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Press Clippings for the period of June 1st to 8th, 2015
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***Here are articles and opinion pieces that might be of interest to AJC members***
***Voici quelques articles et textes d'opinion qui pourraient intéresser les membres de l'AJJ***

OTTAWA CITIZEN

# Young/old schism over sick leave in public service: Carleton professor

**Kathryn May, Ottawa Citizen, June 4, 2015**

The battle over sick leave is creating a generational divide among union members led by young public servants who quietly support Treasury Board president Tony Clement's new short-term disability plan, says a Carleton university professor.

Ian Lee, professor at Carleton's Sprott School of Business, told the Commons finance committee Thursday that the existing accumulated sick leave plan is out of sync with those in the private sector and disproportionately benefits older workers who have banked months of unused sick leave to fall back on if they get sick.

"I urge members to discount disgruntled, tired boomers who will retire soon and instead listen to our young people, for they are our future," Lee said.

In an interview, Lee said he concluded a significant number of young workers support the new disability plan based on "subjective impressions" rather than empirical evidence.

"I am not saying all young people support it, but there is a significant number who do and whether that is 10, 20 or 30 per cent, I don't know."

Lee said sick leave is creating both a generational and class divide because the existing and proposed plans affects public servants differently depending on their age, years of service, position in the hierarchy and how much money they make.

He said higher-income professionals, for example, who don't have enough banked sick leave if they get ill and rely on employment insurance to tide them over to long-term disability, would earn more on Clement's short-term disability plan.

Clement has long said the new plan would be fairer. He claims 60 per cent of public servants don't have enough sick leave banked to cover the 13-week waiting period for long-term disability.

Public servants now get 15 days of paid sick leave a year and any unused days can be banked and rolled over from year to year.

Clement is currently proposing six days of paid sick leave a year. When those days are gone, public servants face a weeklong unpaid waiting period before applying for short-term disability.

Lee said he isn't predicting an "incipient revolution" but argues the union leadership could face some stiff opposition from young and professional workers if Clement improves his sick leave offer – especially if he drops the controversial seven-day unpaid waiting period for short-term disability.

"I think that would change the dialectic of this debate," Lee said. "If Clement removes the seven-day waiting period, I think that would change the debate against the will of the union leaders at the top who are so entrenched in their position."

In fact, Lee believes the union leaders recognize this generational divide and its potential backlash. He said that's why they shifted tactics from threatening to strike to legal action against the legislative changes the government made to collective bargaining.

The 17 federal unions have long claimed their stand on sick leave is based on extensive surveys and consultations with members.

Debi Daviau, president of the Professional Institute of the Public Service of Canada, which represents professionals in the public service, "unequivocally" rejects any suggestion of a generational or class divide among her members and the other unions.

"Mr. Lee is reading from the government's own media lines. Minister Clement has been hard at work trying to dig divides between public servants just to justify tearing down the sick-leave system and bringing a private insurer," she said.

Daviau argued any problems with employees who don't have enough sick leave banked could be fixed without scrapping the existing system.

"We don't play games when it comes to the fair treatment of all of our members. That's why we have repeatedly proposed simple, targeted measures to close any gaps, however small, rather than exaggerating these as an excuse for a politically motivated privatization."

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LeDroit

# Congés maladie: le fédéral confond économies et passifs, dit l'ACEP

**Paul Gaboury, Le Droit, le 4 juin 2015**

En plus de pénaliser nombre de fonctionnaires qui auront à choisir entre travailler alors qu'ils sont malades ou rester à la maison sans salaire, les prémisses sur lesquelles le gouvernement Harper s'appuie pour modifier le régime de congé maladie de ses employés sont «fallacieuses», a dénoncé jeudi devant un comité parlementaire un des principaux syndicats du secteur public fédéral.

Dans le mémoire déposé au comité permanent des finances nationales, qui étudie le projet de loi C-59, l'Association canadienne des employés professionnels (ACEP), syndicat représentant 12 500 économistes et autres professionnels fédéraux, soutient que le gouvernement confond «économies» et «passifs» lorsqu'il explique pourquoi il veut modifier le régime actuel de congé maladie.

En même temps, le syndicat dénonce le fait que le gouvernement ne mentionne pas les coûts du nouveau régime d'assurance invalidité que C-59 lui permettra d'imposer à ses employés en contournant les négociations en cours.

«Le président du Conseil du Trésor répète que son plan est équitable pour les employés de la fonction publique et juste pour les contribuables», explique Emmanuelle Tremblay, présidente de l'ACEP. «Pour y arriver, le gouvernement prétend faussement pouvoir réaliser des économies à partir de ce qui est en fait un passif comptable, et en n'incluant pas des coûts de ce système.»

«Quant aux contribuables, ils doivent accepter la fable racontée par le gouvernement selon lequel des économies de 900 millions $ sont possibles avec son nouveau régime. Le gouvernement confond "économies" et "passif". Car ces 900 millions ne représentent pas des dépenses prévues, mais la valeur comptable des congés de maladie. On ne peut pas économiser ce qu'on ne va pas dépenser.»

Pour améliorer le sort d'un très faible pourcentage d'employés ayant recours au régime d'invalidité (environ 3000 par année, selon le Conseil du Trésor), l'ACEP soutient que 45% des employés actuellement couverts par le régime en place, soit plus de 85 000 personnes n'auront plus aucun revenu après leur sixième journée de maladie. «Vous conviendrez que ce n'est pas très équitable», a rappelé la présidente de l'ACEP.

Dans son mémoire, l'ACEP rappelle, comme les autres syndicats qui ont comparu devant le comité sénatorial des finances mardi, que la section 20 du projet de loi C-59 ne devrait pas être adoptée puisqu'elle contrevient à la Constitution canadienne et à la Charte canadienne des droits et libertés.

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LeDroit

# L'AFPC et l'IPFPC dénoncent des négos «injustes»

**Paul Gaboury, Le Droit, le 4 juin 2015**

Le gouvernement fédéral continue de s'ingérer dans le processus de négociation collective de ses employés et sape leurs droits fondamentaux, tout en faisant fi des accords internationaux et de récentes décisions de la Cour suprême.

C'est le message qu'ont transmis les deux plus importants syndicats de fonctionnaires fédéraux, l'Alliance de la fonction publique du Canada (AFPC) et l'Institut professionnel de la fonction publique du Canada (IPFPC), mercredi, devant le comité sénatorial des finances qui étudie C-59.

Le projet de loi, ont-ils plaidé, fausse le jeu à la table des négociations en permettant au Conseil du Trésor d'imposer unilatéralement certaines conditions d'emploi.

«Il en résulte un processus de négociation collective fondamentalement injuste et complètement faussé en faveur de l'employeur en ce qui concerne la question la plus importante pour lui dans cette ronde, à savoir les congés de maladie», a indiqué la présidente de l'IPFPC, Debi Daviau.

Selon l'AFPC, le gouvernement bafoue la Charte et s'en prend au droit à la libre négociation collective de ses membres et des autres fonctionnaires fédéraux.

«Le gouvernement ne semble connaître aucune limite quand il s'agit de dicter des règles qui servent ses propres intérêts, dans le but de promouvoir son programme politique», dit Chris Aylward, vice-président exécutif national de l'AFPC.

L'Association canadienne des employés professionnels doit comparaître aujourd'hui devant le comité des finances de la Chambre des communes, où elle entend elle aussi faire valoir son opposition au projet de loi.

Rappelons que les syndicats de la fonction publique fédérale contestent devant les tribunaux la loi C-4 - de même que certaines dispositions du projet de loi C-59 - devant l'Organisation internationale du travail.

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Institute for
COMPETITIVENESS & PROSPERITY

# Public sector workers might not be overpaid after all

**A blog by the Institute for Competitiveness & Prosperity, May, 2015**

*(The **Institute for Competitiveness & Prosperity** is an independent, not-for-profit organization that deepens public understanding of macro and microeconomic factors behind Ontario's economic progress. We are funded by the Government of Ontario and are mandated to share our research findings directly with the public.)*

In April, 2013, the Fraser Institute released a report comparing the compensation of public and private sector workers in Canada[1]. Using data from the 2011 Labour Force Survey, the report concluded that public sector workers in similar jobs and with similar characteristics to their private sector counterparts enjoyed a 12% wage advantage.

In March, 2015, the Canadian Federation of Independent Business (CFIB) released a similar report, calculating from the 2011 National Household Survey that the public sector wage advantage in Canada is between 18% and 37%.[2] These are significant percentages, and with a view of reducing Canada's budget deficit, it's tempting to suggest, as both the Fraser Institute and the CFIB did, that public sector compensation ought to be pulled, kicking and screaming, into line with wages in the private sector. It's hard to find a reason to disagree. After all, why should two otherwise identical workers receive different wages just because one of them is on the government's payroll?

Although it seems natural to plough ahead with this line of reasoning, we are missing a step between calculating the wage advantage and proposing a way to reduce it: finding out what's causing it! Broadly speaking, the wage advantage can be decomposed into two distinct parts: a "pure wage premium", which is caused by differences in pay structures, and an "endowment advantage", which is caused by differences in workers' wage-generating characteristics, such as education or experience. According to University of Toronto economics professor Morley Gunderson in his 1979 paper Earnings Differentials between the Public and Private Sectors, this latter component is "considered a 'legitimate' differential", since it "reflects either the returns to the acquisition of human capital such as education or training, compensating differentials or short-run earnings advantages". [3], [4] In other words, the endowment advantage is not caused by an unfair government pay structure, but by a wage-generating composition of worker skills and job types.

