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

Press Clippings for the period of July 14 to 21, 2014
Revue de presse pour la période du 14 au 21 juillet 2014

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

Sick Leave Report / Rapport sur les congés de maladie

Link to the Parliamentary Budget Officer's report on sick leave in 20 federal departments :
http://www.pbo-dpb.gc.ca/files/files/Sick%20Leave%20II%20_EN.pdf

Lien vers le rapport du Directeur parlementaire du budget sur les congés de maladie dans 20 ministères:
http://www.pbo-dpb.gc.ca/files/files/Sick%20Leave%20II%20_FR.pdf

---

OTTAWA CITIZEN

Federal sick leave doesn't cost extra, budget watchdog says

JORDAN PRESS, Ottawa Citizen, July 16, 2014

Public servants who call in sick create almost no extra costs for the federal government, suggesting there is no economic reason to change the current sick-leave system, according to the Parliamentary Budget Officer.

That doesn't mean the sick-leave system is perfect: the PBO says a number of questions must be answered about who takes sick leave in the public service. The PBO also found

there is a dearth of information about whether departments are backfilling for bureaucrats who take sick time off. Many appear not to track those details.

The conclusions are contained in a report released Wednesday, in which Jean-Denis Frechette's office reviewed the cost of sick leave in the 20 largest federal departments. Reforms to the sick-leave system are a key issue in negotiations between the government and 17 federal unions.

Federal workers are allowed 15 days of paid sick leave a year, with unused days banked for use in future years. When they leave the public service, workers aren't paid out for days left banked.

Those workers take, on average, 11.5 days of paid sick leave a year, which accounts for about $871 million in salaries. The number of sick days varies across departments, with Correctional Service Canada staff twice as likely to call in sick as employees of the Department of Foreign Affairs, for example.

When a federal worker calls in sick, many aren't replaced, meaning "there are no incremental costs," the PBO says in its report.

Of the two departments that did backfill for sick workers, and which provided detailed data to review, the costs were negligible. Correctional Service Canada, which tracked replacements, reported extra costs of $7.2 million, or about 2.6 per cent of its overall budget in fiscal year 2011-12, according to the PBO.

"This is really marginal in terms of costs for their total expenditure envelope," Frechette said.

"Other departments, if you're not a front-line employee like Service Canada, like a guard in a prison, technically you don't have to be replaced … Someone else can fill in that time, just not as backfill," he said. "If you don't backfill, you're saving the money."

The government argued that this finding points to other potential problems in the sick-leave system: If someone calls in sick, someone else has to pick up the slack. The PBO report only measured the financial cost of sick leave to determine if there was an effect on budgets and operations; it didn't perform a qualitative study to see if it had any effect on productivity or morale.

"When a manager is faced with a short-term sick-leave situation, she or he makes do with the staff that they have," said Treasury Board President Tony Clement. "That means people are doing two jobs rather than one … These are the things that managers are telling me occurs."

Unions saw the PBO report as a victory, saying its numbers show the current public sector sick-leave system is sustainable.

"Contrary to Treasury Board Minister Tony Clement's repeated assertions, this report confirms that sick leave in the federal public service is not a financial burden on Canadians," said PSAC president Robyn Benson.

"This government's story on federal employee sick leave is as long as Pinocchio's nose," said PIPSC vice-president Shannon Bittman. "Their determination to bring in a massive, privately run short-term disability plan, against evidence that it's needed, is proof that they intend to 'fix' sick leave until it's broken and to introduce a for-profit system that in the end will cost both employees and the public more than the existing one."

Public sector sick leave by the numbers

- 14.6: Average number of paid sick days annually at Correctional Service Canada, the highest among the 20 biggest federal departments
- 7.7: Average paid sick days at Foreign Affairs, the lowest among the 20 biggest federal departments
- 11.5: Average paid sick days across the federal public service
- $871 million: Cost, in regular wages, for time of those who call in sick
- $7.2 million: Estimated cost for Correctional Service Canada to replace workers who called in sick during the 2011-12 fiscal year
- 2.7: What that $7.2 million was as a percentage of CSC's overall budget, the highest among the 20 departments surveyed by the PBO
- 0.2%: Cost as a fraction of the overall budgets in two departments (Employment and Social Development Canada, and Aboriginal Affairs) used for sick leave replacements
- 10% or $500 million: Minimum percentage and cost established as the threshold for the PBO to conclude there was a "material" cost to backfilling for employees who are on sick leave.
- 0: Instances where the PBO found evidence that either of those two conditions was met.

(Source: Parliamentary Budget Officer report, "Fiscal Analysis of sick leave in 20 departments of the core public administration")

How does your department stack up?

The Parliamentary Budget Officer tabulated how many paid sick days are taken annually, on average, by department. Here they are from highest to lowest. Note that the figures for National Defence and the RCMP only capture sick leave by civilian personnel.

- Correctional Service Canada: 14.6
- Employment and Social Development Canada: 13.8
- Canada Border Services Agency: 13.5
- Veterans Affairs: 13.3
- Public Works and Government Services Canada: 11.8
- National Defence: 11.7
- Aboriginal Affairs: 11.4
- Citizenship and Immigration: 11.3
- Royal Canadian Mounted Police: 11.2

- Industry Canada: 10.8
- Statistics Canada: 10.7
- Transport Canada: 10.5
- Justice: 9.9
- Health Canada: 9.8
- Environment Canada: 9.1
- Agriculture and Agri Food: 9
- Fisheries and Oceans: 9
- Natural Resources Canada: 8.8
- Public Health Agency of Canada: 8.7
- Foreign Affairs, Trade and Development: 7.7

(Source: Parliamentary Budget Officer report, "Fiscal Analysis of sick leave in 20 departments of the core public administration")

PBO report finds no 'incremental' costs to federal civil service sick leave

TERRY PEDWELL, THE CANADIAN PRESS, July 15, 2014

OTTAWA - It costs taxpayers almost nothing extra to pay sick leave to federal civil servants, says a new report from the Parliamentary Budget Office.

The findings are ammunition for public-sector unions in their battle with the Treasury Board over proposed changes to government sick-leave policies.

Shortly after its release at least one union was using the report to attack the government's arguments for overhauling the system, although Treasury Board President Tony Clement said it was never his intention to find cost savings through the proposed reforms.

The report shows wide variances in the amount of sick leave taken from one department to another.

But parliamentary budget officer Jean-Denis Frechette says most departments don't have policies in place to backfill for sick leave.

"Since most departments do not call in replacements when an employee takes a sick day, there are no incremental costs," said the report released Wednesday.

Exceptions to that finding include departments where absences have a direct impact on service levels, health and safety.

Correctional Service Canada, for example, is required to maintain minimum staffing levels for the protection of the public, staff and inmates at federal prisons.

But in most cases, the report said, federal employees who call in sick are not replaced, resulting in no additional cost to taxpayers over and above regular public servant salaries.

Collective bargaining is currently underway between Treasury Board and 17 federal unions, with the government pushing for restructuring of benefits to reduce costs.

The governing Conservatives hope to cut the cost of public service pension, disability and sick leave benefits as part of efforts to balance the federal budget by next year.

Clement has said recently that the sick-leave system is unsustainable and that it needs to be revamped.

On Wednesday, however, he said that making the system more fair for all employees is his main objective, rather than cutting costs.

"My goal is not to achieve financial savings, but to put in a place a system that ensures all employees have equal access to a disability plan, allowing them the time needed to get healthy and back to work," the minister said in a statement.

The PBO report does not address the issue of loss of productivity and employee morale but highlights that there is no standard for addressing absenteeism, Clement said.

