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



## **Tories revive union bill that provoked Senate rebellion; move to limit debate**

Joan Bryden, The Canadian Press, The Globe and Mail, September 21, 2014

Conservative senators are making a bid to cut short debate on private members' business just as the Senate is about to revive debate on a controversial bill that would force unions to publicly disclose details of their spending.

The timing of the two moves has sparked suspicions that the Harper government wants to whisk bill C-377 through the Senate, avoiding the scrutiny that prompted senators, including 16 Conservatives, to gut the bill the first time it came before the upper house.

In June 2013, the Senate sent C-377, sponsored by Conservative MP Russ Hiebert, back to the House of Commons with amendments that effectively eviscerated the bill, which critics have called unconstitutional, undemocratic and an invasion of privacy.

However, Prime Minister Stephen Harper prorogued Parliament before the House of Commons could consider the amendments and, in accordance with rules for reinstating legislation following prorogation, the bill wound up back in the upper chamber in its original form.

Little attempt was made to move it forward over the past year but Conservative Sen. Jean-Guy Dagenais has signalled that he will restart debate this week.

At the same time, a Conservative-dominated committee has issued a report recommending that private members' business be subject to time allocation to limit

debate — a departure from the long-standing practice of applying time limits only to government business.

The Conservatives need only use their majority in the Senate to accept the report and put an end to unlimited debate on private members' bills.

James Cowan, Liberal leader in the Senate, said rule changes are usually implemented “on a consensus basis” by the Senate rules committee, with “give and take” between Conservatives and Liberals. But this time, he said the recommendation for limiting debate on private members' business was sprung on the Liberals by a sub-committee that was supposed to be examining a proposal to televise Senate proceedings.

“What this has to do with it, I don't know,” Cowan said in an interview.

A spokesman for Sen. Claude Carignan, government leader in the Senate, said the rule change is “not intended in any way to limit the debate,” but is aimed at preventing a single senator from delaying debate indefinitely.

“We believe that all bills should move forward and be subject to debate and ultimately voted on, including bill C-377 and including the two bills sponsored by Senator Cowan,” Sebastien Gariépy said in an email.

Renewed interest in the bill comes two months after Hugh Segal, who led the rebel Conservative charge against the bill last time, retired from the Senate.

From his new perch as master of Massey College in Toronto, Segal predicted that “use of unprecedented time allocation on private members' bills like 377 would justifiably produce a fire storm.”

“(Bill) 377 was badly drafted legislation, flawed, unconstitutional and technically incompetent when it was amended last time. Unamended, it has not now become perfect simply because one senator retired to do other things,” he added in an email to The Canadian Press.

Although C-377 is a private member's bill, it has been backed by the Prime Minister's Office. It would require unions to publicly disclose any spending of \$5,000 or more and any salary of more than \$100,000.

The amendments approved by the Senate raised the spending disclosure threshold to \$150,000 and the salary threshold to \$444,000. Sixteen Conservative senators supported the amendments and four others abstained.

Critics maintain the original bill would infringe on provinces' constitutional power over labour issues, violate charter guarantees of freedom of speech and association and amount to an invasion of privacy.

Hassan Yussuff, president of the Canadian Labour Congress, said private members' bills are more likely to be flawed than government bills because MPs don't have access to the same vetting process that ensures legislation doesn't run afoul of the Constitution and

Charter of Rights. Consequently, he said it's "absolutely critical" that parliamentarians have time to scrutinize private members' bills.

Yussuff believes the push to cut short debate on private members' bills is aimed not just at whisking C-377 through the Senate but also C-525, which would make it harder for federally regulated workers to join a union and easier to decertify a union.

"The fact that (Segal) is now departed, clearly the government felt that they don't have the same rigour in their own circles to scrutinize them, so they'll take the chance that if they can amend the Senate rules in regard to time allocation, they can get these two pieces of legislation passed sooner rather than later," he said in an interview.

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## Les conservateurs ramènent un projet de loi controversé au Sénat

Joan Bryden, *La Presse Canadienne*, *La Presse*, le 21 septembre 2014

Les sénateurs conservateurs tentent de réduire la durée des débats entourant un projet de loi d'initiative parlementaire, alors que la Chambre haute s'apprête à relancer les discussions sur un projet controversé qui forcerait les syndicats à dévoiler les détails de leurs dépenses.

La concordance des deux décisions, dans un laps de temps si réduit, suscite des craintes que le gouvernement Harper vise à accélérer l'adoption de C-377 au Sénat, évitant ainsi l'examen en profondeur qui avait poussé des sénateurs, dont 16 conservateurs, à en retirer les aspects les plus controversés lorsqu'il est parvenu pour la première fois à la Chambre haute.

En juin 2013, les sénateurs avaient renvoyé C-377, présenté par le député conservateur Russ Hiebert, aux Communes, et ce avec des amendements qui lui arrachaient carrément les griffes. Les détracteurs du projet de loi le qualifiaient d'anticonstitutionnel, antidémocratique et permettant des violations de la vie privée.

Cependant, le premier ministre Harper a prorogé la Chambre avant que les Communes puissent examiner les amendements et, en fonction des normes concernant le nouveau dépôt d'un projet de loi déjà existant, le projet de loi retournera à la Chambre haute sous sa forme originale.

Peu de tentatives ont été faites pour faire progresser ledit projet de loi au cours de la dernière année, mais le sénateur conservateur Jean-Guy Dagenais a signalé qu'il relancera les débats cette semaine. Au même moment, un comité majoritairement composé de conservateur a publié un rapport recommandant que les projets de loi d'initiative parlementaire soient soumis à un temps limite en termes d'échanges - soit une décision allant à l'encontre de la tradition voulant que cette pratique ne s'applique qu'aux affaires gouvernementales.

Les conservateurs n'ont besoin que d'utiliser leur majorité au Sénat pour adopter le rapport et mettre fin aux débats de durée illimitée pour les projets de loi d'initiative parlementaire.

Selon James Cowan, le leader de l'opposition au Sénat, les changements apportés aux règles sont habituellement mis en place «sur une base consensuelle» par le comité des règles de la Chambre haute, qui «tente d'établir un équilibre» entre conservateurs et libéraux. Mais, cette fois, dit-il, la recommandation visant à limiter les débats sur les projets de loi d'initiative parlementaire a été imposée aux libéraux par un sous-comité devant plutôt examiner une proposition pour télédiffuser les procédures sénatoriales.

«J'ignore ce que cela a à voir avec tout ça», a-t-il admis lors d'une entrevue.

M. Cowan croit d'ailleurs que l'intérêt ravivé envers C-377 et la décision simultanée visant à limiter le temps de débat sur de tels projets de loi «sont deux points que l'on pourrait raisonnablement relier». Ce retour du projet de loi survient également deux mois après le départ du Sénat de Hugh Segal, qui avait mené la charge conservatrice contre celui-ci la dernière fois.

Un porte-parole du sénateur Claude Carignan, le leader du gouvernement au Sénat, soutient que le changement apporté aux règles «ne vise aucunement à limiter le débat», mais servira plutôt à éviter qu'un seul sénateur ne monopolise le débat indéfiniment «Nous croyons que les projets de loi doivent aller de l'avant, faire l'objet d'un débat, et, éventuellement, d'un vote, y compris le projet C-377 et les deux projets de loi soutenus par le sénateur Cowan», a indiqué Sébastien Gariépy par courriel.

Des détracteurs maintiennent que la version originale du projet de loi empiétera sur les pouvoirs constitutionnels des provinces en matière de travail, violera les droits de liberté de parole et d'association garantis par la Charte, et représentera une violation de la vie privée.

Quant à Hassan Yussuf, le président du Congrès du travail du Canada, croit par ailleurs que la tentative de couper court aux débats sur les projets de loi concerne non seulement C-377, mais aussi C-525, qui rendrait plus difficile, pour les employés travaillant dans une entreprise à charte fédérale, de se syndiquer, en plus de faciliter la décertification d'un syndicat.

«Le fait que M. Segal soit désormais parti, le gouvernement a clairement senti qu'il n'avait plus besoin de respecter la même rigueur au sein de leurs propres troupes pour évaluer les projets de loi, alors ils vont prendre une chance signifiant que s'ils peuvent

modifier les règles du Sénat en ce qui concerne la durée des débats, ils peuvent faire adopter les deux projets de loi tôt plutôt que tard.»



## Tories prepare to fast-track prostitution bill through Parliament

**JOSH WINGROVE, The Globe and Mail, September 21, 2014**

One of Parliament's most high-profile bills appears set to become law without major changes – as one senator says the committee considering Bill C-36, aimed at reining in the sex trade, is “highly unlikely” to call for changes.

The approval of the bill by the Conservative-dominated Senate committee would be a strong signal it will ultimately become law in its current form, despite being broadly criticized, in particular for provisions that could lead a sex worker to be criminally charged. Many lawyers have also warned the bill is likely unconstitutional and could end up being struck down.

The Senate Legal and Constitutional Affairs Committee was urged to make certain changes as even supporters of the bill said it should not criminalize sex workers. However, the Conservative government has argued that the bill needs to be passed quickly and that it balances protecting sex workers with discouraging their trade. Asked last week whether the committee would call for any changes to the bill, Conservative Senator and committee member Linda Frum replied simply: “It's highly unlikely.”

The committee has been conducting a “pre-study” of Bill C-36 this month, part of a bid to ensure it moves quickly through the Senate once formally passed by the House of Commons. The bill was tabled after the Supreme Court, in its Bedford decision, struck down existing prostitution laws, in part because they were found to violate the Charter rights of sex workers.

During her own appearance before the Senate committee earlier this month, Terri-Jean Bedford threatened senators that she would disclose a list of politicians who buy sex if the bill is passed in its current form. She later ran afoul of committee rules by speaking out of turn, was escorted out of the Senate meeting and ultimately apologized.

The new law largely criminalizes the buyers of sex – rather than the sellers – but will nonetheless have an impact on sex workers. It includes broad restrictions on advertising – sex workers are allowed to place ads but it will be illegal for companies to knowingly run them – a change expected to put a chill on both newspapers and websites.

