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

Ottawa hiring 400 public servants to manage employment insurance files after complaints of poor service

BILL CURRY, The Globe and Mail, December 9, 2014

The Conservative government is adding 400 public servants to manage employment insurance files in response to a big spike in the number of Canadians complaining of poor service, including unanswered phone calls and processing delays.

Employment Minister Jason Kenney's office confirmed the plans to The Globe and Mail in response to questions about negative performance statistics the minister recently tabled in the House of Commons.

Canadians made nearly 10,000 complaints last year over the quality of service related to the EI program, a 40 per cent spike from the year before.

NDP MP Robert Chisholm welcomed the new hires, but said the government's decision contradicts past assurances that federal public service cuts would have no impact on Canadians.

"These cuts are affecting the ability of the government to provide services to people who are in desperate need," he said, comparing the delays for unemployed Canadians seeking EI to the delays veterans face dealing with Veterans Affairs, which has also had significant staff cuts.

This year, the 21,097 staff in Mr. Kenney's department, Employment and Social Development Canada (ESDC), represents a 19 per cent reduction from 2010 levels. While the department had temporary growth during the recession, staffing is still down

11 per cent from 2008 levels. Staffing levels across the core public service have declined 9.8 per cent between 2010 to 2014.

Alexandra Fortier, a spokesperson for Mr. Kenney, said the additional staff are new hires and some are already on the job.

“Clients should expect to see impacts, such as shorter wait times, in the coming months,” she said, adding that the plan follows a review of EI processing issues by Nova Scotia Conservative MP Scott Armstrong, the minister’s parliamentary secretary.

About one quarter of the new hires will be for government call centres, while the rest will be for processing claims. The jobs will be two-year contracts as the government moves to increased automation, which it expects will eventually allow the department to function with fewer staff.

The federal data recently tabled in Parliament show complaints are up dramatically since 2006-07, when only 444 were received. Complaints peaked in 2011-12 at 15,593. That fell back to 7,119 the next year before rising again to 9,998 in 2013-14.

The data, which were released in response to written questions by the NDP’s Mr. Chisholm, also show worsening scores for processing times and for answering the phone when Canadians call. Earlier this year, Service Canada, the division of ESDC that is responsible for administering the EI program, eased its performance target of leaving callers on hold for no longer than three minutes 80 per cent of the time. The new target is a wait of no more than 10 minutes, 80 per cent of the time.

Steve McCuaig, national executive vice-president of the Canada Employment and Immigration Union, said the government has shown a pattern of hiring temporary staff when the EI backlog becomes too large.

He said staffing cuts at ESDC can hurt federal revenue, because fewer workers are assigned to enforce program rules and collect over-payments. Mr. McCuaig said the cuts appear to have been deeper for front-line service staff than senior management.

“I won’t dispute the possibility that maybe there was some excess [in the public service], but certainly not at the processing and operational levels,” he said. “It’s ridiculous.”

Veterans Affairs looks to hire dozens amid questions about service

Bill Curry, The Globe and Mail, December 10, 2014

Veterans Affairs is looking to hire dozens of new front-line staff across the country who are willing to start work "as soon as possible," according to a wave of new job notices posted this week.

The department lists 50 Canadian cities as potential locations for hiring new client service agents and 41 cities where the department is looking to fill case manager positions.

The client service agent and case manager positions were posted Monday during a week when the Conservative government is facing heated questions over service levels for veterans.

The job postings indicate the number of positions that will be filled has yet to be determined.

"This is a collective staffing process to create pools of qualified candidates that may be used to staff this position and similar positions in various work locations across the country on a permanent, temporary, full-time or part-time basis," the postings state.

There are also postings available for clerk positions with the Veterans Review and Appeal Board.

Prime Minister Stephen Harper told the House of Commons Tuesday that the government is eliminating ineffective positions in the department in order to shift staff to direct service for veterans.

"I could give thousands of examples of where we have streamlined back office support, including, of course, eliminating photocopy and processing clerks in place of digital medical records," said Mr. Harper in response to a question from the NDP.

"There is the difference. The NDP wanted to keep bureaucrats to do nothing but process and delay payments to veterans under a program it actually voted against. On this side, we cut down the bureaucracy. We deliver service to the veterans," he said.

The size of the Veterans Affairs department has shrunk in recent years from a peak of 4,137 full time staff in 2009 to 3,188 this year, a 23 per cent reduction.

The Conservative government has faced heated questions in the House of Commons since last month's Auditor-General's report found vets are waiting months or years to access mental-health benefits.

Another federal department, Employment and Social Development, announced this week that it was hiring 400 new staff on two-year contracts in response to client service complaints related to the Employment Insurance program.

Critics said the move amounted to an acknowledgment that public service staff cuts had gone too far and needed to be partly reversed in order to maintain service.

Veterans Affairs Minister Julian Fantino has faced criticism over the past year over the government's decision to shut down nine regional offices that serve veterans.

Mr. Fantino has argued that the decision was based on low case loads at the locations, which were in Corner Brook, Charlottetown, Sydney, Thunder Bay, Windsor, Brandon, Saskatoon and Kelowna and Prince George.

None of the case manager positions overlap with the nine cities that lost regional offices, however there are client service agent positions posted for eight of those nine cities, excluding Prince George.

The minister has said the department is moving toward a system where veterans can receive service at the more than 600 Service Canada centres across the country.

Harper veut affaiblir le syndicalisme, estime la FTQ

JOËL-DENIS BELLAVANCE, La Presse, le 11 décembre, 2014

(OTTAWA) La FTQ s'élève contre un autre projet de loi actuellement à l'étude au Sénat et soutenu par le gouvernement Harper qui, estime son président Daniel Boyer, aurait pour effet d'affaiblir les syndicats au pays.

Le projet de loi C-525, parrainé par le député conservateur albertain Blaine Calkins, rendrait plus difficile le processus d'accréditation syndicale chez les entreprises d'un secteur relevant du gouvernement fédéral.

Ce projet de loi a été adopté par la Chambre des communes en avril après seulement trois heures d'étude par un comité parlementaire. Certains syndicats ont pu faire valoir leur vive opposition à cette mesure jugée antisyndicale, mais la FTQ n'a pas pu se faire entendre. Et elle ne pourra non plus exprimer ses inquiétudes devant le comité du Sénat qui étudie le projet de loi, car il a l'intention de mettre fin aux audiences cette semaine.

Selon M. Boyer, ce projet de loi changera considérablement les règles du jeu en matière d'accréditation syndicale.

Des dispositions qui inquiètent la FTQ

À l'heure actuelle, le droit fédéral du travail permet l'accréditation syndicale automatique par simple vérification des cartes des travailleurs. En vertu du Code canadien du travail,

le Conseil canadien des relations industrielles est tenu d'accréditer le syndicat sans tenir de scrutin s'il est convaincu que la majorité des travailleurs de l'unité de négociation proposée appuient la syndicalisation.

Mais le projet de loi C-525 forcerait la tenue d'un vote secret des travailleurs, et pour qu'une demande d'accréditation soit acceptée, il faudrait l'appui de la majorité des travailleurs et non seulement la majorité des participants au vote.

Autre élément qui irrite la FTQ et d'autres syndicats, c'est qu'il serait plus facile de dissoudre un syndicat. Tout employé qui voudrait révoquer son syndicat n'aurait qu'à démontrer à la Commission du travail qu'au moins 45 % des travailleurs sont d'accord avec lui. La commission demanderait alors la tenue d'un scrutin. Mais pour se maintenir à flot, le syndicat devrait recevoir l'appui de plus de 50 % de ses membres.

« Au nom d'une sacro-sainte démocratie qui n'en est pas une, on veut instaurer un vote obligatoire pour les requêtes en accréditation pour les employés qui sont sous juridiction fédérale et qui veulent se syndiquer. En sachant la date, l'heure et l'endroit d'un vote, il y a donc une période de temps où l'employeur peut intimider, harceler et imposer des mesures disciplinaires aux gens qui sont favorables au syndicat. Le droit de se syndiquer doit appartenir aux travailleuses et aux travailleurs. C'est un droit fondamental. Et il n'appartient pas à l'employeur », a affirmé M. Boyer à La Presse.

Le président de la FTQ a ajouté que l'on a assisté à une baisse du taux de syndicalisation dans les territoires qui ont adopté des mesures comparables, notamment en Ontario.

Transparence financière

M. Boyer a affirmé que ce projet de loi s'inscrit dans la volonté du gouvernement Harper d'affaiblir le syndicalisme au pays, rappelant que les conservateurs ont aussi proposé un projet de loi sur la transparence financière des syndicats qui est aussi à l'étude au Sénat.

« Je n'ai pas de problème à être transparent. Nos états financiers traînent sur les tables aux congrès et à peu près tout le monde peut les voir. Que veut faire ce gouvernement-là avec ces états financiers ? Ils veulent en partie nous contrôler », a-t-il dit.

Aux prochaines élections fédérales, prévues en octobre 2015, M. Boyer a affirmé que la FTQ compte tout mettre en oeuvre pour défaire les candidats conservateurs au Québec.

