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

Press Clippings for the period of March 23 to 30, 2015
Revue de presse pour la période du 23 au 30 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

Head of smaller union proposes sharing strike fund with PSAC, PIPSC

Kathryn May, Ottawa Citizen, March 29, 2015

The new president of the union representing federal economists and policy analysts is making waves with a proposal for her members to gain access to other unions' strike funds if they end up on the picket line.

Emmanuelle Tremblay won election as president of the Canadian Association of Public Employees with a slate of activists who promised to shake up the staid union. Barely two months on the job, she floated an aggressive proposal for "service agreements" with the two biggest unions, the Public Service Alliance of Canada and the Professional Institute of the Public Service of Canada, including access to their strike funds.

The newly elected executive passed a motion to negotiate agreements with PSAC and PIPSC that would give CAPE "access to those unions' strike funds," as well as the training they provide to mobilize and support members. In her blog, Tremblay wrote that the service agreements she has in mind would "allow us to draw upon the resources and expertise " of PSAC and PIPSC to "fill the gaps in our armour."

"The focus would be on access to union training for mobilization and labour representation, as well as on terms and conditions that would give our members access to strike pay, if necessary," she said.

CAPE represents mostly economists, analysts, research assistants at the Library of Parliament, translators, interpreters, terminologists and social scientists.

Service agreements aren't unusual among unions. They provide various types of support to each other, including loans and other financial assistance.

The 17 federal unions representing Canada's public servants have worked closely on this round of collective bargaining. The big galvanizing issue is protecting current sick-leave benefits, which Treasury Board President Tony Clement wants to replace with a new short-term disability plan.

The unions signed an unprecedented "solidarity pact" to present a common front in bargaining but some say CAPE's proposal has raised a few of eyebrows. It's been called everything from "ballsy" and "daring" to "naïve."

PSAC President Robyn Benson said she had a preliminary meeting with Tremblay, and the two unions have agreed to have committees handle further discussions. So far, the issue of money and possible access to PSAC's $30-million strike fund has not come up.

"We are open to looking at proposals with CAPE and we will work in solidarity with it but we don't know what any (agreement) will look like. We would be remiss not to have discussions with her," said Benson.

Benson said she is hopeful the unions can reach a deal with Treasury Board without striking.

But Tremblay is the first union leader to bluntly present the dilemma facing most of the small unions. They don't have strike funds – or even know to how mobilize workers for a strike – because they have always settled their contract disputes by arbitration and never faced the prospect of a picket line.

The Conservatives, however, changed all that with new rules for collective bargaining. Among the legislative changes, the government, not the unions, now has the right to decide whether labour disputes are solved by arbitration, or conciliation and strike.

This means unions such as CAPE, which always picked arbitration in the past, could be forced on strike in event of an impasse.

Historically, CAPE's members – like many professionals in the public service – didn't opt to strike because they were uncomfortable with adversarial bargaining and preferred to solve problems collaboratively. CAPE hasn't opted for a strike since the 1970s.

With 12,500 members, CAPE is the third-largest union, but much smaller than PSAC and PIPSC. Small unions also typically picked arbitration over strikes because they felt they were too small to mount an effective walkout.

A strike doesn't necessarily mean employees would walk off the job for days without pay. Unions would likely be more strategic: using work-to-rule; employees demonstrating during breaks or lunch hour; or partially withdrawing services.

Tremblay said CAPE doesn't want to be a "weak link" in this round of bargaining, forced to take a "bad offer" because her members wouldn't want to strike and lose income. She

said access to other unions' resources, whether funding, training or support, is in the "best interests of everyone."

"Without a strike fund, and considering that our members have never had to resort to job action to force the signing of an agreement, there are not all that many immediate solutions available to us," she said in her blog.

The argument could strike a chord with other unions. In the last round of bargaining, the government divided the unions by targeting PSAC to surrender voluntary severance. Once it struck that deal, the same take-it-or leave deal was offered to all other unions.

Tremblay said she hopes service agreements can be reached without increasing dues but warned they may increase in the future unless the government reverses the changes it made.

With no strike fund, CAPE's dues – at $48 a month – are among the lowest in the public service. It was on the brink of financial disaster several years ago with falling revenues because of job cuts but members put up a long and bitter battle before finally approving an increase.

Tremblay said feedback from members is mixed. Some back the idea and others say she is swinging the union too far left. Some worry service agreements could be the first step towards merging with another PIPSC or PSAC – a move Tremblay says she wouldn't reject if proven necessary.

Treasury Board, PSAC strike groundbreaking mental health deal

Kathryn May, Ottawa Citizen, March 27, 2015

The Conservative government and its largest union struck an unprecedented deal to examine what's making public servants sick and driving mental health claims to record levels — a move both claim as a major victory in a difficult round of collective bargaining.

The government and the giant Public Service Alliance of Canada announced an agreement Friday to create a task force with a sweeping mandate to examine all policies, practices and working conditions that could be contributing to stress and the mental health claims — led by depression and anxiety — that account for about half of all disability claims.

The review will be built around the Mental Health Commission's national standard for psychological health and safety in the workplace, which unions and executives alike have pressed the government to adopt.

"It's a breakthrough," said PSAC President Robyn Benson. "This is a major victory for our members and for all Canadians who depend on federal public services. Through this task, PSAC will ensure the government lives up to its commitment for concrete action that leads to lasting change on improving mental health in the workplace."

Treasury Board President Tony Clement called the agreement a "huge deal" that partly grew out of his "passionate" commitment to well-being and mental health in the workplace. He said he aims to make the public service Canada's model employer as a psychologically healthy place to work.

"I firmly believe the federal public service workplace, as one of the largest employers in the country, has to be a model for mental wellness," said Clement.

The deal was quietly reached at the bargaining table this week, resulting in a memorandum of understanding that will become part of the contracts for the 100,000 employees represented by PSAC.

It marks the first time federal contracts will protect the psychological health and safety of employees as part of its occupational health and safety provisions.

Mental health is increasingly being recognized as a major boardroom issue because the 21st-century economy is a "brain economy" that will rely on the innovative thinking and productivity of its workforce.

Mental health advocates have long argued that the government should be a role model and adopt the standard, which it paid to develop.

Some argued the government couldn't effectively tackle the growing social and economic burden of mental illness in Canada until it deals with the chronic stress of its own workplace — where disability claims of depression and anxiety rank among the highest in the country. At one point, critics dubbed Ottawa the depression capital of Canada.

Mental health advocates have long argued that the public service, by virtue of its size and breadth of work, is the ideal workplace to test the Mental Health Commission's national standard.

Joseph Ricciuti, president of SEB Benefits and HR Consulting who worked on developing the standard, said the government is committing to full openness with the task force, to help reveal problems that he hopes union and management can resolve co-operatively without "finger pointing."

"The victory here is for all the employees who suffer with this," Ricciuti said. "Here is a process to improve the mental health of employers and protect their psychological health."

The unions tactfully managed to make this round of bargaining about "wellness." The big issue is sick-leave benefits, which Clement wants to replace with a new short-term disability plan that the unions strongly oppose.

Benson said the task-force agreement grew out of the bargaining demand the union tabled in January asking for the government to adopt the national psychological standard and enshrine it in all collective agreements. Part of that proposal called for the government to work with the union to identify the toxic factors in the workplace that are making workers sick.

The proposal got nowhere until Clement sought a meeting with Benson several weeks ago to discuss a possible joint task force. The two met March 12, followed by more meetings with Treasury Board officials, before an agreement was hammered out by negotiators at the table late Thursday night.

Clement said the issue of mental health is much broader than a bargaining issue, so the task force is key to tackling the problem throughout the federal workforce.

He said the mental health commission's national standard is a model, but it can't be adopted as a wholesale solution because the public service has so many different kinds of workplaces and jobs.

He said what's needed is a "cultural shift" that will affect the way public servants work, from top management to the front-line workers.

The task force will begin work immediately and operate independently of the ongoing round of bargaining, and will be made up of an equal number of union and management representatives. It will have a steering committee and technical committee.

The steering committee will be up and running by April 30, providing the terms of reference for the technical committee, which is expected to provide a report of recommendations by September. That timing could be extended.

Clement said the government's agreement for a task force will have no impact on bargaining. Clement said he is sticking to his plan to replace the existing sick-leave regime with a new short-term disability plan.

Ricciuti and others have argued that Clement is too focused on overhauling or redesigning the way sick leave and disability is managed and hasn't paid enough attention to what's causing rising absenteeism and mental health claims.

LeDroit

Entente sur la santé mentale dans la fonction publique

Paul Gaboury, Le Droit, le 27 mars 2015

Un protocole d'entente est intervenu entre le gouvernement et l'Alliance de la fonction publique du Canada (AFPC) afin de créer un groupe de travail conjoint pour discuter des questions touchant la santé mentale des employés fédéraux.