The law also includes a provision making it illegal to discuss a transaction near a school, playground or daycare – a law that would apply to sex workers and clients alike. That was the provision most frequently criticized by witnesses during committee hearings. The government has already softened this provision through an amendment made by a House of Commons committee.

Justice Minister Peter MacKay, who is spearheading the bill for the Conservative government, told The Globe and Mail last week that he had not heard from the Senate about any changes. “I have not heard any indication of forthcoming amendments. I have been following it, and following the proceedings. Of course, they’re still sitting, they still have opportunities to examine the bill. We’ll await that decision,” he said.

Government House Leader Peter Van Loan has pledged to pass Bill C-36 by December, to meet the court’s deadline and ensure Canada doesn’t go without laws on prostitution. The government has repeatedly insisted the law is constitutional, but also said it is designed to limit and rein in the sex trade as much as possible.



## Legal observers worry future judicial appointments will be done in secret

**SEAN FINE, The Globe and Mail, September 18, 2014**

Prime Minister Stephen Harper’s power to reshape the Supreme Court in secret is raising alarm in Canada’s legal community after the release of documents showing the government has no plans to involve Parliament in appointing the judges.

Citing a report in The Globe and Mail that revealed the Prime Minister’s confidential list of candidates for a court vacancy, Justice Minister Peter MacKay said the government chose not to use a panel of government and opposition MPs in winnowing down candidates to a list of three, or to hold a public hearing in Parliament, when it appointed Justice Clément Gascon to the court in June.

He added that after the leaks that led to the Globe story, the government no longer trusted the old system, but did not have time to introduce a new one for that appointment.

Another vacancy opens up on Dec. 1 with the retirement of Justice Louis LeBel, and the government has not decided whether to include Parliamentarians in that appointment, the documents show.

“To take away opportunities for consultation – after what we have lived through – only guarantees we’re going to end up with the same difficulties and public doubt,” said Montreal lawyer Simon Potter, who served as president of the Canadian Bar Association. He added that he worries consultation with the legal community is being shut down, or reduced, too.

It is the latest controversy involving Supreme Court appointments in a year strewn with them. First, Mr. Harper appointed a semi-retired maritime law specialist, Justice Marc Nadon, not widely perceived to be deserving; then, the Supreme Court ruled Justice Nadon ineligible; then, the Prime Minister accused Chief Justice Beverley McLachlin of trying to talk to him about that legal case ahead of time, creating an unprecedented public skirmish.

Legal observers said shutting down the process would take the country back to a time before 2004, when the appointment process was shielded from public view.

“I don’t think that would be acceptable if it would be completely behind doors,” said Michele Hollins, the current president of the 37,000-member CBA.

A spokesperson for Mr. MacKay said the appointments have “always been a matter for the executive and continue to be,” that the government consults widely with the legal community on the matter, and that the breach of confidentiality that led to The Globe’s story is still a concern. “As we are concerned about recent leaks from what was intended to be a confidential process, we are reviewing the process for future appointments,” the spokesperson, Clarissa Lamb, said in an e-mail.

For the past 10 years, appointments of Supreme Court judges have been screened by a selection panel that was created by a Liberal government and tweaked by the Conservatives to make it entirely composed of Members of Parliament. After an appointment, a public hearing in Parliament is held. Mr. Harper was the first prime minister to include the newly appointed Supreme Court judge in the hearing.

The appointments are made by cabinet, but in practice are the Prime Minister’s prerogative. Judges can sit until they are 75, so Mr. Harper’s legacy on the court may last a long time. Chief Justice McLachlin, for instance, was appointed to the court (not as chief justice) by Brian Mulroney in 1989. And the court wields enormous power under the constitution, the country’s supreme law. In the past year, it has struck down or softened the impact of some of Mr. Harper’s tough crime laws.

Some in the legal community worry that a lack of transparency would give the PM untrammelled power over Supreme Court appointments.

“It’s another situation where power is concentrated in the Prime Minister’s Office,” said Jean Leclair, who teaches law at the University of Montreal.

Françoise Boivin, the New Democratic Party’s justice critic, who was a member of the Supreme Court selection panel that screened Justice Nadon, said the government is using the leak as an excuse to shut the process down.

“They were not happy when they saw the names in the story. Now they’re trying to make this the scapegoat of the whole story, which I find a bit cheap. It’s an easy way out.”



## Tories fast-tracked Supreme Court appointment after Globe report

**KIM MACKRAEL AND SEAN FINE, The Globe and Mail, September 16, 2014**

The federal government says it abandoned its normal process when it named Justice Clément Gascon to the Supreme Court in June because it was worried about leaks to The Globe and Mail detailing the flawed selection process used to choose the last candidate.

In May, The Globe published the government’s secret list of six candidates for the vacancy, which was filled last September by Justice Marc Nadon of the Federal Court of Appeal. The Supreme Court later ruled that appointment illegal, saying that Federal Court judges do not have the required qualifications for one of the three spots on the court reserved for Quebec.

Written responses to questions from Liberal MP Irwin Cotler, signed by Justice Minister Peter MacKay, provide new insight into the decisions of a government already on the defensive after the failed appointment and the revelations of what lay behind it. His responses were filed in the House of Commons and made public on Tuesday.

In selecting Justice Gascon, the government chose not to use a panel made up of government MPs and opposition members in winnowing down candidates to a short list of three, or to hold a public hearing in Parliament at which the judge could be questioned. The hearings featuring a new Supreme Court appointee were brought in by the Harper government.

Mr. MacKay’s written responses confirm that The Globe’s story was the reason the government did not use a selection panel or hold a public hearing. He also indicated that the decision not to convene the public hearing was made by the Prime Minister’s Office.

“An article by Sean Fine of the Globe [and] Mail dated May 23, 2014 purported to provide various details about the selection process including the names of candidates considered,” Mr. MacKay’s response says. It adds that the government has chosen not to confirm or deny the allegations in the article “to protect the integrity and confidentiality of the selection process as well as the names of the candidates.”

Asked about the impact of the leak on the appointment process, Mr. MacKay response says, “As a result of this, the government chose not to constitute a Selection Panel, nor to arrange for an ad hoc parliamentary committee for the appointment of [Justice] Clément Gascon to the Supreme Court of Canada.”

Four of the six names on the secret list obtained by The Globe were members of the Federal Court or Federal Court of Appeal. They included a judge who had on at least two occasions copied large portions of rulings from government documents, and been publicly criticized for it by appeal-court judges. None of the four, as it turned out, were eligible for the Supreme Court.

The contents of that list shed light on Prime Minister Stephen Harper’s public criticism of Supreme Court Chief Justice Beverley McLachlin earlier in the spring. He and Mr. MacKay had asserted that the Chief Justice tried to contact Mr. Harper inappropriately about the case involving Justice Nadon’s eligibility. In fact, as part of the government’s consultations, Justice McLachlin had been shown the list two months before Justice Nadon was appointed, and had tried to flag a potential legal issue involving the four Federal Court judges. Mr. Harper later came under international criticism for his assertions.

The Supreme Court will have another vacancy on Dec. 1 when Justice Louis LeBel retires, and the government acknowledged it has no process in place involving parliamentarians to choose his replacement. Mr. MacKay’s response indicates that the process has not been abolished, but is “under reconsideration.”

“It seems to me the government doesn’t want a process at all,” Mr. Cotler said in an interview. He said the “putative leaks” to The Globe were “certainly not grounds for suspending a judicial appointment process.”

Noting the government’s acknowledgment that the Prime Minister’s Office, not the Justice Minister, had made the decision not to convene a selection panel of parliamentarians last spring, Mr. Cotler said the decision is being driven by politics, rather than the need for openness, inclusion and accountability in the selection of Supreme Court judges.

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**CBCnews** |

## **Harper sidestepped MPs on Supreme Court pick due to Nadon 'leaks'**

Kady O'Malley, CBC News, September 16, 2014

Concerns over alleged leaks from the all-party panel of MPs that vetted the aborted appointment of Marc Nadon to the Supreme Court led the government to leave MPs out of the loop when it named Justice Clement Gascon to replace him, documents tabled in the House reveal.

In response to a written question filed by Liberal MP Irwin Cotler last June, Justice Minister Peter MacKay confirmed that "it was ... felt that certain breaches of confidentiality related to the Nadon appointment had compromised the integrity of the current selection process, and that it needed to be reviewed."

According to MacKay, it was Prime Minister Stephen Harper — or, at least, his office — who ultimately made the call to circumvent the Supreme Court selection process his own government had instituted in 2006.

The process "has not been abolished," MacKay added, but is currently "under reconsideration."

Cotler had requested more details on the process surrounding Gascon's appointment — particularly, the decision to skip the now traditional post-nomination ad hoc committee hearing, which had previously given MPs the opportunity to question the candidate chosen by the prime minister before their appointment was made official.

In a reply to a related query, also filed by Cotler, on comments he had made in the House about his concerns over "the leaking of information" related to the appointment process, MacKay elaborated on the link between the alleged leak and the scrapping of the selection committee.

"An article by Sean Fine of the Globe and Mail dated May 23, 2014 purported to provide various details about the selection process, including the names of candidates being considered," he noted.

"As a result of this, the government chose not to constitute a selection panel, nor arrange for an ad hoc parliamentary committee for the appointment of J. Clement Gascon to the Supreme Court of Canada."

### **Source of the leak?**

In an interview with CBC News, Cotler dismissed the minister's suggestion the Globe and Mail article necessarily implicated the selection committee in the alleged leak.

"You go back to any judicial appointment, and there's always speculation by journalists," he noted.

"This is not the first, and it won't be the last — and it doesn't mean it came from the selection committee. It might have come from other sources, or may have been the journalist's own speculation."

New Democrat justice critic Francoise Boivin, who was a member of the ad hoc committee that questioned Nadon, was similarly unimpressed by the minister's assertion that MPs were to blame for the alleged leaks.

"The government's claim is a bit rich considering the alleged leaks appear to come solely from the government benches, and even from the PM and Justice minister themselves," she told CBC News.

