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***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 sector pensions targeted in leadup to auditor general report

**BY KATHRYN MAY, OTTAWA CITIZEN MAY 4, 2014**

OTTAWA – The public service pension plan is the biggest in the country, arguably the most generous, and assailed by critics as underfunded and unaffordable – which could make it a prime target for the Conservative government's next push for pension reform.

Minister of State for Finance Kevin Sorenson recently put pension reform back on the agenda with a proposal for "target benefit" pension plans for Crown corporations and federally regulated industries.

Sorenson specifically said his proposal doesn't include the public service, but it's a model some pension experts are promoting to overhaul the public service's defined-benefit plans and deal with accounting methods they believe have masked the federal government's true debt, deficit and compensation bill for public servants and retirees.

The mushrooming liabilities of Canada's public service pension plans are too big for the government not to take another run at reform, says Bill Robson, the president of the C.D. Howe Institute.

"The amount of money at stake here is huge … and it needs attention," he said.

The C.D. Howe Institute, an economic think-tank, has said for years that the way the federal government records the cost of public service plans on its books grossly understates the size of Canada's debt and deficit – and how much it pays thousands of bureaucrats, military and RCMP.

On Tuesday, Auditor General Michael Ferguson will weigh in on the management and governance of the public service pension plan, the Canadian Forces pension plan (excluding the Reserve Force), and the RCMP pension plan. He will also look at whether the government has considered "relevant information, analyses and scenarios" that could affect the plans' costs and sustainability."

**What's the problem?**

C.D. Howe has argued since 2009 that the three pension plans are not fully funded. It maintains the government should adopt "fair-value" accounting like the private sector, which uses current market prices to value assets and liabilities as a means to ensure plans are fully funded in the event they are liquidated or wound down.

Public sector accounting rules, or what pension expert Malcolm Hamilton calls "a magical accounting trick," allow the government to use aggressively high interest rates in valuing its pension plans.

The government is assuming – indeed, guaranteeing – a 4.1-per-cent rate of return on the plans' investments compared to the fair value accounting in the private sector, where rates of return for similar investments are closer to one per cent.

C.D. Howe says this means the plan may not be funded enough to cover public servants' promised pensions, so future taxpayers are on the hook.

A recent C.D. Howe paper by Hamilton, a former partner at global employee benefits and pension consulting firm Mercer, argues public sector accounting rules "created a flawed approach" to the way the government manages public service compensation.

His study concluded the government isn't properly measuring the value of what it pays employees when deciding if they are "reasonably compensated" because it is lowballing the costs of the guaranteed pensions public servants will get in the future.

That kind of guarantee or "risk-free" investment is costly for ordinary Canadians but a "windfall" for public servants.

**What are the implications?**

According to Hamilton, if fair value were used as the standard, the 20 per cent of pay that public servants and the government are kicking in to cover future pension obligations would be more like 44 per cent of pay.

That means the $4 billion reported as the cost of pensions earned last year would also double, with a fair value closer to $8 billion.

"Nothing is wrong with giving people the benefits we would all like to have but what is wrong is not enough is being charged for it," Hamilton said.

In recent years, several groups have also turned up the heat to reduce the costs of "gold-plated" pensions. The government responded with major changes to the MP and public

servants' plans in 2012, increasing the retirement age and contributions of public servants.

Treasury Board President Tony Clement then claimed he was done with pension reform. But it never really left the radar. The Conservatives passed a resolution at the party's convention that public servants' pay and pensions should be comparable to the private sector.

More recently, public servants in New Brunswick were moved from a defined benefit to target benefit pension plan.

Gary Corbett, the former president of the Professional Institute of the Public Service of Canada, who was involved in the New Brunswick negotiations, said the "writing was on the wall" that the federal government would embrace the target-benefit model and eventually turn its sights on the public service plans.

"I've always said the feds will point to that as the success story. Pensions are still very much in the fray and will be the next big thing," Corbett said.

**So what should happen to pensions?**

Hamilton argues that shifting to a target benefit plan would solve many problems.

A "defined benefit" pension plan is just that: members know precisely what they will get when they begin to draw a pension. In a "target-benefit" plan, as in defined benefit plans, contributions are calculated to cover projected retirement benefits. But "target benefits" are not guaranteed by taxpayers. If the plan doesn't generate the expected income, employees and pensioners could face benefit reductions – however, they can also earn higher pensions if the plans exceed expectations.

Bob Baldwin, a pension expert who did a major study of the public service plan for the Institute for Research on Public Policy, also backs shifting to a target benefit to "mitigate" a variety of risks beyond the debate over return rates.

He said the current plan is at a "tipping point" and becoming "financially irrational" because public servants, already contributing 20 per cent of pay, are at the point of living better in retirement than they were while working.

He suggested unions get out in front of this issue and balance the interests of retirees, current and future members rather than fight for the status quo.

**What do unions say?**

Few issues could galvanize federal unions into an all-out war with government like saving pensions could.

They dismiss C.D. Howe's claims as exaggerated, aimed at driving a wedge between Canadians and public servants. They argue the government should be helping all Canadians save more and expand the CPP rather than go after public service plans.

“The government is leaving behind too many Canadians who are at risk and vulnerable with their target benefit proposals. At a time when the government should be exercising leadership in providing better retirement income security for all Canadians, they are opening the door to deterioration of the Canadian pension plans,” said Robyn Benson, president of the Public Service Alliance of Canada.

PIPSC publicly challenged Hamilton’s findings, arguing the 4.1-per-cent returns are reasonable over the long run and “realistic” based on the plan’s past performance. It notes his study fails to consider that the plan has rebounded since the 2008 economic crash, investing in both bonds and equities and generating return higher than 4.1 per cent.

“The plans are in the best shape they have ever been. The Canadian taxpayer is not going to have to pay an extra dime,” said Ron Cochrane, co-chair of the joint-union management National Joint Council.

**What’s next?**

Ian Lee, a professor at Carleton University’s Sprott School of Business, said when the Conservatives turn their attention again to pension reform, they won’t “get into the weeds” of who’s right in the debate about arcane accounting.

Lee, who once ran for the Progressive Conservatives, has long argued that cutting the cost of the public service will be the Conservatives’ new “law and order” agenda in the 2015 election – and pension reform will be a key plank.

“It’s not a matter of if they do it, but when,” said Lee. “It will be part of an overarching narrative for the 2015 campaign that they are restoring balance for ordinary Canadians who aren’t privileged like public servants with gold-plated pensions or elites telling us how to think and live.”

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LeDroit

# Changements aux congés maladie: pas si vite, dit l'AFPC

**Paul Gaboury, Le Droit, le 3 mai 2014**

Des syndicats du secteur public estiment que le fédéral va trop rapidement et tente de contourner le processus des négociations en avisant directement les fonctionnaires des changements qu'il souhaite faire aux congés de maladie et au régime d'assurance-invalidité, enjeu majeur de la prochaine ronde des négociations.

L'Alliance de la fonction publique du Canada (AFPC) vient de mettre en garde ses membres d'un récent courriel dans lequel le gouvernement ferait la promotion de la Stratégie du mieux-être et de la productivité en milieu de travail pour les fonctionnaires fédéraux.

« Avez-vous reçu un courriel pour promouvoir la Stratégie de mieux-être et de productivité en milieu de travail destinée aux fonctionnaires fédéraux ?, souligne l'AFPC dans la mise en garde faite à ses 175 000 membres. Cette stratégie, l'AFPC ne l'a pas approuvée. Le régime actuel de congés de maladie et d'invalidité reste en vigueur. La convention collective n'a pas changé. Changer le régime de congés de maladie et d'invalidité ? Pas si vite ! En répandant de fausses informations dès maintenant, le Conseil du Trésor tente de contourner le processus de négociation collective », soutient le syndicat.

