



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

Press Clippings for the period of April 7 to 14, 2014
Revue de presse pour la période du 7 au 14 avril 2014

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



Public service unions launch web campaign against government 'myths' on sick leave

BY KATHRYN MAY, OTTAWA CITIZEN APRIL 8, 2014

OTTAWA – Federal unions are running a pre-emptive campaign to save sick leave and challenge the Conservative government's "myths" about public servants' absenteeism in the lead-up to a watershed round of collective bargaining meant to replace existing benefits with a new short-term disability plan.

The large unions are posting facts, information and arguments on their websites to explain their support for the existing accumulated sick-leave regime and rebut the government's claims that the benefit is too costly and outdated and that a new short-term disability plan would help get employees back to work faster and in better health.

Claude Poirier, president of the Canadian Association of Professional Employees, said his union, which represents economists and statisticians, initiated a "myth buster" campaign to present the facts he argues the government deliberately distorted to win public opinion. The union's list of nine myths is being distributed to members, MPs, senators and the public.

"We're trying to counter public opinion. The minister used so many wrong figures to convince the public that we are abusing the system and we have to respond to that and correct the facts. We are fact people, our members deal with statistics and economics when doing policy and planning and they cannot stand to see something disseminated in the public if it is wrong," said Poirier.

Robyn Benson, president of the Public Service Alliance of Canada, said the PSAC tabled its "reality check" to explain to members the position unions will be taking at the

bargaining table. Unions have signed a historic “solidarity” pledge not to accept any clawbacks on sick leave at the upcoming contract talks.

“The government has not hidden the fact that they are breaking their word to our members with sick leave, which has been in collective agreements for 30 years, so we are ensuring our membership knows and are prepared to fight for it,” said Benson.

At the heart of unions’ “reality check” campaign are the 18.2 days Treasury Board President Tony Clement claims public servants are off work with injury and illness. Unions have seen red since Clement trotted out the 18.2 figure last year during the kickoff of National Public Service Week – held to celebrate the work of the public service – as part of his rationale for trying to reduce absenteeism in the public service.

In fact, the largest unions, which represent most of the public service, have agreed to boycott National Public Service Week, typically held in June when the government and unions could be in the thick of tense negotiations.

The campaigns also rely on an independent report by the Parliamentary Budget Office, released several months ago, which deconstructed Clement’s 18.2 and found only 11.5 of those days were taken off in 2011-12 on paid sick leave. Another 6.3 days were taken in unpaid sick leave or by people who are sick but are not on payroll because they are on long-term disability.

The study also found major variances among departments in the use and tracking of sick leave, which prompted the PBO to follow up with a second report that could be released by May. That report will examine the discrepancies between departments’ tracking of sick leave and how they report those absences.

The unions have long complained the government has failed to present a business case that justifies replacing sick leave with a new short-term and long-term disability plans. The existing system needs updating but they question whether it must be scrapped.

The upcoming PBO report could raise questions about the costs of the old and new plans and whether a new approach is justified and will solve the problems with the current system.



Supreme Court quashes Harper government’s tougher sentencing rules

SEAN FINE, The Globe and Mail, April 11, 2014

The Conservative government's tough-on-crime agenda has suffered another major blow at the Supreme Court of Canada. The court blocked the government's attempt to stop judges from routinely giving extra credit to offenders for time served in jail before sentencing.

The 7-0 ruling continues the losing streak of the Harper government in major cases at the Supreme Court over the past month.

The rulings in two separate cases were a major rebuke for the Harper government's approach to sentencing. The court suggested that its rulings were rooted not only in a straightforward interpretation of the Truth in Sentencing Act, but in timeless principles of sentencing. And the rulings were written by a Harper appointee, Justice Andromache Karakatsanis — one of four on the panel of seven judges who heard the cases.

“A rule that results in longer sentences for offenders who do not obtain bail, compared to otherwise identical offenders is incompatible with the sentencing principles of parity and proportionality,” she wrote for the court. “This is particularly so, given that vulnerable and impoverished offenders are less able to access bail.

The law at stake is a centrepiece of the government's tough-on-crime agenda. The 2010 Truth in Sentencing Act set out to bar judges from giving double credit to offenders, in which each day behind bars before a trial counted as two days off their ultimate sentence. The act said each day should count as a day, though it also allowed 1.5 days credit “if the circumstances justify it.”

Judges in several provinces, however, have been routinely giving credit of 1.5 days. They say the extra credit is only fair, because jail time is nearly always reduced by a minimum of one-third after sentencing; a 90-day sentence means 60 days.

“I just say it's absolutely unfair to treat someone who is presumed to be innocent more harshly than we would treat someone who has been found to be guilty,” Ontario Superior Court Justice Stephen Glithero wrote in the case of Sean Summers, 19, convicted of manslaughter after shaking his three-month-old baby to death.

That case was one of two prosecutors had appealed to the Supreme Court. Mr. Summers received 1.5 times credit for the 10 months he spent in pre-trial custody, taking 15 months off his eight-year sentence. Level Carvery, also 19, of Nova Scotia was convicted of cocaine trafficking and received 1.5 times credit for nine months in pre-trial custody, which cut his 30-month sentence roughly in half.

Appeal courts in Ontario, Nova Scotia, Quebec and Manitoba upheld the judicial practice of routine 1.5 times credit; only British Columbia's, by a 2-1 count, was against it, saying judges need to “honour Parliament's intention.”

The government said it was building confidence in the justice system by ending an overly generous practice by judges. It also said prisoners abuse the system's generosity by

drawing out their cases in hopes of earning double credit. But one Ontario judge described that type of abuse as “more chimeric than real.”

The case was a key battleground between the government and the judiciary. The Truth in Sentencing Act put limits on judges’ discretion, one of several Conservative laws to do so. Judges have been pushing back, saying that it is still their job to ensure sentences are proportional and fair, under the Criminal Code. While the case wasn’t strictly speaking a constitutional one, proportionality has been described by the Supreme Court as a “constitutional obligation.”

Canada has more people in remand (waiting for trial) than in jail after being sentenced. In 2007-08, on any given day about 12,800 adults were in remand compared to about 9,500 in sentence custody. The number of adults in remand doubled from the late 1990s to 2007-08.

The government lost three major cases last month at the Supreme Court: the appointment of Justice Nadon to the Supreme Court, prisoner rights and a retroactive toughening of parole.



SCC defends judicial discretion in sentencing

Written by David Dias, Canadian Lawyer Legal Feeds Blog, April 11, 2014

In a damaging blow to the Conservative government’s tough-on-crime agenda, the Supreme Court of Canada today dismissed two federal appeals, upholding rulings that essentially reverse the intent of the Truth in Sentencing Act — turning the law’s standard credit for time served into the exception, and the exception into the standard.

Indeed, the Bill C-35, Truth in Sentencing Act — whose very name implies criminal sentences are not what they appear — sought to reduce the amount of credit convicts were granted for time served in pre-trial custody.

Prior to the act, which came into effect in 2010, judges were given discretion in the matter and routinely provided two days credit for every one spent in custody prior to trial. Ottawa viewed this as over-generous and sought to limit judicial discretion. The new law set the standard for credit at 1:1, but offered a vaguely worded exception of 1.5:1 in “justified circumstances.”

Judges in several provinces — annoyed at the attempt to limit their discretion — have defied the new law by exploiting the loophole, suggesting nearly all circumstances justify the enhanced credit.

Ontario Court Justice Colin Westman, for example, has spoken out publicly against the new law, and Ontario Justice Melvyn Green has written that new tough-on-crime laws have cast “a dark shadow on the sentencing principles of proportionality and restraint.”