### **November vacancy**

Cotler also pointed to the admission that it was Harper's office, and not MacKay, behind the move to keep MPs out of the process.

"I would have thought the minister of justice would be the central actor in this process, and not a political agency," he noted, and pointed out the documents also state, "parenthetically," that the Justice Department wasn't consulted either.

With another Supreme Court seat set to open up next month, he said, the government appears to have suspended the selection process entirely, at least as far as parliamentary involvement.

"They say it's 'under reconsideration,' and that it 'remains to be determined' what process will be used in future," Cotler noted.

"That means there's no process yet underway for a vacancy coming up in November."

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## **Harper suspended Commons committee reviews of Gascon's Supreme Court appointment in June: House documents**

Prime Minister Stephen Harper suspended special Commons committee reviews in June of his nominations to the Supreme Court of Canada following an unprecedented public dispute in May over Conservative allegations that Supreme Court Chief Justice Beverley McLachlin had attempted to lobby against a 2013 appointment by the Prime Minister.

By TIM NAUMETZ, The Hill Times, September 9, 2014

PARLIAMENT HILL—Prime Minister Stephen Harper suspended special Commons committee reviews in June of his nominations to the Supreme Court of Canada following an unprecedented public dispute in May over Conservative allegations that Supreme Court Chief Justice Beverley McLachlin had attempted to lobby against a 2013 appointment by the Prime Minister.

Documents show that although Mr. Harper (Calgary Southwest, Alta.) scrubbed a House committee review in June of newly-appointed Justice Clément Gascon because there was “some urgency” in filling the position, the Prime Minister’s Office also suspected the review process had resulted in “breaches of confidentiality” during the 2013 elevation of Federal Court Judge Marc Nadon to fill a Quebec vacancy on the Supreme Court.

The Supreme Court of Canada, in response to a federal government request for an opinion on Judge Nadon’s nomination after it became controversial and in response also to a separate Federal Court challenge by a constitutional lawyer, ruled last March that the appointment of Judge Nadon contravened a constitutional requirement that only members of the Quebec bar or judges from the province’s Superior or Appeal courts qualified for appointment to the Supreme Court of Canada.

The challenge of his choice of Justice Nadon was a blow to Mr. Harper (Calgary Southwest, Alta.), and came at a politically crucial time as the Supreme Court was taking up another case—an opinion the federal government has earlier requested for the constitutionality of Mr. Harper’s attempts to reform the Senate by term limits and consultative elections without provincial government support.

The Supreme Court eventually ruled the federal Senate proposal unconstitutional, and at the same time ruled that another option, outright abolition of the Senate, could not take place without unanimous consent of all the provincial legislatures and the national Parliament.

Following those two defeats for the government, unidentified Conservatives kicked off the spat with Chief Justice McLachlin when they leaked word to National Post columnist John Ivison that the chief justice had attempted to lobby against Judge Nadon’s selection before the decision had been made.

It was an unprecedented government assault against a Supreme Court judge, let alone the chief justice of the Supreme Court, and drew a barrage of criticism from the legal community and other areas, including the Commons opposition.

Mr. Harper suggested Chief Justice McLachlin had interfered in a case that she might have to consider at the Supreme Court.

On behalf of Chief Justice McLachlin, the Supreme Court posted a statement on its media page on May 2 saying “at no time was there any communication between Chief Justice McLachlin and the government regarding any case before the courts.”

Following the setback, Justice Minister Peter MacKay (Central Nova, N.S.) went into high gear to find a new nomination for the Quebec seat, quickly consulting the Quebec government as well as the legal community in the province and elsewhere.

In a response to written questions in the House of Commons, dated June 3, 2014, but tabled by the government in the House on Sept. 15, 2014, Mr. MacKay's department disclosed that the PMO took control of the fast-track appointment of Justice Gascon—to the point of suspending the system of Commons committee review of Supreme Court appointments that Mr. Harper endorsed when he first took office in 2006.

Justice Gascon's appointment took place as the Supreme Court was ending its spring sittings, prior to a summer break before the new fall session.

“There was some urgency in filling the position since Mr. Justice Morris Fish [one of the three Quebec judges] had retired on Aug. 31, 2014, and, as such, it was felt that the best interests of the administration of justice was to move as quickly as possible and that meant not convening an ad hoc committee,” the Justice Department said in the written response to questions Mr. MacKay submitted to the Commons.

“The main consideration was the best interests of the administration of justice,” the statement said. “It was also felt that certain breaches of confidentiality relating to the Nadon appointment had compromised the integrity of the current selection process and that needed to be reviewed.”

The questions about the absence of a committee review of Justice Gascon's appointment were submitted in the Commons by Liberal MP Irwin Cotler (Mount Royal, Que.), who had established the committee review system as justice minister prior to the defeat of the Paul Martin Liberal government in the January 2006 federal election.

The first Ad Hoc Committee on the Appointment of Supreme Court Judges was struck in 2004, and at the time included a representative from the Canadian Judicial Council and one from the Law Society of Upper Canada along with MPs from each party in the Commons. The committee reviewed and approved of prime minister Paul Martin's appointments of Justice Rosalie Abella and Justice Louise Charron, who has since retired.

The series of questions asked why no committee of Justice Gascon's appointment took place and also “who made the ultimate decision.”

“The Office of the Prime Minister,” stated the response from the Justice Department, tabled with Mr. MacKay's signature.

In response to a question about whether the system has been abolished, the response says: “The process has not been abolished. It is under reconsideration.”

The Supreme Court statement in May stated that Justice McLachlin had consulted with the special Commons committee as part of the nomination process in 2013.

“On July 29, 2013, as part of the usual process, the chief justice met with the Parliamentary committee regarding the appointment of Justice Fish's successor. She provided the committee with her view on the needs of the Supreme Court,” the Supreme Court statement said.

“On July 31, 2013, the Chief Justice’s Office called the Minister of Justice’s Office and the Prime Minister’s Chief of Staff, Mr. [Ray] Novak, to flag a potential issue regarding the eligibility of a judge of the federal courts to fill a Quebec seat on the Supreme Court. Later that day, the chief justice spoke with the Minister of Justice, Mr. MacKay, to flag the potential issue. The chief justice’s office also made preliminary inquiries to set up a call or meeting with the Prime Minister, but ultimately the chief justice decided not to pursue a call or a meeting,” the statement said.

Following that, Mr. Harper went ahead with the appointment of Mr. Nadon, who would have been the first Federal Court judge from Quebec to sit on the Supreme Court.

Four months later, a Supreme Court majority six to one decision, supported by several justices who had been appointed by Mr. Harper, ruled the appointment was unconstitutional.

Mr. MacKay's press secretary, Clarissa Lamb, confirmed in an email to The Hill Times on Tuesday that the committee review process remains suspended and "under consideration."

The next seat Mr. Harper will have to fill on the Supreme Court is approaching, with another Quebec judge, Justice Louis LeBel, set to retire at the age of 75 on Nov. 30.

Liberal MP Sean Casey (Charlottetown, P.E.I.), his party's justice critic, said the ad hoc committee review should be able to question Mr. MacKay about Justice Gascon’s appointment to the Supreme Court. The committee has no power to veto an appointment, but the system allows MPs to express opinions privately about the short list that goes to the Prime Minister for a selection, and allows MPs to probe the nominee during a public hearing.

“Whether the Prime Minister is angry about a Supreme Court decision or not should never influence the principles of transparency and accountability. Parliament has a role to play in the process, and there is still time for Parliament to ask questions of MacKay regarding Gascon’s appointment before the court's first case is heard this October,” Mr. Casey told The Hill Times.

“While the committee review process put in place by former minister of justice Irwin Cotler has been inclusive, diverse and fair in the past, it is not an official Parliamentary committee,” he said Wednesday in an email response to questions.

“As Irwin Cotler has repeatedly advised, the Prime Minister could have worked to create a true oversight process that involves Parliamentarians, ensuring a transparent process from start to finish. Instead, he chose to circumvent it completely, which is not entirely surprising from a Prime Minister who typically prefers closed door decisions over dissenting voices,” Mr. Casey said.

“With Justice LeBel’s retirement fast approaching, it would be prudent to begin thinking about this sooner rather than later so that the Supreme Court is not dragged along for several months, absent a member,” Mr. Casey said.

# La valeur des amendes impayées au gouvernement fédéral explose

Hugo de Granpré, La Presse, le 19 septembre 2014

La valeur des amendes impayées au gouvernement fédéral a explosé depuis 10 ans, selon des documents déposés à la Chambre des communes cette semaine.

Ces documents obtenus par le NPD indiquent que les montants en souffrance ont fait un bond spectaculaire de 120 millions entre 2005 et 2014, passant de 53 à un total de 171 millions.

Au cours de la même période, la somme recouvrée a diminué de moitié, passant de 13 à 6 millions par année. Une somme de 68 millions a ainsi été payée entre 2005 et 2014.

Ainsi, bon an, mal an, au chapitre des amendes fédérales, les montants en souffrance augmentent deux fois plus rapidement que les créances perçues par Ottawa.

Cette baisse de revenus est survenue au moment où le gouvernement fédéral a multiplié les compressions budgétaires. Hier encore, 220 vérificateurs de l'Agence du revenu du Canada ont été avisés que leur poste pourrait être supprimé.

«C'est un exemple flagrant du laxisme qui afflige ce gouvernement. Il devrait prendre au sérieux cette responsabilité de percevoir des fonds qui, au bout du compte, ont été infligés pour des manquements à des législations gouvernementales», a dénoncé le député du NPD, Guy Caron.

## Pas d'explication

C'est le Service des poursuites pénales du Canada (SPPC) qui est chargé de percevoir ces amendes imposées pour une infraction à une loi fédérale tels le Code criminel, la Loi sur l'accise, ou la Loi sur l'impôt et le revenu.

Le SPPC a été créé par le gouvernement Harper lorsqu'il est arrivé au pouvoir en 2006. Autrefois, la responsabilité de ce Programme national de recouvrement des amendes incombait au Service fédéral des poursuites du ministère de la Justice du Canada.