To add concreteness to the discussion above, in this blog the ICP builds on its existing research by calculating the public sector wage advantage for Canada in 2015, and then breaking it down into the pure wage premium and the endowment advantage. [5] As in the ICP's Working Paper 19, we depart from the Fraser Institute's choice of data by only

comparing workers in a number of selected occupations. We do this because there are many jobs in the private sector that do not exist or are defined very differently in the public sector, such as salespeople or teachers, and these distinctions would not be captured in our data, potentially throwing off our results. [6] To begin, we calculate the raw wage advantage to be 9.37%. That is, the weekly earnings of the average worker in the public sector are 9.37% higher than the weekly earnings of the average worker in the private sector. This is smaller than the Fraser Institute's and CFIB's figures, likely because the ICP's selected occupations are more comparable. Even so, the raw public sector wage advantage is a composite of many distinct and interwoven effects, such as differences in endowments, pay structures, and job types. These need to be disentangled before we can say anything interesting about the nature of the public sector wage advantage in Canada.

In addition, workers in the public and private sectors are not directly comparable. After all, our data does not describe everything about the workers in our sample, and some of the unknown information may be correlated both with a worker's earnings potential and their likelihood of choosing to work in the public sector. This could really skew our findings if we're not careful. Using the methodology in Raaj Tiagi's 2010 paper Public Sector Wage Premium in Canada: Evidence from Labour Force Survey, we adjust our calculations to account for this potential selection bias. [7], [8] The corrected raw wage advantage is now 0.3%. The reason for this drop is that, on average, current public sector workers would earn more in the private sector than current private sector workers. Raaj Tiagi came across a similar finding, describing public sector workers in his 2008 Labour Force Survey sample as the “cream of the crop”.

With selection bias accounted for, we can now disentangle the pure wage premium and the endowment advantage discussed above. [9] The results are truly surprising. For the average public sector worker, the pure wage premium in Canada in 2015 is -20.4%. That is, the average public sector worker earns 20.4% less in the public sector than they would earn in the private sector doing the same job with the same set of skills. On the flip side, the average private sector worker earns 2.3% more in the private sector than they would earn in the public sector. What we can take from these findings is that, although the absolute difference in earnings is small - only 0.3% -, public sector workers are underpaid relative to the endowment advantages that they have over their private sector counterparts. Previous studies, such as those performed by the Fraser Institute and CFIB, have not explicitly separated the endowment advantage and the pure wage premium, nor have they controlled for selection bias.

These results lead us to an entirely different line of reasoning than that taken by the Fraser Institute and the CFIB. Artificially deflating the wages of these public sector workers won't substantively resolve the underlying questions: Why are Canada's “cream of the crop” workers consistently choosing the public sector over the private sector? Could it be because, as the Canadian Centre for Policy Alternatives asserted in October 2014, lower workplace discrimination in the public sector is attracting skilled workers from minority groups, such as women or aboriginal people?[10] Or could it be that skilled workers are less attracted to Canada's unproductive and slow-growing businesses, as discussed in the ICP's Working Paper 15?[11] Is the Government of Ontario taking the right approach by continuing to freeze the wages of OPSEU workers? More research will

be needed to pinpoint the narrower causes and implications of the public sector wage advantage, but what's clear is that there's more to this issue than meets the eye.

*[1] Palacios, M.; Clemens, J. (2013). Comparing public and private sector compensation in Canada. Vancouver, B.C.: Fraser Institute.*

*[2] Mallett, T. (2015). A Comparison of Public-sector and Private-sector Salaries and Benefits. Canadian Federation of Independent Business.*

*[3] A compensating differential is defined as the additional compensation needed to motivate a worker to perform a riskier or more unpleasant job. Rosen, Sherwin (1986). The theory of equalising differences. The Handbook of Labour Economics. New York: Elsevier. pp. 641 - 692.*

*[4] Gunderson, M. (1978). Earnings differentials between the public and private sectors. Toronto: Faculty of Management Studies, University of Toronto.*

*[5] Data is from the first four months of the 2015 Labour Force Survey.*

*[6] For a list of the selected occupations, see The Institute for Competitiveness and Prosperity, Working Paper 19, The Realities of Ontario's Public Sector Compensation, February 2014. pp. 12*

*[7] Tiagi, R. (2010). Public Sector Wage Premium in Canada: Evidence from Labour Force Survey. Review of Labour Economics and Industrial Relations.*

*[8] We use a structural endogenous switching model to control for the likelihood of selection on earnings.*

*[9] A Blinder-Oaxaca decomposition was used to isolate the pure wage premium.*

*[10] McInturff, K. ; Tulloch, P. (2014). Narrowing the Gap: The Difference That Public Sector Wages Make. Canadian Centre for Policy Alternatives.*

*[11] The Institute for Competitiveness and Prosperity, Working Paper 15, Small Business, Entrepreneurship, and Innovation, February 2012.*

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LeDroit

# 118 000 fonctionnaires seraient pénalisés

## L'ACEP CRITIQUE L'ASSURANCE INVALIDITÉ PROPOSÉE

**Paul Gaboury, Le Droit, le 2 juin 2015**

Le nouveau régime de congés de maladie que le gouvernement Harper propose obligerait plus de 58 % des fonctionnaires fédéraux – soit plus de 118 000 employés – à faire le choix entre « se présenter au travail malade ou rester à la maison sans être payé », jusqu'à ce qu'ils puissent bénéficier de l'assurance-invalidité.

Ce message, la présidente de l 'Association canadienne des employés professionnels (ACEP), Emmanuelle Tremblay, l'a martelé devant quelque 150 personnes réunies hier midi devant le bureau du premier ministre, coin Elgin et Wellington, au centre-ville d'Ottawa. Les manifestants souhaitaient dénoncer le projet de loi C-59, qui doit permettre au gouvernement d'imposer à ses employés le nouveau régime d'assurance invalidité court terme présenté dans le cadre des présentes négociations. « Non seulement nous estimons que le régime proposé coûterait plus cher aux contribuables, mais le gouvernement n'a pas analysé les données historiques sur les congés de maladie ni les enjeux de santé au bureau afin d'évaluer les implications du fait que des employés se présenteraient au travail tout en étant malades », a plaidé Mme Tremblay.

En se basant sur les données du Secrétariat du Conseil du Trésor, l'ACEP soutient que sur un total de 191 908 employés, plus de la moitié (58 %) des employés fédéraux ont utilisé plus de six congés de maladie en 2013-2014.
Or, si le nouveau régime proposé avait été en place, seulement 1 717 employés (1 %) auraient été couverts à 100 % contre la maladie, selon le régime d'assurance invalidité courte durée proposé, 24 109 (13 %) auraient été admissibles à certaines prestations, mais n'auraient pas été couverts à 100 %, alors que 85 462 (45 %) n'auraient eu droit à aucune prestation du nouveau régime.

**UN RÉGIME POUR LES JEUNES**

En vertu du nouveau régime, les employés recevraient six journées de congé de maladie par année, au lieu de 15 actuellement, et seraient admissibles à des prestations d'invalidité de courte durée s'ils sont malades plus de sept jours consécutifs. S'ils sont malades après avoir utilisé cinq des six jours, ils auraient à choisir entre aller travailler malades ou rester à la maison sans être payés pendant les cinq jours d'attente, a déploré Mme Tremblay.

Selon elle, le gouvernement a indiqué qu'il veut implanter ce régime pour aider les « employés plus jeunes » qui se retrouvent dans une situation précaire lorsqu'ils sont malades parce qu'ils n'ont pas accumulé assez de congés de maladie en vertu du régime actuel.

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LeDroit

# Legionella: derniers tests conformes à Portage III

**Paul Gaboury, Le Droit, le 1 juin 2015**

Le dernier test de dépistage de bactéries Legionella effectué à la tour de refroidissement de Portage III de Gatineau indique que le niveau est bas et en deçà des seuils établis par le ministère des Travaux publics et services gouvernementaux (TPSGC) et la réglementation du Québec.

La présence d'une quantité de ces bactéries supérieure au niveau acceptable dans la tour de refroidissement avait forcé la fermeture de la tour de refroidissement le 11 mai dernier.

Brookfield, le fournisseur de service qui s'occupe de l'entretien, avait par la suite désinfecté l'équipement et obtenu le feu vert de Santé Canada le 14 mai pour remettre la tour en service.

Par mesure de précaution, le ministère des Travaux publics et Services gouvernementaux avait par la suite réalisé un autre test de dépistage pour s'assurer que les normes étaient respectées.

«Les résultats obtenus indiquent que le niveau de bactéries Legionella est bas et en deçà des seuils établis conformément à la norme de TPSGC relative aux bactéries Legionella et à la réglementation du Québec» confirme le ministère.

TPSGC indique en avoir informé les autorités fédérales, provinciales et municipales concernées.