Plus tôt cette semaine, le vice-président régional de l'AFPC, Larry Rousseau, indiquait au Droit que son syndicat était prêt à discuter pour améliorer le régime actuel, mais qu'il n'est pas prêt « à s'en débarrasser » comme le souhaite le gouvernement.

Dans le document Stratégie de mieux-être au travail et de productivité, le Secrétariat du Conseil du Trésor (STC) révèle les raisons qui l'incitent à modifier le régime actuel des congés de maladie et d'assurance-invalidité à court terme et les grandes lignes du concept proposé.

« L'approche actuelle pour la gestion de l'incapacité et des congés de maladie est fragmentée et désuète » indique le document. « À l'heure actuelle, il y a une période d'attente de 65 jours (treize semaines) avant qu'un employé ne reçoive ses prestations d'invalidité de longue durée. Au cours de cette période, l'employé doit utiliser les congés de maladie accumulés. Si l'employé ne dispose pas de suffisamment de congés de maladie pour passer à travers cette période de 65 jours, il peut connaître des problèmes financiers. »

**Modèle proposé**

L'objectif du gouvernement, expliquait le Conseil du Trésor, est d'accorder un nombre donné de jours de congé de maladie fourni chaque année que l'employé peut utiliser à sa discrétion. Les employés recevraient leur allocation annuelle de jours de congé de maladie et auraient la marge de manoeuvre voulue pour utiliser ces jours lors de maladies temporaires, comme un rhume » indique le SCT.

« Un régime d'assurance-invalidité de courte durée pourrait être fondé sur les normes de l'industrie. À la suite des observations de juridictions similaires, un tel régime pourrait permettre aux employés d'avoir accès à des mesures de soutien en cas d'invalidité après cinq jours consécutifs d'absence en raison d'une maladie ou d'une blessure », souligne le document.

La durée visée par le régime d'assurance-invalidité de courte durée pourrait être d'au plus de 26 semaines. Le remplacement de la totalité du salaire pour une période allant jusqu'à 25 jours pourrait être envisagé. Ceci assurerait vraisemblablement la couverture d'environ

70 % de tous les employés qui, de façon générale, font face à une invalidité de courte durée » fait valoir le SCT.

« Les dispositions relatives aux congés de maladie - l'attribution annuelle des jours de congé de maladie et le traitement des crédits de congés de maladie - seront négociées au cours du prochain cycle de négociation collective », soutient le SCT.

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# Director of public prosecutions says feds' elections bill could lower public confidence

**A provision in the government's sweeping new election legislation contains a provision that could lower public confidence in the way alleged Canada Elections Act violations are investigated, the federal director of public prosecutions warns.**

**Tim Naumetz, The Hill Times, April 28, 2014**

PARLIAMENT HILL—A provision in the government's sweeping new election legislation contains a provision that could lower public confidence in the way alleged Canada Elections Act violations are investigated, the federal director of public prosecutions warns.

One of the most controversial clauses in Bill C- 23, the Fair Elections Act, proposes to transfer the commissioner of elections from within Elections Canada and transfer the position to the Office of the Director of Public Prosecutions, who would be given the power to hire or fire the commissioner, who heads investigations into potential or alleged election illegality.

But the head of the federal prosecution service, director of public prosecutions Brian Saunders, told MPs on Monday the move could raise a perception among Canadians that he or subsequent directors of the service, which answers to Parliament through Attorney General and Justice Minister Peter MacKay (Central Nova, N.S.), could have an influence on investigation and could also interfere the prosecutor's decision to lay charges or not.

"I am satisfied on balance that an informed person looking at the entire bill and the measures going to be introduced realistically would conclude that the perception [of control over investigations] is very low," Mr. Saunders told the Commons Procedure and House Affairs Committee.

“However, the perception is something that is important to me, in that it is important to maintain the confidence of the public in the administration of justice, so it’s not only necessary that I be seen or that I act independently, but also that I be seen as acting independently,” he said.

“The hiring and firing provisions caused me some concern at the outset, because it might be perceived that if I’m hiring the person who is to be the commissioner, when it’s time for me to assess the results of that person’s investigation in a fair, objective and independent fashion, someone might say, ‘Well, you’re going to favour someone who you’ve hired,’ ” Mr. Saunders said.

“Likewise when it comes to firing power, there might be a perception in some that if I can fire for cause, which would include the ability to fire for incompetence, I have some power in a sense to oversee the quality of investigations,” he said.

Mr. Saunders, a senior Justice Department lawyer who was appointed as the first federal director of public prosecutions when the government of Prime Minister Stephen Harper (Calgary Southwest, Alta.) created the position in 2007, made the comment as one of the final witnesses on Bill C-23 before a 5 p.m. deadline on Thursday to finalize detailed clause-by-clause approval before reporting the legislation back to the Commons for a final vote. The Senate has already begun studying it, and has submitted a report recommending nine amendments

The government accepted some of those and early Monday, as Mr. Saunders was appearing at the committee, circulated its final round of amendments to a total of 27 clauses in Bill C-23, as well as the addition of six new clauses.

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# Rocco Galati, Lawyer Who Challenged Nadon Pick, Calls Harper Comments 'Inappropriate'

**By Benjamin Shingler, The Canadian Press, Huffington Post, May 5, 2104**

The Toronto lawyer who first challenged the appointment of Justice Marc Nadon says Prime Minister Stephen Harper's statements toward the head of the country's top court are "totally inappropriate."

Rocco Galati says he believes Supreme Court Chief Justice Beverely McLachlin was right to warn the Conservative government that Nadon, a Federal Court of Appeal judge, might not fit the legal criteria set for Quebec appointees to the Supreme Court.

Galati said in an interview Harper should take much of the blame for the unprecedented public spat between the chief justice and the prime minister.

"I am shocked by the depravity of the prime minister in now making these ridiculous statements with respect to the chief justice, who is a person of integrity and had every right to raise this with the justice minister," Galati said Sunday.

"The chief justice has not done anything wrong by raising the flag. In fact, one of my complaints was that nobody had raised the flag before I went to court."

On Friday, Harper accused McLachlin of acting improperly last July when she advised his office and Justice Minister Peter MacKay of her concerns.

"I think if people thought that the prime minister, other ministers of the government, were consulting judges before them or — even worse — consulting judges on cases that might come before them, before the judges themselves had the opportunity to hear the appropriate evidence, I think the entire opposition, entire media and entire legal community would be outraged," he said in London, Ont.

"So I do not think that's the appropriate way to go."

McLachlin replied in a statement saying she only wanted to ensure that the government was aware of the eligibility issue, but didn't express any opinion on its merits.

Harper ended up nominating Nadon, a semi-retired 64-year-old with a specialty in maritime law, and McLachlin swore him in last October.

Galati then challenged the appointment in court.

In March, the top court agreed by a 6-1 margin that Nadon did not meet the eligibility requirements, rejecting the wishes of the Conservative government.

Given that MacKay and McLachlin discussed Nadon's nomination last summer, Galati said the Harper government was "hoodwinking" the public when it claimed to be taken aback by the court's decision.

A statement from the Prime Minister's Office at the time said it was "genuinely surprised" by the court's rejection of Marc Nadon.

Harper said last week he consulted constitutional and legal experts both within and outside the government, and they believed Nadon was eligible.

Jason MacDonald, a spokesman for Harper, said Sunday the prime minister "believes he took the right actions, and he stands by his comments."

But Galati isn't the only one to raise concern about last week's public spat between Harper and the chief justice.

The Canadian Bar Association also called on Harper to acknowledge the chief justice has done nothing wrong.

The group's president Fred Headon said Friday he hopes the dispute is a misunderstanding and worried that Harper's comments could erode public confidence in the Supreme Court.

Still, in Galati's view, McLachlin should also bear some responsibility for letting the controversy reach this stage.

He said she should not have sworn Nadon in as a Supreme Court justice if she thought he wouldn't be eligible.

"I don't think the chief justice should be left off the hook in this sense — she should never have administered the oath."