CBC news

Stephen Harper does U-turn on election law gagging advocacy groups

PM pledged in 2004 to repeal legislation that limits third-party advertising

CBC News, Joan Bryden, The Canadian Press, December 8, 2014

Stephen Harper used to contend that money does not influence the outcome of elections.

He used to rail against any attempt to limit the amount of money outside advocacy groups could spend during campaigns.

And he used to strenuously object to any attempts to compel those groups to disclose from whom they got their money or how they spent it.

That was, of course, before he became prime minister.

Now, Harper heads a party that accuses labour unions of trying to "bully and influence our elections from the outside" and routinely uses the spectre of dastardly union politicking to drum up donations the Conservatives say are urgently needed to ensure victory in next year's election.

And he heads a government bent on forcing unions to disclose the salaries of their employees and just how they spend the money they collect from members' dues.

Former Liberal cabinet minister Don Boudria stops just short of calling it hypocrisy.

"I think this is a case of that was then, and this is now," said Boudria, who was named in a court challenge launched by private citizen Stephen Harper in 2000 against the then-Liberal government's so-called "gag law" limiting spending by outside third parties during election campaigns.

"The ironies are all over the place."

PM backtracks on pledge

And there's one more irony: since taking power in 2006, Harper has not lifted a finger to repeal the gag law he once fought all the way to the Supreme Court.

"There's been a lot of things that have disappointed me and disillusioned me about Stephen Harper as prime minister, and that's one of the big ones for me," says Gerry Nicholls, Harper's former sidekick at the National Citizens Coalition.

As president of the NCC, Harper saw the gag law as an unconstitutional attempt by Liberals to silence conservative advocacy groups.

"The obvious intent of the gag law is to stifle independent voices at election time. The government wants to shut out and shut up groups like the NCC," Harper declared the day he launched the court challenge.

After two lower court victories, Harper eventually lost the legal battle in the Supreme Court. But when he was running to become leader of the Conservative party in 2004, he signed a pledge to repeal the gag law should he ever become prime minister.

Nine years in power later, three of them at the helm of a majority, and the gag law seems confined to the dustbins of Harper's mind. Third parties are still prohibited from spending more than a total of $150,000 on advertising during a general election, including no more than $3,000 in any single riding. They must also report details of their advertising expenses to Elections Canada and disclose the donors whose money made the ads possible.

"What philosophically has changed between Stephen Harper in 2014 and Stephen Harper in 2000, when we were going after these laws? I'd really like to know," Nicholls said.

Political self-interest cited

Nicholls surmises Harper's retreat may be a function of the fact that it would be a hard sell politically to scrap or loosen restrictions on spending during elections. People tend to favour the notion of getting filthy lucre out of the business of politics, notwithstanding the libertarian argument that Harper and the NCC used to make about the free marketplace of ideas and how no amount of money could ever convince people to vote for a bad idea.

More significantly, Nicholls believes Harper has discovered it's in his political self-interest to stifle his own ideological opponents.

"People are all in favour of free speech as long as they agree with the speech. All too often, if they don't like the groups which are speaking out then suddenly, 'Yeah, we've got to pass a law to stop them.' "

It's no secret the Harper regime doesn't like unions, a number of which have vowed all-out warfare to bring down the Tories.

Although unions are already prohibited from donating to political parties or candidates and are severely restricted, as third parties, in what they can spend on advertising during campaigns, it seems Harper wants to ratchet the restrictions up a notch.

A backbench Conservative MP's private member's bill, strongly backed by the Prime Minister's Office, would force unions to publicly disclose the names and salaries of all employees earning more than $100,000 and to reveal how much of their time each of those employees spends on political activities, lobbying and other non-labour-relations activities.

Conservatives are clearly banking on such transparency angering dues-paying members and shaming union bosses into curtailing outlays for political activity.

"The union bosses are against it because they don't want people, including their own members, to know how they spend their money," Conservative Senator Bob Runciman, who is sponsoring the bill in the Senate, told the upper house last September.

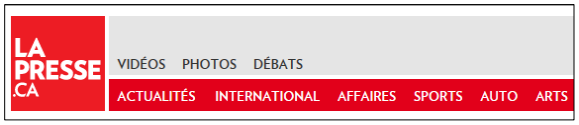
The bill has been widely denounced as shoddily drafted, unconstitutional and an invasion of privacy. But it has an obvious application to the looming federal election.

As the Conservative Party warned in a recent fundraising email: "Sid Ryan" — head of the Ontario Federation of Labour — "and people like him want to bully and influence our elections from the outside, unaccountably spending all kinds of money to hurt us — without ever running for office.

"We won't let that happen. We're going to take them on and we're going to win."

Maybe so. But given the severe restrictions on union campaign spending compared to the $20-plus-million the Conservative Party is entitled to spend, Nicholls said it will hardly be a fair fight.

And the old Stephen Harper would have agreed with him.



La police pourra fouiller un téléphone sans mandat

La Presse, La Presse Canadienne, le 11 décembre 2014

La Cour suprême du Canada a déterminé que la police pouvait procéder à une fouille limitée du téléphone mobile d'un suspect au moment de son arrestation, et ce, sans obtenir de mandat de perquisition. Elle doit cependant le faire selon des règles précises.

Dans une décision à quatre contre trois, le plus haut tribunal du pays a jugé que la fouille devait être directement liée aux circonstances de l'arrestation et que la police devait prendre des notes détaillées sur son examen de l'appareil.

Trois juges dissidents estimaient plutôt que la police devait obtenir un mandat de perquisition dans tous les cas, sauf en de rares occasions où il existe un danger pour le public ou la police ou si une preuve risque d'être détruite.

Il s'agit d'un premier jugement de la Cour suprême relativement aux informations personnelles sur un téléphone mobile, un enjeu ayant obtenu des jugements divergents du côté des tribunaux inférieurs.

La Cour suprême avait rejeté l'appel de la condamnation pour vol à main armée de Kevin Fearon, en 2009, celui-ci ayant alors allégué que la police avait violé ses droits en fouillant son téléphone sans mandat après le vol d'un comptoir de bijoux.

La haute cour avait estimé que la police avait effectivement violé les droits de Fearon, mais avait jugé que la preuve ainsi obtenue ne devait pas pour autant être exclue.

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thestar.com

Supreme Court allows police to search cellphones without warrants

The ruling is narrowly split. The assenters laid out conditions for search, but lifted emergency circumstances as a precondition. The dissenters vocally opposed it as a violation of privacy.

Tonda MacCharles, Toronto Star, December 12, 2014

OTTAWA—In a narrowly split 4-3 ruling that runs counter to the law in the United States, the Supreme Court of Canada has upheld strong powers for police to conduct warrantless searches of a suspect's cellphone upon arrest.

All seven judges who heard the Ontario challenge said cellphones and other personal digital devices contain a wealth of private information and may be locked and password-protected.

But Justice Thomas Cromwell, writing for the majority, said an individual's privacy interest in their cellphone — whether locked or unlocked — is outweighed by law enforcement objectives at the time an arrest.

He said police searches of cellphones can help officers "identify and mitigate risks to public safety; locate firearms or stolen goods; identify accomplices; locate and preserve evidence; prevent suspects from evading or resisting law enforcement; locate the other perpetrators; warn officers of possible impending danger; and follow leads promptly."

A cellphone search is "not as invasive as a strip search," and is not automatically precluded by the Charter guarantee to be free from unreasonable search and seizure, the court said.

The court ruled the warrantless search power is not only restricted to emergency circumstances — although it suggested several times that the power must be used carefully and would generally be justified in the case of serious crimes and not "in relation to minor offences."

Cromwell said the police don't have "licence to rummage around in the device at will." He set out four conditions to ensure warrantless searches of a suspect's cellphone meet

constitutional muster: the arrest must be lawful in the first place, the search on any cellphone found must take place promptly, the extent of the cellphone search must be "tailored" to the law enforcement objective (meaning, the court said, police should look at only recently sent or drafted emails, texts, photos and the call log). Finally, the police must take "detailed notes" of what they looked at and for how long — in order to aid courts to later rule whether the search was justified.

Chief Justice Beverley McLachlin, Michael Moldaver and Richard Wagner signed onto the majority judgment with Cromwell.

But a vocal minority of three judges — led by Andromache Karakatsanis — stated flatly their disagreement with the ruling.

The minority concluded cellphones and other digital devices are overwhelmingly different than other kinds of physical items that could be found on a suspect upon arrest.

The three dissenting judges pointed out cellphones are not weapons like guns or knives, and cannot conceal such a weapon, concluding the constitutional balance between privacy and public safety can only be struck in such cases by police requesting a warrant to search.

"Individuals have a high expectation of privacy in their digital devices because they store immense amounts of information, are fastidious record keepers, retain files and data even after users think they have been destroyed, make the temporal and territorial limitations on a search incident to arrest meaningless, and can continue to generate evidence even after they have been seized."

"Only judicial pre-authorization can provide the effective and impartial balancing of the state's law enforcement objectives with the intensely personal and uniquely pervasive privacy interests in our digital devices. Section 8 of the Charter provides constitutional protection for privacy, which includes the right to be free of the threat of unreasonable intrusions on privacy and the right to determine when, how, and to what extent we release personal information."

