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ASSOCIATION OF JUSTICE COUNSEL
ASSOCIATION DES JURISTES DE JUSTICE

Press Clippings for the period of January 19 to 26, 2015
Revue de presse pour la période du 19 au 26 janvier, 2015

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

The AJC in the News – L'AJJ fait les manchettes

CALGARY HERALD

Federal prosecutors feel burden of tough-on-crime agenda

JASON VAN RASSEL, CALGARY HERALD, January 19, 2015

The number of federal prosecutors working in Alberta's courts is not keeping pace with a bigger workload created by increasingly complex cases and Ottawa's tough-on-crime agenda, says the union that represents them.

The Association of Justice Counsel, which represents more than 400 federal Crowns who work for the Public Prosecution Service of Canada (PPSC), said Alberta is one of several regions across the country where the federal agency is not filling vacant positions as a way of trimming costs.

Although criminal courts are administrated by provincial and territorial governments, the PPSC is responsible for prosecuting matters involving federal statutes, particularly drug-related cases and the seizure of proceeds of crime connected to them.

In Alberta, there are supposed to be 58 lawyers working for the PPSC, but the Association of Justice Counsel said the actual number stands at 50.

"The workload is going up because of the complexity of files and the number of people doing the work is going down," said Len MacKay, the association's president.

Statistics in the PPSC's recent annual reports show the number of cases handled each year by federal prosecutors has remained steady at approximately 81,000 since 2010, as has the number of staff positions on the books.

"What happens instead is they don't fill the vacancies," MacKay said.

But the PPSC's statistics also show the average number of hours spent on each file is going up. One likely reason is that drug cases and financial crime prosecutions, by nature, are often complex and time-consuming. At the same time, landmark rulings by the Supreme Court have increased the legal requirements on authorities in areas such as disclosing evidence to the defence.

However, MacKay and others in the legal profession point to a suite of legal reforms introduced by the federal government in recent years — particularly the elimination of conditional sentences and the imposition of mandatory minimum jail terms — as another factor increasing the burden on prosecutors.

"People facing those charges are more likely to litigate them," said Pawel Milczarek, vice-president of the Calgary Criminal Defence Lawyers' Association.

MacKay agreed that a defendant facing jail time is more prone to plead not guilty, necessitating a one- or two-day trial in a case that might have been settled via a plea agreement negotiated in half a day.

MacKay added he doesn't doubt the legislative changes are aimed at cracking down on crime, but said they're at odds with the federal government's moves to cut costs and streamline the public service.

"It is one of the ironies of this government," he said.

The federal government is also responsible for appointing judges to the provinces' superior courts, and has come under fire for not expanding the number of benchers in Alberta's Court of Queen's Bench. Although Ottawa recently filled two vacancies in Queen's Bench, Justice Minister Jonathan Denis has said the court's roster — which hasn't grown since 1996 — must increase further to accommodate Alberta's population growth.

Milczarek said Queen's Bench trials in Calgary are already booking into 2016 and the defence lawyers' association said an increasing number of cases will be in jeopardy of being thrown out due to undue delays.

PPSC spokesman Dan Brien acknowledged the organization has had challenges recruiting and retaining federal Crowns — particularly in jurisdictions where their provincial counterparts are paid more — but he stressed the vacant prosecutor positions haven't placed any cases in jeopardy due to delays.

The PPSC can temporarily shift lawyers to other regions if they're short of manpower, said Brien, adding the agency also uses a network of private-sector lawyers who act as agents in part-time circuit courts that serve more remote communities.

"We've never had to discontinue a prosecution for staffing reasons," he said.

Unions and government compete for the moral high ground

Kathryn May, Ottawa Citizen, January 23, 2015

Federal public service unions are changing the channel on a round of bargaining that was expected to be a nasty fight over sick-leave benefits, instead tabling demands for integrity, transparency and wellness in the workplace.

The unions, led by the giant Public Service Alliance of Canada (PSAC) and the Professional Institute of the Public Service of Canada (PIPSC), have staked out the high road in contract negotiations that have chugged along for months with little sign of concluding before an election.

For example:

- **PIPSC wants to improve the funding and "integrity" of public science, and free "muzzled" scientists to speak about their work.**

- **PSAC is seeking contract changes to promote a mentally healthy workplace, and has broken new ground with a proposal to expand occupational health and safety in the federal workplace to include "psychological" health.**

- **The union representing Canada's diplomats is asking that the first anti-bullying and harassment clauses be embedded in contracts.**

"Who on earth would oppose anti-bullying or put up an argument against mental health in the workplace?" asked Ian Lee, a professor at Carleton University's Sprott School of Business.

"The unions are clever and very strategic in coming up with a new salient message at a time when we are uber-concerned about bullying and mental health. They have shifted

the whole thrust from fighting for their rights as unions, which is simply not a salient argument for most Canadians who don't belong to unions."

Treasury Board President Tony Clement has changed his tune too. He has toned down his "big union bosses'" rhetoric and jabs at public servants for taking too much time off work. Of late, he has taken a more conciliatory tone, insisting he is looking for a deal "negotiated in good faith" – one that is fair to workers and taxpayers and also promotes a healthier, more productive workplace.

It remains to be seen if the two sides can keep their old animosity in check as an election nears. The unions, for instance, are mobilizing campaigns to make the Conservatives' cuts to public service an election issue.

The big issue in this round of bargaining is sick leave. Clement wants to replace the existing sick leave regime with a new short-term disability plan. The 15 days of annual paid sick leave that public servants get, as well as the ability to bank unused days, is enshrined in contracts and must be re-negotiated so Clement can bring in his new plan.

Lee has long predicted that cutting the cost of the public service would be the Conservatives' new "law and order" agenda in the 2015 election. He still maintains the Tories will take aim at the yearly $45-billion public service compensation bill – but will position themselves as "prudent managers" rather than union- and public-service bashers.

"Both sides have become more politically correct," Lee said. "Both are trying to be more reasonable and responsible so we now have duelling narratives trying to appeal to larger number of Canadians, as opposed to using the language of conflict and discord.

"The Conservatives portray themselves as responsible fiscal managers and the unions portray themselves as only wanting the mental wellbeing and safety of workers."

Ottawa Centre MP Paul Dewar, also the NDP's foreign affairs critic, said the government unwittingly helped the unions shift their message with its "ham-fisted" treatment of veterans.

Dewar argues the Conservatives use the public service as the "enemy" or "punching bag" in the drive to cut spending and the size of government. But that backfired with the outcry over the closing of veterans' offices and other services, he says.

"It's a perversion of logic and facts for the government on the one hand to point the finger at the public service when services aren't delivered … while on the other hand cut the funds for public servants to fulfil their mandates," he said.

"This has created a poisonous atmosphere in these contract negotiations and it's important for unions to remind Canadians about the work they do."

Unions began this round of negotiations having lost some clout because the Conservatives changed the rules for collective bargaining in the public service.

Then came the debate over high absenteeism rates among public servants – and Clement's resolve to overhaul the way sick leave and disability are managed.

No one has hounded the government more to improve the wellness of its workforce than mental health advocate Bill Wilkerson. He suggested that the two sides' jockeying for position "on the side of angels" may finally yield results to improve the health of the federal workplace, which is dogged by one of the highest incidences of mental illness in the country.

"The two parties must realize they have to get something done and feel that yelling at each other isn't going to work," he said.

Some argue the unions have now gained the upper hand, especially with PSAC's bargaining proposal for the government to adopt the Mental Health Commission's national standard for a psychologically healthy workplace. PSAC hopes the standard will root out the "toxic" practices and working conditions behind the rising number of mental health claims that take public servants off work. Federal executives also want the standard implemented.

Joseph Ricciuti, president of SEB Benefits and HR Consulting, argues the proposal leaves the government little choice but to implement the standard to show its commitment to wellness. The standard, however, could expose all kinds of problems in the workplace and force the government and unions to rethink their positions and work together.

"I applaud the union for taking the initiative, but caution that people are at stake here," Ricciuti said. "Both sides have to work together on what is causing employees to be sick and if it is found to be attributed to workplace policies and practices, then they have to work collaboratively together to fix it."

Five issues to watch as Parliament returns

GLORIA GALLOWAY, The Globe and Mail, January 25, 2015

Economic ups and downs – but mostly downs

The bank rate is down, the dollar is dropping, oil prices have fallen by 60 per cent and U.S. President Barack Obama is threatening to veto the approval of the Keystone XL pipeline. Those factors combine to spell tough days for a government that likes to campaign on its economic record. They also create a large and very soft target for the

opposition parties. The New Democrats and the Liberals will both spend much parliamentary time questioning the wisdom of the government's income-splitting plan, which they dismiss as a boon to the wealthy, when the indicators are so resoundingly negative. The Conservatives are delaying the budget at least until April, hoping to ride out the current volatility. And they insist that the ledgers will be balanced despite the dismal projections for growth. But there will be much pressure from the provinces for more spending, especially on infrastructure, to keep the economic engine running – pressure that will be difficult to ignore in an election year.

The mission against the Islamic State – and security at home

Prime Minister Stephen Harper has promised to introduce legislation this week to bolster the ability of police and other agencies to keep Canadians safe from the threat of terrorism. After Paris, and attacks on soldiers here in Canada, the government will offer salves for the unease Canadians are feeling about their own security. Any new anti-terrorism measure must be a delicate balancing act between thwarting the evil-doers and respecting individual liberties. But they will also create potential traps for the opposition because criticisms can be reworked into Conservative slogans about being soft on jihadis. The New Democrats and the Liberals accuse Mr. Harper of misleading Canadians last fall when the government said Canada's troops in Iraq would not be involved in direct combat missions – Canadian forces have been guiding air strikes and using sniper fire on the front lines. But the opposition will also have to decide whether to endorse an extension of the mission against the Islamic State, a mission that Liberal Leader Justin Trudeau opposed last October but one that has evolved significantly in the interim.

