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ASSOCIATION OF JUSTICE COUNSEL  
ASSOCIATION DES JURISTES DE JUSTICE

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*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*



## **Government putting 'cart before the horse' in laying out PS sick leave, disability strategy**

Kathryn May, **OTTAWA CITIZEN**, October 14, 2013

OTTAWA — A federal contract for a team of health benefits experts puts down a clear marker on how the Conservative government wants to manage sick leave and disability in the public service as it gears up for a tough round of bargaining with its unions.

The experts are being recruited to do research and costing as well as help plan, design, buy and introduce new short- and long-term disability insurance plans to replace the existing sick leave regime — and one of their many tasks is to help get unions on side.

For the unions, it's a sign of what's to come in negotiations. Ron Cochrane, a co-chair of the joint union-management National Joint Council, said the government is putting "the cart before the horse" with a request for proposal (RFP) for experts that lays out what the government is planning before it even consults with unions.

"What is most disturbing to the unions is the fact that this government continues to make decisions on employees' terms and conditions of employment as if these decisions were a fait accompli and suggesting all there is left to discuss with unions are the implementation aspects of those decisions," said Cochrane.

"The unions are not willing to play this game. We want a full discussion on the reasons behind the government's decisions including the business case and cost savings, and we

want a full discussion on what is wrong with the current structure before we entertain the employer's proposals for change."

Treasury Board, however, said the contract hasn't started yet but unions have been invited to participate and many have already been attending working group sessions. "This is a parallel exercise and we will continue actively consulting with bargaining agents throughout the process," the department said in an email.

The 17 federal unions have long suspected that the government already knows what it is going to do. They expect the experts will help flesh out that plan and that it will be presented to them as a take-it-or-leave offer with few details, such as the number of sick days employees will be entitled to, left to hammer out.

As a result, the unions are going into the 2014 round of bargaining with a rare show of unity. They have met to develop a common bargaining strategy and will speak with a single voice rather than risk the acrimony that erupted in the last round of bargaining when the government successfully demanded voluntary severance pay as a concession.

Cochrane said the unions aren't expected to table proposals on sick leave "but they will be prepared when the government tables proposals on this subject."

The largest union, the Public Service Alliance of Canada, has already drawn a line in the sand and said it won't be trading away sick leave.

Cochrane said the unions suspect the overhaul is about getting the \$5.2-billion liability for accumulated sick leave off the books to help reduce the deficit before the election. Treasury Board officials say that amount isn't officially on the books. They said the liability is much less than \$5.2 billion because not all public servants will use their banked leave and whatever is left can't be cashed out.

The move is part of the sick leave and disability "transformation" project led by Treasury Board.

The original business plan put together by the team that laid the groundwork for the overhaul suggested a new plan could be phased in between 2012-13 and up and running by 2015-16.

Treasury Board officials say the team developing the plan is working toward implementing a new disability management system over the next three to four years. The RFP says the experts will be working until 2018, which Treasury Board said was built into the contract as a cushion should additional work be needed. Insiders, however, say it is already behind schedule.

The timing could make a big difference for contract negotiations. It's unlikely that unions will give up accumulated sick leave for a three-year contract that will expire before the project is even in place — especially with an election in 2015 that could bring in another government.

The government could always use legislation to impose a new system, but documents obtained by the Citizen show disability experts have warned that that disability management works best when unions are on board. They say unions are legally obliged to represent their members so consultation and collaboration with them on the design and implementation is considered key.

Treasury Board created a team — known as the disability management initiative — in 2009 to get a handle on rising absenteeism and the growing number of disability claims, particularly for depression and anxiety. The team recommended a system that put more emphasis on wellness and prevention and put together a business plan with options on how to overhaul the program.

The unions were involved in those discussions and raised concerns about the existing system's weaknesses when it comes to getting people back to work. Similarly, the unions have been invited to join a working group that is examining changes.

But Cochrane said the government is taking a liberty when it says these discussions mean unions are on board for a new short-term disability plan. Some have sent representatives to the working group but others worry their presence will be interpreted as support for ditching the existing regime.

The RFP documents say the government wants a system that is fair to all employees, comparable to the private sector, saves money, improves wellness and increases productivity.

Clement has already indicated the broad strokes of that plan would get rid of accumulated sick leave, reduce the 15 days public servants get every year, introduce a short-term disability plan and re-tender long-term disability plans that haven't been updated in decades.

Four separate disability plans cover about 352,500 employees, including one managed by Sun Life Financial that covers 240,400 unionized employees. Many say such a large procurement could be a game-changer for the industry that hasn't had a shot at such a big contract since it was last tendered more than 40 years ago.

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## Conservatives look to fill new session of Parliament with 'tough-on-crime' agenda

Tobi Cohen, **Postmedia**, October 10, 2013

OTTAWA — If you thought the federal Conservatives had completed their “tough-on-crime” agenda by now, think again.

Justice policy plays to the party’s base of supporters, is hard for the opposition to attack, and ultimately tugs on the heartstrings of all Canadians who want to see victims helped and crimes prevented or punished.

What can we expect as Parliament resumes?

### **A Victims Bill of Rights**

The Harper government has vowed to make the justice system more sensitive to the needs of crime victims. This bill marks the culmination of those efforts.

Victims of Crime Ombudsman Sue O’Sullivan wants a bill that gives victims the right to review a decision not to prosecute; the right to a recent photo of an offender at the time of his or her release; and the right for victims to have a say in plea-bargain agreements.

Critics are concerned about court costs and jurisdictional issues. University of Ottawa law Prof. Carissima Mathen says victims have “legitimate expectations” to be informed, but the justice system is supposed to be “impartial” and “giving them more influence in criminal trials” is “not the way to go.”

### **Tougher Penalties for Child Predators Act**

First announced in August, the bill will include mandatory minimum and maximum sentences and those convicted on multiple counts will be required to serve their sentences consecutively.

This bill seeks to combat sex tourism by requiring convicted sex offenders to inform authorities of international travel. It will also create a national, publicly accessible, online database of high-risk child sex offenders, to replace a patchwork of existing databases.

Critics have raised concerns about mandatory minimums, saying they take discretion away from judges and contribute to prison overcrowding. Some say the database could lead to vigilantism: ordinary citizens taking the law into their own hands to punish perpetrators.



