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ASSOCIATION OF JUSTICE COUNSEL
ASSOCIATION DES JURISTES DE JUSTICE

Press Clippings for the period of August 25 to September 2, 2014
Revue de presse pour la période du 25 août au 2 septembre 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

AJC in the news/L'AJJ fait les manchettes

Feds look to bolster government lawyers' billable hour targets

Glenn Kauth, Legal Feeds Blog, Canadian Lawyer Magazine, August 25, 2014

The Department of Justice is taking a further step towards mirroring private practice by including billable-hour targets in federal lawyers' performance reviews and increasing the numbers it expects them to meet.

That's the word from the Association of Justice Counsel, which is raising concerns about the new approach.

"Historically, they've always told us through the years that they don't use the time keeping to keep an eye on us," says Len MacKay, president of the association that represents federal government lawyers.

According to a recent letter to MacKay from Deputy Justice Minister William Pentney, the department is increasing the "average time spent on the delivery of legal services" to 1,400 hours per year, up from 1,300. While MacKay notes the department has long had the targets for what it said were budgeting purposes, the move to incorporate them into performance reviews is new.

The goal, according to Pentney's letter, is to reduce the time spent on non-legal activities.

“While the participation of counsel to non-legal services work remains important, the department will examine the extent of counsel involvement in corporate and non-legal activities to ensure that their time is used most efficiently,” he wrote, adding the department also uses the numbers when it comes to collecting revenues from other ministries and agencies.

MacKay has a couple of concerns about the change. First, lawyers can only bill for work on behalf of clients.

“But many lawyers don’t work necessarily for clients, so in many ways the target is artificial,” he says.

Also, he notes the targets won’t include administrative duties, something lawyers have had to take on more of as the government has cut staff in recent years.

“Lawyers are having to work more administrative duties, which can’t go towards billable targets, for example,” he says.

While Pentney’s letter hints at the need to move lawyers away from such tasks, MacKay doubts that’ll mean more support staff to do them.

“In this current climate, in this current government, we’re not optimistic that’s going to happen,” he says.

More generally, MacKay says the move highlights the government’s efforts over the years to have the department reflect a more private-sector approach. He notes part of the implicit deal in taking a government job with the attendant lower salary was a better work-life balance and benefits. But with changes to things like severance and pensions and now the increased focus on billable hours, those advantages are eroding.

“These things that used to be better benefits in the public sector are no longer there,” he says, noting the new approach may prompt the association to push harder on the salary issue (which he acknowledges lawyers made major gains on in the last round of bargaining).

The 1,400-hour target is in line with the median reported by Canadian Lawyer in its recent compensation survey. That survey put the median at 1,470 hours, although the targets are often higher at large national and global firms. When it comes to federal lawyers, MacKay says the target is generally doable but not necessarily for all lawyers. “I think they’re putting the hours in,” he says.

“I think it’s realistic for some folks because they do a job where it’s almost entirely billable work,” he adds. “But for others, it’s not going to be realistic.”

Federal government on track to cut 35,000 public service jobs

KATHRYN MAY, Ottawa Citizen, August 26, 2014

The Conservative government, which has cut nearly 26,000 jobs in Canada's public service over the past three years, is poised to shed another 8,900 jobs by 2017.

Treasury Board's latest employment numbers show 257,138 people working in the core public service at the end of March, compared to 2010-11 when the federal payroll peaked at 282,980.

But the plans and priorities reports done by federal departments indicate they are braced to eliminate another 8,900 jobs over the next three years, said Mostafa Askari, the assistant Parliamentary Budget Officer.

"Those 8,900 reductions are presumably beyond what has already been done," he said.

That would bring total cuts to about 35,000.

That's a far cry from the 19,200 jobs the Conservative government pledged to cut in its major austerity budget of 2012, which launched a downsizing that trimmed $5.2 billion in spending over three years. Most of those cuts were managed by attrition and done in the first year.

The additional reductions are the result of all the other spending cuts – particularly the operating freezes imposed on departments in 2010 and another one this year – that are still working their way through the system.

The latest two-year operating freeze, which affects all departments and separate agencies, came into effect this year and is expected to generate $1.7 billion is savings over two years.

It comes on top of the billions of dollars' worth of spending reductions that departments have been swallowing since 2010. The impact, once the latest operating freeze is factored in, will leave departments managing yearly ongoing savings of $13.7 billion by 2017-18.

With that kind of cumulative impact, federal managers have little room to manoeuvre in managing this operating freeze, which probably means no hiring and more layoffs.

It also puts unions in a tough position at the bargaining table because any wage increase they win for public servants would have to be absorbed by departments – which could further increase job losses.

The government and union are in the early days of what is expected to be a very tough round of collective bargaining over the Conservatives' plans to replace public servants' existing regime of accumulated sick leave with a short-term disability plan.

As part of those contract talks, the government tabled a proposed wage increase of 0.5 per cent a year over three years. During a freeze, departments must absorb any wage increases and can't rely on Treasury Board for funds to compensate for the extra costs of the wage settlements.

That puts unions in the unenviable position of a negotiating a deal that could result in more job losses. The 17 unions have already lost bargaining clout under the new ground rules for collective bargaining that the government has implemented.

The Conservatives, however, can go to polls in 2015 with a balanced budget and a promise of tax cuts while touting what good managers they are, having eliminated 35,000 jobs and driven direct program spending as a share of the gross domestic product (GDP) to its lowest levels in years.

With job cuts closing in on 35,000, the government can also trumpet that it is on track to returning the public service to the size it was when it came to power in 2006.

The public service has changed considerably over those eight years. Studies show it has hired more than 160,000 new employees over the past decade and faced an unprecedented generational turnover of retiring boomers. More than half of today's public service knows no other federal government than the Conservatives. The government also hasn't made cuts in its priority areas, such as security portfolios.

It is still unclear what impact the government's cuts so far are having on the quality and level of some 400 programs and services.

The Parliamentary Budget Officer has been wrangling with the government since the 2012 budget for data to get a handle on the nature of cuts, but has been blocked in trying to get a fuller picture. The PBO recently found that the performance of the government's programs, and whether they were working as expected or not, had little bearing on the government's decisions about what to cut.

By the Numbers:

- **35,000 – Number of public service jobs that could disappear.**
- **25,842 – Number of jobs eliminated between 2010-11 and March 31, 2014.**
- **19,200 – Number of jobs cut in the 2012 federal budget.**
- **6,800 – Estimated number of jobs cut because of 2010 operating budget freeze.**
- **8,900 – Number of job reductions forecast in federal departments' current Reports on Plans and Priorities.**

Performance has little bearing on public service cuts, watchdog says

Kathryn May, Ottawa Citizen, August 27, 2014

As the Conservative government cut nearly 26,000 public service jobs over the past three years, it paid scant attention to the performance of the programs and services those employees had provided, says Canada's budget watchdog.

A report by the Parliamentary Budget Office found little correlation between the success or failure of programs and the cuts made to them since 2010-11. People are the government's biggest single operating cost and departments shed nearly 26,000 jobs in that period. It is expected to eliminate another 8,900 by 2017.

The finding strikes at the heart of the government's expenditure management system, which is built on performance-based budgeting to ensure spending is tied to results.

It also raises questions about the fairness of the new performance management agreements all public servants must sign, which commit them to specific goals. These agreements are key to Treasury Board President Tony Clement's drive to change the culture of the public service and make it "cost-effective" while recognizing stars and weeding out lousy performers.

"You have to wonder on what basis are these managers and employees being judged," said assistant parliamentary budget officer Mostafa Askari.

"They are supposed to use performance measures to determine which programs are working and our examination of those indicators show they are not being used for that purpose and we saw no indication of the linkage between performance measures and budgeting."

When budgeting, the government is supposed to review all programs with an eye to saving costs and improving efficiency. Departments are expected to reallocate funds from low-priority and poor performing programs to higher-priority and successful programs as they did during the strategic reviews that led to 19,200 job cuts and spending reductions of $5.2 billion in the 2012 budget.

But the PBO found "no statistically significant relationship" between the performance of programs – whether they met their targets or not – and receiving increased funding for the next year, or in shifting resources from low-performing to high-performing programs.

The PBO has been wrangling with the government since the 2012 budget for data to get a handle on the nature of cuts and the impact on programs, but has been blocked in trying to get a fuller picture.

For this study, it examined the government's spending as presented to Parliament and correlated it with performance indicators for the programs that 108 departments set, track and report on every year. The PBO scored the performances by ranking them as "met," "not met" or "not applicable" if the evidence was incomplete.

The study found the government met less than one half of its performance targets for 41 per cent of all programs. About 44 per cent of programs didn't have enough data to measure their success or failure.

The government's programs are lumped into four themes: economic, social, international and government affairs. The programs for the running of government, ensuring it is well-managed, efficient and transparent, were the worst performers but received the biggest budget increases.

"We still don't know what was cut and how services were affected but when you look at how they used these indicators, there isn't much of a link between that and policy on spending levels," said Askari.

The report noted the Conservative government isn't alone. A study of the OECD countries using performance-based budgeting found performance measures were "less influential" when governments made cuts after the 2008 financial meltdown.

The report raises the question of why public servants are assessing the performance of programs if no one is paying attention to them. Public servants have long groused about the reporting burden they face.

Even many MPs admit they don't pay enough attention to the reports but government assures them the spending they're asked to approve has considered performance when deciding which programs to expand, fix or scrap.