"This means many positions are not filled during a leave of absence due to illness. This could lead to teammates picking up extra workloads, or work not being completed in a timely manner," he said.

The unions have complained that Clement used inflated figures to justify his proposed reforms, and cited Wednesday's report as proof.

"This government's story on federal employee sick leave is as long as Pinocchio's nose," Shannon Bittman, vice president of the Professional Institute of the Public Service of Canada, said in a statement.

Public servants are allowed 15 days of paid annual sick leave. And, on average, they take 11.5 days off because of illness, says the PBO.

Unlike most private-sector firms, where annual sick leave is granted on a 'use-it-or-lose-it' basis, federal workers can carry over their annual allotment from year to year.

The report found that sick leave can range from a low of 0.16 per cent of total departmental spending to 2.74 per cent on the high end of the scale.

The numbers are based on expenditures in the 2011-12 fiscal year.

The report also found that, in most cases, paid sick leave is proportional to departmental spending on regular wages.

"In other words, the more a department spends on wages, the more it spends on sick leave," the report said.

In February, the office published a report that estimated time lost due to illness in the federal civil service amounted to the equivalent of $871 million in regular wages in the 2011-12 period.

The latest report was compiled after a request from New Democrat MP Paul Dewar and looked at data from 20 departments.

It found that Correctional Service Canada, Human Resources and Skills Development Canada and the Canada Border Services Agency consistently reported the highest average number of paid sick days per employee.

All three departments have minimum staffing level requirements to maintain operations.

In some cases, however, data was either incomplete or departments failed to provide numbers, said the report.

The border agency also noted that it does not track the cost of filling positions left vacant due to employee illness.

The report's findings indicate the Harper Conservatives are misleading Canadians, and have picked a fight with public-sector unions simply to bolster their support base going into a general election next year, said Dewar.

"There is no fiscal impact (from sick time) to the degree that (the Conservatives) were indicating," he said.

"It shows they were misleading Canadians."

CBC news

Civil servant sick leave costs minimal for taxpayers, report says

Most federal departments tend not to backfill staff on sick leave, Parliamentary Budget Office says

CBC News, July 16, 2014

It costs taxpayers almost nothing extra when federal civil servants call in sick, according to a report, as a battle looms between the Treasury Board and public-sector unions over salaries and benefits.

The report from the Parliamentary Budget Office (PBO) released Wednesday shows wide variances in how much sick leave is taken from one department to another.

But parliamentary budget officer Jean-Denis Fréchette says most departments don't have policies to backfill for sick leave.

That means most sick employees are not replaced, resulting in no incremental cost to departments.

The governing Conservatives have been looking to cut the cost of public-service salaries, pensions and sick leave as part of efforts to balance the federal budget by next year.

The new report was requested by NDP MP Paul Dewar after the PBO estimated this February that the fiscal impact of paid sick leave in the federal public service was $871 million in 2011-12.

The report instead found there is "a notable variance among organizations in the use of sick leave," and that the cost of paid sick leave "was not fiscally material and did not represent material costs for departments in the CPA."

But the report also notes that data from some departments were incomplete, and sometimes unavailable.

The Canada Border Services Agency, for example — which was expected to have high sick leave costs because officers need to be backfilled for operational, health and safety reasons — said it does not track data on backfill costs due to sick leave.

The report also found:

- Correctional Service Canada logged the most days of paid sick leave, at 14.6, in 2011-12.
- The Department of Foreign Affairs, Trade and International Development had the lowest number, at 7.7 days.

Federal civil servants' sick leave costs taxpayers almost nothing extra: PBO

The Canadian Press, CTV News, July 16, 2014

OTTAWA -- A new report says it costs taxpayers almost nothing extra to pay sick leave to federal civil servants.

The report from the Parliamentary Budget Office shows wide variances in the amount of sick leave taken from one department to another.

But Parliamentary Budget Officer Jean-Denis Frechette says most departments don't have policies in place to backfill for sick leave.

That means most employees who call in sick are not replaced, resulting in no incremental cost to departments.

The findings come as a battle looms between Treasury Board President Tony Clement and public-sector unions over salaries and benefits.

The governing Conservatives are looking to cut the cost of public service salaries, pensions and sick leave as part of efforts to balance the federal budget by next year.

The PBO report found that sick leave can range from a low of 0.16 per cent of total departmental spending to 2.74 per cent on the other end of the scale.

The numbers are based on expenditures in the 2011-12 fiscal year.

The report also found that, in most cases, paid sick leave is proportional to departmental spending on regular wages.

In February the PBO published a report that estimated time lost due to illness in the federal civil service amounted to the equivalent of $871 million in regular wages in the 2011-12 period.

LeDroit

Congés de maladie dans la fonction publique

Pas de coût supplémentaire significatif

Paul Gaboury, Le Droit, le 16 juillet 2014

Le coût supplémentaire des congés de maladie payés n'a pas été significatif financièrement et n'a pas représenté des sommes importantes pour 20 ministères fédéraux en 2011-2012.

Voilà la principale conclusion du rapport rendu public mercredi par le directeur parlementaire du budget, Jean-Denis Fréchette, sur l'importance relative financière et budgétaire des congés de maladie payés dans 20 ministères fédéraux.

«L'analyse des données laisse croire que, en 2011-2012, le coût supplémentaire des congés de maladie payés n'a pas été significatif financièrement et n'a pas représenté des sommes importantes pour les ministères», conclut le directeur parlementaire du budget, Jean-Denis Fréchette, dans son rapport publié mercredi.

En février 2014, le bureau du DPB avait publié un premier rapport qui avait chiffré à 871 millions $ en 2011-2012 l'incidence financière des congés de maladie payés dans la fonction publique fédérale. Dans ce rapport, il avait indiqué avoir basé son analyse sur un nombre moyen de congés de maladie de 11,52 jours par employé. Toutefois, il avait alors constaté que le nombre variait beaucoup entre les ministères, de 7,7 jours aux Affaires étrangères à 14,6 jours à Service correctionnel. Aussi, les résultats révélaient des écarts importants variant de 0,16 à 2,74% des dépenses ministérielles totales.

Par la suite, c'est encore une fois à la demande du Nouveau parti démocratique que le bureau du DPB s'est penché sur l'importante relative financière et budgétaire des congés de maladie, objet du rapport déposé mercredi.

«Comme la plupart des ministères ne font pas appel à un remplaçant, il n'y a pas de coût supplémentaire. Font exception à cette pratique certains ministères assurant des fonctions opérationnelles pour lesquelles les absences auraient eu un effet direct sur le niveau de service, la santé ou la sécurité», note le DPB.

Pour y voir plus clair, son bureau a donc demandé des données pour trois groupes d'employés pour lesquels il est souvent nécessaire de remplacer les employés en congé de maladie: les agents de la Garde cotière, les agents correctionnels et les agents des services frontaliers.

«Sur les deux ministères qui ont fourni une réponse, aucun n'a signalé de coûts supplémentaires importants par comparaison au budget ou à l'enveloppe salariale du ministère» note le rapport.

Le DPB fait toutefois une mise en garde puisque les données transmises par le Secrétariat du Conseil du trésor sont regroupées et très générales, tandis que celles des ministères affichent des disparités qui empêchent leur rapprochement.

«La qualité et la disponibilité des données limitent la capacité de son bureau de fournir au Parlement une analyse financière des congés de maladie dans la fonction publique. Il recommande donc aux parlementaires de garder ces limites à l'esprit lorsqu'ils tireront des conclusions des résultats de l'analyse des données.

