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Press Clippings for the period of March 16 to 23, 2015
Revue de presse pour la période du 16 au 23 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

Public servants and politics: With election near, bureaucrats reminded of the rules

By Kathryn May, Ottawa Citizen, March 22, 2015

Federal departments are getting their marching orders to ensure public servants know their legal rights and responsibilities when getting involved in political activities in the election this year.

The Public Service Commission, the watchdog of Canada's non-partisan public service, has sent letters to the human resource branches of all departments to remind employees of the rules and code of conduct should they decide to seek nominations, run as candidates or work on political campaigns.

The commission had 155 requests from public servants in 2013-14 for permission to seek nominations or run for office — the highest number ever received in a year. Most were seeking approval to run in municipal elections.

So far this year, the commission has fielded another 125 requests from public servants, including 69 who want to run in municipal elections, followed by 39 seeking federal office and 17 running for provincial seats.

The commission tries to keep tabs on public servants' awareness of their political rights as well as their responsibilities as neutral employees. Its last survey showed that 75 per cent of bureaucrats felt they understood and were aware of the rules.

About four per cent of those surveyed said they engaged in political activity other than running for office — such as fundraising for a party or distributing campaign information.

There will be a number of elections in Canada this year at different levels of government, but public servants' involvement in the federal election is always a sensitive issue. And the Conservatives have had a particularly testy and distrustful relationship with the public service as jobs and programs were cut and benefits reduced.

The 17 unions representing public servants have signed a "solidarity" agreement for collective bargaining and many have been gearing up for major "political" campaigns in the run-up to the election.

The Professional Institute of the Public Service of Canada (PIPSC) shifted its historic non-political approach when it decided to "take all necessary" political action — short of becoming overtly partisan — for the 2015 election and a round of bargaining that could end with most of its members on strike.

PIPSC president Debi Daviau has said the union isn't endorsing a party or candidates but will publicly oppose the Conservatives' record in what it calls an "issue-based" campaign.

"We very much want a change in government," said Daviau. "Are we targeting Conservatives? … In strict partisan terms no, but we will be holding the Conservatives' feet to the fire on the issues that are important to our members."

The Public Service Alliance of Canada has typically been the most organized, with a healthy political action budget and a string of political action committees across the country.

The giant union is still discussing political strategy for the election but is also taking aim at the Conservatives' record on public services, from child care and unemployment insurance to veterans' benefits. The union typically doesn't support a party but its political action committees have backed or targeted local candidates.

PSAC president Robyn Benson said the union is encouraging members to talk to candidates, their friends, neighbours and co-workers about the Conservative record and "use their democratic rights to elect a government that will deliver strong public services to citizens."

Along with this year's federal election, expected in October, there are provincial elections in Prince Edward Island, Manitoba, Saskatchewan, and Newfoundland and Labrador, and a territorial election in Northwest Territories. The Alberta government has broadly hinted at an election this spring. Municipal elections are being held in the Yukon, Northwest Territories and Nunavut.

The Supreme Court of Canada's pivotal Osborne decision in 1991 changed the landscape for public servants, who were once forbidden to take part in political activities. That

ruling recognized the importance of political neutrality while balancing the right of ordinary public servants to participate in political activities.

As a result, public servants are allowed under the Public Service Employment Act to take part in political activities as long as it doesn't impair or compromise their ability to do their jobs impartially — or leave a perception of compromise.

They can support or belong to a political party, they can support or oppose a candidate in an election, and they can become candidates themselves. All of these rights, however, must conform to the values and ethics code they all sign when joining the public service and any other code of conduct in the department.

One of those values is the "duty of loyalty" to the government — central to impartiality — promising to be loyal to the government regardless of the party in power.

Public servants must weigh a range of factors when deciding whether to get involved in a campaign. The nature of their work, role, level and importance and visibility within the department's hierarchy must be considered. Deputy ministers and other senior bureaucrats, for example, can vote but must otherwise steer clear of all political activity.

It's the commission's job to ensure the public service maintains its neutrality. It has the exclusive authority to decide who can run. Public servants who want to seek a nomination or run for office must get the commission's approval. If approved, they are on leave without pay. If elected, they must leave the public service.

The commission is also responsible for investigating any complaints of improper political activities or allegations of political meddling or influence in staffing jobs in the public service.

The commission offers a range of "tools" to help public servants determine whether their political activity is out of bounds or not. It has videos explaining the candidacy process and new online "self-assessment" questionnaires that will indicate whether the activity crosses the line in light of the jobs they hold.

There are also "designated political activities representatives" in departments to consult.

Where to draw the line on what's too political can be murky. Benson said PSAC is strongly encouraging members to exercise their political rights and most should face few restrictions.

"The PSAC agrees that federal public service impartiality is a cornerstone of our democracy, but this does not preclude active political participation of our members, the vast majority of whom should not be subject to any limitations on their political expression," she said.

Dos and Don'ts for public servants

PSAC recently sent its members a list of activities ordinary public servants can do outside work and on their own time without compromising their neutrality. It includes:

- Wear a candidate button in public
- Place an election sign on your property
- Work as a canvasser
- Volunteer in a campaign office
- Take part in election day activities
- Attend peaceful demonstrations on political topics
- Solicit funds from the public for a candidate
- Write a letter to the editor endorsing a candidate or party

The union noted, however, bureaucrats shouldn't identify themselves as public servants or wear their uniforms or I.D. cards when canvassing, soliciting donations or attending public events.

Public servants in politics

Of the 155 public servants who sought the Public Service Commission's approval in 2013-14, 81 per cent of the requests were to run municipally. Nearly 60 per cent of requesters wanted permission to run in Quebec municipalities.

About 68 per cent of those who sought permission to seek nomination or run last year had sought similar approval in previous elections.

About 18 people sought candidacies in provincial elections: one in Nunavut, two in Nova Scotia, two in Ontario, six in New Brunswick, two in Ontario, and seven in Quebec.

The PSC received 12 requests for candidacies at the federal level.

LeDroit

Le ras-le-bol se fait sentir

Paul Gaboury, Le Droit, le 20 mars 2015

Les principaux syndicats de la fonction publique fédérale ont voulu démontrer, une fois de plus, leur solidarité contre le gouvernement Harper en organisant diverses manifestations à travers le pays, hier midi, dont une marche sur la promenade du Portage à Gatineau.

Depuis janvier, les syndicats ont convenu d'organiser des journées d'action le 19 de chaque mois, afin de souligner qu'ils veulent se défaire du gouvernement conservateur lors des élections prévues le 19 octobre prochain.

Ces journées visent notamment à dénoncer les mesures d'austérité et leur impact sur les services publics. L'Alliance de la fonction publique du Canada (AFPC), l'Institut professionnel de la fonction publique et l'Association canadienne des employés professionnels ont eu l'appui de plusieurs autres syndicats du secteur public.

« Le compte à rebours est déjà lancé depuis janvier et il nous reste encore sept mois avant les prochaines élections. Nous devons renverser la vapeur. Le 19 octobre prochain, il faut changer le gouvernement », a lancé au Droit Larry Rousseau, vicepresident exécutif de la région de la capitale nationale à l'AFPC.

« Ce n'est pas toujours évident de sortir à l'extérieur pour les membres, mais les gens sont de moins en moins frileux à mesure qu'ils s'informent. Ils sont de plus en plus conscients des enjeux. Ils comprennent qu'ils doivent démontrer qu'ils en ont assez pour nous aider à défendre les emplois, leurs conditions de travail et les services publics », affirme celui qui a été battu lors de la course à l'investiture du NPD dans le comté de Bourassa.

Reprise des négos

L'AFPC reprend les négociations mardi, après une pause de quelques semaines. Plus de 100 000 membres sont visés par les présentes négociations.

L'enjeu du régime des congés de maladie reste au coeur des échanges. À l'AFPC, on espère que le gouvernement réagira positivement à la demande de mettre en oeuvre la norme nationale sur la santé et la sécurité psychologiques en milieu de travail, une proposition à laquelle adhèrent syndiqués et gestionnaires de la fonction publique.

Selon M. Rousseau, la mise en oeuvre de cette norme permettrait d'améliorer les conditions dans « les milieux de travail toxiques » qui causent du stress à un grand nombre d'employés. La demande pour implanter cette norme a été déposée lors des dernières rencontres de négociations par l'AFPC. « Nous avons hâte de voir si le gouvernement va répondre positivement à cette demande qui rallie les syndiqués et gestionnaires », a indiqué M. Rousseau.

Récemment, les anciens combattants, avec l'appui de l'AFPC, ont réussi à faire quelques gains face au gouvernement Harper, pour améliorer le sort des militaires blessés ou malades, un exemple qui devrait servir aux autres employés du secteur public dans cette ronde de négociations.

« Le gouvernement Harper n'est pas un gouvernement qui a l'habitude de négocier. Mais les anciens combattants ont démontré une grande solidarité, avec l'appui de notre syndicat, a souligné M. Rousseau. La moitié de la salade a été servie, et ils attendent la fin du repas. Et même s'ils n'ont pas tout à fait gagné cette bataille, il ne faut pas oublier ce qu'ils ont fait pour y arriver. »

The StarPhoenix

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PSAC holds protest over sick-leave

Terrence McEachern, The Star Phoenix, March 20, 2015

Although negotiations on collective agreements are underway with the federal government, unionized members of the Public Service Alliance of Canada (PSAC) took to the streets to protest proposed changes to a policy involving sick leave.

In Regina, about 60 public workers demonstrated Thursday during the noon hour in front of the Alvin Hamilton Building on the corner of Rose Street and 11th Avenue. Demonstrations were held in cities across Canada.

Speaking to reporters, PSAC prairie spokesman Chad Kemery read from a statement calling for "healthier workplaces, better public services for all Canadians and defending collective agreements."

He said "all Canadians deserve adequate sick leave. That's the fight this government should be fighting."

When asked to provide specifics of the proposed changes, Kemery said the federal government is "talking about abolishing all sick time as banked." He added that "everything is still open to negotiation."

Kemery described the government's proposed changes as the "go to work sick" plan.

According to PSAC, the plan includes eliminating accumulated sick leave, reducing annual paid sick leave to 37.5 hours "subject to the absolute discretion of the employer" and enacting a seven-day wait period before employees can access short-term disability benefits.

Kemery said some unions within PSAC have been without a collective agreement since June, while others are set to expire.

Saskatchewan Federation of Labour (SFL) president Larry Hubich said the federal government's proposal is counter-productive.

