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Press Clippings for the period of October 27 to November 3, 2014
Revue de presse pour la période du 27 octobre au 3 novembre, 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

OTTAWA CITIZEN

Union wants audit of contracting at Shared Services Canada

Kathryn May, The Ottawa Citizen, October 30, 2014

The union representing federal IT workers wants an investigation into the thousands of consultants hired by Shared Services Canada on multi-year contracts, claiming the practice flouts hiring rules and undermines the merit principle that is supposed to ensure a competent, non-partisan public service.

The Professional Institute of the Public Service of Canada (PIPSC) took its complaint about "rampant" contracting abuses at Shared Services to the Public Service Commission, which, as the government's staffing watchdog, is charged with monitoring hiring and staffing practices to ensure merit is protected. The union appealed to the commission for a full audit of contracting practices.

"What they are doing is circumventing all the rules and doing indirectly what they are not allowed to do directly, which is hiring them as employees but not have to treat them as employees," said employment lawyer Peter Engelmann on behalf of the union.

At the heart of the complaint is that Shared Services is hiring contractors for two or three years at a time for ongoing work and "core" jobs that PIPSC argues should be done in-house by public servants.

Contracting is allowed for short-term or temporary work to fill in for people on leave, or to handle fluctuations in workloads, special projects or a demand for expertise not available in the bureaucracy.

The union argues these multi-year contracts aren't for temporary work and are issued for what should be public service jobs. This allows Shared Services to skirt the Public Service Employment Act, which requires that all employees be hired on merit.

It also circumvents Treasury Board contracting rules that forbid contracts that could create an "employee-employer" relationship as defined in common law, the union says. Departments also can't use contracts to bypass rules, such as meeting the public service's bilingualism and geographic hiring requirements.

"Given that the protection of the appointment process and merit principle is a core part of the commission's mandate and jurisdiction, (Shared Services) misuse of contracting out, by which it is avoiding the appointment process and application of merit principle, is of serious concern" said the PIPSC in a submission to the PSC Monday.

The union also points to Shared Services' own internal audit, released earlier this year, which found hundreds of contractors had been hired over the course of a year in some 860 contracts worth $238 million.

"The number of contacts and the value of those contracts would suggest there are literally thousands of contractors, either from private companies or on their own, working for Shared Services," said PIPSC's submission.

Engelmann said Shared Services' reliance on contractors is "widespread" and has become "rampant" since the agency was created by the Harper government in 2011 to consolidate dozens of email systems, data centres and telecommunications services across 43 departments to improve efficiency and generate big savings.

A review of some recent contracts suggests the agency is seeking contracts for many workers at once for ongoing work. For example, a $5-million contract for 36 jobs at the King Edward Data Centre sought a range of technology skills to provide "day to day operational support and maintenance."

In some cases, the contracts are directly with individual contractors, and in others the contract is with private firms or temporary help agencies. These firms, in turn, advertise for contractors and collect a fee for finding them.

These consultants typically work like employees, and Engelmann argues they appear to meet all "trappings" or common-law tests for an employer-employee relationship.

They are listed in the government employee directory; need the same security clearances as bureaucrats; they do the same work and are based in the same offices. He said the work they are hired for "fits squarely" with the job descriptions of public servants working as full-time computer scientists or specialists. They aren't, however, entitled to the same benefits and protections as unionized employees.

The PIPSC complaint has been a long time coming. It's been sounding the alarm about the growing number of consultants who spend years working in a department alongside public servants – often making more money. Concerns were flagged by former Auditor-General Sheila Fraser, as well as by the previous PSC president, Maria Barrados, who conducted a similar audit on the use of temporary help agencies and the employees they placed.

Barrados found one in five temporary employees worked more than a year and she turned her concerns over to Public Works and Treasury Board to come up with solutions.

PIPSC, which represents many of the 14,000 technology workers who were moved to Shared Services, was an early supporter of consolidating in-house IT services to reduce duplication and improve efficiency. Since the agency's creation, however, PIPSC worries the move to consolidate services could be a first step to outsource or privatize IT services – particularly core services such as data centres, which it argues most companies keep in-house.

LeDroit

Le recours «excessif» aux sous-traitants dénoncé

Paul Gaboury, Le Droit, le 1er novembre 2014

Les pratiques de sous-traitance utilisées de manière «excessive» à Services partagés Canada (SPC) pour réaliser la transformation de l'infrastructure technologique du fédéral sont remises en cause par l'Institut professionnel de la fonction publique (IPFPC). Le syndicat exige d'ailleurs un audit «sans précédent» de la Commission de la fonction publique (CFP) sur ces pratiques visant à recourir à des contractuels.

Services Partagés Canada avaient été créés en 2011 pour transformer la façon dont le gouvernement gère son infrastructure de technologie de l'information. L'IPFPC est le syndicat du groupe Systèmes d'ordinateurs, qui comprend 3400 employés de Services partagés Canada. Son effectif total est de 55000 membres.

Tout en reconnaissant la nécessité de faire appel à la sous-traitance pour obtenir des services professionnels pour des besoins à court terme dans le cadre de projets particuliers, la présidente de l'IPFPC, Devi Daviau, estime que la sous-traitance est un problème dans plusieurs ministères fédéraux, et représente une somme de 10 milliards$ par année. La situation à Services partagés est encore plus problématique et elle nécessite une intervention comme un audit de la CFP, ce que permet la Loi sur la fonction publique fédérale.

«Ces contractuels se retrouvent à travailler dans des bureaux gouvernementaux aux côtés des employés du gouvernement et ont des liens hiérarchiques avec eux et souvent font le même travail qu'eux, a-t-elle indiqué.Le recours excessif aux pratiques de sous-traitance viole la Loi sur l'emploi dans la fonction publique et vise à soustraire les gestionnaires de la tutelle de la Commission de la fonction publique et de son pouvoir de nomination.»

De plus, dit-elle, le recours «exagéré» à la sous-traitance par Services partagés fait courir un risque aux Canadiens «en raison de l'impact potentiel sur la sécurité et la confidentialité des données et du coût élevé à long terme de la dépendance envers les sociétés privées pour ces fonctions gouvernementales fondamentales.»

La CFP a déjà soulevé des répercussions sur l'usage inapproprié d'agents contractuels sur les valeurs fondamentales de la fonction publique, le mérite, l'intégrité et l'équité, rappelle l'Institut professionnel.

«Nous croyons que la preuve est irréfutable et qu'elle devrait être rendue publique, selon Mme Daviau. Une véritable armée d'agents contractuels travaille maintenant aux côtés de fonctionnaires professionnels, mais les règles ne s'appliquent pas à tous de la même manière. Ils n'ont pas les mêmes droits et ne peuvent être tenus de suivre les mêmes normes sur le plan de la transparence et de la responsabilité.»

Le vérificateur général du Canada, Michael Ferguson, avait mené un audit en 2012 sur le recours à des contrats professionnels dans trois importants ministères, Travaux publics et Services gouvernementaux Canada, Santé Canada et Ressources humaines et Développement des compétences Canada.

À eux seuls, ces ministères avaient consacré 2 milliards$ à des contrats de services professionnels et spéciaux au cours de l'exercice 2010-2011, soit environ 25% des dépenses totales engagées par l'administration fédérale au titre de cette catégorie de contrats, soit 8,1 milliards$ à cette époque.

Depuis, le gouvernement Harper a lancé l'initiative Services partagés Canada qui a permis de regrouper les services informatiques des ministères fédéraux sous une seule entité, tout en faisant appel au secteur privé pour des contrats afin de moderniser l'infrastructure technologique.

«En procédant ainsi, les ministères ne sont pas en mesure d'examiner toutes les solutions qui s'offrent à eux pour gérer leurs effectifs. Ils pourraient donc ne pas être en mesure de réévaluer si la répartition du travail entre employés et contractuels reste optimale pour atteindre les objectifs de l'organisation», avait constaté M. Ferguson.

TPSGC avait notamment indiqué qu'il allait prendre des mesures pour intégrer ces recommandations à sa gestion des contrats professionnels.

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New spy bill would let Canadian agents operate illegally abroad

A bill to broaden the powers of CSIS would authorize Canadian spy agents abroad to break the laws of a foreign country when investigating threats to Canada.

Tonda MacCharles, Toronto Star, October 27, 2014

OTTAWA—A bill to broaden the powers of CSIS would, for the first time, explicitly authorize Canadian spy agents abroad to break the laws of a foreign country when investigating threats to the security of Canada.

After a tense week that saw Parliament Hill attacked by a gunman, the Conservative government unveiled a promised new bill to boost spy surveillance powers and protection for secret agents. Even before it was introduced, top RCMP and CSIS officials began lobbying for even greater legal "tools."

Public Safety Minister Steven Blaney on Monday tabled Bill C-44, the so-called "Protection of Canada from Terrorists Act." If passed into law, the bill would:

Extend complete confidentiality to CSIS sources, informants or covert agents, creating a "class privilege" for their identity and forestalling most legal challenges to the use of their evidence in court.

Explicitly confirm the legal authority of CSIS to conduct investigations within or outside Canada, something CSIS has claimed it has but which has been questioned in light of recent court rulings.

Broaden explicit authorization for CSIS to seek and use Federal Court warrants to authorize investigative activities — including electronic intercepts and other covert surveillance activities — outside Canada "without regard to any other law, including that of any foreign state."

The Conservatives previously rejected the creation of a foreign intelligence agency, citing cost, bureaucracy, and arguing CSIS already has a legal mandate to operate on foreign soil to investigate security threats to Canada. This makes CSIS much more akin to the CIA.

"It's an act of political courage," said University of Ottawa law professor Craig Forcese. "What a federal court judge is now authorized to do is authorize a warrant . . . to engage

in surveillance in a foreign country that presumably violates that foreign country's privacy laws."

"So the Parliament of Canada is now saying, 'We are prepared to allow our security intelligence service to violate state sovereignty.' "

In practice, the provision expressly allows CSIS to enlist the technical support of Canada's top secret electronics eavesdropping agency, CSEC (or Communications Security Establishment Canada) and its foreign counterparts in the U.S., United Kingdom, Australia and New Zealand in the "Five Eyes" alliance to spy on Canadians or foreigners abroad in pursuit of security threats to Canada. (The CSEC already has the mandate to provide "technical and operational support" to CSIS, but Forcese says this clarifies the reach of that power.)

However, Forcese argued that with increased spying powers should come robust oversight. He and others objected that the Conservative government made no move to increase the ability of Parliament or any other review body to oversee the operations of CSIS or CSEC, or the RCMP's national security operations.

If anything, agreed lawyer Lorne Waldman, it's worse now than eight years ago when the Maher Arar inquiry urged stronger oversight overall.

The Conservative government has rejected calls for a parliamentary oversight committee of MPs, abolished the office of the Inspector General of CSIS, has failed to create any oversight body for the Canada Border Services Agency, left the watchdog agency of CSIS — known as the Security Intelligence Review Committee or SIRC — understaffed, underfunded, and has not permanently replaced its disgraced chairperson Arthur Porter.