The new Veterans Affairs – or more of the same?

If there was a hole in the Conservative armour as Parliament rose for the Christmas break, it was the poor performance of Julian Fantino who was then-minister of veterans affairs. Stephen Harper came to power promising to do better by the men and women who have served in the Canadian military. But veterans, especially those who served in modern-day combat including Afghanistan, complain bitterly that they are being denied the benefits to which they are entitled – an accusation supported by a report of the Auditor-General – and that they face a bureaucracy that is uncaring of their service. Mr. Fantino added insult to injury by providing misleading information about the size of a funding announcement aimed at helping vets with mental-health issues. Now it is time to see whether Erin O'Toole, the man appointed to replace him can do any better. Veterans might give Mr. O'Toole a chance to straighten out the kinks in his department. The opposition will not.

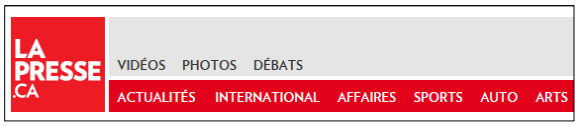
The trial of Mike Duffy – and its reach into the PMO

It promises to be the most riveting spectacle on the political calendar: A former journalist named to the Senate by Mr. Harper is to be tried on charges of fraud and breach of trust related to the expenses he incurred while sitting in the Red Chamber. The court has set aside 41 days between April 7 and June 19 to hear the case against Mr. Duffy who has, so far, demonstrated little interest in protecting the government that honoured him with his appointment. The trial will delve into the deal that saw Nigel Wright, Mr. Harper's

former chief of staff, repay $90,000 in Mr. Duffy's expense claims. And Mr. Duffy's lawyer has not ruled out calling Mr. Harper himself to testify, even if the Prime Minister has previously used parliamentary privilege to avoid testifying in cases. Either way, the hearing will provide delicious fodder for the opposition as voting day approaches, and as the Auditor-General prepares to release an audit of senators' expenses.

Assisted suicide – do we need a new law?

Whether Canadians with terminal illnesses should be able to choose the time and method of their own death is a debate that none of the three largest political parties particularly wants to have. But it appears it will be thrust upon them. The Supreme Court is expected to rule later this year in the case of two women, Gloria Taylor and Kay Carter, with degenerative diseases who sought to hasten their own deaths. The court could find that the existing laws prohibiting assisted suicide violate personal autonomy, forcing politicians to fix the problem. Meanwhile, Quebec has moved ahead with its own law that will allow people to request an assisted death from a physician under restricted circumstances. And there is a bill before the Senate to legalize physician-assisted suicide that is supported by Tory MP Steven Fletcher, who has drafted his own bills on the same issue. All of which means it will likely end up on Parliament's plate, one way or the other.



Rentrée parlementaire à Ottawa: la course à obstacles

JOËL-DENIS BELLAVANCE, La Presse, le 26 janvier 2015

Au début de l'automne, le plan de match des conservateurs de Stephen Harper en prévision des prochaines élections fédérales semblait bien ficelé. L'économie montrait des signes encourageants. D'alléchants surplus se profilaient à nouveau à l'horizon, lesquels pourraient être utilisés pour séduire des électeurs tentés par le changement au moment opportun.

Au même moment, la lutte au terrorisme - un dossier où les conservateurs ont davantage la cote que les autres partis - était propulsée à l'avant-scène de l'actualité par trois événements successifs. D'abord, le gouvernement Harper a décidé au début d'octobre que le Canada participerait aux frappes aériennes menées contre les cibles du groupe armé État islamique en Irak.

Deux semaines plus tard, un militaire, Patrice Vincent, a été tué à Saint-Jean-sur-Richelieu après avoir été renversé par une voiture que conduisait Martin Couture-Rouleau, un jeune converti à l'islam qui s'était radicalisé.

Durant la même semaine, le 22 octobre, Michael Zehaf-Bibeau, un autre jeune qui s'était radicalisé, a tué le soldat Nathan Cirillo devant le Monument commémoratif de guerre, en plein centre-ville d'Ottawa. Il a ensuite fait irruption au parlement, où il a été abattu après des échanges de coups de feu avec les gardes de sécurité et les policiers de la GRC.

À la fin octobre, tandis que le Parti libéral et le NPD se chamaillaient publiquement sur les allégations de harcèlement sexuel dont auraient été victimes deux députées du NPD de la part de deux députés libéraux, Stephen Harper annonçait des baisses d'impôts rétroactives au 1er janvier 2014 (fractionnement du revenu pour les couples ayant des enfants de moins de 18 ans) et une bonification de la prestation universelle pour la garde d'enfants à partir du 1er janvier 2015.

Ces mesures fiscales totalisant près de 5 milliards de dollars par année en 2015, combinées aux investissements de 5,3 milliards de dollars sur trois ans pour rénover les infrastructures appartenant au gouvernement fédéral, ont réduit presque à néant la marge de manoeuvre d'Ottawa au cours des prochaines années.

L'objectif des conservateurs était de forcer les partis de l'opposition à annuler les baisses d'impôts déjà en vigueur pour financer leurs promesses électorales. Le Parti libéral a immédiatement annoncé qu'il abolirait le fractionnement du revenu s'il prend le pouvoir, estimant que cette mesure coûteuse réduirait le fardeau fiscal de 15% des familles les plus riches. Le NPD lui a emboîté le pas quelques semaines plus tard.

À la fin de 2014, le plan de match des conservateurs a commencé à rapporter des dividendes. Le Parti conservateur a vu ses appuis augmenter graduellement dans les sondages nationaux, grugeant l'avance que détenaient les libéraux de Justin Trudeau depuis près de 20 mois. L'écart entre les deux partis ne serait plus que de deux points, selon une récente moyenne des sondages réalisée par ThreeHundredEight.com. Ainsi, le Parti libéral récolterait 34%, le Parti conservateur, 32% et le NPD, 21%.

Toutefois, la chute brutale des prix du pétrole depuis la mi-novembre risque de faire dérailler la stratégie des conservateurs, qui jouent à fond la carte de l'économie et de la bonne gestion des finances pour se faire réélire. La baisse des cours de l'or noir aura un impact considérable sur les revenus du gouvernement fédéral. Certains économistes soutiennent qu'Ottawa pourrait ne pas être en mesure de rétablir l'équilibre budgétaire en 2015, contrairement à ce que soutient le gouvernement Harper. Là, le ministre des Finances, Joe Oliver, a reporté au début du mois d'avril le dépôt de son prochain budget.

L'engagement en Irak

Soudainement, la route jusqu'aux prochaines élections est devenue une véritable course à obstacles. La session parlementaire qui commence aujourd'hui - la dernière avant les élections du 19 octobre - pourrait bien être pour ce gouvernement l'une des plus difficiles de son mandat majoritaire. Car l'économie canadienne entre dans une période de turbulence à un bien mauvais moment et les partis de l'opposition frapperont abondamment sur ce clou.

De plus, la mission militaire en Irak, qui doit prendre fin en mars, suscite de nouvelles interrogations depuis qu'on a appris que la soixantaine de militaires qui se trouvent dans ce pays pour conseiller les troupes irakiennes ont récemment été impliqués dans un échange de tirs après avoir été attaqués par des membres du groupe armé État islamique. Le gouvernement Harper doit décider d'ici deux mois s'il prolonge ou non cette mission. Le NPD et le Parti libéral seront sans doute confortés dans leur opposition à cette mission.

Le scandale des dépenses au Sénat, qui a permis au chef du NPD Thomas Mulcair de s'illustrer en 2013, reviendra hanter les troupes de Stephen Harper au printemps. Le procès du sénateur Mike Duffy, qui fait face à 31 accusations de fraude concernant ses réclamations de dépenses au Sénat, doit commencer en avril. Reconnu pour ses coups d'éclat, Mike Duffy tentera sans doute d'éclabousser le plus possible les troupes de Stephen Harper avant le prochain scrutin.

À neuf mois des élections, les jeux sont donc loin d'être faits.

Aboriginal Affairs staff needed a meeting so badly that they offered to bake treats. But it was kiboshed anyway

Steve Rennie, Canadian Press, National Post, January 21, 2015

OTTAWA — Aboriginal Affairs kiboshed a proposed meeting of all its Ontario staff, who offered to bake their own snacks, gather in a public library and cram onto buses to save a bit of money, a new document shows.

The cash-strapped department — which for years has been dipping into its infrastructure budget to pay for other programs and services — balked at the $53,500 price tag for a one-day get-together that would have been held this past fall in Toronto.

A briefing note to Aboriginal Affairs Minister Bernard Valcourt outlines why management thought it would be a good idea to bring everyone together for a day.

“Recent regional management strategic planning work has uncovered many strains on the organization: staff note they are working in an unco-ordinated fashion, in silos, and there

is perception of deep divides in work, process and philosophy, between each unique business centre," says the document.

"An all-staff meeting would allow for regional senior management to communicate direction to all staff at the same time, provide an opportunity for staff to talk with their management team and each other, which will foster improved collaboration and team-building across directorates and business centres."

The Canadian Press obtained the briefing note under the Access to Information Act.

Had the meeting gone ahead, the document says it would have been the first time in seven years that all the Ontario staff had been in the same room.

Aboriginal Affairs had not budgeted for the meeting, so Ontario staff proposed some creative ways to cut costs.

