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

Press Clippings for the period of March 2 to 9, 2015
Revue de presse pour la période du 2 au 9 mars, 2015

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

OTTAWA CITIZEN

Shared Services Canada plans data centre expansion in Ottawa

Jordan Press, Ottawa Citizen, March 3, 2015

The federal government is moving ahead with plans to refurbish a data centre in Ottawa — a project that could take years to complete, and possibly cost more than $100 million.

The plan is to refurbish an existing data centre by the airport to be a second "development" data centre, which is essentially a space to test programs before they go live, making it one of the seven data centres the government wanted to keep open as part of a massive IT overhaul that the government is undertaking to reduce costs, tighten cyber-security, and help make the public service more nimble.

When work to consolidate 485 data centres into seven is complete — sometime around 2020 — the government expects to save about $100 million a year in operating costs.

Shared Services Canada had previously identified the Macdonald-Cartier data centre as a candidate to be one of the final seven, but bringing it up to standards won't be easy. The building that houses the data centre was built in 1989, and a 2011 engineering report found that "a substantial amount of retrofit is required … to meet SSC's power and capacity requirements," according to a briefing note provided to the president of Shared Services Canada earlier this year.

How much those upgrades would cost is unclear as a dollar figure isn't provided in the documents. The briefing note does say that Shared Services Canada had targeted the summer or fall of 2016 as the completion date for the upgrades.

Similar work on expanding a data centre at CFB Borden is expected to cost up to $150 million, according to government bid documents posted in May 2014. The government plans to partner with the private sector to expand and operate the facility, although when it will be open is not yet clear: another step towards awarding the contract will be taken this month when companies will apply to qualify to bid on the work.

The government has multi-year contracts with Bell Canada and IBM Canada for data centres in Gatineau and Barrie, respectively.

In an email, a Shared Services Canada spokeswoman said the department "uses various assessment criteria" to identify "optimal data centre sites." The criteria include geography, timing, cost and risk.

"We are pursuing all options to procure and provision solutions in order to achieve best value for the government of Canada and Canadians."

Data centres by the numbers

- **485:** Federal government data centres before consolidation.
- **4:** Number of those centres that are being refurbished and will stay open.
- **7:** Number of data centres planned after consolidation.
- **2020:** Year the consolidation project is scheduled to end.
- **49:** Number of data centres closed over the past two years

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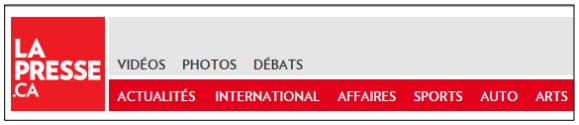

Harper va de l'avant avec la prison à vie sans possibilité de libération

Hugo de Granpré, La Presse, le 4 mars 2015

(Ottawa) Malgré les critiques, le gouvernement va de l'avant avec son plan d'imposer la prison à vie sans possibilité de libération pour certains criminels.

Le premier ministre Stephen Harper a annoncé mercredi en banlieue de Toronto qu'un projet de loi sera déposé en ce sens à la Chambre des communes la semaine prochaine.

Cet emprisonnement à vie serait imposé dans les cas de crimes de haute trahison ainsi que de meurtre avec agression sexuelle, enlèvement ou séquestration, terrorisme, assassinat de policiers ou d'agents correctionnels ou « tout meurtre au premier degré d'une nature particulièrement brutale ».

Les tribunaux auraient la discrétion de choisir cette peine pour tout autre meurtre au premier degré ou lorsqu'un délinquant a déjà été reconnu coupable d'un assassinat à l'étranger.

« Je suis fier d'annoncer que la semaine prochaine, notre gouvernement déposera un projet de loi pour que les criminels les plus haineux, ceux qui commettent les crimes les plus horribles reçoivent la peine la plus lourde prévue au Code criminel », a déclaré le premier ministre Harper.

Cette mesure donne suite à une promesse faite dans le dernier discours du Trône voulant « qu'une sentence à vie soit bel et bien un emprisonnement à vie ».

Cette promesse a été critiquée par les partis de l'opposition ainsi que plusieurs experts en droit et en criminologie, disant qu'elle est trop sévère, rendra la vie en pénitencier plus dangereuse et enlèvera tout incitatif à la réhabilitation.

Dans une note d'information, le gouvernement a précisé qu'« afin de répondre à des préoccupations légitimes d'ordre constitutionnel », un détenu pourra demander au ministre de la Sécurité publique une libération « dans des circonstances exceptionnelles » et « après avoir purgé au moins 35 ans de sa peine ».

Cette note précise que cette « proposition législative [...] permettrait d'aligner l'approche judiciaire du Canada sur celle des pays qui ont la même optique, comme le Royaume-Uni, la Nouvelle-Zélande, les États-Unis et l'Australie ».

Le Parlement aura peu de temps pour adopter ce projet de loi si le gouvernement souhaite le faire avant les prochaines élections, prévues en octobre. Il ne reste que 12 semaines complètes de séances parlementaires avant la pause estivale et les politiciens devraient être en campagne dès le mois de septembre.

Ottawa to introduce life sentences without parole under new legislation

Sean Fine, The Globe and Mail, March 4, 2015

The Conservative government will introduce life without parole for some killers, in what would be the biggest change to the Criminal Code since the abolition of capital punishment in 1976.

Prime Minister Stephen Harper said that, because of constitutional concerns, those sentenced to life without parole would have the right to petition the public safety minister, but not before 35 years have elapsed. The policy would revive a routine role for cabinet in release decisions that had ended in 1959 with the creation of the National Parole Board.

Life without parole, if approved by Parliament, would cap eight years of tougher crime laws that have contributed to record levels of federal prisoners, even as the murder rate has fallen to levels not seen since 1966. The policy would give a focal point to the national debate on crime and punishment as the country heads toward an election expected in October.

Under current law, the first chance at full parole for first-degree murder is at 25 years. Mr. Harper, speaking in Toronto, said the government would remove parole for those who commit "especially brutal murders," those who kill during a sex assault, kidnapping or act of terrorism, and those who kill prison guards or police officers. The government will table the legislation in the House of Commons next week.

In the United States, roughly 40,000 prisoners are serving life without parole, including thousands sentenced as youths. The sentence applies to a variety of crimes, not just murder. "I think the big observation from the U.S. is this has been a slippery slope – it's gotten to be a major form of incarceration," said Richard Dieter, executive director of the Death Penalty Information Center in Washington.

Rick Sauvé, a lifer in Ontario who has been on parole since 1995, and who works with other lifers for the St. Leonard's Society, said he doubts inmates will receive a fair shake when they petition the public safety minister for release. "They would just act on emotion," he said of the minister. And "if you take all sense of hope, people can become desperate. It could create more violence in the prisons."

Legal observers called the 35-year review by the public safety minister a new "faint-hope clause" – an ironic reference to the 1976 law that gave convicted killers a chance after 15 years to apply to a jury for a chance at early parole. The Conservative government killed the 15-year review in 2011.

Several lawyers and academics interviewed said the 35-year review at the political level may not be enough to make life without parole pass muster with the courts. "I would say it's at least questionable," said Stephen Toope, a law professor and director of the Munk School of Global Affairs. "There will be an argument that this could amount to cruel and unusual punishment because of that sense of no hope." And giving the public safety minister control over release, he said, "might be seen as politicization of the sentencing function."

Mr. Harper stressed that violent crime committed by those with previous serious violence on their record is a betrayal of victims, and of the community.

"The suffering of the victims of such horrific crimes and the suffering of those who love them is bad enough," he said. "But what if, when the whole truth is known, they should find out that the crime could have been prevented in the first place, that the perpetrator

was someone who could have been, should have been securely behind bars. When that is discovered, at that moment, their anguish is compounded by disbelief, and outrage, not just to them, but to the entire country, and then we are all left to wonder what justice means. They, we, feel betrayed."

There are 203 people convicted of first-degree murder living in the community on parole, government records show. Mr. Harper cited no data on crimes committed by convicted first-degree murderers on parole. The Globe and Mail contacted the National Parole Board, Correctional Service Canada and the Canadian Centre for Justice Statistics, a branch of Statistics Canada. None said they had numbers available.

Sharon Rosenfeldt, a victims' advocate from Ontario whose son was murdered by serial killer Clifford Olson, praised the proposed changes. "Families who lose loved ones to killers like Clifford Olson will never have to attend parole hearings every two years," she said.

New Democrat MP Françoise Boivin, the party's justice critic, said that most dangerous killers are already denied parole. "Decisions about who is released should be based on the risk an individual poses to the community and how to best protect public safety."

Ottawa, judiciary set to clash over life without parole legislation

Sean Fine, The Globe and Mail, March 6, 2015

The Conservative government is setting the stage for a confrontation with judges over the introduction of life without parole for some killers – the harshest punishment, outside of the death penalty, in Canadian history.

The question that will inevitably come before the courts is whether leaving prisoners without hope of release, at least by a neutral decision-making body, meets Canadian standards of humane treatment.

Royal Canadian Mounted Police Commissioner Bob Paulson speaks to media after a public safety committee meeting on Parliament Hill in Ottawa March 6, 2015. Paulson released the video Michael Zehaf-Bibeau made before carrying out his attacks.

Prime Minister Stephen Harper said the government intends to introduce legislation next week that would mean life with no chance of parole for "especially brutal" first-degree murders, those who kill police or prison guards and those who kill during a sex assault,

kidnapping or an act of terrorism. Prisoners could petition cabinet for release after 35 years. Under current law, a life term is automatic for murder, with the first chance at full parole for first-degree murder after 25 years.

Over the past 18 months, the government and the judiciary have clashed repeatedly over criminal laws that limited judges' discretion over sentencing, including mandatory minimum sentences. And a sentence of life without parole is the ultimate mandatory minimum.

Defence lawyers and constitutional scholars interviewed say a legal challenge to life without parole is almost certain soon after it becomes law. But while the challenge will be cast in legal terms – alleging cruel and unusual punishment, arbitrariness and disproportionality – what will really be decided is whether ending hope for classes of prisoners is in keeping with the basic tenets of the Canadian legal system.