*Justice Minister Peter MacKay (Adrian Wyld, The Canadian Press)*

### **Cyberbullying and lawful access**

The suicide of cyberbullied Dartmouth teenager Rehtaeh Parsons hit close to home for Nova Scotia-based Justice Minister Peter MacKay, who has promised to introduce “holistic” legislation to combat the problem this fall.

Details have not been released but a July report called for a new Criminal Code offence that would make it illegal to knowingly distribute intimate photos of a person without consent.

It recommends other Criminal Code offences be modernized to include language that takes into account the Internet and mobile phone age.

Police also want the power to compel Internet service providers to preserve information such as emails and text messages while law enforcement obtains a warrant.

### **Vehicular manslaughter**

MacKay said he wants to change the Criminal Code offence for impaired driving causing death to “vehicular manslaughter” to better reflect society’s “abhorrence” of impaired driving. The changes would also include provisions to address drug impairment.

### **What’s likely to make a comeback?**

The Not Criminally Responsible Reform Act and Tackling Contraband Tobacco Act died on the order paper when Parliament prorogued. Both remain government priorities and are likely to be reintroduced where they left off.

The former seeks to keep certain mentally ill killers off the streets for longer by creating a “high risk” designation that would bar them from obtaining a discharge and limit their ability to leave hospital if they’ve been institutionalized. Critics call it a knee-jerk reaction to sensational cases, such as that of Greyhound bus beheader Vince Li, who was mentally ill.

The tobacco bill would create a new RCMP task force and make selling, distributing and transporting contraband cigarettes a Criminal Code offence. It also proposes mandatory minimum sentences for repeat offenders.

It does not address jurisdiction issues related to aboriginal reserves, where contraband tobacco businesses thrive, and First Nations leaders have raised concerns native youth will be overrepresented among those charged and that jail time will only make them hardened criminals.

### **What other issues may prompt federal action?**

Mental Health and the challenge for corrections: Between yet another damning report by Correctional Investigator Howard Sapers and the ongoing inquest into the prison suicide of Ashley Smith, the federal government will be under pressure to do something about inmates with severe mental-health issues.

Sapers' key recommendation is to transfer difficult inmates to provincial health care facilities that are better equipped to deal with behaviour such as chronic head banging, cutting and ligature use.

### **What discussions are ongoing and could become policy?**

**Fines for marijuana possession:** The Canadian Association of Chiefs of Police (CACP) wants a new tool: the ability to fine people caught with 30 grams of pot or less. MacKay was initially cool to the idea but Harper said the government is "certainly looking at their proposal very carefully."

**DNA, the modern fingerprint:** CACP president Jim Chu argues DNA should be "collected upon charge, not upon conviction" just as fingerprints are now. That would quickly exonerate the innocent, he says, and help link serial crimes together. At the very least, he wants break-and-enter added to the list of offences for which DNA samples are mandatory upon conviction.

MacKay accepts the fingerprint argument, but recognizes privacy concerns surrounding the destruction of samples for those deemed not guilty. "We're simply examining it at this point," he said. "There's no plans afoot to introduce legislation."

**The extradition process:** Last month MacKay announced an internal review of federal involvement in the case of Ernest Fenwick MacIntosh. The Nova Scotia businessman had 17 convictions for crimes involving children overturned by the province's appeal's court due to delays in getting him to trial, in large part because it took more than a decade to extradite him from India. MacKay has said Canada needs to "reform and modernize how we extradite people." This could be a first step.

**Economics of policing:** Ex-public safety minister Vic Toews kicked off a national discussion to find ways to rein in the high cost of policing and court administration. The Canadian Police Association is organizing another conference in Toronto. Stakeholders, however, say legislation is likely far off in the distance.

## What do stakeholders want that's not necessarily on the agenda?

- Canadian Police Association's Tom Stamatakis is concerned about a cop killer who was granted an escorted absence from prison by a warden despite a negative parole board decision. When it first came to light, Toews expressed outrage and there was talk of a private member's bill, or possibly a government bill, to address the issue. So far, nothing's come of it.

- John Howard Society executive director Catherine Latimer said the court and corrections system is "overloaded" and prison overcrowding is a huge problem, particularly in remand centres where accused are locked up before trial. She was heartened to hear MacKay talk about reviewing pre-trial detention and bail provisions and hopes the throne speech will affirm that commitment.

She'd also like the government to unveil a new approach to the "war on drugs" that focuses on alternatives to incarceration for those with addiction and mental-health problems.

- Eric Gottardi of the Canadian Bar Association said he'd like the federal government to "reinvest in legal aid." A recent CBA report found the federal government covers 20 to 30 per cent of the cost. It used to be a 50-50 venture with the provinces.

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## Discours du trône: Harper courtièra les consommateurs

Joël-Denis Bellavance, **La Presse**, le 15 octobre 2013

(Ottawa) Le gouvernement Harper veut faire de la protection des consommateurs sa priorité, selon le discours du Trône qui sera lu au Sénat mercredi. L'économie et la lutte contre la criminalité ne seront pas loin derrière. Après une pause de 120 jours, les députés retournent cette semaine à la Chambre des communes.

Même si l'économie et la lutte contre la criminalité continueront d'être les deux grands axes prioritaires de sa gestion des affaires de l'État, le gouvernement Harper compte profiter du discours du Trône, qui sera lu au Sénat mercredi, pour faire la cour aux consommateurs de tous genres.

Figure montante des conservateurs à Ottawa, le ministre de l'Industrie, James Moore, a indiqué en fin de semaine que de nouvelles mesures seront annoncées afin de mieux

protéger les droits des passagers aériens, des utilisateurs de téléphone cellulaire et des abonnés au câble.

«On a de nouvelles pistes pour mettre les consommateurs en priorité dans notre système économique afin de mieux protéger leurs intérêts», a déclaré M. Moore à l'émission Les coulisses du pouvoir de Radio-Canada, dimanche.

M. Moore a livré le même message dans des entrevues accordées à CTV et CBC le même jour.

Ainsi, les passagers seraient mieux dédommagés par les compagnies aériennes quand leurs bagages sont égarés ou encore quand ils ne peuvent obtenir leur siège parce que la compagnie a vendu trop de billets.

