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Press Clippings for the period of May 12 to May 20, 2014
Revue de presse pour la période du 12 au 20 mai 2014

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

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Culture shift: New report touts public service makeover

KATHRYN MAY, OTTAWA CITIZEN, MAY 12, 2014

Treasury Board President Tony Clement, the minister many consider a thorn in the side of Canada's public service for his hard-line reforms and spending cuts, is lauding a plan by the government's top bureaucrat for a "cultural" transformation of the federal workforce.

Clement said Destination 2020, the action plan released Monday by Privy Council Clerk Wayne Wouters to bring the public service into the digital age, is "necessary and desirable" and he'll be working to help implement it.

"He has supplemented what I have been saying about cultural shifts in the public service as being necessary and desirable and making sure they have the technology tools and a lot of back-and-forth and give-and-take, and that is very consistent with my views," Clement said.

For some, the minister's supportive tone is a significant contrast to his past digs at the public service as too big, overpaid and under-performing. Many feared this public-service bashing, which makes for good politics, could overshadow or even derail Wouters's broader reform plan, which will take years to unroll.

Clement, however, said he is a big supporter of the public service and is pleased with the quality and timeliness of the advice it provides. He said the biggest challenges facing the

public service of the future is having the tools and skills to be "nimble, innovative" and faster "and all those things were itemized in (Wouters's) report."

Clement's support is critical for the success of Wouters's plan because Treasury Board holds many of the levers needed to implement his five government-wide priorities.

Wouters set the stage for a "cultural" shift of the public service with his ambitious plan, which calls for new technology, more collaboration with Canadians, fewer rules, stripped-down processes and faster results. The report is the first instalment of an ongoing review to help public servants modernize how they deliver services and programs to Canadians.

Tony Dean, a professor at the University of Toronto's School of Public Policy and the former top bureaucrat in Ontario, said the plan's priorities and proposals align with Clement's views. But that doesn't mean Clement won't play hardball at the bargaining table over sick leave, disability and wages, Dean warned.

"There's nothing here that Clement would take issue with," said Dean. "He can also support them without making any promises on the size of the public service, the direction of future reforms or what to do with pensions."

The report was released amid much fanfare after weeks of hype on Twitter and other social media. It was formally launched with a webcast at the Canada School of the Public Service to thousands of federal employees nationwide. The media were not allowed but the event was live-tweeted and trended on Twitter within the hour.

Dean said the report is a "leading edge" collection of some key reforms tried by other Commonwealth countries. For instance, the creation of an "innovation hub" within the Privy Council Office and "change labs" inside departments to develop new ideas takes a page from reforms in the United Kingdom.

The "hub" will also help departments try new approaches such as the work of the "nudge unit" –pioneered in the U.K. using behavioural economics to "nudge" people to act in their best interests, while saving government money.

The report, which has been in the making for nearly a year, focuses on changes in five target areas. It also notes that many other problems facing the public service are more complex and "further analysis and engagement will take place before action is taken."

Wayne Wouters's Five Priorities: a quick summary

1 - Innovative practices and networking

Along with an "innovation hub" and "change labs," public servants will use social media and "Dragon's Den"-style pitches to shape and promote new ideas.

2 - Process and empowerment

A red-tape “tiger team” will be created to examine the snare of rules and processes that slow down operations, approvals and decision-making. Deputy ministers and their employees will connect better, for example using job-shadowing programs, reverse mentoring and Tweet Jams, moderated Twitter discussions.

3 - Technology

An improved directory of federal public servants will include employee profiles and search functions.

4 - People management

Job descriptions will be simplified, and new “learning tools” will help public servants keep their second-language skills up.

5 - Fundamentals of public service

This emphasizes the role of the public service as laid out in the code of values and ethics. New employees will get orientation training in these values.

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No 'trust gap' for average bureaucrat, Privy Council boss says

KATHRYN MAY, Ottawa Citizen, May 16, 2014

Canada’s top bureaucrat says the much talked-about “trust gap” between politicians and public servants never registered as a concern during his year-long grassroots discourse with employees on retooling the public service for the digital age.

In fact, Privy Council Clerk Wayne Wouters says he barely heard any complaints about public servants’ relationship with Conservative ministers and their offices from the 110,000 bureaucrats across the country who took part in his Blueprint 2020 discussions on how to re-shape the workforce.

“The only time … I hear about a trust gap (is) from those who don’t necessarily work in government,” he told the Citizen.

“What I was amazed by on all this was the degree of commitment and passion people had … I don’t think we heard this whole trust thing that others seem to be talking about.”

His remarks were a striking contrast to what the association representing senior managers and executives running departments has said. The trust gap was one of APEX's chief concerns during the Blueprint 2020 review and it suggested steps to restore respect and confidence between public servants and their political masters.

The Public Policy Forum also conducted a major study among public and private sector leaders on leadership skills for the future public service and said the trust gap emerged as a top issue.

Wouters acknowledged some senior executives may have concerns, but average public servants are far removed from that political interaction and their big worries are getting the tools to do their jobs, he said.

About 60 per cent of the public service are front-line workers in regions outside Ottawa. They want WiFi, improved technology, better IT tools, fewer rules and less internal red tape, said Wouters.

As clerk, Wouters wears three hats: head of the public service, secretary to cabinet and deputy minister to the prime minister. Wouters said he warned Prime Minister Stephen Harper that his Blueprint 2020 exercise, which was thrown open to public servants on social media, could generate complaints about the government. But Wouters said such comments never materialized in the unfiltered discussions or, when they did, other participants shut them down.

"This issue of trust, it may be at the most senior levels you hear that, but what we heard about is 'We don't have the right IT tools'; 'We don't like red tape'; 'We want to do our jobs better,' " said Wouters.

"I actually went to the prime minister because I was worried about this exercise when I launched it that I was going to get back all these comments – 'Oh, the government doesn't trust us'; 'They don't like us' – and we were going to get all this negative stuff. We never got that."

Wouters launched Blueprint 2020 last June to get input from public servants via Twitter and other social media, as well as from traditional meetings, town halls and written submissions. The response was unprecedented, particularly from younger public servants.

He recently released his first "action plan" – Destination 2020 – calling for more technology; collaboration with Canadians amid fewer rules; and streamlined processes.

Wouters said the current crop of ministers has a good relationship with senior bureaucrats. Wouters is in the midst of his yearly reviews of deputy ministers' performance, which include check-ins with ministers. He said they report great relations with their departments' top bureaucrats. "They continue to work as teams as they always have," said Wouters.

"I feel I provide advice to the prime minister openly and non-partisan and he takes the advice or he doesn't and that happens every day."

The relationship between ministers and public servants is being studied around the world. The United Kingdom's Institute on Public Policy Research conducted a major study on the conflict – including input from Canada. The U.K. government adopted several of the institute's proposed reforms aimed at beefing up the accountability of public servants to improve ministerial confidence in them.

Some experts argue the relationship in Canada has become so strained that the very role and relevance of the public service is at stake. Donald Savoie, one of Canada's leading academics on public administration, argues that fixing the public service's fundamental role as the government's policy adviser, and clarifying its muddy relationship with ministers and Parliament, must be a first step in any reform of the public service.

Wouters agrees the traditional role of the public service as sole policy adviser is evolving, and many of the changes he introduced in his first reform report are aimed at helping public servants advise ministers in the digital age.

He said public servants no longer enjoy the monopoly they once had on collecting and analyzing information, then offering up advice to ministers.

Instead, he said public servants have to collaborate and network – inside and outside of government – to tap the best ideas. The job will shift from sole advisers to "integrators and facilitators" to ensure public servants are getting the best ideas and information and adapting these to Canadian needs.

"The value we bring as public servants is that we can put it into the Canadian context. We understand this country, we live in most communities, so we can take these ideas and determine what is the best or modify (ideas) and provide that advice that way," he said.---
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LeDroit

«Comme si tout le négatif a été oublié», dénonce Ravignat

Paul Gaboury, Le Droit, le 14 mai 2014

Le député de Pontiac et critique néo-démocrate du Conseil du Trésor, Mathieu Ravignat, déplore que le dernier rapport du greffier du Conseil privé, Wayne Wouters, fasse abstraction des sérieux problèmes vécus dans la fonction publique, à la suite des compressions budgétaires et des abolitions de postes

Dans le document, déposé au premier ministre le 5 mai dernier, le greffier Wouters parle des réalisations et des objectifs de l'initiative 2020 pour la modernisation de la fonction publique. Pour le député Ravignat, tout ne semble pas aussi beau que le document le laisse croire.

«Le rapport manque de perspective critique envers le gouvernement. C'est comme si tout le négatif a été oublié. Si on veut améliorer la situation, il faut dire les vraies choses», affirme le député de Pontiac.

«Si on en croit les affirmations du greffier, tout s'est bien passé pour les fonctionnaires lors du réaménagement des effectifs. Mais tout le monde sait très bien que ce n'est pas le cas. Il y a eu beaucoup de chaos et d'incertitude. Et aujourd'hui, il y a des problèmes importants dans les milieux de travail pour les fonctionnaires», observe M. Ravignat.

Si les changements technologiques font partie de la solution pour améliorer les services, comme le propose le greffier Wouters, le député néo-démocrate croit cependant qu'ils ne régleront rien si les relations avec les employés ne s'améliorent pas.

«L'avantage numérique 2020, je dis oui, pourquoi pas. Mais cela ne réglera pas les problèmes de manque de respect de ce gouvernement envers la fonction publique. Les nombreux changements qui ont été apportés par le gouvernement sont néfastes. Que l'on pense aux scientifiques muselés, à Statistique Canada, aux pensions et les plans pour changer le régime de congés de maladie. Le bien-être et la santé psychologique des employés en souffrent énormément», soutient M. Ravignat.

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PS modernization exercise shows bureaucracy ‘hived off’ from government

MARK BURGESS**, The Hill Times, May 19, 2014**

A new report on modernizing the public service shows a bureaucracy cut off from government, and the worthwhile initiatives proposed likely won’t be realized without engagement from the political side, experts and critics say.

Privy Council Clerk Wayne Wouters released his Destination 2020 report last week, the result of a series of consultations with public servants that began almost a year ago. The exercise made use of digital tools in its outreach and more than 110,000 public servants participated, the report said.

The document calls for new and innovative ways to engage, empower, and manage employees, and to communicate the public service brand.

But some are skeptical about the process, which was performed in a silo without the involvement of elected officials.

“In a way this report almost created further isolation by implying that the public service is capable of doing all these things on its own without needing to engage Canadians and/or Parliamentarians on some fundamental changes,” said Ken Rasmussen, a professor at the University of Regina’s Johnson-Shoyama Graduate School of Public Policy, in an interview.

Mr. Rasmussen said the report is indicative of a growing tendency among public servants and government to see the bureaucracy as “hived off.”

“The way public management is evolving is to see the public service as just an organization like any other organization and that we can import solutions that are generic from the business community, whether it’s lean or any of these other ideas,” he said.

In his final report as chair of the Prime Minister’s Advisory Committee on the Public Service, David Emerson made the case for transplanting “lean” management practices from the public sector to remove duplicative processes and layers of approval. The Destination 2020 report targets departmental red tape.

Mr. Emerson told The Hill Times earlier this month that an attitudinal adjustment has to occur to encourage public servants to be innovative—basically refraining from hanging people out to dry if mistakes are made in order to encourage more risk-taking. The costs of taking risks are too high now, he said.

Mr. Rasmussen said the idea of innovation has always been a bit fanciful for that reason—support for innovative, risky ideas evaporate as soon as there’s any controversy. If governments want to experiment more, he said, they have to be honest about failures, but this requires involvement from the political level.

