AJC-AJJ
ASSOCIATION OF JUSTICE COUNSEL
ASSOCIATION DES JURISTES DE JUSTICE

Press Clippings for the period of May 26 to June 2, 2014
Revue de presse pour la période du 26 mai au 2 juin 2014

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

OTTAWA CITIZEN

# Inside the new federal pay system

**JORDAN PRESS, Postmedia, May 30 2014**

Federal departments, agencies, the House of Commons and Senate are being asked to figure out how much they can absorb of a $750-million one-time payout to federal workers across the country.

**Q. What prompted this need for cash?**

A. Federal workers are being moved to a new pay system for their salaries. It's an off-the-shelf pay software, replacing what the government says is an outdated payment system. The new software changed how biweekly earnings were calculated and created the potential the possibility of federal workers going four weeks without seeing a pay cheque.

**Q. Workers weren't going to be paid for a month? How did that happen?**

A. All pay days are Wednesday. Under the old system, the pay doled out on May 7 was for work between April 24 and May 7. To make sure people were paid, the government had to pay out wages based on what workers were believed to have done in the preceding two weeks — any mistakes were adjusted later on.

Now, the next pay day was May 21. Given the new system came into effect at the end of April, the pay on May 21 would have been for the April 24 to May 7 period. The next pay-day is June 4, which would cover the May 8 to 21 period. The government couldn't pay workers twice, and the unions didn't want to see workers go a month without pay, the two sides negotiated a compromise: A transition payment that wasn't attached to a particular pay period.

**Q. How then did federal workers get a pay cheque on May 21?**

A. Rather than having existing employees skip a pay cheque, the government and unions negotiated a compromise: a one-time "transition payment." If you're a federal worker, you saw that on your pay cheque from May 21. The payment isn't attached to a particular pay period — it's almost like a loan.

**Q. Is this $750 million extra spending?**

A. It's going to look that way on paper, but the government says it really isn't spending extra cash, because it's going to get the money back from employees: "As employees depart from the public service, they will receive a final payment adjusted to recover the May 2014 transition payment. The change of process is therefore cost neutral." (For accounting types, the payment will be recorded in government records as an account receivable with the balance declining as workers depart.)

**Q. What are departments being told to do?**

A. Departments have until the end of the calendar year — Dec. 31, 2014 — to figure out how much of the transition payment to their own employees they can absorb within their current budgets. For example, the Senate has to determine how much of the $1.6 million its employees received (not including the senators themselves) can be handled without needing extra money.

**Q. Do departments, agencies, the House of Commons and Senate have to make budget cuts to deal with the transition payment?**

A. No. Treasury Board assistant secretary Bill Matthews, speaking to senators Thursday morning, said, "we're not looking for extraordinary actions from departments… There will not be people laid off because of this." He said Treasury Board expected smaller agencies would ask for extra money to cover the cost of the transition payment; larger departments, which may have lapsed funding, could fare better. Whoever asks for, and receives money, will have it recorded in the supplementary estimates. It will be a one time payment and isn't being deemed a budget overrun.

---


# Ottawa turns to Quebec for help filling Supreme Court judgeship

**SEAN FINE , The Globe and Mail, May 28, 2014**

The Conservative government has turned to Quebec to create a candidate list for the Supreme Court of Canada, multiple Quebec and federal sources say, as Prime Minister Stephen Harper tries to recover from his failed attempt to appoint an ineligible judge from a court in Ottawa. Until now, the federal government has crafted its own list.

The move is a dramatic climbdown for the Harper government, after it almost entirely ignored Quebec's top judges and lawyers when it tried to fill a vacancy reserved for that province on the Supreme Court last fall, angering Quebeckers.

Three weeks ago, Quebec Justice Minister Stéphanie Vallée gave the province's completed list to her federal counterpart, Peter MacKay, a Quebec source said. It includes the only two names of Quebec-based candidates from the previous list of six compiled by the Prime Minister's Office and the federal Justice Department: Justice Marie-France Bich and Justice Pierre Dalphond, both of the Quebec Court of Appeal, another Quebec source said.

Mr. MacKay has the list and spoke to Ms. Vallée about it this week. The Prime Minister will make the ultimate choice. "This will not be a joint nomination," a senior federal official said. A Quebec source explained that Ms. Vallée and Premier Philippe Couillard will be able to say they provided the name to the Prime Minister.

"What you have to understand is the process is being outsourced in order to prevent any attack on its legitimacy," that source said.

It is the latest development in a series of firsts in Canadian history – from a judge being rejected by the Supreme Court to the Prime Minister's public dispute with Chief Justice Beverley McLachlin over her attempts to flag the eligibility issue before the appointment was made.

The Supreme Court has been short-handed for nine months, since justice Morris Fish retired. The previous process, created by the Conservative government, involved a selection panel with MPs of all parties whose job was to reduce an initial list of six or so names to a short list of three. That process lies in apparent ruins after The Globe and Mail reported that four of the six candidates last time were from the Federal Court in Ottawa, as the Prime Minister sought a judge closer to his conservative views than he apparently believed he could find in Quebec.

The Prime Minister's choice of a judge from the Federal Court of Appeal, Justice Marc Nadon, was denounced in a unanimous resolution of the Quebec National Assembly last fall. The Supreme Court eventually ruled Justice Nadon ineligible, because as a Federal Court judge he lacked current Quebec qualifications for one of the three seats reserved for the province.

Mr. Couillard has a good working relationship with Conservative MP Denis Lebel, the Intergovernmental Affairs Minister. Both represent the riding of Roberval, one provincially and one federally.

The new process is not meant to be a precedent, the federal source said. It applies to the current vacancy, but will probably not be used to select a replacement for Justice Louis

LeBel of Quebec when his retirement takes effect at the end of November. It would be wrong to see the same process being used for the two judges, the federal source said.

But in Quebec City, Ms. Vallée told the National Assembly, "I am persuaded that the collaboration undertaken with my federal counterpart will allow us to chart the course for things to come."

If the Prime Minister does choose Justice Bich, it would be a face-saving pick; interviews with more than 20 Quebec lawyers and academics found she is the consensus choice. Jean-François Gaudreault-Desbiens, who teaches law at the University of Montreal, described her as versatile, rigorous, not ideological and formidable in her ability "to make sense of Quebec's mixed-law environment, and Canada's bijural environment," bringing the province's civil code and the common-law tradition together.

"It surprises me when I heard that possibly the government could be afraid of such a judge," he said.

- *With reports from Daniel Leblanc in Ottawa and Rhéal Seguin in Quebec City*

---


# Opaque and secretive, the Supreme Court appointment process must change

**ADAM DODEK, Contributed to The Globe and Mail, May 26, 2014**

*Adam Dodek is a co-founder of the University of Ottawa's Public Law Group and the author of a recently completed democratic audit of reforms to the Supreme Court selection process. He is also the author of the recently published The Canadian Constitution.*

On Friday, two stories brought the appointment process back in the news. In the morning, the Court announced that Justice Louis Lebel would be retiring on Nov. 30, on his 75th birthday. Since Supreme Court judges must retire at age 75, this announcement was not a surprise. The second story, however, was very much a shocker, and blew the lid off the Harper government's secretive appointment process with detailed revelations about who was on the so-called long list of six names submitted by the Minister of Justice to the Supreme Court selection panel, which sliced the list in half to three from which the Prime Minister made the ill-fated appointment of Justice Marc Nadon.

The Prime Minister responded to the news of Justice Lebel's retirement as he had to the announcement of every other supreme retirement by graciously acknowledging the career and contributions of Justice Lebel. However, the Prime Minister's response was uncharacteristic in not announcing the process for replacing Justice Lebel. Perhaps this is not surprising given that the government has not yet announced how it plans to fill the Nadon vacancy.

It was clear before The Globe's revelations that the appointment process was broken. However, the more we discover about the botched appointment of Justice Nadon, the more questions are raised about the whole process.

In reforming the process for selecting Supreme Court justices, the Harper government – and its Liberal predecessor – promised Canadians transparency and accountability. Instead, we have a closed and secretive process that actually shields those who exercise power in the appointment process from having to account for it.

On Wednesday, the University of Ottawa's Public Law Group will host a public forum on the Nadon appointment. We will attempt to search for answers to the many questions that have arisen about the government's selection of Justice Nadon.

It will be a challenge because the government has refused to explain all but the bare bones of the process. To date, the Harper government has refused to provide answers to the following questions, among others: What were the qualifications upon which candidates were selected and evaluated? How did the Minister of Justice choose the so-called "long list" of candidates to be considered? How many candidates were on this so-called "long list"? (The Globe reported that there were six). Why were four judges of the Federal Court placed on this list? Is there some problem with the judges of the Quebec Court of Appeal?

And then – to invoke Donald Rumsfeld – we have some known unknowns about the Supreme Court Selection Panel. How did it operate? What was its mandate from the Minister of Justice? How did they decide on the recommendations for the shortlist? Consensus? Unanimity? Majority vote?

These are just some of the unanswered questions about a selection process which the Minister of Justice and the Prime Minister have unjustifiably characterized as being "transparent".

In fact, the selection process is actually the dictionary opposite of "transparent": it is opaque or secretive.

The appointment process also failed to produce accountability. Neither the Minister of Justice nor the Prime Minister provided any adequate explanation of why they selected Justice Nadon for this important post. This was both unfair to Justice Nadon as well as to the Canadian people. The accountability failure compounds the transparency failure: in the absence of identifying the criteria for selection, it becomes impossible to explain how a candidate meets those unknown criteria.

There is a way to actual deliver the promised transparency and accountability.

To begin, the government should publish a detailed protocol, a Guide to Appointment of Supreme Court Justices which would set out the qualifications, consultation to be followed, procedure for evaluation, etc.

A revamped advisory committee would then operate in a more open and transparent fashion and produce a report on their work. This committee should not be confined to the list of names given to them by the Minister of Justice. They should be able to consider any candidate that meets the published criteria for appointment.

The public hearings with nominees should continue, but only if the Minister of Justice also appears to answer questions about the process and about why the particular nominee was selected.

With these reforms, the government could then rightly claim transparency and accountability. Until such time, the Supreme Court appointment process will continue to be an exercise in secrecy and non-accountability.

---

LA PRESSE .CA
VIDÉOS PHOTOS DÉBATS
ACTUALITÉS INTERNATIONAL AFFAIRES SPORTS AUTO ARTS

# Un processus perverti, inconstitutionnel

**YVES BOISVERT, Chroniqueur à La Presse, le 26 mai 2014**

On pouvait dire jusqu'à récemment que le gouvernement Harper avait résisté à la tentation de politiser la Cour suprême. Même s'il a nommé six des neuf juges actuels, d'ailleurs, la Cour a fait subir une série de revers spectaculaires au gouvernement fédéral.

On pouvait le dire, mais là on ne peut plus. L'affaire Nadon nous montre à quel point le processus de sélection des juges à la plus haute instance judiciaire du pays est discrédité. Et une enquête du Globe and Mail nous apprend que... c'est encore pire qu'on ne le croyait.

***

La nomination des juges à la Cour suprême est la prérogative du premier ministre. Sur avis du ministre de la Justice, il nomme en principe un juriste éminent. Aux États-Unis, le président choisit le candidat sans être tenu à une quelconque procédure. Aussi politique soit-il, le président doit choisir un candidat respecté, car il devra subir l'épreuve de la «confirmation» par le Sénat.

Au Canada, il n'y avait ni processus formel de sélection ni procédure de confirmation. Le premier ministre recevait l'avis du ministre de la Justice, qui consultait les juges en chef et des membres influents du Barreau. Un processus totalement opaque.

Quand ils étaient dans l'opposition, les conservateurs avaient critiqué ce processus. Avec raison: à l'heure où la Cour suprême du Canada fait et défait les lois, on ne peut plus se permettre d'avoir un système en vase clos.

Les libéraux ont trouvé le compromis suivant: un comité de sages était chargé de dresser une courte liste à même une liste de huit noms fournie par le ministre de la Justice. Ce comité comprenait des députés, mais ils étaient minoritaires et aucun parti ne pouvait contrôler l'issue du vote. Le comité comprenait des doyens de facultés de droit, des représentants du Barreau et du public.

Ce système fonctionnait bien, mais il avait le défaut d'être assez lourd.

Quand les conservateurs sont arrivés au pouvoir, ils ont changé de modèle, prenant prétexte de la complexité (selon eux) inutile de ce comité.

Désormais, le comité est composé de cinq membres: trois du parti au pouvoir, un du NPD et un du PLC. Ce comité, tenu au secret, reçoit une liste de noms du ministre de la Justice et dresse une courte liste de trois.

