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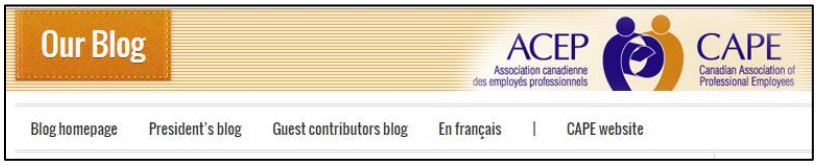
Press Clippings for the period of October 6 to October 14, 2014
Revue de presse pour la période du 6 au 14 octobre, 2014

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



There could come a day when you need those sick days — it happened to me

CAPE Publishes the AJC Blog

By Myriam Girard*

I joined the federal government as an LA 2A (now LP-02) in June 2003. At the time I had a number of job options, but I chose the federal civil service precisely for its health benefits.

Let me explain. I was diagnosed with breast cancer in February 2000 and for the better part of that year, I was in treatment for it: surgery, chemotherapy, radiation therapy, followed by several years of hormone therapy. After all these treatments I was judged to be in remission, but my prognosis for either a local or systemic recurrence was estimated at 33.33 % over 5 years.

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Of course I could no longer be insured on my own, either for a life insurance or a disability insurance (and this is essentially still the case), and the possibility that I would suffer a recurrence was very real. It is with this in mind that I came to work for the federal government and became one of those pesky civil servants who have the nerve not to use much of their sick leave (the other kind of pesky civil servants, of course, being the ones who have the nerve to use them!).

Today, after 11 years in the public service — and thankfully no recurrence ever — I have 22 weeks of sick benefits accumulated. Unfortunately, with breast cancer, there is never a period of time where you are judged in remission forever. A recurrence could still happen. Two scenarios would be possible: I would have a catastrophic systemic recurrence and I would no longer be able to work and would be on my way to an early death. Or — and in this day and age it is the more likely scenario — the recurrence would not be catastrophic, I would suffer from cancer as a chronic disease from which I could no longer be cured, and which is quite amenable to periodic treatments.

I do not know why all these horrible civil servants accumulate their sick leaves, but this is why I have accumulated my sick leaves: because there could come a day when I will suffer from cancer as chronic disease. I will not need short term disability, whatever this means. I will need sick days to get chemotherapy and other treatments. I could get chemotherapy on Friday and be back at work on Tuesday or Wednesday, while I am waiting for 3 or 4 weeks to get the next treatment.

There are a myriad of conditions that cannot be treated through no sick leave and short-term disability. They occur more often to older workers suffering from chronic, non-acute illness, but they may also occur to young workers suffering from Type 1 diabetes, or other problems. The Canadian government has an important role to play in hiring Canadians suffering from a disability or illness. If "non-perfect" people cannot work for the Canadian government, for whom can they work in this country?

This brings to mind the experience of Deborah Grey the former Canadian Alliance MP, who was very proud of not paying into any benefits for several years. Until she quietly bought back all her benefits in 2001 (read here). Her sheepish explanation: she had not realized that she could get sick and need them!

**Myriam Girard is an AJC member and Governing Council representative. She is a Senior Crown Counsel at the Public Prosecution Service of Canada, Nunavut Regional Office.*

Thanks to the AJC for the permission to publish this blog. You can read Myriam Girard' article on the AJC blog.

Un jour, vous pourriez avoir besoin de ces congés de maladie – c'est ce qui m'est arrivé

L'ACEP publie le blog de l'AJJ

Par Myriam Girard*

Je me suis jointe au gouvernement fédéral comme un LA-2A (maintenant LP-02) en juin 2003. À l'époque, j'avais un certain nombre de possibilités d'emploi, mais j'ai choisi la fonction publique fédérale précisément pour ses prestations de santé.

Laissez-moi vous expliquer. On m'a diagnostiqué avec un cancer du sein en février 2000 et pendant la majeure partie de l'année, j'ai subi des traitements : intervention chirurgicale, chimiothérapie, radiothérapie, suivis de plusieurs années d'hormonothérapie. Après tous ces traitements, on m'a indiqué que j'étais en rémission, mais le pronostic d'une récidive a été évalué à 33,33 % sur 5 ans.

Bien sûr, je n'étais plus assurable, qu'il s'agisse d'une assurance-vie ou d'une assurance-invalidité (et c'est encore essentiellement le cas), et la possibilité d'une récidive était très réelle. C'est dans cet esprit que j'ai commencé à travailler pour le gouvernement fédéral et je suis devenue l'une de ces fonctionnaires embêtantes qui ont le culot de ne pas utiliser beaucoup de leur congé de maladie (l'autre type de fonctionnaires embêtants, bien sûr, étant ceux qui ont le culot de les utiliser!).

Aujourd'hui, après 11 ans dans la fonction publique — et, heureusement, aucune récidive — j'ai 22 semaines de congés de maladie accumulés. Malheureusement, avec le cancer du sein, il n'y a aucune garantie que vous allez être en rémission pour toujours. Une récidive peut encore arriver. Deux scénarios seraient possibles: j'aurais une récidive systémique catastrophique et je ne serais plus en mesure de travailler et je me dirigerais vers une mort précoce. Ou — le scénario le plus probable de nos jours — la récurrence ne serait pas catastrophique. Je souffrirais d'un cancer telle une maladie chronique dont je ne pourrais plus être guérie, mais qui serait traitée de façon périodique.

Je ne sais pas pourquoi tous ces horribles fonctionnaires accumulent leurs congés de maladie, mais c'est pour cela que moi, j'ai accumulé mes congés de maladie: car il pourrait y avoir un jour où je vais souffrir d'un cancer sous forme de maladie chronique. Je n'aurai pas besoin de congés d'invalidité de courte durée, quoi que cela puisse signifier. J'aurai besoin de jours de maladie pour obtenir la chimiothérapie et d'autres traitements. Je pourrais obtenir la chimiothérapie le vendredi et être de retour au travail le mardi ou le mercredi, et attendre de 3 à 4 semaines pour obtenir le prochain traitement.

Il existe une multitude de conditions qui ne peuvent être traitées sous un système où il n'y a pas de congés de maladie ni d'invalidité de courte durée. Le plus souvent, ce sont les travailleurs âgés qui souffrent de maladies chroniques, non aiguës, mais les plus jeunes peuvent aussi en être atteints, par exemple le diabète de type 1, ou d'autres problèmes de santé.

Le gouvernement du Canada a un rôle important à jouer dans l'embauche de Canadiens souffrant d'un handicap ou d'une maladie. Si les gens «non-parfaits» ne peuvent travailler pour le gouvernement canadien, pour qui peuvent-ils travailler dans ce pays?

Cela me rappelle l'expérience de Deborah Grey l'ex-députée de l'Alliance canadienne. Elle était très fière de ne pas payer pour des prestations pendant plusieurs années. Jusqu'au jour, en 2001, où elle a tranquillement racheté tous ses avantages (lire en cliquant ici). Toute penaude, elle a expliqué qu'elle n'avait pas réalisé qu'elle pouvait tomber malade et avoir besoin de ces prestations!

**Myriam Girard est membre de l'AJJ et fait partie de son conseil d'administration. Elle est une procureure senior au Service des poursuites pénales du Canada, Bureau régional du Nunavut.*

Merci à l'AJJ pour la permission de reproduire le texte de Myriam Girard. Voici le lien vers ce texte sur le blogue de l'AJJ.

Time to tackle mental health in public service, expert says

KATHRYN MAY, Ottawa Citizen, October 9, 2014

The federal government can't effectively tackle the growing social and economic burden of mental illness in Canada until it deals with the chronic stress of its own workplace – where disability claims of depression and anxiety rank among the highest in the country, says a prominent mental health advocate.

Bill Wilkerson, president of Mental Health International, is leading a pan-European campaign against depression in the workplace. He argues that if the federal government, Canada's largest employer, were a model "psychologically healthy workplace," bureaucrats and politicians would be more effective at making general policy to deal with the illness that affects one in four workers in any given year.