"There is concern that the employer is attempting to bring them back to work before they are well if they're off on sick leave. And that's really not the kind of society that we live in. Certainly, people are entitled to recover from illnesses," he said.

"They can spread what they are ill with. So, there is a reason why we've negotiated these kinds of provisions into collective agreements, and it's important for governments to respect those provisions."

Shelagh Campbell, an assistant business professor at the University of Regina, noted that accumulated sick-leave credits, if paid out rather than used, have interesting financial implications.

"(Accumulated sick-leave credits) represent a big cost to the employer. They represent a big benefit to employees, and they bargained hard for it in the past," Campbell said, adding sick-leave credits are not typical of the private sector.

"You're supposed to come to work (and) do your job. Great. We're not going to reward you for not being sick."

Campbell said the seven-day wait period without pay before accessing short-term disability benefits looks like a penalty.

In an email, a spokesperson for the Treasury Board said the government is proposing a shortterm disability plan to move away from the "40-year-old sick (time) accumulation system (that) is antiquated and not responsive to the needs of the majority of public service employees," adding the plan would help public servants get healthy and back to work while "protecting taxpayers who pay the bill."

LETHBRIDGE Herald

Federal workers concerned about changes to sick benefits

Dave Mabell, The Lethbridge Herald, March 20, 2015

The Canadian government says it wants healthy, productive employees. But politicians are undermining that objective, according to a spokesman for federal personnel in Lethbridge.

David Pearson joined a noon-hour rally Thursday – one of dozens across the nation – to signal workers' concerns over announced changes in their sick benefits. They took their stand in front of the constituency office of MP Jim Hillyer.

Pearson, president of Lethbridge local of the Public Service Alliance of Canada, said cutbacks in sick leave provisions previously negotiated would penalize long-time employees as they near retirement age.

By remaining healthy and on the job, he said PSAC members have been able to accumulate the days they'll need if the doctor says they'll need a hip replacement – or they suddenly face coronary issues.

It's also allowed employees needing radiation therapy, for example, to take the time required for treatment knowing they could return to work when they're able.

The union began national negotiations last summer, and after a break, bargaining is expected to resume next week. But Pearson said the Conservative government has signalled it wants to take away some of the workers' current health benefits.

"It looks like the government wants people with a health problem to just quit."

That's what happens in private-sector jobs where there's no union protection, Pearson pointed out.

When workers have inadequate health and sickness benefits, he added, there's an increased danger of people coming to work even though they'll be ill – and spreading their illness.

Across Canada, union officials said they're also working for a labour agreement that will address "toxic workplace" situations where employees' mental health is also at stake.

Pearson said the national union is also pushing for an enhanced Canada Pension Plan, where workers are allowed to double their contributions in return for larger cheques when they retire.

For Canadians reaching retirement years, "their pensions are very important.

"And the CPP is the most effective way" of funding them, at much lower cost than through private, for-profit savings schemes.

The alliance is also speaking out against federal service cuts in smaller centres across Canada, he said. Pearson said a "1-800 number" is no substitute for a person in a local office, ready to help.

Public service unions protest 'invasive' security screening

Fingerprinting required for certain positions as of July 2015

CBC News, March 16, 2015

The union representing professional public employees has filed a policy grievance after credit checks were added to standard mandatory security screening for public servants.

All federal departments and agencies have until October 2017 to implement the requirements of the new standard on security screening, which came into effect in October 2014, for new and current public servants, the Treasury Board confirmed.

"A credit check will be reviewed as part of the complete assessment of reliability and trustworthiness when dealing with sensitive government information," Treasury Board spokeswoman Lisa Murphy told CBC News in an email.

"This practice is common in certain private industries [such as financial services] to indicate excessive indebtedness that may increase temptation to commit unethical acts."

Criminal record checks are also part of security screening, and will include obtaining a person's fingerprints for certain positions as of July 2015, she said.

"This would apply to positions that are related to or directly support security and intelligence functions," Murphy said. "This will not change the information being checked or released but provides a higher level of security than the results of a name-based criminal record check."

The standard screening applies to about 90 per cent of positions and contracts, she said.

Union calls new screening 'very invasive'

"It's very invasive, particularly fingerprinting, which is akin to sort of any other bodily sample that you might require from an employee," said Isabelle Roy, general counsel for the Professional Institute of the Public Service of Canada.

While the union for professional public servants has already filed a grievance with the Treasury Board, the Public Service Alliance of Canada said it is still considering how to challenge the screening.

"We're very confused about the whole need for this," said union vice-president Chris Aylward.

"We certainly don't agree with just simply a blanket approach to it, because it's certainly going to affect the most vulnerable. When you look at people who are in bad financial

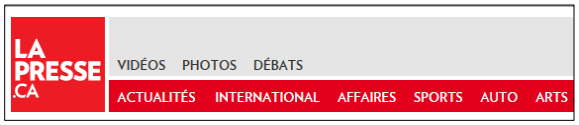
situations, putting this weight on them about having to be concerned, maybe, about future employment, that's certainly an issue."

Industry Canada employee Sandra Tremblay said the new screening with a credit check goes too far.

"[It] could be a mistake from when you're younger and you didn't pay your credit card," she said.

She also doubted whether an employee facing towering debt would even be able to reduce it by stealing from work.

"I think with all the procedures that are in place — you cannot take money out of the government like that — it's a little bit intrusive," Tremblay said.



Surveillance des fonctionnaires: le Commissaire à la protection de la vie privée préoccupé

Hugo de Granpré, La Presse, le 17 mars 2015

(OTTAWA) Des fonctionnaires fédéraux seront tenus de fournir leurs empreintes digitales et feront l'objet de vérifications de crédit en vertu d'une nouvelle politique qui préoccupe les syndicats et le Commissaire à la protection de la vie privée du Canada.

Cette politique est entrée en vigueur le 20 octobre et elle sera mise en oeuvre graduellement d'ici 2017. Elle s'applique aux fonctionnaires actuels de même qu'aux nouveaux arrivants.

En vertu des nouvelles règles, environ 90% des employés de la fonction publique seraient désormais sujets à des vérifications de solvabilité «provenant d'une agence d'évaluation du crédit». Le gouvernement précise en outre qu'il surveillera les réseaux sociaux pour «évaluer la fiabilité d'un particulier et [ou] sa loyauté envers le Canada». Enfin, la Gendarmerie royale du Canada se réserve le droit d'exiger les empreintes digitales d'un fonctionnaire «si cela est jugé nécessaire en raison des fonctions du poste».

«Cette pratique [prélever les empreintes digitales d'employés fédéraux] s'appliquerait aux postes en lien avec la sécurité et les services de renseignement ou qui appuient directement ces fonctions», a affirmé une porte-parole du secrétariat du Conseil du Trésor.

Inquiétude des syndicats

Mais les principaux syndicats de la fonction publique s'inquiètent de la portée trop large de ces changements. L'Institut professionnel de la fonction publique du Canada a déposé six griefs qui dénoncent les violations potentielles des droits de ses membres et le fait qu'il n'a pas été consulté. L'Alliance de la fonction publique du Canada (AFPC) l'appuie dans ces démarches.

«L'Institut convient qu'il y a certains niveaux et certains types de postes pour lesquels cela pourrait être raisonnable d'exiger ces choses-là. Mais ce qui n'est pas clair pour nous, c'est la logique derrière une politique d'une aussi large portée. Elle pourrait s'appliquer à tout le monde qui applique pour une cote de "fiabilité", qui est la cote de base» pour travailler dans la fonction publique, a précisé la conseillère générale aux affaires juridiques, Isabelle Roy.

Une porte-parole du Commissariat à la protection de la vie privée a précisé que l'organisme a déjà formulé certaines préoccupations à l'égard de cette politique lorsqu'il a été consulté dans le cadre de son élaboration. «Nous avons exprimé plusieurs préoccupations, notamment au sujet du recours systématique et obligatoire aux vérifications de crédit, a précisé Tobi Cohen. Nous avons également soulevé des préoccupations concernant les vérifications de sources ouvertes dans la norme, comme la surveillance des sites de médias sociaux.»

Le gouvernement maintient que ces changements sont nécessaires pour «protéger les intérêts et la sécurité du gouvernement du Canada».

«C'est une approche uniforme et c'est une pente glissante», croit quant à lui Chris Aylward, vice-président exécutif national de l'AFPC.

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Bureaucrats to use honour system for texts

By Steve Rennie, The Canadian Press, Metro Ottawa, March 20, 2015

OTTAWA – While controversy swirls around Hillary Clinton for deleting tens of thousands of emails in a personal account she used while serving as U.S. secretary of state, the Canadian government has based its own approach to officials' private text messages on the honour system.

Treasury Board guidelines give bureaucrats free rein to wipe any non-work-related instant messages from their government-issued mobile devices. They are supposed to hold on to texts or PINs that mention government business for record-keeping purposes.

But a newly released document shows the department grappled with an unforeseen technological hurdle that could have scuttled the whole plan.

"Some models of the new generation BlackBerry devices (e.g. Q10 or Passport) do not permit a user to forward PIN-to-PIN messages to email accounts, this making it difficult to retain such messages, or to capture them for response to an (access-to-information) request," says a note attached to a December 2014 memo for Treasury Board Secretary Yaprak Baltacioglu.

PINs, or personal identification numbers, are unique IDs that can be used to send secure messages to other BlackBerry users.

That limitation put Treasury Board — which is responsible for coming up with information technology and access-to-information rules for all government departments — in a bit of a bind.

BlackBerry came up with a few work-arounds. Bureaucrats could cut and paste their PIN messages — including the "to," "from," "date," "time" and "subject" fields — into an email, which they would then send to themselves.

They also had the option of taking screen shots of their PINs, or they could simply write out a copy of their message and store it away in an email message or a Word document.

Treasury Board suggested ditching PINs altogether.

"Please note that it is a recommended best practice to discontinue the use of PIN-to-PIN messaging and use BlackBerry Messenger (BBM) capability instead, as BBM messages can be easily forwarded to a government of Canada email address," says the note attached to Baltacioglu's memo.

The Canadian Press obtained the document under the Access to Information Act.

Long before Clinton — the presumptive Democratic presidential nominee — came under fire for setting up a do-it-yourself home email system when she was secretary of state, Canada's information commissioner raised concerns about electronic record-keeping.