Ian Clark, a former federal deputy minister and Treasury Board secretary who’s now a professor at the University of Toronto’s School of Public Policy and Governance, said talk of empowering public servants, a prominent theme in the Destination 2020, was evident in previous calls for reform, such as former clerk Paul Tellier’s Public Service 2020 report in the early 1990s. That theme fell out of vogue and was replaced by the idea of accountability, which deters innovation.

Mr. Emerson’s report said the Destination 2020 exercise would complement other change initiatives under way and that it would take time to achieve results.

“Those results will depend heavily on the continued backing of the Government for the reform process as a whole,” Mr. Emerson’s report said.

Treasury Board President Tony Clement (Parry Sound-Muskoka, Ont.) last week endorsed the report, saying it supplemented his own thoughts about culture shifts and enhanced technology in the public service.

Mr. Clement told reporters the biggest challenge in the bureaucracy is recruitment and retentions issues, and staying “nimble and innovative.”

“All of those things, I think, were itemized in [Mr. Wouters’] report, and I look forward to working with him, as we always do,” he said.

Mr. Clement also lauded the federal public service and the advice bureaucrats provide to government—something of a departure from past comments that questioned the work ethic in the public service and suggested bureaucrats were underperforming.

NDP MP Paul Dewar (Ottawa Centre, Ont.) said government engagement in the Destination 2020 process was lacking.

“If you’re really looking to innovate in the public service, and everybody agrees that there needs to be innovation, then you have to go to where the work is being done and do deep engagement with public servants,” he said in an interview. “That hasn’t been happening.”

Mr. Rasmussen said the government and the bureaucracy are content to not complicate the process by bringing in politics and social values, but that any reform that ignores those realities is short-sighted.

“I think it’s bound to end up in a confused kind of mess,” he said. “It can possibly lead to even more dissatisfaction and frustration on the part of public servants who are expected to, in some sense, define their mission more clearly. Unless you do that in consultation with the lawmakers, it’s going to be somewhat meaningless and arbitrary.”

Mr. Clark said the process looks like a “heroic effort” from within the public service to engage bureaucrats, understand the changing environment and find productive and innovative ways to make changes using internal processes.

It proposes establishing a central “Innovation Hub” in the Privy Council Office to help departments apply new approaches to policy development such as behavioural or “nudge” economics, big data and social innovation. Other initiatives include updating the Government Electronic Directory Service (GEDS) to include employee profiles and adopting other digital tools to encourage internal networking.

But Mr. Clark also said it’s interesting to observe the extent to which the exercise didn’t try to comment on or engage either government or civil society.

He said a lot of changes could happen without going outside the department for approval, and that some of the initiatives that departments are taking described in the report are impressive.

Debi Daviau, president of the Professional Institute of the Public Service of Canada, a union representing 60,000 public servants, said she agreed there’s a need for a cultural shift in the public service, whose workforce is disillusioned. She said she’s skeptical this could be achieved without a meaningful investment, though, and said details about resources are missing.

“[The Conservative government is] going to think that this is just an excuse to enact some kind of pre-determined path, which likely will include further cuts,” she said in an

interview. “If you want to actually achieve a cultural shift you’re going to need to change the opinions of the public servants that you work so hard to disenfranchise.”

Destination 2020’s goals are sound, she said, but the mechanism to get there is lacking.

“It almost seems to ignore completely that there’s a fundamental issue that needs to be addressed before any of these really positive, innovative changes can occur officially,” she said. “It’s this breakdown between the government and public servants, right up to the top of departments and agencies.”

Mr. Rasmussen said the report shows an effort to adapt to a changing world and to engage younger people, even if the tone is overly optimistic.

“If it’s always just this relentlessly optimistic language and everything you do succeeds by definition and all you do is publish stories about your successes, people will kind of take it with a grain of salt that it’s more of a promotional or PR exercise than a real attempt to address fundamental problems,” he said.

Five key themes in Destination 2020:

Innovative practices and networking:

• Use web platforms to crowdsource the best employee ideas.
• Use Dragon’s Den-style events with employees to find policy and management solutions.
• Establish a central “Innovation Hub” under Privy Council Clerk Wayne Wouters to try new approaches to policy such as big data, behavioural economics and social innovation.
• Use web 2.0 tools to engage external stakeholders.

Processes and empowerment

• Empower employees at the individual level.
• Use red tape “tiger teams” to identify irritants from the bottom up.
• Deputy heads will engage staff to identify ways for employees to connect more with senior managers.

Modern Technology

• Build an enhanced electronic employee directory (GEDS) with profiles that allows employees to cultivate communities of interest.
• Implement a common videoconferencing structure.
• Modernize internal collaborative tools GCpedia and GCconnex.

People management

• Encourage mobility in and out of the public service to support innovation and development.
• Approach staffing based on results and simplify job descriptions.
• Enhanced tools for language learning.

Fundamentals of public service

• Emphasize the role laid out in the Values and Ethics Code for the Public Sector.
• Crowdsource a strategy to communicate public servants' role to Canadians.
• Launch a public service landing page to profile public service achievements and promote employment opportunities.

Average Age in the Federal Public Service

• The average age of federal public servants increased from 44.4 years in 2012 to 44.8 years in 2013.
• Although there was a slight decrease over the past year, the proportion of Executives under 50 years of age has been on the rise in the last decade.
• In 2003, there were 42.4% executives under 50 years of age compared to 45.8% in 2013.
• The average age of deputy ministers and EXs (at both lower and senior levels) may have fluctuated slightly over the past three decades; however, it has remained relatively stable since 2003.

Average Age March 2012 March 2013

Deputy Ministers 55.5 years 56.3 years
Associate DM 55.2 years 55.4 years
EX 04 to EX 05 53.7 years 54.0 years
EX-01 to EX-03 50.0 years 50.1 years
Executive 50.2 years 50.3 years
EX minus 1 48.6 years 47.9 years
EX minus 2 46.0 years 45.5 years
FPS 44.4 years 44.8 years

Years of Experience

After increasing gradually from 1983 to 2007, the proportion of public servants over 25 years of experience has begun to slowly decrease.

Notably, between March 2012 and March 2013, the proportion of FPS employees with 5-14 years of experience and those with 15-24 years of experience increased by 4.1 percentage points and 0.8 percentage points, respectively, while those with 0-4 years of experience and 25 years of experience or more decreased by 4.5 percentage points and 0.4 percentage points, respectively.

These numbers reflect current recruitment and retirement patterns.

March 2012

0-4 Years 21.7%
5-14 Years 41.2%
15-24 Years 20.2%
25+ Years 17.0%

March 2013

0-4 Years 17.2%
5-14 Years 45.3%
15-24 Years 21.0%
25+ Years 16.6%

Source: The Privy Council Clerk's Twentieth Annual Report to the Prime Minister on the Public Service of Canada

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Justice Canada chops research budget by $1.2-million

DEAN BEEBY, The Canadian Press, May 12, 2014

The federal Justice Department has chopped $1.2 million from its research budget, and is tightening control to ensure future legal research is better aligned with the government's law-and-order agenda.

Previous legal research in the department sometimes caught senior officials "off-guard ... and may even have run contrary to government direction," says an internal report for deputy minister William Pentney.

The budget cut on April 1 this year — described as a "significant loss of resources" — represents about 20 per cent of research spending, and arises from deficit-cutting measures first set out in the 2012 budget.

The reduction means the loss of eight experienced legal researchers, most of them social scientists.

The result is a diminished research capacity, which now must be better controlled from the top to ensure it supports the government policies, says the report.

“The review confirmed that there have been examples of work that was not aligned with government or departmental priorities,” says the October 2013 document, obtained by The Canadian Press under the Access to Information Act.

Some past projects have “at times left the impression that research is undermining government decisions.”

The report did not cite specific studies, but a department report last year on public confidence in the justice system appeared to be at odds with the Conservative government’s agenda.

Researcher Charlotte Fraser found many Canadians lacked confidence in the courts and prison system, but suggested it was the result of misunderstanding rather than any failures in the system, and that education could rectify the problem.

Critics said the finding was contrary to the government’s approach, which is to pass tougher laws and impose harsher penalties rather than to cultivate a better-informed public.

Another 2011 study, on the sentencing of drunk drivers, found that harsher terms for first offenders had little bearing on whether they re-offended — a finding critics held to be contrary to the government’s agenda of tougher sentencing through mandatory minimums and other measures.

A spokeswoman for the department said many of the 13 recommendations in the internal review are being implemented, and there is a “continued refinement of (research) work plans to focus on government and ministerial priorities.”

But she said departmental researchers will be free to reach any conclusions.

“Research is not undertaken according to what the potential conclusions might be but rather to obtain information on current priorities,” Carole Saindon said in an email.

The report canvassed users of the department’s research as it existed before the cuts, and found the work was “perceived as non-biased and ... valued for its high quality.”

NDP justice critic Francoise Boivin said reading the document made her cringe.

“This is not a government that believes in research — they’re ideological,” Boivin, a lawyer, said in an interview. “There’s a need for more research from them on the impact of their policies.”

Boivin said the report called to mind the case of Edgar Schmidt, the senior Justice Department lawyer who last year sued the government for allegedly failing to routinely evaluate whether proposed legislation violates the Charter of Rights and Freedoms.

Schmidt alleged that government lawyers are told to warn the minister about possible Charter conflicts only when the violations are unambiguous, so that even if the probability is 95 per cent there’s still no need to red-flag the problem.

Boivin said she hopes Pentney rejects any move to diminish research that outlines the consequences, unintended or otherwise, of justice policies.

The department has also reduced its subscriptions to print publications and legal databases, including QuickLaw, for savings of about $1.6 million a year starting April this year.

Justice has an annual budget of $662 million for 2014-2015, with almost 4,600 employees, many of them lawyers.

Last year, the lawyers group won a 12 per cent pay increase even as the government trimmed benefits and jobs across all departments.

CBC news

Conservative MP Mark Adler's watchdog disclosure bill defanged

Ethics committee throws out most contentious elements of Bill C-520

Kady O'Malley, CBC News, May 13, 2014

Chalk up another quiet victory for common sense by committee.

Just weeks after the government's proposal to rewrite Canada's election laws underwent a major edit at procedure and House affairs, a second Conservative-controlled committee has voted to strip the most contentious provisions in caucus colleague Mark Adler's backbench bid to police parliamentary watchdogs for potentially partisan conduct.

Under the initial draft of Adler's bill, most parliamentary officers — including the auditor general, the chief electoral officer, and the privacy, information and ethics commissioners — would be subject to extensive new disclosure requirements related to past — and even future — partisan activities. MPs on the ethics committee deleted those provisions on Tuesday.

The committee also nixed the creation of a new complaint system that would have allowed MPs and senators to ask parliamentary officers to investigate allegations that any member of their staff "had conducted their duties in a partisan manner."

Adler's bill was introduced last June, and garnered a second-reading nod of parliamentary approval in February after winning the support of the government. Not a

single opposition member voted in favour of the bill, which was widely seen as a thinly veiled attempt to rout out partisan operatives within the offices of independent officers.

It also sparked concern among the parliamentary officers whose offices would be affected by the changes.

In a rare move, five of them, including Auditor General Michael Ferguson, Ethics Commissioner Mary Dawson and Chief Electoral Officer Marc Mayrand, submitted a joint letter calling the committee's attention to their collective and respective concerns, including increasing difficulty recruiting staff and possible conflicts with existing conflict of interest rules.

Last week, Official Languages Commissioner Graham Fraser issued a final plea to the committee to consider making changes to the bill.

Adler voted to change own bill

It appears the MPs on the Conservative side of the table were listening all along.

