Analysis: Don't expect Liberals to woo public service with spending

Kathryn May, Ottawa Citizen, April 24 2016

The Liberal government's love affair with Canada's public servants doesn't seem to include spending money on them.

In fact, the recent federal budget has signalled that the Liberals could be as tightfisted as their Conservative predecessors with departmental business or operating expenses, of which salaries are the single biggest expense.

Peter DeVries, a fiscal policy and public management consultant, says operating expenses haven't changed much since the Conservative' restraint-oriented polices such as spending freezes and the controversial proposed sick leave reform.

"It will largely be life as usual for the public service," he said.

Last week, the giant Public Service Alliance of Canada tabled its first wage increase demand, seeking a more than nine per cent raise over three years. The Liberals haven't made an offer since taking over the reins for collective bargaining, but the 1.5 per cent increase the Tories offered over three years is still on the table.

Some had high hopes that the Liberal government would loosen the purse strings and return to the days when departments could count on Treasury Board to fund the extra cost of any wage settlements.

The Conservatives stopped that practice when they imposed a series of freezes on operating budgets, forcing departments themselves to absorb any wage increase – which in turn squeezed more jobs, programs and services.

The Conservatives' last two-year freeze on departments' operating budgets recently lifted. However, the Liberals plan to continue the Tory policy and departments will have to retroactively fund any wage increase out of existing budgets for 2014-15 and 2015-16 when the last operating freeze was in place.

"Departments remain responsible for any wage increase that takes effect in 2014-15 and 2015-16 and the ongoing costs of those increases," said Jean-Luc Ferland, a spokesman for Treasury Board President Scott Brison, in an email.

Ferland said departments started planning for this in 2014-15, when they requested that surplus funds be "re-profiled" or carried over for use in future years.

Brison began bargaining with the public service by warning that unions had to be realistic in the face of larger-than-expected deficits, falling oil prices and a lacklustre economy. The $45-billion wage bill is one of the government's biggest single costs and a one per cent a year raise represents another $450 million for departments to find.

Another bite on department budgets was the $221 million a year the government will cut from spending on travel, professional services and advertising over the next five years.

That's totals another $1-billion squeeze for departments and comes after years of Tory restraint. Departments absorbed $4.6 billion in ongoing spending cuts with the Tories' spending freezes and personnel reductions in the 2012 budget.

Under the Liberals, operating expenses will increase for two years due to budget initiatives, the biggest being $4.5 billion in benefits for veterans. But they settle out after that and remain flat for the next four years.

As one executive said, "You can't have four flat years of operating expenses and think cuts will be reversed."

The Parliamentary Budget Office noted in its latest Economic and Fiscal Outlook report that this amounts to an "effective freeze," especially if a collective agreement is reached that increases wages and boosts operating costs.

The report also shows direct program expenses – of which 70 per cent are operating costs – will end up accounting for 5.9 per cent of GDP, which is the same historic low level the Conservatives had in 2014-15.

"The government has the option in the next budget to show a different track for direct program expenses, but its current numbers show they go back to the 2014-15 levels as a percentage of GDP," said assistant parliamentary budget officer Mostafa Askari.

The same report projected a deficit for 2016-17 at $20.5 billion, nearly $9 billion less than the $29.4 billion the Liberal government forecast in its budget. And a forecast that the federal government will post a small $700-million surplus in the 2015-16 year that just ended, once numbers are finalized — far better than the $5.4-billion deficit the Liberals have projected. These may give unions a bargain point but the Liberals are still not signalling a loosening of the purse strings.

The unions had high hopes when the Liberals promised to bring back fair collective bargaining. The unions had been through a protracted two-year round of contract talks under the Tories that went nowhere over the Conservatives' proposal to replace the existing banked sick leave scheme with a new short-term disability plan.

After the Liberals were elected, Brison immediately tabled legislation in the House of Commons to repeal controversial Tory plan to allow the government to unilaterally impose a new sick leave regime. That decision reversed the $1.5 billion the Conservatives booked in sick leave savings and added it to the government's mounting deficit.

DeVries said the budget was aimed at delivering on election promises and the government could very well give departments more money in later budgets.

In this budget, the government set aside $500 million over two years to address "rust-out" or "program integrity" problems, with Treasury Board leading a review of departments that need additional funding to improve services, as well as employee health and safety issues. The Canadian Coast Guard and RCMP have already been flagged as agencies that need more funding to deliver their "mission-critical services."

"You can't just provide funding for just two years. Ongoing funding will likely be announced in the next budget and I suspect it will be higher than $250 million per year," said DeVries.

Debi Daviau, president of the Professional Institute of the Public Service of Canada, said the Liberals may not be any more generous to the public service but they have promised to work with the bureaucracy.

"Has there ever been a time when a government doesn't look to the public service for savings?" asked Daviau. "So what we will be focused on is leading this government to changes that make sense in delivery of services and in terms of cost savings so they can re-organize to deliver on their priorities without sacrificing services to Canadians.

"And we will ask for a seat at that table on how the government could best deliver on its priorities."

Système de paye Phénix: le transfert a eu lieu sans problème majeur

Paul Gaboury, La Presse, le 22 avril 2016

L'implantation de la deuxième phase du nouveau système de paye Phénix pour 170 000 fonctionnaires travaillant dans 67 ministères et organismes fédéraux a eu lieu tel que prévu, jeudi, sans problème majeur.

«Aucun enjeu important n'a été soulevé», a indiqué Michèle LaRose, porte-parole du ministère des Services publics et de l'Approvisionnement.

Le ministère, responsable de la mise en oeuvre de ce projet de 300 millions $ qui a nécessité cinq années de travaux, a procédé malgré l'insistance du syndicat des employés du centre de Miramichi, l'Alliance de la fonction publique du Canada (AFPC), qui demandait son report pour régler les problèmes rencontrés lors du transfert initial de 120 000 comptes.

L'AFPC, qui avait accusé le gouvernement «de jouer à l'autruche» dans ce dossier, n'a rien à signaler pour l'instant.

Le ministère souligne qu'il surveille la situation de près et soulèvera publiquement les problèmes et la façon dont il trouvera des solutions.

Si, de manière générale, les employés reçoivent leur paye sans perturbation, le ministère dit avoir constaté «quelques problèmes» lorsqu'il y avait des changements à la rémunération, notamment des employés affectés temporairement à des postes mieux rémunérés et des versements d'allocations.

Des rapports sont fournis aux ministères avant chaque passage de paye afin de cerner et de régler les incohérences, et plusieurs numéros sans frais (dont le 1-855-634-2358) sont mis à la disposition des employés, des conseillers en rémunération, des agents financiers et du personnel en ressources humaines afin de répondre aux questions. L'outil de suivi en ligne permet aussi de consulter l'état d'une demande de service liée à la paye.

Des mécanismes sont aussi en place au sein des ministères afin de résoudre les problèmes, notamment le versement d'avances de salaire d'urgence, au besoin.

New payroll system leaving thousands of public servants in the lurch, says PSAC

Public Services says there have been only 300 formal complaints about new pay system

Alison Crawford, CBC News, April 21 2016

A union representing tens of thousands of federal public servants is urging the government to delay rolling out the second phase of its new automated pay system called Phoenix.

The Public Service Alliance of Canada says thousands of its members included in the first phase of the project aren't getting paid enough — or at all.

"They're simply not getting paid. They're not getting paid on time. They're not getting paid accurately," said Chris Aylward, vice-president of the union.

Colin Barnard said he hasn't been paid since the end of February, except for $652 deposited into his bank account yesterday. He works for the Department of Fisheries and Oceans at the Pinkut Creek spawning channel in northern British Columbia.

"I've had to dip into my RRSPs twice already, and that doesn't make me happy, because that's supposed to be for my retirement. You know it's not a fun thing to have going on," Barnard said, adding that he knows five other people who have also had problems.

There are toll-free numbers for people to call if they're experiencing difficulties with their pay, but the government website warns of high call volumes and that employees "may get a busy signal and calls may be disconnected."