LeDroit

Congés de maladie: un rapport qui renforce la position de l'AFPC

Paul Gaboury, Le Droit, le 16 juillet 2014

Les syndicats et l'opposition officielle estiment que le nouveau rapport du directeur parlementaire du budget vient renforcer leur position déjà connue depuis plusieurs mois contre les changements draconiens que les conservateurs veulent imposer au régime actuel de congés de maladie des fonctionnaires fédéraux.

«J'espère qu'avec ce nouveau rapport, les choses vont être plus claires pour l'employeur et le ministre Tony Clement. Il vient renforcer notre position pour la suite des négociations», a fait valoir Larry Rousseau, vice-président exécutif de l'Alliance de la fonction publique du Canada pour la région de la capitale nationale.

«En fait, il n'y a pas grand-chose que nous ne savions pas dans ce rapport, qui vient confirmer les arguments que nous défendons depuis des mois. Le régime de congés de maladie ne représente pas un coût supplémentaire pour les contribuables. S'il y a des problèmes, nous allons en discuter à la table des négociations pour l'améliorer, pas pour s'en débarrasser», a ajouté le dirigeant syndical.

«En février, le DPB a publié un rapport démontrant que le président du Conseil du Trésor, Tony Clement, avait déformé les faits concernant le volume de congés de maladie pris par les fonctionnaires. Le rapport d'aujourd'hui démontre que M. Clement continue de faire de fausses déclarations concernant les travailleurs de la fonction publique», a fait valoir le député néo-démocrate d'Ottawa-Centre, Paul Dewar.

Le député Dewar a en même temps déploré que le gouvernement tente d'obliger les fonctionnaires à prendre davantage de congés non payés et d'aller travailler même s'ils sont malades.

OTTAWA CITIZEN

Parliamentary budget officer to report on public service sick leave

BY KATHRYN MAY, OTTAWA CITIZEN, JULY 14, 2014

Canada's budget watchdog is wading into the looming showdown over scrapping banked sick leave in the public service, with a new study that questions whether it will save any money.

Parliamentary Budget Officer Jean-Denis Frechette is expected to release a report Wednesday that takes a closer look at the usage and financial implications of sick leave in the government's 20 largest departments – an issue at the heart of collective bargaining now underway between Treasury Board and 17 federal unions.

NDP MP Paul Dewar said he asked the PBO to determine the fiscal implications of the existing sick-leave regime and what it costs departments. He said he expects the study will pour cold water on Treasury Board President Tony Clement's initial suggestions that the system had to be revamped because sick-leave costs are unsustainable.

"What I hope to see is the truth of what this costs departments," said Dewar. "And I am hoping to see facts rather than rhetoric."

Public servants are allowed 15 days of paid annual sick leave, which can be carried over from year to year. Public servants are, on average, off work 11.5 days on paid sick leave, which cost departments about $871 million in salary in fiscal year 2011-2012.

But departments would be on the hook for those salary costs whether public servants were sick or not. Departments typically don't incur extra costs of backfilling for people who are absent by hiring extra workers or paying overtime – with the exception of workers such as prison or border guards, whose jobs must be constantly staffed for safety and security reasons.

Departments are only allowed to incur the extra cost of replacing absent employees if they are on maternity leave, seconded for other duties or on long-term disability. Employees on long-term disability are no longer on payroll. Absences, however, can take their toll in the workplace with lost productivity, project delays or loading more work on to other employees.

Dewar said the PBO study aimed to get a handle on those "incremental costs" of sick leave. The impact on productivity, however, is outside the study's scope. One problem is that departments don't consistently track and record sick-leave usage the same way.

The cost of sick leave is shaping up as a critical issue at the bargaining table. The 17 unions argue any problems with the existing sick-leave scheme can be fixed and that this should be negotiated at the bargaining table. They want the government to show the business case for the short-term disability plan the government favours.

The two sides have already hit an impasse on what should be negotiated.

The biggest unions have filed unfair labour practices complaints against the government, saying it is introducing short-term disability as a fait accompli and leaving only details, such as how many days of sick leave, to be negotiated at the table.

“In terms of collective bargaining, it’s a bit rich for Clement to go so far as to suggest it’s (sick leave) not sustainable so he will bring in something that he has decided is better and that’s short-term-disability,” said Dewar. “He should sit down and discuss that but to make stuff up under the premise of making savings is just not fair.”

If cost isn’t driving the reform, Dewar said the government could be using sick leave as leverage to save money “on the backs of public servants” in other areas. He said the government could be taking a hard line on sick leave with a view of later softening its position in return for bigger cost-saving concessions.

Unions have made saving sick leave a deal-breaker, and all 17 have signed a solidarity pledge promising not to accept clawbacks.

Last week, Clement said it was too early to determine whether short-term disability was a cheaper way to manage illness and injury in the public service because “we are still in the midst of negotiations.” The goal, he said, is to improve productivity.

“The aspiration is to have a more modern system that increases productivity and wellness, so yes, if there’s more productivity and more wellness … then yeah, I think it is going to be better for everyone,” he said.

The unions have long argued that the government wants to get rid of sick leave so it can eliminate the $5.2 billion bank of unused leave and balance the books by the next election. But Clement said banked sick leave is a “contingent liability” and wouldn’t affect the deficit.

Sick-day costs leave taxpayers feeling ill

Column by LORNE GUNTER , Edmonton Sun, July 19, 2014

According to a report released this week by Parliamentary Budget Officer Jean-Denis Frechette, it costs taxpayers almost nothing to cover the generous sick leave federal civil servants are entitled to take.

According to Frechette, "since most departments do not call in replacements when an employee takes a sick day, there are no incremental costs."

Frechette's finding is significant because the federal government is currently locked in a battle with public service unions over proposed cuts to sick-day benefits.

Union leaders were quick to say the report proved no cuts were needed. Robyn Benson, president of the Public Sector Alliance of Canada, insisted "this report confirms that sick leave in the federal public service is not a financial burden on Canadians." The 15 paid sick days federal civil servants are entitled to per year are "both crucial and sustainable."

But here are a couple of alternate explanations not found in Frechette's study.

Maybe what his conclusions show is that there are far too many federal employees.

For years Ottawa's workforce has been vastly overstaffed, so much so that replacements for workers who call in sick are unneeded. The cost of generous sick days are already factored into staffing costs.

Sick days don't cost taxpayers extra because the entire federal civil service is already so bloated that no one notices when one or two cogs take a day off.

Another explanation is that most civil servants are useless. They don't do enough meaningful work that anyone cares when they're absent for a day or six.

This second explanation is bolstered by the fact that Frechette calculated that sick days taken by federal workers cost nearly $1 billion a year. Billion-schmillion.

The very fact that Frechette doesn't see this as an "extra" cost is an indication of the mindset in the public sector, even in the Parliamentary Budget Office (PBO). Even if Ottawa doesn't have to hire replacements for missing workers, the fact those workers are being paid nearly $1 billion a year for work they are not doing is an "extra" cost.

But as Ian Lee, a professor at the Sprott School of Business at Carleton University in Ottawa, points out, the PBO report is seriously flawed. It fails to take into account for "any indirect costs of absenteeism such as delayed completion or reduction in productivity."

According to Lee, who is also a Sun News Network contributor, the standard assumption in the private sector is that employees' unplanned sick days cost between 8% and 9% of payroll.

Given that the federal government spends more than $44 billion a year on civil service compensation – about two-thirds of which ($29 billion) is payroll and the other third is

benefits -- by Lee's formula, that means federal sick days are actually costing taxpayers around $2.3 billion annually.

That's a lot of "extra."

But I like my other explanation better: There are far too many entirely unnecessary civil servants. Way too many federal workers do nothing terribly vital.

