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

Supreme Court ruling could pave way for federal union challenge on right to strike

Kathryn May, Ottawa Citizen, January 30, 2015

A historic Supreme Court of Canada ruling that affirms workers' right to strike opens the door for 17 federal unions to launch a similar constitutional challenge of the Conservative government's changes to labour laws in the public service.

In a 5-2 majority, the Supreme Court found the right to strike is an "indispensable" part of collective bargaining and struck down as unconstitutional a Saskatchewan labour law that prevented public servants from striking.

"The right to strike is not merely derivative of collective bargaining; it is an indispensable component of that right. It seems to me to be the time to give this conclusion constitutional benediction," Justice Rosalie Abella wrote for the majority in the 5-2 ruling.

The ruling granted an appeal Friday by the Saskatchewan Federation of Labour of the province's controversial essential services law, which restricted which workers could strike.

A constitutional right to strike is a major change to Canada's labour laws that was applauded by the unions and labour organizations across the country.

The ruling will affect public service unions in provinces across the country. Last April, Nova Scotia enacted its own essential services law for health care workers, joining Newfoundland and Labrador and British Columbia as provinces with such laws.

It also delivered a severe blow to the Conservative government's overhaul of the labour laws that govern collective bargaining in the federal public service. The changes, passed in Bill C-4, are almost identical to the Saskatchewan legislation that the Supreme Court overturned, particularly the provisions dealing with essential services.

"With the passage of Bill C-4, federal public service employees are faced with very similar legislation which grants the government carte blanche over essential services designations, leaving bargaining agents with little recourse," said Debi Daviau, president of the Professional Institute of the Public Service of Canada.

"This decision is a direct challenge to this Conservative legislation, which has imposed the most radical changes to federal public service labour relations in 40 years."

Federal unions have been waiting for the ruling since the government introduced changes to the Public Service Labour Relations Act in 2013. The biggest union, Public Service Alliance of Canada, filed a constitutional challenge then arguing the law violated employees' right to freedom of association. Many expect the other unions will now follow suit or join the PSAC case.

PSAC president Robyn Benson said the Conservatives' legislation is so similar to the Saskatchewan law that she hoped Treasury Board President Tony Clement would correct the "error of his ways" and repeal the "ill-conceived" law.

"This is an important victory for all working people," said Benson. "If the government repealed (C-4), I would be overjoyed, but if not we will proceed with our case."

Stephanie Rea, director of communications for Clement, said the government is studying the decision.

"As the decision in the case has just been rendered by the Supreme Court of Canada, we will be studying the decision carefully, with the Canadian taxpayer in mind," she said in an email.

The Saskatchewan Party came to power in 2007 and introduced a new law, which said employers and unions had to agree on workers deemed essential and unable to legally strike. If the two sides couldn't agree, the government gets to decide who is an essential.

Abella wrote that such unilateral power violated freedom of association guaranteed by the Charter of Rights and Freedom.

The federal law also gave the government the right to decide who is essential in the event of a strike. Unions have 30 days to comment on that list but the government makes the final decisions.

Before the Conservatives' changes, the two sides negotiated essential services agreements and if they disagreed over what jobs should be designated, the dispute went to the labour relations board to sort out.

The court's decision also found that employees can't effectively bargain if there isn't an impartial dispute resolution mechanism to solve any impasses at the negotiating table. Unlike the Saskatchewan law, the federal law allows unions access to arbitration but only in cases where 80 per cent of employees have been designated essential.

"Given the breadth of essential services that the employer is entitled to designate unilaterally without an independent review process, and the absence of an adequate, impartial and effective alternative mechanism for resolving collective bargaining impasses, there can be little doubt that the trial judge was right to conclude that the scheme was not minimally impairing," said the decision.

Peter Engelmann, a lawyer for the Professional Institute of the Public Service of Canada, said the federal government "will have a difficult road to hoe" if it decides to defend its law in light of the ruling. He argued the most "rational" response would be for the government to consult with unions, revisit the law and fix it to conform with the ruling.

The 17 federal unions are currently in a highly contentious round of bargaining over with the government under the rules that the court found unconstitutional in Saskatchewan.

The Supreme Court gave Saskatchewan one year to enact new legislation.

Top court upholds Canadian workers' right to strike

SEAN FINE, The Globe and Mail, January 30, 2015

Canadian workers have a constitutional right to strike, the Supreme Court ruled Friday morning.

"The right to strike is an essential part of a meaningful collective bargaining process in our system of labour relations," Justice Rosalie Abella wrote for the majority in a 5-2 ruling.

Governments are permitted to limit the right to strike for essential workers, but no more than necessary, the majority said. It also said that not all public-sector workers should necessarily be considered to do essential services.

The ruling comes in a Saskatchewan case in which public-sector unions challenged a 2008 provincial law passed by Premier Brad Wall's Saskatchewan Party that limited the right to strike by workers deemed by the government to be in essential services, such as jail guards. In the previous two decades, Saskatchewan had ordered striking public-sector workers back to the job on 10 separate occasions. But the law gave the government the unilateral right to decide which workers were essential, and it denied them access to effective alternatives for resolving labour disputes, Justice Abella said.

"The right to strike also promotes equality in the bargaining process," she wrote. "This Court has long recognized the deep inequalities that structure the relationship between employers and employees, and the vulnerability of employees in this context. While strike activity itself does not guarantee that a labour dispute will be resolved in any particular manner, or that it will be resolved at all, it is the possibility of a strike which enables workers to negotiate their employment terms on a more equal footing."

The case is the latest of several – including one two weeks ago – in which the Supreme Court has reconsidered its employer-friendly rulings from 1987 that found no constitutional right to collective bargaining or joining a union, and no right to strike. Overturning the first two of those rulings, the court established a right to meaningful collective bargaining in in 2007, and then this month ruled that the Canadian government unfairly denied Mounties their right to unionize.

Declaring a constitutional right to strike would be a change of "seismic proportions" to Canadian labour law, the Saskatchewan Attorney-General's Ministry told the Supreme Court in its written argument. It would affect labour laws around the country. Saskatchewan said it could even jeopardize matters such as the prohibition on strikes during the life of a collective agreement; the requirement to hold a strike vote by secret ballot before a strike action; and the requirement to give at least 48 hours written notice of any strike action.

At issue is Section 2(d) of the Charter of Rights and Freedoms, which protects freedom of association. The Supreme Court gave that right a ringing endorsement in the Mountie union case this month, reaching back to the words of a liberal-minded dissenting judge from 1987 – chief justice Brian Dickson – who said that association enables those "who would otherwise be vulnerable and ineffective to meet on more equal terms the power and strength of those with whom their interests interact and, perhaps, conflict."

The Saskatchewan Federation of Labour cast its argument in similar terms. "The right to withdraw labour is a universal human right," it said. "The recognition of the importance of work in a person's life [by the Supreme Court] requires the Court in applying the Charter to protect the ongoing ability of employees to find meaning and fulfillment in their employment relationships. The collective action of workers in work stoppages in pursuit of common goals is how workers exercise autonomy and participate in self-government in the workplace. These values play a central role in the interpretation of both freedom of association and expression."

The case attracted a variety of unions and governments intervening to make arguments on both sides of the issue.

The British Columbia Civil Liberties Association said the freedom of association should be understood in its relationship to freedom of expression. “By collectively withdrawing their labour in order to further their common goals, workers are engaging in conduct that is both associational and expressive in nature. They are banding together, in pursuit of their common interests. That is associational. And in doing so, they are, among other things, communicating a position to their employer, and perhaps others, such as members of the public, and seeking to persuade them to accept their collective bargaining goals. That is expressive.”

The Canadian Constitution Foundation, a conservative advocacy group, said the right to strike is created by government through laws, and governments have the authority to change those laws if they wish. Such rights [as the right to strike] involve a significant intrusion upon the constitutional role of the legislatures, and involve courts in complex matters of economic regulation,” the group said in its written argument filed with the court.

The Saskatchewan trial judge who heard the case ruled in favour of a right to strike, but the province’s Court of Appeal overturned that ruling, saying only the Supreme Court could overturn its earlier precedent.

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Link to the Supreme Court Judgment: Saskatchewan Federation of Labour v. Saskatchewan:
http://scc-csc.lexum.com/scc-csc/scc-csc/en/item/14610/index.do

Lien pour le jugement de la Cour suprême : Saskatchewan Federation of Labour v. Saskatchewan:
http://scc-csc.lexum.com/scc-csc/scc-csc/fr/item/14610/index.do

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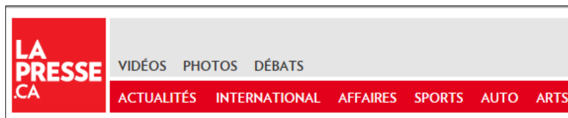


Une loi sur les services essentiels est invalidée par la Cour suprême

La Presse, Presse Canadienne, le 30 janvier 2015

La Cour suprême du Canada a tranché qu'une loi provinciale sur les services essentiels qui restreint le droit de grève des employés du secteur public est inconstitutionnelle, ce qui va vraisemblablement avoir un impact important sur une loi similaire qui existe au Québec.

Dans un jugement 5-2 rendu vendredi, le plus haut tribunal du pays a ainsi déterminé que le droit de grève constitue un élément essentiel d'un processus véritable de négociation collective et l'a en quelque sorte constitutionnalisé.

L'équilibre des forces employé-employeur dans les relations de travail est ainsi modifié de façon substantielle.

La loi qui a fait l'objet de l'étude attentive de la Cour suprême était celle adoptée par la Saskatchewan en 2008. La province soutenait que sa loi protège la sécurité de la population en cas de grève.

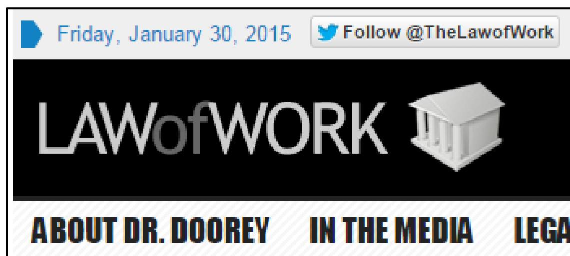
La Cour suprême a suspendu la déclaration d'invalidité de la loi pour un an, donnant ainsi du temps à la Saskatchewan pour rédiger une nouvelle mouture de sa loi.

Elle a eu pour effet de limiter la capacité des employés du secteur public qui fournissent des services essentiels de faire la grève. Ainsi, la loi a créé une méthode dite de «grève contrôlée» encadrant le retrait des services essentiels en établissant un régime destiné à limiter le nombre de salariés qui ont le droit de refuser de travailler en cas de grève.

De nombreux syndicats et de fédérations de travailleurs ont contesté la constitutionnalité de cette loi, soutenant qu'elle porte atteinte aux droits et libertés garantis par la Charte canadienne des droits et libertés, notamment la liberté d'association et la liberté d'expression.

De grandes entreprises comme Air Canada sont intervenues dans les procédures et les gouvernements de plusieurs provinces comme le Québec ont aussi fait valoir leurs arguments, sentant leurs propres lois sur les services essentiels menacées.

En première instance, le juge a tranché que la loi était invalide. Cette décision a été infirmée en Cour d'appel, qui s'est jugée liée par la jurisprudence établie selon laquelle la liberté d'association ne comprend pas le droit de grève.



A Constitutional Right to Strike Comes to Canada!

Law of Work blog page, January 30, 2015

A famous labour law professor told me once that sometimes you write decisions or public commission reports with an eye to the future. Sometimes you lay the ground work for future generations. Today, the Supreme Court of Canada finally accepted that Chief Justice Brian Dickson was right back in 1987, when he argued in his famous dissent in the Alberta Reference case that “freedom of association” in Canada’s Charter must protect a right of workers to withdraw their labour in combination to pressure their employer in collective bargaining. Today, nearly 30 years later, the Constitutional right to strike came to Canada.