In *R. v. Summers* (and a companion case, *R. v. Carvery*), the SCC sides with the Ontario Court of Appeal’s defiant stance, agreeing that entrenched principles of justice warrant enhanced credit not only in exceptional cases — but in virtually all circumstances.

These principles take into account the math around parole eligibility, which is typically granted after two-thirds of a sentence. Under a 1:1 regime, a convict with a sentence of one year and no pre-trial custody would be out after eight months. But a convict who spends six months in pre-trial custody would be out after four months served in prison — for a total of 10 months.

This calculus means convicts who spend more time in pre-trial custody — often because they can’t afford bail or have no connections in the community — would have suffered a longer sentence under the new law.

The decision written by Justice Andromache Karakatsanis for a unanimous bench says: “A rule that results in longer sentences for offenders who do not obtain bail, compared to otherwise identical offenders is incompatible with the sentencing principles of parity and proportionality. This is particularly so, given that vulnerable and impoverished offenders are less able to access bail.”

The court defends judicial discretion while seemingly taking Ottawa to task for vague wording in that apparently uses inference rather than explicit language to institute policies that may be discriminatory (and thus subject to Charter challenge):

“It is inconceivable that Parliament intended to overturn a principled and long-standing sentencing practice, without using explicit language, by instead relying on inferences that could possibly be drawn from the order of certain provisions in the Criminal Code. . . . Neither the language of the provision nor the external evidence demonstrates a clear intention to abolish one of the principled rationales for enhanced credit.”

Josh Koziobrocki, a partner at Lerner LLP who represented the Canadian Civil Liberties Association before the court, stresses there was no Charter challenge here, but that his clients argued “the legislation should be interpreted in a manner that is in line with the principles set out in the Charter.”

“Individuals that have less financial means or fewer connections in the community are more likely not to be granted bail, more likely to remain in custody during a pre-sentence period,” says Koziobrocki. “I think that the court has recognized that, without explicit language from Parliament, offenders should not be punished more severely simply because they were not released on bail.”

While the court’s decision acknowledges that Ottawa’s amendments attempt to set an “exception” of 1.5:1, the ruling — in an amazing semantic leap — suggests exceptions need not be exceptional, particularly when more important principles are at stake:

“While s. 719(3.1) is structured as an exception to s. 719(3), there is no general rule of statutory interpretation that the circumstances falling under an exception must be numerically fewer than those falling under the general rule. Therefore, it is not a concern that most remand offenders will qualify for enhanced credit on the basis of lost eligibility for early release or parole.”

In a blog post about the decision, Ottawa criminal lawyer Michael Spratt notes: “The truth is that there is little empirical support for the government’s justifications on limiting judicial discretion when it comes to the consideration of an offenders time spent in pre-sentence custody - C-25 is yet another example [of] blind ideological legislation.”

Toronto criminal lawyer Frank Addario says the underlying issue here — aside from what constitutes reasonable credit for time served — is judicial discretion: “Judges are trained that the common law is about discretion. They are not going to give it up unless the statute is abundantly clear.”

Koziebrocki agrees, but says the new law continues to limit judicial discretion to a maximum of 1.5 days for each day in pre-trial custody. And while the 1.5:1 ratio may address the quantitative issue (that convicts not granted bail should be given the same sentence as those granted bail), it does not address the qualitative issue cited in the SCC decision —that detention facilities are typically harsher than prisons.

“The court is very clear in suggesting that 1.5:1 is not necessarily sufficient to address all of the circumstances for every offender,” he says. “There may be an offender who has a harsher pre-sentence custody, but that isn’t in the legislative framework they’re working with.”

Spratt also wrote the act is “the work of a government pursuing a reckless approach to criminal justice. Worse, the government seems to be quite aware of this.

“C-25 is yet another example of costly and necessary litigation born from ideology and ignorance.”

He concludes: “Fortunately courts are a crucible designed to reveal truth — perhaps this is why Conservative criminal justice policy has repeatedly failed to passed the test.”



Convicted criminals to contribute to cost of victims' rights bill

SEAN FINE, *The Globe and Mail*, April 7, 2104

The Conservative government won't say how much money it expects the proposed Canadian Victims Bill of Rights will cost, other than to say it has set aside an "undefined" amount of money in the federal budget to handle a victim-complaints system.

"Clearly there's no ability to calculate that at the front end," Justice Minister Peter MacKay said in an interview. "This is going to take some time to take hold."

The bill of rights entrenches in law the right of crime victims to information, participation, protection and restitution. If they feel their rights aren't respected, they can complain to government officials, not to courts. The government has also set aside an undefined amount of money to bolster complaint mechanisms overseen by the provinces, Mr. MacKay said.

He also explained that making convicted criminals contribute to the costs of the victims' rights bill was the idea behind making a controversial financial penalty mandatory, and doubling it, in the fall.

The Victim Fine Surcharge has brought the Conservative government into open conflict with judges in several provinces since it became mandatory on Oct. 24. The charge is set aside to pay for victim services such as counselling.

"A victim fine surcharge is in most cases a modest amount. It seems to me it's an effort to rebalance the way in which costs are administered. The accused or convicted individual is directly contributing to [mitigate] the harm caused," Mr. MacKay said. Crime costs Canada \$100-billion a year, of which more than 80 per cent is borne by crime victims, he added.

Judges no longer have discretion to waive the charge for impoverished offenders.

Some judges have refused to impose it in the cases of homeless or addicted people living on social benefits. Others have evaded it by giving offenders decades to pay. One judge ruled it unconstitutional.

The surcharge is \$100 for a minor crime (summary offence) and \$200 for a more serious one (indictable offence), or 30 per cent of any fine imposed by a judge. Some judges have imposed fines of \$5 or \$10, to keep the surcharge to \$1.50 or \$3.

Bill Trudell, head of the Canadian Council of Criminal Defence Lawyers, called the attempt to make criminals contribute to the costs of the victims' bill of rights a "politically transparent piece of marketing." He said if the government was serious about

victims' rights, it would have sat down with the provinces to create better-funded services.

“They should tell us how much it’s going to cost. Why should it be such a big secret?” He suggested they don’t know what the victims’ rights bill will cost because they don’t know how it will work.

Anthony Moustacalis, president of the Criminal Lawyers’ Association, said the bill of rights is “window-dressing” that does nothing more than standardize across the country rights already protected in an Ontario bill of victims’ rights, and similar protections in other provinces.

Mr. Moustacalis said the problem with the Victim Fine Surcharge is that large numbers of offenders are poor, and when they don’t pay the surcharge, the police must track them down so offenders are informed of a court hearing to determine if they should go to jail for not paying, all of which costs the system much more money than the surcharge would collect.



By latching onto victimhood, bill of rights is just cruel political calculus

ANTHONY MOUSTACALIS, Special to The Globe and Mail, April 9, 2014

Anthony Moustacalis is President of the Criminal Lawyers’ Association.

The government of Stephen Harper has stood accused of a multitude of offences against reason and good sense during its tenure in Ottawa, but inconsistency is not among them.

True to form, its proposed Victims Bill of Rights joins a growing body of legislation that is long on ideological flag-waving and short on meaningful content.

The bill, a hodge-podge of aspirational cant and window-dressing, will do little overt damage to the delicate balancing of rights that characterizes the Canadian justice system. In fact, most of the provisions mirror practices that are already in place in courtrooms across the country.

Rather, its real harm lies in the realm of opportunities lost and the consolidation of false perceptions. Of these, the most damaging is its underlying belief that victims can, and should, play a central role in our court system.