In November 2013, Suzanne Legault urged the government to ban instant messaging on federally issued BlackBerrys and other wireless devices because such messages evaporate so quickly, erasing part of the government record.

In response to Legault's report, Treasury Board came up with a protocol for instant messaging that allows public servants to delete messages that "do not have business value."

The new protocol also recommended that departments and agencies stop electronically saving instant messages, though it is not clear how many have done so.

"For details relating to information management practices in specific departments, please contact them directly," Treasury Board spokeswoman Lisa Murphy wrote in an email.

But at least one prominent department has adopted the practice.

The Toronto Star reported in December that the Canada Revenue Agency had destroyed all text message records of its employees and stopped electronically saving such messages.

The newspaper cited documents released under the Access to Information Act that said Shared Services Canada — the federal organization responsible for information technology services — had wiped the records last August.

That revelation prompted a complaint to information commissioner Suzanne Legault's office from New Democrat MP Charlie Angus.

Asked how the government would know if one of its workers did not archive work-related instant messages, Murphy replied that public servants "are professional and take the preservation of the public trust seriously."

"The government expects that all public servants and staffers will respect the requirements to protect the information of business value," Murphy wrote in an email.

"Training and awareness on employees' responsibilities for record keeping is a requirement of the directive on record keeping."

Meanwhile, Angus also recently asked Legault's office to investigate a former Conservative ministerial staffer's systematic deletion of emails.

A recently published ethics commissioner's report found that Michael Bonner, a senior policy adviser to Jason Kenney in 2013 when he served as minister of employment and social development, deleted his electronic messages every two weeks. Kenney is now defence minister.

LeDroit

Syndicats et environnementalistes se disent ciblés

Julien Paquette, Le Droit, le 16 mars 2015

Le projet de loi C-51 pourrait bien avoir une autre cible que les terroristes, affirment les critiques rassemblés, samedi, devant l'édifice Langevin.

Le vice-président exécutif régional de l'Alliance de la fonction publique du Canada, Larry Rousseau, ne mâche pas ses mots pour décrire le projet de loi. «[Ils veulent] s'assurer que les environnementalistes et les autochtones ne vont pas freiner le développement des ressources naturelles qui met de l'argent dans les poches des multinationales, des sociétés pétrolières, etc. C'est ça le but», affirme le syndicaliste.

M. Rousseau estime que la définition de terrorisme et de sécurité nationale dans C-51 est floue. Il craint que la sécurité économique du pays soit également protégée de façon à empêcher la protestation contre des projets controversés, par exemple, au point de vue environnemental.

«On a 300 000 wagons de chemins de fer qui traversent le pays avec du brut de l'Alberta. [...] Si les environnementalistes vont dire, écoutez, ici, le passage du chemin de fer est évidemment désuet, il faut qu'il soit réparé et on ne veut plus que les trains passent là, à ce moment-là, ils seront étiquetés comme des terroristes.»

La militante des droits de la personne Monia Mazigh exprime également son inquiétude de voir ce projet de loi restreindre les libertés personnelles d'opposants du gouvernement.

La députée néo-démocrate d'Hull-Aylmer, Nycole Turmel, donne également écho à ces appréhensions. Elle soutient que les nouvelles mesures comprises dans C-51 pourraient limiter le droit de se regrouper pour manifester.

Ça ne fait aucun doute pour Larry Rousseau, C-51 donne des outils aux gouvernements pour chasser les sonneurs d'alarme en leur sein. Il prétend que les fonctionnaires auront plus peur que jamais de dénoncer des actions répréhensibles au sein de leur ministère. «Personne ne voudra s'opposer, prendre la chance de savoir si ça va invoquer une sanction ou une action de la justice. Tant qu'à faire, on ne fera rien.» M. Rousseau décrit C-51 comme étant du «stalinisme». Il soutient que le fait de réfléchir à une action, si cette réflexion laisse des traces, pourrait être réprimandé.

C-51: Québec déplore l'approche unilatérale d'Ottawa

La Presse Canadienne, le 18 mars 2015

Le gouvernement Couillard est inquiet de la portée du projet de loi fédéral antiterrorisme C-51 et déplore l'approche unilatérale d'Ottawa dans ce dossier.

Après plusieurs semaines de pressions de l'opposition, Québec a ainsi finalement fait connaître sa position, en transmettant une lettre mardi à trois ministres conservateurs.

La lettre, qui a été déposée en Chambre mercredi matin, fait part de «plusieurs préoccupations» du gouvernement du Québec.

Québec rappelle notamment que «les impératifs de sécurité doivent être pondérés au regard des protections constitutionnelles dont bénéficient tous les citoyens».

Le gouvernement Couillard se dit «préoccupé par la nécessité (...) de protéger adéquatement les renseignements personnels», et s'inquiète aussi des «vastes pouvoirs» qui seraient conférés au Service canadien du renseignement de sécurité (SCRS).

Pour appuyer ses dires, il rappelle même les critiques d'anciens premiers ministres fédéraux, d'anciens juges et professeurs d'université.

Enfin, le gouvernement Couillard déplore ne pas avoir été consulté au préalable et reproche au fédéral sa démarche unilatérale.

Cependant, en Chambre, la ministre de la Justice, Stéphanie Vallée, a assuré qu'elle ne voulait pas se quereller avec Ottawa, contrairement au Parti québécois. Elle a dit qu'elle souhaitait travailler en collaboration avec le gouvernement fédéral.

La lettre a été signée par elle, par la ministre de la Sécurité publique, Lise Thériault, et leur collègue des Affaires intergouvernementales canadiennes, Jean-Marc Fournier.

OTTAWA CITIZEN

Expert challenges government claims that C-51 similar to allies' powers

Ian MacLeod, Ottawa Citizen, March 17, 2015

The government is being challenged over its repeated claim that its divisive security bill, C-51, will upgrade Canada's spy agency powers to those of our closest allies.

Not so, says Craig Forcese, a national security law expert and leading critic of the proposed legislation.

"I believe these claims to be incorrect, or at least require substantial nuancing," he writes in the respected National Security Law blog.

When the Conservatives unveiled the legislation Jan. 30, a government backgrounder noted that "intelligence services in most of Canada's close democratic allies have had similar mandates and powers for many years."

Public Safety Minister Steven Blaney has repeated it many times, as have other Conservative MPs.

Forcese recently reviewed national security law in the United States, United Kingdom, Australia and New Zealand, and spoke with experts. He concludes that "none of our 'Five Eye' allies have seen fit to give their domestic covert service the power to do things domestically that the government wants CSIS to do in Canada.

"I have spoke to colleagues in the U.K. and they don't seem to think MI5 has powers of the sort that the government is proposing for CSIS. The U.S. doesn't have a CSIS-type organization, and the FBI is law enforcement.

"The domestic services of these countries simply do not have powers analogous to what Bill C-51 proposes for CSIS. Period."

At issue is one of C-51's most contentious provisions, dramatically expanding the mandate of the Canadian Security Intelligence Service (CSIS).

The domestic agency's current intelligence-collection-only role would be broadened to include the ability to "take reasonable and proportional measures" to actively disrupt threats to national security, whether in Canada or globally.

If the disruption activities are illegal or unconstitutional in Canada, CSIS would require a Federal Court warrant, essentially granting it impunity for law-breaking in the name of national security. The warrants and the court process for granting them would be top secret.

Despite Forcese's findings, the government insists that "the intelligence services of most allies have disruptive powers and/or mandates," Jean Paul Duval, a Public Safety spokesman, said in an email. He named Sweden, Norway, Finland, Denmark, France, the U.K., U.S. and Australia.

Australia does have a “special intelligence operations regime” that grants Australian Security Intelligence Organisation (ASIO) officers impunity for unlawful acts done in the course of specially approved undercover operations. C-51 proposes similar limitations.

But there are crucial differences between the two pieces of legislation.

ASIO has no mandate to disrupt threats. It is, like the current CSIS, a gatherer of security intelligence for government, says Ben Saul, a University of Sydney scholar and expert on global counter-terrorism law.

Any illegal ASIO “special intelligence operations” must be directed solely at intelligence gathering, not the “kinetic” threat disruption envisaged under CSIS’s proposed additional mandate.

The New Zealand Security Intelligence Service Act makes it clear, too, that, “it is not a function of the Security Intelligence Service to enforce measures for security.”

But what if the government’s contested statements about C-51 refers to other nations’ foreign security services, such as the CIA and the British MI6? They certainly have kinetic powers.

“If so, well, that would be a huge problem since those services don’t exercise their powers domestically for the very reason that they would often be unlawful and trench deeply on civil liberties,” says Forcese.

“Even here, however, the government misstates if it insists that whatever conduct CSIS gets up to internationally will be authorized by a Federal Court warrant, and this makes for more robust accountability than exists among Five Eye foreign intelligence services.

“Canadian law doesn’t apply overseas. So it can’t be violated. So no warrant is ever required. (So) no, we won’t have more checks and balances for CSIS foreign operations, because the warrant requirement will rarely apply to foreign operations.

If all this is correct, he writes, it means Canada is prepared to let its domestic intelligence service act beyond the law in a manner that has no precedent among our closest allies.

“So exactly how are we playing catch up to ‘close democratic allies have had similar mandates and powers for many years’? It looks like we are leading the charge in eroding the rule of law.”

Une centaine de groupes contre C-51 au nom de la liberté d'expression

La Presse, Presse Canadienne, le 19 mars 2015

MONTRÉAL - Ils devaient être 70; or, ils sont depuis jeudi matin plus de 100 groupes du Québec à s'opposer au projet de loi antiterroriste C-51, estimant que leurs droits de s'exprimer, de manifester et de s'opposer sont ainsi brimés.

«La lutte contre le terrorisme doit viser les terroristes, non pas les adversaires politiques du gouvernement fédéral», ont lancé à l'unisson certains représentants de ces groupes, qui ont rencontré la presse, jeudi à Montréal, pour exposer leurs doléances face au projet de loi antiterroriste.

À leurs yeux, la définition de ce qui peut être considéré comme une menace à la sécurité nationale, une menace au Canada ou à son développement économique dans ce projet de loi est beaucoup trop large et pourra mener à des dérapages. Des actions et des manifestations comme le blocage d'une route, d'un projet de pipeline, un sit-in ou une grève qui ne respecterait pas les balises du Code canadien du travail pourraient être interprétées comme une entrave au fonctionnement d'infrastructures essentielles, donc visées par la future loi.

