campana, known for his expertise on everything from Great white sharks to porbeagles and Arctic trout, says the atmosphere working for the federal government is toxic.

The Halifax-based scientist, who only agreed to talk to CBC after he retired from the department, says federal scientists have been working in a climate of fear.

"I am concerned about the bigger policy issues that are essentially leading to a death spiral for government science," he said in an exclusive interview.

"I see that is going to be a huge problem in the coming years. We are at the point where the vast majority of our senior scientists are in the process of leaving now disgusted as I am with the way things have gone, and I don't think there is any way for it to be recovered."

Public-sector unions have organized rallies in a number of locations across the Ottawa area on Tuesday to protest the alleged muzzling of public scientists.

'It's hard to fathom, it seems to be simply a control issue.'
- Steve Campana, retired Fisheries and Oceans Canada biologist
"We have very strict directives of what we can say and the approval steps we have to go through, and very often that approval seems to be withheld for totally arbitrary reasons," Campana says.

He says government scientists often have to find their own funding, travel is often turned down and they are rarely allowed to talk to the media, even about their own groundbreaking research.

Control issue

His team discovered how to tell the age of lobster or shrimp — a finding that could help manage the fishery. But the research wasn't approved for release in Canada.

"Meanwhile, one of my colleagues went down to the United States for a conference, presented the work and the media just converged on him. The results of that story were published in 127 media outlets in 25 different countries, and here we had taken the lead putting DFO science in a good light and nobody ever heard about it."

Campana says he doesn't think it's as simple as science conflicting with government policy

"It's hard to fathom. It seems to be simply a control issue. You could sort of understand the rationale if you were potentially talking about a controversial subject and whoever is in government quite rightly has the right to make sure there are no critical statements about policy. But when you go to the extent of silencing just talking about facts, that just doesn't make any sense."

'Chilling effect'

Peter Bleyer, a special consultant with the Professional Institute of the Public Service of Canada, says they are hearing more stories about disgruntled scientists.

"It has clearly gotten worse. There is very clear evidence of that. The problem is that it has created an atmosphere that affects not only those who are directly affected, but all of those who hear about it understand what is going on around them. That's what we call, very clearly, a chilling effect."

Campana says something needs to change soon.

"If we don't have the system in place to deal with it, there is going to be some problem that happens in the next few years. I don't know, rising tide levels or tsunami coming in or an invasion of great white sharks where people are concerned about what's going to happen, and we won't have the qualified people in place to answer those questions at all.

"You can't have those people in place overnight. It takes years, almost decades, to develop that capacity."

Fisheries and Oceans Canada hasn't responded to CBC's request for an interview.

The minister of state for science and technology has said in the House of Commons that "ministers are the primary spokespersons for government departments yet scientists have and are readily available to share their research with Canadians."

CBC news

FAQ: The issues around muzzling government scientists

Federal scientists have been restricted from publicly talking about their research, they claim

By Althea Manasan, CBC News, May 20, 2015

For years, the Conservative government has been accused of "muzzling" federal scientists by controlling who they're allowed to talk to and what they can say about their own research.

Just this week, recently retired Fisheries and Oceans Canada biologist Steve Campana went public with his own experiences of strict directives, cumbersome approval procedures and arbitrary media rejections while working with the agency.

It's just one of numerous complaints from both scientists and the media about federal scientists being restricted from publicly talking about their research.

So what is at stake? Here are a few frequently asked questions.

How are scientists being muzzled?

In 2006, the Harper government introduced strict procedures around how its scientists are allowed to speak about their research to the media.

In the past, journalists were generally able to contact scientists directly for interviews, but after these new directives they had to go through government communications officers.

And scientists had to get pre-approval from their minister's office before speaking to members of national or international media, a process that can involve drafting potential questions and answers, which are then scrutinized by a team before the green light is given.

In one instance from 2014, a request from The Canadian Press to speak to federal government scientist Max Bothwell about his work on algae led to a 110-page email exchange to and from 16 different federal government communications officers.

In the end, Bothwell was not interviewed before the Canadian Press article was published.

A 2014 study of media policies from 16 federal departments concluded that current policies place far more restrictions on Canadian scientists when it comes to talking to media than is the case with their U.S. counterparts.

There have also been reports of restrictions on scientists being able to travel to conferences to share their results. Some international scientists have also voiced concerns that working with Canadian scientists will affect their own ability to speak freely about research results.

In other cases, scientists have described a "broader chill" within the scientific community, where they aren't directly prevented from speaking out, but feel pressure to stay quiet.

What are some examples of interference?

- In 2010, Natural Resources Canada scientist Scott Dallimore was not allowed to talk about research into a flood in northern Canada 13,000 years ago without getting pre-approval from political staff in the office of then-Natural Resources minister Christian Paradis. Postmedia News said request were only approved after reporters' deadlines had already passed.
- In 2011, Department of Fisheries and Oceans scientist Kristina Miller was blocked from speaking to the media about her research suggesting viral infections may be linked to higher salmon mortality.
- Environment Canada's media office granted no interviews after a team published a paper in 2011 concluding that a 2 degree C increase in global temperatures may be unavoidable by 2100.
- Postmedia science reporter Margaret Munro requested data from radiation monitors run by Health Canada following the earthquake and nuclear plant problems in Japan. Munro said Health Canada would not approve an interview with one of its experts responsible for the detectors.

How has the scientific community responded?

In recent years, scientists as well as members of the media have become increasingly vocal against what has been called the Canadian government's "War on Science."

Science journalist Kathryn O'Hara first sounded the alarm in 2010 in a column for the science journal Nature. She wrote that climate change researchers from Environment Canada were "prevented from sharing their work at conferences, giving interviews to journalists, and even talking about research that had already been published."

In her letter, she urged the government to loosen its strict controls.