Others worry the blanket anonymity for CSIS's human sources will diminish an accused person's ability to challenge evidence and test the credibility of the Crown's case in a court of law, eliminating the possibility of cross-examination even by judges or special advocates. Others say it is tempered because an accused may apply for a court order to lift the veil of secrecy where identity is "essential" to establishing someone's "innocence," similar to cases involving police informants.

Lawyer Paul Copeland, formerly commission counsel to the judicial inquiry into Arar's deportation and torture in Syria, is a security-cleared special advocate assigned to challenge secret intelligence evidence that CSIS uses in immigration proceedings to deport foreign-born terror suspects. He has a clear warning: "One of the ways you test evidence is by cross-examining witnesses." He said CSIS informants have failed lie detectors in the past, with CSIS withholding that fact from a judge.

"This stuff to me is potentially explosive and I think it should be slowly reviewed by an informed committee in the House of Commons," he said.

Blaney, the lead minister responsible for CSIS and RCMP, told the Commons, the legislation will improve the ability of CSIS to work with other intelligence agencies to share information on Canadians going abroad or returning home.

"We will not overreact, but it is also time that we stop underreacting to the great threats against us," said Blaney in the Commons.

Liberal MP Wayne Easter said Liberals are "open-minded" about the bill, and believe CSIS should have a way to protect its informants abroad. But he questioned the push for more powers when he said authorities have yet to use those already on the books, such as punishing those who have gone abroad to engage in terror acts.

Government tables bill to give spy agency wider powers

Dylan Robertson, The Ottawa Citizen, October 27, 2014

The federal government has introduced a bill to boost the ability of the country's spy agency to monitor Canadians.

Amendments to the CSIS Act were tabled Monday under the title "The Protection of Canada from Terrorists Act." The bill also includes small changes to citizenship rules.

The government originally planned to put the bill forward last Wednesday, but that was before a gunman stormed the National War Memorial and Parliament Hill, killing a sentry and sending MPs and Hill employees into an extended lockdown. The gunman was quickly shot dead.

As expected, the legislation:

– Allows the Canadian Security Intelligence Service to obtain information on Canadians fighting abroad with terror groups through the "Five Eyes" spy network, which includes Canada, the United States, the United Kingdom, Australia and New Zealand.

– Lets CSIS more easily track Canadians engaging in terrorist activities abroad, and similarly helping a Five Eyes country track its nationals working with terror groups in Canada.

– Gives CSIS informants the same identity protection now accorded to police sources.

It appears the legislation did not change as a result of Wednesday's shooting, and the document tabled is still dated last Tuesday. The bill doesn't mention the Five Eyes by name, but clarifies that the agency can investigate outside of Canada, as it has done for years.

The legislation also includes technical amendments to the Strengthening Canadian Citizenship Act, which would speed up the immigration minister's ability to revoke Canadian citizenship from dual citizens convicted of terrorism in Canadian or foreign courts.

According to the Canada research chair in surveillance studies, the CSIS bill contains reasonable protections for civil rights.

"It's not as extreme as some people were predicting; there's some judicial oversight, it's not quite as bad," said David Murakami Wood, an associate professor of sociology at Queen's University in Kingston, Ont.

But Wood says Canadians remain in the dark about the implications of allowing more spy links with partnering countries. The government had previously indicated that the measure came in response to a rebuke last November by Justice Richard Mosley. Presiding over a secret trial on a suspected terrorist, he deemed warrants with foreign agencies a back-door way of spying on Canadians abroad that put them at risk of being detained abroad.

"Apparently they've identified some issues that are apparently remedied by this law, but we can't tell because we don't know what they are," said Wood.

Wood also repeated concerns made earlier this month that shielding informants from judges and those being accused could impede the right to a fair trial.

Wood says he's not sure whether the government has resisted rushing to implement laws that restrict civil liberties, or if they will be doing so shortly.

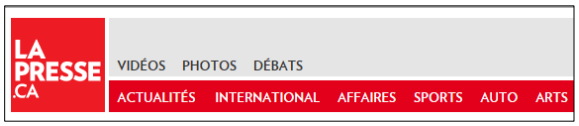
"They may actually be taking note of the reaction of other people that we should think about this more carefully," he said. "Or, there's more comprehensive stuff that will be coming through later."

The government has also said it will bring forward other legislation in coming weeks aimed at stopping and preventing terrorism.

"I am committed more than ever to move forward (and) have this bill tabled so we can make sure that CSIS has all the tools, the structure, the clarity that is needed in the laws," Blaney said on Friday. "I believe the more accurate tools we have, the more efficient we are at tracking those who could or would harm us."

Wood says he's not concerned by Monday's proposals, but is worried about future moves.

“I’m also going to be on the lookout for things thrown into other bills because this government has a tendency to hide things in other legislation … or putting completely irrelevant things into other bills, so that’s the other thing to look out for.”



Un individu ayant commis un crime ne peut obtenir le statut de réfugié

MÉLANIE MARQUIS, La Presse Canadienne, La Presse, le 30 octobre 2014

Une personne qui a commis un crime sérieux dans un autre pays ne peut obtenir l'asile au Canada, peu importe s'il a purgé ses peines et exprimé ses remords, a tranché jeudi la Cour suprême du Canada.

Le plus haut tribunal au pays s'est rangé du côté de la Commission de l'immigration et du statut de réfugié du Canada, qui a refusé d'octroyer le statut de réfugié à Luis Alberto Hernandez Febles en raison de ses antécédents judiciaires.

D'origine cubaine, M. Febles avait obtenu en 1980 le statut de réfugié aux États-Unis, craignant de faire l'objet de persécution à titre de dissident politique dans son pays d'origine. Durant son séjour aux États-Unis, il a été reconnu coupable à deux occasions de voies de fait avec une arme meurtrière.

Comme il s'exposait à un renvoi après avoir purgé ses peines, il est entré illégalement au Canada en octobre 2008, puis a revendiqué le statut de réfugié, ce à quoi la Commission s'était opposée en vertu de la Loi sur l'immigration et la protection des réfugiés.

L'article 98 de cette loi exclut de la protection toute personne qui a commis un crime grave de droit commun.

M. Febles plaidait que «l'exclusion prévue à cette disposition de la loi s'applique uniquement aux fugitifs qui se dérobent à la justice», ce qui n'est pas son cas puisqu'il a purgé ses peines, peut-on lire dans l'arrêt de la Cour suprême.

Le Haut-Commissariat des Nations unies pour les réfugiés, qui était intervenant dans cette cause, partageait l'analyse du demandeur d'asile, étant d'avis que la question est de savoir si ce dernier «mérite» l'asile au moment où il en fait la demande.

L'arrêt de la Cour n'est pas unanime: deux des sept juges ont exprimé leur dissidence et estiment que l'interprétation de la Loi sur l'immigration et la protection des réfugiés devrait être plus large.

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Projet de loi contre le terrorisme: une première étape, dit Blaney

MÉLANIE MARQUIS, La Presse Canadienne, La Presse, le 27 octobre 2014

Ottawa compte déposer d'autres projets de loi contre le terrorisme pour assurer la sécurité de la population, a signalé lundi le ministre fédéral de la Sécurité publique, Steven Blaney.

Le projet de loi C-44, qui vise à donner plus de pouvoirs aux autorités sécuritaires canadiennes en matière de lutte au terrorisme, ne constitue qu'une «première étape», a déclaré M. Blaney en Chambre.

«Il est clair que nous devons aller de l'avant avec d'autres mesures, et nous allons procéder avec célérité», a affirmé le député conservateur de Lévis-Bellechasse en guise de préambule au dépôt de son projet de loi, lundi.

«Soyons clairs: nous ne réagirons pas de façon excessive, mais nous ne resterons pas assis non plus, monsieur le président, et nous allons proposer des mesures concrètes pour lutter contre les «radicalistes', contre les terroristes, contre les islamistes et contre ceux qui veulent attaquer le Canada», a-t-il poursuivi.

Les députés de l'opposition ont réitéré lundi aux Communes qu'ils nourrissaient certaines inquiétudes en ce qui a trait au maintien du nécessaire équilibre entre les libertés civiles et la législation.

Faisant valoir que «la première responsabilité de tout gouvernement» était d'assurer la sécurité de sa population, M. Blaney a plaidé qu'il veillerait «évidemment» à ce que «les droits et libertés des Canadiens soient protégés».

Les changements proposés dans le projet de loi C-44 touchent principalement le Service canadien du renseignement de sécurité (SCRS).

Ils visent également à accorder une plus grande protection aux «sources humaines» de l'agence, à clarifier le pouvoir du gouvernement canadien d'agir à l'international et à élargir sa capacité de partager de l'information avec des agences étrangères.

Ottawa pourrait, par exemple, obtenir de services de renseignement étrangers des informations sur des ressortissants canadiens soupçonnés de vouloir se livrer à des activités terroristes afin d'être en mesure de les intercepter, a précisé le ministre Blaney.

Le projet de loi C-44 amenderait aussi la loi sur la citoyenneté canadienne afin de permettre au gouvernement d'appliquer plus rapidement des mesures de révocation de la citoyenneté.

Cela concernerait «les citoyens ayant la double nationalité déclarés coupables d'infractions de terrorisme, de haute trahison, de trahison ou d'espionnage, selon la peine reçue», a précisé le ministère de la Sécurité publique.

Le projet de loi C-44 devait être présenté aux parlementaires mercredi dernier, mais les fusillades survenues au Monument commémoratif de guerre du Canada et dans l'édifice du Centre du parlement ont empêché le gouvernement de le faire.

Le contenu de la première version rendue publique lundi est «essentiellement le même» que celui auquel on devait avoir droit la semaine passée, a signalé Jean-Christophe de Le Rue, directeur des communications du ministre Blaney.

Certains observateurs s'attendaient à ce que le projet de loi contienne des mesures pour abaisser le seuil permettant aux forces de l'ordre d'appréhender de manière préventive une personne qui pose une menace pour la sécurité nationale.

Ce n'est finalement pas le cas - «comme le ministre (Blaney) a dit, ce projet de loi devait être déposé mercredi dernier», a insisté M. de Le Rue -, laissant entendre que les assassinats de deux soldats, la semaine dernière, pourraient avoir une influence sur l'agenda législatif.

Mardi dernier, en conférence de presse, la Gendarmerie royale du Canada (GRC) a révélé qu'elle avait tenté de porter des accusations criminelles contre l'auteur du meurtre de l'adjudant Patrice Vincent, à Saint-Jean-sur-Richelieu, mais que la Couronne jugeait la preuve insuffisante.

Ces déclarations sont survenues la veille d'un autre attentat, celui qui a été perpétré mercredi dans la capitale fédérale et qui a coûté la vie au caporal Nathan Cirillo, abattu au Monument commémoratif de guerre du Canada.

La porte-parole néo-démocrate en matière de justice, Françoise Boivin, a soutenu vendredi dernier qu'elle craignait que la fébrilité qui règne sur la colline dans la foulée de ces tragiques événements puisse teinter indument le contenu de la législation conservatrice.

Le député libéral Marc Garneau a affirmé le même jour qu'il faudrait s'assurer que les projets de lois qui sont actuellement dans les cartons du gouvernement n'empiètent pas sur les libertés civiles des Canadiens.

