

Press Clippings for the period of September 22nd to 28th, 2015 / Revue de presse pour la période du 22 au 28 septembre, 2015

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

Public Service – Fonction Publique

Yes, minister, no more: Today's bureaucrats have a different attitude

Konrad Yakabuski, *The Globe and Mail*, September 28 2015

The Harper government is hardly the first in Canadian history to routinely overrule its bureaucrats. Despite the popular image of clueless cabinet members being manipulated by canny public servants – think *Yes, Minister* – bureaucrats have always deferred to their elected masters even when they disagree strongly with them. That's how it must be in a democracy. The job of the bureaucracy is to provide advice to the government and execute its decisions. A healthy and productive working relationship between elected officials and the public service requires mutual respect and loyalty. There is a natural tension between bureaucrats, who are permanent and non-partisan, and cabinet ministers, who are transitory and political. But for government to function, there can be no ambiguity about who's in charge.

If a prime minister and cabinet ministers feel they cannot count on the loyalty and discretion of their bureaucrats, they will increasingly marginalize them and discount their advice in making policy. Indeed, some argue that this is what's happened under Stephen Harper's Conservatives.

It's hard to generalize, since interactions between ministers and their top bureaucrats occur behind closed doors and in encrypted e-mails. But if a climate of mutual distrust has poisoned the relationship between the bureaucracy and the Harperites, it's worth asking how it happened and who bears responsibility for it. It turns out there's plenty of blame to go around.

Gilles Paquet, a University of Ottawa professor who has studied the federal bureaucracy for more than five decades, says he's seen a "dramatic transformation" in the culture of the public service in the past two decades. There is less deference among bureaucrats. Some commonly seek to influence public opinion by speaking out, usually through surrogates, against their political masters. This extends far beyond legitimate whistle-blowing to expose misdeeds. There is a generalized venting of indignation that would have been deemed outright insubordination in decades past.

Press Clippings for the period of September 22nd to 28th, 2015 / Revue de presse pour la période du 22 au 28 septembre, 2015

In the old days, bureaucrats were lifers whose longevity depended on reassuring their ministers of their loyalty, regardless of the boss's political stripes. Gordon Robertson, Clerk of the Privy Council under former Liberal prime ministers Lester Pearson and Pierre Trudeau "could disagree with Mr. Trudeau and suffer the consequences, but bite his tongue afterward," Prof. Paquet says. Bureaucrats today "are infinitely more opportunistic and career-driven." And indiscreet.

These days, senior bureaucrats, including diplomats, retire from the public service at a young age and assume gigs as consultants for their former employer or as advisers to lobby groups, law firms or corporations. Unbound by the code of ethics that governs active bureaucrats, they give voice to disgruntled friends and colleagues still working inside the government, becoming media critics of the government in their capacity as public policy experts. But they're hardly neutral.

"The public has been persuaded that when an ex-bureaucrat talks about policy, it's based on science and evidence, but that when a politician speaks about it, it's based strictly on anecdotes," Prof. Paquet says. "But a bureaucrat's point of view is just one among many."

This view is echoed in a March [article](#) in Optimum Online, a public-sector management journal that Prof. Paquet edits. The article, by a senior Ottawa-based policy analyst using a pseudonym, asserts that "many senior federal public servants [develop] a conviction that they are better guardians of basic values of our democracy than elected officials. While this attitude had to be somewhat tamed while they were on active duty, it has become fully unleashed in retirement." The author goes on: "This has naturally generated a flow of self-righteous condemnation of current government policies by many newly unencumbered retired senior officials, and has thereby provided immense moral support for those senior public servants still in active duty – former colleagues and friends – to heighten their own passive (or semi-active) opposition to the elected government from within. As a result, the corridor of what has come to be regarded as tolerable disloyalty from within would appear to have widened considerably."

This trend is nearly certain to outlive the Harper government. Future governments will become even more suspicious of the bureaucracy they inherit. To some extent, such suspicion has always existed. But Canada has always resisted the American practice of administrations stuffing the top layers of the bureaucracy with political appointees. Prof. Paquet worries that will change unless the principles of bureaucratic loyalty and discretion are restored.