Scientists and concerned citizens have since staged protests across the country, including a mock funeral on Parliament Hill in 2013 to mourn what they called the death of scientific evidence.

There have also been open letters written by science organizations, journalists and groups of international scientists calling for the unmuzzling of scientists. A letter signed by more than 800 scientists from 32 countries asked Prime Minister Stephen Harper to end "burdensome restrictions on scientific communication and collaboration faced by Canadian government scientists."

A complaint lodged by advocacy group Democracy Watch and the University of Victoria's Environmental Law Clinic in 2013 led to the launch of an investigation by Canada's information commissioner Suzanne Legault, which is still ongoing.

Despite the outcry, the strict controls still seem to be firmly in place. A survey conducted last year of 4,000 Canadian scientists found that 74 per cent thought the sharing of government science findings with the Canadian public had become too restricted.

How has the government responded to the claims?

The Harper government has repeatedly denied claims of political interference in public science. In fact, several ministers have insisted that since coming to power in 2006, the government has provided record investments in science and technology.

"Canada is ranked number one in the G7 for our support for research and development in our colleges, universities and other institutes," Greg Rickford, then-minister of state for science and technology, said in a statement to the Fifth Estate last year. "Research is vibrant and flourishing right across the country."

His successor, Ed Holder, has repeated similar statements through his spokesman, Scott French. "While ministers are the primary spokespersons for government departments, scientists have, and are readily available to share their research with Canadians," French said in October 2014.

He added that federal departments and agencies produce over 4,000 science publications per year, including 700 peer-reviewed articles last year alone.

What impact does this have on Canadians?

Critics of the restrictions say that the policies undermine government transparency and accountability and that without open communication, Canadians have little knowledge of the research that is being funded by their own tax dollars, or how this research might be utilized in other contexts.

"Forget excitement, it's hard to even maintain public trust in taxpayer-funded research when scientists are not allowed to explain their work," O'Hara wrote in her Nature column. "Government media officers also find it difficult to craft informative press releases and bring research to media attention."

Some observers have also pointed out that freedom of knowledge is necessary for good policy making.

"The Canadian standard of living is, in large measure, a result of scientific discovery and technological innovation," Scott Findlay, a co-founder of Evidence of Democracy and a professor of biology at the University of Ottawa, said in 2013.

"So every Canadian has a vested interest in the health of public science, and the use of scientific evidence to protect and sustain the values we hold."

Boundary between politics, public service is 'no man's land': Expert

Kathryn May, Ottawa Citizen, May 19, 2015

Employment Minister Pierre Poilievre's taxpayer-funded video to promote the Conservatives' universal childcare benefit shows the traditional line between politics and the public service is a "no man's land" where there are no rules, says a leading public administration expert.

Donald Savoie, a Canada Research Chair in Public Administration and Governance at Université de Moncton, said the online video "smacked" of partisanship to which public servants should have been "hyper-sensitive" coming only four months before a federal election.

"If anyone should know and be sensitive to the partisan line that should not be crossed, it's the public service," said Savoie. "They should not get involved in initiatives or

measures that can viewed by Canadians, or opposition politicians, as partisan. They are guardians of the public interest, not the political interest."

But Savoie said the rules and boundaries that once separated politicians and bureaucrats, and the workings of politics and administration have been "thrown out the window" — setting the stage for a creeping politicization of the public service.

There are still rules like those laid down in the communication policy and values-and-ethics code that are supposed to ensure that public servants don't stray into partisan territory. And the department argued that it followed government policies in making the video.

But Savoie argues codes and policies don't fill the void of rules that guided the traditional bargain between Canada's non-partisan public servants and politicians. As a result, public servants don't know what their roles are anymore in policy-making, operations or communications.

"No values and ethics code can paper over this no man's land. The minister should have basic respect for public service, and senior public servants should have it too. It takes two to have a bargain. That old bargain is gone and we are searching for a new one," said Savoie.

"So what's the role of the public service in contemporary government? We haven't defined the new rules. All we have are values and ethics and they have no teeth. We absolutely need a frank and open discussion on the role of the public service in policy making, operations and communications."

Academics have for years warned that the traditional role of the public service was radically shifting as power gathered at the centre in the Prime Minister's Office and its bureaucratic arm, the Privy Council Office.

That shift has accelerated by rapidly changing technology, the 24-hour news cycle, and governments obsessed with managing the message.

But critics argue that nothing has strained the neutrality of public servants like the Conservatives' highly centralized and partisan approach to government communications.

Liberal MP David McGuinty argued that Privy Council Clerk Janice Charette, who heads the public service, should justify how public servants could work on what he called Poilievre's "taxpayer-funded vanity video."

The video was produced by department funds, and public servants were called in on a Sunday to work on it, including filming Poilievre glad-handing constituents.

But Savoie questions why the clerk should be on the hook when every public servant has been immersed in the values-and-ethics code.

“Don’t point the finger at the clerk,” said Savoie. “If you are an EX-1 or above you should know the importance of the value-and-ethics code and when you see a red flag like this a few months before a general election, live by it. You should be asking if this is appropriate. Values and ethics code covers everybody, not just the clerk.”

But Savoie said Poilievre, as a minister, should have known better.

“Ministers have a responsibility to back off and respect the line and realize what’s in the public interest and what’s in their own interest. It’s not all on the shoulder of the public service — the ministers shouldn’t be making inappropriate demands.”

Savoie is among the chorus of experts calling for a new set of rules to govern the relationship between public servants, ministers and MPs.

University of Ottawa professor Ralph Heintzman — who was a key player in developing the original values and ethics code — has long called for a “new charter of public service” to legislate rules that would guide these relationships.

This new “moral contract” would include a code of conduct, new rules for communications, beefed-up accountability for deputy ministers and a new appointment system for them, so they aren’t beholden to the clerk.