Askari said he doesn't expect government to base its budget decisions solely on performance results, but says they should be a factor and "we don't see that linkage."

The auditor-general rapped the government in 2006 for failing to use performance measures when managing its spending. At the time, it promised to improve.

Some say the study could bolster MPs' push to overhaul the archaic Estimates process so they can better understand how much money is spent on programs and the outcomes expected from that spending.

Clement is still studying a report from the government operations committee to redesign the Estimates.

Next round of public sector cuts 'beyond worst-case scenario' 30

BY AEDAN HELMER, OTTAWA SUN, August 27, 2014

As the federal government prepares for another round of job cuts, the union representing nearly 50,000 public service employees in Ottawa is warning of an acute impact in the city's economy.

PSAC regional executive vice-president Larry Rousseau said the latest round of cuts -- with 8,900 jobs to be cut by 2017 -- is "beyond our worst-case scenario."

Austerity measures enacted by the Conservative government in 2012 originally called for the elimination of 19,200 positions, largely to be achieved through attrition.

According to Parliamentary Budget Officer Mostafa Askari, the next round of cuts would go beyond those already announced, bringing the total to nearly 35,000.

Askari said the planned reductions would reduce the total population of the federal public service to levels last seen in 2006-07.

"Three weeks ago the figure was 25,200 (jobs already cut) and we were already 6,000 jobs over the numbers that had originally been announced," said Rousseau. "So the big question was, since the target has been exceeded, why don't we stop the cuts?"

Rousseau warned of an already "toxic" work environment, with stress levels peaking, staff shortages, and programs whose services have been handcuffed by the cuts.

In short, said Rousseau, "the quality of work life in the public service is shot to hell."

Rousseau pointed to several recent high profile events to illustrate the need for a strong public service, including the Lac Megantic rail disaster, where an inquiry put part of the blame on the government's lack of oversight.

"Of course the government has always said it would be the 'back office' staff that would be cut," said Rousseau. "But there are front line services that have been slashed, and we now see that yes, we do need regulations and oversight, we need audits, we need people to follow up on inspections, we do need to hold people accountable.

"The impacts are already starting to be felt, and we feel the future is not going to be very rosy for the average Canadian citizen."

And nowhere will the impact in the workforce be deeper than here in the national capital, said Rousseau, where local PSAC membership has declined by about 15% over the last three years.

"You look across the city, and the economy is grinding to a halt, public service employees are pulling back, not purchasing, holding off on projects that may help kick start the economy. You look around and you can tell," he said.

"Everybody has simply decided to wait this out, to hunker down and wait for this storm to pass."

Québec défend l'aide médicale à mourir devant la Cour suprême

Jean-Marc Salvet, Le Soleil, le 29 août 2014

(Québec) La procureure générale du Québec a décidé de défendre dès à présent «l'aide médicale à mourir» devant la Cour suprême du Canada.

Dans un mémoire déposé devant le plus haut tribunal au pays, Québec plaide sa «compétence exclusive» en la matière et fait valoir que la reconnaissance de celle-ci favoriserait le «fédéralisme coopératif».

C'est la toute première fois que le Québec présente un argumentaire juridique en appui à la loi adoptée par l'Assemblée nationale en juin. Il le fait dans le cadre d'une affaire de suicide assisté en provenance de la Colombie-Britannique.

Dans un mémoire déposé avant celui de Québec, le Procureur général du Canada avait, plus tôt cet été, réitéré la position du gouvernement de Stephen Harper: les dispositions sur l'euthanasie et le suicide assisté inscrites dans le Code criminel canadien ont préséance sur les règles des provinces en matière de santé.

Même si le mémoire du gouvernement fédéral passe sous silence la loi québécoise, celui de Québec est tout entier bâti autour de cette législation. Le gouvernement québécois n'y fait pas mystère de ses craintes.

«La procureure générale du Québec [la ministre Stéphanie Vallée] intervient au présent pourvoi en raison des sérieux impacts juridiques pouvant en découler, plus particulièrement quant à l'encadrement et à l'administration, par les autorités provinciales, de l'aide médicale à mourir.»

Le contre-pied d'Ottawa

Québec soutient que les provinces ont compétence «en matière de santé et que cela comprend notamment le pouvoir de légiférer afin de déterminer la nature des soins qu'elles offrent».

Le document insiste sur le fait que «l'aide médicale à mourir s'inscrit dans un continuum de soins offerts en fin de vie afin de soulager les souffrances de patients atteints de maladies graves et incurables».

Cette question «doit être abordée en tenant compte du contexte médical dans lequel elle s'inscrit, et non de façon désincarnée en centrant l'analyse uniquement sur sa conséquence ultime, le décès du patient», plaide le mémoire.

Il invoque une «compétence exclusive». «Les provinces ont compétence exclusive afin de légiférer à l'égard de l'aide médicale à mourir puisque son encadrement s'inscrit en droite ligne avec le contenu vital et essentiel de la compétence provinciale en matière de santé.»

«Fédéralisme coopératif»

«Reconnaître que les provinces, à l'égard de certaines matières, peuvent exercer de façon exclusive une compétence constitue une forme de fédéralisme coopératif», peut-on lire aussi.

«Cette compétence provinciale exclusive ne peut être usurpée, ou contrecarrée, par le législateur fédéral. En effet, ce dernier ne pourrait criminaliser, en lui-même, le traitement offert par la province. Comment peut-il être question d'une compétence provinciale générale en matière de santé sans reconnaître la compétence exclusive de déterminer la nature des soins de santé qui y sont offerts?»

Le mémoire plaide qu'une disposition du Code criminel comme celle stipulant qu'«est coupable d'un acte criminel» quiconque «aide ou encourage quelqu'un à se donner la mort» doit «faire l'objet d'une interprétation atténuée» dans le contexte d'une aide médicale à mourir.

Il va par ailleurs de soi, ajoute-t-on, que «le fait pour un individu de mettre fin à la vie d'une autre personne, en dehors de l'encadrement légal de l'aide médicale à mourir, serait toujours sujet à l'application régulière du droit criminel».

«Toutefois, le geste posé par un médecin, avec la collaboration d'autres professionnels de la santé, de soulager les souffrances d'un patient en fin de vie atteint d'une maladie grave et incurable ne doit pas être considéré comme un acte criminel, mais plutôt comme un soin exceptionnel.»

La loi québécoise prévoit qu'avant d'administrer l'aide médicale à mourir, deux médecins devront s'assurer que la demande a été faite librement et en toute conscience par la personne mourante.

Fairness for Victims Act faces major constitutional problem

SEAN FINE, The Globe and Mail, September 2, 2014

As parliamentary officials scramble to fix an error-riddled parole bill, a bigger challenge looms: The bill, known as the Fairness for Victims Act, has a glaring constitutional problem.

That problem was identified by the Supreme Court of Canada as recently as March, in a separate law on parole. The issue is retroactivity – adding a new punishment to people already convicted and sentenced. In its ruling in R. v. Whaling, the Supreme Court struck down the Abolition of Early Parole Act because it added extra punishment to current prisoners. A similar problem arises in the Fairness for Victims Act, legal observers say.

Yet the House of Commons gave the Fairness for Victims Act unanimous approval on June 4 without a word spoken about the obvious link to the previous Supreme Court ruling.

The constitutional issue at the heart of the bill is another sign of the scant scrutiny that bills initiated by individual MPs tend to receive, compared to government bills. The legislation, also called Bill C-479, was sponsored by Conservative MP David Sweet of Ontario. In June, the House of Commons sent the wrong version – lacking four amendments – to the Senate for debate and final approval.

The new law would extend the wait for parole after a rejection to up to five years; the rule now is every two years. Mr. Sweet's version did not spell out whether it applied to current prisoners or just new ones. Then, Roxanne James, the parliamentary secretary to Public Safety Minister Steven Blaney, proposed an amendment at a Commons committee that would make it applicable to existing prisoners. They would still have a two-year wait

if they fail their first review. But if they fail their second review, they would have up to a five-year wait.

Ms. James told the committee that unless they made the bill apply to current prisoners, "we wouldn't see the fruits of this particular bill until many years into the future."

Two weeks after the committee approved her changes to the bill, the Supreme Court ruled in R. v. Whaling on the question of whether longer waiting times for parole constituted "punishment." In 2011, the government had ended fast access to day parole for non-violent, first-time federal offenders. The court was unanimous that the Abolition of Early Parole Act could not stand because it applied extra punishment to current prisoners.

Eric Purtzki, a Vancouver lawyer who represented Christopher Whaling in that case, explained in an interview why the Supreme Court ruling may be fatal for the new law, the Fairness for Victims Act. "As a result of the decision in Whaling, a measure will amount to 'punishment' under section 11(h) of the Charter if there is a substantial risk of additional incarceration," he said. "There is, in my view, a strong argument that delaying the ability to apply for parole after it has been refused (in the manner contemplated by this legislation) falls within this definition."

Benjamin Berger, who specializes in criminal law at Osgoode Hall Law School in Toronto, agreed that the Fairness for Victims Act could be struck down by the courts. "There's a real possibility this legislation is inconsistent with what the court articulated in Whaling."

A spokesman for Mr. Blaney maintained that the bill's constitutionality had been reviewed. "The Fairness for Victims Act was deemed votable by the subcommittee on private members business [part of a House of Commons procedural committee]. One criteria they examine is compliance with the Charter of Rights and Freedoms," Jean-Christophe de Le Rue said in an e-mail.