On voit tout de suite le problème: les conservateurs contrôlent le jeu de A à Z. De la liste de départ jusqu'à la liste de sortie. D'autant qu'un vote à la simple majorité suffit.

Néanmoins, les nominations qui ont résulté de ce modèle ont été impeccables, et personne ne trouvait vraiment à redire. Même les députés de l'opposition qui y participaient (comme Stéphane Dion) applaudissaient l'esprit de collaboration et d'excellence qui présidait à ses délibérations. Ils avaient atteint l'unanimité sans souffrir.

Jusqu'à... l'affaire Nadon.

*******

Tout le monde se demandait par quel chemin tortueux ce juge semi-retraité de la Cour fédérale d'appel avait pu 1) se retrouver sur la liste des «meilleurs candidats» soumise par le ministre Peter MacKay au comité; 2) comment ce comité avait pu en faire un des trois meilleurs juges du Québec; et 3) comment le premier ministre avait pu le choisir.

On le sait maintenant grâce à l'enquête du collègue Sean Fine. Le ministre MacKay, après des consultations bidon avec les membres les plus respectés de la communauté juridique du Québec, a présenté au comité une liste de six noms: Marie-France Bich et Pierre Dalphond, deux juges très respectés de la Cour d'appel du Québec; et... quatre juges de la Cour fédérale.

Non pas que les juges de la Cour fédérale soient nécessairement de moindre calibre. Mais premièrement, un doute bien connu existait quant à leur admissibilité à la Cour suprême (en mars, la Cour suprême a conclu qu'ils ne peuvent être nommés).

Et deuxièmement, aussi bons soient-ils, pourquoi quatre sur six?

Parce que les conservateurs en ont marre des juges «trop libéraux» qu'eux-mêmes ont nommés. La Cour fédérale est réputée plus respectueuse du pouvoir exécutif. Et le champion entre eux est le juge Marc Nadon, juge sans histoire et parfaitement charmant, mais sans fait d'armes non plus, et qui est le seul (de 12) par exemple à n'avoir pas blâmé le gouvernement canadien dans le dossier Khadr.

Plus étonnant encore, nous apprend le Globe: la liste finale comprenait la juge Bich (le choix évident), la juge Johanne Trudel de la Cour fédérale (un choix nettement plus prestigieux que le juge Nadon)... et Marc Nadon.

On connaît la suite. Le juge Nadon est maintenant de retour à temps partiel à l'ancien tribunal où il coulait des jours heureux avant de devenir une arme politique contre son gré.

***

Tant qu'à ridiculiser le système ainsi, mieux vaudrait abolir ce comité fantoche. Je ne comprends pas comment il se fait que le NPD et le PLC acceptent encore d'y participer. Françoise Boivin (NPD) et Dominic LeBlanc (PLC) se sont fait flouer comme des idiots et n'avaient qu'une chose à faire: claquer la porte. Ils ne l'ont pas fait.

On se retrouve maintenant avec une Cour suprême privée d'un juge québécois depuis presque un an.

Pis: on se retrouve avec une institution attaquée comme jamais par l'exécutif.

Il faudra bien en venir à la seule option décente: instituer un comité de sélection indépendant.

À l'heure actuelle, le processus n'est pas seulement pervers. Il viole l'esprit de la Constitution.

---

# Supreme Court shortlist shows the fix was in from the start

**Errol Mendes, iPolitics, May 26, 2014**

The Globe and Mail reported over the weekend that the secret short list of prospective Supreme Court nominees that triggered Prime Minister Stephen Harper’s attempt to

smear Chief Justice Beverley McLachlin was shown to McLachlin and five parliamentarians early last summer.

What troubled the chief justice — and should have alarmed everyone in the Harper cabinet, especially Justice Minister Peter MacKay — was that of the six candidates proposed by the PMO to replace Justice Morris Fish of Quebec, four were Federal Court judges — whose eligibility was suspected even by the PMO. They subsequently sought the advice of two former Supreme Court judges and a top constitutional law expert.

As the Globe reported, the top judges in the Quebec trial and appellate courts, apart from two, were ignored in the hunt for a more conservative judge from the province; Quebec's unique civil code and traditions require three seats on the top court. One of the Federal Court judges on this astonishing short list was even publicly admonished for copying large amounts of text from government briefs in one of his decisions.

Did MacKay not realize that the Federal Court — which works primarily on a wide range of federal law concerns — rarely deals with Quebec's civil law the way the province's superior and appellate courts do on a routine basis? The fact that no Federal Court judge had ever been chosen for the three seats reserved for Quebec should have sent warning signals to the PMO and MacKay. The fact that a contextual reading of Section 6 of the Supreme Court Act relating to the qualifications of those eligible for the Quebec seats also would have ruled out the four Federal Court judges certainly should have sent a no-go signal to those in the PMO looking for a more conservative judge.

This sad debacle shows once again how little respect the prime minister has for this country's foundational elements.

Given this unprecedented attempt at undermining Quebec's right to have its civil law and traditions represented on the highest court, it was Chief Justice McLachlin's duty to warn MacKay and try to alert Harper to the potential eligibility concerns. Contrary to the heavy innuendo dropped by the PM to suggest McLachlin lobbied against Justice Marc Nadon, this early and fully justified attempt by the chief justice to advise the government didn't focus on any of the four judges. The fact that Justice Nadon was finally selected by the government on Sept. 30 showed that innuendo was a shoddy and unjustified attempt to undermine the highest judicial official in the country.

On the shortlist were two highly-respected judges from the Quebec Court of Appeal — Justice Marie-Franc Bich and Justice Pierre Dalphond, who would have easily satisfied the eligibility requirements. The fact that their names were on the list only reinforces how stacking the shortlist towards the Federal Court nominees was an insult to Quebec, to the Canadian Constitution and federalism itself. Justice Dalphond may have been destined to be eliminated from the outset as a straw candidate; although he's one of the most respected jurists in Quebec, he had been involved in the Liberal party some 20 years earlier. The PMO needed the opinion of two former Supreme Court Judges and a top constitutional expert — and an attempt to retroactively amend the Supreme Court Act in an omnibus budget bill — to hide its clear intent to ignore Quebec's rights and the constitutional rules.

It took a historic majority Supreme Court ruling in March to teach Harper and the PMO that their ideological imperatives can't override the fundamental nature and principles of the Canadian Constitution, and Quebec's place in it. This sad debacle shows once again how little respect the prime minister has for this country's foundational elements.

And now, with Justice Louis LeBel due to retire in November, we're now looking at the possibility of two Quebec vacancies on the court at the same time. Is the prime minister going to demonstrate once again his disrespect for the letter and spirit of the Canadian constitution?

***Errol Mendes is a professor of constitutional and international law at the University of Ottawa*** *and the founding editor of the National Journal of Constitutional Law, now in its 25th year. He is also the co-editor of the historic fifth edition of the Canadian Charter of Rights and Freedoms text, 2014, published by LexisNexis.*

**----------**

LA PRESSE .CA
VIDÉOS PHOTOS DÉBATS
ACTUALITÉS INTERNATIONAL AFFAIRES SPORTS AUTO ARTS

# Juges à la Cour suprême: vers une modification constitutionnelle?

**Hugo de Granpré, La Presse, le 27 mai 2014**

(Ottawa) Le gouvernement Harper n'écarte pas la possibilité de modifier à nouveau la Loi sur la Cour suprême du Canada pour permettre la nomination de juges de la Cour fédérale pour représenter le Québec, révèlent des documents obtenus par deux députés libéraux et remis à La Presse.

Les députés montréalais Stéphane Dion et Irwin Cotler ont posé des dizaines de questions écrites au gouvernement dans la foulée de la nomination avortée du juge Marc Nadon à la Cour suprême en mars.

« Le gouvernement tentera-t-il de modifier la Constitution afin de permettre la nomination de juges des cours fédérales aux sièges du Québec à la CSC et, dans l'affirmative, comment le gouvernement compte-t-il procéder? » a notamment demandé M. Dion.

« Aucune décision n'a encore été prise sur cette question », a répondu le gouvernement. La réponse écrite, vraisemblablement préparée par des fonctionnaires, est néanmoins signée par le ministre de la Justice, Peter MacKay.

La Cour a statué en mars que les juges des cours fédérales ne sont pas admissibles à siéger au plus haut tribunal du pays à titre de l'un des trois juges du Québec. Elle a aussi

tranché qu'une modification de cette règle dans la Loi sur la Cour suprême serait un amendement constitutionnel qui nécessiterait un appui des provinces.

L'opposition talonne le premier ministre à la Chambre des communes depuis plusieurs semaines pour lui demander s'il se conformera à cet avis de la Cour pour pourvoir au poste laissé vacant par le juge Morris Fish il y a presque un an.

Le premier ministre Stephen Harper martèle qu'il se conformera à la « lettre et l'esprit » l'avis, sans en dire davantage.

Ces documents ajoutent donc une nouvelle dimension au débat, au moment où le ministre de la Justice affirme qu'il nommera un troisième juge du Québec à la CSC « très bientôt», mais qu'il reste muet quant à la procédure qu'il entend suivre.

Stéphane Dion a noté qu'il est très peu probable qu'Ottawa se lance dans de nouvelles négociations constitutionnelles à ce sujet. « Mais le fait qu'ils n'aient pas l'honnêteté d'admettre qu'ils ont perdu en Cour et qu'ils vont se conformer au jugement et que donc, ils n'arriveront pas avec un juge de la Cour fédérale, ça ajoute à tout le mauvais goût que nous laisse cette terrible saga. »

**Pas d'avis juridique du Québec?**

M. Dion a aussi demandé : « Quelles mesures prend le gouvernement pour faire en sorte que le Québec soit pleinement représenté à la Cour suprême du Canada? ».

« Le gouvernement réfléchit à toutes les possibilités qui s'offrent à lui, y compris la nomination d'un remplaçant du juge Fish dès que ce sera possible », a encore une fois répondu le ministre dans sa réponse écrite.

Le document fournit également des détails importants le processus suivi lors du choix du juge Nadon et sur la suite des choses. « Le gouvernement consultera, comme il l'a fait par le passé, le procureur général du Québec et d'autres membres éminents des milieux judiciaires et juridiques du Québec », promet-on au sujet du processus de sélection en cours pour pourvoir le poste vacant.

On ajoute qu'il « y a eu des discussions officieuses avec le gouvernement du Québec et les membres du Barreau du Québec » sur cette question. Le ministre de la Justice MacKay a récemment rencontré sa nouvelle homologue du Québec, Stéphanie Vallée, et celle-ci est censée lui avoir remis la liste de candidats recommandés par son gouvernement.

Le gouvernement refuse enfin de dire si des avis juridiques sollicités avant l'annonce du choix de Marc Nadon l'avaient mis en garde contre le fait qu'il pourrait ne pas être admissible. Cette question « est protégée par le privilège du secret professionnel de l'avocat », a-t-on fait valoir. Même réponse à la question de savoir si des avis juridiques de juristes québécois ou du gouvernement ont été obtenus.

« S'ils avaient consulté un juriste du Québec, ils s'en vanteraient sûrement. Donc c'est clair qu'ils n'ont consulté personne », a conclu M. Dion.

---



# Cour suprême: un nouveau juge qui fera «consensus» avant l'été

**Hugo de Granpré, La Presse, le 28 mai 2014**

(Ottawa) Le ministre de la Justice, Peter MacKay, promet de nommer un nouveau juge du Québec à la Cour suprême du Canada avant l'été. Et il entend choisir un candidat qui se trouve tant sur la liste d'Ottawa que de celle du Québec.

On sait depuis un certain temps que Québec a fourni à Ottawa une liste de candidats potentiels pour pourvoir au poste laissé vacant par le départ de Morris Fish il y a presque un an.

« Nous avons une liste également. Donc clairement, notre liste et leur liste sont examinées de concert pour trouver un nom en commun », a déclaré le ministre MacKay hier à sa sortie de la réunion du caucus conservateur.

On trouve deux noms de juges de cours québécoises sur une liste fédérale qui a circulé au cours des derniers jours : Marie-France Bich et Pierre Dalphond, tous deux de la Cour d'appel du Québec.

On ignore quels sont les noms qui ont été fournis par le gouvernement du Québec.

Le ministre MacKay a indiqué mercredi que le poste vacant sera comblé avant la pause estivale. « C'est sûr », a-t-il dit.

Il n'a pas écarté la possibilité qu'on passe outre le processus habituel, qui consiste à faire examiner les candidatures par un comité parlementaire de cinq députés qui siègent à huis clos.