«Les négociations ont été très intenses. Ça représente pour nous une victoire, car c'était un enjeu important pour nos membres d'avoir des milieux de travail sains. Mais il reste encore 102 autres victoires à obtenir d'ici la fin de cette ronde de négociations», a commenté Larry Rousseau, vice-président exécutif pour la région de la Capitale nationale de l'AFPC. Le groupe de travail devrait se mettre au boulot «dès que possible», sans attendre la fin de la présente ronde de négociations.

«Les problèmes de santé mentale sont depuis longtemps importants pour moi. Je suis prêt à travailler avec tous les agents négociateurs alors que nous prenons les mesures pour améliorer notre façon de traiter les problèmes de santé mentale dans nos milieux de travail et de diminuer les préjugés qui sont souvent liés à la maladie mentale», a commenté le président du conseil du Trésor, Tony Clement.

Selon cette entente, qui ne compte qu'une seule page, les parties ont convenu de mettre sur pied deux comités d'ici le 30 avril 2015. Le comité technique remettra ses recommandations au comité directeur au plus tard le 1er septembre 2015.

Les deux parties travailleront notamment à contrer et à éliminer la stigmatisation en milieu de travail, à transmettre l'information sur les problèmes de santé mentale, et à étudier les pratiques en vigueur chez d'autres employeurs.

Le comité fera une révision de la Norme nationale sur la santé mentale afin de déterminer la meilleure façon de la mettre en application au sein de la fonction publique. L'entente mentionne notamment que cette Norme nationale «doit être considérée comme la norme minimale que doit respecter le programme de santé et sécurité de l'employeur».

Jusqu'à maintenant, le gouvernement fédéral avait refusé d'implanter cette norme dans la fonction publique fédérale.

La norme a été élaborée par l'Association canadienne de normalisation (Groupe CSA) et le Bureau de normalisation du Québec sous l'égide de la Commission de la santé mentale du Canada.

D'application volontaire, elle propose une série de mesures, d'outils et de ressources qui visent la promotion de la santé mentale des employés et la prévention des préjudices psychologiques susceptibles d'être causés par des facteurs liés au travail.

Pay attention private sector: Public sector wages are higher because the gender gap is much smaller

Erin Anderssen, The Globe and Mail, March 26, 2015

A paycheque isn't just money in the bank. Wages influence choice, decide career paths, facilitate equity or widen inequality – and not just at work, but also at home. That's one reason why countries with the smallest gender wage gaps also have the highest female participation rates, and more equitable sharing of household cooking and cleaning.

The scarcity of women in corporate boardrooms had even the federal government recently calling to increase opportunities for women. Jennifer Reynolds of Women in Capital Markets makes the case for including more women on boards.

The role of Canada's gender wage gap was highlighted indirectly this week in a report released by the Canadian Federation of Independent Business. The study calculated that public sector workers enjoy a higher pay premium compared to their private sector counterparts – as much as 13 per cent overall for federal employees. The premium is lower but also exists for provincial and municipal workers. If vacation benefits and other leave is calculated, public sector employees work on average two hours less each week. The pay premium has shrunk slightly since the CFIB's last report based on 2006 numbers, but due to changes in the census forms, author and economist Ted Mallett says that direct comparisons can only be drawn with caution.

Still, reading the study, one could easily image those 3.6-million Canadians (the public sector accounts for one in five jobs) enjoying their taxpayer-funded largesse with feet up on their desks, dreaming of Florida retirement retreats. Indeed, the CFIB study pointed out, when you add in benefits and pensions, the premium more than doubles for federal workers to 33.2 per cent.

But there's an equality story buried in those numbers, that makes those public sector wages an especially important part of Canada's wage policy discussion. The pay premium is not evenly distributed across the public sector. As previous research by the Canadian Centre for Policy Alternatives and Canadian Union of Public Employees have

found, the people benefiting the most are women and minorities. Not fat-cat bureaucrats, but cooks and cleaners and clerks who are getting access to above-the-poverty line wages and sick leave benefits they would have far less access to in the private sector.

According to a 2011 study by CUPE economist Toby Sanger, in male-dominated occupations in the public sector the premium actually goes in the opposite direction. Auditors and computer programmers typically earn significantly less on average than those in the private sector. Female-dominated jobs such as nurses and customer service clerks earn significantly more.

This suggests the most significant factor in the pay premium is a smaller gender wage gap – thanks largely to more stringent pay equity legislation. A gap still exists, but the CCPA study released last October pointed out "that salaries are highest in the public sector precisely for those groups who experience the greatest discrimination in the private sector."

This makes a difference not only for less-educated workers, but also for those with university degrees. In the private sector, according to the CCPA study, university-educated women in the private sector make 27 per cent less on average than their male counterparts. In the public sector, that gap shrinks to 18 per cent.

It's not just women who benefit, but ethnic minorities as well. The CCPA calculated that an aboriginal worker with a post-secondary degree makes 44 per cent less than non-aboriginal peers in the private sector. In the public sector, that same worker earns only 14 per cent less.

Breaking down the numbers within occupations suggests the wage gap narrows from both ends. In health occupations, for instance, the CCPA study found that women earn 4 per cent more than their private sector peers, while men earn 3 per cent less. In finance jobs, the pattern was the same: women earned 5 per cent more in the public sector, while men earn 6 per cent less.

Of course, the three studies represent the different but legitimate perspectives of the organizations, interests that weigh heavily into policy debates, such as raising minimum wage. The CFIB is invested in optimizing private sector wages for businesses wrestling with labour costs and shortages; CUPE and CCPA are focused on workers, income fairness and poverty. The reports differ in methodology (the CUPE study is based on the 2006 census, but there's nothing to suggest the wage patterns have changed), and their percentage calculation of the overall pay differences between the sectors varies widely.

But what these studies show is that wage comparison between the two sectors require a more nuanced discussion than stereotypes. Two of the CFIB's recommendations are no more pay raises above inflation until the private sector can catch up, and a better assessment of pension benefits. But which way should compensation move, and for which group of workers? In the private sector, many employees – especially those just entering the workforce – have seen pensions and benefits shrink, increasing stress and creating long-term uncertainty. One way to close the gap is to increase minimum wage. But as Mallet rightly points out, "Simply wanting to set wages at a high level is not enough to make it sustainable."

But the pay premium can't be easily closed on the public sector side without most affecting women, minorities and less-educated workers – workers that typically earn less than $60,000, as Sanger points out. To catch up, the private sector would have to pay those groups more. "What's the real point here?" he asks. "Should public sector workers reflect the increasing inequality of the private sector, where cooks, cleaners and clerks are often paid less than poverty [line wages], while CEOs receive millions of dollars? Or should we have more equitable pay for all?' Of course, one way to narrow the gap is to improve pay equity – especially valuable for the private sector that needs trained, highly educated female talent. More equitable wages and benefits also explain why more women chose public sector jobs, where, the CCPA report observed, salaries are not left "to the magic of the marketplace."

Another worrisome statistic suggests that women may actually be abandoning male-dominated industries, just when they are needed most. In 2014, 80,000 women dropped out of the labour force – the highest rate in 15 years. Sanger, who highlighted the number in a recent blog post, said most were between the ages of 40 and 54 – so it wasn't to start a family or retire. The jobs they left were often lower-paid positions. Some of the industries with the biggest decline were manufacturing, trades and finance, including middle management positions, while male workers in those same industries increased. Their exodus, says Sanger, suggests that Canada's labour force actually became more gender-segregated last year.

Maybe this was a one-year blip. Why those women jumped ship isn't clear. But it's certainly not unreasonable to assume that their paycheques had something to do with it.

---

thestar.com

Canadian Bar Association condemns Harper's anti-terror bill

By Jim Bronskill, Canadian Press, Toronto Star, March 20, 2015

OTTAWA—The Conservative government's anti-terrorism bill contains "ill-considered" measures that will deprive Canadians of liberties without increasing their safety, the Canadian Bar Association says.

The bar association objects to the planned transformation of the Canadian Security Intelligence Service (CSIS) into an agency that could actively disrupt terror plots.

It argues the bill's "vague and overly broad language" would capture legitimate activity, including environmental and aboriginal protests — and possibly put a chill on expressions of dissent.

The most worrying element of the bill is a provision that would give judges the power to authorize CSIS violations of the Charter of Rights and Freedoms, the association says.

It potentially brings "the entire Charter into jeopardy, undermines the rule of law and goes against the fundamental role of judges as the protectors of Canada's constitutional rights."

The association wants a sunset clause that would see the bill expire and trigger a parliamentary review no more than five years after its passage.

The association, which represents more than 36,000 law professionals across Canada, released a draft summary of its concerns Friday. It has developed a full submission drawing on the input of experts in criminal, immigration, privacy and charities law.

Association representatives are scheduled to appear before the House of Commons committee studying the bill next week.

The government argues the proposed new provisions are needed to combat the threat of homegrown terrorism in the wake of two murders of Canadian soldiers last October.

The bill would also make it easier for police to limit the movements of a suspect, expand no-fly list powers and take aim at terrorist propaganda.

In addition, it would allow much greater sharing of federally held information about activity that "undermines the security of Canada."

The information-sharing measures would permit disclosure of personal data to the private sector and foreign governments, unconstrained by the charter, and open the door to misuse, the association's summary says.