But the subcommittee's website shows that the issue came up long before the R. v. Whaling decision of the Supreme Court. In fact, the subcommittee's review happened more than a year ago – on March 21, 2013. And the discussion lasted about 10 seconds. "This bill is not outside federal jurisdiction, it does not clearly violate the Constitution, and there is no similar bill on the order paper," government official Michel Bédard said, according to a transcript. The only response is, "Some hon. members: agreed."

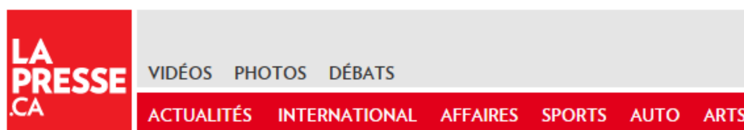
Wayne Easter, who was a member of the Commons committee that reviewed Bill C-479, said in an interview that he had thought the bill applied to current prisoners only if they committed a new offence. After looking at the transcript of Ms. James's remarks, he realized he was wrong.

"When you're dealing with amendments like that, you often just get them the day of the meeting. It's a problem, especially in justice issues: It's legislation on the fly."

Although private members' bills are not reviewed by Justice Department lawyers for constitutionality, Ms. James's amendment would have been reviewed, because it was a government motion, according to Mary Campbell, who retired from a senior post in the Public Safety Department last year.

"We know that it was developed and assessed by Public Safety officials and Justice constitutional experts," she said in an interview. "That doesn't mean that they rated it as constitutional – even an assessment of 'manifestly unconstitutional' would not have prevented the government from putting it forward."

Neither Mr. Sweet nor Ms. James responded to The Globe's questions, despite multiple attempts to contact them.



Évasion fiscale: appel aux dénonciateurs

JOËL-DENIS BELLAVANCE, La Presse, le 2 septembre 2014

(OTTAWA) Alors que tous les gouvernements au pays cherchent à augmenter leurs revenus pour éliminer leurs déficits, la lutte contre l'évasion fiscale est une formule à la mode. En janvier, le gouvernement Harper a lancé une nouvelle mesure pour débusquer les fraudeurs: un programme de récompense pour les dénonciateurs. Bilan de l'offensive fédérale.

Pour lutter contre l'évasion fiscale à l'étranger, le gouvernement Harper a décidé d'emboîter le pas à des pays membres de l'OCDE, comme les États-Unis, la Grande-Bretagne et l'Allemagne, et de remettre une somme d'argent aux dénonciateurs pour démasquer les fraudeurs.

Si l'on se fie à ce qui se passe aux États-Unis, Ottawa fait donc appel au sens du devoir civique de voisins, de collègues de travail et même de membres de la famille pour dénoncer toute personne qui mène un train de vie royal en évitant de payer sa juste part au fisc.

Depuis le 15 janvier, date du début du «programme de dénonciateurs de l'inobservation fiscale à l'étranger», le téléphone sonne plus souvent à l'Agence du revenu du Canada (ARC). En date du 31 juillet, les responsables de la lutte contre l'évasion fiscale ont reçu plus de 1000 appels, dont 310 provenaient de dénonciateurs.

Ces appels ont permis aux enquêteurs de suivre 200 pistes. En outre, l'ARC a reçu 133 dénonciations écrites. De ce nombre, 97 cas sont toujours actifs et 36 autres ont été jugés non valides.

Les délateurs peuvent toucher entre 5% et 15% des sommes qu'Ottawa pourrait recouvrer. Mais seuls les cas de fraude dépassant les 100 000$ peuvent mener à une récompense. L'ARC a un budget annuel de 700 000$ pour verser des récompenses.

«À ce jour l'ARC n'a pas encore versé de paiement à des dénonciateurs. Il peut s'écouler des années entre la date de conclusion d'un contrat avec l'ARC et la cotisation des impôts fédéraux supplémentaires. Les dénonciateurs ne seront payés qu'une fois que les recettes auront été recouvrées», a indiqué à La Presse Philippe Brideau, porte-parole de l'ARC.

70 enquêteurs

M. Brideau affirme que le programme, même s'il en est à ses balbutiements, s'annonce prometteur étant donné le nombre d'appels et de dénonciations écrites acheminés à l'ARC, qui a formé une équipe de 70 enquêteurs à cette fin.

«L'ARC croit que cela représente un bon départ pour le programme. Nous encourageons fortement les personnes qui détiennent des renseignements liés à l'évasion fiscale et à l'évitement fiscal abusif internationaux à se faire connaître - nous voulons de leurs nouvelles. Les premières statistiques sur les appels et les présentations indiquent que les dénonciateurs souhaitent participer au programme», a fait valoir M. Brideau.

Les contribuables connaîtront éventuellement les résultats de cette chasse aux fraudeurs. L'ARC compte inclure un chapitre sur la lutte contre l'évasion fiscale à l'étranger dans son rapport annuel au Parlement.

Le gouvernement fédéral a décidé de serrer la vis, à l'instar d'autres pays industrialisés, afin de protéger son assiette fiscale au moment où il met les bouchées doubles pour rétablir l'équilibre budgétaire d'ici 2015. En plus de faire appel aux dénonciateurs pour contrer les stratagèmes d'évitement fiscal à l'étranger, Ottawa demandera aux institutions financières de déclarer à l'ARC tout télévirement international de 10 000$ ou plus à compter de 2015. Selon M. Brideau, cela permettra au fisc «de mieux identifier les contribuables qui ont recours à de l'évitement fiscal abusif et qui tentent de cacher des revenus et des biens à l'étranger».

Le ministère des Finances calcule que l'ensemble des mesures pour contrer l'évasion fiscale lui permettra d'empocher 1,755 milliard de dollars au cours des cinq prochains exercices financiers.

Une récompense de 104 millions

Aux États-Unis, l'Internal Revenue Service (IRS), l'équivalent de l'ARC, a frappé un grand coup en 2012 en versant la somme record de 104 millions US à Bradley Birkenfeld, ancien employé d'UBS. Il avait dénoncé un stratagème utilisé par cette institution financière entre 2000 et 2007 visant à permettre à quelque 33 000 contribuables américains fortunés d'éviter de payer des impôts.

Grâce aux informations de M. Birkenfeld, l'IRS a pu recouvrer la rondelette somme de 5 milliards US en impôts non payés qui se trouvaient dans des comptes de banque en Suisse.

En Grande-Bretagne, le fisc a versé plus de 1 million de livres en trois ans à des informateurs qui ont aiguillonné les enquêteurs pour mettre la main au collet de fraudeurs, entre 2009 et 2012.

La bataille fiscale en quatre chiffres

- 5 milliards $: Somme minimale que perdrait le fisc canadien chaque année à cause de l'évasion fiscale.
- 1000 : Nombre d'appels reçus par l'Agence du revenu du Canada depuis le début de son « programme de dénonciateurs de l'inobservation fiscale à l'étranger ».
- 15 % P : Pourcentage de la somme recouvrée que l'ARC remettra aux dénonciateurs en guise de récompense.
- 104 millions : Récompense record, en dollars US, remise à un Américain par le fisc aux États-Unis pour les informations fournies sur des fraudeurs à l'étranger. Ces informations ont permis à l'Internal Revenue Service de mettre la main sur 5 milliards.

Un programme trop timide, selon des critiques

L'ampleur du problème de l'évasion fiscale est bien connue. Selon certaines évaluations, le fisc canadien serait privé de 5 à 8 milliards de dollars en revenus par année. Une somme colossale qui pourrait permettre au gouvernement de financer une panoplie de programmes et d'initiatives.

À l'échelle planétaire, on évalue à 2000 milliards par année les sommes qui ont été mises à l'abri dans des paradis fiscaux, selon The Economist. Aux États-Unis, les experts calculent que le gouvernement américain perd 100 milliards annuellement.

La guerre à l'évasion fiscale est d'ailleurs devenue une priorité des pays membres de l'OCDE dans la foulée de la crise économique mondiale de 2008. Les dirigeants des pays du G7 ont décidé d'y consacrer une partie de leur sommet tenu à Londres, en Grande-Bretagne, en 2013.

Si certains applaudissent la décision du gouvernement Harper de récompenser les dénonciateurs qui offrent des informations cruciales permettant de débusquer les fraudeurs, d'autres estiment qu'il s'agit d'une mesure timide qui s'attaquera seulement à la pointe de l'iceberg de l'évasion fiscale.

«Cette mesure s'inspire de ce qui se fait depuis longtemps aux États-Unis. Sur papier, ça fonctionne. Est-ce une façon efficace de combattre l'évasion fiscale? Sur cette question, le jury délibère toujours. Mais chose certaine, on ne s'attaque qu'à la pointe de l'iceberg du problème», soutient Robert McMechan, avocat d'Ottawa qui se spécialise dans la résolution de litiges fiscaux.

Il a ajouté que le fisc canadien s'est toujours fié aux pistes fournies par des dénonciateurs pour combattre l'évasion fiscale. La seule nouveauté, c'est qu'on leur offre maintenant des récompenses.

Mesures contradictoires

Le critique du Nouveau Parti démocratique en matière de revenu national, Murray Rankin, a abondé dans le même sens. Il a fait valoir que le gouvernement Harper a miné les efforts de l'ARC au fil des ans en lui coupant les vivres de 250 millions.

Il a fait valoir que le gouvernement conservateur a sabré 68 millions dans le programme d'observation en matière de production des déclarations, 66,5 millions dans le programme de croisement des données provenant de tiers (707 emplois perdus) et 120 millions dans le programme de détection des cas d'inobservation au moyen d'évaluation des risques et d'enquêtes (254 emplois supprimés).