Message to the minister

With no cell service at the spawning channel where he lives and works all week, a toll-free pay centre help line isn't much use to Barnard. It took him 40 minutes to drive to a spot with enough cell coverage to give CBC News his message for the minister responsible for the department rolling out the new pay system, Judy Foote.

"Get your act together!" he said. "This is not working and, oh, by the way, I want interest and I want the taxes paid on my RRSPs that I've had to dig into."

Aylward said PSAC is hearing the most complaints from employees who don't work Monday to Friday from 9 to 5, such as employees of the Canadian Coast Guard who are out at sea for more than a month at a time. They don't have access to online banking to check how much has — or has not — been deposited into their bank accounts.

"They're coming home, back from sea and all of a sudden they're realizing their utilities have been cut off because you know for two or three pays now in a row, they haven't had sufficient funds in their bank accounts to cover off their automatic pays for utilities," Aylward said.

Aylward recently travelled to the government pay centre at Miramichi, N.B., to meet with members of PSAC who work the phones. He said they told him they're getting up to 7,000 calls per day, but that staff only have the capacity to help 2,200 callers.

Department says it's under control

Yet in an email to CBC News, a spokesman for Public Services and Procurement said the department has only received 300 formal complaints since the end of February, when the Phoenix system went online.

Pierre-Alain Bujold said that, for the most part, the 120,000 employees on Phoenix have experienced no problems, yet that with any big new IT project, there are some technical issues, which have almost all been resolved.

Bujold said Public Services continues to work closely with departments to resolve pay problems and a web-based tracking tool allows employees to get updates on their pay.

"All employees who should have received a pay (i.e. whose information was entered into the system), have been paid," said Bujold.

Aylward said it's unwise for the government to add 120,000 public servants to the Phoenix system.

"We asked that Phoenix be slowed down and allow the employees at Miramichi who are doing the work to basically catch up. They have 115 to 140,000 cases not yet assigned to an adviser."

PS pay change will go ahead only if the government is 99 per cent sure it's ready: official

Kathryn May, The Ottawa Citizen, April 18 2016

The federal government won’t proceed with the second rollout of its new automated pay system unless it’s “99 per cent” sure it is working and ready to go, a top Treasury Board official said Tuesday.

Treasury Board President Scott Brison and his deputy minister told MPs on the Commons government operations committee on Tuesday that the new pay system, known as Phoenix, had glitches in the first rollout but that implementing government-wide IT projects are a huge challenge for public and private sector alike.

"Before the next phase of departments are 'on-boarded' to the new system, Public Services and Procurement … is checking with every department and identifying areas that we have problems with," said Treasury Board secretary Yaprak Baltacioglu.

"We are feeding into them and alerting them if we are running into problems. If they feel we're not ready, they will delay. If they feel 99 per cent of it is going to work, then we will go forward."

Brison said the decision to consolidate all pay operations in a new pay centre in Miriamichi, N.B., was made by the previous government to replace a largely manual 40-year-old pay system. He acknowledged some public servants have faced problems getting their pay but added departments are working together to resolve them.

He said the final decision to proceed rests with Public Services and Procurement Minister Judy Foote, whose department oversees the massive pay transformation process.

Foote gave no indication Tuesday that the department was changing course on the Phoenix rollout.

In an email, she said the primary concern is that public servants are paid "in a timely fashion" and that the old system was at the end of its life cycle with "little functionality."

She said the new system was tested for a year before launch using 16,000 different pay scenarios and was reviewed by a third party.

"As with any major IT implementation, we are anticipating some issues and adjustments following the roll out and are prepared to address them," Foot said. "We are committed to improving federal government compensation services and reducing payment times. "

The government has been under pressure from the Public Service Alliance of Canada, which represents the 550 compensation advisers at Miramichi, to delay the rollout so they can catch up on a backlog of 115,000 files they claim have yet to be assigned.

But bureaucrats have been insisting that Phoenix will roll out as planned for another 67 departments on Thursday. The first test of how well it works will be May 4, the first payday for all 101 departments and agencies using Phoenix.

Brison was testifying about his department's Main Estimates when he was asked by Conservative MP Steven Blaney, former minister of Public Safety and Veterans Affairs, if he could assure public servants in the second rollout that they will be getting their pay on time.

Blaney said he was particularly concerned about members of the coast guard who have returned from long periods at sea and found to their "horror" when they returned to shore that paycheques weren't deposited into their accounts.

"Are you able to reassure us that these problems have been identified and corrected?" he asked. "When it comes to the second phase, can you assure this won't happen again?"

Brison said large IT projects have always proved "frustrating" for government, which he said must "become a better procurer of enterprise-wide solutions. We have a ways to go, as do most governments."

For the pay system, it's unclear how many people are not getting paid, as opposed to those who are getting paid but not all they are owed.

Anecdotally, it seems the system works for employees who receive regular pay cheques with no extra duty payments. Employees with operational jobs, such as the coast guard, typically have complicated schedules and pay rules that seem to have contributed to problems.

There have also been delays and other snags with new hires, terminations and term and casual employees whose contracts are renewed.

The unions and government are presenting very different assessments of the extent, scope or even the nature of the problems.

Public Services has service standards that set turnaround times for various pay transactions, such as for a new hire, a termination or extra-duty pay. The department has been tracking its performance on those standards since it began transferring employee files to the pay centre in 2013.

According to its website, the department is not posting its performance during the transition to Phoenix during March and April and will resume posting in June.

The department says everything is in hand, that Phoenix is working and proceeding as expected for such a massive and complex project. Unions say the pay centre is swamped, Phoenix isn't working and employees won't be able to cope when 170,000 more files are added into Phoenix.

In other matters, Brison said Treasury Board was working with unions to reduce harassment in the public service. In the last public service survey, about 20 per cent of employees said they were harassed.

Privy Council Clerk Michael Wernick has made mental health and a healthy workplace a priority and included it as part of this year's performance contracts with all deputy ministers.

Stewart: Here's how to build a better public service

William Stewart, The Ottawa Citizen, April 21 2016

A new era for the Canadian public service is upon us. Great things are expected. But two deep changes are needed, or it will all come to naught.

The public service tries to act like industry, which they think is purely results-oriented, a no-excuses environment. And so they conduct a monologue, instead of dialogue, with the working level. Management says what must be done, and then walks away. When it doesn't get done, management blames staff. You can imagine the demoralizing effect.

The Shared Services difficulties are the most visible current example. But the same pattern repeats throughout the government.

Setting a challenging goal is good. But it's only half the story. In industry, if you don't let the working level figure out what it will take, it doesn't work. Real achievement requires setting the goal, listening to what the working level says it will take, then honest dialogue to finalize a workable plan.

In government, management sets the goal, the schedule and budget. Commitments are made, and the working level shakes their heads in wonder once again. The question is not whether it will be over schedule and budget, but by how much. The priority becomes avoiding blame.

We have seen the results for decades: little done on time or within budget. And management keeps piling on more work, since things don't get finished. In industry, telling management their plans won't work is not a career risk — it's professionalism. Realistic schedules and budgets must be accepted, or scope scaled back. This honest dialogue is the key change the public service needs.

This is common sense. But decades of experience haven't caused change. The fix must come from the top. The moment a senior manager thinks their job is to be more firm in insisting on an impossible schedule and budget, all the dysfunction will return, and flow through the entire department.

The second change needed is deep-sixing the idea that "people time is free." Throughout government, the main resource — the people doing the work — is ignored. In every class I teach, I ask if people hours are estimated or tracked, and 80 per cent of the time the answer of no, because "staff are paid anyway." And ironically, this most hurts the working level, since all departments have several times the work they can implement, but no one can prove it. So all the schedules slip. Burn-out is rife. And the real costs are several times what anyone knows beforehand, or understands as efforts proceed.

Again, culture is key. The reason for planning and tracking person hours is never to get upset when estimates are exceeded. That's life. Rather, it's so staff can provide realistic numbers from the bottom up, feel responsibility to meet them, and learn how optimistic they were so they can do better next time. Messing up estimates is how staff gets better. But without them, every department has more work than they can do, cannot prove it, and are deluded to claim they can get everything done.

