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Here are a few articles and opinion pieces that might be of interest to AJC members
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MACLEAN'S

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Strapped federal criminal law policy section not sustainable: report

Yet Conservatives pursue criminal-law agenda without deep research and analysis

John Geddes, MacLean's, August 18, 2014

The federal Justice Department's criminal law policy section is growing demoralized. It has lost several top lawyers but not replaced them, and has weathered budget cuts to the point where "it is not operating in a manner that is sustainable." These are just some of the findings of an evaluation of the once-influential section, posted quietly to the department's website earlier this summer. The internal report undoubtedly reflects the frustrations of bureaucrats coping with dwindling resources. More than that, though, it suggests the Conservatives are pursuing their high-profile criminal law agenda without getting the sort of deep research and analysis the section previously provided.

In its look at the section's research and statistics division, the report notes a shift, under the Conservatives, away from ambitious studies to quicker scans of research already done by others. The research staff shrank from 35 in 2008-09 to 17 in 2012-13. Federal

lawyers working on criminal law policy "are now relying less on large-scale research studies that examine broad policy questions," says the report. Instead, they are "increasingly looking to secondary or existing research." Study done in-house now tends to be "more condensed, and expected within a much shorter turnaround." In previous eras, the division wrote "formal briefing notes" to advise politicians, but now it typically provides, according to the report, mostly "oral briefings, email replies and shorter memos."

The evaluation is based largely on interviews with officials in the department and outsiders who work with the section, including officials from the provinces, the RCMP and the Canadian Bar Association. It also takes into account data on workloads and budgets. From 2009-10 to 2012-13, the period under scrutiny, the section's spending fell 21 per cent, from $8.1 million to $6.4 million. Over that stretch, it struggled to keep pace as the Conservatives tabled a remarkable 45 pieces of legislation that reformed the Criminal Code. The section is also called on to advise Ottawa's lawyers when criminal law issues end up being argued in court, as they have been in some highly publicized recent Charter of Rights and Freedoms challenges.

The report is studiously neutral on the Tory approach. It doesn't hint at why a government pressing ahead with an ambitious and often controversial law-and-order agenda might starve the policy section that would logically provide crucial supporting expertise. But critics of Prime Minister Stephen Harper's criminal law thrust—especially his government's propensity for imposing mandatory minimum prison terms that eliminate a judge's sentencing discretion for a raft of crimes—see this as more than a story of budget cuts. David Daubney, a senior lawyer in the section up to his retirement in 2011, says the Conservatives were simply not "interested in hearing what the evidence said," and thus didn't have much use for the section's research.

He sees it as increasingly sidelined. "They have hardly any, it seems, role to play in terms of trying to make a real contribution to the development of public policy in the area of criminal law," Daubney said. Material available on the Justice website does indicate sharply diminished research activity. For instance, of 23 posted studies, surveys and other documents on youth crime, only one dates from after the Tories came to power in 2006. And even though mandatory penalties are a pillar of Harper's policy, the last big federal report on the subject—a critical look at experience with mandatory sentences in other countries—dates from just before the Conservatives took office. (A rare steady stream of newly published documents over the past few years has been on victims of crime, a top Conservative priority.)

Leonard MacKay, president of the Association of Justice Counsel, the union for more than 2,000 federal lawyers, was careful not to accuse the Tories of intentionally marginalizing the section. Still, MacKay wouldn't rule it out. "I can't say one way or another what they are thinking," he said. "But that's certainly an argument that can be made, that they don't require comprehensive research and the opinion [of the section] is, oftentimes, not acceptable to this government."

MacKay said he was surprised an official government internal report was so blunt in concluding that cuts have left the section "not operating in a manner that is sustainable"

and that “multiple lines of evidence indicated that the demanding environment is beginning to have a negative impact on staff morale.”

“These are things we’ve been saying ourselves,” he said. “But sometimes, our statements are seen as a little bit political, because we speak as a union for lawyers in the federal government.”

In an emailed response to questions from Maclean’s, the Justice Department pointed out that the evaluation report found that the section “is achieving its expected outcomes.” The department didn’t comment directly on the report’s conclusion that the policy section can’t go on as it is, but did note that it is “currently engaging in targeted staffing to better meet its changing needs.”

CBC news |

Analysis: Harper government's legal setbacks suggest strategy of confrontation

Legal conflicts reveal a clash of beliefs about how Canada should work

Justin Ling, for CBC News, August 7, 2013

In what must feel to the prime minister like a visit to the shooting range, another tenet of the government's tough-on-crime agenda has been blown away.

Holding the rifle this time is respected Ottawa Judge David Paciocco. In tatters is the mandatory victim surcharge, a compulsory funding scheme implemented by the government to fund services to victims and their families.

The victim surcharge ruling is a clear signal the government's recent legal troubles are much more than a clash of personalities between Chief Justice Beverley McLachlin and the prime minister, but rather a very real collision of beliefs about how Canada should work.

The surcharge itself isn't new, but the Harper government's approach is. The Conservatives made the charge mandatory for most offences and doubled the amount offenders could be on the hook for. When judges balked, Justice Minister Peter MacKay swore they would eventually "see the wisdom" in applying it.

For one 26-year-old offender appearing before Paciocco, it was $900 the man simply couldn't pay. Rather than try to skirt the surcharge, as other judges have done, Paciocco ruled it unconstitutional.

Government lawyers argued the surcharge was not a punishment, and therefore couldn't be ruled cruel and unusual. They urged the judge to interpret the law the way Parliament intended. Paciocco refused; he said it certainly constituted punishment for the man, and was disproportionate to his crime.

In striking it down, he's set up yet another fight destined for the Supreme Court.

A legal cold war

"There's something different about the Harper government," says Emmett Macfarlane, who wrote Governing from the Bench, about the Supreme Court's role in Canadian democracy. He says the top court has long been known to complement, not fight, Parliament.

Edgar Schmidt agrees that something is wrong, and he would know — he was the general counsel for the legislative branch at the Department of Justice, until he became a whistleblower and was suspended without pay in late 2012.

He filed documents in December of that year accusing the department of working under "faint hope" — approving legislation even if it has a "combined likelihood of five per cent or less" of being upheld by the courts.

He argued that Ottawa has a duty to introduce charter-compliant legislation — or, at least, tell the public when legislation doesn't pass the test.