It also says:

- The expanded no-fly list provisions would introduce powers to search computers and mobile devices without a warrant.
- CSIS's powers would be expanded without a similar boost to already insufficient oversight and review of the intelligence sector.
- The bill is being rushed through Parliament without enough time for careful study.

Neither the new disruptive powers nor the information-sharing provisions apply to "lawful" advocacy, protest or dissent, but many critics fear the bill could be used against activists who demonstrate without an official permit or despite a court order.

Public Safety Minister Steven Blaney told the committee last week such concerns were ridiculous, saying the legislation is not intended to capture minor violations committed during legitimate protests.

Ottawa free to destroy Quebec's gun-registry data, top court rules

Sean Fine, The Globe and Mail, March 27, 2015

The federal government has the right to destroy Quebec records in the now-abolished federal gun registry, the Supreme Court ruled 5-4 Friday morning – with all three Quebec judges in the minority.

The province will go ahead with its own gun registry despite the setback, Quebec Public Security Minister Lise Thériault said. She expressed frustration that "Quebeckers will have to start again from zero. Quebeckers paid for that work, for that data to be collected. But Quebeckers will have their registry."

The three Quebec judges, joined by Justice Rosalie Abella of Ontario, disagreed with the majority's ruling, saying the destruction was unconstitutional, and went beyond the purpose of Parliament's decision to end its long-gun registry. They said "unwritten constitutional principles" support the need for co-operation between the federal government and the provinces.

"The trial judge was right to find that there was a federal provincial partnership with respect to firearms control," the minority said, in a dissent written by the now-retired Louis Lebel, Justice Clément Gascon and Justice Richard Wagner, all from Quebec.

The majority wrote, however, that "Quebec's position that cooperative federalism prevents Canada and the provinces from acting or legislating in a way that would hinder cooperation between both orders of government has no foundation in our constitutional law and is contrary to the governing authorities from this Court."

Under the registry, owners of rifles and other long guns were subject to criminal prosecution if they did not register them with a firearms agency run by the RCMP. The government argued that the registry was ineffective at preventing crime and violated the privacy rights of licensed gun owners.

Ms. Thériault said the initial estimate for the cost of a Quebec registry would be $30-million, but she admitted that is a very preliminary estimate and that costs could fluctuate. "We went to the court because we thought we'd win. We thought we'd have the data and now we don't. The number could vary now as a result," she said. When asked if costs could blow up the way the federal registry did, she said Quebeckers will get the registry they can afford in a time of budget austerity.

Ms. Thériault said the divide on the court illustrated how belief in a need for a registry is shared across Quebec. “We’ve rarely seen a consensus so strong on any issue,” she said.

A Liberal government created the registry, driven partly by demands for tighter gun controls after the 1989 massacre of 14 female engineering students at Montreal’s École Polytechnique.

“We’re now in the field of symbolic politics,” University of Montreal law professor Jean-François Gaudreault-DesBiens said before the court ruled. Because of the massacre, gun control has come to be seen as a “Quebec value,” and if Quebec loses this fight with Ottawa, separatists “will say, ‘You see, Quebec values are different from the rest of Canada, and the Supreme Court is a tool in the hands of the rest of Canada.’ ”

The case is also important for the concept of co-operative federalism, which posits that the federal government and provinces should work together on mutual objectives. Quebec argues that this notion, inherent in Canada’s Constitution but not actually written anywhere, obliges Ottawa to turn over the registry’s data. If the argument had succeeded, it would have created a powerful lever for other provinces to use in discussions with the federal government on other issues such as health care or securities regulation.

The partnership between Ottawa and the provinces on gun control was “consistent with the spirit of co-operative federalism,” the dissenting judges wrote in Friday’s ruling. “It enabled the federal and provincial governments to work together, rather than in isolation, to achieve both federal (criminal law) and provincial (public safety and administration of justice) purposes. In the novel circumstances of the dismantling of this partnership, the analysis must be guided by the Constitution’s unwritten principles so as to ensure that the principle of federalism and its modern form – cooperative federalism – are not placed in jeopardy.”

"The destruction of this data is incompatible with the proper management of public funds and the principle of co-operative federalism," Ms. Thériault said.

The ruling comes as Canada heads toward an election, expected in October, with the ruling Conservatives hoping to make gains in Quebec.

The trial judge who heard the case ruled in Quebec’s favour, but the Quebec Court of Appeal said the federal government had the right both to create the registry and to destroy it. Quebec appealed that ruling to the Supreme Court.

LA PRESSE .CA
VIDÉOS PHOTOS DÉBATS
ACTUALITÉS INTERNATIONAL AFFAIRES SPORTS AUTO ARTS

Ottawa autorisé à détruire les données du registre des armes d'épaule

Hugo de Granpré, La Presse, le 27 mars 2015

(Ottawa) Le gouvernement Harper a le feu vert pour détruire les données du registre des armes d'épaule, malgré l'opposition du gouvernement du Québec. Dans un jugement serré à cinq juges contre quatre, la Cour suprême du Canada a statué vendredi que cette décision unilatérale d'Ottawa était constitutionnelle.

Les trois juges du Québec sont toutefois dissidents, et ils auraient invalidé la disposition qui prévoyait cette destruction, au motif qu'elle empiète sur les compétences provinciales et qu'elle est contraire au principe du fédéralisme coopératif.

Québec a contesté cette mesure prise par le gouvernement fédéral en 2012 dans son projet de loi C-19. La province souhaite créer son propre registre et a plaidé que cette décision unilatérale d'Ottawa ne visait qu'à l'en empêcher et était inconstitutionnelle.

Le jugement de la Cour n'empêche pas Québec de créer son propre registre, mais il ne pourra compter sur les données fédérales. Ottawa, qui s'était engagé à conserver les renseignements sur les quelques 1,6 million d'armes d'épaule concernées en attendant l'issue du litige, pourra maintenant les supprimer, comme il l'a déjà fait dans le reste du Canada.

Les cinq juges de la majorité ont statué que le fédéral agissait dans le cadre de ses compétences, et que s'il avait le pouvoir de créer unilatéralement le registre, il avait aussi celui d'en supprimer le contenu.

Les « opinions divergentes sur le bien-fondé du choix de politique générale du Parlement ne sont pas en litige dans la présente affaire », ont noté les juges Thomas Cromwell et Andromache Karakatsanis, qui ont rédigé le jugement majoritaire.

« La décision de démanteler le registre des armes d'épaule et de détruire les données qu'il contient est un choix de politique générale que le Parlement avait le droit de faire en vertu de la Constitution. »

Les divergences d'opinions entre la majorité et les juges dissidents portent sur les questions du fédéralisme coopératif et sur la nature des compétences constitutionnelles en cause.

Dans des motifs rédigés conjointement par les trois juges québécois, les quatre juges dissidents se sont dits d'avis que la destruction des données empiète sur la compétence provinciale en matière de droit civil et contrevient au principe du fédéralisme coopératif.

« On ne saurait valider une mesure législative 1) qui ne relève pas de la compétence fédérale en matière de droit criminel et 2) qui contrecarre, par le débordement substantiel qu'elle cause, l'exercice corollaire des compétences provinciales auquel le partenariat a donné lieu. Conclure autrement serait en outre contraire aux principes du fédéralisme », ont-ils écrit.

Ils ont ajouté qu'il est « difficile d'imaginer comment une disposition qui vise à mettre fin à cette coopération et qui est édictée dans l'intention de nuire à un partenaire peut être rationnelle ».

Les cinq juges majoritaires estiment qu'au contraire, la compétence en question est d'ordre fédéral (puisqu'elle est accessoire à la compétence en matière criminelle), et que la doctrine du fédéralisme d'ouverture ne s'applique pas en l'espèce.

« Le principe du fédéralisme coopératif n'est d'aucune utilité au Québec en l'espèce, ont-ils écrit. En décider autrement minerait la souveraineté parlementaire et créerait un flou juridique chaque fois qu'un ordre de gouvernement adopte une loi qui a une certaine incidence sur les objectifs de politique générale de l'autre. »

Une promesse de longue date des conservateurs de Stephen Harper, la destruction du registre des armes d'épaule s'est finalement concrétisée en avril 2012 avec l'adoption du projet de loi C-19. Ce projet de loi prévoyait la fin de l'obligation d'enregistrer des armes à autorisation non restreinte (armes d'épaule) et la destruction des données relatives à ces enregistrements.

À noter que la portion du registre qui porte sur les armes à autorisation restreinte ou prohibée, qui formait environ 5 % du registre avant avril 2012, reste en vigueur.

« Nous nous réjouissons que la Cour suprême ait confirmé la décision de la Cour d'appel du Québec dans ce dossier, a déclaré le ministre fédéral de la Sécurité publique, Steven Blaney, par l'entremise d'un porte-parole.

« Nous avons au Canada un solide système de contrôle des armes à feu et notre gouvernement a rendu plus sévères les lois et les sanctions à l'endroit de ceux qui commettent des crimes à main armée. »

Des groupes qui défendent le contrôle des armes à feu, comme Polysesouvient, se sont dits déçus de la décision, mais optimistes devant la volonté du gouvernement du Québec de créer son propre registre même sans les données fédérales.