For reasons that go directly to the presumption of innocence, this notion is erroneous and creates cruelly unfair expectations. It is the state – through well-funded police forces and prosecution offices – that contests the innocence of a defendant. The trial process, in fact, does not even recognize the existence of a victim until a crime has been proved.

Not surprisingly, prominent victim advocates have expressed disappointment with the proposed Bill of Rights. Their disillusionment speaks to a deeper reality; the exploitation of their misery.

In latching onto victimhood as a central pillar of its justice policy, the Harper government offers victims a role they can never truly play if the justice system is to remain fair and balanced. In holding out the promise of being an influential counterpoint to the Crown and defense, it turns victims into props in a cruel political calculus.

Crime victims are not alone in being misled. By misrepresenting the role of victims in the justice system, the government invites the public to develop a skewed understanding of how the system works.

To be fair, a handful of provisions in the proposed bill have merit, such as ones that promise victims ready access to the progress of a criminal case and an offender's post-incarceration release conditions.

Others are mere gobbledygook that will not alter the status quo, such as a provision that compels bail and sentencing judges to consider the effects of their decisions on victims. With few exceptions, judges and justices of the peace already do so.

Under a curious change to the Canada Evidence Act, spouses would be compelled to testify against one another. Since spousal testimony is already permitted in domestic abuse cases, this provision will have little application.

How the spousal testimony change falls under the rubric of a victims' bill is never explained. Nor, is the efficacy of ending a provision rooted in maintaining harmony in the home. If the government has studies that justify this change, it should produce them. Failing that, the proposal smacks of both the much-maligned federal omnibus crime bill and recent voting legislation; insidious exercises in law-making that hide significant change amid a confusing welter of provisions.

It is also worth noting that the federal government is not plowing virgin terrain. Several provinces, most notably Ontario, already have similar rights regimes for victims. Whatever merit the new federal bill possesses lies mainly in standardizing these rights from province to province.

Parsing the provisions further, one finds subtle language favouring the use of punitive measures, while at the same time, downplaying the value of rehabilitating offenders. This may have little effect in the short term, yet could well flavor regressive judicial interpretations in years to come while simultaneously fostering public misunderstanding about the true goals of the system.

And what of the opportunities squandered?

Day after day, month after month, victims and defendants alike are traumatized by inordinate delays that plague the trial process. A sincere government would recognize one, superordinate right – the guarantee of a prompt and fair court. Yet, the Victims Bill of Rights is conspicuously silent when it comes to a court system that is notoriously bloated and underfunded; where victims wait interminably as the machine of justice grinds on.

Every crime creates a new set of victims, yet the proposed bill does nothing to tackle the structural roots of crime – poverty and unequal opportunity. Moreover, absurdly low thresholds for access to legal aid programs guarantee that those accused of crimes and families in domestic trouble will be further impoverished as they try to sort out their legal problems.

The bill also proposes rights to restitution which, in some cases, are already in existence, and in others, create the fictional notion that impecunious offenders can eventually make their victims whole.

Were it serious about aiding victims, the government could ensure that Criminal Injury Compensation Boards have sufficient funding to act as a genuine source of relief. It would also ensure that those victims who require counseling are able to obtain it.

At the other end of the justice juggernaut, government failures are equally abysmal. Incarceration remains a brutalizing experience that engrains anti-social attitudes, fails to either rehabilitate offenders, and offers few meaningful, post-release alternatives.

Should the federal government discover a genuine interest in helping victims – and society – before its mandate comes to a close, opportunities for it to do so abound. It needs only to find the will.



Witness anonymity a hidden barb in victims' rights bill: Walkom

On the face of it, a new Conservative bill would give judges extraordinary power to use anonymous witnesses.

Thomas Walkom, Toronto Star National Affairs Columnist, April 9, 2014

With Stephen Harper's government, the devil is always in the details. And so it is with the Conservatives' proposed victims' bill of rights.

Tucked into the middle of a largely uncontroversial piece of legislation aimed at helping victims of crime is a clause that, on the face of it, would give judges extraordinary powers to authorize the use of anonymous witnesses.

The proposed Criminal Code amendment would allow a judge, at the request of a prosecutor or witness, to “make an order directing that any information that could identify the witness not be disclosed in the course of the proceeding.”

This is more than a mere publication ban. Judges routinely issue orders that prevent the media from publishing certain trial details, including the names of witnesses.

But under this proposed law, the identities of witnesses granted anonymity would not be revealed at all in open court.

Nor would the cloak of anonymity be reserved for police agents and confidential informants, both of whom are already accorded this privilege under Canadian law.

Under Bill C-32, a judge could also grant anonymity to any witnesses who “need the order for their security or to protect them from intimidation or retaliation.”

Anonymity could also be offered as an inducement for both victims and witnesses to come forward.

At first blush, this appears to take aim at the long-held right of accused persons to know who their accusers are.

But as The Canadian Press reported this week, the government doesn't care. Speaking in Ottawa, Justice Minister Peter MacKay said Monday that he doesn't mind eroding that right if doing so protects victims.

“We feel on balance that courts, judges, will be in a position to weigh that consideration carefully,” he said.

Can the Conservative government authorize judges to eat into the constitutionally protected rights of accused persons? Lawyers I approached this week say that, unless it wants to take on the Supreme Court, it probably can't.

Toronto lawyer Marlys Edwardh points out that any new laws must adhere to a landmark 1991 Supreme Court ruling that requires prosecutors to disclose all pertinent information to defendants — including the names of prospective witnesses.

Only confidential police informants are exempt from this disclosure rule, the top court ruled then.

Sometimes, she said, courts may prevent the public from knowing the names of those who testify. Judges already use existing provisions of the Criminal Code to justify such bans.

But the names of all witnesses (except confidential informants) must always be revealed to the accused.

This is a constitutionally protected right that holds regardless of whatever laws Parliament passes.

Former Ontario chief justice Roy McMurtry made much the same point when I contacted him on Tuesday. “The Crown must reveal all relevant information to the defence,” he said.

If that’s the case, then why is the government bothering with this particular change to the Criminal Code?

I asked the government. The official answer was that the Conservatives want to “codify the common law practice of allowing witnesses to testify without revealing their true identity.”

McMurtry, who served as Ontario attorney general in a Conservative government, said he has not had time to parse the victims’ rights bill. But he agreed that the government might simply be trying to codify current practice.

“Or it could be just plain old window dressing,” he said. “I don’t think it adds much to existing law.

“I suspect it might be puffery.”



Senate panel sets up confrontation with Harper on Elections Act

JOSH WINGROVE, The Globe and Mail, April 13, 2014

In a rare exercise of power, a Senate committee is pushing back against Stephen Harper’s Conservative government by unanimously recommending changes to the Fair Elections Act, an overhaul of electoral law that is fiercely opposed by other parties.

The Senate report, which will be made public this week, amounts to a warning shot from the embattled Senate. The move is not binding, but it raises the threat of the Senate changing the bill itself if the House of Commons ignores its recommendations before passing Bill C-23.

The Senate committee, two-thirds of whose members are Conservatives appointed by Mr. Harper, heard from a broad range of experts last week, the vast majority of whom called for substantial changes to the deeply divisive bill.

Now the senators are set to recommend, unanimously, specific amendments.

“I think it’s a recognition by all senators that there is something seriously wrong with this bill, according to every single witness that has appeared before both committees in the House of Commons and the Senate,” said George Baker, a Liberal-appointed senator who serves as deputy chair of the committee. “It’s really an expression of the impartiality of members of the Senate.”