Le ministère rappelle que des analyses de bactéries sont effectuées une fois par semaine et des analyses de culture une fois par mois dans tous les immeubles inclus dans son portefeuille immobilier. Ses politiques et pratiques sont fondées sur des exigences fédérales et américaines.

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# You've got mail – but it's late, as federal IT plan misses deadline

**Kathryn May, Ottawa Citizen, June 7, 2015**

The federal government's plan to merge 63 email systems across the country into a single platform is slipping further and further behind schedule, with Bell Canada facing potentially thousands of dollars a day in penalties for failing to meet its deadlines.

The new single email system is now expected to be completed by September, 2016. The original deadline was March 31, 2015.

But Shared Services Canada, the department overseeing the migration of hundreds of thousands of email addresses of employees in 43 departments to the new system, said it will still achieve the promised $50-million annual savings beginning this year, regardless of the delays.

The "email transformation" was the first of three major projects to be tackled by Shared Services, which was created in 2011 as a super IT agency to improve the cost, efficiency and security of the government's aging IT infrastructure.

The Conservative government announced the email project in its 2012 budget with a three-year planning period, and rollout that Shared Services estimated would cost about $82 million. These one-time costs include data migration costs paid to Bell Canada.

The government's contract with Bell-CGI is worth up to $398 million over seven years, with an additional one-year option, as more users move to the system and buy services.

There appear to be multiple issues behind the delay, including overly aggressive deadlines and problems building the system the government needs. Shared Services officials previously put much of the blame on the two companies contracted to build and run the new email system, Bell and CGI Information Systems. The department said they were "unable to meet the committed project deadlines," and the government was "disappointed by the unacceptable delays."

When the project first fell behind schedule, SSC officials said the contractors asked for more time to ensure that all security and technical requirements met the government's standards.

Under the contract, Bell Canada faces a $5,000-a-day penalty for failing to meet its phase one deadline – the date specified in the contract when the system was supposed to be

ready to start testing before users were moved to the system. The latest testing date was set as May 25, but Shared Services wouldn't say whether that date was met or not.

On top of that, Bell can be hit with an additional $10,000-a-day penalty for every day it is late in completing the move of 43 departments to the system. The government, however, is accumulating the penalty as credits to be used against future payments rather than collecting the fees.

The government has been building up these credits since April 1, but it is unclear whether Bell could actually be on the hook for the daily $10,000 penalty for the entire span of the 550 days between the initial March 2015 and new September 2016 deadlines for completion.

"The extent of the total penalties to date is the subject of ongoing contractual conversations with Bell," said an email from a Shared Services Canada spokesman.

Shared Services is a critical piece of the government's drive to bring the public service into the digital era, consolidating a patchwork of systems and plugging security gaps. It is also central to Blueprint 2020, the plan to modernize the public service.

Shared Services officials said the delays didn't affect the savings targets because the department found money by eliminating overlaps and duplication of services when it consolidated the 43 legacy systems.

The original plan was to migrate departments to the new system in waves, train employees on how to use it and finish implementation by spring 2015, when the old systems were to be decommissioned. In "wave zero," SSC employees would be the first on the new system, to work out glitches and ensure everything was secure.

So far, Shared Services is the only department to have migrated to the new system. It is now working with departments on their business and technical requirements to make the move by September 2016.

Debi Daviau, president of the Professional Institute of the Public Service of Canada, said the email project has been plagued with problems from the start because it turned to outside contractors rather than its own in-house experts. PIPSC represents federal IT workers.

"The government could have avoided this entire fiasco had they taken our advice and worked with their own in-house IT experts to consolidate the government's email programs. Instead they are on a track that puts Canadian jobs and data at risk and, based on the results so far, doesn't even deliver the goods."

Daviau said the setbacks with the email project don't bode well for future projects. Shared Services is also overseeing two other major projects: shrinking the number of federal government data centres from 300 to fewer than 20; and reducing the 3,000 overlapping telecommunications networks that now exist.

"They need to reconsider their ideological obsession with outsourcing before pushing more projects down this dangerous track," she said.

Departments turned over $1.5 billion of the yearly funding spent on email, networks and data centres when Shared Services was created, along with 6,000 employees who supported them.

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# The supremacy of an incurious and credulous Parliament

## Parliament seems hardly troubled by the blackhole that the information commissioner says it is about to create

**Aaron Wherry, MacLean's, June 3, 2015**

Mark Adler, a Conservative MP assigned to the finance committee, seated here beneath an impressive chandelier and a grand portrait of the Fathers of Confederation in the Railway Room of Centre Block, attempted, with his opportunity, to engage the information commissioner in a discussion of basic concepts. Apparently, he saw some advantage for his side in getting the commissioner to agree that the sky is, in fact, blue. As if that much might justify everything under the sun.

Did she believe in the principle of the supremacy of Parliament? Suzanne Legault said she did. Does she acknowledge that laws can be enacted with retroactive effect? Legault agreed this was so.

"The principle of parliamentary supremacy is a longstanding one in Canada and in our parliamentary tradition, going back to Britain," Adler explained. "All members of Parliament, all 308 of us, were elected by popular vote, and we were sent here to pass legislation on behalf of the Canadian people, and that's exactly what we have done here."

Sure. But what is going on here is rather more novel than simply that.

The government actually seeks currently to use a budget bill, C-59, to retroactively reimagine the law of the land and the will of Parliament. If passed, C-59 would exempt from the Access to Information Act all information related to the long-gun registry, retroactive to the date that the Ending the Long-gun Registry Act was tabled in the House of Commons in 2011.

All of which would be interesting enough to justify reflection, but this is more than an abstract experiment in creative drafting. More at issue is the fact that, in March 2012, before the Ending the Long-gun Registry Act was passed into law, an individual made a request of the RCMP through the access-to-information system for data from the registry. Even when passed, the Ending the Long-gun Registry Act did nothing to exempt the registry's data from the access-to-information system. That individual subsequently complained that the RCMP did not fully comply with this request. After an investigation, the commissioner agreed with the complaint and has since filed an application with the Federal Court seeking redress. Furthermore, the commissioner wrote to the attorney general to raise the concern that documents related to the request had been unlawfully destroyed. That possibility is being investigated by the Ontario Provincial Police, the OPP confirming to me on Tuesday that the file forwarded to them by the public prosecution service is the subject of an active investigation.

It is the information commissioner's view that the amendments contained in C-59—a budget implementation act, mind you—would nullify all of this: the request, the complaint, the application to the Federal Court and any possible investigation by the OPP, and that, if Parliament passes this bill as is, it will disappear all of that.

Ah, but what about that supremacy of Parliament? What of the collective will of our elected representatives? This is the principle in which the government has wrapped itself.

Legault neatly, but forcefully, stuck this in Adler's ear.

"I agree that the will of Parliament is supreme. I really do," she said. "The situation that I have before me is the following. I have the Ending the Long-gun Registry Act [ELRA], which has been in existence since April 2012. The ELRA never did oust the jurisdiction of the Access to Information Act . . . It is silent about the Access to Information Act, which is also a law of Parliament, which I am mandated to apply. I am mandated to receive and investigate complaints under the Access to Information Act. Government institutions are obligated to respect their obligations under the Access to Information Act. This is the will of Parliament today, and it was in April 2012 and, until it is changed, it is the will of Parliament."

"Well, the will of Parliament is expressed by Parliament, correct?" Adler now wondered.

"In both the Access to Information Act and in the ELRA . . . I cannot speculate that the Parliament decided that the Access to Information Act was not to apply if it was not specifically mentioned," Legault responded.

In other words, if it was the will of Parliament to void all access-to-information requests, then Parliament should have written the Ending the Long-gun Registry Act to do so. If it had done so, Parliament might have ensured that the complaint about compliance and the destruction of records never came to exist. But it didn't. And now here we are. If it be the will of Parliament to reimagine the law of the land, it will apparently cancel a Federal Court case and an active police investigation in doing so.

The government says it is acting to close a "loophole." But it would close this loophole after a lawful request allegedly failed to receive a full response, and after the unlawful destruction of data is alleged to have occurred.

"Mr. Chair, Division 18 of Bill C-59," Legault said this morning of the amendments, "is not an attempt to close a loophole; but rather, it is an attempt to create a black hole."

Even if we accept the loophole metaphor, it should be followed to its metaphorical conclusion: that the government wishes to close a loophole, but only after someone has stuck a finger through it, and after the government is alleged to have stepped on said finger. And so now, to close the loophole, the government is ready to sever the finger.

If not for the possibility that real laws have violated, it would be the stuff of absurdist satire.

At a few points during her prepared remarks, the commissioner laid out a challenge for the MPs around the table: "You must ask yourselves why?" But MPs seem rather unwilling to expend much energy exploring that question publicly. A motion moved yesterday by the NDP at the standing committee on access to information, privacy and ethics to call the commissioner, the justice minister, the public safety minister and the RCMP commissioner to testify—"I think it's our duty to study this further," ventured NDP MP Charmaine Borg—was defeated when the six Conservative members of the committee raised their hands to vote against it. A similar motion originating with the Liberals was defeated at the public safety committee.

Legault appeared at the finance committee at the same time as five other witnesses—representatives of university students, interns, employers and the music industry—to testify about entirely different parts of the budget bill, an hour and a half set aside to hear from and question six witnesses on three areas of law.