For instance, they might oversee "workplace diversity" – i.e. hiring quotas and producing politically correct manuals – in departments that themselves produce little tangible benefit. Redundancy piled on top of more redundancy.

Federal workers are entitled to 15 paid sick days a year. And if they don't use them, they get to bank them.

That means that at the end of their careers, many civil servants can retire a year or more early and still get paid for that year. Some can even cash in their accumulated unused sick days and take a big, fat cheque.

Whether that costs extra or not, it's unwarranted. The feds are right to want to scale that back.

Victim surcharge 'grossly disproportionate', lawyer argues

ANDREW SEYMOUR, Ottawa Citizen, July 15, 2014

Shaun Michael doesn't have a job, likes to drink and lives on $250 a month. He doesn't have a telephone, didn't attend much school and has spent most of his life living in group homes, on the street or in shelters. The Toronto YMCA is his favourite.

Michael is also facing $900 in mandatory victim surcharges, a punishment his lawyer argues is grossly disproportionate and a violation of the Charter rights of the Inuit man whose past is marred by abuse, neglect, alcoholism and drug use.

On Tuesday, the 26-year-old Michael became the first offender in Ottawa to argue that the Conservative government's controversial mandatory surcharge is unconstitutional. The mandatory surcharge came into effect last October as part of the government's Increasing Offenders' Accountability for Victims Act, and is designed to help fund

victim services. The surcharge is tacked on after an offender is sentenced at a rate of $100 or $200 per conviction depending on the severity of the offence, or an amount equal to 30 per cent of any fine levied as part of the sentence.

Michael already has a suspended sentence and two years of probation after receiving credit for 93 days in jail. Michael admitted to kicking a loss prevention officer and police officer after trying to steal a bottle of rye from a downtown LCBO. He also admitted to later trying to pick a fight with a snowplow driver before putting his fist through the window of a homeless shelter. In both instances, he was extremely intoxicated.

Michael's lawyer, Stuart Konyer, argued that the surcharge was out of proportion with the crimes. He said it also amounted to cruel and unusual punishment, and violated Michael's right to life, liberty and security by saddling him with a surcharge he simply won't ever be in a position to repay. The threat of jail if he didn't pay the surcharge, and his continuing inability to ever apply for a pardon, credit or a driver's licence because of the outstanding amount, would also hang over him, Konyer added.

The Crown argued that the surcharge is not a punishment, so it can't be considered cruel and unusual. Even if it is considered a punishment, it shouldn't be considered disproportionate or a violation of Michael's Charter rights.

Prosecutor Dallas Mack argued the surcharge was an "ancillary mandatory provision" akin to a DNA order or driving prohibition, designed by the government with the laudable goal of helping to fund victim services.

Mack argued impecunious offenders only go to jail if they have an ability to pay and flat out refuse, and that offenders can request an extension of time to pay the surcharge if necessary.

"It's not a fine for the sake of punishing an offender, it is a monetary consequence imposed for a different purpose," he said. "The aim is to support victims, and they've chosen a means to do it."

Konyer argued the imposition of the "oppressive" mandatory victim surcharge in Michael's case serves no purpose. If the rationale of the surcharge is to enhance funding for victims, it fails when the offender has no means to pay.

"In the end, it is simply cruel. No benefit is achieved for victims, for society and certainly for Mr. Michael," said Konyer.

Konyer argued that it was the intent of Parliament to make the surcharge a punishment. Konyer quoted then federal Justice Minister Rob Nicholson introducing the legislation by saying it would send the message that criminals must pay for the harm they cause their victims.

"The enactment of this legislation is a considered decision by Parliament to increase the sentence, the punishment, imposed on offenders," argued Konyer.

Ontario Court Justice David Paciocco is expected to deliver his ruling on the constitutionality of the mandatory surcharge on Sept. 15.

Canada's new prostitution laws: Everything you need to know

JOSH WINGROVE, The Globe and Mail, July 15, 2014

Sex work and the rules around it have dominated Parliament Hill chatter this summer. The House of Commons justice committee's rare summer sitting is meant to fast-track the government's Bill C-36, which was tabled in June, six months after the Supreme Court struck down some of Canada's prostitution laws. Dozens of witnesses have spoken about the bill, with some supporting it and others calling for it to be amended or scrapped altogether.

Here's a glance at what the government is proposing, and what critics say about the changes.

1. Going after the buyers

The bill criminalizes the buying of sex – or "obtain[ing] for consideration… the sexual services of a person." The penalties include jail time – up to five years in some cases – and minimum cash fines that go up after a first offence.

2. What's a "sexual service"?

The bill doesn't say, meaning it would likely be up to a court to decide where the line was drawn. A government legal brief, submitted to the committee as it considered the bill, says the courts have found lap-dancing and masturbation in a massage parlour count as a "sexual service" or prostitution, but not stripping or the production of pornography.

3. What about sex workers?

They also face penalties under the bill, though the government says it is largely trying to go after the buyers of sex. Under the bill, it would be illegal for a sex worker to discuss the sale of sex in certain areas – a government amendment Tuesday appears set to reduce what areas would be protected – and it would also be illegal for a person to get a "material benefit" from the sale of sexual services by anyone other than themselves.

Some critics have warned that latter clause could, for instance, prevent sex workers from working together, which some do to improve safety.

4. What about those who work with sex workers?

Anyone who "receives a financial or other material benefit, knowing that it is obtained by or derived directly or indirectly" from the sale of a "sexual service," faces up to 10 years in prison. This excludes those who have "a legitimate living arrangement" with a sex worker, those who receives the benefit "as a result of a legal or moral obligation" of the sex worker, those who sell the sex worker a "service or good" on the same terms to the general public, and those who offer a private service to sex workers but do so for a fee "proportionate" to the service and so long as they do not "counsel or encourage" sex work.

5. Can sex workers advertise their services?

This is a key plank of the bill, which makes it a crime to "knowingly advertise an offer to provide sexual services for consideration," or money. This could potentially include newspapers, such as weekly publications that include personal ads from sex workers, or websites that publish similar ads. Justice Minister Peter MacKay appears to believe the ban could go after such publications. "It affects all forms of advertising, including online. And anything that enables or furthers what we think is an inherently dangerous practice of prostitution will be subject to prosecution, but the courts will determine what fits that definition," he told reporters after speaking to the committee July 7. This has been welcomed by some, including Janine Benedet, an associate professor at the University of British Columbia who supports the bill overall, though she called for some changes. "I didn't actually expect to see this advertising provision in this bill but I would say it's actually a really important step, to say that kind of profiteering needs to stop," she said.

6. Can anyone still advertise the sale of sex?

Yes – sex workers themselves. The bill includes an exemption that says no one will be prosecuted for "an advertisement of their own sexual services," though platforms that actually knowingly run the ads may face prosecution.

7. What else is in the bill?

It expands the Criminal Code's definition of a weapon to including anything "used, designed to be used or intended for use in binding or tying up a person against their will," a change the head of the Canadian Police Association welcomed. The bill also sets mandatory minimum sentences of at least four years in prison for kidnapping cases that involve exploitation, or any similar case where a person's movements are limited – steep new penalties. The bill also gives a judge new powers to order a sex ad seized or deleted – by amending a clause that previously extended those powers in cases of child pornography or voyeurism.

The government has pledged $20-million over five years in new funding to help sex workers get out of the trade. However, Ottawa hasn't said specifically how the money will be spent and various critics, including police chiefs, have warned it's too little.