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Ottawa songe à criminaliser la glorification d'actes terroristes

La Presse Canadienne, La Presse, le 29 octobre 2014

Le ministre fédéral de la Justice, Peter MacKay, songe à faire adopter une loi qui rendrait criminel le fait d'applaudir à un acte terroriste.

Un débat s'amorce déjà à Ottawa, opposant liberté d'expression et sécurité.

En arrivant à la réunion de caucus mercredi, une semaine après l'attaque par un homme armé au parlement, le ministre MacKay a confirmé qu'il étudie la possibilité d'une pareille loi.

«Il est évident que ce type de matériel est souvent utilisé pour recruter, encourager et - je n'aime pas particulièrement le mot - mais, glorifier. Et nous regardons vers d'autres pays, le Royaume-Uni, en particulier. Ils ont des lois que nous examinons», a confirmé le ministre.

La loi au Royaume-Uni s'attaque à «l'encouragement du terrorisme». Cet «encouragement» direct ou indirect est illégal. Une personne coupable de ce crime peut écoper jusqu'à sept ans d'emprisonnement.

Les groupes de défense des libertés civiles, au Royaume-Uni, s'en sont inquiétés.

«C'est un crime même si la personne ou le groupe qui fait la déclaration n'a pas l'intention d'encourager le terrorisme, peut-on lire sur le site du groupe Liberty. La définition du terrorisme est si large que l'on peut considérer comme criminels les gens qui dénoncent des régimes répressifs n'importe où dans le monde. Ces délits peuvent limiter sérieusement la liberté d'expression, (...) refroidir l'envie de parler, par exemple, de politique étrangère.»

Le ministre canadien, lui, tient à avoir des outils pour prévenir les gestes comme ceux de la semaine dernière. Et la «glorification» ou la «promotion» contribuent, selon le ministre MacKay, à «empoisonner de jeunes esprits» et à les mener vers la «radicalisation».

L'opposition néo-démocrate hésite à commenter la sortie du ministre. Le chef du NPD, Thomas Mulcair, préfère attendre le dépôt d'un éventuel projet de loi avant de se prononcer.

Mais le secrétaire parlementaire du ministre MacKay n'a pas hésité à dire son inconfort.

«Je pense que ce serait plutôt extrême d'aller à l'encontre de la liberté des gens», de l'avis de Robert Goguen.

«Est-ce que c'est quelque chose que les Canadiens accepteraient?», s'est demandé le député du Nouveau-Brunswick avant de conclure que l'idée sera étudiée.

Terror fight turns to Internet, sparking new free-speech debate

STEVEN CHASE AND JOSH WINGROVE, The Globe and Mail, October 30, 2014

The Canadian government says it's looking for a way to stop terror groups and their followers from using the Internet to advance their cause as a debate emerges over how to fight threats to Canada while preserving civil liberties including free speech and privacy.

Justice Minster Peter MacKay said measures could include tools to allow for the removal of websites or Internet posts that support the "proliferation of terrorism" in Canada.

"There's no question that the whole issue around radicalization and the type of material that is often used that we think is inappropriate, and we think quite frankly contribute to – again this is my word – the poisoning of young minds, that this is something that needs to be examined," Mr. MacKay said Wednesday.

His comments come as Canada's privacy watchdogs warn changes being planned to boost police powers after last week's terror attacks "must be measured and proportionate" to preserve Canadian democratic values.

A joint statement from 15 privacy and information commissioners raised concerns that new police powers could infringe on civil liberties and privacy rights.

"We acknowledge that security is essential to maintaining our democratic rights. At the same time, the response to such events must be measured and proportionate, and crafted so as to preserve our democratic values," the commissioners, including two federal watchdogs, wrote.

Mr. MacKay said Ottawa is examining laws in the European Union where lawmakers have grappled with the same problem.

Such measures risk infringing on free speech but Mr. MacKay said he believes it's possible to set "an objective standard" with which to judge what constitutes promoting

terrorism. He said he'd want judicial oversight "before you would make any – you know, any type of intervention."

"Encouragement of terrorism," including "glorifying" terrorism is an offence in Britain. Critics of transplanting such a measure to Canada question whether explicitly outlawing this will do any good.

Parliament's major political parties still disagree, though, on whether the slaying of Canadian soldiers last week constitutes terrorism.

Official Opposition Leader Tom Mulcair maintains that Canadians don't have enough evidence to label last week's killings terror attacks.

"The Prime Minister understands, as do Canadians, the fundamental difference between the horrific acts of a profoundly disturbed individual and organized terror," the NDP Leader said.

Liberal Leader Justin Trudeau, however, has begun describing the murders of Warrant Officer Patrice Vincent and Corporal Nathan Cirillo as terrorism, taking his lead from the Mounties. "The RCMP was clear, these were acts of terrorism," Mr. Trudeau said Wednesday.

The Liberal chief said his priority when judging new measures or police powers will be "is this going to keep Canadians safe?"

Mr. Harper rebuffed a proposal by Mr. Trudeau to create an all-party national security committee that might provide parliamentarian oversight of the Canadian Security Intelligence Service and other security agencies.

The Prime Minister said Canadians shouldn't presume that security is a threat to their rights.

"While obviously we always recognize the certain risks that exist, I do not think we should start from the assumption that everything our police and security agencies do are somehow a threat to the rights of Canadians. On the contrary, more often than not, security and rights find themselves on the same side of the ledger and Canadians do not have effective rights unless we can ensure their security – and that is what we intend to do," Mr. Harper said.

The privacy watchdogs speaking out Wednesday called on Ottawa to "adopt an evidence-based approach" over any new legislation proposed to beef up law-enforcement powers, to tell Canadians about the "nature, scope and impact on rights and freedoms" of any new laws or measures, and to ensure "effective oversight" be brought in for any new powers.

"Canadians both expect and are entitled to equal protection for their privacy and access rights and for their security. We must uphold these fundamental rights that lie at the heart of Canada's democracy," the joint statement said.

Don't rush to enact new anti-terror laws, former top judges advise government

Don Butler, The Ottawa Citizen, October 29, 2014

A panel of three former judges who led high-profile judicial inquiries that examined national security matters cautioned the federal government Wednesday not to rush to adopt new anti-terrorism laws based on this month's fatal attacks on two soldiers in Canada.

"The goal here is laudable, without a doubt," said Frank Iacobucci, who presided over an inquiry into the actions of Canadian officials in relation to Abdullah Almalki, Ahmad Abou-Elmaati and Muayyed Nureddin, three Arab-Canadian men who were detained and tortured in Syria and Egypt.

"But we have to be extremely careful about the means we employ to achieve those goals," said Iacobucci, a former Supreme Court judge. "If we rush to the legislative resort, we have to be careful of what we're doing in terms of overreacting."

Iacobucci made the comments during a panel discussion at the University of Ottawa involving John Major, another retired Supreme Court justice who led the inquiry into the 1985 bombing of Air India Flight 182, and Dennis O'Connor, who examined the case of Maher Arar, another Arab-Canadian who was jailed and tortured in Syria.

All three were asked what they thought about the government's tabling on Monday of legislation that would expand the powers of the Canadian Security Intelligence Services (CSIS, Canada's spy agency.

First, Major replied, the government should "rationally consider what powers they already have enacted, rather than a knee-jerk reaction to a present existing circumstance."

He said he agreed that force has to be met with force. "You can't stand idly by if there's danger. But it should be done with some caution."

That need not cause a major delay, Major said. "Government can figure out pretty quickly what powers they've already delegated to law enforcement and what more are needed."

For his part, O'Connor pointed out that the government's proposed legislation will be subject to scrutiny by the courts to see if its provisions conform to the Charter of Rights.

“One can take comfort that, in due course, there is that check and balance within our Constitution,” he said.

Iacobucci said Canadians should be “very concerned about overreach” in the struggle against terrorism. Though necessary, laws are by their nature reactive, he said. What’s needed are proactive efforts to better understand the motivation and underlying reasons for the increase in radicalization.

He also worried about the “spillover effects” of anti-terrorism measures on fundamental freedoms. “What bothers me a lot is the spillover into tainting a huge community, the Muslim community,” he said.

During the panel discussion — part of an event marking the 10th anniversary of the creation of the Arar commission — the three former judges reflected on their experiences with their inquiries.

Iacobucci urged legislative amendments to provide for independent followup reports after commissions of inquiry complete their work. Among other things, such reports should require the government to explain why it hasn’t enacted inquiry recommendations.

“Too often we get these reports and recommendations, and they just sit and gather dust,” he said. “There ought to be a way to have more transparency and accountability.”

Major’s 2010 report into the Air India bombing made 64 recommendations, few of which were adopted.

The most important, he said, was to create a national security adviser, to referee chronic disputes between CSIS and the RCMP.

Had the two agencies shared the information they had prior to the Air India bombing, which killed 329 people, including 268 Canadians, “they could have foiled the attack,” he said.

Major said his report called for the appointment of a single individual as national security adviser, but Vic Toews, then minister of public safety, rejected it, saying he did not support the creation of a “department” of national security.

That leads to one of two conclusions, Major said: “One, that Toews never read the report. Or that he was so stupid he didn’t understand the report.”

Herald News
Home News Opinions

Former PBO Kevin Page: ‘Ottawa is Putinesque’

SELENA ROSS, Halifax Chronicle-Herald, October 31, 2014

Parliamentary Budget Officer Kevin Page appears as a witness at a Commons public accounts committee on Parliament Hill in Ottawa in 2012. Page spoke at a fundraiser for the Canadian Centre for Policy Alternatives Thursday. (THE CANADIAN PRESS / File)

Parliamentary Budget Officer Kevin Page appears as a witness at a Commons public accounts committee on Parliament Hill in Ottawa in 2012. Page spoke at a fundraiser for the Canadian Centre for Policy Alternatives Thursday. (THE CANADIAN PRESS / File)

Former parliamentary budget officer Kevin Page slammed Prime Minister Stephen Harper in a speech in Halifax on Thursday, comparing him to Vladimir Putin, the president of Russia.

Page, asked to speak about accountability in Ottawa, said he thinks Canada has changed so much in recent years, it needs a long, drawn-out American-style election to air all the important questions.

“I think what we’ve got in Ottawa right now is Putinesque. It’s control from the top down,” Page said at an annual fundraiser for the Canadian Centre for Policy Alternatives.

It wasn’t complete disregard for the Tories, however.

“I respect them all,” Page said of Conservative federal leaders.

“In some ways they’re very good people, but they’re quite weak leaders in some ways. This is not leadership.”

Page said he hopes the upcoming election will force the Harper government to answer for some of its policies that it otherwise won’t explain.

As parliamentary budget officer from 2008 to 2013, Page took the government to court over its refusal to provide his office with financial information.

In his speech, he said he routinely sought information from the source when he couldn't get it in Ottawa, going to provincial capitals and often to Washington, D.C., and other international destinations to get facts on Canadian contracts and other deals.

"2015 — we can't waste this election," Page said.

"I don't see this government changing, and I see them dismantling institution by institution. We need to start the debate now."