The charter’s new rules for government communications would ban all government advertising with a “partisan flavour” and introduce procedures to enforce the ban.

So far, the Privy Council Office has rejected criticism that communication is politicized and public servants are becoming partisan cheerleaders, arguing that departments have to adapt to new “communication reality” of online news and social media.

C-59: How can Parliament justify passing this bill?

The NDP wants hearings and the file has been sent to the OPP, so what will Parliament do with the controversial provisions of C-59, the latest budget bill?

Aaron Wherry, MacLean's, May 20, 2015

The test presented by Bill C-59, the government's latest omnibus budget bill, is at least now even more stark.

Parliament will soon be tested directly—asked whether it wishes to fully air and understand the details of something it is being asked to pass. Beyond that, it is even more plausible that Parliament could be asked to pass legislation that could affect a police investigation.

On Friday, I wrote about the government's attempt to retroactively amend the purview of the access-to-information system via the latest budget bill, a move that would nullify unresolved allegations that government information was wrongly withheld and destroyed. The Canadian Press's Bruce Cheadle was the first to report on the ramifications of the relevant clauses in Bill C-59, and his initial story on the matter is here.

I also spoke with Information Commissioner Suzanne Legault, who issued a special report on the amendments last week. Some of my conversation with Legault aired on Maclean's on the Hill, but here is a longer cut.
(Listen the clip by clicking here: https://soundcloud.com/macleans-magazine/interview-with-information-commissioner-suzanne-legault

For the record, I asked the office of Public Safety Minister Steven Blaney whether Blaney had a response to the commissioner's specific concerns that "the RCMP destroyed records responsive to the request with the knowledge that these records were subject to the right of access guaranteed by subsection 4(1) of the [Access to Information Act]" and that "The proposed changes in Bill C-59 will deny the right of access of the complainant, it will deny the complainant's recourse in court, and it will render null and void any potential liability against the Crown."

In response, Blaney's spokesman sent a statement that reads, "Our Conservative government is pleased it has fulfilled its commitment to end the wasteful and ineffective long-gun registry once and for all. It was still possible to access outdated copies of the long-gun registry through Access to Information legislation due to a bureaucratic loophole. The will of Parliament has been made clear; all copies of the registry were to be destroyed. The technical amendment addresses this."

The RCMP has said that it disputes the commissioner's finding and that it would "vigorously defend against any accusation of unlawful conduct in respect of the handling of this Access to Information request."

On Tuesday afternoon, Cheadle reported that the information commissioner's findings have been forwarded to the Ontario Provincial Police. The commissioner had referred the matter to the Justice minister on March 26. According to Cheadle, the minister's office forwarded it to the Public Prosecution Service last week, and the public prosecutor subsequently referred the matter to the OPP.

Meanwhile, the NDP is preparing to put a motion before the access to information, privacy and ethics committee to study Legault's report. The motion would have the committee "request from the Department of Justice all of its documents relating to this case" and would seek to hear from "the Information Commissioner of Canada, the Attorney General of Canada, the Minister of Public Safety and Emergency Preparedness, the Minister of Finance, the Commissioner of the RCMP, the RCMP ATIP Coordinator, the Director of the Public Prosecution Service of Canada, and the RCMP officers who destroyed the registry data."

That seems like the outline of a proper hearing. So is that what we will now get?

That depends, first, on the willingness of Conservative MPs. The membership of the committee is six Conservatives, two New Democrats and one Liberal. In theory, and perhaps in a better version of Parliament, we might imagine even just two Conservatives siding with the New Democrats and the Liberal to approve the study, but I'm not sure I've ever heard of a committee vote deviating from the party lines. So, failing a decisive split, would the Conservative members of the committee ever vote en masse to approve such a study? Put another way, in light of how much executive power is sometimes said to be exerted on committees: Would the Prime Minister's Office and the government ever agree to have MPs approve such a study?

(Another hypothetical: What are the odds that some critical mass of Conservative backbenchers would, publicly or privately, express misgivings about what Parliament is being asked to do here? Whatever happened to the Backbench Spring, anyway?)

That would probably be a political calculation: Will it hurt more to be seen rushing this through Parliament without any meaningful study, or to have the details aired out during committee hearings? Even without knowing what all remains to be revealed, the cynical response would be that it's always better to just ram a measure through Parliament and deal with complaints about mere "process."

And while the NDP's motion is a heartening move, it still remains to be seen how long and loud the New Democrats and Liberals are willing to scream about this. In question period last week, this received only a few questions from a Liberal MP.

So what about the OPP?

As Cheadle clarified, we don't know that there is an active investigation into the RCMP's handling of the access-to-information request in question. (I am also told that no one has ever been charged with an offence under the Access to Information Act.)

A police investigation, or the possibility of same, might not preclude parliamentary hearings, but, lest anyone want to argue here that any hearings by Parliament should be set aside so long as a police investigation is a live possibility, let's note the obvious corollary: That same standard should surely preclude Parliament from passing legislation that could undermine a police investigation.

The latter was a conceivable concern before yesterday's news. As the information commissioner explained it to me on Friday: "The bill would erase the fact that this person

ever made this request, would erase the fact that this person complained to my office, would erase the fact that we conducted an investigation, would erase the fact that we came to the conclusion that additional records are owing to this complainant, and would also erase any administrative, civil or criminal liability for any of the actors involved."

That the file is with the OPP might make that seem a bit more tangible.

Remember: By no serious standard of legislating should these provisions have been included in a budget bill in the first place. Whether or not Parliament should retroactively rewrite the law, that question should at least be asked with a distinct piece of legislation. In a better situation, a decisive number of MPs would refuse to pass a budget bill such as C-59. (And, in a future situation, we should demand that the omnibus bills of this sort are banned under the standing orders of Parliament.)

