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ASSOCIATION OF JUSTICE COUNSEL
ASSOCIATION DES JURISTES DE JUSTICE

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

New Supreme Court judge challenged on conduct as a lawyer in two cases

SEAN FINE, The Globe and Mail, December 5, 2014

The newest judge on the Supreme Court of Canada is facing questions about her conduct as a lawyer in two cases. But Prime Minister Stephen Harper's decision to drop public hearings in which legislators ask questions of new judges means the opportunity to scrutinize the story of Suzanne Côté of Montreal is at an end.

In a letter signed by more than 350 law students, lawyers and professors from several provinces, Justice Côté is accused of demeaning a Manitoba judge and contributing to her decision to resign from the bench. Separately, she is accused of dragging out a lawsuit, now at 16 years and counting, as part of a legal team representing Imperial Tobacco. Justice Côté, 56, who was sworn in this week, is the first female lawyer appointed to the court straight from private practice.

The suspension of the parliamentary hearings is the latest fallout from Mr. Harper's botched Supreme Court appointment last fall of Justice Marc Nadon. The Supreme Court ruled Justice Nadon ineligible, and sat for 10 months short one judge. In May, The Globe and Mail revealed three other candidates on the government's secret list of six candidates were also ineligible. Citing that report, the government suspended parliamentary involvement in a committee that screened the judges on the government list, and shut down the public hearings. Ms. Côté is the second judge in six months named to the court in a closed process.

Justice Côté said through a Supreme Court spokesman that she has no comment.

In a $28-billion class-action lawsuit filed in Quebec against three multinational tobacco companies, lawyers for addicted and ill smokers argue in their closing submissions that

Imperial Tobacco used “abuse of process as strategy.” In court documents, they allege the abuse is “manifest in virtually every aspect of the defendants’ handling of the files” since 1998, including launching “countless proceedings and appeals” without legal justification. (The submissions do not criticize Ms. Côté by name.)

“It’s a good question: When is it the client and when is it the lawyer?” said Douglas Lennox, who represents consumers in a separate class-action lawsuit against Imperial Tobacco in British Columbia. “At what point is a lawyer supposed to say to a client, ‘I have an ethical obligation; there are things I just can’t do’? We don’t get to have that discussion.”

He said he is not criticizing Justice Côté, who may turn out to be an excellent judge, but added, “It is too bad that the Prime Minister did not provide her with a parliamentary hearing to help introduce herself to Canadians. Such hearings provide democratic transparency, and they may be a benefit to prospective appointees. Furthermore, they may draw attention to important issues in the administration of our justice system. In particular, lawsuits are taking too long to resolve, and they cost too much.”

Deborah Glendinning, a lawyer representing Imperial Tobacco, said the allegations are baseless; that they are lodged at Imperial, not its lawyers; that Ms. Côté did not join the Imperial trial team until 2010, and that “at no time has there been any complaint about her conduct whatsoever as she exemplifies at all times the highest of professional and ethical standards.”

The accusation of demeaning a judge is made in a letter to the Canadian Judicial Council protesting the council’s handling of a disciplinary matter involving Manitoba judge Lori Douglas, whose nude photos have circulated on the Internet. Ms. Côté served for the past year as independent counsel to a committee set up by the CJC to review Justice Douglas’s conduct. In that role, Ms. Côté pushed for the photos to be made available as evidence to the 17 members of the judicial council. (The photos were to have been sealed from public view.)

The letter, which does not mention Ms. Côté by name, says her insistence on making the photos available was “callous and gratuitous. Not only would it have re-traumatized the Justice, it could elicit no information relevant to the issues at hand.”

The letter said the judicial council’s inquiry was based on the discriminatory and irrational notion that nude photos taken in private, and consensually, would affect a judge’s ability to rule impartially on cases.

Justice Douglas’s late husband posted the photos on the Internet without her knowledge, and the CJC was attempting to determine whether she failed to disclose the existence of the photos prior to becoming a judge. When she resigned last week after reaching a deal with the CJC to stay the charges against her, her lawyer said that to “risk the viewing of her intimate images by colleagues and others is more than she can bear.”

Esther Mendelsohn, a second-year student at Osgoode Hall Law School in Toronto who spearheaded the letter, said in an interview she did not wish to make the issue about Justice Côté.

“I may take issue with decisions, but not individuals.”

Norman Sabourin, executive director of the Canadian Judicial Council, said “I hate to say something like this, it’s not my style, but a second-year law student saying one of the most esteemed lawyers in Canada didn’t do things the way she should have is something I reject entirely.

“ Those are pretty strong words – ‘callous and gratuitous’ – and I’m not sure on what that opinion is based.”

Côté quietly sworn in as Supreme Court judge

Ian MacLeod, The Ottawa Citizen, December 2, 2014

Lawyer Suzanne Cote delivers the Government of Quebec's closing arguments at the Bastarache Commission on October 12, 2010 in Quebec City. Cote, an experienced Quebec trial lawyer, has been appointed to fill a vacancy on the bench of the Supreme Court of Canada.

Lawyer Suzanne Cote delivers the Government of Quebec's closing arguments at the Bastarache Commission on October 12, 2010 in Quebec City. Cote, an experienced Quebec trial lawyer, has been appointed to fill a vacancy on the bench of the Supreme Court of Canada.

Montreal lawyer Suzanne Côté was sworn in Tuesday as the newest member of the Supreme Court of Canada.

The government wasted no time getting her to Ottawa. Prime Minister Stephen Harper only named Côté to the post last Thursday, to fill a Quebec vacancy on the court created by the departure of Justice Louis LeBel, who hit the mandatory retirement age of 75 on Sunday.

The highly respected Montreal civil trial lawyer is Harper’s seventh Supreme Court appointment since he took office in 2006. She also is the second female justice appointed by Harper. While her selection has been broadly embraced by legal experts and court observers, the government’s selection process has been slammed for its secrecy.

Côté was sworn-in at a private ceremony by Chief Justice Beverley McLachlin. A formal welcoming ceremony is to take place at a date to be announced. Côté did not did take her seat on the bench with the rest of the court Tuesday – she may be trying to catch her breath.

Affaire Nadon: un juge pourfend la décision de la Cour suprême

Hugo de Granpré, La Presse, le 3 décembre 2014

Le nouveau juge en chef de la Cour d'appel fédérale, Marc Noël, a profité du discours d'inauguration qu'il a prononcé à la Cour suprême du Canada vendredi pour pourfendre sa décision dans l'affaire Nadon, a appris La Presse.

«Seuls ceux qui veulent voir les Québécois et le Québec se désengager des institutions fédérales, pour ne pas dire en sortir, peuvent se réjouir de la décote des juges du Québec», a lancé le juge Noël en évoquant la nécessité de trouver une solution à ce «problème très concret» engendré par le jugement rendu par le plus haut tribunal du pays au mois de mars dernier.

La Presse a obtenu une copie de ce discours prononcé lors de la cérémonie de présentation du nouveau juge en chef de la CAF, qui s'est déroulée dans le hall d'entrée de la Cour suprême à Ottawa et où les médias n'étaient pas conviés.

Plusieurs invités de marque étaient présents, dont le juge Marc Nadon lui-même, le juge de la Cour d'appel du Québec Robert Mainville, trois juges de la Cour suprême (Louis LeBel, Michael Moldaver et Marshall Rothstein) et le bâtonnier du Québec, Bernard Synnott. Le juge Louis LeBel, qui a pris sa retraite dimanche, était assis au premier rang.

Pas une critique

Le nouveau juge en chef Noël a d'abord précisé qu'il n'avait pas l'intention de critiquer «la Cour suprême pour cette décision».

«Par contre, en tant que nouvelle personne en charge, [...] j'ai un devoir de parler de ce que je crois être des répercussions non voulues, mais importantes pour les cours fédérales», a-t-il ajouté.

La Cour suprême a invalidé en mars la nomination de Marc Nadon dans ses rangs et statué que les juges de la Cour d'appel fédérale (d'où provenait M. Nadon) et de la Cour

fédérale ne sont pas admissibles pour combler l'un des trois postes réservés au Québec sur son banc.

Le juge Noël n'a pas mâché ses mots pour dénoncer les conséquences de cette décision. D'abord, a-t-il dit, les juristes du Québec qui sont nommés à une cour fédérale le sont en raison de leurs connaissances du droit québécois, notamment. Or, cette nomination les rend soudainement inadmissibles à la Cour suprême, contrairement à leurs collègues du reste du Canada.

«Le Québec ne peut se réjouir du fait que ceux qui occupent la place qui lui est réservée au sein des cours fédérales ont désormais un statut moindre que celui réservé aux juges des autres provinces», a tranché le juge Noël.

Ensuite, la décision a été largement comprise dans les médias comme signifiant que les juges des cours fédérales sont déconnectés des valeurs sociales et du droit civil du Québec, a noté le nouveau juge en chef.

«Une incapacité institutionnelle n'est pas un problème passager, a-t-il dénoncé. Le fait que les juges de Common Law sur nos cours ne sont pas affectés par cette tempête est une mince consolation. Un bateau qui prend l'eau de la poupe, mais pas de la proue ne restera pas à flot longtemps.»

Marc Noël a exhorté les personnes présentes à régler ce problème important: «Le rôle essentiel joué par les cours fédérales nous impose à tous, qui avons foi en ce pays, le devoir de trouver une solution.»

Ovation

La juge en chef de la Cour suprême, Beverley MacLachlin, n'a pas voulu faire de commentaire hier. Elle a martelé au cours des derniers mois que l'avis dans le renvoi sur la nomination du juge Nadon a été rendu et qu'il est temps de tourner la page.