Had an NDP or a Liberal government attempted to do something similar, one imagines Conservative MPs would be profoundly saddened. In the current circumstance, the New Democrats and Liberals seem concerned, but not dramatically so; Thomas Mulcair quizzed the government about it last Tuesday, but, since then, the issue has gone unmentioned in question period. And the press gallery isn't roiled. And the op-ed pages are not quite brimming with statements of concern from observers, so it seems unlikely that the sort of attention that might compel the government to back down will be mustered—because only widespread outrage seems capable of compelling substantial amendment.

Perhaps if this had nothing to do with the long-gun registry, the New Democrats and Liberals would be more eager to throw themselves at the issue. Perhaps if it could be verified that the access request in question was authored by one of those regular, everyday, hard-working, real, middle-class Canadians with a family, every MP here would be clamouring to defend him or her (or, at least, offer him or her a new "So You've Just Had Your Lawful Claim Trampled by Parliament" Tax Credit).

Instead, MPs would seem content to let this one go. A representative of the RCMP is scheduled to appear before the finance committee on Thursday, along with another slate

of unrelated witnesses. The committee has given itself a whole hour to consider that testimony before it gets on with approving (or, by some remote chance, substantially amending) the budget bill.

Probably, MPs should decline to pass legislation that would affect a court proceeding or police investigation. Surely, at least, they should be very, very hesitant about doing anything that would have such an impact. By almost no mature standard of legislating should they be willing to authorize an action such as this via a vote on a budget implementation bill.

And while we're talking about abstract principles, we might consider the notions of accountability and scrutiny, the primary values and purposes of the parliamentary system, and how even backbenchers on the government side, such as Adler, have a duty in this regard.

The supremacy of Parliament is a worthy idea. And the will of Parliament is a powerful expression. But it does not then follow that any expression is admirable in its formation or action.

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# Union videos attack government over treatment of vets

**Lee Berthiaume, Ottawa Citizen, June 3, 2015**

With an October federal election looming, the country's largest union has produced a series of videos with former military personnel blasting the government's decision to shutter nine Veterans Affairs Canada offices across the country.

The videos come amid Conservative fears that unions are preparing to launch an unprecedented number of attack ads in advance of the election, as they did to great effect during last year's Ontario election.

The Public Service Alliance of Canada says it's no coincidence the videos are being released on the eve of the election. And while the union says the videos aren't specifically aimed at the Conservative government, it is hoping they will "cut through the spin" and get voters thinking when they head to the polls.

"We're just trying to provide the facts right now," said Carl Gannon, national president of the PSAC-affiliated Union of Veterans Affairs Employees. "We're obviously not trying

to tell anyone who to vote for right now. But we feel we have a duty to get as much information out there as we can."

A statement from Veterans Affairs Minister Erin O'Toole's office said the minister listens "to all veteran voices and the public service unions like PSAC." It added that some recent changes to veterans' services and benefits, such as plans to hire 100 front-line case managers "reflect input from all of them."

Three of the four videos produced by PSAC feature veterans arguing that the office closures have made it more difficult to access support and services. A Veterans Affairs employee echoes that message in the fourth video.

"When the Veterans Affairs office was open, I was able to go have a face-to-face conversation with a client service agent," veteran and PTSD sufferer Robert Cutbush says of the Thunder Bay office in one video. "Now you want me to open up about my inner trauma that I'm dealing with to someone over the phone?"

In another video, veteran Vincent Rigby credits staff at the office in Sydney, N.S., with saving his life. "I was on the verge of committing suicide," says Rigby, who served in Bosnia and Croatia before being medically released in 2002 because of PTSD.

The Conservative government closed the Veterans Affairs regional offices in Thunder Bay and Sydney as well as in Charlottetown, Corner Brook, N.L., Windsor, Ont., Brandon, Man., Saskatoon and Kelowna, B.C., last year.

The government said the offices weren't busy enough, and closing them saved about $5 million per year. It said veterans would not be affected because they could still receive information and support online, by telephone, or at one of 600 Service Canada locations across the country.

The Conservative government has previously accused PSAC of stirring up anger over the office closures, and refused to re-open the offices. The Liberals and NDP have said they will reopen the offices if elected to govern in October.

Cutbush said he isn't political or affiliated with PSAC, but simply speaking for the many veterans in his community who are upset the office was closed.

Pearl Osmond's 24-year-old daughter, Robyn Young, lost part of her eyesight after military doctors misdiagnosed a brain tumour and ordered unnecessary eye surgery. With the Windsor office closed, the two had to make numerous two-hour drives to the VAC office in London, Ont.

Osmond and Young are featured in one of the videos, and Osmond said she was "happy they're (PSAC) doing it because the public needs to know how veterans are being treated by this government."

The statement from O'Toole's office noted some of the minister's staff met with Young at O'Toole's request, and that she "has our government's complete support."

While the videos are already online, Gannon said the union plans to purchase radio and television time. He said the union will focus mostly on where the offices were closed.

The Conservative government has cut about 900 positions from Veterans Affairs Canada since 2009. That represents a 23 per cent reduction in its work force. The minister has not said when the 100 new case managers will be hired.

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LeDroit

# Des vétérans témoignent de leurs problèmes

**Paul Gaboury, Le Droit, le 3 juin 2015**

L'Alliance de la fonction publique du Canada (AFPC) vient de diffuser une série de vidéos dans laquelle plusieurs vétérans témoignent des problèmes qu'ils rencontrent depuis la fermeture de neuf bureaux régionaux d'Anciens combattants Canada.

Dans leurs témoignages, les vétérans insistent sur le fait que plsuieurs problèmes de santé, dont le stress post-traumatique, se sont aggravés depuis qu'ils n'ont plus accès aux services directs offerts dans ces bureaux.

Vince Rigby, 50 ans, qui a servi 22 ans dans les Forces armées canadiennes, notamment en Croatie et en Bosnie, souffre de stress post-traumatique aigu. Il raconte que c'est grâce au personnel du bureau de Sydney s'il est encore en vie. Mais ce bureau - et huit autres - a été fermé à la suite des compressions du gouvernement Harper. «J'étais sur le point de me suicider. Quand je suis arrivé au bureau de Sydney, je pleurais comme une madeleine. Mais une demi-heure plus tard, j'étais heureux. Quelqu'un m'avait écouté, avait entendu mon histoire.»

Une autre, Robyn Young, a 24 ans et raconte qu'elle ne peut reprendre du service dans la Marine canadienne. Elle essaie d'obtenir l'aide d'Anciens combattants, mais le bureau de Windsor a fermé ses portes l'an dernier. «Je ne peux pas conduire, je suis malade. Quelqu'un se tape deux heures de route pour moi. Je suis assise dans l'auto et c'est affreux. Je suis chanceuse d'avoir de l'aide, mais beaucoup de gens n'en ont pas», dit-elle dans cette vidéo.

Le président national du Syndicat des employés des Anciens combattants, Carl Gannon, rappelle l'importance de ces bureaux pour les vétérans. «Nos membres sont en première ligne. Ils ne demandent pas mieux que d'aider les vétérans, mais les coupes et la fermeture des bureaux les en empêchent», a indiqué le dirigeant syndical.

Neuf bureaux régionaux d'Anciens combattants Canada ont été fermés en 2014, soit ceux de Corner Brook, Charlottetown, Sydney, Thunder Bay, Windsor, Brandon, Saskatoon, Kelowna et Prince George.

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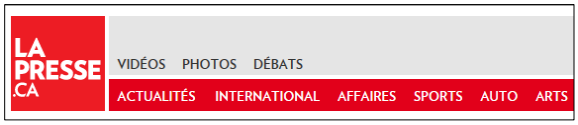


# 15 milliards de dollars pour les victimes québécoises du tabac

**Christiane Desjardins, La Presse, le 1er juin 2015**

Deux recours collectifs ont terrassé trois géants du tabac. Dans un jugement historique, le juge de la Cour supérieure Brian Riordan condamne Imperial Tobacco, Rothmans, Benson&Hedges ainsi que JTI-Macdonald à payer 15 milliards de dollars en dommages punitifs et moraux à des fumeurs et ex-fumeurs malades québécois.

Les maladies visées par le jugement sont les cancers du poumon et de la gorge ainsi que l'emphysème. On compterait près de 100 000 victimes, mortes ou vivantes. Dans le cas des personnes mortes, les sommes iront à la succession.

«Au cours des quelque 50 années visées par le recours, et pendant les 17 années qui ont suivi, les compagnies ont empoché des milliards de dollars aux dépens des poumons, des gorges et de la santé de leurs clients», a indiqué le juge Riordan dans un volumineux jugement de 276 pages.

## Devoir d'informer

Le juge considère que les cigarettiers ont menti à leurs clients. Ils avaient le devoir d'informer leurs clients des risques et des dangers de leurs produits, et devaient présenter une information véridique et non trompeuse, en vertu de la Loi sur la protection du consommateur, souligne le magistrat. Il rappelle que le droit à la vie, à la sécurité et à la dignité des personnes est protégé par la Charte québécoise des droits et libertés. Il blâme particulièrement Imperial Tobacco, considéré comme le leader de l'industrie, qui a caché la vérité au public. En raison de ce comportement, le juge condamne cette entreprise à assumer 67% des coûts, une évaluation basée sur ses parts de marché. Rothmans est responsable de 20% du total, tandis que JTI-Macdonald en assumera 13%.