It’s the latest development in a bill that has largely pitted the Conservative cabinet against a broad range of non-partisan experts, domestic and international, as well as the other parties. The NDP firmly oppose it and have filibustered its progress, while Liberal Leader Justin Trudeau announced last week he’ll repeal the entire bill if he becomes prime minister. Various key stakeholders – including the Chief Electoral Officer, the Commissioner of Canada Elections and the author of a key Elections Canada report last year – say they weren’t consulted on the bill.

Many, however, testified to the Senate committee, which was in the rare position of “prestudying” the bill before the House of Commons was done with it – “in other words, sober second thought now becomes sober first thought,” Mr. Baker said.

Senators appear to have listened to the testimony.

According to one source familiar with the report, it will include:

A call not to limit certain powers of the Chief Electoral Officer (who has been criticized harshly by the minister responsible for the bill, Pierre Poilievre);

A recommendation to continue the use of the voter information card, which Conservative MPs want to phase out;

A recommendation to require that robocalling firms keep their records for a longer period of time, in case they come under investigation.

“Minister Poilievre has repeatedly expressed a sincere interest in any recommendations the Senate may have to improve the bill. Our recommendations, which are the result of our prestudy, will be released soon,” Conservative Senator Linda Frum said in an e-mail Sunday. The committee’s chair, Conservative Senator Bob Runciman, confirmed the report is done and will be filed this week.

The table is now set for a compromise or a standoff. The House of Commons committee will resume consideration of the bill in two weeks, and soon after it will consider amendments. If they do not make the Senate’s changes, they risk the Conservative majority in the Senate amending it anyhow and sending it back to the House, an exceptionally rare occurrence. Doing so would all but guarantee the government won’t meet its previously set target of June for passing the Fair Elections Act.

The committee's report comes as the Senate faces unprecedented scrutiny – Mr. Harper has asked the Supreme Court to outline his powers to reform it, while the Official Opposition NDP favour straight abolition, though haven't said how they'd pull that off. And it comes in the aftermath of the explosive Senate expenses scandal, which led to the suspension of Patrick Brazeau, Mike Duffy and Pamela Wallin, the retirement of Mac Harb, the exit of Mr. Harper's chief of staff, an RCMP investigation and a review by the Auditor-General of all senators' expenses.

In particular, the unanimous recommendations include a specific call that the Chief Electoral Officer be permitted to encourage voter turnout, according to one source familiar with the changes– a particularly direct rebuke of Mr. Poilievre, who has said the Chief Electoral Officer, who opposes much of the bill, simply wants more power. The Senate recommendations also include raising the required time that robocall firms must keep certain records for investigators, from one to as many as five years, the source said.

The report also recommends the government allow the use of the voter information card to corroborate a voter's address, as the stricter ID requirements would, experts have said, leave many people able to prove their ID but not necessarily their current address.

The Senate committee is also said to have produced a minority report that calls for, among other things, the government to back off the bill's proposal to eliminate vouching, whereby one elector can cast a ballot if another swears to his or her identity. Conservative senators did not support that motion.

The committee's senators aren't the only Tories relaying concerns about the bill. In a letter sent to constituents and obtained by The Globe and Mail, Alberta MP James Rajotte wrote to Mr. Poilievre saying people in his riding have problems with the bill, including the suggested reining in of the Chief Electoral Officer.

In his letter, Mr. Rajotte noted he supported the bill at second reading but urged Mr. Poilievre to consider changes. "I encourage you to continue to engage in a dialogue on this bill, listen to concerns about certain parts of it and seriously consider amendments to address these concerns," Mr. Rajotte wrote.



Fraser tells MPs she's greatly disturbed by Poilievre's words

By Laura Beaulne-Stuebing, iPolitics, April 9, 2014

It was electoral reform theme day on Parliament Hill.

The day began with Minister of State for Democratic Reform Pierre Poilievre taking a blistering run at critics of the Fair Elections Act and progressed as a volley of returned fire from those critics, including former auditor general Sheila Fraser, who was blunt before both House and Senate committees examining the bill.

“It troubles me greatly... disturbs me greatly, to see comments that are made, and I will be quite blunt, by the minister... attacking personally the Chief Electoral Officer,” Fraser said. “This serves none of us well. It undermines the credibility of these institutions.”

“At the end of the day, if this continues we will all pay, because no one will have faith in government, in the chief electoral office or our democratic system.”

NDP MP David Christopherson had asked about her thoughts on a few things democratic reform minister Pierre Poilievre had said about Elections Canada Chief Electoral Officer Marc Mayrand.

“I have to say... seeing you at the end of this committee table is like looking up at the ridge and seeing the cavalry coming over to save the day. I really appreciate you for stepping forward,” he said as a preamble.

Christopherson noted that he finds it quite troubling to see the way Mayrand has been portrayed by the government, as he said, at best just a stakeholder and at worst an enemy.

“I very much appreciate you for being here because in my view, you’re probably the most trusted Canadian in the country... giving the straight goods.” Christopherson then asked the former auditor general to comment on the importance of the chief electoral officer being seen in the same way she was seen, as AG, “as a champion of the Canadian people,” he said.

“As I said in my opening remarks,” Fraser noted, “the officers of Parliament really do play an important role in democracy. These jobs, we don’t take these jobs to win popularity contests. We do our work with objectivity.”

“I’ve done certain audits... I’m sure I was not on the christmas card lists of certain people. We do our work, we respect our mandates. We do it in an objective and fair way.”

The committee also heard from former Reform party leader Preston Manning and former Liberal MP Borys Wrzesnewskyj.

Manning reiterated some of his comments on the bill, noting the importance of Elections Canada and the Chief Electoral Officer maintaining their role in conducting public education and outreach to encourage greater voter turnout.

Wrzesnewskyj made some comments on cracking down on voter fraud and said the move of the Elections Canada commissioner to the office of the director of public prosecution would jeopardize his work.

The MPs will reconvene the Wednesday evening to hear from another slate of witnesses.



Tories on the attack as Fair Elections Act faces critics

JOSH WINGROVE, The Globe and Mail, April 8, 2014

The Conservative government is ratcheting up attacks on Chief Electoral Officer Marc Mayrand and others among the growing number of critics speaking out against the Fair Elections Act – a move former auditor-general Sheila Fraser called “totally inappropriate.”

Conservative MPs and senators questioned the credibility or motive of Mr. Mayrand, Ms. Fraser and others during their testimony Tuesday as Bill C-23 is pushed through the House of Commons and the Senate. The NDP said the line of questioning of several witnesses, nearly all of which say the bill has serious shortfalls, smacked of McCarthyism.

Unfazed, however, Prime Minister Stephen Harper defended C-23 in Question Period, dodging a question about Democratic Reform Minister Pierre Poilievre’s lengthy Mayrand attack and failing to identify, when asked, any expert who supports the bill. In his own committee appearance Tuesday, Mr. Poilievre pointedly argued Mr. Mayrand has been criticizing the bill out of his own interests.

But experts have overwhelmingly called for changes, warning the Fair Elections Act could disenfranchise tens of thousands of voters, muzzle Elections Canada, favour the Conservative Party, fail to sufficiently beef up investigative powers and open a loophole for campaign spending.

The list of the bill’s critics so far includes Mr. Mayrand; Commissioner of Canada Elections Yves Côté; two of their predecessors; Ms. Fraser; former Reform Party leader Preston Manning; provincial chief electoral officers; Harry Neufeld, the author of an authoritative Elections Canada report; a law school dean; and various other experts and researchers.

The calls for change continued Tuesday. Pierre Lortie, who chaired a royal commission on electoral reform and party financing two decades ago, said the bill “undoubtedly” violates the Charter of Rights and Freedoms by eliminating vouching, a method used to cast a ballot by voters without sufficient ID. Mr. Poilievre disagreed, while former Conservative Party president Don Plett, now a senator, later said only people without “proper arguments” argue the bill is unconstitutional, an apparent rebuke of Mr. Lortie.