Selon M. Rankin, l'ARC ne fait tout simplement pas le poids par rapport aux nombreux experts et fiscalistes qui conseillent les fortunés sur les moyens à prendre pour réduire leur fardeau fiscal.

«Il faut combattre le feu avec le feu. Mais le gouvernement Harper manque tellement de vue à long terme en coupant le budget de l'ARC. Il faut recruter les meilleurs et les plus futés des fiscalistes et des experts pour gagner cette lutte», a-t-il confirmé.

Ottawa «complaisant» envers les multinationales

Alors qu'il sollicite l'aide des dénonciateurs pour épingler ceux qui se livrent à l'évasion fiscale, le gouvernement canadien multiplie les conventions fiscales avec des paradis fiscaux. Ce qui fait dire à certains que le Canada fait en réalité la promotion de l'évitement fiscal.

Le magazine Canadian Business a rapporté au printemps que des grandes sociétés canadiennes ont réussi le tour de force de ne payer presque pas d'impôts au pays. Et que cela était fait essentiellement avec la bénédiction du gouvernement canadien.

Certaines de ces multinationales détiennent en effet des filiales dans des paradis fiscaux avec lesquels le Canada a signé des conventions fiscales de non double imposition. En transférant une partie de leurs actifs dans ces paradis fiscaux, elles peuvent rapatrier leur profit au Canada en payant un faible taux d'imposition d'environ 2,5%.

Le Canada a signé en 1980 une telle convention fiscale avec la Barbade. Et depuis 2009, il a conclu «un accord d'échange de renseignements fiscaux» avec d'autres paradis fiscaux comme les Bermudes, les îles Caïmans et l'île de Man.

Le Canada peu crédible

Certes, ces accords permettent au Canada d'avoir accès à des informations sur les contribuables canadiens qui détiennent des comptes de banque dans ces paradis fiscaux.

Mais au passage, le gouvernement canadien maintient des avantages fiscaux aux sociétés qui y détiennent des filiales.

«Le Canada fait semblant de lutter de concert avec des pays comme la France, le Royaume-Uni ou les États-Unis. Même si ces pays n'ont pas un passé exempt de reproches, ils se mobilisent sérieusement contre les paradis fiscaux. Le Canada est beaucoup trop compromis et complaisant pour être crédible dans cette lutte», estime Alain Deneault, auteur de plusieurs livres sur l'évasion fiscale.

L'OCDE affirme, dans un rapport percutant publié l'an dernier, que les manoeuvres d'évitement fiscal des multinationales ont pris une telle ampleur qu'elles deviennent de plus en plus intolérables pour les autres contribuables.

«Bien que techniquement licites, ces stratégies sapent la base d'imposition de nombreux pays et menacent la stabilité du système international, a soutenu la secrétaire générale de l'organisation, Angel Gurría. À l'heure où pouvoirs publics et citoyens ont du mal à joindre les deux bouts, il est essentiel que tous les contribuables - particuliers et entreprises - paient leur juste part d'impôts et aient confiance dans la transparence du système fiscal international.»

McLachlin wants to turn page in wake of rocky patch with feds

Chief justice says tensions 'here and there' are 'part of the process'

By Cristin Schmitz, The Lawyers Weekly, August 29, 2014

Despite the barbs aimed at her by the Harper government, Canada's top Supreme Court judge says she will stay on as chief justice and believes the judiciary isn't cowed by recent political attacks targeting her court.

The *Lawyers Weekly* asked Chief Justice Beverley McLachlin whether Canadians should be concerned that the public criticism directed at her by the prime minister and justice minister during the Nadon affair in recent months has eroded the respect that the executive traditionally shows the judiciary. Could courts be cowed by political criticism of the work that they do?

“At the moment, I am not apprehensive that there are any concerns that the courts will be cowed,” she replied during her annual press availability at the Canadian Bar Association’s Legal Conference here Aug. 14.

“It’s not for me to say whether there is, or is not, an erosion of respect,” she added. “I think there is a lot of respect out there, personally. I feel it. I am not concerned particularly.

“We have a job to do in our court, and we will continue to do it to the best of our ability, and hopefully Canadians will, as a result, respect the processes that our Constitution has put in place.”

“There’s always going to be tensions here and there. It is part of the process.”

She declined comment on last month’s statement by the International Commission of Jurists (ICJ) calling on Prime Minister Stephen Harper and Justice Minister Peter MacKay to withdraw or publicly apologize for their recent criticisms of Chief Justice McLachlin. According to the ICJ, not only were the slurs on her reputation “not well founded,” they “amounted to an encroachment on the independence of the judiciary and the integrity of the Chief Justice.”

At press time, neither the PM nor the justice minister had apologized for publicly implying that the chief justice behaved improperly when she alerted them of a legal question mark hovering over the eligibility of one or more of the six candidates under consideration for the Supreme Court vacancy eventually filled by Federal Court of Appeal Justice Marc Nadon last October. (Months later, the Supreme Court ruled he was ineligible).

The chief justice said she has moved on.

“At this point I think the important thing is to turn the page, and get on with the important business of our court,” she stressed.

She also appeared unfazed by the Supreme Court’s tumultuous year, which included grappling while shorthanded with the challenges posed by the Nadon appointment, as well as handing down constitutional rulings preventing government plans to abolish the Senate and early parole.

Typically, it was another productive year for the chief justice, who wrote landmark rulings on aboriginal title and prostitution and co-wrote the historic Nadon judgment which recognized that the Supreme Court is entrenched in the Constitution.

The work remains satisfying, said the chief justice, who turns 71 next month, having spent 25 years with the court (15 as its leader).

“I have no immediate plans, no plans, to step down,” she said, noting that so far as she knows, she and her eight colleagues are in good health. “I’m enjoying my work. I plan to continue.”

Asked what skill set the court needs when Justice Louis LeBel retires in November, Chief Justice McLachlin highlighted the senior judge's "very broad expertise in all areas" and "profound sense" of civil law and constitutional law, including international civil and criminal law.

"I can't tell you what I'll tell the minister [during consultations], but that's the kind of person, I suppose, I would hope that we would get — someone who can fill the rather large shoes that Louis LeBel is leaving," she said.

Chief justice pushes back against bias claims, insinuations of kangaroo court

Yamri Taddese, Law Times, August 25, 2014

ST. JOHN'S — Federal Court of Canada Chief Justice Paul Crampton is pushing back against suggestions of bias in the government's favour following Justice Marc Nadon's failed nomination to the Supreme Court of Canada.

Speaking at the Canadian Bar Association conference in St. John's this month, Crampton said recent media coverage of the Federal Court shows "a lack of understanding of the court's independence."

Crampton said there have been suggestions that the Federal Court is a government court and showed the CBA council excerpts of articles that hinted at bias by the court following the Nadon controversy.

"We do think that there is a sure action that's required" about the misinformation, said Crampton, who urged the CBA to help raise awareness about the court's independence.

Crampton also spoke against "personal attacks" against judges of the court. "They [the media] need to understand that personal attacks are really inappropriate," he said.

University of Montreal Faculty of Law Prof. Paul Daly says the chief justice is right to set the record straight.

"The latest sad and unfortunate outcome of [the Nadon affair] . . . is that the federal courts are now being painted as kangaroo courts, ready to jump as high as the federal government says," Daly wrote on his blog recently.

Crampton "is right to push back against the suggestion that the federal courts are unduly deferential," Daly tells Law Times.

"I don't think that's true at all."

Although it's not uncommon to hear "murmurs of discontent" from lawyers after they've lost their case in that court, the narrative of a biased court grew stronger following reports that four of the six judges Prime Minister Stephen Harper's government was considering for the top court were from the Federal Court, says Daly.

Critics who distrusted the federal government's choice found the Federal Court judges on that list "guilty by association," Daly adds. "The popular reaction was to say these guys are on the list because they are deferential."

Crampton said that in reality, the bias suggestion doesn't hold any water. "We actually have a very balanced record," he said.

Crampton also said there's a misconception that the Federal Court doesn't have sufficient exposure to the civil law, "which could not be further from the truth."

"We're routinely called upon to address the civil law," he said. "We do this stuff all the time."

That misconception grew following the Nadon matter, said Daly, who suggested some people might have misread the Supreme Court's ruling on why the nomination failed.

"The decision was not based on the competence of Federal Court judges," he said, adding there's a perception that Nadon was ineligible for the job because he didn't know enough about the civil law. "That's simply not the case."

The Federal Court deals with the civil law "on a fairly regular basis," said Daly.

The Hill: Long summer of government discord with legal profession

Richard Cléroux, Law Times columnist, August 25, 2014

The long, nasty summer Prime Minister Stephen Harper and Justice Minister Peter MacKay spent attacking Canadian courts and the judiciary is almost over now.

It's all been so ugly, and we have so little to show for it besides looking like fools around the world.

It began back in May when Harper went after Supreme Court Chief Justice Beverley McLachlin with a completely unnecessary personal attack on her because the summer before she had tried to call him to flag a potential legal issue in appointing a Federal Court judge to the top court.

She should have known better. You don't call someone like Harper to give him helpful advice. You call him up only to tell him what a great guy he is or else you stay away completely and let him take his lumps on his own.

Harper stewed in silence for months and then finally came out with his public smear against McLachlin. Eleven former Canadian Bar Association presidents joined outgoing CBA head Fred Headon in criticizing Harper's comments about McLachlin.