The government disagreed, saying that it only needs to do so if legislation is "manifestly unconstitutional, such that no credible argument exists in support of it."

If a lawyer raises an issue with legislation, and management isn't worried, internal documents instruct government lawyers to "proceed to complete drafting or examination (blue-stamping)."

"Blue-stamping" is bureaucrat lingo for approving.

So, even if a piece of legislation has a 99 per cent chance of being defeated by the courts, government policy is to forge ahead.

That throws some cold water on MacKay's now-infamous refrain that even the government's most controversial pieces of legislation are vetted to be charter-compliant.

The NDP wanted to put that to the test for the Tories' new prostitution bill, asking that it be referred to the Supreme Court.

MacKay said no.

"We shouldn't abrogate that responsibility by simply punting or deferring to the Supreme Court on such important issues, especially those that have already been legislated," he told reporters.

In a particularly ironic case, one Ontario ruling struck down the Conservatives' mandatory minimum sentence for gun crimes, ruling that it could imprison lawful gun owners.

Even for the victim surcharge, the Conservatives tried to create an escape hatch — they made it possible for offenders to pay off their surcharge with community service. But seven of the provinces said that was impossible, either because they didn't have those programs or because the crafting of Ottawa's law made it impossible.

'The system breaks'

In the knife fight that has become the government's approach to litigation, Canadian Bar Association past president Simon Potter says things are nearing a breaking point.

At a constitutional conference in July, he argued that if Parliament continues to be "headstrong" instead of co-operative, "then the system eventually breaks. That's where we're headed if we don't get this fixed."

Macfarlane says the insistence on grinding the branches of government against each other betrays not just the Conservatives' long history of distrusting the Constitution, but also a will to pick populist fights.

"Sometimes it's losing a fair fight, and sometimes it's instigating a ridiculous fight," he says.

To that end, there's some irony: the McLachlin-led court with which Harper has so frequently clashed is considered to be more conservative on many matters than its predecessor.

Whatever the reason for the acrimony, amid more and more pieces of legislation being shot from the sky, the Harper government has shown no intention to change its strategy.

Looming legal battles?

Some other recent legislation that may face court challenges:

■Bill C-13: Cyberbullying: This reincarnation of an earlier "cyber-snooping" bill would reinforce sections of the law allowing police to get Canadians' data without a warrant. The Supreme Court has ruled that unconstitutional, but MacKay has no intention to amend it.

■Bill C-24: Citizenship: Arguably the most controversial immigration change the Conservatives have introduced, this law gives the minister the power to strip dual citizens of citizenship if they've been convicted of certain crimes. The Canadian Bar Association was up in arms over the bill.

■Bill C-36: Prostitution: While government lawyers say the Supreme Court will rubber-stamp their effort to criminalize the purchasing of sex, some 220 lawyers say that the bill contradicts the Supreme Court's logic in the Bedford case.

■Bill C-14: Not Criminally Responsible: Critics are confident they'll defeat this law, which would create a designation of "high risk" for offenders found to be not criminally responsible. The bill could mean that offenders are held in detention indefinitely.

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thestar.com

Tony Clement hatches open government plan: Goar

Treasury Board president spells out Ottawa's path to open government.

Carol Goar, Toronto Star Columnist, August 14 2014

Now — from the minister who saved the government $15 billion without telling Parliament what he cut; the policy-maker who eliminated Canada's information-laden census and chopped Statistics Canada's budget by $30 million; the MP who siphoned $50 million out of a border security fund to build to band shells and gazebos in his riding — comes Tony Clement's latest initiative: a " new action plan on open government ."

The Treasury Board president proudly announced this week he has prepared a draft policy "to increase openness and transparency in government." He is inviting the public to comment

It will come as a surprise to most Canadians that a government known for its secrecy and obfuscation is "committed to fostering the principles of open government."

It will astonish political observers that the Tories, who have systematically shut down Ottawa's channels of communication "seek to engage citizens in a public dialogue that will inform the policy creation process."

It will confound anyone who has followed Clement's career that he is in charge of a campaign "to make valuable government information readily available to the public."

Here is the oddest part: this is the second phase of Clement's open government project. Phase 1 ended in 2012. According to Clement it succeeded in enhancing accessibility and transparency. The evidence suggests otherwise:

• Complaints to Canada's information commissioner were up 30 per cent last year. Suzanne Legault warned parliamentarians that the public's right to know is worryingly fragile.

• Parliamentary committees attempting to scrutinize government spending were denied access to essential facts and figures. When MPs persisted in delving into federal expenditures, the Tories adjourned the hearings.

• The parliamentary budget officer was also stymied. Ministers withheld departmental documents and bureaucrats ignored his requests. At wits' end, Kevin Page threatened to take the government to court.

• Members of the media, who act as the public's eyes and ears in Ottawa, were barred from speaking to cabinet ministers. They had to settle for anodyne statements approved by the Prime Minister's Office (PMO) tweeted or emailed by Tory aides.

In Clement's defence, he did download 172,000 government documents on a new Open Data Portal . An additional 100,000 have been now been posted.

Phase 2 was launched last March. Over the course of the spring and summer, the minister held panels, workshops and round tables in eight Canadian cities (Toronto's session took place on July 24 between 1 and 3:30 p.m. at the Northern District branch of the Toronto Public Library). Six meetings were convened for civil society representatives.

Those who missed these consultations — apparently unaware of Clement's blogs, tweets, news releases and email updates to those who signed up for his open-government list — will still get a chance to participate, he says.

He now intends to "engage with Canadians to refine and strengthen" his proposals (which are still under wraps).

But there are enough clues in the minister's public statements and Prime Minister Stephen Harper's management style to deduce what lies ahead.

Clement's objective is to "create a more cost-effective, efficient and responsive government" — in other words, save money.

The rollout will take place as thousands of jobs in the public sector are being cut. Clement, who has already reduced the federal payroll by 20,000, expects to chop 9,000 jobs by 2016-2017. That means the new regime will be technology-driven, shutting out Canadians who don't have Internet access.

No matter what Clement prescribes, the PMO will keep vetting all outgoing information, controlling what cabinet ministers and Conservative MPs say and stopping anything with the potential to harm the re-election prospects of the Conservative party from getting out.