Failing that, MPs should at least summon the necessary self-respect, and respect for the institution, to demand a full airing of the situation. If Parliament is to pass these amendments, it should at least be clear to everyone what, exactly, that means.

Even still, how could Parliament justify passing a bill that would stymie a possible police investigation?

The will of Parliament when this access-to-information request was made seems to have been that that request was lawful. And that seems to have remained the will of Parliament, even when the Ending the Long-gun Registry Act was passed; that bill makes no mention of the Access to Information Act.

Whatever happened here and for whatever reason, we surely deserve to have it fully explained.

To retroactively reimagine the will of Parliament is already highly dubious. For Parliament to do so amid all of this would be much more. And all of it should be weighing on the institution and its members.

Update. Liberal MP Wayne Easter has also submitted a motion to the ethics committee for hearings on the issue. Here is the text of that motion:

- That the Committee urgently invite Suzanne Legault, Information Commissioner of Canada, Bob Paulson, Commissioner of the Royal Canadian Mounted Police, and the Honourable Steven Blaney, Minister of Public Safety and Emergency Preparedness, to discuss the Special Report to Parliament by the Information Commissioner, tabled in Parliament on May 14, 2015, entitled An Investigation into an access to information request for the Long-gun Registry, and that the meeting be televised.

LeDroit

Pressions pour changer le site du Monument aux victimes du communisme

Paul Gaboury, Le Droit, le 22 mai 2015

La controverse entourant le choix du site pour l'érection du Monument commémoratif aux victimes du communisme à Ottawa est loin de s'éteindre.

Plusieurs architectes et urbanistes viennent d'intervenir directement auprès des responsables du Monument, le groupe Hommage à la liberté, leur demandant de reconsidérer l'emplacement retenu qui jouxte la Cour suprême du Canada.

Dans leur plaidoyer, les signataires rappellent aux membres du conseil d'administration du groupe que « le site actuel a été accordé sans consultation publique et sans le débat qu'une telle décision méritait.

« Nous croyons que vous reconnaîtrez que cette absence d'une procédure d'approbation publique et cette indifférence envers des décennies de planification à long terme sont fort peu démocratiques », rappellent les membres signataires qui proviennent du Conseil canadien d'urbanisme, de l'Institut canadien des urbanistes, de l'Association des architectes paysagistes du Canada, de l'Institut royal d'architecture du Canada et de Patrimoine Canada.

Les architectes et urbanistes rappellent que « plus de soixante ans de planification à long terme et de consultations publiques, auxquelles s'ajoutent des millions de dollars des contribuables » ont réservé ce site d'importance nationale pour la Cour fédérale qui viendrait s'ajouter à une place centrée sur la Cour suprême. « Cette triade d'édifices juridiques est parallèle à la triade parlementaire entourant la colline du Parlement », plaident les signataires.

Jusqu'à maintenant, les nombreuses interventions pour changer le site du Monument, incluant celles de plusieurs membres du caucus libéral, n'ont rien donné. Tout en reconnaissant l'importance du monument, les libéraux avaient proposé qu'il soit érigé plus loin sur la rue Wellington, dans le parc des Provinces. La semaine dernière en Chambre, le député d'Ottawa-Centre, le néo-démocrate Paul Dewar, avait lui aussi interpellé le gouvernement sur cette question.

Most Canadians oppose communism victims memorial: poll

Elizabeth Payne, Ottawa Citizen, May 24, 2015

A large majority of Canadians — even among Conservative supporters — think the Conservative government's planned memorial to the victims of communism is a poor idea, a poll has found.

Across the country, just 23 per cent of Canadians said they would support the Memorial to Victims of Communism "in its current form after they were shown design plans for the monument, to be erected near the Supreme Court in Ottawa," the EKOS polling firm reported.

Some 27 per cent said they somewhat opposed the memorial and 51 per cent said they strongly opposed it. In the National Capital Region, that opposition rises to 83 per cent of people polled — 63 per cent who strongly oppose it and 19 per cent who somewhat oppose it. Just four per cent of those polled — both Canada-wide and in the capital region — said they strongly support the memorial.

Voters who identified themselves as Conservatives were slightly more supportive of the memorial than voters who identified with other parties. But, still, the majority of Conservative voters polled by EKOS — 63 per cent — said they opposed it.

The poll also found that the majority of Canadians knew little or nothing about the monument. But when they were shown design plans and given details, they didn't like what they saw. The majority of capital region residents were aware of the memorial, which has been dogged by controversy.

When asked to rank a list of new facilities "to showcase Canada's National Capital Region," respondents ranked a memorial to the victims of communism last out of five possibilities. A national Holocaust monument, which the federal government is also building, came in second last. A national library "on a grand scale" and a memorial for historical injustices against Aboriginal peoples were the top two picks of respondents.

Defence Minister Jason Kenny recently said the monument, which will get $3 million in taxpayer support, is "strongly supported by Canadian ethno-cultural communities representing some eight million Canadians" and deserves a high-profile location.

Its planned location on a 5,000 square metre site on Wellington Street southwest of the Supreme Court is a major point of contention with numerous groups that oppose it.

Rideau-Rockcliffe Coun. Tobi Nussbaum said he plans to introduce a motion at Ottawa Council to formally request the federal government move the memorial.

Its planned location is on land that has long been reserved for a new judicial building. Mayor Jim Watson has been vocal in his opposition to locating the victims of communism memorial on what is supposed to be part of a so-called judicial triad. The mayor has said he is unaware of any public consultation on what amounts to a significant change to the long-term vision for the capital, something the city supports.

The National Capital Commission's advisory committee on planning and design has had concerns about both the location and design of the memorial. Other groups, including the Royal Architecture Institute of Canada, the Canadian Society of Landscape Architects and the Ontario Association of Architects, have also expressed concern that the proposed location for the memorial will violate the guiding principles of the government's plan.