Le SPPC n'a pas été en mesure d'expliquer pourquoi les montants en souffrance avaient autant augmenté au cours des 10 dernières années.

## **Le recouvrement au privé**

L'organisme a toutefois précisé qu'il avait été décidé de confier le recouvrement de ces créances au privé.

«Des efforts sont toujours en cours afin d'élaborer un nouveau modèle de programme pour le recouvrement des amendes, qui permettrait qu'une agence de recouvrement recouvre les amendes, et le SPPC superviserait le programme dans son ensemble», a indiqué une porte-parole, Sujata Raisinghani.

«Entre-temps, le SPPC continue de respecter ses obligations en matière de recouvrement des amendes au meilleur de sa compétence», a-t-elle ajouté.

Dans sa réponse donnée au NPD, le Service a cependant reconnu que «les ressources disponibles limitées» ne lui permettent même pas de consigner le recouvrement des amendes en temps voulu dans les livres du gouvernement.

La Loi sur l'impôt sur le revenu, la Loi sur l'immigration et la protection des réfugiés, le Code criminel, la Loi sur l'assurance-emploi, la Loi sur les douanes, la Loi réglementant les drogues et autres substances et la Loi sur la taxe d'accise sont parmi celles qui comptent le plus d'amendes impayées.

### **Sommes recouvrées**

2005-2006	13,3 millions
2006-2007	5,1 millions
2007-2008	5,8 millions
2008-2009	5,6 millions
2009-2010	7,5 millions
2010-2011	7 millions
2011-2012	8,5 millions
2012-2013	8,5 millions
2013-2014	5,9 millions
2014-2015*	1,1 million
TOTAL	68,4 millions

\* Année en cours

### **Montants en souffrance**

2005-2006	52,9 millions
2006-2007	62,9 millions
2007-2008	77 millions
2008-2009	92,9 millions
2009-2010	105,9 millions
2010-2011	133,6 millions
2011-2012	145 millions
2012-2013	158 millions
2013-2014	169,5 millions
2014-2015*	170,7 millions
TOTAL	170,7 millions
* Année en cours	



## Somebody in this government needs to go back to law school

**By Michael Spratt, Contribution to iPolitics, September 18, 2014**

Another fall in Ottawa, another sitting of Parliament — we're all a summer older and the Harper government still hasn't learned a thing about passing criminal laws that work.

Let's recap, just for laughs: When the House of Commons adjourned for the summer the Conservatives — as they love to do — were talking tough on crime. The courts, on the other hand, were paying close attention to logic and constitutionality of the government's criminal justice agenda.

And we all know how that turned out. Minimum sentences, mandatory victim fines and the retroactive elimination of parole — all Conservative legislation, all declared unconstitutional by the courts.

And the government's losing streak continues: Last week, the Ontario Court of Appeal declared a fundamental aspect of the 'Truth in Sentencing Act' to be unconstitutional.

The Act sought to impose strict limits on the amount of credit that an offender could receive for pre-sentence custody.

Historically — and for very good reasons — judges retained the discretion to determine the amount of credit an offender could receive for time spent in custody prior to conviction. This credit could then be applied to reduce the offender's ultimate sentence.

Over and over again, courts have recognized that it's fundamentally unfair to treat a day in custody prior to sentencing as equivalent to a day in custody after sentencing. There are two reasons.

The first is quantitative: Pre-sentence custody does not count towards parole eligibility or earned parole remission.

The second is qualitative: Conditions in remand facilities are deplorable. While waiting for their trial, the accused — and these are people presumed to be innocent, remember — are warehoused in remand detention centers that are overcrowded, dangerous and devoid of any rehabilitative programming.

As a result — and despite the Conservatives' best arguments at the Supreme Court — when the circumstances justify it, judges are still able to increase pre-sentence credit to account for these inequities.

The Truth in Sentencing Act sought to completely eliminate this aspect of judicial discretion in cases where an offender had been denied bail because of a past criminal record.

The Ontario Court of Appeal unanimously found that the elimination of judicial discretion on this point “offends the proportionality principle, and the parity principle which is a vital part of it, by subjecting identically placed offenders to different periods of incarceration, depending on whether they are able to obtain bail, for reasons that are irrelevant to sentencing. It also produces effects that are grossly disproportionate.”

Not just disproportionate — illogical. The real problem with the Truth in Sentencing Act is that it makes no sense. Let's talk cases:

Imagine we have two different people accused of identical crimes. Each has a criminal record. The first offender has strong community support and is released on bail. The second offender is less lucky — maybe he's poor, homeless, or without family — and he's ordered remanded into custody pending trial.

If both these offenders ultimately receive identical sentences, the offender who was denied bail will actually spend more time in jail — because the time spent in pre-sentence custody (in abysmal conditions) doesn't count toward parole.

And because the poor and marginalized are less likely to obtain bail, they're the ones who stand to lose the most through the Truth in Sentencing Act. That should have been obvious to the Conservatives. Maybe it was. But the bill's purpose was to play up the government's crime-fighting cred with the Conservative party base. When your objective is purely political, logic is irrelevant.

But rabid partisanship and faulty logic tend to play poorly in our courts; judges like to hear arguments based on facts. The Ontario Court of Appeal's decision on the Act is an indictment the Harper government's entire approach to criminal law: "Like many attempts to replace the scalpel of discretion with a broadsword, its application misses the mark and results in unfairness, discrimination and ultimately unjust sentences."

The Conservatives say that their heavy-handed take on criminal law is necessary to restore public faith in the justice system. Ironically, the Court of Appeal suggested that the opposite is true — that the public's confidence in the criminal justice system is being eroded by irrational laws that end up exploding in their authors' faces.

You think they'd learn. You'd be wrong. The track record of the Harper government's crime agenda reads like the ancient Greek myth of the hydra: For each unconstitutional law the courts cut down, two new laws — equally stupid — grow in its place.

And the man leading the parade isn't turning it around. He may not know how. Speaking to a packed partisan crowd at the Ottawa Convention Centre recently, Prime Minister Harper vowed more of the same:

"This fall we will do more. We will move to speed the removal of foreign criminals from our shores, we will end automatic early parole for serious offenders, and we will make sure that a life sentence means what it is supposed to mean — prison for life,"

More parole changes. Indefinite incarceration ... until death. Think about that for a minute.

Eliminating any possibility of parole would be a profound change to Canadian criminal law. At the very least, it's something that deserves careful and considered debate. But the Conservatives' don't like debates, don't like being contradicted and aren't interested in hearing any facts that don't support their arguments. So if there is a debate, it won't be a long one.

Last year the Supreme Court found the last Conservative attempt at parole reform — the retroactively limiting of parole — was unconstitutional.

Last week the Ontario Court of Appeal found that the section of the Truth in Sentencing Act that eliminated any exercise of discretion to account for parole disparities was also unconstitutional.

Given Harper's tub-thumping, I suspect the courts will be called upon to slay yet another dragon. And unless things change in Ottawa, two new heads will grow in its place.

*Michael Spratt is a well-known criminal lawyer and partner at the Ottawa law firm Abergel Goldstein & Partners. He has appeared in all levels of court and specializes in complex litigation. Mr. Spratt is frequently called upon to give expert testimony at the House of Commons Standing Committee on Justice and Human Rights and the Senate Standing Committee on Legal and Constitutional Affairs. He is a past board member of the Criminal Lawyers' Association and is on the board of directors of the Defence Counsel Association of Ottawa. Mr. Spratt's continuing work can be found at [www.michaelspratt.com](http://www.michaelspratt.com) and on twitter at @mspratt*

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## **Stinging message to Canada's lawyers: Goar**

**Tired of being bullied and humiliated, Canadians who can't afford lawyers demand fairness from the bench.**

**Carol Goar, Toronto Star Columnist, September 21, 2014**

The request would be funny if it weren't so sad.

Last week, 10 citizens who couldn't afford lawyers sent an open letter to Canada's judges. "When you meet us, please do not assume that we are enjoying ourselves. We are not," they wrote. "Please do not assume that we have chosen to represent ourselves because we believe we can be brilliant trial lawyers."

"The most important — and simple — reason that we are representing ourselves is that we cannot afford — or can no longer afford — the cost of legal services."

Do the arbiters of justice in this country really need to be asked to treat litigants with basic decency? Do they really need to be told that lawyers have priced themselves out of reach of the average Canadian?

Regrettably, the answer is yes.

After being scolded, bullied and humiliated by judges for years, a handful of self-represented litigants, assisted by University of Windsor professor Julie Macfarlane, are finally speaking out. She sent the group's three-page letter to Chief Justice of the Supreme Court Beverley McLachlin who chairs the Canadian Judicial Council, to the National Judicial Institute, to a number of supportive judges and to members of the media. She also posted it on Facebook, Twitter and other social media.

The signatories — from Toronto, Vancouver, Halifax, Edmonton and North Bay — represent thousands of Canadians. Two-thirds of those who appear in family court (three-quarters in Toronto) don't have a lawyer. They either can't afford the \$350 to \$400 hourly fees charged by family lawyers or they run out of money as the trial drags on. They're not poor enough to qualify for legal aid.

The majority are middle-class parents over 40. Half have university degrees. They are responsible, competent people, but they haven't been exposed to the arcane language and complex procedural requirements of the courts.

The number of self-represented litigants has ballooned in the last decade. Policy-makers, judges, lawyers and court officials all knew it was happening, but it took Macfarlane and her team of researchers to find out why and show how it changed the justice system. They interviewed 283 individuals who had gone to court without legal counsel, documenting their experiences and feelings.

One single mother told the research team: "I can't feed my children — and the judge is telling me to hire a lawyer." A humiliated father recounted: "The judge blasted me. He sent me out of the court and told me not to come back until I had a lawyer." One bitter litigant asked her interviewer to deliver this message to the judiciary: "Don't assume we are stupid just because we have not gone to law school."

With striking consistency they described appearing before a judge as "the worst experience of my life." Some said they would never enter a court again.

"I was really horrified — perhaps I was naive — by the social, emotional and psychological consequences," Macfarlane said after releasing her report.