8. What brought us here?

The Supreme Court struck down Canada's existing laws last December – namely, a ban on keeping or being in a "bawdy house," or brothel; a ban on "living on the avails of prostitution," since largely reworded as the "material benefit" ban; and a ban on communicating in public for the purposes of prostitution. The court generally said the provisions violated the Charter by threatening sex workers' rights to life, liberty and security of the person. That's essential, because critics are warning the new bill does the same thing, and is therefore vulnerable to a Charter challenge. "The new bill does not respect our constitutional right to life, security and liberty," sex worker Émilie Laliberté told the committee.

The group whose challenge led to the December Supreme Court decision has already promised another legal fight.

9. Why is the government doing this?

They're doing it now because the court forced their hand – without a new law, Canada would simply not have any laws on the books against prostitution by December. Some witnesses have called for that, but that's not what government is doing. Conservative MP Stella Ambler, who is on the Justice Committee considering the bill, has flatly called the bill an "anti-prostitution law," and the Justice Minister has said it's the government's aim to limit the sex trade as much as possible.

The opposition parties have opposed the bill. But both the NDP and Liberals have avoided getting into specifics about how they would have responded to the court's ruling.

10. What's the status of the bill?

Once done at the committee, it will return to the House of Commons, which is scheduled to return from its summer break Sept. 15. It has not yet worked its way through the Senate. Canada's current laws, struck down by the Court, officially expire in December, and the government has pledged to pass Bill C-36 by then.

Les conservateurs amendent leur projet de loi sur la prostitution

Hugo de Granpré, La Presse, le 15 juillet 2014

(Ottawa) Les conservateurs ont amendé leur projet de loi sur la prostitution pour limiter aux garderies, cours d'école et terrains de jeux les lieux où les travailleurs du sexe ne peuvent solliciter des clients potentiels.

La version originale du projet de loi C-36 prévoyait une infraction pour la sollicitation « dans un endroit public ou situé à la vue du public s'il est raisonnable de s'attendre à ce que des personnes âgées de moins de 18 ans se trouvent ».

De nombreux témoins au comité parlementaire chargé de l'étude du projet de loi ont dénoncé cette disposition en disant qu'elle criminalisait toujours les prostitués et les travailleurs du sexe. Ils ont demandé de la supprimer

D'autres ont affirmé que cette notion de lieux où des mineurs pourraient raisonnablement se trouver est trop vague.

Pour répondre à cette dernière préoccupation, le gouvernement en a limité la portée à « un endroit public ou situé à la vue du public qui est une garderie, un terrain d'école ou un terrain de jeu ou qui est situé à côté d'une garderie ou de l'un ou l'autre de ces terrains ».

Les députés conservateurs, majoritaires au comité parlementaire qui mène l'étude article par article du projet de loi mardi, ont voté contre la proposition du NPD de supprimer cette criminalisation des travailleurs du sexe.

Bob Dechert, le secrétaire parlementaire du ministre de la Justice, a affirmé qu'il souhaitait protéger les enfants contre la prostitution dans les cours d'école et accusé l'opposition de faire obstacle à ces intentions.

« Seulement dans des terrains de jeux, des cours d'école, des garderies... et mes amis de l'autre côté ne veulent même pas le faire! Ils sont heureux que des prostituées se promènent sur des terrains de jeu à 3 heures de l'après-midi... J'ai des petites nouvelles pour eux : je ne crois pas que les clients seront là! » a lancé Bob Dechert.

« Je comprendrais l'argument si c'était seulement une question d'achat [de services sexuels] près d'écoles et tout ça. Mais le problème avec cette disposition est qu'ils victimisent les prostituées, même s'ils limitent les lieux où elles seront victimisées », a lancé la porte-parole du NPD en matière de Justice, Françoise Boivin.

Le Parti libéral n'a déposé aucun amendement au projet de loi, car il juge que même amendé, il n'aura aucune chance de passer le test des tribunaux.

Cette réforme des règles canadiennes sur la prostitution a été rendue nécessaire par l'arrêt de la Cour suprême du Canada dans le dossier Bedford. En décembre, la cour a invalidé certaines dispositions clés du Code criminel, dont la criminalisation de la sollicitation, et donné au gouvernement jusqu'à la fin de 2014 pour adopter de nouvelles règles.

LE DEVOIR
Libre de penser
ACTUALITÉS OPINION CAHIERS SPÉCIAUX

LOI SUR LA CITOYENNETÉ

Des avocats aux aguets

Ottawa accroît son pouvoir de partage de données personnelles avec d'autres pays, sans surveillance

Fabien Deglise, Le Devoir, le 15 juillet 2014

Autre levée de bouclier contre les réformes apportées à la Loi sur la citoyenneté par le gouvernement conservateur, et qui, à peine entrées en vigueur, éveillent de nouvelles craintes chez les défenseurs des droits civils et des libertés individuelles. Selon eux, ces modifications législatives donneraient désormais un pouvoir supplémentaire à Ottawa dans le partage, avec d'autres pays, d'informations personnelles touchant des citoyens canadiens et des ressortissants étrangers vivant au Canada. Et ce, avec une absence de vérification de la véracité de ces informations qui pourrait porter préjudice à certains voyageurs.

« Le langage [de la nouvelle loi] donne [au gouvernement conservateur] une autre base légale pour partager de l'information », s'est inquiété dimanche dans les pages du Globe and Mail l'avocat Lorne Waldman. L'homme a, entre autres, représenté le Canadien d'origine syrienne Maher Arar, déporté et torturé dans son pays d'origine en 2002 sur la base d'informationsofficielles de la GRC qui en avait fait, à tort, un terroriste. « Partager de l'information, c'est bien, mais quand on le fait, il faut s'assurer de la qualité et de la véracité des informations partagées. »

En substance, dénoncent les critiques de la réforme fédérale en matière de citoyenneté, les nouvelles dispositions de la loi ouvrent la porte désormais à l'élaboration par le bureau de Stephen Harper d'un règlement pour « la divulgation d'information [avec d'autres États] au nom de la sécurité nationale, de la défense du Canada ou dans le cadre d'affaires internationales ». Ottawa pourrait ainsi permettre ces échanges afin de vérifier « le statut d'un citoyen ou l'identité de n'importe quelle personne », et ce, dans l'application des lois canadiennes ou d'autres pays. Les procédures de surveillance de ces partages ou de vérification de la crédibilité des données transmises ne sont pas précisées.

« C'est très inquiétant de voir un gouvernement pouvoirutiliser et partager des informations non vérifiables ouvérifiées sur des individus, a indiqué lundi en entrevue auDevoir l'avocat spécialiste en droit de l'immigration, Noël Saint-Pierre. On pourrait mettre ainsi en danger la sécurité de ressortissants canadiens ou de résidents permanents dans leur pays d'origine ou encore aider des régimes autoritaires à s'attaquer à des opposants vivant sur notre territoire. »

Vie privée des Canadiens

Une nouvelle fois sur la sellette pour une dérive sécuritaire et liberticide, Ottawa tourne au ridicule les mauvaises intentions prêtées à sa réforme, précisant que celle-ci respecte les lois sur l'immigration et le statut de réfugié. « Notre gouvernement prend la vie privée des Canadiens très au sérieux », a indiqué au Globe Alexis Pavlich, attaché de presse du ministre fédéral de l'Immigration Chris Alexander. Selon lui, les nouvelles dispositions de la loi visent à confirmer la citoyenneté d'une personne, à répondre à« d'autres questions », par le partage d'information entre pays « qui respectent les normes internationales et obligations » en la matière.