"I think that civilized norms of justice include the idea that people can reform themselves and the system should provide some incentive and hope for them to do so," University of Ottawa law professor Carissima Mathen said. "Society is entitled to use the criminal law to denounce behaviour, but we tend to reject retribution for its own sake."

One question for Canadian judges will be whether the political review at 35 years offers a realistic hope of release. Mr. Harper stressed that the 35-year review is not parole but an appeal to cabinet, whose members are accountable to voters. In an e-mail, Prof. Mathen called this review a "complete non-starter. The whole point of sentencing is that we take it out of the political realm (once Parliament decides on the range of sentences)."

Judges might also look at hypothetical cases – a young person who kills someone during a hostage-taking, for instance. "The courts will take a very hard look at the proportionality of imprisoning a person who kills during a hostage-taking in his 20s when he is in his 70s and 80s," University of Toronto law professor Kent Roach said.

The Supreme Court has barred Canada from extraditing prisoners to jurisdictions such as the United States where they might face the death penalty. The court said in 2001 that such extraditions would "shock the conscience of Canadians." Last year, the Alberta Court of Appeal authorized an extradition of a suspected terrorist who could face life without parole in the U.S., saying the penalty would not shock Canadians' consciences.

One question is whether the government can justify its contention that the bill is needed to protect society. Thus far, the government has made public no data on crimes committed by paroled killers. "It will be interesting to see what research and evidence the government has to support this idea," said Nikos Harris, who teaches law at the University of British Columbia.

Judges have shown themselves willing to stand up to the Conservative government in unpredictable and surprising ways, even when they are not challenging the constitutionality of a law. For instance, they have evaded the government's mandatory victim fine surcharge, a financial penalty payable by all offenders, no matter how poor, to fund victim services. Judges in several provinces refused to order the poor to pay, or granted 99 years to pay, or made sure the surcharge was $1.50.

Mr. Harper has fought back at times in an equally surprising way, declaring publicly last spring – outside of any formal process – that Supreme Court Chief Justice Beverley McLachlin had acted inappropriately in a case the government lost. The court had rejected Mr. Harper's choice of a new Supreme Court judge, Marc Nadon.

Judge in hijab ruling is the real face of judicial activism

Carissima Mathen, Contribution to The Globe and Mail, March 4, 2015

Carissima Mathen *is associate professor of law at the University of Ottawa, and head of its Public Law Group.*

Lately there has been a lot of froth and fury about judicial activism. For those not familiar with the term, "judicial activism" is a label applied to courts, most often when they strike down legislation. For some, the Supreme Court's decision in February that the criminal offence of assisted suicide is unconstitutional is the pinnacle of such activism. For making that ruling, the Court has been called everything from the greatest threat to our democracy to a drag on the Canadian economy.

Reasonable people can disagree about particular court decision. No court is above criticism. Too often, though, judicial activism provides a convenient and seemingly neutral platform from which to issue sharply ideological critiques.

Judicial activism is a misleading term to the extent that it implies that courts merrily embark on legal frolics. Courts do not initiate legal proceedings. Their authority is invoked, either by parties who seek a legal remedy or, occasionally, by governments who seek answers to legal questions. Of course, the fact that courts do not go looking for cases does not lessen their duty to render decisions in a transparent and reasonably rigorous manner. But our system imposes far more constraining factors on courts than empowering ones.

So, when a court appears to go out of its way to invite controversy, we're entitled to take notice. That is exactly what happened in Montreal when a judge refused to hear a case involving Rania El-Alloul, a Muslim woman who wears a headscarf. Judge Eliana Marengo cited Article 13 of the Quebec Rules of Court, which requires any person appearing before the court to be "suitably dressed". Noting that she would be similarly disapproving of sunglasses and hats, Judge Marengo told Ms. El-Alloul to either remove the hijab or consult a lawyer. When Ms. El-Alloul declined – because removing the hijab

would violate her religious beliefs, and she could not afford a lawyer – the judge adjourned her case indefinitely.

Let us assume that Judge Marengo's ruling was not a knee-jerk reaction to a form of Muslim dress, but a sincere decision about the incompatibility of religious symbols with court decorum. The implications are staggering. Does the judge really mean to bar from her court all persons wearing religious dress such as turbans, skullcaps or nun's habits. Will she refuse to hear their cases? Such a situation would not only be intolerable – it would, surely, be legitimate grounds for removal from judicial office.

Judges exert a tremendous level of control and discretion over how they run their courtrooms. They are accorded great deference in this regard. Judges must always been seen to be independent, not only of the state, but even of their own immediate superiors. The fierce protection of judicial independence may explain the cautious reaction to the controversy by the Quebec court and by political leaders. The court said that Judge Marengo's ruling would stand, noting that it could not allow public pressure to sway a decision. And while he was admitted to being "disturbed", Premier Philippe Couillard noted a need to be "very careful".

For very good reasons, it is not possible to sue a judge for her decisions. But no intelligible legal system can allow the result reached in Ms. El-Alloul's case to stand. To leave a person without a judicial remedy, because of her religious belief, makes a mockery of the rule of law and brings the administration of justice into disrepute. Judge Marengo's ruling is the real face of judicial activism, a frightening world in which judges position themselves above the law and the principles they are entrusted to uphold. If the judicial community does not impose sufficient sanctions, then society should not shrink from the ultimate, if rarely imposed, remedy: impeachment.

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829 M$ pour les congés de maladie des fonctionnaires

TVA Nouvelles, Agence QMI, le 5 mars 2015

L'ardoise s'élève à 829 millions $. L'an dernier, Québec a déboursé 111 millions $ en congés de maladie monnayables, et le président du Conseil du trésor, Martin Coiteux, juge la note élevée.

«On demande la fin de la possibilité d'accumuler des congés de maladie», a confié M. Coiteux à notre Bureau parlementaire. Cette disposition n'existe que pour les fonctionnaires et les enseignants. Les autres employés du secteur public n'y ont pas droit.

Martin Coiteux réagissait à un reportage paru dans notre livraison de mercredi et faisant état d'une employée de Revenu Québec partie en préretraite de 13 mois grâce à 200 jours accumulés de congés de maladie. «Elle a profité des dispositions qui existent dans une convention collective. Elle a fait ce qu'elle avait le droit de faire», a commenté Martin Coiteux.

Les conventions collectives des employés de l'État viennent à échéance le 31 mars, et le gouvernement Couillard demande de réduire de 12 à 7 le nombre de congés de maladie pour les fonctionnaires et de mettre fin à leur accumulation pendant toute une carrière. L'employeur souhaite rembourser annuellement les congés de maladie non utilisés.

«Le Trésor retranche deux journées et demie de salaire au monde, soutient l'ex-président de la Centrale des syndicats du Québec (CSQ), Réjean Parent. De l'autre côté, on veut augmenter les salaires des députés; ça va se faire à coût nul pour régler le problème de Bolduc parti avec une prime de 155 000 $.»

Réjean Parent signale que les fonctionnaires sont en retard de 8 % dans leur rémunération globale par rapport au secteur privé. Il ajoute que les congés de maladie monnayables sont du salaire différé. «Au lieu d'augmenter les salaires des fonctionnaires, ils ont choisi de différer le salaire [...] On a économisé de l'argent pour payer plus tard. On est rendus à plus tard, et M. Coiteux dit: ce sont des affaires d'une autre époque.»

La CAQ demande au gouvernement de mettre fin à l'accumulation des congés de maladie. «C'est comme si mon assureur vie me disait: tu n'es pas mort, mais je te paie quand même», déplore le député Éric Caire.

Winnipeg Free Press
March 5, 2015

The thousand-day access request: long delays must be justified, judge rules

Winnipeg Free Press, Jennifer Ditchburn, The Canadian Press, March 5, 2015

OTTAWA - The Federal Court of Appeal has sent a stern message to government institutions: you can't just make up any old deadline for responding to requests under the Access to Information Act.

And by asserting it has the power to review long access-to-information delays, the court has given the information commissioner an important stick to wield against dawdling departments.

"At least now what we have is a clear assertion of jurisdiction of the Federal Court, which means that it gives us more ammunition when we negotiate stricter timelines with institutions," commissioner Suzanne Legault said.

The case in question involved the Department of National Defence, which in 2011 told someone seeking records on the sale of military assets that it would take 1,100 days — more than three years — to meet the request.

The information commissioner took the department to court for a review of the time extension. The documents were released a month before the hearing in 2013.

Such battles over delays between commissioners and departments have gone on since the access act was passed 30 years ago.

The Federal Court eventually ruled that time extensions, which are permitted under the law, are not subject to judicial review, but the appeal court disagreed.

Chief Justice Marc Noel said timely access is a central part of the right of access and that viewing all time extensions as permissible is tantamount to not having any limits at all.

Under the act, institutions must produce records within 30 days, or else inform the requester of a reasonable extension. Often an institution must consult another department or agency to see what documents can be released, making it hard to supply information within a month.

National Defence had come to their estimate of how long it would take to produce the records by considering the typical number of days it took for the Department of Foreign Affairs to get back to it on an access consultation (110) and multiplying that by eight. The number of records involved was roughly eight times more than the usual batch.

"This type of perfunctory treatment of the matter shows that DND acted as though it was accountable to no one but itself in asserting its extension," Noel wrote.

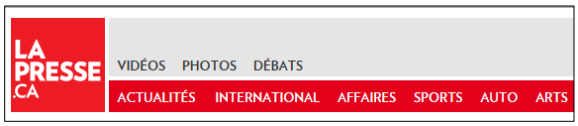
He said government institutions must make serious efforts to figure out how long it will take to produce records and the estimation must be sufficiently rigorous, logical and supportable to pass muster under court review.

It is not yet clear whether National Defence will file an appeal with the Supreme Court of Canada. It has 60 days to decide.

In this case, the department had already released the documents. But Legault said in the future, the federal court could theoretically tell an institution to hand over records by a particular date.

"This is actually a very important decision in terms of access rights at the federal level," said Legault.

"For the last 30 years ... government institutions always took the position that they could take extensions of any length and those were not reviewable by the court."