Judges weren't solely to blame. Court officials were rude and short-tempered. Provincial officials drafted incomprehensible pretrial forms. Lawyers left clients high and dry when their money ran out. Self-represented litigants encountered barriers at every turn.

For the past year, Macfarlane has walked a fine line between full-blown advocacy and dispassionate academic research. She has recommended practical, cost-effective remedies for the shortcomings she highlighted. She has put her findings in the hands of key decision makers. She has reached out to the media to amplify the messages in her report. And she has organized self-represented clients to take a stand. Last week's open letter to the judiciary was part of that campaign.

The tone was polite but forthright. "We write this letter not to lay blame, but to try to explain the widespread experience of self-represented litigants in our legal system," they said. "The cost of legal services has forced us to become our own advocates. Given the complexity of the system that we are learning from the ground up, it is not surprising that we fail.

"Of course our presence makes your job harder," they acknowledged. "We understand that you exercise judicial discretion. We need your clear and respectful explanations and your fair discretion to avoid turning the courtroom into a playground for experts."

Their request is reasonable. Self-representation is not an act of bravado. It is a desperate, exhausting, stressful choice.

That is the new reality of Canada's courts.

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**CBCnews** |

## **Union puts defeat of Harper's Tories ahead of blanket support for NDP**

**Unifor will support re-election of all incumbent NDP MPs, says president Jerry Dias**

**Joan Bryden, The Canadian Press, CBC News, September 18, 2014**

The NDP's traditionally strong ties to the labour movement won't be enough to secure a blanket endorsement from Canada's largest private sector union in next year's federal election.

Unifor will urge its 300,000-plus members to vote strategically and will pour its resources behind local candidates — be they NDP or Liberal — that are best positioned to defeat Stephen Harper's Conservatives.

The union infuriated many New Democrats when it took a similar stance in last spring's Ontario election in a bid to stop Tim Hudak's Progressive Conservatives.

In that case, Conservative support collapsed, allowing Kathleen Wynne's Liberals to cruise to a majority victory.

Unifor national president Jerry Dias says the union has a strong relationship with the federal NDP and will support re-election of all incumbent New Democrat MPs.

But he says the need to defeat the Harper government must trump Unifor's loyalty to the NDP.

"For us, we know that another four years of Harper will be disastrous for working class people in Canada, period. So, that in itself trumps going out there and putting support in a riding where we know that the New Democrats have no chance," Dias said in an interview.

"If the New Democrats have a legitimate, good shot at winning, absolutely that's where we're going, no question about it. But if there's not a hope in hell, why would I waste resources? It doesn't make a stitch of sense."

For example, in a riding like Manitoba's Brandon-Souris, where the Liberals came within a whisker of defeating the Conservatives in a byelection late last year, Dias said Unifor would throw its support and resources behind the Liberal candidate next year.

"The New Democrat got wiped right out (in the byelection). So for us to even consider supporting the New Democrats in Brandon-Souris, in my opinion, may very well just hand the seat back to the Conservatives."

If choice between Harper and Trudeau, 'that's a no-brainer'

The decision to pursue strategic voting in the next federal election was taken unanimously at a weekend meeting of Unifor's national council.

Ironically, the gathering featured a keynote speech by NDP Leader Tom Mulcair, who announced his plan to reinstate a minimum wage for workers in federally regulated sectors, rising to \$15 per hour over four years.

Dias acknowledged the labour movement has no stronger political ally than the NDP.

But while Justin Trudeau's Liberals are less supportive of unions than the NDP, he doubted they're intent on destroying the movement, as he believes Harper's Conservatives are determined to do.

"So, if my choice is Stephen Harper or Justin Trudeau, then that's a no-brainer."

Dias said anti-union measures are "red meat" that Harper throws out to pacify "right-wing extremists" in the Conservative party.

He pointed to government and Conservative private members' bills which labour advocates complain would impose unfair financial transparency rules on unions, gut public service collective bargaining and make it harder for federally regulated workers to join a union while making it easier to decertify a union.

Unifor's decision not to unequivocally back the New Democrats in the Ontario election prompted more than 600 federal NDP parliamentary staffers, who are members of Unifor, to look for another union to represent them.

Dias said the divorce is almost complete.



# Holding the Harper government to account, one written question at a time

Adam Dodek, Contribution to The Globe and Mail, September 18, 2014

*Adam Dodek is one of the founders of the University of Ottawa's Public Law Group and the author of the book The Canadian Constitution. He is currently a Visiting Professor at the Halbert Center for Canadian Studies at the Hebrew University in Jerusalem.*

Sometimes the tortoise does win the race. Through his patient but dogged determination, Liberal MP Irwin Cotler has forced the government to reveal information on subjects ranging from consultations on the government's prostitution legislation, Aboriginal justice, human rights abuses in Iran and the civil war in Syria. Mr. Cotler has done this through the relatively obscure process of "Order Paper Questions."

Unlike Question Period, you will never see clips from "Order Paper Questions" on the evening news. That's because they are written questions that receive written responses by the minister responsible, within 45 days of when they are submitted. Not quite the sort of timely response that we have come to expect in a 24/7 social media age, but as Mr. Cotler has demonstrated, this slow but detailed process can yield real substantive answers about government actions.

Nowhere is this seen more than in Mr. Cotler's questions about the Supreme Court appointment process. Mr. Cotler has probed everything from the government's bungled appointment of Justice Marc Nadon to the fast-tracking of Justice Clement Gascon's appointment without following its own vaunted public questioning of the Prime Minister's nominee prior to taking his seat on the high court. As I have written previously, Minister of Justice Peter MacKay provided next to no explanation about why Justice Nadon was selected. In a comprehensive democratic audit on reforms to the Supreme Court appointment process over the past ten years, I concluded that the government had failed to deliver on its promise of increasing transparency about the appointment process. After a decade, we still had many unanswered questions. Some of these are now answered in the responses to Mr. Cotler's Order Paper questions.

For the first time, the government spelled out in writing the criteria for evaluation of Supreme Court candidates. The answers revealed that the "Supreme Court Selection Panel" prepared a Report with its recommendations and annexes which it submitted to the Minister of Justice. We have now also learned that all the working documents used by the Selection Panel Members were destroyed. And there is much more. For example, the Quebec Regional Minister (The Hon. Denis Lebel) was consulted on the list of potential candidates to fill the Nadon-Fish vacancy.

Perhaps most interesting politically is Mr. MacKay's response to the following questions: "is consultation with [the] Chief Justice a normal practice of selecting a nominee for the Supreme Court of Canada" and "what role is served by consulting with the Chief

Justice”? Answer: “Yes. ... The Chief Justice is able to comment on the needs of the court and, at her discretion, on the expertise and suitability of individual candidates.”

There it is in 26 words: an admission by the Minister of Justice himself that it is entirely appropriate for the Chief Justice to be consulted about Supreme Court appointments. This admission runs completely contrary to the allegations levelled at the Chief Justice by the Prime Minister and the Minister of Justice several months ago.

Parliament essentially has three primary functions: (1) to consider and enact laws; (2) to debate great policy issues of the day; and (3) to hold the government to account. (it also has the specific duty to approve all taxes and authorize government spending).

If our Parliament was ever a place where great debates took place, it has now been replaced by MPs reading scripted talking points. With majority governments, the process of considering and enacting laws is dominated by the government. Similarly, it becomes difficult for Parliament to hold the government to account. The joke in Ottawa about “Question Period” is that it’s called Question Period and not “Answer Period” for a reason: MPs get to ask whatever questions they want, but government ministers or parliamentary secretaries don’t necessary have to answer them.

Not so with Order Paper questions. They must be answered. And Mr. Cotler has learned how to master this arcane point of parliamentary procedure with flourish. His questions take the form of written interrogatories of the type that lawyers pose in lawsuits. In this, Mr. Cotler draws upon his vast knowledge and experience in the Canadian justice system and his tenure as attorney-general and minister of justice between 2003 and 2006.

The use of the singular in “Order Paper Question” is misleading. In his last batch of three Order Paper Questions to which the government just tabled its responses, Mr. Cotler posed 30, 58 and 64 questions, many of which with sub questions.

In this age of cynicism for public institutions and public officials, Mr. Cotler has demonstrated that a single MP can indeed make a difference. The Harper government continues to preach the values of transparency and accountability while practicing secrecy and obfuscation. Mr. Cotler slowly and steadily pries information out of the government’s hands, strengthening Parliament in the process.



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## **Court overturns Robert Latimer’s travel restrictions**

**A Federal Court judge has overturned a parole board condition that bars Robert Latimer from leaving the country. The Saskatchewan farmer was convicted of killing his severely disabled daughter Tracy in 1997.**

**Toronto Star, The Canadian Press, September 12, 2014**

VANCOUVER—A Federal Court judge has overturned a parole board condition that bars Robert Latimer from leaving the country.

Judge Michael Manson says in a ruling released Tuesday that the appeal board acted unreasonably in November 2013 when it upheld a parole board decision that denied Latimer's request to travel freely outside Canada without first obtaining pre-approval.

Manson says there is no reason the Saskatchewan farmer can't travel freely, as there is nothing to indicate he poses any risk to society.

The decision also says the parole board is supposed to consider the least restrictive release possible for an offender, and the board and its appeal decision did not exercise discretion in Latimer's case in a reasonable, transparent or intelligible manner.

The Attorney General of Canada had argued the travel ban was warranted because positive assessments from Latimer's parole team don't necessarily outweigh the gravity of his crime.

Latimer was convicted of the second-degree murder of his severely disabled daughter Tracy in 1997 and sentenced to life in prison but granted full parole, with some conditions, in 2010.



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## **Supreme Court ruling hasn't stopped police from warrantless requests for data**

**Police continue to request Canadians personal information from telecoms. Sometimes with a warrant, sometimes without a warrant.**

**Alex Boutilier Staff Reporter, and Paul McLeod Halifax Chronicle Herald, September 17, 2014**

OTTAWA—Law enforcement agencies are still making warrantless requests for telecom customers' personal data months after a Supreme Court ruling appeared to shut down the practice.