The case challenged draconian legislation enacted by the Saskatchewan Party that gutted collective bargaining rights of public sector workers, and permitted employers to unilaterally decide which employees would have a right to strike and which would not. The Saskatchewan government, and governments in Ontario (see Dunmore), B.C. (see B.C. Health Services) have no one to blame for this decision by themselves. In their haste to strip workers of the right to collective bargaining, they overreached, went far beyond what was necessary to protect the public interest, to win some small points with their political base, to show that they are ‘tough as nails against labour’, and that they could do whatever the hell the liked, because there is no constitutional protection of a right to collective bargaining or strike.

By stripping marginalized farm workers of any right to bargain, by ripping up collective agreements and prohibiting bargaining over key subjects, and by effectively removing any right of employee resistance or access to a fair and neutral system of interest arbitration, these governments demonstrated with great flair the absolute hollowness of a freedom to associate that protects neither a right to collectively bargain or strike. In their arrogance, they gave labour the perfect test cases to ask the Court to revisit the 1987 Labour Trilogy. Had the governments taken a more measured, fair, and respectful approach, we may not be here today.

And so we enter a new era in which governments will be expected to justify the necessity of stripping workers of the right to bargain collectively and to strike.

Today’s decision was somewhat anti-climatic, notwithstanding its obvious significance. The Court showed its hand in last week’s MPAO v. Canada decision, which all but told us what was coming. By adopting Chief Dickson’s dissent in the Alberta Reference as the correct approach to Section 2(d), it seemed unimaginable that it would not also adopt the conclusion that followed from that approach, that Section 2(d) protects a right to strike.

As it had done in B.C. Health Services, where a right to collective bargaining was first recognized, the SCC relied on history and international law to justify the recognition of a right to strike. The lessons to be taken from that review include the conclusion that “without a right to strike, a constitutional right to bargain collectively is meaningless.”

The right to strike is constitutionally protected “because of its crucial role in a meaningful process of collective bargaining”. In a key passage, the SCC wrote:

Abella J.: This historical, international, and jurisprudential landscape suggests compellingly to me that s. 2 (d) has arrived at the destination sought by Dickson C.J. in

the Alberta Reference, namely, the conclusion that a meaningful process of collective bargaining requires the ability of employees to participate in the collective withdrawal of services for the purpose of pursuing the terms and conditions of their employment through a collective agreement. Where good faith negotiations break down, the ability to engage in the collective withdrawal of services is a necessary component of the process through which workers can continue to participate meaningfully in the pursuit of their collective workplace goals. In this case, the suppression of the right to strike amounts to a substantial interference with the right to a meaningful process of collective bargaining.

The test, according to the SCC is this:

Abella J.: The test, then, is whether the legislative interference with the right to strike in a particular case amounts to a substantial interference with collective bargaining. The PSESA demonstrably meets this threshold because it prevents designated employees from engaging in any work stoppage as part of the bargaining process. It must therefore be justified under s. 1 of the Charter .

It will take some time to flesh out what the case means. It appears to mean at first glance that a complete statutory ban on the right to strike will now violate Section 2(d), and the analysis will turn to Section 1 and the question of whether the infringement is justified. This is similar to the Court's long-standing approach to freedom of expression in Section 2(b), where most of the heavy legal lifting takes place under Section 1. The section 1 analysis will include an assessment of whether there is an adequate dispute resolution process, such an independent interest arbitration, when workers' right to strike is limited. Does this have the effect of constitutionalizing a right to interest arbitration?

Abella J.: Where strike action is limited in a way that substantially interferes with a meaningful process of collective bargaining, it must be replaced by one of the meaningful dispute resolution mechanisms commonly used in labour relations.
In Saskatchewan, the SCC ruled that the legislation in question was not saved by Section 1, because it was over broad in sweeping in employees who were not essential at all, and because it offered no fair alternate dispute resolution process at all for the workers whose right to strike had been taken away.

Many questions remain. I have to digest the decision for a while, but off the top of my head, here's a few:

1. What does this decision mean for the Ontario Court of Appeal ruling in Association of Justice Counsel v. Canada, which was denied leave to the SCC. That ruling found that the constitutional obligation on the government to bargain with its employees' association ends after a reasonable period of bargaining has occurred and an impasse is reached. At that point, the employer/state can unilaterally impose whatever terms it likes. That conclusion was premised on the assumption that the test for Section 2(d) is that the law makes it "effectively impossible" to engage in collective bargaining, and that there is no Constitutional right to a dispute resolution process. The "effectively impossible" test was killed in MPAO, replaced by "substantially interferes", and Saskatchewan now makes clear that in fact there is a right to strike or a right to access a meaningful dispute resolution process. This suggests that Association of Justice Counsel would be

decided differently now. All of this could spell trouble for Alberta, which is trying to defend its controversial Public Sector Salary Restraint Act.

2. Is the Agricultural Employees Protection Act, barely upheld in Fraser, now unconstitutional, because it does not grant any protected right to strike or access to any alternative dispute resolution process to agricultural workers?

3. Can employee associations that function outside of the Wagner model (because they are excluded from the legislation), like the union representing Legal Aid Lawyers, now strike when their public sector employer ignores their requests to engage in bargaining?

4. About 65% of Canadian employees and 83% of private sector employees are non-union, and have no legally protected right to strike in Canada. That is, if nonunion workers go on strike in this country, there is no statutory protection from termination by their employer. Only workers unionized in a majority trade union have a legally (statutorily) protected right to strike. Does this Saskatchewan decision, read with Dunmore and Fraser, which created a positive duty on governments to protect Charter rights in some cases, mean that nonunion workers (or at least some of them) must now be a afforded some form of statutory right of non-reprisal for engaging in a strike? Do we need a law that protects nonunion Walmart workers from being fired if they strike to try and win better wages? Or can governments still only grant the constitutional right to strike to about a 17% of private sector employees?

One thing's for sure: labour lawyers will have a lot more constitutional litigation on their plates in the coming years.

Lastly, I'd like to note two points about the importance of legal academics. Firstly, over a dozen labour law scholars were cited by the Court in this case and last week's decisions, and labour law scholars helped set the foundation for the Court's reasoning for both the majority and dissenting decisions. Second, the leading peer reviewed law journal on work law–the Canadian Labour & Employment Law Journal–was cited 10 times in this decision. I play a small role on that journal as Articles Review Editor, but credit must go out to Kevin Banks (and Bernie Adell (RIP), Jeffrey Sack and his people at Lancaster House, and Queens Law students who work on the journal.

With right to strike, the Supreme Court returns balance to the workplace

HASSAN YUSSUFF, Contribution to The Globe and Mail, January 30, 2015

***Hassan Yussuff** is president of the Canadian Labour Congress*

The Supreme Court has reaffirmed the centrality of collective bargaining and the right to strike to Canadian democracy. In a 5-2 decision, the Court has ruled that the right to strike is protected by the Canadian Charter of Rights and Freedoms.

This is a courageous decision, one that all Canadians should celebrate.

The decision is an important win for all of us because it recognizes once again that there is a fundamental power imbalance in the workplace that favours employers over employees, and that the right to strike restores balance and promotes equality in the bargaining process.

Does this mean we'll see more strikes? Of course not. No union goes into bargaining looking to send their members out on strike. As the Court recognizes, "strike action has the potential to place pressure on both sides of a dispute to engage in good faith negotiations." What it does mean is that employers and unions alike will collaborate more and that more negotiations will successfully conclude with fair collective agreements.

The decision strikes down legislation that the Saskatchewan government hoped would allow it to sidestep that collaborative approach completely. The legislation meant the government could unilaterally determine which workers were essential and which were not. It removed all possible recourse for the workers affected. It was devoid of any independent, effective dispute-resolution process, and handcuffed the Saskatchewan Labour Relations Board.

As the Court ruled, "no other essential services agreement in Canada comes close to prohibiting the right to strike as broadly, and as significantly."

There is no justification for this approach. Unions and employers have successfully used a collaborative approach to negotiate essential service agreements time and again. And time and again unions have fully agreed that some services are essential to the public good.

The Court found "no evidence to support Saskatchewan's position that the objective of ensuring the continued delivery of essential services requires unilateral rather than collaborative decision making authority."

Strikes will always be the last resort in collective bargaining. But it's strikes that make the news. The reality is that the vast majority of collective agreements – 94 per cent in the federal jurisdiction alone – are settled without a work stoppage.

This decision won't change the labour movement's commitment to protecting public health and safety during labour disputes. Health providers, emergency services workers, and critical infrastructure workers will continue to put the safety and well-being of the public first.

We should also take pride, as Canadians, that this brings our law in line with Canada's international commitment to the right to strike. Canada is a party to United Nations conventions recognizing the right to strike, as well as International Labour Organization Convention no. 87 concerning freedom of association and the right to organize. These undertakings commit Canada to upholding the right to strike.

This decision comes on the heels of another Supreme Court decision last week that recognized the right of the RCMP – indeed all workers in Canada – to choose independent associations to engage in meaningful collective bargaining. That confirmed what workers have known instinctively all along; that the right to choose an independent association to engage in collective bargaining forms the essence of freedom of association.

This week, the Court has recognized again that in effect, workers collective rights are human rights. As the decision says, the right to strike is essential to realizing Charter values of "human dignity, equality, liberty, respect for the autonomy of the person and the enhancement of democracy."

As Justice Abella wrote in the Court's decision, "clearly the arc bends increasingly towards workplace justice."

Public servants have 15 million days in banked sick leave

Kathryn May, Ottawa Citizen, February 1st, 2015

Canada's public servants have socked away nearly 15 million days of unused sick leave, which would disappear under the Conservative government's plan to introduce a new short-term disability plan.

That means the 195,330 people who are working today in the core public service — those for whom Treasury Board is the employer — have banked an average of 75 days, or 15 weeks, of sick leave to fall back on in the event of a prolonged illness.

The size of the sick leave bank was released by Treasury Board in response to an order paper question from Ottawa South Liberal MP David McGuinty. The statistics show a stockpile of 14.7 million days is what remains after nearly 63,000 people left the core

public service over the past six years because they had retired, resigned, were laid off, fired or died.

(About 2,600 of those departures were public servants who went to separate agencies such as Canada Revenue Agency or Parks Canada, which are not part of the core public service.)

The biggest departures came in the past two years, when more than 25,000 people left jobs in the core public service. The government has backfilled with some new hiring, but overall the core public service has about 22,000 fewer positions now than it did at its peak in 2011 of 217,224.

Public servants can't cash out their sick leave when they leave government, so those credits disappear and are wiped off the books. With those departures, the amount of banked sick leave sick fell from 16 million days in 2008-09 to about 14.7 million days in 2013-14. There are about 261 working days in a year.

With the drop in the overall size of the sick leave bank, the average number of sick leave credits per employee also shifted. The average employee had a bank of 76 days in 2008-09, falling to 72 days when the 2012 budget cuts began but increasing to an average 75 days per worker for the past two years.

The large number of retirements and resignations over the past six years is probably older workers who had a stockpile of sick leave credits that would have been cancelled when they left the public service. Any new hires to replace them haven't started to build their banks.

Many predicted there would be a run on the sick leave bank over the past couple of years from disgruntled employees deciding to use some of their sick leave credits before they lost them under the government's new plan. But nothing in the data suggests that is happening in a significant way.

McGuinty said he was hoping the questions would shed some light on the state of the health of the public service and "what's going on here" as the government negotiates with the 17 public service unions to reform the way sick leave and disability are managed.

"We are seeing new forms of psychological distress and serious morale problems that are leading to mental health issues," said McGuinty. "I rarely come across anyone who says, 'I really enjoy what I do in the public service.' It's extremely difficult to get people to talk … but it is affecting health, mental health and well-being, and I am trying to get more information on what is going on."