Given the torpid pace of policy development, it is unlikely Clement will table anything before Parliament is dissolved for the 2015 election campaign.

A work-in-progress plays in the Tories' favour. It allows Harper to promise open government legislation as soon as Parliament reconvenes. It allows Clement to trumpet all the consultations, workshops and round tables he has held. And it allows the

Conservatives to deflect accusations that they have weakened one of the cornerstones of democracy.

There is one flaw in the strategy: voters judge governments by their actions. They judge challengers by their commitments.

Staffing cuts strain Justice Department

Sean Fine, The Globe and Mail, August 18, 2014

The Conservative government has been sharply reducing the expertise on hand in the Justice Department, even as its tough-on-crime agenda continues to be a major priority, with dozens of laws being debated and changed at the same time.

In a year when several key criminal laws were struck down by the Supreme Court, or given an interpretation that dramatically softened their impact, the Justice Department has been flying by the seat of its pants after sharp cuts to the number of researchers and lawyers and frequent demands for the speedy drafting of new laws, according to interviews with former senior bureaucrats and the release of an internal report.

Separately, in the Public Safety Department, lawyers were given just one week to draft a new law on parole, according to Mary Campbell, who retired last year from her job as the department's director-general of the corrections and criminal justice directorate.

By her count, 30 bills on justice, sentencing and corrections are either currently before Parliament or were given royal assent in June. She likened the legislative development process to a sausage factory.

"When you've got a pace that says, 'Keep the sausage machine going,' you're going to get errors," she said in an interview.

Jason Tamming, a spokesman for Public Safety Minister Steven Blaney, said the government has passed more than 30 measures to get tough on crime. "Our Members of Parliament work very hard to pass the best legislation to keep our communities safe," he said. "We expect our civil servants to do the same."

The Justice Department, in an internal report on the criminal policy section released on its website, did not use the colourful language that Ms. Campbell did. But it spoke of lowered morale as research and statistics staff have been cut from 35 to 17, between 2008-09 and 2012-13. It said 81 per cent of the department's lawyers said the quality of their work has suffered because of the short timelines they must meet.

However, when contacted directly, a Justice Department spokesperson said it is important to note that the criminal policy section is achieving its objectives and the government has a high degree of satisfaction with its work.

David Daubney, a former senior bureaucrat in the Justice Department who retired in 2011, said the purpose behind the research staffing cuts is obvious. “They don’t want to encumber their minds with the facts,” he said of the government. “We always at Justice prided ourselves as being ‘stewards of the criminal law.’ We were seen as the go-to place for the facts and research on criminal policy, justice and corrections. That’s certainly no longer the case.”

He said morale has dropped as advisers conclude the government doesn’t want their advice. At a recent retirement party, an assistant deputy minister he wouldn’t name “confirmed that they’re not bothering to put as much background data as they used to into anything going into the minister’s office or into memoranda to cabinet.”

He said there are several reasons why they don’t bother: “You can only get hit over the head so many times. There’s also a view that ‘they got elected and we’ve got to do what they want.’ And frankly, there are a number of careerists in the department and elsewhere who don’t want to damage their careers by being overly negative.”

Ms. Campbell said that, because it involved a cabinet confidence, she could not reveal the name of the bill in which the department had just one week for drafting. But she said she recalled the experience clearly.

“I have a photographic memory of the week, because I had gone home after work on the Monday and just crawled depressed into bed at 5:45 p.m. – I was telephoned and ordered to be on Parliament Hill in 45 minutes for a very high-level meeting on the particular issue, at which time it was decided that the legislation would be prepared. And by Friday we had the final print of the bill for tabling,” she said.

The bill was on “a substantive parole matter, it was forthwith placed on the Order Paper and tabled, and was passed by Parliament. There were other options to address the concern, but they got no air time.”

Call for federal pension policy baffles experts

Kathryn May, Ottawa Citizen, August 4, 2014

The Conservative government is developing a funding policy for the pension plans of Canada's public servants, military and RCMP, a move that baffles experts because the plans have no real funds and own no assets.

A funding policy typically sets the framework for how to cope with risk and manage any gains and losses by adjusting the contributions paid into pension plans.

But the policy, to be crafted by consultants, would cover years of pensionable service in accounts that are nothing more than ledger records with no real assets. Pension benefits are guaranteed by law and paid from government's main bank account — the consolidated revenue fund.

Pension expert Malcolm Hamilton said he's puzzled why the government is charging ahead with a funding policy for the "least funded parts" of its unfunded pension plans.

Funding is about setting money aside to pay benefits and they don't pay benefits from those accounts, so why do they need a funding policy?" he added.

What, if anything, does it mean to fund a pension plan that, by the government's own admission, has no fund in which assets are held and from which benefits are paid? Beats me. This might make sense if the government was proposing to change the way its handles the pension funds but there's no suggestion that is the case."

The public service pension plans are like no other. They aren't governed by the Pension Benefits Standards Act, the assets aren't in trust or managed by a trustee, and there is no segregated pension fund owned by the plan in which pension assets are held and invested and from which pension benefits are paid to retirees.

Treasury Board is hiring consultants to come up with a "funding policy," as recommended by Auditor-General Michael Ferguson in his recent report on the sustainability of the three plans. Bidders have until Tuesday to submit proposals for the two-phase project, which must be completed six months.

The policy is being specifically drafted for the public service pension plan but it must be "flexible enough" to be adapted for the other plans. Consultants will provide a research report, followed by a second phase of weekly consultations on proposals developed for the final policy.

A funding policy sets the framework for funding a defined benefit pension plan, including factors such as workforce demographics, stability and affordability of contributions, and the handling of surpluses or deficits. It takes into account the employer's − in this case the government's — financial position and risk tolerance.

Without a policy, Ferguson said the Public Sector Pension Investment Board, which manages the plans' assets, is forced to make assumptions about the government's tolerance for risk and funding preferences when targeting rates of return in its investment strategy.

The bid documents, however, indicate the funding policy is for the pension assets and liabilities accrued before 2000, which aren't managed by the investment board. All the pensionable service built up before 2000 is considered unfunded.

Treasury Board officials offered no explanation on why the policy is for the pre-2000 plan other than it would "provide additional guidance" for funding and financing decisions while also "strengthening" its guidance to the investment board on investment strategies and risk management.