« Comme vous le savez, des juges ont été nommés dans le passé par notre gouvernement et des gouvernements précédents en vertu d'un processus plus rapide en raison de la nécessité de combler la position », a-t-il noté.

« Nous n'avons pas déterminé cela encore », a-t-il ajouté.

Le dernier processus de sélection s'est soldé par un échec majeur pour le gouvernement Harper : son choix, le juge de la Cour d'appel fédérale Marc Nadon, a été invalidé par la Cour suprême il y a deux mois.

En raison de cette controverse, seulement deux juges du Québec sur trois siègent à la Cour depuis le mois d'août. L'un de ces deux juges, Louis Lebel, a lui aussi annoncé son départ à la retraite pour novembre prochain. On s'attend à ce que le processus pour le remplacer soit mis en marche dans les prochaines semaines ou les prochains mois.

On ignore si Ottawa adoptera la même approche que cette fois-ci en terme de consultation du Québec. On ignore aussi quel processus sera adopté: le Parti libéral a réclamé des changements, tandis que le NPD a émis des doutes quant à sa participation.

À Québec, la ministre de la Justice, Stéphanie Vallée, s'attend à une annonce « imminente ». « Les signaux ne me disent pas qu'Ottawa ne va pas prendre un nom à l'intérieur des recommandations qu'on a soumises », a-t-elle soutenu, prudente. Elle a soumis une liste de recommandations préparées par le secrétariat à la nomination des personnes aptes à la magistrature, en vertu d'un processus « rigoureux ».

Questionnée au sujet des déclarations de M. MacKay, Stéphanie Vallée a affirmé que « l'objectif » du gouvernement a toujours été que « les recommandations du Québec puissent trouver preneur » à Ottawa. Québec a fait preuve de « leadership dans ce dossier, et si ce leadership peut apporter quelque chose de positif, évidemment on s'en réjouit », a-t-elle affirmé. Elle dit avoir « une très bonne collaboration » avec M. Mackay.

*Avec Tommy Chouinard*

---


# Quebec's input on Supreme Court appointments a win-win for Harper and Couillard

**Campbell Clark, The Globe and Mail, May 28, 2014**

It's rare that a prime minister so neatly paints himself into a corner with something as politically straightforward as a Supreme Court appointment.

Now, Stephen Harper is counting on Quebec's new premier, Philippe Couillard, to help get him out. It's a marriage of convenience. Mr. Couillard gets something, too.

Mr. Harper is running out of time, and he needs a new process for picking a Supreme Court justice from Quebec.

So Mr. Harper's leaving it to Mr. Couillard to draw up the shortlist. Then he can say he got the candidates through consultation. And Mr. Couillard, in turn can claim he obtained satisfaction of a long-standing Quebec demand.

Two months have passed since the Supreme Court ruled his previous choice, Marc Nadon, ineligible because he hailed from the Federal Court of Appeal, rather than one of Quebec's own higher courts. The prime minister is under pressure to fill a nine-month-old vacancy, pronto.

But he's got a used shortlist with only one name on it. And the process usually used to create such a list, with a multi-party committee of MPs, is time-consuming and so tainted by the way Mr. Nadon's appointment was handled that the opposition might be unwilling to take part.

Enter Mr. Couillard, who can step in to help Mr. Harper – and take credit for achieving a long-standing goal of Quebec nationalists, to boot.

Both he and Mr. Harper should count themselves lucky at the way opportunity knocked.

Giving the Quebec government a say in the appointment of Supreme Court justices is one of the so-called "traditional demands" that political parties of all stripes in Quebec's National Assembly have long made for more powers.

The failed Meech Lake Accord would have guaranteed just that – that Quebec's premier draw up a shortlist when Quebec's three places on the court are filled, from which the Prime Minister would have to choose.

So now the freshly-elected federalist premier can say he's quickly managed to obtain a long-sought role in selecting a Supreme Court justice. And when Quebec confirms the justice chosen came from their list, Mr. Harper can show his government didn't just make up a list of its favourites.

That's crucial now, since it's clear that the government didn't bind itself the suggestions of Quebec's government and legal community the last time, when Mr. Harper nominated Mr. Nadon. Instead, they put forward a list packed with their own favourites, from which a committee of MPs had to make a shorftlist.

For the moment, however, it's a marriage of convenience.

Mr. Harper didn't let the Parti Quebecois government of Pauline Marois have the same role when he selected Mr. Nadon. It's not clear if he'll make it a precedent to be followed when he picks another Supreme Court justice from Quebec. But the test will come soon enough, since Justice Louis LeBel has said he will retire in November.

And of course it still doesn't really provide the checks that vetting by a multi-party committee of MPs is supposed to provide – to ensure the candidates are deemed acceptable across party lines. It replaces it with closed-door dealings between Quebec City and Ottawa which could, if repeated, simply become part of the backroom trade-offs between premiers and PMs.

That's far from the kind of open judicial selection process Mr. Harper and his party favoured in opposition. But Mr. Harper should consider it a lucky escape.

Usually, Supreme Court appointments in Canada are simple enough. They're not like the politically-charged debates over justices the United States. They rarely cause controversy.

But Mr. Harper packed the Nadon nomination process with so much scheming he bumped into himself coming around a corner. He named a little-known semi-retired judge after his government ignored consultations and rigged the list of initial candidates.

That shows that this time he had developed a keen, driving desire to appoint Supreme Court justices to his liking – more conservative, more deferential to government than the obvious choices. It also indicates he didn't want to make that choice openly, by boldly claiming the prime ministerial prerogative to name a judge of his choosing; instead he tried to force it through a loaded consultation and multi-party vetting process.

Now that process is in tatters. Mr. Harper needed someone to help find a new one, soon. Lucky for him Mr. Couillard came along at just the right time.

---

thestar.com

# Federal government promises to fill Supreme Court vacancy 'very soon'

**Conservatives refuse to say whether they will consult the Opposition or Quebec legal community this time.**

**Tonda MacCharles, Toronto Star, May 27, 2014**

OTTAWA—The federal Conservative government promises to name a new judge for a Quebec vacancy on the Supreme Court of Canada "very soon" but refuses to say if it will consult the Opposition or the broader Quebec legal community this time.

Under fire in the Commons over an apparent leak of the names on an initial long list and a vetted shortlist of judicial candidates, Harper refused to say whether he will relaunch the selection process his government long touted as "transparent and accountable" and is now a shambles.

Last spring, it led to the appointment of Federal Court of Appeal Justice Marc Nadon, whose appointment was later invalidated by the Supreme Court itself. The high court ruled Quebec seats were restricted to members of Quebec's senior trial or appellate court or current members of the Quebec bar.

On Monday, Harper said in French that "since that is the decision, the government will follow the necessary steps" to fill the vacancy left by last year's retirement of Morris Fish.

But Harper refuses to directly answer Opposition questions about whether he will try nevertheless to elevate someone from the federal court bench.

The ruling did not technically disallow the appointment of a federal court judge who rejoins the Quebec bar temporarily and becomes a "current" member for the purposes of a Supreme Court appointment.

Montreal law professor Stéphane Beaulac says the Supreme Court's decision in the Nadon case may continue to hinder the federal government's ability to change the selection process or scrap it altogether, even if it is tempted to do so.

The ruling "constitutionalized" the Supreme Court — recognizing some of its characteristics may only be changed by constitutional amendment. Beaulac said someone might well argue the modern selection process, with its formal consultations, is also now entrenched as part of the constitutionally protected "composition of the court." He suggested it may mean the process of nominating judges — or the prime minister's ability to scrap it to any great extent — could be subject to judicial review to see if it conforms with constitutional requirements.

In the Commons, Opposition leader Tom Mulcair demanded Harper explain why "Conservatives rigged the process to make sure that at least one of the three final candidates would be from the federal court."

"The reason federal court judges were considered in this appointment is that federal court judges had always been considered eligible for these appointments up to and including the process that chose Justice (Richard) Wagner," Harper answered. "Obviously, the Supreme Court has now ruled otherwise and as I said before, the government will respect that ruling and act accordingly."

Later, Mulcair said he will propose in the next federal election a new procedure following the British model, which he says removes the choice from politicians.

For now, the New Democrats and Liberals are rethinking their involvement in any new consultation, although neither has refused to participate.

Both said Monday the government has repeatedly breached confidentiality obligations imposed on MPs who are involved in vetting judges and have "politicized" the process.

Justice Minister Peter MacKay slammed the NDP justice critic Francoise Boivin, who said the Conservatives rushed headlong into a legal battle over Nadon.

Boivin for the first time indicated her view that Nadon was "very competent but not eligible."

MacKay then retorted: “I can guarantee her we will be coming forward with the name of a very qualified appointment based on legal expertise, based on ability and merit, and if she plays her cards right she might even be considered.”

---

thestar.com

# Former Supreme Court judge critical of both Harper and court’s ruling on Marc Nadon

**A former Supreme Court of Canada judge says Prime Minister Stephen Harper got poor advice from his justice minister and should have taken a call from Chief Justice Beverley McLachlin to flag a potential legal problem with his judicial candidates list.**

**Tonda MacCharles, Toronto Star, May 27, 2014**

OTTAWA—A former Supreme Court of Canada judge says Prime Minister Stephen Harper got poor advice from his justice minister and should have taken a call from Chief Justice Beverley McLachlin to flag a potential legal problem with his judicial candidates list.

Retired Justice John Major slammed the prime minister’s criticism of McLachlin in recent weeks since the Supreme Court ruled against Harper’s appointment of Marc Nadon saying it was “completely unjustified in my view.”

In an interview from his Calgary office where he now practices law, Major said he did not agree with the high court’s March 21 reasoning that federal court judges are ineligible for Quebec seats on the Supreme Court. Major said an argument could be made that the Federal Court is an “equivalent court” with the Quebec Court of Appeal.

But Major questioned how the government has handled the political and legal issue from the get-go, saying it’s a “puzzle” it ever came to this.

“I wonder if Harper hasn’t suffered from his poor choices of ministers of justice,” said Major, who was appointed by the Harper government in 2006 to head the Air India commission of inquiry.

A former justice minister, Vic Toews, he said, “was no gem” and “the present minister” had little legal experience, he suggested. (Peter MacKay spent two years in private law practice and four years as a Nova Scotia Crown attorney prior to entering politics in 1997.)

Major, who sat on the high court for 13 years from 1992-2005 and was appointed by the Harper government in 2006 to lead the Air India inquiry, said it is "strange" that Harper's office has taken control of the high court appointments, adding in the past prime ministers relied more on their justice ministers.

In the Nadon affair, Major said in the first place, "If he (Harper) had a forceful minister of justice, he might get an argument" about the appointment or at least on how to proceed to lay "the groundwork, by going to see the premier of Quebec."

Major said it wasn't even clear until well after Toronto lawyer Rocco Galati challenged the eligibility of a federal court judge for the job that the Quebec government would fight it too. Quebec suggested it would file some kind of challenge. That prompted the federal government's reference to the top court and a retroactive legislative change in the budget bill to amend the Supreme Court of Canada Act to allow the appointment.

In the second place, once McLachlin called, Major said MacKay should have advised the prime minister to take her call.

"She did Harper a favour," said Major. "When she saw the list two months before the appointment was made, she saw four federal court judges and two from the Quebec Court of Appeal and told the minister of justice that the federal court appointments may be problematic.

"That's the last she said on it. And it turned out to be problematic. But you would think that Harper might be grateful to have that pointed out to him so he could decide whether to go ahead."

"You'd think Harper, just out of ordinary curiosity, would like to know why it was problematic. He might change his mind . . . if there was information available to him that would have been of help to the government and presumably to the court."

"How he could criticize that is beyond me."

Major said the advice of a chief justice may be offered, but isn't always followed. He recalled one instance during his tenure when a Quebec seat on the high court was open, and the justice minister of the day contacted then-chief justice Brian Dickson. He said Dickson was "very vocal" in support of one candidate and "very critical about the other. "Dickson made the case for Candidate A on Tuesday, and on Thursday, Candidate B was appointed," he chuckled.

MacKay and Harper have publicly criticized McLachlin's call as inadvisable and inappropriate, suggesting it was akin to calling about a case before the court. Harper now says he foresaw a potential legal challenge, and decided it was unnecessary to take McLachlin's call.

But Major says it's clear there was "no case in this particular matter."

He said the prime minister clearly "took some notice" however because he sought outside legal opinions from eminent Ontario jurists to support the bid to name Marc Nadon.

It’s not clear whether Harper sought any legal opinions from within Quebec to support the Nadon nomination. The government claimed solicitor-client privilege in declining to answer questions about that from Liberal critic Irwin Cotler.