Ottawa voudrait aussi mettre fin à la pratique des câblodistributeurs qui forcent les abonnés à payer pour une longue liste de chaînes simplement pour obtenir des réseaux comme RDS ou TSN. Les abonnés pourraient donc s'abonner uniquement aux chaînes qu'ils désirent.

Enfin, le gouvernement conservateur souhaiterait mieux encadrer les frais d'itinérance qu'imposent les sociétés de télécommunications sans fil, au pays comme à l'étranger. D'ailleurs, une nouvelle réglementation du Conseil de la radiodiffusion et des télécommunications canadiennes, qui entrera en vigueur en décembre, limitera les frais à 100\$ par mois lorsque les abonnés sont à l'étranger.

Le discours du Trône qui sera présenté demain doit permettre au gouvernement Harper de mettre en évidence de nouvelles priorités, dans le contexte où il entreprend la seconde moitié de son mandat majoritaire. Des élections fédérales sont prévues en octobre 2015.

Mais les partis de l'opposition, le Nouveau Parti démocratique (NPD) en tête, ne sont pas impressionnés par cette soudaine préoccupation des consommateurs de la part du gouvernement conservateur. «Regardons leur bilan en matière de protection des consommateurs. À chaque fois que nous avons proposé quelque chose, ils ont voté contre», a soutenu le chef du NPD, Thomas Mulcair, dans une entrevue accordée à La Presse. Il a rappelé que le NPD avait proposé un projet de loi pour protéger les droits des passagers et un train de mesures pour réduire les frais exigés par les banques, mais que les conservateurs ont refusé de les appuyer.

Après avoir remanié en profondeur son cabinet en juillet, Stephen Harper utilise donc une autre carte à sa disposition pour donner un nouveau souffle à son gouvernement et tenter de faire oublier le scandale des dépenses au Sénat, qui a fait perdre des plumes au Parti conservateur dans les sondages.

Paradoxalement, le discours du Trône sera lu par le gouverneur général David Johnston vers 17h demain, au Sénat, l'institution qui cause de sérieux maux de tête aux conservateurs depuis le début de l'année.



Trois sénateurs nommés par Stephen Harper - Mike Duffy, Pamela Wallin et Patrick Brazeau - font l'objet d'une enquête de la Gendarmerie royale du Canada pour avoir réclamé le remboursement de dépenses injustifiées, tandis que l'ancien chef de cabinet du premier ministre, Nigel Wright, est dans la ligne de mire des policiers pour avoir rédigé un chèque personnel de 90 000\$ au sénateur Duffy pour l'aider à rembourser des allocations de logement qu'il a indûment empochées pendant quatre ans.

Malgré la controverse qui frappe la Chambre haute, des stratèges conservateurs ont fait savoir que le discours du Trône pourrait être muet sur l'avenir de cette institution.

En matière de lutte contre la criminalité, le gouvernement Harper devrait réitérer son intention d'adopter une charte des victimes.

Plusieurs s'attendent aussi à ce que le gouvernement resserre les mesures de sécurité pour le secteur ferroviaire dans la foulée de la tragédie de Lac-Mégantic, qui a coûté la vie à 47 personnes et rasé le centre-ville de cette municipalité du Québec.

Sur le front économique, les conservateurs devraient rappeler leurs intentions de conclure des accords de libre-échange avec certains partenaires, dont l'Union européenne. On devrait aussi rappeler l'objectif d'éliminer le déficit d'ici 2015.

## **STEPHEN HARPER EN CHIFFRES**

### **59**

Le nombre de sénateurs nommés par Stephen Harper, qui avait pourtant promis d'abolir la chambre haute quand il était dans l'opposition. Comble de l'ironie, trois de ses nominations - Mike Duffy, Pamela Wallin, Patrick Brazeau - se retrouvent au coeur du pire scandale à avoir ébranlé le gouvernement conservateur. Ils ont empoché des milliers de dollars en allocations auxquelles ils n'avaient pas droit. L'ex-bras droit du premier ministre, le millionnaire Nigel Wright, a signé un chèque personnel de 90 000 \$ à Duffy pour le sortir du pétrin.

### **14 %**

L'appui au Parti conservateur de Stephen Harper au Québec, selon le dernier sondage CROP-La Presse, réalisé à la fin de septembre. Le leader avait fait des pieds et des mains pour gagner la confiance des Québécois à son arrivée au pouvoir, mais sa députation a fondu de moitié dans la province aux dernières élections. Il n'y a que cinq députés conservateurs au Québec.

### **54**

Député depuis 1993, premier ministre depuis près de huit ans, Stephen Harper est somme toute fort jeune malgré l'ampleur de son parcours. À 54 ans, il est beaucoup plus jeune que ne l'était Jean Chrétien au même stade de son mandat : l'ancien chef libéral avait 67 ans lorsqu'il a célébré son huitième anniversaire au pouvoir. Plusieurs observateurs spéculent sur la possibilité qu'il démissionne avant les prochaines élections. Chose certaine, ce ne sera pas pour cause de vieillesse.

Une élection partielle n'est pas garante du résultat d'une élection générale, mais elle donne une bonne idée de l'humeur de l'électorat. Et elle réserve de mauvaises surprises aux gouvernements en place. Stephen Harper a jusqu'à la mi-décembre pour en déclencher quatre. Le Nouveau Parti démocratique a l'oeil sur les châteaux forts libéraux de Bourassa, à Montréal, et de Toronto-Centre. Les conservateurs tenteront pour leur part de se faire réélire dans Brandon-Souris et Provencher, au Manitoba.

## **150**

Féru d'histoire, Stephen Harper s'active depuis des années à mettre en relief le passé canadien sous un jour plus conservateur. On n'a qu'à penser à la multiplication des portraits de la reine dans les édifices fédéraux ou à la commémoration de la guerre de 1812. Le 150<sup>e</sup> anniversaire du Canada approche à grands pas et on s'attend à ce que le gouvernement conservateur mise sur la « fierté canadienne » à l'approche de cette grande fête.

### **LA LOI ET L'ORDRE TOUJOURS AU PROGRAMME**

L'arrivée d'un nouveau ministre de la Justice n'a pas marqué de changement de ton, et la loi et l'ordre restent des sujets de prédilection pour le gouvernement Harper. Voici trois dossiers dans lesquels il souhaite légiférer au cours des prochains mois.