Le registre des armes à feu a été créé en 1995, dans la foulée de la tuerie de l'école Polytechnique à Montréal en 1989. Les victimes et leurs proches avaient alors fait pression sur Ottawa pour que le contrôle des armes soit resserré.

« Nous sommes très reconnaissants envers le gouvernement du Québec et tous les grands partis politiques de la province qui défendent et luttent pour la sécurité publique », a déclaré Wendy Cukier, présidente de la Coalition pour le contrôle des armes.

« Même si nous sommes déçus de la décision, le soutien du gouvernement québécois, l'appui des forces policières, des experts en sécurité publique et des victimes de violence armée ont envoyé un signal fort », a ajouté Mme Cukier.

Trente millions pour créer un registre québécois des armes d'épaule

Martin Croteau, La Presse, le 27 mars 2015

(Québec) La mise en place d'un registre québécois des armes à feu coûtera environ 30 millions selon une estimation « conservatrice » avancée vendredi par la ministre de la Sécurité publique, Lise Thériault.

Mme Thériault s'est dite « extrêmement déçue » par la décision de la Cour suprême qui autorise la destruction des données québécoises du registre des armes démantelé par le gouvernement conservateur de Stephen Harper.

« La décision de détruire les données n'est pas acceptable en termes de gestion de fonds publics et de fédéralisme coopératif », a-t-elle dénoncé.

La ministre a confirmé que le gouvernement Couillard mettra sur pied son propre registre des armes. Il déposera à cet effet un projet de loi d'ici la fin de la session parlementaire.

Lise Thériault estime que cette mesure est « essentielle au travail des policiers », le registre actuel étant consulté 900 fois par jour par les forces de l'ordre.

En revanche, Québec devra procéder « par étapes », prévient la ministre, afin de « respecter la capacité de payer » des contribuables.

La mesure coûtera 30 millions selon une évaluation préliminaire qu'elle qualifie de « conservatrice ». La facture pourrait varier en fonction du type de registre que le gouvernement choisira.

Le gouvernement Couillard n'a pas prévu cette somme dans son budget déposé hier, a indiqué Mme Thériault, car il s'attendait à gagner sa cause devant la Cour suprême.

Mme Thériault n'a pas été en mesure de préciser comment Québec compte s'y prendre pour éviter l'explosion des coûts qui a miné le déploiement du registre fédéral.

Editorial: The Court says the government can take its marbles

Ottawa Citizen Editorial Board, March 27, 2015

The Supreme Court has ruled that the federal government has the right to destroy the gun registry data, so that Quebec can't use it. The court did not say, though, that the government would be wise to do so.

The Conservative government ended the registry in 2012. Much of the criticism of the registry was always valid: It was ridiculously expensive to set up, and its safety benefits were vastly overstated. On the other hand, abolishing the registry didn't recover those costs. It was never the great violation of rights that the Conservatives, highly selective in their libertarianism, contended. And the registry did provide some useful information for law enforcement. The Conservative decision to abolish it was justifiable; its decision to torch all evidence of its existence, and thereby make it harder for Quebec to set up its own registry, is mere childish spite.

The Supreme Court was not asked to step in as wise parent and sort all this out in the wisest way possible. It was asked to rule on the narrow question of whether the federal government has a right to destroy the information.

Four judges (including the three from Quebec) ruled that the federal government did not have that right, that it would run counter to "the spirit of co-operative federalism." They pointed out that there was no rational reason for the federal government to destroy the data, and that destroying it is not necessary to achieve the purpose of the abolition of the registry. "Furthermore, Parliament declared that its intention was to cause harm to the other level of government," these dissenters wrote.

Spite, in other words.

The majority, though, ruled that, "the principle of cooperative federalism does not prevent Parliament from exercising legislative authority that it otherwise possesses." The two levels of government should play nicely together, but they are not bound by the Constitution to do so. "To hold otherwise would undermine parliamentary sovereignty

and create legal uncertainty whenever one order of government adopted legislation having some impact on the policy objectives of another." In other words, the Quebec government is not the boss of us.

This is a sensible ruling – conservative in the non-partisan sense of that term – and it seems unlikely to place federalism in "jeopardy," despite the dissenters' warning. If there is mutual benefit in co-operating, the provincial and federal governments can and should do so. But that very co-operation doesn't, and shouldn't, limit their powers to act within their own legislative domain. In fact, if the dissenters had carried the day, based on an analysis of evolving and "unwritten principles," that might have created an unintended disincentive to co-operate, because no government wants to do something that could constrict its power to act.

All that said, just because the federal government has the power to act selfishly and spitefully, and in a way that could cost the taxpayers of Quebec more money unnecessarily, that doesn't mean it should do so. What is legal, and what is wise, are separate things. The history of the gun registry is a history of throwing good money after bad, and that seems likely to continue.

Proposed communism monument would put justice under a shadow

BAR ASSOCIATION PRESIDENTS, Contribution to The Globe and Mail, March 26, 2015

This open letter is signed by 17 former presidents of the Canadian Bar Association*: Simon V. Potter, Bernard Amyot, Thomas G. Heintzman, L. Yves Fortier, D. Kevin Carroll, Brian A. Tabor, J. Guy Joubert, J.J. Camp, Trinda L. Ernst, Robert Brun, Rod Snow, Paul Fraser, Daphné Dumont, Russell Lusk, Wayne Chapman, Gordon F. Proudfoot and Susan T. McGrath.*

We are past presidents of the Canadian Bar Association and wish to express our deep concern with the federal government's plan to erect a monument to the victims of communism right next to the Supreme Court of Canada building.

We do not wish to deal here with the aesthetic issues, raised by others, as to the proposed monument's artistic merit or as to any consistency between it and the Wellington Street surroundings proposed for it. We do note, though, that the National Capital Commission's Design Committee was unanimously opposed to the monument being placed there.

We do not wish to deal either with the good sense of the decision apparently made a few years ago to deprive the National Capital Commission of the power to decide these issues, and the transfer of responsibility to Heritage Canada.

We write as lawyers concerned by the decision to install a permanent political message on the very doorstep of the highest court in the land.

It is fitting that the Supreme Court of Canada is located near the Parliament buildings and across the street from the Department of Justice. Together, these buildings and institutions represent the three distinct, independent pillars of our democracy – the judicial, legislative and executive branches.

It is ill conceived, however, to add an imposing sculpture signalling a strong political message, controversial or not, literally in the face of the very institution which is the final arbiter in Canada of disputes involving Canadians, the federal and provincial governments, and foreign litigants.

The citizens of this country approach the Supreme Court of Canada up the majestic stairs in front of the courthouse. If this monument is erected, they will do so under the shadow of a state-imposed message of this monument. No citizen should feel that his or her case is being heard under such a shadow. Even a fervent anti-communist can, and should, oppose making any of our courthouses, let alone our Supreme Court house, the venue for state-imposed messages of political preference or of political opprobrium.

If the proposed monument is judged worthy of the public expense and worthy of such a footprint, let it be a footprint many, many steps away from Canada's Supreme Court.

Le futur site du Monument aux victimes du communisme encore critiqué

Le Droit, La Presse Canadienne, le 26 mars 2015

L'érection du monument aux victimes du communisme sur un terrain qui jouxte la Cour suprême du Canada porterait ombrage à ce que l'institution représente, estiment plusieurs ex-présidents de l'Association du barreau canadien (ABC).

Les 17 anciens dirigeants expliquent, dans une lettre ouverte publiée jeudi dans le Globe and Mail, que les citoyens qui gravissent les marches de l'auguste bâtiment ne devraient pas avoir à le faire «à l'ombre d'un monument porteur d'un message imposé par l'État».

En entrevue téléphonique avec La Presse Canadienne, l'un d'entre eux, Simon Potter, a précisé qu'il était primordial de préserver l'indépendance - et l'apparence d'indépendance - du plus haut tribunal au pays.

Les ex-présidents de l'ABC ajoutent donc leur voix au concert de critiques entourant le choix du terrain, qui devrait selon plusieurs être réservé à la construction de la Cour fédérale.

Parmi les opposants au projet figurent notamment le maire d'Ottawa, la juge en chef de la Cour suprême, des députés du Nouveau Parti démocratique (NPD) et du Parti libéral ainsi que l'Institut royal d'architecture du Canada (IRAC).

Mais au gouvernement, la décision semble finale. Le ministre responsable de la Commission de la capitale nationale (CCN), Pierre Poilievre, a exclu à de nombreuses reprises la possibilité de relocaliser le monument.

Selon lui, personne ne veut d'un autre «édifice parlementaire ennuyant au centre-ville d'Ottawa».

LeDroit

Réunions syndicales: le prêt de locaux approuvé «au cas par cas»

Paul Gaboury, Le Droit, le 26 mars 2015

La direction d'Environnement Canada n'a pas voulu expliquer pourquoi elle n'a pas permis aux scientifiques de l'Institut professionnel de la fonction publique du Canada (IPFPC) de tenir une réunion syndicale dans les locaux du ministère à l'édifice Fontaine, à Gatineau, lundi.