"Loyalty breeds loyalty," he says. "It's 50-50."

Press Clippings for the period of September 22nd to 28th, 2015 / Revue de presse pour la période du 22 au 28 septembre, 2015

How Liberals, NDP are battling for public service vote

Kristy Kirkup, CTV News, September 25 2015

Liberal Leader Justin Trudeau has penned an open letter to public servants as his party and the New Democrats fight to woo federal government workers in target ridings such as Ottawa Centre.

The Grits are trying to capitalize on the public, and often nasty, battle between the bureaucracy and the federal Conservatives.

The strained relationship has been the focus of attacks launched by public sector unions during the course of the campaign.

In July alone, the Public Service Alliance of Canada announced it would spend \$2.7 million on a pre-election ad blitz to take aim at what it called "reckless Conservative cuts" to government departments.

The union also launched a Charter challenge against Bill C-59. It claims the legislation gives the government power to amend provisions in federal government employee contracts without negotiations.

In his letter made public on Friday, Trudeau vowed to bargain in good faith with public sector unions and work in partnership.

"Respect and trust for our public servants by the federal government has never been so low," the letter states. "I want to take this opportunity to assure you that I have a fundamentally different view than Stephen Harper of our public service."

The Liberals are dialing up their message to public servants as part of an aggressive campaign in ridings such as Ottawa Centre, held by the NDP's Paul Dewar since 2006.

Candidate Catherine McKenna claims she and her team have knocked on more than 70,000 doors in the lead up to October's vote.

"I see my role as meeting as many residents of Ottawa Centre, listening to their concerns and then advocating for their concerns in Parliament," she said at a Friday news conference,



Press Clippings for the period of September 22nd to 28th, 2015 / Revue de presse pour la période du 22 au 28 septembre, 2015

Dewar said the public service is the dominant issue in his riding, which is saturated with federal employees.

"They want to make sure that we have an employer, in the government, that's actually going to value the work of the public service and restore the relationship of trust," Dewar said.

"We knew that this had been something that has been ... percolating over the years, the way in which the Conservatives really put public servants in a very distressing position. Sometimes they're not consulted, sometimes their advice is being absolutely ignored."

Dewar said he is concerned about how the Liberals will approach the bureaucracy, due to the party's move to slash the number of public service employees in the late 1990s.

He also highlighted how the Grits have indicated they will reduce the size of administration within the Department of National Defence and the Canadian Armed Forces during this campaign.

"When you see that in their proposals in an election ... I worry greatly," Dewar said.

The Liberals have yet to indicate what this measure will mean in terms of job losses.

The Conservatives, meantime, have championed their plan to implement "savings measures" for the public service. It claims the federal government has saved the taxpayer more than \$19 billion in 2015-2016 and beyond.

Les libéraux veulent revoir le mandat de négos

Paul Gaboury, Le Droit, le 25 septembre 2015

Les candidats libéraux promettent de réviser le mandat du Conseil du Trésor pour «négocier» avec les syndicats la question des congés de maladie. De plus, ils s'engagent à «accélérer» le processus visant à mettre en place la norme nationale sur la santé mentale dans la fonction publique fédérale.

Lors d'une conférence de presse tenue dans un hôtel d'Ottawa, les candidats ont voulu envoyer un message aux fonctionnaires par le biais d'une lettre ouverte de leur chef Justin Trudeau.

Press Clippings for the period of September 22nd to 28th, 2015 / Revue de presse pour la période du 22 au 28 septembre, 2015

«Nous voulons revenir au premier principe, celui de la négociation», a expliqué le candidat libéral dans Gatineau, Steven MacKinnon.

Les libéraux n'ont pas voulu dévoiler s'ils allaient proposer de maintenir le régime de congés de maladie actuel, le bonifier comme le proposent les syndicats, ou négocier dans le but d'en implanter un nouveau.

Il est clair toutefois, comme l'avait déjà indiqué au *Droit* mercredi le chef Justin Trudeau, que les libéraux n'ont pas l'intention d'imposer un nouveau régime de congés de maladie en dehors de la négociation comme le souhaite le gouvernement conservateur avec la loi C-59.