Page said he hopes to see science and the environment become key election topics, as well as health care.

The Senate scandal is another source of frustration.

"I would say the Senate has completely lost trust, and I'm a believer of the Senate," Page said.

Prior to becoming the PBO, Page worked in other Ottawa agencies, including the Department of Finance and the Privy Council Office.

He saved special criticism for the changes he has seen in the Prime Minister's Office, saying the cheque Harper's former chief of staff Nigel Wright wrote to cover disgraced Senator Mike Duffy's expense debts was "rock bottom."

"PMO is broken," he said. "I've worked for 10 years one floor above the Prime Minister's Office. It's never been this bad.

"They have no idea what they're doing. They don't know what it's like to run departments or how programs get run.

"To have a chief of staff write a cheque to a senator?" he said. "That isn't fine. Their job is to hold the executive to account. You don't write a cheque to somebody to hold (him) to account."

Page said Canada has seen a major cultural change. But in an interview after the speech, he said he believes there will be a return to more open government communications.

"What I hear from people is, they hate that," he said.

"In an information age — youth, that's not their future."

Since his appointment ended last year, Page has become a research chair at the University of Ottawa.

When asked if he plans on a return to the world of public policy, he said he doesn't feel removed from that world now.

C-377 rises from the grave

By Robyn Benson, President of PSAC, PSAC Blog, October 29, 2014

It's back.

People will recall the battle over anti-union Bill C-377, another one of those "Private Members' Bills" that gets full approval and support from the Harper government's front office. This one was so grossly discriminatory and unconstitutional that the Conservative-dominated Senate, in a rare move, amended it to the point of shredding it and sent it back to the House of Commons. To what I imagine was Harper's dismay, 15 Conservatives joined with Conservative Senator (and mover of the amendments) Hugh Segal, and six more of them abstained from the vote. That's how bad the thing was.

The amended bill should have gone back to the House of Commons, but Parliament was prorogued before that could happen, so under the rules, the Bill ended up back in the Senate, unamended. Not a scratch on it. Bad as new.

It sat around for a year or so, but is now under Senate consideration. And by no coincidence at all, Harper Conservatives in the Senate are moving quickly to change the rules in their favour. Private Members' Bills are presently open to free debate in the Senate. But the Conservatives want to impose time allocation on those debates so they can whisk the legislation through.

For those who have forgotten what C-377 contains, here's a refresher:

C-377 is discriminatory, targeting labour organizations specifically. No other association, corporation or non-profit organization in Canada is required to submit to this level of intrusion, even organizations like the Fraser Institute which actively lobby the government against unions.

C-377 is not about "transparency." Unions are already required by law to provide regular, detailed financial reports of assets, liabilities, income and expenditures to their memberships. C-377 not only requires labour organizations to file an additional twenty-one reports that would chew up enormous union resources to produce, but to pass on all of that information to the Minister of Revenue for public posting.

Privacy rights are ignored in C-377. Highly detailed personal information would be forcibly publicized, such as medical benefits covered for individual employees, who would be publicly identified.

Union strategy would be forcibly publicized to employers. But there would be no such requirement for those employers to disclose back. As Senator Hugh Segal said last year, "How about a law that forced my political party to disclose its campaign, travel, research and advertising budgets to the Liberal Party of Canada or to the NDP two weeks before the election was called? Perhaps Coca-Cola should be forced to disclose to Pepsi its marketing plan and expenditures over $5,000."

C-377 covers all labour organizations, big or small. Union Locals, usually run by part-time volunteers, would also have to research, produce and file all this paperwork. The same would go for labour councils, federations, union committees and other labour bodies. Failure to comply would mean heavy fines.

Segal rightly described Bill C-377 as "immature, ill-conceived and small-minded." Nothing has changed, except that he has since retired: his strong pro-union voice in the Senate will not be heard during the current debates. But you can make sure yours is. Let's put a stake through C-377's heart once and for all, before it begins to feed.

Editorial: Harper's Ottawa is Omnibusted

The Globe and Mail, October 27, 2014

Whatever feelings of solidarity were aroused by the sight of the three main party leaders hugging it out on the Commons floor the day after last week's lone-gunman assault on Parliament Hill were extinguished several hours later, when the Harper government tabled yet another of its contemptuous omnibus budget bills. The new normal is the old normal in Ottawa.

We have been decrying the government's addiction to omnibus budget bills – and to smaller bills that bundle unrelated policies together – with growing alarm since 2010. That year, the minority Conservative government tabled an overstuffed turkey that topped out at 880 pages and was served with the threat of an election if the opposition failed to support its passage. It lumped together such unrelated issues as ending Canada Post's monopoly on overseas mail delivery with changes to environmental assessments.

Subsequent omnibus bills have ranged between 300 and 450 pages. All have been an abuse of process and shown contempt for Parliament by subverting its role. Major changes to policy and law that should have been examined by MPs have been pushed through with almost no debate, sometimes with disastrous results for the Harper government. For instance, one omnibus budget bill contained an amendment to the

Supreme Court Act that allowed the Prime Minister to name Justice Marc Nadon to the Supreme Court in spite of his ineligibility. We know how that ended.

And now the government has returned with another omnibus budget bill of 458 pages. Buried within it is the language from a private member's bill that would allow the provinces to deny welfare to refugee claimants awaiting a decision on their status, among other vulnerable non-citizens. That bill, C-585, would have gone to second reading next month; now it is in Finance Minister Joe Oliver's budget monstrosity.

Among other things, this settles the question of whether the government supports the private member's bills that its caucus members table as though they were their own creation. Even more tellingly, it suggests that the Harper government's contempt for Parliament has become so ingrained that it could not be bothered to hide it even on a day that was marked by a heightened respect and gratitude for our country's greatest symbol of democracy.

Ottawa to blacklist employers that break provincial labour laws

BILL CURRY, The Globe and Mail, October 27, 2014

The Conservative government is beefing up its blacklist of Canadian employers with a plan to include not only businesses found to have broken temporary foreign worker program rules, but also provincial labour laws.

The move is the latest in a series of policy changes responding to allegations of abuse related to the foreign worker program.

The expanded powers are contained in the Conservative government's latest omnibus budget bill, which was introduced late last week. The enforcement of labour law is primarily a provincial responsibility and enacting the change will require information-sharing agreements between Ottawa and the provinces, something Employment Minister Jason Kenney has recently said he is working toward.

But more than four months after Mr. Kenney and Immigration Minister Chris Alexander announced major changes to the TFW program, employers are concerned that the new rules are still unclear.

Garth Whyte, president and CEO of Restaurants Canada, said it would be "devastating" for any business to be added to a blacklist, but important questions remain as to the

government's plans. Mr. Whyte says abusive employers should be named, but his organization is concerned that honest mistakes could land a business on the blacklist, given the lack of clarity over the government's changes.

"The devil's in the details and the details haven't been worked out yet," he said. "All legitimate businesses won't be on that blacklist, but the issue is how do we ensure that those trying to use the program in good faith are not put on a blacklist. I think that's the big issue."

For years, Immigration Canada maintained a TFW program employer blacklist that had no employers on the list. The government said that was due to a technicality in the wording and a new list was launched this year on the website of Employment and Social Development. That list currently names four employers, all of which were added between April and June of 2014.

Three of the four employers are in the restaurant sector, including an owner of three McDonald's franchises in Victoria. One of the most sweeping aspects of the June changes was a provision that effectively bans all employers in the accommodation, food services and retail sectors from accessing the temporary foreign worker program unless they are in a region where unemployment is above 6 per cent.

Since the broad changes were announced in June, the government has published a discussion paper outlining a detailed list of potential infractions that would trigger fines of varying amounts. The government also proposes bans of varying lengths in terms of access to foreign workers.

The changes in the latest government budget bill would give Ottawa the power to list employers convicted "under any other federal or provincial law that regulates employment or the recruiting of employees." Currently the blacklist is limited to employers found to be in violation of federal immigration law.

A spokesperson for Mr. Kenney said the changes in the budget bill follow through on the overall changes announced in June.

NDP MP Jinny Sims said the government regularly announces tougher rules in response to controversy, but then fails to follow through with proper enforcement to ensure that employers are in compliance.

"Repeatedly, they have failed to genuinely stop abuse of this program," she said. "They always adopt half-measures in response to media stories when they get caught, but it seems that even when they have rules, they're unwilling to enforce them."

A ‘tough case’: Ghomeshi, the CBC and the law

SIMON HOUPT AND JEFF GRAY, The Globe and Mail, October 27, 2014

The scandal enveloping the Canadian Broadcasting Corporation over its handling of the dismissal of radio host Jian Ghomeshi is already making Canadian media history.

Now, it may make Canadian legal history too.

On Sunday, the CBC dismissed Mr. Ghomeshi over what it said it was information it had recently received that precluded it from continuing his employment. But after the host fired back with a $55-million lawsuit, lawyers were divided on whether he has a realistic chance of success.

Popular radio host Jian Ghomeshi filed a multi-million dollar lawsuit againt CBC after he says he was fired over his sexual behaviour. Howard Levitt, Senior Partner, Levitt & Grosman joins BNN to explain why he believes the case will never make it to court, and why Jian Ghomeshi isn't legally entitled to the money.

On Monday afternoon, Mr. Ghomeshi filed a statement of claim against the CBC, claiming $25-million in damages for breach of confidence, $25-million in damages for defamation, and $5-million in punitive, aggravated and exemplary damages.”

But employment lawyers say the host’s move to also file a grievance through his union appeared at odds with his lawsuit. Normally, employees cannot do both, and the issues in a wrongful dismissal case involving a union employee would be resolved through arbitration – not a lawsuit, lawyers say.

“It’s a tough case,” said Natalie MacDonald, a partner with Rudner MacDonald LLP and the author of Extraordinary Damages in Canadian Employment Law. “There’s no easy answer.”

Lawyers say that while many people may think they cannot be fired for bad behaviour that they commit on their own time, legally in Canada employers can fire anyone, with cause, if they can demonstrate the bad behaviour – even if it does not result in criminal charges – damages their reputation.

“The issue really comes down to whether or not the employer is going to have sufficient evidence to prove that it had a reason to terminate. The issue will become whether or not CBC is going to be able to prove that it affected their reputation to such an extent that they needed to take this action,” Ms. MacDonald said.

“Any time the court can point to behaviour that is inappropriate and that is going to somehow be linked to the company, and can harm the company, the courts are going to be more sympathetic to the employer,” she said.

In the case of Mr. Ghomeshi, however, they may have acted prior to any damage being done, Ms. MacDonald noted, and thus precipitated both the revelations and the resulting alleged damage to Mr. Ghomeshi’s reputation. She pointed out that, when high-profile executives are dismissed, the company usually takes steps to minimize the potential damage to their reputation by suggesting, for example, that they want to spend more time with their families.

Mr. Ghomeshi’s case may intersect as well with developments in new media. While the law has not changed, the issue of social media and the reputational damage that can be done there is now a bigger issue for employers, said Erin Kuzz, a senior partner with Toronto law firm Sherrard Kuzz LLP who advises companies on employment law.