During clause-by-clause review on Tuesday, the Conservatives used their majority to vote down several key clauses in the bill, with Adler casting his lot in along with the nays as well.

The amended version will no longer apply to parliamentary agents at all, although potential staffers will still be required to hand over a list of any and all "politically partisan positions" they held within the previous decade as a standard part of the job application process.

Those declarations would be posted to the web within 30 days of hiring.

Staffers will also have to sign a statement pledging to "conduct themselves in a non-partisan manner."

The committee is expected to wrap up clause-by-clause review later this week, at which point the bill will be sent back to the House for a final vote.

La réforme électorale approuvée par les Communes

Martin Croteau, La Presse, le 13 mai 2014

(OTTAWA) Les efforts de l'opposition n'auront pas suffi à empêcher l'adoption du controversé projet de loi C-23 sur la réforme électorale, qui a été avalisé par la Chambre des communes, mardi soir.

L'initiative du ministre d'État à la Réforme démocratique, Pierre Poilievre, a été approuvé par un vote de 146 députés contre 123. Il sera expédié au Sénat pour examen final.

« Ce projet de loi va améliorer notre démocratie, a indiqué M. Poilièvre au terme du vote. Ça relève du bon sens. »

Le projet de loi limite les pouvoirs du directeur général des élections d'enquêter sur des malversations électorales. Il va également restreindre la capacité de l'organisme d'encourager les Canadiens à voter.

Le projet de loi va aussi interdire aux citoyens de voter sans présenter une pièce d'identité ou de se présenter à un bureau de scrutin avec un répondant.

Le gouvernement Harper avait retiré plusieurs éléments des plus controversés de son initiative, fin avril, après avoir subi un barrage de critiques du grand patron d'Élections Canada, Marc Mayrand, et d'une batterie d'experts.

Le Nouveau Parti démocratique a multiplié les efforts pour battre le projet de loi conservateur au cours des dernières semaines. Encore hier soir, il a tenté de l'amender en vain.

Son chef, Thomas Mulcair, craint que le projet de loi pipera les dés en faveur du Parti conservateur. Il craint que les changements empêcheront surtout des étudiants d'aller voter.

« On disait que c'était très mauvais, a-t-il dit. Avec les changements, c'est devenu juste mauvais. »

Fair Elections Act passes third reading, expected to become law by June

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

An overhaul of Canadian electoral law is one step closer to being in place for the 2015 campaign after the House of Commons passed Bill C-23 despite ongoing calls for changes.

The Conservative government's divisive Fair Elections Act passed third reading in the House on Tuesday evening by a vote of 146 to 123. It will now be sent to the Senate, where a quick approval is expected. The government hopes to make it law by June.

Bill C-23 overhauls many of the rules for election campaigns in Canada. Chiefly, it will boost ID requirements on voting day and place limits on what Elections Canada can do publicly. It creates a registry for robocall rules, albeit one some fear will be toothless, and boosts penalties for certain offences while adding an extra day of advance voting.

Critics have warned its effect could disenfranchise some voters, reduce voter turnout and tilt the electoral playing field in favour of the Conservatives.

Facing widespread calls for change, the Conservatives last month were forced to back down on certain proposals and amend the bill. The government, however, voted down more than 200 opposition amendments – all but a few minor, technical ones – aimed at further reforms.

The man spearheading the effort, Democratic Reform Minister Pierre Poilievre, brushed aside ongoing calls for changes and said it's time to push the bill to become law.

"Now we move forward to decision day, having had all these debates [and] considered modest but fair changes. It is time for people to decide. This bill will allow Elections Canada to focus on its core mandate of running elections fairly and efficiently," Mr. Poilievre said in the House of Commons on Tuesday.

House Leader Peter Van Loan said the bill will be in place in time for the next election and it's not expected to be delayed in the Senate.

"All indications are the bill does have a lot of support – not only among elected officials in the House, but also in the Senate," Mr. Poilievre said.

The bill continues to have opponents. A long list of non-partisan experts called for changes, including some that weren't made. In return, the Conservative government attacked the motives of some critics, such as Chief Electoral Officer Marc Mayrand, before abruptly announcing amendments.

Mr. Poilievre offered no contrition Tuesday when asked if he had any regrets about the process. "I'm very happy with how it went about," he said.

NDP Leader Thomas Mulcair has said the bill would "weaken our democracy and make voting harder across the country," and NDP MPs continued to outline their problems with the bill in the waning hours of debate Tuesday.

The NDP had asked 19 specific Conservative MPs – those with an independent streak – to oppose the bill. They included Harold Albrecht, Jay Aspin, Maxime Bernier, Peter Braid, Michael Chong, Rob Clarke, Robert Goguen, Bal Gosal, Laurie Hawn, Bryan Hayes, Gerald Keddy, Ryan Leef, James Rajotte, Lawrence Toet, Brad Trost, Susan Truppe, Tim Uppal, David Wilks and Stephen Woodworth. In the end, none voted against it.

Liberal Leader Justin Trudeau has pledged to repeal the bill if elected prime minister, a pledge he reiterated Tuesday.

“The changes that have been made aren’t good enough, and if we form government in 2015, we will establish a much fairer principle around elections and repeal C-23,” he said.

Bar warns of conflict if tribunals merged under Bill C-31

BILL CURRY, The Globe and Mail, May 13, 2014

Independent experts are calling for several sections to be removed from the Conservative government’s sweeping omnibus budget bill as an expanding number of provisions come under fire, including a move to shrink 11 independent tribunals into one “mega agency.”

The latest appeal for changes came Tuesday from the Canadian Bar Association, which is calling for the government to scrap sections of the bill that would merge the staffing of 11 independent tribunals and place the new entity under the direction of the federal Justice Minister.

The group representing lawyers and judges warned at parliamentary hearings this new “mega agency” would undermine the independence of bodies such as the Public Servants Disclosure Protection Tribunal, damaging whistle-blower protection. Meanwhile, the inclusion of the Canadian International Trade Tribunal could have international repercussions, by exposing Canada to accusations from trading partners that its processes are unfair.

“It’s Canada’s international reputation that is at stake,” said Cyndee Todgham Cherniak, a tax and trade specialist with the CBA, during an appearance before the Senate national finance committee.

The concern is that whether it is a foreign country or an individual taking a case to tribunal, they are usually opposed by government lawyers from the Department of Justice. The CBA warns there would be a conflict in having tribunal staff who also work under the Justice Department.

Ms. Cherniak, an international trade lawyer, predicted “it will not be long” before someone challenges this before the World Trade Organization or other bodies. That, she said, could lead the WTO to impose penalties that would wipe out any potential savings

from merging the tribunals. Another potential consequence is that other countries could respond with increased duties on Canadian goods, which would hurt manufacturers.

The section of the budget bill would merge the back-office work of 11 independent tribunals into a new entity called the Administrative Tribunals Support Service of Canada. The government has said the shared work would include corporate services such as human resources, as well as research, analysis and investigation services.

"The objective of this organization is to allow better use of the resources and better control of the costs and to improve services that will be delivered to the tribunals," France Pégeot, special adviser to the deputy minister of justice, recently told the Senate committee. Ms. Pégeot said tribunals will still have independence from the Justice Department.

Tuesday's Senate hearing is just the latest example of strong concerns being raised by independent non-partisan experts about provisions of the budget bill that the government insists are relatively minor. Business groups are opposing the bill's changes to trademark law – with the Canadian Chamber of Commerce warning they may be unconstitutional – while lawyers from across the country have signed a letter calling for that section to be scrapped. The government says its trademark changes are designed to comply with international treaties but critics say they create many unintended consequences because industry was not properly consulted.

The budget bill, C-31, is still before the House of Commons but Senate committees are holding pre-studies of the bill. The timeline suggests the government wants the bill passed into law before the summer recess in June. It would be highly unusual for the government to accept amendments to a budget bill.

In the House finance committee, MPs heard several experts weigh in Tuesday with concern over the bill's sweeping provisions related to the sharing of tax information with the U.S. under the American Foreign Account Tax Compliance Act, or FATCA.

"The deal is a bad deal for Canada," said Queen's University law professor Arthur Cockfield, who said the U.S. is "treating us like we're the Cayman Islands."

The 11 affected tribunals are the Canada Agricultural Review Tribunal, the Canadian Industrial Relations Board, the Canadian Cultural Property Export Review Board, the Canadian Human Rights Tribunal, the Canadian International Trade Tribunal, the Competition Tribunal, the Public Servants Protection Tribunal, the Public Service Labour and Employment Board (which itself is a new merger of two tribunals), the Specific Claims Tribunal and the Social Security Tribunal.

Gregory Thomas, federal director of the Canadian Taxpayers Federation, told senators Tuesday that merging the tribunals is a positive step for government efficiency. But he also sided with critics who say the Conservatives are putting too many measures inside budget bills.

“What we’re dealing with now – these omnibus bills – aren’t in the public interest,” he said. “they aren’t serving the public, they aren’t serving Parliament and we’re opposed to them on principle.”

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ACTUALITÉS INTERNATIONAL AFFAIRES SPORTS AUTO ARTS

La Charte des droits des victimes obtient une note de «B»

La Presse Canadienne, le 13 mai 2014

Mais Sue O'Sullivan aimerait y voir d'autres changements pour renforcer encore plus la protection des victimes, a-t-elle fait savoir mardi matin, en point de presse.

Elle estime toutefois que la charte marque un profond changement de culture sur le plan législatif au Canada.

La charte fédérale met plusieurs choses de l'avant: une protection de l'identité des victimes dans certains cas, le droit de participer au processus du procès criminel et de celui de libération conditionnelle, incluant le droit d'être informées des différentes étapes, de faire valoir leur point de vue et de savoir quand et où les délinquants seront libérés. Le projet de loi oblige aussi les juges à toujours considérer le paiement d'une somme pour compenser les victimes.

Selon Mme O'Sullivan, plusieurs changements sont à considérer.

Elle juge que les victimes ne devraient pas avoir à s'enregistrer pour être tenues au courant du processus: quelqu'un devrait être chargé de les contacter.

Les victimes devraient aussi avoir l'occasion de présenter leur point de vue lorsqu'une négociation de plaidoyer de culpabilité a lieu, et aussi de choisir comment elles assisteront à une audience de libération conditionnelle - vidéoconférence, télévision en circuit fermé, etc.

De plus, les victimes ne devraient pas devoir se présenter devant un tribunal civil afin de recouvrer les sommes compensatoires qui leur sont accordées, a-t-elle indiqué: cette démarche devrait être prise en charge pour elles.

Le ministre de la Justice, Peter MacKay, avait déclaré en déposant le projet de charte en avril qu'il représentait un équilibre entre les droits des victimes et ceux des délinquants à être traités de façon juste et équitable par le système judiciaire.

Le projet avait soulevé de nombreuses interrogations car celui-ci permettait en outre le témoignage contre les conjoints, et même des témoignages anonymes dans certains cas.

Le Bureau de l'ombudsman fédéral des victimes d'actes criminels a été créé en 2007.

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thestar.com

Joe Clark, Paul Martin criticize PM's attack on chief justice

Two former prime ministers feel Prime Minister Stephen Harper's remarks about Chief Justice Beverley McLachlin were not appropriate.

Tonda MacCharles, The Toronto Star, May 20, 2014

OTTAWA—The ranks of those who are profoundly disturbed by Prime Minister Stephen Harper's comments about the chief justice of Canada now include several of Harper's predecessors in the highest office in the land.

In interviews with the Star, former prime ministers Paul Martin (Liberal) and Joe Clark (Progressive Conservative) and the top aide to former Liberal prime minister Jean Chrétien delivered scathing reviews of Harper's comments.