«Le gouvernement conservateur a enlevé l'option de maintenir le régime actuel. Ce que nous voulons faire, c'est de remettre cela sur la table de négociation et négocier de bonne foi avec les syndicats, ce que les conservateurs n'ont pas fait depuis neuf ans» a souligné le candidat dans Hull-Aylmer, Greg Fergus.

Norme nationale sur la santé mentale

Les candidats libéraux se sont également engagés, avec leur chef, à «accélérer» le processus visant la mise en oeuvre de la Norme nationale sur la santé mentale et la sécurité psychologique en milieu de travail de la Commission de la santé mentale du Canada.

Déjà, une entente de principe est intervenue entre le gouvernement et les syndicats pour la création d'un groupe de travail dans le cadre de la présente ronde. «Notre intention c'est d'accélérer, d'intensifier le processus de mise en oeuvre parce que c'est un problème qui affecte de nombreux fonctionnaires dans leur vie de tous les jours», a indiqué le candidat MacKinnon.

Supreme Court of Canada - Cour suprême du Canada

Press Clippings for the period of September 22nd to 28th, 2015 / Revue de presse pour la période du 22 au 28 septembre, 2015

Supreme Court of Canada affirms international enforcement of the law, allows Ecuadorans to pursue Chevron assets in Canada

Jamie Kneen, rabble.ca, September 26, 2015

In a small but significant step towards ending corporate impunity for destroying the environment and people's health, the Supreme Court of Canada has ruled that Ecuadoran villagers should be allowed to try to get hold of Chevron assets in Canada, to collect on the \$9.51 billion (USD) that Ecuadoran courts had awarded them for extensive pollution of the Amazon rainforest.

MiningWatch Canada intervened in the case (*Chevron Corp. v. Yaiguaje*, 2015 SCC 42) in order to support the idea that transnational corporations should be held to account for their abuses, regardless of where they took place. As part of a joint intervention, we argued that there should be no jurisdictional barriers to plaintiffs seeking to enforce foreign judgments against corporations that have been held to account for environmental or human rights abuses in foreign courts. We also told the Court that in some cases the "corporate veil" -- the legal fiction that different subsidiaries of the same company are separate and independent -- may need to be "pierced" to ensure that transnational corporations are held accountable for human rights violations committed by their wholly-owned and controlled subsidiaries.

The Ecuadorans' lawyer, Alan Lenczner, made similar arguments, but our intervention was aimed at providing the Court with more background on the range and seriousness of human rights abuses perpetrated by transnational corporations, and the crying need to allow justice to be served for the victims of those abuses -- wherever they happen.

While the judgment does not, by itself, accomplish anything more than allowing the Ecuadorans' court action to proceed, this is a significant step, since it provides a firm precedent for other plaintiffs seeking to enforce favorable rulings from their own courts against companies in Canada, even if they are subsidiaries of other transnationals. As the Court noted,



Press Clippings for the period of September 22nd to 28th, 2015 / Revue de presse pour la période du 22 au 28 septembre, 2015

We are pressing for access to justice in Canada for victims of Canadian companies, and we are supporting a number of legal actions against Canadian transnationals in Canadian courts, but at the same time it is vitally important for the legal systems in other countries to be strong enough to put a stop to the impunity enjoyed by transnational companies and their local representatives. It is also vitally important that when legal systems in other countries do actually hold corporations to account, the Canadian legal system lend its help in enforcing these foreign judgments.

Just this week, we just published a **groundbreaking report** that clearly shows how Canadian mining interests are implicated in the criminalization -- and even murder -- of local opposition leaders, often with the full support of the Canadian government. Access to justice in Canada is crucially important for the victims, but access to justice at home is just as important. This ruling recognizes the validity of the Ecuadoran legal system, and holds out promise for our partners in several other countries who are struggling for justice within their own legal system. It sends a strong message that Canadian courts will not allow corporations to hide behind jurisdictional boundaries to avoid the enforcement of foreign courts' judgments.