La Cour d'appel se prononcera sur les délais dans l'accès à l'information

La Presse, La Presse Canadienne, le 5 mars 2015

La Cour d'appel fédérale vient de rendre un jugement qui pourrait accélérer la réponse des ministères et agences à une demande d'accès à l'information.

Dans une cause impliquant le ministère de la Défense nationale, la Cour d'appel a statué que les institutions ne peuvent fixer, à leur guise, de longs délais de réponse aux demandes déposées en vertu de la Loi sur l'accès à l'information. La cour estime par ailleurs que le tribunal a toute compétence pour réévaluer ces délais, ce qui réjouit la Commissaire à l'information du Canada.

La Cour d'appel fédérale examinait une plainte de la Commissaire contre le ministère de la Défense, qui avait estimé en 2011 qu'il lui faudrait 1100 jours - plus de trois ans - pour répondre à une demande d'accès à l'information relativement à la vente d'actifs militaires.

De tels litiges entre les ministères et le bureau du Commissaire sont monnaie courante depuis l'adoption de la Loi sur l'accès à l'information, il y a 30 ans. La Cour fédérale a éventuellement statué que les délais supplémentaires, permis par la loi, ne sont pas du ressort des tribunaux, un avis que rejette maintenant la Cour d'appel. Le juge en chef, Marc Noël, estime que l'accès rapide est au coeur même du principe de droit d'accès à l'information, et que l'ajout de délais supplémentaires équivaut à une absence totale de limites.

La loi prévoit en effet que les ministères et agences gouvernementales doivent produire les documents demandés dans un délai de 30 jours, ou alors informer les demandeurs de tout délai supplémentaire raisonnable.

Selon le juge Noël, les institutions gouvernementales doivent déployer des efforts sérieux pour évaluer le temps nécessaire au traitement d'une demande, et cette estimation doit être suffisamment rigoureuse et logique pour tenir la route devant un tribunal.

Dans le cas qui occupait la Cour fédérale d'appel, le ministère de la Défense nationale avait déjà produit les documents demandés - un mois avant le début des audiences en 2013. Mais la commissaire à l'information du Canada, Suzanne Legault, croit que grâce au jugement de la cour d'appel, la Cour fédérale pourrait dorénavant imposer à une institution un délai précis pour produire les documents demandés.

«Au moins, nous disposons maintenant d'un avis juridique qui affirme la compétence de la Cour fédérale (en matière de délais), ce qui nous donne des munitions supplémentaires pour négocier des échéanciers plus stricts avec les institutions», s'est-elle réjouie, jeudi. «Depuis 30 ans (...) les institutions présument qu'elles peuvent fixer les délais qu'elles veulent, et que ces décisions ne peuvent être revues par un tribunal.»

On ignore si le gouvernement en appellera en Cour suprême de la décision de la Cour d'appel fédérale; il dispose de 60 jours pour le faire.

Dwight Newman: A court gone astray on the right to strike

Dwight Newman, Contribution to the National Post, February 26, 2015

Dwight Newman *is a senior fellow of the Macdonald-Laurier Institute and Professor of Law at the University of Saskatchewan.*

In the abstract, nobody designing a democratic system of government would suggest that our largest societal decisions should be made by nine unaccountable people exercising their complete discretion — no matter how wise those people were. The decisions of the Supreme Court of Canada are meant to be guided by careful legal reasoning and by judicial precedent, and must include detailed reasons for its decisions. It also subject to potential override by the legislative bodies in the event of disagreement on interpretation of certain Charter sections — indeed, some recent cases could invite this, undermining the Court's authoritativeness on constitutional interpretation.

Recent decisions of the Supreme Court have shown a remarkable disregard for precedent. The law is obviously not unchanging, but unjustified departure from precedent risks undermining the Court's role as legal arbiter. In each case, we can ask: is this disregard justified?

The recent Saskatchewan Federation of Labour case, in which a five-justice majority of the Court reversed the Court's past decisions on the issue and created a constitutional

right to strike, is an example of the Court gone astray. Whatever one thinks of delicate labour relations issues, the majority's reasoning is unfortunately well short of the standards we should demand from our best judges. It will have challenging consequences, without having been justified in adequate legal reasoning.

The decision is not short of potential legal sources. It purports to rely on dozens of past cases, dozens of academic articles, international instruments, and even the constitutions of half a dozen other states that have entrenched a constitutional right to strike. What is missing is a well-reasoned explanation of how this collection of stuff actually leads to the conclusion that section 2(d) of Canada's Charter of Rights protecting "freedom of association" contains a constitutional right to strike.

Canada specifically contemplated such a right when the drafting process for the Charter was underway in 1982 and specifically excluded it — unlike the half dozen states the Court found that had included such a right in their constitutions. How the fact that other states included a right in their constitutions has anything to say about whether Canada's constitutional text includes it gets no explanation in the judgment. Notably, most of those constitutions predated the 1982 Charter, so the fact that they included a right to strike and Canada's excluded it does not give any logical reason why the Court should create such a right today.

Remarkably, in at least one instance, the majority does not even cite the most current version of one of the constitutions it cites but ends up citing a prior constitution. Putting it bluntly, the majority judgment of Justice Abella plays a bit loose with its sources in other ways as well. A significant part of the judgment traces through international human rights bodies' views on the right to strike and suggests a clear international consensus in favour of a right to strike as part of freedom of association. The dissenting judgment of Justices Rothstein and Wagner rightly points out that whether there is a right to strike in international human rights law is actually a contested matter amongst international bodies.

In one instance, they even show that the "decision" cited by Justice Abella was not a judicial decision and did not receive support at the decision-making body that is higher up the hierarchy than the committee she had cited. That goes unacknowledged in her decision, which simply continues to cite sources as if they definitively resolved things that they do not. The judgment offers no real explanation of why cherry-picked international law material would have anything significant to say about the contents of a section of Canada's Charter.

In some ways, the main potential argument of the majority is that there has been a trend in some recent decisions toward readings of Canada's freedom of association provision that protect greater labour rights. Explaining this, Justice Abella says that "the arc bends increasingly toward workplace justice" and says, of recognizing a right to strike as protected, that "[i]t seems to me to be the time to give this conclusion constitutional benediction".

Her colourful language — and her bold tendency to "give constitutional benediction" rather than to more cautiously apply the law — should not distract from the real questions. Recent cases have said that meaningful collective bargaining has constitutional

protection. As the dissent points out, the fact that a constitutional case can be pursued over government failures to engage in meaningful collective bargaining arguably makes strikes less necessary than if there were no such opportunity. The "arc" leading to a constitutional right to strike may be more metaphorical than logical.

On one reading, the majority judgment constitutionalizes a right to strike only where necessary to meaningful collective bargaining rights. But many features of the judgment suggest it will be read as a broader constitutionalization of a right to strike, with restrictions on the right to strike always subject to constitutional challenge and constitutional analysis for their justification. That rigidly entrenches a particular labour relations model and takes away from opportunities to develop new models over time.

There could be further unexpected consequences as well. Governments do not resort lightly to back-to-work legislation, but when they do, they will now presumably be subject to constitutional litigation. It would not be surprising — and might be legally prudent — for governments to make proactive use of the notwithstanding clause in the special circumstances of various pieces of back-to-work legislation, simply to avoid unnecessary constitutional litigation. The case may yet open real precedent for the notwithstanding clause. Depending on how governments act in the years ahead, the majority's weakly reasoned constitutional judgment in Saskatchewan Federation of Labour may actually trigger a process of reducing the role of the Supreme Court of Canada in constitutional interpretation.

LE DEVOIR
Libre de penser
ACTUALITÉS OPINION CAHIERS SPÉCIAUX

LA LIBERTÉ D'ASSOCIATION

Quand la Cour suprême vient changer la donne

Le Devoir, février 2015

Texte de Michel Coutu - Professeur titulaire à l'École de relations industrielles de l'Université de Montréal

Ce texte se veut un hommage à la mémoire de Pierre Verge, professeur émérite en droit du travail à l'Université Laval, qui est décédé le 7 février, une lourde perte pour le droit du travail et les sciences sociales en général.

Avec trois décisions relatives à la liberté constitutionnelle d'association dans la sphère du travail — soit les arrêts Police montée, Meredith et Saskatchewan Federation of Labour —, la Cour suprême du Canada (CSC) vient de redessiner les contours de cette liberté.

Ces décisions, en particulier le jugement concernant la Saskatchewan, relatif au statut constitutionnel du droit de grève, auront un impact certain, possiblement capital, sur le droit du travail au Québec.

Alors que la décision Police montée reconnaît le droit de syndicalisation des policiers travaillant pour la GRC et que, dans la décision Meredith, la CSC juge que par rapport à ces employés, la Loi sur le contrôle des dépenses ne contrevient pas à l'article 2d) de la Charte canadienne, le jugement Saskatchewan Federation of Labour examine la compatibilité avec cet article d'une loi de la Saskatchewan limitant le droit de grève dans le secteur public, au titre du respect des services essentiels. Vu l'absence de mécanisme neutre et efficace de désignation des services essentiels et d'arbitrage de différends, la Cour juge ces limitations au droit de grève incompatibles avec la liberté d'association.

Ces arrêts de la CSC développent une jurisprudence nouvelle en la matière. Limitons-nous ici à la question du droit de grève et des services essentiels, ainsi qu'à celle de la légitimité d'une éventuelle « grève sociale » au Québec. Remarquons d'emblée que les services essentiels sont ceux dont l'interruption mettrait en danger « la vie, la santé et la sécurité de la population », de même que la sécurité nationale ou la primauté du droit.

Suivant la Cour suprême du Canada, le niveau des services essentiels à maintenir ne peut être déterminé arbitrairement par le gouvernement ou le législateur, mais doit être soumis à l'évaluation d'un organisme neutre et impartial. Par ailleurs, dans les services essentiels au sens strict, les salariés privés du droit de grève doivent pouvoir recourir à un mécanisme d'arbitrage des différends neutre et efficace, ou à un mode équivalent de règlement des conflits.

Cette approche nouvelle du droit de grève est susceptible d'avoir un impact majeur au Québec. Par exemple, les exigences actuelles relatives au maintien des services essentiels dans le secteur des affaires sociales ne nous semblent pas compatibles avec cette nouvelle interprétation : ainsi, dans le secteur hospitalier, ce niveau est généralementfixé à 90 % des effectifs salariés. Or, observe la Cour suprême, ce ne sont pas tous les employés d'hôpitaux qui, tels les infirmiers, assument des services essentiels.