Martin — Harper's immediate predecessor — offered an unequivocal defence of Chief Justice Beverley McLachlin's recent actions in flagging a potential legal issue with a Supreme Court appointment.

"The chief justice acted perfectly appropriately. The prime minister has not," said Martin, who named two judges to the top court during his tenure.

Clark, who appointed one judge to the high court during his brief time in the prime minister's seat, said: "My gut (reaction) and my considered reaction was it's very inappropriate."

While the government's initial frustration over a string of losses before the high court may be understandable, lashing out at the top judge is not, he said. "I'm afraid it's part of a pattern of disrespect that has been shown to institutions by this government. What makes it even more inappropriate and more troubling is that the prime minister is persisting in it."

Chrétien was unavailable for an interview, but his former chief of staff, Eddie Goldenberg, now a lawyer in Ottawa, said Harper's conduct and that of his office is inexcusable.

"I actually find it despicable," Goldenberg said. "I can disagree with a lot of his policies or agree with some of them but this is just an attack on institutions — I'm trying to think of a word — to try to 'swift boat' the chief justice. We've never seen this in Canadian history."

The rift burst into the open two weeks ago.

The Conservative government was stung by five recent rulings at the high court that were setbacks, including two significant measures the court said required constitutional amendment: Senate reform and an interpretation of the Supreme Court of Canada Act that would allow Harper to name Marc Nadon to the court itself, which was found invalid.

Senior PMO and high-level government officials were quoted anonymously in the National Post, saying McLachlin "lobbied" against Nadon's appointment and was overreaching in rejecting key laws and policies of an elected government.

The first complainers were anonymous. Then Harper, Justice Minister Peter MacKay and Harper's spokesman Jason MacDonald doubled down and suggested McLachlin had made an "inappropriate and inadvisable" call to Harper on the effort underway to fill the high court's Quebec vacancy.

In interviews with the Star, the two former prime ministers and Goldenberg all said McLachlin had a duty to flag a potential legal question about a judicial candidate's eligibility under the act that governs such appointments.

Furthermore, Quebec judicial sources told the Star that the issue was a "real" one, alive and certainly well known in Quebec, if not Ottawa. It arose most recently around the time the Conservatives moved to fill an earlier Quebec vacancy in 2012. That search led Harper to ultimately name Richard Wagner, a judge in the Quebec Court of Appeal, to the high court.

At that time, said another source with knowledge of the government's confidential deliberations, three women from Quebec were identified as potential judicial candidates of interest to the federal Conservatives.

But Harper was not interested in merely retaining a gender balance of four women after Marie Deschamps retired. Wagner was widely respected in the province's legal community, a former head of the Quebec bar, and the son of the late Claude Wagner, a one-time Quebec justice minister and former Progressive Conservative senator. He ended up the successful candidate.

The choice of a Supreme Court of Canada judge is a prime minister's prerogative, and under Harper the selections have been finalized in his office.

But Martin and Clark told the Star that they, while in office, delegated the legwork to their justice ministers. Paul Martin turned to Irwin Cotler, still a Liberal MP, who set up a judicial advisory committee to seek input from the bar, bench, law faculties and the public — the precursor to Harper's judicial selection committee, which is made up of only MPs and dominated by Conservatives.

Martin said it is a long-standing tradition for a government to welcome a chief judge's input. He said during the search that ultimately led to two Ontario appointments on the same day — Rosalie Abella and Louise Charron (which upped the number of women on the bench to a historic high of four) — Cotler consulted McLachlin twice.

In the current dispute, said Martin, McLachlin's actions at every stage have been above board, and she made "no error" in publicly responding to suggestions she'd acted inappropriately.

"The error is all the prime minister's," said Martin. "There was no error on the part of the chief justice."

He said that "opinion on this is overwhelmingly in her favour," including that of every past president of the Canadian Bar Association and Canadian law school deans.

"For God's sake, even the American Association of Trial Lawyers came in on this issue and supported the chief justice," he said.

"The mistake the government made was in treating the chief justice the way it's treated so many other people."

Asked if some of Harper's critics are not overreacting and whether the court should instead be open to such criticism, Martin disagreed in part.

"I think the Supreme Court of Canada is a very robust institution. I do not believe the Supreme Court or the chief justice has been in any way damaged by this. Not a bit." But, he said, this kind of personal criticism is wrong. "I do believe this is damaging to institutions of government."

Clark, in his short time as prime minister, named just one Supreme Court justice: Julien Chouinard, who came from the Quebec Court of Appeal. Clark's justice minister handled the search, which was "straightforward" and included consultations with then-chief justice Brian Dickson.

He didn't recall the issue of eligibility ever arose: instead a "carefully drawn up list" of candidates came through the Justice Department. Any conversations he ever had with Dickson were simply social and informal.

Clark said he's appalled at how Harper and his officials have acted.

"We can all understand a sense of high frustration at some point, and even anger that could have led to the initial statement," he said. "But that doesn't excuse or explain its persistence."

He said the Harper government, more than any other, came to office "with very much an outsider mentality, whereas I think previous governments, probably all of them, accept not just the responsibilities but the prerogatives of other institutions in our system. I think it's fair to say they've been consistently hostile to them."

Clark cited how Harper has dealt with a litany of institutions, starting with the Commons and the Senate, landing repeated omnibus bills on the agenda, diminishing the role of private members, making Senate appointments "some of which were good and some clearly bad … it did not indicate a respect for the role and the rules of the Senate."

Harper, he said, has shown disdain for the "principle of an independent electoral commission. They've done it with regard to first ministers' conferences, which were an informal but I think very important institution."

"I think there's a pattern here that is quite a cause for concern because not only is it coming from the highest authorities of the government, it seems to be accepted by other members of the government and other members of their caucus, which is alarming."

A similar hostility extends toward non-governmental organizations that carry out an advocacy role, Clark said. "We've all from time to time been upset by an NGO that was receiving public funding being involved in advocacy often against a government. But this is much more consistent."

He sees the same antagonism toward the National Round Table on the Environment, killed in a recent budget, and the Rights and Democracy agency, which he established under Brian Mulroney. "We always knew it would be in a quasi-adversarial role to the government. That was its purpose."

Clark says criticism of the chief justice was simply too much.

"That's why the prime minister's decision, which it had to be, to persist in this — as I say the original statement may have been a statement of frustration or loss of temper — but its persistence carries it into a different league and I think it's quite alarming.

"Institutions have statutory lives of their own, but they depend upon legitimacy, and if public opinion and the legitimacy of our most basic institutions is gradually narrowed by whatever source, that's a danger for democracy. And when the source is the prime minister himself, I find that quite alarming."

Harper would likely shrug off Martin's and Clark's criticism. Since winning power in 2006, he has often taken cues from how Chrétien conducted himself in office.

But Goldenberg, Chrétien's longtime senior policy adviser, says Harper has now acted like no other prime minister in history in offering public and unwarranted criticism of a chief justice. He dismissed as "bull----" the suggestion made by Harper's office that McLachlin fired the first salvo by issuing a press release that challenged the initial anonymous comments.

“What they did is they attacked the institution of the court in a way that’s never happened before,” he said.

He said the chief justice and the prime minister have a right to talk to each other “and that’s happened often.” They are supposed to interact usually around matters of space or resources for the court’s administration, or about the court’s needs as an institution with the responsibility of reviewing laws and settling disputes.

“It might be that the chief justice will say, ‘Look, we’ve got enough experts on tax or securities but we see intellectual property is going to be a big issue in the next 10 years, or aboriginal rights, and when you’re looking at filling vacancies we hope you’ll consider some of those things.’

“It’s done all the time, and it’s always been done, and sometimes there’s a disagreement,” he said. “When Chrétien was minister of justice, he was the one who appointed Bertha Wilson to the court. The chief justice at the time, (Bora) Laskin, lobbied the prime minister for somebody else because he thought somebody else would be better.”

Goldenberg, who wrote about that appointment in The Way It Works, his book on the Chrétien years, said Laskin wanted Ontario Court of Appeal Justice Charles Dubbin for the top court. “No one thought that it was inappropriate for Chief Justice Laskin to make representations to the prime minister for the appointment of a judge whom he thought would be best for the Supreme Court.”

Chrétien too wrote in his memoir about the process of naming the first woman to the high court, saying Trudeau had someone else in mind. Chrétien said he won the day by taking it to cabinet.

Goldenberg said McLachlin was not “lobbying.”

“In this particular instance nobody had been appointed, and she said ‘be careful if you want to appoint somebody from the Federal Court.’ ”

Goldenberg said the government can argue “one way or another that the judgment on Nadon was a good judgment or a bad judgment, but that’s not the issue. The issue is calling into question the integrity of the chief justice, and by so doing you’re calling into question the integrity of the Supreme Court.

“Why I find it despicable is they are setting up the court for attacks, saying it’s illegitimate and now we can raise money this way.

“When the prime minister of the country starts to question the institutions of the country, I think it is beneath him and I think it’s disgracing his office. I think the prime minister has a responsibility to defend the institutions of the country.”

Harper has publicly said he’d be excoriated by the legal community and the media if he or a minister improperly called a judge about a case that was or could come before the courts.

Indeed, Harper's current caucus whip John Duncan was forced to resign as aboriginal affairs minister last year after it was discovered he wrote to a Tax Court judge on a case involving a constituent.

But Harper's story has shifted as the outcry continues. He now says he foresaw a court challenge, as he well may have, given that MacKay revealed in the Commons that more than one Federal Court judge "applied" to take the seat of the retired Morris Fish, a criminal law expert on the high court.

(Judicial sources and other legal sources who have previously been involved in the identification of top court candidates say judges don't "apply" for the job. However, if contacted by the Justice Department, which draws up an initial long list, candidates agree or disagree with allowing their name to stand for consideration and may submit rulings or articles to illustrate their judicial reasoning and qualifications.)

MacKay told the Star the government sought outside legal advice on the potential legal issue after McLachlin spoke to him.

McLachlin's office says it made an initial inquiry on her behalf about speaking to the prime minister, but she did not pursue it and she expressed no opinion to MacKay on the merits of the issue.

Two months later, when Nadon was appointed after Harper got a green light from three top Ontario lawyers, who included two former high court judges, McLachlin presided over Nadon's private swearing-in.

On that same day a Toronto lawyer launched a lawsuit to challenge the move. Nadon stepped aside. The government tried to retroactively change the law through a declarative amendment to allow a judge who had been a past member of the Quebec bar. But the high court ruled 6-1 that this amendment was invalid, with McLachlin siding against it too.

Only one judge, Michael Moldaver, would have allowed Nadon to take the Quebec seat. Marshall Rothstein, a former fellow Federal Court colleague and a friend of Nadon's, recused himself from the case.

McLachlin herself was named by Brian Mulroney, whose Montreal office said the former prime minister was travelling and not available for an interview for this story.

However, in his memoirs, Mulroney wrote that two months after he took office in 1984 he was already getting recommendations about appointments to the bench.

"It had been a long time since Tories appointed anybody to anything in Ottawa," he wrote.

But, he continued, "I wanted the best judges possible on the bench, and I didn't give a hoot about their political background. An independent, competent, and respected judiciary is the backbone of Canada's very existence and must be maintained by all federal governments because it is essential to the flourishing of our admired democracy."

In his time he appointed eight justices to the high court, including McLachlin in 1989, whom Chrétien later made chief justice.

“There definitely was no partisan litmus test when I appointed a member of Canada’s highest court,” wrote Mulroney.

“Canada has a moderate, centrist Supreme Court, composed of the most talented and thoughtful jurists the nation can produce. This high standard was maintained before my service as prime minister and continued afterwards under Jean Chrétien, Paul Martin and Stephen Harper, who made their own appointments.