The ruling's unequivocal tone -- and the fact that it was unanimous -- are also a positive signal. There are a number of lawsuits under way in Canada that may well end up before the Supreme Court in some respect: **Hudbay Minerals**, **Tahoe Resources**, **Nevsun Resources**. We hope that the Supreme Court will take a similarly internationalist approach to the rights of foreign claimants as it has to the recognition and enforcement of foreign judgments.

The Supreme Court decision is available online: **<http://scc-csc.lexum.com/scc-csc/scc-csc/en/item/15497/index.do>**

The Court's docket for the case is also online at **<http://www.scc-csc.gc.ca/case-dossier/info/dock-regi-eng.aspx?cas=35682>**

A number of big law firms have published commentaries on the case. Here are two recommended by our lawyers:

1. McCarthy Tetrault, *Chevron Corp v. Yaiguaje: SCC Decision Highlights Increased Litigation Risk for Canadian Companies for Misdeeds of their Foreign Affiliates* **https://www.mccarthy.ca/article_detail.aspx?id=7151** "The Supreme Court of Canada's most recent decision in *Chevron Corp. v. Yaiguaje* has significantly increased the litigation risk for companies with assets in Canada from plaintiffs seeking to enforce foreign judgments obtained against the foreign affiliates of such companies."
2. Torys, *SCC on Foreign Judgment Debtors and Canadian Courts* **<http://www.torys.com/insights/publications/2015/09/scc-on-foreign->**

Press Clippings for the period of September 22nd to 28th, 2015 / Revue de presse pour la période du 22 au 28 septembre, 2015

judgment-debtors-and-canadian-courts. "Canadian corporations may be called on to satisfy foreign judgment debts of their parent corporations. A Canadian corporation that is a stranger to a foreign judgment may nonetheless be on the hook to satisfy a foreign judgment debt of one of its related corporate entities."

Panel looking at assisted dying learns much from European experience

Members of assisted-death panel spent 11 days in Europe ahead of legalization in Canada
Sheryl Ubelacker, The Canadian Press, September 21 2015

The head of a panel looking into legislative options to govern doctor-assisted death says a recent fact-finding tour in Europe has opened members' eyes to the many complexities surrounding a practice that's soon to become legal in Canada.

Dr. Harvey Max Chochinov said he and the two other members of the External Panel recently returned from an intensive 11-day study of how physician-aided dying has been implemented in the Netherlands, Belgium and Switzerland, where patients can legally have their deaths hastened.

"We learned a tremendous amount from experts who have a great deal of experience with end-of-life regimes in their countries," said Chochinov, Canada Research Chair in Palliative Care at the University of Manitoba.

"We saw people from such diverse perspectives — people who still continue to struggle with the issue of physician-hastened dying and are very much opposed to it," he said Monday from Winnipeg.

"And we saw others who were, of course, much more comfortable and described this as something that has become part of their cultural experience around death and dying."

Chochinov, Ryerson professor emerita Catherine Frazee and University of Ottawa law professor Benoit Pelletier were appointed to the panel by the Harper government in July, following the Supreme Court of Canada's February decision to overturn the ban on doctor-assisted suicide and euthanasia.



Press Clippings for the period of September 22nd to 28th, 2015 / Revue de presse pour la période du 22 au 28 septembre, 2015

The high court ruled that Canadians with unbearable and irremediable suffering could be eligible to end their lives with a doctor's aid, but the justices stayed their decision until February 2016 to give Parliament time to replace the existing law if it so chooses.

The panel was appointed to consult experts and the Canadian public before providing the government with potential options for crafting new legislation, but their work, for the most part, is on hold until the federal election is decided Oct. 19.

Chochinov, Frazee and Pelletier met with a broad range of experts in the three European countries, including general-medicine and palliative-care physicians, lawyers, government officials and bio ethicists.

The panel also consulted with two major groups offering assisted-dying services in Switzerland: Dignitas, a group that helps people — including foreigners — with a terminal illness or severe physical and mental illnesses to die; and EXIT, an aid-in-dying organization that helps people plan for the end of life with the best available information and the support of family and friends.

"We really tried to get a sense from them as to ... what is the connection, for example, between these death-hastening organizations and medical practitioners," said Chochinov.

