AJC-AJJ
ASSOCIATION OF JUSTICE COUNSEL
ASSOCIATION DES JURISTES DE JUSTICE

Press Clippings for the period of February 17 to 24, 2014
Revue de presse pour la période du 17 au 24 février 2014

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

Should public service pay and benefits be brought into line with the private sector?

TO LISTEN TO PODCAST OF CBC CROSS COUNTRY CHECKUP (FEBRUARY 16, 2014 SHOW), CLICK ON THIS LINK:

http://www.cbc.ca/checkup/episode/2014/02/16/should-public-service-pay-and-benefits-be-brought-into-line-with-the-private-sector/

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thestar.com

Tim Hudak renounces anti-union right-to-work plan

The Progressive Conservative leader has suddenly backed away from his controversial anti-union plan for Ontario, saying "If we are elected we are not going to do it."

RICHARD J. BRENNAN, Toronto Star, February 21, 2014

Progressive Conservative Leader Tim Hudak has abandoned his cornerstone policy to defang unions on the eve of a possible spring election.

Hudak, during a breakfast speech Friday, jettisoned his U.S.-style right-to-work plan that faced opposition from within the party, organized labour and the public.

He defended his climbdown, saying his controversial labour reform — which was still on the party's website Friday — was just one of 15 policy papers and simply didn't make the cut.

"You got to make the most impact on jobs and the economy. It didn't make the cut. We got a better plan," Hudak told reporters after his speech to the Toronto Region Board of Trade.

Party insiders feared a repeat of the disastrous 2007 campaign when then leader John Tory promised taxpayer funding for a wide range of religious schools.

"Quite frankly for every one person . . . who said they liked this policy I heard from a hundred others who said focus on getting hydro rates under control, get taxes down, do something about the skilled trade in Ontario. So the choice is clear," Hudak said.

But critics say right-to-work is at the core of Hudak's being, and that his public renouncing of the policy is simply not believable.

Premier Kathleen Wynne said she's not buying Hudak's transformation.

"I don't see this actually as a change of direction. I think that Tim Hudak has responded to an uproar in his own caucus," she said in Sudbury, noting just this week the Tories introduced a private member's bill that would contract out public sector jobs.

NDP MPP Gilles Bisson said, “A lot of people are going to be wondering is there a hidden agenda because we know this is something he is heavily invested in?”

At the centre of the Tories’ labour reform plans was a proposal to get rid of the Rand Formula.

The formula dates back to an arbitration decision by Canadian court Justice Ivan Rand in 1946, part of the arbitration settlement that ended a United Auto Workers’ strike at the Ford plant in Windsor, Ont. It ensured there are no so-called free riders, those who would benefit from union bargaining and representation without paying dues.

Critics said Hudak’s move would have gutted unions and led to the depressed wages and benefits seen in several U.S. states that have adopted a right-to-work policy.

“This ‘right-to-work’ issue just doesn’t have the scope or the power to fix the issues that are threatening 100 per cent of the manufacturing jobs in Ontario. So if we’re elected, we’re not going to do it — we’re not going to change the so-called ‘Rand Formula.’ Our agenda is a lot bigger, and a lot more ambitious, than that,” Hudak told the crowd at Toronto Region Board of Trade.

In September, the anti-union idea only narrowly won support at a policy convention in London, Ont., making critics in the party doubt even more that it was the right move.

Even though he backed off right-to-work in his speech, almost in the same breath Hudak said, “Why should anybody have to join a union they don’t support?”

Union leaders told the Star they still don’t trust Hudak.

Unifor national president Jerry Dias said Hudak “is a right-wing extremist who honestly believes in the right to work for less.”

“Do I believe he has changed his mind if he is elected? Absolutely not,” Dias said.

Warren (Smokey) Thomas said: “I don’t believe for one minute that his fight with labour is over . . . I think they will just come at us in a different way. Don’t trust him at all.”