Selon deux sources, le discours a été bien reçu par plusieurs membres de l'assistance, puisque de nombreux juristes de la région d'Ottawa sont en désaccord avec l'avis de la Cour dans cette affaire.

Une ovation a d'ailleurs accueilli les paroles du juge Noël lorsqu'il a noté que «personne n'aurait dû être confronté à l'épreuve que le juge Nadon a été forcé d'endurer».

Marc Noël

Originaire de Québec, Marc Noël a été nommé à la Cour fédérale en 1992, après 15 ans de pratique privée. Il siège à la Cour d'appel fédérale depuis 1998. Le juge a succédé à Pierre Blais à titre de juge en chef en octobre. M. Blais avait été ministre de la Justice sous Brian Mulroney.

Audiences sur le transfert de Robert Mainville

C'est aujourd'hui à Montréal que la Cour d'appel du Québec entendra la contestation du transfert de Robert Mainville sur son banc. M. Mainville est un autre juge de la Cour d'appel fédérale dont le nom avait circulé comme candidat potentiel à la Cour suprême. L'avocat Rocco Galati conteste la constitutionnalité de ce transfert. Selon lui, il s'agit d'un moyen détourné choisi par Ottawa pour pouvoir nommer à la Cour suprême des juges du Québec qui proviennent des cours fédérales.

Suzanne Côté assermentée

Suzanne Côté, qui est devenue la semaine dernière la première femme à avoir été nommée directement de la pratique privée à la Cour suprême du Canada, a été assermentée hier lors d'une cérémonie privée. Elle remplace Louis LeBel, qui a pris sa retraite dimanche.

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thestar.com

Judges should be wary of leading public inquiries, says former justice Louis LeBel

Judges should be wary of leading public inquiries that take hot political issues off the table only to see recommendations for change ignored, says former Supreme Court of Canada justice Louis LeBel.

Tonda MacCharles, Toronto Star Ottawa Bureau reporter, December 1, 2014

OTTAWA—Judges should be wary of leading public inquiries that take hot political issues off the table only to see recommendations for change ignored, says former Supreme Court of Canada justice Louis LeBel.

LeBel, a labour law specialist and leading authority on administrative and constitutional law who retired Sunday from the high court, said in an exclusive interview with the Star he would not seek out such work, saying it is a "delicate matter" especially given how often the outcomes are ignored.

"You may want to serve the public but you do not want to be used," said LeBel.

"That's something that happens very often, that a judge is tasked with doing an inquiry making recommendations about some matter but where the purpose is most often to take it out, remove it from the political agenda when it is getting too sensitive," said LeBel. "Sometimes you wonder about the utility of the result."

“I would not say ‘never,’ ” he said. “You may feel that you have a public duty to do it but that would not be the kind of work that I would chase.”

LeBel pointed to complaints by former Supreme Court of Canada colleague Jack Major, who said a recent conference that the federal Conservative government ignored some of the central recommendations out of his Air India inquiry.

LeBel said sometimes judicial inquiries have been “useful” or done “great” work such as the Emmett Hall commission into health services in Canada, “which really created the framework for our national health system,” and a Quebec inquiry into the judicial selection process for provincial courts led by former colleague Michel Bastarache.

“But you must think whether it is useful, whether the mandate makes sense. Obviously former judges — and at some point sitting judges — were used to undertake some public mandates. But as I tell you, a delicate matter.”

There have been hundreds of judge-led inquiries named by federal and provincial governments in Canada’s history. The Canadian Judicial Council has even published a reference guide for sitting and retired judges who choose to lead the probes.

Liberal MP Irwin Cotler, a former justice minister who appointed Justice Dennis O’Connor to the Maher Arar inquiry, said “Justice LeBel was correct to say we should not use these commissions of inquiry as a kind of surrogate for the kind of work parliament should be doing. Number two, we should not be using it with abandon or indiscriminately, and number three if we do use it . . . we need to follow up on the recommendations. If we don’t it ends up not being serious.”

Cotler, however, insisted judge-led inquiries are important, especially in cases such as Arar, or now in the issue of missing and murdered aboriginal women, “exactly because it’s been botched” over the course of many governments, and “because it’s more than just criminality that’s involved.”

Cotler said an inquiry into the violence against missing and murdered native women has been demanded by aboriginal peoples, all the provincial premiers and the opposition parties. “You’ve got a fairly broad consensus here, except for the government, with regard to the need for this type of inquiry.”

In his exit interview with the Star, LeBel pushed back at a claim that the Supreme Court has become a policy maker. The comments were published last week by the MacDonald Laurier Institute in a paper by Benjamin Perrin, a past law clerk to former Supreme Court of Canada judge Marie Deschamps, and a former legal policy adviser to Prime Minister Stephen Harper.

Perrin and the institute declared the Supreme Court of Canada was the “policy maker of the year” for 2014, citing the high court’s reversal of several legislative and policy initiatives of the Conservative government.

LeBel said the fact is the cases came up before the high court and “had to be decided.”

“I don’t see ourselves as developing a public policy agenda,” he said. “We decided them according to what we believed should be done but certainly not in the framework of a public policy agenda.”

Why secret Supreme Court appointments are likely here to stay

ADAM DODEK, Contribution to The Globe and Mail, December 2, 2014

Having championed reform of the Supreme Court appointments process for more than a decade, the Conservatives are now desperately trying to stuff the genies of transparency and accountability back into the bottle. They are unlikely to succeed precisely because they have been so successful in making these twin principles an article of faith in Canadian politics.

The Reform Party put the Supreme Court appointments process on the democratic reform agenda. Their successor, the Conservative Party, fervently embraced it. But now, the Conservative Government appears intent on convincing Canadians that everything it preached to them for the last 25 years is bunk.

In 2004, Liberal justice minister Irwin Cotler started to reform the Supreme Court appointments process. He became the first – and, sadly, the last – justice minister to appear before a parliamentary committee to explain and justify the choice of particular Supreme Court nominees (Justices Abella and Charron). The Conservative Party criticized the Liberal government for not going far enough.

When it came to power in 2006, the Conservative Government stood by its previous position. It took the process further and had Justice Marshall Rothstein appear before a committee of parliamentarians for questioning. Not all welcomed that process, but some hailed it. One politician claimed that it marked “an historic change in how we appoint judges in this country. It brought unprecedented openness and accountability to the process. The hearings allowed Canadians to get to know Justice Rothstein through their members of Parliament in a way that was not previously possible.” That speaker was Prime Minister Stephen Harper. He repeated the process in 2011, 2012 and 2013, but since the botched appointment of Justice Marc Nadon – due to the government’s own ineptitude – the Prime Minister has twice dispensed with public hearings for Supreme Court appointments.

Once may be an exception, but twice starts to look like a new practice. Indeed, statements by the Prime Minister in appointing Justice Suzanne Côté indicate that the appointment

process – with no advisory committee and no public hearing – was no aberration. It is to be the new normal.

Before the Côté appointment, the Harper government had been laying the groundwork for its desired return to executive fiat. It complained about leaks in the Nadon process. This argument hardly justifies killing the entire process. In fact, it actually supports more transparency in the appointments process, not less.

Being on the shortlist for a Supreme Court appointment is a badge of honour, not of shame. Other countries publish the list of those under consideration for high court appointments in order to invite public comment. Had the Harper government done this in the case of the Nadon appointment, it might have been spared the political embarrassment of a failed appointment.

What really appears to have irked the government is its loss of control over the process. When faced with the choice between commitment to its asserted principles of transparency and accountability and maintaining absolute control over the process, the Harper Government has chosen the latter. The Conservative Party of 2006 (and before) would be the strongest critics of the Conservative government's actions in 2014.

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

OTTAWA CITIZEN

Scientists push for 'scientific integrity' at bargaining table

Kathryn May, The Ottawa Citizen, December 2, 2014

Canada's federal scientists are going to the bargaining table this week with an unprecedented package of contract changes to promote "scientific integrity" in government, including the right of scientists to speak freely and forbidding political interference in their work.

The Professional Institute of the Public Service of Canada, which represents more than 15,000 scientists, researchers and engineers, is tabling a negotiating position for managing science in the "public interest" with a list of demands for Treasury Board

negotiators that dramatically push the boundaries of traditional collective bargaining in the public service.

The 7,000 members of PIPSC's large applied science and patent examination group are the first at the table with Treasury Board this week, followed by 2,300 members of the research group next week.

The two groups have previously traded electronic demands, but this is the first face-to-face negotiating round. PIPSC negotiators are presenting two packages – one on "scientific integrity" that would trigger a series of changes to other federal policies, and another package of proposals for professional development of scientists.

A document obtained by the Citizen shows the union is looking for changes to deal with the ongoing spending cuts in science and "interference" in the integrity of scientific work.

The integrity policies will ensure science is done in the public interest; information and data is shared; scientists can collaborate, seek peer review and be protected from political meddling, "intimidation," "coercion" or pressure to alter data.

The policy would lay out the expectations of scientists, managers, policy analysts, and communications or public affairs staff.

PIPSC officials said negotiating provisions around integrity or public science isn't outside the scope of bargaining for federal unions. "There is no legal or other restriction that would prevent parties from negotiating along these lines. In fact, some of our proposals flow directly from Charter rights."

Federal scientists have been a thorn in the Conservatives' side during the government's downsizing, accusing them of using federal policies to muzzle them, change or suppress their findings and undermine their ability to do their jobs to protect Canadians' health and safety and inform evidence-based decision-making.