The 17 unions argue they have been fighting to get the same kind of information at the bargaining table, where sick leave is the hot negotiating issue.

Treasury Board President Tony Clement wants a new short-term disability plan to replace the existing accumulated sick leave. He argues it would be fairer to all employers while improving the productivity and wellness of Canada's bureaucrats.

Workplace experts have waded into the debate, arguing that the government should get a handle on the causes of disability in the public service — especially for the rising number of mental health claims — before re-designing its disability management plans.

They urge the government to adopt the Mental Health Commission's psychological standard for healthy workplaces, to audit all departments and agencies to determine what working conditions and practices might be behind the high absenteeism and number of mental health claims.

Ron Cochrane, the co-chair of the union-management National Joint Council, said Treasury Board negotiators have given the unions basic information about the sick leave usage of their bargaining units but no details by gender, age, years of service or types of illness or disability.

"When asked why such drastic changes are required, they don't even pretend to present a business case for these changes. They simply say it is government policy and proceed to explain how their latest proposal is an improvement on their last," Cochrane said. "So it's pretty hard to engage on this issue when the employer is unable to make a business case for what it is proposing."

The government wants to replace the sick leave provisions in the contracts of all unionized employees that currently give them 15 days of paid sick leave a year.

Under the existing regime, public servants can roll over sick days they don't use from year to year. Those 14.7 million days that are now in the bank are valued at about $4 billion. The government, however, has booked a $1.4-billion liability on that banked leave, based on estimates of how much of those sick leave credits will actually be used.

Over a 35-year career, a full-time public servant can earn 525 days in sick leave. Treasury Board says public servants are using an average of 11.5 days of sick leave a year — which means the average employee is also banking about 3.5 days a year.

The government's latest proposal introduced a formula that allows employees to convert banked sick leave into credits that could be used to top up disability benefits from 70 per cent of salary to 85 per cent during the first year of the new plan. The rest of the bank woulb be abolished in September 2017.

Clement has long argued the existing system was unfair, especially for new employees, because they often don't have enough sick leave accumulated to bridge the 13 weeks they have to wait to qualify for long-term disability if it is needed.

The rule of thumb for any employee joining the public service is to save enough sick leave to cover that 13-week waiting period in the event of illness so they can get full pay on sick leave rather than resorting to employment insurance.

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Public service unions bracing for more restraint

Mark Burgess, The Hill Times, January 26, 2015

Public sector unions are bracing for more restraint, which could increase tension with the government as they negotiate new contracts, despite assurances the Conservatives won't cut programs to balance the budget.

Conservative sources and other experts say the federal government would look to cut government operational spending to meet its promise of balancing the 2015-16 budget as oil prices remain below $50 U.S.

"It would be phenomenal if this government ever stopped looking at operating. That's in their DNA," one top political insider told The Hill Times. "They will always be looking for operating efficiency."

The possibility for more federal program cuts arose earlier this month when Finance Minister Joe Oliver (Eglinton-Lawrence, Ont.) announced that he would delay the federal budget until at least April because of the "market instability" caused by the falling price of oil. Employment and Social Development Minister Jason Kenney (Calgary Southeast, Alta.) took to the weekend political talk shows on Jan. 17 and Jan. 18 to say the Conservatives would look at more spending restraint and extending the operating spending freeze to balance the budget.

However, The Canadian Press reported last week that a senior federal official said there were no budget cuts planned. The government has a $3-billion contingency fund built into its planning that could be used to balance the books, the official suggested, though Mr. Kenney said the fund would not be used.

Mr. Oliver told The Canadian Press last week that the government still planned to balance the budget and would not cut social programs to do it.

"We do not intend to cut programs but we must recognize that flexibility has decreased, that's clear," Mr. Oliver told CP.

Stephanie Rea, a spokesperson to Treasury Board President Tony Clement (Parry Sound-Muskoka, Ont.), said in an email to The Hill Times last week that while the government "is always looking for ways to deliver services to Canadians as efficiently as possible … there are no cuts planned."

One Conservative source said the government would definitely look to further chip away at public sector spending, pointing to the billions in spending held back in recent years.

The federal government's public accounts released in October showed more than $7-billion in lapsed spending in 2013-14. Nearly $11-billion in approved spending wasn't used the year before.

The Treasury Board introduced a three-year spending freeze on operating budgets in 2010 and extended it for another two years in 2013.

"There's room everywhere. It's government," the source said, when asked where further cuts could be made.

Emmanuelle Tremblay, president of Canadian Association of Professional Employees, a union representing more than 12,000 federal economists, interpreters and analysts, said she expects the government will continue to cut operational spending to balance the budget.

"We know what this government has been doing in the past few years, demonizing public services and basically using rhetoric, the wedge of getting the public to be mad at the good, decent jobs that public servants are enjoying—basically creating positioning that makes cutting more jobs and banging on public servants' heads what they anticipate will be a powerful electoral message," she said in an interview.

CAPE and the other major public sector unions are engaged in a tense round of collective bargaining with the government. Years of cuts have affected morale and services to Canadians, the unions say, and the government has put forward a major change to the public service sick leave regime that has led the unions to form a solidarity pact in their negotiations.

Mr. Clement told The Globe and Mail earlier this month that using the contract negotiations as an election issue is not the plan.

Previous cuts are affecting federal government services, Ms. Tremblay said, and more of them would lead to a "blurring of conversations with employers" at the collective bargaining table.

Former Parliamentary budget officer Kevin Page, who's now a research chair at the University of Ottawa, also said the government would look to cut operational spending to create more room to balance the budget.

"If you just look at their DNA, they're just kind of like, 'Let's do operating. We can do more operating. No one seems to care. Cutting public service seems to be a good thing to do, it doesn't seem to hurt us too much. If it does hurt us, nobody's really going to notice it for a few more years,'" he told The Hill Times in an interview.

"So my fear is, without really detailed spending plans on how they're cutting it, how they're achieving productivity increases in the public service to meet service levels, I think they're really kicking these pressures down the road."

Mr. Page and his PBO successor, Jean-Denis Fréchette, have fought with the Conservative government, including in a legal battle, to reveal details about the impact of spending and job cuts to the public service in the 2012 austerity budget. That budget announced a $5.2-billion reduction in spending and the elimination of 19,000 public service jobs.

The cuts are now expected to reach 35,000 jobs in the next three years.

The government spent almost $277-billion in 2013-14, according to the fall fiscal update. Transfer payments—which include money to other levels of government for health care, equalization and the Gas Tax Fund, and to people for old age security, employment insurance and children's benefits, among others—made up $169.4-billion, or 61 per cent.

Government operating expenses, which include salaries and benefits, facilities, supplies and travel, accounted for $79.2-billion, or 29 per cent. About half of this went to just three departments: National Defence ($21.5-billion), Public Safety ($9.8-billion) and the Canada Revenue Agency ($7.8-billion).

That left $32.6-billion, or 12 per cent, for the operations of the remaining government departments and agencies.

"You can only cut where you spend, and you don't spend on public servants very much," said former Privy Council clerk Mel Cappe, who's now at the University of Toronto's School of Public Policy and Governance, in an interview.

The Conservatives want to be seen as fiscally responsible, Mr. Cappe said.

"Fiscally responsible in light of these shocks doesn't mean necessarily being in balance. Even the governor of the Bank of Canada is adapting to the circumstances. So should this government, and they should decide what fiscal stance is right for 2015, which may or may not be fiscal balance and zero deficit," he said in an interview.

Bank of Canada Governor Stephen Poloz cut interest rates last week by a quarter-point to 0.75 per cent, the first change since September 2010. The bank said low oil prices would be "unambiguously negative for the Canadian economy in 2015 and subsequent years."

The Conference Board of Canada predicted last week that oil prices would lead to a $4.5-billion reduction in government revenues, while a senior economist at the C.D. Howe Institute told The Hill Times the revenue loss from the petroleum sector could be up to $6-billion. Both economists said balancing the budget would force the Conservatives to use the $3-billion contingency fund set aside for unforeseen events.

A report from TD Economics this month also predicted deficits for "the next few years" unless the federal government dips into its $3-billion contingency fund.

Mr. Page said balancing the budget in 2015-16 is a "political big deal," for the Conservatives, "not a policy big deal."

“There’s nobody in the world looking at Canada saying, ‘You definitely need to balance your books.’ That’s a political commitment that the Prime Minister made, so they are worried about it,” he said.

The Conservatives announced billions in family tax breaks last fall, well ahead of the federal budget. That package, which included the controversial plan for income splitting, is expected to cost $4.6-billion in 2015-16 and $27-billion over six years.

“They took out a lot of their fiscal room to manoeuvre that was there in the budget. They pre-announced it. It makes the budget look a little bit like there’s nothing there. It’s like you handed out the Christmas presents in November and the kids are all looking underneath the tree saying, ‘Where’s the other stuff?’” Mr. Page said.

Senate committee renews scrutiny of bill on public servants' politics

Kathryn May, The Ottawa Citizen, January 26, 2015

A private member’s bill that has been assailed as a “witch hunt” because it would force employees of Canada’s parliamentary watchdogs to disclose past political activities will be back before a Senate committee this week.

Mark Adler, the Conservative MP who proposed C-520, will be in the hot seat Tuesday to defend the need for the bill, which has been condemned by some as overkill because, they maintain, the existing regime of statutes, codes and processes in place already safeguards the political neutrality of Canada’s public service.

Private members’ bill typically don’t pass, but this one has passed second reading in the Senate and is now being reviewed by the National Finance committee, which could recommend changes.

The bill was amended last year by a House of Commons committee, removing a controversial provision that most parliamentary officers – including the auditor-general, privacy, information and ethics commissioners – would have to disclose any partisan activity in their pasts for up to a decade. Their employees, however, would still have to do so.

It also scrapped the creation of a new complaint system that would have allowed MPs and senators to investigate any allegations of partisan activities among the staff of the parliamentary watchdogs.

But questions about the general need for the bill, and whether it conflicts with existing laws, remain.

Four parliamentary watchdogs will be testifying this week about their concerns: Auditor-General Michael Ferguson; Official Languages Commissioner Graham Fraser; Information Commissioner Suzanne Legault; and Privacy Commissioner Daniel Therrien.

Anne-Marie Robinson, the president of the Public Service Commission, who has repeatedly sounded misgivings about the bill, will also testify. Robinson has argued the bill is “at odds” with the impartiality and fairness that underpins the merit principle of public service hiring.

A meritorious and non-partisan public service has been the cornerstone of Canada’s bureaucracy and the Westminster parliamentary system for more than a century. A non-partisan public service is a principle in the Public Service Employment Act and Treasury Board’s values and ethics code.

That means job candidates must be assessed only on their competence and qualifications. They cannot be asked about any political activities.

The PSC monitors all staffing to ensure the neutrality of the public service. It argues the bill’s proposals to compel employees to disclose their political pasts, whether they belonged to a party of worked for one, conflicts with existing laws. It also worries such information, if disclosed, will be used in selecting candidates for jobs.

The PSC has said that if transparency is the big concern, employees could disclose their political past after they are appointed.

Errol Mendes, a professor of constitutional and international law at the University of Ottawa, said that, if passed, the bill would trump existing legislation, including the non-partisanship provisions of the Public Service Employment Act. He argued, however, that the bill would face a constitutional challenge. The courts have long been clear that public servants have political rights and can engage in some political activities.

“Extending this to hiring triggers serious issues whether it is using government employment and potential government employment to undermine a sacred right of Canadians which is freedom of association,” said Mendes.

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Watchdogs want Conservative bill quashed

The Canadian Press, National Newswatch, January 27, 2015

OTTAWA - Parliament's watchdogs have urged a Senate committee to quash a proposal to publish the political backgrounds of their employees, calling it unnecessary and potentially harmful to the independence of their offices.