"The government isn't paying attention to its own workplace and I assure you the government would get a very different and informative picture of Canadians' experience with mental illness if they looked at the problem through the eyes of their own people," said Wilkerson.

"Understanding what causes the depression of their own employees would help make them much better policymakers than they would (be) … gliding across the horizon at 50,000 feet."

Wilkerson has long argued that the public service, by virtue of its size and breadth of work, is the ideal workplace to test the Mental Health Commission of Canada's national standard for a psychologically healthy workplace, which has piqued the interest of employers around the world.

Joseph Ricciuti, president of SEB Benefits and HR Consulting, worked on developing the standard. He said the government's failure to implement it in the public service is puzzling. He likened it to "selling Fords but not driving one."

"It begs the question: Why not?" he said. "If you spend all this money setting up the Mental Health Commission, making it a cause of choice and developing the standard, why not implement it?

"I think the government should make it mandatory for all agencies and Crown corporations. It would go a long way to mitigate the health and even the legal risks of chronic work stress."

Mental illness is the number one – and fastest-growing – cause of short- and long-term disability in Canada, costing employers about $6 billion a year. It accounts for nearly half of the disability claims among Canada's public servants.

The Mental Health Commission standard is a toolkit to assess any workplace, based on 13 psycho-social risk factors for mental health. The government's own executives have pressed for the standard's adoption as part of the Blueprint 2020 initiative to modernize the public service.

Treasury Board President Tony Clement has previously said he was willing to consider the standard, along with any tools that could improve the wellness of public servants and reduce their absenteeism. He is currently at the negotiating table with unions to replace the existing sick-leave regime with a new, short-term disability plan.

This week is Mental Illness Awareness Week, organized by the Canadian Alliance on Mental Illness and Mental Health. The coalition of care providers and organizations representing people with mental illnesses lobbied MPs to promote the standard and improve access to care and other support.

Also this week, Wilkerson and his Canadian-based Mental Health International kicked off a major campaign in Europe to target depression in the workplace. A key player in the launch was the Mental Health Commission, pitching its standard as a way for companies to assess the health risks of their workplaces.

MHCC President Louise Bradley told the European business leaders at the launch that she is seeing a "paradigm shift" with employers recognizing that safeguarding the "mental well-being" of employees is as important as protecting physical health and safety.

She said the standard has "taken on a life of its own," with the commission being invited to talk in Australia, New Zealand and China.

The commission has case studies underway with 42 Canadian employers in fields ranging from telecommunications and finance to public administration and policing. Of those, four are federal agencies: RCMP headquarters, CSIS, Canadian Centre for Occupational Health and Safety and Crown corporation Via Rail.

Bell Canada was among the first to adopt the standard and has so far seen mental health claims fall by 12 per cent. There use of the employee and family assistance program has nearly doubled.

Mental health is increasingly becoming recognized as a “board room” issue because the 21st century economy is a “brain economy” that will rely on the innovative thinking of its workforce.

Bradley said the standard is an “early detection” and “prevention” tool and, if successful, would help speed recovery while reducing absenteeism, presenteeism, employee turnover, benefit costs and disability rates.

Wilkerson has long argued the Conservative government sends contradictory signals about mental illness.

He said Prime Minister Stephen Harper made it a priority with the creation of the MHCC; Parliament passed a suicide prevention bill; and the government created Brain Canada, a private-public partnership for brain research to help find new treatments for mental illness. As an employer, however, the government has done little, he says.

The Mental Health Commission’s mandate expires next year and officials were at a parliamentary committee this week asking for a new 10-year mandate with a $25 million a year budget.

Ottawa seeks use of news footage without permission in political ads

STEVEN CHASE, The Globe and Mail, October 8, 2014

The Harper government is preparing to alter copyright law in Canada so politicians can use news footage and other journalistic content for attack ads and campaign spots without asking broadcasters or publishers for permission.

The measure would constitute an intervention into the intellectual property rights of broadcasters and other news organizations by a Conservative government that styles itself as laissez faire.

Broadcasters for years have complained about political parties producing advertising that borrowed news content such as video without approval, saying it could compromise

“journalistic independence,” and earlier in 2014 vowed they would no longer air ads that relied on infringing material.

CTV News, citing a memo to cabinet, reported Wednesday night that the government has been working on a new “copyright exception for political advertising” that would be inserted into a budget implementation bill.

The memo warns the measure will be controversial.

“Given its legal and political complexity, and the speed with which the exception was developed, there may be unforeseen circumstances that create unintended consequences,” it says, before advising “a strong communications plan will be required to manage vocal stakeholder reactions.”

It also warned that “creators of news” including “broadcasters, newspaper and periodical publishers, and ‘news’ photographers will vehemently claim that their work is being unfairly targeted for the benefit of political parties.”

The Conservative government declined to offer any comment on the matter Wednesday, including on whether it is proceeding with this measure.

The Tories have come under fire for using clips from TV footage or other news content without permission in negative political ads.

In 2013, Liberal MP Stéphane Dion filed a complaint with Elections Canada over a Conservative attack ad that included footage shot by the Huffington Post as well as clips from an interview Mr. Trudeau gave to CTV, both used without approval. Mr. Dion alleged the “unauthorized use of this material” contravened election law because “unpaid use of copyrighted material” is in effect a “non-monetary contribution” to the Conservative Party.

Sources said staff in Canadian Heritage Minister Shelly Glover’s office have been contacting senior broadcast executives to arrange discussions on a matter that would affect the industry.

The cabinet memo says the proposed copyright exception “would allow free use of ‘news’ content in political advertisements intended to promote or oppose a politician or political party, or a position on a related issue.”

It would be available for use by “political actors,” meaning “publicly elected officials, party leaders and those who intend to seek such positions” as well as registered political parties.

News content would have to meet three criteria for this exemption, the cabinet memo says. It would have to be published or made available through TV broadcasts or platforms such as YouTube. It would have to be obtained from a news source such as a news program or newspaper or periodical. And it would have to feature a political actor operating in that person’s capacity as a politician, or relate to a political issue.

This past May, major broadcasters including CTV, CBC, Global and Rogers sent a letter to all federal and provincial parties serving notice that they would no longer "accept any political advertisement which uses our content without our express authorization."

The cabinet memo notes broadcasters would still be free to refuse advertising but, it added, during a political campaign the rules are different.

"During an election, broadcasters must provide a certain amount of advertising time to political parties," the memo says.

LeDroit

Publicités politiques: les conservateurs veulent modifier les règles

Le Droit, la Presse Canadienne, le 9 octobre 2014

Les conservateurs veulent modifier le Loi sur le droit d'auteur afin de permettre aux partis politiques d'utiliser du contenu journalistique dans leurs publicités.

Selon un document interne obtenu par le réseau CTV, le gouvernement Harper souhaite légaliser l'«accès gratuit au contenu journalistique dans les publicités politiques visant à promouvoir ou s'opposer à un politicien ou à un parti politique».

Le même document prévient qu'il faudra s'attendre à une forte opposition des réseaux médiatiques, qui défendront bec et ongles leur indépendance face aux partis politiques.

La députée néo-démocrate Megan Leslie a déclaré jeudi en marge d'un point de presse que cela «sentait mauvais».

Elle a dit douter de la légalité de la démarche, qui consiste à utiliser du contenu protégé par le droit d'auteur et l'utiliser de façon à en tirer profit - par exemple, en attaquant un adversaire.

Les amendements proposés à la loi sont contenus dans un projet de loi omnibus qui doit être déposé au cours des prochaines semaines, précise CTV dans son reportage.

CBC news

Council of Canadians going to court to fight election law changes

Council of Canadians, Canadian Federation of Students say Conservative changes infringe on right to vote

By Laura Payton, CBC News, October 9, 2014

Election law changes made by the government last June are being challenged in court by two groups that say they infringe on Canadians' right to vote.

The Council of Canadians and Canadian Federation of Students say the Conservative government's changes to the Canada Elections Act will result in tens of thousands, if not hundreds of thousands, of voters being turned away during the next election.