About a month ago, hundreds of scientists from around the world signed an open letter appealing to Prime Minister Stephen Harper to end the "burdensome restrictions" Canada's scientists face in talking about their work and collaborating with international colleagues.

The letter, signed by 800 scientists from 32 countries, was drafted by the Union of Concerned Scientists, which represents U.S. scientists.

The union has extensively surveyed federal scientists in recent years and issued two major reports that found scientists don't feel they can freely speak and that spending cuts are affecting Canadians' health, safety and environment.

A quarter of scientists surveyed said they have been asked to exclude or alter information. That request, whether explicit or implicit, came from the department, ministers' offices or the Prime Minister's Office. At the same time, nearly three-quarters of scientists believe policy is being compromised by political interference.

More recently, the union consulted with its members on what they wanted from collective bargaining. A key issue that emerged was “scientific integrity,” with many feeling the drive for good public science is about more than decent salaries and benefits and needs policy changes, said PIPSC president Debi Daviau.

“This is about much more than their salaries; it’s about preserving the standards on which both Canadian public policy and public services are maintained,” she said.

Specifically, PIPSC wants a scientific integrity policy for Treasury Board and the 40 science-based departments and agencies. The union would be consulted in the drafting and the final policy would be part of the collective agreements and made public.

The policy would touch on a range of issues and existing policies, but the key proposal is the “right to speak.” The union wants a clause guaranteeing scientists the right to express their personal views while making clear they don’t speak for government.

The other big demand is professional development, allowing scientists to attend meetings, conferences and courses to maintain their professional standards.

PIPSC wants scientists to get 37.5 hours per year for conferences or similar gatherings and be allowed to carry any of that unused time over to the next year. It wants any refusals justified in writing.

The union’s push for “scientific integrity” is modeled after the Obama administration’s call for similar policies. More than 22 departments and agencies have since drafted or finalized integrity policies.

A proposal for a “scientific integrity” policy enshrined in contracts certainly ramps up the pressure on the government and union in the battle for public opinion in this bargaining round that was largely expected to be fought on sick leave benefits.

This round of negotiations was expected to be unlike any previous round because of the Conservatives’ legislative changes to bargaining rights, strike and replacing sick leave with a new short-term disability plan.

Scientists want revenues from their inventions invested in research: union

Kathryn May, The Ottawa Citizen, December 7, 2014

Canada's federal scientists want contract changes so half of the revenues generated by their inventions and other intellectual property will be plowed back into government research to shore up budgets hit by spending cuts and to attract top talent.

The Professional Institute of the Public Service of Canada, which represents more than 15,000 scientists, researchers and engineers, is going to the bargaining table this week with a demand to improve science funding as part of its negotiating strategy for 2,300 researchers working in the science-based departments and agencies.

The proposal would put more money into research programs by re-investing at least 50 per cent of the proceeds generated by inventions, patents, copyright royalties and other intellectual property, rather than going into general departmental revenues.

The Ebola vaccine now in clinical trials, for example, could potentially generate huge benefits for the Public Health Agency of Canada if successful. Under PIPSC proposal, half those revenues would be invested in the research programs at the Winnipeg laboratory where the vaccine was developed.

The union is also proposing the principal investigators or the "inventors" be consulted on where the money should be invested. If the inventors have left government, a department's joint union-management "consultation team' could decide.

Treasury Board had an awards policy for "innovators and inventors" that was aimed at encouraging scientists to commercialize their work by letting them share in the proceeds of their discoveries. That policy was rescinded in 2010 and it's unclear how departments are handling awards and rewarding their inventors.

As part of its proposal, PIPSC wants all departments to annually submit a list of awards given to scientists, as well as the amount of money directed to the departments' research.

PIPSC will be making the same proposals for employees it represents at the National Research Council when they go to the bargaining table after Christmas. NRC researchers have a long history of inventions, from the black box for aircraft to the pacemaker. In 2012-13, the NRC generated intellectual royalties and fees worth about $8.5 million.

PIPSC is clearly pushing the boundaries of traditional collective bargaining with demands to deal with the ongoing spending cuts in science and "interference" in the integrity of scientific work.

This latest proposal comes on the heels of PIPSC's unprecedented demand last week calling for contract changes to promote "scientific integrity" in government, including the right of muzzled scientists to speak freely and forbidding political interference in their work.

That's when the 7,000 members of PIPSC's applied science and patent examination group presented Treasury Board negotiators with two packages — one for "scientific integrity" and another for professional development of scientists. PIPSC also wants those proposals included in researchers' contracts.

The Conservatives have made a significant shift to business-driven research which many federal scientists worry is being done at the expense of research that only government will do — particularly the collection of long-term data, enforcement and regulatory science.

PIPSC President Debi Daviau said the new science and technology strategy released by Prime Minister Stephen Harper last week "abandoned" government science.

"At a time when so many are lamenting the state of Canadian government science both here and around the world, it beggars belief that a federal government science strategy could so blatantly and completely ignore government science," she said.

"So our members are stepping in and using the bargaining table to ensure we reinvest in science. Like a bridge that requires upkeep and reinvestment to maintain structural integrity, science is part of our critical public infrastructure."

PIPSC proposals could dramatically change the direction of this round of collective bargaining which was expected to be a rough-and-tumble round over the Conservatives plans to replace sick leave with a new short-term disability plan.

For the public, the Conservatives cast this round as a push to rein in public servants' pay and benefits so they are in line with the private sector.

It remains to be seen whether PIPSC can change that channel but the union is crafting its demands as much-needed changes to protect the "public good" and science in the "public interest."

Unions representing teachers have tried to negotiate class size while unions for municipal workers have pressed for better service levels but PIPSC is the first to bargain to improve the funding and "integrity" of public science.

And PIPSC 's proposals are attracting international attention.

Michael Halpern of the Union for Concerned Scientists — which led the charge for scientific integrity policies in the U.S. government and recently appealed to Prime Minister Harper to stop muzzling scientists — said PIPSC's approach is a first.

"They are trailblazers," said Halpern. " I haven't seen unions make scientific integrity the centrepiece of negotiating … and the fact they have chosen to make it a primary issue for bargaining speaks to the importance of scientific integrity to employees and the way they see the current state of government science in Canada. This is certainly a new chapter in Canada and internationally."

Gordon McBean, an academic and former senior bureaucrat who is now president of the International Council for Science, said he supports embedding integrity in contracts to protect scientists and ensure Canadians know "on what basis of science, health and economics" that government is making policy decisions.

The integrity policies that PIPSC is seeking would ensure science is done in the public interest, information and data are shared, and that scientists can collaborate, seek peer review and be protected from political interference, coercion or pressure to alter data.

The policy would touch on a range of issues and existing policies, but the key proposal is the "right to speak." The union wants a clause guaranteeing scientists the right to express their personal views while making clear they don't speak for government. It would also deal with misconduct, annual reporting, and administrative burden.

Public sector union to take muzzled science issue to bargaining table

The Globe and Mail, Canadian Press, December 3, 2014

The union representing government scientists, engineers and professionals says its next contract demands will include an integrity policy to free up muzzled researchers and promote evidence-based policy making.

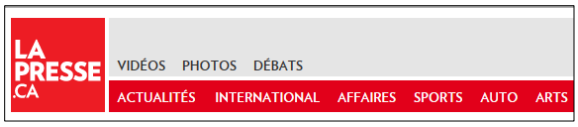
The Professional Institute of the Public Service of Canada, which represents 55,000 federal employees, says a scientific-integrity policy is needed to ensure innovation and to protect public health, safety and the environment.

The union, known by its acronym PIPSC, says it will seek enforceable standards for international collaboration among scientists, preservation of government science libraries, reinvestment in research programs and the right for federal scientists to speak.

It’s the latest move against the Conservative government by a public sector union that traditionally has avoided any hint of campaigns that could be considered political.

Last month, the Professional Institute announced it will actively advertise the damage it believes the Harper government has done to federal public services.

Union president Debi Daviau says it is a sad state of affairs when professionals need to bring their demands for good public science policy to the negotiating table, but PIPSC feels it is the only way to get the government’s attention on the long-simmering issue.



Musellement: les scientifiques passent par leur convention collective

La Presse, La Presse Canadienne, le 3 décembre 2014

Las d'être «muselés» par le gouvernement Harper, les scientifiques du gouvernement fédéral adoptent une voie originale: celle de négocier des clauses de protection de l'intégrité de leur travail dans leurs conventions collectives.

L'Institut professionnel de la fonction publique du Canada, qui représente quelque 15 000 scientifiques à l'emploi du gouvernement fédéral, présente à la table de négociation une proposition qui obligera le fédéral à négocier des clauses protégeant la liberté d'expression des scientifiques fédéraux, le réinvestissement dans les programmes de recherche et la protection du savoir et des bibliothèques scientifiques.

Le syndicat des professionnels veut également que l'on garantisse le recours à la science pour éclairer les politiques publiques et qu'on assure un niveau de collaboration suffisant entre les scientifiques canadiens et étrangers.

Il s'est déjà élevé contre les obstacles qui se dressent devant les scientifiques qui seraient prêts à parler aux médias, notamment, et à faire connaître plus librement leurs recherches. Il a aussi déjà protesté contre les compressions budgétaires qui ont touché différents ministères, instituts et organismes.