“Generally speaking, all of Canada’s superior courts are a model of excellence, and it is vital that they remain so. If our courts were to become politicized, it would be a dark and dangerous day for Canada.”

Independent MP Brent Rathgeber is a former member of Harper’s caucus who sat on the Conservative-dominated judicial selection advisory committee that led to the appointments of Moldaver and Andromache Karakatsanis.

Rathgeber, himself a lawyer, said the government’s frustration with the court is clear: “Rather than start over on Senate reform the reaction was to blame the whole thing on an overarching Supreme Court.”

But he said when the prime minister stood up in London, Ont., and suggested “impropriety on the part of the chief justice, the necessary — and I think indisputable — inference is what he’s trying to do is try to create less respect for the court.”

“His political motivation in my view is obvious: the election’s about 15 to 16 months away and so they go into the elections and say, ‘We tried to bring in consultative elections for the Senate, we tried to bring in nine-year terms, but the Supreme Court got in our way. Can’t do it.’ I’m sure the fundraising letters have already gone in the mail.”

McLachlin, he said, acted appropriately in her capacity, not as a judge sitting on a case but as administrative head who foresaw an issue “that would create a hole in her court for an indefinite period of time, which is exactly what’s happened. We’re now in middle of May 2014 (and) the court is still sitting with one member short.”

The Harper government says it will move soon to fill the vacancy, although no formal consultations have yet begun.

Canada's legal community steps up its demand that Stephen Harper withdraw criticism of Chief Justice

An outraged Canadian legal community is marshalling criticism of Prime Minister Stephen Harper, writing an open letter to him and at the same time seeking outside international help to reaffirm the independence of Canada's top jurist.

Tonda MacCharles, The Toronto Star, May 13, 2014

OTTAWA—An outraged Canadian legal community is marshalling criticism of Prime Minister Stephen Harper, writing an open letter to him and at the same time seeking outside international help to reaffirm the independence of Canada's top jurist.

More than 650 lawyers and law teachers from across Canada released an open letter Tuesday calling on Harper to withdraw his criticism of Supreme Court of Canada Beverley McLachlin.

In apparent expectation that the government will not back down, a second letter from seven top Canadian legal academics asks the International Commission of Jurists in Geneva to investigate what they call the Conservative government's "unfounded criticisms leveled at the Chief Justice."

"We fear that the unprecedented statements of the Prime Minister and Minister of Justice and Attorney General, which question the integrity and judgment of the Chief Justice of Canada, may seriously undermine judicial independence in Canada," says the letter to Geneva.

Harper and his justice minister Peter MacKay — following a string of legislative and policy defeats at the Supreme Court — suggested nearly two weeks ago that McLachlin acted inappropriately by calling to flag a potential legal issue in the elevation of a federal court judge to a Quebec seat on the top court.

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Letter to Stephen Harper from Canadas legal community:
http://www.scribd.com/doc/223772936/Letter-to-Stephen-Harper-from-Canada-s-legal-community

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Harper and MacKay intimated that McLachlin's call amounted to lobbying on a case before the court, forcing McLachlin's office to publicly clarify she called during a consultation period last July, two months before federal court of appeal judge Marc Nadon was indeed named—launching a legal challenge the government finally lost.

Harper and MacKay have refused to back down in the face of a storm of criticism that erupted ever since. They have also not moved to appoint a new judicial candidate for the Quebec vacancy on the court.

Tuesday's letters are the latest salvo in a battle that saw public calls last week by 11 former presidents of the Canadian Bar Association and by the Council of Canadian Law Deans for Harper to withdraw his suggestion.

The first open letter lists 35 pages of signatures by members of the Canadian legal profession and legal academy and says: "We … deplore the unprecedented and baseless insinuation by the Prime Minister of Canada that the Chief Justice engaged in improper conduct."

It continues: "Public criticism of the Chief Justice impugns the integrity of Canada's entire judiciary and undermines the independence of Canada's courts.

"An independent judiciary is vital to the health of any democracy and a foundational tenet of Canada's constitutional order and the rule of law. Impugning the integrity of the judiciary, including through public and personal criticism of the Chief Justice, represents an attempt to subvert that judicial independence."

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Canadian legal academics letter to the International Commission of Jurists:
http://www.scribd.com/doc/223773557/Canadian-legal-academics-letter-to-the-International-Commission-of-Jurists

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The second letter says the actions of the Conservative government which "question the integrity and judgment of the Chief Justice of Canada, may seriously undermine judicial independence in Canada."

It lays out all the relevant dates and documents.

And it says the discussion between McLachlin and MacKay "involved a possible new appointment to the Supreme Court of Canada, a topic well within guidelines for appropriate conversations between prime ministers and chief justices."

Harper et la Cour suprême: la Commission internationale des juristes saisie

STÉPHANIE MARIN, La Presse Canadienne, le 13 mai 2014

Les attaques du premier ministre Stephen Harper contre la juge en chef de la Cour suprême du Canada risquent maintenant de dépasser les frontières du pays: il a été demandé à la Commission internationale des juristes d'enquêter sur la querelle.

Il s'agirait d'une première pour le Canada, a indiqué la professeure de droit Lucie Lamarche, l'une des signataires de la lettre à l'origine de la démarche.

Normalement, la commission enquête sur des pays où la règle de droit est plus «vacillante» qu'ici, a-t-elle fait remarquer, en entrevue à La Presse Canadienne.

Cette demande d'enquête découle de propos tenus par le premier ministre, qui a déclaré publiquement que la juge en chef Beverley McLachlin a agi de façon inappropriée lorsqu'elle aurait tenté de le contacter pour discuter du cas du juge Marc Nadon. M. Harper voulait le nommer à la Cour suprême et la juge en chef souhaitait l'avertir que cette nomination pouvait soulever des difficultés. Celle-ci dit avoir parlé au ministre de la Justice mais pas à M. Harper directement.

La nomination du juge Nadon a finalement été contestée devant les tribunaux par un avocat torontois, ce qui incité le gouvernement à demander l'opinion de la Cour suprême. Celle-ci a déterminé que le choix de Marc Nadon ne respectait pas les critères de la Loi sur la Cour suprême et qu'il ne pouvait siéger sur son banc.

Des juristes de partout au pays ont dénoncé les propos du premier ministre, estimant qu'ils portent atteinte à la juge en chef ainsi qu'à l'intégrité et à l'indépendance du plus haut tribunal du pays.

Certains d'entre eux ont ainsi décidé de demander à la Commission internationale des juristes, un organisme basé à Genève, en Suisse, de se pencher sur ces déclarations «sans précédent».

La Commission a notamment pour mission de protéger l'indépendance des tribunaux.

«Ces circonstances nous laissent avec la préoccupation que les déclarations du premier ministre pourraient intimider ou porter atteinte à la capacité de la Cour suprême à rendre justice objectivement et justement», est-il écrit dans la demande d'enquête.

Selon la professeure Lucie Lamarche, du département des sciences juridiques de l'Université du Québec à Montréal (UQAM) et aussi de l'Université d'Ottawa, la position tenue par l'actuel gouvernement - qui a refusé de retirer ses propos à l'égard de la juge McLachlin - pourrait «équivaloir à une certaine dose d'intimidation» envers la magistrature et la juge en chef du Canada.

Si elle accepte d'enquêter, la Commission ne peut que formuler des recommandations non contraignantes.

Mais Mme Lamarche estime que la démarche a du poids car elle pourrait entacher la réputation du Canada sur la scène internationale. Et selon elle, il est primordial d'éviter toute récidive.

Le même jour, 652 juristes, avocats, professeurs de droit et anciens présidents de l'Association du Barreau canadien ont cosigné une lettre ouverte, adressée à Stephen Harper.

«Nous déplorons (...) les insinuations, sans fondement et sans précédent, du premier ministre canadien», est-il écrit dans la missive.

«Une magistrature indépendante est vitale pour toute démocratie. C'est un élément fondamental de l'ordre constitutionnel canadien et de la règle de droit. Attaquer l'intégrité de la magistrature, y compris par des critiques personnelles adressées publiquement à la juge en chef, constitue une tentative de saboter l'indépendance judiciaire», ajoutent les signataires.

Le groupe demande formellement au premier ministre de clarifier ses déclarations publiques dans le but de dissiper toute impression que la juge en chef s'est comportée de façon inappropriée.

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The real reason behind Harper's Supreme Court Spat

Could it be that the real cause of Harper's annoyance with Canada's highest court is that his own appointments to the Supreme Court have turned against him?

Allan C. Hutchinson, special to The Toronto Star, May 12, 2014

Prime Minister Stephen Harper may be surprised that his own appointments to the Supreme Court have not made decisions according to Conservative Party ideology, writes Allan C. Hutchinson.

That Prime Minister Stephen Harper is certainly miffed with the Supreme Court and especially Chief Justice Beverley McLachlin is clear. His decision to go public seems both petulant and ill-advised.

But the exact reasons for his bitterness are less obvious and apparent. They run much deeper than the fact that his government has recently lost a number of high-profile appeals to the Supreme Court. In his world-view, he feels betrayed.

Defeats like the recent Senate Reference, the nixed Nadon appointment, and the rejection of stricter sentencing rules are good reason for any prime minister's nose to be out of joint. He believes that he should get the first and last word on the political course of law and government. And he may have a point.

But the deeper and more revealing account of his annoyance is that his own appointments to the Supreme Court have turned against him. In his tenure, he has managed to appoint five of the existing eight members of the Supreme Court. With a new appointment imminent, he will have appointed six of the nine. Moreover, the Chief Justice herself is an appointment by another Conservative prime minister, Brian Mulroney.

It appears that Harper thinks that those five (and soon-to-be six) should repay the confidence that he put in them by returning the favour. He appointed them because of their conservative credentials and he expects them to remain true to not only the conservative viewpoint, but also his own version of it.

While there is no doubt that politics are a major driver of Court decisions, to imagine that a judge's ideology maps directly onto that of a political party, Liberal or Conservative, misunderstands the whole adjudicative project. Judicial ideology is focused and calibrated differently than party politics.

For judges on both sides of the political divide, the primary concern is the legitimacy and power of the Supreme Court itself. Whatever the broader political values of individual judges on substantive matters, the judiciary as a whole is devoted to ensuring that its own integrity and influence is paramount in their decisions and their impact.

This means that they will set aside party-political affiliations and leanings when the Court's political authority and stature is at stake. In all the cases that have riled Prime Minister Harper, the substantive issue took a distinctly second place to the judges' collective concern to preserve the primary role of the Supreme Court in deciding how the Constitution should be interpreted and what it meant for government actors.

Their message is loud and clear — it is the judges, not the prime minister, that call the constitutional shots. Most importantly, they will not countenance the appearance of politicians playing fast-and-loose with legal texts and doctrines. At the risk of sounding facetious, this remains a decidedly judicial prerogative. The prime minister can continue to be miffed by that state of affairs, but his appointments, no matter how apparently partisan, will not change that fact.

The available empirical research, albeit largely American, strongly suggests that judges do tend to drift in their ideological alliances. After an initial display of solidarity with their appointing prime minister, they tend to deviate in a variety of ways; some shift right, others left, and a few back-and-forth. There is either a hardening of views or a relative transformation.

What else explains why in 2007 a comparatively conservative-dominated Supreme Court reversed its own history and recognized a right to collective bargaining under the Charter?

So where does this lead the prime minister and his successors, Liberal or Conservative, in making future appointments? While they will likely be best advised to go with those who share their broad political dispositions, they should accept that their choices are likely to have only guaranteed short-term payoffs, mainly appeasing the contemporary party-base.