The changes end voters' ability to have someone vouch for their address. The new law also ends the use of voter information cards as proof of address.

The Council of Canadians previously challenged the election wins of seven Conservative MPs over what they said was a co-ordinated campaign to commit electoral fraud in the 2011 federal race.

They later dropped one riding from the challenge, then lost the bid to annul the election results.

The Federal Court found, however, that the group proved their case that electoral fraud occurred.

Elections Canada later dropped its probe of related allegations, saying there wasn't enough evidence.

Challenge alleges voter suppression

Three of the Canadians who worked with the organization to challenge the MPs are involved in the new court challenge to the updated federal election laws.

It was filed in Ontario Superior Court, according to a news release announcing the bid.

"The applicants contend that amendments to the act will suppress the vote of certain Canadians by denying them critical and timely information about the electoral process and their right to vote, and by making it far more difficult for them to obtain a ballot or register to vote on election day," the release said.

"They also contend that by stripping key powers from the chief electoral officer, including by removing their authority to appoint and report upon the activities of the

commissioner of Canada Elections, [the new law] makes it far less likely that Canadians will ever learn of electoral fraud like the kind that occurred in the last federal election."

Bill C-23, which became law last June, contained a number of controversial measures that drew criticism from a range of electoral and democracy experts in Canada and around the world.

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La réforme électorale contestée en cour

Hélène Buzzetti - Correspondante parlementaire à Ottawa, Le Devoir, le 9 octobre 2014

La réforme électorale du gouvernement conservateur sera contestée devant les tribunaux. Le Conseil des Canadiens et la Fédération canadienne des étudiants feront valoir en Cour supérieure de l'Ontario que les changements apportés au processus d'identification des électeurs compliqueront l'exercice du droit de vote des étudiants.

Les deux groupes feront connaître ce jeudi matin l'argumentaire légal qu'ils entendent défendre. En entrevue avec Le Devoir, la présidente de la Fédération, Jessica McCormick, explique que les assouplissements apportés par le ministre responsable de la réforme, Pierre Poilievre, n'ont pas été suffisants.

« Certes, nous avons gagné sur la question des répondants, mais plusieurs des changements qui posent problème sont allés de l'avant, rappelle Mme McCormick. Le principal est que la carte d'électeur a été éliminée de la liste des documents acceptés. C'est important pour les étudiants car elle leur donnait la possibilité de prouver qu'ils habitent là où ils veulent voter. »

La carte d'électeur est ce carton blanc que poste Élections Canada indiquant les renseignements personnels de l'électeur. Pour voter, un électeur doit prouver à la fois son identité et son adresse. Désormais, donc, seuls deux documents combinent ces éléments (permis de conduire et carte d'identité délivrée par certaines provinces). En l'absence de ce document, un électeur doit présenter deux pièces d'identité, ce qui peut s'avérer difficile pour un étudiant, soutient Mme McCormick.

L'autre élément qui sera contesté touche aux répondants, ces personnes qui attestent généralement de l'adresse d'un électeur qui ne peut prouver où il habite. Le gouvernement a renoncé à leur abolition, mais a limité à un le nombre d'électeurs pour qui on peut répondre. Encore là, selon Mme McCormick, cela posera problème aux

étudiants. « Imaginez quatre étudiants en colocation et que toutes les factures sont au nom d'un d'entre eux. Il ne pourra répondre que d'un de ses colocataires. »

Mme McCormick agira à titre de demanderesse dans cette cause parce qu'elle a eu recours à un répondant en 2011. L'avocat qui plaidera la cause est Stephen Shrybman, le même qui avait mené pour le Conseil des Canadiens la charge légale contre les appels robotisés.

Supreme Court says Zahra Kazemi's family can't sue Iran for her death

JORDAN PRESS, Ottawa Citizen, October 10, 2014

The family of a Canadian journalist who died after torture in Iran can't sue that country for damages, the Supreme Court has ruled.

Zahra Kazemi, who was born in Iran but was a Canadian, was sexually assaulted, tortured and beaten into a coma by her captors two days before dying in June 2003. She had been arrested by Iranian authorities for taking photos outside the notorious Evin prison in Tehran.

The details of her death shocked Canadians, and her family, led by her son, Stephan Hashemi, has been trying to sue Iran for the past eight years, turning to the top court as its last hope. Kazemi family lawyers had argued before the court that Canada had to allow the lawsuit to proceed to fulfil its obligations under an international agreement.

Signatories to the United Nations Convention on Torture are required to ensure victims can sue their assailants in civil court, they argued.

The Iranian government argued that it couldn't be sued because of a Canadian law granting immunity to foreign states. The top court, in a 6-1 ruling, agreed, saying that the State Immunity Act in its present form doesn't allow civil suits in cases where torture has taken place outside of Canada.

The ruling means Iran cannot be the subject of a civil lawsuit.

In its decision, the top court said that Canadian laws could change. That decision is up to politicians, the court said.

“Parliament has the ability to change the current state of the law on exceptions to state immunity, just as it did in the case of terrorism, and allow those in situations like Mr. Hashemi and his mother’s estate to seek redress in Canadian courts,” Justice Louis LeBel wrote for the majority. “Parliament has simply not chosen to do it yet.”

The lone dissenter, Justice Rosalie Abella, argued that while the Republic of Iran is immune from prosecution, two of the key figures in the family’s lawsuit — former Tehran prosecutor Saeed Mortazavi and prison official Mohammad Bakhshi — don’t have the same immunity.

“I see no reason to include torture in the category of official state conduct attracting individual immunity,” Abella wrote.

The government argued the merits of the state immunity law and its place in maintaining international relations, while also saying the law itself didn’t condone torture.

The case wound its way to the Supreme Court after Kazemi’s son, Stephan Hashemi, filed a civil action in Quebec Superior Court in Montreal against Iran’s Islamic Republic, its head of state and chief prosecutor as well as the former deputy intelligence chief of Evin Prison.

Hashemi’s lawyer told the Supreme Court in a hearing this past winter that the law on state immunity denies access to justice and is therefore unconstitutional.

A lawyer for Amnesty International, another intervenor, argued that the state immunity law was absurd, saying the appeal to the high court was a chance to “set the record straight.”

Hashemi’s lawsuit named the Islamic Republic of Iran; its leader, Grand Ayatollah Ali Khamenei; former Tehran prosecutor Saeed Mortazavi; and prison official Mohammad Bakhshi.

A brief chronology

2003

June 23: Zahra Kazemi is arrested outside Evin prison in Tehran where she was taking photographs of the families of imprisoned student protesters. She is taken into custody in the same prison and subjected to brutal interrogation, torture and sexual assault.

June 27: Kazemi is moved to a hospital in Tehran.

July 3: Iranian officials tell Kazemi’s family that she has been taken to a hospital.

July 11: Kazemi dies in the hospital.

July 13: Iran announces that Kazemi “suffered a stroke when she was subject to interrogation and died in hospital.” The same day, under pressure from Canada, Iran’s president, Mohammad Khatami, orders an investigation into her death.

July 20: Iran admits that Kazemi died from a fractured skull caused by “a physical attack.”

July 21: Canadian foreign affairs minister Bill Graham says what happened to Kazemi “was a flagrant violation of her rights under international human rights law and a breach of obligations that Iran owes to the international community.”

2004

July 28: An Iranian court rules Kazemi’s fatal head injuries were accidental, the result of fainting because she refused to eat.

2005

March 31: Following his escape from Iran in 2004, Shahram Azam, a former military physician, says he examined Kazemi four days after her arrest. He says she showed marks of having been tortured. There were signs of rape, skull fracture, broken fingers and torn fingernails, abdominal bruising and beaten feet, he says. Azam was granted landed immigrant status in Canada as a refugee.