The panel wanted to know how people with abject suffering who seek help in dying are referred to services and whether people can self-refer, he said, adding that members also wanted to determine the role of right-to-die organizations and doctors in assessing whether patients meet the criteria for assisted death.

"I think we learned there is a very close relationship between the role of physician and the role of organizations such as Dignitas and EXIT, and it really is that connection between those two that seems to facilitate the ability in Switzerland and to deliver physician-assisted dying.

"I don't think I understood the complexities of that as well before as I do now after visiting Switzerland."

Chochinov said the challenge for the panel is to lay out options for regulations that honour the values inherent in Canada's health-care system, which approaches suffering "with compassion, integrity and wisdom."

"One thing that's critically important — we very much need Canadians to weigh in and to provide us their guidance on the issue of physician-hastened dying and how that can be enacted in Canada in a way that is going to be in keeping with those core values in health care."

Press Clippings for the period of September 22nd to 28th, 2015 / Revue de presse pour la période du 22 au 28 septembre, 2015

The public is encouraged to provide their insights on the panel's website:
www.externalpanel.ca.

"That's what our panel is looking for," he said. "We are open to any and all opinions that will guide our work."

Give indigenous people veto power over development on their lands, report urges

Resource companies join with conservationists to urge 'free, prior and informed consent'
CBC News, September 21, 2015

A coalition of resource companies, financial institutions, First Nations and conservation organizations has recommended that aboriginal bands have veto power over development on their traditional lands.

The Boreal Leadership Council – which includes resources companies such as Suncor Energy, Goldcorp and Tembec – [released a report Monday](#) that sets out recommendations for engagement with First Nations by business and government.

"Free, prior, and informed consent – the right of Indigenous peoples to offer or withhold consent to development that may have an impact on their territories or resources – is the key to development, not a barrier," said Boreal Leadership Council member Robert Walker of NEI Investments.

Chris McDonell of Tembec said it is a "prevailing myth" in Canada that there is nothing but conflict between resource development and indigenous communities
Treaty rights are protected under the Constitution, but there is confusion over how this should play out in resource development, the council said.
Landmark Supreme Court decision

The Supreme Court of Canada's 2014 Tsilhqot'in decision is defining the direction the law is taking as, in addition to granting title, it states the First Nation has the right to decide how the land will be used and authority to manage the land and its economic benefits.
Industry groups, including mining, petroleum and forestry organizations, have attempted to respond to the ruling, urging members to obtain consent and engage early with communities that might be affected by their projects.

Press Clippings for the period of September 22nd to 28th, 2015 / Revue de presse pour la période du 22 au 28 septembre, 2015

The Forest Stewardship Council, a forest certification system, recently recommended a global initiative to incorporate "free, prior and informed consent" from First Nations communities into certification requirements for its companies.

The Boreal Leadership Council has suggested next steps for government, industry and aboriginal communities to encourage a collaborative process that leads to consent. It says that will speed development in most cases, as it will forestall long and divisive legal cases.

Industry should engage early

The federal government should be working with communities and aboriginal governments to develop legal and policy tools that strengthen decision-making processes, the report said. There also needs to be capacity building to strengthen lands stewardship skills and resources in indigenous communities.

For industry, it recommends early and respectful engagement in any development process. "While there is no "one size fits all" approach, early engagement can provide a foundation for the necessary working relationships and can provide the opportunity to establish impact benefit agreements that can help guide project development and management," the report said.

The council urged indigenous communities to share the lessons they have learned in working collaboratively on major projects. Among the lessons to be learned are how to structure internal governance and management of their communities in negotiation and implementation phases of development.

Sick Leave – Congé de maladie

Liberals amp up message to public servants ahead of federal election

Kristy Kirkup, *The Toronto Star*, September 25, 2015

[Liberal Leader Justin Trudeau](#) has penned an open letter to public servants as his party and the New Democrats fight to woo federal government workers in target ridings such as Ottawa Centre.

Press Clippings for the period of September 22nd to 28th, 2015 / Revue de presse pour la période du 22 au 28 septembre, 2015

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The strained relationship has been the focus of attacks launched by public sector unions during the course of the campaign.