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# Cour suprême: les propos de Harper choquent

**La Presse Canadienne, le 5 mai 2014**

Un avocat torontois, Rocco Galati, se dit choqué par la critique récente formulée par le premier ministre Stephen Harper envers la juge en chef de la Cour suprême du Canada, Beverley McLachlin.

Vendredi, M. Harper a reproché à la juge McLachlin d'avoir mal agi en informant le cabinet du premier ministre en juillet dernier que le juge de la Cour d'appel fédérale Marc Nadon pouvait ne pas répondre aux critères juridiques exigés pour être nommé à titre de juge du Québec à la Cour suprême.

M. Harper a recommandé la nomination de Marc Nadon qui a ensuite été assermenté par la juge McLachlin.

Mais l'avocat Rocco Galati a contesté cette nomination et le plus haut tribunal du pays a statué que Marc Nadon n'avait finalement pas le droit de siéger en tant que juge de la Cour suprême.

Me Galati estime que la juge McLachlin est une personne d'une grande intégrité, qui avait parfaitement le droit de soulever la question de l'admissibilité de Marc Nadon auprès du bureau du premier ministre et du ministère de la Justice.

Il accuse Stephen Harper de faire des déclarations ridicules et totalement inappropriées à l'égard de la juge en chef.

L'Association du Barreau canadien a également demandé à Stephen Harper de reconnaître publiquement que Beverley McLachlin n'avait pas mal agi.

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# Polémique Harper-McLauchlin: l'Association du Barreau canadien inquiète

**La Presse Canadienne, 3 mai 2014**

Le premier ministre Stephen Harper devrait reconnaître que la juge en chef de la Cour suprême, Beverley McLauchlin, n'a rien fait de mal, affirme l'Association du Barreau canadien (ABC).

L'organisme s'est dit profondément inquiet de la polémique publique ayant éclaté entre M. Harper et Mme McLachlin à la suite du rejet de la candidature de Marc Nadon par les juges de la Cour suprême.

Le premier ministre a accusé Mme McLachlin d'avoir agi de façon «inappropriée» en avisant son cabinet que Marc Nadon n'était pas admissible à un siège à la Cour suprême selon les critères de la Loi sur la Cour suprême.

Dans un courriel, Mme McLachlin a dit qu'elle a contacté le ministre de la Justice, Peter MacKay, pour l'aviser des problèmes potentiels qui pourraient découler de la nomination d'un juge de la Cour fédérale pour occuper l'une des trois places réservées au Québec sur le banc. Elle a ajouté qu'elle a fait cette démarche avant le choix du juge Nadon et n'avait exprimé aucune opinion sur comment cette question devait être tranchée, ni fait de commentaires sur le juge Nadon.

Le président de l'ABC, Fred Headon, dit espérer qu'il s'agit d'un malentendu. Il craint aussi que les commentaires de M. Harper n'amoindrissent la confiance de la population envers la Cour suprême. Selon lui, le premier ministre devrait dire publiquement que Mme McLachlin a agi de façon appropriée.

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# PMO snubs lawyers' request for clarity on allegation against Chief Justice…

**SEAN FINE AND KIM MACKRAEL, The Globe and Mail, May 4, 2014**

The Prime Minister's Office is rejecting a call from Canada's legal community to clarify its statement about the Supreme Court, leaving unresolved an allegation that the Chief Justice behaved improperly.

The unprecedented dispute comes as the country's top court prepares for additional constitutional challenges to laws that were passed by the Conservative government. The court agreed last month to hear a case dealing with mandatory minimum sentences for illegal gun possession, while another Conservative law forcing criminals to pay a victim surcharge fee has been flouted by some judges and may reach the Supreme Court.

Fred Headon, president of the Canadian Bar Association, said on Sunday that he is concerned the recent comments from the PMO could undermine the public's faith in Canada's judicial system and called for Prime Minister Stephen Harper to clarify the matter publicly. Those comments come from a statement issued by the PMO Thursday night suggesting that Chief Justice Beverley McLachlin had improperly tried to contact the Prime Minister regarding the government's decision to appoint Justice Marc Nadon to the Supreme Court.

A separate statement from the Chief Justice's office said the contact between her office and the Prime Minister's Office had occurred during the selection process last summer – when candidates were being considered for the Supreme Court but before anyone had been chosen.

Mr. Headon said it does not appear as though the Chief Justice acted improperly when she flagged a potential issue during the appointment process. "We would like the government to say that the comments they have made should not have been interpreted as if the [Chief Justice] did anything wrong," Mr. Headon said. The Bar Association represents 37,000 lawyers and judges.

The Advocates' Society, an association that promotes professionalism in the justice system, issued an open letter to the Prime Minister on Sunday calling comments from the PMO "unfounded and regrettable" and urged the Prime Minister to publicly correct the record.

Asked on Sunday if the PMO planned to clarify its earlier statement in light of concerns raised by the legal community, a spokesman for Mr. Harper indicated that it does not.

“For the record, the statement was issued in response to media queries,” Jason MacDonald wrote in an e-mail. “I have no additional comment.”

The dispute came to light after the National Post asked the Chief Justice to respond to an allegation – reportedly from senior Conservatives – that she had lobbied against Justice Nadon’s appointment.

The Chief Justice’s office denied that she had done so in a statement that was later shared with other reporters, and the PMO subsequently issued a statement of its own, indicating the Chief Justice had contacted the Minister of Justice, who then advised the Prime Minister not to take a phone call from her because doing so would be “inadvisable and inappropriate.”

The PMO statement prompted another response from the Chief Justice’s office, explaining that the contact with the Justice Minister and the PMO occurred in April and July of 2013 – well before Justice Nadon was selected to fill a vacant seat at the Supreme Court.

Dennis Baker, a political scientist at the University of Guelph, said he believes it is possible that the Chief Justice made a minor error by trying to contact the Prime Minister after she was consulted by the committee responsible for selecting the next Supreme Court justice and after she had flagged a potential issue to the Justice Minister.

“If you repeat a warning – and you are the one who ultimately decides the issue – such warnings can easily take on a different character,” he said.

However, Prof. Baker added that such a mistake – if it was a mistake – is very minor and occurred with enough grey area to be defensible. “It surely does not warrant the prominence and attention the [Prime Minister] seems to want to draw to it,” he said.

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# Avenir du Sénat: aux provinces d'agir, dit Harper

**JOËL-DENIS BELLAVANCE, La Presse, le 30 avril 2014**

(OTTAWA) Le premier ministre Stephen Harper s'en remet aux provinces pour lancer toute initiative visant à réformer ou à abolir le Sénat, après avoir essuyé une rebuffade devant la Cour suprême la semaine dernière.

Le plus haut tribunal du pays a statué vendredi que la réforme du Sénat mise en avant par le gouvernement Harper - qui aurait eu pour effet de limiter à neuf ans le mandat des sénateurs et aurait permis la nomination de sénateurs qui auraient été élus dans une province - ne respecte pas le cadre constitutionnel actuel parce qu'Ottawa a omis de consulter les provinces avant de proposer des changements dans un projet de loi.

Aux Communes, hier, M. Harper a affirmé que cette décision de la Cour suprême fait en sorte qu'il incombe maintenant aux provinces de prendre le relais pour ce qui est des changements à apporter au Sénat.

Cette réponse a fait dire au chef du Nouveau Parti démocratique (NPD), Thomas Mulcair, que M. Harper est maintenant devenu «le champion du statu quo» au Sénat.

«Pendant des mois, le premier ministre a pourtant dit que le chef du troisième parti [Justin Trudeau] défendait le statu quo et il nous donnait bien l'impression de ne pas être d'accord avec lui. Et là, soudainement, c'est le premier ministre qui brandit un drapeau blanc et il s'avoue vaincu. Pourquoi? Parce qu'il faudrait parler avec les provinces et que, pour lui, c'est bien trop difficile de parler avec elles», a lancé M. Mulcair.

