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Maladie et médias sociaux

Paul Gaboury, le 1er janvier 2016

Deux personnages, un lieu, un mot, une date et une résolution. Place au bilan de l'année dans la fonction publique fédérale.

Deux personnages: Tony Turner et Emilie Taman

Chose rare, deux fonctionnaires fédéraux ont fait les manchettes dans la deuxième moitié de 2015, pour avoir osé défier le gouvernement en mettant en jeu leur emploi, tout en défendant des causes différentes.

Auteur de la chanson *Harperman*, un succès viral sur les médias sociaux, M. Turner est ce scientifique d'Environnement Canada qui dénonçait en musique et en paroles le musèlement des scientifiques fédéraux. Il a été congédié quelques semaines avant sa retraite, mais a suscité un mouvement d'appui.

Quant à l'avocate Emilie Taman, qui occupait un emploi de procureure au gouvernement fédéral, elle s'est vu refuser le droit d'avoir un congé sans solde pour être candidate à l'élection fédérale. Elle a perdu sa bataille en justice devant la Cour fédérale et comme candidate néo-démocrate dans Ottawa-Vanier.

Un lieu: les médias sociaux

La stratégie de la rue a été souvent éclipsée par celle des médias sociaux, qui servent désormais de place publique virtuelle, permettant aux syndicats de la fonction publique fédérale de faire passer leur message au-delà des moyens traditionnels.

La campagne et la vidéo *Votez pour stopper l'hémorragie* de l'Alliance de la fonction publique du Canada, vue plus d'un million de fois sur YouTube, est un bel exemple de ce succès de diffusion.

À l'occasion de la campagne en faveur de la science publique, l'Institut professionnel de la fonction publique a aussi connu un succès viral qui a permis de susciter des réactions dépassant les attentes.

Un mot: maladie

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Les congés de maladie demeurent l'enjeu principal de la présente ronde de négociations en vue du renouvellement du contrat de travail des fonctionnaires fédéraux.

C'est le gouvernement fédéral qui a lancé le bal en annonçant son intention de réaliser des économies de plus de 900 millions \$ en abolissant les banques de congés de maladie et en imposant un nouveau régime d'assurance-invalidité à ses employés.

La réaction des syndicats n'a pas tardé. Ils ont non seulement uni leurs forces pour s'opposer à la volonté du gouvernement Harper, mais ils ont tout fait afin qu'il soit défait le 19 octobre dernier. Les syndicats ont aussi décidé de contester devant les tribunaux la loi C-59, permettant au gouvernement d'imposer un nouveau régime d'assurance-invalidité à court terme sans passer par la voie de la négociation.

Une date: le 19 octobre 2015

La date du dernier scrutin fédéral restera gravée dans la mémoire de plusieurs fonctionnaires fédéraux de la région.

Cette campagne n'aura pas été comme les autres, puisque les syndicats les représentant avaient lancé le mot d'ordre de «sortir» le gouvernement conservateur. Ce message a été répété dès que le budget fédéral a été déposé et est rapidement devenu un objectif incontournable de leur stratégie.

Les engagements pris par les partis politiques ont d'ailleurs tenu compte des commentaires exprimés par les fonctionnaires insatisfaits du traitement reçu du gouvernement conservateur.

Une résolution: le respect

Le «respect» est redevenu un mot à la mode pendant la dernière campagne électorale pour les fonctionnaires fédéraux, outrés par les déclarations des ministres conservateurs qui ont souvent mis en cause leur taux d'absentéisme au travail et leurs conditions de travail trop généreuses par rapport au secteur privé.

Pendant la campagne électorale, le chef libéral maintenant premier ministre, Justin Trudeau, s'est engagé à rétablir des relations harmonieuses avec les employés fédéraux. Cet engagement s'est rapidement fait sentir dès les premières semaines de son arrivée au pouvoir.

Le nouveau président du Conseil du Trésor, Scott Brison, a ouvert la porte aux dirigeants syndicaux, en utilisant un ton plus respectueux avec les dirigeants syndicaux.

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Les libéraux ont aussi promis d'abolir les mesures considérées antisyndicales de plusieurs lois adoptées sous les conservateurs, et de modifier le mandat dans le cadre des négociations déjà amorcées afin de «négocier» la question du régime de congés de maladie. Les négociations doivent reprendre en février.

Stakes high for Trudeau in PS labour negotiations

Corey Larocque, The Ottawa Sun, January 10 2016

The upcoming high-stakes negotiations between Canada's biggest public sector union and the federal Liberal government could be the cloud that casts a shadow over Prime Minister Justin Trudeau's "sunny ways."