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“They want to make sure that we have an employer, in the government, that’s actually going to value the work of the public service and restore the relationship of trust,” Dewar said.

“We knew that this had been something that has been . . . percolating over the years, the way in which the Conservatives really put public servants in a very distressing position. Sometimes they’re not consulted, sometimes their advice is being absolutely ignored.”

Dewar said he is concerned about how the Liberals will approach the bureaucracy, due to the party’s move to slash the number of public service employees in the late 1990s.



Press Clippings for the period of September 22nd to 28th, 2015 / Revue de presse pour la période du 22 au 28 septembre, 2015

He also highlighted how the Grits have indicated they will reduce the size of administration within the Department of National Defence and the Canadian Armed Forces during this campaign.

“When you see that in their proposals in an election . . . I worry greatly,” Dewar said.

The Liberals have yet to indicate what this measure will mean in terms of job losses. Requests for clarification were not answered on Friday.

The Conservatives, meantime, have championed their plan to implement “savings measures” for the public service. It claims the federal government has saved the taxpayer more than \$19 billion in 2015-2016 and beyond.

Trudeau courtise les fonctionnaires fédéraux

Paul Gaboury, Le Droit, le 24 septembre 2015

Le chef libéral Justin Trudeau affirme que la décision du gouvernement Harper d'imposer un nouveau régime de congés de maladie des fonctionnaires fédéraux «n'est pas justifiée», et a été prise uniquement «pour des raisons politiques», plutôt que d'être basée «sur des faits».

Lors d'une entrevue exclusive avec *LeDroit* mercredi, le chef libéral a expliqué que le gouvernement Harper avait manqué de «respect» envers les fonctionnaires fédéraux en voulant imposer, par le biais de la loi C-59, un régime d'assurance-invalidité de courte durée aux fonctionnaires fédéraux sans passer par le processus de négociations.

«Nous ne sommes pas d'accord avec les éléments du C-59 qui donnent autorité au gouvernement de modifier unilatéralement le régime des congés de maladie des fonctionnaires, une décision prise uniquement pour des raisons politiques et qui n'est aucunement basée sur les faits et les épargnes. Nous avons besoin d'un gouvernement qui négocie de bonne foi les conditions de travail des fonctionnaires, tout en leur offrant les outils pour qu'ils puissent bien servir les Canadiens. C'est ce que je me suis engagé à faire lorsque j'ai rencontré les dirigeants syndicaux», a indiqué M. Trudeau.

S'il est élu, le chef libéral promet «en priorité» à mettre fin aux «longues files d'attente» pour obtenir des services du gouvernement fédéral, en personne ou au téléphone, résultat des compressions et des abolitions de postes. Il s'est déjà engagé à rouvrir les neuf bureaux régionaux d'Anciens Combattants Canada fermés par le gouvernement Harper. «Nous avons



Press Clippings for the period of September 22nd to 28th, 2015 / Revue de presse pour la période du 22 au 28 septembre, 2015

besoin d'un gouvernement qui est au service des citoyens et nous avons besoin de redonner à la fonction publique son indépendance en mettant fin à l'ingérence», a ajouté le chef libéral.

Dans le dossier de Postes Canada, il veut arrêter l'installation des boîtes postales communautaires et mener une véritable consultation pour trouver des moyens de maintenir la livraison du courrier à domicile. «Il faut arrêter de penser que Postes Canada est une machine à profit», a déclaré M. Trudeau.

Sans prendre d'engagement précis sur le «gel budgétaire» des ministères fédéraux pour les deux prochaines années, annoncé dans le dernier budget, M. Trudeau soutient qu'un gouvernement libéral mettrait fin au «gaspillage» dans les dépenses afin de dégager des sommes importantes pour améliorer les services publics.

Les maires à la CCN

Sur des questions à incidence régionale, le chef libéral s'est dit ouvert à discuter avec les maires d'Ottawa et de Gatineau au sujet de leur participation au conseil d'administration de la Commission de la capitale nationale.

«Nous voulons être un gouvernement responsable. Et c'est tout à fait responsable d'avoir une bonne représentation à la CCN pour Ottawa et Gatineau. J'ai l'intention de trouver une solution acceptable avec les deux maires», a-t-il indiqué.