Le chef de l'opposition officielle a pu interroger le premier ministre pour la première fois hier sur cette question depuis que la Cour suprême du Canada a rendu sa décision. La Chambre des communes a repris ses travaux lundi après une pause de deux semaines, mais M. Harper était absent, comme c'est souvent son habitude les lundis.

Pour M. Mulcair, il appert que M. Harper abdique ses responsabilités en invitant les provinces à lui soumettre des propositions sur le Sénat. «La Cour suprême dit que le fédéral doit travailler avec les provinces. Ça ne veut pas dire que les provinces peuvent s'unir et lui annoncer qu'elles ont éliminé le Sénat. Il essaie de trouver des prétextes pour dire qu'il ne peut rien faire. Lui, qui avait juré que s'il ne pouvait pas réformer le Sénat, il allait l'abolir», a affirmé M. Mulcair.

Il a réitéré que le NPD souhaite abolir le Sénat et qu'il compte le faire en convainquant les provinces de la sagesse de cette mesure. «On est prêt à parler avec les provinces. On va dire clairement aux prochaines élections que ça fait partie de ce que souhaite le NPD. On souhaite l'abolition de cette institution élitiste et vétuste. Et nous, on va travailler avec les provinces», a-t-il dit.

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# Tories incensed with Supreme Court as some allege Chief Justice lobbied against Marc Nadon appointment

**John Ivison, National Post Columnist, May 1, 2014**

Frustrations inside the Harper government at the recent string of losses at the Supreme Court are in danger of boiling over.

One minister said he had been advised not to get into a public "firefight," but senior Conservatives are privately incensed and feel the court has blocked Parliament's ability to make laws.

Rumours about Beverley McLachlin, the Chief Justice, are being shared with journalists, alleging she lobbied against the appointment of Marc Nadon to the court (an appointment later overturned as unconstitutional). It is also being suggested she has told people the Harper government has caused more damage to the court as an institution than any government in Canadian history.

The chatter suggests there is a clear strain between the offices of the Prime Minister and the Chief Justice.

Ms. McLachlin hit back in a statement released by her executive legal officer, Owen Rees. He said she did not lobby against the appointment but was consulted by a parliamentary committee on the government's short list and the needs of the court.

"The question concerning the eligibility of a federal court judge for appointment to the Supreme Court under the Supreme Court Act was well-known in legal circles. Because of the institutional impact on the Court, the Chief Justice advised the Minister of Justice, Mr. [Peter] MacKay, of the potential issue before the government named its candidate for appointment to the Court. Her office also advised the Prime Minister's chief of staff, Mr. [Ray] Novak. The Chief Justice does not express any views on the merits of the issue," he said.

Neither did she make disparaging remarks about the Harper government. "She has stated publicly on several occasions that mutual respect between the branches of government — and their respective roles — is essential in a constitutional democracy," said Mr. Rees.

A tug of war between the legislative and judicial branches is normal. But five overwhelming losses in as many weeks at the court — on Judge Nadon's appointment, on Senate reform, and on early parole, among others — has left many Conservative lawmakers wondering who runs Canada.

The frustration in Cabinet and caucus has been visceral this week, kept in check only by an edict from the Prime Minister's Office not to speak publicly. "The internal wisdom is not to get into a firefight," said one minister.

But, privately, MPs on the government side of the House are bitter. “It’s clear that Canadians don’t make laws through their governments any more. Instead, they watch while unelected courts override important community standards,” said one MP, speaking about the court’s decision to strike down Canada’s prostitution law. “[Canadians] are powerless to act through their government and left to live by court edict that doesn’t have any public support.”

There were suggestions that the government accepted amendments to its Fair Elections Act before a hostile court threw out much of the legislation on the eve of the next election.

“The left will celebrate this as a triumph — what they couldn’t achieve politically, they have achieved through decades of court appointees,” said one MP, ignoring the fact that the majority of the current court was appointed by Stephen Harper.

One Cabinet minister struggled to stifle his opinion. “I think you can imagine my views. Allan Blakeney and Sterling Lyon were prophets,” he said, referring to the former premiers of Saskatchewan and Manitoba, who fought the introduction of the Charter because they felt it would weaken Parliament’s supremacy. In the 22 years under the 1960 Bill of Rights, just one statute was declared invalid but in the first decade after the 1982 Charter was introduced, 41 statutes were voided.

Another minister mused that the court’s decision to strike down term limits for senators may have been influenced by the fear that similar measures could eventually be introduced for Supreme Court judges, who currently sit until their 75th birthday.

Such are the levels of frustration that senior government officials are musing about how to make the court more transparent and accountable — perhaps by requiring disclosure of expenses that are not publicly documented at the moment. However, they stress they are wary of being seen as vindictive and no action is planned. Short of appointing Vic Toews, the former justice minister and now a trial judge in Manitoba, to the court when a Western vacancy comes open in a couple of years, there seems little that the government can do. There is little upside for Mr. Harper in making the Supreme Court rejection of his policies a political issue.

But while there are frustrations on both sides — the Chief Justice is likely annoyed at the continuing vacancy on the court — a fragile peace is still holding.

“In my view, both parties are behaving appropriately,” said Dennis Baker, an assistant professor in political science at the University of Guelph, who studies the legislative-judicial relationship.

“The Prime Minister has been measured in his reactions to the decisions and has not tried — as some have suggested — to find technical ways to thwart the spirit of the decisions … The Supreme Court has avoided rhetoric of [any] sort.

“Given that the institutions are designed to be in conflict with each other — a necessary function of being responsible for reviewing each other’s actions to some extent — I don’t

think there's anything abnormal or worrying about recent events. It's just the institutional design at work, in my view."

Another reversal for the Conservatives, though, and the parliamentary sovereigntists on the government benches will not be so easily muzzled.

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LeDroit

# Fonction publique : Les «vrais changements» doivent venir de l'intérieur

**PAUL GABOURY, Le Droit, le 30 avril 2014**

Même s'il appuie la stratégie d'équilibre budgétaire du gouvernement Harper, le comité consultatif sur la fonction publique fédérale recommande d'investir dans le renouvellement de sa main-d'oeuvre. Selon le groupe, les «vrais changements» doivent venir de l'intérieur, avec la collaboration active des fonctionnaires.

Dans son 8e rapport annuel, ce comité consultatif créé pour conseiller le premier ministre s'est penché essentiellement sur l'avenir de la fonction publique.

«Dans la foulée du budget 2014, nous appuyons la stratégie budgétaire du gouvernement et nous sommes conscients que tous doivent contribuer à la réalisation de cet objectif, y compris la fonction publique. Cependant, il faut viser un équilibre entre la réduction des coûts, l'efficacité opérationnelle et le renouvellement, et ce, en investissant et en réinvestissant dans la fonction publique», souligne le comité présidé par David Emerson, ancien ministre fédéral, qui tire à son tour sa révérence après avoir pris la relève à Paul Tellier, avec qui il assurait la coprésidence au cours des dernières années.

Parmi les autres membres de ce comité, on compte Monique Leroux, présidente du Mouvement Desjardins, et Peter MacKinnon, ancien recteur et vice-chancelier de l'Université de la Saskatchewan.

Selon eux, le maintien pour deux autres ans du gel des budgets de fonctionnement des ministères place les gestionnaires et les employés devant des défis importants. «Après cinq années de restrictions similaires, cela ne sera pas une mince tâche. C'est pourtant une réalité que nous impose un environnement mondial de plus en plus concurrentiel», note le groupe.

Déjà, le gouvernement a mis en place une initiative appelée Objectif 2020, afin de réformer la fonction publique. Le groupe croit qu'elle ne connaîtra du succès qu'avec la participation active des employés de tous les niveaux.

«Selon notre expérience dans le secteur privé, les vrais changements doivent venir de l'intérieur, et ne peuvent vraiment réussir que s'ils s'appuient sur les idées et l'engagement des employés», note le comité.