Mais la décision n'a rien à voir avec une nouvelle directive du Conseil du Trésor visant l'ensemble des ministères fédéraux.

Lundi, l'IPFPC avait déploré que le refus du ministère de lui prêter une salle pour la tenue d'une réunion syndicale, sur l'heure du dîner, mettant ainsi fin à une pratique «de longue date», selon la présidente du syndicat, Debi Daviau.

Environnement Canada n'a pas expliqué son refus, malgré les demandes du Droit. C'est finalement le secrétariat du Conseil du Trésor qui a pris le relais, en soulignant que la décision de prêter des locaux est évaluée «au cas par cas» par les ministères fédéraux.

«Aucun changement n'a été apporté à cette pratique pour ce qui est de l'utilisation des locaux de l'employeur. La permission d'utiliser ces locaux doit être obtenue de la direction chargée de ces locaux. Cela s'applique dans l'ensemble du gouvernement. Chaque demande est évaluée au cas par cas», a indiqué par courriel Lisa Murphy, porte-parole du Conseil du Trésor.

Mme Daviau avait estimé que la demande avait sans doute été refusée parce que l'assemblée devait permettre aux scientifiques de discuter de l'«intégrité scientifique» et du droit de s'exprimer publiquement.

La rencontre syndicale aura finalement lieu jeudi midi, au sous-sol de l'église Notre-Dame-de-l'Île, boulevard Sacré-Coeur, à Gatineau.

‘Bold’ Toronto judge to preside over Mike Duffy’s trial

Daniel LeBlanc and Sean Fine, The Globe and Mail, March 25, 2015

A Toronto-based judge will take over a courtroom in Ottawa to hear the Mike Duffy trial, where the veteran of the Ontario Court of Justice will be expected to bring a neutral eye to what has been a heated political saga.

The court confirmed on Wednesday that Justice Charles Vaillancourt has been assigned to the case that has attracted national attention and could shine a negative light on the Conservative government ahead of the election scheduled for October.

Appointed to the bench in 1990 by the NDP government of Bob Rae, Justice Vaillancourt will need to keep a tight grip on the proceedings. The trial is scheduled to last 41 days, but sources have told The Globe and Mail that the defence has already raised the possibility of seeking an extension in preliminary discussions with the Crown.

Mr. Duffy, a former television journalist who became a senator in 2008, was charged by the RCMP last July with 31 counts of fraud, breach of trust and bribery. The charges were related to living and travel expenses claimed, contracts awarded by his office and a deal in which he received $90,000 from the Prime Minister’s former chief of staff to reimburse the government for his controversial expenses.

Starting on April 7, Justice Vaillancourt will hear the opening arguments of the Crown and the defence. The trial will be held in front of a judge alone, and it will be up to him to rule on Mr. Duffy’s guilt or innocence.

The trial will delve deeply into the arcane rules of Senate administration, but also offer an unprecedented glimpse into the inner workings of the Prime Minister's Office.

The RCMP investigation has turned up hundreds of e-mail exchanges involving PMO officials and other Conservative staffers, while looking into vast amounts of invoices, forms, receipts, contracts and agendas as it built its case. The Crown and the defence are expected to offer vastly different interpretations of the evidence, leaving Justice Vaillancourt to keep the trial moving.

"Judges in criminal cases these days are used to avalanches of documents and evidence," said William Trudell, chair of the Canadian Council of Criminal Defence Lawyers. "Sometimes trials do unexpectedly get bogged down, but it is also important to recognize that people's lives are at stake. Efficiency is important, but fairness is essential."

Mr. Trudell called Justice Vaillancourt "very patient, a good listener, pleasant to appear before, balanced and with no shortage of common sense."

He is no stranger to the pressures that come with being a judge. In one case, police officers packed the courtroom to hear a verdict involving their fellow officers.

"That terrorized me," Justice Vaillancourt said at a legal conference in 1996. "But I went on to give the judgment I had prepared."

He has overseen other trials involving politicians, such as the late New Democrat MPP Peter Kormos, charged with assaulting a security guard, whom he acquitted in 1998.

He has stated his willingness to go against public opinion in his rulings. "Judges are not in the happiness business," he said, in reference to his landmark 1998 ruling affirming Métis hunting rights around Sault Ste. Marie, Ont. While not unanimously popular, his ruling was later upheld by the Supreme Court.

Toronto lawyer Steven Skurka said he believes the Ontario Court of Justice carefully chose Justice Vaillancourt for the case.

"He makes bold decisions. He will not be affected by public sentiment. He plays no favourites in the courtroom," Mr. Skurka said. He added that Justice Vaillancourt is "a better judge when he has great lawyers in the courtroom. There are some judges who perform better when both sides present vigorous, formidable positions, and that will no doubt happen in this case."

Speaking through his lawyer after he was hit with 31 charges last July, Mr. Duffy maintained his innocence and said he looks forward to a fair hearing in court.

Justice Vaillancourt will bring more than a quarter-century of experience to the task. He was a school teacher before spending 16 years as a criminal lawyer in Sault Ste. Marie. He also taught criminal jurisprudence for a decade at Algoma University in Northern Ontario and Lake Superior State University in Michigan.

CBC news

Debt agencies sought to help government collect overdue fines

Public Prosecution Service can't keep up and wants help from the private sector

By Dean Beeby, CBC News, March 26 2015

A backlog of unpaid court fines has hit a record $136 million as the federal government revives a stalled plan to hire collection agencies to make people pay up.

The Public Prosecution Service of Canada issued a notice this week looking for companies to help clear the overdue accounts, almost a third of them older than seven years.

The service issued a previous notice in 2012, but instead of hiring outside firms as intended, it carried on with its internal collections agency based in Montreal with a small staff.

It also chopped $1.7 million from the budget of the fine recovery program in 2013-14 to help pay down the federal deficit, said Sujata Raisinghani, spokeswoman for the service.

Outstanding fines that were recovered dropped in value that year, to $6 million from $7 million the year before, while the backlog of unpaid fines rose by $11 million to a record high of $136 million.

More stale accounts

No penalties or interest is charged on unpaid court fines, and the slow collection process is creating more and more stale accounts that may never be collected.

"It might be hard after seven years to collect it," said NDP justice critic Françoise Boivin, adding the growing backlog raises doubts about the Harper government's tough-on-crime agenda.

"It's a government that talks hard, loud. But in the day to day, they're like little sheep."

Justice Minister Peter MacKay declined to comment on the backlog, saying, "The Public Prosecution Service is an arm's-length group. You might want to talk to them."

Raisinghani said there can be many reasons for unpaid fines.

"The offender cannot be located," she said. "The offender does not have the means to pay at the moment, and is going through negotiations.… The offender declared bankruptcy and cannot pay until he has been discharged."

Fine amounts can range widely. And any money collected as a "victim surcharge" goes into victim funds administered by the provinces, while the rest goes into general revenues, she said.

Some fines levied can be high, such as the $9 million imposed for money laundering and other crimes in Montreal last week in a case involving Sy Veng Chun and Leng Ky Lech, who were also given prison sentences.

In 2002, the Public Prosecution Service took over responsibility for collecting fines for people convicted under federal law. It inherited a backlog of cases with unpaid fines totalling $47 million that year, and in the 12 years since the amount has tripled.

'Wasting their time'

The number of unpaid fines has remained relatively stable at 20,000 each year, but the average value has increased significantly.

Liberal justice critic Sean Casey said any attempt at collecting stale fines is fraught.

"If this is an attempt to extract blood from a stone, they're wasting their time – but it fits well on a bumper sticker," he said in an interview.

"My experience as a lawyer would tell me that they may very well have a problem with the [debt] statute of limitations, quite frankly."

Raisinghani said the Public Prosecution Service has several options for collecting outstanding amounts, including intercepting tax refunds from the Canada Revenue Agency, and seizing assets.

Companies have until May 5 to respond to the fine-collection tender.

---

thestar.com

Proposed life-sentence bill could have domino effect, critics say

A proposed bill to do away with parole for the worst murderers may affect as few as three to six convicted killers each year, according to the federal prison investigator's office.

Tonda MacCharles, Toronto Star, March 25, 2015

OTTAWA—A proposed bill to do away with any prospect of parole for the worst murderers may affect as few as three to six convicted killers each year, according to the federal prison investigator's office.

But advocates of a rehabilitative approach to corrections warn those numbers will grow — if only out of prosecutors' reluctance to tell victims their loved ones didn't suffer a "particularly brutal" murder worthy of a whole-life sentence. They warn the build-up of offenders facing no hope of release will have far-reaching effects on the prison system.

"It's unnecessary, cruel and dangerous," warns Catherine Latimer, executive director of the John Howard Society of Canada, and a former Justice Department adviser.

She said the worst murderers — serial killers like Clifford Olsen — already die behind bars. She predicts others who face no chance to serve the rest of their "life sentence" under strict conditions with supervision in the community will become angry and desperate, a danger to themselves or others.