Hudak’s retreat comes on the heels of the Tories’ byelection loss in Niagara Falls, where union leader Wayne Gates reminded voters time and again of Hudak’s plan to gut unions. Gates edged the Tory candidate Bart Maves by 962 votes, even though the riding includes Hudak’s hometown of Fort Erie.

Hudak’s comments during the speech were a far cry from those made previously, when he demonized union leaders and blamed organized labour for holding back the province.

“I just think we have reached a level in the 21st century that an approach based in the 1950s is holding us back,” Hudak told reporters in September following the convention.

CBCnews

Tim Hudak backs off PC 'right to work' plan

Tim Hudak says controversial policy was an idea that 'didn't make the cut'

CBC News, February 21, 2014

Progressive Conservative Leader Tim Hudak announced a major policy reversal Friday, saying he would not campaign on making Ontario a so-called right-to-work province.

The issue of making union membership and payment of dues optional caused public rifts with Conservative candidates and internal dissent within Hudak's caucus, as many feared the anti-labour policy could cost the party the next election.

"Only 15 per cent of the private sector is unionized in Ontario [so] this right-to- work issue just doesn't have the scope of power to fix the issues for the 100 per cent of manufacturing jobs threatened in Ontario," Hudak said in a speech to the Toronto Region Board of Trade.

"If we're elected, we're not going to do it. We won't touch the Rand formula."

The Rand formula requires all employees in a unionized workplace to pay dues, even if they don't join the union.

The right-to-work ideas still have merit, but aren't widely supported, admitted Hudak.

"The arguments make sense. Why should anybody be forced to join a union that they don't support?" he asked the business audience.

"My own party raised these measures as an option for Ontario, and when I talk to employers, to workers, some of them tell me that they do want right-to-work laws in Ontario, but not very many."

The right-to-work policy, which U.S. President Barack Obama famously called "the right-to-work for less," was a key part of a Conservative policy discussion paper and was narrowly approved by party delegates at a convention last fall. But veteran Conservative

John O'Toole was applauded at the convention when he warned that the party could be "screwed" in an election if they campaigned on the policy.

Travelling across Ontario to promote right-to-work showed the Conservatives that the policy wasn't right for the party at this time, said Hudak.

"Quite frankly, for every one person, worker or business owner I heard say they like this policy, I literally heard from a hundred who said 'focus on getting hydro rates under control, get taxes down, do something about the skilled trades,'" he said.

Policy reversal not affected by byelection results, Hudak says

Hudak insisted his change of heart had nothing to do with losing the Niagara Falls byelection last week to the New Democrats, who were supported by union activists that flooded the riding to rally against the policy.

"We can't run on 15 different white papers. We can't run on 300 different things," he said. "You've got to focus on what's going to have the most impact on jobs and the economy, and it didn't make the cut."

However, the Ontario Public Service Employees Union said Hudak's about face "had quite a bit to do with" the Conservatives loss to the NDP in Niagara Falls.

"That's when they began to realize right-to-work was a non-starter," said OPSEU president Warren (Smoke) Thomas.

The Liberals warned that Hudak's backpedalling could not be trusted, and said he had a "hidden agenda" to bring back
right-to-work if the Conservatives form government.

"I think it's a stunning alleged reversal, but he's still talking about this notion of modernizing labour laws," said Liberal
MPP Steven Del Duca. "The bottom line is he has put so much of his time, energy and resources into right-to-work-for-less policy that it's not believable or credible that he would suddenly change his mind."

OPSEU was glad to see Hudak step back from right-to-work, but doubted the Tories will suddenly become pro-union.

"I thought he might have to back down given early on the divisions within his party, however I don't believe for one minute
that Hudak is going to give up his fight against organized labour," said Thomas. "They will come back at us another way."

Hudak had publicly waffled on the controversial issue for several weeks after firing a Conservative candidate in the Windsor area who publicly criticized right-to-work. The party said the candidate was fired for publicly criticizing PC labour critic Monte McNaughton on Twitter, not for his opposition to the policy.