Mais il y a davantage : les lois spéciales relatives au secteur public, dont les gouvernements successifs ne se sont guère privés (encore cette semaine, le gouvernement a menacé d'y avoir recours dans le cas du CP), devront porter « le moins possible atteinte » aux droits constitutionnels de négociation collective et de grève, au risque autrement d'être invalidées. Sur un autre plan, il convient de s'interroger sur la légitimité constitutionnelle d'une éventuelle « grève sociale ». Une telle grève peut se définir comme un mouvement professionnel, pacifique et ordonné, se traduisant par la cessation du travail dans le secteur public et/ou privé : l'objectif de la grève sociale est notamment de contrer les politiques d'austérité du gouvernement.

Dans son ouvrage remarquable Le droit de grève. Fondements et limites (Yvon Biais, 1985), le professeur Verge défendait l'idée de la validité constitutionnelle de la grève sociale, en s'appuyant sur le droit international et comparé du travail. Cette démarche intellectuelle amena le professeur Verge à jeter un regard critique sur le droit nord-américain du travail.

À l'époque, la perspective de Pierre Verge demeura isolée, les juristes québécois invoquant la position canadienne traditionnelle : l'adoption ici (1944) du modèle Wagner états-unien signifie que seul un syndicat accrédité peut faire la grève, et seulement lors des périodes prévues au Code du travail. Autrement, la grève estillégale et sévèrement sanctionnée.

Le nouveau statut du droit de grève oblige à repenser la question. Verge faisait en effet la disctinction entre :

1- un processus de négociation collective impliquant, dans l'entreprise, un employeur et un syndicat ; et
2- un mouvement de protestation d'envergure « nationale », ciblant les politiques du gouvernement et se traduisant par des interruptions du travail, en dépit de conventions collectives en vigueur.

Dans le premier cas, les restrictions au droit de grève prévues par le Code du travail peuvent se justifier au regard de la Charte canadienne. Dans le second cas cependant, l'enjeu national dépasse complètement la négociation décentralisée prévue par le Code et ne vise nullement un employeur spécifique, mais plutôt le gouvernement, lorsque celui-ci entend redéfinir unilatéralement les conditions de travail de la grande masse des salariés.

Nous partageons le point de vue du professeur Verge : interdire, en le qualifiant d'illégal, un mouvement de grève sociale pacifique visant à protester contre les politiques du travail de l'État et éventuellement à les infléchir, représenterait une « entrave substantielle » à l'exercice par les salariés de leur droit fondamental de poursuivre des objectifs collectifs. Les acteurs concernés auraient tout avantage à prendre acte de la valeur constitutionnelle maintenant reconnue au droit de grève, alors que des moments décisifs pour la survie de l'État social québécois se profilent à l'horizon.

CBC news

Veterans Affairs morale plunged alongside staffing levels: survey

'It's just another indication of how deep this government has cut and the effect it has had': Liberal critic

CBC News, Murray Brewster, The Canadian Press, March 5, 2015

The most recent survey of federal employees shows Veterans Affairs Canada is an increasingly unhappy place with plunging morale and a frazzled workforce.

The evaluation, published by Statistics Canada for the federal Treasury Board, asks dozens of questions on topics ranging from satisfaction with equipment to workplace harassment.

It shows that the number of staff who say the quality of their work has suffered — either because of fewer resources or a lack of departmental stability — has more than doubled since 2008.

That level of dissatisfaction is between 1.5 and two times the rate of the overall federal civil service.

And the surveys, conducted every three years since 2008, show a steady decline in employee satisfaction that appears to mirror Conservative job cuts at Veterans Affairs that began in 2011.

There's a clear connection between the two, said Liberal veterans critic Frank Valeriote — especially since the surveys also broadly track the size of the department through the survey response rate.

"It's just another indication of how deep this government has cut and the effect it has had," Valeriote said.

Steps taken to address concerns: department

The department recognizes the results of the survey and has already taken steps to address the concerns in areas of workload, communication and training, said Veterans Affairs spokeswoman Janice Summerby.

"Senior management is committed to increasing consulting with staff members and taking action so that service excellence for veterans remains paramount," Summerby said.

The survey also found 86 per cent of Veterans Affairs staff were proud of the work that they do, she added.

That may well be, Valeriote acknowledged, but clearly service has suffered, judging from the number of anecdotal complaints from veterans, he said.

Federal government performance reports released last year show that between 2009 and 2014, Veterans Affairs eliminated 897 positions across the department, with 33 per cent of those cuts coming in the section that administers pensions and awards.

The auditor general complained last fall that the department was taking too long to answer and decide on the applications of soldiers who applied for mental health support.

Services for vets 'dramatically affected' by cuts: Liberal MP

The Harper government insists it has only eliminated "backroom administration" and that service has not suffered.

Figures tabled in the House of Commons at the end of January show that 205,213 military and RCMP veterans sought federal assistance in 2014, a decrease of seven per cent from 2006.

That alone is sufficient justification for cuts to the workforce, the government has said in the past.

The workforce survey simply adds to the growing body of evidence that the cuts have gone too far and are impacting the quality of service provided to ex-soldiers, Valeriote said.

"We've got veterans complaining. We've got an auditor general saying it's taking too long to process claims," he said.

"The data is telling you that the front line has been cut, drastically. It is clear that the ability of Veterans Affairs to provide the services our veterans require has been dramatically affected."

The embattled department late last year posted notices saying they were looking to hire dozens of new front-line staff across the country who are willing to start work "as soon as possible."

NATIONAL POST

Digital Acc

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Tories considering changing pot laws to make possession a ticketable offence in lieu of criminal charges

Mark Kennedy, Postmedia News, March 4, 2015

With just 12 weeks left before Parliament shuts down for an election, the federal Conservative government is still considering introducing a bill to let police issue tickets to people caught with small amounts of marijuana, instead of laying criminal charges.

The potential legislative change is in the hands of Justice Minister Peter MacKay, who has spoken strongly about the dangers of marijuana use, particularly by young people.

The government has not made a final decision on the proposed change. As well, it isn’t clear – with time running short – if it would introduce a bill in the current Parliament, which ends in June, or make it a campaign promise in the fall election.

But what is significant, say Tories, is that the idea is still on the government's "radar" as it prepares for re-election. It is looking for a marijuana proposal to contrast with the position of Liberal leader Justin Trudeau, who would legalize pot.

The proposed ticketing change was first advocated two years ago by the Canadian Association of Chiefs of Police (CACP), and has the strong support of a group of former police officers in the Conservative caucus.

They say police are hamstrung because they have only two options if they find someone with a small amount of pot: ignore it and let the person go; or lay a criminal charge that creates more paperwork for police and increases delays in an already overburdened court system.

Currently, anyone found guilty of possessing a small quantity of marijuana for the first time can get a criminal record and potentially face a $1,000 fine and/or up to six months in jail.

The CACP is urging the justice minister to amend the Controlled Drugs and Substances Act to provide police with the "discretionary option" of issuing a ticket for simple possession of cannabis (30 grams or less of marijuana or one gram or less of cannabis resin) in cases where a criminal charge "would not be in the public interest."

Last summer, MacKay said the government was examining the proposal, but cautioned that, with a full legislative agenda, a bill would have to come within six months, if at all.

Those six months have now expired, but MacKay's office told the Citizen this week the minister has not rejected the idea.

"Our government is still considering changes to the Controlled Drugs and Substances Act (CDSA) aimed at creating a new ticketing proposal for possession of small quantities of cannabis," said a statement issued by his office.

"We do not support making access to illegal drugs easier. To be clear, any proposed changes would not decriminalize or legalize cannabis possession in Canada whatsoever, but support law enforcement's efforts to efficiently deal with possession of these illicit drugs."

Clive Weighill, president of CACP, said in an interview that his group is looking for ways to "streamline policing costs."

"I think the world has really changed on this," said Weighill, who is Saskatoon's chief of police. "I think a lot of the judges right now are loath to give someone a criminal record because the police find him in possession of a couple of joints."

The current law, he said, puts police officers "in a very tough situation" on how to exercise their discretion.

"If you stop a vehicle and one person has a couple of joints in their pocket and the other person has open liquor, you give the person with open liquor a ticket. And yet what do

you do with the person with the two joints? Do you charge them criminally? Do you let them off?"

Conservative senator Vern White, a former Ottawa chief of police, said he fully supports the proposed change.

"Don't get me wrong. If it is a guy with 15 joints in his pocket in a high school parking lot, I'm going to charge him criminally."

"But if we're talking about a guy with a couple of joints or a joint, do we really want to bring them through the criminal process?"

White said tickets would serve as a deterrent.

The Liberals would legalize marijuana through a system in which sales are regulated. Trudeau says this would take pot out of the hands of organized crime and make it harder for kids to obtain.

It's time to scrap articling

By Jim Middlemiss, Contribution to Canadian Lawyer magazine, March 2, 2015

Jim Middlemiss *blogs about the legal profession at WebNewsManagement.com.*

As the law school year winds down across the country, Canada's medium and large law firms begin preparations for the annual legal rite of passage — articling. That's when hordes of lawyer wannabes, fresh out of torts and civil procedure, disperse across law firms, and anxiously seek to dip their toes in the legal waters.

It's also a time when masters in Ontario, small claims courts judges across the country, and articling principals — those who must contend with the student hordes — want to scream obscenities, and pull their hair out, assuming they have any hair left at this stage in their career.

I have a better idea. Why not scrap articling, or at least radically overhaul it? The thought is not novel, but could be timely, given the economic climate.

More than 40 years ago, Ontario lawyer Bert MacKinnon, later associate chief justice of Ontario, suggested articling be abolished in a report to the Law Society of Upper Canada.

In 2012, a dissenting group of four benchers on the LSUC articling task force proposed the same thing.

Articling and the way the profession trains young lawyers is archaic and a throwback to ancient common law principles, such as primogeniture, where the first-born male inherits everything.