Right now about 20 per cent of first-degree murderers are serving out the remainder of their life sentences in the community, on day or full parole. Recidivism rates are low.

"I think you'll see more mental health issues, more self-injuries, more violence," Latimer said in an interview, citing concerns raised by lifers with whom the organization works.

Howard Sapers, who heads the federal Office of the Correctional Investigator, estimates the bill could catch up to half a dozen offenders sentenced each year — a relatively small number when compared, for example, to the 36 first-degree murderers jailed last year.

Sapers says the job of gauging the bill's impact is complicated by "vague" definitions in it. It will be up to courts to clarify how juries and judges should conduct what is essentially a "subjective" exercise — judging an accused person's character and expectations of future behaviour — and what is meant by a particularly "brutal" murder, he said.

"There will eventually be superior court guidance, but this is going to take years and years to go through the system."

Sapers would not give his opinion on whether the bill is fair or will pass constitutional muster, but says it is certain to be challenged in court as a potential violation of the Charter guarantee against cruel and unusual punishment.

Meantime, Sapers said prisons that are already trying to deal with an aging prison population, with one in five federal inmates over the age of 50, will have to "rethink"

what kind of programs to offer someone who has no hope of ever getting out from behind bars. As it is, about 30 per cent of first-degree murderers die behind bars. The average age of an incarcerated first-degree murderer is 40. The oldest first-degree murderer in jail today is 88, and the youngest is 18.

Bill C-53 targets tougher sentences for those guilty of high treason (the last offender convicted in Canada for that was Louis Riel) or first-degree murder — meaning murder that is planned, deliberate and is committed during an act of terrorism, kidnapping, sexual assault, or an act that leads to the death of a police or corrections officer, or any first-degree murder that is of such a "brutal nature as to compel the conclusion that the accused's behaviour in the future is unlikely to be inhibited by normal standards of behavioural restraint."

The bill also toughens parole ineligibility for second-degree murderers previously convicted of a homicide or a killing deemed a war crime, potentially making them forever ineligible for parole as well, or at least not until after 25 years is served. Currently, second-degree murderers may be eligible for parole after serving between 10 to 25 years, as ordered by a court.

It will be up to a jury to make a sentencing recommendation to a judge, who will have the final determination to impose an unlimited sentence.

The Conservative government has inserted a possible, though remote, chance of applying for parole to the federal cabinet, taking the decision away from the independent National Parole Board. A cabinet review of an offender's sentence would be available only after 35 years has been served, up from 25. The bill allows for no escorted absences, whether for judicial proceedings or for compassionate reasons such as illness or to attend a funeral, until 35 years has passed.

The bill has won the support of Victims of Violence, a victims' advocacy group founded by the parents of one of Olsen's victims, but all opposition critics have suggested it goes too far, and question the politicization of parole decisions.

Ottawa criminal lawyer Leo Russomano is blunt: "Let's just call it what it is, it's just an election year bill that makes no effort whatsoever to actually respond to a problem. This is a solution in search of a problem."

"The fact of the matter is they are life sentences. Whether a person is released on parole or not, they are under sentence for the rest of their lives. It's sowing the seeds of mistrust with the administration of justice."

Jason Godin, national vice-president with the Union of Canadian Correctional Officers, questions how guards will deal with inmates who will no longer have any real incentive to change their behaviour. Godin flagged a big "operational" concern of guards is that most first-degree murderers "cascade down" from maximum- to minimum-security prisons, around which he said there are no fences. "Then what?"

The Correctional Service of Canada says it costs $102,000 to maintain an offender in an institution; $25,000 to supervise a sentence in the community. The agency refused

comment, with spokesperson Véronique Rioux saying it "would be inappropriate" as Bill C-53 is currently before the House of Commons.

---

thestar.com

Brampton judge blasts Ontario government over courtroom shortage

Regional senior justice writes to lawyers that having to shift cases to distant sites "inconveniences counsel, the accused, witnesses, the police, court staff, judges and members of the public."

Wendy Gillis, Toronto Star, March 25. 2015

An Ontario Superior Court judge has blasted the provincial government for its latest plan to address the chronic shortage of courtrooms in Brampton — an "immense" problem so dire trials are being shipped to courts as far away as Kitchener.

In a letter distributed to Criminal Lawyers' Association members late last week and obtained by the Star, Justice Francine Van Melle accuses the Ministry of the Attorney General of failing to provide sufficient criminal jury courtrooms "on time, as promised."

Van Melle's letter, sent to the CLA president earlier this year, came just days after the province announced a "state-of-the art," six-floor addition to Brampton's A. Grenville and William Davis courthouse, one of the busiest in the province due to a staggering 40,000 new cases each year.

But Van Melle said the ambitious project, which won't be ready until December 2017 at the earliest, does nothing to address the current shortage of courtrooms, which she and other judges have been asking the province to "immediately address" for more than three years. Facing a scarcity of places to hold jury trials, a Brampton cases are being sent to Orangeville, Kitchener and elsewhere.

Van Melle and other judges "urged" the ministry to proceed with a plan developed in 2012 to add three modular courtrooms, a modest solution that would have brought relief far sooner. But the ministry went ahead with the six-storey addition "despite our pleas," Van Melle wrote.

"You can imagine our frustration when we learned … that it will take another three years before there is any real relief in Brampton," wrote Van Melle, who was then Regional Senior Justice for Ontario's Central West court region, a role that includes determining where cases are heard.

“The ministry’s decision inconveniences counsel, the accused, witnesses, the police, court staff, judges and members of the public.”

Brendan Crawley, spokesperson for the Ministry of the Attorney General, said in an email that the ministry “has always responded to issues of courtroom demand and condition promptly and effectively.”

The Brampton courthouse addition “will satisfy projected demand for both the Superior Court of Justice and the Ontario Court of Justice for an estimated twenty-five years,” he said.

Van Melle wrote that she “took the liberty” of sending her letter to assistant deputy attorney general Lynne Wagner. “I trust the ministry will respond as it sees fit,” she wrote.

Asked if Wagner responded, Crawley said the letter was sent to the CLA and “as such, the ministry did not respond.”

In a January communiqué sent to Brampton courthouse staff to announce the permanent courthouse expansion, Wagner did say the long-term plan was “the best use of our capital dollars and offers the best value for taxpayers.”

Justice P.A. Daley replaced Van Melle as Regional Senior Justice in February, but Van Melle remains a judge in Brampton. She could not be reached for comment.

Daley declined to comment on the concerns Van Melle raised in the letter, the impetus for which came from CLA president Anthony Moustacalis, who expressed in a December letter to her the association’s “grave concerns” about the situation in Brampton.

Highlighting complaints about childcare responsibility, transportation difficulties and lack of funding to reimburse travel costs, Moustacalis asked Van Melle to suspend the practice of moving cases to other courthouses until they could arrange a meeting to discuss it.

“Shipping Brampton trials out of jurisdiction, particularly as far as Kitchener … is terribly unfair to many of our members, as well as to the accused persons,” he wrote.

But Van Melle could only sympathize, detailing the efforts she and other judges had made to convince the Ministry of the Attorney General to “immediately” address the courtroom shortfall, including numerous meetings with senior ministry officials.

“The responsibility to provide appropriate and sufficient facilities rests squarely on the provincial government, not the judiciary,” Van Melle wrote.

In a statement to the Star, CLA Toronto region director Daniel Brown said the association is troubled by the lack of government resources directed towards the criminal justice system throughout Ontario.

"A scarcity of court space impacts everyone in the system and particularly an individual's right to a fair trial. Most concerning is that there appears to be no short-term solutions. Without significant government funding for additional judges and court space, we expect these problems will continue."

Brampton is among several GTA municipalities struggling to accommodate the high demand growing populations place on court resources. Earlier this year, an Ontario Court judge called Halton Region "one of the lost children of the Ontario judicial system," due to a lack of court resources.

Last week, another Halton judge threw out a drunk driving case after it had been delayed nearly a year, ruling the defendant's right to a trial within a reasonable time was infringed. Justice Stephen Brown blamed the delay in part on the lack of court resources and the region's failing court infrastructure.

In his ruling, he accused the province of failing to respond to the "persistent and ever-increasing" strain placed on Halton's justice system by the region's growing population.

"It seems to be recognized by local governments but not the government that has the Constitutional obligation to allocate sufficient resources to remedy the problem," Brown wrote. "The government has failed to allocate sufficient resources in Halton for a lengthy period of time. This cannot be an oversight, but only a conscious decision."

Crawley said the ministry is aware that numerous courthouses across Ontario, including in Halton, are facing facilities challenges.

"The ministry's courthouse capital investment decisions are guided by long-term planning and the need to ensure that facilities with the greatest needs are given priority. The challenges in the Halton region were an important part of the ministry's annual infrastructure priority and planning exercise, which is ongoing," he wrote.