In his first two months on the job, Canada's new prime minister has handled some hot issues without getting burned by them.

Among the early controversies that came across Trudeau's desk were Canada's withdrawal from the military mission against the Islamic State, resettling Syrian refugees, climate change talks in Paris, a weak Canadian dollar, legalizing marijuana and meeting the Queen.

He continues to enjoy his honeymoon period with the Canadian public. But media and other pundits have wondered how long Trudeaumania 2.0 will last.

Contract talks with the Public Service Alliance of Canada - set to begin in February - could be the first issue that throws cold water on the new prime minister's hot streak.

Trudeau needs to keep the public service on board without alienating Canadians by giving government workers too much.

If Trudeau is seen to be too cozy with the bureaucracy, he risks ticking off Canadians who work in the private sector and whose taxes pay the wages of federal public servants. Many folks in the private sector have seen their own wages frozen for several years, resulting from the Canadian economy's sluggish performance.

A lot of them will resent it, if the Liberals are too generous with public servants.

The Liberals also need to establish some credibility on the economic front. On the campaign trail, Trudeau pledged to help the middle class and to stimulate the economy by not rushing toward a balanced budget -- the way his Conservative and NDP rivals promised to balance the books.



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While Canadians liked Trudeau enough (or were tired enough of Harper) to put him in charge, his plan to run \$10-billion deficits for three years makes a lot of them uncomfortable.

If the Liberals are too generous with PSAC, giving big wage hikes, retroactive payments or pension plan improvements, it could tie their hands in other areas. Making too big a commitment to its unionized workers could force Trudeau to delay other promises he made during the campaign, to cut back on existing services or to run bigger-than-expected deficits.

None of those would sit well with Canadians.

Some of the other issues Trudeau tackled in his first two months were controversial, such as the decision to bring back Canadian fighter jets from the NATO-led bombing mission against ISIS or the failure to meet his own target to resettle 25,000 Syrian refugees by the end of 2015.

Trudeau will survive those issues. They don't affect Canadians personally or directly, so a new government with a popular leader still in his honeymoon period won't get dragged down by them.

But average Canadians do pay attention to financial issues and questions of fairness. If they see a new prime minister giving away the store just to keep public servants happy, the Liberal government's lustre will quickly begin to dull.

SIDEBAR:

The Public Service Alliance of Canada, the largest union representing federal public servants, will get back to negotiating with the federal government in February.

When PSAC begins contract talks with the federal government's Treasury Board on Feb. 1, it will try to secure a new contract for nearly 98,000 federal government employees, including 40,000 in the National Capital Region.

Here are some of the issues they'll be discussing:

- Wages: PSAC wants a "decent and fair" pay hike because some members have had their salaries frozen since 2014, vice-president Chris Aylward says.

- Sick leave provisions: The Liberal government has promised not to use a provision entertained by the previous Conservative government to prevent them from banking unused sick days throughout their careers, only to take them or cash them out just before retirement.

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- Pension: Harper government tried to impose a “defined contribution” pension plan (instead of a “defined benefit” plan). Unions tend to prefer defined benefit plans because they set out how much money members get when they retire. Some employers prefer defined contribution plans because they allow for cost-certainty.

Here’s a breakdown of how many federal workers whose contracts are up for renewal and how many are in each group:

Program and administrative services: 68,972

Operational services: 10,133

Technical services: 9,498

Border services: 8,429

Education and library services: 880

— Source: Public Service Alliance of Canada; Ottawa Sun files

PS unions "cautiously optimistic" with bargaining set to resume

Michael Woods, Metro News, January 6 2015

Public service union leaders say they’re “cautiously optimistic” as collective bargaining talks with the federal government are set to resume in a few weeks.

Talks had been scheduled for December, but Treasury Board officials asked for them to be delayed as the new Liberal government establishes a new mandate.

Some talks are resuming this week. But the major ones begin Feb. 1 with Public Service Alliance of Canada teams representing 98,000 members—including 40,000 in Ottawa-Gatineau—scheduled for four days of negotiations.

“We’re certainly not expecting a deal in the first week,” said Chris Aylward, PSAC’s national executive vice-president. “What we are hoping for is a change of tone.”

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Talks with the former Conservative government soured last summer when a section of budget Bill C-59 gave the government power to unilaterally impose changes to public servants' sick leave plans.

The new government has pledged to respect the collective bargaining process, but its exact plans for sick leave are unclear.

"What they bring in February, right now it's a wait and see game," Aylward said.