CBC news

Canadians think fix for courts lies in education, report says

Federal report summarizes decade's worth of opinion polls and research, some of it unpublished

An aerial view of the Kingston Penitentiary. The government announced Thursday it will be closed over the next two years. (iStock)

CBC News, February 17, 2014

An internal Justice Department report says Canadians have little confidence in the courts and the prison system — and the best way to counter those perceptions is through education.

Opposition critics argue that message is at odds with the Conservative justice agenda, which they say simply exploits public misunderstanding of justice issues by enacting tough-on-crime measures that can be harmful.

The federal report summarizes a decade's worth of opinion polls and research, some of it unpublished, that has consistently found high confidence in the police.

But research shows Canadians also see the courts as too slow to deliver justice, and judges as handing out sentences that are too lenient.

The research indicates the public believes victims are too often ignored in the justice system, and that prisons do a poor job of rehabilitating offenders.

"It's legislation by popular opinion on many complex justice issues," says New Democratic Party MP and Justice Critic, Francoise Boivin, of the government's policy of mandatory minimum sentences to remove discretion from judges, and promoting a victims' charter of rights. (Justin Tang/Canadian Press)

The study, prepared for a policing symposium last month in Ottawa, was obtained by The Canadian Press under the Access to Information Act.

"The public generally believes that sentences are too lenient and that the corrections system is not doing a great job of rehabilitating offenders," says the 13-page report.

Author Charlotte Fraser, a Justice Department employee, notes that Canadians' generally low levels of confidence in the justice system are similar to those of citizens in other western countries.

Less confidence

Such views have remained relatively stable over the last 10 years, even as crime rates have fallen.

"Canadians have less confidence that the CJS (criminal justice system) is helping victims of crime," Fraser concludes.

"Canadians also have less confidence in some functions of the courts and corrections system, particularly sentencing practices, providing justice quickly, rehabilitating offenders and releasing the right offenders at the right time."

The report links the poor opinion of Canadians to a "lack of understanding of the specific mandates of courts and corrections," and says public education is the favoured approach to correcting misperceptions.

'Kind of catering'

The Conservative government has made some elements of public opinion the cornerstone of its justice policy, imposing mandatory minimum sentences to remove discretion from judges, and promoting a victims' charter of rights.

"It's legislation by popular opinion on many complex justice issues," says MP Francoise Boivin, the NDP's justice critic.

"The way that the Conservatives have been acting on criminal justice bills, it's been kind of catering to these impressions."

Boivin, a lawyer who once practised criminal law, says the justice system can be improved, especially in its treatment of victims. But Canadians also need to be better educated about the system rather than "just exacerbating their preconceived impressions."

Media reports and the Conservatives' own claims about criminal justice can distort reality, she said.

The Liberal justice critic said he was surprised that public opinion has remained static even as crime rates have fallen.

"The empirical evidence in terms of crime rates and rates of re-offence don't justify the pessimism that appears to exist," MP Sean Casey, a lawyer, said in an interview from Charlottetown.

Unreported crime

The Conservative justice agenda, he said, is "playing on perceptions, stereotypes and fears as opposed to the evidence."

The study notes the often-reported phenomenon that much crime goes unreported, but says only about 15 per cent of Canadians decline to report crime because they lack faith in the justice system.

"The three primary reasons people report crimes are when they are serious in nature, involve substantial loss or physical injury, or when insurance payments require them to do so," says the study, citing research on the failure to report many crimes.

A spokesman for Justice Canada, Andrew Gowing, said the report was "an opportunity to synthesize existing research on public confidence in the Canadian criminal justice system."

"At this time, no further steps are planned."

SCC sidesteps question on retired judges appearing before former courts

After 17 years, SCC decision winds up MTS pension case

Jennifer Brown, Canadian Lawyer Magazine, February 18, 2014

After 17 years and a bizarre series of events including a former judge representing the defendant, pension money originally belonging to 7,000 employees of Manitoba Telecom Services has been ordered returned to its rightful owners.