“What happening is we are seeing it and hearing it more and more because of social media,” Ms. Kuzz said. “Things that used to be kept private before an employee and an employer ... can now be made public more quickly.”

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ACTUALITÉS OPINION CAHIERS SPÉCIAUX

La Cour suprême donne raison à Air Canada

Le transporteur n'a pas à indemnisé un couple de Franco-Ontariens qui estimait que ses droits linguistiques n'avaient pas été respectés

Philippe Orfali, Le Devoir, le 28 octobre 2014

Défaite sur toute la ligne pour un couple de Franco-Ontariens qui contestait devant les tribunaux la portée de la Loi sur les langues officielles. La Cour suprême vient de conclure qu’Air Canada n’a pas à mettre en place un système de suivi des violations des droits linguistiques de ses passagers. Le transporteur n’aura pas non plus à dédommager Michel et Lynda Thibodeau, à qui la Cour fédérale avait d’abord accordé 12 000 $.

Une réparation n’est pas « convenable et juste » si son octroi contrevient aux obligations internationales qu’impose au Canada la Convention de Montréal, malgré ce qu’indique la Loi sur les langues officielles en matière de dédommagement, conclut le plus haut tribunal au pays, dans une décision partagée.

« Il faut rejeter l'argument des [Thibodeau et du Commissariat aux langues officielles] selon lequel le statut quasi constitutionnel de la LLO empêche [de l']interpréter harmonieusement [avec] la Convention de Montréal », indique le tribunal dans un jugement rédigé par le juge Thomas Cromwell.

Revers de taille

Il s'agit d'un revers de taille pour Michel et Lynda Thibodeau, un couple de Franco-Ontariens de la région d'Ottawa, qui dénonçaient depuis plusieurs années les bévues linguistiques dont ils ont été victime à bord du transporteur national.

« Autoriser une action de ce genre compromettrait l'un des principaux objectifs de la Convention de Montréal, qui est d'assurer l'uniformité entre les pays quant aux types de recours en dommages-intérêts pouvant être exercés contre les transporteurs internationaux pour les dommages subis au cours du transport de passagers, de bagages et de marchandises, et aux plafonds applicables à ces recours. »

L'un des pires dossiers

Depuis des décennies, chaque année, Air Canada figure invariablement au sommet de la liste des pires violateurs de la Loi sur les langues officielles. Pas moins de 370 plaintes ont été acheminées au Commissariat aux langues officielles depuis 2006. La partie visible de l'iceberg, selon l'organisme.

En tant qu'ancienne société d'État, Air Canada a toujours l'obligation d'offrir ses services en anglais et en français. L'assujettissement du transporteur à la Loi sur les langues officielles ne pose aucune ambiguïté, mais l'entreprise continue d'interpréter ses obligations linguistiques de façon réductrice.

En 2011, un jugement de la Cour fédérale donnait raison aux Thibodeau, caractérisant de « systémiques » les problèmes de non-respect de la loi chez Air Canada, et leur octroyant 12 000 $ en dommages-intérêts.

Surtout, la Cour forçait l'entreprise à créer un système de surveillance des violations des droits linguistiques de ses employés et usagers. En 2012, la Cour d'appel cassait partiellement la décision, réduisant les indemnités de moitié et supprimant l'obligation pour Air Canada de faire l'inventaire de ses bévues linguistiques. Les Thibodeau demandaient aux juges de la Cour suprême de rétablir le premier jugement, ce qu'ils ont refusé de faire.

La décision devait tomber vendredi dernier, mais a été exceptionnellement repoussée à mardi en raison de l'attentat au parlement, la Cour suprême étant située à côté du parlement.

LA PRESSE .CA
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ACTUALITÉS INTERNATIONAL AFFAIRES SPORTS AUTO ARTS

Air Canada a gain de cause en Cour suprême dans une cause linguistique

La Presse, le 28 octobre 2014

Air Canada ne peut se voir imposer de dommages-intérêts s'il viole la Loi sur les langues officielles sur un vol international, a tranché la Cour suprême du Canada dans un jugement fort attendu rendu mardi.

L'affaire portait sur quatre plaintes déposées auprès du Commissaire aux langues officielles en 2009 par deux francophones d'Ottawa, Michel et Lynda Thibodeau. Les plaintes portaient sur trois vols entre Toronto et les États-Unis (Atlanta et Charlootte).

Aucun agent de bord ne parlait français sur l'un des vols, le pilote n'a pas fait d'annonce dans la langue de Molière sur un autre et ils n'ont pas reçu de service en français sur le troisième.

À titre d'ancienne société d'État, Air Canada est tenue d'offrir des services dans les deux langues officielles. Les tribunaux, tant en première instance qu'en appel et en Cour suprême, ont tous reconnu que les agissements du transporteur ont contrevenu à ces obligations.

La question en litige portait sur les remèdes appropriés. La juge de première instance a imposé un total de 12 000 $ en dommages et intérêts à Air Canada (1500 par plainte, par personne), de même qu'une ordonnance l'obligeant à mettre en place un système de surveillance des violations des droits linguistiques.

La Cour d'appel fédérale a infirmé cette décision et la Cour suprême a confirmé ce dernier jugement mardi.

Selon le plus haut tribunal du pays, des dommages et intérêts ne pouvaient être imposés en vertu de la Loi sur les langues officielles, puisque ces dommages contreviennent à la Convention de Montréal. Cette convention adoptée en 1999 limite les cas où la responsabilité d'un transporteur peut être retenue à la perte de bagages, les dommages corporels et les retards.

« Les demandes de dommages-intérêts [...] ne font manifestement pas partie des recours autorisés », a tranché le juge Thomas Cromwell au nom de la majorité. Les juges Rosalie Abella et Richard Wagner sont dissidents.

Quant à la mise en place d'un système de surveillance, « l'ordonnance est trop imprécise, elle risque de donner lieu à d'incessantes procédures et mesures de supervision judiciaire », a écrit le juge Cromwell.

La Cour a précisé que cette décision n'a pas pour effet d'écarter tous les remèdes prévus par la Loi sur les langues officielles ni les dommages dans les cas où ils ne sont pas contraire au droit. À noter de plus que l'affaire ne portait que sur des vols internationaux.

Air Canada ressort donc de ce litige hautement médiatisé avec un jugement déclarant qu'elle a violé ses obligations, et avec une seule lettre d'excuse à adresser aux Thibodeau.

Supreme Court rejects payout for couple who wanted to order 7Up in French

Don Butler, The Ottawa Citizen, October 28, 2014

The Supreme Court of Canada has denied financial compensation to an Ottawa couple who sued Air Canada when, among other things, they could not order a 7Up in French.

Though the top court ruled by a five-to-two margin Tuesday that the airline violated Michel and Lynda Thibodeau's French-language rights, it found they did not qualify for monetary damages.

The Federal Court of Canada had awarded them damages of $12,000, but its judgment was set aside by the Federal Court of Appeal, which awarded the couple a lower amount.

The couple, who live in Orléans, filed eight complaints with the official languages commissioner over the English-only service they said they received during three trips they took between January and March 2009.

On a flight from Charlotte, N.C., to Toronto in 2009, Lynda Thibodeau asked in French for a 7Up, Michel Thibodeau said in an affidavit filed with the court. The unilingual English-speaking flight attendant served her a Sprite instead.

In earlier court proceedings, Air Canada admitted to four breaches of the Official Languages Act in the Thibodeau case.

Among other things, it admitted there was no bilingual flight attendant on the flights taken by the Thibodeaus in 2009 and that there was no translation of an announcement made by the pilot about arrival time and weather on one of the flights.

The case was the second time that Michel Thibodeau, a crusader for French-language rights, had sued Air Canada or its subsidiaries for failing to provide service in French.

In 2000, he was refused service in French when he tried to order a 7Up from a unilingual English flight attendant on a flight from Montreal to Ottawa.

He filed suit in Federal Court for $525,000 in damages. The court upheld his complaint, ordered the airline to make a formal apology and pay him $5,375.95. Thibodeau was later honoured by the French--language rights group, Impératif français.

In 2007, he filed a complaint against the City of Ottawa, accusing it of not providing sufficient bilingual services on its buses.

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thestar.com

Ex-citizenship judge jailed for illegally revealing citizenship exams

Philip Gaynor, 71, was sentenced to three years for the "reprehensible" act of providing copies to an immigration consultant to make extra money.

Jacques Gallant, The Toronto Star, October 30, 2104

A retired citizenship judge has become the first in Canada to be imprisoned for breach of trust after illegally providing copies of citizenship exams.

Family members wept as Philip Gaynor, 71, was led away in handcuffs Wednesday following Ontario Court Justice Harvey Brownstone's sentence of three years. He said Gaynor's "reprehensible" and "appalling" actions went "straight to the heart of the integrity of Canada's immigration system" and potentially tarnished new Canadians' perception of the judiciary.

"In my 20 years on the bench, I have never had the misfortune to deal with something like this," he said.

While still a citizenship judge in February 2012, Gaynor began stealing exam papers and providing them to Scarborough immigration consultant Li Ling, 49, whom he had meet in

2007, and her assistant Mo Sui Zhun, 58. Brownstone said this continued even after Gaynor's retirement in September 2012, lasting until about April 2013. Li and Mo were charged with possession of stolen property last year. The status of those charges is unclear.

The papers were then given to citizenship applicants who went through Li's consulting business. The court heard that Gaynor had engaged in a "social" and later "personal" relationship with Li — inappropriate given his position, said Brownstone — and was paid in cash for the papers. It is unclear how many applicants benefitted from this arrangement.

Gaynor was arrested in May 2013 and pleaded guilty earlier this year to breach of trust and fraud over $5,000, in relation to collecting EI benefits after his retirement but while still receiving income from Li. Brownstone noted that Gaynor did pay more than $11,000 in restitution last month. He sentenced Gaynor to 90 days for fraud, to be served concurrently with the three-year sentence.

In 2010, the Conservative government launched a new citizenship test and raised the passing mark to 75 per cent from 60 per cent. The failure rate almost tripled as a result. The 20 multiple-choice questions measure applicants' knowledge of Canadian history, culture and values. Besides passing the test, they must demonstrate proficiency in English or French, and have no criminal record.

"The sentencing of former Citizenship Judge Philip Gaynor demonstrates that Canadian citizenship is not for sale," said Citizenship and Immigration Canada spokeswoman Johanne Nadeau. CIC now uses an electronic system where each test contains a random scrambling of questions, making the type of crime committed by Gaynor much more difficult to carry out.

Crown attorney Julie Battersby had asked for a three- to four-year prison sentence, saying Gaynor's actions were carried out over several months and were not a simple oversight. She said the country as a whole was a victim of his crimes.

Defence lawyer Brian Scott requested two years, pointing out his client's age, lack of a criminal record, close family ties and good standing in his community. He also asked Brownstone to consider a conditional sentence, but admitted that the case law stipulates that the appropriate sentence for breach of trust is prison time.

Brownstone took issue with Gaynor's statement that he didn't want to see "good people" be denied citizenship because they failed the multiple-choice test. He said Gaynor was clearly worried about finances with his retirement imminent, and wanted to make some extra money.