Hamilton, the pension expert, said a funding policy also won't resolve the major problems critics have with the way the government records the cost of the plans on the books.

The C.D. Howe Institute has long argued the plans are not fully funded and the government is grossly understating the size of Canada's debt and deficit — and how much it pays thousands of bureaucrats, military and RCMP.

It argues the government should adopt "fair-value" accounting like the private sector, which uses current market prices to value assets and liabilities as a means to ensure plans are fully funded in the event they are liquidated or wound down.

The timing of the proposal has also raised eyebrows, particularly among unions locked in a testy round of collective bargaining with the government over its plan to replace the existing sick leave regime with a new short-term disability plan.

Ian Lee, a professor at Carleton University's Sprott School of Business, said the project, which includes a sweeping report on the latest trends and best practices in the pension industry, will set the stage for Conservatives to make compensation reform, including a pension overhaul, a campaign promise in the 2015 election.

"I think this report is the first step in that journey," he said. "They will run as the party with the courage, conviction and ability to reform the largest employer in Canada by modernizing its sick leave, pay, benefits and pensions. These are fundamental changes and they will seek a mandate from Canadians to do it."

LeDroit

Conciliation travail-famille: le fédéral n'ira pas en appel

Paul Gaboury, Le Droit, le 23 août 2014

Le fédéral a décidé de ne pas en appeler de la décision rendue par la Cour fédérale dans le dossier d'accommodement à la situation familiale d'une employée de l'Agence des services frontaliers du Canada (ASFC).

Le délai final est maintenant périmé pour interjeter appel de cette décision favorable pour Fiona Johnstone, cette employée de l'ASFC qui avait demandé à son employeur de l'accommoder avec un horaire lui permettant de s'occuper de sa famille.

En mai dernier, la Cour fédérale avait maintenu à l'unanimité la décision du Tribunal canadien des droits de la personne qui avait donné raison à l'employée à la suite d'une plainte déposée en 2005 contre l'ASFC, son employeur, qui avait refusé de lui accorder des quarts de travail fixes afin qu'elle puisse trouver des services de garde adéquats.

La décision du gouvernement a été saluée par son syndicat, l'Alliance de la fonction publique du Canada (AFPC), puisqu'elle met fin à la bataille juridique dans cette affaire.

«Cela met ainsi fin au long combat juridique que cette membre de l'AFPC a mené pour obtenir un accommodement à ses besoins de garde d'enfants. Le gouvernement semble avoir enfin reconnu que les parents qui travaillent ont besoin d'aide», indique le syndicat.

Dans sa décision, la Cour d'appel fédérale avait confirmé que la situation familiale englobe les services de garde et d'autres obligations parentales, imposant ainsi un devoir d'accommodement aux employeurs.

LeDroit

La fonction publique sans fil, un défi de sécurité

Louis-Denis Ébacher, Le Droit, le 16 août 2014

La migration de 120 000 lignes téléphoniques terrestres vers des lignes cellulaires ou des transmissions électroniques, dans la fonction publique fédérale, pose de sérieux défis quant à la sécurité et aux risques d'espionnage à la grandeur du pays, constate LeDroit.

Dans des documents obtenus grâce à la Loi d'accès à l'information, on comprend que la volonté du gouvernement de réduire les dépenses dans la fonction publique passe entre autres par l'épuration de ses moyens de communication.

Des documents et des échanges de courriels ayant circulé au sein de Services partagés Canada (SPC) démontrent une volonté de retirer les «doublons» des bureaux fédéraux. Des employés sont équipés à la fois d'une ligne terrestre conventionnelle et d'un téléphone cellulaire.

Ottawa a créé SPC en 2011 afin d'entreprendre «des mesures de rationalisation et des économies dans les services de technologie de l'information (TI) à l'échelle du gouvernement du Canada».

Selon l'organisme, «la migration vers les cellulaires s'inscrit dans le cadre du projet Milieu de travail 2.0 visant à créer un espace moderne pour permettre aux fonctionnaires de travailler plus efficacement».

Services partagés Canada compte faire communiquer les employés fédéraux par BlackBerry ou par appareils VoIP (Voice over Internet Protocol), dont le fonctionnement se rapproche de celui d'un ordinateur branché sur sa propre adresse IP. «Pendant ce temps, 10 000 lignes non occupées seront retirées», cite d'ailleurs le même document.

Dans une foire aux questions transmise aux différents ministères et organismes touchés, on explique que «le réseau VoIP de SPC est mis en place sur des réseaux privés sécurisés de l'administration fédérale (dans les immeubles et à l'échelle de la ville et du pays). Lorsqu'une communication vocale sort du réseau VoIP de SPC, elle devient un appel téléphonique ordinaire et est acheminée vers le réseau téléphonique public. Le service VoIP de SPC est plus sécurisé que les services Centrex actuels et est adapté à l'information de niveau protégé A.»

Créer des faiblesses

La sécurité et la confidentialité des informations transmises par ce type de technologie peuvent être compromises, selon un spécialiste en équipements de surveillance, Alexandre Santos, des entreprises Spytronic et Sécurité Santor, à Montréal.

«Dès que ce n'est pas filaire, ça peut être décrypté, dit-il. On s'expose à des interceptions et on crée une faiblesse au niveau structurel.» M. Santos donne l'exemple d'un éventuel saboteur qui réussit à brouiller des ondes cellulaires pour nuire à un échange d'informations sensibles. «Au point de vue de la sécurité, c'est mauvais.»

«Si c'est bien crypté, c'est sécuritaire, mais il n'en demeure pas moins que les données sont transmises dans les airs. Et l'espionnage, ça se fait par la voie des airs, par satellite.»

Bien que leur utilisation soit illégale, il existe des équipements pour intercepter et enregistrer des données cellulaires. Il est possible d'en fabriquer à partir de pièces commandées via Internet.

«Cependant, le VoIP est beaucoup plus sécurisé que l'ancienne technologie, poursuit M. Santos. Mais, encore une fois, ce n'est pas de la fibre optique, c'est une transmission par la voie des airs.»

Le porte-parole de SPC, Ted Francis, concède que les appareils cellulaires sont exposés à des menaces de sécurité supplémentaires reliées à la mobilité. «Ceux-ci sont munis de profils de sécurité similaires à ceux des téléphones fixes traditionnels», explique-t-il.