The Supreme Court of Canada in Telecommunications Employees Association of Manitoba v. Manitoba Telecom Services Inc. recently upheld a lower court ruling that a pension surplus of $43.3-million that existed when the former Manitoba Telephone System was privatized in 1997 belonged to MTS workers and retirees and must be repaid.

The high court reinstated the decision of the trial judge, who had ordered the parties negotiate utilization of the funds and arrive at a mutually agreeable implementation process or submit further evidence so the court could make that determination.

Since 1999, Kris Saxberg and Brian Meronek, partners with D'Arcy & Deacon LLP in Winnipeg represented the plaintiffs — three unions and the retirees of MTS including Unifor (formerly the Communications, Energy and Paperworkers union Local 7), the Telecommunication Employees Association of Manitoba Inc., and the International Brotherhood of Electrical Workers.

The decision means the employees get the $43.3 million plus interest at the plan rate of return, which has been about seven per cent over the last 15 years. The present estimate of the amount is between $134 and $140 million.

When the privatization happened MTS had its own pension reserve set up (the government did not contribute to the old plan) but Crown corporations were socking away money to be prudent in their own pension reserves — that pension reserve of about $375 million was allowed to be counted as a pension contribution on the first day of the company, which meant MTS was tax free for three years after the privatization, explains Saxberg.

"That led them to declare some really nice profits, which affected their share values," he told Legal Feeds. "They got a lot out of this and while this payment back seems like a lot, it really isn't."

Also complicating the case was a move by MTS in 2010 when at the Court of Appeal trial it replaced its trial counsel with a new firm and hired former Court of Appeal judge Charles Huband of Taylor McCaffrey LLP.

Three years before, Huband had retired from the Court of Appeal after 28 years. In Manitoba, the law society allows for retired judges to practise and appear in court after three years whereas in Ontario there has to be special consent.

“That was a huge concern to the plaintiffs and retirees — that a Court of Appeal judge would be arguing the biggest case in Manitoba in front of former colleagues,” says Saxberg.

The appeal court said it would ensure the three judges on the panel would be judges who hadn’t sat with Huband at any point. But that proved to be tricky as well. A week before the hearing was to begin Saxberg learned one of the judges used to sit on the board of MTS, the second judge was a close friend of Huband and the third — Richard Chartier — now the Chief Justice of the Court of Appeal of Manitoba — had sat with Huband for about six months but had forgotten about it.

“They dropped this on us before the appeal,” says Saxberg. “But we were very confident we were going to win and the case is so old and so many retirees had passed away so felt it had to go forward.”

So the court “plugged its nose” says Saxberg and went ahead allowing Huband to argue for MTS.

Saxberg says the Court Appeal “hammered” them and delivered a “complete and utter reversal” thus leading to the SCC appeal which included the question about Huband representing MTS.

Supreme Court hears arguments from RCMP members keen to form a union

Canadian Press, Calgary Herald, February 18, 2014

OTTAWA - RCMP members are before the Supreme Court of Canada making a final pitch for their right to form an independent union.

They are appealing an Ontario Court of Appeal decision which found that federal labour laws which exclude RCMP members from collective bargaining do not violate the Charter of Rights.

RCMP regulations provide for elected staff-relations representatives who are to be consulted on staff and pay issues.

The Mounted Police Professional Association of Canada says that's not good enough and has been fighting for the right to collective bargaining.

The association won a victory in the Ontario Superior Court of Justice in 2009, but that was overturned on appeal in 2012.

There are about 18,000 uniformed Mounties in the national force.

The association argues that denying them the right to unionize threatens collective bargaining rights generally.

Some major labour bodies, including the Canadian Labour Congress and the Public Service Alliance of Canada, are interveners in the case.

Rae Banwarie, the association's president, said the challenge could prove to be a landmark case, especially if the court sides with the RCMP and the staff relations representatives system.

"It will be the beginning of the end for collective bargaining in Canada, as employers could justifiably impose labour programs and deny employees the right to select independent associations to bargain on their behalf," he said.

"Canadians deserve better. This unchecked power is not acceptable in a just and democratic society."