Après avoir protesté publiquement, le syndicat tente cette fois la voie des conventions collectives. «On procède par tous les chemins possibles. Ce sont nos membres qui l'ont décidé, dans les priorités qu'ils ont établies pour la négo, ils voulaient s'attaquer à ce problème de l'intégrité scientifique», a expliqué en entrevue Peter Bleyer, conseiller spécial à l'Institut professionnel de la fonction publique du Canada.

La première séance de négociation en vue du renouvellement de certaines conventions collectives a justement lieu ce mercredi avec le Conseil du Trésor.

«Tous les besoins des scientifiques sont menacés, les besoins des scientifiques pour pouvoir faire leur travail, pour défendre et protéger l'intérêt public des Canadiens, sauvegarder la salubrité de leurs aliments, l'environnement et tout ce qui est important; c'est leur rôle qui est menacé», a résumé M. Bleyer.

L'Institut représente des ingénieurs, chercheurs, biologistes, médecins et autres à l'emploi du gouvernement fédéral, qui oeuvrent notamment à l'Agence canadienne d'inspection des aliments, à Environnement Canada, à Pêches et Océans Canada ou aux Ressources naturelles.

L'adoption de telles clauses permettrait aux scientifiques syndiqués de déposer un grief si les normes jugées essentielles à leur travail ne sont pas respectées, a expliqué M. Bleyer.

Il espère que le Conseil du Trésor fédéral accepte au moins de discuter de ces clauses de protection. «Il n'y a aucune raison de ne pas négocier ce genre de clauses» qui visent ultimement à mieux protéger les citoyens en matière de santé, d'environnement et de transport de matières dangereuses, notamment, a soutenu M. Bleyer.

Barbara Winters, Lawyer Who Tried To Save Nathan Cirillo, Honoured In House Of Commons

By Ryan Maloney, The Huffington Post Canada, December 3, 2014

Barbara Winters was headed to work that fateful October morning when she heard gunshots ring out at the National War Memorial.

So, she ran towards them.

Winters soon discovered four people trying desperately to save the life of Cpl. Nathan Cirillo, who was shot while standing guard over that towering monument to Canada's war dead.

So, she joined them.

Putting to use her 17 years as a medic in the naval reserve, Winters performed mouth-to-mouth on the young soldier and provided direction to others working to keep him alive.

It would not be enough.

So, before Cirillo drifted off, she gave him comfort.

"You're a good man, you're a brave man," Winters told Cirillo, over and over.

"You are so loved."

On Wednesday, Winters, a government lawyer, was awarded the deputy minister of justice's award for humanitarian excellence. She watched question period from the gallery later that that afternoon.

As things wrapped up, Speaker Andrew Scheer told the "honourable members" that he wanted to draw their attention to the woman above them.

Scheer reminded MPs that Winters was among the first on the scene at the War Memorial on that miserable day and provided first aid, support, and encouragement in Cirillo's last moments.

The room erupted in applause. MPs of all stripes rose to feet to pay tribute to her courage.

"Bravo," some shouted. "Bravo."

And so, she also rose from her seat.

And with quiet grace, Winters fought back a tear and nodded her head.

(Watch the video by clicking here)

LeDroit

Maintenant 550 employés au centre de paye de Miramichi

Paul Gaboury, Le Droit, le 6 decembre

La dernière étape pour combler les 550 emplois au nouveau Centre des services de paye de la fonction publique à Miramichi, au Nouveau-Brunswick, vient d'être franchie.

Le ministère des Travaux publics et services gouvernementaux a confirmé que le centre a maintenant atteint sa pleine capacité de 550 employés en accueillant son dernier groupe de 207 nouveaux employés.

Le premier ministre Stephen Harper avait lui-même annoncé la mise sur pied de ce centre en août 2010 et la création de 550 emplois à Miramichi en 2015.

Le centre offrira ses services à plus de 57 ministères et organismes fédéraux. Selon le ministère, le projet de transformation de l'administration de la paye permettra des économies annuelles de 78 millions $ dès 2016-2017.

Lorsque le gouvernement a annoncé le projet, la communauté des agents de rémunération qui comptait alors plus de 1 800 employés avait été secouée, puisque la centralisation des services a entraîné la suppression de plusieurs centaines d'emploi dans les ministères, principalement dans la région de la capitale nationale.

Peu d'employés travaillant dans la région avaient accepté un transfert vers les Maritimes lors des premières vagues d'embauche.

En octobre dernier, LeDroit révélait que 974 conseillers en rémunération, travaillant principalement dans la région de la capitale nationale, avaient reçu un avis de poste touché.

Some federal bodies balking at Harper government's unified comms site

By James Munson, iPolitics, December 2, 2014

A federal website with the aim of publishing news releases from every government-funded entity is only getting partial uptake from arm's-length bodies.

News.gc.ca, which disseminates not actual news but public relations content, is a slickly-designed one-stop media shop tailored for an easy user experience that will one day funnel the missives of over a 100 different federal departments, agencies and offices.

The effort at consolidating Ottawa's image and public relations through the site is so expansive that some willing departments have stopped publishing news releases, media notices and background documents on their own websites.

Environment Canada and Natural Resources Canada made the switch in March. Anyone looking for Environment Minister Leona Aglukkaq's reaction to U.S. coal emissions

regulations announced in June or her work at the United Nations' Climate Summit in September will have to go to News.gc.ca for insight.

But not every federal body in the government's sights is so willing.

News.gc.ca's advanced search function reveals the groundwork has been laid to publish news releases from the Supreme Court of Canada, the RCMP, the National Energy Board and almost all of the watchdog-mandated officers of Parliament.

The RCMP, the National Energy Board, the office of the Privacy Commissioner and the office of the Commissioner of Official Languages see no problem with participating, though in their cases they will continue to publish news originally on their sites.

"There's no issue with having the material simultaneously on our site and their site," said Nelson Kalil, a spokesperson for the office of the Commissioner of Official Languages. "We're not trying to be strangers to them necessarily. But the key for us is that we maintain our own independent website."

The Supreme Court of Canada, which in the eyes of many had its independence questioned by the Prime Minister's Office during a sparring contest over the failed appointment of Judge Marc Nadon in the spring, isn't coming on board so easily.

"The Supreme Court of Canada is independent of, and must be seen to be independent of, the other branches of government," wrote spokesperson Owen Rees in an email. "It will therefore continue to publish its own news releases rather than use the www.news.gc.ca website."

Aside from its basic independence from government, the court's participation is complicated by the fact that its communications include the court's decisions — documents that require a high degree of public availability.

Several officers of Parliament have joined the Supreme Court of Canada in declining to participate in news.gc.ca.

"Elections Canada will not be contributing its news releases to that website," said spokesperson John Enright. "If a request were to come or if a request did come, the answer is no."

The office of the Information Commissioner won't be using the website either, said spokesperson Natalie Hall.

In an email, the office of the Lobbying Commissioner said it was "exempt" from the news.gc.ca.

As for major federal departments, none appear to have joined Environment Canada and Natural Resources in ending the publication of news releases on their websites despite the nine months that have elapsed since those two departments joined.

All departments are slated to join news.gc.ca but the process is taking time, wrote Treasury Board Secretariat spokesperson Stephanie Rea in an email.

Q and A: David Anderson on balancing security with civil rights

Dylan Robertson, The Ottawa Citizen, December 3, 2014

Since the United Kingdom grappled with violence in Northern Ireland, the country's had an Independent Reviewer of Terrorism Legislation to help ensure security laws don't encroach on civil liberties. The current officer, Queen's Counsel David Anderson, spoke to the Citizen's Dylan Robertson in advance of his visit to Ottawa later this month.

Q. How can countries balance civil liberties with security?

A. With great difficulty. The first priority of any government is to keep the people safe and free. On the whole, governments in Western countries want to do both things and go about it in good faith. But it's in the nature of government, if not checked, to overreach itself from time to time.

In a sophisticated democracy, Parliament and court are the most important. But in the U.K. (and Australia), you have the independent reviewer who gets to read all the secret stuff. Unlike the courts, which are restricted to the specific case before them, he gets to look across the whole range … and pick up on trends.

Sometimes your recommendations are picked up by government. This week the government said it would accept all my 10 recommendations on a particular law, because it's a coalition government and I think that's the only thing they can agree on.

Q. What issues are hardest to navigate?

A. The trickiest are measures that constrain how people live their lives. Whether that's freezing of assets, or terrorism investigation and prevention measures — similar to what you call peace bonds.

Those are troubling because in terrorism cases there are parts you can't disclose in full. Both in Canada and the U.K., we have tried to develop a trial process which is as fair as

possible. It's still a very awkward position to be in when you have someone who cannot actually hear all the evidence and may face bad consequences as a result.

Q. How has terrorism changed in the U.K. since 'The Troubles'?

A. You can make the case it was more serious then: In 1972, more than 500 people lost their lives in the U.K. due to terrorism, most in Northern Ireland.

In reaction to that, some pretty oppressive measures were brought in. We brought in internment for a few years in which people were indefinitely detained. The European Court of Human Rights found in 1985 that we were close to torture, with five degrading techniques where they were hooded and deprived of sleep and subject to loud noises.

I think we've learned from that in the post-9/11 world. We have made mistakes but what we have so far avoided, with some good judgment, are measures that are so disproportionate they become in themselves radicalizers. In Northern Ireland today, I can show you freshly painted signs complaining about internment; (yet) that's not been used for more than 30 years.

Q. Some argue laws from the Troubles weakened U.K. justice in general.

A. It's always a tendency of governments to adapt an idea that was originally said to be exceptional and apply it more widely. And we have seen that, for example, executive orders used not just for people believed to be terrorists, but sexual offenders too.