La réforme fédérale de cette loi est actuellement contestée devant les tribunaux par l'Association canadienne des avocats et avocates en droits des réfugiés (ACAADR) en raison d'une disposition qui accorde désormais un pouvoir discrétionnaire au ministre de l'Immigration pour révoquer la citoyenneté d'un individu, sans passer devant un juge. Le groupe estime que cela brime le droit à une procédure équitable de révocation. Le projet conservateur estégalement accusé par unavocat de Toronto, RoccoGalati, qui a contesté avec succès la nomination du juge Nadon à la Cour suprême, de ne pas respecter la Charte des droits et libertés.

OTTAWA CITIZEN

Ottawa legal 'hero' treated leniently by Law Society Tribunal

DON BUTLER, Ottawa Citizen, July 14, 2014

Gerry White is many things — a recovering alcoholic, a raconteur who knows how to spin a story, a lawyer who often works pro bono for his clients, all of whom are addicts. Some even consider him a sort of hero, though he rejects the label.

What he's not is much good at is keeping books and records. That failing got him in hot water with the Law Society of Upper Canada, which wanted to suspend him indefinitely until he cleaned up his act. What happened next, though, was extraordinary.

White, now 69, had his first drink at 13. He quit in 1977 and hasn't touched alcohol since.

After running Billy Buffet's House of Welcome, a recovery home in Vanier, for seven years, White enrolled in law school at the University of Ottawa, determined to help addicts in trouble with the law.

He was called to the bar — the legal variety — in 1995 at age 50. Since then, he has earned a reputation as Ottawa's go-to lawyer for people with addictions facing criminal charges.

Some of his clients qualify for legal aid. But many don't and can afford to pay White little or nothing. As long as his clients are committed to kicking their addiction, though, White will represent them at no charge.

Such generosity of spirit has consequences. Unlike other lawyers, White — who sees about 100 clients in a typical year — doesn't enjoy a six-figure income. But money was never his motivator.

"All I want my clients to do is clean up," he said in an interview. "To me, that's the only way you can deter them from committing crimes."

Unless an accused has money or is eligible for legal aid, few lawyers will touch them, White said.

"And I think that's preposterous. The Charter of Rights says you have the charter right to make full answer in defence. It doesn't say, if you don't have the money, you're screwed."

White first appeared on the Law Society's radar in 2003, when an audit found his books and records weren't up to date. A second audit in 2010 found even more problems.

That prompted escalating demands from the Law Society for White to produce his books and records. White ignored them all, something he readily acknowledged in an agreed statement of facts presented at his disciplinary hearing.

"I admitted when they'd send me requests for certain things, I'd file them in the garbage," White said. "I had better things to do."

That might seem like a cavalier approach in a tightly regulated, rule-bound profession. But in his July 7 decision, Law Society Tribunal adjudicator John Campion more or less agreed, saying "there can be no doubt about (White's) contribution to society in general through his practice.

"Mr. White's work in aid of persons suffering from alcohol and drug addiction is the work of a hero," Campion wrote, saying his work "is to be greatly commended and admired."

Campion pointed out that Rev. William Main, founder of the Harvest House Christian Fellowship, and Justice Céylenne Dorval of the Ontario Court of Justice both wrote glowing letters about White.

In her letter, Dorval said White "contributes significant work to the criminal justice process in Ottawa. He does so in an unconventional manner and often without remuneration.

"In my view, his devotion to his clients is an example to follow in the contemporary practice of law, which is all too often geared only to income generating work," she said.

Despite those "powerful testaments to Mr. White's remarkable contributions," said Campion, the Law Society argued that a suspension was appropriate and would not fully interrupt his work as a social worker.

Campion disagreed, saying White's efforts as a social worker cannot easily be divorced from his role as a lawyer.

The adjudicator found there was little chance that White's past books and records will ever meet the high standards required by the Law Society.

But given White's unconventional practice, "there is virtually no likelihood that Mr. White handled clients' money improperly," he said. Even so, Campion conceded, White "cannot escape the obligations that enable him to practise law."

Although the Law Society wanted a suspension and $24,000 in costs, Campion said a letter of reprimand was the appropriate penalty along with nominal costs of $1,000.

White's practice, he observed, "does not generate a large income but does generate a large benefit for society."

White called the adjudicator "absolutely amazing. He was very fair." The penalty was appropriate, he said. "I admitted the error of my ways."

He's now working with a bookkeeper to try to clean up his record-keeping going forward. "It's not perfect," he said. "But we're trying."

But White isn't sold on Campion's description of him as a hero.

"The real heroes in my practice are the people who follow my direction and the judges who have the courage to impose the appropriate sentence," he said. "I'm just the middleman."

OTTAWA CITIZEN

Federal government turning to Dragons' Den to shake up policymaking

JASON FEKETE, Ottawa Citizen, July 13, 2014

Federal deputy ministers are turning to new models they hope will help shake up some dusty approaches to policymaking, including conducting their own version of Dragons' Den.

The federal government wants to remain relevant and responsive in a dramatically changing world where the rise of social media is eroding its "monopoly" over policymaking and its ability to control messaging on important policies, says briefing material prepared for the country's top bureaucrats.

One idea the government is now turning to is its own Dragons' Den – which appears to consist of federal employees pitching potentially innovative ideas to senior bureaucrats who, much like on the hit CBC show of that name, then decide which ones to back with "(federal) funding or other forms of support."

"Each (Dragons' Den) segment will consist of a brief introduction, the finalists' presentation, and a 5 minute Q and A," explains the briefing material for the federal government's deputy ministers' committee on policy innovation.

"Presenters will leave the room so that Dragons can deliberate … Presenters will return to receive individual feedback and results from the Dragons."

The government views the Dragons' Den as "another strong opportunity for practical testing" of potentially innovative ideas to address policy challenges. The briefing material was prepared for the committee in December 2013 and obtained by the Citizen using the access to information law.

Led by Graham Flack, then the deputy secretary to the cabinet, and Bill Pentney, the deputy minister of justice, the deputy ministers' committee has also been encouraging senior bureaucrats to implement a "reverse mentor" program, according to the documents.

"Reverse mentors participate in committee meetings alongside their DMs (deputy ministers), and provide you with an opportunity to learn from public servants that are actively engaged in innovative policy work (e.g., use of social media and 2.0 tools, collaborative methods and networks)," says the briefing material sent by Flack to deputy ministers in the federal government.

"Reverse mentors can also be your eyes and ears in your departments, surfacing innovative ideas and helping to identify concrete opportunities to advance the committee's work."

Some of the ideas in the briefing material are echoed in Destination 2020, the blueprint for an improved public service recently released by Clerk of the Privy Council Wayne Wouters. For instance, his report states, "Employment and Social Development Canada (ESDC) is using social media to foster collaborative dialogue on policy issues with stakeholders, and departments are experimenting with regular 'Dragons' Den'-type events with employees to find creative solutions to policy and operational challenges."

According to the briefing documents, some of the innovative policy ideas the government is looking to test as pilot projects could include using social media or other tools to engage or consult the public, end users and others to help inform policy development; or creating a "tiger team" to address specific, time-limited objectives.

Other examples of possible pilot projects include using open data, such as launching a challenge to design apps, or innovative "social finance instruments" to help address social problems.

The deputy ministers' committee was created in November 2012 and originally called the DMs' "committee on social media and policy development." It was initially mandated to consider links between social media and policymaking, including new models for policy development and public engagement.

As of December 2013, the committee was asked to move beyond social media to examine trends and new technologies to help improve and transform policy development.

Yet, the rise of social media and its impact on how government communicates its messages and develops policy remains a concern to the government, according to the documents.

"Many governments (around the world) are seeing their authority decrease as autonomous networks of citizens and stakeholder groups emerge, decreasing the impact of governments on public policy. Concurrently, the public is becoming less deferential to authority," the documents note.