The legal profession has been training lawyers pretty much the same way for more than a century — almost a form of indentured servitude. A law grad finds a firm that agrees to provide tutelage in the hopes of one-day becoming part of the profession. If they hit the lottery they are in. If they don't, it's been nice knowing you. Sadly, it's often minorities and foreign-trained lawyers left in the cold. Even the world's oldest profession, prostitution, has evolved over the past century. But the process for training lawyers remains largely the same as it did at the time of Confederation.

The problem with articling today is the role of training new recruits falls mostly on the shoulders of larger law firms, which have the resources and bureaucracy to manage the program. However, there is little empirical evidence to suggest articling students are well trained and that articles meet the objectives of the legal regulators. Many students do not receive constructive training and there are few mechanisms or controls in place to ensure the training students receive is up to par. In fact, the 2012 LSUC minority report bluntly states, "articling as it exists today is virtually indefensible from a regulatory standpoint."

Yet, the sacred cow continues, largely with the result that we push lawyers to Bay Street and not main street, where they are equally needed.

Ontario has grappled with articling for years. The problem is that Ontario is rich with law students, which works well when the economy is humming, but not so much when it's in the doldrums, which it has been the past few years. Recently, as many as 15 per cent of grads were unable to find that elusive articling job to push them over the goal-line into the legal end zone. It wasn't right.

While concerns about articling have largely been confined to Ontario, that could change. At the time of writing this column, Target, Sony, and Mexx were fleeing the country, oil prices were crashing, prompting energy firms to slash budgets, and commodity prices were plummeting. The economic gloom is spreading to resource-rich provinces and their legal regulators could soon find themselves with a glut of law students and no places to put them, the same quandary as Ontario.

Ontario has developed a partial solution with its Law Practice Program, where students take an alternative route to articling by taking a practical skills program with a co-op placement. It's a three-year pilot project started in 2014, which could be extended until 2019. But all the bi-furcated system has really done is created two classes of legal professional citizens — those who were chosen for articles and those who were perceived by law firms as not good enough for articles, so they opted for the LPP. It's an erroneous assumption, of course, but perception is reality.

The LSUC minority report suggested enhanced online learning modules prior to the entrance exams, followed by post-licensing mentorship, including the filing of a practice

plan for those going solo. It's a much cleaner, fairer, and affordable solution than the one including the LPP that was adopted.

It's time for law societies around the country to take a hard look at the training processes for bringing new recruits into the legal fold. Yes, articling has been in place for more than a century and has produced Canada's top lawyers, but that doesn't mean it's the best system. Just finding a principal to do research for and carrying that person's bags isn't the best way to train new recruits.

FINANCIAL POST

The unkillable billable hour: How Canadian corporations are clinging to legal business 'poison'

Drew Hasselback, Financial Post, March 6, 2015

In December, the Ontario Court of Appeal issued a ruling that questioned the traditional practice of hourly billing.

"There is something inherently troubling about a billing system that pits a lawyer's financial interest against that of its client and that has built-in incentives for inefficiency," wrote Madam Justice Sarah Pepall in a decision that reviewed the size of a legal bill in the receivership of a London, Ontario-area cattle farm. The appellate decision confirmed a lower court ruling that had cut to $157,500 from $328,000 a bill that law firm Borden Ladner Gervais LLP had sent to PricewaterhouseCoopers for work done on a relatively simple matter that took two months to complete.

Justice Pepall is hardly the first person to question the use of the billable hour. Corporate clients want certainty and efficiency. That should spark client demands for flat fees or other pricing alternatives to the conventional system of hourly billing. Yet billable hours are proving to be a tough practice to kill.

A survey of in-house lawyers published in the December 2014 edition of Canadian Lawyer magazine reveals that 47% of Canadian corporations cite billable hours as the primary way they pay their bills to outside law firms. That's a noticeable drop from the 55% surveyed the year before, but it also means that nearly half of Canadian companies are clinging to billable hours.

“The billable hour is a zombie,” says Peter Carayiannis, president and founder of Conduit Law P.C. in Toronto. “We can’t actually kill it. Every time you kill one, another one comes out.”

Despite the odds, Mr. Carayiannis is fighting the unkillable billable hour. Conduit Law works for corporate clients, and the bills Mr. Carayiannis sends to clients are based on the firm’s up-front assessment of what the legal service should cost. If Mr. Carayiannis underestimates the time and resources necessary for the task, he eats the loss. If he gets it right, he makes a profit. In other words, his firm takes risks just like any other business.

Billable hours are “poison” to the legal business because they’re an incentive for inefficiency, Mr. Carayiannis says. It makes more rational economic sense to connect the price of legal services with the value they bring to a client’s business.

“If the dollars-times-hours formula hits the value, it’s really just a monkey throwing a dart against a board. It’s an accidental byproduct. It’s not the lawyer and the client actually trying to assess the value of the retainer,” Mr. Carayiannis says. About 90% of his firm’s revenue comes from such “value-based” billing arrangements. Only 10% comes from traditional hourly billing, and Conduit Law issues such bills only at the express request of the client.

Conduit Law isn’t the only upstart trying to shake up billing practices in the corporate legal market. Cognition LLP has been at it for some time. About 75% of the firm’s clients pay “value-based” fees, says co-founder Joe Milstone. The remaining 25% ask to be billed by the hour.

Clients generally aren’t fussed about hourly rates if they’re content with the dollar amount at the bottom of the bill, Mr. Milstone says. That might look okay on the surface, but it masks a problem. A firm’s hourly rates are typically based a firm’s need to cover overhead plus the profit expectations of the firm’s partners. Missing from the equation is the value the work is supposed to bring to the client. Mr. Milstone says an hourly rate might be a tool that helps begin a discussion on what a legal service should cost, but it shouldn’t be the only thing that goes into the mix.

Mr. Milstone says Cognition actually pushes clients to demand alternative fee arrangements. A lot of the work that a corporate law firm does is basically commoditized — that is, high-volume, repeatable work that a well-run firm should be able to deliver on a predictable timeline and budget. “If you’ve done the work as much as you say you have, you should be able to scope out an appropriate project plan,” Mr. Milstone says.

And for those clients that still cling to hourly rates, Cognition has developed a simple solution: get rid of the overhead. It’s not hard to do. Bay Street law firms work out of high-rent office space that is decorated with a lot of expensive art. Cognition works out of cheaper surroundings, and strips away enough costs to offer hourly rates for experienced counsel that are about one-third to one-half of the amount charged by big firms in downtown Toronto.

What's surprising about firms such as Conduit and Cognition is that it sometimes seems like they're the ones browbeating clients to embrace alternative billing, rather than the other way around. It's odd, because corporate Canada has tremendous bargaining power.

Amar Sarwal, vice president and chief legal strategist with the Association of Corporate Counsel, a Washington-based group that represents in-house lawyers at corporations around the world, believes Canadian in-house lawyers are in a unique position. With a small number of top-flight Bay Street firms serving Canada's relatively short list of blue-chip financial institutions and corporations, the country's in-house lawyers should have the marketing clout to bring rapid change to the legal industry. "Canada has a more concentrated legal market, and because of that, it has an opportunity to change faster than perhaps the U.S. market," Mr. Sarwal believes.

Ian Holloway, dean of the law school at the University of Calgary, says he thinks Canadian general counsel — the job title often given to the top in-house lawyer at a large corporation — aren't aggressive enough in demanding change. "They could pull the trigger and say that from next year, we're 90% alternative fee arrangements. And the big firms would all dance to their tune."

So why don't they? Lawyers are paid to assess risk, and that has the byproduct of making them risk averse, Mr. Holloway suggests. Most senior lawyers grew up with the billable hour, and they're too comfortable with that system to accept change. In particular, law firms have gotten used to judging and rewarding performance by a lawyer's capacity to generate hourly billings. "It's an easy way to justify why partner X earns so many dollars and partner Y earns another amount," Mr. Holloway says.

Some companies are trying to change the market. Food company George Weston Ltd., which is the 46% owner of Loblaw Companies Ltd., has a policy in place that makes it mandatory to discuss alternative fee arrangements for any legal matter worth more than $5,000 in billings. The policy is mentioned in the Canadian Bar Association's "Futures Initiative" report on ways the Canadian legal profession should adapt to change. Gordon Currie, vice-president and chief legal officer with George Weston, explains in the CBA report that the policy isn't just about saving money on legal bills. It's about getting the best value for the fees paid, he said.

Not every in-house lawyer thinks corporate legal departments have been slow to embrace change. "If you look at the corporations that are, like ourselves, large consumers of legal advice and services, I think the rate of change has actually been quite rapid," says Simon Fish, top in-house lawyer for BMO Financial Group.

"About 50% of the legal fees charged to us today is on a value-based billing basis, however our long-term goal is to be at or near 100%," Mr. Fish says. "In another three years from now, I suspect we'll be well on our way to reaching that target."

The CBA, a voluntary body that represents 37,000 Canadian lawyers, judges and law students, also believes change is inevitable.

"We got into this project because that change is coming, and it's coming quicker than some people might think," says Fred Headon, an in-house lawyer with Air Canada, who

chaired the CBA's Futures Initiative. "We need to catch up on fees and other things because we need to be relevant. This is just how the world is moving. The finance department in all these companies is going to be looking at the legal spend, and asking why they can't get more for less like everyone else in the business."

Maybe. Until the rest of the market catches up, a new wave of alternative law firms, such as Conduit and Cognition, is ready to exploit the opportunity that was noted in that recent Ontario Court of Appeal case.

"There is an inherent conflict of interest," says Mr. Carayiannis of Conduit Law. "It pits our clients' interest in getting a fair value at a fair price for our services directly in conflict with the lawyer's interest in maximizing his financial gain."