#### **1. La charte des victimes**

Le ministre MacKay a repris là où son prédécesseur Rob Nicholson avait laissé. Il a mené une tournée des provinces et territoires canadiens cet été afin de discuter du projet de charte des victimes. On ignore quand le document sera présenté et la forme exacte qu'il prendra, mais on s'attend à ce que le gouvernement y accorde une grande importance, étant donné la position de défenseur des droits des victimes qu'il a adoptée depuis son arrivée au pouvoir.

#### **2. La cyberintimidation**

Plusieurs cas d'intimidation sur l'internet ont été rapportés dans les médias au cours des derniers mois, et le ministre MacKay a promis de présenter un projet de loi pour agir sur cette question. Il souhaite utiliser une approche « holistique », qui engloberait diverses pistes de solution, dont la prévention et la punition. La stratégie aura recours à des programmes existants, comme Pensez cybersécurité et le site web aidezmoisvp.ca.

#### **3. Les prédateurs sexuels d'enfants**

Le premier ministre Harper a lui-même annoncé cet été qu'un projet de loi serait déposé à l'automne pour amender le Code criminel et rendre les peines plus sévères à l'égard de ce type de criminels. Les peines de prison pour certaines infractions seraient purgées de manière consécutive, comme c'est le cas aux États-Unis, et la durée de certaines peines minimales serait augmentée.

## QUELQUES CHIFFRES

**15 %**

C'est la proportion approximative des projets de loi adoptés par Ottawa dans le domaine de la loi et de l'ordre depuis l'arrivée au pouvoir des conservateurs, en 2006. À noter que certains d'entre eux, comme le célèbre projet de loi omnibus C-10, comportaient plusieurs volets en un seul projet.

**C-25**

Comme C-10, ce projet de loi a aussi reçu une attention considérable. Il réduisait le poids de la détention avant procès dans le calcul de la peine. Plusieurs craignaient qu'il fasse exploser le nombre de détenus, en particulier dans les prisons provinciales. Selon le Service correctionnel du Canada, l'impact sur la population carcérale fédérale a été moins important que prévu.

**37 200 \$**

C'est le coût que peut atteindre, en moyenne, un recours judiciaire incluant un procès de deux jours, selon un rapport rendu public la semaine dernière. Le problème d'accès à la justice au Canada est de plus en plus évoqué, et le Nouveau Parti démocratique a promis d'en faire l'une de ses priorités lors de la session parlementaire qui s'amorce. Sa porte-parole en matière de Justice, Françoise Boivin, réclame notamment plus de juges à la Cour supérieure et une hausse des transferts en matière d'aide juridique.



## Throne Speech fires up the Tory machine for 2015 election

Terry Pedwell, The Canadian Press, October 14, 2013

The Harper Conservatives will hit the gas pedal this week in the race toward the next election in 2015.

But the opposition parties are vowing to push down hard on the brakes in reminding Canadians about what they call the government's lapse in ethics in the Senate.

In a Throne Speech Wednesday, the Tories will be driving ahead with their jobs and tough-on-crime agendas while steering slightly to the left to pick up passengers on the social and consumer issues track.

Prime Minister Stephen Harper delivers a speech in Richmond, B.C., on Sept. 16, 2013. With Mr. Harper and European Commission President Jose Manuel Barroso now handling free-trade negotiations directly, there is increasing confidence that an agreement could be in place before the end of the year. REUTERS

The speech is expected to focus on bedrock Conservative issues – creating jobs and rebuilding the economy – with particular themes targeted at creating employment opportunities and providing job training for aboriginals in the resource sector.

But several consumer-friendly measures will also be incorporated into the blueprint document, designed to counter proposals expected from the Opposition New Democrats and Liberals.

Those measures are also aimed at turning the attention of voters away from the Senate spending controversy that has seen several Conservative appointees and one Liberal taken to task over their travel and living expenses.

The sales pitch will include measures directed at alleviating consumer irritants, such as a plan to force cable and satellite TV providers to adopt a pick-and-pay price model, in conjunction with the bundled channel payment plans they currently offer.

The Tories also hope voters will appreciate moves to create an airline passenger bill of rights, designed to compensate people who are inconvenienced when air carriers overbook flights.

There will also likely be references to increasing competition in the wireless sector and to capping domestic cellphone roaming fees.

“We think roaming fees have been a long standing concern for not only consumers but for competition within the telecom sector,” Industry Minister James Moore said in an interview with The Canadian Press.

But if the government is serious about helping consumers, it will reduce the price gap between goods sold in Canada and the United States by further lowering tariffs and cutting costs for retailers by placing a cap on credit-card fees charged to business, says the Retail Council of Canada.

“What we’re very much eagerly awaiting is a recognition that addressing each one of those areas will result in benefits to Canadian consumers, and a signal from the government that they’re continuing to explore opportunities to reduce those costs,” said council senior vice president David Wilkes.

However, the credit-card fee issue is not expected to make its way into the Throne Speech, said Moore.

The federal Competition Tribunal struck down a complaint against Visa and Mastercard in July over the processing fees they charge businesses for using their cards, and a government finance committee has been grappling with the issue ever since.

The Conservatives already have a website and Twitter app set up to bring Canadians highlights from the Throne Speech under the banner “Seizing Canada’s Moment – Security and Prosperity in an Uncertain World.”

The speech, opening the delayed second session of Canada’s 41st Parliament, will be read by Governor-General David Johnston in the Senate – the very chamber at the centre of an expense scandal that has dogged the Conservatives since the last session.

And no matter its content, the Opposition is sure to take advantage of the optics.

“I don’t know what you would write down in words that the governor general is meant to relay to Canadians that will take attention away from the harsh realities [of the Senate scandal],” says NDP House Leader Nathan Cullen.

Still, the government is not expected to say much about Senate reform, waiting instead to hear back from the Supreme Court of Canada about a reference that asks whether the red chamber can be reformed, or even abolished.

The Throne Speech will include a handful of new promises to further crack down on crime.

But don’t expect any big new initiatives that would risk spending lots of money or that cannot be completed in time for the election, say insiders.

Public safety and protecting the environment will likely also go hand-in-hand in segments of the speech that touch on the Lac-Mégantic derailment disaster and recent oil pipeline leaks.

But even that will be a balancing act as the Harper Conservatives hope to convince Canadians that getting oil and other commodities to market is essential to creating jobs and economic wealth.