These two changes – working level planning of realistic schedules and budgets, and including everybody's time – are the foundation needed for the public service. And the benefits would compound. The biggest tragedy is the demoralization resulting from the current approach. With unilateral direction, unrealistic schedules and insufficient resources, the system becomes increasingly clogged. Productivity plummets. Sick leave is just one result. But so is decreasing achievement.

On the other hand, if our government can reverse these drivers, they can reverse the results, obtaining higher morale, productivity and achievement. Lofty goals are necessary. But effective implementation will require deep changes in how the system works.

The beneficiaries? The entire country.

William Stewart *worked for five years for the federal government, 13 for industry with the government as his main customer and has taught more than 200 project management courses, mainly to public service personnel.*

Le sort incertain de l'aide à mourir
Hélène Buzzetti, Le Devoir, le 21 avril 2016

Le projet de loi sur l'aide médicale à mourir fera peut-être l'objet d'un vote libre à la Chambre des communes, mais cette liberté ne délie pas les langues pour autant. Les députés fédéraux se montrent réticents à partager leur point de vue sur cette législation, au point où il est difficile de prédire si son adoption est compromise ou non.

Chez les libéraux, seuls Justin Trudeau et ses 30 ministres sont obligés de voter pour le projet de loi C-14, qui décriminalise l'aide médicale à mourir dans certaines circonstances. Les 35 secrétaires parlementaires sont libres de l'appuyer ou non. Si quelques députés sont d'accord avec le projet de loi, plusieurs se disent encore en réflexion. Un grand nombre a refusé de répondre aux questions ou l'a fait avec réticence.

Fayçal El-Khoury, un député de Laval, se dit *a priori* en faveur de C-14, bien qu'il veuille encore l'étudier. *« Il y a une tendance de ma part* [à penser qu']*il faut soulager le patient quand il est dans un cas où la douleur domine »*,dit-il. Jean Rioux (Saint-Jean) ou encore Anthony Housefather (Mont-Royal) penchent en faveur de C-14.

D'autres sont indécis. Ken Hardie, de Colombie-Britannique, dit *« ne pas encore savoir »* comment il va voter. *« Je suis partagé. C'est extrêmement difficile. »* D'autres encore offrent leur point de vue à reculons. C'est le cas de Randeep Singh Sarai, qui a abruptement tourné les talons après avoir entendu la question. Après la réunion du caucus où le sujet a été abordé, il a consenti à dire que *« jusqu'ici, je suis enclin à l'appuyer. C'est un pas positif dans la bonne direction ».* Son collègue Geng Tan, de Toronto, a lancé : *« ne demandez pas cela à moi ».* Quand on lui a rappelé qu'il était député, il a consenti à répondre, sans se commettre, que *« toute personne a le droit de prendre ses propres décisions ».*

Opposition conservatrice

Chez les conservateurs, où le vote libre prévaudra, aucun élu ne s'est encore prononcé pour le projet de loi. Tous les conservateurs interrogés soit s'opposent à C-14, soit demandent des modifications. Par exemple, Gérard Deltell, qui se réjouit que le projet de loi écarte l'aide à mourir pour les mineurs et les personnes seulement atteintes de problèmes mentaux, demande encore que la liberté de conscience des médecins soit protégée. Maxime Bernier indique que « [s]*a décision n'est pas encore prise ».* La chef par intérim Rona Ambrose n'a pas encore pris publiquement position.

Les opposants conservateurs sont nombreux. Tom Lukiwski songe à voter contre C-14. *« Je crois fortement au caractère sacré de la vie et ce projet de loi, tout bien intentionné soit-il, semble aller à l'encontre de cela. »* L'ancien président de la Chambre Andrew Scheer évoque aussi la liberté de conscience du personnel médical. *« S'il n'y a aucun amendement, je vais voter contre, car c'est très important de protéger les droits des médecins et les gens qui travaillent dans le système de santé. »*

Inconfort

Signe du malaise, le député Blake Richards a refusé de dire ouvertement qu'il s'opposait au projet de loi, évoquant plutôt son précédent vote (négatif) sur un enjeu similaire. Même timidité de la part de Erin O'Toole et James Bezan, qui, lorsque interrogés, ont d'abord voulu quitter le micro. Puis, M. O'Toole a renvoyé les journalistes à son site Internet, où il parle de la *« pente glissante de l'euthanasie ».* Quant à M. Bezan, il estime que *« le projet de loi ne protège pas les droits religieux des médecins, des infirmières, des professionnels de la santé et des établissements où cela pourrait avoir lieu ». « À moins que des changements soient apportés, je m'opposerai à ce projet de loi. »*

Mouvement pro-vie

MM. Lukiwski, Scheer, Richards et Bezan s'associent au mouvement pro-vie, qui s'oppose avec autant d'ardeur à l'euthanasie qu'à l'avortement. Le mouvement pro-vie est omniprésent dans le caucus conservateur : 43 des 98 élus conservateurs en font partie, selon une compilation

effectuée par *Le Devoir.* Ce chiffre pourrait augmenter encore un peu à mesure que les nouveaux élus moins connus se commettent sur ces enjeux.

Trois députés libéraux se disent pro-vie (John McKay, Lawrence MacAulay et Filomena Tassi) même s'ils se sont engagés, comme le réclamait leur chef, à voter de manière pro-choix. John McKay votera pour C-14 parce qu'il estime que la bataille de l'aide à mourir a été perdue en Cour suprême et qu'il faut se ranger.

Du côté néodémocrate, le chef Thomas Mulcair s'est engagé à voter pour C-14. Il prétend ne pas avoir sondé ses troupes — qui ont carte blanche pour voter comme bon leur semble — pour en connaître l'avis général. *« On discute du contenu de la loi, mais puisque c'est un vote libre, je ne vais jamais demander aux gens comment ils vont voter. »*

M. Mulcair invite le gouvernement libéral à soumettre son projet de loi à la Cour suprême sous forme de renvoi, pour s'assurer qu'il est conforme au jugement de l'an dernier. La ministre de la Justice a déjà indiqué qu'elle estimait cette suggestion prématurée.

Pour sa part, le chef bloquiste par intérim, Rhéal Fortin, a l'impression que ses troupes seront pour C-14. *« On verra au final comme on doit voter, mais sur le principe, je serais bien étonné que vous ayez à constater des votes contre de la part du Bloc québécois. »*

169 voix

Depuis le décès de Jim Hillyer, la Chambre compte 337 députés, incluant le président (libéral), qui ne vote pas. Il faut donc 169 voix pour qu'un projet de loi soit adopté. Les libéraux comptent 183 députés votants. Il y a 98 conservateurs, 44 néodémocrates, 10 bloquistes et un vert. Mercredi, le premier ministre Justin Trudeau s'est dit *« confiant »* que les gens comprendront que *« la question n'était pas si on devrait légaliser l'aide médicale à mourir, mais comment on allait le faire et* [que] *le pas qu'on a fait, c'est un premier pas responsable ».*

Notons qu'en 2010, le projet de loi sur l'aide à mourir de feu la bloquiste Francine Lalonde avait été défait à la Chambre des communes. Tous les conservateurs présents, à l'exception des

Québécois Lawrence Cannon et Josée Verner, avaient voté contre ce projet de loi. Seulement cinq néodémocrates avaient appuyé le Bloc — M. Mulcair n'était pas du lot — et huit libéraux. Il est difficile de transposer ce vote à C-14 dans la mesure où plusieurs estimaient que le projet de loi de Mme Lalonde était mal rédigé.

Aide à mourir: le projet de loi respecte le jugement Carter, assure la ministre

Lina Dib, La Presse, le 22 avril 2016

Prise à partie par la famille qui a mené la bataille et obtenu le jugement Carter, la ministre fédérale de la Justice a assuré, vendredi matin, que son projet de loi sur l'aide médicale à mourir répondait adéquatement à la décision de la Cour suprême du Canada.