Stephen Harper 'playing a very divisive game' with niqabs, Tom Mulcair says

Issue of niqabs during citizenship oath may come up in Thursday's French-language debate in Montreal

CBC News, September 21 2015

Stephen Harper is "playing a very divisive game" with his government's effort to impose a ban on niqabs during the citizenship oath, NDP Leader Tom Mulcair said Monday, just days before a French-language debate in Quebec — a province in which identity politics continues to drive a wedge between voters.



Press Clippings for the period of September 22nd to 28th, 2015 / Revue de presse pour la période du 22 au 28 septembre, 2015

"I'm not about the politics of fear and division. Mr. Harper is going to always go after that. If he senses that there's something there that can divide Canadians one against the other, he'll do it," said Mulcair during a morning campaign stop in Nova Scotia.

The comments came after a reporter asked how Mulcair felt about Muslim women who want to wear a niqab or another type of face covering while taking the oath of citizenship.

"Well, the courts take care of that ... They're there to defend your rights, including freedom of religion," Mulcair said in response, adding that "the courts have spoken in this case."

Last week, an appeals court upheld a lower court's previous decision to [strike down a ban on wearing niqabs](#) at citizenship ceremonies. The federal government has since said it will seek a stay on the court's decision until it can take the issue to the Supreme Court of Canada.

Despite the ruling, the wearing of veils at citizenship ceremonies continues to be an issue on the campaign trail, posing a dilemma for Mulcair in his home province of Quebec, where polls suggest a considerable number of voters tend to agree with the Tories.

Conservative Leader Stephen Harper has repeatedly said that the "overwhelming majority" of Canadians, as well as "moderate Muslims," subscribe to his party's position.

The Bloc's wedge issue

The Bloc Québécois has also taken up the issue, saying it would go even further than the Tories and impose a ban on face coverings during citizenship ceremonies and in the voting booth.

It is currently [running a deeply controversial ad](#) that the party says is meant to criticize the NDP's opposition to a ban on face coverings. A Muslim women's group, however, said the ad "drives a wedge" between Muslims and other Quebecers and insinuates that Muslim citizens are foreigners in the country.

The Bloc is pushing to win back votes it lost to the NDP during the "orange wave" that swept Quebec in the 2011 election. The clash over face coverings is therefore likely to play a central role in Thursday night's French debate in Montreal, where Bloc Leader Gilles Duceppe is expected to draw attention to the fact that there appears to be division within the NDP ranks on the issue.

For example, Quebec NDP candidate Jean-François Delisle said in an interview last week that his party would be amenable to reopening the Constitution to resolve the issue. But the next day he walked back his comments, saying they were "ill-considered and contradictory and do not reflect my priorities or those of the party."



Press Clippings for the period of September 22nd to 28th, 2015 / Revue de presse pour la période du 22 au 28 septembre, 2015

'That's a code word'

For his part, Mulcair has had to negotiate a tricky path on the issue. His party needs to retain the hard-won votes it secured in Quebec in 2011, but cannot risk losing support in the diverse suburbs of Toronto and Vancouver, where voters appear to be opposed to the government's effort to impose a ban.

Part of his approach has been to accuse Harper of dog-whistle politics.

"He talks about 'old stock Canadians,'" Mulcair said this morning, alluding to a comment Harper made during last week's leaders' debate in Calgary.

"That's a code word. He knows what he's doing when he does that."

Liberal Leader Justin Trudeau said earlier this week that the Grits have "always been crystal clear" about their opposition to a ban on niqabs and other veils.

"In any situation where a government chooses to limit or restrict individual's rights or freedoms, it has to clearly explain why. This government has not done that. It is continuing with the politics of division and even fear, and that is not worthy of a country as diverse and extraordinary as Canada."

Thursday's debate is set for 8 p.m. ET.

Competition Bureau battle begins over public access to crucial real estate stats

Sophia Harris, CBC News, September 23, 2015

The fight is back on in a dispute that could shake up the traditional real estate industry. The battle boils down to whether real estate brokers can give the public unfettered online access to important home sales information.