The position of citizenship judge is a political, quasi-judicial appointment that doesn't necessarily require legal experience. The judge administers citizenship exams, adjudicates if an applicant meets all the citizenship requirements, and swears in the country's new citizens at ceremonies. They make between $91,800 and $107,900 a year.

Brownstone said the impact of Gaynor's conduct extends to criminal and civil judges who preside in courtrooms every day.

"To the average citizen, a judge is a judge is a judge," he said. "Immigration judges are often our newest citizens' first contact with the law. (Gaynor's actions) give the impression that a Canadian judge can be bought."

In his short address to the court before his sentence, Gaynor, holding back tears, said he was "deeply sorry" and wished he could go back and change what he did. After he read his sentence, Brownstone told Gaynor he still has a promising future ahead of him, and suggested he write a book about his own experience as an immigrant — having come to Canada from Ireland in 1963 — and seeing scores of new Canadians pass before him.

The RCMP launched its investigation in 2012 after a complaint from immigration officials. Among the evidence in the Crown's case was a wiretap from a conversation Gaynor had with an undercover police officer, in which he admitted that he should not have been in possession of the exams.

A longtime resident of Durham Region, Gaynor was appointed a citizenship judge in 2006 by the Conservative government and reappointed to another three-year term in 2009.

The court heard he had been a volunteer on the election campaign of late federal finance minister Jim Flaherty and was a Toronto auxiliary police officer for 18 years. A Citizenship and Immigration Canada biography listed him as a former executive at the T. Eaton Co., Gordon Brothers and Premier Brand Foods.

Defined contribution pension plans more costly, study finds

Janet McFarland, The Globe and Mail, October 2014

Converting large public sector pension plans into defined contribution savings accounts for employees could cost governments up to 77 per cent more to provide the same retirement benefit for workers, a report argues.

A study sponsored by the Canadian Public Pension Leadership Council, an association of large public pension funds, says governments considering converting their traditional defined benefit (DB) pension plans would face higher administration costs because defined contribution (DC) plans cannot be run as efficiently.

A new report says Canadian pension plans have erased half their deficits so far in 2013 thanks to higher interest rates and stronger markets.

DB pension plans pay workers a guaranteed level of income in retirement, while DC pension plans operate like individual savings accounts, paying out a retirement benefit that varies depending on the investment performance of the funds.

The pension council said it commissioned the study because there have been increasing calls by some provincial opposition parties and pension advocates for governments to shut down their large employee pension plans and convert workers to DC savings plans. Former Ontario Conservative leader Tim Hudak, for example, said in 2013 that the province should negotiate a transition to DC pension plans to reduce funding requirements, while the Saskatchewan New Democratic Party advocated in a 2013 study that more governments should shift public sector pensions to a DC model to cut costs for taxpayers.

“There’s an attack on public sector defined benefit plans, and we wanted to substitute facts for impressions,” study author Robert Brown, a pension researcher and actuary, said Tuesday. “We think it’s a fairly overpowering argument.”

Mr. Brown, a retired University of Waterloo professor, said DC plans are less efficient than DB plans because members must pay more for asset management and do not pool their risk of living longer than average; so they must each save enough to cover longer lives.

The result is that a hypothetical $10-billion DB plan would see the cost of providing the same retirement benefit rise by 77 per cent if it converted into individual-account DC plans.

Mr. Brown said DB pension benefits paid to workers are typically composed of 75 per cent from investment income and 25 per cent from contributions, which are typically split equally by employees and the employers. To achieve the same income from individual DC accounts, the study said investment returns would provide just 55 per cent of the final benefit, requiring workers and employers to cover 45 per cent of the cost.

The report said governments must also continue to manage the remaining DB plan that continues to exist after workers are shifted to DC, and have often found their liability soars because workers are not making any new contributions while the funding obligation remains and can grow.

Saskatchewan, which converted employees to DC plans in 1977, saw costs for its legacy DB plan climb in the first decades after it was closed, and will continue paying benefits under the plan for 90 years, the report said.

Two U.S. states – Nebraska and West Virginia – that converted employees into DC plans ended up partly converting back to DB because of a backlash about how low retirement income was for employees, the study adds.

The study also argues that governments do not enjoy the same savings as a private sector companies when they shift workers to DC plans because workers who end up with less retirement income can qualify for higher payments from Old Age Security or the Guaranteed Income Supplement for low-income retirees, so governments have to fund their pension costs through another route.

Mr. Brown said that if the motivation to convert to DC plans is to cut pension funding costs for governments, the outcome would be achieved more efficiently by modifying features of the DB plan – such as eliminating guaranteed inflation indexation – than by eliminating the plan entirely.

“If you’re concerned about the level of costs, then let’s talk about the level of benefits,” he said. “But don’t try to achieve cost reductions just by moving out of the DB delivery model, because it’s the most efficient and effective model there is.”

Un quiproquo linguistique mène à une arrestation pour menaces de mort

Louis-Denis Ébacher, Le Droit, le 29 octobre, 2014

Deux employées fédérales et le procureur général du Canada doivent dédommager une fonctionnaire qui a été arrêtée par la police parce qu'une intervenante anglophone du Programme d'aide aux employés, qui a mal compris les nuances de la langue française, croyait qu'elle « voulait tuer son père ».

En réalité, l'employée francophone, identifiée par de simples initiales par la Cour supérieure, voulait se débarrasser de pensées obscures concernant son père, sans vouloir mettre fin à la vie de celui-ci. La Cour supérieure a imposé une indemnisation de 174 319 $ pour ce quiproquo linguistique.

Lors de deux nuits en deux semaines, en 2009, la fonctionnaire francophone s'était imaginée en train de tuer son père. À l'époque, la femme venait de refuser à son père - un joueur compulsif - de lui prêter de l'argent pour une énième fois. En novembre, elle a consulté le Programme d'aide aux employés, afin qu'on la dirige vers un professionnel pour mettre fin à ses pensées indésirables.

La fonctionnaire a consulté une intervenante anglophone, qui a une cote de bilinguisme de niveau C, et lui a confié son histoire familiale et les pensées survenues lors des deux nuits. L'intervenante a compris que sa patiente faisait des menaces de mort. La patiente

maintient qu'elle s'est surprise à imaginer deux scénarios dans lesquels elle tuait son père, mais qu'elle n'avait jamais dit qu'elle voulait passer à l'acte.

« Les questions de l'intervenante lui donnent l'impression qu'elle ne comprend pas tout à fait bien », résume la juge Carole Therrien dans sa décision du 6 octobre dernier. « Elle en parle à son interlocutrice, ce qui semble la vexer. [L'intervenante] lui dit qu'elle comprend très bien le français. [La fonctionnaire] lui propose donc de continuer en permettant à chacune de parler sa langue, ce qu'accepterait [l'intervenante]. [...] Malgré cela, [la fonctionnaire] adapte son débit et répète à l'occasion, n'ayant pas le sentiment d'être totalement comprise. »

Enfin, un des principaux arguments de la plaignante est retenu par le tribunal.

« Lorsque [la fonctionnaire] exprime avoir eu à deux occasions des pensées au cours de la nuit, [l'intervenante] semble comprendre que sa cliente a des pensées d'homicide depuis deux semaines. La conclusion de [l'intervenante] réfère davantage à des pensées constantes depuis deux semaines, alors que le discours de [la fonctionnaire] concerne deux événements bien précis durant la nuit. »

La patiente a soutenu n'avoir eu aucune intention de passer à l'acte, mais qu'elle était inquiète d'avoir ce genre de pensées.

Intervention policière

Lors de la consultation, l'intervenante s'est adressée à sa supérieure et lui a demandé de contacter la police puisqu'une cliente menaçait de tuer son père. « This is serious », dit-elle. Puis, en laissant la porte ouverte, elle est retournée auprès de la fonctionnaire francophone pour continuer la conversation.

Lorsque les policiers de Gatineau sont arrivés, l'intervenante s'est levée et a dit à la fonctionnaire qu'elle allait rencontrer les agents en ajoutant : « Ils pourront t'aider. »

À ce moment, la patiente croyait que cette « aide » policière lui permettrait d'entamer des démarches juridiques afin de ne plus être importunée par les demandes incessantes de son père.

Les policiers lui ont demandé de sortir du bureau de consultation. La femme, escortée jusque dans une salle d'attente, a alors appris des policiers qu'elle était interpellée pour des menaces de mort proférées à l'endroit de son père. Même si elle tente de leur dire que l'intervenante a mal compris, elle doit se rendre à l'hôpital.

Le lendemain, ses directeurs lui interdisent de revenir au travail sans note médicale attestant de ses capacités mentales. Toujours selon la plaignante, l'intervenante a bafoué son secret professionnel, puisque plus d'une dizaine de personnes a été mise au courant de sa situation.

« À son retour au travail, plus d'un mois plus tard, [la fonctionnaire] a le sentiment que ses collègues connaissent les raisons de son absence. Elle est mal à l'aise et croit être l'objet de discussions. Elle quittera pour un autre service du gouvernement quelques mois

après les événements. Elle y aura la même perception, ce qui entraîne selon elle, son incapacité à travailler depuis. »

Le tribunal ne nomme pas le ministère où a travaillé la plaignante. Les questions du Droit ont été référées à Travaux publics et services gouvernementaux Canada (TPSGC), qui a répondu par courriel que le ministère analysait la décision du Tribunal avant de porter éventuellement le dossier en appel. « Ces employés sont toujours à l'emploi de TPSGC », a précisé le service des relations médias.

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Lourde sanction imposée à un «Citoyen souverain»

Vincent Larouche, La Presse, le 30 octobre 2014

Préoccupé par l'«abus grandissant» du système judiciaire par les partisans de l'idéologie sibylline des «citoyens souverains», un juge québécois a imposé hier de lourds dommages punitifs à un adepte du mouvement qui jurait dur comme fer qu'il avait le droit de s'approprier une Porsche Cayenne sans la payer.

Non seulement Jean-Marc Paquin, le défendeur dans cette affaire, a vu la Porsche saisie par la banque, mais il doit aussi maintenant payer près de 27 000$ en dommages pour avoir donné des maux de tête à tous les intervenants qui ont dû composer avec «une série de moyens de défense mal fondés en fait et en droit qui relèvent de l'ésotérisme à l'état pur», a décrété le juge de la Cour du Québec Henri Richard. La somme comprend un remboursement de 16 000$ en frais d'avocats de la partie adverse ainsi que 10 000$ en dommages punitifs.

M. Paquin est une figure québécoise bien connue des Citoyens souverains, aussi appelés Freemen on the Land.

Cette mouvance, déjà bien connue des autorités aux États-Unis et au Canada anglais, rejette violemment les services publics, la loi, l'État, qu'ils assimilent à une vaste conspiration à laquelle ils pourraient se soustraire en brandissant une sorte de jargon pseudo-légal. Des adeptes cessent de payer leurs factures, roulent en voiture sans plaque d'immatriculation et opposent une résistance acharnée aux autorités policières et fiscales.

Certains prétendent que le Canada a fait faillite en 1933 et est secrètement devenu une compagnie appartenant aux États-Unis.