However the government appeared again to shrug off confidentiality that is supposed to protect the work of the judicial selection advisory committee, with Harper telling the Commons both the NDP and the Liberal party supported the appointment of federal court judges to a Quebec seat and specifically, the Nadon appointment — a claim the NDP later disputed. The Liberals declined to comment.

Both Opposition parties suggested the Conservatives have politicized the entire process.

The Supreme Court eventually invalidated the Nadon appointment. It ruled the law bars Ottawa-based Federal Court judges for the three Quebec seats on the Supreme Court, which are reserved for senior members of Quebec’s bar, trial or appellate courts. Any change to that would require a constitutional amendment, and unanimous provincial agreement, it said.

Major said the court should be subject to “legitimate criticism” about its rulings, but insisted it was wrong of the government “to accuse the chief justice of improperly trying to contact the prime minister.”

Major said the court is now “limping along” with one vacancy for the past nine months on the bench, and another one looming in November, just as the fall session gets underway.

On Tuesday, Harper told the Commons the government “will be acting in the very near future” to name a replacement for Nadon. But a document tabled Monday by the government suggests that no consultations have begun for the next Quebec seat that must be filled when Louis LeBel retires in November.

---

CBC news

# Analysis: More subplots in the search for a 'right-minded' Supreme Court judge

**Documents tabled Tuesday show no formal movement to fill top court vacancy**

**Chris Hall, National Affairs Editor, CBC News, May 28, 2014**

It's hard to imagine just who Stephen Harper has in mind to fill the vacant Quebec seat on the Supreme Court of Canada. It's harder still to imagine why anyone would want to accept it.

It's been two months since the country's highest court rejected the prime minister's first choice, Federal Court of Appeal Judge Marc Nadon, ruling he wasn't eligible to represent Quebec because he was neither a judge nor a practising lawyer in the province itself.

But that botched attempt was only the opening episode in this legal drama, which comes complete with an ensemble cast of flawed characters, plot twists and claims of impropriety and betrayal.

The prime minister has accused Chief Justice Beverley McLachlin of trying to improperly lobby against Nadon's appointment, a charge her office denies.

Harper and Justice Minister Peter MacKay have also insisted that the two opposition MPs on the judicial selection committee agreed with Nadon's appointment — even though everyone involved in the process is supposed to be sworn to confidentiality.

And if that isn't enough, the Conservatives aren't disputing stories on cbc.ca or in other media that they don't want to appoint a judge from the Quebec bench, viewing the current group as too liberal.

"It seems clear that the prime minister and the justice minister politicized the selection process in order to appoint the judge they thought to be aligned with their Conservative ideology," Liberal MP Stephane Dion charged this week.

The government's response is always the same.

"We will respect the process," MacKay told the Commons. "We will respect the needs of Quebec."

**An opaque process**

Well, maybe. But Quebec's new Liberal premier doesn't sound so sure that is going to happen.

Philippe Couillard told reporters this week that his government now wants a direct say in who is chosen for the three seats on the Supreme Court that are reserved for Quebec.

The question at the moment, though, is who would want the job in the current circumstances.

The Supreme Court is, of course, the highest court in the land, its members among the very best and the very brightest legal minds Canada has ever produced.

But the drawn-out, politically-charged atmosphere surrounding this appointment is a factor that can't be ignored. So is the lack of a formal, transparent process to identify and choose the appropriate candidate.

"I don't understand why it is taking so much time," says University of Ottawa law professor Benoit Pelletier, a former Liberal cabinet minister in Quebec. "If a Federal Court judge is not eligible, there is still a huge group of judges and lawyers in Quebec who can be appointed to fill the Quebec vacancy."

However, government documents made public Tuesday show there has been no new formal discussions with the Quebec legal community since the last round, even though the seat is still vacant.

No effort to involve the federal opposition parties, no indication whether the government intends to pick another name off the previous 2013 short list that included Nadon, or start all over again.

Pelletier isn't so much worried that no willing candidate will be found, but he is concerned that the debate around the choice is alive with political, rather than legal arguments.

"It should not be a requirement to be conservative-minded to be appointed to the Supreme Court. That is something we are not used to in Canadian judicial culture," he says.

**A right-minded judge**

But there's no dispute that the government went to extraordinary lengths to place a Federal Court judge in one of the court's three Quebec seats. And in Nadon, the government says it found not only a competent judge, but a right-minded one who exercised judicial restraint in the post-Charter of Rights era.

The documents tabled this week, in response to questions from Liberal MP Irwin Cotler, offer some additional subplots.

For example the government is citing solicitor-client privilege in refusing to disclose whether it sought a legal opinion from any Quebec judge before appointing Nadon.

Liberals claim that is an admission the government did just that, and is trying to hide the advice it received inside Quebec about the eligibility of a Federal Court judge to represent the province.

The government claimed no such privilege in releasing a legal opinion by retired Supreme Court justice Ian Binnie — an opinion that supported Harper's view that Federal Court judges are eligible.

NDP justice critic Francoise Boivin, a member of the all-party selection committee, says the PM should think hard about his next Supreme Court choice because it is going to send a message to the Quebec bar. (Adrian Wyld / Canadian Press)

Democrat MP Francoise Boivin was a member of the selection committee that led to Nadon's appointment.

She won't discuss that process, or how Nadon came to be chosen. But she has no problem warning Harper to think twice about the new choice he's about to make.

In particular, Boivin, who is a Quebec lawyer herself, says the PM should consider the impact of choosing a lawyer rather than a sitting judge to fill the Quebec vacancy.

"If he goes to the barreau [bar association] it better be one of the most brilliant legal minds because that's going to send the Quebec courts a signal — the message is that we don't want you."

Harper's vowed to respect the letter and the spirit of the Nadon ruling. But the prime minister also made it clear that he disagrees with the court's decision, arguing it makes Quebec members of the Federal Court second-class judges.

Still, many legal observers believe the delay in choosing someone to replace Nadon, and the absence of a formal nomination process, is a sign that the choice will be Stephen Harper's, and his alone.

And both he, and the successful candidate, will be judged accordingly.

---


# Supreme Court justices chosen on merit, Peter MacKay says

**JORDAN PRESS, Ottawa Citizen, May 26, 2014**

The federal government will appoint judges to the Supreme Court of Canada “based on ability and merit,” the justice minister said Monday, amid a firestorm of accusations that the governing Conservatives had tried to rig the process for naming Quebec representatives to the top court.

Pledging that the next appointment is expected “very soon,” Peter MacKay faced a barrage of criticism that the government had tried to secretly ensure a conservative-minded judge filled the Quebec spot on the top bench.

Last fall, Prime Minister Stephen Harper nominated Federal Court Judge Marc Nadon to fill one of Quebec’s three seats on the nine-seat court — a nomination that was then rejected by the court itself, leading to a rare public argument between Harper and Chief Justice Beverley McLachlin.

The court will soon lose another Quebec judge; Justice Louis LeBel plans to retire in November.

Explosive revelations in the Globe and Mail last week dominated daily question period in the Commons Monday, with the opposition demanding the government provide details of how it arrived at its short list of potential judges. In Canada, that process takes place mostly behind closed doors.

Based on the newspaper report, "it has now been exposed that four of six candidates on the short list of Quebec nominees for the Supreme Court proposed by the prime minister were Federal Court judges," NDP Leader Tom Mulcair said. "Conservatives rigged the process to make sure that at least one of the three final candidates would be from the Federal Court. Why?"

Harper responded that federal court judges had "always been considered eligible for these appointments up to and including the process that chose Justice (Richard) Wagner (in 2012)."

"Obviously, the Supreme Court has now ruled otherwise and as I said before, the government will respect that ruling and act accordingly."

"We will move forward and have a name that will result in the appointment of a new Supreme Court justice for Quebec very soon," MacKay said. "I can guarantee … we will be coming forward with the name of a very qualified appointment based on legal expertise, based on ability and merit."

The newspaper reported Friday that at the time Harper nominated Nadon, four of the six judges on his short list were members of the Federal Court, allegedly placed there because the government couldn't find a candidate from Quebec's own high courts who met its political ideology.

However, the legislation governing the Supreme Court does not allow federal court judges to be appointed to the Quebec seats, the court itself ruled recently. Under the Supreme Court Act, candidates for Quebec's Supreme Court seats must be from either the Quebec Court of Appeal or Superior Court, or be members of the provincial bar. Nadon was none of these at the time of his appointment.

Chief Justice Beverley McLachlin reportedly attempted to alert MacKay and Harper to problems around such nominations months ago — an overture the government then suggested publicly was inappropriate.

Francoise Boivin, the lone NDP member of a parliamentary committee that vetted Nadon's nomination, wouldn't comment on the names of the judges who reportedly made the short list. She would only say that if any committee members had objections or problems with a nominee, "we all spoke our piece." The committee operates in secret.

Harper repeated Monday that at the time of Nadon's initial nomination, the government had consulted outside and "inside" legal experts, including two former Supreme Court justices, who found no problems with Nadon's appointment.

“I acted according to those expert legal opinions,” Harper said.

---


# Ottawa confirms Quebec collaboration on Supreme Court

**SEAN FINE AND JOSH WINGROVE, The Globe and Mail, May 28, 2014**

Ottawa is consulting with Quebec to fill a vacancy on the Supreme Court of Canada before summer – an appointment designed to find approval in both the national capital and Quebec City, Justice Minister Peter MacKay said.

The Conservative government turned to Quebec to create a candidate list for the court after trying to appoint a judge from the Federal Court of Appeal who was deemed ineligible to fill a vacancy reserved for that province.

“They have provided us with a list,” Mr. MacKay said on Wednesday, “and we are looking for a consensus that would include a name from that list. … Our list and their list are being examined in concert to find a common name.”

Mr. MacKay reiterated his pledge to fill the vacancy, which is entering its 10th month, before summer. “We are obviously running up against what I consider to be serious timelines,” he said. “We need to get that position filled.”

The move is a dramatic about-face for the government of Prime Minister Stephen Harper, after it passed over virtually all of Quebec’s top judges and lawyers in an effort to appoint a judge closer to its conservative views than it apparently believed it could find in Quebec.

In Quebec City on Wednesday, federal Liberal Leader Justin Trudeau said Ottawa has a duty to consult and take into account the Quebec government’s recommendations in filling positions from the province on the Supreme Court. Mr. Trudeau discussed the issue during a meeting with Premier Philippe Couillard, the two men agreeing that future Supreme Court judges from the province should be chosen from a list submitted by the province.

“I think the situation that the Prime Minister finds himself in right now is one entirely of his own making, where he refused to listen and respect Quebec’s recommendations around Supreme Court nominations,” Mr. Trudeau said.

The Liberal Leader added that the Prime Minister has the constitutional prerogative of making the final choice. But that shouldn't give him the authority to ignore the province's requests, he said. The decision to nominate Justice Marc Nadon, which was found to be unlawful and rejected by the highest court, could have been avoided through close consultation with Quebec, he said.

Meanwhile, a retired judge launched a spirited defence of Justice Nadon at a legal conference on Wednesday, saying he is a good judge who has been unfairly maligned.

"I would say he is probably as good as some that have been up there on the Supreme Court of Canada," Gilles Létourneau, who retired a year ago from the Federal Court of Appeal, told a conference at the University of Ottawa law school. "He did not in any way deserve the treatment he has been given."

Justice Nadon has lived in an often harsh public spotlight ever since his appointment, when the news media and legal commentators questioned why Mr. Harper chose a semi-retired judge who was a specialist in maritime law, rather than the court's key areas of criminal or constitutional law. The Quebec National Assembly opposed his nomination in a unanimous resolution.

"It was quite hard for him to go through that process," Mr. Létourneau said in an interview. "He was somewhat caught between a hard rock and a tree. Being elevated to the Supreme Court of Canada and having left the Federal Court of Appeal he could not walk out of the process, because he would find himself with no position. … It became a real ordeal for him."

Justice Nadon is back on the Federal Court of Appeal, but has rejected requests for an interview.

---

LeDroit

# L'«information poubelle» n'est pas acceptable

**Paul Gaboury, Le Droit, le 29 mai 2014**

Les politiques publiques du gouvernement fédéral ne devraient pas être décidées sur la base de «pseudo-analyses» et d'«énoncés non vérifiés» trouvés sur Internet, l'équivalent moderne de la «boîte de pop-corn», s'offusque l'Association canadienne des employés professionnels.