La ministre Jody Wilson-Raybould a présenté ses arguments en entamant la première heure de débat aux Communes sur le projet de loi C-14.

«C'est le devoir du Parlement, non seulement de respecter la décision de la cour, mais aussi d'écouter toutes les opinions et de décider ce qui est dans l'intérêt public», a noté la ministre.

«Ce n'est jamais aussi simple que de copier-coller les mots d'un jugement pour les mettre dans une nouvelle loi», a-t-elle illustré.

Puis, contrairement à la famille de Kay Carter, la femme dont le cas a conduit au jugement de la Cour suprême reconnaissant le droit à l'aide médicale à mourir, la ministre maintient que Mme Carter aurait eu droit à l'aide d'un médecin pour mourir, sous C-14.

À ceux qui lui reprochent le flou de certains termes, comme une «mort naturelle devenue raisonnablement prévisible», la ministre répond que «le langage a été choisi délibérément». Son but: «S'assurer que les personnes qui sont sur le chemin de la mort dans des circonstances diverses puissent choisir une mort paisible plutôt que d'endurer une agonie longue et douloureuse».

La ministre refuse de soumettre son projet de loi à un renvoi à la Cour suprême du Canada pour s'assurer de sa constitutionalité. Ce serait «prématuré», a-t-elle répondu au député néo-démocrate Murray Rankin qui lui en faisait la demande.

De toute manière, Mme Wilson-Raybould continue de garantir que son projet de loi respecte le jugement de la cour et la Charte canadienne des droits et libertés.

En appui aux déclarations de la ministre en débat parlementaire, le gouvernement a publié un document qui détaille le raisonnement derrière C-14.

On y dresse la liste des accrocs possibles que le projet de loi pourrait faire à la Charte. Et on offre à chacun la même justification: l'atteinte d'un «équilibre approprié entre des droits, intérêts et valeurs opposés».

Par exemple, on reconnaît que le fait de refuser toute demande anticipée pour cette aide à mourir en la restreignant aux personnes «capables» pourrait violer l'article 7 de la Charte. Mais, cela «offre une meilleure protection aux personnes vulnérables».

La réplique de l'organisation qui a appuyé la famille Carter devant les tribunaux n'a pas tardé.

«Les avocats du ministère de la Justice se sont trompés dans leur analyse de l'aide à mourir pendant des années. Leur analyse et leurs arguments ont été rejetés en cour. Et ils ont tort maintenant», peut-on lire dans le communiqué diffusé par l'Association des libertés civiles de la Colombie-Britannique, vendredi après-midi.

Les objections de députés conservateurs

Les députés conservateurs se sont lancés dans le débat parlementaire avec beaucoup d'émotion.

L'Albertain Michael Cooper, connu pour son opposition à l'avortement et l'euthanasie, a d'emblée déclaré que le projet de loi C-14 respecte l'arrêt Carter. Puis, il a réclamé des amendements.

Il veut qu'un psychiatre détermine la capacité à consentir de la personne qui demande l'aide médicale à mourir. Il réclame également que le projet de loi fédéral accorde une protection aux médecins et infirmières qui, pour des raisons de conscience, refuseraient d'appliquer eux-mêmes l'éventuelle loi.

Son collègue ontarien Scott Reid était plus critique, déclarant que s'il n'y a pas de protection pour les médecins, «ce n'est qu'une question de temps avant que les tribunaux n'obligent les médecins à fournir de l'aide à mourir».

Un autre conservateur, Garnett Genius, a offert la critique la plus sévère. «Le projet de loi met les patients, les aînés, les malades, les handicapés à la merci d'une erreur ou d'un abus. Nous l'avons vu en Belgique. (...) Nous ne voulons pas prendre ce chemin au Canada», a plaidé le député albertain.

C-14 sera soumis à un vote libre. Seuls les ministres libéraux sont tenus d'appuyer le projet de loi. Les parlementaires reprendront ce débat en deuxième lecture le lundi 2 mai.

Liberals' restrictive approach to assisted death could sink Bill C-14 in Senate: Hébert

Pre-emptively filling a legal vacuum with a bill that fails to pre-emptively address predictable court challenges is not exactly a recipe for legal clarity or for ensuring a parliamentary consensus.
Chantal Hèbert, The Toronto Star, April 19 2016

The sky won't fall if Parliament fails to pass legislation on assisted death by the court-imposed deadline of June 6. It was always going to be no longer a criminal act after that date for a medical practitioner to help a patient who wanted to end their life. Plans for a federal law were never meant to do more than circumscribe this new reality.

Faced with a national legal vacuum, the provinces would step in. When it comes to running the health-care system the buck stops with them. Presumably every province has done due diligence on the issue. If they have not, they have been negligent.

It has been more than a year since a Supreme Court ruling voided the Criminal Code prohibition on assisted death on charter grounds. Over that period Parliament has been in flux as the result of a regime-changing election. But the same is not true of most provincial legislatures.

If Quebec found a way to regulate access to physician-assisted death on its own, there is no reason why other provinces cannot do the same, especially since they have a template in hand. They might actually find it easier to adapt the Quebec template to the top court's prescriptions absent the federal legislation introduced last week.

Bill C-14 was expected to chart a common path for the provinces. But it was also expected to align with the court's guidelines. Inasmuch as the legislation barely meets the Supreme Court's threshold (if at all), it has the potential to make life more complicated for the provinces than if they were guided solely by the ruling.

Pre-emptively filling a legal vacuum with a bill that fails to pre-emptively address predictable court challenges is not exactly a recipe for legal clarity or, as it happens, for ensuring a parliamentary consensus.

Based on the initial reactions to the Liberal bill, it is likely headed for relatively smooth sailing in the House of Commons. But safe passage is anything but assured in the Senate.

For the MPs whose top-of-mind consideration is a looming legal vacuum, and for many of those who are only reluctantly coming to terms with having to sign off on an assisted death law, this bill is as good as it can get.

It is hard to see how a federal government of any stripe could have come up with more restrictive legislation than Bill C-14 and still have been able to claim with a straight face that it was responding to the Carter ruling.

By the same token, at least some of the MPs who would have wished for a less restrictive regime stand to be swayed by the government's promise of a loosening of the criteria for qualifying for assisted death at some unspecified point down the road.

But the government's restrictive approach to assisted death — even as it stands to facilitate the bill's adoption the Commons — could sink it in the Senate.

Earlier this year, all Senate members of a joint parliamentary committee struck to advise the government on the way forward signed off on a majority report that recommended a significantly more permissive law than Bill C-14. On that occasion the Conservative senators broke ranks with their House of Commons colleagues.

There is more than just senatorial independence at play here. In contrast with the Commons, the upper house has been looking into end-of-life issues such as euthanasia, assisted death and palliative care for more than two decades. The only group in Parliament that can claim to have done any homework on this file sits in the Senate.

Cabinet ministers and the newly appointed government representative in the upper house, Peter Harder, are bound to support the bill at every step of the legislative way. All other parliamentarians will be free to vote as they see fit.

No one, including the Conservative and the Liberal house leaders in the Senate, will give odds as to the likelihood that a majority of their colleagues will support Bill C-14 and/or do so in time for the June 6 deadline. It is possible there will not be enough common ground between the two houses for a federal law to see the light of day. Worse things could probably happen.

The Court Challenges Program rises

Will the Trudeau government design the Court Challenges Program to survive future changes of government?

Ian Brodie, Policy Options, April 21 2016

Here we go again.

The oft-cancelled Court Challenges Program (CCP) is to be resurrected. The program, which sees the federal government subsidize activists and interest groups to sue it and other governments using the Charter of Rights, has been established and cancelled several times throughout its controversial 40-year history. This year's federal budget set aside an annual $5 million budget to start up the program once again. Why has this little program become a political football? Can the Trudeau government give it a more stable life?