Le gouvernement fait appel à un soumissionnaire pour assurer la sécurité et diminuer les risques de piratage.

«Un processus portant sur l'intégrité de la cybersécurité de la chaîne d'approvisionnement a été intégré à toutes les activités d'approvisionnement en matière de télécommunications pour assurer la sécurité des appareils», poursuit M. Francis.

Une simple question d'économie pour le fédéral

Le passage des lignes terrestres vers des lignes cellulaires et des systèmes de transmission des données sans fil dans la fonction publique fédérale s'inscrit dans une campagne de rationalisation lancée il y a trois ans.

En 2011, le gouvernement qualifiait de «gaspillage» les 100 systèmes de courrier électronique différents, 300 centres de données et 3 000 services de réseaux. Le gouvernement veut adopter un seul système de courrier électronique et réduire à 20 son nombre de centres de données. En tout, 43 départements sont touchés par ces mesures.

En fournissant des cellulaires à ses fonctionnaires, l'employeur souhaite accroître leur mobilité en leur permettant d'envoyer et de recevoir des fichiers et de l'information urgente, partout et en tout temps.

«À travers Services partagés Canada, il y a plus de 288 000 téléphones de bureau encore en service. En plus, il y a 133 000 cellulaires utilisés», apprend-on dans des documents obtenus par LeDroit grâce à la Loi d'accès à l'information.

Le ministère de la Défense nationale a tout de suite intégré cette technologie à son arrivée dans le nouveau bâtiment du boulevard de la Carrière, dans le secteur Hull.

La Gendarmerie royale du Canada l'a déjà fait pour 5 000 employés.

Emploi et développement social Canada et Citoyenneté et Immigration Canada comptaient suivre la marche, à compter du mois de novembre 2013, et poursuivre sur leur lancée jusqu'en mars 2015.

Le porte-parole de SPC, Ted Francis, explique qu'au 31 mars 2014, plus de 50 000 fonctionnaires sont passés à l'utilisation des appareils cellulaires et de téléphones intelligents ou à la VoIP. «Éventuellement, tous les fonctionnaires cesseront d'utiliser les téléphones fixes traditionnels», dit-il.

À la même date, 50 000 lignes téléphoniques terrestres ont été remplacées ou abolies par des services téléphoniques cellulaires VoIP. SPC dit avoir atteint sa cible avec des économies de 13,8 millions $ pour l'exercice financier 2013-2014, et prévoit des épargnes de 29 millions annuellement à partir de 2015.

Avec William Leclerc, La Presse

Five ways to renew the public service

By David McLaughlin, contribution to The Globe and Mail, August 22, 2014

DAVID MCLAUGHLIN is a former chief of staff to a prime minister and a deputy minister to a premier

There is a new Clerk of the Privy Council in Ottawa today.

Most Canadians will neither notice nor care about an obscure Ottawa bureaucratic name change. That would be an oversight. Despite the antiquated and low-grade title (who calls anyone a "clerk" any more?), this is the most important and powerful public service position in the federal public service. And how the Clerk behaves affects our cherished "peace, order, and good government."

No mere bureaucratic mortal, the Clerk is also Secretary to the Cabinet, responsible for the management of the government's highest decision-making processes. She – for the second time in our history "it" is now a "she," Janice Charette – is the Prime Minister's principal public service adviser. All formal advice from the public service to the PM goes through the Clerk. And all formal directions from the PM to the public service go through the Clerk. That is a lot of "get," as they say.

In short, the Clerk is the PM's deputy minister while the Privy Council Office, housed in the same buildings with the Prime Minister's Office, is really the department of the Prime Minister. It exists to assert the Prime Minister's will across the vast apparatus of government.

If the Prime Minister is in theory primus intra pares or "first among equals" in the cabinet, the Clerk has no such encumbrances and really exists as "with no equals," theoretical or otherwise.

After almost nine years in government, Prime Minister Stephen Harper knows what he wants in this, his third Clerk, and how he intends to deploy her. It is the only true instance where the Prime Minister can appoint his own deputy minister. All other deputies are appointed by the PM on advice of the Clerk for cabinet ministers; they cannot choose their own, continuing the formal non-partisan, merit-based appointment system of many years. While the Clerk is supreme in the public service as a whole, the job derives practical authority from the trust relationship with the prime minister.

This dynamic is worth watching most. For the Clerk of the Privy Council is also head of the Public Service of Canada, charged with the effective leadership and management of the federal public service. It is in this capacity that conflict can occur for this is a government not shy about imposing its political will not just on decisions, but on the very decision-making process itself. The independence of the public service has been eroded

in important ways not through crass political appointments as some might expect, but by the more deliberate diminution of its once pre-eminent advisory and expert role.

Fairly, this phenomenon was not invented by the current Conservative government. But it has flourished and perhaps metastasized to an unhealthy degree.

Calls for the public service to reform its culture and operations too often masquerade as demands to conform to the government of the day. Akin to recent musings about the supremacy of Parliament versus the courts in making and interpreting laws, insisting the public service exists – full stop – to loyally carrying out the program and policies of the duly-elected government obscures the essential role of checks and balances necessary for good governance.

Each Clerk has systematically embarked upon some form of public service renewal within the ranks during their tenures. This next round needs to be aimed at principles first, not the latest management fad or gimmick such as Dragon's Den policy

Here's a five-point checklist for the new Clerk:

First, stop the churn in deputy minister turnover. Fewer and fewer deputies stay in their respective departments for more than a couple of years now. Environment Canada is on its fifth deputy minister in eight years. This erodes corporate memory and expertise at the top, severs the link between responsibility and accountability in a department, and makes deputy ministers more amenable to short-term priorities and thinking.

Second, build back the research capacity for independent, evidence-based decision-making. Access to good, reliable data and information is at the core of sound policy and decisions. Governments are the ultimate knowledge-based institutions. So, why do we insist they operate without it?

Third, think out loud with smart, committed Canadians. Fear of failure is endemic to large bureaucracies, but fear of facing others in case one is challenged over politics is a recipe for idea ossification and policy stasis.

Fourth, build up the Canada School of Government from a management incubator to an idea accelerator. Use it to engage bright and controversial thinkers to challenge and test the public service's own thinking.