Claude Poirier, le président de l'ACEP, qui représente 11 000 économistes et analystes du secteur public, a vivement réagi aux propos de l'ancien ministre David Emerson. Ce

dernier, qui est aussi le président sortant du Groupe consultatif du premier ministre sur la fonction publique, affirmait récemment au quotidien Ottawa Citizen que la fonction publique ne peut plus dépendre des sources traditionnelles de données «structurées» et «épurées», comme celles produites par Statistique Canada, pour élaborer les politiques publiques. Il incite les fonctionnaires à modifier leurs méthodes de recherche d'information, s'ils ne souhaitent pas devenir des «dinosaures» dans l'élaboration des politiques publiques.

«Quand un ancien ministre semble laisser entendre que les politiques publiques devraient s'appuyer sur des pseudo-analyses et des énoncés non vérifiés, non scientifiques et non fiables trouvés sur Internet, les Canadiens devraient s'alarmer», soutient le président Poirier.

«À son avis, la fonction publique doit s'adapter ce qui semble vouloir dire d'abaisser les normes et de ne pas tenir compte des principes scientifiques, en fournissant aux politiciens des renseignements rapides, mais dépourvus de toute fiabilité. Pourquoi s'embarrasser de positions de principe bien fondées pour orienter des dépenses de milliards de dollars quand on peut piger des politiques dans l'équivalent moderne d'une boîte de pop-corn en ratissant la Toile mondiale?», poursuit M. Poirier.

**Séparer le grain de l'ivraie**

Le président de l'ACEP se dit particulièrement surpris que l'ancien ministre fasse abstraction du fait que «de l'information non vérifiée, biaisée, complaisante - et donc non fiable - circule depuis toujours dans le domaine public, pondue par des groupes de réflexion, des universitaires, des lobbyistes, des groupes de défense et des attachés politiques».

Le président Poirier soutient que les fonctionnaires fédéraux ont reçu leur part d'«information poubelle» du gouvernement Harper avec les allégations publiques au sujet d'abus concernant les congés de maladie, les régimes de retraite de la fonction publique.

«À l'opposé, d'autres gens de la société canadienne, nos analystes, notamment, ont répondu à cette vague d'information poubelle par une analyse réfléchie et fiable. Pourtant, M. Emerson semble affirmer que cette information fiable devient non pertinente», soutient M. Poirier.

---

# How a way of life is ending for Ottawa's public servants

**JAMES BAGNALL, Ottawa Citizen, May 27, 2014**

**Chapter One: Cash crunch and consequences**

The big civil service unions knew it was just a matter of time. The first four years of Conservative rule had seen their membership ranks swell to unprecedented levels, with most of the growth in the National Capital Region.

By the time finance minister Jim Flaherty delivered his fifth budget on March 4, 2010, nearly 150,000 workers in Ottawa and Gatineau were on the federal payroll — up more than 40 per cent from when the Tories took office. Another 16,000 civil servants worked for provincial and municipal governments. Astonishingly, one in four workers across the region was now a government employee.

It was why the capital's economy was so vulnerable when the Conservatives finally retrenched.

"We will take action to ensure the government lives within its means," Flaherty declared that day in 2010, in announcing a three-year freeze on departmental budgets. This would be the catalyst for halting, then reversing, the growth of the public service.

But there was a second part to the austerity program, buried deep inside the budget papers. There, Flaherty warned it was time that government workers' pay and benefits should be brought into line with those earned in the rest of the economy — to ensure that "total costs of compensation are reasonable".

This was new. Previous government austerity programs had targeted head counts, not the benefits of those who remained.

To the unions' shock, the Conservatives have been true to their word. Pensions, the glittering jewel in government workers' compensation packages, have been a prime target. Under a new package of rules passed in 2012, the government bumped up the normal retirement age to 65 years from 60 for anyone entering the civil service after Jan. 1, 2013. This move has reduced the cost of the amended pension plan by 12 per cent annually, according to the federal government's chief actuary.

The tightening didn't end there — public servants are contributing substantially more to fund their own pensions. By 2018, employees who joined government before 2013 will have to contribute 11.65 per cent of their earnings above a certain threshold ($52,500 this

year) compared to 8.6 per cent in 2012. The idea is to have their contributions finally match those of government — a 50-50 split, which is the norm for many private sector plans. During the previous Liberal administration the pension ratio had drifted to 28-72 in favour of employees.

By 2018, the federal government will contribute $2.1 billion towards the core public service pension plan compared to $2.6 billion in 2014.

Similar changes involving RCMP and military pension plans will also save taxpayers considerable sums.

In what would prove to be his final budget before he stepped down as finance minister and his subsequent, untimely death earlier this year, Flaherty addressed other benefit anomalies. He suggested civil servants should contribute 50 per cent of the premiums for post-retirement health benefits — double the current ratio and more in line with private sector plans. His cabinet colleague, Treasury Board President Tony Clement, negotiated the arrangement, which will be phased in, shortly after the budget was tabled.

The unions have also had to give up severance benefits (in exchange for one-time lump sums) for government employees who quit voluntarily. Now, as Clement faces the unions in another set of bargaining talks, he has signalled clearly he intends to strip civil servants of the right to accumulate sick leave.

The combination of a 20 per cent drop in employment and lower benefits for government workers has chilled the region. From 2010 to 2013, the local economy actually shrank on a per capita basis. The Conference Board of Canada predicts the region will finally resume growing this year but will trail all other large Canadian cities.

The Ottawa-based research group expects government employment to rise again starting next year but forecasts modest hiring. By 2018, the Conference Board suggests, total federal employment locally will still be significantly below where it was in 2010.

The pervasiveness of the government sector means scarcely a corner of the region has been unaffected. Consider the portrait offered by the 2011 national household survey, which captured Ottawa and Gatineau when the government workforce was an all-time high. The survey — conducted by Statistics Canada to complement the census — offers a detailed look at nearly 270 neighbourhoods known as tracts.

Excluding less than a handful of deep rural areas, in no tract were fewer than 10 per cent of residents directly employed by government. The highest concentration of civil servants, as you might expect, was in the square kilometre surrounding Parliament Hill (nearly half the home owners and renters were in government). However, there were also many tracts in which more than 30 per cent of residents were civil servants — the bedroom communities of Aylmer and Orléans, for instance, Gatineau's Autoroute 50 corridor and along the Rideau River between the airport and Manotick.

Across the country, government workers make up just seven per cent of the workforce.

While relatively rich government salaries lifted the average salaries of most of the region's census tracts, a few neighbourhoods — home to senior bureaucrats or families with at least two serious income earners — were especially favoured.

In Chelsea, New Edinburgh, the Glebe and Island Park Drive families reported median incomes in excess of $120,000 and house values substantially in excess of the national median. (The median is the point at which half are greater and half are smaller.)

Years of government downsizing have affected households in a variety of ways. Of the nearly 30,000 who have left the civil service, only a small minority did so involuntarily. Early retirement or exits supported by severance pay and unused sick leave, have been far more common. The biggest damage done to the economy was likely caused by the uncertainty within the civil service. For every government worker who was actually let go, several others worried about whether they would be next — and tightened their spending accordingly.

Until the government stops thinning its ranks, this isn't likely to change. And fears within the public sector could well spread if Ontario Conservative leader Tim Hudak wins the premier's job in next month's election. He has promised to trim 10 per cent of the province's public sector workers.

Within the National Capital Region, teachers and hospital workers make up 21 per cent of the total workforce — roughly the same now as those in public administration. The region's heavy reliance on public payrolls, once a comfort, has become an unaccustomed source of worry.

**Chapter Two: There's us — and then there are the others**

In much of the rest of the country, a shrinking federal public service has been seen as a justified comeuppance.

Indeed, the Conservative government's desire to reform public sector compensation is driven only in part by a desire to save money. The government is also trying to catch up with public opinion. The big question is whether its recent moves against the public service are the end of the retrenchment, or simply a phase with more cuts to come.

This much is clear — despite the recent reforms, the compensation gap between federal government employees and workers in the rest of the economy remains significant.

Consider first the bigger picture. Median family income in 2010 across the Ottawa region, according to the 2011 national household survey, was $96,300 compared to $76,500 for the country as a whole. For Ottawa residents, the median was $101,000 while the median for Gatineau was $84,600.

To understand what's behind the region's higher numbers, it's necessary to drill down to the level of individual taxpayers. In 2011, the median salary in Ottawa was nearly $40,000 — highest among Canada's six largest cities — and $36,000 in Gatineau. The median was pulled up mainly by the government sector (median salary of $70,900) and

professional services firms ($60,000). Many of the latter sell services to federal departments and are considered a kind of shadow public service.

The disparity in compensation between civil servants and the rest widens when you consider benefits. Government employees — the highest paid as a group — also enjoy richer pensions and other post-retirement extras.

The federal government's pension obligation as of March 31, 2013 was nearly half a million dollars for every active member of the main federal pension plans. This is the amount needed to cover promises already made to current members of pension plans covering the public service, military and RCMP. And it's more than double the comparable ratio in the private sector — for companies that have pension plans, and most do not. Indeed, the only economic sector in which pension assets per capita exceed those in the federal government is utilities — think Hydro One, Ontario Power Generation and other provincial energy giants.

The compensation divide is evident within the region as well. Workers in retailing, hotels and restaurants in the Ottawa area not only earned less than public servants, they were paid less than their counterparts in Canada's other large cities. It's no accident that the region's poorer neighbourhoods — such as lower Sandy Hill and Britannia — are characterized by workforces with unusually heavy concentrations of retail and restaurant employees. These jobs tend not to offer pensions at all.

The benefit gap between the government and private sector emerged gradually. Before the 1991 economic recession, 2.2 million government workers and 2.4 million private sector employees enjoyed the richer, more secure type of pension known as defined benefit. Under this arrangement, employers promise to pay a pension based on a set formula — two per cent times years worked times salary, for instance. All the investment risk is borne by the employer. If the value of the pension fund shrinks because stock prices slipped, the employer has to make up the difference.

After the 1991 recession, however, many private sector employers moved the pension risk to their employees through defined contribution plans. Workers and employers each chip into the pension plan — and retirees receive a pension based on how well their investments do. If the latter perform poorly, retirees receive a smaller pension.

The trend away from the more expensive defined benefit pensions outside government has been inexorable. By 2012, only half of all private sector employees with a registered plan could count on the security of a defined benefit plan. In sharp contrast, 93.5 per cent of government workers enjoyed the richer type of plan in 2012, down only marginally from 1990. Teachers and hospital employees — nearly all of them union members — can also count on defined benefits.

Indeed public servants, teachers and hospital workers make up more than 40 per cent of Ottawa-Gatineau's workforce — making this one of the most unionized cities in the country.

**Chapter Three: Baby boomers' inheritance**

It's difficult to blame the public service unions for having negotiated rock-solid contracts. Successive administrations, Liberal and Conservative, have long seen themselves as model employers. Public servants were awarded a defined benefit pension plan in 1924, according to a Treasury Board history. Government workers could earn a pension worth 70 per cent of their average salary during their best ten years, and provided they worked 35 years. Normal retirement was 65 years of age.

Over time, the terms improved. The normal retirement age was reduced to 60 in 1947. Then the Liberal government of Pierre Trudeau in 1971 made it possible for government workers to retire at 55 after 30 years of service. The formula for calculating pensions shifted from employees' best 10 years of service in 1960 to the best six. In 1999, it was further reduced to the best five years — thus increasing the size of the pension again in most cases.

These were just the major reforms. The key difference between the federal pension plans and those in the private sector had to do with financing. The main federal pensions were paid out of general revenues. It wasn't until 2000 that Jean Chrétien's Liberals created a separate public service pension fund with a mandate to invest pension contributions from employees and government. That fund last year had $72 billion worth of assets in the form of stocks, bonds and treasury bills.

But it comes nowhere near to matching what is owed to future pensioners.

In essence, the federal government prior to 2000 made promises to its employees for which no funding was set aside. The overhang is considerable. In fiscal 2013, the government's liability to its workers' pensions was $151.7 billion, after deducting the assets in the $72 billion fund. The liability for other post-retirement benefits was $67.4 billion. Another way to look at it: The amount owed by taxpayers for federal civil servants' pensions and post-retirement benefits makes up nearly 25 per cent of the federal government's total debt — on which $9.2 billion is being paid in annual interest.

And yet, the pensions enjoyed by many government retirees don't seem extravagant. The actuarial report on the pension plan for the federal public service notes the average pension for 114,000 male retirees in 2011 was $27,900. For 78,500 female pensioners, the average was just $18,400.

Part of this has to do with the plan's generous early retirement provisions, which offer a top-up (known as a bridge benefit) until age 65 when Canada Pension Plan and Old Age Security payments take effect. The average age at which retirement benefits kicked in for federal employees in 2011 was 60 for both men and women. The annual average bridge benefit was roughly $7,000 per year in 2012.