Staff could hold bake sales so they'd have treats to munch on during breaks, they suggested. And rather than pay for an expensive venue, everyone could gather at one of Toronto's many public libraries, or perhaps even on a university campus.

Staff also suggested hiring a non-profit group to make their lunches instead of getting a caterer, while employees from Brantford and Sudbury would take vans or buses to Toronto to avoid airline costs.

Trying to squeeze everything into one day wasn't ideal, staff admitted, since it "does not provide adequate time for function training." But they said it was still the most economical way to bring everyone together.

Senior officials turned down the proposal.

"As discussed at (executive committee), I don't support this approach, although I appreciate your desire as management to bring people together," says a handwritten note beneath the signature line for the deputy minister or associate deputy minister.

"I recommend you put together a team of two or three to go to each office for a face-to-face meeting, then wrap up with an all-staff video conference."

It took more than a day for an Aboriginal Affairs spokeswoman to reply to specific questions with a generic, three-line response about respecting taxpayers' money.

The department has been dipping into its infrastructure dollars to pay for its other programs and services.

Aboriginal Affairs shifted half a billion dollars budgeted for infrastructure over a six-year-period to try to cover shortfalls in education and social programs, according to a recently released document.

But the document adds that moving the money around has only put greater pressure on the department's already strapped infrastructure program. Even with the reallocated money, it says Aboriginal Affairs' social and education programs are still short.

AANDC Employees Struggling with Morale: Memo

By The Public Servant website, January 22, 2015

A recently released memo through ATIP paints a picture of struggling morale at Aboriginal Affairs and Northern Development Canada (AANDC), and how employees are trying to find ways to do more with less.

In the memo, employees proposed an all day staff retreat in Toronto last fall that allegedly would have cost $53,000 to bring everyone together from the Ontario region. The event was not budgeted for, hence the reason for submitting the memo for approval. If approved, the event would have apparently been the first time in seven years that all of the employees from the Ontario region would have been together in-person, all at once.

The memo details:

Recent regional management strategic planning work has uncovered many strains on the organization: staff note they are working in an uncoordinated fashion, in silos, and there is perception of deep divides in work, process and philosophy, between each unique business centre.

An all-staff meeting would allow for regional senior management to communicate direction to all staff at the same time, provide an opportunity for staff to talk with their management team and each other, which will foster improved collaboration and team-building across directorates and business centres.

To save money, employees proposed:

- holding the venue at a Toronto public library or university campus;
- having bake sales so employees would be able to be provided with snacks during health breaks;

- hiring a non-profit group to prepare lunches rather than hiring a caterer; and
- transporting employees from Brantford and Sudbury via vans or buses to Toronto to avoid airline costs.

In the end, the $53k could not be justified and the memo was not approved:

As discussed at (executive committee), I don't support this approach, although I appreciate your desire as management to bring people together.

I recommend you put together a team of two or three to go to each office for a face-to-face meeting, then wrap up with an all-staff video conference.

As a strategic consideration, employees admitted the one-day approach probably wasn't ideal as it "does not provide adequate time for function training." However, they still believed it was the most economical way to meet their objective of bringing everyone together.

Anti-terror bill: Can government balance security and civil rights?

IAN MACLEOD, The Ottawa Citizen, January 25, 2015

The nation's leading independent organizations on criminal law, civil liberty and privacy haven't been briefed or consulted on the government's looming new anti-terror legislation.

And that has some worried the result could be bad, or constitutionally flawed, law.

"No one benefits from having legislation that is controversial sprung upon them," says Michael Vonn, policy director at the B.C. Civil Liberties Association.

Days after the October attacks in Ottawa and Quebec by lone extremists, Prime Minister Stephen Harper promised new laws giving police more power to "surveil, detain and arrest" suspected terrorists. Harper announced on Sunday that the legislation would be unveiled in the Commons on Friday.

A government source with knowledge of the legislation says the measures aren't exceptional or sweeping. "I don't think we're going to see this leap from the cliffs that some would suggest."

But civil liberty advocates and some legal experts are concerned.

Among other things, the pending legislation responds to police concerns about existing legal requirements they say impede their ability to thwart terrorism. The bill is expected to soften and remove safeguards on extraordinary, but rarely used, police powers to arrest, detain and restrain people without charge or the commission of an actual crime.

Some are already condemning any such move.

"It's just baffling to me that they would try this, the idea that it's too hard to use these (existing powers) so therefore we need to lower the threshold," says Carmen Cheung, senior counsel at the civil liberties association.

The Canadian Bar Association says the change would be a "big mistake" and an "over-reaction" to the October attacks. "I don't know that in response to these particular incidents that we need to … overhaul some pretty well accepted common law standards," says Eric Gottardi, chair of the association's national criminal justice section.

Neither organization, nor the Office of the Privacy Commissioner, has been asked by government for input on the bill. The privacy commission was informed in very general terms of a plan to introduce legislation to "enhance (personal) information sharing for national security purposes," but has not seen the contents of the bill. It only offered government "some very preliminary views," a spokeswoman said.

Government rarely seeks outside scrutiny of a draft bill. The Conservatives, however, have held high-level briefings in the past on significant policy and legislative initiatives with some advocacy and other groups. "There used to be a lot more consultation than there is with the current government," says Gottardi.

The bill will make it easier for police to disrupt suspected terror plots by reducing the legal prerequisites required to obtain court-ordered peace bonds. Such orders can limit the movements, living arrangements, associations and other liberties of "national security targets" in hope of derailing a suspected attack or other violent action. Failure to comply can lead to a year in jail. Terrorism-related peace bonds have been used just eight times since 2001.

The bill also is expected to ease the rules for police to make "preventive arrests" — to disrupt suspected, imminent attacks and what police believe to be other impending terrorist violence. The power, introduced in 2001, has never been exercised, though it's not known if police have tried to invoke it and been turned down by senior justice officials.

RCMP Commissioner Bob Paulson suggested at an Oct. 27 Senate national security committee hearing that government consider lowering the legal thresholds for obtaining

terror-related peace bonds and invoking preventive arrest powers. “There’s an argument to be made that cops can handle that,” he said.

Police are now required to get prior consent from provincial attorneys-general (or their representatives) before asking a judge to impose a peace bond or issue a warrant for preventive arrest. The requirement was made law in 2001 as a safeguard against potential misuse or abuse of the extraordinary measures.

With that consent, an officer can go to a judge seeking a peace bond or preventive arrest warrant, provided the officer “believes on reasonable grounds” that a terrorist activity will be carried out, or “suspects on reasonable grounds” that a peace bond or the arrest of a person is necessary to prevent the terrorist activity. (In limited circumstances, police also are empowered to make warrantless preventive arrests.)

It has been reported that the Mounties tried to place Martin Couture-Rouleau under a peace bond to restrict his movements weeks before he ran over and killed soldier Patrice Vincent in St-Jean-sur-Richelieu, Que., on Oct. 20. Quebec’s attorney-general refused to consent to the move; prosecutors reportedly told police there was insufficient evidence Couture-Rouleau would commit a terrorist offence.

In Quebec, “they historically have taken a dimmer view on some of these remedies, preventive arrest and that kind of thing. In Ontario, it’s not particularly easy sometimes to get the attorney-general’s consent” either, says Gottardi.

The Criminal Code has always outlawed preparatory “conspiracy-to-commit” crimes. But since 2001, the long arm of the law has been able to reach into the most embryonic of suspected terror plots and activities long before any bombs and guns go off, a radical departure from Canada’s common law tradition.

But there are legal dangers in that, too. The line between aspirational and operational can be very sketchy.

Arresting, detaining and otherwise restraining people — without charge — based on inchoate evidence and predictions of future dangerousness was considered so potentially perilous when the provisions were created under the 2001 Anti-terrorism Act, that the then-Liberal government added safeguards: prior consent from senior justice officials before police could act; mandatory annual reporting to Parliament on their use; and a five-year sunset clause (The government renewed the provision in 2013).

“The reason why these provisions were originally subject to a sunset clause and why there is some measure of prosecutorial discretion involved is because they are all recognized as pretty extraordinary powers,” says Cheung. “Normally in democratic societies we don’t lock people up if we don’t think they’ve done something wrong. We don’t lock people up based on predictions of future dangerousness.”

Several independent security experts say preventive arrest is a valuable anti-terrorism tool, if needed. Even so, the bar association says creating more anti-terror laws while relaxing restraints on existing ones is unwise.

“There’s (already) a fairly robust set of tools to deal with these sorts of incidents; you’re never going to be 100-per-cent successful in preventing some of these kinds of things from happening,” says Gottardi.

“It’s really a question of how far Canadians are prepared to go in giving up some pretty basic fundamental freedoms to feel safer. We really have to take the time and look critically at the steps that are being taken and say, ‘Are any of these things actually making us safer?’ and, if they’re not, is it worth the costs of the freedoms that we’re going to be giving up?”

The ideological debate is summarized by University of Ottawa national security law expert Craig Forcese.

“A risk-minimizing society would permit mass detentions in the expectation that the minimal increase in public safety from the dragnet would outweigh the massive injury to civil liberties,” he writes.

“A rights-maximizing society, however, would deny the state the power to detain except through conventional criminal proceedings, for which it would impose demanding standards, even at the risk of leaving people free whose intent and capacity are clear but whose terrorist acts lie in the future.”

In a recent statement to the Citizen, Privacy Commissioner Daniel Therrien said: “Canadians want to be safe, but they also care profoundly about their privacy rights.

“Horrific attacks on innocent people obviously raise concerns about safety. But I was struck by the fact that, immediately after the attacks in Ottawa and in Paris, many people were talking about the importance of also protecting democratic rights such as free speech and privacy.