"We're not asking for the moon and the stars, but we are expecting a fair collective agreement and a decent wage increase as well. ... What we've seen so far gives us some reason to be cautiously optimistic."

Aylward said the government doesn't need to immediately repeal the section of Bill C-59 that allows it to bypass the collective bargaining process, as long as it promises not to legislate a new plan.

Canadian Association of Professional Employees president Emmanuelle Tremblay said she's hoping for a firm commitment from the government that it won't invoke its powers under Bill C-59.

"That's absolutely definitely going to be a central part of the discussion, is how can we go back to the table in good faith if that Damocles sword is hanging over our heads," she said.

Tremblay said CAPE's talks with Treasury Board won't begin until late February or early March. CAPE represents about 12,500 public servants.

Public service bargaining resumes this week

Kathryn May, Ottawa Citizen, January 4 2016

The Liberal government's first round of collective bargaining with 18 unions representing Canada's public servants begins this week amid hopes by some for a "quick deal."

The International Brotherhood of Electrical Workers will be the first at the table this week, but the major unions, representing most public servants, won't be back in negotiations until late

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January or early February. The giant Public Service Alliance of Canada is scheduled for its first four-day session beginning Feb. 1.

The big question is what the government will propose on sick leave, which has dogged contract talks for nearly two years.

Chris Aylward, PSAC vice-president, said dates for further negotiations have been booked into April. "We have no clue what they are going to say," he said Monday. "We are cautiously optimistic about going into February."

The Liberals promised to rethink the Conservatives' controversial sick-leave proposal and negotiate a deal – rather than force one by legislation – but it's unclear whether the government will do that negotiating based on the Conservative position.

The 18 unions, which firmly resolve to make no concessions on sick leave, are expecting Treasury Board President Scott Brison to take his Conservative predecessor's proposal off the table and start over.

Ron Cochrane, the outgoing co-chair of the joint union-management National Joint Council, said the government and unions alike would probably prefer a "quick deal" to close the book on a rancorous round of bargaining and a decade of deteriorating labour relations.

He said the morale of the public service has been on the upswing since the Liberals were elected with promises to restore trust and integrity in the bureaucracy. Optimism is high that negotiations won't hit an impasse.

"The relationship with the Liberals at this stage of governance has been a positive one. Brison comes across as sincere and wanting to do the right thing. No one expects him to roll over ... but he says he is committed to negotiate in good faith and that is all you can ask for," said Cochrane.

Jean-Luc Ferland, Brison's press secretary, said restoring the relationship with the public service is a government priority.

"We are committed to bargaining in good faith. As such, we will not comment publicly on the issues that will be discussed with bargaining agents at negotiation tables," he said in an email.

The Canadian Association of Professional Employees (CAPE), the third-largest union, representing economists and translators, is still waiting for its first session at the bargaining table, which isn't expected before late February or early March.



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CAPE President Emmanuelle Tremblay said she expects a change in “tone and message” and a government open to other options on reforming sick leave.

“We will have to see what the ‘sunny ways’ mean for real in terms of bargaining in good faith, she said.

The public service’s \$45-billion annual wage bill is the single largest operating cost in government and was a key piece of the Conservatives’ restraint strategy as it froze operating budgets; whacked severance pay, health benefits and pensions; and targeted sick leave for savings.

About one-third of the \$15 billion in savings the Conservatives had booked for 2015-16 came from public-service compensation: \$3 billion in ongoing savings by forcing departments to eat any wage increases; \$1 billion from making public servants and retirees pay a bigger share of their health benefits; and \$900 million from abolishing banked sick leave.

The Liberals’ fiscal plan is banking on the \$900 million the Conservatives booked in savings for 2015-16 by eliminating sick-leave banks. Without it, the savings will have to be rolled back and the cost added to the government’s mushrooming projected deficits.

Debi Daviau, president of the Professional Institute of the Public Service, said the Conservatives’ short-term disability plan was “pulled out of thin air” with no facts or evidence to support the reforms.

She said the Liberals can’t achieve those savings by the March fiscal year-end.

“The way I see it, the \$900 million is mess left by the former government,” said Daviau.

Treasury Board will also have to find money for any wage settlements negotiated in bargaining. The Conservatives imposed five years of freezes on operating budgets, which meant departments swallowed any wage increases and inflation costs.

Assisted-suicide debate leads off a busy Supreme Court session

Ian MacLoed, Ottawa Citizen, January 5 2015

The debate over assisted dying leads off the Supreme Court of Canada’s winter session next week. Twenty other appeals are to follow, ranging from whether federally regulated workers

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can be legally fired without cause, to a constitutional quarrel over mandatory-minimum criminal sentencing.