In March, Canadian Heritage said the groundbreaking for the $5.5-million memorial would take place this summer. The National Capital Commission has since said that its board of directors would likely not approve the design until as late as September. Construction could not begin before then, although preliminary site work could go ahead.

LeDroit

La Cour d'appel de l'Ontario lui reconnaît le droit de subir un procès dans la langue de son choix

Louis-Denis Ebacher, Le Droit, le 20 mai 2015

Un francophone accusé de graves chefs criminels reliés à la drogue a eu gain de cause devant la Cour d'appel parce que son enquête préliminaire et son procès n'ont pas eu lieu dans la langue de son choix, soit le français.

Christian Munkonda, arrêté en 2010 à Ottawa, avait demandé une enquête préliminaire et un procès bilingues.

Tout au long du processus judiciaire, ses procureurs ont demandé des transcriptions dans les deux langues - car il y avait des coaccusés anglophones -, les services d'un sténographe bilingue, le bilinguisme chez tous les procureurs de la Couronne et tous les documents en français.

Le juge Robert N. Fournier, de la Cour de justice de l'Ontario, a refusé le renvoi du procès, le 23 juin 2011.

Le 5 mai dernier, trois juges de la Cour d'appel ont accordé à l'accusé les dépens raisonnables qu'il a engagés pour l'enquête préliminaire, et cassé le renvoi à procès. C'est donc un retour à l'étape de l'enquête préliminaire.

La défense a maintenant l'occasion de présenter une requête en délai déraisonnable pour cette cause qui a débuté il y a cinq ans.

La preuve de la Couronne comportait entre autres des centaines de pages de conversations et de textes dans diverses langues, dont l'anglais, le français, l'italien et l'arabe.

Les coaccusés anglophones avaient accès non seulement à une transcription des textes anglais, mais aussi à une traduction des conversations ou textes électroniques faits dans d'autres langues. Les accusés francophones, par contre, n'avaient accès qu'à des textes ou des traductions en anglais. Rien n'était transcrit en français, même pas les passages des textes ou conversations dont la langue originale était le français», lit-on dans le récent jugement.

Dans sa décision, qui a rejeté en appel le 5 mai dernier, le juge Fournier a expliqué qu'il pouvait «imposer la lettre de la loi très strictement (afin qu'il y ait) trois procureurs absolument bilingues (...)». C'est d'ailleurs ce qu'il aurait fait «dans un monde parfait», avant d'ajouter: «on ne vit pas dans un monde parfait».

La jurisprudence est pourtant claire et empêche que les ressources soient une excuse valable.

«Mais je pense qu'à cette étape-ci dans la procédure, si je dois insister pour que les trois procureurs soient absolument bilingues, cela signifie que je dois ajourner l'affaire [...]. Mais pour éviter tout délai excessif, je ne vais pas faire ça.»

Bid to force articling positions shot down

By Yamri Taddese, Law Times, May 18, 2015

Members of the legal profession shot down a motion that proposed forcing law firms to take articling students at the Law Society of Upper Canada’s annual general meeting last week.

The articling motion "would solve nothing," said newly elected Bencher Rocco Galati.

"It's not focused and it doesn't really address the real problem."

The motion, moved by lawyer Peter Waldmann, would have compelled members of Convocation to consider assigning articling students to law firms on a random basis to ensure equal opportunity for all candidates. It also proposed requiring law firms with eight or more lawyers to provide articles to the students assigned to them.

Representing The Advocates' Society, lawyer Brent Arnold said the idea was bad for law firms and even worse for students.

"Our primary concern is the absolute loss of autonomy for students in this process," said Arnold.

"It's bad enough what it does to firms, but the real harm is to the loss of autonomy for students going through this process."

Arnold said many students go to law school with a clear idea of where they'd like to work upon graduation. Implementing the idea proposed in the motion would rob them of that choice, said Arnold, adding some students might feel "pigeonholed" in the area of law they landed in for their articles.

Sotos LLP lawyer David Sterns, who's also the second vice president of the Ontario Bar Association, echoed Arnold's concerns. The motion "would deprive students of choice," he said.

But newly elected Bencher Anne Vespry pointed out that articling "isn't a buyer's market."

"Law students are already deprived of choice," she said.

"Law students take articles where they're working for free. Law students take articles that are not in their area of interest. Law students sometimes can't get articles in their area of choice."

Waldmann agreed with Vespry. When it comes to articling, "free choice is illusory," he said.

The competition for available articling positions "is very corrosive, not just at the time of hiring but it covers the whole law school experience," according to Waldmann.

But to Arnold, the motion would do nothing to solve that issue. "It's not going to eliminate rivalry or hostility between students. It's going to defer that until they're done their articles and then they're going to be applying for jobs at the firms," he said.

"You can't assume that the firms, having trained these people that they're forced to work with . . . are going to hire those people back," Arnold added, noting there's a "strong

possibility" firms would later hire the people they would have taken in the first place had the regulator not forced them to accept an assigned articling student.

"That's where the competition is going to start anew," said Arnold.

Lawyer David Hager, who seconded the motion, asked the law society to keep an open mind. He said that instead of assigning law students randomly to law firms, there could be a matching program. "Think outside the box," he added. "It's time for a radical solution."

Hager also criticized opponents of the motion who didn't offer up other solutions. "Denigrating the motion without proposing anything in response does nothing," he said.

At voting time, only a few yellow cards shot up in the air in support of the motion.

But for some of the lawyers who signed the motion, the goal wasn't so much to see their proposal pass but was about alerting the law society to the fact that articling and legal education remain a significant concern.

Maryellen Symons, one of the lawyers who signed the motion, spoke about what she called "a strange disjunction" between theoretical legal education and the practice of law.

"My fundamental belief really is that the practical and theoretical or academic aspects of legal education need to be integrated rather than [be] in disjunction as they are now," she told the meeting.