## Parti trop tôt

«Je suis soulagée, la cigarette vous détruit, vous écrase. C'est très dangereux, écrasez», a réagi Lise Blais, dont le mari Jean-Yves Blais a été emporté par un cancer du poumon en 2012, peu après le début du procès. «C'était mon héros, il l'est encore», a ajouté Mme Blais.

Membre désigné d'un des recours, M. Blais avait commencé à fumer dans les années 50, à 10 ans. Il a essayé plusieurs fois de cesser de fumer, sans y parvenir.

C'est un avocat qui avait pris contact avec le couple en vue de ce recours, en 1998.

«C'est un grand jour pour les victimes du tabac qui attendent ce moment depuis 17 ans», s'est réjoui de son côté Mario Bujold, directeur général du Conseil québécois sur le tabac et la santé, organisme qui représentait ce recours.

Le «recours Blais» concerne les fumeurs atteints de cancer et d'emphysème, évalués à environ 100 000, tandis que le «recours Cécilia Letourneau» regroupe 918 218 personnes dépendantes du tabac au Québec.

Les deux recours ont été entendus dans le même procès, mais seuls les membres du recours Blais obtiendront une compensation financière, qui pourra varier de 24 000$ à 100 000$.

Le juge accorde des dommages punitifs de 131 millions au recours Letourneau, ce qui représente 130$ par membre. Le magistrat estime qu'il serait trop onéreux et impraticable de distribuer ces sommes. Les modalités de distribution seront fixées au cours des prochains mois.

**Avocats satisfaits**

Une dizaine d'avocats de quatre cabinets ont travaillé pendant 17 ans pour mener ces recours collectifs à bon port. Ils étaient fièrement réunis hier pour la conférence de presse. C'était David contre Goliath, ont-ils laissé entendre.

Ce combat de 17 ans n'est cependant pas encore terminé. Les sociétés de tabac ont annoncé qu'elles feront appel. Me Bruce Johnston et Me André L'Espérance, deux des avocats qui pilotent les recours collectifs, s'y attendaient. Mais ils semblent confiants. «On est la seule province au Canada où le procès a pu se tenir et c'est grâce au système judiciaire», a dit Me L'Espérance.

Il est à noter que le juge Riordan oblige les cigarettiers à verser plus de 1 milliard dans les 60 jours suivant le jugement, même s'il y a appel.

**Le procès en chiffres**

- Les deux recours entrepris en 1998 ont été autorisés en 2005.
- Le procès s'est ouvert le 12 mars 2012.
- Il y a eu 251 jours d'audience.
- 76 témoins ont été entendus, dont plus de 20 experts.
- 43 000 documents ont été déposés.
- Le jugement compte 276 pages.

**Les sommes accordées**

Les membres du recours Blais recevront:

- 80 000$ ou 100 000$ par cas de cancer du poumon ou de la gorge.
- 24 000 ou 30 000$ pour les victimes d'emphysème. Les intérêts accumulés depuis 1998 s'ajouteront à ces sommes.

## Des dommages records... et parfois renversés

Le combat que se livrent cigarettiers et victimes du tabagisme partout sur la planète entraîne des condamnations parfois inimaginables devant les tribunaux. Toutefois, ces sommes n'ont souvent rien à voir avec celles qui aboutissent réellement dans les poches des familles endeuillées.

Tobacco Master Settlement Agreement - 206 milliards sur 25 ans

Le Tobacco Master Settlement Agreement est une entente liant les quatre plus gros cigarettiers américains à la quasi-totalité des États américains, conclue en 1998. Il prévoit certaines protections judiciaires pour ces entreprises en échange de versements réguliers aux gouvernements, notamment pour financer des campagnes antitabac. Les cigarettiers s'engageaient aussi à cesser certains types de publicités, notamment celles visant les mineurs.

Recours collectif floridien - 145 milliards

En 2000, un jury a accordé 145 milliards de dollars en dommages aux membres d'un recours collectif rassemblant plusieurs centaines de fumeurs floridiens. À l'époque, les entreprises ont déploré « l'arrêt de mort » décidé par la cour et ont porté la décision en appel. Celle-ci a été annulée six ans plus tard, le tribunal d'appel jugeant que chaque individu devait s'attaquer individuellement aux cigarettiers. Depuis, certaines de ces procédures ont fait l'objet de règlements qui totalisent quelques centaines de millions de dollars, selon Morgan Stanley.

Procès Robinson - 23,6 milliards

En juillet dernier, la veuve d'un fumeur s'est vu accorder des dommages de 23,6 milliards par un jury de la Floride. Les avocats de Cynthia Robinson, dont le conjoint avait succombé à un cancer des poumons à 36 ans, ont plaidé que le cigarettier R.J. Reynolds n'avait pas correctement indiqué à ses clients qu'en fumant, ils pouvaient devenir dépendants à la nicotine et être affectés par des maladies graves. Le cigarettier a porté la décision en appel.

## 17 ans de bataille

### 1998

À l'automne, deux requêtes en recours collectif sont intentées. La première, par Cecilia Létourneau, est pour le compte des personnes dépendantes de la nicotine contenue dans les cigarettes. La deuxième, celle de Jean-Yves Blais et du Conseil québécois sur le tabac et la santé, est pour le compte des personnes qui souffrent d'un cancer du poumon, du larynx, de la gorge ou d'emphysème.

**2005**

Entre 1998 et 2004, les compagnies de tabac déposent de multiples requêtes visant à faire invalider et empêcher les deux recours. Après divers jugements des tribunaux, la Cour supérieure du Québec autorise finalement les deux recours collectifs.

**2008**

Les compagnies de tabac déposent une requête qui appelle en garantie le procureur général du Canada dans les deux recours. Cette demande se fait en parallèle de la réalisation des étapes préparatoires en vue du procès.

**2012**

Le procès débute finalement le 12 mars 2012, soit deux ans après l'accord survenu entre les parties sur le déroulement des échéanciers. Le procès se terminera le 4 décembre 2014.

**2015**

Le 27 mai 2015, la Cour supérieure rend son jugement, qui accorde 15 milliards aux victimes du tabac. La Cour estime que les entreprises ont fait passer leurs profits avant la santé de leurs clients. Les trois fabricants en cause annoncent qu'ils porteront la cause en appel.

## Qui sont les cigarettiers?

### Imperial Tobacco Canada

Plus important fabricant de produits du tabac au Canada, Imperial Tobacco a son siège social dans le quartier Saint-Henri depuis 1908. Depuis 2007, toute sa production est toutefois effectuée au Mexique. L'entreprise appartient à British American Tobacco depuis 2000.

Principales marques: Du Maurier, Player's, Matinée et Peter Jackson.

### Rothmans, Benson & Hedges

Deuxième fabricant de produits du tabac en importance au Canada, Rothmans, Benson&Hedges appartient au géant américain Philip Morris depuis 2008. Son siège social est situé à Toronto.

Principales marques: Benson & Hedges, Craven A, Rothmans et Mark Ten.

### JTI-Macdonald

Fondée en 1858 à Montréal, Macdonald exploite toujours une usine rue Ontario. Après avoir été détenue par la firme américaine RJ Reynolds pendant 25 ans, l'entreprise

appartient depuis 1999 à Japan Tobacco, dont le gouvernement nippon est un important actionnaire.

Principale marque: Export A.

## Les fabricants en colère, les victimes soulagées

Se disant «déçus» du jugement rendu hier, les trois cigarettiers visés ont rapidement annoncé leur intention de le porter en appel. Ils ont réagi avec virulence par voie de communiqué, contrairement aux victimes, qui se sont montrées satisfaites des conclusions.

*«Le jugement ignore la réalité, à savoir que les consommateurs adultes et les gouvernements étaient au courant des risques associés à l'usage du tabac depuis des décennies, et cherche à dégager les consommateurs adultes de toute responsabilité concernant leurs actes. Nous estimons qu'il y a des motifs solides d'interjeter appel de ce jugement et nous continuerons de défendre nos droits en tant que société légale.»*
**- Tamara Gitto, vice-présidente, affaires juridiques, et chef du contentieux d'Imperial Tobacco Canada**

*«Les demandeurs réclamaient des sommes pour un million de personnes, mais pas un seul membre du groupe, durant presque trois ans de procès, n'a témoigné. Personne ne s'est présenté pour dire qu'il ou elle ne connaissait pas les risques liés au tabagisme. Nous croyons qu'à la lumière du droit applicable et du bon sens, le jugement ne peut être maintenu.»*
**- Anne Edwards, porte-parole de Rothmans, Benson&Hedges**

*«JTI-Macdonald est fondamentalement en désaccord avec le jugement. L'entreprise croit fermement que la preuve présentée au procès ne justifie pas les conclusions du tribunal.»*
**- Communiqué de JTI-Macdonald**

*«Je suis soulagée de ce qui est arrivé. Mon mari était mon héros, ce l'est encore plus aujourd'hui.»*
**- Lise Blais, veuve de Jean-Yves Blais, qui a amorcé le recours collectif**

*«Victor Hugo disait qu'il n'y a rien de plus fort qu'une idée dont le temps est venu. [...] C'est un peu ce qu'il se passe aujourd'hui.»*
**- Me Bruce Johnston, avocat de la poursuite**

*«C'est une grande victoire pour les victimes et contre les compagnies de tabac.»*
**- Mario Bujold, directeur général du Conseil québécois sur le tabac et la santé**

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NATIONAL NEWSWATCH
NEWS OPINION ENTERTAINMENT THE MIX MOST-READ

# Judge awards $15 billion to Quebec smokers; companies to appeal

**By Sidhartha Banerjee, Canadian Press, National Newswatch, June 1st 2015**

MONTREAL - In a ruling described as "historic" by one lawyer, a Quebec judge has ordered three major cigarette companies to pay $15 billion to smokers in what is believed to be the biggest class-action lawsuit ever seen in Canada.