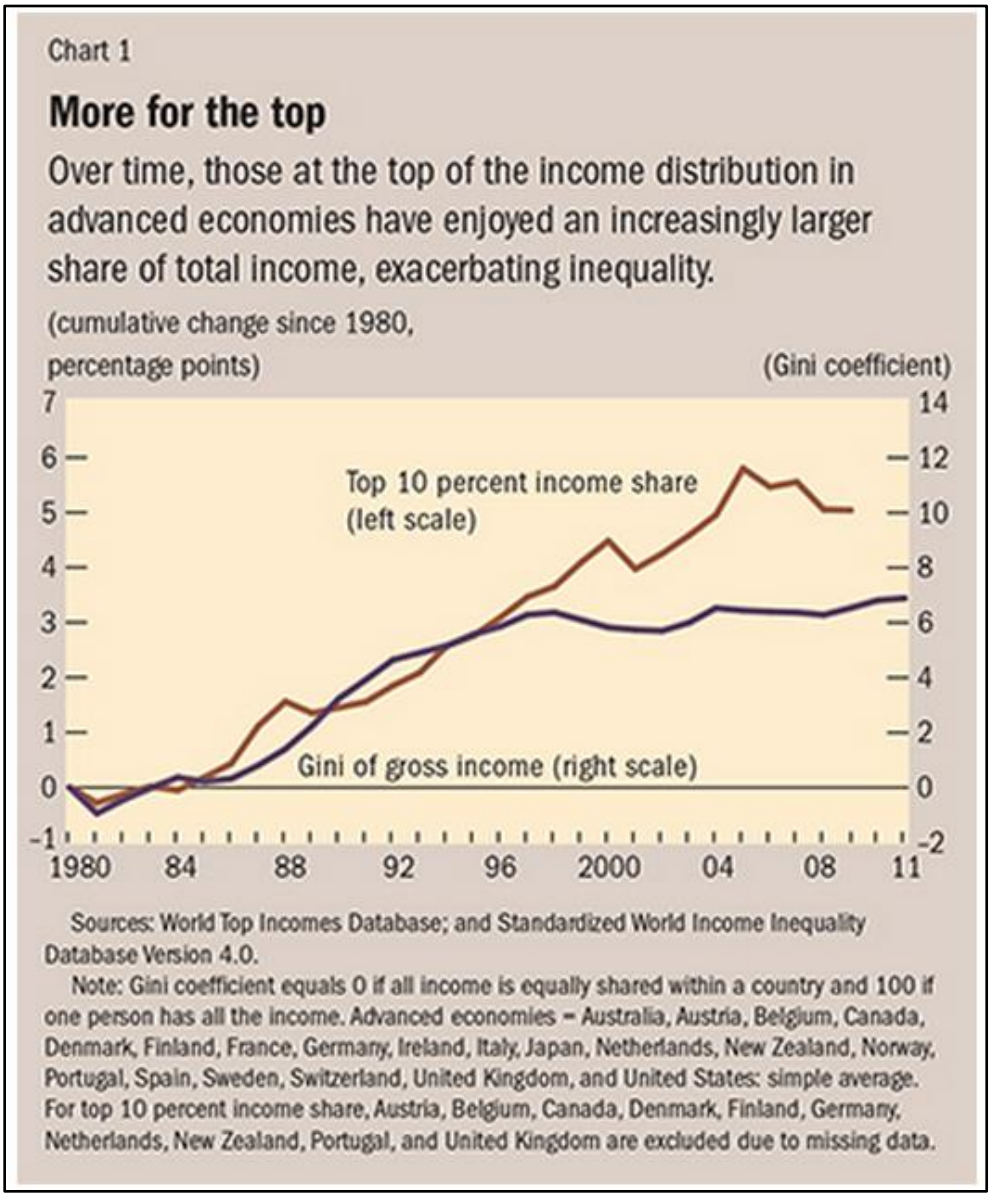
Power from the People

FINANCE & DEVELOPMENT

The decline in unionization in recent decades has fed the rise in incomes at the top

Florence Jaumotte and Carolina Osorio Buitron, International Monetary Fund, March 2015

Inequality has risen in many advanced economies since the 1980s, largely because of the concentration of incomes at the top of the distribution. Measures of inequality have increased substantially, but the most striking development is the large and continuous increase in the share of total income garnered by the 10 percent of the population that earns the most—which is only partially captured by the more traditional measure of inequality, the Gini coefficient (see Chart 1).



The Gini is a summary statistic that gauges the average difference in income between any two individuals from the income distribution. It takes the value zero if all income is equally shared within a country and 100 (or 1) if one person has all the income.

While some inequality can increase efficiency by strengthening incentives to work and invest, recent research suggests that higher inequality is associated with lower and less sustainable growth in the medium run (Berg and Ostry, 2011; Berg, Ostry, and Zettelmeyer, 2012), even in advanced economies (OECD, 2014). Moreover, a rising concentration of income at the top of the distribution can reduce a population's welfare if it allows top earners to manipulate the economic and political system in their favor (Stiglitz, 2012).

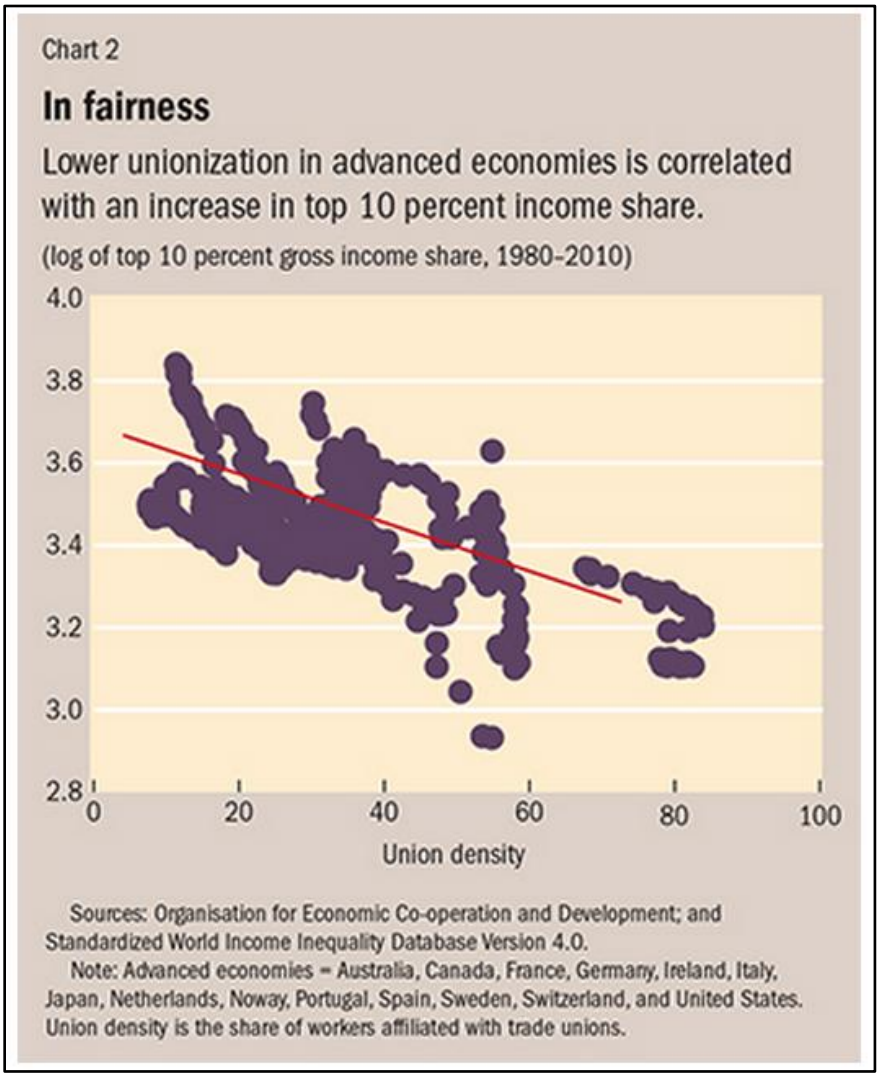
Traditional explanations for the rise of inequality in advanced economies are skill-biased technological change and globalization, which have increased the relative demand for skilled workers, benefiting top earners relative to average earners. But technology and globalization foster economic growth, and there is little policymakers can or are willing

to do to reverse these trends. Moreover, while high-income countries have been similarly affected by technological change and globalization, inequality in these economies has risen at different speeds and magnitudes.

As a consequence, economic research has recently focused on the effects of institutional changes, with financial deregulation and the decline in top marginal personal income tax rates often cited as important contributors to the rise of inequality. By contrast, the role played by labor market institutions—such as the decline in the share of workers affiliated with trade unions and the fall in the minimum wage relative to the median income—has featured less prominently in recent debates. In a forthcoming paper, we look at this side of the equation.

We examine the causes of the rise in inequality and focus on the relationship between labor market institutions and the distribution of incomes, by analyzing the experience of advanced economies since the early 1980s. The widely held view is that changes in unionization or the minimum wage affect low- and middle-wage workers but are unlikely to have a direct impact on top income earners.

While our findings are consistent with prior views about the effects of the minimum wage, we find strong evidence that lower unionization is associated with an increase in top income shares in advanced economies during the period 1980–2010 (for example, see Chart 2), thus challenging preconceptions about the channels through which union density affects income distribution. This is the most novel aspect of our analysis, which sets the stage for further research on the link between the erosion of unions and the rise of inequality at the top.



Changes at the top

Economic research has highlighted various channels through which unions and the minimum wage can affect the distribution of incomes at the bottom and middle, such as the dispersion of wages, unemployment, and redistribution. In our study, however, we also consider the possibility that weaker unions can lead to higher top income shares, and formulate hypotheses for why this may be the case.

So the main channels through which labor market institutions affect income inequality are the following:

Wage dispersion: Unionization and minimum wages are usually thought to reduce inequality by helping equalize the distribution of wages, and economic research confirms this.

Unemployment: Some economists argue that while stronger unions and a higher minimum wage reduce wage inequality, they may also increase unemployment by maintaining wages above “market-clearing” levels, leading to higher gross income inequality. But the empirical support for this hypothesis is not very strong, at least within

the range of institutional arrangements observed in advanced economies (see Betcherman, 2012; Baker and others, 2004; Freeman, 2000; Howell and others, 2007; OECD, 2006). For instance, in an Organisation for Economic Co-operation and Development review of 17 studies, only 3 found a robust association between union density (or bargaining coverage) and higher overall unemployment.