2006

Kazemi’s son, Stephan, files a civil lawsuit in Montreal’s Superior Court against the government of Iran, Iran’s leader, Ayatollah Ali Khamenei, Saeed Mortazavi, Tehran’s chief prosecutor, and Mohammad Bakhshi, former deputy chief of intelligence for Evin prison. Iran argues the case should be dismissed under Canada’s State Immunity Act. The law generally provides immunity to foreign governments.

2011

Quebec’s Superior Court rejects the claims made by Zahra Kazemi’s estate, ruling that because she suffered injuries only outside Canada, no claim for compensation could be made in Canada. On the other hand, because Stephan Kazemi suffered nervous shock in Canada because of mistreatment of a family member, his claim was allowed to stand.

2012

The Quebec Court of Appeal rules that the defendants, including Iran and Ayatollah Ali Khamenei, are immune under Canada’s State Immunity Act, even in cases of torture. It also rejects Stephan Kazemi’s personal claim, saying the exceptions in the State Immunity Act do not apply in his case.

2013

The Supreme Court of Canada announces it will hear Stephan Kazemi’s appeal of the ruling by the Quebec Court of Appeal.

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La famille Kazemi ne pourra pas poursuivre l'Iran

La Presse Canadienne, La Presse, le 10 octobre 2014

La famille de Zahra Kazemi ne pourra pas poursuivre l'Iran, car la Cour suprême confirme l'immunité des États. Mais dans leur décision, rendue vendredi, les juges soulignent qu'il est simple pour le gouvernement de corriger cette situation.

C'est un jugement à six contre un. La juge dissidente, Rosalie Abella, estimait que l'immunité assurée par la Loi canadienne sur l'immunité des États (LIÉ) ne s'étendait pas aux deux fonctionnaires iraniens nommés dans la poursuite. Mais ses collègues majoritaires ne sont pas d'accord.

«Les actes commis par MM. Mortazavi et Bakhshi revêtent toutes les caractéristiques d'actes officiels, et rien ne permet de croire que l'un ou l'autre de ces représentants de l'État agissait à titre personnel ou dans un cadre sans lien avec leur rôle d'agents de l'État», peut-on lire dans le jugement.

«Il est possible que la torture constitue un acte officiel», de l'avis des juges.

Le fils de Mme Kazemi, Stephan Hashemi, voulait poursuivre la République islamique d'Iran, son chef d'État et les deux fonctionnaires qu'il rend responsables de la torture et de la mort de sa mère en 2003. Mme Kazemi, une photographe, avait été arrêtée à Téhéran alors qu'elle prenait des clichés d'une manifestation devant une prison.

«Au Canada, l'immunité des États à l'égard des poursuites civiles est consacrée par la LIÉ», écrivent les juges.

Mais dans leur conclusion, ils rappellent qu'il serait facile de changer la loi et d'y ajouter une exception pour les cas de torture comme ce fut fait pour les cas de terrorisme, en 2012.

«Le législateur (...) peut modifier l'état actuel du droit régissant les exceptions à l'immunité des États, tout comme il l'a fait dans le cas du terrorisme, et permettre aux personnes qui se trouvent dans une situation semblable à celle de M. Hashemi et de la succession de sa mère d'obtenir réparation devant les tribunaux canadiens», rappellent les juges.

«À ce jour, le législateur a tout simplement décidé de ne pas le faire», soulignent-ils.

L'avocat de M. Hashemi reprend ce paragraphe du jugement pour inciter le gouvernement à ajouter l'exception de torture à la loi.

Après avoir souligné sa déception devant le jugement qui a donné tort à son client, Me Mathieu Bouchard se tourne vers le gouvernement.

«On ne voit pas pourquoi (...) on devrait faire différence entre les victimes d'actes horribles, dépendant du type d'acte horrible», s'étonne Me Bouchard.

MacKay unmoved by addiction centre call for marijuana legalization

By Joan Bryden, Canadian Press, October 9, 2014

OTTAWA - The Harper government's resolve to enforce the law against marijuana use is unshaken by a call to legalize pot from the country's largest mental health and addiction treatment centre.

Justice Minister Peter MacKay said Thursday the Conservative government has no intention of heeding the call of the Centre for Addiction and Mental Health.

Indeed, the government remains committed to going in the opposition direction, said MacKay: finding ways to actually increase enforcement of marijuana laws, including potentially making it a ticketing offence to possess small quantities of dope.

But Liberal Leader Justin Trudeau, who has been championing legalization for more than a year, said CAMH's endorsement of the idea shows he's on the right track while the Tories are ideologically bound to a war on drugs that has proven a total failure.

NDP health critic Libby Davies, whose party supports decriminalization of marijuana, said the Conservatives are becoming increasingly isolated on the issue as more and more public health groups refuse to back their tough-on-pot message.

In a policy statement released Thursday, CAMH said cannabis should be legalized and strictly regulated, sold through a government-controlled monopoly with limited availability and an age limit. The centre concluded that the current legal prohibition on pot has failed to prevent use or reduce the harm it can cause.

That pretty much echoes the arguments that have been made by Trudeau, who has been pilloried by Conservatives for allegedly wanting to make pot more easily available to children.

"Yes, it's nice to see a world-class organization like CAMH come out and agree with (us) and demonstrate that we're on the right track," Trudeau said in an interview.

By contrast, he said CAMH's position shows the Harper government is "trapped in policies based on ideology rather than policies based on evidence and that is harmful to Canadians and to Canada."

MacKay, however, was unmoved. "It surprises me, quite frankly, because there are just as many respected organizations and credible reports that say the opposite," MacKay said on his way into a committee meeting.

He argued that other public health groups have warned about the negative impact of marijuana on the developing brains of children and the fact that it can "trigger episodes of psychosis and schizophrenia and other serious mental conditions."

"And so I think there is a need to really be very circumspect about any move towards making marijuana more readily available. So that certainly is our government's position. We do not intend to legalize or decriminalize."

MacKay added that the government continues to consider "methods in which we can increase enforcement," including the ticketing option favoured by chiefs of police.

"This would not decrease but increase enforcement and optionality for police to ensure that people are respecting the law," he stressed.

Trudeau argues that legalizing and strictly regulating marijuana would do more to restrict availability and reduce consumption, particularly among young people, than the failed war on drugs.

He said Thursday that he has deliberately not spelled out precisely how a regulatory regime would work because he wants the input of experts and groups like CAMH.

On that score, Trudeau said he's "very interested" in CAMH's advice that advertising, marketing and sponsorship by marijuana producers should be prohibited and that health information should be clearly displayed.

Davies said CAMH brings "a lot of credibility" to the debate on marijuana because it so well respected.

While the NDP has not gone as far as the Liberals in calling for outright legalization, Davies said New Democrats see decriminalization as a first step, to be followed by a serious public debate on what more needs to be done.

The "biggest impediment" to that debate, she said, is the ruling Conservatives, "who've buried themselves in this rhetoric of the war on drugs, when I think most Canadians know it's absurd and it's unrealistic."

The rigidity of the Tories' position "does leave them more and more isolated on the question," Davies said.

New Privy Council clerk Janice Charette facing difficult challenges amid massive change

KATHRYN MAY, Ottawa Citizen, October 6, 2014

Janice Charette took over as Canada's top bureaucrat Monday with the double challenge of earning the confidence of Prime Minister Stephen Harper and of the country's change-weary public servants.

Charette stepped into the job as clerk of the Privy Council Office and the prime minister's top bureaucratic advisor at a time when the public service is in the midst of a massive change, with a combat mission beginning and an election looming.

The transition between Charette and her predecessor Wayne Wouters has been in the works since Wouters announced his retirement and Charette was picked to replace him several months ago. The change-over formally began on Monday.

It's the first time in years that a new clerk also comes with a new deputy clerk. Michael Wernick, a long-time and respected deputy minister — most recently at Aboriginal Affairs and Northern Development Canada — was recently appointed to replace Charette, who had been deputy clerk since January 2013.

"I think Janice is an excellent choice. She is well-prepared and will do a great job and Michael is a seasoned pro who will provide strong support to her and the public service," said Mel Cappe, a former PCO clerk under the Chretien government.