Le représentant d'un des groupes d'opposants, Dominique Peschard, de la Ligue des droits et libertés, a fait un parallèle avec la Gendarmerie royale du Canada, qui avait brûlé des granges et volé les listes de membres du Parti québécois dans les années 1970, au nom de la sécurité nationale.

Certains de ces groupes pourraient même emprunter éventuellement la voie juridique pour contester le projet de loi, au nom de leur liberté d'expression, protégée par la Charte canadienne des droits et libertés.

«Le premier geste qu'on pose aujourd'hui, c'est un geste de mobilisation des groupes de la société civile, un geste de mobilisation citoyenne et, surtout, de conscientisation de la population par rapport au phénomène. Mais par rapport aux voies légales, c'est bien évident qu'il n'y a rien qui est exclu pour nous», a prévenu le président de la CSN, Jacques Létourneau.

Les communautés autochtones également se sentent ciblées par le projet de loi C-51. «Nous, ce qu'on fait, c'est souvent des mobilisations pour un blocus économique sur nos territoires. Donc, on se sent totalement visés par ce projet-là. Et oui, c'est sûr qu'on va aller en cour. Présentement, l'article 35 de la Constitution canadienne reconnaît nos droits ancestraux, nos droits issus de traités. C'est le plus gros levier qu'on a, sauf qu'économiquement, on n'est pas les plus riches. Et aller en cour ça prend de l'argent, ça prend des ressources», a commenté de son côté Melissa Mollen Dupuis, de l'organisation autochtone Idle no more.

Odette Sarrazin, du Regroupement vigilance hydrocarbures Québec, croit que même les simples comités de citoyens qui s'opposent au gaz de schiste, à un pipeline qui passe dans leur communauté, pourraient être visés par C-51, au nom du développement économique du Canada.

Le projet de loi prévoit «des mécanismes qui pourraient aller beaucoup plus loin que de viser les groupes à caractère terroriste», estime Jacques Létourneau, de la CSN. «Ceux qui sont devant nous à Ottawa, ce sont des gens qui n'aiment pas les groupes de pression, qui n'aiment pas l'opposition, qui n'aiment pas les syndicats et les groupes environnementalistes. Dans ce sens-là, C-51, à plusieurs égards, c'est extrêmement inquiétant», a opiné le dirigeant syndical.

À Ottawa, le ministère de la Sécurité publique, Steven Blaney, s'est défendu de vouloir nuire aux droits et libertés des citoyens avec C-51.

«Nous rejetons l'argument selon lequel chaque fois qu'il est question de sécurité, nos libertés sont menacées. Les Canadiens comprennent que leur liberté et leur sécurité vont de pair. Les Canadiens attendent de nous que nous les protégions et c'est exactement ce que font les mesures de précaution contenues dans le projet de loi», a-t-il fait valoir.

Il a ajouté que les mesures proposées «protègent spécifiquement les activités licites de défense d'une cause, de protestation ou de manifestation d'un désaccord».

Parmi les groupes d'opposants, on retrouve également la Confédération des organismes de personnes handicapées du Québec, l'Entraide missionnaire, l'Association des avocats de la défense de Montréal, Amnistie internationale section Canada francophone, Palestiniens et Juifs unis, la Fédération des femmes du Québec, l'Union des consommateurs de même que des individus.

MacKay asked to review case of judge convicted in wife's murder

CTV News, March 20, 2015

Lawyer James Lockyer is asking the federal justice minister to review the case of Jacques Delisle, the former Quebec judge convicted of first-degree murder in the death of his ailing wife.

Lockyer, of the Association in Defence of the Wrongly Convicted, is asking that Peter MacKay order a new trial for Delisle, which would give the 79-year-old the opportunity to testify in his own defence.

During a news conference in Quebec City on Friday, Lockyer said he believes that Delisle's "failure to testify played a huge role in his wrongful conviction."

Delisle was convicted of first-degree murder in 2012, and is currently serving a life sentence in prison.

His wife, Nicole Rainville, was found dead in the couple's Quebec City condominium in November 2009, months after Delisle retired from the province's court of appeal. Rainville, 71, had suffered a gunshot wound to the head.

Delisle maintained that his wife took her own life because she was in poor health, after suffering a stroke in 2007 that left her partially paralyzed. She had also suffered a fractured hip in the months before she died.

Lockyer said Friday that the "Crown experts were wrong and the defence experts were right that Mrs. Rainville must have committed suicide."

He has also asked the Centre for Forensic Science in Toronto to conduct a review of the case, with the consent of its Quebec counterpart. The director of the centre has told Lockyer he will make a decision in the coming weeks.

"We always say that wrongful convictions do not have a size or a shape to them," Lockyer said. "It could happen to anyone. It could happen to you, to me, and in this case a judge of the court appeal."

Three factors led to Delisle's conviction, Lockyer said, including the fact that, at first blush, the evidence at the scene did not support suicide and investigators began working on the theory that Rainville was murdered.

Delisle's status as a judge also hurt him at trial, Lockyer said. But it was Delisle's last-minute decision not to testify in his own defence that sealed the conviction, he said.

Delisle was heavily influenced by requests from his children and children-in-law that he not testify and make potentially embarrassing details public, including that he provided his wife with the gun.

The couple's grown son, Jean Delisle, said Friday that he and his sister, Helene, feel "partly responsible" for the situation their father is in.

"His concern for the impact of his testimony on his family apparently weighed heavily in his decision making, and in that sense the influence we had on his decision is also a weight that we will be carrying forever," Jean Delisle told reporters.

"We cannot accept that he would spend the rest of his life in jail for a crime that he did not commit."

Top court sides with Catholic school in divided ruling on religious freedom

The Globe and Mail, Canadian Press, March 19, 2015

A divided Supreme Court of Canada disagreed over the subtleties, but in the end upheld the religious freedom of a historic Montreal Jesuit school to teach Catholicism in the way it chooses.

The high court ruled Thursday that Quebec infringed on the religious freedom of Jesuit-run Loyola High School in Montreal by refusing it an exception from teaching the province's ethics and religious culture program.

But the high court was divided by a 4-3 margin on how to resolve the clash between religious freedom and the need to follow the secular law of the province.

A vocal minority, led by Chief Justice Beverley McLachlin, said they didn't think the majority struck the right balance between protecting freedom of religion and the need to follow the law.

In the narrowest legal sense, the ruling grants the school's appeal so it can use its own course and teach the province's Ethics and Religious Culture or ERC program from a Catholic perspective.

The school can now reapply to Quebec's education ministry for an exemption to teach the ERC course and that decision must be guided by Thursday's ruling.

Paul Donovan, Loyola's principal, said the school encourages debate and discussion in its classrooms, and has educated many prominent people, politicians and clergy, since its founding in 1848.

"We want them to know what it is they're accepting or rejecting," he said. "To say, I don't want to be a Catholic, that's up to each individual. But you got to know what you're saying no down."

John Zucchi, the Loyola parent who was the main appellant in the case, said he didn't want to put his son "in a Catholic ghetto" by sending him to the school.

Loyola, he said, "was completely engaged with the world," and has educated politicians and other prominent people.

The ruling comes amid the backdrop of political, cultural and religious acrimony that has arisen in Ottawa around the issues raised by Prime Minister Stephen Harper's position that women taking the oath of citizenship should not be allowed to wear a face-covering niqab.

The high court ruled on the issue in 2012 in a similar case in Drummondville, Que., involving a public school.

In that case, the Supreme Court ruled that teaching students about world religions did not infringe the rights of Catholic parents who wanted to raise their children in their faith.

Thursday's case revolves around Quebec's law that requires schools to teach religions from a secular, cultural and morally neutral perspective in private schools.

Under the law, schools can apply for an exemption that allows an alternative course to be taught as long as the minister of education approves it. Schools are only allowed to teach an alternative course as long as teachers steer clear of injecting their own religious beliefs.

"To ask a religious school's teachers to discuss other religions and their ethical beliefs as objectively as possible does not seriously harm the values underlying religious freedom," wrote Justice Rosalie Abella for the majority.

"But preventing a school like Loyola from teaching and discussing Catholicism in any part of the program from its own perspective does little to further those objectives while at the same time seriously interfering with the values underlying religious freedom."

Loyola's exemption, the court held, "cannot be withheld on the basis that Loyola must teach Catholicism and Catholic ethics from a neutral perspective."

However, the minority opinion, penned by McLachlin and Justice Michael Moldaver, took issue with how all of this would play out in a practical sense in a classroom.

"Requiring Loyola's teachers to maintain a neutral posture on ethical questions poses serious practical difficulties and represents a significant infringement on how Loyola transmits an understanding of the Catholic faith," they wrote.

"The net effect would be to render them mute during large portions of the ethics."

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Cours d'éthique religieuse: l'école Loyola a gain de cause en Cour suprême

Hugo de Granpré, La Presse, le 19 mars 2015

L'école secondaire Loyola ne devrait pas être forcée d'enseigner le catholicisme de manière neutre et objective dans le cadre du programme Éthique et culture religieuse (ECR), a tranché la Cour suprême du Canada jeudi.

Cette décision s'applique à toutes les écoles confessionnelles du Québec, qui pourront se prévaloir des mêmes principes face au programme instauré en 2008 par le ministère de l'Éducation. L'ECR propose une exploration de toutes les religions de façon neutre et objective. Il compte aussi un volet axé sur l'examen de questions éthiques et sur le dialogue.

Loyola, une institution privée de Montréal, a demandé d'en être exempté pour pouvoir enseigner le catholicisme de manière non pas neutre, mais plutôt conforme aux orientations et croyances de l'établissement et de ses enseignants. Cette demande lui a été refusée par le gouvernement. Elle a contesté cette décision. La Cour supérieure lui a donné gain de cause, mais pas la Cour d'appel du Québec.

À la Cour suprême, une majorité de quatre juges sur sept a en quelque sorte coupé la poire en deux : l'État québécois peut exiger que des écoles confessionnelles enseignent d'autres religions de façon neutre et objective, mais leur religion peut être enseignée de manière subjective et conforme à leurs croyances, ont statué les quatre juges de la majorité.

« Le fait d'empêcher complètement une école comme Loyola d'enseigner et de traiter du catholicisme selon sa propre perspective dans le cadre de son programme contribue peu à l'atteinte [des objectifs du programme] tout en portant gravement atteinte aux valeurs qui sous-tendent la liberté de religion », a écrit la juge Rosalie Abella.