It's important to realize this is not a one-way ratchet. If the people decide that laws are too strong in a healthy democracy, it can change. In the 2010 election, parties campaigned on the basis that previous laws were too strict.

Q. You've had this role since 2011. What worries you most?

A. Every time I turn on the radio or the television, I wonder whether there has been a major atrocity, but that's only because of the job I do. I think if I were a civilian with normal responsibilities, I would live my life not unduly concerned with these matters.

On the whole, people in this country can go about their ways not restricted by the measures the state is taking to protect them.

(This interview has been edited for length and clarity.)

dcrobertson@ottawacitizen.com

What does the independent reviewer of terrorism legislation do?

– The reviewer can see top-secret documents, and meets with judges, police, convicted people and civil society. He issues reports on drafted legislation, as well as every few months on how all terrorism laws have been enforced.

–The reviewer is appointed after approval by the Prime Minister and opposition.

– Australia replicated the position in 2010.

– Canada has no such position.

Queen cannot send Canadian troops to war, Attorney General says in letter aimed at settling longstanding dispute

Joseph Brean, The National Post, December 3, 2014

The Queen is Canada's head of state and commander-in-chief of the Canadian Forces. She is ceremonially ubiquitous in the Forces — from the Loyal Toast given at regimental dinners to the playing of God Save The Queen and the recent renaming of the "Royal" Canadian Air Force.

According to the Attorney General of Canada, though, the monarch "cannot unilaterally deploy the Canadian Forces," which may seem an odd thing for Canadian officials to say, given that she has never tried.

But the unusual declaration came in the settlement of a longstanding dispute between the Canadian Forces and Aralt Mac Giolla Chainnigh, a lifelong military man who served in Afghanistan and recently retired as professor of physics at the Royal Military College of Canada.

As a Canadian with Irish heritage who resents the trappings of British monarchy, he fought for many years against being made to toast the Queen at formal dinners, and only reluctantly swore allegiance to her as a representative of Canada.

His superiors were less than enthusiastic about his concerns. He said General Thomas Lawson, now Chief of Defence Staff, in his previous role as Commandant of RMC, wrote to him about his concern that the Queen possessed the constitutional prerogative to send Canada to war without parliamentary approval, saying "Don't know. Not interested."

The final settlement of his grievance, with its careful circumscription of the Queen's military powers, falls in line with a recent decision of Ontario's top court that swearing allegiance to the Queen does not violate the Charter right to free expression. That action was brought on behalf of an activist group that included people of Irish or Trinidadian background, and ideological anti-monarchists, all similarly reluctant to swear an oath of allegiance to a hereditary British monarch.

“The oath to the Queen of Canada does not violate the appellants’ right to freedom of religion and freedom of conscience because it is secular; it is not an oath to the Queen as an individual but to our form of government of which the Queen is a symbol,” the Ontario Court of Appeal ruled.

As the expression goes, a constitutional monarch reigns but does not rule. Similar conclusions were reached in Capt. Mac Giolla Chainnigh’s federal court case.

“I cannot think of any Canadian institution where an expectation of loyalty and respect for the Queen would be more important than the Canadian Forces,” the judge wrote, noting the importance in the military of “standards of decorum and respect,” including raising a toast to the Queen.

“This is particularly obvious in an environment of command and control management,” the judge wrote. “Whether Capt. Mac Giolla Chainnigh likes it or not, the fact is that the Queen is his Commander-in-Chief and Canada’s Head of State. A refusal to display loyalty and respect to the Queen where required by Canadian Forces’ policy would not only be an expression of profound disrespect and rudeness but it would also represent an unwillingness to adhere to hierarchical and lawful command structures that are fundamental to good discipline.”

A letter from the office of the Attorney General, Peter MacKay, to ultimately settle the challenge acknowledged the Queen cannot send Canadian troops into battle; that is the nature of ceremonial power. Going to war “is an executive decision that is made by the government, through Cabinet,” the letter reads. “The Queen and the Governor General stand as legally necessary figureheads in this process.”

Despite his loss in court, Capt. Mac Giolla Chainnigh was “not completely dissatisfied” by the experience, he said in a letter. “I had carefully, and honestly, represented an issue of justice and freedom to the legal system of the country. Although I had lost, my voice had been heard.”

He is also keen that people, especially in the military, know what is now so bluntly stated in his settlement letter. The Queen “cannot issue orders within the military establishment,” he wrote. “All that she is empowered to do is to parrot the decisions of our democratically elected officials. The power lies with the people, as it must if we are to claim the status of a democracy.”

THE VANCOUVER SUN
ENTERTAINMENT LIFE HEALTH TECHNOLOGY TRAVEL CARE

Lawyers sue province over civil jury fees

Costs present a barrier to justice by making process unaffordable, group maintains

BY IAN MULGREW, VANCOUVER SUN, DECEMBER 2, 2014

Charging would-be litigants up front for the cost of a civil jury is unconstitutional and represents a barrier to civil justice, the Trial Lawyers Association of B.C. says in a lawsuit against the provincial government.

The sheriff's levies are unaffordable not just by the indigent and needy, but also by large segments of the middle class, the group maintains.

"The right to Canadians to pursue or defend a civil claim before a civil jury enhances the achievement of justice, serves the public interest and is an essential aspect of the Canadian civil justice system," the trial lawyers say.

The B.C. Supreme Court rules state a litigant must pay to the sheriff a sum sufficient to cover the costs for the jury and the jury process.

In a statement of claim filed with the court Tuesday, the lawyers say not only do the hefty fees deter anyone who isn't wealthy, but also they have not been authorized by an order-in-council under the Jury Act or any other statute.

Instead of following the proper process, they say the sheriff simply issued a memo saying that effective July 1, 2013, litigants had to pay 45 days before their trial a deposit of $1,500, $1,000 of which was non-refundable; then they had to pay the sheriff further deposits — $800 daily for day two through 10 of trial, a deposit of $900 a day for the following 39 days and then a deposit of $1,200 a day for every trial day beyond.

Jurors receive $20 a day for each of the first 10 days of trial, $60 a day for the 11th to 49th days of the trial, and $100 for succeeding days.

The association was part of the winning side in October when the Supreme Court of Canada declared hearing fees imposed on litigants by the B.C. government were unconstitutional.

Chief Justice Beverley McLachlin said such charges imposed undue hardship on ordinary people and impeded their right to bring legitimate cases to court.

Back from participating in that battle about access to justice, Vancouver lawyer Darrell Roberts said the charges for an eight-person civil jury represent a similar hurdle and were part of the same government regime to make civil litigation pay for itself.

Roberts said most other provinces don't impose the fees but he hadn't finished collecting data on those that do.

"We don't even have the number of civil jury trials that are being conducted in B.C.," he said. "They're way down; nobody can afford them, we know that. Anecdotally, when I talk to people, only ICBC is going for them. I can't point to one civil jury trial going on right now. When I was a young counsel (in the 1960s), they were not uncommon."

The jury charges and the hearing fees together were blamed by lawyers who abandoned lawsuits on behalf of survivors of the 2006 Queen of the North ferry sinking that left two dead.

Roberts said the sheriff turns up in the Supreme Court at the start of trial to collect the money.

"On day one, the sheriff stands there waiting for a cheque for the first 10 days of trial — $800 times nine, and if he doesn't get it, you don't get your jury," Roberts said.

"Who the hell can afford to pay that? I've run the numbers and they're awful."

Although they do not exist in Quebec, whose civil legal system is based on the Napoleonic Code, civil juries have been an integral part of B.C.'s litigation process since the colony was created in 1858 — before confederation.

The philosophy of civil juries is that the courts should be able to explain the law to lay people and that respect of our civil justice system is enhanced when people know their dispute can be resolved by their peers.

They are considered an institutional check protecting citizen involvement so that the legal system doesn't become the special preserve of the bench and bar.

"The civil justice system must be available for all. If it is not, that undermines our civil society," Roberts added.

"We have to have the civil justice system available for everybody, not just corporations and the wealthy. That's why the Supreme Court of Canada decision (on hearing fees) was so important. It sends a signal that the courts are available to everybody. This case is another step along that road."

The government has 21 days to respond to the suit that seeks to have the fees declared illegal and the sheriff ordered to stop collecting them.

What Canada's 'Open Government' Hides

A truly open plan would release all the info to which the public is entitled, not only what the feds want us to see.

By Michael Geist, Contribution to tTheTyee.ca, December 2, 2014

*(**Michael Geist** holds the Canada Research Chair in Internet and E-commerce Law at the University of Ottawa, Faculty of Law. He can reached at mgeist@uottawa.ca or online at www.michaelgeist.ca.)*

Treasury Board president Tony Clement unveiled the latest version of his "Open Government Action Plan" earlier this month, continuing a process that has seen some important initiatives to make government data such as statistical information and mapping data publicly available in open formats free from restrictive licenses.

Given the promise of "greater transparency and accountability, increased citizen engagement, and driving innovation and economic opportunity," few would criticize the aspirational goals of Canada's open government efforts, which have centred on three pillars: open data, open information, and open dialogue. Yet scratch the below the surface of new open data sets and public consultations, and it becomes apparent that there is much that open government hides.

True, federal efforts around open data have seen progress in recent years. What started as a few pilot projects with relatively obscure data has grown dramatically, with over 200,000 government data sets now openly available for use without the need for payment or permission. Moreover, the government has addressed concerns with its open government licence, removing some of the initial restrictions that unnecessarily hamstrung early efforts.