The Tories, says Liberal Leader Justin Trudeau, cannot be trusted to do any of the things they’ll promise in the speech.

“You asked for open and honest government,” Trudeau says in a video message posted on the party’s website.

“Instead, you’re getting secrecy, distrust and scandal.”

Trudeau accuses the Conservatives of giving Canadians “partisan games and gimmicks” rather than real action on jobs and security.

Still, the Conservatives are expected to make further reference to veterans, and the need to better incorporate them into the workforce and match their skills to jobs.

First Nations could also hear a more conciliatory tone on resource development. The Conservatives were told over the summer that their omnibus budget bills, C38 and C45,

which sparked the Idle No More movement, have caused more harm than good, and that they need to signal a change in approach to win people over.

The Tories are expected to signal a renewed commitment to passing legislation on First Nations education in time for fall 2014.

The speech will also likely make some reference to preparations for the 100th anniversary of the start of the First World War, and the 70th anniversary of the D-Day invasion, among other notable historical milestones.

Security may be a little tighter for this throne speech. The last time Gov. Gen. Johnston read from the Harper Conservatives' blueprint for governing, in June, 2011, a Senate page disrupted the speech by holding up a "Stop Harper" sign in the middle of the proceedings.

Brigette DePape of Manitoba was immediately removed from the Senate chamber and fired from her job, but later became an icon for critics of the Conservatives.

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# MACLEAN'S

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## Real wages in federal public service virtually stagnant over last decade: PBO

By Julian Beltrame, *The Canadian Press*, October 9, 2013

OTTAWA — The latest report by the parliamentary budget office appears to put to rest the myth of fat-cat public servants who get far greater compensation than counterparts in the private sector.

The report shows that virtually all the growth in federal public service pay over the last 11 years has merely kept up with inflation and that about half of the \$7.8 billion additional expense in paying for public servants between 2001-02 and 2011-12 was due to additional hiring.

Salaries accounted for about 47 per cent of the increase, the PBO says, but 96 per cent of that merely kept up with inflation — only four per cent could be counted as real income gains and that is over 11 years.

On average, public servants earned just under \$70,000 last year, according to the data in the report.

That is in variance to the \$114,000 estimate the budget office reported last December, but officials said a different methodology was used — the new calculation does not include benefits and does not include salaries for the RCMP and the military.

The report also shows that growth in Ottawa’s labour costs has all but stalled in the last three years as the government brought in cost-cutting measures that restrained salary hikes and cut levels in the core public service.

NDP critics were quick to jump on the findings as evidence that the Harper government unfairly targeted public servants in their austerity measures.

“The Conservatives like to point the finger at workers, unions and everyone but themselves for increasing costs, but this report shows the real story,” said NDP Treasury Board critic Mathieu Ravignat.

“The reality is employees took a pay cut while the Conservatives went on a hiring binge.”

The report was compiled at the request of NDP MP Paul Dewar, who asked the budget office to determine the main forces driving increases in federal labour costs.

Dewar said the report shows that Treasury Board President Tony Clement did not have the facts before proceeding to attack the public service as bloated.

“They are using the public service as whipping boys and as a wedge between those who are having a hard time at the moment and public servants,” he said.

The PBO also appeared to dismiss the myth that costs have been driven by reclassification, involving moving public servants to higher-paying categories even though their duties have remained largely the same. Costs due to classification added less than five per cent of the total increase, the PBO found.

“Cumulatively, changes in classification and real wage growth contributed little to overall labour cost growth,” the report, one of the first by new watchdog Jean-Denis Frechette, concludes.

“Recent reductions in the level of employment and the Expenditure Restraint Act of 2009 have been successful in limiting the growth in labour costs,” it adds.

However, it notes that some labour cost growth is inevitable if public servants are to maintain a constant standard of living.

Over the 11 years surveyed, the federal government spent \$354 billion on compensation for its employees, exclusive of the RCMP and the military.

# This just in: cats not so fat



Robyn Benson, **PSAC President**, October 11, 2013

“Those pampered public employees.” Heard that before? Of course you have: we’ve been listening to that guff so long that it’s almost background noise at this point. And ideology-based organizations like the Fraser Institute and the Canadian Federation of Independent Business, not to mention the current President of the Treasury Board, Tony Clement, have been doing their best to keep that notion alive.

Compared to the private sector, we have been told, public workers abuse sick leave, they get superior wages and benefits, and don’t forget those “gold-plated” pensions. And then there are all these big wage increases that federal public workers keep getting. Unfair!

But one by one, the myths crumble under the weight of facts—for a while, at least, although they keep springing up like stubborn weeds. As it turns out, federal public workers are taking about the same amount of sick leave as their private sector counterparts. Nor has it been proven that public sector workers are more highly compensated than their unionized counterparts in the private sector, as the Fraser Institute claims: as I’ve pointed out before, the detailed job-to-job data required to make its case is generally lacking. But this data is collected in Quebec, and compensation differences there, somewhat surprisingly, run the other way—when public-sector unionized workplaces are compared to private-sector unionized workplaces.

Then there’s the pension issue, which I’ve also written about. Another day, another flawed report from the usual suspects. Yes, public sector pensions are decent and reasonable, especially compared to private-sector workplaces without pension plans, but they’re hardly gold-plated: the average federal public service pension, after a higher-than-average contribution rate, is about \$25,000 per year.

And now, thanks to Jean-Denis Frechette, the new Parliamentary Budget Officer whom many expected would be a bit of a disappointment, the myth of those handsome public-sector wage increases is also put to rest. Responding to a request by Paul Dewar, MP for Ottawa-Centre, Frechette looked into labour costs in the federal Public Service for the past decade. And the numbers indicate that real wages have remained at about the same level for the entire time.

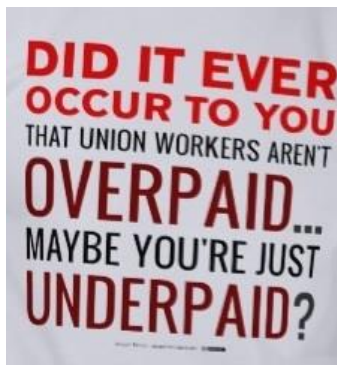
What’s interesting—and rather depressing—about the “they’ve got it better than us” line of argument is not only the consistently flawed comparisons that exaggerate differences by comparing apples to oranges one moment and bananas the next, but the underlying politics of division.