Nobody in the public or the legal community was on Harper's side. What had he been thinking? Had no one in his office given him advice?

Less than a month later at a meeting of the Ontario Bar Association, Justice Minister Peter MacKay talked about why, in his opinion, there are still so few women judges.

MacKay replied that women fear circuit-court jobs might take them away from their children.

Headon challenged MacKay to back up his outrageous remark with some statistics. MacKay replied he had never made any such remark, but so far nobody has played back a voice recording to jog his memory.

MacKay decided it would be wise to pass up the CBA conference in St. John's last week. He had already planned his summer schedule, he said. The conference is an annual event planned a year ahead of time and justice ministers always attend, except those trying to snub the judiciary and the legal profession.

But then again, if MacKay was once again going to make some sort of stupid remark about women, it might be better for him to stay away, especially since he could almost be sure to get at least one question about his new prostitution law that appears to be heading for an eventual constitutional challenge before the Supreme Court.

Meanwhile, news of Harper's ill-considered attack on our chief justice made its way around the world. Last month, the Geneva-based International Commission of Jurists sent Harper a letter.

It said he should never have tried to smear McLachlin and that he should apologize for having intruded on the independence of the judiciary. Harper flatly refused to budge or apologize. Last week, McLachlin said she had moved on from the issue.

And then this week, the United Nations announced a noted Canadian jurist would head a war crimes investigation in relation to the conflict in Gaza.

William Schabas teaches international law at Middlesex University in England and is a member of the editorial board of the prestigious Israel Law Review.

Rather than complimenting the UN on choosing a Canadian, Foreign Affairs Minister John Baird attacked Schabas and accused him of being anti-Israel.

Schabas replied that if he were anti-Israel, he wouldn't be serving on the editorial board of the Israeli law publication.

It's true that Schabas once said Israeli Prime Minister Benjamin Netanyahu should "probably be in the dock of an international court." It wasn't a nice thing to say about the Israeli leader, but then half of Israelis aren't big fans of Netanyahu either. But that doesn't make them anti-Israel.

"Like everybody inside and outside Israel, I disagree with some people," said Schabas. "Is everyone in Israel who has an opinion about Netanyahu anti-Israel?"

What Schabas didn't address is the fact that Harper is a big fan of Netanyahu. Baird, of course, takes his orders from Harper, and so the Canadian foreign minister knows when to attack someone who has said something rather harsh about a good friend of his boss.

Schabas isn't about to step down from his UN posting just to please Baird. But it's about time this summer comes to an end. We've all had a long, hard summer.

Harper government asks public servants to delete emails

The Conservative government is telling public servants to delete emails with no "business value," possibly opening the door to the destruction of potentially valuable or embarrassing records, say critics.

Mike De Souza, Toronto Star Ottawa Bureau, August 27, 2014

OTTAWA—The Conservative government is telling public servants to delete emails with no "business value," possibly opening the door to the destruction of potentially valuable records, say critics.

Employees must still preserve information as required by law, a government spokeswoman says, but instructions obtained by the Star show that employees were being

told to delete some reference materials related to their work, including memos and copies of departmental documents.

Several departments have issued the instructions in recent weeks to delete records as part of a new two-gigabyte limit imposed on email inboxes for all federal employees based on a new standard, introduced by the secretariat of Treasury Board President Tony Clement.

“Clean up your mailbox and delete everything of no business value,” said a recent message sent to Environment Canada employees this summer.

The Environment Canada message included a poster listing different categories of what could be deleted and what should be preserved.

Documents “approved by your manager” were among the records that the department told employees to save. But some business-related emails fell into a “transitory” category that also includes “messages from your friends” or an “invitation to a party.”

The Environment Canada poster described these as “transitory reference” materials — which could include memorandums, copies of government reports, or reference material for subsequent work. The poster, which identified memos with an image of a paper airplane, showed these types of “transitory” documents going into a trash can.

The NDP’s access to information critic, MP Charlie Angus (Timmins-James Bay), slammed the instructions, warning that they might erase evidence of political interference or mistakes by managers prior to decisions on federal policies.

“We’ve seen many times where draft reports may contain very vital political information that could be changed, either through political interference or an attempt to whitewash an issue,” Angus said in an interview.

“I have great faith in Canada’s civil service, but I don’t have faith in the embedded political officers who are now operating throughout these departments to protect the rear ends of the ministers.”

The instructions could also lead to the elimination of records, including personal correspondence, that would otherwise be available to the public under the Access to Information Act.

A spokesman for Environment Canada told the Star that its employees were responsible for retaining all information of “business value.”

Environment Canada also told its employees in its internal message that they could take a 60-minute online course, offered by the Canada School of Public Service — a government-owned training school for civil servants — for guidance on what to preserve and what to delete.

The Treasury Board Secretariat, which oversees application of Canada’s access to information legislation, added that government information management policies haven’t

changed and continue to "clearly outline employee responsibilities" for information of "business value."

Clement (Parry Sound-Muskoka) has touted the government's record on transparency, noting that federal departments and agencies are releasing an increasing volume of documents in response to growth in requests made through access to information legislation.

But the union representing government professionals and scientists is skeptical about the new instructions.

"Given the current government's track record, a red flag has to go up anytime our members are instructed to delete information," said Debi Daviau, president of the Professional Institute of the Public Service of Canada.

"Gathering, maintaining, and assessing evidence has become increasingly difficult under this government and its fondness for secrecy, which has led to muzzling of government scientists."

The new limits on inboxes are part of a system-wide overhaul of government emails, that would convert 63 separate email systems into a single "@canada.ca" email address for all employees.

A consortium led by Bell Canada was awarded a seven-year contract, worth up to $400 million, to deliver this system.

Daviau said her union was also concerned that the government hasn't considered using its own employees to manage the email restructuring. She warned that it means profit motives could be conflicting with what's in the public interest.

"In this case, it could certainly mean that a corporate bottom line decision undermines services and threatens accountability while the price to taxpayers goes up," she told the Star.

The Treasury Board Secretariat wasn't immediately able to say Tuesday who had recommended the new email management standard, which came into force on Jan. 1, 2014 and will be phased in over three years. It told the Star that someone set the two-gigabyte limit to "accommodate the significant variance in account sizes" across the government.

Canada's information watchdog said she wasn't concerned about the government setting limits on the size of email inboxes as long as it creates systems to preserve "valuable information."

"It's important to note, however, that the right of access isn't confined to information of business value," said Josée Villeneuve, a spokeswoman for Suzanne Legault, the federal information commissioner. "It applies to all records in existence at the time an institution receives a request (for information), including transitory information."

In a recent report concluding an investigation into record-keeping of mobile text messages across the government, Legault noted that the right of access to government information is a “quasi-constitutional” right under existing legislation, and that it’s also protected under the Canadian Charter of Rights and Freedoms, which guarantees the right to freedom of expression.

Salaries expected to rise further in 2015

STEPHANIE CHAN, The Globe and Mail, August 7, 2015

Canadian employees will be happy to hear that salaries are expected to rise an average of 2.8 per cent in 2015, up from the 2.6-per-cent salary increase last year.

The figures, reported in an annual survey released by human resource consulting company Morneau Shepell, also take into account salary freezes and excludes promotional or special salary adjustments.

“Employers are relatively optimistic about the coming year,” Michel Dubé, a principal in Morneau Shepell’s compensation consulting practice, said in a statement. “Those expecting a significant increase in revenue, operating budgets and staffing outnumber those expecting decreases by four to one.”

Although the mining, oil and gas sectors continue to retain their crown for the highest salary increases, the upcoming year’s hike of 3.4 per cent falls short of last year’s 3.9-per-cent pay raise. Wholesale and retail trade workers will see the smallest increases with only a 2.4-per-cent hike as tougher economic conditions continue.

The report also found that professional, scientific and technical services are pulling ahead with a 3-per-cent pay increase, which Morneau Sheppell said reflects the increased competition for talent in the sector.

Looking into the upcoming year, businesses will be continuing to look for ways to improve employee engagement and performance as they struggle with tightening salary budgets. The report found the major priorities for 2015 would include reward and training and development programs.

Cost-cutting will also affect sick leave and disability pay policies, with one of the hardest hit being benefit and retirement plans. A third of employers who still have defined benefit pension plans signalled in the report their desire to review their existing policies and discuss how employees can share the costs. A quarter said they would be looking into making the switch to defined contribution pension plans.

The survey was conducted during June and July, with input from organizations employing 800,000 people in Canada.

Federal 'tough on crime' plan could cost Alberta $18M a year

JASON VAN RASSEL, CALGARY HERALD AUGUST 25, 2014

The federal government's "tough on crime" agenda could be tough on Alberta's coffers, based on a provincial government analysis obtained by the Herald under freedom of information legislation.

The internal document, drafted in 2011 prior to the passage of the Safe Streets and Communities Act, predicted stricter sentencing provisions could increase the annual cost of running provincial jails for adult offenders - pegged at $175 million this year - by up to $18 million.

Justice Minister and Solicitor General Jonathan Denis said his government supports Ottawa's move to impose more mandatory minimum sentences and eliminate conditional sentences for several offences - but he wants the federal government to pay a portion of the added costs.

"People in this province are tired of people getting slaps on the wrist for major crimes," said Denis.

Conditional sentence orders (CSOs) allow offenders to serve their time outside of jail, as long as they abide by court-ordered conditions such as house arrest for the duration of their term.