Toutefois, concernant les autres volets du programme, dont celui sur l'éthique : « Demander aux enseignants d'une école confessionnelle de discuter d'autres religions et de leurs convictions éthiques aussi objectivement que possible ne porte pas sérieusement atteinte aux valeurs qui sous-tendent la liberté de religion », ont ajouté les juges majoritaires.

Loyola demandait aussi de pouvoir enseigner ce volet éthique d'un point de vue catholique.

Juges minoritaires

La Cour a renvoyé le dossier au gouvernement du Québec « pour réexamen à la lumière des présents motifs ». « Une exemption ne peut pas être refusée au motif que Loyola doit enseigner le catholicisme et l'éthique catholique suivant une perspective neutre », a-t-elle précisé.

Les sept juges sont d'accord sur la décision principale de casser la décision du ministère, mais les trois juges de la minorité seraient allés plus loin. Ils n'auraient pas obligé l'école à faire une nouvelle demande auprès du ministère de l'Éducation, mais plutôt approuvé sa proposition telle quelle, en autorisant donc Loyola à enseigner le volet « éthique » du programme selon la foi catholique.

« Obliger les enseignants de Loyola à conserver une attitude neutre sur les questions d'éthiques pose de sérieuses difficultés d'ordre pratique et porte considérablement atteinte à la façon dont l'établissement transmet sa conception de la foi catholique », a expliqué le juge Michael Moldaver.

Les juges de la minorité ont par ailleurs confirmé un droit à la liberté de religion pour les personnes morales, tandis que ceux de la majorité sont restés prudents sur cette question : « Pour statuer sur le présent pourvoi, je ne crois pas qu'il soit nécessaire de décider si les sociétés jouissent elles-mêmes de la liberté de religion », a écrit la juge Abella.

« Victoire »

Le ministre de l'Éducation du Québec, François Blais, a dit qu'il prendra le temps d'étudier le jugement avant de réagir.

La direction de l'école Loyola de même que John Zucchi, un parent qui l'a assistée dans sa démarche, ont crié victoire sur tous les plans. Le directeur Paul Donovan a précisé qu'il s'agissait largement d'une bataille de principe pour son école, puisque les autres religions y sont déjà enseignées depuis longtemps.

Quant aux questions éthiques, « tout ce qu'on a demandé, c'est d'avoir l'habilité d'expliquer la position catholique quand on parle d'une situation d'éthique, pas d'inculquer une seule perspective », a précisé M. Donovan.

Plusieurs autres groupes ou intervenants au litige ont applaudi le jugement. L'Association for Reformed Political Action, un groupe formé de plus de 300 écoles catholiques situées principalement à l'extérieur du Québec, s'est aussi réjouie de la décision. Son avocat, André Schutten, a affirmé que les principes mis de l'avant par la Cour serviront pour lutter contre d'autres mesures adoptées dans d'autres provinces, dont l'Alberta et l'Ontario.

« C'est une approche juste et équilibrée », a quant à lui affirmé Bruce Clemenger de l'Alliance évangélique du Canada. Selon lui, d'autres écoles du Québec emboîteront le pas à Loyola pour réclamer une exemption du programme d'enseignement selon les principes établis dans le jugement.

Catholic schools need not be 'objective' in teaching Catholicism: SCC

By David Dias, Canadian Lawyer, March 19, 2015

Quebec's insistence that religious schools teach their own religion through an objective lens infringes on religious freedoms under the Charter of Rights and Freedoms, the Supreme Court of Canada ruled today.

In Loyola High School v. Quebec, a majority of four justices at the SCC (with three only partially concurring) crafted a nuanced and equivocal judgment that, on the one hand, lauds an educational program intended to foster respect for other belief systems, while at the same time ruling that the program strays into Charter violation territory.

The appeal stems from a mandatory ethics and religious culture (ERC) program introduced in Quebec in 2008, which requires high schools in the province to teach world religions from a neutral and objective perspective.

Loyola High School, a private Jesuit institution founded in the 1840s, sought an exemption under regulations that allow the school to propose an alternative, equivalent program.

Loyola's alternative would respectfully teach other world religions, but from a Catholic perspective. The application was denied by Quebec's education minister, given that any education based on Catholic beliefs could not be objective, and therefore could not be equivalent.

Loyola applied for judicial review, winning initially at the Superior Court level, but losing on appeal. Today's decision by the Supreme Court overturns the lower court's assessment and establishes for the first time that religious organizations have rights under the Charter.

Written by Justice Rosalie Abella, the decision states that, while it is not a Charter infringement to require schools to teach other religions in a neutral manner, it is an infringement to require them to abandon their own perspective in teaching their own faith.

"In a multicultural society," the decision states, "it is not a breach of anyone's freedom of religion to be required to learn (or teach) about the doctrines and ethics of other world religions in a neutral and respectful way . . ."

". . . . [but] preventing a school like Loyola from teaching and discussing Catholicism from its own perspective does little to further the ERC Program's objectives while at the same time seriously interfering with religious freedom."

Although a vocal minority, including Chief Justice Beverley McLachlin, sought to grant Loyola an exemption outright, the majority decided to send the matter back to Quebec's education minister, challenging the government to craft programs that hold true to its laudable objectives while protecting religious freedoms.

"Teaching the ethical frameworks of other religions in a neutral way may be a delicate exercise," the decision states, "but the fact that there are difficulties in implementation does not mean the state should be asked to throw up its hands and abandon its objectives by accepting a program that frames the discussion of ethics primarily through the moral lens of a school's own religion."

Mark Phillips, a litigator at Borden Ladner Gervais LLP who represented Loyola, says the ruling is a big win for religious schools across the country.

"It's basically a unanimous decision where the court has said that religious organizations do have freedom of religion, which had been contested," says Phillips. "The Supreme Court said that there was a violation, in that to oblige a Catholic school to disengage from its Catholic faith and its Catholic morals in the teaching of its own religion and its own ethical system is a violation and is not justified."

The court's appeal, Phillips explains, turns on the test established in Doré v. Barreau du Québec, which involves challenging the constitutionality of administrative decisions. The test requires any decision that limits Charter rights to be balanced against the value of the objectives being sought.

"So in a way it's a simpler test," says Phillips, "and the way the court has sided, in both sets of reasons, is that, yes, there was a violation and, no, it was not reasonable to do it because there is nothing in the ERC program and its objectives . . . that is in tension with what Loyola wants to do. So there's actually nothing to be achieved by the state in restricting Loyala's religious liberty in any way — therefore there's no reasonable limitation."

Moreover, Phillips says he doesn't see a problem with the court's decision to remit the matter to the education minister, or in the finding that the province's requirement to objectively teach other religions remains justifiable.

"I think it's a fairly fine nuance, and it's not something that creates any trouble for Loyola per se," he says. "You can't teach Buddhism from a Catholic perspective. So the only way that Loyola would teach it or any other religious faiths other than its own would be to present the practices and doctrines of that religious group in a way that's totally respectful."

LeDroit

Fini le certificat et l'épinglette pour 15 ans de service public

Paul Gaboury, Le Droit, le 18 mars 2015

Le certificat laminé et l'épinglette remis aux fonctionnaires fédéraux ayant atteint 15 ans de service seront les prochaines victimes des mesures d'austérité mises de l'avant par le gouvernement Harper.

La disparition de ces reconnaissances, qui entrera en vigueur le 31 mars, a été confirmée par Travaux publics et Services gouvernementaux Canada (TPSGC), responsable de l'achat des certificats et épinglettes. Le gouvernement fédéral est présentement à la recherche d'un nouveau fournisseur pour ses prix de reconnaissance.

«Le ministère et les autres organisations fédérales qui utiliseront cette nouvelle offre à commandes devront ajuster leur programme de reconnaissance. Bien que les employés continueront de recevoir un cadeau pour le jalon de carrière de 15 ans, le certificat laminé et l'épinglette ne seront plus offerts», a confirmé par courriel le porte-parole du ministère, Pierre-Alain Bujold.

Impossible, pour l'instant, de savoir combien d'argent le gouvernement fédéral entend économiser avec cette mesure. Le ministère soutient cependant qu'il y aura des économies. Au cours des cinq dernières années, le nombre d'employés de TPSGC ayant reçu un prix de reconnaissance pour des «jalons de carrière» est passé de 554 à 691.

Au Secrétariat du Conseil du Trésor, on a indiqué que la politique sur les prix de reconnaissance pour l'ensemble de la fonction publique a été annulée en 2010, chaque ministère étant désormais responsable de remettre ses propres distinctions.

«La Loi sur la gestion des finances publiques donne aux administrateurs généraux le pouvoir de décerner des prix à leurs employés respectifs pour l'exercice exceptionnel de leurs fonctions, pour d'autres réalisations méritoires liées à leurs fonctions et pour des inventions ou des suggestions à des fins d'amélioration», a précisé par courriel la porte-parole du Secrétariat du Conseil du Trésor, Lisa Murphy.

Souligner l'«excellence»

Le gouvernement continue à souligner l'«excellence» des fonctionnaires - carrières exceptionnelles, excellence en gestion, innovations et autres - par l'entremise des Prix d'excellence dans la fonction publique, dévoilés pendant la Semaine nationale de la fonction publique, en juin.

La remise officielle de ces prix a eu lieu à Rideau Hall, l'automne dernier, en présence du gouverneur général David Johnston et du premier ministre Stephen Harper.

Doctors worry how organ donations will be affected by Supreme Court ruling on assisted suicide

Sharon Kirkey, The Ottawa Citizen, March 16, 2015

As the nation awaits legalized doctor-assisted death, the transplant community is grappling with a potential new source of life-saving organs — offered by patients who have chosen to die.

Some surgeons say every effort should be made to respect the dying wishes of people seeking assisted death, once the Supreme Court of Canada ruling comes into effect next year, including the desire to donate their organs.

But the prospect of combining two separate requests — doctor-assisted suicide and organ donation — is creating profound unease for others. Some worry those contemplating assisted suicide might feel a societal pressure to carry through with the act so that others might live, or that it could undermine struggling efforts to increase Canada's mediocre donor rate.

"Given the controversy and divided opinion regarding physician-assisted suicide in Canada, I don't think we are anywhere near being ready to procure the organs of patients who might choose this path," said Dr. Andreas Kramer, medical director of the Southern Alberta Organ and Tissue Donation Program in Calgary.

"I think there is a legitimate possibility that advocating aggressively for this could compromise the trust that the Canadian public has in current organ-donation processes," Dr. Kramer said.