If Prime Minister Harper persists in his spat with the Chief Justice, he will only reveal that he does not have a sophisticated appreciation of judicial politics. And he is likely to reinforce, not soften those politics to boot.

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Jonathan Kay: Beverley McLachlin, and judges everywhere, should let their judgments do the talking

Jonathan Kay, National Post columnist, May 13, 2014

Earlier this year, U.S. Supreme Court Justice Sonia Sotomayor appeared at Yale Law School, where she spoke about "her jurisprudence, her agreements and disagreements with colleagues, and her outreach to the wider public."

"If the purpose [of a dissenting judicial opinion] is just to say 'I'm right, you're wrong,' I think it's not very useful," she told her audience. "The purpose should be broader than that. Often, you're talking to Congress; sometimes, you're talking to the executive branch; sometimes, you're talking to the public in the sense of engaging them around an issue that might get missed."

The idea that Supreme Court Justices must maintain some sort of informal dialogue with the rest of government, and indeed with the broad public, has become increasingly common in recent years. We live in an age when our once-remote elites are supposed to be approachable and transparent. If Stephen Harper gives piano recitals and the Pope has a Twitter account, why should we surprised to see Justice Sotomayor speak repeatedly to the broad public about how her upbringing has shaped her strong support for

controversial affirmative action policies, or see her U.S. Supreme Court colleague Antonin Scalia holding forth on (as he sees it) the pernicious liberal bias contained in The Washington Post and The New York Times?

It is hardly shocking to learn that these judges have private lives, back stories and political biases, of course: The presence of black robes does not make anyone less of a human being. But the administration of justice at the highest levels should demand a certain detachment from politics and the culture wars. Ms. Sotomayor's extensive autobiographical musings about race in America put affirmative actions opponents on notice that they can expect an uphill battle when she writes her judgments — just as Justice Scalia's admission that he "couldn't handle" the Washington Post's allegedly "slanted and often nasty" liberal tone sends a similar message to leftists.

Unlike the United States, Canada does not have a rigid system of separation of powers. But our Supreme Court is every bit as powerful as its American counterpart when it comes to interpreting constitutional questions. And in this country, too, problems can arise when Supreme Court Justices step out of their traditional roles as neutral and detached arbiters.

Thomas Mulcair seized on the claims, and advanced somewhat hysterical suggestions about the current Supreme Court of Canada trying to cover up the 30-year-old supposed scandal

Last year, for instance, a Quebec separatist named Frederic Bastien published a book, La bataille de Londres, arguing that then-Supreme Court chief justice Bora Laskin had provided discreet tips to Canadian and British officials about how to ensure that the patriation of the Canadian constitution withstood constitutional scrutiny. No one in the rest of Canada cared much, but separatists in Quebec made a great fuss about the supposed revelation. Even Thomas Mulcair seized on the claims, and advanced somewhat hysterical suggestions about the current Supreme Court of Canada trying to cover up the 30-year-old supposed scandal. In the end, it all came to nothing, but it shows how sensitive the issue of a Supreme Court Justice's out-of-courtroom role in society can become.

All of this brings us to the current controversy involving Supreme Court of Canada Chief Justice Beverley McLachlin, who has admitted to making phone calls to Justice Minister Peter McKay and Stephen Harper's Chief of Staff to offer warnings about whether Marc Nadon fulfilled the criteria, as a Quebec judge, listed in The Supreme Court Act. "Because of the institutional impact on the Court, the Chief Justice advised the Minister of Justice, Mr. MacKay, of the potential issue before the government named its candidate for appointment to the Court," the Chief Justice's executive legal officer told the National Post's John Ivison two weeks ago. "Her office had also advised the Prime Minister's Chief of Staff, Mr. Novak. The Chief Justice did not express any views on the merits of the issue."

The Chief Justice ended up creating a political controversy that has elicited ugly, pointless anti-Court comments from various Tories

The problem here is that, as Dennis Baker and Rainer Knopff argued in the National Post last week, the Chief Justice's contention that she was just flagging a "potential issue" seems to conflict with her subsequent conclusion that "the requirement of current membership in the Quebec bar has been in place — unambiguous and unchanged — since 1875." If the Chief Justice had already made up her mind on this apparently "unambiguous" issue (as seems likely), the most prudent course would have been to keep her powder dry until it was time to actually weigh in on the Nadon issue. Instead, she ended up creating a political controversy that has elicited ugly, pointless anti-Court comments from various Tories, and turned the Court's otherwise sound and sensible judgment on Nadon's eligibility into a subject of political gossip.

Judges — especially the ones who sit on the highest court — have extraordinary power in our society. The best way to ensure that their stature remains unsullied by needless controversy is to confine their public pronouncements, as much as possible, to the judgments they deliver in regard to the cases they hear in their courtrooms.

The McLachlin mess: The Harper government's attempts to explain

The unexplained explanations

Aaron Wherry, Maclean's, May 12, 2014

Before we all forget about that time the Prime Minister accused the Chief Justice of doing something inappropriate, it's probably worth dwelling one last time on the explanations that Conservatives seem content to leave behind (and possibly even believe themselves).

Here again is the column by John Ivison that started everything. And here again is the entirety of the statement from the Chief Justice's office on the matter of the Marc Nadon appointment.

The Chief Justice did not lobby the government against the appointment of Justice Nadon. She was consulted by the Parliamentary committee regarding the government's short list of candidates and provided her views on 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 within judicial and legal circles. Because of the institutional impact on the Court, the Chief Justice advised the Minister of Justice, Mr. MacKay, of the potential issue before the government named its

candidate for appointment to the Court. Her office had also advised the Prime Minister's Chief of Staff, Mr. Novak. The Chief Justice did not express any views on the merits of the issue.

These two paragraphs were apparently something of a problem for the government. The Canadian Press reports that "Among Conservatives, an internal narrative has emerged that McLachlin herself is to blame for fuelling the controversy, having responded to a query by a National Post reporter in the first place." CP then quotes Conservative MP Stephen Woodworth as saying the Prime Minister was somehow attacked for not speaking with the Chief Justice and thus had to respond, but it's not clear who, in that understanding, attacked the Prime Minister.

Justice Minister Peter MacKay made that internal narrative public last Wednesday when he stood in the House and offered that "this entire subject began when a Supreme Court spokesperson released a statement to the press, to which we felt it was incumbent to respond and clarify."

Setting aside the question of whether or not the Chief Justice should have responded to the allegations of anonymous senior Conservatives, what precisely had to be clarified about the Chief Justice's statement? His office won't say.

Contra Woodworth's understanding, it doesn't seem to have been until the Prime Minister's Office responded to the Chief Justice's statement that there was any suggestion that the Prime Minister had refused to take a call from the Chief Justice.

Here again is that statement from the PMO.

Neither the Prime Minister nor the Minister of Justice would ever call a sitting judge on a matter that is or may be before their court.

The Chief Justice initiated the call to the Minister of Justice. After the Minister received her call he advised the Prime Minister that given the subject she wished to raise, taking a phone call from the Chief Justice would be inadvisable and inappropriate. The Prime Minister agreed and did not take her call.

The Department of Justice sought outside legal advice from a former Supreme Court justice on eligibility requirements of federal court judges for the Supreme Court of Canada. This legal advice was reviewed and supported by another former Supreme Court justice as well as a leading constitutional scholar, and was made public. None of these legal experts saw any merit in the position eventually taken by the Court and their views were similar to the dissenting opinion of Justice Moldaver.

As CP notes, here is where the matter became something else entirely. Now the government was suggesting that the Chief Justice had done something inappropriate. An allegation the Prime Minister's Office later clarified to me.

But when the Prime Minister returned to the House last week, he basically refused to repeat the allegation. Instead, he settled on an explanation that somehow someone had questioned his knowledge and so his office had sought to clarify.

To wit: “Mr. Speaker, last week, it was suggested that I was not aware of a question about eligibility for appointment of judges to the Supreme Court.”

And also: “Mr. Speaker, once again, as I have said before, it was alleged last week by another source that the government, myself particularly, were not properly informed of issues of eligibility on the Supreme Court appointment.”

Who suggested this? Who made such an allegation? The Prime Minister’s Office won’t say.

Meanwhile, the parliamentary secretary to the justice minister attempted at one point last week to deny the suggestion that the Chief Justice had been accused of doing anything inappropriate and even went so far as to say that “Nobody is attacking the Chief Justice’s credibility here,” a reassurance that no one else in the government, to my knowledge, has so far repeated.

So after the Chief Justice saw fit to respond to allegations of impropriety by anonymous senior Conservatives, the Prime Minister’s Office came forward with an implicit allegation that the Chief Justice had behaved inappropriately, an allegation it later made explicit, but an allegation that the government has seemed reluctant to repeat since and an allegation the parliamentary secretary has attempted to refute, while the Justice Minister has ventured that the Chief Justice started all of this and the Prime Minister has suggested someone impugned his credibility without specifying who that someone is.

And barring any further comment, that’s where things will apparently be left to stand.

Perhaps at his next media availability, the Prime Minister will take a moment to expound on this and explain precisely, and in detail, his view of this episode—what precisely was inappropriate about what the Chief Justice did, was it inappropriate for her to contact the Justice Minister and Mr. Harper’s chief of staff, if the government felt she did something inappropriate why didn’t it say so sooner, should she really have let those anonymous attacks stand without response, would that not have harmed the court, why did the government feel it necessary to accuse her of doing something inappropriate in its initial statement, who questioned the Prime Minister’s knowledge of the law and does he agree with the parliamentary secretary who said the Chief Justice’s credibility was not being attacked here?

Or perhaps he is resigned to the idea that Twitter has made it impossible to carry on a thoughtful conversation about anything.

Ten years from now, someone—probably Paul—will write a book that explains the exchange of statements between the PMO and the Chief Justice and the seven days that ensued. For now we might debate whether this is indicative of a particular era in political communication or a uniquely odd moment. I think I might argue for some combination thereof.

THE LAWYERS WEEKLY
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Tension grows following PMO 'political smear'

By Cristin Schmitz, The Lawyers Weekly, May 16, 2014 issue

Lawyers say a "baseless" and "unprecedented" personal attack on Canada's top judge launched by Prime Minister Stephen Harper and Justice Minister Peter MacKay this month signals a potentially dangerous escalation of the Conservatives' anti-judge rhetoric.

Following recent high-profile losses at a Supreme Court dominated by Harper's appointees — who quashed his signature Senate reform plans and his Supreme Court appointment of Federal Court of Appeal Justice Marc Nadon — observers queried whether the PM now considers Chief Justice of Canada Beverley McLachlin a fair political target due to the failure of his unconstitutional initiatives.

"In my view…this counts as a political smear," University of Ottawa law professor Carissima Mathen told The Lawyers Weekly, noting she was "not aware of any prime minister criticizing any chief justice of Canada for any reason" in the past — let alone for actions that "in this instance were neither wrong nor inappropriate."

The Canadian Bar Association, the Advocates' Society, legal academics and many others within the legal community called for Harper, MacKay and the Prime Minister's Office to withdraw their statements implying that Chief Justice McLachlin behaved inappropriately last July when her office took preliminary steps to set up a telephone call with Harper to warn him that the potential appointment of a Federal Court or Federal Court of Appeal judge to fill a Quebec seat on the Supreme Court could face legal difficulties. The Chief Justice, had previously alerted MacKay to the same issue.

This month, the PMO intimated to reporters that her actions were tantamount to calling the prime minister about a current or pending court case.