THE HILL TIMES online
News | Politics | Opinion | Policy Briefings | Legislation & Lobbyi
COLUMNS | Climbers | Civil Circles | Heard On The Hill | P

Next election 'very likely' most expensive in Canadian history, say political insiders

Abbas Rana, The Hill Times, March 30, 2015

The Oct. 19 federal election is expected to be the most expensive in Canada's political history because, for the first time, the election date is known and pre-election spending will be big, say MPs, party strategists, and third-party organizations.

The House of Commons is scheduled to start its summer recess on June 23 and won't return until after the Oct. 19 election. This means that MPs, political parties, and third-party groups are going to start campaigning for the next election almost full-time right after the adjournment of the House and will continue until the election day.

The spending cap for the major national parties in the last election was around $21-million. According to Elections Canada, in the last election, the New Democratic Party spent $20,319,567, the Liberal Party $19,483, 917, the Conservative Party $19,457,420 and the Green Party spent $1,924,478.

Already, the Conservatives and Liberals have been running ads either against each other or to promote their own party's policies or achievements. Since Liberal Leader Justin Trudeau (Papineau, Que.) became party leader in 2013, Prime Minister Stephen Harper's (Calgary Southwest, Alta.) Conservatives have been running attack ads on and off to try to define Mr. Trudeau. The Conservative government has also been running ads to promote programs such as Canada's Economic Action Plan.

The Liberal Party is currently running ads promoting its party policies in Quebec. Liberal sources told The Hill Times that the ads will be run nationally in the coming months. This is the third round of ads from the Liberals since Mr. Trudeau became the party leader.

"This will be the most expensive [election campaign]. We're going to run ads and will spend to the limit [during the campaign]. Other parties are going to do [the same]," one Liberal source said.

Green Party Leader Elizabeth May (Saanich-Gulf Islands, B.C.) told The Hill Times that pre-writ and post-writ election periods are "very likely" going to be the most expensive in Canadian political history. But she also drew a distinction between informative ads and the negative attack ads by political parties, singling out the ones run in heavy rotation by the Conservative Party against three successive Liberal Party leaders on and off since 2007.

When reminded that each political party deems its own ads as informative while opposing party advertisements as negative, Ms. May said the Green Party doesn't run attack ads.

"If third parties take a leaf out of our book, then it could be informative and helpful advertising. If they decide to go negative and follow the way Mr. Harper's party runs ads, we can find ourselves in a toxic swamp," Ms. May said.

"We don't want to move in the direction of the United States where people just tune out because there's too much noise and too much partisanship," Ms. May said.

Elections Canada tracks election spending by political parties and third parties only during the writ period. In the pre-writ period, the political parties and outside groups such as unions, interest groups, and business lobbies can spend any amount of money on partisan activities. Elections Canada will issue spending limits for political parties for the next election after the writ is dropped.

For third parties, the advertising spending cap for the next election is $4,116 per riding, or $203,800 for the national campaign. Elections Canada requires third parties to register if they spend $500 or more during the writ period.

Last year's Ontario provincial election drew a lot of media attention in which third-party advertisers spent about $8.5-million. Former Ontario Progressive Conservative leader Tim Hudak suffered the most damage from the union advertisements because of his campaign pledge to eliminate 100,000 public service jobs. The provincial Liberals, led by Kathleen Wynne, reaped the benefits of this game-changing controversy and won an unexpected majority government.

On March 10, Ontario's Chief Electoral Officer Greg Essensa recommended to the Wynne government to consider putting in place increased reporting requirements, such as spending and contribution caps to create a level playing field for all candidates and political parties.

Former government House leader Don Boudria, who was in the Jean Chrétien Cabinet, told The Hill Times last week that when the Conservatives passed the fixed date election law in May 2007, they should have also taken up steps to monitor spending in the pre-writ period. The Chrétien government also passed Bill-C-24 in 2003, a sweeping reform of the Canada's elections laws that introduced individual donation limits and banned unions and corporations from donating any money to political parties. Mr. Boudria said that his party did not restrict pre-election spending at that time because there was no fixed date election law.

"You didn't know if the election was two months from now or two years from now. So, you didn't put any money into it [running pre-writ ads]," said Mr. Boudria who is now a senior counsellor at Hill + Knowlton Strategies. "Now, it's wide open for corporations, for unions for pressure groups, to spend all kinds of money on advertising with no accountability. People are going to spend like crazy. That's what we're going to have and it has already started."

Mr. Boudria said that when the governing party runs pre-writ attack ads, the opposition parties have to defend themselves, unless they can't afford it. Under the current laws, he said, if a union or any other third party does not like the policies of any political party, they have a golden opportunity to oppose that party by running ads.

"What's the other party supposed to do? Roll over and play dead? Of course not. They're going to have to react. Maybe they don't have the same amount of money to react but they're still going to defend themselves. Somebody goes after you with a bazooka, you've got to take out whatever arms you have to defend yourself," Mr. Boudria said.

NDP MP Paul Dewar (Ottawa Centre, Ont.) also told The Hill Times that the next election is likely going to be the most expensive. He pointed out that besides third-party spending and attack ads, there will be 30 new ridings up for grabs and said Parliament should come up with some mechanism to control the pre-writ spending by political parties or third parties.

"The question is, when is the election really? Is it right after the writ is dropped or is it whenever a particular group or party decides they want to start campaigning? We have to be vigilant," said Mr. Dewar.

Anita Vandenbeld, Liberal candidate in the riding of Ottawa West-Nepean, said that the fixed date election law has created an atmosphere where all parties are constantly in the permanent election campaign mode like the United States. She said that the lack of restrictions on the pre-writ spending by third parties puts female candidates at a disadvantage, in particular.

"For the most part, election campaigns have been fought during election times. This whole permanent campaign that we're seeing now is a very new thing for Canada. A lot of it is because of the fixed election date," said Ms. Vandenbeld who is a former Liberal Hill staffer and is an international expert on democracy and human rights. "[Women] would not be able to run because you'd have a kind of politics where either you have to be independently wealthy or you have to accept money that comes with strings attached from very well financed groups in order to be able to win. Women typically don't have the same access to financial networks, not all women."

When the Chrétien government passed Bill C-24, Ms. Vandenbeld worked in the Liberal Research Bureau and later served as director of Parliamentary affairs in the Government House leader's Office.

Chief Government Whip John Duncan (Vancouver Island North, B.C.) said it's too early to draw any conclusions about whether the Harper government should have included pre-writ campaign spending rules with the fixed date election law. He said all parties will find out during the next election whether there should be any caps for pre-campaign spending or not.

As for the Ontario election in which third parties played a key role in helping the Liberals win, Mr. Duncan said, more than money, Progressive Conservatives should blame themselves for running a poor campaign.

"I also saw that the Conservatives that were running in the provincial election ran a terrible campaign. Election results had more to do with the Progressive Conservative campaign in Ontario than it did with [third-party] advertising. Everybody knows you don't campaign based on cutting jobs," said Mr. Duncan.

In interviews with The Hill Times, several third-party organizations said they will play an active and vigorous role both in the pre-election and post-election periods. They said they are currently in the process of finalizing their strategies.

Peter Coleman, president and CEO of National Citizens Coalition, a conservative lobby group, said that his organization has plans to run ads using social media and on radio, both pre-writ and post-writ. But he said his organization is still trying to figure out when to run the pre-writ ads because in the summer months most Canadians are tuned out of politics. Mr. Coleman did not reveal the cost of his campaign.

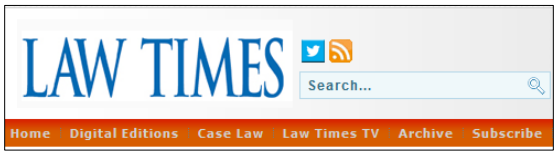
"We feel that any impact you're going to have in spending has more of an impact during the election campaign when people are paying attention. If we were spending money in June, July, and August when people are on vacation or on holidays, it's doubtful that [the advertising will have the desired impact]," said Mr. Coleman. "Most people don't like politics, at the best of times, and they're not going to pay attention to the ads in the summer time."

Prior to becoming Canadian Alliance leader in 2002, Mr. Harper headed the National Citizens coalition.

The Public Service Alliance of Canada, one of the largest public service unions, told The Hill Times last week that it was still in the planning phase of its strategy for the next election. For advertising, a spokesperson said it has sent some questions related to advertising rules to Elections Canada. Since the Conservatives came to power in 2006, both have had a testy relationship.

Canadian Labour Congress president Hassan Yussuff, told The Hill Times two weeks ago that his organization is already holding consultative meetings with members across the country to work out the details of their election strategy. He said that his organization's total budget for the next election is likely going to be in hundreds of thousands, which will include pre-writ and post-writ expenses.

National Firearms Association President Sheldon Clare also told The Hill Times two weeks ago that his organization had not finalized the election strategy but will provide its members with performance reviews of individual MPs' and political parties related to firearms legislation. He declined to share how much money his organization will spend in the next election.



Editorial: Let suspects dial a lawyer

Law Times Editorial by Glenn Kauth, March 23, 2015

When it comes to the right to counsel, is it enough for police to ask detainees if they know of a lawyer they'd like to contact and then dial the number for them?