The small average pension also understates the value of complete protection from inflation. The buying power of a $27,900 pension — absent protection from cost of living increases as low as 2 per cent annually — would drop nearly 50 per cent by the end of retirement assuming normal life expectancy. Equally important, federal employees —

mainly in the military and the RCMP — also have the right to work at a separate government job while collecting pensions from a previous one.

To get a better idea of the potential value of a federal government pension, consider how it works out for employees who work the maximum 35 years.

The 2011 actuarial report shows the average salary for male public servants still employed that year was $76,100 — making them eligible for a $53,270 pension (70 per cent of best five years' salary, assuming they started out in the early 1980s). This includes Canada Pension Plan payments ($12,460 this year) but not Old Age Security ($6,618.)

This is the heart of the baby boom generation. And they have done very well by their public service careers: they've paid significantly less for their retirement than will the generation that follows them. And the boomers have done so to the detriment of other Canadian taxpayers. It is why the National Capital Region will be the object of envy and irritation in the years to come.

Longer term, having smaller government could well be a boon for the region. While there's nothing wrong with an economy that relies on federal institutions as a core, it's a question of degree. Too much government is unhealthy. The talk in too many households across the region revolves around pay, pensions and security. Civil servants who travel frequently to other cities know this. After years of government downsizing, with little protest from taxpayers, it's becoming clear to the rest that their lifestyles had somehow got out of synch with much of the rest of the country. It was time to recalibrate.

---


# Law groups urge government to revamp cyberbullying bill

**JOSH WINGROVE, The Globe and Mail, May 27, 2014**

Two prominent groups representing Canadian lawyers are calling on government to change its cyberbullying bill, saying broad new surveillance powers being proposed go beyond the scope of the bill and are vulnerable to a Charter challenge.

The testimony from the Canadian Bar Association and Criminal Lawyers' Association on Tuesday sparked testy exchanges, including one with a Conservative MP who argued police officers' "spidey senses" should be enough to justify a warrant-less intrusion of a person's privacy rights.

But lawyers warned that Bill C-13, in its widely supported pursuit of fighting cyberbullying, has raised new, broad questions over lawful access to electronic data.

“The bill announces itself about being about cyberbullying and protecting Canadians from online crime, but certainly it far exceeds those parameters,” Michael Spratt of the Criminal Lawyers’ Association told the committee, adding the bill is “not only overly broad, but it’s likely unconstitutional.”

The lawyers’ complaints follow those of non-partisan watchdogs over Bill C-13, tabled after the high-profile deaths of Rehtaeh Parsons, Amanda Todd and others. The bill criminalizes cyberbullying but also includes, for instance, provisions allowing companies to voluntarily hand over data with impunity. Watchdogs have warned about a lack of judicial oversight. However, the families of several teens who died after high-profile cyberbullying cases have said they support the bill, and the government has regularly invoked victims’ rights in defending the bill’s expansion of surveillance powers.

Marian K. Brown, an executive member of the Canadian Bar Association’s criminal justice section, told the committee the bill, as written, could have unintended consequences, such as prosecuting image-sharing cases that are “merely careless” as full-scale cyberbullying and should be given a more precise wording. The CBA made 19 recommendations for changes to the bill.

“We’re at a perfect storm of legal change and technological change and it’s no wonder we’re having difficulty with it,” Ms. Brown said. The CBA echoed other critics’ calls to split the bill apart, moving forward quickly on the newcyberbullying laws and giving a closer look to the new police powers.

Two other witnesses, lawyers Gregory Gilhooly and David Butt, told the committee they favour the bill, with Mr. Butt calling it a “win-win.” Each have done work related to victims’ rights causes. Mr. Gilhooly suggested it wasn’t a concern if the law was proven unconstitutional. “I’m firstly worried about keeping our children and citizens alive when it comes to issues of cyberbullying. … If it turns out our laws have gone too far in accordance with what the Charter sets out, I’m more than happy to have a perp walk [away free after a failed case] but to have a child alive,” he said. In a struggle between privacy and victims’ rights, he said “a tie’s gotta go to the victim here.”

Mr. Spratt later argued “a tie doesn’t go to the victim, a tie goes to the Charter,” adding it is possible to boost police powers without infringing on privacy rights.

Conservatives on the committee took exception to some of the lawyers’ critiques during the two-hour session. Mr. Spratt at one point sparred with David Wilks, a former Mountie who is now a Conservative MP, over Mr. Spratt’s suggestion the bill opens the door to police abuse.

“What we want to avoid is police obtaining personal and private information based on their spidey senses, which happens all the time and the courts have a dim view on that,” Mr. Spratt said, speaking about the new powers in the bill.

Mr. Wilks, interrupting, said: “As a police officer, my spidey senses, as you [call] them, are the one and only thing that will allow me sometimes to move forward in an investigation that will eventually bring forward more information” in a case.

“Well, unfortunately, spidey senses don’t amount to reasonable and probable grounds [to justify seizing data], and the courts have found that acting on spidey senses and your suspicions is what leads to evidence being excluded,” or ruled inadmissible, Mr. Spratt replied.

At another point, Ms. Brown was asked what the harm would be if someone’s personal information was erroneously swept up in an investigation. “Infringement of a Charter-protected privacy interest is a harm,” she replied.

Bill C-13 is one of a handful of bills currently before Parliament that include provisions to expand police powers to monitor Canadians. They come amid revelations that the government is monitoring Canadians’ social media accounts and that there were 1.2 million cases in 2011, the most recent year available, where government agencies asked telecommunications companies to voluntarily hand over certain data. Justice Minister Peter MacKay has said the bill won’t be split apart, and all signs are government will push ahead.

“We cannot protect people by mere declarations. We must also give the authorities the ability to actually investigate and prosecute offences under the law. That is what this bill does,” Prime Minister Stephen Harper said when asked about the bill Tuesday.

---


# Privacy watchdogs troubled by controversial bill extending police powers

**JOSH WINGROVE, The Globe and Mail, le 25 mai 2014**

The Conservative government plans to push ahead with a pair of controversial bills that will give police and other law-enforcement officials new powers to request and monitor the private data of Canadians, despite objections from privacy watchdogs.

Bills C-13 and C-31 are among those Government House Leader Peter Van Loan has pledged to make “progress” on before summer as MPs return Monday from a one-week break. The bills propose new powers for police and other “public officials” – including, critics say, many of the powers first proposed by former cabinet minister Vic Toews in his now-defunct surveillance bill, C-30, which became a lightning rod.

The new bills come amid a renewed debate over privacy in Canada, ranging from questions about oversight at the national spy agency, Ottawa's own efforts to monitor Canadians' social-media accounts and recent revelations that telecommunication companies are regularly being asked by government agencies to hand over private data.

Nonetheless, the new bills further expand snooping powers. In particular, C-13 was tabled as a cyberbullying law but also includes clauses beefing up the power of various government officials to monitor cellphones and other electronic data and track people, though in most cases a warrant is required. However, the bill also allows law-enforcement officials to seek private information from, for instance, telephone companies – who critics say could, under the bill, voluntarily hand over certain subscriber information to police, border guards or other officials with full legal impunity.

The government has argued that that part of the bill is only firming up what is already allowed – and this year Chantal Bernier, Canada's Interim Privacy Commissioner, revealed a document showing telecoms already receive such requests from government agencies, including 1.2-million of them in 2011.

In the case of C-13, however, Ms. Bernier has said there are "troubling aspects" including "a lack of accountability and reporting mechanisms," but hasn't yet spoken to Parliament about the bill.

The privacy commissioners, meanwhile, of Ontario and British Columbia have called for Bill C-13 to be split apart, separating the widely supported cyberbullying provisions from the controversial expansion of snooping powers, though government views it as the same subject and has bristled at the suggestion the bills are omnibus legislation.

"This is a wolf in sheep's clothing," Ontario Information and Privacy Commissioner Ann Cavoukian said . "... What we have to get away from is this trust-me model – 'just trust us, we're the government, we're doing the right thing, we're in it to protect you.' It's just unacceptable."

B.C. commissioner Elizabeth Denham echoed that, saying in a written statement she is "deeply concerned" about C-13's privacy implications. "Legislative remedies to address cyberbullying should not be bundled with broad changes to law enforcement powers," she said. "... It is up to government and law enforcement agencies to make the case to Canadians as to why increased police powers are necessary."

Bill C-31, meanwhile, is a budget implementation bill that allows the Canada Revenue Agency to hand over a person's tax information to police, without a warrant or charge having been laid, "if the official has reasonable grounds to believe that the information will afford evidence" of a crime.

The NDP are set to file a motion Monday to split Bill C-13 – the fate favoured by Ms. Cavoukian, Ms. Denham and Carol Todd, the mother of bullied teen Amanda Todd whose death fuelled calls for stronger cyberbullying laws. Ms. Todd this month asked MPs to split the bill.

“Cyberbullying is way too dangerous to play politics with,” NDP Justice Critic Françoise Boivin said, adding the bill is vulnerable to a court challenge with the other provisions jammed in.

Liberal Critic Wayne Easter agreed the bill should be split. “This is something these guys always do – they have some good points in a bill and they tag on a bunch of other issues,” he said of the Conservatives.

Both bills are currently before House of Commons committees. The government has extended Parliament’s sitting hours for the next month, beginning Monday, to “pass legislation benefiting Canadians.” Government cited C-13 and C-31 among its priority bills in the announcement but stopped short of guaranteeing each would pass. A request for comment sent to Justice Minister Peter MacKay’s office Friday was not returned.

---


# Heures supplémentaires à prévoir pour les députés fédéraux

**Louka Jacques, Radio-Canada, le 26 mai 2014**

Le leader du gouvernement à la Chambre des communes, Peter Van Loan, déposera une motion lundi, qui demande aux députés de faire des heures supplémentaires d'ici la relâche parlementaire, prévue vers la fin juin. Le but de cette motion est de permettre l'adoption de plusieurs projets de loi importants aux yeux des conservateurs.

Cinq projets de loi à surveiller :

**1. Projet de loi C-13 contre la cybercriminalité**

Le projet de loi C-13 vise notamment à criminaliser la cyberintimidation et la diffusion non consensuelle d'images intimes. Ce projet de loi a été élaboré dans la foulée des suicides de Rehtaeh Parsons, en Nouvelle-Écosse, et d'Amanda Todd, en Colombie-Britannique. Les deux adolescentes ont été victimes de cyberintimidation dans les semaines précédant leur mort. L'opposition officielle appuie la lutte contre la cyberintimidation mais s'inquiète de la portée de ce projet de loi, puisque les entreprises qui transmettraient volontairement des données aux autorités obtiendraient notamment une immunité en matière de poursuites criminelles et civiles.

**2. Projet de loi S-4 sur la protection des renseignements numériques**

Il s'agit d'une mise à jour de la Loi sur la protection des renseignements personnels et des documents électroniques. Comme c'est le cas avec le projet de loi C-13, les entreprises

pourront fournir, sans mandat, des données personnelles aux autorités policières et à d'autres entreprises. Le NPD croit qu'il manque des balises efficaces dans ce projet de loi pour protéger les Canadiens.

**3. Projet de loi C-23 sur l'intégrité des élections**

Il s'agit probablement du projet de loi le plus contesté. S'il est adopté, les pouvoirs du Directeur général des élections seront réduits, entre autres sur sa capacité d'encourager le taux de participation en diffusant des messages publicitaires. Les nombreuses critiques ont forcé le gouvernement à revoir ou à retirer certains éléments controversés de son projet de réforme, notamment sur l'obligation de présenter une pièce d'identité avec adresse. Selon le NPD, ce projet de loi ne favorise pas la participation aux élections.

**4. Projet de loi C-24 modifiant la Loi sur la citoyenneté**

Le gouvernement souhaite accélérer le processus d'obtention de la citoyenneté canadienne tout en resserrant certains critères. Le NPD craint une concentration des pouvoirs discrétionnaires du ministre en matière d'immigration.

**5. Projet de loi C-31 de mise en œuvre du budget**

Un projet de loi omnibus de 359 pages qui prévoit modifier une quarantaine de textes de loi. Une disposition de C-31 permettra à un fonctionnaire de l'Agence du revenu du Canada de transmettre sans mandat toute déclaration qui pourrait être liée à certains actes criminels.

Le gouvernement souhaite éviter que les débats ne s'étirent. Il prévoit qu'aucune motion dilatoire ne pourra être proposée sauf par un ministre, ce que plusieurs considèrent comme une forme de bâillon.