The dissenting three — Karakatsanis, Rosalie Abella and the now-retired Louis LeBel — criticized the majority ruling, saying it sets out an impractical prescription for police to follow, will only generate "police uncertainty and increased after-the-fact litigation."

The case will not have practical effect on the Ontario man Kevin Fearon whose lawyers challenged the common-law power of police to do such searches.

He was convicted in connection to a 2009 robbery at gunpoint of a jewellery vendor in Toronto, sentenced to six years in jail, and has since been released after serving his sentence, his lawyer Sam Goldstein told the Star.

Fearon won no solace from the high court.

It said the police search of his phone violated his rights because the officers had not taken notes of what they scrolled through and for how long, and so could not document the legality of the search.

Nevertheless, Cromwell said it was a minor breach, the police had acted in good faith at a time the law was unclear, and to exclude the evidence the cellphone search had provided would bring the administration of justice into disrepute.

The ruling is certain to have big implications for other Canadians who find themselves arrested by police.

Supreme Court allows warrantless cell phone searches

Top court rules investigative necessity outweighs privacy rights

By Gail J. Cohen, Legal Feeds Blog, Canadian Lawyer, December, 11, 2014

Warrantless cell phone searches are fair game during a police arrest and, conducted properly, do not violate Charter rights against unreasonable search and seizure.

That was the bottom line today as the Supreme Court of Canada handed down its landmark decision in Fearon v. R. — a case that, much to the chagrin of privacy advocates, has granted police powerful new search tools during arrest.

The case stems from an armed jewellery heist, in which police confiscated a cell phone during an arrest and quickly found incriminating evidence, including a text message and photo.

At trial, the judge found that Kevin Fearon's Charter rights had not been violated, and a subsequent appeal was dismissed.

Today's final appeal, written by Justice Thomas Cromwell on behalf of the majority (Chief Justice Beverley McLachlin, and justices Michael Moldaver and Richard Wagner), comes with strong minority dissent (justice Andromache Karakatsanis, Louis Lebel, and Rosalie Abella).

The ruling attempts to balance the investigative usefulness of cell phone searches in law enforcement against the rights of the accused against unreasonable invasion of privacy and unlawful search and seizure.

Cell phone searches, the decision states, can aid police officers in identifying risks to public safety, in identifying accomplices, and in locating and preserving evidence. That being said, the judgment warns that "safeguards must be added" to bring these kinds of searches into compliance with the Charter:

"Consequently, four conditions must be met in order for the search of a cell phone or similar device incidental to arrest to comply with s. 8." These four conditions are as follows:

The arrest must be lawful.

The search must be "truly incidental" and not the object of the arrest, and this condition must be strictly applied;

The nature and extent of the search must be tailored to its purpose (limited to areas where evidence is likely to be found, such as text messages, e-mails, and call logs).

Police must record detailed notes about the search, including applications opened and the search duration.

The new test essentially allows police officers to conduct searches and then sort out the justification after the fact — a prospect that has enraged defence lawyers and privacy advocates, and raises the spectre of abuse.

"Let's just say I'm skeptical," says Peter Sankoff, a law professor specializing in criminal evidence at the University of Alberta. "It wouldn't be the first time we've seen limited powers granted and then abused.

"Any time you sanction invasions of this sort and rely upon discretionary tests to limit whether or not the invasion is going to take place properly, it's incredibly problematic. It's like, 'go ahead and we'll fix it later.'"

The ruling also dispels any notion that a password lock on a cell phone may denote some expectation of privacy that would prevent an invasion by law enforcement.

As Cromwell writes: "I would not give this factor very much weight in assessing either an individual's subjective expectation of privacy or whether that expectation is reasonable.

"An individual's decision not to password protect his or her cell phone does not indicate any sort of abandonment of the significant privacy interests one generally will have in the contents of the phone . . ."

A post on Osgoode Hall Law School's The Court blog, meanwhile, points to a contrasting SCC decision in November 2013, R. v. Vu, which deals with incidental computer searches in the course of an investigation that has been authorized by warrant.

In the incident, police obtained a warrant to search a residence they suspected was a grow-op, but the warrant did not include specific authorization to search computer files.

The judgment, again written by Cromwell, took a markedly different approach than today's ruling. In Vu, the court determined that law enforcement is required to obtain judicial authorization prior to computer or cell phone searches.

Seemingly anticipating the confusion, however, the ruling states the law with respect to warranted searches does not "disturb the law that applies when a computer or cellular phone is searched incident to arrest or where exigent circumstances justify a warrantless search."

Another contrasting decision was highlight by criminal lawyer Sean Robichaud on Twitter: "police need a warrant to search a person's company computer (R. v. Cole) but not for their personal phone (R. v. Fearon). Huh?"

Sam Goldstein, who represented Kevin Fearon at the SCC, says, while his client is disappointed, the decision actually is a good thing in that it affords Canadians stronger digital privacy rights.

"Prior to this, the police had unfettered discretion in terms of searching your cell phone," he says. "Now the court is saying that that discretion is fettered. They can't simply take your cell phone and root through it like your underwear drawer."

Goldstein also takes some comfort in a strong dissenting opinion, which stressed the difficulties and potential for abuse when applying conditions on privacy invasions after the fact.

"It's good to hear the minority of the court express those concerns," says Goldstein. "At least the majority took to heart some of what the minority was saying by placing limits on police and saying that they have to take detailed notes."

Going forward, Goldstein says, further litigation will be required to define the scope of the Supreme Court's conditions and how they apply on the ground in law enforcement.

"Canadians should feel comforted that we have recognition of our digital privacy rights," he says. "It's not the complete loaf, but it's half a loaf."

LeDroit

Le nouveau directeur du budget dénonce le silence du fédéral

Paul Gaboury, Le Droit, Décembre 2014

À l'instar de son prédécesseur Kevin Page, le directeur parlementaire du budget (DPB), Jean-Denis Fréchette, déplore à son tour «les refus discutables» du gouvernement Harper lorsque vient le temps de divulguer les détails des dépenses liées aux programmes fédéraux.

Dans son premier rapport annuel déposé au Parlement vendredi, le directeur parlementaire du budget réclame plus de pouvoirs et plus de ressources pour lui permettre d'informer les parlementaires et les Canadiens de l'évolution des finances du gouvernement fédéral, un travail jugé important par le Fonds monétaire international (FMI).

«Le manque d'accès à l'information détenue par le gouvernement est le plus grand obstacle auquel se bute le DPB dans l'exercice de son mandat, soutient M. Fréchette. En 2013-2014, les ministères n'ont donné suite qu'à 55 % des demandes d'information du DPB, allant, dans certains cas, jusqu'à contrevenir à leurs obligations au sens de la Loi sur le Parlement du Canada.»

Capacité «très limitée»

La capacité du DPB de fournir aux parlementaires une analyse rigoureuse et pertinente est «très limitée» si le Bureau n'a pas accès en temps opportun à des données électroniques gouvernementales de qualité, souligne-t-il.

Son prédécesseur Kevin Page avait souvent fait les manchettes dans sa lutte juridique contre le gouvernement Harper pour obtenir des données plus précises sur les dépenses des programmes et l'impact des compressions budgétaires sur les programmes.

Malgré ces embûches, M. Fréchette affirme qu'il a bien l'intention de poursuivre le travail amorcé, et il entend bien ajouter de nouveaux produits dans le cadre de son plan stratégique 2013-2018. Il souhaite notamment accroître sa présence dans les médias sociaux, soutenir le perfectionnement professionnel de ses employés, et défendre son droit d'obtenir les données demandées.

Le DPB rappelle qu'il a reçu une évaluation positive de son travail dans le cadre d'une étude de cas réalisée par le FMI et que son modèle a été reproduit en Ontario et a été étudié récemment en Alberta et au Québec.

B.C. revokes consent for Christian law school

ANDREA WOO, The Globe and Mail, December 11, 2014

B.C.'s Minister of Advanced Education has revoked his consent for the proposed law school at Trinity Western University.

Amrik Virk had sent a letter to TWU president Bob Kuhn last month indicating that he was reconsidering his consent. The university had launched legal challenges against several Canadian law societies that chose not to grant accreditation to the school's graduates, Mr. Virk noted in his letter, and it was unlikely those court actions would be completed before the three-year expiration date of the conditional consent he granted on Dec. 18.

"Obviously, the ability of graduates to practise in B.C. is a relevant consideration in whether you grant consent for a program," Mr. Virk told the Globe and Mail in a November interview.

The school, which would be built at the university's Langley campus, had become a lightning rod for controversy because of a line in the university's covenant that requires all students, administrators and faculty to abstain from "sexual intimacy that violates the sacredness of marriage between a man and a woman."

A legal challenged launched against Mr. Virk and TWU by two Canadian law firms said the minister had "created a two-tiered system of legal education" when he granted consent. After some deliberation, the law societies in B.C., Ontario and Nova Scotia all decided not to recognize the school as an approved faculty of law, meaning graduates would not be able to practice in those provinces.

Mr. Kuhn said he was disappointed with the minister's decision and that the university will explore its legal options.