Given the controversy and divided opinion regarding physician-assisted suicide in Canada, I don't think we are anywhere near being ready to procure the organs of patients who might choose this path

Dr. Atul Humar, medical director of the multi-organ transplant program at the University Health Network in Toronto, said donation after assisted death is highly complex and

would require careful consideration by the transplant community, national and provincial organ-donation agencies and the public.

“If we were ever to consider this type of practice, all the decisions around assisted death should be kept separate from the discussions around organ donation,” he said. “And that whole piece should be kept separate from the transplant group and the transplant physicians.”

However, “My own thoughts on it are that we should always make all efforts we can to respect the patient’s wishes.

“If one of those wishes is to be an organ donor, we would try, as we would for any end-of-life situation, to respect that wish,” he said.

Organ harvesting after doctor-assisted death is already a reality in Belgium, which became the second country in the world, after the Netherlands, to legalize voluntary euthanasia in 2002.

In 2011, Belgian surgeons reported the first lung transplants using lungs recovered from four donors put to death by lethal injection. All — two patients with multiple sclerosis, one with a neurological disorder and the other a mental illness — explicitly and voluntarily expressed their wish to become an organ donor after their request for euthanasia was granted, the team reported.

“We now have experience with seven lung donors after euthanasia,” Dr. Dirk van Raemdonck, a surgeon from University Hospitals Leuven, told the National Post. “All recipients are doing well.”

Lungs, as well as kidneys and livers, have been retrieved and transplanted from a total of 17 euthanasia donors, Dr. van Raemdonck said. The results will be presented next week at the annual meeting of the Belgian Transplantation Society in Brussels.

In Canada, 4,612 people were waiting for an organ in 2012; 230 died waiting.

While demand for organs is growing as the population ages, only about a third of potential donors become actual donors in this country, a recent Canadian Institute for Health Information report found.

As well, fewer people who suffer severe head injuries are progressing to “brain death” — historically the major source of organs for transplant — largely because of advances in treating head trauma.

Now, with organs in scarce supply, doctors are expanding donors to include “donation after cardiac death,” or DCD — procuring organs from people whose hearts have stopped beating.

DCD involves patients on life support who are thought to have no chance of recovery. If a decision is made with the family to stop life support, the organs can be retrieved five

minutes after the heart has stopped beating. Two doctors declare death, separate from the transplant team.

The same guidelines could be applied to assisted-dying donors, says bioethicist David Shaw, of the Institute for Biomedical Ethics at the University of Basel in Switzerland.

In a recently published paper in the journal Transplantation, Dr. Shaw argues organ donation after assisted suicide could reduce transplant wait-list deaths "in any country that permits assisted dying."

Organs are already retrieved from people who commit "unassisted" suicide, if they are taken to hospital while they are still alive or soon after death, Dr. Shaw said in an interview.

"It's strange that we would take organs after very sad, violent, self-suicides but refuse to do it when people are part of a process of assisted dying that involves lots of planning, and they can make a competent decision about it," he said.

Drugs used in physician-assisted suicide — typically sodium pentobarbital — do not normally cause permanent damage to the organs, Dr. Shaw said. As well, "terminally ill patients often have several organs that are in perfect working order," he wrote. For example, according to Dr. Shaw, fewer than half of people accessing assisted suicide in Switzerland have active cancer, which can make organs unsuitable for transplant.

Tissue typing and organ matching could also be performed weeks in advance, because the exact date of death would be known, he argues.

Assisted suicides would have to take place in, or near hospitals, so organs could be retrieved while still viable for transplant. For those who prefer to die at home, "a better option could be to have an ambulance booked to arrive at the time of death."

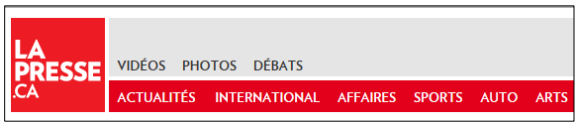
Dr. Shaw and others stressed that the "dead donor rule" — patients must be declared dead before their organs can be taken — must be upheld. "There is no suggestion on anyone's part that the dead donor rule should be abandoned," he said.

Dr. Kramer is skeptical organ donation after assisted death would have a meaningful impact on Canada's transplantation rates.

Currently, not all Canadian hospitals perform donation after cardiac death, and even where it is available, it is performed in intensive care units, "where you know exactly when the donor's blood pressure drops, when the heart stops, and the time frame from death to procurement of organs is very short," he said.

If assisted death occurred in the home, the person would arrive in the hospital with their heart having stopped and no circulation to their vital organs for a significant period of time, he said, meaning it would no longer be possible to recover their organs for transplant.

While organs can be retrieved from people who die by unassisted suicide, “it is always after an attempt to save the life of these individuals,” Dr. Kramer added, “and to help them overcome their depression.”



Le Québec, champion de la non-responsabilité criminelle

Marie-Claude Malboeuf, La Presse, le 19 mars 2015

L'affaire Guy Turcotte a lancé le débat. Une vaste étude le confirme: les verdicts de non-responsabilité criminelle sont neuf fois plus fréquents au Québec qu'en Ontario. Et les accusés québécois qui en font l'objet sont deux fois plus susceptibles de récidiver que les Ontariens. L'immense majorité d'entre eux ont toutefois un profil et un parcours à l'opposé de ceux du cardiologue. Leurs crimes sont bien moins graves, et même moins graves qu'ailleurs au Canada.

Les accusés québécois sont neuf fois plus susceptibles que les ontariens d'être déclarés non criminellement responsables pour cause de troubles mentaux. Ils ont alors presque trois fois plus de chance de recouvrer immédiatement la liberté... Et risquent deux fois plus de récidiver dans les années suivantes.

Voici un aperçu des conclusions de la plus vaste étude jamais menée sur le sujet, qui paraît ce matin sur le site de la Revue canadienne de psychiatrie. L'étude retrace la trajectoire de quelque 1800 personnes déclarées non criminellement responsables (NCR) dans les trois provinces canadiennes les plus populeuses, de 2000-2001 à 2004-2005.

Ce verdict évite de punir les accusés qui étaient incapables de distinguer le bien du mal au moment de commettre un crime, peu importe sa gravité.

«Au Québec, il est utilisé pour une plus grande variété de délits et de pathologies. Et c'est ici que la gravité des infractions est la plus basse», précise l'auteure principale de l'étude, Anne Crocker, professeure au département de psychiatrie de l'Université McGill et chercheuse à l'Institut en santé mentale Douglas.

Philosophie québécoise

Pourquoi autant de cas au Québec? «On a peut-être moins de programmes de déjudiciarisation, qui évitent de criminaliser les symptômes de problèmes de santé mentale», avance la Dre Crocker.

«Pour les familles dépassées, judiciariser est souvent le seul levier pour avoir des services. Et pour les médecins, c'est parfois la seule façon de donner des soins psychiatriques à plus long terme à des patients qui vivent autrement les portes tournantes», souligne pour sa part la psychiatre France Proulx, de l'Institut Philippe-Pinel.

Les médecins québécois ont sans doute une philosophie différente ou interprètent différemment la loi, croit aussi la Dre Proulx. «Ils ont plus tendance à recommander la non-responsabilité criminelle que dans les autres provinces. Ils exigent un seuil de confusion mentale plus bas que certains collègues en Alberta, par exemple, pour qui, même si on est psychotique, on sait que ce n'est pas correct de blesser quelqu'un.»

«Le Québec a une culture très orientée vers l'intervention psychosociale, moins coercitive, renchérit la Dre Crocker. Et puisque son taux de criminalité violente est plus faible, peut-être qu'on y a plus tendance à attribuer les crimes graves à une pathologie et à vouloir la traiter.»

Trop de récidives

Cela dit, 67% des Québécois (contre 44% des Ontariens) déclarés non criminellement responsables n'avaient agressé personne (n'ayant commis ni voies de fait, ni meurtre ou tentative de meurtre, ni viol, ni séquestration). Ils avaient plutôt proféré des menaces, détruit des biens, etc.

Cela pourrait expliquer que les accusés québécois déclarés NCR soient détenus moins longtemps à l'hôpital psychiatrique, en moyenne. Et qu'après les avoir libérés, la Commission d'examen des troubles mentaux les garde aussi moins longtemps sous sa supervision.

«La clientèle québécoise étant très diversifiée, les accusés n'ont pas tous besoin d'être derrière les barreaux. Si la personne n'est pas à risque, on est moins privatif de liberté. C'est plus proche de l'esprit de la loi», souligne la Dre Crocker.

La récidive observée dans les trois ans chez les accusés déclarés NCR est encore moins violente que leur délit initial, ajoute-t-elle. Seulement 0,6% de tous les accusés ont commis un nouveau crime grave contre la personne.

L'échec à prévenir de nouveaux délits est quand même troublant, convient-elle, d'autant plus qu'il est deux fois plus marqué au Québec qu'ailleurs (22% au Québec contre 9% en Ontario).

Il est possible qu'une partie des récidives qui surviennent en Ontario soient «cachées» si on y ramène les accusés à l'hôpital plutôt qu'en cour.

Quoi qu'il en soit,«on est trop en mode réaction. On semble prêt à mettre beaucoup d'argent dans les volets judiciaires et peu dans la prévention, qui a pourtant plus de potentiel de sécurité publique», déplore la Dre Crocker.

«Une fois la libération accordée, on n'a pas tous les outils requis pour diminuer le risque - par exemple, de l'hébergement supervisé, alors que ça coûte moins cher qu'un lit à l'hôpital ou en prison.»

«Quand le Québec a désinstitutionnalisé, l'argent devait suivre les patients dans la communauté, mais ça ne s'est pas fait», renchérit la Dre Proulx.

Familles

Au Québec, 48% des victimes de délits graves menant à un verdict de NRC étaient des membres de la famille. «On a beaucoup, beaucoup de travail à faire pour outiller et aider les proches. Leur intégrité physique et mentale est importante», plaide la Dre Crocker.

Autre problème, les accusés québécois non criminellement responsables sont si nombreux qu'ils se voient éparpillés dans de nombreux hôpitaux, pas tous spécialisés - contrairement à ce qui se fait en Ontario et en Colombie-Britannique. «Une certaine absence d'expertise dans l'évaluation et la gestion du risque peut avoir un effet sur la récidive, estime la Dre Crocker. Il faut l'améliorer.»

À Montréal, les établissements viennent justement de lancer une réorgarnisation afin de mieux se répartir les patients selon leurs expertises propres.