**Technologies de l'information**

L'infrastructure technologique reste un outil déterminant de cette modernisation. La transformation des services de pensions à Shediac et le regroupement du service de paye des ministères à Miramichi dans les Maritimes sont désormais cités en exemple. «Ce sont là d'excellents exemples qui illustrent comment des investissements technologiques améliorent l'efficacité tout en localisant des services communs à l'extérieur de la région de la capitale nationale», souligne le comité.

Quant à la consolidation de l'infrastructure de services clés des ministères, qui relèvent désormais de Services partagés Canada, le comité consultatif affirme qu'une telle mesure devait être prise depuis longtemps. Il constate qu'un solide plan a été élaboré pour le regroupement des systèmes de courrier électronique, des centres de données et des réseaux.

«Les ministères attendent de récolter les bénéfices de cette nouvelle infrastructure de technologie de l'information partagée. La clé, maintenant, est de mettre le plan en oeuvre et de ne pas retarder le travail de modernisation par des processus d'autorisation et une lourdeur administrative inutiles», avertit le comité.

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LeDroit

# L'importance du Sénat pour les minorités linguistiques est reconnue

**Paul Gaboury, Le Droit, le 25 avril 2014**

La Fédération des communautés francophones et acadienne(FCFA) a accueilli favorablement la décision rendue vendredi par la Cour suprême sur la réforme du Sénat du gouvernement Harper, estimant qu'elle vient d'affirmer de façon «claire» l'importance de l'institution pour les minorités linguistiques au pays.

«La Cour suprême a reconnu explicitement un principe que nous défendons depuis des années, soit que le Sénat est essentiel pour assurer aux minorités linguistiques une voix dans les institutions parlementaires fédérales», a commenté la présidente de la FCFA, Marie-France Kenny.

En ce qui a trait au rôle du Sénat en matière de représentation de divers groupes sous-représentés, dont les minorités linguistiques, la Cour a indiqué qu'avec le temps le Sénat

en est aussi venu à représenter divers groupes sous-représentés à la Chambre des communes.

«Il a servi de tribune aux femmes ainsi qu'à des groupes ethniques, religieux, linguistiques et autochtones auxquels le processus démocratique populaire n'avait pas toujours donné une opportunité réelle de faire valoir leurs opinions» indique la Cour suprême. Cela correspond de près, précise la présidente de la FCFA, à l'argumentaire présenté lors des audiences de la Cour à l'automne.

«Cette décision consacre une fois pour toutes le rôle du Sénat en matière de protection et de représentation des minorités linguistiques. Clairement, on ne peut procéder à une réforme de la Chambre haute sans considérer l'importance de celle-ci pour la représentation des minorités linguistiques », indique Mme Kenny.

La FCFA indique qu'elle n'est pas opposée à une réforme du Sénat, mais qu'elle doit toutefois se faire par le biais des mécanismes constitutionnels prévus à cette fin, en tenant compte de la représentation des communautés francophones et acadienne et des groupes sous-re

La FCFA avait le statut d'intervenante dans cette cause et s'était opposée à la réforme proposée par le gouvernement Harper en plaidant que les minorités francophones y perdraient beaucoup. Totalement opposée à l'abolition du Sénat, la FCFA avait plaidé que les francophones en situation minoritaire risquaient d'être moins bien représentées à la chambre haute, n'ayant pas le poids démographique pour faire élire un francophone dans les communautés.

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LeDroit

# Réforme du Sénat: Benoît Pelletier heureux du jugement

**Paul Gaboury, Le Droit, le 26 avril 2014**

Le constitutionnaliste Benoît Pelletier est très satisfait du jugement rendu par la Cour suprême sur le Sénat. Professeur à la faculté de droit de l'Université d'Ottawa, l'ex-ministre ministre québécois des Affaires intergouvernementales reconnaît que des changements qui ne nécessitent pas la voie constitutionnelle sont à portée de main pour améliorer les choses.

« C'est un excellent jugement. Il faut se rappeler que lorsque j'étais ministre, j'avais défendu la cause du Québec (dès 2006) contre les initiatives du gouvernement Harper », a commenté M. Pelletier, dont le nom est cité à plusieurs reprises dans le jugement.

En 1979, la Cour suprême s'était prononcée sur un renvoi sur la Chambre haute, en disant que le Parlement ne pouvait pas modifier seul le Sénat. À la suite du rapatriement de la Constitution, plusieurs experts se demandaient si le jugement de 1979 était devenu caduc. « On ne pouvait être certain jusqu'à aujourd'hui. Mais la Cour suprême confirme sa décision de 1979 », a-t-il expliqué en entrevue au Droit.

La Cour a indiqué que les changements sur la durée du mandat et du mode de sélection des sénateurs sont des caractéristiques essentielles du Sénat. Pour les modifier, il faut passer par une consultation constitutionnelle. En réalité, le professeur Pelletier souligne que la Cour a retenu les deux principaux arguments qu'il a toujours défendus pour le gouvernement du Québec. « La Cour dit que ce que le gouvernement fédéral cherchait à faire touche des caractéristiques essentielles, et qu'il ne peut le faire unilatéralement », explique M Pelletier.

Pour la suite des choses, le constitutionnaliste souligne que des changements mineurs pourraient grandement améliorer les choses, pour permettre au Sénat de jouer le rôle que les Pères de la Confédération lui avaient donné.

« On peut dépolitiser le Sénat et abolir la ligne de parti, nommer des sénateurs indépendants et resserrer les règles d'éthique. Tout cela pourrait améliorer grandement les choses au Sénat sans passer par l'application de la procédure constitutionnelle », dit-il.

La création d'un comité de sélection indépendant avec des personnes crédibles pour choisir les sénateurs serait tout aussi appropriée et pourrait être réalisée rapidement.

Il souligne aussi l'importance du Sénat pour les minorités. « À mon avis, c'est une qualité du Sénat sur laquelle on peut miser dans le futur. »

## L'indépendance du Sénat reconnue par la Cour suprême

Le jugement de vendredi vient non seulement clarifier une fois pour toutes les règles à suivre pour réformer le Sénat, mais il reconnaît en même temps l'indépendance et le travail des sénateurs.

« Toute modification fondamentale au Sénat doit se faire selon la formule d'amendement prévue dans la Constitution et confirme le concept du Sénat et son indépendance », a commenté Gilles LeVasseur, professeur de gestion et de droit de l'Université d'Ottawa.

Selon lui, le jugement unanime rendu par les huit juges de la Cour suprême vient ainsi confirmer que le Parlement ne peut modifier l'institution de manière unilatérale. La décision de la Cour vient aussi rappeler le fait que les sénateurs ont leur indépendance et que leur travail consiste à revoir celui de la Chambre des communes. En modifiant le mode de sélection pour une représentation électorale, et en limitant le mandat des sénateurs, on toucherait à l'indépendance des sénateurs.

« Il est important de comprendre que le Sénat n'est pas une deuxième Chambre des communes. Le Sénat a son autonomie. Et il va sans doute prendre plus de distance. Son rôle a pendant longtemps été malmené et dilué par la partisanerie », a indiqué le professeur LeVasseur.

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# Party leaders dial back ambitions on Senate reform

**Campbell Clark, The Globe and Mail, April 29, 2014**

If big Senate reform is beyond their reach, Canada's political leaders have different visions of reform writ small.

Thomas Mulcair and Justin Trudeau are both arguing the best way to fix an unelected legislature is to water down its partisanship.

For Stephen Harper, it's tightening the purse strings. His government has expressed a philosophical objection to freeing the Senate from the bounds of partisanship.

All three leaders now face a completely different debate about changing the hated Senate. It's no longer about what you'd like to do, it's about what you can do. The Supreme Court's Friday ruling dashed the mirage of easy routes to reform by stating that electing or abolishing the Senate requires provincial approval for a Constitutional amendment. And of the three, only Mr. Mulcair would be willing to try that.