"We remain committed to having a school of law," Mr. Kuhn said in a news release issued Thursday, "and now have to carefully consider all our options. There are such important rights and freedoms at stake that we may have no choice but to seek protection of them in court."

The university, which had been hoping to launch the law school in September 2016, can re-apply for consent after the legal challenges are resolved.

Canadian Judicial Council defends probe of judge in nude photo case

CJC executive director Norman Sabourin dismisses criticism raised in letter signed last week by nearly 400 lawyers, law professors and law students.

By Mia Rabson Winnipeg Free Press, December 11, 2014

WINNIPEG—The Canadian Judicial Council has fired back at accusations the public inquiry investigating Manitoba Judge Lori Douglas's fitness to remain on the bench was callous and irrational, says the Winnipeg Free Press in a report out of Ottawa.

CJC executive director Norman Sabourin responded Wednesday to a letter signed last week by nearly 400 lawyers, law professors and law students that sought an apology from the CJC for humiliating Douglas and forcing her to endure a public trial when she herself was a victim.

"The Douglas inquiry has raised a number of difficult, and sometimes novel, issues," Sabourin wrote to Esther Mendelsohn, a second-year law student at Osgoode Hall Law School in Toronto, who spearheaded the letter.

"However, the inquiry was never instituted to determine if a judge's ability to adjudicate impartially has been affected because of her choice to engage in private, consensual sexual expression."

Douglas, on paid leave from her role as associate chief justice of the Manitoba Court of Queen's Bench, family division, was accused in 2010 of sexual harassment by a former client of her husband, lawyer Jack King.

That accusation involved King giving his client, Alexander Chapman, nude photographs of Douglas, and trying to convince him to have sex with Douglas while King watched.

Ultimately the inquiry process determined there was no evidence for the harassment allegation against Douglas. King, who died of cancer earlier this year, was reprimanded and fined for professional misconduct by the Law Society of Manitoba in 2011.

However, the CJC inquiry continued, and hearings that were to have taken place last month were to look at three things, Sabourin wrote.

The first was whether Douglas was candid about the Chapman situation when she applied to become a judge. The second was whether she altered her personal diary regarding the situation. And the third was whether the presence of nude photographs of her on the Internet undermined confidence in her as a judge.

Sabourin said he was particularly troubled by the accusations of impropriety made against Suzanne Côté, who was the independent counsel hired by the CJC to present the facts of the case at the public inquiry.

The letter was critical of Côté for insisting the inquiry panel had to see the actual photographs, saying it was unnecessary and would have re-victimized Douglas, who had not given permission to her husband to have those photos posted online or shared with anyone else.

Sabourin rejected any suggestion Côté had done anything wrong.

Côté is now a Supreme Court of Canada Justice, sworn in just a week after the Douglas inquiry was suspended following the decision by Douglas to retire from the bench next May. A spokesman for the Supreme Court of Canada has declined to comment on her behalf.

Government of Canada Gouvernement du Canada

Designation of Queen's Counsel

Government Honours Lawyers who Have Demonstrated Exemplary Service to the Canadian Justice System Through Their Work in the Federal Public Service

Department of Justice, December 11, 2014

Today, the Government of Canada recognized seven lawyers in the federal public service as Queen's Counsel (Q.C.). Formally styled "Her Majesty's Counsel learned in the law," the federal Q.C. honours lawyers who demonstrate exemplary service to the Canadian justice system.

The individuals receiving this honour are members of the federal public service who have demonstrated leadership in their professional lives, raised esteem for the legal profession, and made outstanding contributions to the development of the law.

Quick Facts

- The individuals were designated as federal Q.C.s by the Governor-in-Council, upon recommendation of the Minister of Justice with the assistance of an advisory committee.

- Individuals were identified and considered according to a number of factors, including their contributions to the development of the law, leadership in their professional and personal lives which has raised esteem for the legal profession, and professional integrity and character.

- The Q.C.s are being conferred on the anniversary of the Statute of Westminster becoming law on December 11, 1931. The Statute of Westminster granted Canada, and the other Commonwealth Dominions, greater legal and foreign policy autonomy.

Quotes

"Our Government is pleased to recognize the exemplary public service of those receiving this esteemed Queen's Counsel designation today - they reflect the highest standards of the legal profession in the public service. An effective justice system is a cornerstone of our democracy, and we commend our public service lawyers for embarking on a role so vitally dedicated to civil service." **-- Peter MacKay, Minister of Justice and Attorney General of Canada**

BIOGRAPHIES

Robert Frater, Senior General Counsel, Office of the Assistant Deputy Attorney General, Department of Justice

Mr. Frater has had a long and distinguished career, demonstrating exceptional leadership, both inside and outside the Department. He has been counsel for the federal Crown before the Supreme Court of Canada on more than 50 cases, including such notable cases as the Senate Reference, the Securities Regulator reference and the Harkat security certificate case, among many others. His expert legal knowledge is apparent in his multiple publications and lectures on a variety of topics, including criminal law, **constitutional law and advocacy.**

Colonel Vihar Joshi, Deputy Judge Advocate General, Administrative Law, Canadian Armed Forces

Colonel Joshi is Canada's leading authority on military administrative law. Throughout his career, he has been involved in such key files as the drafting of the Anti-Terrorism Act (2001) and the Canadian Armed Forces' first pension plan for Reserve Force personnel. He has also made important contributions as a legal adviser on operational

matters, including in Haiti, Bosnia and Afghanistan, for which he received honour and recognition (Meritorious Service Medal in 2010, Officer of the Order of Military Merit in 2014).

Guy Laurin, Senior General Counsel, Legislative Services, Department of Justice

Mr. Laurin has dealt with some of the most complex and difficult legislative files for more than 32 years. He revolutionized legislative drafting by developing a method that gave true meaning to co-drafting and even opened up the drafting process to sponsoring officials, thereby making drafting more efficient. He also played a key role in the development of software and numerous other tools to aid his colleagues in their work.

Liliana Pecorilli-Longo, Senior General Counsel, Legal Services of the Royal Canadian Mounted Police, Department of Justice

Ms. Pecorilli-Longo has been with the Department of Justice for 31 years, after a brief period in private practice, and has provided exceptional service in a variety of different capacities. She worked as a prosecutor in a regional office, where her main areas of practice were regulatory and criminal law, including extradition and organized crime. At Headquarters, shehe also developed a national strategy for drug prosecutions and key policy involving money laundering legislation and cases. She has been head of the legal services units, with a general practice involving Crown law, at the Department of Fisheries and Oceans and the RCMP. She is also a leader within the Department of Justice in a number of capacities - serving, for example, as Chair of the Advisory Committee for Equal Opportunities for Women.

Croft Michaelson, Senior General Counsel, Ontario Regional Office, Public Prosecution Service of Canada

Mr. Michaelson has worked as a Crown Prosecutor for most of his career since his call to the bar in 1988, distinguishing himself at all levels of court. Since late 2008, his practice has been primarily focused on terrorism cases, including the "Toronto 18" terrorism case and Khawaja. He has been involved as a prosecutor and director in senior management within the Public Prosecution Service of Canada in a range of cases, including federal drug cases, money laundering investigations, and proceeds of crime investigations.

William F. Pentney, Deputy Minister of Justice and Deputy Attorney General of Canada, Department of Justice

Mr. Pentney was appointed Deputy Minister of Justice in November 2012. Mr. Pentney has demonstrated outstanding and inspiring leadership in his numerous positions within the public service, both within the Department of Justice and during his tenures at the Privy Council Office and National Defence. His high level of professional integrity, outstanding intellect and analytical abilities have been demonstrated in multiple high-level files, including commissions of inquiry and the hostage-taking of Robert Fowler and Louis Guay. Prior to joining the Department of Justice, Mr. Pentney was a professor in the Faculty of Law at the University of Ottawa and then Director of Legal Services at the Canadian Human Rights Commission.

Dale Yurka, Senior General Counsel, Ontario Regional Office, Department of Justice

Ms. Yurka has represented the Attorney General of Canada in all levels of court in complex, multi-million dollar files. She is an inspiring role model as a litigator, public servant and mentor to junior counsel. She is committed to professional learning both at the regional and national levels and is involved in organizing and presenting at conferences for both public and private sector lawyers. Her areas of litigation include tax law, Aboriginal law, the Canadian Charter of Rights and Freedoms, pensions and benefits, class actions, and commercial disputes.

Titre de conseiller de la reine

Le gouvernement rend hommage à des avocats qui offrent des services exemplaires au système de justice par leur travail au sein de la fonction publique.

Ministère de la Justice, le 11 décembre 2014

Le gouvernement du Canada reconnaît aujourd'hui sept avocats de la fonction publique en leur conférant le titre de conseiller de la reine (c.r.). Auparavant appelé « conseiller de Sa Majesté en loi », le titre fédéral de c.r. rend hommage à des avocats qui offrent des services exemplaires au système de justice canadien.

Le titre de conseiller de la reine est conféré à des avocats du secteur public fédéral qui font preuve de leadership dans leur vie professionnelle, rehaussent l'estime dont jouit la profession juridique et contribuent de manière exceptionnelle à l'évolution du droit.