Le succès des Citoyens souverains vient notamment du fait qu'ils sont nombreux à prétendre avoir obtenu une «immunité» contre le gouvernement et les créanciers en utilisant d'obscures formules judiciaires enseignées aux initiés. Ils donnent tant de fil à retordre aux autorités que le juge en chef de la Cour supérieure avait demandé à la SQ de lancer une enquête sur eux l'an dernier.

Une Porsche sans payer

Selon la preuve déposée en cour, M. Paquin avait acheté sa Porsche Cayenne en 2011 grâce à un prêt de la Banque de Nouvelle-Écosse qu'il remboursait avec des paiements mensuels. Après sept mois, il a cessé de payer, puis a expédié à sa banque divers documents sibyllins en anglais, dont un chèque tiré d'un compte bancaire fermé, censé le dispenser de rembourser le solde de son prêt.

La banque a obtenu la saisie du véhicule, mais M. Paquin a répliqué en la mettant en demeure de lui verser 1,4 million pour «confiscation illégale» de sa propriété. Il a invoqué des arguments obscurs communs chez les Citoyens souverains, notamment le fait que chaque individu posséderait une «entité juridique» distincte cachée qui possède un patrimoine caché lui aussi. Il disait aussi que la Porsche étant un bien «créé en vue de justifier les politiques de développement durable», la banque n'avait aucun droit à son égard.

M. Paquin n'en était pas à ses premiers démêlés à ce sujet. Le 16 octobre, il a été arrêté par la Sûreté du Québec pour avoir fraudé plusieurs personnes qui avaient assisté à ses conférences. La police croit qu'il a pu faire jusqu'à une centaine de victimes, qu'il incitait à frauder l'impôt avec des arguments spécieux.

L'Agence de revenu du Canada a aussi mené des perquisitions, car elle le soupçonne d'avoir organisé des fraudes fiscales à grande échelle à travers le Québec en utilisant comme prétexte son idéologie.

Fiché par la SQ

Au procès découlant de la saisie de sa Porsche, la banque a fait témoigner un enquêteur de la SQ rattaché au Service des enquêtes sur les menaces extrémistes. Celui-ci a expliqué que Paquin est fiché comme un «Freemen on the land» très actif qui envoie des mises en demeure aux juges, ne paie pas ses impôts et a déposé une réclamation frivole de 200 000$ contre un policier qui avait osé lui remettre un constat d'infraction.

«Jean-Marc Paquin adhère aux idées des Freemen, dont il est un partisan, et les présente d'une manière abusive afin de faire triompher une doctrine, une idéologie ou une philosophie qui démontre une déconnexion de ses partisans et adhérents avec la réalité terrestre et les règles de droit de notre société», a déclaré le juge hier.

«L'abus grandissant des partisans des Freemen à l'encontre du système judiciaire et des droits des parties cocontractantes ou adverses doit être dénoncé et éradiqué», ajoute le magistrat, qui a imposé à M. Paquin des dommages de plusieurs milliers de dollars dans une optique «préventive» pour l'avenir.

CBC news

Unions urge province to abandon Pooled Registered Pension Plans

NSGEU, CUPE want province to push the federal government to enhance the Canada Pension Plan

CBC News Nova Scotia, October 28, 2014

Two of Nova Scotia's largest public sector unions are urging the governing Liberals to abandon their plan to allow Pooled Registered Pension Plans in the province.

Both the Nova Scotia Government and General Employees Union and the Canadian Union of Public Employees told a legislature committee they would not support legislation. Instead, the unions want the province to push the federal government to enhance the Canada Pension Plan as a secure means of ensuring that workers save for retirement.

Finance Minister Diana Whalen has said the voluntary pooled plans would provide a low-cost, regulated option given that only 40 per cent of working people in the province have a pension, and less than 20 per cent contribute to a registered retirement savings plan.

But Ian Johnson, a policy analyst with the government and general employees union, said he doesn't believe pooled plans will meet the government's goals without mandatory coverage. He said it was the biggest flaw with the proposed bill.

"We hear that businesses are keen to offer the PRPP, but what is unknown is if they will step up and contribute towards their employees' future retirement," said Johnson.

Johnson said instead, the province should be lobbying Ottawa to beef up the Canada Pension Plan.

Carol Ferguson of CUPE said the pooled plans aren't pensions and will offer participants no relief from investment management fees and low returns.

The labour movement wants a phased-in doubling of CPP benefits, funded by an increase in employee and employer contribution rates, she said, arguing it's a better solution because it is mandatory, non-profit and the risks and costs are pooled with workers across the country.

"We urge premier McNeil to push for CPP expansion as most other provincial leaders are," said Ferguson.

Opposition Leader Jamie Baillie is also against PRPPs. He thinks people should be allowed to contribute more to their Canada Pension Plans.

Liberal committee member Terry Farrell said there is nothing in the legislation that precludes the government from pushing for additional pension changes at the federal level in addition to offering the pooled plans.

The plans, to be administered by large financial institutions, such as insurance companies, would be available to people who are self-employed and people without a participating employer.

Nova Scotia cyberbullying law faces criticism

Provincial government tackled 370 cases of cyberbullying this past year

By David Burke, CBC News Nova Scotia, October 27, 2014

It has been just over a year since the province's Cyber Safety Act came into effect and one Halifax lawyer says it's time the law was changed.

The law was created to help protect people from cyberbullying. But David Fraser, an internet and privacy lawyer with McInnes Cooper in Halifax, says the law's definition of cyberbullying is too broad.

He said anything online that might hurt someone's feelings could be considered cyberbullying.

"If you were to hurt the feelings of a politician — that's technically cyberbullying and you can be sued for that, you can be the subject of an order that takes away your internet access and your electronic devices," said Fraser.

"So it has the possibility of being abused and I think it's likely unconstitutional because of that."

Fraser also believes if the law was good other provinces would have adopted it.

"This legislation was passed prior to the last election and it got a lot of attention," said Fraser. "But no other province has looked at or has implemented legislation like it, which strongly suggests to me that if it was a good statute other provinces would be looking to go down the same path, but they're not."

But Roger Merrick, the province's director of public safety, says other jurisdictions have been researching Nova Scotia's Cyber Safety Act and the legislation is solid.

"The fact that we have 370 investigations in one year says a lot," he said. "People are asking for help and we have been able to do that because of this new legislation."

Merrick said about 200 cases were solved through an informal process. That process usually involves the province's CyberScan unit contacting people accused of cyberbullying and asking them to stop.

If the cyberbullying continues the case can be brought to court. So far only one case has to gone to court; the remaining cases are still being investigated.

Merrick said about half the complaints are from children, the other half from adults.

Many cases involve ex-lovers posting harassing comments or intimate images online.

"We deal with horrific cases where there are very serious consequences to what's being communicated," said Merrick.

The emotional harm can be so significant, he said, that is can cause physical illness where victims have to take time off work or seek medical attention.

The CyberScan unit is also trying to educate the public about the dangers of cyberbullying.

Investigators with the unit have held 290 public presentations in the last year, mostly at schools.

HRTO case questions accommodations for alleged disabilities

By Mallory Hendry, Canadian Lawyer Magazine's 4 Students blog, October 27, 2014

How much weight should a law student's grades be given? Does a student's sub-par academic performance automatically mean they would be a sub-par lawyer? Are exams a fair way to measure professional competency? How much consideration should each individual's backstory be given?

These are some of the questions encouraged by a recent Human Rights Tribunal of Ontario case, R.L. v. Federation of Law Societies of Canada – National Committee on Accreditation.

Recent law grad R.L. brought an application to the HRTO in September 2012. R.L., who obtained his law degree at Cardiff University in Wales, claimed he was discriminated against on the basis of disability after the NCA refused to let him write Canadian equivalency exams needed to take the bar exam in Ontario.

The NCA responded saying the decision was made on the basis of its policy stating no recognition will be given to candidates whose academic performance is third class or lower. R.L. had received a third-class standing at Cardiff.

R.L.'s argument was he has a cognitive disability resulting from medical treatment he received for a childhood cancer. He said he didn't become aware of his cognitive issues until law school.

Because of his disability, the NCA's decision constituted discrimination on the basis of disability in the area of membership in a vocational association and was therefore contrary to the Ontario Human Rights Code, he argued.

On Sept. 25, adjudicator Brian Eyolfson dismissed R.L.'s application.

Eyolfson said while he accepted R.L. had a mild cognitive impairment that constitutes a disability within the meaning of the Code, he didn't prove a prima facie case of discrimination. R.L. had not established his disability was a factor in the NCA denying him the opportunity to write the exams.

The adjudicator found because of accommodations R.L. received during law school, he could not attribute R.L.'s poor academic standing to his disability. There was insufficient evidence to show the NCA's academic performance policy had a disproportionately negative effect on those with disabilities.

Lorne Sossin, dean of Osgoode Hall Law School, says Canadian law schools strive to maintain inclusive communities where all students' needs are accommodated. However, he says the accommodations must be done in the context of "equity across the entire student body in terms of evaluation, grading, and objective measures of performance."

He says, the commitments to accommodation and objective evaluation are not in conflict, as R.L. alleges the grading system used in the NCA process is discriminatory to law graduates with disabilities.

“I am not aware of any correlation between physical or mental health status and academic performance in the law school setting,” says Sossin. “One of the goals of the various accommodations we provide is to ensure all students can be assessed fairly.”

Some would question the objective measures of performance, however, as well as the use of the word fair.

Douglas Judson, president of the Law Students Society of Ontario, says despite shifts to practical learning and more hands-on training, the “traditional, archaic method” of measuring success — based on grades and exams — continues to dominate.

While the LSSO speaks for students enrolled in Ontario’s common law program and not for other jurisdictions’ students, Judson says sometimes the interests of both groups intersect when it comes to the organization’s focus on the licensing process for lawyers and access to justice in general.

On a macro level, there’s relevance in R.L.’s case to the LSSO’s concerns with how excellence and qualification among lawyers is assessed, says Judson.

“We need to recognize as a professional community that the systems we have been traditionally using to evaluate law students are rather flawed and outmoded,” Judson says. “It takes a tremendously gifted group of people and subjects them to a strict ranking system or evaluation where there’s always a winner and a loser.”

Judson likens the process to the old story of forcing a monkey and elephant to climb a tree and calling it a fair race to the top.

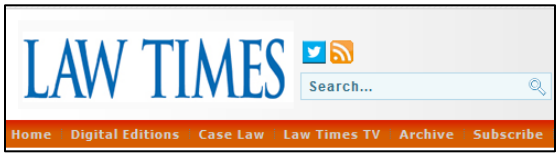
He acknowledges the need for some sort of measuring stick at some points in the process, but questions if the current, arbitrary way of assessing law students is appropriate.

“Does the examination process reflect professional competency?” he asks.

He sees a disconnect in the exam evaluation process, adding that R.L.’s employer said in the application R.L.’s performance was acceptable.

“I think, for the most part, law students are on average a pretty smart group of people and to a certain point the difference in exam scores can boil down to how fast you can type,” Judson explains. “That’s where it gets a little silly.