But lesser roads to reform remain. Canadians don't like the unelected Senate, but there are other aspects of the Upper Chamber they'd like to change. They don't like the idea that it's a repository for party political hacks. And they don't like the idea that they're paying top dollar for it, too.

Mr. Mulcair used to have the easiest time in debates on the Senate, because his New Democratic Party has never had Senators, and favoured outright abolition. It was clean, simple, and bold. But it's not so simple anymore now that Mr. Mulcair has to admit it would require Constitutional talks, and he's more likely to get bogged down in the public's distaste for re-opening the Constitution.

But his party has put forward one major route for improving the unelected Senate. "The place has to be de-partisanized," said New Democrat MP Craig Scott , the party's critic for democratic reform. Independence from party ties is the only way for the unelected Senate to live up to its original function of providing "sober second thought" for legislation, he said.

That reform policy used to be the NDP's turf, but Mr. Trudeau stole it in January, when he excluded Liberal senators from his caucus, and promised that if he's elected, future Senators would be chosen by some sort of advisory committee. The Liberals pre-empted

the court's decision, choosing to look a lesser reforms, and Mr. Trudeau garnered attention for excluding senators from his caucus – even though they banded together as the Senate Liberal Caucus.

Mr. Trudeau's proposal to have a committee choose senators, something like the way Order of Canada recipients are chosen, probably doesn't meet the test set by the Supreme Court, which said the Governor-General, as advised by the PM, must be able to appoint them. But some kind of vetting process by a committee might still do what he proposed: reduce the partisanship in appointments.

But Mr. Harper's government has already declared that a bad idea. At least Conservative senators are accountable to their party, Mr. Harper said, defending party lines in the vote to oust three senators accused of making inappropriate expense claims, Mike Duffy, Patrick Brazeau, and Pamela Wallin.

His minister for democratic reform, Pierre Poilievre said that at least when senators are appointed by the prime minister, they're appointed by someone who is democratically elected. Having them selected by committee would make them less accountable and less democratic. One Conservative MP, John Williamson, said a few months ago that committees would pick a bunch of elites, and he'd rather see senators picked out of the phone book. In other words, if they're not going to be elected, they should be picked by the elected government.

Instead, the Conservatives are signalling they'll go another way. Mr. Poilievre said the government will now focus on minimizing the cost of the Senate, and maximizing its accountability. The latter means more rules for reporting things like expenses. The former is a signal they plan to cut Senate budgets.

There's no doubt that would be popular. A chamber that most Canadians think isn't really legitimate has a budget of $91.5-million, and an administration with 393 employees.

And it suits the Conservatives' favoured approach to many things: making it a taxpayer issue. If Canadians are stuck with an unelected Senate, at least they'll appreciate the cost being cut.

But it's a fight Mr. Harper might really not be willing to pick. Slashing senators' budgets dramatically requires approval from the Red Chamber itself. And there's no certainty that the majority appointed by Mr. Harper will accept his will if it means slashing their budgets, staff, travel, expense, or salaries.

And with big reforms off the agenda, it's not clear how much capital leaders will want to spend on little ones. But all of them will want to say they will do something to change the institution Canadians love to hate.

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CBC news

# Citizenship bill changes 'likely unconstitutional,' bar association warns

## The Canadian Bar Association is urging the government to amend Bill C-24

**Susana Mas, CBC News, April 30, 2014**

The Canadian Bar Association says it has "serious concerns" about the government's proposed citizenship bill, which would, among other things, give the immigration minister greater powers to revoke citizenship.

The Canadian Bar Association says it has "serious concerns" about the government's proposed citizenship bill, which would, among other things, give the immigration minister greater powers to revoke citizenship. (Tom Hanson/The Canadian Press)

The Canadian Bar Association is sounding the alarm over some of the more controversial measures included in the government's proposed citizenship bill, saying they are "likely unconstitutional," effectively contradicting the government's own assessment of the bill.

The government proposed sweeping changes to the Citizenship Act last February when it introduced Bill C-24, dubbed the strengthening of the Canadian citizenship act.

The bar association is specifically concerned with three aspects of the bill that it would like to see either significantly amended or scrapped altogether:

1. New eligibility requirements for becoming a citizen.
2. Requiring that would-be citizens show an intent to reside in Canada.
3. Expanding the grounds for revoking citizenship.

Chris Veeman and Barbara Jackman, members of the bar association's national immigration law section, will offer some 20 recommendations to improve the bill when they testify before a House of Commons committee Wednesday starting at 3:30 p.m. ET.

While the bar association said it welcomes some of the new measures proposed in the bill, such as granting citizenship to so-called Lost Canadians, it has "serious concerns" about other aspects of it.

"Our most significant concerns relate to the lack of flexibility by reducing residency to a physical residence test, requiring applicants to demonstrate intent to reside in Canada if granted citizenship, and the expansion of grounds to revoke citizenship," the bar assoiation said in its 30-page written submission.

On Monday, Immigration Minister Chris Alexander appeared for an hour before the Commons citizenship and immigration committee, and told MPs the bill was constitutionally sound.

"We believe that this bill is entirely in line with the requirements under the Constitution," Alexander said.

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LA PRESSE .CA
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# Les fameux avis juridiques sur la Charte restent introuvables

**Denis Lessard, La Presse, le 1er mai 2014**

(Québec) Avec stupéfaction, le gouvernement Couillard est arrivé à cette conclusion: après plusieurs jours de recherche au ministère de la Justice, les fameux avis juridiques que disait détenir Bernard Drainville pour justifier la Charte de la laïcité n'existent pas.

En début de soirée hier, le ministère de la Justice a publié une lettre expliquant qu'aucun avis juridique ne lui avait été demandé sur le projet de loi 60, la Charte de la laïcité. Stéphanie Vallée, qui a fait rapport hier à ses collègues du Conseil des ministres, n'aurait trouvé à son ministère «aucun document attestant de la légalité ou de la constitutionnalité du projet de loi», piloté par Bernard Drainville. La recherche n'est pas terminée mais normalement, ces documents, s'ils avaient existé, auraient été facilement retrouvés, fait-on valoir. En soirée, la ministre Vallée a expliqué à La Presse que la recherche visait exclusivement «les avis juridiques du Ministère sur le projet de loi». Elle n'exclut pas que des opinions, des argumentaires ou des documents sur des aspects de la Charte aient pu être demandés et obtenus par son prédécesseur.

## Drainville les mentionnait

Pendant des mois, le ministre parrain de la Charte, Bernard Drainville, a soutenu que le projet du gouvernement Marois s'appuyait sur des avis juridiques.

Dès la première conférence de presse à ce sujet, en septembre 2013, La Presse lui avait demandé si ce projet était soutenu par de tels avis pour expliquer quelles étaient les chances de succès en cour, si la Charte de la laïcité pouvait traverser le test des chartes canadienne et québécoise des droits. M. Drainville avait alors répliqué: «Nous avons la conviction que ce projet-là est constitutionnel. On a des avis qui vont dans ce sens. Mais comme vous le savez, ces avis constitutionnels sont toujours confidentiels, l'ont toujours été et vont le rester.»

L'ex-ministre de la Justice, Bertrand St-Arnaud, avait toujours refusé de confirmer l'existence d'avis juridiques de son ministère sur le projet de loi 60. Mais en campagne électorale, clairement embarrassée, Mme Marois avait laissé entendre qu'elle en avait plusieurs et qu'ils étaient même contradictoires. «Nous avons eu des avis juridiques.

Certains nous disent que cette charte pourrait tenir la route. Mais cependant, je tiens à ce point à cette charte que s'il faut aller vers une dérogation, nous le ferons», avait-elle dit, soutenant même que des avis «disent qu'il y a des risques». Peu après, le ministre St-Arnaud avait encore refusé de confirmer que son ministère disposait de tels avis.