Prime Minister Pierre Trudeau created the CCP in 1978. It was part of a broader Liberal effort to undermine the Parti Québécois (PQ) government, in this case by paying activists to challenge the PQ's Bill 101 and, for good measure, the unilingualism legislation of other provinces, in court. The elder Trudeau used the Charter of Rights to create new language rights in the area of education, so in 1982 his government expanded the CCP to cover these new rights. And when the Mulroney government was looking for a low-cost way to prove its "progressive" bona fides, it expanded the CCP again to support litigation by feminist, gay and disability rights groups. Pretty soon, CCP-funded cases were forcing a broad-scale social reform agenda on governments from coast to coast.

The political agenda of the CCP and the idea of the federal government funding only one side in contentious litigation soon sapped the program's political support. In 1992, the Mulroney government was looking for ways to reduce government spending and closed it. But the Liberals promised to re-establish the program during the 1993 election, turning it into a political football. The resurrected program was even more firmly married to progressive social reform groups, and it therefore ended up back on the scrap heap when the Stephen Harper Conservatives took office. During last fall's campaign, Justin Trudeau promised to re-resurrect the program, and discussions are now underway about how to design it.

Before the details of the new CCP are ironed out, Trudeau's ministers should ask some fundamental questions. Will it just be cancelled again by the next Conservative government? Is it fated to be a political football? Or could the Trudeau government do the country a service and set it up to survive future changes of government? After all, the protection of human rights

is supposed to be above partisan politics. Shouldn't a program to fund human rights litigation also be above partisan politics?

The new government's challenge is to make the CCP less partisan than it has been in the past.

The new government's challenge is to make the CCP broader and less partisan than it has been in the past. The new CCP will certainly subsidize the equality rights litigation of social- reform groups. It will fund a new generation of test cases about equality rights, drawing the courts into issues around the rights of transgender Canadians. And it will continue to finance cases about minority language rights. But the Charter covers more than equality and language rights. The new CCP should benefit more than just social-reform and minority-language groups.

Why not let the CCP finance free speech litigation by journalists like Ezra Levant and Mark Steyn? After all, they have both paid a high price to highlight the oppressive provisions of federal and provincial human rights codes. Why not let the CCP help traditional religious groups protect the rights of religious minorities in court? Going beyond Charter issues, why not let the program finance challenges to interprovincial trade barriers? If the CCP 3.0 had a board of directors and management team with a broader view of rights litigation, it should be able to survive a future change of government.

Whatever the Trudeau government decides about the scope of the program, it should be careful to keep it out of cases that pit one Charter right against another. In the 21st century, human rights issues are not always as clear cut as they were in the early years after the Charter. Back then, most rights litigation was trying to roll back oppressive government policies. These days, the courts are often called upon to decide between two competing Charter claims in a single case. The federal government should not be weighing in to finance one side or the other in cases like that.

Just such a case will likely come before the CCP as soon as it opens for business. Trinity Western University, a private, evangelical university in British Columbia, is suing three provincial law societies over its right to have a law school. Trinity Western, as befits a religious institution, expects its students to abide by traditional religious rules regarding marriage and sexuality. Some law societies are refusing to recognize the credentials of its graduates, because they cannot tolerate an institution that does not embrace same-sex marriage. In 2001, when ruling on a similar case about Trinity Western's teacher training program, the Supreme Court said that neither freedom of religion nor equality on the basis of sexual orientation is absolute. Since then, same-sex marriage became the law of the land. The issue is therefore being litigated over again.

The new cases are on the way to the Supreme Court. Will the resurrected CCP fund the equality rights side or the freedom of religion side? Better to instruct the CCP to avoid this kind of case altogether. Since the Supreme Court has recognized that in a conflict between equality rights and freedom of religion, neither side can make an absolute claim. That, along with a broader set of directors and mandate, could relaunch the CCP without making it a political football again.

Marijuana laws should vary by province, report says

Daniel Leblanc, The Globe and Mail, April 20 2016

Canada's provinces should each get leeway on the way they sell, tax and control marijuana once the drug is legalized by the federal government, according to a new report by the C.D. Howe Institute.

The framework suggested by economist Anindya Sen would create a patchwork of rules across Canada, with different laws governing everything from the stores that can carry the drug to the penalties for selling to underage users.

In this "joint venture," the federal government would monitor the safe production of marijuana for recreational use, while the provinces would oversee distribution, with an eye to meeting public-health goals.

The report is being released on the same day as a new poll by the Angus Reid Institute that shows support for legalizing marijuana is growing across the country. The poll found that 68 per cent of Canadians agree on the need to "make it legal," a nine-point increase in only two years. April 20 is known as "420" among marijuana enthusiasts, who have waged a long campaign to legalize a drug that has been prohibited in Canada since 1923.

Even though the drug is currently illegal, the Toronto-based Centre for Addiction and Mental Health found that 40 per cent of Canadians say they have used cannabis in their lifetime, including 10 per cent who have done so in the past year.

The federal Liberal government has promised to legalize marijuana, while vowing to take the time to "get it right" as it enacts the major societal change. Key issues to be determined by a coming federal-provincial task force include who will be allowed to produce recreational marijuana, who will get to sell the drug and what kind of controls are needed to try to keep the product out of the hands of children.

A professor of economics at the University of Waterloo, Mr. Sen is urging Ottawa and the provinces to put public-health issues ahead of generating tax revenue as they open the market for recreational marijuana. Both levels of government would tax the product, with Ottawa hitting the manufacturers and the provinces imposing a sales tax on consumers. “The challenge for policy makers is to set tax rates that do not foster an illicit market alongside legal sales,” the report said.

In terms of ensuring that new rules are respected, the report added: “As with tobacco, the federal government should establish penalties for illegal trafficking and production, while provinces should have discretion over setting penalties for the purchase and sale of marijuana to minors.”

There will be billions of dollars at stake once the drug is legalized, with pharmacies mounting a push to have a right to sell the drug and the Ontario government pushing for the product to be sold at its LCBO liquor stores.

The C.D. Howe report said consumers should be allowed to purchase and carry up to 30 grams of dried marijuana at once, while calling on the government to delay the legalization of edible marijuana products for further study.

Mr. Sen favours “stand-alone privately owned stores” as the prime location to sell marijuana, arguing that independent retailers are capable of conducting age checks if adequately supervised by provincial authorities. He adds that the provinces may not be willing to make “the necessary infrastructure and staff investments that would be required to sell marijuana at provincial liquor stores.”

Angus Reid found the most popular places to sell marijuana are licensed dispensaries that carry only cannabis products (with 69-per-cent support), followed by provincial stores (with 67-per-cent support).

Only 23 per cent of respondents supported the right of citizens to grow and sell their own marijuana, and only 6 per cent said Canadians should be able to grow an unlimited amount of plants for personal use and/or sale.

“There seems to be broad consensus that if people are going to be growing it at home, Canadians don’t want them selling it,” Angus Reid said.

The Angus Reid poll of 1,522 Canadian adults was conducted online between April 13 and 17. A probability sample of this size would carry a margin of error of 2.5 percentage points, 19 times out of 20.

The Accountability Act breeds its own problems

The public service has become more Ottawa-centric and less nimble, and government operations thicker, after a decade under the *Accountability Act*.
Donald J. Savoie, Policy Options, April 18 2016

If we have learned anything about government reform measures, it is that they rarely solve the problems they set out to address, and all too often they create new ones. To be sure, the *Federal Accountability Act* set a very ambitious bar. It sought to overhaul Ottawa's approach to conflict of interest rules, election financing and lobbying, as well as bureaucratic oversight and accountability requirements.

On the latter goal, the government of the day looked to the private sector for inspiration on how to make the bureaucracy more efficient and more accountable. The objective was to unleash an entrepreneurial culture in government, give managers more freedom to manage operations, and then hold them to a higher level of accountability. The *Accountability Act* was introduced shortly after Justice John Gomery's commission tabled its reports, in the aftermath of the Liberal sponsorship scandal. Even before the Gomery reports were released, prime minister Paul Martin's 2004 budget re-established the Office of the Comptroller General of Canada and strengthened the internal audit process.

The *Accountability Act* put in place several other important reform efforts, including designating deputy ministers or their equivalents as senior accounting officers in all departments and agencies, directing that all programs be evaluated over a five-year period, and creating the position of Parliamentary Budget Officer.