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'Conscious objectivity': That's how the chief justice defines the top court's role. Harper might beg to differ

Joseph Brean, The National Post, May 21, 2015

In the hallway that leads to the corner chambers of Canada's chief justice, Beverley McLachlin, the view to the right is all red-velvet dignity.

Portraits of chief justices past — Antonio Lamer, Brian Dickson, Bora Laskin — hang in oracular grandeur on stone walls, with an empty spot awaiting the mandatory retirement in 2018 of "McLachlin C.J.," as she is styled, the first woman and longest-serving chief, whose court is on a roll of momentous rulings about life, death, freedom, and fairness, often against the wishes of government.

The view to the left, however, is a reminder that she and her eight colleagues are not so aloof as they seem, for outside the windows, down in an interior courtyard of the Supreme Court of Canada, there is a badminton court.

Taking in such contrasting views is key to appreciating McLachlin's career as a judge, which coincides almost exactly with the lifespan of the Charter of Rights & Freedoms, Canada's foundational statement of values. It is precisely what she does on the bench. To her, judgment is not a coldly neutral evaluation of competing positions, robotically free of passion or perspective. It is an engaged, human act of imagination.

"What you have to try to do as a judge," she says in an exclusive interview, "whether you're on charter issues or any other issue, is by an act of the imagination put yourself in the shoes of the different parties, and think about how it looks from their perspective, and really think about it, not just give it lip service."

She describes it as "conscious objectivity," and it is a major factor in her court's rise to almost unprecedented levels of public scrutiny, interest, admiration and occasionally resentment.

By a purely quantitative measure, the government wins here more than it loses — about two thirds of the charter cases it fights. Politically, however, it wins small and loses big.

Recent headlines scream out the trend. On prostitution (Bedford), assisted suicide (Carter), mandatory minimum gun crime sentences (Nur), Senate reform and, just this month, whether Omar Khadr deserves an adult sentence, the government has lost on key elements of its party's platform. The ugliest was its effort last year to elevate Federal Court judge Marc Nadon to the Supreme Court, which the top court struck down because he did not qualify as a Quebec appointee. That led to competing press releases about who did what when, and the revelation that Prime Minister Stephen Harper refused to take a call from McLachlin, whom he called sniffily "a sitting judge," despite a long tradition of private consultation on such matters.

"Governments have always suffered defeat at the hands of the court," says Emmett Macfarlane, a political scientist at the University of Waterloo who specializes in the role of the top court. "What is unique about the Conservative government is that there have been a string of highly salient losses in two areas."

One is the Conservative Party's law and order agenda, often in the case of criminal appeals. The other is institutional reform, such as the recent ruling against Senate term

limits and elections, which Harper criticized as enforcing an unworkable status quo. It also torpedoed a long-standing Tory platform plank.

All this has solidified an image of the court as the government's nemesis, with McLachlin as its fearless, indomitable leader. In this majority government, she sometimes seems like leader of the opposition.

Tom Mulcair holds the role, technically. Casual observers could be forgiven for thinking it is Justin Trudeau. Senators really ought to keep their heads down at the moment. That leaves the Supreme Court as the most potent democratic challenger to the questing prime minister, the only one that can actually ever stop him. The rest just build the dramatic tension.

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The Supreme Court of Canada was not always supreme. Until 1949, its rulings could be appealed to the Judicial Committee of the Privy Council in London. Laskin described it as a "captive court," with barely any doctrine of its own other than perhaps in criminal law. Most cases were commercial disputes, with interpretation of statute a lesser priority, and overturning the government a rarity. Judges were political appointees.

It was not until the passage of the charter in 1982, and its equality section in 1985, that the court became as prominent and active as it is today. In a way, the charter embodies the judicial independence of Canada. It set out national values, then gave them voice and impact through the court on issues from the decriminalization of abortion in 1988 to the rapid expansion in gay and lesbian equality through the 1990s.

As Macfarlane writes in his book Governing From The Bench, the Supreme Court "has evolved from a largely legal, dispute-resolving body into a policy-making institution whose decisions have far-reaching implications for virtually all areas of Canada's political, social, cultural and economic life."

This is the era in which McLachlin rose like a helium balloon through the judicial ranks. In at least one instance, she heard a case in Vancouver, then beat the appeal to the Supreme Court.

It was not an obvious path. Born in 1943, one of five children, she was raised by devout Pentecostal Christians who operated a ranch in Pincher Creek, Alta., a small town between Lethbridge and the Rockies.

She recalls a high school teacher's appalling advice. "You've got the highest reading retention scores we've ever seen, but a girl can't do much with that," the woman said, adding whatever she did, she should not become a waitress or telephone operator because her attention was poor.

McLachlin became neither, instead studying languages and philosophy, and later law, at the University of Alberta. It was there that she met and married Roderick (Rory)

McLachlin, a biologist, and after being called to the Alberta bar in 1969, she moved with him briefly to the northeastern British Columbia town of Fort St. John, where she practised law.

Soon, they moved to Vancouver so she could join a major firm, and in 1975, she started teaching law at the University of British Columbia, focused on rules of evidence.

The next year, their son Angus was born, and with Rory handling much of the child care, her career took off: in 1981, she was appointed to county court in Vancouver, then elevated to the B.C. Supreme Court the same year; in 1985, she became the first woman justice on the B.C. Court of Appeal.

Rory died of cancer in 1988, a few days after she was appointed chief justice of the B.C. Supreme Court. But even that devastating loss did not impede her ascent. The following spring, then-prime minister Brian Mulroney called to offer a seat on the Supreme Court.

In 1992, she married Frank McArdle, a lawyer and executive director of the Canadian Superior Courts Judges Association. She became chief justice in 2000.

It has now been decades since she lived on a ranch, but McLachlin still has a reputation as a farm girl who knows the weight of mud on her boots.