However, the enthusiasm for open data has not been matched with reforms to the access to information system. Despite government claims of openness and transparency, all government data is not equal. There is a significant difference between posting mapping data and making available internal information on policy decisions that should be released under access to information rules.

Indeed, while the government has invested in making open data sets available, it has failed to provide the necessary resources to the access to information system. The Information Commissioner of Canada has warned that inadequate financing has made it virtually impossible to meet demand and respond to complaints. Regular users of the access to information system invariably encounter long delays, aggressive use of exceptions to redact important information, significant costs, and inconsistent implementation of technology to provide more efficient and cost-effective service.

In short, the access to information system is broken. An open government plan that only addresses the information that government wants to make available, rather than all of the information to which the public is entitled, is not an open plan.

'Consultation theatre'

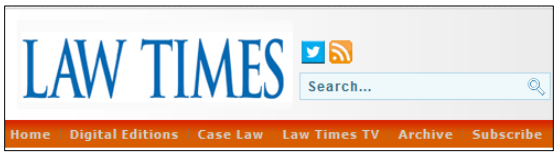
The efforts on open dialogue and open government suffer from similar shortcomings. The government and its agencies have embarked on public consultations on many issues in recent years: the Canadian Radio-television and Telecommunications Commission asked Canadians for their views on broadcast regulation, the Competition Bureau consulted on advocacy priorities, and House and Senate committees regularly hold hearings on new legislative proposals.

Yet open dialogues and consultations mean little if the outcomes are pre-determined and the public input is largely ignored. This form of consultation is properly characterized as "consultation theatre," where government seeks to claim consultation with no discernible impact on the resulting law or policy.

For example, this week the Senate Committee on Justice and Human Rights wrapped up its hearing on Bill C-13, passing the lawful access/cyberbullying bill with no comments or changes. The hearing included many voices (I appeared in a personal capacity), but Carol Todd, the mother of cyberbullying victim Amanda Todd, was excluded after she expressed concern with the privacy implications of the bill. Similarly, Daniel Therrien, the Privacy Commissioner of Canada appointed earlier this year by the government, advocated changes during his appearance that were ultimately ignored.

Open dialogue and public consultations do not mean that the government simply follows whatever advice is offered up through the process. However, if the consultations or hearings are little more than theatre, claims of open government or open dialogue mean very little.

Open government -- whether open data or dialogue -- offers great promise to provide a more transparent, inclusive and efficient government. Unfortunately, ignoring issues such as access to information and genuine efforts to incorporate public input into policies means that for now open government is most notable for what it hides.



Judicial vacancies pile up

Lawyers concerned about delays as 29 Superior Court posts left unfilled

By Yamri Taddese, Law Times, December 1st, 2014

Despite Superior Court Chief Justice Heather Smith's call for prompt judicial appointments, Ontario is approaching the end of the year with nearly 30 vacancies for federally appointed judges across the province and no new appointments since April.

The impact of these vacancies is playing out across the province, says Cheryl Siran, chairwoman of the County & District Law Presidents' Association.

"There simply aren't enough Superior Court judges to deal with the volume that's going through our system," she says, adding the problem has created "a ripple effect" for both the justice system and the way lawyers do their jobs.

"It's more than just about accessing a judge. It has impacts that then move down to the practices of lawyers, their businesses in rural and remote communities, and the people that they service," she says.

"If you can't get dates in your region for your matter except months and months down the road, it has a ripple effect that goes through the whole of the justice system and for people who are both in it and using it."

At the opening of the courts ceremony in September, Smith sounded the alarm about the problem. "In the past, the federal minister of justice filled these vacancies in a timely manner. Regrettably, this year is quite different," she said. The last new appointment to the Superior Court was in April, although the government has promoted a judge to the role of regional senior justice since then and made Ontario Chief Justice George Strathy's appointment official in June. Currently, there are 29 vacancies at the Superior Court and three at the Ontario Court of Appeal.

The unfilled positions have meant longer wait times in the province's busiest courtrooms, according to lawyers. Brampton, Ont., lawyer Edmond Brown says what's already a crowded courthouse is now feeling the pressure of unfilled vacancies as well.

His clients are waiting longer to have their day in court, and "the routine now is anywhere up to a year before you can get your trial on," he says. Unfilled judicial vacancies are "one of the factors" for the delay, he adds.

“Some of the vacancies have been open for quite a while and there doesn’t seem to be any urgency in making the appointments,” he says.

David Sterns, second vice president of the Ontario Bar Association, says longer times to appear before judges means fewer cases coming to a settlement as well.

“If there’s no prospect of getting in front of a judge, people don’t settle and that applies in every type of dispute but it’s particularly heartbreaking in family law disputes because people are just waiting for this elusive day in court,” he says.

“When [that day] comes, they focus on their case, they get down to business, and they often resolve their differences. But if you can’t actually get that hearing or the hearing is put off too long, that’s not going to happen.”

The situation is also far from perfect in class action law, says Sterns, adding there are just two judges dealing with these types of proceedings in Toronto.

“Without new appointments and without filling these vacancies, the situation is becoming unworkable,” he adds.

Lawyer Bruce Hillyer, a partner at Martin & Hillyer Associates in Burlington, Ont., says the delays have been frustrating.

“How it affects my practice primarily is the inability to get timely judicial pretrials, which in one of the jurisdictions in which I practise is a precondition to getting a trial,” says Hillyer, whose practice focuses on personal injury and insurance disputes.

Hillyer gives an example of a client who’s an amputee and has been unable to purchase the upgraded prosthetics he needs. “We had to get a private loan to help him fund that,” says Hillyer, adding “our inability to get a judicial pretrial in a timely manner has effectively delayed our ability to get this thing to the courtroom door.”

The situation is worse in Halton region, says Hillyer, who also practises in Hamilton, Ont. “In Hamilton, it’s a little easier. It’s a bigger problem for me in Halton.”

At least part of the problem “has to be” the result of unfilled judicial vacancies, says Hillyer, adding “it is a real hindrance in getting justice for injured folks in a timely manner.”

The Department of Justice says the appointment process includes “broad consultations.”

“These appointments have always been a matter for the executive and will continue to be. The appointment process includes broad consultations with prominent members of the legal community,” said Clarissa Lamb, spokeswoman for Justice Minister Peter MacKay.

“We will respect the confidentiality of the consultation process and will not comment on specific recommendations,” she added.

Meanwhile, some lawyers say the lack of lawyers among the government benches may be to blame for the Justice Department's slow pace of appointments.

"Unlike some governments, there are not a lot of lawyers in this government, not a lot of lawyers in cabinet, and some of the lawyers who are in cabinet have little experience as lawyers. They might have worked a year or two," says Brown.

"Say [Brian] Mulroney's or [Jean] Chrétien's or [Pierre] Trudeau's governments, where the majority of the cabinet would have been lawyers, they were very aware of legal issues and they were much more understanding of the consequences of delays."

Meanwhile, Smith's office says the court is doing its best to move cases along as quickly as it can.

"For its part, the Superior Court has done everything that it can do to provide litigants with timely next steps in all proceedings. However, to ensure that cases and trials will continue to be scheduled in an orderly and timely way, the court must have its judicial complement at full strength," said Roslyn Levine, executive legal officer to Smith.

"Everyone recognizes the challenges that the current number of vacancies present. Chief Justice Smith is confident that the minister of justice understands the importance to the public, the government, and the court, of promptly filling all of the Superior Court's current judicial vacancies," she added.

U of C law embracing innovative teaching methods

Mallory Hendry, 4Students Blog, Canadian Lawyer, December 1st, 2014

University of Calgary Faculty of Law associate dean Alice Woolley insists she is not tech-savvy. She can check her e-mail on her smartphone, and recently learned to set an alarm, but a technlogical whiz she is not, she says.

Standing at the front of the class lecturing just doesn't work anymore, so Woolley is not letting her Luddite tendencies keep her from finding new ways to connect with students. And she says her innovative teaching methods shouldn't deter students who consider themselves less technologically inclined from taking her courses either.

Woolley says people always think the tools are harder than they are, but nobody should be intimidated — she clearly isn't. Woolley has been adding innovative methods to her teaching for a while now.

"I'm always trying to make my teaching better," she says.

Woolley explains she had become "fundamentally skeptical" that a "stand-and-deliver" model of teaching was an effective way to facilitate student learning.

"If we want students to be able to not just regurgitate the law but actually be able to use it to analyze a problem then they have to start practising analyzing problems in class, we can't just have them doing it in the exam," she says.

Students need to learn the skills they will need when out in the profession — not just applying legal doctrine but thinking critically and making policy assessments in a systematic and rigorous way.

"The method I use allows that to happen."

So if something new and interesting comes to her attention — and it makes sense for her course — she incorporates it.

The latest addition is the use of the Top Hat app in her second-year administrative law class and upcoming ethics class. It allows her to ask the class a question, and the students text in their answers. It takes her ability to continually assess their learning to a whole new level.

"I know what every single student in the class thinks, and it gives me a way better sense of where they're at and if they understand the concept," she says

It allows her to track her students' learning and generates feedback not from the few willing to speak out in front of the class but from everybody.

Woolley can also measure participation with Top Hat — the app tells her who is there and who answered the questions and she can give grades for participation which, she adds, creates a more "vibrant" classroom atmosphere.

"It's the best teaching experience I've had in ten years," Woolley says. "I'm able to connect with them so much better through this delivery mechanism."

As for the students, they are enjoying the new approach as well.