Ms. Fraser said the attack on Mr. Mayrand “disturbed [her] greatly,” was “totally inappropriate” and that such comments “undermine the credibility of these institutions.” She also warned the bill would unduly limit the Chief Electoral Officer, threaten Elections Canada’s independence and block people, including her own daughter, from voting with tightened ID requirements.

The Conservatives have dug in their heels and largely rejected the testimony – 20 witnesses had been scheduled to speak on Tuesday alone.

Mr. Poilievre slammed what he called the “astounding” claims of Mr. Mayrand, who he says simply opposes the bill to get “more power, a bigger budget and less accountability.” He accused Mr. Mayrand of “grasping” for arguments and making “incredible claims and inventing some novel legal principles” in his critique of the bill. “The [Chief Electoral Officer] of Elections Canada has indicated his opposition to it, and let me just say I am at peace with that,” Mr. Poilievre said.

The opposition parties called for an apology in Question Period. “I stand by my testimony,” Mr. Poilievre replied.

Conservative Senator Linda Frum also questioned Mr. Mayrand’s credibility, suggesting it was a conflict of interest for him to run a fair election while also running campaigns to boost voter turnout – campaigns that the bill would eliminate. “You don’t see the conflict there?” she asked.

Ms. Fraser was later asked whether she was an expert on elections law, or repeating what other experts have said, and was grilled about her work for Elections Canada.

Another witness, a voter- phoning firm executive named Simon Rowland, testified the bill doesn’t go far enough to stop robocalling – but Tory MP Blake Richards, who was fined last year for robocalls, responded only by asking Mr. Rowland to confirm he’d done work for NDP campaigns, suggested that was a conflict of interest and asked no further questions about his testimony.

The logo for LeDroit, featuring the word "LeDroit" in a bold, red, serif font. The "L" and "D" are significantly larger than the other letters. The logo is set against a white background with a thin red border.

Le vote secret sera imposé aux syndicats

Paul Gaboury, Le Droit, le 10 avril, 2014

Les députés conservateurs ont profité de leur majorité à la Chambre des communes pour faire adopter le controversé projet de loi privé d'un député d'arrière-ban qui impose le

vote secret pour l'accréditation ou la révocation syndicale dans la fonction publique fédérale et dans les syndicats visés par le Code canadien du travail.

Le projet de loi C-525 a passé le vote de la troisième lecture au Parlement mercredi soir alors que les conservateurs ont appuyé la démarche législative de leur collègue, le député albertain Blaine Calkins.

S'il passe l'étape du Sénat et de la sanction royale, le projet de loi modifiera le Code canadien du travail, la Loi sur les relations de travail au Parlement et la Loi sur les relations de travail dans la fonction publique.

L'accréditation et la révocation des syndicats seront subordonnées à l'obtention d'une majorité de votes exprimés lors d'un scrutin secret.

Le Conseil des relations de travail pourra ainsi accréditer un syndicat comme agent négociateur d'une unité que «s'il est convaincu, sur le fondement des résultats de représentation secret, que la majorité des employés de l'unité qui ont participé au scrutin désirent que le syndicat les représente à titre d'agent négociateur.»



Trinity Western law school approved in B.C. despite gay-rights dispute

ANDREA WOO, The Globe and Mail, April 11, 2014

The Law Society of B.C. has cleared the way for a Fraser Valley university to open the first faith-based law school in Canada despite controversy over the school's policy toward gays and lesbians.

Trinity Western University's proposed law school had already cleared two major hurdles in receiving preliminary approval by the Federation of Law Societies of Canada (FLSC) and B.C.'s Ministry of Advanced Education. Provincial law societies now have final say, by way of individual decisions on whether to recognize the law school as an approved faculty of law.

After short but passionate presentations from the society's board of directors – known as Benchers – on Friday, 20 voted against a motion to reject the school, while six voted in favour of it. The decision could set the tone for other provincial law societies, which are expected to make their decisions in coming weeks.

Controversy over the proposal has centred on a clause in the university's community covenant, which all students, administrators and faculty must sign, that prohibits "sexual

intimacy that violates the sacredness of marriage between a man and a woman.” Critics say it discriminates on the basis of sexual orientation and question how the law school would educate students on discrimination and equality rights.

On Friday, many of the Benchers referenced a similar case involving TWU and the B.C. College of Teachers. In 1995, the BCCT refused accreditation to the university over the same clause and the case made its way to the Supreme Court of Canada. In a 2001 judgment, the court ruled in favour of TWU, noting “the proper place to draw the line is generally between belief and conduct.”

Bencher David Crossin said the fundamental rights to assemble, and freely and openly practise religious belief, must be jealously guarded. “It is no doubt true that some, or many, or most, find the goals of TWU in the exercise of this fundamental right to be out of step and offensive,” he said. “But in my opinion, that does not justify a response that sidesteps that fundamental Canadian freedom in order to either punish TWU for its value system, or force it to replace it. In my view, to do so would risk undermining freedom of religion for all, and to do so would be a dangerous overextension of institutional power.”

TWU president Bob Kuhn called the meeting a “great opportunity for an exchange of ideas,” and affirmed “the need in a pluralistic society for voices that may not be popular, but are important as part of the dialogue.”

Meanwhile, Benchers at the Law Society of Upper Canada in Ontario began making arguments on Thursday and will reconvene on April 24 for a vote. The Nova Scotia Barristers’ Society will decide on the matter the following day, and the Law Society of New Brunswick will decide on June 27.

Some lawyers have expressed concerns that if one provincial law society’s ruling is different from the others, it could threaten national mobility agreements that allow lawyers licensed in one province to practise across Canada.



Pursuing pro bono in-house

Lawyers shouldn't erase volunteer time from their personal docket when they go in-house.

Jennifer Brown, Canadian Lawyer Magazine, April 7, 2014

When lawyers leave private practice and go in-house many may feel they are no longer easily able to pursue pro bono work, but the reality is corporate and public sector lawyers

have skills that are in demand. There also appears to be growing interest from the in-house bar in pursuing pro bono activities.

After some queries from its members last year, the Canadian Corporate Counsel Association struck a committee to evaluate ways to make it easier for in-house lawyers to explore their pro bono options, says Lawna Hurl, legal counsel with Niska Gas Storage Partners LLC in Calgary. “There’s kind of an assumption when you leave private practice that you leave the possibility of doing pro bono and the cynic’s take is you don’t really need to do it for your career anymore,” says Hurl. “But even after I went in-house, I still did evening clinics at Calgary Legal Guidance — matters that aren’t considered super-heavy, complicated legal work. You’re really listening to somebody’s story and directing them to the next step.”

Hurl is chairwoman of the CCCA’s recently formed pro bono committee and is also past-chairwoman of Calgary Legal Guidance, where she has volunteered since 2003. She joined its board in 2008 and now provides more corporate-related assistance to the organization. She says the CCCA is trying to help determine things like insurance requirements for in-house lawyers looking to do pro bono work and what the opportunities are out there for them.

Lee Cutforth has always felt a duty to continue pro bono work even after leaving private practice and has done so with Lethbridge Legal Guidance. When he made the move last year to an in-house role as Alberta’s first Property Rights Advocate, he said there was no question he would continue to volunteer his time. Cutforth, who was in private practice for 27 years, was initially drawn to pro bono as a means of doing some community service. “It’s a good opportunity to contribute to the community and fill a need, and there is a growing issue in our profession about access to justice and so it is a way to help with that problem as well,” he says.