“Security is essential to maintain democratic rights, but our national security responses to acts of terror must be proportionate and designed in a way that protects the democratic values that are pillars of our Canadian society.”

Some other measures the bill may include:

- Increasing the time a terrorism-related suspect can be detained in custody without charge to seven, or possibly even 14 days, from the current 72 hours. One reason would be to give investigators more time to gather evidence — such as combing through computer files — to lay potential charges.
- Increasing the ability of the state to monitor communications and criminalizing the incitement, promotion or glorification of terrorism, especially via the Internet. A tricky part of any such law would be navigating around the Charter right to freedom of expression.
- Altering privacy rules that restrict the sharing of personal information between government departments and security agencies.
- Lowering the evidentiary standard required to rescind passports.
- Adopting an Australian-style law that outlaws citizens from travelling to “enter a foreign state with intent to engage in a hostile activity in that foreign state.”

Canada's current — and weaker — law against so-called Canadian "foreign fighters" prohibits leaving or attempting to leave Canada, "for the purpose of committing an act" in support of a terrorist group or activity.

- A system to track people exiting the country, something the Canadian Security Intelligence Service recently said would be "helpful" in its monitoring and investigations.
- Changes to Canada's "no-fly" list to make it easier to prevent individuals suspected as threats to aviation from boarding commercial airplanes.

MacKay cool to justice system review

Peter Rakobowchuk , Canadian Press, National Newswatch, January 20, 2014

MONTREAL - Justice Minister Peter MacKay said he doesn't see the need for an in-depth examination of police and justice system protocols as suggested by the head of the RCMP after the recent shootings of two Mounties in Alberta.

RCMP Commissioner Bob Paulson said last weekend the fact the suspected shooter was let free despite having a violent criminal history including a series of overlapping firearm bans may spark a review.

"I don't think, in my view, in my experience, having some sort of a pause where we have a full-blown examination or royal commission or some sort of a study is really going to provide us the answers that we need," MacKay said Tuesday in Montreal.

"The answers that we need are the ongoing efforts to prevent crime, to deal specifically with individuals who are drifting, who are feeling disconnected and marginalized and to provide the police with the necessary support, tools and laws that they need to protect Canadians."

Const. David Wynn has been in hospital since he was gunned down early Saturday morning and is not expected to survive.

Auxiliary Const. Derek Bond was shot in the arm and torso and faces a long recovery.

"My thoughts are first and foremost with the two officers that were injured — one of them is from a community not far from where I grew up in Nova Scotia," MacKay said.

Wynn joined the Mounties in 2009 after working as a paramedic in Bridgewater, N.S.

MacKay noted that suspected shooter Shawn Rehn, 34, was known to police and had a fairly extensive criminal record.

Rehn was found dead in a rural home north of Edmonton Saturday morning, just hours after the two Mounties were shot at the nearby Apex Casino in the city of St. Albert.

Court and parole board documents revealed Rehn had a history of assaults, weapons convictions, break-ins and drug use going back to his teens.

MacKay added that it's not easy to determine if someone like Rehn poses an immediate danger.

"This is an individual who, I think, if someone was to try to examine his past criminal behaviour, wouldn't have led to the conclusion that he was necessarily going to be a cop killer.

"But what was happening at that moment in time and what was happening in his life (was) very difficult to predict."

MacKay made his comments in Montreal after announcing more than $220,000 in federal funding for a Montreal centre that provides programs to help young offenders reintegrate into society.

LeDroit

Primes au rendement: la facture grimpe à la fonction publique

Paul Gaboury, Le Droit, l e 22 janvier 2015

Malgré les compressions et la réduction de la taille de la fonction publique fédérale, la facture et le nombre de fonctionnaires fédéraux ayant touché des primes et une rémunération liées au rendement continuent de grimper.

Ainsi, alors que les principales mesures d'austérité étaient mises en oeuvre et que le nombre total d'employés fédéraux (administration centrale et organismes distincts) diminuait de 335 646 à 313 218, la facture totale des bonis de performance et la rémunération à risque a continué à grimper, passant de 122,6 à 133,6 millions $, entre 2010-2011 et 2013-2014.

Selon des données obtenues par LeDroit en vertu de la Loi de l'accès à l'information, l'ensemble des ministères et organismes fédéraux ont ainsi versé des primes et de la

rémunération liées au rendement à plus de 13 899 employés en 2013-2014, en hausse de plus de 600 par rapport à la période 2010-2011.

La hausse a été notable, de 6872 à 7753, parmi les employés qui ne sont pas des hauts dirigeants ou des sous-ministres. Dans ces deux groupes, le nombre d'employés ayant eu droit à des primes et une rémunération de rendement a plutôt diminué passant de 6 326 en 2010 à 6065. Chez les sous-ministres, leur nombre est resté presque le même, avec 80 en 2010 et 81 en 2014.

Depuis 2013-2014, le gouvernement a modifié sa politique alors que 67 % de la rémunération à risque est consacrée aux résultats en rapport avec les engagements individuels, et 33 % au rendement lié à l'engagement collectif pangouvernemental.

Par exemple, les cadres supérieurs sont désormais évalués en fonction de leur rendement par rapport à la mise en oeuvre efficace des mesures de réduction des coûts et d'amélioration de l'efficacité mises de l'avant dans le plan d'action pour atteindre l'équilibre budgétaire en 2015.

Prime au bilinguisme

Par ailleurs, le nombre de fonctionnaires ayant droit à la prime au bilinguisme est passé de 104 827 à 98 837 entre 2010-2011 et 2013-2014. En même temps, la facture liée cette prime a fondu, passant de 73,3 millions $ à 69,4 millions $. Par employé, cela représente une somme d'environ 700 $ pour l'année.

Les données obtenues indiquent par ailleurs que la proportion de fonctionnaires ne touchant plus la prime a diminué un peu moins que la taille de la fonction publique au cours de ces trois années, soit 5,7 % comparativement à 6,7 %.

Avec William Leclerc

LeDroit

Abolition de postes dans la fonction publique: une facture de 4,45 milliards

Paul Gaboury, Le Droit, le 23 janvier, 2015

L'abolition de 25 800 postes dans la fonction publique a obligé le fédéral à débourser près de 4,45 milliards entre mars 2010 et octobre 2014, selon des données obtenues par LeDroit grâce à la Loi sur l'accès à l'information.

La facture liée aux indemnités de départ et mesures d'aide à la transition est ainsi passé de 368 millions$ (6747 employés) en 2010-2011, à 1,4 milliard$ (89062 employés) en 2011-2012. L'année suivante, en 2012-2013, les déboursés ont diminué à 992,8 millions$ (31047 employés), pour ensuite augmenter à 1,17 milliard$ (50960 employés) en 2013-2014.

Pour le début de l'année fiscale 2014-2015 (d'avril à octobre), la facture a atteint 492 millions$ (24349 employés).

À noter que les données obtenues ne permettent pas de départager les montants versés en indemnités de départ (volontaire ou involontaire) et les sommes payés à titre d'aide à la transition, une mesure prévue dans les ententes sur le réaménagement des effectifs.

Indemnités de départs

En présentant son budget 2011, le gouvernement Harper avait annoncé qu'il allait mettre fin à l'indemnité de départ versée aux fonctionnaires qui quittaient volontairement leur emploi, une mesure imposée d'abord aux syndiqués de l'Alliance de la fonction publique du Canada lors de négociations tenues à l'automne 2010, puis progressivement à tous les autres fonctionnaires fédéraux, y compris le personnel syndiqué et les gestionnaires.

Auparavant, tous les salariés de la fonction publique fédérale comptant au moins une année d'emploi continu avaient droit à une indemnité de départ correspondant à une semaine de salaire par année complète d'emploi, jusqu'à un maximum de 30 semaines.

En y mettant fin, le gouvernement avait offert trois options aux fonctionnaires admissibles: encaisser immédiatement l'indemnité de départ accumulée; conserver l'indemnité accumulée et l'encaisser lors de leur départ; ou en encaisser une partie et conserver le reste pour l'encaisser à leur départ.

En même temps, l'indemnité de départ involontaire (mise à pied) avait été bonifiée, en prévoyant le versement de prestations facilitant la transition vers une nouvelle carrière à ceux qui perdent leur emploi à la suite d'une réduction des effectifs et qui ne reçoivent aucune offre d'emploi.

L'abolition des indemnités de départ et les changements aux régimes de retraite des fonctionnaires et parlementaires font partie des principales mesures sur lesquelles le gouvernement compte pour réduire ses dépenses, avec l'objectif de retourner à l'équilibre budgétaire dès cette année.

En 2012, le gouvernement avait indiqué que l'abolition des indemnités en cas de départ volontaire fédéraux devrait permettre des économies annuelles de 1,4 milliard$ à compter de 2017-2018.

D'ici trois ans, les ministères et organismes fédéraux prévoient couper encore 8900 postes, au-delà des 25800 déjà abolis depuis 2010.

Avec William Leclerc

CBC news

Yukon francophones take French school board appeal to Supreme Court

Case could decide who has the right to control admissions to francophone schools outside Quebec

CBC News North, January 20, 2015

The Yukon government and the territory's francophone school board will be at the Supreme Court Wednesday to argue a case that could decide who has the right to control admissions to francophone schools outside Quebec.

The big question is who has the right to control admissions to francophone schools.

"It does raise important issues across Canada," says Max Faille, counsel for the Yukon government, "and this issue that we as a country have been grappling with for generations, really, of minority language education. It's an area of the law that is constantly evolving as a result of the natural tensions that exist and that have always existed."