Some Conservative senators also voiced reservations about Toronto-area Conservative MP Mark Adler's private member's bill, C-520.

The proposed legislation would require all employees of the various agents of Parliament to publicly disclose any political jobs held over the previous decade. Job seekers would also have to file a declaration during the hiring process.

The public disclosures — by everyone from senior managers to junior staff — would be posted to the Internet. The actual agents of Parliament, such as the auditor general and the chief electoral officer, would not be covered.

Seven of the parliamentary agents sent a letter Tuesday expressing their reservations with the bill. They sent a similar letter to the Commons committee that examined and amended the bill last year.

They noted that the bill requires them to collect information about the political past of prospective employees, but doesn't indicate what the agents are supposed to do with it. Currently, hiring in the public service is based on merit alone.

The agents also worry about the privacy of employees and the chilling effect they say the bill could have.

"It also subjects the employees to unwarranted public scrutiny and risks hindering the independence and execution of the mandates of the agents of Parliament," they wrote.

"Individuals who would otherwise be interested in applying for a position in the office of an agent may be discouraged from applying in light of the disclosure of their personal information."

In a separate letter, the president and two commissioners of the Public Service Commission of Canada noted that public servants are already subject to rules on political activity under the Public Service Employment Act and the government's ethics code.

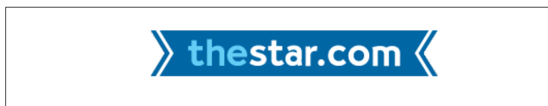
Conservative Sen. Diane Bellemare said she worried that some Canadians might not want to participate in the political process because of the scrutiny they would later face. Colleague Michel Rivard raised the fact the bill had not been reviewed for constitutionality.

A 1991 Supreme Court of Canada decision struck down an absolute ban on the political activities of public servants, emphasizing the different levels of responsibility bureaucrats might have and the range of political activities that exist.

Adler appeared before the committee of Tuesday and told the senators that the bill aims to prevent potential conflicts of interest. It will subject the public servants to "the highest standards of accountability,' he said.

"As the agents and their employees are tasked with oversight of parliamentarians, it is in Canada's best interest to shine a light on potential conflicts of interest in the preparation of reports," he added.

"Transparent disclosure will help ensure that even-handedness and neutrality are always applied. This bill speaks to the fact that access to information is a public good."



Conservative bill stigmatizes Parliament's watchdog agencies: Editorial

Like so much of the federal Conservative legislative agenda, Bill C-520 affecting Parliament's watchdog agencies is a heavy-handed "fix" to a problem that doesn't exist.

Toronto Star Editorial, January 29, 2015

Prime Minister Stephen Harper has had more than his share of public run-ins with Parliament's independent watchdogs for his hyper-partisan, secretive style of governance. He has drawn deserved fire over the years from the chief electoral officer, the auditor-general, the ethics commissioner, the privacy commissioner and the information commissioner.

Now it's payback time. Parliament's independent officers are being forced to defend their rank-and-file staff from the petty tyranny of a stigmatizing Conservative bill that would force them to disclose any political positions they have held in the past. The government makes the lofty claim that the public has "a right to know" whether staffers once engaged in political activities. But there's more paranoid mischief than truth-in-packaging to this bill.

Conservative MP Mark Adler's private member's Bill C-520 requires employees and potential hires to disclose whether they held a "politically partisan" position in the 10-year period before joining the office. That includes everything from running as a candidate to being an electoral district association officer or working as a ministerial, parliamentary or political staffer.

Presumably, this will alert the public to the dark potential for bias in the watchdog agencies, responsible for holding ministers and the bureaucracy accountable.

But that's a bogus concern. Canadians are well-served by these watchdogs; their integrity is unimpeachable. Staffers are covered by the Public Service Employment Act, the Values and Ethics Code for the Public Sector and other codes that require them to do their jobs in a strictly non-partisan manner, whatever their political views or affiliations. On-the-job partisan bias can get them fired. Moreover, staff who conduct investigations are routinely obliged to disclose real or potential conflict of interest beforehand. And hiring is solely on merit, not on partisan affiliation.

While the Harper Conservatives (like any government) chafe at robust parliamentary oversight, all necessary safeguards already are in place. Like so much of Harper's legislative agenda, Bill C-520 is a heavy-handed "fix" to a problem that doesn't exist. Yet even so, this addled bill has made it through the House of Commons and is now in the Senate for review. That's where it should be stopped in its tracks. The Senate should reject it as a misguided, poorly-drafted mess.

Testifying before a Senate panel on Wednesday the privacy commissioner, information commissioner, auditor-general and official languages commissioner all pointed to the bill's deep flaws. They noted that it has been likened to a political "witch hunt," and that it would brand public servants for life with a "metaphorical tattoo."

"Past political or partisan activity could be used to assert the existence of a possible bias in the conduct of an investigation or audit," warned Information Commissioner Suzanne Legault. "It will affect the integrity of our investigations. It will politicize our investigations. It will undermine our effectiveness."

Collectively, they pointed out that Bill C-520 is an unnecessary, poorly drafted, dangerous piece of legislation that makes political experience something to be ashamed of rather than an asset. It can only impair recruitment, they warned, and invite allegations that parliamentary investigators are biased.

Could someone under investigation say "I do not want this investigator on my file because (he or she) used to work for the Conservative party?" Legault wondered. Good question.
Auditor-General Michael Ferguson was especially withering. He pointed to multiple incoherencies in the bill, including this glaring disconnect: One section says that anyone who intends to occupy a partisan position while holding down a job in a watchdog's office has to declare that intention, while another says that nothing in the act is to be construed as allowing an employee to engage in political activities. So which is it?

All in, Bill C-520 isn't worth the trouble. It should be scrapped.

Le flou budgétaire inquiète les syndicats du secteur public

Paul Gaboury, Le Droit, le 29 janvier 2015

Plus que les chiffres, l'incertitude entourant le prochain budget fédéral et l'intransigeance manifestée par le premier ministre Harper n'ont rien pour apaiser les craintes des dirigeants syndicaux du secteur public fédéral.

«Nous sommes très nerveux. Nous sommes comme dans une tempête, alors que le vent tourne continuellement», observe le vice-président exécutif de l'Alliance de la fonction publique du Canada (AFPC) pour la capitale nationale, Larry Rousseau.

Selon lui, l'analyse du directeur parlementaire du budget de l'impact de la baisse des prix du pétrole a peut-être réussi à mettre les pendules à l'heure au niveau budgétaire. Mais il reste encore trop d'inconnus pour savoir comment le gouvernement réagira à ces turbulences, alors qu'il est déjà en pleine ronde de négociations avec l'ensemble des employés du secteur public fédéral.

«C'est comme si on nous avait dit que les freins de notre char étaient très usés, illustre M. Rousseau. Nous roulions à 40 km/h pour éviter le pire. Mais là, c'est comme si on était obligé de passer à 100 km/h et qu'on ne sait pas si on va pouvoir éviter l'obstacle en avant.»

À l'Institut professionnel de la fonction publique du Canada (IPFPC), la présidente Debi Daviau déplore que le gouvernement ait des services publics «pour appliquer le programme de réduction d'impôt tordu».

«On ne peut pas se permettre de la petite politique sur le dos des services publics dans le prochain budget fédéral», soutient-elle.

Santé mentale: l'AFPC veut la «norme nationale»

Paul Gaboury, Le Droit, le 29 janvier 2015

L'Alliance de la fonction publique du Canada (AFPC) demande au fédéral d'enchâsser la Norme nationale sur la santé et la sécurité psychologiques dans les conventions collectives.

Annoncée en 2013, cette norme volontaire a été élaborée par de nombreux partenaires sous l'égide de la Commission de la santé mentale du Canada. Toutefois, Ottawa n'a pas encore accepté de la mettre en oeuvre.

«Il n'y a pas seulement nous, les syndicats, qui le souhaitent, les gestionnaires aussi», plaide Larry Rousseau, vice-président exécutif de l'AFPC pour la région de la capitale nationale.

«C'est un guide de 150 pages qui a été élaboré en partenariat entre le secteur public et le secteur privé. Le gouvernement devrait être d'accord.» Le Secrétariat du Conseil du Trésor (SCT) a confirmé mercredi au Droit que le gouvernement examine la proposition contenue dans le cahier de demandes du syndicat.

«Le Conseil du Trésor, dans son rôle d'employeur, appuie la santé et le bien-être des employés, et a un rôle de premier plan pour ce qui est des politiques et des programmes dans ce domaine», a indiqué par courriel Lisa Murphy, porte-parole du SCT.

Hausse des réclamations

Les problèmes liés à la santé mentale préoccupent de plus en plus les syndicats du secteur public, alors que les réclamations en invalidité augmentent sans cesse. Chez les cadres aussi, les préoccupations en santé mentale sont de plus en plus soulevées.

Les syndicats déplorent notamment que leurs membres rencontrent des problèmes lorsqu'ils font des réclamations en santé mentale.

Selon M. Rousseau, les changements que le gouvernement souhaite implanter avec son nouveau régime d'assurance invalidité à court terme risquent de mettre encore plus de pression sur les employés, qui pourraient avoir à choisir entre «aller travailler malade» ou «perdre du salaire».

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Government tables sweeping Anti-Terrorism Act, increasing powers of security agencies

STEVEN CHASE AND DANIEL LEBLANC, The Globe and Mail, January 30, 2015

People who encourage terrorism attacks, even if they don't counsel a specific act, could face up to five years in prison under new legislation the federal government wants to pass into law.

For instance, an individual in Canada who posts a video online that includes the phrase "Attack Canada" could be charged with advocating or promoting "terrorism offences in general."

Individuals could be charged even if they're advocating attacks against countries or people other than Canada.

The new criminal code offence is a marked departure from the current situation, in which police can only take action when an online posting refers to a specific attack, such as killing a particular category of individuals or targeting a precise location.

The proposed new charge is part of a series of anti-terror measures the Harper government introduced Friday in a bill it says is necessary to protect Canadians in the wake of deadly attacks on soldiers last October that also led to a gunman storming Parliament.

This Anti-Terrorism Act represents the most sweeping increase in power for Canadian security agencies since legislative changes passed in the aftermath of the Sept. 11, 2001 terrorist attacks.

Other measures include:

- Giving Canada's spy agency the power to intervene and disrupt threats to national security at home and abroad, a major change from its existing mandate where it merely collects intelligence and hands off an intervention role to the RCMP.
- Give courts the power to order the removal of "terrorist propaganda" from websites operating using Canadian Internet service providers.
- Making it easier for authorities to restrict the movements of suspected jihadists, meaning they can apply to a court if they only believe terrorist activity "may be carried out." The previous threshold called on law-enforcement authorities to state they believed an act "will be carried out."
- Extending the length of time authorities can detain suspected terrorists for up to seven days from three.
- Relaxing the threshold needed to prevent suspected jihadis from boarding a plane, allowing the Minister of Transport to bar those whom the government believes are heading abroad to take part in terrorist activities.
- Granting government departments explicit authority to share private information, including passport applications, or confidential commercial data, with law enforcement agencies.

Prime Minister Stephen Harper said these changes are necessary given what he called the war declared by jihadists following a "distortion of Islam."

“Over the last few years a great evil has been descending over our world,” Mr. Harper told an audience in Richmond Hill, Ont., Friday.

“Jihadi terrorism is one of the most dangerous enemies our world has ever faced.”

The Canadian Security Intelligence Service’s role is currently restricted to collecting intelligence, analyzing and reporting on dangers to Canada, but the newlegislation rewrites its mandate to allow CSIS agents to take action to foil security threats.

Ottawa is building in judicial oversight for this new CSIS power, however, and will require the agency to obtain a court warrant to flex its new muscles. As long as a judge approves, CSIS agents would be able to cancel someone’s travel reservations, for instance, or disrupt a banking transaction or electronic communications.