Les faits en bref

Ces personnes ont été nommées conseillers fédéraux de la reine par le gouverneur en conseil, sur recommandation du ministre de la Justice aidé d'un comité consultatif.

Elles ont été choisies et prises en considération selon un certain nombre de facteurs, dont leur contribution à l'évolution du droit, le leadership dont elles font preuve dans leur vie professionnelle et personnelle et qui rehausse l'estime dont jouit la profession juridique, et enfin leur intégrité et leur réputation professionnelles.

Le titre de c.r. est décerné à l'occasion de l'anniversaire de la signature du Statut de Westminster, qui a eu lieu le 11 décembre 1931. Le Statut de Westminster conférait au Canada ainsi qu'aux autres membres du Commonwealth une plus grande autonomie en matière de droit et de politique étrangère.

Citations

« Notre gouvernement est heureux de souligner les services publics exemplaires des personnes qui reçoivent aujourd'hui le titre honorable de conseiller de la reine. Elles représentent les normes les plus élevées de la profession juridique au sein de la fonction publique. Un système de justice efficace est une pierre angulaire de notre démocratie, et nous félicitons nos avocats de la fonction publique d'avoir choisi un rôle si essentiel pour la fonction publique. » **Peter MacKay, Ministre de la Justice et procureur général du Canada**

Biographies

Robert Frater, avocat général principal, Bureau du sous-procureur général adjoint, ministère de la Justice

Au cours de sa longue et distinguée carrière, M. Frater a fait preuve d'un leadership exceptionnel, tant au Ministère qu'à l'extérieur. Il a représenté la Couronne fédérale dans plus de 50 causes soumises à la Cour suprême du Canada, notamment le renvoi sur le Sénat, le renvoi concernant la Régie des valeurs mobilières et l'affaire du certificat de sécurité de Mohamed Harkat. Ses connaissances juridiques spécialisées sont manifestes dans ses multiples publications et conférences sur une variété de sujets, notamment le droit pénal, le droit constitutionnel et la plaidoirie.

Colonel Vihar Joshi, juge-avocat général adjoint, Droit administratif, Forces armées canadiennes

Le colonel Joshi est une sommité canadienne en droit administratif militaire. Au cours de sa carrière, il s'est occupé de dossiers importants comme la rédaction de la Loi antiterroriste (2001) et l'élaboration du premier régime de pension des Forces armées canadiennes pour le personnel de la Force de réserve. À titre de conseiller juridique, il a également apporté une importante contribution à des questions opérationnelles, notamment à Haïti, en Bosnie et en Afghanistan, contribution pour laquelle il s'est mérité la Médaille de service méritoire en 2010 et a été nommé officier de l'Ordre du mérite militaire en 2014.

Guy Laurin, avocat général principal, Services législatifs, ministère de la Justice

M. Laurin s'est occupé, au cours de ses plus de 32 ans au ministère de la Justice, de certains des dossiers de rédaction législative les plus complexes et les plus délicats. Il a révolutionné les services de rédaction législative en mettant au point une méthode qui donne tout son sens au mot « corédaction », ouvrant même le processus aux responsables qui parrainent les projets de loi, ce qui rend la rédaction plus efficace. Il a également joué un rôle crucial dans l'élaboration de logiciels et de beaucoup d'autres outils destinés à faciliter le travail de ses collègues.

Liliana Pecorilli-Longo, avocate générale principale, Services juridiques de la Gendarmerie royale du Canada, ministère de la Justice

Mme Pecorilli-Longo est au ministère de la Justice depuis 31 ans après un bref passage en pratique privée, et a offert des services exceptionnels à divers titres. Elle a travaillé comme procureure dans un bureau régional, où ses principaux domaines de pratique

étaient le droit réglementaire et le droit pénal, notamment l'extradition et le crime organisé. À l'administration centrale, elle a également élaboré une stratégie nationale des poursuites en matière de drogues ainsi qu'une politique importante touchant la législation et les causes de blanchiment d'argent. Elle a dirigé les Services juridiques et exercé dans le domaine du droit de la Couronne au ministère des Pêches et Océans et à la GRC. Au ministère de la Justice, elle exerce également son leadership de diverses manières, par exemple en présidant le Comité consultatif de promotion de la femme.

Croft Michaelson, avocat général principal, Bureau régional de l'Ontario, Service des poursuites pénales du Canada

Depuis son admission au barreau en 1988, M. Michaelson a œuvré comme procureur de la Couronne pendant la majeure partie de sa carrière, et il s'est distingué devant des tribunaux de tous les niveaux. Depuis la fin de 2008, il se spécialise surtout dans les causes liées au terrorisme, notamment celles des « 18 de Toronto » et de Khawaja. À titre de poursuivant et de directeur et membre de la haute direction du Service des poursuites pénales du Canada, il s'est occupé de toute une gamme de causes fédérales, notamment de causes de drogues, d'enquêtes sur le blanchiment d'argent et d'enquêtes sur les produits de la criminalité.

William F. Pentney, sous-ministre de la Justice et sous-procureur général du Canada, ministère de la Justice

Nommé sous-ministre de la Justice en novembre 2012, M. Pentney a fait preuve d'un leadership exceptionnel et inspirant dans les nombreux postes qu'il a occupés dans la fonction publique, tant au ministère de la Justice qu'au Bureau du Conseil privé et au ministère de la Défense nationale. M. Pentney a démontré son niveau élevé d'intégrité professionnelle, son intellect remarquable et ses capacités d'analyse supérieures dans de nombreux dossiers, notamment lors de commissions d'enquête et de la prise en otage de Robert Fowler et Louis Guay. Avant son arrivée au ministère de la Justice, M. Pentney a été professeur à la Faculté de droit de l'Université d'Ottawa et ensuite directeur des Services juridiques à la Commission canadienne des droits de la personne.

Dale Yurka, avocate générale principale, Bureau régional de l'Ontario, ministère de la Justice

Mme Yurka a représenté le procureur général du Canada devant des tribunaux de tous les niveaux et dans des causes complexes de plusieurs millions de dollars. Elle est un modèle d'inspiration comme avocate plaidante, fonctionnaire et mentore auprès d'avocats débutants. Elle croit fermement à l'apprentissage professionnel, tant à l'échelle régionale que nationale, et participe à l'organisation de conférences destinées aux avocats du secteur public et du secteur privé, où elle présente souvent des exposés. Elle exerce dans les domaines du droit fiscal, du droit autochtone, de la Charte canadienne des droits et libertés, des pensions et avantages sociaux, des recours collectifs et des litiges commerciaux.

CJC responds to criticism of Côté

By Gail J. Cohen, Legal Feeds Blog, Canadian Lawyer, December 10, 2014

In a letter released today, the Canadian Judicial Council says Supreme Court of Canada Justice Suzanne Côté acted well within her mandate in her previous role as independent counsel at the inquiry into the actions of Manitoba Justice Lori Douglas.

Executive director Norman Sabourin was responding to an open letter from students, lawyers, and law professors that criticized Côté's conduct at the inquiry. The letter, signed by more than 350 law students, lawyers, and professors accused the newest SCC judge of acting in a "callous and gratuitous manner" toward Douglas and contributing to her decision to resign from the bench.

Esther Mendelsohn, a second-year law student at Osgoode Hall Law School in Toronto, spearhead the letter campaign and sent it across the country Dec. 1. It did not expressly name Côté.

Sabourin says he was "particularly troubled by" suggestions of unprofessional behaviour levelled in the letter.

"The mandate of Independent Cousel is to marshal all evidence, whether favourable or unfavourable to the judge," wrote Sabourin. "Independent Counsel who served in the Douglas Inquiry is someone with a strong reputation for outstanding legal skills. She discharged her duty, as she was required to do, in accordance with Council's by-laws and policies. There is no basis to suggest she acted other than in the proper fulfilment of that mandate."

There continues to be much debate in the profession as well as on the Internet (see Susan Drummond's SLAW post from earlier this week) regarding what happened during the Douglas inquiry and whether there was a need for Côté in her role as independent counsel to push to have the naked photos of Douglas admitted into evidence again. And also what message the entire affair sends to those in profession, particularly young women.

Côté, 56, who was sworn last week, is the first female lawyer appointed to the court directly from private practice.

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Number of staffers working for PM, cabinet ministers ballooned under Harper government

Glen McGregor, Postmedia News, December 9, 2014

The Conservative government's enthusiasm for cutting costs and reducing the size of the public service appears to end at the elevator to the minister's office.

Data tabled in the House of Commons on Monday shows the number of political staffers working for cabinet ministers has ballooned under the Tories, up 21 per cent per cent from the last year of Liberal rule.

Paul Martin's government employed 452 people as "exempt" ministerial aides, advisors and other staff in 2005. This year, that number has swollen to 549 bodies on the public payroll.

The increase in exempt staffing is even sharper in the Prime Minister's Office.

In 2005, it took 68 exempt staff to run Martin's PMO. This year, Prime Minister Stephen Harper's command-and-control centre employs 94 people — 38 per cent more than Martin's, according to the figures provided by Treasury Board Secretariat.

The number of PMO staff was even higher in 2010, when the office counted 109 exempt bodies.