Police in Canada used to ask telecom companies to voluntarily hand over data on Canadian customers more than a million times per year. In June, the Supreme Court struck down this warrantless method as an invasion of privacy.

But while the number of warrantless requests has dropped since the decision, they have not stopped, an investigation by the Star and the Halifax Chronicle Herald has found. Key players, including the country's largest police force and a major telecom, aren't saying whether they still send or accept them.

Another of Canada's "big three" telecoms, Rogers, started demanding warrants for all requests after the June ruling, known as the Spencer decision. Even after this policy change, the company continues to receive warrantless requests, according to Ken Engelhart, vice-president of regulatory affairs at Rogers.

Engelhart said the warrantless requests are only a "handful" compared to the approximately 90,000 the company fielded in 2013. But he also said that overall police requests are being made nearly as frequently as before the Spencer decision.

"People now understand that we don't give it warrantless . . . so we're getting a handful," Engelhart said in an interview last week. "But we're still getting the kind of requests we used to get without a warrant, but now they're accompanied by a warrant."

Warrantless requests are generally made for "basic subscriber information." This data — such as a customer's name, address, Internet protocol address, or telephone number — that can be used to construct a telling profile when tied to someone's online activity.

TELUS confirmed in a statement that they also require a warrant to access such data in all but the most extreme circumstances. The company did not disclose, however, if it is still receiving warrantless requests.

The last of Canada's "big three" telecoms, Bell, has repeatedly refused interview requests on the issue. In a one-line statement last week, the company would say only that it complies with Canadian law.

There does not seem to be consensus on whether the Supreme Court decision should apply to almost all requests.

"(The decision) specifically did not create a requirement for law enforcement to obtain judicial authorization for any and all basic subscriber information from a telecommunications service provider," Sgt. Greg Cox, a spokesman for the RCMP, wrote in an email.

Cox wrote that the RCMP will continue to request data without a warrant in the case of emergencies — which the Supreme Court allowed — but would not clarify whether they will do so in other cases.

Federal agencies have not made up their minds on how broadly the ruling should apply. The government is still reviewing the decision “with a view to establishing a common interpretation,” according to the Canada Border Services Agency.

The debate seems to be whether the decision applies to all warrantless data requests, or only in the specific set of circumstances that were before the Supreme Court in the Spencer case.

That case centred on Matthew David Spencer, a Saskatchewan man who was charged with accessing child pornography. Police tracked him down after Shaw Communications gave them the name and address attached to Spencer’s IP address. No warrant was involved.

The top court unanimously ruled that police should not request customer information without a warrant. But Spencer’s conviction was upheld because the Supreme Court justices found police had acted in good faith at the time.

The lawyer who argued Spencer’s case said he has no doubt that the decision was clearly meant to apply very broadly.

“The fact that this was a child pornography case was almost irrelevant to the decision. The question was, ‘(Is) judicial authorization required before you could access that information?’ ” said Aaron Fox, of Saskatchewan-based McDougall Gauley LLP.

Customers are not informed when their data has been shared and most never find out unless it shows up as evidence in a court case.

“That’s the frightening part about this. They could be accessing your Internet information right now. If you’re not charged with anything . . . you’ll never know,” said Fox.

While Rogers no longer entertains warrantless requests, Engelhart said it’s up to police to judge whether trying to obtain information without a warrant could jeopardize their case.

“They need to analyze it to determine whether they are going to lose any convictions in court . . . but frankly that doesn’t affect us. We’ve decided that we won’t be providing this information without a warrant,” Engelhart said.



## 'Inspiring' public servants get top honours at Rideau Hall

**DYLAN ROBERTSON, Ottawa Citizen, September 16, 2014**

Anna Kapiniari says one of the best moments of her public-service career was standing in a silent but packed school auditorium. Astronaut Chris Hadfield was live on screen from the International Space Station, ringing out a wet washcloth to show what happens when there is no gravity.

“We all saw how the water gelled around his hands and sort of pooled there,” said Kapiniari, acting director of communications with the Canadian Space Agency. “There were over a thousand students in the room at that moment and you could’ve heard a pin drop.”

Kapiniari’s team co-ordinated Hadfield’s viral appearances during his five months in space last year. The team was among 33 groups and individuals honoured Tuesday as Governor General David Johnston handed out the Public Service Award of Excellence.

“In this time of considerable change and uncertainty, your examples are inspiring,” Johnston said at Rideau Hall.

From savvy budget chiefs to the brains behind Canada’s digital passport, Johnston highlighted the behind-the-scenes work of the federal service.

In the case of Kapiniari’s team, a group of bureaucrats crafted detailed plans to make Hadfield’s live-but-virtual school visits go seamlessly. Her team, which ranged from seven core members to 20 supporters, started navigating logistics two years before Hadfield reached outer space.

“Our objective was to make science fun and to get young people interested in learning more,” she said.

One contest had hundreds of students proposing science experiments that could be carried out both by Hadfield in space and in a classroom on the ground. Navigating NASA paperwork, changing schedules and limited materials, the team facilitated a wet-washcloth lesson that explained how water reacts to gravity.

Kapiniari also remembers a sing-a-long where 700,000 schoolchildren across Canada accompanied Hadfield through live video feeds.

“Technically, it was the most difficult event we had ever put together in our careers,” said Kapiniari. “It was technically crazy but also very inspirational for us.”

While some of Tuesday’s winners were awarded for decades of service or exceptional management talent, most winners were cited for their use of new technologies.

Outgoing Privy Council Clerk Wayne Wouters told his fellow bureaucrats he was proud the ceremony would be the one that ended his tenure as head of the public service.

“I’ll miss days like this, when we get to recognize the everyday work of our public servants,” he said.

## Among the winners

- An award for citizen-focused service delivery was given to the team behind the new 10-year digital passport, as well as to the team administering compensation payment for families of the Air India Flight 182 victims.
- The Transportation Safety Board’s Lac-Mégantic investigation team was honoured for “exemplary contributions under extraordinary circumstances.”
- Agriculture and Agri-Food Canada scientist C. André Lévesque was honoured for scientific contributions, including a diagnostic protocol that thwarted a potato-wart crisis that led the U.S. to suspend Canadian potato imports in 2000.
- Special recognition was given to the Franklin Expedition search team, which included 200 public servants.



# Unfilled vacancies threatening court progress

## Slow pace of judicial appointments among concerns of chief justices

**Kabeer Sethi, Law Times, September 15, 2014**

Despite progress on reducing wait times for civil motions, a lag in filling judicial vacancies at the Ontario Superior Court is a growing concern for the justice system, Chief Justice Heather Smith said last week.

Progress on reducing wait times in civil matters will be at risk if delays in naming new Superior Court judges continue, says Chief Justice Heather Smith.

Progress on reducing wait times in civil matters will be at risk if delays in naming new Superior Court judges continue, says Chief Justice Heather Smith.

Smith began her address at the opening of the courts ceremony in Toronto on Tuesday by sounding the alarm over the slow pace of judicial appointments to fill the growing number of vacancies. According to Smith, there will be 30 judicial vacancies by the end of the year, with family law judges accounting for nine of them, if current trends continue. The vacancies, combined with a “critical lack of criminal jury courtrooms,” were hampering the judicial process, she said.

“I would urge the minister of justice to act with dispatch to fill our court’s outstanding vacancies. I also trust and expect the new appointees will have the skills and expertise necessary to step confidently and seamlessly into their roles.”

Smith also raised concerns about the court’s ability to handle the pressures caused by rapid population growth in several suburban communities in the Greater Toronto Area. “They lack the facilities required to discharge our court’s core functions,” she said.

While the government has made some progress with plans for a temporary solution to address facility shortages in Barrie and Newmarket, Ont., Smith said it had “abandoned” that option for Brampton, Ont., and is instead considering a permanent facility that would take years to complete.

“This startling change of plan can only result in continuing and worsening delays in criminal jury trials,” said Smith.

Ensuring timely hearings was a top priority as Smith’s two fellow chief justices also pronounced on the state of the courts last week. Newly sworn-in Ontario Chief Justice George Strathy described the challenges as significant “but not insurmountable,” a sentiment echoed by both Smith and Ontario Court Chief Justice Justice Annemarie Bonkalo.

Strathy noted his concerns about access of justice in Ontario and a lack of space in the trial courts. “Our justice system has become so cumbersome and expensive that it has become inaccessible to some of our citizens,” said Strathy.

While a key aim of the legal system is to be fair and produce just results, inefficient practices are impeding that goal, he said, suggesting those who work in the legal system have a collective responsibility to improve the administration of justice.

Despite her concerns, Smith commended the success of the Superior Court’s internal review of delays in civil matters, an effort spearheaded by Justice Geoffrey Morawetz.

“I am absolutely delighted to report that the first phase of the GTA civil justice review has yielded results that are nothing short of outstanding, particularly for Toronto,” said Smith.

“Last year’s unacceptable wait times for civil long motions and long trials are now history.”

Timely hearings in civil cases were a top priority last year as average wait times for a short civil motion had reached four months and long motions were taking 11 months. Smith said the timelines for both motions are now “a few short weeks.” She also noted a significant decrease in wait times for certain long civil trials that could take up to 22 months. The timeline is now six months for any long civil trial, according to Smith.

In explaining the changes, she touted the reduction of counterproductive booking practices and other inefficient procedures. “When the bar organization spoke last year, we listened,” she said.

Despite the progress, Smith said maintaining it in the coming years will be “virtually impossible” without a full judiciary.

Bonkalo, who will be leaving her post next May, highlighted the continued efforts to ensure “open, modern, and fair justice” in Ontario’s court system. In noting some of the examples, she referred to improvements in quarterly statistical reporting of court activity and efforts to make information more accessible to unrepresented litigants.

Further improvements, she said, will include increased use of videoconferencing in courtrooms and a provincewide electronic judicial scheduling tool.

“While fairness already underscores all our daily efforts, we’re always looking at ways to improve. Reducing trial continuations through enhanced case management will be focal points for our court in the coming year,” said Bonkalo.

When it comes to family law, Bonkalo said measures such as on-site mediation for families have been helping. But she added: “We need to do more.”