Fifth, heed the maxim I once heard from a Clerk: It is unavoidable that governments get caught up in the short-term, but it is unforgivable that they ignore the long-term. Only governments have the mandate and capacity to think about what the future might bring. Seize that role and share what was learned with us all.

Closer monitoring of judicial behaviour is necessary

By Troy Riddell, Lori Hausegger and Matthew Hennigar, contribution to the Ottawa Citizen, August 12, 2014

Recently, the Quebec Court of Appeal ordered a retrial for a man convicted of murder by a jury because the trial judge's "intrinsically sexist attitude" and contemptuous attitude toward the accused's female defence lawyer undermined the fairness of the trial process.

Courts of appeal should not be put in the position of having to police the behavior of judges, however, and there are many practical limitations to such an approach.

The only other mechanism we have for responding to objections about judicial behavior in Canada is through complaints to "judicial councils" at either the provincial or federal level. But this process is also flawed as a method for monitoring judicial behavior and helping judges to improve their performance. Like the appellate process, it is sporadic and depends on someone bringing a complaint. Understandably, lawyers who must appear frequently before a judge might be hesitant to launch such a complaint. The processes by which these councils dismiss or pursue complaints have also been critiqued for being overly opaque.

The judge who was reprimanded, Justice Jean-Guy Boilard, had previously been rebuked by the Canadian Judicial Council in 2002 for berating a defence lawyer. Following that rebuke, in a fit of pique Boilard stepped down from an ongoing major trial against the Hell's Angels, thereby wasting significant amounts of time and money.

One way to more systematically monitor judicial behavior, in an effort to both correct improper performance and highlight areas of strength, is through periodic evaluations of judges.

Of course, how judicial evaluations would be conducted, who would conduct the evaluations, and what would be done with the results would have to be carefully thought through to avoid undermining judicial independence. For example, we would not want provincial or federal ministers of justice evaluating judges based on the outcomes of their decisions with the threat of initiating procedures to remove "poorly" rated judges.

One possibility is for a commission composed of judges, members of the legal community, government officials and lay people to develop a confidential survey mechanism for evaluation purposes. Questions could address a judge's legal knowledge, fairness, timeliness of decision-making, whether parties and staff were treated with

respect, and so on. Staff, lawyers and individuals who have appeared before the judge could fill out the survey confidentially.

Reasonable people will disagree over what should be done with the results. In a pilot project of judicial evaluations in Nova Scotia in the mid-1990s, the results were shown only to the judge and a mentor for professional development purposes. Others may want the results for individual judges published with tangible consequences attached to the results. An intermediate approach would be to publish a report with the aggregate statistics on how well the judiciary is doing on the various indicators, and give the individual results only to the judge and his or her administrative superior.

The results would most likely show that Canada is fortunate to have a very strong judiciary on the whole, but the process would allow for a more systematic way of identifying and responding to problematic judicial behaviour than we currently have in place.

Troy Riddell, Lori Hausegger and Matthew Hennigar are associate professors of political science at the University of Guelph, Boise State University and Brock University, respectively.

THE LUNCH

The lawyer who challenged the Harper government and won

SEAN FINE, The Globe and Mail, August 22, 2014

Wherever I've gone this year in Canada, lawyers are talking about Rocco Galati. What's Rocco going to do next? If the Prime Minister tries any funny business with the courts, Rocco will stop him. Rocco won't sit by …

It's as if Mr. Galati, the Toronto lawyer who brought grief to the Conservative government, has been designated the Unofficial Opposition. He's the first person ever to challenge a Prime Minister's appointment of a Supreme Court judge. And he won. All the resources Stephen Harper and his government could bring to bear, and this upstart spending $42,000 of his own money won the case. And he's not done.

Canada's Unofficial Opposition is eating a tuna salad, washed down with red wine (a Negroamaro, an earthy wine from Friuli), at an outdoor patio on College Street in

Toronto's Little Italy, just down the street from the three-storey house he has turned into an office for his small law firm.

The government never thought someone named Galati could defeat it, he says.

"They were so arrogant in assuming that an argument from me couldn't win or shouldn't win, because we live in a tribal culture. You're only an expert if you're anglo or francophone.… That's been made clear to me for 26 years. I'd put my win ratio in impossible cases up against anybody's, yet I'm still ridiculed when I bring a challenge. How does that work?"

But the real question is – why him? Why not someone else in this country of lawyers?

Mr. Galati and I have a lot to talk about. We have so much to talk about that the batteries in my tape recorder run out of juice. Mr. Galati, an amiable provocateur, goes across the street to buy me new ones.

Snazzy in a beige linen suit with a striped shirt and grey-patterned tie (only the open-toed sandals hint at non-conformity), the 55-year-old comes from a world far from Ottawa's Wellington Street, where the Supreme Court and the Parliament buildings sit in a majestic row. He and his 12 siblings were born in Calabria, in southern Italy. Five of them died in early childhood. His father, a farmer, was court-martialled twice and interned because he didn't want to fight in Mussolini's army.

"He always told me the fascists don't come marching in overnight. It's a slow march."

His father came to Toronto in 1965, found work in construction, and brought the family over a year later. Only three of the children received any formal education, Mr. Galati says. But that includes a brother who, though he had only two years of public schooling, went to the University of Toronto as a mature student and became a lawyer.

"Because of my sense of history, I don't like the idea of injustice. Growing up in Toronto was no picnic in the sixties and seventies. It was a very brutal, racist environment. The police were enforcing wartime regulations. On College Street, up until Trudeau rewrote the loitering laws, more than two Italian males could not congregate. They'd get billy-sticked home by the police."

Although he is Catholic, he says his family was Jewish, on both sides, at one time. (When I first met him at his office, he showed me his late grandfather's Argentine identification document from 1918, framed on the wall. It has a Star of David on it.) He says most people don't realize how many Jews (and Muslims) used to live in Calabria, or about the violence used to kill or convert them in previous centuries. It's a recurrent theme of his – the loss of historical memory.

A fighter for long shots, he was a long shot himself. He says he was once assessed in school as intellectually handicapped, and it was only through the efforts of an English teacher at his technical high school, who recognized his perceptiveness in Shakespeare studies, that he was able to go to an academic school for Grade 13.