Redistribution: Strong unions can induce policymakers to engage in more redistribution by mobilizing workers to vote for parties that promise to redistribute income or by leading all political parties to do so. Historically, unions have played an important role in the introduction of fundamental social and labor rights. Conversely, the weakening of unions can lead to less redistribution and higher net income inequality (that is, inequality of income after taxes and transfers).

Bargaining power of workers and top income shares: Lower union density can increase top income shares by reducing the bargaining power of workers. Naturally, top income shares are mechanically influenced by what happens in the lower part of the income distribution. If deunionization weakens earnings for middle- and low-income workers, this necessarily increases the income share of corporate managers' pay and shareholder returns. Intuitively, the weakening of unions reduces the bargaining power of workers relative to capital owners, increasing the share of capital income—which is more concentrated at the top than wages and salaries. Moreover, weaker unions can reduce workers' influence on corporate decisions that benefit top earners, such as the size and structure of top executive compensation.

To study the role of unionization and the minimum wage in the rise of inequality, we use econometric techniques over a sample including all advanced economies for which data are available and the years 1980 to 2010. We examine the relationship between various inequality measures (top 10 percent income share, Gini of gross income, Gini of net income) and labor market institutions, as well as a number of control variables. These controls include other important determinants of inequality identified by economists, such as technology, globalization (competition from low-cost foreign workers), financial liberalization, and top marginal personal income tax rates, as well as controls for common global trends in these variables. Our results confirm that the decline in unionization is strongly associated with the rise of income shares at the top.

While causality is difficult to establish, the decline in unionization appears to be a key contributor to the rise of top income shares. This finding holds even after accounting for shifts in political power, changes in social norms regarding inequality, sectoral employment shifts (such as deindustrialization and the growing role of the financial sector), and increases in education levels. The relationship between union density and the Gini of gross income is also negative but somewhat weaker. This could be because the Gini underestimates increases in inequality at the top of the income distribution.

We also find that deunionization is associated with less redistribution of income and that reductions in minimum wages increase overall inequality considerably.

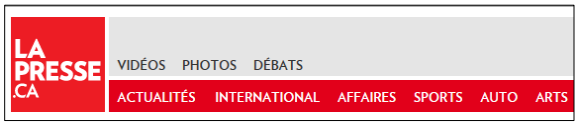
On average, the decline in unionization explains about half of the 5 percentage point rise in the top 10 percent income share. Similarly, about half of the increase in the Gini of net income is driven by deunionization.

Future research

Our study focuses on unionization as a measure of the bargaining power of workers. Beyond this simple measure, more research is needed to investigate which aspects of unionization (for example, collective bargaining, arbitration) are most successful and whether some aspects may be more disruptive to productivity and economic growth.

Whether the rise of inequality brought about by the weakening of unions is good or bad for society remains unclear. While the rise in top earners' income share could reflect a relative increase in their productivity (good inequality), top earners' compensation may be larger than what is justified by their contribution to the economy's output, reflecting what economists call rent extraction (bad inequality). Inequality could also hurt society by allowing top earners to manipulate the economic and political system.

In such cases, there would be grounds for governments to take policy action. Such action could include corporate governance reforms that give all stakeholders—workers, managers, and shareholders—a say in executive pay decisions; improved design of performance-related pay contracts, especially in the risk-happy financial sector; and reaffirmation of labor standards that allow willing workers to bargain collectively.



Regarder l'heure sur son cellulaire est illégal, tranche la cour

BRUNO BISSON, La Presse, le 3 mars 2015

Un automobiliste ne doit jamais utiliser son téléphone cellulaire lorsqu'il est au volant, même si c'est seulement pour regarder l'heure sur le cadran de l'appareil lorsqu'il est immobilisé devant un feu rouge.

Dans une décision datée du 24 février dernier, le juge Randall Richmond, de la cour municipale de Montréal, a reconnu Mélanie Njanda coupable d'avoir fait usage de son téléphone alors qu'elle était au volant, même si celle-ci a plaidé qu'elle regardait l'heure au moment où elle a été surprise par un policier.

La cour s'est ainsi rendue au raisonnement utilisé dans une autre cause, tranchée en Cour supérieure, où le contrevenant avait plaidé qu'il avait seulement regardé l'afficheur de son appareil pour vérifier qui venait de l'appeler.

«En résumé, conclut la cour, le législateur québécois veut que les automobilistes conduisent avec les deux mains sur le volant et les yeux sur la route.» La défenderesse a

donc été jugée coupable d'une infraction à l'article 439,1 du Code de la sécurité routière, qui interdit «l'usage d'un appareil tenu en main et muni d'une fonction téléphonique».

Une infraction à cet article est passible d'une amende de 80 à 100$ et de trois points d'inaptitude inscrits au dossier du contrevenant.

Une distraction

Dans sa décision, le juge Richmond explore de nombreuses décisions antérieures rendues devant plusieurs cours municipales et en Cour supérieure concernant cette infraction, qui a été inscrite au Code de la sécurité routière en 2008 et qui vaut des amendes à des dizaines de milliers d'automobilistes, chaque année.

L'infraction s'est produite le 12 décembre 2013 à Montréal, à un endroit non précisé.

«Un policier, écrit le juge, a observé la défenderesse au volant de son véhicule automobile immobilisé devant une lumière rouge. Elle tenait un téléphone cellulaire dans sa main droite au niveau du volant.» Selon le policier, elle semblait parler. Aussitôt qu'elle a vu le policier, elle a baissé son bras.

Mme Njanda, qui se défendait sans avocat, a affirmé qu'elle «ne faisait que regarder l'heure sur son téléphone cellulaire».

Or, selon le juge Richmond, ce n'est pas le fait de parler à quelqu'un d'autre avec son cellulaire qui est proscrit par le Code de la sécurité routière. C'est son utilisation au sens large, qui génère une distraction pour l'automobiliste.

«Pour voir l'heure sur son téléphone, écrit le juge, il faut enlever une main du volant, prendre le téléphone dans sa main, le porter à la hauteur des yeux et peser sur un bouton. Par la suite, il faut retourner le téléphone dans un endroit quelconque. Il y a donc un laps de temps important pendant lequel une main n'est plus sur le volant et où l'attention des yeux est détournée de la route pour voir où on prend le téléphone et où on le remet.»

«Certes, ajoute le juge, le risque d'accident est moins grand que lorsqu'un conducteur parle au téléphone ou qu'il lit un message texte, mais il y a néanmoins une distraction de l'attention portée à la route.»

Immobile ou pas

Quant au fait que l'automobile était immobilisée à un feu rouge, il a déjà fait l'objet d'une dizaine de décisions en cour municipale ou en Cour supérieure. À une exception près, elles ont toutes convenu que «cette activité est défendue».

«Le but recherché par l'adoption de l'article 439,1 est de contrer les distractions lors de la conduite d'un véhicule, cite le juge Richmond. Peut-on douter de l'importance pour le conducteur immobilisé à un feu rouge de demeurer vigilant et de ne pas être distrait, précisément, par l'usage d'un téléphone cellulaire?»

Encore beaucoup de contrevenants, révèle un sondage

Si une forte majorité d'automobilistes québécois considère le cellulaire au volant comme un «problème grave», ils sont encore nombreux à texter ou à parler au téléphone en conduisant, révèle un sondage mené par la SAAQ et que La Presse a obtenu.

- 56% des conducteurs qui possèdent un cellulaire parlent au téléphone en conduisant; 1 sur 3 n'utilise pas de dispositif mains libres, contrevenant ainsi au Code de la sécurité routière.
- Le quart des conducteurs utilisateurs d'un téléphone cellulaire écrivent ou lisent des messages textes au volant. C'est plus qu'en 2013 (19%). La majorité des contrevenants attendent d'être à un feu rouge pour texter.
- 27% des conducteurs ont été tellement distraits pendant qu'ils écrivaient ou lisaient un message texte qu'ils ont emprunté la mauvaise voie, ont freiné brusquement, n'ont pas roulé à la bonne vitesse ou n'ont pas vu un arrêt obligatoire.
- La moitié des utilisateurs de cellulaires admettent qu'ils ne peuvent s'empêcher, même s'ils conduisent, de lire un texto quand ils entendent la sonnerie de leur cellulaire, et 22% disent qu'ils ne peuvent s'empêcher d'y répondre. Seuls 16% des utilisateurs éteignent leur appareil avant de prendre le volant.
- 95% des adultes québécois sont d'avis que la distraction au volant est un problème grave; 53% y voient même un problème «très grave».

Source: sondage réalisé par la SAAQ entre le 20 et le 24 octobre 2014 auprès de 1205 répondants.

Dr. Dawg licks his wounds: Court rules that defamation of Ottawa blogger was 'fair comment'

Andrew Duffy, Ottawa Citizen, March 4, 2015

A Superior Court judge has ruled that although Ottawa blogger Dr. Dawg was defamed on a conservative message board, the hurtful words fell within the bounds of fair comment in the rough and tumble blogosphere.

“Political debate in the Internet blogosphere can be, and often is, rude, aggressive, sarcastic, hyperbolic, insulting caustic and/or vulgar. It is not for the faint of heart,” Madam Justice Heidi Polowin noted in dismissing the legal claim.

The decision is among the first to establish the legal boundaries in Canada's blogosphere, where the battle between left and right often devolves into flame wars.

The ruling concludes that the political blogosphere must be governed by existing laws, but it also recognizes that the Internet is a place of strongly worded opinion and hyperbole, where fair comment should be given a broad interpretation.

Cara Zwibel, director of the fundamental freedoms program at the Canadian Civil Liberties Association, an intervener in the case, said the ruling does not significantly depart from the established principles of defamation law. Although no new legal exceptions have been carved out for political blogs, she said, it does acknowledge that "the way expression happens in some of these forums is different."

In her ruling, Polowin found that John Baglow, an Ottawa blogger known as Dr. Dawg, had been defamed by an August 2010 chat room post that referred to him as "one of the Taliban's more vocal supporters."

The statement was made on the Free Dominion website by Roger Smith, of Burnaby, B.C., in the course of an acrimonious debate about federal politics and the treatment of Canadian Omar Khadr, then a Guantanamo inmate.