Decent wages and benefits usually have to be negotiated, and where there are unions, they will be, despite all the obstacles in the way. The labour movement is also in the forefront of the fight to improve [pensions for everyone](#) by expanding the CPP/QPP. Three guesses who [opposes it](#)?

Unionized workers do better than non-unionized ones as a rule—of course they do. Otherwise, why do they organize themselves into unions in the first place, and why is the Canadian labour movement [growing](#)? We also know that the public sector is considerably more unionized than the private sector at present. Hence we shouldn't be surprised, or shocked, that many public workers are better compensated than many private-sector workers. But what conclusions should we draw from that?

Supposedly the various levels of government should be cutting down all those tall poppies. But why is that a given? Time to look at things a little differently, I think. Public sector or private sector, I can't really improve on this comment I saw on a T-shirt once:



## **‘Status quo no longer acceptable,’ Tony Clement tells government technology conference**

**Public service needs to challenge accepted ways, Treasury Board president says**

Kathryn May, [Ottawa Citizen](#), October 8, 2013

OTTAWA — The Conservative government's priority is to transform the use of technology in government and bring Canada's public service — and the way it works and delivers services — into the 21st century, says Treasury Board President Tony Clement.

Clement was one of the keynote speakers who on Tuesday opened the annual government technology event known as GTEC with the promise the government will be continuing its drive to standardize, consolidate and transform the way it does business because the “status quo is no longer sustainable or acceptable.”

“Now more than ever, the public service needs to be innovative, and think outside the box to challenge the accepted and expected ways of doing things,” Clement told the conference, which has attracted some 7,000 delegates from the public service and 190 companies to discuss agile government, at the Ottawa Convention Centre.

“We need to be bold. Giving up on an idea because it doesn’t fit within ‘how the government is supposed to do business’ is not a legitimate excuse.”

Clement has been trumpeting the transformation of government since he took the Treasury Board portfolio in 2011. He is also acknowledged as the party’s social media guru and is leading the initiative to open up access to data and information, a move he says will forever change the way citizens interact with their government.

He said government must be managed like an “enterprise” and should work closely with industry for government-wide solutions and insisted that all IT spending must result in improved services to Canadians.

Shared Services Canada is the Conservatives flagship agency that is taking over the running of government IT services from individual departments. Shares Services is introducing a single email system across government that officials hope will save \$50 million a year. It is also planning similar consolidation projects for data centres and networks.

Clement said the email project sets the marker for the kind of “ruthless standardization” the government needs to operate as an enterprise. He argued the government isn’t special or unique and should run and think like any other company does.

Over the past year, he said the government charged ahead with modernizing the “back office” by standardizing and consolidating applications for key support functions across government, particularly human resources, finance and web content. “Back office” typically refers to internal services that all departments use, such as finance, human resources, information technology, communications and procurement.

The next big step is consolidating human resources and financial management systems and the government has been discussing with industry how to replace the patchwork of systems across departments.

But Clement said the transformation of government business isn’t about modernizing processes or updating old systems but rather a “leap frog to the forefront of new technology.”

He said departments are too inward-looking and are too used to focusing on their own needs and problems as opposed to government-wide problems. As the largest employer in

the country, the government has the clout and “collective size to save money, time and resources” to provide Canadians better services.

“We often fall victim to solutions that ‘divide and conquer’ the government. This leads to individual departments paying higher prices for common solutions that should be servicing the government as a whole,” he said.

“My intention is to have government act more like the enterprise it truly is. Identify common issues, develop a road map, and work with the private sector to implement new solutions. “

Although the Conservative government is harshly criticized for its secrecy, Clement claimed Canada has taken an “international leadership role” in opening up its data. Canada is among the G8 member countries that signed an Open Data Charter. In June, the government created its open data portal (data.gc.ca) to allow access to government data in one spot rather than scattered across departments.

Clement is banking that open data will help spur innovation and boost productivity as people mine the data to come up with new apps that will provide services to Canadians.

“Open data is truly changing the way citizens interact with their governments around the world,” said Clement.



## Marc Nadon’s Supreme Court appointment subject of legal challenge



*Justice Marc Nadon delivers his opening remarks as he appears before a parliamentary committee*

*following his nomination to the Supreme Court of Canada Wednesday October 2, 2013 on Parliament Hill in Ottawa. PHOTO: ADRIAN WYLD/THE CANADIAN PRESS*

Tobi Cohen, **Postmedia**, October 8, 2013

**OTTAWA – A Toronto lawyer is contesting the appointment of Supreme Court Justice Marc Nadon, who joined the court earlier this week.**

Rocco Galati and the Constitutional Rights Centre say that according to the Supreme Court Act, Nadon, a former Federal Court and Federal Court of Appeal judge from Quebec, cannot sit on the top bench. Galati argues the act limits Quebec's three appointments to members of the Court of Appeal, superior justices of Quebec and Quebec lawyers with 10 years' standing at the bar "just prior to nomination for appointment."

Nadon, 64, most recently spent 12 years as a Federal Court of Appeal judge and eight years on the Federal Court before that. Prior to becoming a judge, he spent two decades as a lawyer specializing in maritime and transportation law at Fasken Martineau Walker in Montreal.

It's an issue Justice Minister Peter MacKay raised several months ago, but which the government tried to confront prior to his nomination.

The government sought a legal opinion from former Supreme Court Justice Ian Binnie, who concluded a member of the Federal Court with at least 10 years' experience as a member of the Quebec bar could be appointed to the Supreme Court. Retired Supreme Court Justice Louise Charron and constitutional expert Peter Hogg both reviewed and agreed with the opinion.

But in his application for judicial review, Galati argues that wasn't enough. MacKay was "duty bound to bring a reference on the issue" to the Supreme Court rather than simply commission a "private legal opinion," according to the application filed this week in Federal Court.

The application names Prime Minister Stephen Harper, Governor General David Johnston, Chief Justice Beverley McLoughlin, Justice Nadon, and MacKay.

"The appointment of Federal Court . . . judges under Sect. 6 of the Supreme Court Act as 'Quebec' judges of the Supreme Court of Canada, constitutes a change to 'the composition' of the Supreme Court of Canada and would require a constitutional amendment," the application argues, noting the appointment is a "breach" of Canadian "federalism, constitutionalism and rule of law" and raises questions about "a fair and independent judiciary."