"These three companies lied to their customers for 50 years and hurt their right to life," Andre Lesperance, one of the lawyers involved in the case, said Monday.

"It's a great victory for victims as well as for society in general."

For Lise Blais, the judgment was bittersweet.

One of the two lawsuits that eventually merged into one was filed by her husband, Jean-Yves Blais, shortly before he died of lung cancer in 2012 at the age of 68.

The widow attended a news conference in Montreal after the ruling was handed down and she urged people to quit smoking.

"Your health is completely lost," she said as she clutched photos of her late husband.

"I waited every year (for a judgment) — for 17 years," she said. "But I had the opinion we were going to win and we did."

In an interview in March 2012, Blais said he had tried to quit "five or six times in the last 14 years," although some of the remedies triggered depression.

"I smoke a little more than one package a day — maybe 30 cigarettes a day," he said.

Quebec Superior Court Justice Brian Riordan's long-awaited 276-page decision was made public following years of testimony and another six months of deliberations.

"By choosing not to inform either the public health authorities or the public directly of what they knew, the companies chose profits over the health of their customers," Riordan wrote.

"Whatever else can be said about that choice, it is clear that it represent a fault of the most egregious nature and one that must be considered in the context of punitive damages."

The three firms will split the $15.6 billion according to responsiblity set out by the court — 67 per cent will fall to Imperial Tobacco ($10.5 billion), 20 per cent to Rothmans, Benson & Hedges ($3.1 billion) and 13 per cent to JTI-Macdonald ($2 billion).

The judgment calls on the three companies to issue initial compensation of a total of more than $1 billion in the next 60 days, regardless of an appeal. The judge will decide at a later date how to distribute those funds.

Bruce Johnston, a lawyer with one of the firms that took on the tobacco companies, called the ruling "historic — not just for the compensation for victims but also for public health and accountability."

Riordan squarely denounced the firms' actions.

"The companies earned billions of dollars at the expense of the lungs, the throats and the general well-being of their customers," he wrote.

"If the companies are allowed to walk away unscathed now, what would be the message to other industries that today or tomorrow find themselves in a similar moral conflict?"

All three Big Tobacco firms reacted immediately to Riordan's ruling and said they'll appeal the decision.

The Quebec case marked the first time tobacco companies had gone to trial in a civil suit in this country and involved two separate groups of plaintiffs: some who became seriously ill from smoking and others who said they couldn't quit.

More than one million Quebecers were represented and argued the companies were liable because they knew they were putting out a harmful product and hid the health effects of tobacco.

Initially the lawsuit was valued at $27 billion and included 1.8 million Quebecers, but a 2013 ruling changed the definition of who could qualify and lowered the amount to $17.8 billion. It was considered the biggest class-action ever seen in Canada.

"Today marks an important day for the victims of tobacco who have waited almost 17 years for this moment," said Mario Bujold, executive director of the Quebec Council on Tobacco and Health.

The industry argued people knew about the risks of smoking and that the products were sold legally and with federal government approval and strict regulation.

"These cases are far from over," RBH spokeswoman Anne Edwards said in a statement. "We will vigorously appeal this lower court's judgment, and believe that we have very strong legal grounds to overturn the judgment in its entirety."

JTI-Macdonald said Canadians have been well aware of the health risks since the 1950s and health warnings have been on packages for more than 40 years.

"JTI-Macdonald Corp. fundamentally disagrees with today's judgment and intends to file an appeal," it said in a statement. "The company strongly believes that the evidence presented at trial does not justify the Court's conclusions."

Since the 1950s, Canadians have had a very high awareness of the health risks of smoking, the company noted. That awareness has been reinforced by the health warnings printed on every legal cigarette package for more than 40 years.

Imperial Tobacco added its disapproval Monday.

"We believe there are strong grounds for appeal and we will continue to defend our rights as a legal company," said Tamara Gitto, vice-president law and general counsel for Imperial.

The trial stemmed from two cases that were originally filed separately in 1998 before being certified and consolidated in 2005. The case began sitting in 2012.

Cecilia Letourneau filed on behalf of the province's smokers who were addicted to nicotine and remained addicted or who died without quitting.

The other was filed by Blais and sought compensatory and punitive damages for smokers who'd suffered from cancer in their lungs, larynx or throat, or emphysema.

The council says some 918,218 Quebecers qualified under Letourneau's action while 99,957 qualified under Blais.

The case heard from 78 witnesses over 234 days in a giant Montreal courtroom as well as several weeks of final arguments.

The case is distinct from civil suits launched by several provinces to recoup health-care costs from smoking-related disease, but many of the arguments in the cases overlap.

All provinces have passed laws that allow them to go after so-called Big Tobacco for health-care costs stemming from smoking-related disease and most have filed legal actions to that effect.

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# Retirement: Dare to dream

**By Jennifer Brown, Canadian Lawyer cover story, June 1st 2015**

Lawyer Norm Keith is 58 and laughs hard when asked about his readiness for retirement. “There’s an old adage that most good lawyers live well, work hard, and die poor,” he

says, referencing the quote from American lawyer and statesman, Daniel Webster. “Many probably spend a little more money than they need to, for appearances sake, or life enjoyment or because they’re not thinking and planning ahead. As a partner in a law firm you probably think you should be living better than you are and for some that means going into debt,” says Keith.

For many lawyers in their mid-to-late career, he says, the inability to even consider retirement is very real these days as the profession gets squeezed by a number of competing forces generally acting negatively on their financial statements. And there are stark indicators the need for smart and early retirement planning is greater than ever before. The word on Bay Street is big firms are pushing partners out, in some cases in their late 40s and 50s in order to thin the ranks and make room for less expensive, younger lawyers.

“It’s a bleak prospect for the profession, bleak indeed,” says Keith, an employment and criminal defence partner at Fasken Martineau DuMoulin LLP in Toronto who plans to continue working indefinitely. He admits various factors over the years have made the prospect of retiring anytime soon pretty slim. “I think generally lawyers, once they’re past 15 or 20 years of practice, are like most professionals and start thinking about retirement. Unlike accountants and more organized people though, they don’t do a good job of planning for it,” says Keith. “I think by the time you realize you should have been saving, I’m not going to say it’s too late, but it makes it more difficult.”

Even the best-laid retirement plans can give way to chaos when a major life event takes place, such as divorce or job loss. As well, over the last five years, market forces have not always been kind to investment portfolios. The fact clients are pressuring lawyers to deliver lower cost services hasn’t helped either. “We tend to be very busy ourselves and tend to look after our clients’ interests better than our own. It’s also a high-risk profession for marriage failure. Typically, unless you have married another lawyer or a wealthy spouse it tends to be a reversal of fortune experience when you have a marriage breakdown,” says Keith. “The third reason is incomes have been stagnant or even in some cases declining for lawyers, even for partners in law firms.”

From a financial adviser’s point of view, Izhak Goldhaber says lawyers are typically pretty savvy about the need to save money. “In general lawyers are a higher income earning class and have been putting aside good sums of money, but the big issue is one of quantum — am I going to have enough? And many are discovering they are not going to have enough,” adds Goldhaber, a former adviser and vice president, insurance and financial services, with the Canadian Bar Insurance Association and CBA Financial Services Corp.

Goldhaber agrees with Keith that life events like divorce can affect financial outcomes over time, even when someone makes a good living. “When you talk about the impact of divorce alone — I can’t overstate how devastating that is emotionally, but also financially. Imagine you’ve been on track with a retirement and financial plan and then all of a sudden it all blows up because half your assets are gone,” he says.

While many may not have much sympathy for lawyers who haven’t had the foresight to plan for retirement, it’s pretty clear they have become somewhat of a high-risk group.

With law firm profitability on the decline over the past six to eight years, some partners are working harder than ever but not necessarily making more money — in some cases less — which detracts from their ability to save and plan when costs remain the same.

"In this economy who is ready to retire at 55 to 60 years old?" asks Malcolm MacKillop, of Shields O'Donnell MacKillop LLP. "Lawyers aren't any worse than any other profession, the difference today is the attitude about the profession itself. Many thought when they joined a firm, if they worked hard and became a partner they would work there until retirement and the firm would take care of you; now it's all changing. I've seen people in their late 40s and 50s — the worker bees — getting pushed out."