The measures were touted in the 2006 budget speech as a way of helping Canadians to "trust their government and know their tax dollars are being well spent." In reality, the changes made government operations thicker, adding new management layers increasing the cost of government overhead; made morale problems in the federal public service worse; and muddied accountability requirements. The federal government bureaucracy has become even more Ottawa-centric.

Accounting officers were first introduced in Britain by the Gladstone government in the mid-nineteenth century. I remember participating in discussions in Ottawa when the government was contemplating introducing the accounting officer concept. A senior official from a central agency insisted that introducing the concept in Canada would be a "train wreck in the making." Well, it hasn't been a train wreck, but there haven't been any obstacles in the road either.

In Britain, the accounting officer concept makes the permanent secretary personally responsible for the management of his or her department. In addition, the accounting officer is made responsible for making sure that the estimates presented to Parliament are consistent with the department's statutory authority, that its operations achieve high standards of propriety, that basic public service values are upheld, and that value for money guides managers' work. British accounting officers are given the instructions to follow if their ministers embark on a course of action that is not consistent with the aforementioned values. They are asked to consult with the treasury and seek a written instruction from the minister before proceeding with the minister's wishes.

The accounting officer concept introduced under Canada's *Accountability Act* is considerably watered down from both the British version and the proposal prime minister Stephen Harper promised during the 2005-06 election campaign. In Canada, the accounting officer is the deputy minister and must operate within the framework of ministerial responsibility. They do not have the same type of personal responsibility over departmental management as their British counterparts. This means that nothing much has changed, and I cannot think of a single example where the concept has had any appreciable impact on the accountability relationship between departments, ministers and Parliament.

What has changed is the program evaluation industry in Ottawa within departments and in consulting firms. The government now spends nearly $100 million a year, employs 500 full-time public servants and contracts some 93 percent of its program evaluation work to outside consultants.

And that evaluation industry has failed to deliver. Even the Office of the Auditor General, arguably the most vocal supporter of the program evaluation function, maintains that it has fallen far short of expectations. We know that precious few program evaluation efforts have generated program termination or reforms. In brief, the program evaluation function provides politicians with excellent opportunities to tell the electorate that they are doing something to make government more effective and efficient, but it does not accomplish much else. It is not too much of an exaggeration to suggest that it has done little more than keep public servants and consultants busy turning a crank that is not attached to anything.

The program evaluation function has done little more than keep public servants and consultants busy turning a crank that is not attached to anything.

The *Accountability Act* also erred in insisting that all programs should be evaluated over a five-year cycle. It borrowed a page from Peter Drucker, the management guru to the private sector,

when he argued that "if you can't measure it, you can't manage it." There are things in government that one can measure – for example, the number of public servants required to process passports, income tax returns, and the like. But there are things that government simply cannot measure. How can one possibly evaluate all the work of a department like Canadian Heritage, as it tries to manage conflicting goals and too many demands on its resources?

There are now far more agents of Parliament in Ottawa than there are in other Westminster-style parliamentary systems. Instead of addressing the matter, the *Accountability Act* added still more officers of Parliament, including the Parliamentary Budget Officer. The PBO was established under the legislation to "ensure truth in budgeting." I am certain that the message that they are not as credible, and cannot be trusted to tell the truth, was not lost on finance officials.

All parliamentary officers view their reporting relationship as being geared more to the media than to Parliament. In recent years new officers of Parliament have been created without any effort to define a constitutional niche or to clarify how they fit into the existing constitutional framework. It is not clear how they are to be held accountable and by whom. They do, however, generate a great deal of work for the Ottawa bureaucracy. This explains, in part, why we have witnessed the transfer of many public sector jobs from the regions to Ottawa. Some 35 years ago, 72 percent of federal public service positions were in the regions – today the number is down to 57 percent.

Meanwhile, if anyone wanted more evidence of how the public and private sectors are different in both important and unimportant ways, one need only to look at the mechanics of the *Accountability Act* measures.

While the private sector manages to the bottom line, the public sector has much different goals. Its managers look to the demands of the prime minister, ministers, Parliament, courts, interest groups and what the media have to say, rather than just to profit-minded shareholders or owners. In the private sector, it does not much matter if you get it right only 50 percent of the time, so long as you turn a handsome profit for the firm. In the public sector, it does not matter much if you get it right 99 percent of the time if the 1 percent you get wrong casts your minister, your department and you in a negative light in the media into the future. Trying to make the public sector look like the private sector – an impossible goal – has sapped the morale of the federal public service.

Trying to make the public sector look like the private sector – an impossible goal – has sapped the morale of the federal public service.

The *Accountability Act* failed to recognize that the public sector needs its own diagnosis and remedy. Rather than strengthening accountability in government by focusing on lessons learned and on traditional public sector financial audits, the measures it sponsored have continued to feed into what has come to dominate the political discourse in Canada – managing the blame game. They have provided fodder for the always hungry 24-hour news cycle, social media and the hyper-partisanship that now permeates Canadian politics and Parliament.

What does the *Federal Accountability Act* have to show for its 10 years? Rather than address fundamental questions confronting our parliamentary system and our public service, it turned to Band-Aid solutions by borrowing bits and pieces from the American political system – notably the Parliamentary Budget Officer and the obsession with private sector approaches. Accountability has not been strengthened, while the government has grown thicker, government operations more expensive trying to service an ever growing number of oversight bodies, and morale in the public service has plummeted. It has shifted the locus of control management from where the bulk of programs and services are delivered, at the regional level, to Ottawa, where the blame game is played out.

One can only applaud the Clerk of the Privy Council's recent call for the public service to be better at taking risks, introducing change and making it stick. To give life to his commitment, he will have to revisit the many layers of oversight bodies and accountability requirements put in place in Ottawa over the past 15 years.

Bringing lobbying out of the shadows of the Accountability Act

The *Accountability Act* helped create a negative perception of lobbying and created walls between the public and private sector.
W. Scott Thurlow, Policy Options, April 19 2016

With the passage of the *Federal Accountability Act* (*FAA*), something changed in the way lobbying was perceived. Perhaps it was the way that politicians invoked the name of lobbyists in public statements. Perhaps it was the renewed implication that special interests were somehow able to effect change in ways ordinary citizens could not. But the tone of conversations between the private and public sectors suddenly shifted. There was a new

skepticism around lobbying, despite the preamble of the Lobbying Act, which celebrates its important role in policy-making.

That skepticism has persisted. Prime Minister Justin Trudeau's *Open and Accountable Government* document says that "Ministers, Parliamentary Secretaries and their staff should exercise caution in meeting with consultant lobbyists, and should give particular consideration to whether it is appropriate to meet a consultant lobbyist in the absence of the lobbyist's client." Why are consultant lobbyists (of any political stripe) seen as a threat? It is because the tone has changed.

The *FAA* transformed the *Lobbyists Registration Act* into the *Lobbying Act*. Stephen Harper's government made it seem like they were ushering in a new era of transparency and accountability in the lobbying sphere compared with the corrupt dystopia that allegedly existed before the 2006 election.

But changing the title was cosmetic. The *Accountability Act* was never intended to regulate lobbying activity. Beyond the rules to regulate where certain bureaucrats and political staffers could work after retiring, the legislation contains no specific limitations on the practice of lobbying itself.

Lobbying is an important tool of the citizenry in petitioning their government. But the *FAA* has hampered the ability of many Canadians to share their policy viewpoints with the government. It has also infringed on the free speech of the lobbying community, disrespected Parliament and unfairly targeted some in the civil service.

Just before the 2006 election, Harper noted, "I have told my own MPs and parliamentary staffers that if they have ambitions to use public office to advance their own interests or get rich lobbying a future Conservative government, they had better make different plans, or leave."

As it turns out, many of them can't even make a living lobbying, let alone get rich. The most tangible manifestation of the *FAA* ten years after it was introduced is the five-year ban on lobbying for some former public servants and political staff, who became known as "designated public office holders," or DPOHs. The vast majority of ministerial staffers who are covered by the five-year ban on lobbying continue to find it extremely difficult to find work in Ottawa once they leave office. This may have a little to do with their partisanship. It has a lot more to do with those scarlet letter(s) with which they have been branded: DPOHs.