Eugene Meehan, a lawyer at Supreme Advocacy and former executive legal officer at the Supreme Court, describes her character as tough, independent, competent, "the kind of lady who would bag her own groceries."

But describing her jurisprudence is trickier. Meehan uses terms of art, pointillism and chiaroscuro, to describe the effort as artistic as much as intellectual.

The dominant theme in her career, the interpretation of the charter, reflects this union of principle and imagination. The charter is the human core of Canada's constitution, famously regarded by judges as a "living tree," to be interpreted in a way that grows and adapts to changing times.

It is also a mechanism through which courts can decide that a law, duly passed, is "ultra vires," literally "beyond the powers," and thus strike it down — either killing it outright, or forcing its legislative improvement.

From the beginning, McLachlin embraced this brave new style of judicial oversight. In one of her last trials in Vancouver, she heard the case of a male teacher accused of sexually assaulting a 13-year-old boy (not his student). The teacher's defence — that the boy was the aggressor who performed sex acts on him as he remained passive, and had earlier been in a similar situation with other men who were convicted, which put a different spin on the boy's presence in his apartment — was impossible to argue.

According to the law as it was, the boy was too young to consent to any sex with someone more than three years older, and no alleged victim could be cross-examined about sexual history with other people.

McLachlin struck down both laws. The first discriminated based on age, she found, and the second denied the man a full and fair hearing.

Her ruling was later overturned, and the teacher eventually acquitted, but the revolutionary wheels of charter jurisprudence had been set in motion.

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The Supreme Badminton Court of Canada is not often used. Looking out the window behind McLachlin's desk, however, east toward Parliament Hill, you can almost imagine a great game of legal badminton, in which Parliament lobs a passed vote across the clifftop, only to see a judgment come whizzing back. In democracy, as in badminton, keeping the birdie aloft is competitive and cooperative.

"Democracy is a complex affair," McLachlin says. "You simply have to have courts there to resolve the various, not only legal issues that arise in the course of applying the law, as would be the case in any democracy, but also the constitutional issues, be they division of powers or interpreting the fundamental rights and obligations set out in the charter. So you could not conceive of a functioning Canadian democracy without the court, and without a strong and independent court."

Of course, this also allows for cycles of conflict between government and the bench.

Chess theorists of Harper's strategy see a method here, of legislative over-reach to invite the campaign storyline of judicial activism.

At best, his government seems not to care that its most "spectacular" losses reveal a persistent disregard for the rule of law, says Audrey Macklin, a University of Toronto law professor. At worst, it seems to regard the court as an "arbitrary obstacle" to its agenda.

The government is comfortable in this tense, adversarial relationship because it can then present itself to voters as trying its best and not failing so much as being thwarted, says Carissima Mathen, a law professor at the University of Ottawa. This is new, she says, and the change has been with the government, which takes rigid and uncompromising "all or nothing" stances that are tougher to win in constitutional law, which is based on the dynamic of balancing rights. Compromise rarely seems an overt goal.

"I have to wonder if some of this is very conscious," she says.

The day before McLachlin's interview, Justice Minister Peter MacKay slagged off her court in an op-ed for overturning mandatory minimum gun sentences. That ruling, known

as Nur, boldly announced that the government's law and order agenda would not trump actual law and constitutional order, and offered one of the cheekiest hypotheticals in recent jurisprudence.

In effect, the majority judges kicked the mythical duck hunter of Canadian electoral politics back at the government that loves him so well. Such a person, a "licensed and responsible gun owner," might make a mistake about where and how he stores his ammunition, with "little or no moral fault and little or no danger too the public," but he would still be caught by this law. That is "totally out of sync with the norms of criminal sentencing," the court ruled, and thus unconstitutional.

Mackay criticized this "far-fetched hypothetical scenario," and said he preferred the view of the dissenting minority. Macklin says this kind of thing "shows a lack of respect for the independence of the judiciary." But McLachlin sees it differently.

"The government of the day or anyone else has the right to say they don't agree with a court decision," she says. "What I think should be the case is that this is done in a respectful way.

"The courts have to be respectful of Parliament's role and the executive's role, and I think you can seen this in our decisions. We're often giving a measure of deference to ministerial decisions. We often say — and it's not just lip service — that Parliament has a right to make these and other choices . I think the people in government have to treat the courts with respect, otherwise we will undermine our system and it won't work very well."

She thinks this has been successful, and whatever tension exists has no discernible effect on rulings. The next day, for example, the Supreme Court reinstated extradition orders signed by Mackay for two men New Hampshire wants to try for murder. The day after that, it reinstated a Harper judicial appointment in a similar case to the Nadon debacle.

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Despite the chief justice's air of equanimity, there are those who look for a political agenda in her court's rulings, and see a deliberate pattern in the political losses.

If there is any perceived trend in McLachlin's legal thinking, it is that she emphasizes access to justice, and individual rights and liberty. She is thought to be slightly to the right of the genial Rosalie Abella, and slightly to the left of the gruff Michael Moldaver — the opposite of their seats on the bench. But for every grasp at an ideological decryption of her work, a counter-example announces itself.

The same is true for her court. Though there are long-standing rumours about voting blocs — in the 1970s, Laskin, Spence and Dickson were know as the LSD Connection for their dissents, and in the 1990s, Lamer, Sopinka, Cory, Iacobucci and Major were known as the "Gang of Five" for their majorities, often in favour of the criminally

accused — McLachlin thinks they are an amusing fiction. She even feels disappointed for the press when they cannot discern these patterns, and not for lack of looking, especially now that Harper is about to make his eighth appointment after the resignation of Marshall Rothstein, who was his first.

"I just shake my head, because we aren't the United States," she says. "It's not part of the Canadian tradition, perhaps because we're slightly less political in our orientation. People here aren't appointed because they represent a certain point of view."