Nadon was officially sworn in at a private ceremony Monday and is expected to begin hearing cases on Wednesday. Galati wants his oath to be "declared invalid and quashed."

Nadon has courted some controversy. In the case of Omar Khadr, while his two colleagues upheld a ruling ordering the government to repatriate the since-convicted

terrorist, who was at the time being held in Guantanamo Bay, Cuba, Nadon sided with the government and suggested the Federal Court would be exceeding its jurisdiction if it ordered his repatriation.

Some have also raised concerns about the case of Leon Mugasera, who was ordered deported for his role in the Rwandan genocide only after the Supreme Court overturned Nadon's initial ruling.

Following his appearance last week before an all-party House of Commons committee that heard from him on his credentials, there were questions about his integrity.

Nadon told the committee he was drafted by the Detroit Red Wings when he was 14, but sports bloggers quickly discovered there was no record of that. He clarified to some media outlets that he'd actually been recruited at a lower level and might have eventually been chosen to play for the Red Wings, and that he did not mean to deceive Canadians.



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## Canada's military will shift personnel, jobs in effort to reduce costs

**Almost 5,000 civilian and uniformed employees could find themselves doing a new job — or out of a National Defence job altogether — as the department launches a program to become more efficient**

Bruce Campion-Smith, **Toronto Star** Oct 7 2013

OTTAWA — Almost 5,000 civilian and uniformed employees could find themselves doing a new job — or out of a National Defence job altogether — as the department launches a program to become more efficient.

The five-year initiative to cut waste and reduce overhead could save as much as \$1.2 billion a year by 2018, money that will be redirected toward boosting military readiness and capability, the department says.

“These resources will be redirected towards the continued modernization of the Canadian Armed Forces’ capabilities and other defence priorities,” Defence Minister Rob Nicholson told a media briefing Monday.

“It is about strengthening defence for the future,” he said.

Nicholson said the initiative acts on Prime Minister Stephen Harper's demand that the military find more resources to support the front line.

Nicholson said the goal is not to cut the ranks of the regular force, reservists or civilians employed by the department. But he said there would be a "rebalancing" of the work force to address higher "operational" priorities.

A defence official said later that those who can't be retrained or redeployed to other locations could be out of work.

The potential savings include making greater use of simulators to train helicopter pilots, streamlining information technology and reducing travel costs.

And the department cited the case of the aircraft maintenance personnel who spend only 20 per cent of their time actually working on the aircraft, with the rest taken up by other duties including a "heavy layer of paperwork." Just boosting that to 30 per cent would cause readiness levels to "surge," the department said in a briefing document.

"We think there is an opportunity here to, we believe, increase capability," a defence official told reporters during a technical briefing on the changes.

"There will be more sea days for the navy, more flying hours for the air force and more training opportunities for the army."

The "defence renewal" comes after past reviews, including one by now retired Lt.-Gen. Andrew Leslie, identified big potential for the defence department to become more efficient.

One goal is to cut the ranks of headquarters staff in the national capital region and shuffle them to postings across the country.

A defence official told reporters that the department has already reduced its spending on contractors and consultants — also fingered as a problem in the past — by \$455 million, out of total spending of about \$2.7 billion a year.

The department has been already forced to find a total of \$2.1 billion in savings as part of the Conservatives' deficit reduction strategy.

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# Complaint against justice minister over comments on Justin Trudeau's pot use dismissed

Tobi Cohen, *Postmedia*, October 7, 2013



*Peter MacKay, federal minister of justice and attorney general.  
Photograph by: Chris Young/The Canadian Press , Postmedia News*

OTTAWA — The Nova Scotia Barristers' Society has dismissed a complaint against Attorney General Peter MacKay, whose comments about Justin Trudeau's pot smoking struck a nerve with an outspoken University of Ottawa professor.

Amir Attaran called on the regulator to investigate MacKay for allegedly misleading Canadians when he said "it's currently against the law to smoke dope" in a televised interview.

MacKay made the comments in late August, shortly after the Liberal leader declared his support for legalizing marijuana and admitted to smoking weed, as recently as a few years ago, after he had been elected as an MP.

In his letter to the law society, Attaran said the courts have concluded that it's against the law to possess marijuana, but that smoking it isn't a crime in and of itself.

He called MacKay's comments inappropriate and partisan in nature because he alleged a crime was committed even though Trudeau was never charged.

In a letter to Attaran dated Sept. 30 and obtained by *Postmedia News*, the Nova Scotia Barristers' Society argued MacKay was "entitled to express the view that Mr. Trudeau's actions were illegal" and that there's "no evidence" to suggest he didn't believe what he was saying was true.

The regulator said "no lawyer is held to the standard of perfection" and besides, it's not within the scope of its complaints process to decide if MacKay's opinion was "legally correct."

“Even though a Member of Parliament is a lawyer they are still permitted to make fair public comment without fear of intervention by their governing body,” the letter said.

“Application of the rules of ethics to limit fair comment under such circumstances would have a chilling effect on appropriate public discourse and this would not be in the public interest.”

The regulator concluded MacKay’s statements to the media “do not raise any issue of a lack of integrity” and that Attaran’s allegations, if proven, would not “constitute professional misconduct, conduct unbecoming or professional incompetence.”

In a statement Monday, MacKay said he was “pleased” with the regulator’s decision to dismiss the complaint and uphold his right to participate in a “public debate on the Liberal Leader’s record.

“It is my belief that public discourse, freedom of speech and political debate are the hallmarks of a democracy, and I will continue to adhere to these principles in all my actions,” MacKay said.

Attaran could not immediately be reached for comment.

His complaint, however, touched off a heated legal debate with a fellow University of Ottawa law professor that played out on Twitter and in the press.

Adam Dodek chided his colleague Attaran for his “ill advised baseless and frivolous complaint” and predicted it would indeed be dismissed.

Dodek argued law societies “should not be in the business of policing politicians’ statements” and that the “disturbing trend” by some lawyers to “silence or chill legitimate debate” through the law society complaints process needed to stop.

“I am not surprised in the slightest that the complaint was dismissed,” he said Monday. “It was ill-conceived, baseless and frivolous.”