Lawyers for the Attorney General of Canada argued at the appeal court that the staff representative system more than meets constitutional scrutiny.

They said the reps are elected to provide fair and equitable representation to management and to participate in developing police and procedures that affect employment.

Slaw Canada's online legal magazine.

Approval of Trinity Western University's Law School? It's Complicated

by Alice Woolley

Trinity Western University views sexual relations outside of a marriage between one man and one woman as inconsistent with "biblical and TWU ideals", and requires its students and faculty to agree to abstain from such activities. In short, TWU discriminates against people on the basis of their sexual orientation.

My wish for Canada is that that sort of discrimination becomes so contrary to the social and public mainstream that, regardless of whether it is legally permitted, only the most marginal and outsider groups will engage in it. That to require students to sign a community covenant eschewing same-sex expressions of love will be viewed as no better than requiring students to be white, something of which any virtuous person would be ashamed, and in which no right-thinking person would participate.

That Canada is not this one. In this Canada Trinity Western can lawfully discriminate against LGBT students because it operates in British Columbia, where under s. 41 of the Human Rights Code, an educational institution that promotes the interests and welfare of a common religion does not discriminate just because it grants "a preference to members of the identifiable group or class of persons". Apparently creating a community of shared religious values counts as this sort of permitted preference, even if it results in the exclusion of people on the basis of their sexual orientation (See in general the FLS Special Advisory Report).

Further, and despite the thoughtful arguments made against this position (see, e.g., Elaine Craig's article, "The Case For the Federation of Law Societies Rejecting Trinity Western University's Proposed Law Degree Program"), I think the Federation of Law Societies would have erred if they had concluded that a person holding a law degree from Trinity Western ought not to be admitted because their legal education did not satisfy the Federation's legal ethics requirement.[1] In particular, I question the proposition that teaching ethics from a religious perspective, or raising the possibility that moral beliefs may have a role in determining how a lawyer acts in contra-distinction to the obligations of law, is inimical to proper instruction in legal ethics.

On the latter point, the position that legal obligations do not always trump moral duty is mainstream in legal ethics. David Luban asserts that "When serious moral obligation conflicts with professional obligation, the lawyer must become a civil disobedient to professional rules" (*Legal Ethics and Human Dignity*, 2007, p. 63). And any Canadian law student who learns ethics from the second edition of the casebook I co-edit, *Lawyers' Ethics and Professional Regulation*, has the opportunity to read that statement. They may also read the classic ethics case, *Spaulding v. Zimmerman* (263 Minn 346 (1962)), in which a lawyer learns that the plaintiff in the case where he represents the defendant suffers from a potentially fatal aneurysm. The lawyer does not disclose the existence of the aneurysm, and could not have done so under the professional rules on confidentiality that governed that lawyer (and that until recently also governed Canadian lawyers). He simply negotiates a settlement without disclosing the information to the plaintiff. Even if those students are taught by a professor like me, who asserts fidelity to law as a paramount ethical obligation (see, e.g., "Legal Education Reform and the Good Lawyer"), they might nonetheless have heard their professor say that a lawyer who broke the ethical rules to disclose in such a circumstance would do a good thing, not a bad one.

Now one response to this position may be that there is a difference between the kind of culturally specific moral beliefs associated with religious practice, and universal moral obligations that can be said to govern everyone's conduct. One could argue that there is a material difference between suggesting to students that they act in accordance with universally justifiable moral values (e.g., prevent an unnecessary death) in preference to legal duty, and suggesting that they act in accordance with their personal moral beliefs in preference to legal duty. The weakness with that response, however, is that the content of universally justifiable moral values is disputed, and the identification of those values

culturally grounded; the difference between the universal and the idiosyncratic is generally in the eye of the beholder. As Jeremy Waldron has noted, while we may all agree that rape is wrong, disagreement arises fairly quickly as soon as we think about questions like the age of consent or whether there ought to be a defence for a reasonable but mistaken belief in consent (Jeremy Waldron, *Law and Disagreement*, 1999, p. 105).