In addition, she noted her particular concern about the plight of Ontario’s youth. “Our court continues to be deeply concerned about the special challenges faced by young people. These youth often have multiple needs: legal, housing, employment, educational, mental health, and addiction,” said Bonkalo.

“Our youth are our most precious resource and are worth our collective investment.”

Speaking after the judges, Attorney General Madeleine Meilleur reflected Strathy’s concerns when she referred to access of justice as “the most pressing issue of our time.”

“Many of us have seen the struggles of vulnerable, self-represented litigants,” said Meilleur.

“There are no easy answers, and this is not an issue any of us will be able to solve on our own. Partnerships will be key.”

Meilleur also said the Ministry of the Attorney General is seeking to modernize the court system by posting daily docket information online and providing for electronic filing at the Small Claims Court. She also commended the Law Commission of Ontario’s involvement in improving access to justice, calling its efforts “excellent work.”

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**LeDroit**

**«Une solution à un problème qui n'existe pas», soutient l'IPFPC**

**Paul Gaboury, Le Droit, le 15 septembre 2014**

Un autre important syndicat du secteur public fédéral estime que le gouvernement Harper veut mettre en place un nouveau régime de maladie pour régler «un problème qui n'existe pas».

Même si les équipes de négociations de l'Institut professionnel de la fonction publique du Canada (IPFPC), un syndicat qui représente 55000 membres, ne se retrouveront pas devant le Conseil du Trésor avant plusieurs semaines, les propositions faites par le gouvernement Harper pour établir un nouveau régime de maladie à l'échelle de la fonction publique n'y ont pas trouvé d'échos favorables, hier, pas plus qu'auprès des autres syndicats.

L'institut serait par contre favorable à toute amélioration proposée au régime de congés de maladie et d'invalidité «à condition qu'elle vise la prévention des maladies et des blessures et le bien-être de ses membres»,

«Nos membres disposent en moyenne de 111 jours de congé de maladie, qu'ils n'ont pas le droit d'encaisser au moment de leur départ à la retraite, rappelle l'IPFPC. Contrairement à ce que laisse entendre le gouvernement, l'utilisation des congés de maladie par les employés de la fonction publique est pratiquement la même que celle des employés du secteur privé - un écart de 0,8 jour - différence qui s'expliquerait par l'âge moyen supérieur des employés de la fonction publique et le fait que les hommes y sont moins nombreux que les femmes, y compris des mères monoparentales qui ont des personnes à charge, deux facteurs qui contribuent à l'augmentation de l'incidence des congés de maladie».

Quant à l'augmentation du nombre de congés de maladie au cours des dix dernières années, elle peut être directement liée à une montée en flèche des demandes de prestations de l'invalidité longue durée, dont 48% découlent directement de problèmes de santé mentale, qui serait attribuable à l'augmentation du nombre de lieux de travail toxiques qui résultent des compressions budgétaires, selon le syndicat.

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**LeDroit**

## **Le gouvernement «tord» la réalité, accuse la députée Turmel**

**Paul Gaboury, Le Droit, le 15 septembre 2014**

La députée de Hull-Aylmer Nycole Turmel reproche au gouvernement Harper de «tordre» la réalité pour faire passer son message dans les négociations avec les fonctionnaires fédéraux.

À l'occasion de la rentrée parlementaire, la députée néo-démocrate a réagi aux propositions faites par le Conseil du Trésor la semaine dernière pour modifier le régime actuel de congés de maladie des fonctionnaires fédéraux.

Le gouvernement veut mettre en place un nouveau régime avec 37,5 heures (5 jours) de maladie par année (au lieu de 15 jours), l'abolition des banques de congés de maladie accumulés, et la mise en place d'un nouveau régime d'assurance-invalidité à court terme.

«Si le gouvernement veut revoir les conditions de travail des fonctionnaires, il doit négocier de bonne foi avec les syndicats en s'appuyant sur des faits. Il est grand temps que Tony Clément cesse de tordre la réalité pour qu'elle corresponde aux idéologies conservatrices, comme il le fait dans le dossier des congés de maladie» a fait valoir la députée Turmel, elle-même ancienne présidente de l'Alliance de la fonction publique du Canada.

En juin 2013, le président du Conseil du Trésor avait fait part de la volonté du gouvernement Harper de modifier le régime actuel afin de réduire l'absentéisme dans la fonction publique dans le but de réduire les coûts et d'accroître la productivité. Il avait alors mentionné que les employés fédéraux prenaient en moyenne 18 congés de maladie par année.

Depuis, les syndicats ont dénoncé les affirmations du ministre Clément, en lui reprochant de ne pas dire la vérité, puisque les chiffres officiels indiquent que les fonctionnaires prennent en moyenne 11,8 congés de maladie payés, alors qu'ils prennent six autres congés non payés.

De plus, un récent rapport du directeur parlementaire du budget révélait que les congés de maladie ne représentaient pas de coût significatif dans les 20 ministères étudiés.

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**LeDroit**

## **Des bureaux pour 25 000 fonctionnaires et 3700 logements**

**Paul Gaboury, Le Droit, le 16 septembre 2014**

Le site de 49 hectares du pré Tunney est voué à se développer pour devenir un lieu de travail avant-gardiste pouvant accueillir plus de 25 000 fonctionnaires fédéraux, soit plus du double qu'à l'heure actuelle, avec un usage mixte dont l'aménagement inclura des zones résidentielles comptant jusqu'à 3 700 logements.

Lors de la réunion de son conseil d'administration mardi, la Commission de la Capitale nationale a approuvé le plan directeur pour le développement futur du pré Tunney dont le

principal objectif vise à répondre aux besoins d'espaces à bureaux actuels et futurs du gouvernement fédéral.

En vertu de ce plan, le gouvernement souhaite ainsi que le site devienne un lieu de travail avant-gardiste, avec des normes élevées de design urbain et de développement durable. Il souhaite également tirer le maximum de la station pré Tunney située sur le site comme catalyseur clé de l'aménagement axé sur le transport en commun. Le site de 49 hectares, situé à quatre kilomètres à l'ouest du centre-ville, compte dix-neuf édifices qui sont majoritairement sous la responsabilité de Travaux publics et services gouvernementaux. Plusieurs ministères dont Santé Canada, Statistique Canada, la Défense nationale, Bibliothèque et Archives Canada y occupent des locaux.

Le plan directeur prévoit ainsi que le site passera d'un centre d'emploi traditionnel «à un quartier dynamique à usage mixte» s'appuyant sur les pratiques exemplaires en matière d'aménagement axé sur le transport en commun.

Ainsi, les possibilités de bureaux qui logent présentement 10 000 fonctionnaires devraient permettre d'accueillir 22 000 à 25 000 employés, des zones résidentielles avec environ 3 400 à 3 700 logements permettraient ainsi d'offrir plus de possibilités d'habiter près du travail et du transport en commun.

D'autre part, le plan directeur prévoit réserver un bloc important pour l'aménagement d'un parc communautaire, de même qu'une meilleure connectivité avec les terrains qui longent la rivière des Outaouais.

Le conseil a toutefois soumis quelques conditions en acceptant ce plan directeur. Ainsi, à chaque phase de la mise en oeuvre, il faudra obtenir une nouvelle approbation fédérale d'utilisation du sol, du design et des transactions immobilières. De plus, la CCN donnera sa rétroaction à TPSGC à l'étape de la planification de la demande des propositions pour s'assurer que le site est intégré de façon appropriée à la promenade Sir-John-A.-Macdonald et aux terrains adjacents.



## **CRA staffing shakeup throws promised tax crackdown into question**

**BILL CURRY, The Globe and Mail, September 19, 2014**

A staff shakeup at the Canada Revenue Agency is prompting accusations the Conservatives are backing away from a promised crackdown on international tax evasion.

Months after the dust apparently settled in terms of federal public service staffing cuts, more than 300 workers at the Canada Revenue Agency are receiving notices their jobs could be “affected” in some way, either through relocation internally or a layoff.

More than 200 of those positions involve senior tax auditors who work on international tax evasion schemes, according to the Professional Institute of the Public Service of Canada (PIPSC), the union representing the employees. In addition, “affected” notices went out to more than 100 staff who handle taxpayer appeals of CRA decisions, according to the Union of Taxation Employees.

The two unions say the changes are at odds with pledges in the last two federal budgets that Ottawa would boost enforcement of overseas tax evasion.

Debi Daviau, the president of PIPSC, said the shuffle will mean fewer senior auditors working on international files, even though it is one of the agency’s most lucrative areas in terms of finding new government revenue.

Ms. Daviau said it appears those auditors will be shifted to a new focus on small and medium-sized Canadian businesses.

“In light of their [budget] announcements, it doesn’t really make any sense at all,” Ms. Daviau said. The union says that every dollar spent on a CRA salary for international tax evasion returns \$46 in tax revenue, compared with the average of \$19 for the agency as a whole.

“It’s clear that they’ve shifted their positioning on this. I think it’s from lobbying from big business, personally,” she said.

Philippe Brideau, a spokesman for the CRA, provided a very different version of events that still left questions as to the exact nature of the changes.

“To be clear, the CRA is not reducing the number of tax evasion and tax avoidance experts or the number of auditors,” he wrote in an e-mail. “This work force adjustment process will not result in any auditor positions being cut.”

He added that the CRA’s resources for auditing international tax planning have increased and money from the 2013 budget led to the creation of an Offshore Compliance Division with 70 full-time staff.

The agency has also seen a “dramatic increase” in the annual use of a voluntary disclosure program for offshore accounts, rising from 1,215 disclosures eight years ago to nearly 6,000 already this year.

“These increases are the direct result of the government’s action,” he said.

Staff levels at the CRA have fluctuated significantly over the past 15 years. The size of the CRA reached a high of 51,128 in 2003 and then a low of 39,895 in 2005. It then grew to 43,216 in 2010 and then back down to 40,279 in 2014.

There has been a sharp decline in the size of the federal public service as a whole in recent years, dropping from a high of 282,980 in 2010 down to 257,138 in 2014. The drop does not completely offset the major increase in hiring that took place in the early years after the Conservatives formed government in 2006. The current size of the public service is still slightly larger than it was in 2006 when the population was 249,932.