Lethbridge Legal Guidance has a fairly high participation rate among lawyers in the community. “I think on a pro-rated basis it’s the highest in Alberta for the number of lawyers who end up participating in pro bono,” says Cutforth. Because the participation rate in the clinic is so high, Cutforth’s involvement in the clinic is about four to six times a year. The clinic runs weekly in Lethbridge in the evening. One has started in Medicine Hat as well as clinics farther west. Senior and junior lawyers as well as in-house counsel contribute their time.

The matters Cutforth has dealt with are “pretty garden-variety” — issues including family law, some civil claims, and landlord-tenant concerns make up the bulk of the work. The role is more one of triage as clients come in and are given a half-hour consultation and advised of what their rights are in a situation and what steps should be taken next. “If it turns out they need representation in court then we act as a gatekeeper and provide a referral to the staff lawyer to help them,” says Cutforth. “As lawyers we may see the issues these people have as garden-variety but to them it’s the most important thing they have going on at that moment and that’s the other thing that makes it worthwhile. For the people coming to see us it’s important and we’re fulfilling an important service.”

When Hurl joined the board of Calgary Legal Guidance she was transitioning from working at a private firm to an in-house role at Chevron Canada Resources. She quickly

realized they could use her assistance in areas more germane to what an in-house counsel does. That was also the case for lawyer Tony Wong, who, in 2008 when he was still a securities regulator working for British Columbia's Securities Commission, decided he wanted to put his corporate governance skills to work on a volunteer basis. "In my job I was dealing less with people and real issues and wanted to volunteer my skills but couldn't do it on a public company board. I soon realized most not-for-profits really value the skills lawyers bring to the table and I think lawyers have a lot to offer these kinds of organizations."

In February, Wong became general counsel and corporate secretary of Prophecy Coal Corp. in Vancouver and continues to volunteer his time as vice chairman of the board of the Vancouver East Cultural Centre, known colloquially as the Cultch. In January, along with Cultch executive director Heather Redfern and staff, Wong helped successfully argue before Vancouver City council to amend a city sign bylaw so corporate sponsorship could be permitted on the centre's signage. After a public hearing, the city, which owns the Vancouver East Cultural Centre, approved the Cultch's application to put West Coast Reduction's name on the marquee. It meant a \$2-million donation to the centre. "It was hugely rewarding," says Wong who attends about one board meeting a month for Cultch in addition to spending time on their corporate governance needs such as preparing for the annual general meeting.

Last year, members of the Association of Corporate Counsel's Ontario chapter began a project called "In Your Corner" aimed at helping foster families looking to formally adopt children they had raised. A meeting between PBLO and Catholic Children's Aid revealed the legal department at the agency was getting a number of requests from adoption workers asking for help in finalizing adoptions for some of the former Crown wards who had just turned 18. In July 2012, an initial training session on adoption law took place in Toronto with the 35 ACC Ontario members who volunteered. It was led by a lawyer PBLO works with from the Catholic Children's Aid Society.

The pro bono program saw in-house counsel help foster families complete necessary paperwork to finalize the adoptions. The program saved the families money: a typical adoption can cost between \$8,000 and \$12,000. Phase two of the ACC Ontario's efforts will see them help non-profit organizations with more business law issues such as employment, intellectual property, and commercial contracts.

Hurl says there's a misconception of what constitutes pro bono work and there are many opportunities to help where an in-house lawyer wouldn't be required to make substantive decisions in the areas of criminal and family law.

That means those who have spent a career doing M&A work shouldn't be discouraged from considering pro bono. "So often, when people think about pro bono they think about homeless advocacy, immigration, landlord-tenant, and family law," says Hurl. "In the work I've done recently for Calgary Legal Guidance I've written policy, contracts, some guidance on board governance and there is a lot of value in that. People forget all these not-for-profits delivering front line services also have legal needs that aren't obvious."

Pro Bono Law Ontario has also been working with in-house counsel from RBC for seven years providing a range of services including assistance to unaccompanied minors who

arrive in Canada at Pearson airport with no documentation, usually from war-torn countries. The challenge for in-house can be employer approval. While some, like RBC, have active internal pro bono programs others don't always approve, says Hurl. "Sometimes you have to justify it to your employer. Some companies encourage it but unfortunately others have cultures that dictate if you're not working on the company stuff you shouldn't be working on anything else," she says.

There are also development advantages to doing pro bono. Working in-house, Cutforth says he finds himself becoming more of a generalist but doing the pro bono work allows him to get exposure to the needs of individuals as opposed to groups of people. "I think that's good for your own perspective but can also help sharpen your skills if you're exposed to a different area of law you don't see every day," he says. "I think we owe a duty of service to the community but even in a practical way it helps broaden an in-house counsel's experience."

Other concerns have kept public sector lawyers from doing very much volunteer legal work but Crown counsel in three provinces are now able to carry out pro bono work with far less exposure to legal claims and less risk of running into conflicts of interest. Three year-long pilot schemes allowing Department of Justice lawyers to volunteer at legal clinics in British Columbia, Alberta, and Ontario received official approval in March. Lisa Blais, president of the Association of Justice Counsel, says her organization "applauds the attempt to increase access to justice" and looks forward to the program being expanded.

Crown counsel can only volunteer for departmentally approved activities and have traditionally been restricted in the level of insurance coverage they can obtain for pro bono work. It has also been difficult for government lawyers to rule out potential conflicts of interests, due to the enormous scope of legal cases involving the federal government. Under the new policy, lawyers will be insured to work (outside of their regular work hours) at the three legal clinics in Vancouver, Edmonton, and Ottawa, on specific areas of law screened by the government to minimize conflicts.



Tories chastised for lack of racial diversity in judicial appointments

SEAN FINE, *The Globe and Mail*, April 10, 2014

In the past five and a half years, the federal government has appointed just three non-white judges, out of nearly 200 first-time judges named to the bench, despite growing numbers of lawyers who are members of racial minorities.

Two years ago, The Globe and Mail first revealed that the Conservative government is choosing almost no visible minorities as new judges. Since that time, groups such as the Canadian Bar Association, representing the country's lawyers and judges, have urged the government to pay more attention to diversity, and to record the number of minority candidates and make the information public. And Chief Justice Beverley McLachlin of the Supreme Court has spoken out about the importance of having a more racially diverse bench.

"Many people, particularly women and visible minorities, may have less than complete trust in a system composed exclusively or predominantly of middle-aged white men in pinstriped trousers," she told a conference in Scotland in June, 2012.

Census data from 2006 showed that 11.5 per cent of Ontario lawyers and 14.6 per cent of B.C. lawyers were visible minorities. More recently, a 2010 survey found 17 per cent of lawyers who responded in Ontario were visible minorities.

When B.C. kept track of visible-minority candidates for provincial appointments to the bench, it found that 27 per cent of candidates between 2004 and 2006 fit that category.

But the pattern of nearly all-white appointments persists, a new study by University of Ottawa law professor Rosemary Cairns Way has found.

"I think there's a silence now, and no change, in a context when everything else about the legal system is changing, and everything else about the social context judges are dealing with is changing," she said in an interview.

The continuing pattern of white-only appointments raises questions about discrimination, and whether the courts could become diminished in the eyes of Canadians if they do not reflect the population. Roughly 20 per cent of Canadians are visible minorities.

"It makes the courts seem to be more disconnected from the reality of society," Emmett Macfarlane, who teaches political science at the University of Waterloo, said, adding that at the very least "systemic discrimination" is at play.