The changes in ease of access to information and data are "effectively undoing governments' monopoly on policy analysis," says the briefing material.

"Social media is fundamentally changing the nature of citizen-state relations. Citizens increasingly expect democratic governments to be transparent, participative, responsive, and to provide customizable (and digital) services," the documents say.

"The speed of social media interactions puts pressure on government to develop quick and coordinated responses, which can conflict with longer-term policy and communications planning and priority setting."

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

What happens when a lawyer drops the F-bomb

A B.C. lawyer's courthouse curse leads to a disciplinary hearing and a landmark ruling

Michael Friscolanti, MacLean's, July 14, 2014

As soon as the words left his lips, Martin Drew Johnson regretted what he said.

"F–k you."

A veteran criminal defence lawyer in Kelowna, B.C., Johnson was at the local courthouse that Wednesday afternoon (March 9, 2011) representing a man accused of assaulting his wife. During a break in the proceedings, Johnson asked the investigating RCMP officer if he would escort his client back to the family home so he could retrieve a few personal items. Although it sounded like a reasonable request, the Mountie stubbornly refused.

Before long, the two men—a 61-year-old lawyer fresh off hip replacement surgery, and a six-foot police officer half his age—were nose to nose in the courthouse hallway. Johnson cracked first. "F–k you," he told the officer.

"You don't scare me, you big-shot lawyer," the Mountie allegedly replied. He then pointed to Johnson's chest, now close enough to be touching his. "That's assaulting a police officer." Moments later, the lawyer was in handcuffs, being paraded down the hallway like so many felons he defends.

In the end, Johnson was not charged with assault (or any other crime) but he was accused of professional misconduct and hauled in front of the Law Society of British Columbia. What followed was a disciplinary hearing like few others—and an eloquent, almost nostalgic legal opinion—on the prevalence of the F-word in modern society, and when it's appropriate to use it.

At the heart of Johnson's case is a question most fellow lawyers can certainly sympathize with: Is it ever excusable for counsel to curse on the job? In other words, does hurling a profanity always constitute professional misconduct, or are there rare moments when a lawyer can be so provoked that blurting out a "F–k you" is forgivable?

The answer? F–k no.

In its ruling, released earlier this year, a Law Society "hearing panel on facts and determination" concluded that it's never acceptable, under any circumstances, to hurl such vulgar language inside a courthouse. Although the legal profession "can sometimes be hostile, aggressive and fierce," the panel wrote, Johnson "had an obligation to ignore any 'provocation' by the witness, 'rise above the fray,' and act with civility and integrity in a dignified and responsible way that lawyers are expected to act."

Just in case the decision isn't clear enough, paragraph eight of the written reasons—a gem of Canadian jurisprudence—eliminates all reasonable doubt.

"Obviously, we recognize that the use of the word 'f–k' in its various word combinations and permutations isn't as taboo as it used to be," reads the judgment (minus the "–"). "For good or for bad, it is not uncommon to hear the word in its various forms on television or in the movies. Despite the argument that it is still 'profane,' we all know it is used in everyday conversation harmlessly and innocuously, although one probably would not use it with one's mother or with small children in the room. It is used in humour, literature and music. It is used when one stubs one's toe, falls down skiing, makes a mistake, or even as a form of self-deprecation. It is used by athletes in sports, and by disappointed or excitable fans. It has been used by presidents, prime ministers, Nobel laureates and Academy Award winners. Its use is not going away, and nor should it. Consequently, we wish to make it clear that our decision is not meant to deny the use of a word in the English language that people may hear or use all the time, or otherwise interfere with one's freedom of speech. Rather, we wish to make it clear to members of the profession that insults or profanity, if uttered in anger (whether using the F-word or not), directed to a witness, another lawyer, or member of the public in the circumstances and the place in which it was used by the respondent, are not acceptable and can constitute professional misconduct."

Permitting such conduct, the panel continued, "might well lower the reputation of the legal profession in the eyes the public and, arguably, bring the administration of justice into disrepute."

Guilty as charged, Johnson appeared before a second disciplinary hearing on June 16, where lawyers for both sides argued the appropriate sanction. (Johnson is no stranger to the process, having been found guilty of professional misconduct in 2001 and suspended for one month.) A spokesman for the Law Society said the panel reserved its decision, and by press time, a ruling had not been released.

Maclean's contacted Johnson's lawyer, Gregory DelBigio, but he declined an interview request—in the politest possible way.

Le régime de retraite des députés doit être revu, soutient Couillard

Jean-Marc Salvet, Le Soleil, le 21 juillet 2014

(Québec) Le premier ministre Philippe Couillard soutient que le régime de retraite des élus de l'Assemblée nationale doit être revu.

C'est ce qu'il affirme dans une entrevue exclusive accordée au Soleil. «Il faut être cohérent, postule-t-il. Si l'on demande des redressements aux régimes de retraite municipaux, il faut également qu'on fasse les efforts maximums pour rendre ça applicable au régime de retraite des élus du gouvernement du Québec.» Ces derniers doivent donner l'exemple, dit-il.

Philippe Couillard est le premier chef de parti à accorder son appui explicite au rapport du comité présidé par l'ex-juge de la Cour suprême, Claire L'Heureux-Dubé.

En présentant ses recommandations en novembre dernier, le groupe avait comparé le régime de retraite des 125 élus de l'Assemblée nationale à une «Ferrari». Il déplorait le fait que leurs cotisations ne représentent qu'environ 21 % du coût total de leur régime.

Une «approche globale»

La proposition d'accroître leur contribution et celle de rendre leurs rentes moins généreuses s'inscrivent dans un tout, souligne toutefois le chef du gouvernement québécois. C'est ainsi - dans une «approche globale» - qu'il faut appréhender le dossier, insiste-t-il.

«Tout ça ne se règle pas à la pièce. Ça prend une approche globale pour l'ensemble des conditions de travail des élus. Ce qui est intéressant avec ce rapport, c'est qu'en termes de coûts nets pour les contribuables, c'est à coûts nuls.»

Philippe Couillard détaille lui-même les grandes lignes du document : «On diminue la partie non imposée des rémunérations; on retire des possibilités de primes de séparation en cours de mandat; on modifie le régime de retraite - avec une augmentation de la rémunération de base.»

Le comité recommandait de faire passer le salaire annuel de base des 125 députés québécois de 88 186 $ à 136 000 $. C'est la partie délicate du dossier - celle pour laquelle les partis ont manié le rapport avec des pincettes jusqu'ici.

Philippe Couillard invite aujourd'hui le Bureau de l'Assemblée nationale, le conseil d'administration de l'institution, à se saisir du document.

Un «déséquilibre structurel» à régler au plus vite

La commission sur la fiscalité doit produire ses premières recommandations au début de l'automne. Certaines pourraient être mises en vigueur dès l'exercice de mise à jour économique et financière de novembre, soit plusieurs mois avant la présentation du budget 2015-2016 de l'État québécois.

«Ce n'est pas exclu, indique le chef du gouvernement. On va voir la nature des recommandations. Si le comité nous dit : "Voici quelque chose que vous pourriez faire tout de suite", on n'attendra pas un budget.»

«Il existe un intervalle de temps entre l'annonce d'une mesure fiscale et le rendement budgétaire qu'on anticipe, poursuit-il. Comme on veut établir l'équilibre budgétaire pour l'année 2015-2016, s'il y a des mesures qui peuvent être mises en place plus tôt, qu'elles le soient!»

Son gouvernement mise beaucoup sur les deux commissions spéciales lancées récemment pour parvenir à l'équilibre budgétaire en 2015-2016. Celle sur la fiscalité devra générer des épargnes de

650 millions $ pour l'État. Celle sur la révision permanente des programmes devra identifier pour 3,2 milliards $ d'économies.