The Safe Streets and Communities Act, passed in 2012, eliminated CSOs for all offences with a maximum sentence of 14 years or more, such as manslaughter, aggravated assault, arson and fraud over $5,000.

The legislation also eliminated CSOs for several violent crimes and offences involving drug trafficking or weapons.

The resulting financial impact on the provincial jail system isn't yet known, mainly because departmental officials haven't determined what effect Alberta's population growth has had on rising prisoner numbers in provincial jails.

Once the provincial government has an idea how many additional prisoners are behind bars due to the federal measures, Denis said he'll be asking Ottawa to help pay for them.

"I think it's reasonable for Alberta to pick up some of these costs, but not all of them," he said.

Provincial jails house offenders serving sentences shorter than two years, as well as remanded defendants awaiting trial.

Last year, the system averaged 3,167 adult offenders in custody.

At the time the 2011 analysis was written, the average daily head count in provincial jails was 2,985.

The analysis predicted that population growth alone would result in a 12.6 per cent increase in the average daily count by the end of 2014-15, to 3,360.

The analysis then considered a number of scenarios, varying the percentage of offenders who will go to jail instead of receiving CSOs and how long they'd be behind bars.

A "minimum impact" scenario with only half of formerly eligible CSO recipients going to jail and getting a jail sentence half the length of the non-custodial sentence they would have received would cost the province an extra $7.3 million a year.

However, the analysis predicted the effect on the system will likely be much closer to the $18 million forecasted in the "maximum impact" assumption.

"At this time, it is estimated that the most likely scenario is that 75 per cent of those who will be ineligible for a CSO under Bill C-10 will receive a custody sentence. If this group receives a custody sentence that is 75 per cent as long as the CSO they would have received, the operational impact is between $16.5 and $18.5 million," it read.

Under that scenario, the average daily head count will increase to between 3,757 and 3.799.

The variance depends on whether the Crown chooses to prosecute "hybrid" offences such as sexual assault, criminal harassment and vehicle theft by summary conviction or indictment.

The federal legislation, also known as Bill C-10, allows CSOs only for hybrid offences prosecuted by summary conviction, a procedure usually employed for less serious allegations.

"It is recognized that, given the significant number of new inmates that could be admitted to custody following the coming into force of C-10, that additional infrastructure (either additions to existing centres or new facilities) may be required in this and other jurisdictions to accommodate the increased custody population," the analysis said.

The head of a group representing Calgary defence lawyers criticized the provincial government for supporting the federal measures, saying they're expensive and unnecessary with Canada's crime rate consistently decreasing since historic highs in the 1990s, and at its lowest point in 40 years.

"The Harper government and the Alberta government are 20 years behind the times," said Ian Savage of the Calgary Criminal Defence Lawyers' Association.

Extra money spent on incarceration would be better spent on the province's legal-aid program, which helps low-income Albertans pay for lawyers, Savage said.

Current eligibility requirements have been cut to the point where people receiving Assured Income for the Severely Handicapped can't qualify for legal aid.

Denis has promised to increase legal-aid funding in next year's budget, but Calgary defence lawyers and their sister organization in Edmonton have said the program needs an additional $30 million annually.

Spending additional millions on incarceration instead is the wrong priority for Denis' department, said Savage.

"It's drawing money away from other program areas," he said.

The power of Canada's unions: A Labour Day report card

By Tasha Kheiriddin, iPolitics, August 287, 2014

Canadian unions are living a paradox. For the past decade, their membership has remained relatively flat, at between 30 and 31 per cent of non-agricultural workers, after dropping from a high of 34.6% in 1997. The decline in manufacturing jobs, the rise of temporary and part-time work, and the introduction of non-unionized workplaces such as Walmart have meant a shrinking pool of members, relative to the size of the workforce itself. In the public sector, the federal government is on track to trim 35,000 positions by 2017, returning the size of the public service to that of 2006. It is also scaling back benefits for remaining employees, including pensions and sick leave, to level closer to that of the private sector.

And yet, the organizational power of organized labour — and of the political parties who have traditionally represented it — increased in recent years. The federal NDP formed the Official Opposition in 2011, following the party's dramatic success in Quebec and the

implosion of both the Bloc Quebecois and the Liberal Party. In 2013, the Canadian Auto Workers and Communications, Energy and Paperworkers union merged to create Unifor, the largest private sector union in Canada with over 300,000 members. In Ottawa, federal public sector unions are rallying against government cuts and demands for increased union transparency, even taking the federal government to court over reforms that limit the right to strike. And in the recent Ontario election, unions helped re-elect the Liberal government and block the Progressive Conservatives, who would have cut 100,000 public sector jobs and introduced right-to-work legislation, from taking power.

What does this mean for the average Canadian worker on Labour Day, 2014? That depends who you ask. Unions will claim that membership has its privileges, including higher pay and better pensions. The website of the Canadian Labour Congress touts the “union advantage”: young workers earn $3.16 more per hour, women $6.89 per hour, “thanks to their union”. Unions further claim that their organizations “raise the bar for everyone,” pushing up wages for non-unionized workers as well as firms that compete for their services.

But other organizations, such as the Fraser Institute, point to those “advantages” as a direct hindrance to employment growth. In a report released Thursday, the Institute compared Canadian and American labour market flexibility, and found that “Canada’s biased labour relations laws are failing workers, restricting their choices, and potentially stunting job growth and investment.” Even Alberta, which has the strongest economy and highest labour market flexibility score in Canada, scored lower than all 50 American states, including those without right to work legislation.

What does the public think about unions? A study conducted in late 2013 by Harris Decima for the Canadian Association of University Teachers found that 56% of Canadians “hold favourable views of unions.” Two-thirds believe that all employees of a unionized workplace should be obliged to join the union, versus giving them the right to opt out via right-to-work legislation. At the same time, 45% thought unions have too much influence over government and business, while 35% disagreed.

To oust the Conservatives and prevent them from carrying out their remaining public sector reductions, or from planning new ones, unions need to pool their efforts and pick the party most likely to do the job — and for the past year, polls indicate that would be the Liberals.

When it comes to specific benefits, however, Canadians seem to want what unions are selling – without necessarily signing a membership card. For example, a study published by Ekos research in February 2014 found that Canadians would rather see all Canadians’ pensions increased to the more generous levels enjoyed by public servants, rather than have the public sector’s benefits brought down to private sector levels.

How does this translate politically? If the Ontario election is anything to go by, Big Labour has some big choices to make — and they probably won’t please the NDP. To oust the Conservatives and prevent them from carrying out their remaining public sector reductions, or from planning new ones, unions need to pool their efforts and pick the party most likely to do the job — and for the past year, polls indicate that would be the Liberals.

The NDP also has the same problem that U.S. Democrats have, trying to please both left-leaning constituencies, such as the environmental movement, and its bedrock union base. Projects such as oil pipelines provide well-paying, unionized jobs, yet the NDP stands opposed to both Keystone XL and Northern Gateway. Ironically, in the long term, the federal Conservatives' emphasis on resource extraction and the skilled trades as a source of economic growth could create opportunity for unions, by enlarging their potential membership pool.

At the same time, unions dislike another Conservative initiative, the Comprehensive Economic and Trade Agreement between Canada and the European Union, set to be unveiled in September 2014. They claim it will hurt the Canadian auto industry by removing tariffs and thus decreasing the price of European imports. But the deal would also vastly increase the number of cars Canada exports to the EU, and provide a boon to the auto parts trade — and Canadian manufacturing jobs.

As the next federal vote looms ever closer, Canadians can expect the war of words between labour's defenders and critics to intensify. For the Tories and the NDP, maintaining the current political polarization in the House serves both their interests, but with the Liberals on the ascendancy, it is unlikely that it will be as sharp. But whether as a wedge issue or an organizational boost, the role of labour in federal politics hasn't been this important in decades. It promises not only to influence the campaigns, but to open opportunities to more fully debate issues such as right to work laws, trade, and pensions, from all sides of the political spectrum.

Denied legal aid in Alberta? There's now a toll-free number to help you get it

JASON VAN RASSEL, CALGARY HERALD, AUGUST 29, 2014

Groups representing defence lawyers in Calgary and Edmonton said they expect hundreds of low-income Albertans denied legal aid coverage will begin deluging the courts with applications seeking financial relief.

The Calgary Criminal Defence Lawyers' Association and its sister organization in Edmonton announced Thursday they've set up a toll-free phone line to help people who have been denied legal aid successfully petition the court for coverage.

While volunteer lawyers in both cities will help people obtain coverage via court orders, the groups' ultimate aim is getting the provincial government to boost its contribution to the legal aid program.

“The government needs to act now,” said Ian Savage, president of the CDLA.

A funding crunch has prompted the program to tighten its eligibility requirements to the point where people receiving $1,588 monthly on Assured Income for the Severely Handicapped don’t qualify for a discounted lawyer.

“People that are on AISH funding are people that are physically or mentally unable to work. The income the government provides them is below the poverty line,” said Joan Blumer, a vice-president of the Calgary lawyers’ group.

However, an Edmonton provincial court judge issued an order compelling Legal Aid Alberta to provide representation for three separate accused who had previously been rejected because their AISH benefits put their incomes above the current eligibility requirements.

Initially, there was concern the ruling would place additional stress on Legal Aid Alberta’s budget, but Alberta Justice and Solicitor General announced last week it will give the program extra funding to cover the trio and any additional court-ordered lawyers.