Section 23 of the Charter of Rights of Freedoms guarantees Canadians the right to education in a minority language, whether English or French, but extends that right only to the children or grandchildren of those who were educated in French or whose first language is French.

In some cases, francophone school boards also welcome students of families who had the right to a French-language education in the past, but were unable to exercise it.

Roger Lepage represents Yukon's French school board, which first brought the case against the Yukon government in 2009, claiming the territorial government was withholding money and not giving it full control over its staff, school programs and enrolment.

He argues that the French school board should be allowed to determine who its students are because there are reasonable exceptions that exist.

"Can they allow immigrants who are not citizens to attend the francophone school? Can they allow people of French ancestry who were assimilated because there were no French-language schools? Can they allow their children to come? Can they allow some anglophone families who have integrated to the francophone community to attend?"

The board argues many francophones have already been assimilated, and points out that many francophone students who do exercise their rights transfer to English schools by high school. It says allowing exceptions means francophone communities in minority settings can grow and thrive, according to the spirit of the charter.

Some provinces — like Ontario, which educates about 100,000 of the 150,000 francophone students outside of Quebec — already allow for these exceptions, according to the National Federation of Francophone School Boards.

Long list of interveners

The list of interveners in the case includes the governments of Quebec, B.C., Saskatchewan and the N.W.T. Also intervening are the Commissioner of Official Languages of Canada, the B.C. francophone school board, francophone parents groups in B.C. and Alberta and the National Federation of Francophone School Boards.

The case is not the only legal battle being fought between French school boards and provincial and territorial governments.

Earlier this month, the N.W.T. government won an appeal against a francophone group that had previously won the right to bigger, better school facilities for French students.

British Columbia and Saskatchewan are also dealing with cases involving francophone school boards.

Biased judge?

The original case brought against the Yukon government was successful. In 2011, the Yukon Supreme Court ordered the Yukon government to build a new French-language school in Whitehorse.

But that decision was later overturned by an appeal court, which found the judge in the initial case, Justice Vital Ouellette, was biased.

"There is this unfortunate circumstance in this case in which the Yukon government felt it did not in effect get a fair hearing," says Faille, the Yukon government lawyer.

The government pointed to several incidents in the original trial where it says the judge appeared closed-minded. In its appeal, the Yukon government also pointed out that Ouellette sits on the board of governors of the Franco-Albertan Foundation, a charitable group that distributes money to francophone communities.

The francophone school board maintains the judge's involvement in the group is not political or an indication of bias.

"A judge should not be completely cut off from society," says lawyer Lepage. "That's important in our judicial system, so it's a question of clarifying the rules."

Lepage says the ruling on this from the Supreme Court could clarify the rules for all judges in the country.

The Supreme Court will also consider whether the Yukon government is obligated to communicate with the francophone school board in French.

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Québec se met à dos les francophones hors-Québec

Philippe Orfali, Le Devoir, le 23 janvier 2015

Le malaise demeure entier entre le gouvernement Couillard et les francophones du reste du pays, deux jours après que le Québec a demandé à la Cour suprême de limiter le plus strictement possible l'accès aux écoles de langue française dans les autres provinces, de crainte que cela n'ait des répercussions sur les écoles anglophones d'ici.

Mercredi, le Québec intervenait pour la première fois depuis 1990 devant la Cour suprême dans un dossier touchant l'éducation de langue française en milieu minoritaire. Il épousait au mot près la position adoptée par le gouvernement du Yukon, qui cherche à limiter le nombre d'élèves pouvant être admis dans les écoles de la minorité francophone, en excluant des écoles de langue française des enfants dont les parents n'ont pas eux-mêmes été éduqués dans la langue de Molière, ou encore de jeunes arrivants qui ne sont pas pour l'instant citoyens canadiens. En vertu de l'article 23 de la Charte canadienne des droits et libertés, ces personnes n'ont pas un accès automatique à l'éducation dans la langue de la minorité.

Jointe par Le Devoir, la ministre de la Justice du Québec, Stéphanie Vallée, a refusé de commenter la délicate situation jeudi. C'est plutôt le bureau du ministre des Affaires intergouvernementales canadiennes, Jean-Marc Fournier, qui a pris la parole, contredisant du tout au tout la position adoptée la veille. « Pour nous, l'amélioration de l'accès aux services en français pour les minorités francophones est de la première importance. On milite beaucoup pour l'immigration. C'est dans cette optique-là qu'il est important de fournir tous les outils éducatifs aux francophones, à ceux de l'immigration ainsi qu'aux francophiles », a affirmé Félix Rhéaume, porte-parole de Jean-Marc Fournier.

Incompréhensible

Des déclarations qui ont fait sursauter l'avocat représentant la Fédération des communautés francophones et acadienne et la Fédération nationale des conseils scolaires francophones du Canada, Mark Power.

« Tant dans son argumentation écrite que dans sa plaidoirie, le Québec est venu à la défense d'articles qui permettent d'interdire à des francophones d'inscrire leurs enfants à l'école de langue française. On ne peut comprendre comment il peut prendre cette position et en même temps prétendre appuyer les communautés francophones », tranche-t-il. Pendant de nombreuses semaines, les avocats des groupes francophones ont tenté de conscientiser le Québec aux répercussions potentiellement dévastatrices qu'aurait cette prise de position. En vain.

De l'avis de l'ex-doyen de la section de droit civil de l'Université d'Ottawa, Sébastien Grammond, Québec se trouvait dans une position difficile. « C'est sûr que le Québec aurait pu demander que le jugement vise juste les communautés francophones hors-Québec et pas les Anglo-Québécois. On ignore si la Cour se serait rendue à cette [conclusion]-là. »

Le vice-doyen de la Faculté de droit qualifie la position du Québec de « conséquence très malheureuse » du fait qu'on ait cherché à définir, dans la Constitution, les droits des communautés francophones hors-Québec de la même manière que ceux de la communauté anglo-québécoise, « alors que l'attraction de l'anglais est une force présente autant au Québec qu'ailleurs au Canada ».

« Ailleurs au pays, pour endiguer l'attraction de l'anglais, il faut accorder plus de droits à la minorité. Alors qu'au Québec, pour l'endiguer, il faut justement restreindre les droits de la minorité. Il est là, le paradoxe. »

Les francophones du Yukon traînent en cour leur gouvernement, notamment parce que celui-ci refuse de leur fournir les ressources nécessaires afin d'accueillir davantage d'élèves, malgré l'importante croissance de la population francophone et francophile du territoire ces dernières années. Les Franco-Yukonais ne sont pas les seuls à poursuivre leur gouvernement devant les tribunaux.

Les francophones de la Colombie-Britannique, de l'Alberta, de la Saskatchewan et des Territoires du Nord-Ouest sont, eux aussi, devant la cour de dernière instance dans des dossiers semblables.

LeDroit

La jambette

Editorial du Droit, Pierre Jury, le 23 janvier 2015

Les francophones du Yukon aimeraient grossir leurs rangs. Qui s'y oppose? Le Québec!

Le gouvernement de Philippe Couillard s'est présenté devant la Cour suprême cette semaine non pas pour défendre et promouvoir la francophonie sous toutes ses formes - particulièrement là où elle est particulièrement vulnérable -, mais pour honteusement lutter contre elle.

Gageons que cela ne serait pas arrivé à l'époque où Benoît Pelletier siégeait au conseil des ministres à Québec. L'ex-député de Chapleau à l'Assemblée nationale et constitutionnaliste de l'Université d'Ottawa a défendu la Francophonie bec et ongles. Pas que celle de France, d'Afrique et d'ailleurs, mais celle du Canada, celle de l'Ontario et celle des autres provinces. Celles qui sont fières mais minoritaires, celles qui tentent de perpétuer un certain idéal d'un pays où deux cultures fondatrices peuvent survivre et prospérer, plutôt que juste survivre.

Au Yukon comme dans d'autres régions où le français est minoritaire, la communauté de langue française a besoin d'appuis, d'un coup de main. Voilà que le Québec lui sert une jambette. Une jambette qu'endosse Stéphanie Vallée, la ministre québécoise de la Justice et députée de Gatineau. Elle habite près de l'Ontario, elle devrait être un peu au courant des combats incessants que les Franco-ontariens mènent depuis un siècle pour leur langue et leur culture. Mme Vallée devrait être capable d'extrapoler ce défi jusqu'au Yukon où la Commission scolaire francophone de l'endroit lutte depuis des années pour élargir les critères d'admission à l'école Émilie-Tremblay (primaire) et à l'Académie Parhélie (secondaire) et obtenir le financement idoine.

Pourtant, non.

Québec et la ministre Vallée ont davantage peur que l'arrêt de Cour suprême, attendu l'automne prochain, n'apporte de l'eau au moulin des écoles anglaises de la Belle Province.

Tout le débat en est un de principes d'abord, et d'argent ensuite. Parce que derrière les principes se profilent toujours des questions d'argent. Grossir les rangs des Franco-yukonais exercera de la pression sur les services scolaires à Whitehorse et ça, le gouvernement du Yukon s'y oppose. Il a perdu en première instance et gagné en appel; d'où l'aboutissement devant la Cour suprême du Canada.

Le débat concerne l'élargissement des droits à l'enseignement en français au-delà des stricts «ayant-droits», ceux qui ont accès à l'école française parce qu'au moins un des parents l'a fréquenté auparavant. C'est l'application de l'article 23 de la Charte canadienne des droits et libertés. Des immigrants francophones et des francophiles aimeraient se joindre à ces «ayant-droits». Cela compte dans une région peu densément peuplée comme le Yukon, où les francophones ne représentent que 1500 âmes sur 36000 habitants.