Morality is slippery, which is why people like me think that law is a better constraint on lawyer conduct, most of the time. However, and this is my point here, it is a mainstream, defensible and legitimate legal ethics position to say that, at least sometimes, morality trumps legality in determining how a lawyer ought to respond to a particular dilemma. There are undoubtedly limits on how far a legal ethics professor can go. There are positions about violating the law that it is not "professionally respectable to assert" (Milan Markovic, "Advising Clients After Critical Legal Studies and the Torture Memos" (2011-12) 114 W Va L Rev 109 at 152, citing Mark Tushnet). But the mere fact that a law professor suggests obligations for the lawyer that are inconsistent with the law does not demonstrate that the professor has failed to teach that student about his or her ethical duties.

Further, that a professor does not agree with a law does not mean that a professor cannot teach the content of that law. Indeed, I imagine that most Canadian law professors, some or much of the time, disagree with the substantive law governing the topics that they cover in class. Within legal ethics I frequently have issues with law society and judicial decisions, and with provisions of the codes of conduct. I have occasionally been heard to disagree quite strenuously with the majority position (civility anyone?). But based on years of reading examinations, I can say with some confidence that no student in my class is confused about the difference between what the law is, and what I (or they?) think it ought to be.

There is also respected literature from the United States situating a lawyer's ethical duties within that lawyer's religious community and tradition. The best writer in that tradition is Thomas Shaffer, who argues that when a lawyer faces an ethical dilemma, she should resolve that dilemma within her community, including her religious community. He rejects the idea of the lawyer as *solely* autonomous in deciding how he or she ought to act:

When the study or practice of law becomes painful or confusing for her, she returns to the community of the faithful, and talks there, in that religious community, about her professional life. She considers what she is thinking and doing, and in some sense "decides" what to think and what to do, as much as the autonomous actor imagined in our liberal political philosophy does, but she "decides" *in* the religious community" (*American Lawyers and their Communities: Ethics in the Legal Profession*, 1991, p. 198 (with Mary M. Shaffer))

I cannot say that I find Shaffer's approach to legal ethics remotely appealing. And as noted, and despite the hard case of *Spaulding v. Zimmerman*, I view lawyers' duties as fundamentally grounded in the law, not morality. I think professors do students a disservice when they de-emphasize the law in their legal ethics teaching. But I cannot say that a professor who disagrees with me, who in her instruction grounds a lawyer's ethical duties in moral obligation, or who views the lawyer's decisions as properly informed by the values and norms of her community, including her religious community, fails to instruct her students in legal ethics. As much as anything, it is the job of the legal ethics professor to help her students develop their own ethical identities, recognizing that those will inevitably vary from the professor's (See: "Intuition and Theory in Legal Ethics Teaching"). That can occur (and is always a challenge) regardless of the professor's own ethical perspective.

The main problem posed by TWU is that there is nothing legally wrong with what they do. The laws of British Columbia permit them to discriminate in this way. And, to me at least, it seems problematic to suggest that an institution whose conduct is lawful cannot properly teach students the law.

Which brings me back to where I started. What TWU does shouldn't be acceptable. It is one thing to see freedom of religion as permitting you a space to live your life in accordance with your own values (as I argued here); it is a very different thing to see freedom of religion as permitting you to diminish people in a way that the law would otherwise prohibit. And that's the case whether those people study history or chemistry or nursing or law. British Columbia should change its human rights law. And if British Columbia does not do so, then TWU ought nonetheless to be subject to public criticism. If your religion believes that sexual orientation is a choice, and that people should be

excluded from your university because of their sexuality, I'm suggesting it is time to reassess your religious beliefs.

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[1] The arguments with respect to satisfaction of the requirement for competency in public law seem problematic for similar reasons. More interesting are arguments arising from the differing human rights statutes, and the question of whether a jurisdiction whose human rights legislation arguably prohibits TWU's conduct ought to approve its law degree (although see the FLS Special Advisory Report, para. 38-39, here). It is also noted that none of this speaks to the procedural issues that arise in Alberta where the Law Society purported to delegate this decision to the Federation. In my view, for the reasons set out here, the Law Society of Alberta could not properly delegate this question.