---

THE CANADIAN BAR ASSOCIATION
L'ASSOCIATION DU BARREAU CANADIEN

**Link to the Canadian Bar Association's analysis of Bill C-13 (cyber bullying bill):**

**http://www.cba.org/CBA/submissions/pdf/14-33-eng.pdf**

**----------**

LAW TIMES
Search...
Home Digital Editions Case Law Law Times TV Archive Subscribe

# Lawyers urged to move faster on mobile technologies

**Yamri Taddese, Law Times, May 26, 2014**

If you're not tracking your billable hours as you go, technology entrepreneur John Kuntz is certain you're not getting it right.

Kuntz is a co-founder of Bellefield Systems LLC, the company behind an application called iTimeKeep.

Although technology has significantly altered the way lawyers communicate, what hasn't changed is the way they keep track of their time, said Kuntz, who spoke about the state of mobile technologies in the legal profession at the Association of Legal Administrators annual conference in Toronto on May 21.

Kuntz cited a survey that found less than 10 per cent of U.S. lawyers use mobile technologies to track their time.

Many lawyers still sit down at the end of the month to reconstruct the time they spent on various tasks, he noted.

"There's no way you can remember a phone call at the dinner table from a client three weeks ago," Kuntz told attendants.

"It's costing the firm thousands of dollars, if not millions of dollars, in a lot of cases."

If law firms are trying to get lawyers to adopt an application, the first thing to look for is simplicity, according to Kuntz, who noted keeping time is a pet peeve for many lawyers.

"If we have to think about it, we don't want to use it," he said. "If [lawyers] have to think, you have failed."

People often say lawyers are averse to technology but, said Kuntz, "it's not that they are technology averse; they just don't want technology that sucks."

Kuntz said 99 per cent of lawyers at large law firms use smartphones, whereas the number is 85 per cent for sole practitioners. More lawyers are using Apple Inc.'s operating system as the BlackBerry platform plummets in popularity, he added. According to Bellefield Systems, 22 per cent of lawyers use Android; 16 per cent are still on BlackBerry; and 62 per cent use Apple.

Harpaul Sambhi, chief executive officer of Toronto-based Careerify, said law firms are often reluctant to promote social media use for fear of compromising their reputation.

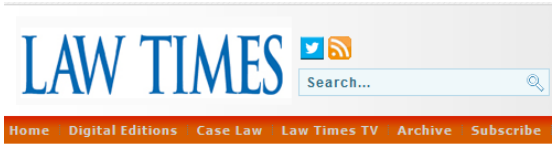
“You guys are very risk averse as an industry,” he told an audience of lawyers and legal administrators. But “moving forward is a must,” he added.

“Our technology moves so fast right now, you need to be on top of it or be left behind.”

In fact, Sambhi predicts the legal profession may soon adopt a wristband security tool that functions as a password using a person’s cardiac rhythm.

The technology, called Nymi, would replace vulnerable passwords and personal identification numbers.

---




# CCLA calls for new law on non-conviction records

**Yamri Taddese, Law Times, May 26, 2014**

Canadian lawmakers should create a law to ban “alarming” disclosures of non-conviction information through police record checks, the Canadian Civil Liberties Association says.

A CCLA report showed there’s “a patchwork” of laws across Canada on what should and shouldn’t turn up in records checks. The situation has resulted in disclosure of dropped charges, acquittals, mental-health apprehensions, and even casual contacts by police to employers and schools that require a background check, according to the report.

“From a civil liberties perspective, it’s extremely alarming,” says CCLA general counsel Sukanya Pillay.

The report notes more and more employers are relying on criminal background checks to ensure workplace safety and avoid liabilities. But according to the CCLA, information handed over to employers often breaches privacy, human rights, and employment laws.

“This growing reliance on police record checks has significant collateral consequences that are damaging on multiple fronts,” the report says.

“On a personal level, individuals who have paid their debt to society find that they are facing years of social and economic exclusion. Those who called 911 for medical

assistance or faced baseless allegations are being excluded from school, denied employment and isolated from their communities on the basis of old non-conviction records and police contact."

Pillay is calling for overarching legislation as she says it's unrealistic to expect the private sector to restrict the scope of its background searches or filter out the kind of information deemed inappropriate for viewing.

According to the report, there's little evidence the growing reliance on criminal background checks will result in increased safety. "Our interviews also revealed a general perception that a police record check is a useful risk-mitigation tool — that it will help screen out 'bad' people and keep organizational assets and vulnerable clients safe. The available social science evidence, however, does not support this assumption," the report states.

"The academic research that has been done to date has found that past criminal convictions are not correlated with a likelihood to commit a work-related offence in the future."

Pillay says while safety is paramount, "we shouldn't fool ourselves into thinking we have a meaningful screening process, which we don't."

Defence counsel Daniel Brown notes disclosures of non-conviction records are a concern for the criminal bar as well.

"I've dealt with lots of people who have been acquitted of criminal charges, who have been investigated and no criminal charges were laid. And they'll come back to me months later or years later and say, 'If I was found not guilty or the Crown attorney dropped the charges against me, why is this still showing up?'" he says.

"And there's very little I can do to assist them right now because every police force has their own policies and procedures about what they'll disclose. So there is no consistency amongst the police on what information they'll share . . . and, more importantly, they all have their own individual appeal routes."

If people are unhappy with what police will disclose, they often have to go through costly appeal processes that don't necessarily result in a win for the applicant, Brown notes. "So normally they're told, 'Tough, but we're going to disclose this.'"

Pillay says the CCLA was able to get the Ontario Association of Chiefs of Police to pass a motion on a presumption against the release of non-conviction records, a move she calls "a serious first step in the right direction."

When it comes to broader legislation, the CCLA recommends taking notes from the B.C. Criminal Records Review Act.

"Governments should introduce legislation based on British Columbia's Criminal Records Review Act, establishing centralized bodies to conduct vulnerable sector screening and evidence-based risk assessments. These bodies should provide screening

services for all positions that would qualify for a vulnerable sector check," the report suggests.

It continues: "British Columbia provides a unique, centralized process available to some employers aimed at determining whether a potential employee or volunteer poses certain risks to children or the elderly. This process, governed by B.C.'s Criminal Records Review Act, has significant benefits in terms of consistency, accuracy, human rights, privacy and fairness."

Brown says privacy commissioners have in the past deemed the scope of criminal records checks to be intrusive and recommended a greater degree of care to protect people's privacy. Although privacy commissioners can tell police they're in the wrong, they can't stop them unless there's legislation preventing certain disclosures, he adds.

In March, the information and privacy commissioner of Ontario found police in Guelph, Ont., had inappropriately used and disclosed the records of a man regarding incidents protected under the Youth Criminal Justice Act. But the commissioner's request for proof of correction of the records was a recommendation as opposed to an order.

Brown says the disclosure of non-conviction records "is a huge problem," especially in the context of mental illness. It's ironic, he says, that emergency services provided to people who were in crisis could haunt them for the rest of their lives.

In some cases, people can get pardoned convictions erased from their records even as non-conviction information remains. Even if the record indicates dropped charges or an investigation, it will have a negative impact on employment, says Brown, adding it's a practice that goes against the presumption of innocence the criminal justice system upholds.

"When two candidates or multiple candidates are applying for the same job, what employer is willing to take a risk? Even the innuendo of a criminal investigation is enough to persuade most employers that candidate isn't right for the job."

---

NATIONAL POST
Digital Acc
FINANCIAL POST • NEWS • COMMENT • PERSONAL FINANCE • INVESTING • TECH • SPORTS • ARTS • LIFE • HOMES • DRIVING • CLASSIFIEDS • SUBSCRIBE
CANADA • WORLD • TORONTO • GRAPHICS • VIDEO • HOCKEY • HEALTH • APPETIZER • BOOKS • HOROSCOPES • NP TODAY • CONTESTS • POST POINTS

# Jesse Kline: A bigger surveillance state won't stop 'cyberbullying'

**Jesse Kline, National Post, May 26, 2014**

As a result of the revelations of the vast foreign and domestic surveillance programs run by the U.S. National Security Agency (NSA), the U.S. Congress is at least trying to rein in some of the NSA's powers. Unfortunately, despite all we know about the Canadian

government's involvement in the NSA's mass surveillance programs, this country is moving in the opposite direction by making it easier for government officials to gather information about Canadians' online activities.

Bill C-13, colloquially known as the cyberbullying bill, is currently being studied by a parliamentary committee. The term "cyberbullying," however, is a bit of a misnomer. In a stunning display of political opportunism, the government has trotted out parents whose children have tragically taken their own lives after being bullied online. But nowhere in the bill do the words "cyber" or "bully" actually appear.

What the bill does do is outlaw the distribution of "an intimate image of a person knowing that the person depicted in the image did not give their consent to that conduct." And fair enough: There is a good case to be made that the harm caused by so-called "revenge porn" warrants government action, even though it's far from certain the proposed law would have done anything to deter or prevent the high-profile cases we've heard of in recent years.

But this is essentially the extent to which the bill has anything to do with children harassing each other over the Internet. The rest of it is largely a rehash of the government's lawful access legislation — the one that was supposedly targeted at child pornographers, and which Canadians vehemently rejected because it was a serious threat to privacy.

Much of Bill C-13 deals with how and when government officials can seek a court order to obtain personal information about Internet users from telecommunication companies. For this, it sets a pretty low bar: All a government agent would need is "reasonable grounds for suspicion" that someone is doing something illegal. Even worse, the bill would give Internet or cellular providers legal immunity from any criminal or civil charges that result from the times when they hand over information without a warrant.

We have not seen the same type of public opposition to C-13 as that previous "lawful access" bill. But there have been some unlikely critics of the bill. Carol Todd — whose 15-year old daughter Amanda Todd killed herself after suffering harassment stemming from an incident in which she revealed her breasts on a webcam — publicly spoke out against the bill in front of a parliamentary committee earlier this month. "We should not have to choose between our privacy and our safety," she said. "We should not have to sacrifice our children's privacy rights to make them safe from cyberbullying, 'sextortion' and revenge pornography."

Justice Minister Peter MacKay's response to such criticism was downright creepy, in a Nineteen Eighty-Four meets Minority Report sort of way: "The reality is that this bill is aimed at enabling police to more actively pursue online investigations for cyberbullying, but for other forms of cybercrime … And without that ability to pre-emptively prevent online crime we will not be able to save the lives of people like Amanda Todd, Rehtaeh Parsons and others." (Emphasis added.)

When the Canadian public, parents of victims of cyberbullying, privacy commissioners and former cabinet ministers all voice serious concerns about a bill, it is a sure sign that something is wrong

At least the government is now admitting that the bill isn't just about cyberbullying. But what is proposed is deeply troubling. Even Mr. MacKay's former cabinet colleague Stockwell Day called the bill a threat to privacy and freedom of speech, arguing that legislation needs to be "crystal clear on the aspect of police, what data they could have … without some kind of warrant procedure."

"I'm hoping that all MPs … take a serious look at how we can maintain certain rights to speech and freedom of expression even when it's unpleasant," Mr. Day told CBC's Power & Politics. "I'm hoping they take another look at this and kind of curtail some of those powers."

When the Canadian public, parents of victims of cyberbullying, privacy commissioners and former cabinet ministers all voice serious concerns about a bill, it is a sure sign that something is wrong, and the government should listen. Instead of beefing-up the surveillance state, we need to have a serious national conversation about what limits should be placed on it.

---


# Den Tandt: Michael Chong's Reform Act isn't going away

**MICHAEL DEN TANDT, Postmedia News Columnist, May 28, 2014**

Michael Chong's private member's bill, the Reform Act, is the plucky, underdog outgrowth of years of frustration among backbench MPs about the steady erosion of their powers, beginning really in 1970 under Pierre Trudeau, who famously referred to them as "nobodies." Still only at second reading, Chong's bill is by no means a sure thing. But nor is it going away.

Last December, when the Ontario Conservative MP's project first hit the news, it caused a furor on Parliament Hill as MPs of all parties, and their leaders, sought to calibrate their reactions just so. There was some early support, from backbench stalwarts, and also a few tentative, qualified murmurs of praise, from the NDP and Liberal leadership camps. From the Prime Minister's Office, there was the sound of crickets.

The reason of course, is simple: Though a long-standing brainchild of Chong's, this bill only saw the light of day because of the unprecedented discussion of accountability that accompanied the Senate spending scandal and the controversy involving the prime

minister's former chief of staff, Nigel Wright, and suspended senator Mike Duffy. The Liberals and New Democrats, amid the bloom of concern over the concentration of arbitrary power in the PMO, pushed hard for reform, which seemed like a great idea to them at the time, and Chong caught that wave. Once launched, though, such ripples are difficult to contain.