Approaching eight years as prime minister, Harper doesn't need a clerk to give him the kind of guidance and support he would have sought as a newcomer to the office. He has worked with Charette and picked her as his chief bureaucratic advisor but that top post demands a new level of comfort and confidence.

A big issue on her plate will be Canada's combat mission against Islamic State militants. The main bureaucratic pointman on the file will be the prime minister's national security adviser Stephen Rigby, said Wesley Wark, national security expert at the University of Ottawa.

Wark said Charette would be providing the prime minister strategic policy advice on foreign and defence policy, but the day-to-day operational details will be left to Rigby. He will be shaping operational advice working with the Canadian Forces leadership, Defence deputy minister Richard Fadden and two one-star generals who are reporting to him.

Wark said the government could set up a separate task force for the mission as it did for Afghanistan if the mission drags on longer than expected.

The other big file will be planning the transition to a new government after the federal election, including putting together briefing books and advice for an incoming government.

But many argue Charette has to keep the management of the public service front and centre in the coming months because all eyes will be on her, particularly her plans for modernizing the public service.

In a video address released Monday, Charette said she was "invigorated" by the challenges facing the public service. She referred to the changes underway and suggested she would continue on the action plan that Wouters unveiled to implement his Blueprint 2020 vision.

Many public servants say they are waiting to see how Charette will put her own stamp on the Blueprint reforms that are being rolled out across government to bring the public service into the digital age.

She emphasized the same priorities as Wouters for new skills, new technologies and a "culture of innovation" to improve the traditional role and work of the public service, while building "communities" for Canadians and "enhancing our quality of life."

"And while our world continues to evolve at a rapid pace, our focus continues to be delivery of quality programs and services and evidence-based advice to government," she said.

Wouters formally left the public service on Friday with a written outgoing message to all public servants and a final tweet — "saluting our flag on the Peace Tower as I leave Langevin for the last time as clerk. Thx for everything. Long live the PS!"

Public Works scrambling to fix loose windows and bricks on Hill

JORDAN PRESS, Ottawa Citizen, October 8, 2014

The federal government says it has spent hundreds of thousands of dollars to keep MPs, staffers and visitors to the Centre Block safe from loose windows and bricks.

None of those windows has fallen on anyone – although a small, but heavy piece of stained glass crashed into the floor of the House of Commons in February 2012 – but Public Works and Government Services Canada Wednesday outlined its spending to reassure anyone concerned about the findings of a 2013 report, made public this week, that suggested parts of the Centre Block could collapse.

That report found that the one-of-a-kind stained-glass windows in the Commons were on the verge of falling on to politicians because of failing masonry, and cheap windows installed elsewhere in the building weren't easy to close, opening the building to water damage.

"When you walk through the corridors upstairs, you can see lots of water damage. You can see things that are simply not taken care of," said NDP Leader Tom Mulcair.

"It's quite clear to anyone who takes the trouble to look around that there's been a lot of neglect. There's been a lot of neglect in some of our heritage buildings in Canada. That's a sad fact."

That neglect, experts suggest, is symbolic of a lack of political will to spend what's needed to maintain a symbol of the national identity.

"All buildings – and heritage buildings in particular – need to have an ongoing regular investigation and maintenance program. Some of the dramatic interventions that are needed are a result of deferred maintenance," said Barry Padolsky, an Ottawa-based architect with an expertise in heritage buildings.

Asked about when work on heritage buildings should be undertaken, Padolsky said: "Now is always the time." The longer work is deferred, the more the renovations will cost, he said.

"That tends to be a political decision … about choosing the moment" to do the work, Padolsky said. The Parliament buildings, he said, are "a part of our national identity.

They serve the functions of government, but at the same time we should be maintaining them."

In a March 2013 report, outside experts noted that in some cases, "cheap" windows were installed on the west side of the Centre Block that could fall out on the street, or on to anyone trying to open and close them – that is if they could be closed at all, given that the "counter balance hardware systems … have failed, making windows difficult to operate, and causing windows to be left open," according to the report.

That allows water into the building, compounding problems, architects wrote in the report first released to the CBC under the access to information law. The Citizen obtained the report Wednesday.

The architects wrote that much of their findings were because the "building has been poorly maintained," and "compounded by the poor installation of cheap replacement windows, and inadequate maintenance practices."

The immediate fixes identified by architects in the March 2013 report to Public Works estimated that addressing all concerns could cost between $3.53 million and $4.63 million, depending on whether the government wanted to a quick fix, or full replacement of part of the copper roof or windows in the parliamentary restaurant on the sixth floor of the building.

Public Works and Government Services Canada said it spent $651,874 to install safety nets at the base of each stained glass window lining the House of Commons. Work was also done to carefully remove and repair three windows – those representing Northwest Territories, Manitoba and Ontario – and repair the masonry around all 12 windows that were installed between 1971 and 1974.

Public Works said it is planning more window work in the Commons, and has had a masonry expert come in at least every two months to make sure nothing is amiss, including spots around the stained glass ceiling in the foyer of the Commons, where staffers and politicians gather at all hours of the day.

As for the glass ceiling in the foyer of the Commons, department spokesman Pierre-Alain Bujold wrote in an email that the glass ceiling is protected by a layer of safety glass "as well as a solid plywood roofing membrane" to prevent anything from falling on people below.

Bujold said there are no safety concerns for anyone wandering the halls of the Centre Block.

The repairs to the windows are part of quick-fix measures that cannot wait until 2018 when the Centre Block is shut down for a decade of renovations at a price tag of more than $1 billion.

Some work has already started: $21 million was set aside for masonry work on the two ventilation towers in the Centre Block and the East Pavilion roof to reinforce them against seismic activity given the buildings weren't designed to withstand earthquakes.

The capital region is one of the three urban Canadian centres with the greatest earthquake risk.

What the architects found

– The 12 stained glass windows in the House of Commons "have only a tenuous connection to the stone tracery and are at risk of collapsing into the chamber in the event of heavy winds."

– There were "significant problems" with how the windows were installed and conditions around their edges that were "causing accelerated deterioration." The original structural support system was "inadequate and has led to premature deterioration."

– The "counter balance hardware systems" on most windows "have failed, making windows difficult to operate, and causing windows to be left open." That allows water into the building, compounding problems. "Also, the sashes can drop unexpectedly, which can cause personal injury."

– The glazed clay brick around the stained glass ceiling in the foyer of the House of Commons has "deteriorated and exhibits many hairline cracks." It was also leaking, and buckets were used to catch water before it hit the glass ceiling "suggesting that the leaks remain active" despite "the fact that a waterproof membrane was installed over the skylight itself in 2005."

– Numerous glass panels in the light well over the Commons foyer "have been damaged from above" from objects hitting them. If the panels underneath were damaged, "these panels would be at risk of falling out into the foyer below."

Our laws have not kept pace with Canadian views on assisted death

ANDRÉ PICARD, The Globe and Mail Health Columnist, October 8, 2014

'If I cannot give consent to my own death, whose body is this? Who owns my life?" Sue Rodriguez famously asked.

The Supreme Court rejected her attempts to strike down the Criminal Code provisions making assisted suicide a crime, in large part because the prohibition was deemed to be consistent with Canadian values.

Twenty-one years later, as the top court prepares to revisit the issue, Ms. Rodriguez's whispered question has become a coast-to-coast shout. Our values have changed. So have our expectations. Our laws, and our lawmakers, have not kept pace.

As a new poll commissioned by Dying With Dignity Canada shows, the overwhelming majority of Canadians believe people should have the right to end their own lives, and they should be able to ask for assistance from a physician to do so.

The message in the poll is clear: We should – no, we must – do everything possible, medically and legally, to facilitate the right of people to die with dignity.

What that means, first and foremost, is that we should be alleviating the pain and minimizing the suffering of those who are dying.

About 250,000 people a year die in Canada, and most die in hospital and, depending on their life-threatening condition (cancer, heart disease, COPD, dementia, pneumonia, etc.) they do so in a fairly predictable manner. Everyone who dies of a terminal illness deserves good palliative care, and, generally speaking, we do a poor job of providing that care. That's not a reason to decriminalize assisted death; that's a reason to improve palliative care.