Le projet de loi C-38 aurait provoqué une cyberattaque

Des documents obtenus par La Presse démontrent que l'Agence du revenu du Canada et des ministères ont lancé une opération à grande échelle après avoir été prévenus par le Centre de la sécurité des télécommunications du Canada (CST) qu'une cyberattaque était imminente à l'automne 2012.
PHOTO: IVANOH DEMERS, ARCHIVES LA PRESSE

Joël-Denis Bellavance, La Presse, le 18 février 2014

(OTTAWA) Le gouvernement Harper a-t-il provoqué une cyberattaque contre l'Agence du revenu du Canada (ARC) et des ministères, à l'automne 2012, en

déposant son controversé projet de loi omnibus C-38 de 400 pages visant à mettre en oeuvre le budget fédéral?

Services Canada refuse de répondre à une telle question, invoquant le fait qu'il s'agit d'informations confidentielles qui touchent la sécurité nationale. Mais des documents obtenus par *La Presse* en vertu de la Loi sur l'accès à l'information démontrent que l'ARC et des ministères ont lancé une opération à grande échelle après avoir été prévenus par le Centre de la sécurité des télécommunications du Canada (CST) qu'une cyberattaque était imminente à l'automne 2012.

«Cette attaque contre l'ARC semble s'inscrire dans une série d'attaques qui sont planifiées ou qui seront exécutées contre le gouvernement du Canada au cours des prochaines semaines. La motivation première de cette attaque semble être liée au projet de loi omnibus (C-38)», affirme-t-on dans des documents de l'Agence des services frontaliers.

L'assaut informatique attendu par certains ministères devait prendre la forme d'attaques par déni de service distribué (également connu en anglais par le sigle DDOS). Ce genre d'attaque consiste à inonder de demandes le serveur d'une entreprise ou d'un ministère pour empêcher les usagers légitimes d'y accéder. Ces attaques sont de plus en plus fréquentes. Le groupe Anonymous a été à l'origine de plusieurs d'entre elles au cours des dernières années.

Levée de boucliers

Le fameux projet de loi C-38, qui avait été déposé à la Chambre des communes par le ministre des Finances Jim Flaherty au printemps 2012, avait provoqué une levée de boucliers de la part des partis de l'opposition, des groupes environnementalistes et d'autres groupes en raison de sa portée sans précédent.

Le projet de loi avait pour objectif de modifier 70 lois et règlements existants. Entre autres choses, il consacrait le retrait du Canada du protocole de Kyoto, modifiait les lois environnementales afin d'accélérer l'approbation de projets de développement de ressources naturelles, resserrait les règles d'admission au programme d'assurance-emploi et confirmait la disparition de l'agence Droits et Démocratie.

Les partis de l'opposition ont tenté de bloquer son adoption en présentant des centaines d'amendements. Le projet de loi a finalement été adopté au terme d'un marathon de votes aux Communes de 26 heures, en juin 2012.

Si Services Canada a refusé de répondre aux questions de La Presse à ce sujet, il se trouve que les hauts fonctionnaires de plusieurs ministères ont reçu à cette même période un courriel de la part du CST, qui les invitait à prendre les moyens qui s'imposent pour contrer une éventuelle cyber-attaque devant avoir lieu entre le 2 et le 15 novembre 2012. D'ailleurs, des employés informatiques des ministères visés ont été à

pied d'oeuvre jours, soirs et week-ends durant cette période afin de parer à toute éventualité.

Le quotidien Le Droit avait fait état de l'existence de ce courriel envoyé par le CST. Mais la cause de l'attaque appréhendée était alors inconnue. Les documents obtenus par La Presse démontrent qu'il s'agissait d'une menace venant de pirates informatiques qui souhaitaient exprimer leur vive opposition au projet de loi mammouth C-38.