The new power would lift a fundamental restriction on CSIS’s activities and gives the agency a measure of authority that’s currently reserved for police forces. CSIS, a civilian agency, was created in the early 1980s after an inquiry into the RCMP security service’s illegal activities and civil-rights abuses recommended that policing be separated from intelligence gathering.

The government justifies these changes to CSIS by saying that the agency is often the first in Canada to detect a threat because it’s continually gathering intelligence and conducting surveillance, and is therefore best placed to act to disrupt a new threat before it can grow.

CSIS would still not be a law enforcement agency after these legislative changes. It would not be granted authority to arrest or detain people, for instance.

Today, CSIS informs the RCMP when it detects terror threats and hands the matter off, letting the Mounties conduct their own investigation. Ottawa argues that Canada needs to be able to act more quickly in an environment where terrorist threats can rapidly escalate from concepts to planning to execution, sources say.

The Conservative government holds a majority of seats in the Commons and the legislation is expected to pass easily.

Ottawa is also planning a more robust government financed campaign to thwart radicalization in young people, separate from the legislation being unveiled Friday.

CLICK HERE FOR COMPLETE TEXT OF BILL C-51
http://www.scribd.com/doc/254210494/Bill-C-51-Anti-terrorism-2015

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Dépôt d'un projet de loi antiterroriste qui ratisse large

Hugo de Granpré, La Presse, le 30 janvier 2015

(Ottawa) Le gouvernement fédéral a finalement déposé vendredi son projet de loi qui répond aux attaques d'Ottawa et de Saint-Jean-sur-Richelieu en octobre.

Le projet de loi de plus de 60 pages élargit de manière importante les pouvoirs d'agences de sécurité comme le Service canadien du renseignement de sécurité (SCRS) pour prévenir des actes terroristes.

En voici un bref survol :

- Mandat plus large au SCRS: Le SCRS se voit accorder le mandat de perturber les menaces à la sécurité du pays - au Canada et à l'étranger. Actuellement, son mandat se limite à la collecte de renseignements, qu'elle doit communiquer à d'autres organismes comme la GRC. Le SCRS pourrait maintenant passer lui-même à l'action en empêchant des déplacements potentiels, entre autres, en interceptant des déplacements d'armes ou en bloquant des communications incitant au terrorisme;

- Criminalisation de la « préconisation ou de la fomentation » d'actes de terrorisme: Un emprisonnement maximal de cinq ans est prévu pour ces nouvelles infractions. Le gouvernement a précisé que ces mesures visent l'incitation d'actes terroristes plus généraux comme l'incitation à « mener des attaques contre le Canada »;

- Saisie de propagande terroriste: Actuellement, la loi permet la saisie de documents haineux ou de pornographie juvénile. Cette mesure créerait deux nouveaux mandats pour empêcher des individus ou des groupes d'encourager la perpétration d'actes terroristes;

- Faciliter l'arrestation et la prévention: Le projet de loi abaisse les seuils requis pour imposer un engagement assorti de conditions et pour un engagement de ne pas troubler l'ordre public en changeant la terminologie. Il fait passer la détention préventive de trois à sept jours, ce qui donne une plus grande latitude aux forces de l'ordre pour amasser des éléments de preuve;

- Protection des témoins: Le projet de loi élargit la notion de « personne associée au système judiciaire » pour inclure les témoins, entre autres, et ainsi décourager davantage l'intimidation de témoins. Il accorde aussi une plus grande protection aux agents de sécurité et aux enquêteurs;

- Programme de protection des passagers: Le projet vise à élargir l'interdiction d'embarquer dans un avion aux personnes qui posent une menace terroriste ou qui se déplacent pour participer à des activités terroristes (en Syrie par exemple). Pour l'instant, la « No Fly List » vise surtout les voyageurs qui posent une menace à la sécurité aérienne;

- Meilleure communication: Les mesures annoncées vendredi prévoient une meilleure communication entre diverses agences et ministères fédéraux pour permettre de communiquer entre elles de manière proactive certaines informations susceptibles de nuire à la sécurité nationale.

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What other countries are doing to combat terrorism

A look a the laws other countries have introduced to thwart the growing threat of terrorism or in direct response to attacks on their soil.

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Toronto Star, Canadian Press, January 30, 2015

OTTAWA — New anti-terror measures introduced Friday by the Conservative government are seen as a direct response to the attacks in October in which two Canadian soldiers were killed by men believed to be influenced by radical Islam.
The Harper government considered both to be acts of terrorism.
In response, they're proposing to give Canada's spy agency greater powers to disrupt potential attacks and also broaden the ability of the RCMP to go after possible suspects.
In recent years, other countries have also introduced legislative reforms to thwart the growing threat of terrorism or in direct response to attacks on their soil.
Here's a look at what some of the measures have been, what precipitated them and what happened after.

FRANCE

Last fall, the French government tightened its anti-terrorism legislation because of concerns about the growing number of nationals joining radical causes at home and abroad.

Measures included:
— a travel ban on anyone believed to be travelling to join a terrorist group abroad.
— creation of new offences and new punishments for terrorists believed to be acting alone.
— the power for authorities to block websites that "glorify terrorism" without the intervention of a judge.

In January, two gunman tied to Al Qaeda in Yemen stormed the Paris office of the satirical weekly newspaper Charlie Hebdo, killing 11 people, in apparent retaliation for provocative cartoons published by the paper of the prophet Muhammad.
The two men died in a shootout with police two days later and a third, who had taken a Jewish supermarket hostage, also died.

The French government is now considering boosting anti-terror measures further, included beefed up surveillance powers.

AUSTRALIA

In September 2014, security agencies claimed to have foiled a plot by Islamic extremists to carry out executions in Sydney and Brisbane.

The Australian government said it was an example of a growing threat to the country from Islamic radicals affiliated with the ongoing conflicts in Syria and Iraq.
In response, a suite of new laws were introduced last fall.

Measures included:
— making it a crime to advocate terrorism.
— sentences of life in prison for those who travel overseas to engage in hostile activities.
— making it a crime to travel to or stay in an area designated as being of "terrorist activity," with some exceptions for family visits and other legitimate travel.
— requiring telecommunications companies to retain customer's phone and computer metadata for around two years.
In December 2014, a man with a criminal record for assault and known to have radical views, took 17 people hostage in a Sydney cafe, before being shot and killed by police. While he was known to security, he wasn't actively being monitored.

BRITAIN

On July 7, 2005, four suicide bombers detonated bombs in the London Underground and on a city bus, killing 52 people and injuring close to 800.

Two of the bombers had made videos ahead of time in which they declared their motivations being linked to radical Islam.

In response, the British government introduced the Terrorist Act of 2006.

New measures included:
— extension of police powers to hold terrorist suspect up to 28 days without charge.
— making it a crime to encourage terrorism by directly or indirectly inciting or encouraging others to commit acts of terrorism.
— creating new offences to allow for the prosecution of anyone who gives or receives training in terrorist techniques.
In 2013, a British soldier was murdered in London by two British men linked to radical Islam. A report into the attack found that security forces were aware of the two men but said they couldn't stop them. A further suite of legislation was introduced late last year as a response.

Proposals include:
— giving police the power to force Internet companies to hand over details that could help identify suspected terrorists.
— banning British citizens suspected of involvement in terrorist activity abroad from coming back into the U.K. for two years.
— requiring named institutions, including colleges and universities, to implement anti-radicalization programs.

Violent repeat criminals to be locked up longer under Ottawa's changes

Sean Fine, The Globe and Mail, January 29, 2015

The Conservative government is set to announce that it will make violent repeat criminals wait longer to get the near-automatic ticket out of jail known as "statutory release."

Few prisoners in Canada serve their full sentence. Most, if they do not receive parole, are set free with conditions at the two-thirds mark under statutory release. But the government intends to keep offenders with a violent history behind bars until they have just six months left in their sentence.

The government will bring those changes to Parliament next month, a source said. They will be introduced around the time the Conservatives table a new law, revealed in The Globe and Mail this week, that would end the possibility of parole for some convicted killers. The two proposed changes would reinvigorate the government's tough-on-crime agenda as an election approaches next fall.

Both plans focus on a public perception that the sentences judges impose do not do what they say they do: life does not mean life, and a nine-year term means three years (with parole) or six years (with statutory release).

"There is some dysfunction that comes from a one-thirds, two-thirds system," said political scientist Dennis Baker of the University of Guelph. "I think that affects confidence in the justice system and judiciary quite a bit."

Even so, he said, "that transition period is very important. That's always been the argument for statutory release: you have time to integrate back into the community under supervision."

The changes would almost certainly boost Canada's federal prison population, which is now at a near-record 14,885, up nearly seven per cent in five years, even as crime rates have steadily fallen. (The record high of 15,276 was reached in July, 2013, and matched in March, 2014.) As prisons have got more crowded, they have become more violent, with greater reliance on controls such as pepper spray or solitary confinement, and with rehabilitation programs stretched thin. The change would also affect aboriginal prisoners the most, as they are more likely to be in jail for long terms, to have committed violent crimes, and to gain their freedom by statutory release rather than parole.

Jason Tamming, a spokesman for Public Safety Minister Steven Blaney, declined to answer specific questions about the new rules, but said in an e-mail: "Our Conservative Government is keeping dangerous criminals behind bars where they belong. We are always interested in new ideas to keep our communities safe."

Only prisoners deemed a danger to public safety or likely to commit a serious drug offence are held until the end of their sentences. There were just 300 such prisoners in 2013-14, compared to 5,635 on statutory release, according to the Parole Board of Canada's performance monitoring report for that year.

The proposed changes would apply to those who have previously been sentenced to five years, at least two of which was for a violent offence. During that sentence or any subsequent one, release at the two-thirds mark would be denied for another violent offence for which they are sentenced to two years or more. Alberta RCMP Constable David Wynn was shot to death this month by a repeat offender who had received statutory release on a five-year sentence.

The new rules fall short of the government's repeated promise to scrap statutory release and keep serious repeat offenders in jail until their sentence ends unless they earn parole by showing they are rehabilitated.

The tougher rules for serious repeat criminals will sharpen the debate over how best to prepare prisoners to return to society. Those who get statutory release commit more crimes, and are more likely to be returned to jail, than parolees. Longer jail stays shorten the period in which convicted criminals are subject to conditions and supervision in the community.

Tom Stamatakis, president of the Canadian Police Association, said his group wants prisoners to be forced to earn parole. “Any legislation that puts some onus on the offender to earn the right to be released, to earn the right to be forgiven, I think is good.”

The government promised to scrap statutory release in 2006. In 2007, a commission recommended ending it as a way to make prisoners more accountable for their behaviour. The Throne Speech of October, 2013, said the government “will end the practice of automatic early release for serious repeat offenders.” But doing so could cost hundreds of millions of dollars annually. The government’s more limited change to statutory release would cost in the tens of millions of dollars annually, by one estimate.

The proposed changes would not have prevented the murder of Constable Wynn, because the killer, Shawn Maxwell Rehn, did not commit a violent offence when he received a five-year sentence in 2010.

We don’t need life without parole

Globe and Mail Editorial, January 27, 2015

It seems like such a simple equation: If a murderer is sentenced to life in prison, he should stay in prison until he dies. Polls have shown that a majority of Canadians support the idea of automatic life without parole, preferring it to the reinstatement of the death penalty, if given the option between the two.

The Harper government is right there with them. It plans shortly to introduce legislation that would make life without parole the automatic sentence for killers of on-duty police and jail guards, and anyone who kills during a sexual assault, a kidnapping or a terrorist act. It could also apply, at a judge’s discretion, to a particularly brutal slaying that shocks society.

“Canadians do not understand why the most dangerous criminals would ever be released from prison,” the government said in its 2013 Throne Speech. “For them, our government will change the law so that a life sentence means a sentence for life.”