Most firms don't have pension plans and even some of the firms that do and have amalgamated are grandfathering pensions going forward, says MacKillop, who represents partners who find themselves in battles with their firms over compensation or being let go. He's handled 15 such cases in the last two years. "The treatment sometimes is very harsh. It's about passing the work down to the younger lawyers so the firms can charge less. I've seen partners with 25 to 30 years of service who are told they have to leave and they're like deer caught in the headlights."

Calgary tax lawyer Roy Berg agrees that as a profession, lawyers are probably more focused on their work than saving for the future. "Lawyers are in a tough spot because it's really up to us, as people who don't typically have pensions or stock options and forced retirement savings, to plan for retirement. A lot of times, as retirement planners we make better lawyers," says Berg, a partner at Moodys Gartner Tax Law LLP. "Every practising lawyer knows dozens of guys who are the senior lawyer with kids in private schools, they have paid for university educations for their kids and take nice trips and really can't afford to retire because they've consumed all their capital as they've gone along and have not properly planned."

Moodys has a group RRSP for its lawyers, a rarity in today's law firms. Many firms feel it's too paternalistic to impose any kind of forced savings on their lawyers. But for both retirement and tax reasons, Berg says it can be hugely beneficial. "Lawyers often get into trouble because as partners there is no source withholdings. So at the end of the year, you owe a whack of money," he says.

While it doesn't have a pension plan, partners at Lerners LLP continue to receive some income during their transition into retirement, based on files they brought in while at the firm. "I think most firms say it's the lawyer's responsibility and not only should the partnership not want to interfere in your personal life but we don't have any duty, obligation, or responsibility to do so," says partner and executive committee member Lisa Munro. "Many people feel their firms already control too much of their lives."

Many firms have a fixed retirement age at which time they get their capital investment back, so for some, like WeirFoulds LLP, that age is 70 but is in no way a hard stop. At age 70 the firm will often "reset" the relationship for those who want to continue working. "It's that age for a reason," says Lisa Borsook, executive partner at the Toronto firm. "Half of the lawyers here are litigators and in our view litigation lawyers have a longer runway. I have litigators reaching their prime at 65. I'd be insane to dump them overboard."

Law firms are also no longer the stable homes of partners who would stay with the same firm their entire career. Opportunity, feeling more valued, or a sense of increased security elsewhere lead lawyers to move around more — especially if they feel they are getting pushed out or into roles with lower compensation. With fewer big deals, an emphasis on mediation to avoid litigation whenever possible, and pressure from corporate clients to lower fees, law firms are feeling pinched and having to re-evaluate compensation plans for some lawyers. Partners are being pressured to bill more and older partners with big books of business want to stay longer.

MacKillop says firms often have a 10-year payout for partners, of say $75,000, which is based on how many years the lawyer has been an equity partner multiplied by their best year of income.

Often a judgeship can be an attractive second act for many lawyers in their 50s and 60s who are unhappy in their practice but have dreams of a solid pension plan dancing in their head.

Depending on your income level as a partner, however, your earnings could drop precipitously when joining the judiciary. In 2010-11, puisne superior court judges made about $271,400, according to the 2011 Judicial Compensation and Benefits Commission. A lawyer in a small town might see a salary increase by becoming a judge and realize the benefit of the pension, but in high-rent districts like Toronto and Vancouver it may not be quite as valuable a move — financially speaking.

Typically, for partners in large law firms their retirement has been based on selling their partnership interest, which the law firms would be obligated to do, but the payments come out of current billings. “So if now we have lots of mobility amongst junior and mid-tier and senior ranks, all it takes is a bunch of them to leave and the firm doesn’t have the capital to pay out. That’s the unfunded deferred compensation plan. I know legions of older partners in their 70s and if they retire they will expect the firm to buy their partnership interest back but the young guys might decide to go form their own firm instead,” says Berg. “That’s happened with scores of firms in the U.S.”

For the smaller firms in which 90 per cent of Canadian lawyers practise, there is a propensity to accumulate capital within their own private corporation, which is generally good planning, but they often ignore RRSPs as an effective additional tool. “They have one mindset — it works [the private corporation], it’s easy and is effective, but they ignore the RRSP and when they retire then they have all their eggs in the one basket,” says Berg. “The risk of having it all in one pot — especially the professional corporation, you don’t know how the tax law is going to change with respect to that. If all your capital is in your professional corporation and you decide to live outside Canada in retirement, you’re going to have to recognize the gain on your PC stock, which can be very substantial.”

In practically all private-practice environments, it’s largely up to the individual to fend for themselves or enlist a financial adviser to help map out a solid financial future. But with investment performance being mediocre over the last few years, it makes the challenge even greater. “When some people start to realize that retirement is looming it’s almost scary for them — maybe because they’ve had a divorce or they are no longer a

partner at a firm or are just at an age they should start looking at it," says Virginia Engel, a partner at Peacock Linder Halt & Mack LLP and chairwoman of the CBA Financial Services Corp. board. "The realization you need to figure out where you want to be in retirement can be very scary. Then combine that with how much money do I need to live on and what am I going to do when I don't go to work, or do I want to work part-time or do something else full-time?"

Scotiabank senior wealth adviser Andrew Pyle says, like doctors and dentists, lawyers share similar traits in that they are highly focused on what they specialize in, which means they tend to not be very focused on their own personal issues, such as finance. "It's common to find professionals who focus so much on their practice and neglect to look at financial management," says Pyle. "If we start layering in on top of that the need to do comprehensive cash flow and retirement planning, and estate planning, they just do not have the time to spend on those things."

## Making a plan

Even if virtually no retirement planning has taken place, it's important to take stock of where you are right now. What is the realistic timeframe between now and when you think you will retire? Consider a couple of timeframes, and even consider whether you might want to work part-time and what that income level might be.

Since few lawyers look at a hard stop date where all work will cease, Pyle suggests part-time practice or other kinds of work is a good way to approach the plan. He says once a timeline is in place, take stock of what is saved and where there is capacity for additional contributions to RRSP plans and other tools. "They need to really do a bottom-up analysis of their cash situation and project it forward. As opposed to just throwing out numbers — if you don't have $1 million in X number of years, too bad. You have to approach it from the ground up and be realistic."

For lawyers who have their own corporation they have some powerful tools that will afford them things average Canadians cannot do. "Regular Canadians who don't have a corporation can't hold their life insurance strategies in the corporation, which is a very tax efficient thing to do," Pyle notes as an example.

## Projecting cash flow and creating multiple pots of capital

"They have to get hold of their cash flow and a hold of what those cash-flow projections look like and make sure that they are not only tax efficient now, but tax in retirement," says Pyle.

Projecting where work is going to come from and what revenue it will bring may be tricky, but practitioners should at least attempt to do the exercise. It may be surprising to find how much a solid amount of regular work comes in and can be projected out even up to five years.

The next step is to create "multiple pots of capital" so that when retirement does happen you aren't drawing from one source. "The worst thing in the world is ending up in

retirement and having limited choices in terms of how you fund that — an RRSP becomes a RIF and that's all there is and now has a big tax issue," says Pyle.

Lawyers can also investigate the use of an individual pension plan if they have a corporation. "An IPP is a very effective tool that a lot of professionals use in Canada because the size or the growth of wealth we can get from an IPP is greater than an RRSP. And it's tax efficient, funded from within the corporation."

And if a spouse is involved in the practice — for a lot of lawyers spouses are often involved in some way, which is great for income splitting — the spouse too could have an individual pension plan. "IPPs have been around a long time but we find a lot of individuals are just not up to speed on them and some of the accounting advice is not up to speed. For an incorporated lawyer it's a very effective tool."

There is also the need to re-evaluate life insurance coverage.

"From a tax point of view, when you do a plan for individuals and show them the tax bills that will occur at death, their eyes fall out of their head because they never thought of their RSP becoming income when they die, or the accumulated corporate assets getting taxed. It really is a revelation for a lot of professionals and that's when you need insurance," says Pyle. "The insurance policy covers taxes at death and provides a more tax efficient structure for the corporation because again, assuming a lawyer is successful and is pulling a salary to meet their day-to-day needs before retirement, they probably are building up a surplus within the corporation and investing the surplus. Because of the tax rules the investment earnings on those assets are taxed at the highest marginal tax rate — so investments in a corporate structure are not tax efficient thanks to the Tax Act. However by incorporating an insurance strategy within the corporation, we can siphon funds into that policy, which grows tax free," says Pyle. "It's like creating a large tax-free savings account — we can educate a lawyer as to how to use a corporation to create a TFSA of $100,000 a year depending on the surplus — it's a very effective tool for wealth planning and tax planning."

Goldhaber of CBAF recommends target date funds that become more conservative over time are a great way for individuals to invest their money without having to give it a lot of thought each month. "That's huge no matter how sophisticated you are. We're happy to have such a product and we continue to steer lawyers towards it so they don't have to worry about investments — the mental energy should be on socking away as much as possible. You put away as much as possible and this investment engine will take care of the other side of it," he says.

CBAF's investment line-up includes retirement date funds — ready-made portfolios geared to a lawyer's date of retirement. Each portfolio is allocated among a number of different segregated funds based on a split between fixed income and equity. CBAF's program also shows lawyers their personalized rates of return so they can determine if they are meeting their investment goals.