Un devoir envers la prochaine génération

Le redressement des finances publiques du Québec constitue un «devoir fondamental envers la prochaine génération, répète

M. Couillard. On ne peut plus laisser le Québec dans cet état de déséquilibre structurel.»

Il laisse entendre que «les trois grands ministères de l'État que sont la Santé, l'Éducation et la Famille» sont déjà sous la loupe de la Commission sur la révision permanente des programmes.

«S'il y a des structures qui doivent être changées de façon radicale, qu'elles le soient!» lance-t-il. Trop de ressources de l'État sont accaparées par l'administration et la bureaucratie, dit-il.

L'état actuel de l'économie mondiale inquiète Philippe Couillard, bien qu'il existe «quand même quelques signes d'espoir».

«On assiste à une lente récupération. L'économie se transforme. Les types d'emplois qui se créent ne sont plus les mêmes.»

«Classiquement, lorsque les États-Unis reprennent, le Canada a toujours repris de façon presque automatique. Il semble que cet automatisme ne soit plus aussi direct. Je pense que ça, c'est préoccupant.»

D'où la nécessité «de réformer les finances publiques du Québec de façon structurelle et de relancer l'économie sur de nouvelles bases avec des nouvelles façons de faire», récupère-t-il aussitôt.

Il note que l'inauguration de la mine de diamants Stornoway «fait partie du grand travail

«Parce que d'une façon ou de l'autre, l'État du Québec s'assurera que les fédérations médicales participent aux efforts», affirme Philippe Couillard.

Une «main tendue» aux médecins

Philippe Couillard prévient les deux fédérations médicales québécoises que leurs membres n'échapperont pas à l'effort de redressement des finances publiques.

Devant le piétinement des négociations, il leur lance un appel pressant : «L'appel que je leur lance - et je dirais que c'est un appel de main tendue -, c'est de venir s'asseoir avec nous de façon à ce qu'on ait une entente sur l'étalement pour l'année en cours.»

«Parce que d'une façon ou de l'autre, enchaîne-t-il, l'État du Québec s'assurera que les fédérations médicales participent aux efforts.»

Même si le président du Conseil du trésor, Martin Coiteux, s'est déjà avancé sur ce terrain, le premier ministre refuse de dire si son gouvernement recourra à une loi spéciale s'il ne parvient pas à s'entendre avec elles sur l'étalement dans le temps des nouvelles augmentations salariales prévues pour les médecins.

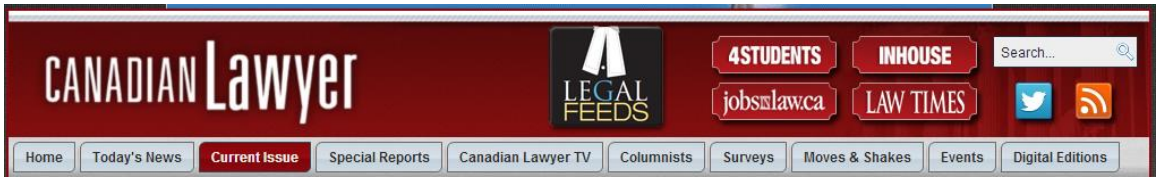
«Le message que j'envoie aux fédérations médicales est qu'il est dans leur intérêt d'avoir avec nous une entente satisfaisante reflétant leur participation aux efforts budgétaires que le Québec doit faire avant que la prochaine négociation ne débute vraiment.»

En disant cela, M. Couillard suggère que ce qu'il n'obtiendrait pas sous peu grâce à l'étalement serait récupéré dans la prochaine entente que les parties devront bientôt commencer à négocier.

Il refuse d'être plus explicite : «Cette question sera résolue d'une façon ou d'une autre. Je souhaite qu'elle le soit d'abord par une conclusion positive sur l'étalement. Ensuite, la prochaine négociation sera abordée dans un esprit plus positif.»

D'après une entente négociée sous le gouvernement de Jean Charest, les médecins spécialistes et généralistes sont censés profiter d'un relèvement salarial global de 540 millions $ cette année seulement. Il a été de 530 millions $ l'an dernier et il est prévu qu'il soit de 358 millions $ l'an prochain.

Les salaires des médecins ont bondi depuis cinq ans, surtout ceux des spécialistes.



A new and exciting frontier

Written by Bob Rae, July 7, 2014

(Guest columnist Bob Rae is a partner at Olthuis Kleer Townshend LLP, and a former premier of Ontario and interim leader of the Federal Liberal Party)

When I was at law school (my daughters tell me to never start a sentence this way, but it's too late now), the Calder v. Attorney-General of British Columbia case had just come down, but there was no Charter of Rights and Freedoms. Just a few years earlier, the Chrétien/Trudeau White Paper had been floated and shot down, and with the Calder case the federal government finally had to recognize that treaty and indigenous rights had some meaning, and, even more, their absence no longer meant all title fell automatically to the Crown.

As luck would have it, I was a Member of the House of Commons when the Charter was debated, and remember well the discussions and negotiations around s. 35 and the valuable references to the Royal Proclamation. Some protested no one knew exactly what the implications of these changes were, but in fact we knew full well we were making progress in reducing the unilateral prerogative of governments.

The failure of the next round of discussions between the Crown and First Nations had two major effects: it hardened aboriginal opinion against the Meech Lake Accord, and led to the Royal Commission on Aboriginal Peoples. It also meant the premiers had no choice but to insist on full aboriginal participation in what became known as the Charlottetown round of discussions and the Charlottetown Accord. That accord was a breakthough in recognizing an indigenous right to self-government, but at the same time, its rejection in a referendum meant the courts would be pressed even further into service, which is precisely what has happened.

The groundbreaking decisions in Delgamuukw v. British Columbia and more recently the Manitoba Métis Federation Inc. v. Canada (Attorney General) decision have set out clearly the court's insistence the Crown has an obligation to consult and accommodate legitimate First Nations' interests, and that the phrase "honour of the Crown" is not an empty rhetorical gesture.

At the bargaining table, considerable progress is being made in advancing both the economic and political cause of aboriginal people — from Labrador to British Columbia. Self-government agreements, extensive land claim accords, transfers of tax points — it's all happening.

An important current challenge is that progress is actually much slower in the so-called "treaty provinces," where a "miserly interpretation" of treaties by the Crown, both federal and provincial, has prevailed, and the First Nations concept of treaties as reflecting a "sharing of the land, water, food, and resources" has not been embraced at all by the Crown. On the other hand, the notion that First Nations would surrender all rights and claims in exchange for a few dollars a year and forced confinement on tiny tracts of land seems implausible unless the deal was forced upon them.

There is a growing body of historical evidence that, in fact, the written treaties as interpreted by the Crown were forced on First Nations. They were, for the most part, take-it-or-leave-it documents that were matched by real economic hardship. The phrase "starved into submission" is tragically accurate.

Documents signed under pressure are hardly a reflection of the Crown acting honourably, and it is increasingly obvious to all that the status quo is not working at all. Small remote communities in the north of the treaty provinces are among the poorest of the poor, and have few means of escape, as neither the federal government nor the provinces have shown the imagination to break through jurisdictional barriers and create new opportunities for effective self government. Land, revenue, capacity — these are all key to real progress, and without them there will be little chance for an end to poverty and hopelessness.

The frontier of economic development is now heading north and west, and this provides the potential for economic leverage in breaking the logjam.

So . . . an exciting time to be practising aboriginal law! Change will come — it will require effort and imagination, but it will come.