"It is the proper role of the Chief Justice to flag potential ineligibility issues when a seat becomes available on the Supreme Court of Canada," Richard Parsons, president of the Trial Lawyers Association of British Columbia, said in a May 5 statement. "Chief Justice McLachlin acted appropriately in doing so…Prime Minister Harper's criticism of the Chief Justice is not only unwarranted, but also could have the effect of bringing the administration of justice into disrepute."

Parsons added that Harper's criticism was not only "baseless" it also "smacks of political bullying."

CBA president Fred Headon called on the government to "clarify" that the chief justice "did not act inappropriately. Their comments, so far, cast aspersions, and that will, we're afraid, serve to undermine the court and needs to be rectified quickly."

At press time, the government had not backed down. "The fact of the matter is that in terms of the [Federal Court] eligibility question it was my understanding that that was a matter that could come before the court, in fact Mr. Speaker the government later referred the matter to the court," Harper told the Commons on May 6. "For that reason, Mr. Speaker, I chose not to have a discussion with the court on that question but instead, Mr. Speaker, discussed it with independent legal experts and we acted on their advice."

Headon said the prime minister's comments "keep coming back to this idea that the chief justice called [him] about 'a case.' " But there was no "case" during the consultation phase on filling the Supreme Court vacancy and "suggesting otherwise is what is unfairly casting aspersions on the chief justice."

A timeline released by the chief justice's office revealed her contact with MacKay and the PMO occurred in late July, two days after the ad hoc parliamentary committee vetting candidates to replace retired Supreme Court Justice Morris Fish of Quebec privately consulted with the chief justice and presumably revealed to her the list of candidates provided by the government, which would have included Justice Nadon and reportedly at least one other Federal Court of Appeal judge. The prime minister named Justice Nadon to the top court in October, and the judge's eligibility was subsequently challenged in court.

The chief justice notes she never followed through with a phone call to Harper, but MacKay, backed by Harper, said he advised the prime minister not to take her call because to do so would be inappropriate.

"Neither the Prime Minister nor the Minister of Justice would ever call a sitting judge on a matter that is or may be before their court," a PMO spokesperson told reporters, a position echoed later by both Harper and MacKay. The PMO suggested it was "inappropriate" for the Chief Justice to ask to discuss with the prime minister a matter that could end up in court.

The chief justice's office responded with a statement that "at no time was there any communication between Chief Justice McLachlin and the government regarding any case before the courts."

"Given the potential impact on the court, I wished to ensure that the government was aware of the eligibility issue," the chief justice said. "At no time did I express any opinion as to the merits of the eligibility issue. It is customary for chief justices to be consulted during the appointment process and there is nothing inappropriate in raising a potential issue affecting a future appointment."

Headon warned that if the government did not "clarify" the situation "the implications could be very serious…because it will remain a precedent of sorts in our history as to how the different branches interact, and remains a cloud hanging over the court that unjustifiably could raise concerns in the minds of those who are appearing before our

courts about its impartiality, its independence, [and] its ability to freely interpret and apply the laws."

University of Ottawa emeritus law professor Ed Ratushny said parliamentary rules forbid MPs from personally attacking judges. "It reflects a much broader principle, and that is that members of government institutions must respect, and try to maintain public confidence, in other institutions," he said. "In this case, to me, this was clearly an act of disrespect on the part of the Prime Minister ... and was done in co-operation with the Minister of Justice who has a special role in relation to the judiciary as well, and I think it's very unfortunate. In this case there was more innuendo than a direct attack, but the consequences are the same."

If the government believed the chief justice acted inappropriately — and could back it up with facts — the proper course would have been to complain to the Canadian Judicial Council or ask her to recuse herself from the Nadon Reference, but it did not do so, Ratushny pointed out. "There was a clear avenue for them if they wanted to make an issue of this to do this in a legal manner and in the proper forum rather than through press release."

He suggested the government's actions in the Nadon matter, including introducing legislation rejected by the Supreme Court as unconstitutional, "almost seems to invite opportunities for the government to say that 'We want to do all kinds of great things, but the courts aren't letting us'…There may be some political strategy involved here that they can paint the judiciary as an elitist institution that doesn't understand the common person…but it's very unfortunate because it's not the appropriate way for a government to behave, in my view."

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Ottawa's new pension reform legislation will force stakeholders to face tough questions

Dan Ovsey, Financial Post, May 13, 2014

The federal government's recently announced pension proposal to allow crown corporations and organizations within federally regulated industries to voluntarily adopt target benefit pension plans served two specific purposes.

On the one hand, it quashed Ontario Finance Minister Charles Sousa's speculation that Ottawa was aiming to make Pooled Registered Pension Plans (PRPPs) mandatory. On the

other hand, it busted open the door of discussion on what has the potential to become the future pension model for Canadian workers.

The target benefit model gives employers and employees joint sponsorship of a pension plan that offers no guaranteed benefit to plan members, but rather bases pension benefits on the funding status of the pension fund.

Federal Minister of State for Finance, Kevin Sorenson, has gone out of his way to emphasize that the proposal is not a harbinger for federal public service pension reform, but rather a mechanism to relieve the angst felt by both employers and workers in the federally regulated private sector around the sustainability of the traditional defined benefit pension.

"We want to answer the concerns some have on this," says Mr. Sorenson. "If a lot of employees are worried that they're in a defined benefit plan and being moved into a defined contribution plan, I think they would be the first to ask for a third option."

'What the people of Detroit have'

To be sure, there is just cause for worry. It wasn't quite three years ago that Air Canada's flight attendants – whose pension plan was grossly under-funded – were forced to capitulate to a hybrid model that would see new workers maintain a pension that is half defined benefit and half defined contribution.

Such scenarios have swelled the chorus of voices calling for a more moderate alternative to the defined contribution plan, including individuals like Jim Leech, the former CEO of the Ontario Teachers' Pension Plan and co-author of The Third Rail: Confronting Our Pension Failures, who sees the target benefit pension as the most likely salvation for pension contributors in Canada – particularly those whose pension plans seem to be in free fall.

"You cannot have a plan that is entirely dependent on the financial well being of your sponsor," says Mr. Leech. "That's what the people of Detroit have. That's what the people at General Motors and Nortel had… For the betterment of employees, a plan has to be sustainable and have the instruments to allow it to navigate through good and bad times."

Mr. Leech sees the target benefit model as a more practical alternative to the hybrid pension introduced at Air Canada where the plan sponsor essentially has to concurrently administer two plans. Rather than create a two-tiered model, he says, better for sponsors to move to a target benefit plan that would allow them to remove ancillary benefits, such as guaranteed inflation indexing, in the event a plan becomes underfunded.

Planting seeds

Just how favorably plan sponsors in the federally regulated industries and crown corporations view the legislation remains to be seen. The consultation period for the proposed legislation is still ongoing and the targeted employers remain fairly tight lipped about their amenability to adopt a target benefit model.

David Burke, Canadian retirement leader at Towers Watson, says he has received anecdotal information from at least one of the target organizations that the proposal would be the best way to create something sustainable for both sponsors and members. Mr. Burke says that if the target benefit plan is successfully implemented, it could have the potential to draw in defined contribution sponsors, as well.

"I think even if you're a defined contribution sponsor today there are reasons why you might want to consider this type of design over time, but I think the short-term potential users of this type of target benefit plan is… current defined benefit sponsors, whether it's private sector or public sector."

Mr. Burke's colleague, Ian Markham, Towers Watson's senior actuary, sees Mr. Sorenson's proposal as perhaps planting the seeds for future pension reform at the provincial level. To be sure, some provinces have already been eyeing reforms. New Brunswick recently forced its own public service workers into a target benefit plan based on the Dutch pension system, and earned the ire of organized labour in doing so.

But Mr. Markham suggests there are alternative ways of introducing a target benefit plan. "There's a different kind of model out there — which sounds like it's the kind of model that B.C. and Alberta may be leaning towards — and it's possibly a simpler way of making these work."

Whether it's crown corporations, federally regulated industries or provincial civil servants, sponsors interested in introducing a target benefit plan as an alternative to a defined benefit plan will have to contend with the protests of organized labour, which remains gun shy after observing the outcome of negotiations in New Brunswick.

No dice: unions

Some observers believe union leaders — who have watched the decaying sustainability of defined benefit plans – will be amenable to the target benefit option.

"I think smart unions understand that they want to do everything they can to maintain the solvency and sustainability of their benefit," says Tyler Meredith, research director at the Institute for Research on Public Policy. "If it means that they go from having 100% guarantee on benefits to 95% guarantee on a blended portion of the ancillary and core benefits, I think that's a pretty good deal, provided there's equal representation of members' interests and there's a plan for dealing with deficit that's clearly spelled out."

Several other industry observers have also stated that organized labour will eventually be forced to contend with the reality that defined benefit pensions are slowly disappearing and that a target benefit model is far more attractive than the current alternative — the defined contribution plan.

No dice, says the unions representing the vast majority of federally regulated workers say, who take issue with the idea that the target benefit model is a mutually agreeable middle ground.

Paul Moist, national president of the Canadian Union of Public Employees (CUPE), says, "We would be resisting a move to a target benefit plan because it's crystal clear by all commentators… that from a worker point of view, to secure retirement a defined benefit plan provides the best security."

Teamsters Canada president Robert Bouvier, says, "I'm totally against it," adding that he believes the target benefit model is an easy out for employers looking to escape their pension responsibilities while still being able to reap the benefits of any surpluses. "What they [employers] are looking at is: at the end of the day, if there's a surplus we keep it and if it's short, you guys pay."

Unifor, the union representing the largest number of federally regulated employees, says there may be extreme situations where a target benefit model can serve as a viable alternative to a defined benefit plan, but in general sees the target benefit model as an unattractive option unless it's replacing a defined contribution plan.

"This is not an exercise in raising the water level that people are at in terms of defined contribution plans, but it's about lowering the water level in terms of defined benefit plans," says Corey Vermey, national representative of Unifor's pension and benefits department.

Both Unifor and Teamsters say they're concerned that should the federal proposal become legislation, it could allow the Treasury Board to impose a target benefit model on crown corporations in the event of a labour-negotiation stalemate.

But Mr. Sorenson insists the idea is not to force anyone's hand: "It's for the company boards and leadership teams and employees and retirees, and in some cases unions — those representing employees — to sit down and look at pension options. It is not something we would move companies into."

Plan conversion, inter-generational equity

Even if plan sponsors were to convince organized labour to adopt the target benefit model, a host of other challenges remain, not least of which would be the question of whether or not already accrued benefits under a defined benefit model should be rolled into the target benefit plan (as they were in New Brunswick) or managed separately.

In addition, a target benefit model for a currently underfunded pension plan would force the joint employer/employee sponsors to consider raising current workers' contributions to subsidize the plan's shortfall – bringing into debate the issue of inter-generational equity.

All the more reason, says Mr. Leech, to expedite the introduction of conditional benefits: "You do have to worry about intergenerational equity and I would argue that the sooner you start making benefits conditional, the better."

In essence, the federal proposal may generate more questions than it answers, but many industry observers believe that's just the point – to generate the tough questions that need to be addressed to pave the way for pension reform.

As Mr. Meredith puts it: "The value of this is that it begins to set about what I hope will be a more comprehensive discussion amongst regulators about how they create a framework for target benefit design that allows employers to go a bit more beyond the design of the defined contribution plan without adopting all the features and risks associated with a defined benefit plan."

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Supreme Court upholds security certificate law in Mohamed Harkat terror case

Tonda MacCharles, Toronto Star, May 14, 2014

OTTAWA—The Supreme Court of Canada unanimously upheld revised security certificates laws Wednesday along with the use of secret evidence to deport foreign-born terrorism suspects as constitutional.