The problem is that, if Canadians believe that the most dangerous criminals – the ones serving the current sentence of 25 years without parole eligibility – are walking free as soon as they hit the 25-year mark, it is because they have been misinformed. It is untrue to contend that the types of murderers targeted by the pending Tory legislation have any real chance of getting parole.

There are numerous examples of dangerous criminals who remain in prison until they die, the serial killer Clifford Olson being among the most notorious. Just last October, Justin Bourque, the Moncton man who pleaded guilty to three counts of first-degree murder in

the brutal killings of three RCMP officers, was sentenced to 75 years without parole eligibility. He, too, will die in prison.

So what's the problem? Canada does not need automatic life without parole. It is a cruel punishment that risks failing the constitutional test of being proportionate to both the crime and the criminal. It is also self-defeating, in that a person who murders one police officer or one kidnap victim would get the exact same sentence as the person who murders five, or 10, or 20.

Worst of all, it undoes the progress Canada made when it abolished the death penalty in 1976. Canadians have struggled with the fact that the alternative to the finality of capital punishment is the perpetual obligation created by rehabilitation and parole. But that was our choice, and it was a good one. Since the end of the death penalty, the murder rate in Canada has been cut in half.

The Harper government says the justice system is deficient because murderers don't get their so-called just desserts. But the country put the medieval notion of eye-for-an-eye justice behind it in 1976. We don't automatically condemn people to die in prison any more, and we shouldn't go back to that.

Life without parole is a solution without a problem

Anthony Doob, contribution to The Globe and Mail, January 30, 2015

Anthony N. Doob *is professor emeritus of criminology, University of Toronto.*

Canada's criminal justice system faces many challenges. For example, provincial prisons contain more people who are legally innocent while awaiting trial than it does offenders who are serving prison sentences. Our sentencing structures are becoming more and more incoherent with each passing bill, such that it is becoming increasingly impossible for judges to follow a simple and almost universally accepted principle: that the sentence should be proportionate to the gravity of the offence and the degree of responsibility of the offender.

We face other challenges – economic and international ones, for example. But instead of addressing these difficult problems, Prime Minister Stephen Harper's government has picked an easy target. The Conservatives are promising to create a new sentence of "life without parole" for certain categories of people found guilty of first-degree murder. The question is "Why?"

As Globe and Mail justice reporter Sean Fine pointed out this week, it's not because of crime – the homicide rate has been decreasing for decades. Contrary to recent statements by Mr. Harper, the decreases have nothing whatsoever to do with his crime policies. And the life-without-parole proposal has nothing to do with current sentencing laws. First-degree murderers get automatic life sentences. Even if paroled – after a minimum of 25 years – they are supervised for life.

Canada's parole boards are already tough on offenders. If all parole boards stopped granting full parole to those serving sentences other than life, the prison population would increase by just 2.7 per cent. And offenders on parole commit very few offences. About 150,000 adults a year are charged with violent offences, but just 16 federal parolees are convicted of such offences each year.

The government's view is that some murderers should never be released, and most people would probably agree. The question is when that decision should be made: right after someone is convicted, or decades later, when the parole board can see whether they have changed and whether the public interest is served by releasing them?

The Harper government opposes policies based on the assumption that people can change. A different view was expressed recently by the European Court of Human Rights, which argued that those "who commit the most abhorrent and egregious of acts and who inflict untold suffering upon others, nevertheless retain their fundamental humanity and carry within themselves the capacity to change. Long and deserved though their prison sentences may be, they retain the right to hope that, some day, they may have atoned for the wrongs which they have committed."

We also have feedback from ordinary Canadians who have examined carefully whether murderers should be released.

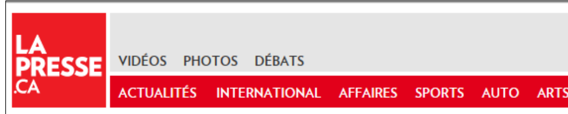
Until 2011, those who committed murder benefited from what was popularly known as the "faint hope clause." Instituted when capital punishment was abolished, the idea was that with parole ineligibility periods of up to 25 years, prisoners serving life sentence should have a "faint hope" of earlier release. After serving 15 years in prison, an inmate who was not yet eligible for parole could ask for a court hearing before a 12-person jury to try to persuade them to award an earlier parole eligibility date. If successful, the offender would still have to convince the parole board that release was appropriate.

Under that system, 77 per cent of first-degree murderers and 87 per cent of second-degree murderers were successful in convincing a jury that they should have a chance at earlier release. Before 1997, at least two-thirds had to vote in favour; after 1997, juries had to be unanimous. The success rate was essentially unaffected by this change.

They're not easy marks – like the parole board, they easily turn down the worst cases. After hearing four days of evidence, the jury in Clifford Olson's 1997 faint-hope hearing took just 15 minutes to reject his application. But jurors apparently want to give first-degree murderers a chance at parole if they can demonstrate that they've changed.

The evidence is clear: Canadians who look at actual cases often recognize that after 15 or more years, some people who have done terrible things have changed and should be

allowed back into our communities under various controls. There is no rational evidence of a need to create a sentence of life without parole. The government is trying to address some other need.



Un ado accusé de terrorisme pourrait écoper d'une peine pour adulte

Gabrielle Duchaine, La Presse, le 28 janvier 2015

S'il est trouvé coupable, l'adolescent montréalais de 15 ans qui est devenu en décembre le premier Canadien accusé d'avoir tenté de quitter le pays pour participer à une activité terroriste en vertu de la nouvelle Loi sur la lutte contre le terrorisme pourrait écoper d'une peine pour adulte.

Lors du passage du jeune homme au tribunal de la jeunesse, ce matin, la procureure de la couronne fédérale a annoncé au juge qu'elle «considérait faire une demande» à la cour pour que l'accusé, que la loi nous interdit d'identifier parce qu'il est mineur, soit assujetti à une peine pour adultes.

Rappelons que le garçon est détenu dans un centre jeunesse depuis qu'il a été arrêté au mois d'octobre après avoir volé 2000 $ dans un dépanneur de l'Ouest-de-l'Île armé d'un couteau et le visage couvert d'un foulard.

Inquiet de son comportement de plus en plus radical, c'est son père qui l'avait dénoncé. La police lui a mis la main au collet alors qu'il était à l'école, dans un prestigieux collège privé de Montréal.

Les autorités croient que le garçon voulait utiliser le fruit de son larcin pour financer son voyage vers le djihad.

Il a été accusé le 4 décembre d'avoir tenté de quitter le Canada dans le but de participer à une activité d'un groupe terroriste (article 83.181) et d'avoir commis un crime au profit d'un groupe terroriste (article 83.2). Il avait alors plaidé non coupable.

S'il est jugé comme un adulte, il risque des peines respectives de 10 ans de prison et de la prison à vie. La loi sur la jeunesse prévoit plutôt des peines de quelques années.

Selon nos informations, le jeune maghrébin d'origine a raconté lors d'un interrogatoire de police que l'argent dérobé devait lui servir à s'acheter un billet d'avion vers un pays soumis à la loi islamique.

Il avait refusé de préciser lequel.

L'adolescent disait vivre dans le péché parce qu'il ne réside pas dans un pays musulman. Il aurait décrit aux policiers le Canada comme un pays d'infidèles. S'estimant en guerre, le garçon considérait qu'il avait des raisons légitimes de s'emparer du « butin » de ses ennemis. Les enquêteurs ont aussi établi qu'il entretenait des liens sur le réseau Facebook avec Martin Couture-Rouleau, auteur d'un attentat contre des militaires à Saint-Jean-sur-Richelieu.

Une date de procès doit être fixée bientôt.

La présence de la Bible au palais de justice remise en question

Elisabeth Fleury, Le Soleil, le 29 janvier 2015

(Québec) Les crucifix ont disparu des murs, mais on trouve encore dans les salles d'audience des palais de justice du Québec des bibles sur lesquelles les témoins peuvent prêter serment. Faudrait-il les retirer, au nom de la laïcité?

Pas nécessairement, dit Jocelyn Maclure, professeur de philosophie à l'Université Laval et coauteur du mémoire 60 chercheurs universitaires pour la laïcité, contre le projet de loi 60.

«La pratique est acceptable dans la mesure où il y a une option. On peut jurer sur la Bible ou faire une déclaration solennelle», dit celui qui a aussi travaillé comme analyste-expert et rédacteur pour la commission Bouchard-Taylor sur les pratiques d'accommodement de la diversité culturelle et religieuse.

Sauf qu'au Québec, on ne trouve que la Bible dans les salles d'audience. Si un témoin souhaite poser la main sur un autre texte religieux, on lui offrira simplement de faire une affirmation solennelle.

«Il est là le problème, remarque M. Maclure. Si on permet aux témoins chrétiens de jurer sur la Bible, il faudrait aussi permettre à ceux d'autres confessions qui le désirent de prêter serment sur le livre de leur choix. L'option devrait leur être offerte. Soit on retire les symboles religieux, soit on les pluralise.»

En Ontario, on peut témoigner sur simple déclaration solennelle ou «jurer de dire toute la vérité et rien que la vérité» en posant la main sur la Bible, le Coran ou le livre sacré de notre choix, indique le site Web du ministère du Procureur général de la province.

Le Mouvement laïque québécois (MLQ) réclame depuis longtemps que la Bible soit retirée des palais de justice. «Qu'arrive-t-il si des gens d'autres confessions désirent jurer sur leur livre sacré? Ça devient compliqué», disait en mars 2010 la professeure de philosophie au Collège Ahuntsic Marie-Michelle Poisson, alors présidente du MLQ, en entrevue au quotidien Le Droit.

Mme Poisson faisait aussi remarquer que la pratique de jurer sur la Bible aurait encore un sens si notre État était de droit canonique. «La Bible a encore un sens dans les institutions d'État dirigées par la religion. Ce n'est plus le cas ici. Le droit ne s'inspire plus de ça.»

La voix de la laïcité au Parti québécois, Bernard Drainville, s'accommode bien de la situation actuelle. «Les gens ont déjà le libre choix lorsqu'ils doivent prêter serment et ce libre choix va demeurer», a brièvement commenté au Soleil l'attaché de presse du père de la défunte charte des valeurs, Mathieu Renaud St-Amand.

Au palais de justice de Québec, une juge de la chambre criminelle, Chantal Pelletier, refuse que les témoins qui se présentent devant elle prêtent serment sur la Bible. Seule l'affirmation solennelle est autorisée. Le Soleil a tenté de s'entretenir avec la juge Pelletier pour connaître ses motifs, sans succès.

McLachlin alarmed by 'bleak' designs for victims of communism memorial

Don Butler, Ottawa Citizen, January 26, 2015

Supreme Court Chief Justice Beverley McLachlin raised a red flag last September about the “bleakness and brutalism” of the new Memorial to the Victims of Communism, to be built this year on Wellington Street.

In a letter — obtained by the Citizen — to Michelle d’Auray, the deputy minister of Public Works, McLachlin wrote to “share some concerns” about the $5.5-million memorial, slated to sit on a prime 5,000-square-metre site between the Supreme Court building and Library and Archives Canada.

At that time, five possible designs were being considered for the memorial. Some, McLachlin wrote, “could send the wrong message within the judicial precinct, unintentionally conveying a sense of bleakness and brutalism that is inconsistent with a space dedicated to the administration of justice.”

The letter does not say whether the entry selected in December, submitted by Toronto’s ABSTRAKT Studio Architecture, was among those that caused McLachlin concern. Owen Rees, a spokesman for McLachlin, said Monday neither the chief justice nor the court would comment.

But Shirley Blumberg, a member of the selection jury who went public last month with her objections to the site chosen for the memorial, said the winning design “focused on the brutality and viciousness (of Communist regimes) in a disturbing way.