“We anticipate criminal defence lawyers will continue to make these applications more in the future. We do not have an estimate as to these costs but Alberta Justice and Solicitor General will consider them on a case-by-case basis as they arise,” Justice Minister Jonathan Denis said in a written statement Thursday.

But the government’s response is a “stop-gap” measure that will clog the courts and ultimately cost more than increasing base funding to the legal aid program, said Savage.

“The system is being delayed and demeaned by the government’s refusal to properly fund legal aid,” he said.

Savage said compared to “a handful” of court applications for legal aid in Alberta last year, there have been 50 or 60 since the new fiscal year began April 1.

“We anticipate literally hundreds of applications being made in the next month or more,” Savage said.

The lawyers’ groups have begun circulating the toll-free number, 1-844-441-9957, in courtrooms and among agencies that work in the legal system.

Blumer added the pressures are not being felt in just the criminal courts — organizations that help family court litigants and people with immigration cases are also beset with clients who need help paying for lawyers.

“We’re getting overwhelming feedback that those agencies are also in contact with people who need legal counsel,” Blumer said.

Legal aid’s main source of funding is the provincial government, which is providing $48 million this year.

The provincial contribution has increased since 2005, when it was $20.2 million, but has remained unchanged since 2011.

Denis has maintained the federal government must increase $11 million contribution, which has been unchanged since 2005.

"We will continue to work with legal aid and the other provinces and territories to push the federal government for an increase in their portion of the funding which hasn't changed since 2005," Denis said.

Denis said the province will increase its funding to legal aid in next year's budget if Ottawa doesn't boost its contribution — but has not specified a dollar figure.

Futures report offers some food for thought for law students, teachers

Mallory Hendry, Legal Feeds, August 25, 2014

The Canadian Bar Association's 2014 Legal Futures report explores some interesting possibilities for law students and their education.

Among them, another call for the further innovation of legal education models, parallel programs — think a course on law office management — that offers law students some practical skills on top of their traditional learning, and the possibility of law schools tracking and sharing entry and exit data.

Fred Headon, in a press briefing on the release of "Futures: Transforming the Delivery of Legal Services in Canada" on Aug. 14, spoke about the focus on bringing more innovation to the training of future members of the profession.

"Law schools' teaching is good grounding, but we need to think about how we take this into the real world," said Headon of the many of the report's 22 recommendations related to legal education and training.

Under the "New Models for Legal Education" recommendation, it states in part that legal education providers should be "empowered to innovate so that students can have a choice in the way they receive legal education," whether it be a traditional model or a more innovative, specialized program.

Kim Brooks, dean of Schulich School of Law at Dalhousie University, thinks justice is a "tricky business" but ultimately, with ideas like parallel legal programs being floated, "the more informed people we have participating in the project, the better," she says.

Headon talked about a "T"-shaped model for training lawyers: The vertical line of the "T" — "deep legal thinking" — could be supplemented by the broader horizontal crossbar, the more innovative, less theory-based skills lawyers in today's legal landscape need to have.

As for the report's data collection recommendation, which suggests law schools should "gather and publish qualitative and quantitative data on the composition of students entering and exiting law school," Brooks says her law school collects "some" data, and also works collaboratively with the barristers' society to track the students and their path as they enter the profession.

"No one, to my knowledge, keeps great data on what happens to the full complement of students," Brooks says, referencing students who leave the practice altogether as an example.

"I'd love to see more academic work, by sociologists for example, on what happens to students who receive legal educations in the long run," she adds.

At the release of the report, Headon was asked how the CBA would make data collection mandatory. He said they can't require it, but hopes to work with other players — such as the council of law deans — to collect the recommended data. The report also talks about creating a centre for expertise and information on the Canadian legal profession, which would be developed in part to collect and present the law school data — as well as more general data — to the profession and the public.

While her school may not collect all the data it could, Brooks says law schools generally make "all kinds of data" available on their web sites.

"Canadian law deans are generally committed to transparency, especially given the nature of legal education as a public good."

As to whether or not collecting extensive data is a valuable initiative, Brooks says "it can often be useful to have robust, reliable data."

However, she cautions "it's important to remember that all data has limits, and that there are myriad possible interpretations of it."

Brooks calls the legal-education related parts of the CBA's report "careful" and "creative," specifically giving the nod to Futures Initiative education team members Daniel Jutras, dean of law at McGill University, and Ian Holloway, dean of law at the University of Calgary and chairman of the education and training team for the CBA, for their service on the committee.

"Their work will give us lots to work within the next couple of years," says Brooks.

Tribunal orders HRSDC to pay former public servant $17,000 in expenses

DON BUTLER, The Ottawa Citizen, August 25, 2014

The Canadian Human Rights Tribunal has ordered a federal government department to reimburse a former employee nearly $17,000 in expenses after ruling last year the department had engaged in "reckless discrimination" against him.

Last October, the tribunal awarded Leslie Hicks $35,000 after it upheld his complaint that Human Resources and Skills Development Canada discriminated against him on the basis of family status when it denied his claim for $21,247 for temporary dual residence assistance.

In 2002, Hicks was transferred from Sydney, N.S., to a new job with the former HRSDC's occupational health and safety and injury compensation division in Gatineau.

His wife stayed behind to care for her ailing mother, then living in an assisted-living apartment. Her mother, deemed too sick to travel by doctors, moved to a nursing home in 2003 and died in 2007.

In 2004, Hicks applied for financial assistance under a Treasury Board policy designed to offset expenses when two residences are temporarily maintained after a relocation.

But the department rejected the claim because Hicks' mother-in-law was not living in his wife's residence in Sydney and therefore was not considered a dependent person.

In its decision last year that extended family status protection to elder care for the first time, the tribunal said the department "showed disregard and indifference" to Hicks' family status and the consequences its denial of his claim would have.

While it ordered HRSDC to pay Hicks $15,000 for pain and suffering and the maximum $20,000 for having engaged in a recklessly discriminatory practice, it deferred a decision on Hicks' expenses claim.

After the parties were unable to agree, the tribunal issued a decision dated Aug. 22 awarding Hicks $16,812 for various housing and travel expenses.

The tribunal also ordered the department to pay interest on that amount from November 2004, which will add thousands of dollars to the money owing to Hicks.

Supreme Court of Canada docket not driven by ideology, study suggests

Drew Hasselback, National Post, August 26, 2014

The Supreme Court of Canada decides a lot of political matters and it clearly has political influence. Yet is there any empirical evidence to suggest that Canada's Supreme Court judges are pursuing their own political agendas?

According to a study by Benjamin Alarie and Andrew J. Green of the Faculty of Law at the University of Toronto, the answer is no. (Read the study by clicking here).

About 20% of the cases the court hears arrive there "as of right" — that is, the appellant has an automatic right to argue that matter before the court. The remaining 80% of cases are granted on leave. What Alarie and Green did is look at the cases the court decided to hear, and see whether any patterns emerged.

"Our results therefore overall provide weak evidence for ideological voting in the selection of cases to be heard by the Supreme Court of Canada," they conclude.

Applications for leave are made before a panel of three SCC judges. Alarie and Green studied the composition of those panels.

They wondered whether there were any patterns that suggested certain judges were draw to certain categories of cases. They also compared whether judges who granted leave to appeal also participated in the final written decision — something that might suggest the judge was hot to trot to have a say on a particular issue. As for ideology, they asked whether there was any connection between case choice and whether the judge who granted leave was appointed by a Liberal or Conservative prime minister.

Their conclusion: "There is little evidence that Canadian judges are deciding whether to grant based on their assessment of whether their preferred outcome will win on the merits. There is no correlation between being on the leave panel and being on the winning side on the merits. Moreover, there is no connection between being in the majority and being on the leave to appeal panel in general even accounting for ideology."

The Honourable Louise Arbour Joins BLG as Counsel

From a Borden Ladner Gervais press release, August 26, 2014

Borden Ladner Gervais LLP (BLG) is delighted to announce that one of Canada's leading jurists, the Honourable Louise Arbour, former United Nations High Commissioner for Human Rights and Justice of the Supreme Court of Canada has joined the firm as Counsel.

In our long and successful history as Canada's oldest and largest law firm, serving both Canadian and international clients, BLG has always been committed to providing exceptional counsel. The appointment of Madam Arbour affirms our commitment to professional and service excellence.

Madam Arbour is a seasoned legal expert with an extraordinary scope of international experience, having most recently served as president and CEO of the International Crisis Group. Her outstanding qualifications and wide-ranging legal expertise are welcomed by everyone at the firm and in particular litigators and arbitration practitioners who anticipate the value her strategic counsel and insight will bring to the firm and its clients.

A graduate of Université de Montréal, Madam Arbour was called to the Quebec Bar in 1971 and the Ontario Bar in 1977. Receiving countless awards and accolades for her celebrated career, she was most recently named in the 2014 edition of Canadian Lawyer's Top 25 Most Influential judges and lawyers for her work on the world stage. Madam Arbour will be providing strategic counsel as part of the firm's esteemed litigation practice.

BLG is privileged to have such an extraordinary legal authority whose remarkable career, extensive experience and breadth of knowledge will complement our senior leadership and add strength to the firm.

Warm regards,

Sean Weir
National Managing Partner & CEO

About Borden Ladner Gervais LLP

Borden Ladner Gervais LLP (BLG) is a leading full-service, national law firm focusing on business law, commercial litigation and arbitration, and intellectual property solutions for our clients. With more than 750 lawyers, intellectual property agents and other professionals in six Canadian cities, BLG assists clients with their legal needs, from major litigation to financing and patent registration.