Québec prône une application restrictive de l'article 23. Depuis une quinzaine d'années, la Cour suprême a plutôt - enfin! - opté pour une vision d'ouverture, reconnaissant le contexte sociolinguistique; c'est l'approche asymétrique qui accepte que l'on ne doit pas appliquer stricto sensu une décision sur les minorités francophones à la minorité anglophone du Québec, bien mieux nantie.

Défendre le français, ce n'est pas que se pavaner devant le Centre de la francophonie des Amériques en chantant du Radio Radio. C'est aussi l'encourager, favoriser son essor partout, et adopter une attitude d'ouverture plutôt que celle d'un repli sur soi par crainte d'un ressac.

LeDroit

Patience avant d'être jugé en Outaouais

Louis-Denis Ébacher, Le Droit, le 21 janvier 2015

Il est de plus en plus difficile de se prévaloir du droit d'être jugé devant ses pairs en Outaouais. Au bas mot, il faut deux ans de plus pour être jugé au criminel à la Cour supérieure - devant jury - que si l'on s'adressait à un juge seul de la Cour du Québec.

Un procès dans trois mois ou dans deux ans et demi? La réponse semble facile pour la grande majorité des accusés, qui veut en finir au plus vite.

Lorsqu'on veut se prévaloir de son droit d'être jugé devant jury, il faut savoir qu'en Outaouais, comme dans bien d'autres régions du Québec, il faut attendre au moins deux ans, que l'on soit en détention préventive ou en liberté provisoire.

La situation s'est améliorée à la Cour du Québec, mais le manque de juge à la Cour supérieure se fait sentir plus que jamais.

C'était jour d'assises criminelles à la Cour supérieure, mardi, au palais de justice de Gatineau. Plusieurs gros dossiers de meurtre, d'enlèvement d'enfant et de voies de fait graves ont été énumérés afin de trouver des cases horaires appropriées pour la tenue de nombreux procès devant jury.

La chambre criminelle de la Cour supérieure entend les causes devant jury. Lorsqu'on s'adresse à un juge de la Cour du Québec, le procès a lieu devant juge seul.

Parmi les causes phares qui doivent être entendues devant jury, à Gatineau, se trouve celle de Shakti Ramsurrun, un jeune homme accusé des meurtres prémédités de son ex-conjointe et de ses ex-beaux-parents, dans le secteur Aylmer, en mai 2012. Son procès aura lieu en avril, mai et juin 2017.

Plusieurs pointent du doigt l'absence de juges de la chambre criminelle de la Cour supérieure en Outaouais. Ce sont les magistrats du district de Montréal qui tentent de venir en aide à la région. Tous s'entendent pour dire que le verre déborde.

Appelé en renfort en Outaouais, le juge coordonnateur de la Chambre criminelle de Montréal, Marc David, a expliqué à plusieurs accusés, mardi, qu'ils avaient bien le droit de se prévaloir d'un procès devant jury, mais que les délais dépassaient deux ans.

À une femme accusée d'enlèvement, et détenue en attendant la suite des procédures, le juge David a dit qu'elle pouvait avoir un procès dans les trois mois, à la Cour du Québec. La femme, dont on ne peut publier l'identité, a répondu que les avocats qu'elle avait consultés lui ont conseillé de s'adresser à un jury. «C'est deux ans», a répondu le juge coordonnateur.

Ailleurs, le procès devant jury de Francis Cormier, détenu de façon préventive pour voie de fait, de harcèlement et d'introduction par effraction, est prévu en septembre 2016.

Au procès verbal de l'accusé, le juge David a fait ajouter que «des indications qui permettent au Tribunal de conclure que si l'accusé réoptait devant un juge seul à la Cour du Québec, celui-ci pourrait se tenir à Gatineau à compter de septembre 2015. Malgré ces renseignements, l'accusé maintient son choix de procéder devant jury.»

Un examen de conscience s'impose
La pénurie de juges à la Cour supérieure n'est pas la seule source des retards dans les chambres criminelles, selon l'Association des avocat(e)s de la défense du Québec.

Selon la présidente de l'association, Me Joëlle Roy, c'est tout le système de justice qui doit se remettre en question afin de trouver des solutions pour réduire les délais pour les accusés en attente d'un procès.

«On est très concernés, dit-elle. Mais, même s'il y avait plus de juges, aurait-on les ressources et le personnel pour faire "rouler" tout cela? Est-ce qu'on peut "dégraisser" le système, l'épurer?»

L'attente, qui peut dépasser deux ans pour un procès devant jury en Outaouais, engendre des préjudices chez les accusés, selon Me Roy. «On se trouve au-delà des préjudices acceptables convenus par la Cour suprême, soit 14 mois pour un dossier par acte sommaire et

18 mois par acte criminel. C'est notre système qui est mis en joue. Si on respectait toutes les règles de la Cour suprême, il y aurait beaucoup d'arrêts de procédures.»

Des juges de la Cour supérieure sont entièrement dédiés à des causes extrêmement longues et complexes comme le procès SharQc. «Et (les dossiers de) l'Unité permanente anticorruption (UPAC) ne sont pas encore arrivés...»

À l'ouverture des tribunaux, en septembre, le juge en chef de la Cour supérieure du Québec, François Rolland a martelé que le système était «saturé» et qu'il était temps de «penser à d'autres façons de faire».

Des délais dans les causes criminelles

En octobre dernier, le juge coordonnateur de la Cour supérieure en Outaouais, Dominic Goulet, a confirmé au Droit que son district judiciaire faisait appel à la métropole pour l'audition de causes criminelles devant jury.

En Outaouais, il y a quatre juges de la Cour supérieure au civil, au criminel, au familial et aux faillites commerciales. Le district compte quatre palais de justice: Gatineau, Campbell's Bay, Maniwaki et Mont-Laurier. Ces quatre juges ont environ 3700 dossiers à gérer. Un peu plus de 1500 de ces dossiers sont de nature familiale (gardes d'enfant, divorces, etc.).

Depuis le départ à la retraite du juge Jean-Pierre Plouffe, l'année dernière, aucun juge de la région n'est disponible pour entendre ces causes criminelles à la Cour supérieure. Les autres juges de la Cour supérieure en Outaouais sont affectés aux causes civiles. En avril dernier, le district a perdu ses deux juges surnuméraires, qui permettaient d'assurer une certaine stabilité malgré des rôles surchargés.

NORTON ROSE FULBRIGHT

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Union certification just got tougher: new Canada Labour Code rules in 2015

Author: Michael Torrance , Norton Rose Fulbright, January 2015

New rules on union certification for federally regulated employers will take effect June 16, 2015, following the royal assent of Bill C-525.

The legislative amendment substantially alters the process for unions to obtain certification in relation to federally regulated employers. In particular, a union's ability to obtain certification automatically without a vote has been eliminated under the new rules. Unions will now be required to win a vote before being certified to represent workers.

Under the outgoing regime, union certification can be awarded under Part II of the Canada Labour Code (the Code) where a union presents evidence that more than 50% of employees in a proposed bargaining unit have signed union "cards" and paid for a union membership. Where such evidence could be provided, certification would be automatically granted the union without the need for a secret ballot vote. Only if evidence of union membership is provided of between 35% and 50% of the proposed bargaining unit would a vote be held.

Many other jurisdictions in Canada (including Ontario, British Columbia, Alberta, Nova Scotia and Saskatchewan) hold a secret ballot vote even where more than 50% support is

provided. The voting process provides time for employers (and unions) to communicate factual information and educate employees about the meaning of unionization. Automatic certification (certification without the opportunity for a vote) denies employers the opportunity to communicate with bargaining unit employees about their decision before votes are cast.

Bill C-525 has eliminated the automatic card-based certification provisions of the Code. Now, all certifications will involve a secret ballot vote. Such a vote will be triggered where the union adduces evidence that 40% or more of the bargaining unit are members of the union. Where that threshold is met, certification will be issued if a majority vote in favour of the union.

In addition to this significant change, Bill C-525 has lowered the threshold for employees in a certified bargaining unit to trigger a vote on whether they wish to remove their union, otherwise known as de-certification or termination of bargaining rights. Under the outgoing regime, a secret ballot vote on de-certification would be triggered where evidence could be shown that more than 50% of bargaining unit employees no longer wished to have the union represent them.

Under the amended Code, the threshold has been reduced to 40%. If that threshold is met, then a secret ballot will be held and the union can be de-certified if a majority of voters vote against the union. For the vote to be valid, at least 35% of eligible voters must vote.

These changes will be important to federally regulated employers, such as those in the inter-provincial transport, shipping, airline and financial sectors. Employers affected by these changes will have a greater opportunity to voice their views in any certification process brought under the Code. It will be important for employers to be ready to take advantage of these opportunities with campaign strategies where such votes may take place.

Whopping donation nets naming rights at UBC law school

Yamri Taddese, Canadian Lawyer, January 23, 2015

The University of British Columbia's law school is getting a name change after receiving a whooping $30-million donation from a former student yesterday. That amount is the largest gift ever to a Canadian law school.

UBC's law school is now dubbed the Peter A. Allard School of Law in honour of Peter Allard, who in 2011 had previously given the school another $12 million for the construction of the building that now houses the faculty of law.

"It's our largest donation; it's the largest individual donation in our university's $1.5-billion dollar [fundraising] campaign, and it's the largest donation to legal education in Canada ever," says law school dean Mary Anne Bobinski about the latest gift.

"We're thrilled by [Allard's] generous support and grateful for the way in which that support will help students' experience and faculty research, and allow us to have an impact for generations to come," she adds.