En attendant d'apprendre à mieux prévenir - et parfois à déjudiciariser - les dérapages, ce flot de verdicts de non-responsabilité coûte cher. «Ça prend beaucoup de lits, ça engorge, constate la Dre Crocker. Et c'est une étiquette lourde à porter pour les accusés. Aux yeux des autres, ils ne sont pas seulement malades, pas seulement criminels, mais «fous criminels». Cela n'aide pas à se réintégrer.»

Qui sont les Québécois déclarés non criminellement responsables?

En plus d'être particulièrement nombreux, les Québécois déclarés non criminellement responsables n'ont pas exactement le même profil que les autres Canadiens ayant bénéficié de ce verdict. Et ils ont encore moins le profil que le grand public imagine. Principales révélations tirées du Projet de trajectoire national.

Leur maladie

Le cardiologue Guy Turcotte a su convaincre le jury qu'il ne savait pas ce qu'il faisait lorsqu'il a assassiné ses deux enfants à coups de couteau parce qu'il souffrait alors d'un trouble d'adaptation avec anxiété et d'humeur dépressive. Même si son cas a suscité des réactions sans précédent, il n'est pas totalement unique. Au Québec, les troubles de l'humeur justifient deux fois plus souvent qu'en Ontario un verdict de non-responsabilité criminelle (28 % des cas, contre 14 %). Les troubles du spectre de la psychose y restent tout de même majoritairement en cause (dans 66 % des cas). Le reste des dossiers (6 %) font état de maux divers. Comme cette crise d'« épilepsie partielle complexe » expliquant qu'une conductrice de Saint-Hubert ait écrasé une femme et blessé un homme sans même s'arrêter, en 2009.

Leur délit

Leurs crimes violents sont beaucoup plus médiatisés - comme en témoignent tous les exemples rapportés ici -, mais dans les faits, les accusés « non responsables » commettent neuf fois moins de meurtres, de tentatives de meurtre ou d'agressions sexuelles que de délits de moindre gravité. C'est encore plus vrai au Québec, où la part des délits « autres que contre la personne » est deux fois plus importante qu'ailleurs. Un Beauceron de 34 ans, Pierre-Luc Lévesque, a par exemple défoncé la façade d'une maison avec sa voiture en 2012.

Proches éprouvés

Pierre Pépin jr, un jeune schizophrène, a poignardé son beau-père à mort alors qu'il visitait sa mère, à Otterburn Park, en 2011. L'année suivante, Samuel Ouellet-Gagnon, de Rivière-du-Loup, a défiguré sa mère à coups de marteau. Plus d'une fois sur deux, les Québécois déclarés « non responsables » après avoir commis un délit contre la personne s'en sont pris à un proche : membre de la famille (dans 35 % des cas) ou bien ami, connaissance, colocataire, etc. (20 %). La personne malade peut les mettre au coeur de son délire, vu leur proximité, ou encore accumuler de la colère contre eux lorsqu'ils appellent l'hôpital ou la police à la rescousse, explique la Dre France Proulx, psychiatre à l'Institut Philippe-Pinel. Les professionnels qui interviennent auprès de ces accusés font eux-mêmes plus souvent office de victimes que les étrangers (dans 26 % des cas plutôt que 20 %). Autre constat : 41 % des accusés vivaient avec leur famille ou un ami, et 8 % en logement supervisé. Ils étaient un peu moins nombreux à vivre seuls (37 %) ou dans la rue (11 %).

La drogue

À Longueuil, David Pelletier a tué un homme en le percutant à toute vitesse avec sa camionnette, en 2009. Comme 58 % de tous les accusés déclarés non responsables, le jeune de 19 ans avait un problème de toxicomanie. Et comme 24 % d'entre eux, il était intoxiqué au moment de commettre son délit. Dans son cas, le cannabis avait provoqué une psychose toxique qui lui a permis d'échapper à la prison. En 2011, la Cour suprême du Canada a toutefois décrété qu'obtenir un verdict de non-responsabilité n'est plus possible lorsqu'un trouble mental est provoqué par l'usage de drogue volontaire.

Lourd passé

Alexandre Forcier, de Drummondville, avait déjà reçu un diagnostic de schizophrénie quand il a abattu son père, en 2013, parce que des voix lui disaient que sa propre survie en dépendait. Et les délires du garçon de 19 ans l'avaient déjà conduit deux fois à l'unité psychiatrique. Un cas typique, puisque 73 % des Québécois « non responsables » avaient de même déjà été hospitalisés au moins une fois en psychiatrie avant de commettre leur délit. Près de la moitié d'entre eux (49 %) étaient même déjà connus du système de justice, ayant déjà des antécédents ou fait l'objet d'un verdict de non-responsabilité criminelle dans le passé.

CBC news

Niqab controversy: Judge struck down ban without referring to charter

Zunera Ishaq, a Pakistani woman and devout Muslim, seeks to wear niqab during citizenship oath

Mark Gollom, CBC News Posted, March 16, 2015

When Federal Court Judge Keith Boswell ruled last month that a woman could wear a niqab while taking her oath of Canadian citizenship, supporters may have thought the decision was another victory for charter rights.

During the controversy over the niqab ban, the charter was certainly cited, in particular regarding religious freedom and freedom of expression rights.

But in his ruling, Boswell avoided any charter issues, focusing not on whether the woman's rights had been violated, but rather the legality of the ban.

The case itself involves Zunera Ishaq, a Pakistani woman and devout Sunni Muslim who is seeking Canadian citizenship. Based on her religious beliefs, Ishaq wears a niqab, or veil, to cover most of her face when out in public.

In 2011, then immigration minister Jason Kenney issued a new policy manual stating that candidates for citizenship must remove any kind of face covering when taking the public citizenship oath.

'Must be taken freely and openly'

It's a "public declaration that you are joining the Canadian family and it must be taken freely and openly," Kenney told CBC News at the time.

While applying for citizenship in 2013, Ishaq had agreed to unveil herself to an official before taking the citizenship test. But she objected to removing her niqab at the public swearing-in ceremony.

Ishaq, a permanent resident, later sued the government, arguing, in part, that the ban against her wearing the niqab during the ceremony was an infringement of her charter rights.

Boswell, however, in rendering his decision, thought it "imprudent to decide the charter issues that arose" in this case, instead saying the "evidentiary record was adequate to decide the matter."

"A court will look at whether a law violates the Charter of Rights and Freedoms as a kind of last resort," said Audrey Macklin, a professor and chair of human rights law at the University of Toronto. "Courts don't tend to go to the charter first, they tend to go to the charter last."

So Boswell focused on whether the government had violated its own law — the Citizenship Act — by imposing such a ban.

Under the section "Ceremonial Procedures of Citizenship Judges," the act states that a citizenship judge shall "administer the oath of citizenship with dignity and solemnity, allowing the greatest possible freedom in the religious solemnization" of taking the oath.

In his ruling, Boswell said that Kenney's policy manual that banned the wearing of the niqab while taking the oath contradicted the act. A judge couldn't comply with both the policy manual, which said one thing, and the act, which said another, Boswell suggested.

"How can a citizenship judge afford the greatest possible freedom in respect of the religious solemnization or solemn affirmation in taking the oath if the policy requires candidates to violate or renounce a basic tenet of their religion?" Boswell asked.

Boswell offered two hypothetical examples: a monk who had taken a vow of silence and a person who is mute. Would a judge be affording a monk the "greatest possible freedom" by forcing him to betray his vow? And what if a person is physically incapable of saying the oath and cannot be heard taking it?

As the Citizenship Act is a law passed by Parliament and the policy manual is a directive from a cabinet minister, the act naturally trumps the policy manual, Boswell reasoned.

Minister 'doesn't have that power'

"The minister is not authorized to make law. He doesn't have that power," said Macklin. "And if he purports to make law or make a rule or command a citizenship judge to do something that takes away from the citizenship judge's discretion, and even more, commands the judge to do something that is directly contradictory [to what] the law says, then the minister himself is acting unlawfully."

Government lawyers had argued there was no contradiction between the act and minister's policy manual. They said the manual did not attempt to trump the act because the policy of banning veils was not mandatory — instead more of a suggestion or guideline — that could be disregarded by citizenship judges.

However Boswell, in his ruling, said the policy manual makes it perfectly clear that the veil ban is not a suggestion or optional, and that it clearly states that candidates "are required" to remove their face coverings for the oath-taking portion of the ceremony. If they do not, the manual says that the certificate "is NOT to be presented."

Taking all that into consideration, Boswell ruled that the ban on wearing a niqab was unlawful.

Slaw Canada's online legal magazine.

What Makes a Law School Great?

By Alice Woolley, Slaw: Canada's online legal magazine, March 18, 2015

What makes a law school great? What should a law school curriculum seek to accomplish in light of the school's obligations to its students, its university, the pursuit of knowledge, the profession, and society as a whole? What should a law school strive to be?

Every law school has to answer these questions one way or another, and events of the last few years – the crises of American legal education and Canadian articling, and global and technological shifts in the legal services market – have given them greater urgency.

In this column I want to share my own law school's recent efforts to answer them, and the significant curricular changes we have adopted in our attempt to bring ourselves closer to our standard for a great law school. This is not to suggest that our perspective and approach are the right ones (although I am in no way going to pretend to be neutral given I was Chair (later Co-Chair with Jennifer Koshan) of the committee leading the process). It is simply to put them out there as one law school's view on what it should strive to be.

Our answer started at the level of general principles. In particular, we decided that a great law school program must focus on three things: competence, performance, and engagement.

Competence requires knowledge and understanding of the concepts, methods, analysis, reasoning and critical perspectives in and about law. It requires intellectual engagement and rigour, and is directly connected to the scholarly mandate of a University education. Performance requires the ability to translate knowledge into action. It is where intellect meets practice, and learning turns into judgment or – aspirationally – wisdom. Engagement requires intensity and resolution in learning, investing time and effort in preparing for and attending classes, in completing course work and through participating in extra-curricular activities.

Competence and performance are distinct yet connected. Knowing something does not wholly teach you how to use what you know. And using what you know may require abilities – communication, inter-personal skills, practice management – which are distinct from substantive knowledge. At the same time, however, performance is impossible without substantive knowledge. And the ability to use and apply substantive knowledge will deepen it.

Engagement connects to both competence and performance. To put it bluntly, the only way students will achieve competence and performance is through a program which engages them – in which they are motivated to do the work necessary to gain knowledge and to learn how translate that knowledge into action.