Bob Dylan saved him from life as an electroplater. He quit his job to move to Montreal to learn to read the poet Arthur Rimbaud in French; he came to Rimbaud knowing that he had influenced Bob Dylan.

“He was not very popular in his early years. That was to my liking – this guy stands on what he believes.”

Once again, his future (and Canada’s) was altered by the kindness of a teacher. He enrolled in non-credit courses in poetry at McGill University, and a teacher told him he’d written a publishable poem, and saw to it that McGill accept him as a full-time student. Despite an A- average, journalism schools and teachers’ colleges rejected him – he still wonders if it was because of his name.

At York University’s Osgoode Hall Law School in Toronto, he learned that his love of Bob Dylan stood him in good stead: Constitutional law was like poetry.

“I had a professor at Osgoode, a very bright man, Graham Parker, who I took courses on statutory interpretation from. He said to me, ‘Do you read or write poetry?’ I said, ‘Yeah, I do both.’ He said, ‘I can tell. Reading statutes is as difficult as reading poetry.’”

He started his law career by working for – of all places – the federal Justice Department. “It seemed the best place for me to get to court frequently.” But he owed $122,000 in bank and student loans, and the interest rate was 22 per cent; his salary was $29,000. If not for his financial need, “I might have stayed, because I enjoyed the kind of law they did.”

On Sept. 30 last year, Prime Minister Stephen Harper announced his choice for a Quebec vacancy on the Supreme Court: Justice Marc Nadon of the Federal Court of Appeal. It was an unusual choice in several respects: He was semi-retired; he was a maritime law specialist (hardly a big need on the court); and he was little-known.

The Canadian legal community raised hardly a peep.

But in early October, Mr. Galati stepped in. He filed a lawsuit in Federal Court, saying the choice was illegal under the Supreme Court Act, which governs appointments. Federal Court judges can’t be appointed for any of the three spots reserved for Quebec judges, he said.

There was nothing personal in it, he says.

“In fact, I like Justice Nadon. I was tormented by bringing the challenge. I thought he was a good judge. I got along with him. That’s not the point. If it was my father, I would have brought the challenge.”

Justice Nadon immediately stepped aside, pending a resolution of Mr. Galati’s lawsuit. Then, Quebec’s National Assembly passed a unanimous resolution opposing the appointment. Prime Minister Harper then asked the Supreme Court to rule on whether it was legal.

So why didn't anyone else challenge the appointment? "Look," Mr. Galati says, "there are about 300,000 lawyers in Canada. I think 299,995 think they're all going to the Supreme Court and they don't want to blow their chances. They're worried about their reputation."

Few thought he had a chance to win. "Most people in the legal establishment thought his case was frivolous," University of Montreal law professor Paul Daly says.

Fighting the odds is nothing new for Mr. Galati. Early in his career he argued 27 separate times in Federal Court that government officials need to provide reasons for their decisions. Finally, in Baker v. Canada, a 1999 deportation case on which he was co-counsel with Roger Rowe, representing a Jamaican immigrant mother, he won his point at the Supreme Court.

"It was epoch-making," Prof. Daly said. "Your liberty and sometimes your life are really in the hands of a government official. Because of Baker, the government has to give reasons for finding against you."

In the Nadon case, he had a secret advantage: he knew the Supreme Court Act inside and out from another improbable case.

Four years ago, he learned that a judge hearing a constitutional challenge of his was 77 – two years past retirement age – and that the chief justice could appoint a retired "deputy judge" if he needed someone to hear a case. The Federal Court had followed the practice since its creation in 1970, and a predecessor court since 1927. In 80 years, no one had challenged the practice. Mr. Galati did, in Felipa v. Canada, and won.

We are having a good laugh. In an earlier story, I somehow managed to slip his quote about the Harper government enjoying "urinating on the Constitution" past my editors. "I say that all the time," he tells me. "You're the first guy who put that in."

It is hard to say what is more fun to talk to Mr. Galati about – the personal or political. He's what my mother would call a character. His cellphone voice mail is a Miranda warning: "If you're anyone else except Miranda, please do not leave a message." Miranda is his daughter who is away at university in the United States. (Mr. Galati also has twin four-year-old boys from his second marriage; Miranda is from his first.)

Few outside of legal circles realize the lasting importance of the Nadon case. The Supreme Court gave itself the protection of the Constitution; from here on in, any changes to its composition will require provincial consent. On Mr. Galati's back, the court insulated itself from tampering.

Although he calls that "a big win," he still describes the ruling as a disappointment. "The way they politically split it is inconsistent and illogical." (The court said Federal Court judges can be named to the six non-Quebec spots on the Supreme Court.)

It's news to him that lawyers everywhere are talking about him. "That's strange," he says. The case hasn't changed his life, "except taking away time from my family and from my billable hours."

He makes his money from doing tax law, not constitutional cases.

And now he has launched a challenge to another of the Harper government's judicial appointments – that of Federal Court of Appeal Justice Robert Mainville to the Quebec Court of Appeal, and any subsequent appointment to the Supreme Court.

"The other thing I hear – 'You won the Nadon reference, but that's because nobody likes Nadon; everyone likes Mainville.' What kind of kindergarten debate is that, really? That's just stupid. Liking or not liking has nothing to do with it."

Rain has begun to fall, more on me than on him. Mr. Galati is in fine form, still going strong after two hours, the tuna long since finished. It is a good thing he picked up those batteries.

"I hear, 'Mr. Justice Mainville wanted a transfer to Montreal for personal reasons.' I sympathize. Are they going to bend the Constitution for me? Should we bend the Constitution for any individual? Well, no. If we do, we're back into l'état, c'est moi. We're back to the divine right of kings, Louis XIV and the Versailles culture.

"This is why stacking of the courts is a very serious concern. There's only one difference between a dictatorship and a constitutional monarchy: a fair and independent judiciary standing between the authority of the state and the rights of the citizen."

I tell him I need to pay him for the batteries so no one can accuse me of anything. I give him $5.

"Yeah, okay," he says. "I'm going to give you $1.50 back because as a lawyer I won't be bribed either." And he does.

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In his own words:

Rocco Galati on the business of law:

"If I go broke, I'm no good to anybody. A lot of good lawyers who do a lot of good work lose sight of the business side and they go under."