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## **Harper government cut revenue agency crime unit after report called for strengthening resources**



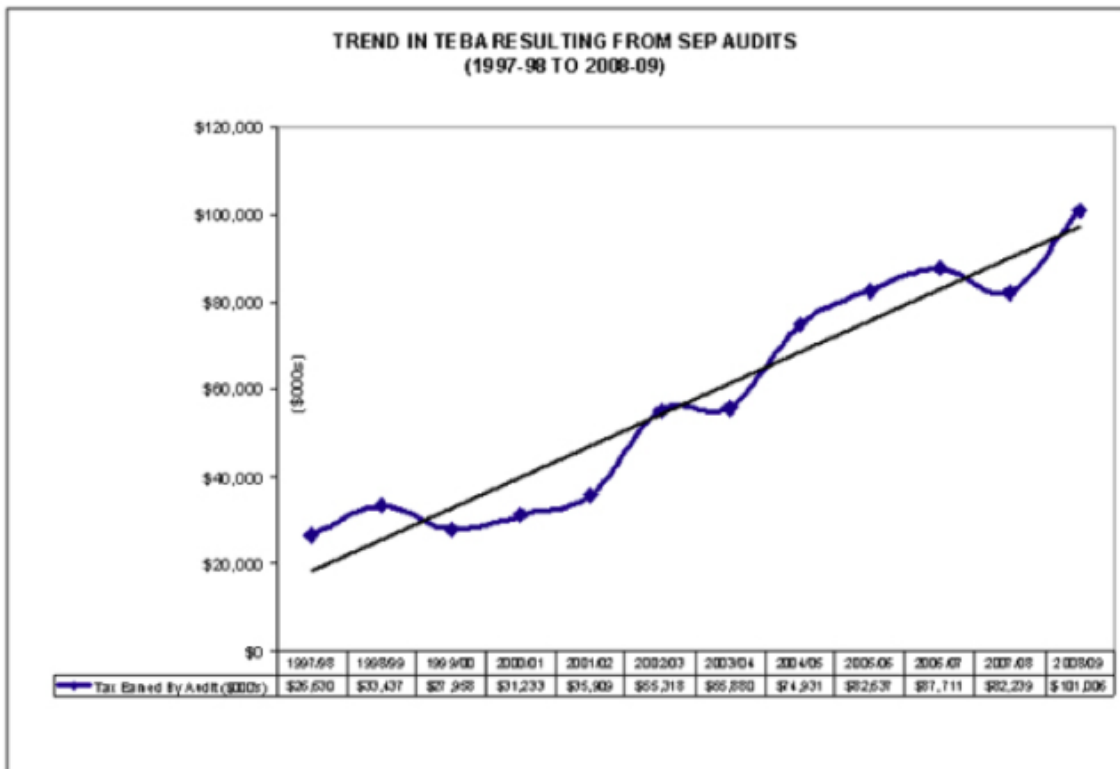
Mike De Souza, **Postmedia**, October 7, 2013

OTTAWA – The federal government eliminated a special team of tax auditors tasked with investigating organized crime and integrated the unit’s role into another branch of the Canada Revenue Agency after an internal review recommended increasing government efforts to pursue criminals.

“The agency should determine the extent to which it wishes to strengthen its capability to pursue both criminal non-compliance and non-compliance in the criminal economy and then develop a comprehensive enforcement strategy,” said the October 2010 report.

The review also revealed that the unit had identified about \$101 million in assessments from 1,176 audits in 2008-2009, up from about \$20 million in assessments from 1997-1998, and representing an eight per cent annual increase over the previous five years.

**Figure 3**



*A government chart shows growth in tax assessments by a special organized crime unit at the Canada Revenue Agency.*

But the report also concluded that a lack of resources for the unit made it difficult to collect unpaid taxes, with 85 per cent of its assessments going uncollected.

A spokesman for the agency, Noel Carisse, said these results, related to court challenges in the cases involving the team, justified the decision to integrate the unit’s resources within an existing audit branch.

The explanation contrasted with remarks made last week by Revenue Minister Kerry-Lynne Findlay who defended a lack of reported results from a new \$8 million fund from the 2012 budget to investigate charities by saying “it isn’t about the numbers” but rather about “who’s complying and who isn’t” complying with Canada’s tax laws.

Outside of the organized crime unit, the report found that the agency’s overall approach to pursuing criminals was disorganized.

“The agency has a decentralized and somewhat disparate approach to enforcement and lacks a clear well articulated and operationally entrenched enforcement strategy,” it said.

The report also said that the organized crime unit worked closely with police forces, including participation in a major November 2006 raid that “dealt a serious blow to traditional organized crime” in Montreal with over 70 arrests and charges in connection with almost 1,000 offences. The unit also had a formal agreement with the RCMP as part of its work.

In terms of its efforts to investigate charities in the wake of new funding from the 2012 federal budget, the agency has only been able to revoke the charitable status of one organization, Physicians for Global Survival, for spending more than 10 per cent of its budget on political activities to advocate for a cause.

But the agency was not able to provide details about how it has spent the funding, offering instead a general explanation that it was used to build a new website, modify some reporting requirements of charities and do some auditing work.

Murray Rankin, the NDP revenue critic, said he was contacted in his Victoria, B.C., riding by one charity that said it was forced to spend about \$250,000 on paperwork in response to the new requirements that he described as a “Conservative witch hunt” against environmental groups.

“That’s outrageous because they’re tying these charities up, I say, deliberately in red tape so as to not let them do their mission,” said Rankin.

The NDP also called on the government to reinstate the organized crime unit and call an independent investigation into allegations of corruption within the agency in the wake of a media report about a \$400,000 cheque that a tax centre sent to a reputed mob leader.

The special team tasked with pursuing organized crime had about 192 full-time equivalent workers and a budget of about \$12.9 million, according to the 2010 report.

Overall, the agency has projected about 3,000 job cuts in a workforce of about 41,000 over the next three years.

The agency spokesman, Carisse, said that it still had a Criminal Investigations Directorate with “broad based powers to investigate and gather evidence to support a prosecution of tax evasion or fraud.”

Last week, Findlay, who was appointed as revenue minister in July, said the decision to eliminate the special enforcement team was made by bureaucrats before she took over as minister and that she believed it was for “efficiency reasons.”