Allard, who is a lawyer, businessman, and philanthropist, received both his undergraduate and law degrees from UBC. After graduating, he practised law for 20 years and founded his own firm, Allard and Co. He has since been involved in a variety of business enterprises, including the investment firm Peterco Holdings Ltd.

"As a proud UBC alumnus, I am pleased to make an investment today that will enable students to pursue a profession that strives to create a more just society," Allard said in a statement.

"My intention is to create a permanent and growing revenue stream that will help to recruit and retain outstanding faculty members, provide support to ensure that the most promising students are able to participate, and ensure that exceptional learning programs are offered."

Bobinski says the new donation will be used to create several endowments at the law school. Some $5 million will go into creating student support that includes scholarships and bursaries as well as summer employment opportunities.

Another $4 million will go into experiential learning that will allow students "to take what they learn in the classroom and use it to help clients in need in society," says Bobinski, who also adds the funds will also go into recruiting the best faculty.

"This allows us to go to the next level of trying to ensure that we're recruiting the very best students, that we have fantastic faculty. Those two together, the students and the faculty, can, through their research and clinical work, have a real impact nationally and globally on issues like human rights," she says.

Part of the new funding will help support an international prize created under Allard's name. The Allard Prize for International Integrity supports global organizations that are involved in fighting corruption and promoting human rights, ethics, transparency, and the rule of law around the world.

In addition, with the new money, UBC's law school has launched a $10-million fundraising campaign to encourage others to join Allard in supporting the law school.

Restorative justice gets to the root of the evil

DANNY GRAHAM, Contribution to the Halifax Chronicle-Herald, January 2015

The first time I heard of restorative justice, I remember feeling troubled that anyone would take it seriously. I was sitting in a classroom at Dalhousie law school listening to a professor extol its benefits when it occurred to me that this was an example of the impractical dreams I was told to ignore from "soft-touch" left-leaning law professors.

The professor's praise of this approach jarred my rough and tumble, hockey-influenced, view of the world. I believed the issue was straightforward: jerks and crooks should be dealt with firmly, by someone with the spine to straighten them out with swift and tough punishment.

What a difference real-world experience can make. For much of the past 30 years, I've worked both with offenders on the frontlines and with justice departments in Canada and overseas as a policymaker.

What I have learned is that our preoccupation with tough punishment is sacrificing opportunities for safer societies, more satisfied victims and reformed offenders. In the systems of police, courts and corrections, rates of reoffending remain stubbornly high; victims' needs are typically ignored; and the general public stays largely oblivious to the causes of harm and crime.

This lack of public knowledge is partly because the mainstream justice system has become a place to bury our social problems instead of opening them up to be addressed — the way restorative justice does. The price of this public unawareness is mounting.

In our desire to have the despicable behaviour of the now-suspended Dalhousie dentistry students taken seriously, our outrage seems to have triggered our public "let's get tough" reflex, instead of our "let's get it right" reflex. This can be dangerous.

Moments like these test us. Nova Scotia has become an internationally recognized leader in restorative justice over the past 15 years. Justice leaders from around the world have come to our province to learn from our success; but as Nova Scotians, we remain unclear about what it is.

First of all, restorative justice is not a panacea. It does not offer solutions for all people in all situations. Moreover, it is more challenging in situations like the dentistry matter — where there are ongoing relationships, and the harm alleged is of a sexual and violent nature.

But, contrary to some media reports, it is far from an informal, soft or weak process. It is a rigorous, internationally recognized approach, backed by extensive research and refined training.

The variety of consequences and outcomes in restorative justice can be as wide-ranging as it is in the mainstream system — resulting in accountability that is sometimes "lighter" and sometimes "heavier" than the traditional justice system.

While the names of the parties are often not disclosed, the findings and outcomes can be made public in the interests of justice.

When done well, the research points to those harmed being the biggest winners in a restorative justice process — with victims consistently reporting higher satisfaction rates than in the mainstream justice system. So, why would we want to remove this option from these students? Why would we deny them an informed choice they believe would better meet their needs?

The important point is that the focus for restorative justice participants — victims, offenders, community members and their supporters — is on what is most effective for them, instead of what is the right level of toughness.

Of particular relevance to this case is that it is far more possible through restorative justice than in the mainstream system to identify and begin to address the systemic social problems that brought about these deplorable actions in the first place.

Following on the heels of reports that celebrities we trusted acted violently toward women, we have a unique opportunity to understand and tackle widespread misogyny and sexualized violence more seriously and systematically. Let's not sweep this messy problem under the carpet by mistakenly believing that a simple tough response is going to miraculously fix a complex social problem.

Life is layered with complexity. Lasting solutions aren't found in simple answers. Even traditionally "tough justice" states like California and Texas are gradually reversing their simple punitive policies because they have cost so much and failed so badly.

And this is Nova Scotia, after all. If ever there was a culture that can navigate the intricacies of these issues, Nova Scotia is it. At our best, we are a tolerant and balanced people — not seduced by fancy new ideas or easy outs. We understand both the frailties and shortcomings of human beings, and the power of community to hold each other accountable.

We should rise to this challenge, take full responsibility for it and ensure another generation of men and women don't grow up in it.

***Danny Graham, QC**, has been recognized by the Nova Scotia government for helping to found the provincial restorative justice program. He has also worked with the United Nations to advance restorative justice internationally.*

A look at the lawyer challenging the Beer Store

By Glenn Kauth, Legal Feeds blog, Canadian Lawyer, January 19, 2015

While most people get chocolate in their Advent calendars, Toronto lawyer Michael Hassell's was full of 25 beers.

It's perhaps not surprising given that he's the lawyer trying to take on the Beer Store through a legal challenge he announced last week. A co-owner of Barge Craft Beer Distribution and Retail Co. Ltd., he's a lawyer who practises civil litigation and commercial defence who has also started up what he calls a "beer law niche practice" focused on advising craft brewers on regulatory issues and, since the issue of what to do with the Beer Store exploded into Ontario's political consciousness in recent months, breaking up its dominant position in the market and the legal framework that allows for it.

Hassell, a 34-year-old graduate of Western Law who has been practising law since 2008, says his passion for beer itself dates back to good memories of hanging out with friends in high school. "There's such a great social aspect to having a beer," he says. But his passion for beer law is a bit more recent. One of his favourite beers was Creemore Springs, a smaller brewery bought up by Molson Coors Brewing Co. in 2005. Hassell was sad to see the acquisition of his favourite brewer, and when he realized the brewing behemoth also owned the Beer Store, he became more aware of just what the business environment for beer in Ontario was all about. "I didn't realize it was this single private company getting untold millions of dollars," he says of the retail environment for beer in Ontario. Like many people, he had the vague idea that the government had some sort of stake in the Beer Store or that the profits somehow flowed back to the province. But with the media, notably the Toronto Star, having started to question the current arrangement in recent months, people have become much more aware of the Beer Store's ownership by the brewing giants, the limitations on beer sales at the LCBO, and the industry's warm relationship with Ontario's political parties.

In the meantime, Hassell has started up Barge Craft Beer Distribution and Retail, a company he admits has no sales. Of course, the law restricts most beer sales in Ontario to the Beer Store, so doing what his company's name suggests isn't really an option. While the LCBO is an alternative for the craft brewers themselves, Hassell says it has limited shelf space for craft beer. The goal of his company is to have 100 Barge Craft Beer outlets open within a year of the end of any change to the current legal framework. "When Year 1 will be is a question mark," he says. His notice last week put the province on notice that he would be bringing a legal challenge to s. 3(e) of the Liquor Control Act that grants Brewers Retail Inc. monopoly status as the only private company able to sell beer to the public without brewing it. The draft notice calls it "an unreasonable restraint of trade, contrary to equitable principles of fairness and contrary to public policy."

With more light shone on the issue and the government seeking to impose a franchise or licensing fee on the Beer Store of up to $100 million — Hassell calls it a "monopoly fee" — the Beer Store recently made some concessions to Ontario's craft brewers, including making it easier for them to sell their products at the five locations closest to their breweries. But Hassell says the Beer Store's listing fees remain "prohibitively high" and notes he wouldn't be happy if the province were simply to wrestle more money for its own coffers from the existing arrangement. "That's still just totally unfair to Barge because it means zero sales," he says.

The goal, then, is to loosen the rules on beer retailing and distribution and Hassell says he'll be officially launching his challenge once he sees what the province does on the issue in its upcoming budget. "If the government says it will end the monopoly, then the application is effectively solved," he says.

Hassell, who professes a love of India pale ales and stouts, says he also has more legal options in the works and is vowing to continue the fight. "It's going to be fun," he says.

Please don't confuse Peter MacKay with facts

By Michael Spratt, Contribution to iPolitics, January 18, 2015

Ignorance of the law is not a defence — unless, apparently you're the minister of Justice.

Last week, in response to columnist Stephen Maher's indictment of the Conservatives' criminal justice agenda, Peter MacKay took the unusual step of releasing an open letter claiming that Maher's article did a "disservice" to Canadians by promoting a misunderstanding of the justice system.

Looks like irony is dead again — at least in Ottawa.

In his letter, MacKay assured Canadians that the government "drafts our legislation to ensure it is compliant with the Canadian Constitution."

The Department of Justice Act requires that the minister examine every government bill to determine whether any provisions are inconsistent with the purposes and provisions of the Canadian Charter of Rights and Freedoms.

In other words, the Justice minister now finds it necessary to assure Canadians that his department is obeying the law. But if actions speak louder than words, the government's track record on justice bills is shouting.

In a recent response to questions posed by Liberal justice critic Sean Casey, the government confirmed that, under the Harper government, the Department of Justice research budget has been slashed by almost $3 million, or 60 per cent.