When the *FAA* was introduced, it adversely affected career public servants — even though they didn't sign up for the same kind of work as political staffers did — by limiting their career options outside of government. Ten years ago, they may not have anticipated this onerous constraint, which applies equally to a deputy minister and to a policy adviser in a minister's office.

Few people acknowledged the disconnect between the goal of the policy and the impact it had on the career prospects of an ever growing number of public servants. This could be interpreted as a limitation on their ability to pursue a career outside of the civil service, potentially frustrating their section 6(2)(b) Charter rights (the freedom of movement and the ability to be gainfully employed in Canada). Ultimately, Canadian society loses out, because bright young people won't choose a career in the public arena.

Who benefits from the policy? Well, current lobbyists do, of course. This limitation shields them directly from new competition for clients or employment opportunities.

Treatment of corporations and organizations is the same, but different: The *Accountability Act* created a strange exception to the DPOH rules by drawing a distinction based on where the DPOH later worked. If the DPOH becomes a "consultant lobbyist," they are barred from lobbying for five years. If that person is employed by an organization – like a trade association, a not-for-profit, or a union – they are also barred from lobbying for five years. But if they are employed by a profit-seeking corporation, lobbying is not entirely *verboten*, provided that their role does not amount to a "significant portion of their duties." This has been interpreted to mean less than 20 percent of their duties.

It seems an odd distinction to make. I understand preventing someone from renting out their connections as a consultant lobbyist. I also understand why a person working for an organization whose primary purpose is to represent an industry is similarly precluded. But exempting corporations outright seems wholly inconsistent with all of the motives alluded to by Harper and the Treasury Board president at the time of the passage of the *Accountability Act*. To allow a former DPOH to work for a corporation where profit is at the centre of their employer's motive seems antithetical to the objective of the legislation.

The Registry of Lobbyists: The other sea-change in lobbying that is a direct result of the *FAA* is the monthly reports now required under the *Lobbying Act*. These "reportable communications," filed on a monthly basis by lobbyists, are public documents that are posted online. Ironically, the Conservative government created a new registry, the Registry of

Lobbyists, while simultaneously complaining about the wastefulness of the long-gun registry. The result? Lobbyists — hired guns? — were registered more conspicuously than actual guns.

Again, while this requirement certainly creates a discernible, though incalculable, public benefit in the form of transparency, the sure-fire winners as a result of these changes are those seeking to influence public policy. If nothing else, the registry helps map out a strategy to respond to (or complement) a lobbyists' plan to influence the government.

There are critics of the registry, however, who feel that its existence was much more about keeping tabs on civil servants, who became DPOHs along with ministers' political staff. These same critics have lamented how it became more difficult to meet increasingly senior bureaucrats after the registry was established. In fact, they allege that the very tool that was designed to improve transparency is now driving certain meetings below the radar. I believe that the registry has erected walls between the public and private sectors, as some public servants are reluctant to see their names reported in it. This is problematic because the country benefits when government and business better understand each other.

The swaths of communications reports now required by the law don't really hurt anyone: making more information available to the public about its government is surely worthwhile. What must be articulated, however, is what those reports have meant for policy dialogue — public servants may feel their names are being attached to some sort of awkward or embarrassing activity. The communication reports should be seen as evidence of consultation, not an excuse to avoid it.

Fixing the FAA: People in government affairs often lament that when a lobbyist is the subject of a news story for doing something untoward, the reaction is that it's time to crack down on lobbyists. But the most egregious behaviour that has been reported in the media over the past dozen years has been, without exception, dealt with through the proper authorities under the existing law. Former Liberal Party official Jamie Carroll was convicted on April 18 of violating the law by not filing a report on his activities with the commissioner. Making things that are already covered under the *Accountability Act* "illegaler" will not solve the problem.

To reiterate, the real problems with the *Lobbying Act* are the unfair career limitations imposed on Canadians in the public service and the obstacles erected around their participation in public policy discussions. Fortunately, Parliament is required to undertake its own statutory review every five years, and that review is long overdue.

Most importantly, the absolute five-year ban on lobbying imposes a disproportionately harsh limit on those who fall under its ambit. What may seem like a perfectly reasonable regime for a senior mandarin or political adviser cannot be appropriate for the most junior of staffers, who are nevertheless ensnared in its net. Regardless of Parliament's intent, there is no logic in treating a minister's chief of staff the same as the people who report to them.

The other important issue to be addressed is that political staff and public service executives should not be treated in the same way under the regulations, as they came to their respective offices in different ways. The lobbying restrictions for public servants should be in the terms of their contracts.

One possible solution is to maintain the five-year ban for the department that the DPOH served in, but limit the ban to a one-year prohibition for all other departments and agencies. Another one is a legislated sliding scale based on the role of the individual in question, or tying the cooling-off period to the person to whom the DPOH reported. Parliament can also instruct the lobbying commissioner to grant more waivers under the *Accountability Act* to more appropriately limit lobbying activity

It is for Parliament to balance these distinctions between designated public office holders. The regulations that establish who is a DPOH should be incorporated directly into the *Lobbying Act* as a schedule. This would enfranchise parliamentarians to schedule the list of affected public servants accordingly. Investing this power specifically in Parliament would restore an affront to parliamentary privilege previously implemented by the Crown.

Through the regulatory process, the governor in council added senators and members of Parliament to those who were captured under the DPOH provisions. This might have been a violation of the principles laid out in the Magna Carta, arguably the first constitutional document that limits the Crown's powers. To do this would, however, be fair game for Parliament — it is up to Parliament to limit the future of parliamentarians, not the Crown.

Assuming the above changes to the rules governing DPOHs are made, I would also recommend eliminating the exemption that allows them to leave government and work for corporations and lobby for part of their time. In this way corporate employees would no longer have to do complicated arithmetic to figure out exactly how much time they spend lobbying.

The future of the *Lobbying Act*: The *Lobbying Act* needs to be reviewed in the context of the current administration's "open government" initiative, which is meant to encourage more public dialogue in policy-making.

Instead, the guidance and interpretations of the Lobbyist's Code of Conduct mandated by the *Lobbying Act* are acting as a barrier to meaningful policy engagement to both parliamentarians and the government.

As well, recent changes and guidance issued under the Lobbyists Code of Conduct seem to have expanded the authority of the lobbying commissioner and created *de facto* limitations on the constitutional rights of Canadians. For example, the commissioner recently cautioned lobbyists against giving public office holders free tickets to charity and other events. Under section 3 of the Canadian Charter of Rights and Freedoms, the right to participate in the democratic process, as interpreted by the Supreme Court of Canada in the case of *Figueroa v. Canada*, has been placed in jeopardy. Parliament contemplated the creation of a code of conduct, not guidelines that could significantly curtail constitutionally protected activity.

Parliament contemplated the creation of a code of conduct, not guidelines that could significantly curtail constitutionally protected activity.

The changes to the Lobbyists Code have fundamentally changed the role of the commissioner to include acting as the unofficial watchdog of the activities and relationships of lobbyists. That change could threaten transparency, which is a core principle of the *Lobbying Act.* Why? Because activities that would have otherwise been reported on the registry of lobbyists may now materialize in other ways that are not necessarily "oral" and "arranged in advance." This is really just a polite way of saying that added burdens on the activities of lobbyists may lead them to look for ways around the rules.

In recent public forums, lobbyists have lamented that as a result of the new provisions of the code, they did not participate to the fullest extent possible in the recent federal election. While most lobbyists recognize that they are still entitled to participate in elections and engage in free speech and assembly, I believe that the new code is effectively restricting certain expressive and democratic activities of lobbyists by forcing them to choose between those rights and their vocation. The restriction comes *after* the constitutionally protected activity has occurred, meaning that the section 3 Charter right is preserved, but the prohibition on lobbying results is connected to that activity. This has forced lobbyists to choose one activity over another. It is my view that this is inconsistent with if not the letter, then the spirit, of the *Charter*.