In the case of the current leaders, neither Liberal Justin Trudeau nor New Democrat Tom Mulcair can feel any giddier than does Prime Minister Stephen Harper, at the prospect of having their wings clipped, as the Reform Act envisions.

Not only would party heads lose the power to veto a candidate's nomination, which an amendment to the Canada Elections Act gave them in 1970; they'd also lose authority over expulsions from caucus and the appointment of caucus chairs. At the same time they'd become, along with Harper — assuming he remains Conservative leader following the next election — the first Canadian national political leaders ever shackled with a federally legislated caucus leadership review process.

On the basis of a 15-per-cent initial vote of caucus, followed by a majority vote, they could be turfed, under the rules in the initial draft of the bill. In the second draft, that threshold has been raised to 20 per cent. Either way, particularly for the leader of a party with a low seat count, it's a new threat. Trudeau, for example, could be forced to defend his leadership following an initial vote of just seven of his 35-member caucus. Though this law wouldn't go into effect until after the next election, it would certainly be germane for one of the three present leaders, and perhaps two – the ones who lose.

There were flaws in the initial draft, the main ones being a too-low threshold for igniting a leadership review, and the apparent loss of control, by the parties, over their brands. To Chong's credit, he has addressed both problems. In addition to boosting the initial threshold for a leadership review to 20 per cent, the re-draft stipulates it must be 20 per cent of the whole caucus, not just of those present for a given vote, and also – and this is key – that this initial vote must be public. The rebel angels will need the courage of their convictions, in other words.

On the second point, there was a legitimate concern that, without the necessity of securing the party leader's approval, a Trojan horse could get himself or herself nominated, then pursue an agenda inimical to the party's. That has been resolved by the idea of provincial nomination officers, elected by all the riding presidents in any given province. Not only that but the party leader would retain the right to "decertify" an entire riding association, in extremis, assuming one goes entirely mad.

Now, here's the interesting thing: As the leaders' offices have gone preternaturally quiet on the topic, enthusiasm among backbenchers has slowly built. There's little question of this being a whipped vote, for any party; the leader who ordered that would be inaugurating his own political decline. Conservative and NDP caucus members expect Chong's bill will receive support from a majority of their members. Trudeau's office has punted on the matter for now, throwing it out to the party membership in an internal poll. But the fact is that the Liberal leader cannot be seen to block this reform, any more than can his two rivals, because he has made democratic reform a key priority.

The question the leaders face, then, is this: Do they murmur polite acquiescence in public, allow their caucuses free votes of course, but then work quietly against Chong behind the scenes, to derail him in committee? Or do they accept that passage in some form is inevitable, and seek to put themselves ahead of the wave? It is not, actually, the end of the world for a political leader to be required to lead by persuasion, rather than brute force. It's how it should be.

---

LE DEVOIR
Libre de penser
ACTUALITÉS OPINION CAHIERS SPÉCIAUX

# Une anglophone de l'Ontario obtient gain de cause en français

## Pour Agnes Jane Whitfield, impossible de témoigner en anglais sans revivre les années de sévices. Elle a dû se battre pour utiliser le français.

**Caroline Montpetit, Le Devoir, le 24 mai 2014**

Une anglophone de Peterborough, victime d'agressions sexuelles sur une longue période perpétrées par son frère, a gagné sa cause au civil après avoir obtenu un procès bilingue qui lui permettait de témoigner en français.

Agnes Jane Whitfield, qui vit désormais à Montréal, a déposé en 2002 une plainte pour agressions sexuelles contre son frère, Bryan Whitfield. Douze ans plus tard, le 1er mai dernier, elle a finalement obtenu gain de cause, au civil, après s'être battue pour être entendue en français, et s'être défendue seule, sans avocat.

En 2011, Agnes Whitfield avait essuyé un refus lorsqu'elle avait demandé un procès bilingue à un juge de Peterborough, en 2011. Celui-ci alléguait que la plaignante était anglophone et que sa plainte avait été d'abord déposée en anglais.

Or, c'est justement parce que l'anglais est sa langue maternelle, qu'elle avait été la langue des sévices terribles imposés par son frère, et la langue de la censure exercée par sa mère, qu'Agnes Jane Whitfield, qui est traductrice, souhaitait témoigner et être entendue dans la langue de Molière.

**Prison familiale**

Originaire de Peterborough, en Ontario, Mme Whitfield a étudié en France et au Québec. Elle vit aujourd'hui avec un francophone de Montréal. Le français, dit-elle, a été la langue qui lui a permis de sortir de la prison familiale.

« Quand je l'ai dit à ma mère, vers cinq ou six ans, elle m'avait vivement punie et traitée de menteuse. Cela a été le début d'un refoulement complet de l'agression », dit-elle.

En effet, Agnes Jane Whitfield n'a recouvré la mémoire de ces agressions que dans la cinquantaine, entre autres à l'occasion d'un traitement de physiothérapie. Elle s'est souvenue alors avoir été agressée par son frère Bryan, de l'âge de 4 à 18 ans, parfois à la pointe d'un fusil, et aussi d'avoir été prostituée auprès d'amis de Bryan Whitfield, lors d'un voyage avec lui en Colombie-Britannique.

Le juge McIsaac, de la Cour supérieure de Peterborough, qui a entendu la cause de Mme Whitfield au civil, a retenu l'expertise de la psychologue Sarah Maddocks, selon laquelle ce syndrome de la « mémoire retrouvée » est plausible dans les cas de sévices physiques et sexuels graves survenus sur une base régulière, et à partir d'un très jeune âge.

Lorsqu'elle a retrouvé la mémoire, Mme Whitfield a contacté la police provinciale de l'Ontario pour déposer une plainte contre son frère. Cette plainte n'a pas mené à des accusations criminelles.

« Si c'était une cause criminelle, les allégations auraient dû être établies au-delà du doute raisonnable, c'est-à-dire à un point beaucoup plus près de la certitude absolue que selon les standards de preuve civile de balance des probabilités. Cependant, ceci est une cause civile où le plaignant ne doit me convaincre que dans une proportion de 51 % », écrit le juge McIsaac dans son jugement (traduction libre de la rédaction).

**Au civil**

Agnes Jane Whitfield a finalement entrepris des démarches au civil contre son frère Bryan, pour des dommages et intérêts de 350 000 $, auprès d'une avocate de Toronto spécialiste des agressions sexuelles.

À l'époque, elle était convaincue qu'elle pourrait éventuellement témoigner et être entendue en français puisque le français est l'une des deux langues officielles du pays. Mais sa cause est transférée à Peterborough, et cette région n'est pas officiellement désignée bilingue. Les services juridiques en français n'y sont pas automatiquement prodigués.

Aujourd'hui, elle déplore de ne pas avoir été avertie par l'avocate du fait qu'elle ne pouvait pas avoir un procès bilingue à Peterborough. « Les avocats ontariens sont censés informer leurs clients des questions linguistiques », dit-elle. Ce n'est qu'en 2012 que le juge Mark Edwards autorise finalement un procès bilingue à Peterborough, région non désignée comme telle. D'ailleurs, écrit le juge McIsaac dans le jugement rendu le 1er mai, la seule exigence prévue à l'article 126 de la Loi sur les tribunaux judiciaires pour avoir le droit d'utiliser le français est de parler cette langue.

« Il y a déjà eu des causes, comme celle de Melvin Deutsch, à Toronto, où un justiciable anglophone a tenté en vain d'utiliser le français sans connaître suffisamment cette langue officielle des tribunaux de l'Ontario », écrit l'avocat Gérard Lévesque, spécialiste des questions linguistiques, dans un article de L'Express de Toronto sur la cause d'Agnes Jane Whitfield.

Mme Whitfield, quant à elle, est parfaitement bilingue.

« Imaginez-vous que mon frère était en cour durant les 25 jours du procès », raconte-t-elle.

« Je devais témoigner devant la personne qui m'avait réduite au silence sous menace de mort. Parler français m'a permis de mettre une vitre de verre protecteur entre moi et le criminel. […] J'étais en français, dans une langue où la censure n'avait jamais été exercée. Ma mère m'a censurée, mes soeurs m'ont censurée. C'était vraiment l'étau de la famille sur moi. »

---

les affaires

# Juristes Power : l'avenir après Heenan Blaikie

**PAR CÉLINE GOBERT, Les Affaires, 20 mai 2014**

Cela faisait respectivement 11 et 12 ans que Caroline Etter et Mark Power travaillaient chez Heenan Blaikie lorsque le cabinet d'avocats leur a annoncé sa dissolution, le 5 février dernier. « Si tout peut disparaître en un mois, quel est l'avenir des grands bureaux ? » s'interroge le duo, persuadés que d'autres géants s'effondreront dans les années à venir.

Depuis quelques mois déjà, face à la demande de clients qui ne veulent plus payer des fortunes pour défendre leurs droits et fatigués des mandats imposés qui ne s'alignaient plus avec leurs valeurs d'un accès à la justice pour tous et d'une profession altruiste avant d'être lucrative, les deux avocats questionnaient la viabilité du modèle d'affaires des grands bureaux.

Le 14 février, ils ouvrent les portes de Juristes Power, à Ottawa et à Vancouver, entourés d'une dizaine d'autres anciens d'Heenan Blaikie, et se concentrent alors sur des dossiers portant sur le statut du français, ainsi que le droit public, constitutionnel et administratif. Parmi leurs clients, on compte des sociétés, des particuliers, des institutions gouvernementales tels que des commissions scolaires et des écoles, ainsi que des associations sans but lucratif.

**Un nouveau modèle d'affaires**

Pour rendre viable leur modèle d'affaire, les avocats appliquent une réduction du taux horaire de l'ordre de 30% à 40%, soit moitié moins que les 450 $ par heure facturés chez leur ancien employeur. Leurs bureaux sont « plus modestes ». Afin de réduire le coût des

services opérationnels, ils font appel à des ressources externes : un consultant en ressources informatiques et un comptable.

Selon eux, les cabinets boutiques, sur le modèle de celui qu'ils ont créé, notamment dans les secteurs du litige, du droit de travail et de l'emploi, sont appelés à fleurir à l'avenir. « Les clients sont maintenant plus ouverts aux choix offerts dans le domaine juridique ce qui veut forcément dire que ceux-ci sont maintenant plus conscients des coûts pour les services offerts par les avocats ainsi que la nécessité de maintenir un ratio qualité-prix raisonnable », expliquent les juristes.

En outre, la technologie a un impact pour les clients, leur donnant accès à des services juridiques plus spécialisés peu importe où ils sont situés sur le continent. « Plusieurs de leurs avocats habitent à Ottawa mais travaillent sur des dossiers dans l'Atlantique, en Alberta et en Colombie-Britannique. »

Enfin, selon eux, les boutiques peuvent plus facilement contrôler beaucoup des coûts fixes et d'opérations et peuvent ainsi offrir des gammes de prix et des taux plus concurrentiels sans sacrifier l'excellence des services.

À ce jour, Juristes Power compte plusieurs dossiers médiatisés : ils sont procureurs au dossier dans le Renvoi sur le Sénat, premier litige portant sur la procédure de modification de la Constitution, ou encore procureurs du Conseil scolaire de district catholique du Centre-sud dans une poursuite contre le ministère de l'Education de l'Ontario visant à obtenir l'argent requis pour construire une école de langue française à Hamilton.

L'équipe a été rejointe depuis peu par l'ancien juge à la Cour suprême Michel Bastarache, séduit par l'intérêt que ces francophones et francophiles portent à la langue française. Par exemple, ils ont tous les appuis requis par les commissions scolaires revendiquant la pleine mise en œuvre du droit à l'instruction primaire et secondaire en français en Ontario, en Alberta et en Colombie-Britannique, et représentent également des institutions et particuliers revendiquant le respect du droit aux services gouvernementaux en français à l'extérieur du Québec, que ce soit des services fédéraux ou provinciaux.

Leur but est de faciliter l'accès à la justice en français devant les tribunaux dans les juridictions où un tel droit existe- outre le Québec notamment l'Ontario, le Nouveau-Brunswick, les cours fédérales et la Cour suprême du Canada.

Selon eux, cette spécialité, dans laquelle se spécialisent quelques petits bureaux à Ottawa et plus largement au Canada, a de l'avenir. « Les avocats expérimentés dans ce domaine se font très rares. En offrant des taux bien en deçà de ceux des cabinets nationaux, nous pouvons offrir ou faciliter l'accès à la justice pour plusieurs clients ».

Enfin, leurs avocats sont pour la plupart d'anciens auxiliaires juridiques de cette cour et possèdent donc l'expérience requise pour défendre les intérêts des clients devant cette cour. « Cette expertise, elle aussi très rare, s'étend également aux tribunaux d'appel du pays ».

---