But, in some instances, the pain is unbearable; in others, the medical interventions merely prolong suffering rather than extending life.

What we do now is do pain relief as best we can, up to and including palliative sedation. Patients sign do-not-resuscitate (DNR) orders – so, for example, if their heart or lungs stop working, cardiopulmonary resuscitation is not performed. Dying patients also routinely refuse food and water and starve themselves to death.

These are all passive forms of "euthanasia" (a loaded word that's best avoided).

What striking down s. 241(b) of the Criminal Code, with its maximum sentence of 14 years in prison, would do is allow the accelerating of death, for example, with the injection of a combination of barbituates and muscle relaxants.

Some argue that physicians should not be involved in accelerating death because their job is to heal ,not kill. That's a false dichotomy: The role of physicians is to provide humane care. In exceptional circumstances, ending a person's suffering is appropriate medical care.

The principal fear with decriminalization is the "slippery slope" argument – the notion that, without a law, we'll start injecting old people and those with physical, developmental and psychiatric disabilities willy-nilly.

Well, not all slopes are slippery.

What people want, and deserve, is control over their own bodies, their own lives. That is a fundamental right in a democratic society.

There have to be practical and reasonable limits to providing care – which is why care is sometimes discontinued – but no one is going to impose assisted death on anyone.

And the reality is, if assisted death is decriminalized, very few people will actually exercise the option.

What the experience from other jurisdictions, such as Oregon, the Netherlands and Switzerland, also tells us is that, where assisted death is legalized, palliative care services are excellent. (Quebec's Bill 52, for example, allows physician-assisted death, if a number of strict conditions are met, but also makes palliative care at end-of-life a right.)

The likely reason is that when right-to-die legislation is proposed, it forces a societal debate to occur and underscores the importance of good end-of-life care.

In Canada, the "who owns my life?" debate is long overdue. It's a discussion that needs to happen in the courts, in Parliament and, above all, around all our kitchen tables.

Armes à feu: Ottawa propose un nouveau projet de loi

Hugo de Granpré, La Presse, 7 octobre 2014

(Ottawa) Le gouvernement Harper propose de nouveaux changements aux règles sur les armes à feu au Canada qui pourraient relancer les hostilités avec Québec dans ce dossier, à la veille des audiences sur l'abolition du registre des armes d'épaule qui se tiendront à la Cour suprême du Canada.

Le nouveau projet de loi propose une dizaine de mesures destinées à simplifier les formalités administratives pour les propriétaires d'armes à feu, tout en renforçant quelques règles de sécurité.

Cette Loi visant la délivrance simple et sécuritaire des permis d'armes à feu éliminerait les permis de possession seulement, créés il y a une trentaine d'années, pour les scinder aux permis de possession et d'acquisition. Elle changerait les règles sur les autorisations de transport d'armes à feu; donnerait au ministre plutôt qu'à la GRC le dernier mot sur la classification d'armes; et accorderait une période de grâce de six mois aux propriétaires d'armes qui ne renouvellent pas leur permis avant d'être passibles aux sanctions prévues au Code criminel.

Le projet de loi obligerait aussi les particuliers qui possèdent une arme à feu pour la première fois à suivre des cours de sécurité en ce qui a trait au maniement d'armes à feu et modifierait le Code criminel pour renforcer les dispositions relatives aux ordonnances interdisant la possession d'armes à feu lorsqu'une personne a été condamnée pour une infraction liée à la violence conjugale.

Le ministre de la Sécurité publique, Steven Blaney, a insisté sur la distinction entre les propriétaires d'armes à feu qui respectent la loi, et ceux qui ne la respectent pas, au moment d'annoncer le dépôt de ce projet.

«La Loi sur la délivrance simple et sécuritaire des permis d'armes à feu est une preuve supplémentaire que notre gouvernement défendra toujours les propriétaires et les chasseurs respectueux des lois», a-t-il déclaré, entouré de plusieurs députés conservateurs de l'Ouest canadien, surtout des hommes.

Autres contestations judiciaires?

Mais ces nouveaux changements pourraient remettre le feu aux poudres dans les relations entre Québec et Ottawa, surtout au moment où les deux gouvernements s'apprêtent à croiser le fer en Cour suprême mercredi au sujet de l'abolition du registre des armes d'épaule par le gouvernement Harper, dont Québec conteste la constitutionnalité.

Le gouvernement Couillard a déjà énoncé ses préoccupations à l'égard de certaines mesures annoncées cet été, dont la volonté de limiter les pouvoirs des contrôleurs provinciaux des armes à feu. Ces contrôleurs gèrent les autorisations de transport de certaines armes, notamment. Des propriétaires et associations d'armes à feu se plaignent depuis longtemps des trop grands pouvoirs qui leur sont accordés. Mais Québec estime que de tels changements pourraient empiéter dans ses champs de compétence.

«Toute la démarche du gouvernement fédéral, qui vise à favoriser les armes à feu, et dans le projet de loi dont ce qu'on entend dire c'est de favoriser les armes à feu qualifiées de dangereuses, je crois que ça va à l'encontre du concept de la sécurité du public, de la sécurité des citoyens. Lorsque le gouvernement nous annonce qu'il fait ça au nom de la sécurité publique, je crois qu'il y a une incohérence», a renchéri mardi le ministre québécois des Affaires intergouvernementales, Jean-Marc Fournier.

Des groupes qui militent pour le contrôle des armes à feu ont exprimé leur vive opposition aux mesures annoncées. «Après avoir aboli la pierre angulaire du contrôle des armes à feu au Canada - le registre des armes d'épaule - le gouvernement conservateur continue de céder devant les demandes du lobby des armes, aussi indécentes et aberrantes soient-elles», a dénoncé dans un communiqué Heidi Rajhten, porte-parole du groupe Polysesouvient.

«Même si les armes à feu peuvent être utilisées à des fins récréatives, il n'en demeure pas moins qu'elles sont conçues pour tuer», a ajouté Romain Gayet, président de l'Association des étudiants de Polytechnique.

«Les conservateurs peuvent affubler cette loi de tous les adjectifs qu'ils veulent, cela ne change en rien la nature irresponsable et immorale de cette législation, ainsi que l'impact

réel et négatif qu'elle aura sur la sécurité publique», a quant à elle affirmé Nathalie Provost, une diplômée de la Polytechnique de Montréal qui a été blessée lors de la tragédie de 1989.

Le communiqué de presse du ministère fédéral de la Sécurité publique était accompagné de citations de plusieurs associations de chasseurs provinciales : «La Fédération québécoise des chasseurs et pêcheurs se réjouit d'une telle initiative. Il s'agit d'un projet de loi qui satisfait grandement les chasseurs du Québec, puisqu'il vient simplifier les démarches d'octroi de permis pour les utilisateurs respectueux de la loi tout en renforçant l'aspect de la sécurité et de l'éducation», a déclaré cet organisme.

«L'élimination de la paperasse pour les tireurs sportifs et les chasseurs ne compromet pas du tout la sécurité publique», a affirmé l'Association des sports de tir du Canada.

LeDroit

La justice au ralenti en Outaouais

Des procès pour meutre traînent en longueur

Louis-Denis Ébacher, Le Droit, le 7 octobre 2014

Le manque de ressources à la Cour supérieure du Québec en Outaouais commence à faire sentir ses effets : d'importants procès pour meurtre n'auront pas lieu avant 2016, soit quatre ans après les faits.

C'est le cas, entre autres, du procès de Daniel Semples, accusé du meurtre de Nicolas Quintal, 18 ans, dont le corps a été retrouvé le 29 avril 2012 dans un boisé du chemin Farrell, à Quyon. Au terme de son enquête préliminaire, en janvier dernier, tout indiquait que le procès pouvait prendre son envol cet automne. Non seulement le dossier est complexe, mais le district judiciaire manque de juges de la Cour supérieure.