Paloma Aguilar, a spokeswoman for Justice Minister Peter MacKay, said in an e-mail that the government is "guided foremost by the principles of merit and legal excellence in the appointment of judges and Canada has many candidates that meet these criteria." The e-mail made no mention of diversity.

Prof. Cairns Way looked at the past 94 appointments, made between April, 2012, and March 7, 2014. In a paper she is presenting on Friday at a conference at York University's Osgoode Hall Law School in Toronto, she reported that just one non-white judge, a South Asian woman in British Columbia, was chosen by the federal justice minister.

Her study, like The Globe's, focused on new judges only, not those picked from lower courts to sit on higher ones. The federal government did, for instance, name the first Filipino-Canadian member of a superior court last summer – Justice Steve Coroza, of the Ontario Superior Court, who had been a judge on the Ontario Court of Justice.

Prof. Cairns Way's study followed one done by The Globe between 2008 and April, 2012, which found just two of 100 new judges were non-white – each a Métis chosen in British Columbia and Nova Scotia. Both studies used Internet searches and information from judicial sources and the law firms where the judges had worked to compile their data on race. In 12 cases of the 94, Prof. Cairns Way did not know the race of the new judge.

The Office of the Commissioner for Federal Judicial Affairs tracks the appointment of women but not of other minorities. Women make up a third of the 1,111 federal judges who sit on provincial superior courts, the Federal Court of Canada's trial and appeal divisions, the Tax Court of Canada and the Supreme Court. Prof. Cairns Way found that 37 of the past 94 appointments were of women. (In 12 appointments, she was unable to determine whether the judge was a member of a racial minority.)

There are 17 screening committees across Canada that screen judicial applicants for the federal government; each committee includes members of the legal community and a police officer, and mark candidates qualified or not qualified. A third category, highly qualified, was abolished under the Conservatives. The ultimate choice is made by the Conservative government.

Andrew Alleyne, the past president of the Canadian Association of Black Lawyers, said he could not say visible-minority candidates are discriminated against "without having any evidence." But, he said, until the government accepts the importance of a diverse judiciary, "I don't anticipate much in the way of change."

Prof. Cairns Way said she believes there are many qualified lawyers from visible minorities.

"It's not just lunatic legal academics who are writing about this," she said. "It's the chief justice [Beverley McLachlin of the Supreme Court] – she's speaking about it. It's the CBA. It's law societies. Demographics are changing with no response. I think that's what's astonishing."



Courts not some Jurassic Park: Justice Brown

Judge frustrated by counsel's refusal to conduct electronic trial

Charlotte Santry, Canadian Lawyer, April 9, 2014

Lawyers and the courts must embrace technology to avoid becoming “irrelevant museum pieces,” an Ontario judge has urged.

'How many wake-up calls do the legal profession and the court system need before both look around and discover that they have become irrelevant museum pieces?' asks Justice David Brown. (Image: Shutterstock)

'How many wake-up calls do the legal profession and the court system need before both look around and discover that they have become irrelevant museum pieces?' asks Justice David Brown. (Image: Shutterstock)

Justice David Brown expressed his “profound frustration” in case conference notes for *Bank of Montreal v. Faibish*, being heard at the Ontario Superior Court.

He had asked counsel involved in the case to consider conducting the proceedings as an electronic trial. In e-trials, digital files typically replace paper documents and video testimony may be used. But in *Faibish*, “some counsel (I will not indicate whom) communicated a desire to work in paper,” wrote Justice Brown on April 4. This was despite the fact that doing so would result in 10 binders of documents, according to BMO’s Bennett Jones LLP lawyers.

Brown wrote: *“Those who make up the public court system — be they the judges adjudicating the cases or the counsel pleading them — provide a service to members of the public who face legal problems.*

“. . . As a service it must be alive to the way in which the community it serves handles and communicates information.”

Changes to music publishing meant his “treasured” teenage collection of 45 rpms, along with 8-tracks and cassettes had “gone the way of the dodo bird,” Brown added.

He said: “Providers of music to the public have had to adapt to changes in technology in order to continue to provide their particular service. Why should courts and lawyers be any different?”

“Why should we be able to expect that treating courts like some kind of fossilized Jurassic Park will enable them to continue to provide a most needed service to the public in a way the public respects?”

“How many wake-up calls do the legal profession and the court system need before both look around and discover that they have become irrelevant museum pieces?”

He ordered that the six-week commercial litigation trial should be held as an e-trial, dismissing counsel’s suggestion that paper should also be used.

Blaney McMurtry LLP partner Lou Brzezinski represented plaintiffs Brome Financial Corporation Inc. in the action. He agrees with Brown's decision, saying it would lead to "a much more rational and simplified way of dealing with a complex documentary trial."

As well as allowing lawyers to turn up to trials with a USB key instead of many boxes of documents, e-trials are faster and more efficient, he believes.

"At some of these trials, the documents are put on a larger screen. The witness can look at the decision in an enlarged form, [instead of] squinting at a document that might have been produced in 1964 and that no-one can read it because it's so smudged," he says.

This is not the first time Brown has raised the need for courts and lawyers to embrace modern technology.

In 2012's *Romspen Investment Corp. v. 6176666 Canada Ltée*, he criticized "delays caused by our antiquated, wholly-inadequate document management system."

Two years earlier, in *Pershadsingh v. Thompson*, Brown pondered "how much the document and file management systems maintained by the Government of Ontario in this court differ from those that existed back in 1867."

But David Whelan, a published author on legal technology, says the bar is getting mixed messages.

He points to memorandums such as a Court of Appeal for Ontario e-filing notice posted 14 years ago, and still apparently active, that says printed documents are required during the "transition."

Meanwhile, an Ontario Court of Justice protocol allows electronic devices to be used – unless a judge prohibits them.

"Taken together, there seems to be an aspirational direction in the courts to use more technology but the mixture of paper requirements and individual judicial discretion suggest that parties may not be completely certain about when they should or could prepare for an e-trial," says Whelan.

There does not seem to be any leadership on using technology to improve the administration of justice across Ontario, he adds.

Document-heavy cases like *Faibish* lend themselves well to e-trials, but there may be situations in which technology can be unhelpful, according to Whelan. For example, iPad apps that need to be fiddled with can be distracting to judges or juries.

"If a court or process mandates using technology, there should be a benefit to doing so," he notes.

Why youth and unions can't seem to see eye to eye

As unions try to find ways to attract young people, their membership remains dominated by older workers

By Adrian Lee, Maclean's, April 7, 2014

When Jeff Sloychuk was 17, starting out as a summer student reporter at the Alaska Highway News in Fort St. John in B.C., he had no real idea of what a union was—where his dues went, or what he got in return. That changed when a shop steward came to meet him and shake his hand.

Now 32, Sloychuk says that initial meeting paid off—he's an organizer in Whitehorse for the United Association and the United Brotherhood of Carpenters. While acknowledging he's "certainly young within the labour movement," he knows the kind of outreach he received is the exception today, rather than the rule. "I got lucky," he says. "They really treated me like a full member, not a token youth, and I think that's the problem we tend to have—we just treat [younger workers] as the youth, rather than an equal partner in the movement."

Workers everywhere, unionized or not, have been buffeted by today's economy. Where once an employee might hold a job at a single company for life, no one expects that anymore. The nature of work itself is rapidly evolving. A recent report from the Broadbent Institute found that 52 per cent of Canadians between the ages of 20 and 30 believe work for their generation will be made up of a perpetual mix of contract positions interspersed with full-time work. In comparison, the think tank found just 14 per cent of their parents worked in a situation like that.