“The fact that academic competency is a factor to consider, I hope that those individual circumstances are being looked at as well when we are determining competency.”



Heenan facing flurry of lawsuits

Collapsed law firm sued by former employees, partners

Yamri Taddese, Law Times, October 27, 2014

Toronto lawyer representing former legal assistants at Heenan Blaikie LLP in their wrongful dismissal claims against the defunct law firm says her clients are struggling to get by after their sudden termination this year.

Heenan Blaikie, which began winding up operations last winter, is facing a flurry of lawsuits from former employees alleging wrongful dismissal, misrepresentation, and unpaid settlement agreements. None of the allegations have been proven in court.

"These are legal assistants who were dedicated, loyal employees serving their employer for a lengthy period of time and, through no fault of their own, they were terminated and now haven't received the compensation they were legally entitled to," says Christine Westlake, an associate at Koskie Minsky LLP who's representing two former legal assistants at Heenan Blaikie.

Westlake says her clients didn't get termination pay, continuation of group benefits, and other legal entitlements. "They're not out to get the sun, the moon, and the star," she adds.

In one of the lawsuits, a 61-year-old legal assistant alleges the law firm lied to her about its state of affairs just before its collapse. Wendy Rhodes, who's seeking $105,000 for wrongful dismissal or breach of contract, says the firm's managing partners misled her into believing her job was secure before sending her a termination letter on Valentine's Day.

Former national co-managing partner Norman Bacal "advised Rhodes that Heenan was doing well financially due to profits and high billings from December 2013," her statement of claim alleges.

Rhodes had caught wind of rumours that compared the firm to the Titanic, according to the claim.

But Bacal and Kip Daechsel, the firm's national co-managing partner at the time, assured Rhodes Heenan Blaikie was doing fine, says Westlake.

“Rhodes states that the aforementioned representations were untrue, inaccurate and/or misleading and were made negligently, without regard to their truth, or alternatively, were intentionally false,” according to the statement of claim.

Rhodes relied on these assurances to her detriment, the claim continues, noting she suffered health issues just before the firm’s collapse that left her without her group medical benefits.

In another lawsuit, a former patent agent at Heenan Blaikie alleges the firm owes him $800,000 in damages for wrongful dismissal for letting him go without notice.

“The defendants’ misconduct is malicious, oppressive, and highhanded to a degree that offends the court’s sense of decency warranting an award of punitive damages,” Marcelo Sarkis’ claim alleges.

Sarkis’ claim also alleges that as the firm had terminated more than 200 employees during the four weeks ending Feb. 28, it had an obligation to provide 12 weeks’ notice pursuant to the Employment Standards Act’s mass termination provisions.

“Mr. Sarkis has diligently sought alternative employment. However, to date, he has been unable to secure replacement employment,” according to the statement of claim. It noted Sarkis “has and continues to incur expenses with respect to his efforts to reemploy and earn alternative income.”

When reached by Law Times, Sarkis declined to comment.

There was no response from Heenan Blaikie filed in the two matters. Westlake says her only communication with the defendants came from Robb Beeman, a former Heenan Blaikie lawyer and a member of the insolvency committee. She says Beeman had asked her not to take default steps against Heenan Blaikie while the respondents decided whether they’d retain counsel to defend the matter.

If Heenan Blaikie doesn’t file a defence by today, Westlake says she has told Beeman she’ll pursue default steps that include the option of obtaining a default judgment against the firm.

Beeman didn’t respond to a request for comment.

The firm did file a defence to a former non-equity partner’s claim over an unpaid settlement. Rhonda Levy says that when she left the firm in May 2013, it agreed to pay her $270,000 in bimonthly instalments.

The payments stopped in January of this year, according to Levy’s statement of claim. “In accordance with the terms of the settlement agreement, the defendant continues to owe Ms. Levy $118,000, which remains unpaid.”

In response, Heenan Blaikie argues the court should dismiss Levy’s action with costs. “Implicit in the agreement was a term that the plaintiff would not be placed in a better

position through the agreement than if she had remained with the defendant as a partner," according to the firm's statement of defence.

"Had the plaintiff remained a partner in the firm, she would not have received any income after January 2014. The firm stopped compensating all partners, both equity and non-equity, after January 2014. The plaintiff would not have been excluded from this."

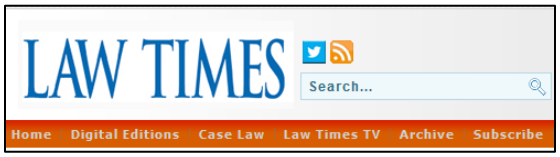
Through her action, the firm suggests in its statement of defence that Levy is "seeking to put herself in a better position than other partners of the firm, none of whom has received any compensation from the firm since January 2014."

But Rhodes, the legal assistant, says the firm didn't treat everyone the same. Part of her allegations against the firm relates to "fraudulent preference." She alleges partners of the firm, including Bacal and Daechsel, "were paid out their capital in preference to her minimum entitlements pursuant to the ESA."

Rhodes' claim says that at the time of the payment of capital, Heenan Blaikie was legally bankrupt. According to her claim, that makes the payments to the partners an illegal preference under s. 95 of the Bankruptcy and Insolvency Act.

Meanwhile, a recent claim filed by Heenan Blaikie shows the firm itself is suing the African Canadian Legal Clinic for unpaid invoices. The action is seeking an order for the payment of $120,000.

"The plaintiff provided legal services to the defendant in Toronto," according to the claim, which notes invoices went out in June and December 2012.



Law firm valuations in flux

By Julius Melnitzer, Law Times, October 27, 2014

As the profession evolves at an ever more rapid pace, experts are mulling the impact of change on the value of legal practices.

"Dental practices have become very valuable commodities because young dentists can't build practices the way previous generations did," says Stephen Cole, senior adviser in the Toronto office of Duff & Phelps Corp., a valuation and corporate finance consultancy.

“The same thing is happening at accounting firms, and law firms will follow, largely because there are fewer entrepreneurial opportunities and the ones that are available are valuable.”

But James Cotterman, a U.S.-based consultant and principal at Altman Weil Inc., sees things differently. In an article on the valuation of law firms and law practices, he suggests “the valuation landscape has changed and generally not for the better from a seller’s perspective.”

Cotterman notes the number of sellers, comprised largely of retiring baby boomers, is growing rapidly; successor purchasers are more aware of the challenges of transferring practices; clients and referral networks have become more unpredictable; clients are more willing to consider alternatives to the “traditional, long-standing relationship with a single trusted adviser;” and technology is changing how the profession works, which affects both the lawyer-client relationship and its value.

“Buying professional practices is recognized as a much more difficult activity today than it was a decade ago,” wrote Cotterman.

“Pricing models, and reasonable hopes and expectations for pricing conversion and future pricing increases are vastly different today.”

Traditionally, buyers and sellers assumed clients would stay with the new lawyer or firm after a short transition period; the new firm could imbue the clients with its pricing model; and historic rate increases would repeat themselves.

“All three of those assumptions must be examined far more critically today,” according to Cotterman.

“Clients may not ‘go along’ with the handoff and it’s likely they will be much less willing to accept an upsell in pricing. And the rate increase patterns pre-recession are unlikely to return in the current environment.”

Indeed, in some ways things are going in the opposite direction. As Cotterman noted, a trend is developing whereby practitioners are leaving large firms to practise in smaller environments where they can keep pricing down.

The upshot, Cotterman noted, is that due diligence in the course of purchasing a practice “must be more thorough and conducted with greater skepticism.”

John Olmstead, president of St. Louis-based legal management consultancy Olmstead & Associates, sees the primary problem as one of too much supply.

“So many lawyers are hitting succession at the same time and they’re all competing for buyers to pick up their practices,” he says.

“On the other hand, there is a growing recognition that goodwill can have considerable value, particularly in small and solo firms.”

When it comes to the Canadian context, the looming prospect of alternative business structures, which would allow investment in law firms by non-lawyers, is a further complicating factor.

“Potential buyers and sellers should take note of the liberalization of standards in the U.K. and elsewhere that, for the first time, have allowed outside investment in law firms by non-lawyers,” wrote Cotterman.

“A similar change in the U.S. would be a potential game changer for firm valuation.”

Both the Law Society of Upper Canada and the Canadian Bar Association earlier this year released reports emphasizing that the status quo isn’t a viable option for the legal profession. Core recommendations in the reports included proposals that would permit alternative business structures such as multidisciplinary partnerships.

To be sure, both the CBA and the LSUC processes are at early stages. In neither case have the recommendations become organizational policy. The law society is currently consulting about the relative viability of the four models for alternatives business structures proposed by a working group.

Still, if non-lawyer investment becomes a reality, the change would certainly affect the profession in different ways depending on the type and size of the firm involved. Outside investment in law firms would potentially create a more competitive market, particularly on the retail side. As well, small firms may be less able to handle the competition than their larger counterparts, thereby detrimentally affecting their value.

As for the large firms, alternative business structures could affect their valuations as well, but they might be in a better position to deal with the changes. And if the large law firms ever go public, their value could increase exponentially.

“If law firms go public, they will have their value measured like advertising agencies or public consulting firms,” says Cole.

Twenty years of (expanding) budget bills

A numerical history of omnibus legislation

Aaron Wherry, MacLean’s, October 28, 2014

The second budget implementation bill of the year arrived last Thursday. Although it's what's on the inside that counts, of course, a simple page count is interesting and this one weighs in at 478 pages—good enough to make C-43 the third-largest budget bill of the last 20 years. (Congratulations to Joe Oliver?)

Here is my tally of every budget implementation bill since 1994, with page counts at Royal Assent (except for C-43).

C-17, **1994**. 24 pages

C-76, **1995**. 49 pages

C-31, **1996**. 56 pages

C-93, **1997**. 61 pages.

C-36, **1998**. 92 pages.

C-71, **1999**. 32 pages.

C-32, **2000**. 35 pages.

C-49, **2001**. 124 pages.

C-28, **2003**. 144 pages.

C-30, **2004**. 64 pages.

C-33. **2004**. 82 pages.

C-43, **2005**. 120 pages.

C-13, **2006**. 198 pages.

C-28, **2006**. 140 pages.

C-52, **2007**. 146 pages.

C-28, **2007**. 378 pages.

C-50, **2008**. 152 pages.

C-10, **2009**. 552 pages.

C-51, **2009**. 60 pages.

C-9, **2010**. 904 pages.

C-47, **2010**. 152 pages.

C-3, **2011**. 58 pages.

C-13, **2011**. 658 pages.

C-38, **2012**. 452 pages.

C-45, **2012**. 430 pages.

C-60, **2013**. 128 pages.

C-4, **2013**. 322 pages.

C-31, **2014**. 380 pages.

C-43, **2014**. 478 pages.

For total annual page count, 2014 is now in a position to have the third-highest total, with 858 pages of budget bills—topped only by 2012′s 882 pages and 2010′s 1,056 pages.

In five-year increments (note: there was no budget bill in 2002), the average length of budget bills looks like this:

1994 to 1998 56.4 pages

1999 to 2004 80.2 pages

2005 to 2009 218.3 pages

2010 to 2014 396.2 pages