Hier, il a été confirmé que les audiences auraient bel et bien lieu dans le dossier Semples, mais seulement en mai et juin 2016, pour un procès de six semaines.

D'abord, la défense prévoit déposer trois requêtes pour contester certaines modalités de l'arrestation de l'accusé. Les motifs fournis au juge de paix avant l'arrestation de Daniel Semples auraient été insuffisants pour signer un mandat en bonne et due forme. « Il n'y avait pas de motif raisonnable », à l'époque, pour procéder à son arrestation, selon son avocat, Daniel Cyr.

Un règlement en vue ?

Un autre dossier de meurtre pourrait trouver son dénouement plus rapidement que prévu. Le ministère public et la défense seraient tout près d'une entente concernant Michael Brazier, un résident de Val-des-Monts accusé du meurtre prémédité de Richard Blanchet, en mai 2012. Celui-ci pourrait plaider coupable à une accusation réduite de meurtre au deuxième degré.

Cette entente n'a pas été entérinée et le dossier n'est pas officiellement clos. Sous toute réserve, l'entente pourrait être ratifiée au début de l'année prochaine.

« Cela a débloqué récemment. L'issue possible serait un règlement pour un meurtre au deuxième degré. Je pense honnêtement que le dossier va se régler », a mentionné l'avocat de la défense, Gérard Larocque.

M. Brazier a été arrêté par les policiers, quelques jours après le décès par balles de sa présumée victime, dans un motel du boulevard Gréber. M. Brazier aurait utilisé le véhicule de sa victime de 57 ans pour se rendre dans le secteur Gatineau.

Le cas Ramsurun

On ignore toujours quand débutera le procès de Shakti Ramsurrun, accusé du triple meurtre de son ex-conjointe et de ses ex-beaux-parents, dans le secteur Aylmer, en mai 2012.

L'auteur présumé de l'une des pires tragédies familiales à frapper l'Outaouais est accusé des meurtres prémédités de Louise Leboeuf, Claude Lévesque, et de la fille de Mme Leboeuf, Anne-Katherine Powers.

Le prévenu, originaire de l'île Maurice, a subi son enquête préliminaire, cet été. La défense pourrait bien débattre de l'état mental de l'accusé au moment des faits. Le tribunal pourrait être le théâtre d'une guerre d'opinions de témoins experts, lors du procès. La Couronne prévoit six semaines pour étaler sa preuve.

Domenico Torrente

Un autre dossier de meurtre analysé par un témoin expert en psychiatrie sera celui de Domenico Torrente, 85 ans, qui doit répondre à une accusation de meurtre non prémédité de sa conjointe, Santina Larosa, 77 ans. En mars 2012, les policiers de Gatineau sont intervenus dans la résidence du couple, dans le quartier Rivermead, y découvrant le corps de la victime. L'avocat de la défense, Marino Mendo, entend présenter une expertise en psychiatrie lors du procès, qui doit débuter en avril 2015. Mme Larosa a été tuée par balles.

Mourad Louati

Une date de procès reste à trouver pour Mourad Louati, accusé du meurtre non prémédité de Sheldon O'Grady, sur la Place du Portage, au début du mois de janvier 2013. Le procès en anglais pourrait nécessiter les services d'un interprète. Dans tous les dossiers qui n'ont pas encore trouvé de case horaire, les procureurs devront revenir devant la Cour supérieure, le mois prochain, afin de faire le suivi.

LeDroit

Centralisation de la paie à Miramichi

Paul Gaboury, Le Droit, le 9 octobre 2014

Un total de 974 conseillers fédéraux en rémunération, travaillant principalement dans la région de la capitale nationale, ont reçu un avis de postes touchés, une mesure qui découle de la décision du gouvernement Harper de centraliser les services de l'administration de la paie et des avantages sociaux dans la ville de Miramichi, au Nouveau-Brunswick.

La région de la capitale nationale est la plus touchée par ces avis, bien que des conseillers de Winnipeg, Toronto et Halifax soient aussi visés.

Une fois la transition vers Miramichi complétée, entre janvier 2015 et décembre 2016, le nouveau centre compterait un total de 550 employés, comparativement aux 1800 conseillers en rémunération qui travaillaient à travers le pays au moment de la décision du gouvernement Harper.

L'Alliance de la fonction publique du Canada (AFPC) a indiqué mercredi qu'en vertu des ententes prévues aux conventions collectives, les ministères et les agences devront présenter une «garantie d'offre d'emploi raisonnable» aux membres touchés ou leur donner accès, à une date ultérieure, aux options prévues sur le réaménagement des effectifs à la convention collective. «Chaque employé sera libre de décider de ce qui lui convient», a-t-on indiqué.

L'AFPC recommande fortement de documenter par écrit toutes les conversations entre deux employés ou entre un membre et son gestionnaire au sujet d'un échange de postes.

On indique que le transfert vers Miramichi est encore possible. «Il faut encourager les conseillers en rémunération qui veulent déménager à Miramichi à en informer leur employeur dès qu'ils le pourront. Le processus de dotation pour les conseillers en rémunération à Miramichi a été republié la semaine dernière. Comme il s'agit d'un poste en demande, les candidats expérimentés n'auront qu'à soumettre des références», indique l'AFPC à ses membres.

Les ministères et les agences ont été fortement encouragés à appliquer le processus des départs volontaires pour maximiser les chances d'échange de postes et aider un maximum d'employés à se trouver un autre poste dans la fonction publique.

CBCnews

Ralph Ivan Doncaster shut down by Supreme Court of Canada

Doncaster has been the subject of at least 36 decisions in various Nova Scotia courts

CBC News, October 9, 2014

Nova Scotia's most litigious person, Ralph Ivan Doncaster, has failed in his bid to take his nasty divorce proceedings to the Supreme Court of Canada.

In a decision released this morning, Canada's highest court dismissed Doncaster's application. As usual with such decisions, no reason was given.

Doncaster has, at various times, launched a string of litigations naming defendants such as his ex-wife, a school board, the Attorney General of Nova Scotia and the Public Prosecution Service.

Doncaster has been the subject of at least 36 decisions in various Nova Scotia courts over the last few years. He has been labelled a vexatious litigant by at least one judge, meaning he files an inordinate number of lawsuits.

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thestar.com

Canada's federal science departments get C- for freedom of speech

Analysis of media policies finds only one federal science department that does not require researchers to ask for pre-approval to speak to journalists.

Kate Allen, The Toronto Star, October 8, 2014

Federal science departments received an average grade of C- for how well — or poorly, in most cases — their media policies give scientists the freedom to communicate their research, according to a new analysis released Wednesday.

All but one Canadian department received scores worse than those of American science agencies assessed under a comparable set of criteria in 2013.

“There has been a lot of concern in recent years about government scientists facing restrictions in how they can communicate to the public and media,” said Katie Gibbs, executive director of Evidence for Democracy, the non-partisan not-for-profit that produced the report.

“But there hadn’t been any kind of systematic assessment of the communications policies governing scientists in Canada. We thought this would be a useful addition to this discussion.”

Gibbs and Simon Fraser University’s Karen Magnuson-Ford, co-authors of the report and scientists themselves, assessed the media policies of 14 federal science-based departments against a rubric that included whether the policies safeguard against political interference, promote timely communication with reporters, and protect scientific free speech, among other criteria.

Ironically, the researchers were forced to obtain all but two of the policies through freedom of information requests because they were not publicly accessible online.

Twelve of the departments received a grade of C or lower. The Canadian Space Agency, Industry Canada, Natural Resources Canada, and Public Works and Government Services Canada all received failing marks.

The best-ranked department was National Defence, which received a B. It was the only one that does not require that scientists ask for pre-approval in order to speak to journalists, the authors found. None of the media policies they obtained explicitly specified that scientists should have final review of the scientific content of department communications that make use of their research.

Reached Tuesday evening and provided with the analysis, a spokesperson for Minister of State for Science and Technology Ed Holder said he could not comment on the specifics of an unpublished report.