Justice research contracts have decreased by over 90 per cent — from $450,000 in 2010 to a mere $41,000 in 2014 — and the number of full-time legal researchers was cut from 34 to 18 over the same period.

The purported justification for cuts was budgetary. However, according to an internal government report, the Justice Department's research budget was actually slashed because its findings "may run contrary to government direction" and "at times left the impression that research is undermining government decisions."

The same internal report notes that "there have been examples of (research) that was not aligned with government or departmental priorities."

A government that believes in fact-based legislation doesn't starve itself of the funds required to find those facts. Unless it's not really interested in facts at all. There, in a nutshell, is Peter MacKay's approach to drafting laws: Ideology first, evidence never.

How can MacKay — with a straight face — assure the public that his legislation is constitutional when the government purposefully suppresses evidence to the contrary?

Suppressing evidence may just be the tip of the iceberg. It has been alleged that the government has tried to game the system to avoid legal opinions that show its legislation conflicts with the Charter.

If MacKay can't suppress the evidence, he's content to place his thumb squarely on the constitutional scales.

In MacKay's universe, words mean what he says they mean. Whistleblower Edger Schmidt — a former Department of Justice Lawyer — is suing the government over its rosy interpretation of the word "inconsistent". Schmidt claims that the government takes the position that laws that are "likely or even almost certainly inconsistent" with the Charter will pass review if any arguments exist to support consistency.

If MacKay can't suppress the evidence, he's content to place his thumb squarely on the constitutional scales.

Let's look at a concrete example — the cornerstone of Conservative justice policy, mandatory minimum sentence — to illustrate MacKay's embrace of ignorance. In 2007 the Library of Parliament warned the government about the drawbacks of minimum sentences — their potential constitutional difficulties, their lack of utility and general uselessness:

- *Mandatory minimum terms of imprisonment are generally inconsistent with the fundamental principle that a sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender, as they do not allow a judge to make any exception in an appropriate case … A mandatory minimum sentence may constitute cruel and unusual punishment, in violation of the Canadian Charter of Rights and Freedoms, if it is possible for the mandatory punishment, in a specific matter or reasonable hypothetical case, to be "grossly disproportionate," given the gravity of the offence or the personal circumstances of the offender.*

Even the government's own research is down on the idea. A 2005 Justice Department report found, after a review of the evidence, that:

- *Minimum sentences are not an effective sentencing tool: that is, they constrain judicial discretion without offering any increased crime prevention benefits. Nevertheless, mandatory sentences remain popular with some Canadian politicians.*

MacKay can't claim ignorance. He knows that minimum sentences don't work and clash with the Constitution. He just doesn't care.

Or does he? The government's response to Casey's questions disclosed that the Harper government has commissioned at least four additional studies of mandatory minimum sentences. What do they say? Do they provide a constitutional justification for mandatory minimums? Did the government keep commissioning new studies until it got one that said what they wanted it do? Your guess is as good as mine; the studies have never been released.

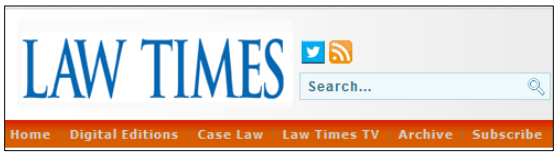
And it may be a moot point anyway, because in a written response to Casey's questions, MacKay office seems to suggest he never read them: "Research reports and studies are sent to the minister's office only if approval for external publication is being sought."

Ultimately, the proof of MacKay's feckless approach to drafting laws comes not from his PR spam or his party fundraising letters. It comes from the courts — a place where specious arguments based on wishful thinking tend to run out of air rather quickly. Mandatory sentences, mandatory victim fines, retroactive changes to parole, 'truth' in sentencing reforms — they've all been declared unconstitutional.

If MacKay truly has been running its bills through a constitutional compliance review, he's doing something wrong. Meanwhile, he's the last person on earth to be talking loftily about bringing the justice system into "disrepute".

By ignoring the constitution, disregarding evidence and manipulating the review process, MacKay is the one doing the justice system — and Canadians — a disservice. He owes us an apology. Failing that, the least he could do is exercise his constitutional right to remain silent.

Michael Spratt *is a well-known criminal lawyer and partner at the Ottawa law firm Abergel Goldstein & Partners. He has appeared in all levels of court and specializes in complex litigation. Mr. Spratt is frequently called upon to give expert testimony at the House of Commons Standing Committee on Justice and Human Rights and the Senate Standing Committee on Legal and Constitutional Affairs. He is a past board member of the Criminal Lawyers' Association and is on the board of directors of the Defence Counsel Association of Ottawa. Mr. Spratt's continuing work can be found at www.michaelspratt.com and on twitter at @mspratt*



Guarded optimism for 2015

Yamri Taddese, Law Times, January 19, 2015

As falling oil prices add another wrinkle to already-uncertain economic conditions, several law firms are expressing guarded optimism that they'll be able to weather the storm and continue to adapt to changing markets this year.

Lower oil prices will "undoubtedly" mean challenges for some oil and gas producers but they also present opportunities for clients in other sectors, says Brock Gibson, chairman of Blake Cassels & Graydon LLP.

"Oil prices have been volatile in the past and are clearly volatile over the last few months," says Gibson.

"They are generally priced in U.S. dollars, so the drop in the Canadian dollar mitigates some of that. It will undoubtedly create some challenges for some of the oil and gas and energy producers and it will create opportunities for others who are looking to acquire."

He adds: "There will be changes in capital expenditure and undoubtedly consolidation opportunities for some of the clients and so we're here to serve all of the clients both in seizing the opportunities that it creates and dealing with any challenges."

A weaker Canadian dollar could also benefit export-oriented clients, according to Gibson, who also notes the currency drop will help attract more foreign investment.

The optimism, of course, follows a year that saw major concern about the future of legal business given the collapse of Heenan Blaikie LLP in February. While there was rampant speculation about which firm would be next, Gibson says the last year turned out to be a good one. "I do feel that 2014 was a good year for Blakes. It was one of our best years and I expect 2015 will continue to be robust for us. Our strategy has been to assist our clients in the leading industries, markets, and practice areas that are most active in Canada. Those areas vary from year to year," he says.

"Some industries, markets, and practice areas are more robust in any given year than others, but our strategy is to be positioned for our clients in all of those market cycles and so we anticipate 2015 will be similar to 2014 adjusted for where market activity is," he adds.

For some small- and mid-size law firms, the focus for 2015 is less on global economic trends and more on the business of law.

“Our business is litigation and from a litigation perspective, we’re always optimistic that people will still have reason to litigate,” says Brian Grant, managing partner of Lerners LLP’s Toronto office. “My own view of what’s ahead for us is less to do with broad economic factors and more with respect to the business of law.”

There will be “huge implications” should the Law Society of Upper Canada move towards allowing alternative business structures and public ownership of law firms, according to Grant. “That is a real conversation that’s going to have to take place across a broad spectrum in the coming year. It has huge implications. I think the [Canadian Bar Association] believes it has implications for access to justice. That may be so, but it has huge implications for legal culture, accountability, independence, and solicitor-client privilege. It has a potentially large impact on how law firms organize themselves. That conversation is going to be front and centre this year.”

The possibility of alternative business structures is causing even more apprehension in the personal injury bar.

“The most significant challenge we could possibly foresee is if the law society decided to do something drastic and unnecessary to the structure that we have,” says David Levy, managing partner of personal injury firm Howie Sacks & Henry LLP.

“Right now, we work within a system that allows us to do good work on behalf of our clients and help us get them the compensation they deserve and make a good living doing it. If the law society doesn’t interfere with that, we expect to be able to continue to do so,” he adds.

Over at boutique law firm Hicks Morley Hamilton Stewart Storie LLP, managing partner Stephen Shamie says he’s “cautiously optimistic” about 2015.

“As a boutique human resources law firm, we believe our clients will continue to look for specialized [or] subject matter expertise advice that will allow them to deal with the challenges of their businesses,” he says.

But law firms will continue to face demands from their clients in terms of value-added services and the need to be more cost-effective, according to Shamie, who notes those focused on human resource law may find new opportunities in areas such as the new medical marijuana regulations.

“As a human resources law firm, the issue of medical marijuana in the workplace can be a significant issue for our clients and one which we expect to see in 2015 together with other workplace, accommodation, and related issues,” he says.

Grant says law firms will likely seek to diversify their revenue bases this year, a lesson many took from the Heenan Blaikie collapse.

“Whenever you’re in uncertain economic times — and I’d say that terribly, that’s where we are — we’re always looking and I think law firms are looking to diversify their lines of business and maintain a diverse revenue base,” he says.

“One of the many potential lessons we could learn from Heenan Blaikie is that if you put all your eggs in one or two baskets, then you set yourself up for difficulties when economic conditions change. So certainly going forward, I would think law firms will, to the extent they can, look to diversify their revenues and reduce their reliance on one major source of revenue or business.”

But other firms are quick to point out that Heenan Blaikie’s demise left them with no scars.

“As a specialty boutique law firm, many of the pressures experienced by full-service law firms simply do not apply in our case,” says Shamie. “We have focused on our core strengths over the years, which has served us well.”

But even bigger law firms like Blakes express a similar sentiment. “We’re pleased with our strategy of focusing on leading industry, practice areas, and markets, primarily in Canada but also elsewhere and we remain completely confident in that approach,” says Gibson.

“We haven’t changed our strategy or management or approach to the market or anything we do in any respect whatsoever as a result of the Heenan collapse. That has been a non-event as far as we’re concerned.”