This week, Canada's Competition Bureau is back before the federal Competition Tribunal in Toronto, continuing its ongoing lawsuit against the Toronto Real Estate Board (TREB) in a test case that could affect other regions.

Press Clippings for the period of September 22nd to 28th, 2015 / Revue de presse pour la période du 22 au 28 septembre, 2015

The bureau wants to remove TREB's power to keep under lock and key crucial house hunting information such as previous home listings, the length of time a house is on the market and "sold" data — the price homes have sold for in the market.

"TREB's anti-competitive behaviour continues to restrict potential home buyers and sellers from taking advantage of a greater range of service and pricing options when making one of the most significant financial transactions of their lives," said the Competition Bureau in a statement to CBC News.

The battle over sold data

At the heart of the matter is whether recent sold data should be made accessible to the public without being relayed through a real estate agent. The information can empower homebuyers and sellers by helping them gauge a property's value by comparing it to current home sales.

"The sold data is the most important thing," says real estate broker Ara Mamourian. "It's what people usually ask us for."

TREB gives agents access to recent sold stats and other details that they can offer to personal clients. Yet Canada's largest real estate board maintains that agents cannot publicly post the data online because of privacy issues.

"The Toronto Real Estate Board will continue to work to protect the personal information entrusted to it," TREB CEO John DiMichele told CBC News in an email.

Mamourian, who runs Spring Realty in Toronto, argues that in the age of the internet, consumers should be able to freely access sold stats when house hunting online.

"People are making huge financial decisions based on those [sold] prices. So why not put it out there?"

Putting sold stats out there

Already in [Nova Scotia](#), and for years across [the U.S.](#), realty websites publicly post home sales history.

Some Toronto brokers, including Mamourian, also recently decided to give people easy access online. They skirted TREB's rules by making the data available to registered users instead of posting it for everyone to view.

TREB then sent a stern warning letter to brokers in February. It threatened that anyone defying its rules would be "suspended or terminated immediately" from the Multiple Listing

Press Clippings for the period of September 22nd to 28th, 2015 / Revue de presse pour la période du 22 au 28 septembre, 2015

Service (MLS) — an important database for agents. A few real estate agencies balked and quickly shut down their sold data services.

But Mamourian pledged to continue emailing the information to registered customers.

"It's 2015, not 1980 any more. The way people expect to receive information has changed, and we're just simply giving people what they want," he told CBC in March.

But now, the broker has halted his sold data mailouts and has decided to wait for the outcome of the Federal Competition Tribunal.

"We did a risk reward analysis on this whole thing and looked at the worst-case scenario which is having TREB coming down on us with some kind of fines or whatever they do and the time it would take to defend something like that," Mamourian explains.

He says considering how much time it takes him to compile sold stats and the fact his clients found weekly emails weren't overly useful, he concluded the risk wasn't worth it.

But he says if the Competition Bureau wins its case, he will publicly offer sold details on Spring Realty's real estate search site. "The day that we're actually allowed to display this data on our website, we're going to integrate it into our search tool."

Mamourian is optimistic that day will come. He points to other industries like travel where the internet has allowed consumers to bypass travel agents to access information to book trips.

"I know that TREB's going to fight it pretty damn hard. But I think that this time around there might be a little bit of a tipping point with the way technology is and the way consumers are already receiving information in other industries."

Anticipating victory

Other brokers are also watching the case carefully.

Broker Fraser Beach is still emailing recent sold prices to people who sign up for his service. But the owner of Select/Plan Real Estate says he does so at his own risk.

"It's an ongoing concern because the bottom line is TREB could pull the plug based on their assertion that I was doing something wrong. And then it is a very arduous procedure to combat that."

Press Clippings for the period of September 22nd to 28th, 2015 / Revue de presse pour la période du 22 au 28 septembre, 2015

Beach would know. TREB axed his access to MLS in 2007 after he launched a website that offered broad access to real estate data including sold price information. He then unsuccessfully sued TREB.

But the broker is also hopeful that the Competition Bureau will be triumphant. In fact, he recently fine-tuned his sold data service with a [new website](#) in anticipation of a victory.

"Technology changes things and this is an evolution of the way the business should be conducted," he said.