«Le gouvernement se situait dans une zone confortable de la raisonnabilité», expliquait hier l'ex-ministre péquiste Alexandre Cloutier, un juriste qui, a-t-on appris en coulisses par la suite, était très opposé à la Charte.

«J'étais de ceux qui disaient après les élections qu'il fallait avoir un discours d'ouverture, cela avait fait l'objet d'une joute politique avec comme résultat qu'on n'a rien derrière nous, et nous devons construire un discours rassembleur. [...] Il y a un point de rupture, on a eu 25% du vote», a-t-il dit.

En campagne électorale, le chef libéral Philippe Couillard s'était engagé à rendre publics ces avis s'il était porté au pouvoir.

Joint chez lui hier soir, l'ancien sous-ministre de M. Drainville, Jacques Gosselin, qui a démissionné juste au moment des élections, a refusé de répondre à nos questions, soulignant que son secret professionnel l'empêchait de commenter.

L'ancien ministre Drainville a lui aussi refusé de commenter l'affaire, et indiqué à l'avance qu'il ne rappellerait pas à ce sujet. Son ex-attaché de presse, Manuel Dionne, s'est aussi refusé à tout commentaire, suggérant de s'adresser au responsable des communications de l'aile parlementaire du PQ, Julien Lampron. Joint en soirée, M. Lampron a suggéré, lui, de parler à Manuel Dionne.

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# Les professionnels du gouvernement veulent plus que les autres

**Tommy Chouinard, La Presse, le 1er mai 2014**

(Québec) Les 25 000 professionnels du gouvernement du Québec se disent «sous-payés» et réclament des augmentations de salaire supérieures à celles des autres employés de l'État.

Ils veulent un «rattrapage salarial important» et se comparent aux professionnels du gouvernement fédéral, qui gagnent 27% de plus en moyenne.

«On ne vit pas sur la planète Mars. On ne croit pas que le gouvernement sera en mesure d'octroyer des augmentations de salaire de 27% directement à l'ensemble des professionnels», a indiqué le président du Syndicat des professionnels du gouvernement du Québec (SPGQ), Richard Perron, en entrevue à La Presse. Mais l'objectif du syndicat est d'obtenir des «ajustements significatifs aux échelles salariales». Il n'a pas voulu chiffrer ses demandes, mais il a confirmé que les professionnels veulent des hausses de salaire plus généreuses que les autres employés de l'État.

C'est la raison pour laquelle le SPGQ a décidé de faire bande à part et de ne pas intégrer le front commun syndical (CSN, FTQ, CSQ, SFPQ, etc.). Formé en pleine campagne électorale, le front commun dévoilera ses demandes salariales avant le budget Leitao, dont le dépôt est prévu au début du mois du juin. Les conventions collectives échoient le 31 mars 2015.

Le front commun veut combler l'écart de 8,3% de la rémunération globale qui, selon l'Institut de la statistique du Québec, sépare ses membres des autres salariés québécois. Cela représente environ 2,5 milliards de dollars. Le front commun ne réclamera pas forcément une hausse de 8,3%, mais le principe du rattrapage sera au coeur de ses revendications.

Les hausses de salaire «paramétriques» que le front commun négociera s'appliqueront à l'ensemble des employés de l'État, y compris les professionnels. Mais ces derniers veulent arracher des augmentations supplémentaires en négociant directement avec Québec.

**Contexte difficile**

Le défi est de taille, dans un contexte où les finances publiques présentent un déficit encore plus grand que prévu. Québec doit trouver 3,7 milliards de dollars pour atteindre le déficit prévu de 1,75 milliard cette année. Le premier ministre Philippe Couillard a pour «objectif» de respecter sa promesse électorale de retour à l'équilibre budgétaire en 2015-2016, mais son ministre des Finances, Carlos Leitao, laissait entendre la semaine dernière que l'échéancier est compromis.

Richard Perron croit malgré tout que «la conjoncture est très favorable pour faire valoir l'importance d'investir dans les experts du gouvernement». La commission Charbonneau a montré que la perte d'expertise au ministère des Transports a préparé la voie à la collusion. Le fiasco des projets informatiques, cédés à l'externe, a prouvé l'importance de renforcer le rôle des professionnels du gouvernement, qu'ils soient analystes informatiques ou comptables, soutient-il. Ces professionnels servent «souvent à débusquer les entourloupettes que les entreprises privées voudraient nous faire» dans des contrats. «C'est un investissement de se redonner l'expertise interne. Ça va donner des économies d'échelle qui vont souvent du simple au double. C'est comme ça qu'on peut aider à rééquilibrer les finances publiques», a-t-il plaidé.

Il rappelle que Philippe Couillard lui-même demandait au président du Conseil du trésor, Martin Coiteux, de «préserver l'expertise de l'État dans les domaines stratégiques», lors de la cérémonie de prestation de serment du Conseil des ministres la semaine dernière. «Préserver l'expertise» passe par une rémunération accrue des professionnels, croit M. Perron.

Il y aura un départ à la retraite «massif» de professionnels au cours des prochaines années. Les salaires versés par le gouvernement doivent être «compétitifs» si l'on veut attirer les meilleurs candidats, selon le chef syndical. «On est tellement convaincus que nos membres sont sous-payés par rapport au marché que partout les gestionnaires du gouvernement ont de la difficulté à embaucher. Il y a péril en la demeure!», a-t-il lancé.

Selon lui, les membres du SPGQ ont perdu plus de 30% de leur pouvoir d'achat depuis la réduction des salaires de 20% de 1980. D'autres catégories de professionnels ont obtenu un rattrapage salarial dans les dernières années, comme les ingénieurs, les procureurs de la Couronne et les juristes de l'État. Mais les professionnels du SPGQ «ont été laissés de côté de négociation en négociation, au nom de l'austérité, de la conjoncture, des finances publiques qui vont mal», a-t-il déploré. Il ne veut pas que l'histoire se répète.

**EN CHIFFRES**

**80 731$ :** Rémunération globale moyenne - salaires et avantages sociaux compris - des professionnels du gouvernement du Québec

**102 739$ :** Rémunération globale moyenne des professionnels du gouvernement fédéral

*Source: SPGQ, sur la base des données de 2013 de l'Institut de la statistique du Québec*

**Qui fait partie du SPGQ?**

Le SPGQ compte 25 000 membres, dont environ 18 000 dans la fonction publique, 4000 à l'Agence du revenu du Québec et 3000 dans les sociétés d'État, les réseaux de la santé et de l'éducation. Ce sont par exemple des comptables, des actuaires, des fiscalistes, des analystes en informatique, des agronomes, des chimistes, des physiciens, des géologues, des architectes, des arpenteurs-géomètres et des ingénieurs forestiers.

**Rencontre aujourd'hui**

Au moment où les négociations dans les secteurs public et parapublic se préparent, le premier ministre Philippe Couillard rencontre les présidents des grandes centrales syndicales aujourd'hui à l'occasion de la Journée internationale des travailleurs. Les chefs syndicaux sont Daniel Boyer (FTQ), Louise Chabot (CSQ), Jacques Létourneau (CSN) et François Vaudreuil (CSD).

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# Opinion: ‘I voted for Trinity Western U because of the rule of law’

**TONY WILSON, Special to The Globe and Mail, April 29, 2014**

*Tony Wilson is a Vancouver lawyer, a bencher of the Law Society of British Columbia and a regular business columnist with The Globe and Mail. His opinions do not reflect those of the Law Society or any other organization.*

I am a bencher of the Law Society of British Columbia and one of 20 out of 26 benchers who voted in favor recognizing law degrees from a proposed law school at Trinity Western University despite a covenant that bars sexual intimacy other than within a marriage between a man and a woman.

One media report wondered how could "so many intelligent and articulate people clearly see and abhor discrimination yet are unwilling to do anything about it." Another said that our decision was "misguided and cowardly because it hides behind a 13-year-old split ruling by the Supreme Court of Canada."