Many staff who received “affected” notices during the period of budget cuts who wanted to keep working were able to stay in the public service because of openings created through attrition.

Bob Campbell, the president of the Union of Taxation Employees, said the practice of leaving jobs unfilled is taking its toll. Staff are also upset with the government’s plans to cut back on sick days and to launch an anonymous snitch line for agency staff to report perceived abuses by their colleagues.

“The morale within CRA right now is very low,” he said.

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## Our lumbering justice system

**Law Times Editorial by Glenn Kauth, September 15, 2104**

It seems it’s one step forward and two steps back when it comes to progress on resolving issues in Ontario’s court system.

On the one hand, Superior Court Chief Justice Heather Smith, speaking at the opening of the courts ceremony last week, noted progress on reducing delays in civil cases over the past year. On the other hand, Ontario Chief Justice George Strathy lamented a “legal system that has become increasingly burdened by its own procedures,” takes too long to resolve matters, and is too expensive.

It’s in some ways ironic that these issues linger. With reports of declining activity in the courts due to falling crime rates and talk of the vanishing trial as litigants deal with their matters in other ways, the issues should largely be resolving themselves. But with a motions culture and other elaborate rules and practices referenced by Strathy, the system continues to hobble along.

It’s not that governments are necessarily helping. Last week, Smith noted her concern about the increasing number of judicial vacancies at the Superior Court. If the federal government doesn’t appoint new judges, there will be 30 unfilled positions by the end of the year, she pointed out.

The slow pace of appointments is evident in the fact that it has been since June 13 that the government has named any judges. It may name some soon but it's clear the appointments process has been lagging. That's perhaps not surprising given the recent controversies over the lack of women on the bench and the continuing debates about the Supreme Court of Canada, but that's no excuse. The problems facing the justice system are complex enough without the government adding to them by taking too long to make appointments.

The fact that the justice system continues to languish despite some positive developments is a reflection of just how complex it is as well as governments' reluctance to invest significant resources into reform. The judges' comments last week are a reminder that they need to pick up the pace.

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## Taxman wants to catch its own bad apples with internal snitch line

**Steve Rennie, The Canadian Press, Winnipeg Free Press, September 16, 2014**

OTTAWA - The taxman wants to know if any of his own are up to no good.

That's why the Canada Revenue Agency is in the process of setting up a self-snitch line.

The so-called internal fraud and misuse reporting lines would give agency staff a way to confidentially report any concerns about their colleagues.

"Internal fraud and integrity lapses pose a serious threat to the organization's objectives and reputation and to the morale, productivity and well-being of its employees," the agency says in a new contract document.

"To mitigate the threat, it is vital that the CRA takes all reasonable measures to safeguard the assets, resources, information and reputation of the organization from fraudulent activity and inappropriate conduct by its employees."

Three Canada Revenue Agency employees were among seven people caught up in a sweep by the Mounties earlier this year.

Charges laid include bribery of public officers, conspiracy, fraud, breach of trust by a public officer and fraud against the government.

Since 2008, 15 people — including eight former Canada Revenue Agency officials — have been arrested as part of an investigation called Project Coche.

Back in 2010, The Canadian Press obtained internal reports showing the agency had trouble with employees who wasted their work days surfing the Internet, setting up sports pools, sending chain letters, promoting illegal substances, sharing offensive cartoons and running pyramid schemes.

But some staff may be wary about bringing their concerns to a supervisor, the agency says.

Others may fear their covers could be blown. There's no guarantee of anonymity under either the Access to Information Act or the Privacy Act. That means any information gathered over the course of an investigation into wrongdoing is accessible — although personal information would most likely be blanked out in any documents released under those laws.

"Therefore, the most effective way to learn about fraud and other unethical behaviour is to provide employees with a variety of methods for reporting their concerns," says the agency.

"These methods include phone lines, web forms, emails, faxes, regular mail and face-to-face meetings."

This isn't the first time the agency has set up a snitch line.

A hotline to try to catch people who may be hiding money offshore has been up and running since January.

The Offshore Tax Informant Program offers tipsters a cash reward of up to 15 per cent if the agency collects more than \$100,000 in taxes owed. The down side? The reward money must be claimed on the tipster's income tax.

There's also a third snitch line that is focused on domestic tax fraud and pays no rewards.

The Canada Revenue Agency did not immediately respond to questions about the new hotline.

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## Managing message in media storm

## **Lawyers have to be the ‘voice of reason’ when their client is in the spotlight**

**By Geoff Kirbyson, Lawyers Weekly, September 19, 2014**

They can have the same legal problems as anybody else and pay the same fees but a celebrity is not — and never will be — a run-of-the-mill client.

By virtue of their notoriety and media interest in them, a celebrity client has to be treated much differently than a typical person looking to clear his or her name, experts say.

Perhaps the biggest duty for a lawyer working on behalf of an actor, politician, pop star, athlete or other celebrity is trying to manage the media when something goes awry.

Few lawyers know the trials and tribulations of representing a high-profile client like Dennis Morris. The Toronto-based sole practitioner has been kept hopping over the past 18 months on behalf of the city’s mayor, Rob Ford, who has had a laundry list of personal issues, including drug and alcohol abuse and questionable friendships, brought to the fore.

Many times, Morris has been called upon not for his legal expertise, but to act as a spokesman to help the media see the story from Ford’s point of view.

“Sometimes you’re acting as a voice of reason so the media doesn’t go one way or the other on the topic of the day.”

Morris recalls one incident in particular on Oct. 31, 2013, when Toronto Police Chief Bill Blair held a press conference to express his displeasure with the mayor after having seen a video of him apparently smoking crack cocaine. Blair suggested that Ford resign.

Morris responded in kind: “I took the offensive position by saying: ‘If anyone should resign, perhaps it should be the chief of police. He should be impartial and shouldn’t indicate his personal interpretations while wearing his police chief hat.’”

“It’s a once-in-a-lifetime opportunity to defend an individual whose character has been assassinated by the media, or attempted to be assassinated, without having balanced coverage.”

The fact that lawyers can appear in court by designation is critical, says Robb MacDonald, a Toronto-based criminal lawyer. With a non-celebrity client, lawyers want them to attend court week in and week out so that they see the work that’s being done on their behalf and know what’s going on.

With a celebrity, however, you keep them out of court and the public eye; indeed, “until it’s absolutely necessary.” MacDonald says.

In many ways, the media can be like dogs, chasing after the newest case to catch their attention — sometimes it doesn’t take long for them to lose interest in a case that’s

dragging out. MacDonald says he often talks to the opposing Crown attorney to see if they have tipped the media off about a “notable” appearance.

In one recent case, he’d show up a half-hour before his client was supposed to and if he saw media members camped out — he’s familiar with reporters who cover criminal law and celebrity cases — he’d put the matter over until the next day or the day after that. Finally, after a number of adjournments, the media had moved on to other matters and he and his client were able to make their plea in peace.

“They weren’t there to take photos or do courtroom sketches or anything that would be disruptive to the client. At least by having those discussions [with the Crown attorney], you can try to prevent your client from having to show up on a day when the media is ready,” he says.

One challenge for celebrities is their entourages, which can vary in size depending on how often they’re featured on Entertainment Tonight. MacDonald says that when managers, handlers and assorted hangers-on insist on being a part of a discussion when the lawyer is in the room, the conversation is no longer privileged.

“Any time they’re talking about anything of importance, such as the client telling his version of events, that has to be done one-on-one so that privilege isn’t breached,” he says.

Of course, once the client realizes what’s on the line, the room clears immediately.

But representing a high-profile client doesn’t always mean you’ve got to spend more time on the case. For example, MacDonald says the process was expedited for Const. James Forcillo, the Toronto police officer accused of fatally shooting 18-year-old Sammy Yatim on an empty Toronto streetcar in the summer of 2013.

Typically, it takes some time to get a bail hearing and when you do go to bail court, there will be 20 other matters ahead of yours. But because there was so much media attention with this case — and because the Crown wanted to capitalize while the story was hot — it went to bail court the day after the arrest was made.

Sometimes it is beneficial to capitalize on media attention.

David Asper, the Winnipeg-based lawyer who represented David Milgaard, who was wrongly convicted of the 1969 murder of nursing aide Gail Miller in Saskatoon, says he purposely tried to get as much media attention for his client as possible.

“We were trying to get a new hearing and we faced all kinds of resistance. We were on a campaign of advocacy. We were quite deliberately trying to get more attention to ourselves, to get people who had information about the case to know that we were there and if they wanted to come forward, we were the people to talk to,” he says.

After spending more than two decades in jail, Milgaard was freed in 1992 and awarded \$10 million in compensation, the largest payout of its kind in Canadian history at the time.

While Asper was ultimately successful, he says undertaking that kind of advocacy is risky because he didn't write the newspaper headlines or control how the media digested the information he was providing.

"We were fortunate. We were mostly correct [but] once you open yourself up, there will be some who try to debunk what you're saying or attack your position. We had plenty of that from the authorities in Saskatchewan, former crown attorneys or police. It made for a lot of conflict. The media loved it," he says.

"You have to be careful about your advocacy. It can be played the wrong way. You can be seduced into the narrative of the story."

Successful representation of a celebrity can be a lottery win of a marketing campaign. While some lawyers trumpet these cases on their websites, experts recommend keeping as much on the down low as possible. Then, the word of mouth campaign could really take off.

"The client will appreciate that and so will his or her management team. They might say something to somebody down the road about 'this lawyer wasn't a media hog, he did a good job to help keep our client out of the public eye as possible,'" MacDonald says.

Asper, who went into business shortly after Milgaard was freed but has kept his hand in the legal profession as a law professor and supervisor of students at the Legal Aid clinic at the University of Manitoba, says he still gets people asking him to be their lawyer.

"I'm a firm believer in resolute or zealous advocacy when you have situations that are extraordinary. I was prepared to go to the wall for my client and I did. I think most lawyers always do that, they just don't necessarily play it out on the national news every night," he says.