Law grads need debt forgiveness programs, says Canadian Bar Association

Student debt discourages new lawyers from working in underserviced communities

BY DANIEL FISH, AUGUST 14, 2014

Law graduates that build a career in an underserviced community should have access to debt forgiveness programs, according to a report published today by the Canadian Bar Association that outlines 22 recommendations on how to improve the legal industry.

Across Canada, the report explains, many law students want to practise law in the public interest. But those students often carry six-figure student debt, so they pursue high paying jobs in urban centres — even if their passion lies elsewhere.

Meanwhile, smaller communities across Canada need more lawyers, says Ian Holloway, dean of the faculty of law at the University of Calgary and a co-author of the education section of the report. "There are too many would-be lawyers in downtown Toronto, but not nearly in enough in Cochrane or Timmins."

Debt forgiveness programs, he says, could encourage new lawyers to practise in small communities, despite the lower salary.

In fact, this is not an entirely new idea.

Consider, for instance, the Forgivable Loans Program in Manitoba. Launched in 2011, the Law Society of Manitoba provides an interest-free loan to one law student each year who grew up in an underserviced community. If, after graduation, that student returns home to practise, the Law Society will forgive 20 percent of the loan each year. In five years, young lawyers can become debt-free.

So far, one law student has gone through the program, says Allan Fineblit, CEO of the Law Society of Manitoba. She now practises in her hometown of Thompson, which has a population of around 13,000.

The long-term goal, he says, is to inject 20 lawyers into remote regions across Manitoba. "If a community only has one lawyer, adding one more doubles the level of services. And in many communities there are no lawyers," he explains. "A relatively small number could be very, very important."

But the program is expensive. According to Fineblit, it costs $75,000 to put each student through the Forgivable Loans Program.

Indeed, the central barrier to implementing similar programs across the country is cost, says Holloway. In the end, he says, law schools, law societies and governments will all need to chip in to get more programs off the ground. Still, he admits: "No one has blank cheques to hand out to law schools to do this."

In their wide-ranging report, the CBA made several other suggestions for how to improve legal education. For instance, the report says law schools should accept life experience as a substitute to the required two years of pre-law university study and that law schools incorporate more practical training into their curriculum.

Read the CBA report here:

http://www.cbafutures.org/CBA/media/mediafiles/PDF/Reports/Futures-Final-eng.pdf?ext=.pdf

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The law school of the future — today

Written by Arshy Mann, 4Students, Canadian Lawyer Magazine, August 25, 2014

Harry Arthurs knows a thing or two about legal education. The 79-year-old has been a fixture of Canada's legal community for more than 50 years. He has served as dean of Osgoode Hall Law School, president of York University, and was the author of "Law and Learning," a 1983 report that was the first comprehensive examination of Canadian legal education. When asked to assess how important McGill University's introduction of a "transsystemic" law program in 1999 was, Arthurs is definitive. "I think it's one of the most dramatic changes in English-language legal education in 100 years," he says.

Arthurs isn't alone in that assessment. Peter L. Strauss, the Betts Professor of Law at Columbia University, calls it the "new Langdellian moment," referring to Christopher Columbus Langdell, the Harvard Law School dean who introduced the case method, revolutionizing the teaching of law more than a century ago. Over the past 15 years, numerous journal articles have enquired whether McGill's program is the next frontier in legal education. Europeans have pointed to it as a model for teaching law in a supranational continent, while Americans look to it as a possible way to train students for a globalized legal marketplace.

So what exactly constitutes this paradigm-shifting curriculum? At its essence, transsystemic law attempts to teach students about the law not from the perspective of any one specific jurisdiction, but from the perspective of many. While it sounds like a simple proposition, McGill remains the only law school in the world that imbues this principle into the fabric of its curriculum.

Practically, this means McGill students graduate with both common and civil law degrees. But if you believe the scholars, the consequences for legal education are much more profound. McGill has certainly become the darling of the global legal academy. But will it serve as a beacon among the increasingly stormy waters of legal education like Harvard did a century ago?

The McGill Programme has its roots in the 1920s, when for four years the university offered a combined civil and common law program. The initiative was quickly killed by a number of factors, including a hostile anglophone bar that feared McGill graduates would leave to practise in common law jurisdictions and weaken their grip on Quebec's legal profession.

It wasn't until the 1960s, when debates about higher education were rocking universities throughout the Western world, that McGill once again looked to re-evaluate its curriculum. More than most law faculties, McGill faced even greater existential questions. The Quiet Revolution was sweeping through the streets of Montreal, making it

uncomfortable for an institution, that to many, represented anglo privilege among an increasingly assertive francophone population.

To combat its isolation, in 1968, the same year René Lévesque formed the Parti Québécois, McGill unveiled the National Programme. It allowed students to receive two degrees in common and civil law if they chose. This permitted graduates to practise in whatever jurisdiction they chose instead of limiting them to Quebec. The courses were taught sequentially, so a student would learn about the second field of law in upper-year courses that were dedicated specifically to either civil or common law.

It took time to evolve. At first, most students chose only to gain one of the degrees, but over the years, more and more opted for both a common and civil law education. However, over the decades, National Programme fatigue set in, and in 1995, McGill's law school once again set out on a thorough examination of the curriculum.

The process, led by Stephen Toope, then-dean of the faculty, and a previous dean, Roderick Macdonald, took four years of intensive work. "It is not a betrayal of confidences, nor is it an overstatement, to say these efforts severely taxed the patience of many in the teaching faculty, the student body and the administration," wrote Yves-Marie Morissette, now a judge on the Quebec Court of Appeal, in the Journal of Legal Education.

In 1999, McGill unveiled its new curriculum. Many words were used to describe its innovative new curriculum; transsysytemic and polyjural top the list. But the official name was the McGill Programme.

The McGill Programme was similar to the National Programme in students earned both civil and common law degrees. It differed from its predecessor at a fundamental level, however. Whereas the National Programme taught common and civil law courses in silos, the transsystemic curriculum integrated both legal traditions into classes from first year. Professors were not limited to Canadian common and civil law, but were instead encouraged to bring in perspectives from legal traditions around the world.

The end result was an entirely new standard for legal education — instead of studying the laws of any one particular jurisdiction, the McGill Programme was a study of law in its many permutations.

Fifteen years later, the McGill Programme is here to stay. The university has become a destination for scholars and instructors interested in legal issues that transect different legal jurisdictions and traditions. According to dean Daniel Jutras, a number of students who apply to McGill don't apply to any other universities. "They recognize that there's something very distinctive happening here," he says.

McGill's system has been hailed by many as a model for what legal education should look like in a globalized world, with "transsystemia" becoming a buzzword in legal education circles. While a number of schools offer dual common and civil law degrees, no other university has fully embraced McGill's radical vision. If the McGill Programme is the future of legal education, the next "Langdellian moment," why haven't the world's law schools been lining up to follow in McGill's footsteps?

One of the factors is the immense amount of work such a transition requires. To start with, professors must get rid of the way they traditionally teach classes. “If you’re teaching, as I am, a course in civil procedure at an institution that focuses on Canadian law or Quebec law, there are multiple textbooks that you can rely on and the structure of your course is pretty much given,” says Jutras. But at a school that’s embraced transsystemic law, a professor will bring together multiple legal traditions to bear on every subject and will have to find sources from around the world.

“In a sense that freedom becomes both a challenge and a burden,” says Jutras. “Those questions mean that pedagogy and the content of the courses and how the courses are structured is a constant question for my colleagues. And that means that they have to be really committed to this.”

But should law schools really be emulating McGill at all? Arthurs thinks they should, but not by copying the transsystemic curriculum. “I don’t particularly think McGill should send missionaries and establish colonies in France or Saskatchewan.” Instead, according to Arthurs, the truly radical aspect of what McGill has done lies less in the content of its curriculum, but instead how it got there.

“What they should emulate is sitting down, figuring out where their intellectual strengths lie,” he says.

Jutras agrees. “I wouldn’t really necessarily aspire to see all Canadian law schools doing what we’re doing,” he says. “I think each law school in Canada brings something really valuable and is doing it really well. This is our niche, this is something we do really well.”

Instead, universities must do serious soul searching. McGill’s history as an anglophone institution in a francophone province, in a country with two systems of law, led it to the transsystemic program. Other universities must figure out the advantages their own history and geopolitical circumstances give them and exploit them. Jutras points to the University of Victoria, now headed by Jeremy Webber, an alumnus of McGill’s 1999 transition, as a university that’s doing the right thing. “They’re looking at a program that will achieve some kind of integration of aboriginal legal perspectives and non-aboriginal perspectives in ways again that resemble some of our pedagogical and institutional assumptions.”

Arthurs, however, thinks any sort of specialization is becoming more of a challenge today than when McGill did it in 1999. “One challenge that McGill didn’t face was that the Federation of Law Societies has for the first time ever laid down requirements if a law school wants its degree to be recognized so its students gain admission to the bars of the various provinces, they now have to ensure their students study certain subjects and acquire what the federation calls competencies,” he says. “It’s a nonsense list, it’s a counterproductive exercise, and it will inhibit people doing what I think they should do and what McGill did.”

But Arthurs urges universities to follow McGill’s example nonetheless. “I think the deliberateness, the care with which McGill did what it did, is what wants emulating rather than having a curriculum that looks like McGill’s curriculum.” ■