“It won’t move people to think that there could be a better world,” Blumberg, a prominent Toronto architect, said in an interview. “To me it’s just focusing on evil.

“A memorial has to acknowledge what happened and also point to the future. That’s what the Vietnam Memorial does so eloquently, as does Vimy Ridge. That’s what I would have liked to have seen for this monument.”

The winning design features six parallel concrete rows, rising 14.5 metres at their highest, covered with 100 million “memory squares,” each representing a life lost to Communist regimes worldwide.

McLachlin’s views about the memorial likely added further frost to her relationship with Prime Minister Stephen Harper’s government, which has embraced the memorial project with enthusiasm.

Last year, Harper accused the chief justice of trying to lobby against the appointment of Federal Court of Appeal judge Marc Nadon to the Supreme Court.

Spokesmen for McLachlin denied the charge, saying she had simply wanted to flag her concern about the legal eligibility of federal court judges to fill Quebec vacancies on the court. The Supreme Court later quashed Nadon’s nomination, concluding he did not meet the eligibility requirements set out in the Supreme Court Act.

The federal government has pledged to contribute $3 million to the victims of communism project, first proposed by a private group called Tribute to Liberty. It also donated the site, valued at $1 million, which had previously been reserved for a new justice building to complete a planned triad of judicial buildings, centred on the Supreme Court.

Tribute to Liberty is supposed to raise the rest of the money. As of December, it said it had raised between $1.6 million and $1.7 million.

In her letter, McLachlin said she had no comment on the decision to erect the memorial or its placement. “That is for the government to decide.

“However, because the proposed grounds of the memorial will be within the judicial precinct,” she told d’Auray, “I would ask your department and the selection committee to ensure that the final design is consistent with, and enhances, the public’s respect for justice and the rule of law.”

McLachlin also pointedly reminded d’Auray that the chosen site “has long been designated” as part of the judicial precinct. “As you know, the Supreme Court of Canada sits at the apex of the justice system.”

Earlier this month, Larry Beasley, who chairs the National Capital Commission’s advisory committee on planning, design and realty, told Maclean’s magazine his committee did not favour the winning design.

Until recently, most of the controversy over the memorial centred on its site. Last September, Ottawa architect Barry Padolsky released an open letter to Harper, saying the site “needs a significant piece of architecture, not a low-profile landscaped memorial.”

Blumberg told the Citizen in December that placing a large memorial to victims of communism on the site “overshadows Canada’s true history” and “misrepresents and skews” what the country is all about.

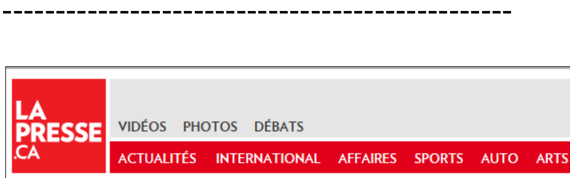
In Monday’s interview, Blumberg, who emigrated to Canada from South Africa, said she was drawn to this country by its values of democracy, openness, freedom and transparency.

For nearly six decades, she said, the memorial site was designated as the future home of a justice building. “Then, in a matter of months, without any consultation, the government gave this site to a private group, Tribute to Liberty,” she said.

That lack of due public process is “undemocratic and very troubling,” Blumberg said. “That is not the Canada I thought I was emigrating to.

“This is right on Parliament Hill. That belongs to us. It does not belong to Mr. Harper or his government.”

Despite the growing opposition, there is little chance the memorial will be derailed. The current timetable calls for “major elements” to be completed and ready for an inauguration next fall, in time for the scheduled Oct. 19 federal election.



«La justice du Nord est malade», s'inquiète le Barreau du Québec

Philippe Teisceira-Lessard, La Presse, le 27 janvier 2015

La Presse a fait une incursion dans le Grand Nord pour voir comment on administre la justice au pays des Inuits : un tribunal itinérant qui se déplace de gymnases en salles communautaires, en petits palais de justice pour condamner et acquitter. Le Barreau du Québec s'est aussi penché sur la situation et a tiré de ses visites un rapport aux constats troublants.

Cellules bondées, engorgement monstre et problèmes évidents de communications: «La justice du Nord est malade», évalue le Barreau du Québec, qui tire la sonnette d'alarme dans un rapport publié vendredi dernier.

Il y montre du doigt «des lieux de justice et de détention inadéquats et des conditions de détention inacceptables», et demande que les actes d'accusation soient aussi rédigés en inuktitut afin de résoudre un problème de «communications inefficaces».

La Presse a obtenu les «orientations» qui ont servi à rédiger le rapport. Celles-ci ont été adoptées par le Conseil général de l'organisation - son conseil d'administration - et vont plus loin que le document officiel.

Le Barreau y souligne la «grande méconnaissance du système de justice par les autochtones» et l'impression que «le système de justice profite à certains avocats de la défense».

Le document révèle aussi que depuis l'an dernier, un juge de la Cour du Québec refuse carrément de siéger dans la deuxième communauté du Grand Nord, Inukjuak (1800 habitants), en raison des «lieux inappropriés» et des conditions difficiles qui y existent.

Ces détails ont été écartés de la version officielle du rapport.

«Une grande tristesse»

Les visites de reconnaissance au Nunavik «m'ont marqué», a confié le bâtonnier du Québec, Bernard Synnott, à La Presse. C'est sous son impulsion que l'organisation a pesé sur l'accélérateur afin d'alerter le public et le gouvernement le plus rapidement possible.

«Quand on arrive chaque trois mois et qu'on débarque, que ce sont «les Blancs» qui débarquent, les gens ont l'impression que les Blancs viennent les mettre en prison», déplore-t-il.

Selon lui, le principal problème en est un d'information et d'éducation.

Là-haut, «il y a quelque chose qui ne marche pas», déplore-t-il. «C'est d'une grande tristesse. Les gens ne comprennent pas le système de justice dans lequel on vit.»

«On leur demande: «Do you understand what's happening?» Leur réponse, c'est: «Oui, oui», mais si on regarde leurs yeux, de toute évidence, ils ont beaucoup de difficulté à

comprendre ce qui se passe, relate-t-il. Souvent, ils ne comprennent pas assez bien la langue dans ses subtilités et leur dossier procède [tout de même].»

Me Synnott souligne le cas de la mère d'un nourrisson envoyée à la prison de Saint-Jérôme pour neuf mois parce qu'elle avait violé à répétition une interdiction de conduire pour mener ses enfants à l'école. «Des centaines de personnes appelées à leur procès dans une communauté de 1500 personnes, dit-il. À peu près tout le village est accusé de quelque chose. Il y a quelque chose qui ne fonctionne pas.»

Johanne McNeil, présidente du comité des affaires autochtones du Barreau, croit aussi que l'information, «c'est ça qui manque dans le Nord». Elle souhaite que le gouvernement investisse davantage pour informer les justiciables de leurs droits.

Conditions de détention «inacceptables»

Les infrastructures font aussi cruellement défaut, selon le Barreau.

Le bâtonnier a indiqué que les conditions de détention étaient «souvent atroces» dans le Grand Nord.

«Du monde qui dort par terre, à l'extérieur de la cellule la nuit, attaché avec les menottes après une chaise parce qu'il y a trop de monde, a-t-il donné en exemple. Ça n'a aucun bon sens.»

Sur place, à Kuujjuaq et Kangiqsualujjuaq, le ministère de la Sécurité publique du Québec a refusé à La Presse l'accès aux quartiers cellulaires.

Quant aux salles d'audience improvisées dans une salle de fêtes ou dans un gymnase, «c'est loin d'être idéal». Parfois, «les avocats rencontrent leurs clients dans le corridor ou dans la salle de bains. La Couronne rencontre les autres avocats à travers les poids et haltères. [Un avocat de la défense] rencontrait son client dans une chambre de joueurs», s'est rappelé Bernard Synnott.

Selon lui, Québec devra ajouter des fonds supplémentaires pour améliorer la situation de la justice au Nunavik.

«Il va falloir que le gouvernement prenne les moyens au niveau budgétaire pour investir s'il veut prétendre qu'il y a de la justice dans le Nord.»

D'autres problèmes décelés

- Pénurie d'interprètes
- [Manque de] clarification des rôles gouvernementaux
- Méconnaissance de la mission du Barreau du Québec chez les communautés autochtones
- Absence de forum sociojudiciaire autochtone
- Faible proportion d'autochtones parmi les avocats
- Système de comparution par vidéoconférence déficient

LAO lawyers see promise in RCMP ruling

Yamri Taddese, Law Times, January 26, 2015

Legal Aid Ontario staff lawyers who've been fighting for the right to join a union say the Supreme Court's recent endorsement of collective-bargaining rights in Mounted Police Association of Ontario v. Canada (Attorney General) is a victory for them as well as the Mounties.

"We think this [ruling] helps solidify our position," says lawyer Dana Fisher, spokeswoman for the campaign around the LAO union issue.

"We're really happy about the decision."

In one of its first decisions of the year, the top court said RCMP officers could still form an association despite their exclusion, as with LAO staff lawyers, from the applicable labour relations act.

"The government cannot enact laws or impose a labour relations process that substantially interferes with the right of employees to associate for the purpose of meaningfully pursuing collective workplace goals," wrote Supreme Court Chief Justice Beverley McLachlin and Justice Louis LeBel on the majority's behalf in the Jan. 16 ruling.

"Just as a ban on employee association impairs freedom of association, so does a labour relations process that substantially interferes with the possibility of having meaningful collective negotiations on workplace matters.

"Similarly, a process of collective bargaining will not be meaningful if it denies employees the power to
pursue their goals. Whatever the nature of the restriction, the ultimate question to be determined is whether the measures disrupt the balance between employees and employer that s. 2(d) seeks to achieve, so as to substantially interfere with meaningful collective bargaining."

Fisher says her team is feeling emboldened by the top court's ruling and hopes it will convince LAO to reconsider its decision not to give the lawyers voluntary recognition to bargain collectively.

“We’re hoping legal aid will see this decision and really kind of take the right steps and recognize our rights to have collective bargaining,” she says.

For its part, LAO believes the Supreme Court’s ruling suggests another interpretation. “The Supreme Court of Canada’s recent decisions involving the Royal Canadian Mounted Police (RCMP) are in line with what Legal Aid Ontario (LAO) has always understood to be the law on this issue,” said LAO spokeswoman Genevieve Oger in a statement.

“The freedom of association provides a right to a collective bargaining process, but does not guarantee a particular collective bargaining model or outcome. LAO has offered to meet with staff lawyers to discuss developing a collective bargaining process between LAO and an association of its lawyers, which recognizes the culture and particular workplace issues at LAO. This offer has been declined, with the result that LAO has continued on its own to address issues in the workplace of concern to its lawyers.”

Labour and employment lawyer Danny Kastner says there’s merit to LAO staff lawyers’ reaction. “This is another decision from the Supreme Court giving force to freedom of association and the right to collectively bargain,” says Kastner, an associate at Turnpenney Milne LLP in Toronto.

“It’s the most definitive one yet and there are lots of reasons why a parallel could be drawn between the police and the lawyers. The one caution I suppose is the Supreme Court is explicit in that decision that there are different considerations in different industries. What we can’t do is apply a cookie-cutter approach from one industry to another. That said, the general principles the Supreme Court endorses in that decision one would think apply to legal aid lawyers.”

In October 2013, LAO chief executive officer Bob Ward told lawyers the organization doesn’t have a legal obligation to voluntarily recognize a trade union to represent employees excluded from the Labour Relations Act.

The Supreme Court’s decision may leave Ward without the option of saying no to employees who want collective-bargaining rights, according to Kastner. “The big take-away from this decision is well, that’s not [Ward’s] choice as the employer,” he says.

“It’s up to the employees whether they want to have a collective voice or whether they want to deal with their employer individually. That’s a principle that’s likely to be applied to any industry.”