“Our government has made record investments in science, technology and innovation,” said Scott French. “Federal scientists are available to share their research with Canadians.” He cited 2,500 media calls fielded by Environment Canada last year and 4,000 published papers from scientists across departments.

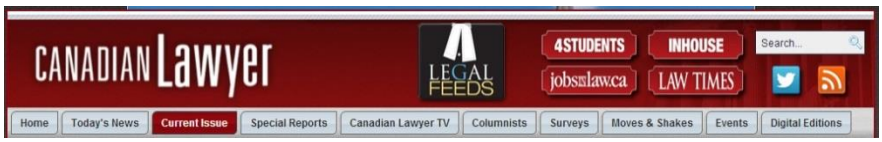
Fisheries and Oceans Canada and Environment Canada, two departments that have received the strongest volley of accusations of scientist “muzzling,” fared comparatively well: their media policies ranked third and ninth out of 14.

But Gibbs noted that a poll of federal scientists conducted earlier this year on behalf of the union that represents public servants found that Fisheries and Oceans researchers were the least happy with how the ministry broadcasts their work to the public. That same poll found that 91 percent of Environment Canada scientists do not feel they can share concerns based on scientific knowledge without facing censure.

"There is definitely a big difference between policy and practice," said Gibbs, but added that if scientific freedom of speech is going to improve, "I think it's going to have to start at the very least with a very clear and explicit communication policy."

Evidence for Democracy's analysis was modeled on a similar study conducted by the U.S. Union for Concerned Scientists. After giving American science agencies' media policies an average score of 70 out of 100 in 2008 and issuing a series of recommendations, the group followed up in 2013 and found a five-point improvement. (The Canadian analysis, which differed slightly from the American one, found an average score of 55).

"We're trying to look at it as midterm marks rather than a final grade," said Gibbs.



Lawyer's correspondence doesn't meet threshold for incivility: hearing panel

By Yamri Taddese, Legl Feeds Blog Canadian Lawyer, October 10, 2014

A Law Society of British Columbia hearing panel has found a Surrey lawyer did not act unprofessionally when he wrote a letter calling a paralegal "an uneducated person striving to be what she is not."

While acting for the plaintiff in a personal injury matter, Thomas Harding received a letter from a paralegal working for opposing counsel regarding an independent medical examination.

Harding, who took issue with the choice of doctors for the examination, wrote a colourful letter to the opposing counsel about his wish not to communicate with the paralegal, who had cited case law in her last correspondence with him.

"While it is delightful that you have an uneducated person striving to be what she is not, it is not my job to educate her. A child may dress in her mother's uniform, but it does not make her a general," he wrote.

“Having your paralegal quote law at me reminds me of Dr. Johnson’s comment about a woman preaching. Please do not have your paralegals, secretaries, or legal assistants write to me on any matter at all,” he wrote, adding that if an issue merits his attention, it should merit the other lawyer’s own attention as well.

Harding repeated the same statements in a second letter written on the same day. After a complaint for incivility was filed against him, he apologized to the paralegal and the lawyer, admitting that his remarks were an unfair “eruption of irritation.” He added he was trying to be “witty” in his letters.

Harding also testified he is seeking counselling for anger management. But as to the wording of his letters, the law society did not find it met the threshold for incivility.

“While the panel accepts the respondent’s testimony that he was trying to be witty, we find, as presumably did [the opposing counsel and the paralegal], that the respondent’s attempt at a ‘witty admonishment’ fell short of the mark,” the law society panel wrote.

“His comments were open to misinterpretation, and they were so misinterpreted. In the circumstances, however, we do not find that the manner in which he expressed his views, or the words he used, was a marked departure from the conduct expected from members.”

Harding told the panel he has a strong view that lawyers should not be put in a position where they’re expected to debate legal issues with non-lawyer staff on the opposite side of a case.

Ethics lawyer Gavin MacKenzie with Davis LLP says Harding’s words were “ill-advised and discourteous,” but he agrees they didn’t constitute a professional misconduct “particularly since he had a legitimate point to make about the inappropriateness of the law clerk engaging him in correspondence about the interpretation of case law.”

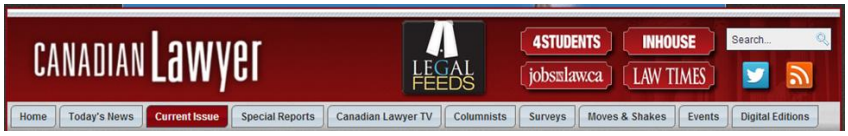
The law society did not comment on the appropriateness of lawyers corresponding via non-lawyers.

MacKenzie says he is surprised the complaint went as far as a conduct hearing.

“In Ontario, it is likely that it would have been dealt with through an informal, non-disciplinary process, such as a letter of advice from the chair of the proceedings authorization committee or an invitation to attend a meeting with benchers to discuss how the lawyer might consider handling issues such as this more professionally in future.”

In his letter, Harding had also referred to the Insurance Corporation of British Columbia’s suggested medical examiner as the ICBC’s “hireling.” He has previously gotten in trouble for comments he gave to the press about the credibility of an expert witness.

Harding wasn’t available for comment before press time.



National pro bono group to aid with access to justice

Written by Arshy Mann , Canadian Lawyer Magazine

As legal aid budgets are squeezed, more members of the public are looking for pro bono services to help with their legal needs. Into that gap comes the recently formed Pro Bono Canada.

'The idea of Pro Bono Canada is that we will not be direct program deliverers, but we'll be helping support the expansion of pro bono,' says Dennis O'Connor

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Incorporated last fall, Pro Bono Canada is an initiative born out of the five provincial pro bono organizations in B.C., Alberta, Saskatchewan, Ontario, and Quebec. It will be having it's coming-out party at the National Pro Bono Conference in Regina this week, which will be for many lawyers their first exposure to the organization.

"The idea of Pro Bono Canada is that we will not be direct program deliverers, but we'll be helping support the expansion of pro bono," says Dennis O'Connor, former associate chief justice of Ontario and chairman of organization.

Along with O'Connor, the organization is run by the executive directors of the five provincial pro bono groups and two other trustees: former Supreme Court of Canada justice Marie Deschamps and former B.C. chief justice Lance Finch.

In the past year, Pro Bono Canada has begun working on a number of initiatives. One of their primary goals is to help start pro bono organizations in the provinces and territories that currently don't have any.

"The whole idea of it is to promote pro bono service, to give it a national voice, and have a centre where other jurisdictions that are trying to get pro bono up and running can come and get information and be connected with the groups that have already started successful programs," says Kara-Dawn Jordan, executive director of Pro Bono Law Saskatchewan.

The organization is already in discussions with Nova Scotia, Prince Edward Island, Yukon, and the Northwest Territories about starting up pro bono groups in those jurisdictions.

"That is one of our objects, to promote and assist with expansion," says O'Connor.

But Pro Bono Canada isn't looking to provide any services directly to the public.

"The people in the provinces and the communities, ultimately they're going to be the volunteers and will have to run their own programs," says O'Connor.

The organization has also partnered with Pro Bono Students Canada to develop and administer a survey to law firms about their pro bono activities. O'Connor says that the idea is to let students know which firms are the most committed to pro bono work so that they can factor that into their decision-making when they're searching for a job.

One way that Pro Bono Canada is looking to fund itself is through cy-près awards given out in class action settlements.

"There is a natural connection between class actions and pro bono," says O'Connor. "Class actions are tool that the provinces have put in place to address access to justice problems for certain types of cases."

Pro Bono Canada has created material that encourages lawyers to consider the organization for any cy-près awards that are given out.

"If we were to receive funds, then we have a transparent formula where we would then filter the money down to provincial organizations who actually deliver the programs," says O'Connor.

While access to justice has become a more acute problem, Jordan believes the legal community has been stepping up to the challenge. O'Connor points out that last year, almost 30,000 Canadians were provided pro bono services.

"It's a good news story for the legal profession and I'm not sure as to how widely appreciated it is," he says.