It would seem to be the perfect environment for unions to appeal to young workers. Indeed, the same Broadbent survey found the majority of millennials, 59 per cent, think weaker unions make good jobs harder to find. Yet unions in Canada have been shrinking—in 1997, more than 21 per cent of private sector workers belonged to unions; by 2011 that had fallen to 17.4 per cent—and a failure to reach out to young workers is partly to blame. "Young people in precarious jobs typically have been non-unionized. They don't see a union fighting for them, they see themselves as being left aside," says Jerry Dias, the president of Unifor, the largest private sector union in Canada. "The trade labour union movement has not spent a lot of time trying to organize them, historically."

When Dias was elected as president of Unifor—formed out of the 2013 merger of the Canadian Auto Workers and the Communications, Energy and Paperworkers Union of Canada—one of his main campaign planks was a commitment to youth outreach. At the union’s convention, he announced Unifor would earmark \$10 million to target new workers. It’s also looking to generate more opportunities at the grassroots level, with committees bringing the concerns of young workers directly to the union’s national executive to bring to the bargaining table. Dias also sees student unions as a feeder into the larger labour movement.

Part of the issue is a generational communications gap. CUPE recently contributed to a high-profile TV ad aimed at boosting the image of unions. Paul Moist, the president of CUPE, admits now that was a mistake, because few young people watch traditional TV. As such, they’re redoing the campaign for other formats.

The hierarchical nature of unions is also hurting their reputation among youth. Orion Wilson, a 24-year-old carpenter and construction worker in Toronto, says that when he signed up for his union, the International Alliance of Theatrical Stage Employees, he was told it would be months before he’d be able to find a unionized gig. “It was an old boys’ club, is basically what it was,” he says. “Working for them is great, but the experience I’ve mostly had [is that] the older workers get the pick of the litter for work.”

Dias disagrees with that assessment. “We are a seniority-based organization, no question about it, but to somehow suggest that young people are disadvantaged is nonsense,” says Dias. “Everybody will have their time.”

But with youth opinion slow to shift, new ad-hoc advocacy groups are forming, and they highlight the challenges facing unions. Seeing a need to stand up for the rights of young interns, Claire Seaborn, a 25-year-old law student at the University of Ottawa, founded the Canadian Interns Association in 2012. When it was taking shape, she was well aware of the stigma that unions had among young people and actively developed a distinct model: serving as an advocacy group, but not charging the membership—entirely unpaid—any union dues. “It’s a divisive issue, and we wanted to avoid it,” she says.

But the realities of funding remain an issue for the group, so when Unifor reached out a few months ago to see if the association would be willing to form a partnership—with the CIA effectively being folded in as a union chapter—Seaborn listened. She didn’t like what she heard: her association was told it would have to charge dues and hold in-person meetings, an approach that’s counter to the social-media-driven nature of the group. “They just didn’t seem to understand our approach,” she says, adding that she feels that unions are out of touch. “I just felt a bit frustrated that they were only willing to work with us if we played by their game.”

There is recognition of the problem in union halls. “We cannot sell out the next generation at the bargaining table and think they’re going to embrace trade unionism,” says CUPE’s Moist. “We need to have our eye on the future work force.”

Burnout shouldn't be part of your business plan

Hitting the wall will do you, your firm and your clients no good

By Ann Kaplan, Lawyers Weekly, April 11, 2014

Entrepreneurs share many common qualities. These include being self-starters, passionate, confident, determined and hard-working. Many, however, will admit that another common trait can be burnout. Being self-employed and running your own law firm can be much more demanding than working for someone else. There is much required to not only get a firm off the ground but also to succeed and survive in a highly competitive legal environment.

Solo law firm practitioners often feel as though they must do every task on their own, from the day-to-day operations, to marketing and business development to administration. It can often be too much for one person. And if juggling multiple responsibilities on the work front isn't taxing enough, factor in juggling the business of life such as household responsibilities, kids and appointments, and things can feel overwhelmingly unmanageable.

The following are some personal tips to manage the workload and succeed personally and professionally.

Get a head start on the day

Many successful sole practitioners will admit to waking up before the crack of dawn to try and maximize their day and increase productivity. There are fewer demands at that hour because clients or colleagues are not yet working.

This is a great time to squeeze in a workout, plan the day, do household chores or enjoy reading the newspaper over breakfast.

Write it down

Schedule all tasks that need to be completed during the day. This helps to map out the day and set goals to achieve. Many people also feel a sense of accomplishment in tracking completed projects.

Nothing feels better than being able to cross multiple tasks off a to-do list. If work tends to take over the day leaving very little spare time, schedule in some time to relax. This will provide a goal time to complete all of the tasks and ensure downtime.

It is hard to be effective if every minute of the day is busy. Some of the best business ideas often come during downtime.

Schedule time to manage the business

We spend most of our time trying to earn money and do this by scheduling time with clients. But it is important to also schedule time to oversee the business, to regroup and strategize to stay on track to reach goals and ensure that everything is in order.

Maximize meetings

When approached for a meeting, think about the goal of the meeting. When time is limited, it is important to ensure the meeting is worth the time. If it turns out the meeting is not what was preconceived, don't be afraid to decline. When time is limited, prioritize how to best use those valuable hours.

Prepare in advance

Avoid scrambling in the morning by preparing the night before. This includes everything from printing documents for client meetings and mapping out where the meeting is located to packing lunches.

Keep detailed notes

Keep a list of everyone you meet and work with and make detailed notes about that person such as where they went to school, how many kids, etc. This information can easily be tracked in an Outlook address book under contact information. This will help to quickly pull up information that can be referred to in future meetings with potential customers or business people.

Be organized

There is a lot of paper to handle when operating a business, from contracts and tax documents to banking information and client files. It is critical that everything is filed right away. This will save time looking for documents later and will help in keeping track of the day-to-day operations.

Specialize

Don't be everything to everyone. Consider personal strengths and brand yourself accordingly. Specialize in a specific area, build a reputation and business around it, and dedicate the time to this service. It will help to prevent being pulled in multiple directions. It's always possible to expand to other related services later.

Outsource

As tempting as it is to do every task by ourselves, there is great value in outsourcing services that we don't have any expertise in such as marketing or public relations. Partner

with an independent team in the early days. Their input can help frame how the firm should be presented, increase visibility and ultimately help to raise the bottom line.

Interview good people

When looking to expand the team, invest the time in interviewing to ensure the right fit. In addition to skills competency, interview for the values that would make a good addition to the team such as leadership, intelligence, loyalty, etc. The right alignment is extremely important. A bad hiring choice will cost a firm money. A good hire will be a great investment. Once hired, take the time to train them well so they become reliable team members who can then be trusted to take on key tasks and help ease the workload.

It is important to understand that while it may cost money to outsource services or hire employees to spread out the workload, it can help a firm increase its bottom line in the long term. By delegating some responsibilities like marketing and administration to others, lawyers can focus on the tasks that will bring in additional revenue like client meetings and work. It can be beneficial to map out goals of where the firm will ideally be in one year, five years and 10 years and then staff the firm accordingly to help reach these goals without burning out.

Burnout does not have to be a part of business. By staying organized, delegating work internally to staff members or outsourcing it, the workload can easily be managed. Identify activities or tasks that will help to unwind and schedule that into the day. Don't underestimate the value of personal time. Whether it is exercising or baking or reading, a few minutes away from office work will rest the mind and a rested mind will be much more productive and equipped to succeed.

Ann Kaplan (www.annkaplan.ca) is the president and CEO of iFinance Canada, the largest private non-bank consumer lender in the country. She is a finalist for the 2013 EY Entrepreneur of the Year Award, the recipient of national and international entrepreneurship awards and a published author and mother.