Some of the fatter numbers could be explained by higher turnover rates in certain ministers' offices and a higher churn rate of staff under the Harper government.

Part of the overall increase is due to the increases in staffing at the Public Safety Canada (with 13 staffers supporting minister Steven Blaney), the Federal Economic Development Agency for Southern Ontario (five staff) and the Office of the Co-ordinator Status of Women (three staff).

The numbers were provided in response to an order paper question from NDP MP Charlie Angus, who asked how many ministerial staff were stationed in each city.

His question appeared to be an attempt to develop a response to questions about the NDP's contentious use of House of Commons staff in so-called satellite offices in Montreal and Quebec City.

The vast majority of ministerial staff work in the National Capital Region, but there are some exceptions for ministries with strong regional interests, such as the three Department of Fisheries and Oceans exempt staff who work from Charlottetown, P.E.I., or the two from Agriculture and Agri-Food Canada working out of Regina, Sask.

Less clear, however, is why four of Canadian Heritage Minister Shelly Glover's staff members work from Winnipeg, in her home province.

In an email, Glover's office said only three ministerial staff are based in Winnipeg did not respond to a request to identify the staff or say why they worked there.

The response from Treasury Board also shows that, in 2007, then-Foreign Minister Lawrence Cannon had a ministerial staff member working in the far-away land of New Glasgow, Nova Scotia.

CBCnews

New public service integrity watchdog should be in place soon

Outgoing commissioner Mario Dion to head Immigration and Refugee Board

CBC News, December 11, 2014

A new integrity watchdog for the federal bureaucracy should be in place by Christmas.

The current public service integrity commissioner, Mario Dion, announced in August that he's quitting, citing personal reasons.

In April, just months earlier, the auditor general found "gross mismanagement" of two separate case files in the troubled Office of the Public Sector Integrity Commissioner of Canada, which was created by the Conservative government in 2007.

But Dion said he's helped to repair the office's reputation after the first commissioner, Christiane Ouimet, resigned in disgrace in 2010 before a scathing audit found she had failed to fulfill her mandate and had mistreated her staff.

"I think we now have a viable office, an office that can actually fulfill its mandate," Dion said.

"We have service standards. We give ourselves a limited number of days to do things and we comply with those standards. We're better known than we used to be.

"I have full confidence that my successor will be able to continue to make it work and to improve further the way we do things."

Number of complaints remain low

The office has done about 100 investigations and has filed 10 case reports in Parliament, Dion said.

But he acknowledges the number of complaints are still low, considering he's the watchdog for 400,000 public servants.

He said it's because there is still fear of reprisal, and that it takes time to build trust.

He recommends a review of federal whistleblower legislation in the Public Servants Disclosure Protection Act, which came into force in 2007.

The office has 15 ideas for improvements, Dion said, if and when the president of the Treasury Board calls for a legislative review.

Commissioner role has been disappointment, says advocate

Some of those recommendations include making thousands of governor in council appointees covered under the commissioner's mandate, as well as reversing a current requirement for the office to not pursue evidence outside of the public sector.

David Hutton, a whistleblowing advocate, said he holds out little hope for the role of the integrity commissioner in general.

"I think it's been extremely disappointing," Hutton said.

"[Dion] has consistently turned away really important cases, and instead has taken up ... pretty small potatoes, cases where it could all be blamed on an individual," Hutton said.

Dion will soon head the Immigration and Refugee Board.

Rocco Galati, Lawyers Who Challenged Nadon's Appointment Get $5K In Costs

Huffington Post, Canada, The Canadian Press, December 10 2014

OTTAWA - The Toronto lawyer who led a challenge against Marc Nadon's nomination to the Supreme Court of Canada says he is appealing a Federal Court ruling that denied him the bulk of his legal costs.

Rocco Galati and the Constitutional Rights Centre claimed more than $68,000 in fees and costs for their work in bringing their application before the Federal Court of Canada.

The court instead awarded them a single $5,000 lump sum.

"This judgment is just reflective of a privileged world of Versailles under Louis XIV," Galati fumed Wednesday after learning of the decision.

"It's just an affront to the rule of law."

Galati filed for a total of $51,706.54, while the centre sought $16,769.20 for work done by lawyer Paul Slansky.

Both bills were unwarranted, Federal Court Judge Russel Zinn wrote in his decision.

Zinn said the application challenging the 2013 appointment of Nadon — whose nomination was ultimately rejected in a ruling by the high court itself — would have been complicated and important had it gone ahead.

However, he says it was essentially sidelined by a subsequent governmental reference to the Supreme Court, rendering the cost claims excessive.

"Although the application would have involved complex issues of law and have been of importance to the judicial system and the Constitution of Canada, the application was derailed and supplanted by the reference," Zinn wrote.

"As such, very little work needed to be done on the application by the applicants. The mere filing of it appears to have had the desired result."

The challenge was nonetheless important, the judge acknowledged in awarding the single lump-sum payment.

"At the time the application was filed, there was no apparent objection made to the appointment of Justice Nadon on constitutional grounds by any person or government. To that extent, one could argue that the applicants have done Canada a service and should not be out-of-pocket in so doing."

Galati called the decision "bizarre."

"He says solicitor-client costs, even if not a constitutional right, are only given in the most exceptional and rare cases," he said.

"I can't think of a more exceptional and rare case than the Nadon challenge, can you? In the history of Confederation? I can't think of a rarer case. It's never happened and I doubt if it's going to happen again."

Galati had argued that Nadon, a judge of the Federal Court of Appeal, was not eligible to be appointed to one of the three high court seats reserved for Quebec.

The Supreme Court agreed and Nadon's appointment was rescinded, resulting in a year-long vacancy on the high court. Quebec Court of Appeal judge Clement Gascon was appointed in June to fill it.

New courthouse security rules 'draconian,' say lawyers

Chris Cobb, The Ottawa Citizen, December 8, 2014

Proposed security measures at Ontario courthouses will stifle the public's right to access court proceedings and close the door on a traditionally open system, say Ottawa defence lawyers.

Although the Ontario legislature has yet to approve changes to the provincial Police Services Act, some of the measures are already in place at the Ottawa courthouse.

Most notable and controversial is police questioning of everyone who walks through the court's main entrance on Elgin Street.

Revisions to the Police Services Act are "fundamentally flawed," said Trevor Brown, president of the Defence Counsel Association of Ottawa.

"While there is always a need to make sure the courts are secure," he said, "these are draconian measures, and are susceptible to arbitrary use and abuse.

"One should not be required to submit to an interrogation and a search as the price to be paid for accessing what are supposed to be public courts," he added. "The courts are where we go for protection and enforcement of our most fundamental rights and freedoms. It's not supposed to be the place we go to have them abused."

The Ottawa courthouse has had three open access entrances since it opened in 1986, but when the $1-million-plus security reconstruction project is finished next spring, members of the public will have to line up at the Elgin Street entrance to be screened by security staff and pass through metal detectors.

The other two doors will become emergency exits.

Although tightened security has been talked about for several years, it was fast-tracked following the killing of Cpl. Nathan Cirillo at the nearby National War Memorial in October.

There has been a security desk deep inside the Elgin Street entrance, but staff manning that desk has traditionally been there to help visitors, not to question or monitor them.

“The starting point for a courthouse is that the justice system should be available for anyone to come and watch out of pure interest, ” said defence lawyer Howard Krongold.

“Having people questioned at the door has a chilling effect on the movement of people into a courthouse,’ he added. “People should feel they can see justice being done without feeling they are being watched themselves.”

Fellow defence lawyer Mark Ertel agreed.

“Courthouses are instruments of democracy and it’s a fundamental right of people to access them without being asked what their business is about the place,” he said. “It should be none of the police’s business why people are coming into the courthouse.”

The questioning of members and monitoring of people coupled with the “intimidating” security measures will sound the death knell for open courts, predicted Ertel.

“People will stop going because they won’t want to explain to police and security guards what they are doing there,” he said.

“The days of people coming to watch court cases were almost behind us,” added Ertel, “but now they will be behind us for sure.”

Metal detectors didn’t stop an armed man accessing the Brampton courthouse earlier this year and shooting a police officer, said Ertel.

“So another question is whether it is a waste of resources,” he said. “As far as I know, there has never been any threat to the Ottawa courthouse.”

Portable metal detectors, stationed outside individual courtrooms where high-profile cases are being heard, have been used for many years.

The system has worked well, said Brown.

“Absent some demonstrated need for these drastic changes, it makes no sense to spend vast amounts of taxpayer dollars on something that isn’t a problem,” he said. “The legislature should be looking to make changes that are as minimally intrusive as possible.”

Ottawa police Insp. Steve Bell, co-chair of security committee at the Ottawa courthouse and the officer in charge of courthouse security, said the Brampton courthouse shooting played a significant role in the security review.

“There is research that says one of the most effective ways of securing your building is to have a single point of entry where there is a screening point,” he said.

Security changes since the Cirillo shooting have been positive, said Bell.

“It hasn’t really impacted the flow in and out of the building,” he said, “but we believe it has made it more secure. We always try to balance what’s the current threat level to our city, to our country against the security measures we put in.”