Scott Travers, president of the Society of Energy Professionals IFPTE Local 160, the union LAO staff lawyers are seeking to join, says he’s hoping their employer will “do the right thing” after looking at the ruling.

“We hope the government will, having seen the Supreme Court ruling, do the right thing and direct legal aid to recognize the chosen representative for the employees,” he says.

“We hope it doesn’t have to go through a legislative process.”

He adds: “Our assumption is that legal aid will see the ruling and do the right thing now.”

Travers says the union has been working to raise the issue through the government and notes it had also been waiting to see the top court’s ruling in the RCMP case. “Now that we got the decision, we’re going to be working to make sure the decision-makers are aware of the implications.”

Kastner says there isn’t a “serious debate” about whether the recent ruling will have implications for the LAO staff lawyers’ campaign to form an association. The real question now, he says, is what kinds of freedoms it would mean for them. “It’s beyond serious debate that LAO lawyers have the freedom to associate and collectively bargain,” he says.

“What remains to be worked out is the precise content of that freedom.”

According to Kastner, the Supreme Court’s ruling is clear that it’s not enough that the RCMP officers are able to bargain collectively. The employer has to deal with them in “good faith” when it looks at their proposals, he says.

“If the federal government can just turn around and reject those proposals, it completely undermines the collective-bargaining rights that they have,” he says.

“So the cases going forward now, including for the legal aid lawyers, aren’t going to be so focused on the right to collectively bargain because it’s pretty clear they have that right. It’s going to be then, on top of that, what kind of a collective-bargaining legislation are they entitled to.”

Justice Marshall Rothstein, the sole dissenting judge, said the courts aren’t the best place to decide which specific labour relations scheme is most appropriate for a particular group of employees.

“In my view, requiring RCMP members to be included in the [Public Service Labour Relations Act] or equivalent scheme is ‘to enter the complex and political field of socio-economic rights and unjustifiably encroach upon the prerogative of Parliament,’” he wrote, citing Delisle v. Canada (Deputy Attorney General).

Opinion: Crusade against Trinity Western law school runs up against a sensible judge

Kelly McParland, Columnist for the National Post, January 30, 2015

Elements of Canada's legal community have been fighting Trinity Western University's attempt to open a law school for some time, hoping to have it barred from graduating lawyers.

Trinity Western is a private Christian university in British Columbia. It plans to open its law faculty in September 2016, but has roused intense passions over its requirement that students agree to a code of conduct that prohibits "sexual intimacy that violates the sacredness of marriage between a man and a woman."

Opponents maintain the condition is homophobic and a violation of Canada's Charter of Rights and Freedoms. Toronto lawyer Clayton Ruby claims it amounts to a "queer quota" because it would exclude gays. In a vote among B.C. lawyers, a large margin expressed opposition to the school. Under pressure, both the B.C. Law Society and the Advanced Education Minister revoked previous approvals given to the school.

The claims against Trinity Western don't hold water. It does not ban gays, or anyone else, it simply asks them to pledge not to have sex while they are students at the school. The Supreme Court of Canada has already ruled that does not constitute discrimination. In a 2001 judgment – also involving TWU – in which it ruled that "the proper place to draw the line in cases like the one at bar is generally between belief and conduct …The freedom to hold beliefs is broader than the freedom to act on them." In other words, asking people to abstain from sex is not the same as denying them a right.

That has not stopped the effort to block TWU from training lawyers. Opening a second line of attack, opponents maintain it would be unable to adequately teach the law, given that its religious beliefs differ from the rights granted in the Charter. That conveniently ignores the fact that some of the most respected legal faculties in the U.S. – including Notre Dame, Boston College and Brigham Young – have similar codes of conduct and have successfully graduated lawyers for decades.

On Wednesday, the Nova Scotia Supreme Court finally brought some sense to the argument, dismissing a decision by the province's Barristers Society to deny TWU graduates the right to practice. Justice Jamie Campbell wrote that TWU's code does nothing to discriminate against students or undermine the quality of their training.

"People have the right to attend a private religious university that imposes a religiously based code of conduct," he wrote. "That is the case even if the effect of that code is to exclude others or offend others who will not or cannot comply with the code of conduct. Learning in an environment with people who promise to comply with the code is a religious practice and an expression of religious faith. There is nothing illegal or even rogue about that."

In trying to shun TWU students, the court said, the law society exceeded its authority. Its mandate to regulate legal practice in Nova Scotia does not include the power to order universities or law schools to change their policies. There is no indication TWU students would be inadequately trained, yet the law society would ban them anyway, Judge

Campbell noted. If TWU did not exist, the same students holding the same beliefs would be free to obtain law degrees elsewhere.

He also rejected the notion that TWU would be violating the Charter. In fact, he wrote, it is the legal community that has failed to adequately respect the Charter.

“The [Bar Society] has characterized TWU’s community Covenant as ‘unlawful discrimination’. It is not unlawful. It may be offensive to many but it is not unlawful,” wrote Justice Campbell.

“Like churches and other private institutions [TWU] does not have to comply with the equality provisions of the Charter. It has not been found to be in breach of any human rights legislation that applies to it. … The Charter is not a blueprint for moral conformity. Its purpose is to protect the citizen from the power of the state, not to enforce compliance by citizens or private institutions with the moral judgments of the state.”

These are important words and should be taken to heart by the law societies in B.C. and Ontario that continue to oppose the school. Five other provinces and Nunavut have all indicated they will accept TWU graduates. As Judge Cambell writes, people have a right to study among others who share their faith. Denying that is a violation of religious freedom. It is the lawyers who are out of line, not Trinity Western.

Second legal challenge launched over solitary confinement in prisons

The Canadian Civil Liberties Association and Canadian Association of Elizabeth Fry Societies have filed a petition in Ontario Superior Court to challenge the constitutionality of isolation solitary confinement.

Canadian Press, Toronto Star, January 27, 2015

The federal government is facing a second court challenge to the use of solitary confinement in prisons.

This time, the Canadian Civil Liberties Association and Canadian Association of Elizabeth Fry Societies have filed a petition in Ontario Superior Court.

The petition seeks to challenge the constitutionality of isolation, which the groups call cruel and inhumane.

They say the practice is “fatally flawed.”

Last week, the B.C. Civil Liberties Association and a group that speaks for male prisoners began a similar action in British Columbia.

The federal government has insisted prison authorities must have the option of placing inmates in solitary where needed.

Quebec judge rejects challenge over French sign law

Montreal lawyer Brent Tyler says he’ll appeal a Quebec judge’s rejection a legal challenge by about two dozen businesses that were prosecuted for not respecting the province’s French Language Charter.

The Toronto Star, Canadian Press, January 29, 2015

MONTREAL — A Quebec judge has rejected a legal challenge by about two dozen businesses that were prosecuted for not respecting the province’s French Language Charter.

But lawyer Brent Tyler quickly announced Wednesday he plans to appeal the ruling, which he says didn’t surprise him.

“I told my clients: ‘Don’t even try and think about getting involved in this case if you don’t want to go the whole distance,’“ he said outside the courtroom.

The merchants, who operate businesses in and around the Montreal area, were charged with violating the sign provisions of the law, better known as Bill 101.

The law requires the marked predominance of French on public signs, posters and packaging. It also applies to Internet postings.

Violations included bilingual outdoor signs where the English text was equal to the space allotted to the French text; commercial signs written only in English; and the online promotion of goods and services exclusively in English.

One of the defendants’ main arguments was that the French language is no longer threatened.

The companies also argued the sign law violated their freedom of expression as English-speaking citizens.

In a 69-page ruling, Quebec court Judge Salvatore Mascia dismissed the challenge, ruling the defendants did not show the situation of the French language had changed significantly.

Mascia noted that the declining birth rate among francophones, coupled with the growing number of people whose mother tongue is neither French nor English, places French at a disadvantage.

He also pointed to other social factors such as the dominance of English in North America.

“For now, the evidence presented . . . does not convince the court that the situation of the French language — judged vulnerable in 1988 by the Supreme Court of Canada and in 2000 and 2001 by the Quebec Superior Court and the Quebec Court of Appeal respectively — is no longer in jeopardy,” Mascia concluded.

Tyler argued there is no rational connection between the language of signs and factors that make a language vulnerable.

“Think about it logically: do people have more babies because of the language of signs? Do they have fewer babies? Do they die earlier? Do they decide to move?”

Five of the merchants also testified that the application of the sign law made them, as members of the English community in Quebec, feel marginalized, ignored and less worthy.

Mascia disagreed.

“In promoting the French language via the signs legislation, the law does not promote prejudice or a negative image of the English community,” he wrote.

The judge also noted that the Quebec government was not trying to regulate the Internet by going after companies that posted messages in English.

Mascia said while the Net could fall within federal jurisdiction, the sign legislation was aimed at regulating the content of the message being conveyed.

“It matters not at all if the message and its contents were transmitted in a paper form or transmitted digitally via the Internet,” he wrote.”The medium is not the message.”

The judge said evidence presented by the accused that their individual rights had been violated was thin.

All but one of the 24 businesses were found guilty of violating Bill 101.

A moving company that had a truck parked on its premises with a unilingual English slogan was acquitted.

The vehicle had been out of commission for several years and was kept on the grounds only for spare parts.

$27-million, gone in seven seconds: Top court quashes Quebecker's bid to claim jackpot

Globe and Mail, Reuters, January 29, 2015

A Quebecker who was denied part of a $27-million jackpot because he missed the deadline to buy the ticket by seven seconds has lost his appeal to get the money.

The Supreme Court of Canada ruling on Thursday ended a seven-year legal battle by Joel Ifergan, an accountant, to claim his share of the prize.

Ifergan went to a local convenience store just before 9 p.m. on May 23, 2008, to purchase tickets for that night's Lotto Super 7 drawing. The store clerk told him to hurry before the 9 p.m. deadline, according to a court summary.

While the clock on the lottery terminal read 8:59 p.m., only one of the two tickets was registered in time. The second ticket, the winning one, was printed and registered on the Loto-Québec computer at seven seconds after 9 p.m., eligible for the following week's drawing.

The store clerk told Ifergan that only one ticket was registered in time and asked if he still wanted to buy the second ticket. Ifergan said he did, and paid for both.

After he was denied half of the lottery jackpot, which was awarded to another winner, Ifergan sued Loto-Québec for the processing lag.

The case has been working its way through Canada's courts. The Supreme Court did not comment on the case.

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Pas de gros lot de 13,5 millions pour un Montréalais, dit la Cour suprême

La Presse, Presse Canadienne, le 29 janvier 2015

Un citoyen montréalais devra définitivement faire une croix sur le gros lot de 13,5 millions qui lui a échappé à quelques secondes près.

La Cour suprême du Canada a refusé jeudi d'entendre l'appel de Joël Ifergan, sans expliquer les motifs derrière cette décision, comme d'habitude.

En 2008, l'homme s'était rendu dans un dépanneur de son quartier afin d'acheter deux billets de loterie pour le tirage qui allait avoir lieu ce soir-là, soit le 23 mai.

Si le premier billet a été émis à temps pour le tirage, peu avant 21h, le second a été traité par l'ordinateur central de Loto-Québec à 21 h et sept secondes.

Le préposé au comptoir du dépanneur avait avisé Joël Ifergan que le second billet indiquait comme date de tirage le 30 mai 2008, et lui avait demandé s'il désirait tout de même acheter les deux billets.

Le client avait répondu par l'affirmative.

Le hasard a voulu que ce soir-là, les numéros gagnants de la loterie Super 7 correspondent aux numéros apparaissant sur le second billet.

M. Ifergan alléguait que la transaction avait été conclue à temps, et qu'il ne devait pas faire les frais d'un délai de traitement informatique.

Il a été débouté en Cour supérieure en 2012, puis en Cour d'appel en 2014.