In doing so, the 8-0 decision also concluded a security certificate — a kind of special immigration warrant — issued against Algerian-born Mohamed Harkat is reasonable.

It is a major nod to the Conservative government's 2008 redesign of the security certificates that brought in the use of security-cleared special advocates who have access to secret state evidence although they are not allowed to disclose that evidence to the defence.

However, it may not be the end of a long battle for Harkat, pegged by Canada's security agencies as a suspected Al Qaeda sleeper agent.

For years, Ottawa has sought to deport Harkat insisting he is a threat.

But Harkat's lawyers say Canada cannot deport anyone to face a risk of torture as they argue he would be in Algeria, and are expected to fight further efforts to remove him.

Under immigration law, Ottawa must conduct a preremoval risk assessment to evaluate if Harkat's fears of torture are well-grounded. Harkat last year had an electronic monitoring bracelet removed last year as his appeals ground on. He was expected at the high court to be briefed by his lawyers on the ruling's release.

In the past, the Supreme Court has ruled government should not remove individuals where there is a substantial risk of torture. However, it also said there may be undefined "exceptional circumstances" where removal is warranted.

Chief Justice Beverley McLachlin wrote Wednesday's decision which found the security certificate provisions in the Immigration and Refugee Protection Act do not violate a person's "right to know and meet the case against him, or the right to have a decision made on the facts and the law."

In Harkat's case, the court found he had sufficient information about the case against him, and upheld Federal Court judge Simon Noel's conclusion the certificate against him was reasonable.

Harkat is suspected of running guest houses for training Chechen terrorists in Pakistan on behalf of Al Qaeda-affiliated groups. He came to Canada in 1995, claiming refugee status.

Arrested in 2002 on suspicions he was a "sleeper agent," Harkat has long denied the allegations against him. His Canadian wife Sophie Lamarche and a wide group of supporters have vowed to continue the fight to prevent his deportation.

The Supreme Court judges were unanimous on most key aspects of the case.

Overall, the high court found the special advocate regime is constitutional, that CSIS informants do not have a special "class privilege" or blanket legal protection for their identities, like police informants.

The majority said the informants' tips are used in legal proceedings where the rules for hearsay evidence are laxer than in criminal courts, and said it would be up to Parliament to extend protection further.

However two judges, Rosalie Abella and Thomas Cromwell, dissented and would have extended new protections to CSIS informants saying those who come forward with information about a potential terrorist threat often "risks his or her life" if their identity is disclosed.

Despite upholding the regime, the Supreme Court majority said it was still "imperfect" and laid out guidelines for judges to ensure fairness of the proceedings. Though they upheld the use of redacted summaries of evidence even in cases like Harkat's where original tapes were destroyed by CSIS, the court said CSIS informants may be called to testify in secret, even cross-examined "as a last resort."

The ruling said federal court judges who review security certificates have a duty to ensure the fairness of the process especially because so much may be held in secret;' they must be "vigilant" in that duty and be "skeptical" of governments' "overclaiming" national security in a bid to protect secret information.

"Only information and evidence that raises a serious risk of injury to national security or danger to the safety of a person can be withheld," wrote McLachlin. The judge "must be

vigilant and skeptical with respect to the claims of national security confidentiality and must ensure that only information or evidence which would injure national security or endanger the safety of a person is withheld," she said. "Systematic overclaiming would infringe the named person's right to a fair process or undermine the integrity of the judicial system." That could require a judge to resort to excluding evidence or requiring disclosure to the defence.

The ruling comes seven years after the country's top court sent Parliament back to the drawing board after it threw out security certificates as unconstitutional violations of the right to a fair hearing.

That regime — set out in the Immigration and Refugee Protection Act — was used by Liberal government used in several high profile post Sept. 11 terror cases. In 2007, the high court found it unconstitutional. The Conservatives rewrote the law and reintroduced a system modelled on the British regime in 2008.

The high court judges had heard part of the historic case, including the national security evidence, behind closed doors, at a secret hearing in an undisclosed location.

It was only the second known time the country's top court moved arguments out of public view. The first, more than a decade ago, was a hearing into the use of investigative hearings in the Air India investigation.

On Wednesday, it said written summaries prepared by CSIS of intercepted communications may be accepted as evidence even if the original tapes are destroyed, but said the government must provide as much evidence as possible to a person in order to justify its actions.

The court also said the ministers of immigration and public safety who sign such certificates are not obligated to go back to foreign intelligence agencies to confirm information they present, but must make reasonable attempts to provide updated information to the judge and special advocates.

Lawyer Barbara Jackman of the Canadian Council for Refugees intervened at the hearing last fall, and warned that courts were on a slippery slope.

She said while there have been some 30 security certificate proceedings in the past 22 years, there is a huge upswing in the use of secret evidence and closed-door proceedings in a range of other civil proceedings, notably immigration matters.

Since 2008 the Federal Court has conducted secret proceedings in more than 100 cases of judicial review of decisions such as sponsorship applications where the Ottawa cites national security as a reason to bar a public hearing, she said.

La Cour suprême confirme la validité des certificats de sécurité

Hugo de Granpré, La Presse, le 14 mai 2014

La Cour suprême du Canada a confirmé mercredi la validité constitutionnelle du nouveau régime de certificats de sécurité instauré par le gouvernement Harper en 2008. La décision ouvre la porte à la déportation d'une personne arrêtée à Ottawa dans la foulée des attentats du 11-Septembre.

La Cour se penchait sur la cause de Mohamed Harkat, arrêté en 2002 et soupçonné d'être un agent dormant d'Al Qaeda. M. Harkat est l'une des trois personnes à être toujours sous le coup d'un certificat de sécurité au Canada.

Le résident d'Ottawa de 45 ans demandait à la plus haute cour du pays d'invalider son certificat et de déclarer l'ensemble du régime inconstitutionnel, parce qu'il contreviendrait à son droit à un processus équitable.

Les juges ont refusé à l'unanimité et statué que le régime modifié en 2008 atteignait un équilibre acceptable entre les droits des personnes visées et le besoin de protéger la sécurité des Canadiens.

« Il n'est pas facile de concevoir un régime qui instaure un processus fondamentalement équitable tout en protégeant les renseignements confidentiels touchant la sécurité nationale », a noté la juge en chef Beverley McLachlin.

Déportation?

Le gouvernement fédéral peut émettre un certificat de sécurité à l'encontre d'un non-citoyen qui pose une menace pour la sécurité nationale. Ce certificat permet de détenir la personne et, éventuellement, de le déporter, sans que cette dernière puisse consulter l'ensemble de la preuve déposée contre elle.

La décision de mercredi signifie que des procédures pour la déportation de M. Harkat vers l'Algérie pourront être entreprises. Ces procédures risquent d'être contestées à leur tour et les débats judiciaires pourraient durer encore plusieurs années. Il pourrait notamment faire valoir qu'un renvoi dans son pays d'origine l'exposerait à un risque de torture.

M. Harkat a été détenu pendant plus de 40 mois, mais il vit maintenant chez lui à Ottawa, où il est soumis à certaines conditions de semi-liberté. Il ne porte plus de bracelet GPS, mais ses communications électroniques sont surveillées.

La Cour suprême a statué en 2007 que le régime de certificats de sécurité remodelé après les attentats du 11 septembre 2001 était inconstitutionnel, puisqu'il ne permettait pas une communication suffisante de la preuve à la personne désignée, notamment.

Le gouvernement Harper a modifié le régime l'année suivante pour y inclure un nouveau joueur: un avocat spécial susceptible de recevoir une preuve plus complète et de participer aux audiences à huis clos. M. Harkat jugeait que les règles qui touchent les communications de ces avocats spéciaux avec leurs clients sont trop restrictives.

« Le régime requiert que la personne visée demeure suffisamment informée - c'est-à-dire qu'elle doit être en mesure de donner des instructions utiles à ses avocats publics et des indications et des renseignements utiles à ses avocats spéciaux », a statué la juge McLachlin.

L'arrêt fournit une marche à suivre détaillée pour tous les acteurs qui seront impliqués dans ces procédures dans l'avenir. Il s'appuie fortement sur l'importance de la discrétion du juge de première instance, chargé par la loi d'examiner la validité du certificat. À noter que deux juges ont inscrit une dissidence sur une question plus technique de l'arrêt.

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Judges can't ignore victim fine surcharge, appeal court rules

BY ANDREW SEYMOUR, OTTAWA CITIZEN MAY, 15, 2014

The mandatory victim fine surcharge is presumed constitutional and judges who skirt the compulsory fee without first hearing proper Charter arguments are committing a legal error, an appeal judge ruled Thursday. “It is not for a judge to take the new compulsory victim fine surcharge law and mould it into what she or he thinks better achieves justice and a fair result,” said Ontario Superior Court Justice Lynn Ratushny Thursday before overturning rulings by four Ontario Court judges that avoided implementing the controversial surcharge.

The mandatory victim fine surcharge is presumed constitutional and judges who skirt the compulsory fee without first hearing proper Charter arguments are committing a legal error, an appeal judge ruled Thursday.

“It is not for a judge to take the new compulsory victim fine surcharge law and mould it into what she or he thinks better achieves justice and a fair result,” said Ontario Superior Court Justice Lynn Ratushny Thursday before overturning rulings by four Ontario Court judges that avoided implementing the controversial surcharge.

Ratushny's ruling came after prosecutors had appealed the four cases where Ontario Court judges in Ottawa had either refused to impose the fine, unilaterally declared it an unconstitutional tax without hearing any legal argument, or granted an offender 60 years to pay a $100 fine.

The new legislation, which was part of the Conservative government's Increasing Offenders Accountability For Victims Act, has been a lightning rod for criticism from defence lawyers and judges, some of whom have taken to crafting creative sentences to avoid imposing the surcharge as it was intended.

One Crown prosecutor has since referred to the actions of the judges as a "brazen and very public insurrection," enraging defence lawyers who called the attacks on judges unnecessary and inappropriate.

The four cases appealed by the Crown were among the first attempts by the judiciary to avoid imposing the surcharge. Previously, judges had the discretion to avoid imposing the surcharge where it would cause an offender undue hardship, but judges frequently waived the fee out of hand without hearing any evidence or when an offender was being sentenced to jail.

"Each of the trial judges obviously viewed the new legislation as detracting from the fair application of sentencing principles. The problem, of course, is that the applicable legislation does not allow them this discretion," said Ratushny, who found there was no alternative but to overturn the lenient rulings.

The lawyer for one of the men said he suspects Ratushny's decision will likely put an end to attempts by Ontario court judges to circumvent the surcharge.

"I believe judges will follow this ruling. It is binding," said Paul Lewandowski, the lawyer for a refugee on a disability pension who fled war-torn Sierra Leone and received a $100 fine after stealing seven chocolate bars.

However, that won't stop bona fide constitutional challenges to the law, Lewandowski said.

Ratushny overturned the decisions because the appropriate process wasn't followed and made no ruling on the constitutionality of the law, he said.

"The Conservatives should know this issue isn't going away simply because of this," said Lewandowski.

Ratushny said she agreed with prosecutor Dallas Mack that a finding of unconstitutionality without a full hearing violates principles "so fundamental to the operation of our Canadian justice system."

"All legislation is presumed valid and constitutional. If legislation is alleged to be unconstitutional, it is for the accused to assert and establish a Charter violation and that the legislation is unconstitutional," said Ratushny. "It is not for a court to come to its

conclusion by way of its own motion, without proper notice, and without arguments presented to it. A court has no jurisdiction to proceed unilaterally in this way."

She ordered each of the four offenders who earlier escaped the surcharge to pay. Two of them were given 30 days to pay, while the other two received a year to pay on consent of the Crown.