In an emailed statement, Minister of Community Safety and Correctional Services Yasir Naqvi — the Ottawa-Cenre MPP — said the legislation ensures that courthouses “are safe and accessible” and that “local police are best positioned to assess the appropriate level of security required for court facilities within their jurisdiction and remain responsible for providing that security.”

Naqvi declined to be interviewed because of “previously scheduled community events.”

What the legislation proposes

Highlights from Ontario’s proposed revisions of the Police Safety Act as it impacts provincial courthouses

Security staff would have the powers to, “where reasonable”:

- Require any person entering or inside a courthouse to identify himself or herself and provide information for the purposes of assessing the security risk.
- Search, without a warrant, any person, property or vehicle entering or attempting to enter the premises where court proceedings are conducted or who is on such premises.
- Search, without a warrant and using reasonable force if necessary, any person who is in custody where court proceedings are conducted or being transported to and from such premises, or any property in the custody of the person.
- Refuse to allow a person to enter or demand that a person leave the premises where court proceedings are conducted, and use reasonable force if necessary to exclude or remove the person, if the person refuses to identify himself or herself, provide information, submit to a search or if there is any reason to believe the person poses a security risk.
- Arrest anyone who attempts to enter without identifying himself or herself, providing information or submitting to a search where these have been required or after being denied access or being directed to leave and to use reasonable force to make an arrest.

It would also establish:

- Offences for individuals entering or attempting to enter without identifying himself or herself, or submitting to a required search or after being denied entry, or for failing to leave immediately upon demand.

- Penalties for the offences, such as fines up to $2,000, or imprisonment up to 60 days.

Is the Supreme Court appointment process transparent enough?

The 180 with Jim Brown, CBC Radio, December, 2014

CLICK HERE TO LISTEN TO THE CBC SEGMENT

It's hard to find anyone who disapproves of Suzanne Côté as the Prime Minister's latest pick for Supreme Court Justice. What's easier, is to find people who disapprove of the WAY she was appointed. While many see this as a big step away from transparency, at least one lawyer says it's not such a big deal.

When it first came into office, the Conservative government had its Supreme Court nominees appear before an ad-hoc committee of MPs. That practice ended this year, after the Marc Nadon affair. Now critics, from opposition MPs to newspaper editorial boards, are criticizing the return to a secretive selection process.

"The issue is that we do not overstate the transparency of the process that was in operation before."

But Carissima Mathen says that process wasn't really that great. The Associate Professor of Law at the University of Ottawa says the committee hearings didn't amount to much, and it was still never clear how the government chose appointees in the first place. She says while there is nothing inherently wrong with transparency, we should be cautious to move to a new system just for transparency's sake.

"I think that we need to have a more thorough discussion about what it is that we think Supreme Court Judges need to be measured against, and what are the goals of having a more transparent process, because the danger in that is we will see the injection of much more blatant politics into the appointment process."

Mathen sees no evidence that the appointment process has led to the wrong people ending up on the court. She says she would be more supportive of a call for transparency if there were signs it would improve the bench-- but she feels it doesn't need to be improved. But,

she says, a conversation about what we want our judges to be-- especially whether we want them to be political figures or not. By opening the door to hearings, we would allow politics into the process, and could end up creative a more political, U.S.-style bench.

Retired Supreme Court justice Arbour slams practice of solitary confinement

SEAN FINE AND JOSH WINGROVE, The Globe and Mail, December 11, 2014

Canada needs to end its "addiction" to solitary confinement in its prisons, and have judges review any use of segregation beyond short-term "timeouts" of three days or so, retired Supreme Court justice Louise Arbour says.

Anything less would allow a destructive and unlawful practice to continue, she said.

"In light of everything we know about segregation, the government may want to think about including it in its list of 'barbaric cultural practices' that it seems to be so concerned about," Ms. Arbour said in an interview from Montreal. She was referring to a bill introduced by the Conservative government this year known as the Zero Tolerance for Barbaric Cultural Practices Act, aimed at punishing polygamy, underage marriage and honour killings.

Ms. Arbour's comments come the day before Ottawa is expected to formally respond to the 104 recommendations of the coroner's inquest into the death of Ashley Smith, the New Brunswick teenager who killed herself after spending more than 2,000 days in isolation. Among the major recommendations: restrict the use of solitary confinement.

A special report in The Globe and Mail Saturday detailed the story of Eddie Snowshoe, another inmate who suffered from mental-health issues. At the age of 24, he hanged himself after spending 162 consecutive days in solitary confinement.

Ms. Arbour called the report "a very compelling story, very tragic, very, very sad. You saw the signs of distress – the waste of a young life through a kind of addiction, a reflective recourse to a practice that is very dangerous.

"I don't understand why we tolerate this extravagant recourse to segregation, number-wise, in this country, against all the evidence that we shouldn't," she said.

Public Safety Minister Steven Blaney defended the practice of "administrative segregation" in the House of Commons on Wednesday, saying it's done for the "safety of

the inmates, safety of the personnel and safety of the facility." In an e-mailed statement, his spokesman later said Correctional Service Canada "uses all of its tools to make sure the corrections system actually corrects criminal behaviour, including the use of segregation."

One in four federal prisoners in Canada spends some time in segregation. The average stay is 35 days for male offenders and seven days for women. One in six prisoners in solitary spends more than 120 days at a time.

There is no upper limit on the amount of time prisoners can spend in "administrative segregation," used for their safety or the safety of staff or other prisoners. And there is currently no system of external review. (Only 2 per cent of solitary cases are for disciplinary purposes, which require an up-front, independent review, and have a 30-day limit.)

Ms. Arbour has spent much of her life working on human rights. She has been an international war-crimes prosecutor and the United Nations high commissioner for human rights. Nearly 20 years ago, she headed a Canadian inquiry into conditions in a women's prison, and called for judicial review, or failing that another form of independent review, after 30 days. Many of the standards she developed for the use of solitary confinement have since been adopted by the UN.

"How many coroner's inquests are we going to need?" she said in the interview. "How many wasted lives before we bring it to the standards of the other parts of the criminal justice system, such as the law enforcement part where we've subjected police officers to enormous levels of scrutiny?"

Ms. Arbour, a Supreme Court judge from 1999 to 2004, described segregation as "imprisonment within imprisonment. It's a further and extremely severe deprivation of liberty from people who are already at the mercy of the state for their well being. Particularly when there's any kind of signal of mental health issues or mental distress, there's a huge burden on the state to pay attention."

Before the 1982 Charter of Rights and Freedoms took effect, police work was largely without scrutiny by the courts, she said. "It just operated in a world of its own." Today, that scrutiny is a widely accepted part of the system. But the corrections system is still closed to review, which allows it to act in ways that are unlawful, and that sentencing judges do not expect.

"There is no reason for the criminal-justice system to close judicial engagement after the sentence is imposed. Judges fix a length of time assuming the sentence will be served in accordance with law and in compliance with constitutional requirements of respect for human dignity. It's a package – you fix the term but the other terms are implicit."

The reason little has changed in Canada's use of solitary confinement over the decades, she said, is that "inertia easily settles. There's no big lobby, there's no pressure on the government. Prisoners are a well-identified unpopular minority."

A dangerous moment for justice at the International Criminal Court

ERNA PARIS, Contribution to The Globe and Mail, December 11, 2014

Erna Paris *is the author of The Sun Climbs Slow: The International Criminal Court and the Struggle for Justice.*

The early 20th century Shakespeare scholar, A.C. Bradley, argued that the tragic hero must possess an inner flaw which will become the inevitable source of his failure. The higher his worldly status, the more poignant his downfall. This week, 100 years later, the member states that make up the International Criminal Court and oversee its administration are meeting in New York. They are discussing the budget, electing new judges, instituting mechanisms for paying reparations to victims, and inaugurating a policy on sexual and gender-based crimes. But there's an elephant in the room: Kenya – the country whose actions have highlighted a similar flaw at the heart of the ICC.

Last week, Fatou Bensouda, the chief Prosecutor, was forced to abandon her case against Kenya's current president, Uhuru Kenyatta. In 2011, two years before he was elected president, Kenyatta was indicted by the ICC for orchestrating murder, rape and deportations following the earlier elections of 2007. More than a thousand people died during that melee. For years, the government promised to hold national trials. When they failed to deliver, the ICC stepped in.

But when the prosecution tried to build its case against Kenyatta, Kenya obstructed the process. Key witnesses were bribed, intimidated, or killed. Court-protected identities were made public. The government blocked access to key documents. Eventually, the ICC judges concluded there was simply insufficient evidence available to convict Kenyatta. Ms. Bensouda really had no choice. "Today is a dark day for international justice," she lamented.

The ICC is informed by the Rome Statute, an international treaty that details every structural element, from the Prosecutor's jurisdiction, to the role of the judges, and everything in between. Most important, the Statute articulates the obligations of member states to co-operate with the tribunal; in particular, to arrest indicted individuals, whether nationals or visiting foreigners, and to support fair trials by providing the tribunal with the evidence it needs.