From that level of principle we moved to the more specific – and more difficult and contentious question – of how we could change the delivery of our program to better ensure our students are engaged in achieving both competence and performance. After a year and half of work by a Committee made up of a quarter of faculty, and another eight months of working with faculty as a whole and consulting with students, the Law Society of Alberta and the profession, we adopted significant changes to all three years of our curriculum. The new Calgary curriculum contains most of our existing courses, and maintains our strong specialization in natural resources, energy and environmental law. But it gives students more opportunities to develop performance, deepen their competence and to be engaged in their learning.

Performance-Based Learning

Traditional legal education teaches competence well. Most Canadian law school grads, including ours, have knowledge and understanding of the concepts, methods, analysis, reasoning and critical perspectives in and about law. What law schools don't do particularly well is allow students to deepen competence through performance, or to learn the aspects of performance that are distinct from competence. The new Calgary curriculum aims to deepen competence and enhance performance. Specifically:

- Core courses in each year will be taught entirely through Performance-Based learning (PBL). Rather than using 100% examinations, students will be evaluated through their ability to use what they've learned in more realistic and practical ways. PBL courses will include Legislation, Foundations in Law and Justice 1 and Foundations in Law and Justice 2 (first year), Civil Procedure, Ethical Lawyering and Negotiation (Selected Topics) (second year) and Advocacy (Selected Topics) (third year).

As an example, in Ethical Lawyering students will be evaluated through assignments that may include writing a short policy paper on a regulatory issue (e.g., ABS), drafting a law society complaint against a lawyer, drafting an originating notice to remove a lawyer for a conflict, drafting a statement of claim or defence given an allegation of professional negligence, writing a memorandum of argument in a case of ineffective assistance of counsel or writing a reflective essay on the lawyer's obligation to pursue (or not) lawful but immoral actions for a client.

Over time the number of PBL courses will be expanded.

- All first year doctrinal courses, and some upper year courses (in the winter term), will be taught in shorter (10 week) terms with longer class times to allow professors to use innovative and interactive teaching methods.
- The second year Negotiation and third year Advocacy courses will be expanded to allow students to focus on particular substantive areas of their choice (e.g., Advocacy: Civil Litigation; Advocacy: The Criminal Trial, Negotiation: Contracts; Negotiation: Settling Disputes). The negotiation and advocacy skills currently taught will be linked to exercises in legal analysis, writing and research in the subject area chosen by the student.
- Optional courses in Legal Practice will be offered. These will include courses such as Law and Technology, Entrepreneurship, Leadership, and Diversity and the Legal Profession.
- Opportunities for students to participate in legal clinics will continue to be expanded.

Engagement

In order to foster student engagement – to encourage investment of time and effort in their legal studies – the Calgary curriculum focuses on 1) increasing student choice; 2) introducing more focused and intensive learning (to allow students to deepen their effort in one area rather than skimming the surface of several); and 3) improving scaffolding in the first year program.

- First year will begin with a three-week introductory course, Foundations in Law and Justice 1. The course will introduce students to the structure of the legal system; reading cases and statutes; legal reasoning, analysis and communication; the role of the lawyer and critical analysis of law. The course will be taught through performance-based learning, with particular emphasis on students practicing and being evaluated on legal reasoning, analysis and communication.
- In January of first year students will take a second three-week introductory course, Foundations in Law and Justice 2, which will cover legal research, writing and advocacy. Foundations 2 will build on the substantive law they have learned in their doctrinal courses in the first term, and give them the opportunity to deepen that learning through performance.
- All courses in first year, and selected courses in the upper year, will be taught with varying degrees of intensity, using three week, ten week and 13 week terms, with students taking from 1-5 courses, depending on the term length.
- Rather than taking an introductory survey course in legal theory in first year, students will be able to choose a theory course in an area of interest to them in 2L and 3L. In addition, rather than taking a required legal research course in the upper years, students will be evaluated on research through the course they choose to take to satisfy the upper year writing requirement. Finally, the Negotiation and Advocacy courses will be in an area chosen by the student, rather than simply being generic.

The Calgary curriculum will remain a work in progress. We know that some changes will in practice work out better or worse than we envisioned them. We also know that the legal services market will continue to evolve, as will the resources and technology available to us as educators. We must continue to break down artificial separation between the academy and practice, where law as a lived enterprise is viewed as irrelevant to academic inquiry, and the academic study of law is viewed as irrelevant to practical problems. Part of our answer to the question of what makes a law school great must, in the end, include a willingness to continue to strive to achieve greatness, and never to assume that we've done so.

Handful of bencher candidates represent in-house perspective

By Jennifer Brown, InHouse, Canadian Lawyer, March 16, 2015

While almost 100 lawyers have put their name forward to run for bencher of the Law Society of Upper Canada, only a handful of those are in-house or public sector lawyers.

But an ambitious few say it's time there was greater representation from the in-house bar at the professional regulator.

"In-house lawyers have traditionally been under-represented at Convocation. We need more in-house benchers," says Dan Revington, general counsel at the Workplace Safety & Insurance Appeals Tribunal who says in-house lawyers, by virtue of what they do, have consensus building skills.

"Having practised both in a law firm and in-house, I believe in-house counsel have some significant advantages when it comes to being a bencher," says Revington, who has been at the WSIAT for 23 years, 15 of those as general counsel.

"Lawyers typically are not trained in management, however in-house lawyers often find themselves assuming a managerial role on a day-to-day basis, as well as having to constantly work in committees and with other departments."

Revington has volunteered on committees such as the specialist certification committee and says he has an interest in working on issues including access to justice and paralegal regulation.

Kimberly Graber, head of legal services for DHL Canada, says in-house lawyers offer a perspective that comes from a different lens than most of the benchers at Convocation.

“The issues faced by Convocation in the coming term are varied and the decisions made will affect all members despite their individual roles,” says Graber, who moved in-house in 2006. Apart from a break while she completed her MBA, she has been in-house ever since.

“I have a particular interest in issues of access to justice, equity and aboriginal issues, as well as the issue of inter-jurisdictional mobility,” she says.

Public sector lawyers also offer a similar perspective to corporate counsel. Sandra Nishikawa, who is counsel with the Crown law office of the Ministry of the Attorney General, handles civil litigation for the AG. Prior to going in-house in 2003 she was an associate at Shearman & Sterling LLP in New York.

Nishikawa has been part of the equity advisory group of the law society for seven years.

“I thought, well, I’m pretty well placed to step up and run because I’m experienced at how things work there,” says Nishikawa, who has also been part of the action group on access to justice work.

“I bring a different perspective as a public sector lawyer and it is a perspective that is under-represented. Most benchers have been from private firms and are largely litigators. I think the full diversity of the profession should be represented at Convocation both in terms of gender, race, and also in other areas of practice, otherwise some concerns and perspectives don’t get raised or heard.”

Access to justice is a big issue for Nishikawa.

“I think people have come to a point where we recognize it’s a crisis situation with respect to access to justice. I think it’s great the law society is taking a more proactive role and I’d like to enhance that and ensure it continues. It’s part of our responsibility of regulating in the public interest.”

She also hopes more younger lawyers will vote and become more engaged in the work of the law society.

Diversity and equity issues are a top concern for David Smagata, vice president claims and underwriting, and chief legal officer at DAS Canada. He began his career in a boutique insurance defence firm and has worked with several large national and international insurance companies in the area of insurance defence litigation and claims.

DAS is a “start-up” insurance company that launched about five years ago and offers legal expense insurance. Smagata has been in the role of CLO for about a year now. He went in-house to Liberty Mutual after working in private practice at McCague Borlack

LLP. He also worked at Aviva Canada running its in-house department before going to DAS.

Smagata has been involved with the law society on the equity advisory group and was chairman of the equity advisory group, which advises the bencher committee on equity and aboriginal issues.

“I really enjoyed that work and running for bencher is something that’s always been in the back of my mind. I know very few in-house counsel are benchers. I see that often — a lot of lawyers who are in-house who don’t feel represented and say they aren’t voting,” he says.

Incumbent bencher candidate and public sector lawyer Jeffrey Lem says for in-house lawyers it can be difficult to carve out the time needed to be a dedicated bencher.

“Of all of the lawyers out there, it is most difficult for in-house counsel and government lawyers to participate in the bencher process,” says Lem, who also wants to see more solicitors get involved at Convocation. “In-house counsel are an integral part of the day-to-day business of their clients. I live government all day long.”

Lem says there is “tons” of work to be done in 20 different committees and private practitioners have more flexibility to do that work.

“That’s what makes it a tough time commitment,” says Lem, who is on five committees at the law society. “Our employers also tend not to see the value to the profession. Firms understand the value of having a bencher in the ranks. For a lawyer working in-house, it’s a tougher sell.”

Smagata acknowledges it’s going to require considerable time but is prepared to juggle his schedule to make it happen.

“It will be challenging, but it’s a very supportive work environment here and it is important enough to make those sacrifices,” says Smagata, who is also interested in the current debate around alternative business structures.

“Being part of a large European company I have seen, through the recession, how the practice of law has changed,” he says. “I’ve seen work environments where ABS has been put in and we need to look at overall, how can we do this.”

Smagata’s other concern is the introduction of the Law Practice Program and how the law society deals with the articling crisis.

“Nobody stepped back to look at it from an equity and diversity perspective. Are the students who can’t find articles those who are underrepresented already? We need to make sure we don’t erode what we’ve already accomplished in terms of equity and diversity at the law society. I do think the professional program versus lieu of articles was not well thought out in terms of long term ramifications.”

Lem, who was in private practice when first elected, says he is running again because he says it's the most "efficient" way to give back to the profession.

"It's important work. How do we best give back? Helping our profession and what's the best way to do that? Being a bencher is one way and that's why I do it," he says.

Lem was on the ABS task force and one of the few who is voting no to it.

"I don't approve of ABS as a general rule, for lots of reasons. Outside of the criminal law bar and the personal injury law bar, I'm one of the few guys who are saying no and I've made up my mind," he says.

"I'm not convinced of the benefits. The biggest benefit touted is access to justice. In any way you define access to justice, ABS will do nothing. Will it create capital and innovation? Yes, but it also has to be regulated. Do you have any idea how much regulation is going to be required to make ABS a manageable beast?"

Lem says the access to justice argument is "almost an offensive argument."

"We have a whole segment of the population who can't afford legal services and ABS won't address any of that," says Lem.