For example, when human rights hate speech laws came up for review in Whatcott, 20 years after they were upheld as valid limits on free speech, there was speculation McLachlin's earlier dissent would become the majority view. It did not, and the provincial laws still stand. But when assisted suicide came up again, she led a unanimous court in striking down the ban, just as she advocated in dissent the first time.

Winning is not a judge's goal, but there is a certain satisfaction in this for the chief.

"Only in a secondary sense, you know," McLachlin says. "As a judge, and I've been a judge for a long time, I have always resolved to just try to judge the issues as honestly as I can, and not to think about things in too strategic a manner. My job is simply to listen to what the parties have to say, and to do my best to understand the position, the ramifications of deciding one way or the other, to think about what's best for Canadian society on this particular problem that's before us, and give it my best judgment after listening to, also, my eight other colleagues. So there's a consensual element there.

"But if at the end of all that dialogue and discussion I still feel [in dissent], as I did for example in Rodriguez, the first case on assisted suicide, I had no regrets. I knew it was a very difficult question, a heart-wrenching question, and the process had been excellent. We had had enormously deep and anguished sometimes discussions, and it came out 5-4, and I said the process was good. I decided the way I thought but I respect my colleagues decision the other way. When it came back [in the recent Carter decision], I said I'm going to give it the same process and apply the same approach, and it came out differently."

This focus on process has been key to recent major rulings, from Senate reform to judicial appointments. While McLachlin is often described as principled, it is usually meant as more pragmatic than visionary.

Matthew Gourlay, a criminal defence lawyer who clerked with her in 2008-09, says the court's more frequent unanimous judgments are a by-product of her conciliatory leadership style. Gone are the "ugly decisions," split four ways, with dissents within dissents. Now the court seems to speak with one voice, even when its decisions are split.

This is largely McLachlin's achievement. It rebuts complaints that she leads an activist or obstructionist court, and it goes some way to explaining why there has been no

discernible rightward shift over the last decade, even though she and Abella are the only justices who were not nominated by Harper.

In the future, she foresees “a few tussles” about privacy rights in the digital sphere, but other than this vague prediction, she is clear her court does not seek out topical issues.

“We are totally passive,” she says. “We look at it [a case], and if it’s important, we take it. Sometimes you might wish to duck one. But we can’t.”

They can, however, swat a few back at the government.

When McLachlin joined the Supreme Court in 1989, and photographers asked the three female judges for a photo together, the late Bertha Wilson, the first woman on the top bench, leaned over to her and whispered, “Three down, six to go.” It was a joke that would soon grow stale as McLachlin took the centre chair and the gender imbalance was largely resolved, though a racial one remains.

“I think the court belongs to the Canadian people and it should reflect the Canadian people,” McLachlin says, not only to convey an impression of balance, but to bring in perspectives that were so long absent from the judicial imagination. But she admits to having personally underestimated the symbolic impact of a woman as chief justice. It came as a surprise how much it means to people, especially new Canadians, who bring their daughters to meet her on Canada Day, seeing inspiration in this figure, at once diminutive and towering.

“They express wonderment and pleasure that they live in a country where this could happen,” she says.

University gives 95-year-old practising lawyer honorary doctorate

FindLaw, The Canadian Press, May 21, 2015

VANCOUVER — At 95 years old, Constance Isherwood is used to people asking when she's going to give up practising law.

"I tell them 'well, if you keep practising, eventually you'll get the hang of it," she told a laughing crowd that had gathered for a graduation ceremony at the University of British Columbia on Wednesday.

Isherwood, the most senior female lawyer still practising with the B.C. bar, received an honorary doctorate of laws degree at the ceremony, recognizing her decades of legal work and service to her community.

The Victoria lawyer still runs Holmes and Isherwood, the firm she and her husband opened in 1964.

Her honorary degree comes 64 years after Isherwood walked across the stage at the very same university to receive her law degree.

There were eight women and 200 men in her 1951 graduation class, and she was the first woman to receive the B.C. Law Society's gold medal for top marks.

The senior lawyer was happy to see a more gender-balanced class walk the stage Wednesday.

"Though I must admit, some of them really did look like teenagers," she said in an interview.

Isherwood practises general law, including everything from arranging mortgages and wills to adoptions and separations. But she has always stayed away from criminal cases.

"I left all the criminal stuff to the boys," she said with a laugh.

Some of her most memorable work has been as a legal adviser with the Anglican Diocese of B.C., helping to determine a way forward on issues such as residential schools, female priests and gay marriage.

Law wasn't always Isherwood's chosen path. As a young woman, she was the drummer in an all-girl orchestra, and travelled playing big band music.

Reminiscing about her dreams of being in show business, the nonagenarian shook her perfectly coifed strawberry blonde hair and smiled.

"We thought we were quite good," she said.

Today, Isherwood has a deep passion for the law, and loves the variety it brings.

"No two clients are alike, no two cases are alike," she said. "And the clients themselves are the greatest variety of them all."

Many things have changed over Isherwood's decades in law, but there's one thing she has not fully embraced: she still uses a typewriter instead of a computer.

"Clients are a bit confused when they first come in and see it," she said. "But then they say 'I really missed that clickety-clack sound.'"

Isherwood has also been a role model to budding lawyers. Her nephew, Robert Holmes, remembers wanting to follow his aunt when he was a boy.

Holmes is now a partner at the Vancouver law firm Holmes and King, and still holds his aunt in the highest regard, particularly for her ability to connect with others.

"It's really quite a remarkable feat, to be able to relate and empathize with other people, and to relate and listen, and to build them up," he said.

Standing before the crowd Wednesday in a bright red and blue gown, Isherwood offered similar advice to the graduates, encouraging them to be approachable with their clients.

She also offered the crowd some words of wisdom on aging.

"There's really nothing wrong with getting old," she said. "You just have to keep going and keep breathing."