And there's the rub. The flaw at the heart of the Statute is its fundamental inability to compel ICC member states to fulfil these obligations. Without a police force or army, the Prosecutor must rely on good will. Her only tool is rhetorical: to underline the promised

commitment of each of the 122 member states to pursue accountability at the highest levels.

Kenya (a member state since 1999) has exposed this weakness. For years, Uruhu Kenyatta undermined the court with language calculated to incite racial hatred. The ICC is 'biased,' 'colonialist,' and 'western-imperialist,' he proclaimed. The Prosecutor is a "race hunter" (never mind that she's a Gambian lawyer, or that many cases were brought to the ICC by African heads of government).

Kenya's most pointed efforts to damage the ICC were contained in two recommendations its delegates brought to New York this week. The first was a direct incitement to attack the integrity of the ICC Prosecutor and possibly others associated with the court. The second was a proposal that all sitting heads of state be immune from prosecution for purported criminal acts.

Since both these suggestions were inherently extreme, the chances of either passing muster was, and remains, next to nil, but their presence on the order sheet shocked the delegates into placing the need to enforce co-operation near the top of the agenda. Unfortunately, since there are no mechanisms for coercion, few concrete proposals have emerged so far.

Should Kenya's slanders, judicial interference, and attempts to legalize impunity for sitting heads of state be ignored; and should no instrumental strategy be adopted to compel member-state co-operation with the court, Uruhu Kenyatta will have effectively won. Kenya will have limited the jurisdictional reach of the ICC.

The worst losers would be the abused women, child soldiers, and other victims of major international crimes whose last hopes lie with the International Criminal Court.

It's a dangerous moment for the ICC. The delegates meeting in New York this week must renew their commitment to the future of international criminal justice – and uphold the integrity of the court.

Emotional debate over plan for more administrative calls

By Yamri Taddese, Law Times, December 8, 2014

A proposal to allow prospective lawyers to skip the call to the bar ceremony started a heated debate among Law Society of Upper Canada benchers at Convocation on Nov. 28 with some calling the plan “the final coup d’état” of a profession that’s continually “dumbing down.”

On the face of it, the motion before Convocation seemed pretty innocuous. The idea was to give law graduates an option for an administrative call to the bar of Ontario without first gowning up to watch proud family and friends cheer them on at a traditional ceremony.

The proposal was a response to the rising numbers of graduates every year and, in turn, the increased cost and administrative hurdles around planning more ceremonies. With call to bar ceremonies only taking place in Toronto, Ottawa, and London, Ont., geography is also a barrier for some students, according to Bencher Howard Goldblatt, who moved the motion.

On top of that, the new crop of law practice program graduates will have to wait two months before their call to the bar. If the administrative option existed, they could be called soon after finishing their program.

But in a 26-19 vote, Convocation decided attendance at the traditional ceremony should remain obligatory unless extraordinary circumstances prevented graduates from showing up.

“I think that we need to recognize that being called to the bar is a different process from a motor vehicle registration,” said Bencher Constance Backhouse, a professor at the University of Ottawa.

“Our members are joining a learned profession with a long history of tradition and ritual.”

In-person calls to the bar are also an “occasion of opportunity for the law society,” according to Backhouse.

“As a regulator, we meet our new members in person for the first and, for some of them, the only time. We have their attention. We have the attention of their friends and family, which is not an inconsiderable point given how hard we work to construct a positive image in the community,” said Backhouse, who has attended call to the bar ceremonies for 12 years.

“I know that we don’t always realize fully the opportunity that this presents, but it is a very important chance for us to convey information about what the law society does, what our members’ obligations are, and to inspire an entire audience with speeches from our best role models,” she added.

Some, like Bencher Alan Silverstein, said the motion wasn’t going to rob anybody of the opportunity to be in attendance if they so wished.

“We’re not taking anything from anyone who wants to attend,” he said.

“We’re adding an option.”

Bencher Judith Potter disagreed. “I support entirely Ms. Backhouse’s comment,” she said, adding call to bar ceremonies are “an important opportunity for families to bask in the glory of the moment for their loved ones.”

“I totally, totally feel that we need to continue with the traditions that are so important. We are dumbing down our profession in so many ways and this would be, to my mind, the final coup d’état,” said Potter.

Bencher Avvy Go made an emotional delivery about how grateful she is that she was able to attend her call to the bar ceremony with her late mother even though she was the type of person who didn’t like to go to graduations.

But Bencher Peter Wardle described the situation as a matter of “compulsion versus choice.”

“If the call to the bar is such a great thing, it’s not going to matter that people are no longer compelled to come,” he said.

“They’re going to make the choice because it’s going to be something that they want to do. That’s the secret here. We have to keep this as something that’s a great event that honours all the traditions of the law society. If we do that, we shouldn’t be afraid that if we give people the choice, they won’t come.”

Others, like Bencher Michael Lerner, suggested that providing those who finish the law practice program with an administrative option would create a two-tier system between them and those who pursued articling.

“The most important thing in my mind is I heard during the articling debate concern expressed by benchers and the profession as to a two-tier system. If we do not include the LPP licensing candidates with those who have gone through the traditional articling system, we have clearly made a two-tier system,” he said.

“And I think it is important that at an occasion such as the call to the bar, the two groups in the licensing process be joined together to recognize that they are equals in the eyes of the profession,” he added.

On Nov. 28, Convocation also heard about the placement opportunities Ryerson University and the University of Ottawa were able to find for those currently enrolled in the law practice programs.

As of mid-November, Ryerson had secured 227 placements for its program with 91 of them paid, 73 unpaid, and the issue of payment still undetermined for the remaining 63 placements, according to a report to Convocation.

The University of Ottawa, meanwhile, has 19 candidates and has secured paid placements for all of them.

The law society will also extend its current repayable allowance program for students who were only able to find unpaid work.

“The repayable allowance program is a forgivable loan of last resort for those who demonstrate need and have exhausted other sources of funds. Candidates do not have to begin repaying the loan until the third year from their date of call to the bar,” according to the report.

“Repayable allowance recipients may apply for forgiveness of repayment on compassionate grounds, such as medical disability or inadequate income.”

Beware of link rot

Online isn’t exactly forever and that can pose some legal problems

By Jennifer Brown, Legal Feeds Blog, Canadian Lawyer, December 9, 2014

Everyone may think (and often fear) information posted online will be there forever, but a University of Ottawa professor says the legal system needs to be wary of the real issue of vanishing digital evidence online.

“The Internet isn’t as permanent as we think,” says professor Karen Eltis, “It’s ephemeral and that frustrates access to evidence and even to precedent.”

Eltis has written about and continues to research the phenomenon of link rot — hyperlinks that point to web pages that are no longer available — or reference rot, where the links work but he information is no longer present.

“One American scholar has called it precedent in the wind,” she says.

Eltis, who wrote Courts, Litigants and the Digital Age Law, Ethics and Practice in 2012 is working on a second edition funded by the Canadian Internet Registration Authority Community. The book will explore issues that have arisen since 2012.

She says the legal profession needs to be careful about what information it cites in cases as some links are more likely to disappear than others.

At a Canadian Bar Association conference last week she was on a panel about how social media evidence is different and can be ever changing.

“Not only can things appear to have changed, judges and lawyers need to be aware when dealing with social media evidence that you can’t just do a screen capture of Facebook or print out of an e-mail because it can easily be changed,” she says. “Everyone needs to be aware of the metadata — the data about the data. My caution is that we do not treat social media evidence in the same way. Think of SnapChat photos — it doesn’t really disappear.”

Cases can end up in appeal where links originally provided as evidence simply disappear.

She points to a New York Times article last year that indicated 49 per cent of the hyperlinks in U.S. Supreme Court decisions no longer work. Jonathan Zittrain, who teaches law and computer science at Harvard, said 75 per cent of links in the Harvard Law Review since 1999 no longer function.

“Why is that important? When they are in court decisions or when offered by attorneys and these links disappear it has severe consequences to transparency and access and reliability,” says Eltis.

Part of Eltis’ research looks at the issue of when transparency online is not properly thought out you can end up with significant unwanted consequences and create access to justice issues.

“Judges and lawyers and litigants and self-represented litigants need better awareness around this,” she says.

She says recent cases of cyber-bullying and cybercrime have put the importance of evidence produced and stored with social media tools at the centre of high-profile legal debates and decisions such as A.B. v Bragg Communications Inc.

Eltis says when courts put decisions online automatically and in error, they can be difficult to correct or take down. The court may redact the information but it may have already been proliferated and individuals can be humiliated.

“I know a lot of lawyers tell clients in employment matters that they would be better off not pursuing a matter because it may go online as many administrative tribunals put things online the second they come out,” says Eltis.

She says the United States Court of Appeals for the Ninth Circuit is creating a public database with opinions cited in pdf. As well, Harvard professor Zittrain came up with a database called perma.cc — a “Noah’s ark” of information and links.

Eltis says if lawyers are citing authorities found on the Internet, they need to be aware of the phenomenon of link rot, metadata, and consider attaching an appendix pdf to the version of the web site they are referring to in cases.

“We can point to certain links that are more reliable than others and be more discriminating online and not cite everything — some appear are more reliable than others and there are a number of indicia that are being developed towards that end,” she says.