In finding the words to be defamatory, Polowin rejected the argument of Free Dominion's founders, Mark and Connie Fournier, who said they should not be held legally responsible for the messages that other people post on an open Internet platform. That position was supported by the Canadian Civil Liberties Association, which argued that holding website administrators liable for the content of message board postings would impair the free exchange of ideas on the Internet.

Polowin, however, said defamation law must balance two fundamental values: the worth of an individual's reputation and freedom of expression. "To adopt the position of the defendants would leave potential plaintiffs with little ability to correct reputational damage and would impair that delicate balance," she wrote.

The Fourniers also argued that the statement was not defamatory in the context of the political blogosphere, where profanity, insults and invective run wild. But Polowin rejected the notion that the Internet is too unruly to be governed by conventional defamation law.

"Implicit in their submissions is that based on the rough and tumble nature of these media platforms there would be little, if anything, that would tend to lower the plaintiff's reputation in the eyes of a reasonable reader. However, there is nothing in the law of defamation to suggest that that is the case."

Polowin concluded that Baglow's reputation was damaged by the suggestion that he was a Taliban supporter. The judge, however, accepted the Fourniers' argument that the defamatory words could be defended as fair comment in the blogosphere.

Fair comment can be used as a defence when the words at issue are based on fact and honestly expressed on a matter of public interest.

Baglow argued that Smith's words were expressed, not as comment, but as a statement of fact. Polowin, however, said the impugned words appeared in the course a political diatribe. "The post itself was rambling, if not incoherent, touching on a number of different topics. It was in essence a rant, with Mr. Smith giving his views and opinions on any number of issues, none too clearly."

The judge said Smith was commenting on a matter of public interest — the Khadr case — and honestly held the belief that anyone who supported the teenager, an enemy combatant in Afghanistan, supported the Taliban.

Polowin decided against awarding costs to either side in the bitterly fought case.

Baglow, a left-wing political blogger and former executive with the Public Service Alliance of Canada, called the ruling a split decision. "If one has to lose a lawsuit, this is probably the way to lose it," he said.

Baglow said the judge found that he was defamed and endorsed many of the principles for which he was fighting. "The fact the blogosphere is not a place where rules are suspended — that the same law applies to them as to any other media — I think that's a good thing to establish," he said. "It means it's not the wild west out there."

Connie Fournier, a computer programmer who lives in Kingston, said she was pleased with the outcome of the case. "I hope people will calm down when it comes to trying to sue each other over things said online," she said. "Because you are not going to change the culture: The culture is what it is."

Online commenters, Fournier said, are likely to write things they would not say in person since "they're sitting at their computers, they're uninhibited — and they're probably having a beer while they do it."

Neither side has any plan to appeal the judgment.

Civil servant Max Yalden was a fierce defender of human rights

RON CSILLAG, Special to The Globe and Mail, March 3, 2015

Intellectually rigorous and unflappable, Ottawa mandarin Max Yalden helped shape some of the most important policies in Canada, advancing acceptance of bilingualism and

furthering the protection of human rights. He later took his expertise in human rights to the international stage.

In a 50-year career, Mr. Yalden excelled in diplomacy, international brinksmanship and protecting the vulnerable, while patiently explaining to English Canada that French was not being forced on anyone.

He was the rare civil servant to have headed two top government agencies. Mr. Yalden was the second commissioner of official languages, appointed the same month Quebec's French language charter, Bill 101, came into force, and he later led the Canadian Human Rights Commission.

He belonged to a small elite cadre of postwar Ottawa bureaucrats that included Allan Gotlieb, the foreign affairs whiz who went on to become ambassador to the United States; Ivan Head, the foreign service officer who became an adviser to Pierre Trudeau; and Keith Spicer, who became the first commissioner of official languages and later headed the Canadian Radio-television and Telecommunications Commission.

Mr. Yalden died in Ottawa Feb. 9 of complications from pneumonia at the age of 84.

"He was one of the most brilliant, outstanding public servants of his generation," enthused James (Si) Taylor, who spent 40 years in the diplomatic corps and enjoyed a long friendship with Mr. Yalden. "That series of senior appointments is quite extraordinary, really. You wouldn't find more than three or four people who would have matched responsibilities like that, one after the other."

As commissioner of official languages from 1977 to 1984, Mr. Yalden brought a calm voice to the table following Ottawa's inaugural appointment to the post, the irascible Mr. Spicer. At times prickly and blunt, traits grounded in his journalist genes, Mr. Spicer conceded he had used "deliberate provocation and humour to get people smiling about official languages rather than snarling," he told The Globe and Mail from Paris. "Max came aboard and anchored my small contribution and added the power of his great experience in government. He really made sure that the job remained non-partisan and he became even more sensitive to the realities of government."

In the linguistically polarized late 1970s, Mr. Yalden suggested that protecting French in Quebec would help it thrive in the rest of Canada. He championed rights for francophones outside Quebec, but called on Quebec to do more to protect its anglophones.

"Confronted with the language tensions that marked several years of his term, [Mr. Yalden] helped mitigate the backlash from a large segment of the population against the Official Languages Act," according to Graham Fraser, the current commissioner of official languages. One of Mr. Yalden's main achievements was to ensure that federal language laws complied with the Charter of Rights, Mr. Fraser noted.

Mr. Yalden "was not a flamboyant person," said Victor Goldbloom, another unflamboyant former commissioner of official languages. "He was a serious, low-key administrator and a very effective one."

As chief commissioner of the Canadian Human Rights Commission from 1987 to 1996, Mr. Yalden "took his time," his son, Robert, said, to focus on three key issues that troubled him: The state of aboriginal peoples, the needs of the disabled and prohibiting discrimination based on sexual orientation. He succeeded in pressing Ottawa to amend the Human Rights Act to outlaw discrimination against gay people and the disabled.

And although he persuaded the government of the day to establish the Royal Commission on Aboriginal Peoples in 1991, he rued the plight of native people as the "most shameful" aspect of Canada's human-rights record, one that is of a "different order of magnitude" than the problems of other groups.

Always courtly, he was not shy about letting Ottawa know of its shortcomings. His annual reports, which bristled with facts and methodical research, routinely blasted the federal government for failing to live up to its own human rights laws and bilingualism policy. Human-rights tribunals, for example, "make a lot of money for the lawyers, but don't do a hell of a lot else." Those reports "are now the stuff of legend," Bernie Farber, formerly of the Canadian Jewish Congress, wrote recently.

But if Mr. Yalden "growled at governments for failing to exercise leadership, he also worked to soothe inflamed public opinion," Queen's University political philosopher Will Kymlicka noted in a Globe and Mail review of Mr. Yalden's 2009 book Transforming Rights: Reflections from the Front Lines. Indeed, the contentious issues he initially faced – chiefly employment equity and accommodation – are now taken in stride by the vast majority of Canadians.

Maxwell Freeman Yalden was born in Toronto on April 12, 1930, the only child of Frederick Yalden, a salesman who had come to Canada from Britain as a child, and Marie Smith, a Trinidad-born nurse. He earned a BA from the University of Toronto in 1952, and completed master's and doctoral degrees at the University of Michigan in the philosophy of language, studies that would come in handy later when Mr. Yalden sought to crack down on a new source of hate speech, the Internet.

Spurning a prestigious Harvard fellowship and a life in academia, he joined the Department of External Affairs, as it was then known, in 1956 and was soon sent to Cambridge to learn Russian. His first posting was to Canada's embassy in Moscow in 1958. Mr. Taylor, who would also serve in the Soviet capital a few years later, recalled a tense time. "It was not easy living in Moscow. It was the height of the Cold War [and] you were under surveillance. But Russia was fascinating," and diplomats drank in her cultural riches.

In 1960, Mr. Yalden was tapped to serve on the Canadian delegation to the Geneva Conference on Disarmament and he worked on the file in Ottawa until 1963 under Lieutenant-General E.L.M. (Tommy) Burns, Canada's chief disarmament negotiator.

A four-year posting to Paris followed, and he returned to Ottawa in 1967 as a special adviser at External Affairs.

It was roughly in this period that Mr. Trudeau, then justice minister, began to notice the talent that was growing at External Affairs and gathered around him a small group of

advisers. According to University of Toronto historian Robert Bothwell, they included Mr. Head, Mr. Gotlieb and Mr. Yalden – the latter two representing "what might be called a realistic approach to Canadian foreign relations."

Mr. Yalden began the process of contributing to the 1969 Official Languages Act. Starting that year, he served in the department of the Secretary of State and was named deputy minister of communications in 1973.

His appointment to commissioner of official languages was important because he was an anglophone who pushed hard for official bilingualism. "It was a very powerful message to French Canada about how serious the public service was about this project," said his son, a lawyer in Montreal. "He was involved in a constant process of explaining and justifying to English Canada why this was important. Separatism was on [the] rise and this was an important way to counter that."

That Mr. Yalden was an anglophone "might have been considered an advantage, as there was still some resistance in certain parts of the country to the federal bilingualism policy," wrote Trudeau-era cabinet minister Marc Lalonde, in an e-mail to The Globe.

Mr. Yalden had few illusions that bilingualism would succeed on a mass scale, however. "I don't think it's realistic to expect that this country is going to be functionally and fully bilingual in the sense of hearing both languages spoken daily and frequently and commonly on the streets of Vancouver or St. John's or in parts of Quebec," he told The Globe in 1977. Even so, "I think that there will be more and more people who will for one reason or another, have an interest in being bilingual, and if they aren't, then making their children so."

Mr. Yalden returned to the diplomatic corps as ambassador to Belgium and Luxembourg, from 1984 to 1987, and was elected in 1996 to the United Nations Human Rights Committee, a rarity for a non-lawyer. He served there for eight years.

Mr. Yalden was named an officer of the Order of Canada in 1988 and promoted to companion in 1999.

He leaves his wife, Janice; son, Robert; and granddaughter, Zoë. The Yaldens' daughter, Cicely, died in an accident in 1990. His memorial service is planned for April.

Mr. Yalden exemplified a bygone time, noted his long-time friend, Mr. Gotlieb, one in which the public service was a calling, not just a job. "It was a different era in which public service was the highest level at which you could contribute to public policy. It meant something."