That was one of the issues in R. v. Glenfield, a case dealing with, among other charges, alleged impaired driving causing death against Jeremy Glenfield in relation to a 2011 accident in Wellesley, Ont., a town near Waterloo. In a March 12 ruling on an application by Glenfield, Superior Court Justice Peter Hambly considered defence counsel Paul Burstein's argument that the Waterloo Regional Police Service had violated the procedure mandated by the Supreme Court of Canada by not allowing Glenfield to actually dial calls to counsel on the night they arrested him.

The issue is an important one for Burstein. At the Criminal Lawyers' Association conference in the fall, Burstein criticized the police practice in Ontario of asking suspects if they know of any lawyers they'd like to consult and how to spell their name and then dialling the number for them in order to dispatch the call through to a phone in an enclosed room. If they can't come up with someone to call, they get the "consolation prize" of speaking to duty counsel, Burstein told the conference. "They're never given an actual phone," he noted.

It's a valid criticism. Certainly, it seems reasonable to suggest that providing truly meaningful access to counsel of choice would involve giving some sort of directory to look up a lawyer as well as a phone to make a call. In Glenfield's case, he wanted to call his mother to see if she could contact a lawyer to advise him before police proceeded with a breath test at the station.

Police initially said no as the officer suggested it was against their policy to contact a third party for the purpose of retaining a lawyer. The officer later relented, but in the meantime police had Glenfield speak with duty counsel and proceeded with the breath test before he could consult with the lawyer his mother was eventually able to contact.

Hambly rejected Burstein's arguments police had failed to uphold his client's right to counsel of choice. Among other things, he found it was "irrelevant" whether police allowed Glenfield to call counsel on his behalf or he did it himself. It's also important to note that there were several factors working against Glenfield. As Hambly pointed out, while police have their obligations when it comes to the right to counsel, suspects must also exhibit reasonable diligence in exercising it. In Glenfield's case, he was belligerent with police and, when they handed him a directory to search for a lawyer he named, Andrew Spire, he looked in the M section of the book. He later told them Spire was in fact a paralegal. And as Hambly noted, time was of the essence in such a serious impaired driving matter. "Glenfield was obstructing the police and delaying throughout his interaction with the police from the moment that he failed the roadside breath test," he wrote.

Nevertheless, while this clearly isn't the best case for Burstein's general proposition, it's clear police should go further in accommodating the right to counsel of choice.

People should be able to call someone else to help with finding a lawyer and they should get a phone and a directory to use. It's time to update police practices on this issue.

Tory MP supports calls for legislative oversight of anti-terror bill

DANIEL LEBLANC, The Globe and Mail, March 23, 2015

A Conservative MP has broken ranks with the government by calling for parliamentary oversight of Canada's anti-terrorism agencies.

Conservative MP Michael Chong said he supports the government's Bill C-51, but added he also agrees with the opposition parties that a committee of MPs should oversee the work of the Canadian Security Intelligence Service and other national-security operations.

The Conservative government has repeatedly rejected calls for any new oversight mechanism, saying the existing Security Intelligence Review Committee [SIRC] is a made-in-Canada success.

"I think SIRC worked well for many decades, but things have changed in the last decade," Mr. Chong said in an interview. "With the changes that have taken place in law, and in the government's activities with respect to security and intelligence, should come increased oversight. That would bring us in line with other Western democracies."

His comments come as the public safety committee of the House is embarking on a fast-paced review of the proposed surveillance bill, which the government wants to pass before the summer. The committee has started to hold evening hearings to finish its review of the legislation this month, with calls for increased oversight a common refrain among critics.

The bill has won broad public support after the government portrayed it as a necessary reaction to the terror attacks in Ottawa and Saint-Jean-sur-Richelieu last October, but the NDP has vowed to fight to amend the legislation over concerns about the privacy rights of Canadians and fears that some environmental and native groups will become the targets of anti-terrorism authorities.

The government has rejected calls for parliamentary oversight as opening the door to "political interference" and defended the work of the "experts" at SIRC, which is made up of five members appointed by the government.

"This is an independent review body with extensive powers to decide the scope and type of investigations it conducts," Public Safety Minister Steven Blaney said in the House. "It is accountable, it certifies the report of the director of the intelligence service and it

investigates activities at its own discretion, free from government involvement or partisanship."

Bill C-51 would boost the powers of Canada's spy agency, criminalize the promotion of terrorism, make it easier for police to make preventive arrests and facilitate the transfer of personal data among federal departments.

"I strongly support C-51," said Mr. Chong, the MP for Wellington-Halton Hills in Ontario. "It closes a lot of the gaps that we currently have in law, which are preventing us from countering terrorism in Canada."

Mr. Chong said the new mechanism of "democratic oversight" would not be created by legislation, but by amending the standing orders of the House to give a committee the powers of oversight over intelligence activities.

"It's not incongruous to say I support this bill and say that we need a separate instrument to affect changes to standing committees," he said. "You can't amend this bill to achieve that oversight, you need to do it through a motion of the House."

Mr. Chong added that ideally, there would also be changes to the ways the committees of the House of Commons are filled. As it stands, party leaders, through their whips, decide which MPs sit on which committees.

"We must change the method of selection," he said. "We should go to the Westminster system, where MPs elect members to committees so that they are truly independent from party leaders' offices and, by extension, the Prime Minister's Office."

Mr. Chong has championed the Reform Act that would give MPs the power to trigger leadership reviews, suspend and reinstate caucus colleagues, and select their own caucus chairs.

Gowlings enters thawing Cuban market

Jeff Gray, The Globe and Mail, March 24, 2015

Prompted by the historic talks between Cuba and the United States to normalize their relations, Canadian law firm Gowling Lafleur Henderson LLP is launching a Cuba initiative aimed at advising clients seeking to invest in the Communist island as it opens up.

The move, to be officially announced on Tuesday, will see the firm counsel Canadian and European businesses looking to set up shop in Cuba, where observers say a building boom is in the offing to prepare for a flood of U.S. tourists, who will need new hotels, roads and other infrastructure.

The diplomatic talks with the U.S., brokered by Canada and made public on Dec. 17, follow a series of market-based economic reforms in recent years by Cuban President Raul Castro. But it is expected to take years before the U.S. trade embargo on Cuba lifts.

"The real opportunity for Canadians is, we have a normal relationship now. There's obviously going to be a significant opening up, but at the moment we are not competing with U.S. companies to enter into the market," said Scott Jolliffe, chairman and chief executive of Gowlings, in an interview.

The law firm's initiative involves well-known long-time Conservative fundraiser Ralph Lean, a lawyer who had been working with clients interested in Cuba for several years while he was at his previous firms, Cassels Brock & Blackwell LLP and Heenan Blaikie LLP.

The initiative will be led by Gowlings partners Paul Fornazzari and Stuart Olley, and involve a Havana-based Canadian lawyer, Gregory Biniowsky, who previously worked with Heenan Blaikie. Recently hired Spanish-speaking merger-and-acquisitions partner France Tenaille is also involved.

Foreign law firms are not allowed to practice law in Cuba, but Gowlings – under the banner Gowlings Consulting Inc. – says it will be partnering with a local law firm, and its staff will continue travelling frequently to the island.

Mr. Jolliffe says his law firm will be unaffected by the U.S. embargo, which has seen other Canadian business people active in Cuba banned from entering the United States, as Gowlings is not actually establishing a permanent Cuban office. He also said Gowlings will be able to assist American companies in using Canada as a vehicle to avoid the embargo and invest indirectly in Cuba.

Already, Mr. Lean says, Gowlings has about 10 clients, including construction companies as well as a medical tourism business that aims to take advantage of Cuba's well-known medical system by flying in patients seeking hip replacements and other procedures.

Mr. Lean, who travels frequently to Cuba and had worked with Mr. Biniowsky before, said the Dec. 17 announcement of the U.S.-Cuba talks prompted an increase in calls from prospective clients looking to do business there. That prompted him to bring the idea of establishing a formal Cuba practice to his bosses at Gowlings: "It's a dream, because I am a cigar guy."

It's not the first liberalizing Communist country where Gowlings has set up shop. The firm opened its Moscow office in 1990, before the final collapse of the Soviet Union but just months after the fall of the Berlin Wall.

In a phone interview from Havana, Mr. Biniowsky says Cuba is rife with opportunities for Canadian businesses. In tourism alone, the island is expected to skyrocket past its current pace of three million visitors a year, once it opens to the U.S.: “You have a tourist infrastructure that has to double, if not triple, in size. … That’s a lot of hotel rooms, a lot of airport space, that’s a lot of cruise ship terminals.”

Mr. Jolliffe, the law firm’s chairman and CEO, clients are not being dissuaded by concerns about a handful of Canadians and other foreign businessmen rounded up in recent years in what was described as an anti-corruption sweep, or fears about demands for bribes from poorly paid Cuban officials.

“We see that everywhere, no matter what country,” Mr. Jolliffe said. “If the pace of that [imprisonments of foreign businessmen] increases then people may get cold feet. But I don’t see it.”