On the source of his sharp tongue:

"It comes from my mother. She had a great, quick wit and was very quick with a metaphor. Everything that came out of her mouth was original and often funny."

On his previous work representing suspected terrorists:

I saw it as the civil rights issue of the day."

On his chances of winning his challenge, filed in Federal Court, to the appointment of Federal Court of Appeal Justice Robert Mainville to the Quebec Court of Appeal:

“The Federal Court, because they’re human beings, is going to be resistant to the idea because he’s one of their own. You know that beautiful line in O Brother, Where Art Thou? where the evil sheriff is the personification of the devil, and says ‘The law is a human institution?’ Therein lies the historic, ageless tension between the rule of law and human capriciousness and tribal impulses.”

On whether the Supreme Court will grant leave to appeal, if the Mainville case goes that far:

“What’s in it for the Supreme Court at this point? Nothing, they’ve constitutionalized their status. Will they care about one judge? Maybe not. There are a lot of variables that have nothing to do with the law, but with human frailties and dysfunction and a non-adherence to the idea of law.”

THE WINDSOR STAR

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Exam time especially taxing on students with ADHD

Ted Whipp, The Windsor Star

Distraught, overwhelmed, filled with dread.

That’s how a second-year University of Windsor law student with Attention Deficit Hyperactivity Disorder described her experience with the disorder as she flailed about in her post-secondary studies.

Unable to focus, procrastinating for weeks over projects and homework for tests, she would leave a mountain of work to the last minute.

Finally, feeling so stressed and overwhelmed, she sought medical help and was diagnosed with ADHD in her third year of undergraduate studies. Her situation has improved greatly since and she encourages others to seek help, she said.

"It’s so daunting," she said of feeling so overwhelmed.

"You can’t even start thinking how you can overcome it," the 23-year-old student from the Toronto area said. She wanted to speak anonymously because of concern her disorder may affect her future law career prospects.

She described her plight in class, saying she was falling behind, unable to cope and even begin school work and feeling her situation would never end.

Her experience proves especially timely with the approach of exams in December at the University of Windsor and universities elsewhere, say those involved with helping and treating people with ADHD.

The intense study period can prove especially difficult for students who may be away from home for the first time and removed from their support system.

But there's much help available online and from the University of Windsor.

Dr. Corina Velehorschi, a Windsor psychiatrist and consultant with the University of Windsor's student health services, said the university offers "wonderful" resources.

She added ADHD also has one of the highest success rates for treatment in medicine.

Heidi Bernhardt, national director and founder of the Centre for ADHD Awareness, Canada based near Toronto, said the organization offers "tons of resources." They include 30 hours of video presentations with experts.

Bernhardt points to the centre's website — caddac.ca — that offers facts, information, resources and strategies.

While many may associate ADHD with the young fidgety kid who can't sit still, she said it can continue into the teens and through adulthood.

As a mother with three grown sons with ADHD who attended university, Bernhardt appreciates the situation for students with exams on the horizon.

Because ADHD can involve what Bernhardt calls the "executive functioning skills" such as organization, time management and problem solving, ADHD can affect students' ability to complete assignments and meet deadlines.

Away from home, parents aren't available to follow up on school work and make sure students get to class.

Bernhardt said recent efforts to raise awareness about ADHD with university students may explain why they're struggling.

"They may be overwhelmed. They don't know what's happening to them. And they're told to just try harder," she said.

But students may spin their wheels, fail and drop out, Bernhardt said.

She hears from students and parents and their situations can be heartbreaking.

"Parents are in tears, parents are in denial. We are constantly trying to raise awareness."

Bernhardt said it can be difficult for students to be their own best advocates. But they need to talk to student health and counselling services at university.

Diagnosis and treatment are much better in recent years, Bernhardt said.

For a long time, researchers missed girls because they didn't see the hyperactivity so commonly associated with ADHD. "But you see a lot of anxiety and depression in girls later on," Bernhardt said.

Velehorschi sees bright students who are failing, have low self-esteem, feel overwhelmed, stupid and unable to keep up.

"Their brain cannot make the bridge between knowledge and the execution of that knowledge," Velehorschi said. "They lack the neurotransmitters in their brain between knowledge and execution."

Exam time can be especially difficult. They have a hard time sitting still and may read a test question over and over, Velehorschi said. In turn, they may overcompensate, studying intensely two or three times longer.

They lack focus and don't have an appreciation of time, so they procrastinate and get distracted. A project due in two weeks falls by the wayside as the student still thinks it can be completed in the last couple of weeks.

The University of Windsor law student said she lacked the basic study skills so many of her peers take for granted.

"They don't know what they have to do," Velehorschi said. And besides medicinal drugs, treatment also involves teaching them skills. At exam time, they may need a quiet environment, extra time and breaks.

Said the second-year law student: "I can't imagine not being diagnosed and being here in university."

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Misconceptions and myths abound about Attention Deficit Hyperactivity Disorder, according to the Centre for ADHD Awareness, Canada

Here are some facts to dispel the myths:

- ADHD is a genuine neurobiological disorder that was clinically observed more than 100 years ago. All of the major medical associations and government health agencies recognize this fact because the scientific evidence is overwhelming.

- ADHD is under-diagnosed and under-treated.

- ADHD occurs in five to 12 per cent of school-age children worldwide.

- ADHD is the most common mental health disorder in children.

- Eighty per cent maintain the diagnosis into adolescence.

- Sixty per cent are still affected by core symptoms in adulthood.

- Research shows that ADHD is most likely inherited.

- New research shows that problems with executive functioning, such as organization and time management, greatly affect those with ADHD.

- ADHD is a problem with regulating attention not just inattention.

- Parenting styles do not cause ADHD.

- Diets and limiting food additives and sugar will not cure ADHD.

- Treatment for ADHD should always be multi-modal.

- Using medication for ADHD does not lead to future drug abuse and may decrease the chance that adolescents with ADHD self medicate.

Children and adolescents with untreated ADHD are at a greater risk for:

— problems with learning, resulting in less academic success;

— dropping out of high school;

— poor self-esteem;

— substance abuse;

— increased parent-child conflict and stress;

— sustaining injuries and having accidents;

— more mental health issues as they grow up;

— problems with social skills and peer relationships and

— becoming a juvenile offender.

— Centre for ADHD Awareness Canada; caddac.ca