For Laura Comfort, a second-year student in Woolley's administrative law class, the professor's reputation preceded her.

"I heard she uses more of a problem-based learning method," says Comfort, who has some experience in her past educational experience with that method. "The technology helps her use the problem-based learning. Once I learned the technology I was interested. It's quite effective, especially for the material."

The Top Hat question, with which Woolley begins every class, allows the professor to see what the students are struggling with "right then and there," says Comfort.

Students come to the class having watched a short, usually 15-minute podcast and class time is spent diving into longer written problems and discussion of the concepts.

"Her theory was that it makes no sense for the exam to be the first time you're faced with a problem," Comfort says of Woolley.

Comfort feels more prepared going into the exam because she has become familiar with how the professor frames questions, what is expected of answers, and students have been getting direct feedback during the classes which helps them navigate how they'll be marked.

"It helps you learn the teacher," Comfort explains.

Woolley tends to agree.

"One of the things is how you teach and another is how you evaluate," she says. "I'm always trying to find ways to evaluate the students that go beyond the traditional exam. It's harder to do that, but it's a nice option to have."

Jonathan McDonald, another 2L, is having his first experience with this kind of learning platform.

"I find it pretty good, I find it pretty helpful to learn, because we get to go through smaller questions on issues rather than looking at the bigger picture, which we always do in law school," he says.

There are two sections of administrative law — one with Woolley and one with a more traditional lecturing model. Of the two, McDonald says the people in Woolley's class are finding the information easier to absorb. McDonald says he switched sections for his ethics class next semester in order to stick with Woolley and continue with the more high-tech approach.

While the inaugural class hasn't written final exams yet, Woolley says the midterms were promising. Her approach seems to be spreading — other faculty members have started using Top Hat now too.

The culture at the University of Calgary is very supportive of new and innovative ways of teaching, says Woolley. There's a strong push to maintain a strong academic rigor, but also ensure the faculty is using best practices and updating their methods.

"There's an atmosphere at U of C where we're trying as a faculty as a whole to be innovative in our teaching," she explains.

What Performance Management Is and Is Not

By Robert D. Behn, Contribution to Government Executive Magazine, November, 2014

At a recent academic conference a scholar was explaining his research in which he sought to determine whether performance management worked—whether it improved performance. He took a traditional approach (called "meta-analysis" by the cognoscenti) examining all of the different reports that analyzed this question seeking to draw conclusions from this entire collection of research.

Unfortunately, he had one problem. How to decide what counted as "performance management." After all, many of the reports he analyzed offered no specific definition of "performance management." Many simply used this two-word phrase as if its meaning was simple and obvious.

Moreover, many of these reports used the phrase "performance management" when all anyone was doing was collecting some data that might (or might not) be related to performance—to some public purpose that the organization might (or might not) be trying to achieve.

No actual management was involved. No managers were doing any managing. They had some data. But how they were using their data was unclear. They might have been doing nothing more than storing them in a database. Maybe they were also posting their data on a website.

Clearly, however, not all of the organizations that asserted they were doing "performance management" had developed a strategy for focusing staff and collaborators on the task of improving performance—on producing some specific results.

This revelation is not surprising. Long ago, I learned that many public officials—and many academics too—use the phrases "performance management" and "performance measurement" interchangeably, as if they are the same thing.

It's time to stop letting them off the hook. It's time to clarify what performance management is and what performance management is not.

1. Performance management requires the members of the leadership team of a jurisdiction, agency, or collaborative to focus their efforts on achieving a specific public purpose. The leadership team of the agency, jurisdiction, or collaborative is engaged in performance management only if it articulates this purpose clearly, publicly and vocally.

This purpose might be to reduce crime. It might be to help children grow up to be responsible citizens and productive employees. It might be to prepare a nation to cope effectively the next time a virulent virus jumps from an animal to a human. Whatever their purpose is, the managers have to make it clear to their staff, to their collaborators and to citizens.

2. Performance management requires the leadership team to focus everyone on the task of eliminating or mitigating one of the important performance deficits that is preventing them from achieving this purpose.

3. Performance management requires the leadership team to define a "performance target"—a specific result to be produced by a specific date that, when achieved, will eliminate (or at least mitigate) this key performance deficit.

4. Performance management requires the leadership team to develop a performance strategy that will engage employees, collaborators and citizens in helping to achieve this target.

5. Performance management requires the leadership team to track, regularly and frequently, data that reveal its progress toward achieving this target. (If the leadership team has no target for eliminating a performance deficit, how does it know what data to collect—what to measure?)

6. Performance management requires the leadership team and staff to analyze these data to determine how much progress they are making toward achieving their target.

7. Performance management requires the leadership team to learn from these data—to use its analysis of its data to make adjustments (or drastic revisions) to their strategy.

8. "Performance management" requires the leadership team—after it has achieved its target—to select another performance deficit and create another target, plus another strategy for achieving this new target. In doing so, the leadership team will focus everyone on ratcheting up the achievement of their public purpose.

Real performance management requires active leadership. It is not a mere data-collecting chore that can be delegated to a few measurement wonks. If a leadership team is truly doing performance management, it needs to be actively engaged in performance leadership.

Perhaps you remember what Humpty Dumpty told Alice in Through the Looking Glass:

"When I use a word," Humpty Dumpty said in rather a scornful tone, "it means just what I choose it to mean—neither more nor less."

Claiming that mere performance measurement is actually performance management is nothing more than Humpty Dumpty management.

***Robert D. Behn**, a lecturer at Harvard University's John F. Kennedy School of Government, chairs the executive education program Driving Government Performance: Leadership Strategies that Produce Results. His book, The PerformanceStat Potential, was recently published by Brookings.*

EDMONTON JOURNAL

Jim Prentice eyes public service reforms to tackle 'shocking' turnover, low morale

'This is not about cuts,' premier says

KAREN KLEISS, EDMONTON JOURNAL NOVEMBER 26, 2014

EDMONTON - Premier Jim Prentice will reform Alberta's public service to address "shocking" turnover, low morale and a host of other "very significant problems."

He has appointed an outside "agent of change" as Alberta's top civil servant and appointed two high-profile Albertans to helm a new, permanent advisory council that will begin meeting in the new year.

He started laying the groundwork days after he took office, when he met with high-ranking deputy ministers to discuss reforms; the following week, he hosted a one-hour question-and-answer session with Alberta's top 300 bureaucrats.

"The reason I'm focused on this is it's clearly necessary. There have been very significant problems in the past, and there is empirical proof of that," Prentice said.

"There have been employee surveys that show the morale of the civil service is low, and that there has not been a healthy relationship between elected representatives of government and the civil service.

"There has clearly been a very high level of turnover and churn, and I actually found the numbers quite shocking," he said, adding inexperience at senior levels is also a concern.

Prentice has appointed Richard Dicerni as deputy minister of executive council, with a specific mandate to "strengthen and renew" the civil service of 27,000 employees. Discerni worked under Prentice at Industry Canada in Ottawa and oversaw a public service overhaul there, too.

The new Premier's Advisory Council on the Public Services will be co-chaired by Ian Brodie, a former chief of staff for Prime Minister Stephen Harper, and Oryssia Lennie, a veteran civil servant who spent decades in key Alberta roles before heading to Ottawa as deputy minister of Western Economic Diversification.

Committee members will not be paid, but they will be reimbursed for expenses incurred during three to four annual meetings.

In coming weeks Brodie and Lennie will work with Prentice to name the other members of the committee. Prentice said he expects the first meeting to happen in early 2015.

Dicerni and Brodie declined interview requests and Lennie could not be reached for comment.

Prentice said the committee won't make decisions but will make recommendations directly to him. He emphasized that "this is not about cuts.

"I don't want this to be mis-cast as a committee to cut the civil service and chop up the civil service," Prentice said. "It's an agenda that involves retaining and attracting bright young talent into the civil service, it's about improving the morale of the civil service, it's about reducing the churn and the turnover in the civil service," Prentice said.

"It's about the professionalism and the ethics in terms of the relationship between the civil service and the elected representatives of the government."

Tony Dean, professor at the School of Public Policy and Governance at the University of Toronto, was once head of Ontario's civil service and is now writing a book about public service reform.

He said public service reform is typically driven by two competing forces: increasing citizen demand for more and better services, and a tight fiscal environment.

"We live in a world in which there are massive expectations on our political leaders to get results quickly, and that is certainly the case with Mr. Prentice," Dean said.

He said "there's no doubt" that some governments have used public service renewal to shrink the sector by introducing alternative forms of service delivery and contracting out. However, he said Prentice's unique focus on improving the work experience for Alberta civil servants suggests he is taking a different approach.

"The challenge is, given the experiences of the last decade or two … public services have in many respects been under attack, and people are going to be defensive," Dean said. "There will be cynicism.

"You're asking the question, what does it mean? Everybody in the public service is going to be asking that as well. The sooner there's a concrete sense of what the elements of this look like, the better.

"That's the next step — to give people a feel for what, in Jim Prentice's mind, renewal of public service means."

THE LAWYERS WEEKLY zsa.ca
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Litigation reaching critical point on Christian law school question

Curtain set to rise on cases in Ontario, Nova Scotia and B.C.

By Cristin Schmitz, The Lawyers Weekly, December 5, 2014 issue

The Trinity Western University law school dispute that has divided lawyers and their regulators is set to be argued soon in Nova Scotia and Ontario courts — but new developments in related British Columbia litigation have made the case a moving target.