"Monthly savings programs sound boring and dull but there's magic in it because savings take place automatically and over time but it takes that money out of the household

budget and enforces a discipline. They are tools that don't get the respect they deserve," says Goldhaber.

As for Keith, he is bullish on the future — he ran his fourth Ironman last June in Austria — and says he loves his work at Faskens and plans to keep working as long as he can — mostly because he loves what he does. While he has worked most of his career as a labour and employment lawyer in the health and safety practice, a few years ago he branched out into white-collar crime, investigations and compliance. "If you have good health and a vibrant practice, you're probably never going to be obsolete until you're beyond the point of which you should be advising clients. I could probably work as long as I want because I think clients see I do good work and I'm capable. I don't lack for work and I like the interesting, challenging cases that I have," he says.

"Even a small mid-course correction can refresh your interest in the profession as opposed to just seeing it as a daily grind. I think you need to take some responsibility for re-thinking and re-looking at the profession and firm you're at and what you're doing and listen to your clients," he says.

**Make a plan**

The Canadian Bar Association Financial Services Corp. offers a number of services to help lawyers plan for retirement. They include investment and savings products designed for and available exclusively to lawyers, their staff, and their families, RRSPs, TFSAs, individual banking services, and group RRSP plans for law firms. It offers licensed financial advisers available across the country to meet and help lawyers and their spouses develop and implement individual retirement goals, including regular monitoring.

CBAF's investment line-up itself includes Retirement Date Funds — ready-made portfolios geared to a lawyer's date of retirement. Each portfolio is allocated among a number of different segregated funds based on a split between fixed income and equity geared to the date of one's retirement. The allocation is adjusted automatically over time to become more conservative as the lawyer approaches retirement. In addition, CBAF's program also shows lawyers their personalized rates of return so they can determine if they are meeting their investment goals.

**There are also Internet-based tools available from CBAF, including the following:**

**1)** Steps program: a tool that helps lawyers to determine which set of variables are applicable to them (including retirement age, level of regular savings, future savings/inheritance, and investment style). Unlike other retirement projection programs, Steps does not require the lawyer to input the exact dollar sum needed for retirement (unless they want to), rather, one simply chooses one of the lifestyles depicted in the program and Steps then "costs" that retirement, inflation adjusted. Steps also help lawyers determine their appetite for risk based on a series of behavioural questions and then recommends an appropriate portfolio mix. Also, the lawyer's progress towards his or her retirement goal is displayed on the first page of every investment statement so it can easily be determined whether one is on track and if not, what remedial actions should be undertaken.

**2)** Retirement Income Illustrator: this provides a detailed schedule showing legislated and variable withdrawals from a registered or defined contribution pension so the lawyer can determine how long their savings will last under different rates of return and withdrawal scenarios; and

**3)** Learning centre: an array of education tools, such as a "pay yourself first" calculator showing the benefit of putting money aside on a regular basis; a Retirement IQ Quiz; learning modules (some in video format); games and quizzes; many different investment calculators; and a new "Ride To 65" game that gives lawyers the opportunity to explore and learn smart money-management tips in an online virtual world.

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# The Going Rate: 2015 Canadian Lawyer Legal Fees Survey

**By Michael McKiernan, Canadian Lawyer, June 1st 2015**

After years of steady decline, Canadian litigation fees have finally returned to the heights of the pre-global-recession era, but Canadian lawyers aren't happy about it.

According to the results of Canadian Lawyer's 2015 Legal Fees Survey, the national average estimated cost of a two-day trial crossed the $30,000 threshold for the first time, leaping 43 per cent to $31,330 this year from $21,953 in 2014.

The previous peak for a two-day trial came in 2009, when responses averaged around $29,000, but then dropped every year until 2013, when the average fee hit $18,000. The fall was arrested in 2014 with a 19-per-cent jump, but that was dwarfed by the 2015 hike. At $56,439, the national average cost of a five-day trial was up 30 per cent over 2014, while the cost of a seven-day trial was also up around 40 per cent at $81,958.

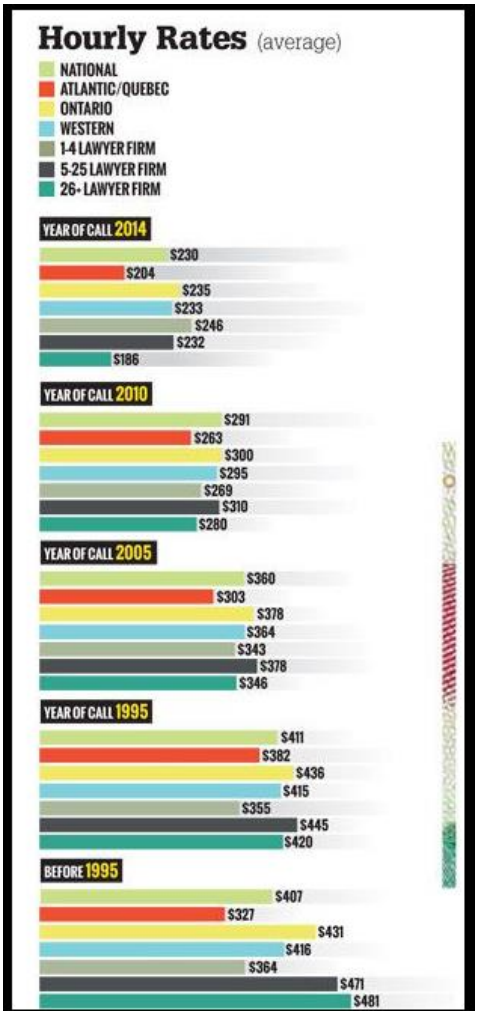
But that doesn't mean the boom times are back, according to some of our respondents. One Ontario sole practitioner lamented the level of litigation fees, calling them "a shame. . . .
I think they are high enough to keep many issues away from resolution and legal advice." In Vancouver, another smaller firm lawyer claimed the price of litigation is costing them business: "It prevents most of my clients from enforcing commercial agreements," they wrote.

However, in Alberta, a lawyer in a mid-size firm said the profession gets a rough deal from the public when it comes to fees: "It's very fashionable these days for people to talk about them being too high, especially judges who make north of $300,000. . . . I wish people knew what they actually paid their doctor or banker."

Hourly rates have also clawed their way back to pre-recession levels, with 10-year calls commanding an average rate of $360 per hour, up 12 per cent over 2014, and just short of the 2009 peak, when they billed an average of $365 per hour across the nation. First-year calls are charged at an average rate of $230, a six-per-cent rise over last year, while at the other end of the experience scale, 20-year calls bring in $411, five per cent more than 2014.

Based on feedback, we've once again expanded the survey, to assess the going rate for 45 different matters across nine practice areas: civil litigation, corporate-commercial, criminal, family, immigration, intellectual property, real estate, wills and estates, and new for this year, labour and employment.

Results are again divided by region, with 50 per cent of our 277 respondents reporting an office in Ontario, 47 per cent with an office in Western Canada (British Columbia, Alberta, Saskatchewan, Manitoba, and the North), and 10 per cent reporting offices in Quebec or Atlantic Canada. Lawyers from a wide variety of firm sizes took part in the survey, with the bulk, or 65 per cent, in firms of 1 to 4 lawyers. A further 22 per cent came from law firms with between 5 and 25 lawyers, and another 13 per cent from firms with more than 25 lawyers.




Fee estimates for individual matters increased in most categories for 2015 over the 2014 responses, with immigration law another area seeing notable rises. Practitioners across the country cited new rules and increased complexity as the reason for fee hikes in a year that saw the arrival of the revolutionary new Express Entry system for permanent residence. Average fees for all four immigration matters surveyed rose, by between seven and 31 per cent compared with 2014 levels.

Respondents were once again split down the middle on the issue of further price rises, with just under 50 per cent opting for a freeze in the next year, and 48 per cent planning to increase fees. Just two per cent are aiming for a fee decrease. Things were different in Alberta, where the plunging price of oil has hit the economy, and respondents said lawyers are feeling the knock-on effects. In that province, about six in every 10 respondents opted for a no-change approach to what they're charging clients.

The most commonly cited reasons for price rises included inflation and surging overhead costs, as well as the increasing complexity of the legal work

lawyers are taking on. In Ontario, one sole practitioner said their price rise was a tactic to "weed out the chaff" from a busy practice, while an honest Alberta lawyer from a mid-sized firm said they simply "want to make more money."

For those cutting and freezing rates, competition and client demands were the driving factors: "Economic conditions are so tight that people generally aren't willing to pay more," wrote one small-firm lawyer from Ontario.

For lawyers with practices rooted in real estate or wills and estates, market forces were particularly influential. A lawyer with a small Alberta firm summed up the dilemma: "I need to do wills as a service, but I wish I could charge more," they wrote. "Real estate purchase files have razor-thin margins. Lawyers need to stop the drive to the bottom in an attempt to gain market share; it is hurting the entire industry," wrote another from a small Ontario city. Others are cutting their losses: "Although much of the work that we do is in the area of real estate, that work is labour intensive and requires well trained and highly paid staff. We are having to consider phasing out that work completely, over time," wrote one Ontario respondent.

Read on to see how your fees match up with the competition, and discover the going rate in your area of practice.