While these recent changes to the Lobbyists Code were not a direct result of the *Accountability Act*, they nevertheless reflect a change in attitudes around lobbying over the past decade. The current government needs to remind itself, and the country, of the *Lobbying Act*'s preamble. Lobbying is a legitimate activity. Open access to government is in the public interest. The

registration (and reports) of paid lobbyists should not impede free and open access to government. Let's hope it doesn't take another decade to remind ourselves of these points, and to change the tone.

Command but no control: A decade under the Federal Accountability Act

The *Accountability Act* has hurt the government's ability to attract the best and brightest to Ottawa
Michele Austin, Policy Options, April 20 2016

Creating a more ethical and accountable Ottawa was a key differentiation strategy for the Conservative Party of Canada under party leader Stephen Harper during the 2006 federal election.

The Liberal governments of Jean Chrétien and Paul Martin received a great deal of negative public and media attention for a series of ethical missteps stemming from the Auditor General's 2004 report on the sponsorship scandal, and extending through to the conclusion of the Gomery Commission (2005-06).

In the period leading up to the 2006 election while in opposition the Conservative Party conducted extensive voter research on the issues of accountability and integrity. The results indicated that the public was concerned about ethics in Ottawa, and that a promise to do business differently could swing potential voters to support the Conservatives.

Further, the accountability issue played very well with the Conservative base. Many long-time Conservative supporters believed there were lobbyists in Ottawa who were too closely tied to Martin. The Gomery Commission had become required daily viewing in Quebec, where the Conservatives needed to win seats to gain power. Stephen Harper had never been in government and had no record to defend, so it made sense for the Conservatives to try and force the Liberals to talk about their ethical problems on a daily basis.

To be fair, the Conservatives were not the only party that focused on ethics and integrity. Accountability became politicized during the campaign. All five political parties made commitments to improve accountability as part of their blueprint to either win or maintain power. But Harper was best able to make the case against the Liberal Party with the Canadian electorate.

As he wrote in his book *Winning Power: Canadian Campaigning in the Twenty-First Century*, University of Calgary professor emeritus and former Harper adviser Tom Flanagan noted how the Conservatives focused on the accountability issue "because that seemed to capture the mood of the electorate."

The Conservatives were elected with a minority government in January 2006, and Harper and his transition team quickly went to work creating plans on how to implement his five campaign priorities. Legislation that included new rules on accountability was on the top of that list.

The *Federal Accountability Act* (*FAA*) was the Harper government's first piece of legislation in 2006. Implementing it quickly allowed the government to check a "done" box on a campaign deliverable, which was very important in a minority situation. The short-term political usefulness of the *FAA* was clear.

More broadly, it was meant to promote better behaviour in both the political and the public service offices across the federal government. It also gave the government and the courts more tools to punish bad behaviour.

While many of the Harper government's campaign promises were reflected in the first draft of the legislation, the House of Commons and the Senate made numerous amendments (more than 150 in the case of the Senate) that considerably broadened the scope of the Bill. If the *FAA* was intended to foster and encourage a new attitude in Ottawa, by the time it received Royal assent, it had become a monstrous list of heavy-handed rules and directives.

One of the most onerous areas within the legislation dealt with political staff. Minister's offices are staffed by "exempt" staffers. These are individuals who receive all the benefits of being public servants (such as dental benefits and a pension plan) but are exempt from the job security enjoyed by the rest of the federal civil service. Political staffers can be fired or can leave their posts in the same manner as much of the private sector workforce – instantly.

The *FAA* removed the possibility for political staffers (and senior bureaucrats) to immediately jump from their federal jobs into the private sector. The Conservatives wanted to ensure that individuals did not take up political work solely with the intent of taking advantage of their inside knowledge and personal relationships. A five-year post-employment ban was slapped on exempt staffers. Officers of Parliament such as the ethics commissioner were given the power to decide the fate of a political staffer with a veto over a potential job after the staffer had left (or was fired from) political office. The *FAA* also removed the priority access that political staffers had to public service jobs.

In my opinion, the five-year ban has had a very negative long-term impact on Canadian politics. The *FAA* has virtually eliminated the ability of elected officials to attract the best and the brightest to Ottawa to support them in their offices and in their decision-making.

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The best political staffers are the ones who consider politics as one part of an overall, long-term employment plan. They come into politics early, leave for the private or not-for-profit sectors, and then return years later, sadder but wiser, having learned new management and life lessons.

They begin, for the most part, as young partisans whose work experience is limited to volunteering or campaigning. They have virtually no experience dealing with complex policies, organizations (such as a federal department) or decisions.

In the federal government political staffers generally fall into two classes – those at the top of the food chain, such as chiefs of staff in ministers' offices, and those at the bottom, lowly worker bees in roles such as political assistant or volunteer. There is virtually no middle management in politics.

Chiefs of staff in ministers' offices can be well paid, depending on how ministers choose to spend their budgets. Despite the unpredictable nature of politics and the limitations imposed by the *FAA*, a chief's salary can attract a wide group of potential candidates.

Assistants, on the other hand, are poorly paid. They usually start as a young and happy lot – happy to have their first real jobs, happy to debate political minutiae 24/7 and, most of all, happy to be very close to the most powerful offices in the country. But soon enough they realize that their pay and their long-term job prospects compare very poorly with those in the public and private sectors. The "happy warrior" is a rare breed in politics.

There is virtually no on-the-job training in a minister's office, which is why it is critically important for elected officials to try and attract staff with work experience from Parliament Hill. Political parties are not supposed to interfere with the day-to-day operations of government, so they do not provide management training. And, for various reasons, the civil service has absolutely no interest in or incentive for training political staff.

When offered the chance to work in a political office, the first question politically savvy individuals who work outside politics (or even recruiting firms) ask is whether the five-year ban will apply to them. They understand now, after a decade under the *FAA*, that this ban would severely limit their ability to find a job after politics.

In retrospect, a prudent political party with an eye on keeping power should have created and encouraged a system where potential staffers are able to broaden their experience outside Parliament Hill. The scope of the *FAA* was too wide and unruly. Almost all the political effort, including that by opposition parties, was put into creating rules rather than developing skills. Eventually, the *FAA* created a unique and insular silo for political staff.

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The class of political support staff created by the *FAA* is too young and inexperienced to provide good advice to the elected officials they serve. There are no mentors who have the benefit of experience, because the *FAA* discourages their entry into the system, while simultaneously encouraging young employees to make a quick exit and wait out their post-employment five-year ban. A former senator once referred to this new political class as “kids in short pants.” By limiting recruitment, the *FAA* also limited the government’s ability to enact good policies or to bring about change (even if it had a mandate from an election to do so).

I also believe another, if unintended, effect of the *FAA* is to limit democracy. With the influx of younger, more inexperienced staff, the bulk of the government’s corporate memory now rests almost exclusively with the civil service. As such, decisions and advice on how to move forward become transactions, rather than vigorous debates. On top of this, poorly trained political staff don’t have the gravitas or analytical ability to push the civil service to do things differently on important files.

An unfortunate side effect of the *FAA* that merits study is the practice among ministers of selecting support staff from the civil service. One of the fastest ways to bypass any employment awkwardness created by the *FAA* is to ask the civil service to send someone on an interim basis to sit at a political desk. Often that person stays on for months. This staffing strategy is an easy but exceptionally poor practice that serves only to reinforce convenience and does not improve quality.

If you believe the *Federal Accountability Act*'s purpose was predominantly political, you could argue it was a success. It certainly helped the Harper government win power in 2006, and it ushered in a decade of power for the Conservatives.

However, the *FAA*'s political usefulness has worn thin. It is time to take a broader view of staffing on Parliament Hill. Political parties need to give some thought and effort to what kind of organization they want to build, not to just win power. Over time the principles espoused by the *FAA* limited the Harper government's ability to reinvigorate its staff and bring new ideas on management practices to govern the country. Now it is up to the new government to decide if its principles are worth saving