A petition circulating among lawyers in British Columbia has received a sufficient number of votes to require the B.C. benchers to hold a special general meeting to consider a reversal of our decision. And despite our 20-6 vote to approve a law School at TWU, the benchers of the Law Society of Upper Canada declined the accreditation of TWU's Law School on April 24. The next day, Nova Scotia's law society conditionally approved accreditation, provided that TWU drops the policy prohibiting same-sex intimacy.

Alberta, Saskatchewan and other provincial law societies have effectively adopted the position of B.C. and the Federation of Law Societies, making Ontario and Nova Scotia outliers on this issue.

But this makes a complicated situation all the more complicated because of a mobility agreement among all law societies that permits graduates from an institution in one province to article and subsequently practice in another.

My decision to approve TWU wasn't misguided or cowardly, nor was the decision of the 19 other benchers who voted the way I did. I did not "hide behind" a 13-year-old split ruling by the Supreme Court of Canada. An 8 to 1 decision is by no means "split", and a 13-year-old decision is hardly old enough for the Supreme Court of Canada to reverse itself.

Despite being an atheist with "no horse in this race," I voted the way I did because of something called the rule of law, which among other things, dictates that courts and administrative bodies like ours shouldn't cherry pick the laws we like from the ones we don't. I don't believe we can choose to disregard the leading case on this issue just because we don't like the case or we don't like the covenant. From what I saw, I don't think anyone liked the covenant.

In addition to more than 800 pages of submissions from Canadians who were invited to comment on TWU's application, I read a number of legal opinions from some of Canada's leading lawyers, who advised us that the Trinity Western University v. B.C. College of Teachers case was still the law of Canada. That 2001 case, from the Supreme

Court of Canada, determined that the B.C. College of Teachers could not deny accreditation of TWU's teaching degree (and those who graduated from such program) because TWU insisted upon a similar covenant from its students. "For better or for worse" the Court said, "tolerance of divergent beliefs is a hallmark of a democratic society."

I believe that the benchers must follow the decisions of higher courts, particularly the Supreme Court of Canada. That's the way our justice system works. Otherwise the law is nothing more than the political, ethical and unpredictable partialities of one judge, and laws developed in this fashion are neither fair, consistent nor predictable. That's one reason why we have the Supreme Court: To tell lower courts, and other judicial and quasi-judicial bodies what the law is, and how it should be interpreted and applied.

One of the most persuasive submissions was from the B.C. Civil Liberties Association, (an organization not known to shy away from protecting the rights of the LGBTQ community). The BCCLA took the position that its commitment to a society in which LGBTQ people are free from unlawful discrimination on the basis of sexual orientation did not give anyone licence to discriminate against others on the basis of their conscientiously held religious beliefs, nor to deny them their fundamental freedoms. "For the Law Society to deny TWU's application for accreditation" they said "would itself be contrary to law, as established by the Supreme Court of Canada, and would result in unlawful discrimination against and infringement of the fundamental freedoms of those who seek only to be able to study law and be allowed entry to the legal profession without discrimination based on their religious beliefs."

Unfortunately, critics of the B.C. benchers seem to be overlooking the position of the BCCLA on the issue of religious freedom in Canada. It would appear that the majority of the benchers of the Law Society of Upper Canada and Nova Scotia didn't think it was important either. To me, it was definitive.

Some critics have argued that a law school at TWU may, by virtue of its Christian orthodoxy, create intolerant lawyers who would discriminate against gays and lesbians despite the fact that no teachers who have ever graduated from TWU's teaching program have been cited or disciplined for such conduct.

Others critics have suggested that one can't satisfactorily teach ethics at a faith-based institution that does not recognize gay marriage (opening up the question as to whether lawyers of faith can teach ethics at Canada's existing law schools). I told my colleagues at bencher table that these arguments were absurd.

If the TWU application had been rejected by the B.C. benchers, would our law society be obliged to reject applicants who received their law degrees from other faith-based law schools in the United States and who may have actually practiced in the U.S.? And should we go further down the rabbit hole and reject students who attended TWU as undergraduates, but who received their law degrees at Osgoode Hall or U of T?

Some have suggested that the law has changed since that TWU 2001 B.C. teachers' ruling and that it might be decided differently today, especially in the light of the Civil Marriage Act, which legalized gay marriage. The many legal opinions our law society

obtained on this matter indicated the Supreme Court would not reverse itself on that issue today.

However, if the Supreme Court of Canada somehow looks at this issue again and reverses itself, I'm fine with that.

Why? Because I believe in the rule of law, and the rule of law must be paramount in a free and democratic society.

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# Lawyers question Civil Forfeiture's evidence policies

**SUNNY DHILLON, The Globe and Mail, April 29, 2014**

Abandoning its most high-profile case could indicate British Columbia's Civil Forfeiture Office is thinking twice about files in which evidence was unlawfully obtained, say lawyers who have worked on forfeiture cases.

The government agency was created in 2006 to fight organized crime, but has come to have a far broader reach and has been criticized for the people it targets and the fairness of the process.

The office – which was the subject of a recent Globe and Mail investigation – earlier this week ended its pursuit of a Fraser Valley home belonging to David Lloydsmith, a former electrician on partial disability. A police search of Mr. Lloydsmith's home turned up marijuana plants, but a judge ruled the search to be warrantless and in violation of the Charter. Mr. Lloydsmith was never charged with a crime, and the officer involved in the search characterized the offence as "minor."

Jay Solomon, a Vancouver lawyer, said the Civil Forfeiture Office needs to reconsider accepting any cases in which there have been Charter breaches. "I think their policy in prosecuting cases where there are serious Charter violations is wrong and they're paying the price for it," he said.

Mr. Solomon noted that a Court of Appeal ruling in Mr. Lloydsmith's case earlier this year cited the hardship defendants endure when fighting for their Charter rights. Legal aid is not available in civil forfeiture cases, and the court said a power imbalance exists between the office and the people it targets.

Sean Hern, a Victoria lawyer, said it's important to know whether the office's director is screening for potential Charter breaches and whether such cases are in the public interest. Mr. Hern represented the B.C. Civil Liberties Association when it intervened in Mr. Lloydsmith's case at the Court of Appeal. He said that court's ruling – the Civil Forfeiture Office's application was dismissed – undoubtedly played a role in it abandoning the case.

The court's ruling meant the Charter violations in Mr. Lloydsmith's case would have to be dealt with before a full trial – hurting the office's leverage in any settlement discussions.

Mr. Hern said the decision has put the onus "back onto the director to think carefully about how he selects cases to go forward with. We're certainly hopeful that they use their discretion to take care not to target cases in which there are Charter breaches or potential Charter breaches."

Phil Tawtel, the office's director, would not agree to an interview Tuesday. In an e-mailed statement, he said Mr. Lloydsmith's case was dropped after consultation with legal counsel because it was "the most appropriate way to resolve the matter."

The statement said the office takes a number of measures to ensure due diligence before accepting a file.

In response to a question about other cases involving Charter breaches and whether they were being dropped, Mr. Tawtel said all cases are re-evaluated on an ongoing basis, a process that includes consideration of Charter issues.

Mr. Solomon said the questions about Charter issues demonstrate that the office would be better served having someone who has worked as a Crown prosecutor at its helm. He added that while there has been a great deal of focus on such cases, the majority of the ones he sees are instances in which a landlord did not know their tenant was growing marijuana and is now at risk of losing the property.

Mr. Lloydsmith, who described himself as being in a state of shock when he spoke with The Globe about the end of the case Monday, said in a follow-up interview that he was still trying to let it all sink in. He said the case has put an incredible strain on him for years – he's seen doctors for the stress. He said it's also wiped out what he had in his savings and RRSPs.

Still, he held out hope that some good would come of what he endured. "I hope things are going to change, the way the Civil Forfeiture Office operates. I hope I've accomplished something. It's got to be more than just a win for me, it's got to be a win for everybody."