Réaction du NPD

Le député néo-démocrate de Rosemont - La Petite-Patrie, Alexandre Boulerice, a soutenu que le gouvernement Harper s'attire ce genre de réactions en se comportant de manière autoritaire depuis qu'il détient la majorité aux Communes.

«Il faut déplorer les cyberattaques contre le gouvernement fédéral parce que cela engendre des coûts, des problèmes pour les citoyens qui ne peuvent accéder aux services. Je ne connais pas la motivation des auteurs de ces cyberattaques, mais utiliser à répétition des bâillons parlementaires, des projets de loi mammouth pour éviter d'avoir des débats intelligents, ça peut provoquer des réactions. Il y a des gens qui vont manifester dans les rues. Et il y en a qui vont utiliser d'autres moyens pour exprimer leur opposition», a dit M. Boulerice.

BRANDON SUN
February 24, 2014
The Weather Network Brandon, MB WARNING -30°C A few clouds
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Federal government opens up prostitution law rewrite to public input

BRUCE CHEADLE, CANADIAN PRESS, FEBRUARY 17, 2014

OTTAWA - The Conservative government wants to hear from the public about how to rewrite the prostitution laws that were struck down by the Supreme Court late last year. A month-long, online consultation period on the Justice Canada website began Monday and runs to March 17.

"Our government is concerned about the significant harms that flow from prostitution to communities, those engaged in prostitution and other vulnerable persons," Justice Minister Peter MacKay said in a release.

"Doing nothing is not an option. We are therefore asking Canadians right across the country to provide their input through an online consultation to ensure a legislative response to prostitution that reflects our country's values."

In a Dec. 20 ruling, the high court unanimously struck down laws against street soliciting, living on the avails of prostitution and keeping a brothel.

The Supreme Court ruled the laws endangered sex workers and were violations of the constitutional guarantee to life, liberty and security of the person. It gave the government one year to come up with new legislation before the current Criminal Code provisions lapse.

However, in the meantime, several provinces say they will not prosecute prostitution-related offences and that in some cases existing charges are being thrown out, drawing the ire of the federal justice minister.

NDP justice critic Francoise Boivin expressed deep skepticism of the government's track record on public input.

"You've got a minister that's almost announced the law that he's going to present," she said in an interview.

"He didn't leave much room for changing his mind, but we'll see."

MacKay said earlier this month that the government had already started drafting new prostitution legislation and planned to consult police and provincial governments.

Adding online public input to the mix is not unprecedented for the Conservative government, although it tends to pick its spots.

The government held consultations on a new victims' bill of rights last year, and in that case, the public comment period ran for almost five months, from May 1 to Sept. 27.

The Department of Justice also consulted the public in 2010 on drunk-driving laws and family law reforms, while a 2008 effort to harmonize federal law with Quebec civil law was also opened to public input.

"I think it makes perfect sense," Liberal justice critic Sean Casey said of the consultations on prostitution law.

"They have a year to do this and to get it right. There's a better chance of getting it right if they listen to the public."

Casey called it "a little out of character (for the Harper government) when you look at what they're doing with the Fair Elections Act and with some other legislation they brought in in the past."

The government is stiffly resisting public hearings on its current, sweeping overhaul of the Elections Act. Pierre Poilievre, the minister in charge of electoral reform, dismissed an NDP proposal for travelling committee hearings as a "costly circus." His parliamentary secretary predicted a "gong show."

A discussion paper on the Department of Justice's website lists three international approaches to prostitution: decriminalization or legalization, as practised in countries such as Germany, the Netherlands and Australia; prohibition, as practised in most American states; and abolition, or the so-called Nordic Model, which targets johns and other third parties but not prostitutes.

Boivin said she'd like to see a truly national consultation, including televised government ads informing citizens how to make their views known.

"'Please voice your opinion on prostitution, a message from your government of Canada' — during the Olympics!" said the New Democrat, laughing.

"You might have a lot of people answer, but I doubt very much they'll promote that."