TWU's proposed law program would admit its future graduates to the bars of the 12 common law provinces and territories, but at press time, the private evangelical Christian school's separate judicial reviews of rejections from the Nova Scotia Barristers' Society and the Law Society of Upper Canada were slated to be heard this month and next. TWU is also preparing to launch an additional judicial review of the B.C. Law Society's recent reversal of its approval of the proposed law faculty.

The Langley, B.C.-based university is also a respondent in the B.C. Supreme Court, where it is defending a constitutional attack on last year's key decision by B.C. Minister of Advanced Education Amrik Virk consenting to TWU's planned Juris Doctor law program. TWU also is facing the prospect of launching yet another judicial review if the minister opts to revoke his approval, as Virk alerted TWU he might do last month.

One way or another, the national controversy that ignited when the Federation of Law Societies of Canada granted preliminary approval to TWU's proposed law program on Dec. 16, 2013, could be litigated right up to the Supreme Court of Canada, said B.C. lawyer Earl Phillips, executive director of TWU's nascent law school. Phillips and other TWU leaders have been crossing Canada over the past 12 months trying to persuade legal regulators to green-light the law school, with mixed results.

“We still intend to proceed and build a law school, and how and when we do that, right now there’s a lot of balls in the air,” Phillips said. “We’re prepared to take that fight on. We don’t choose to do that. We don’t do that lightly. But if that’s what we have to do, that’s what we’ll have to do. What form it’s going to take, what it’s going to look like I just can’t say.”

The source of the controversy is the university’s requirement that students and full-time faculty adhere to a “community covenant” limiting sexual intimacy to married heterosexuals. Opponents say the requirement discriminates against lesbian, gay and bisexual students, whether married or not, by effectively excluding them from scarce and highly coveted law school places.

Virk recently told TWU he is considering revoking his Dec. 17, 2013 approval of TWU’s law program, given that the B.C. law society has since determined that the school’s law school graduates would not be eligible to practice law in the province. In light of TWU’s legal challenges to the regulators’ rejections in B.C., Ontario and Nova Scotia, it is unlikely that the proposed law school will be able to enrol its first students by the 2016 deadline on which his approval was based, Virk said.

“If I decide to revoke my consent after considering TWU’s submissions, TWU would, of course, be welcome to resubmit a further application in the future, when the legal issues have been determined,” he wrote on Nov. 17.

The government's reconsideration was sparked by B.C. benchers’ pivotal decision Oct. 31 to revoke their initial April 11 approval of the proposed law faculty. They were following a binding direction from 74 per cent of the 8,039 B.C. law society members who voted Oct. 30 against approval of TWU’s law school for the purposes of the law society’s admissions program.

'The B.C. Law Society reversal kills this law school,” predicted Clayton Ruby of Toronto’s Ruby Shiller Chan Hasan, who is spearheading a Charter attack on Virk’s initial approval last year of the law school (Loke v. Minister of Advanced Education).

“If you were the minister, why would you authorize a law school that the profession told you they find morally repugnant?” Ruby said. “I don’t think they are ever going to get another approval. The idea to have law school that makes life uncomfortable for gays and lesbians, or Jews, or Muslims, is simply laughable. It’s not what Canada is in 2014.”

The Loke challenge, which Ruby was scheduled to argue Dec. 1-5 in B.C. Supreme Court, was temporarily adjourned on consent Nov. 21 at Virk’s request so the minister could reconsider his approval of the law school. Virk is expected to decide by Jan. 5, when the parties are back in court to set dates for the hearing. (If Virk revokes his decision, the Loke case will be moot; otherwise, the case will go forward).

Meanwhile, the court hearings for TWU’s judicial reviews of the negative decisions of Nova Scotia and Ontario benchers are scheduled respectively in Nova Scotia Supreme Court Dec. 16-19 and in Ontario’s Divisional Court the week of Jan. 19. At press time, counsel in both cases told The Lawyers Weekly they were anticipating the hearings would proceed.

However, Ruby said there could be a domino effect if Virk decides to revoke his approval of the law school. “The other cases may not be heard because there will be no law school to approve by the law societies, and it will be moot,” he said.

Ruby speculated the main legal battleground could then shift to TWU suing Virk for reversing himself. “But no court is going to say to a minister of higher education, ‘You have to give permission to any group that comes along and wants a law school according to their religious tenets,’” Ruby said. He posed the hypothetical of 300 sharia believers proposing a law school restricted to males. “And [the minister] has to say ‘yes’? Don’t be silly.”

As of Nov. 25, Alberta, Saskatchewan, Yukon and P.E.I. had decided to admit TWU’s law graduates, while New Brunswick was reviewing its initial decision in favour of admission.

B.C., Ontario, and Nova Scotia denied approval. The matter was still under consideration in Nunavut, and in the Northwest Territories where there was a tie vote. In Manitoba and Newfoundland, regulators are taking a wait-and-see approach.

Meanwhile, the Federation of Law Societies of Canada is examining whether to follow the U.S. example by adding a “non-discrimination” component to its national competency standard for law graduates.

The litigation in three provinces has also attracted plenty of interveners. In TWU and Volkenant v. Nova Scotia Barristers Society, the law society is supported by the Nova Scotia Human Rights Commission, while TWU is supported by the Attorney General of Canada, the Justice Centre for Constitutional Freedoms, and eight other groups. In TWU and Volkenant v. The Law Society of Upper Canada, the interveners supporting the law society are Out on Bay Street, OUTlaws, The Advocates’ Society and the Criminal Lawyers Association, while TWU is supported by Christian Legal Fellowship, the Evangelical Fellowship of Canada, Christian Higher Education Canada, and Judicial Centre for Constitutional Freedoms.

The stakes in the case are high, extending far beyond the birth of one law school, Phillips said.

“There’s a range of issues under the Charter of Rights and I think that if ultimately a court decides that a Christian community is not allowed to seek to work, live and study together in a way that honours the traditional Christian conception of marriage, then we have significantly less freedom of conscience, and religion in Canada,” he said.

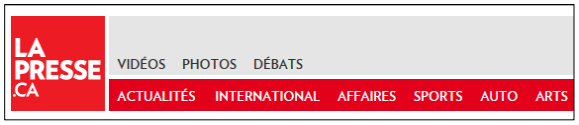
Nova Scotia’s law society argues that freedom of religion is not even implicated, partly because offering a law degree is a secular activity.

“This case is about the [law] society’s role and its obligation to ensure equal opportunity to access the legal profession, and ultimately the judiciary, to historically disadvantaged persons,” the regulator said in its brief. (The Law Society of Upper Canada’s brief is not due until Jan. 5.)

“This idea of what is the mandate of the law society, and what is the breadth of the mandate, is certainly one of the key issues in the case,” said the society’s counsel Marjorie Hickey, of Halifax’s McInnes Cooper.

The scope of Charter-guaranteed freedom of religion is another central issue, added co-counsel Peter Rogers.

“How [do] you balance that right against the equality rights that the Charter mandates the society to carry out...and what does it do to that if a religiously-associated law school basically reserves all its places for the traditional majoritarian sexual orientation?”



La discrimination des femmes enceintes au travail devant la Cour suprême

La Presse, Agence France-Presse, le 3 décembre 2014

WASHINGTON - La Cour suprême des États-Unis s'est penchée mercredi sur la discrimination des femmes enceintes au travail, pendant que sur les marches de l'imposant bâtiment à Washington des défenseurs de la cause féminine avaient déployé des banderoles en soutien à une ex-employée d'UPS.

Peggy Young travaillait comme chauffeuse-livreuse pour l'entreprise postale américaine UPS quand elle a demandé en 2009 une adaptation de ses conditions de travail après être tombée enceinte par fécondation in vitro. Ses médecins ont requis qu'elle ne soulève pas plus de 20 livres, alors que ses fonctions exigeaient qu'elle puisse porter des colis de plus de 70 livres.

Son employeur a refusé de lui attribuer un poste avec des charges «légères», UPS arguant que ces postes étaient réservés à ses employés «blessés» ou handicapés, forçant la jeune femme à prendre un congé sans solde de sept mois, perdant du coup son assurance maladie.

Pendant une audience d'une heure, seules deux des trois femmes juges ont ouvertement pris position pour la plaignante, qui n'avait pas obtenu gain de cause devant la justice inférieure, mais il était difficile de prédire quel serait le vote de la gent masculine de la haute Cour.

De retour d'une opération cardiovasculaire, Ruth Ginsburg, 81 ans, fervente défenseuse des droits des femmes, et sa collègue progressiste Elena Kagan ont conduit un interrogatoire en règle de l'avocate d'UPS, Caitlin Halligan. Concluant de vifs échanges,

Elena Kagan a estimé que la politique de la société postale «excluait injustement (les femmes enceintes) de la main-d'oeuvre», en acceptant «d'accommoder certains employés», mais en refusant cet arrangement aux femmes enceintes, et mettait de fait «toutes les femmes enceintes au bout de la queue».

À l'audience, l'avocat du gouvernement Donald Verrilli a apporté son soutien à la plaignante, qui affirme qu'UPS a violé la loi sur les discriminations contre la grossesse (PDA, Pregnancy Discrimination).

Après de récents revers pour le droit des femmes à la haute Cour, en matière de contraception, les militantes féministes espèrent que ce cas leur donnera raison. Elles avaient déployé des banderoles «Stand with Peggy» (Soutien à Peggy) devant l'édifice.

Au pied des marches de la Cour suprême, Peggy Young, qui avait assisté à l'audience, s'est dite «pleine d'espoir». La décision de la haute Cour est attendue avant juin.