On Monday, federal lawyers will ask the court for a six-month extension to align the Criminal Code and provincial legislation with the court's landmark 2015 judgment striking down the law against assisted suicide. It gave the federal government one year – until Feb. 6, 2016 – to enact constitutionally sound law.

The British Columbia Civil Liberties Association, which helped spearhead the ground-breaking case, is to argue against the proposed extension to Aug. 6, saying it would punish those seeking immediate relief from unbearable suffering. More than 20 other groups have been granted intervener status.

If the deadline passes without an extension, the old law will be invalid, opening the door to the possibility of the unregulated practice of physician-assisted death.

The case is one of 21 appeals to be heard by the high court by the end of March. For example:

– The court will hear the case of Joseph Wilson, a non-unionized purchasing supervisor with Atomic Energy of Canada Ltd. fired in 2009 without cause, despite a Canada Labour Code provision against “unjust dismissal.”

With the exception of a layoff for economic reasons, the code states that non-unionized federally regulated workers with at least one year of continuous service cannot be dismissed without just cause on articulated reasons.

Wilson filed a complaint and ended up before the Federal Court of Canada. It concluded federal employers may lawfully dismiss an employee without just cause provided they fulfil their obligations under the code's severance pay provisions, which AECL did. The Federal Court of Appeal upheld that ruling, adding that dismissals without cause were not automatically “unjust” and remained to be determined by labour adjudicators based on the particular circumstances.

– The constitutionality of mandatory-minimum sentences, this time involving drug crimes, returns to the high court Jan. 13.

Last spring, the court struck down mandatory-minimum sentencing for gun crimes, saying the law could be cruel and unusual punishment. It was among 60 mandatory-minimum provisions enacted by the former Conservative government as part of its law-and-order legislative agenda.

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Now, a convicted, small-time Vancouver drug dealer, Joseph Ryan Lloyd, says his Charter rights, including the protection against cruel and unusual punishment, have been violated by the mandatory-minimum law against repeat drug offenders like him who deal drugs to support their habits.

The Pivot Legal Society, which intervened in the case, says the law has a disproportionate effect on women, young offenders, aboriginal people, and those in the drug trade to support their addictions.

– The limits of the law against possession of digital child pornography are to be tested in the case of Oswald Villaroman, of Alberta. He was convicted of possession of child pornography after images and videos were found in a music-sharing file on his laptop by a service technician repairing the machine in 2009. Villaroman argued he didn't know how the images came to be on his laptop.

The prosecution was based on circumstantial evidence, including that Villaroman owned the computer and controlled the sole user account.

But the Alberta Court of Appeal overturned the conviction, ruling a circumstantial case can only result in conviction if the Crown has left no gaps and disproved all innocent possibilities. The Crown now wants the Supreme Court to reject that decision.

If the decision is allowed to stand, the Crown believes proving future cases of possession of child pornography on a computer will mean prosecutors will have to disprove all possibility of access to the computer by anyone other than the accused. In effect, it says, if the Crown cannot establish a complete history of potential access, a verdict of guilt would be unreasonable and that, it says, places an unattainable standard of proof on the Crown.

Aide à mourir: Ottawa semble peu pressé

Joan Bryden, La Presse Canadienne, le 7 janvier 2016

Le gouvernement Trudeau ne semble pas pressé de se saisir de la question controversée de l'aide médicale à mourir, même s'il demandera la semaine prochaine à la Cour suprême du Canada de lui donner plus de temps pour élaborer une nouvelle loi sur le sujet.

Le nouveau gouvernement libéral s'est pressé de déposer le mois dernier - dans la seule semaine où le Parlement a siégé depuis les élections du 19 octobre - une motion pour la création d'un comité spécial mixte sur l'aide à mourir.



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Le leader du gouvernement, Dominic LeBlanc, avait expliqué à ce moment que le comité devrait travailler rapidement, étant donné qu'il aurait seulement jusqu'à la fin du mois de février pour mener ses consultations sur cet enjeu épineux, en plus de déposer des recommandations pour le nouveau cadre législatif.

Or, un mois plus tard, aucun député n'a reçu de convocation pour siéger au comité, et encore moins pour commencer les consultations.

Pendant ce temps, la Cour suprême se prépare à entendre les arguments oraux du gouvernement fédéral, lundi, relativement à sa demande d'un délai de six mois pour élaborer une nouvelle loi.

Le plus haut tribunal du pays a invalidé en février 2015 l'interdiction de l'aide médicale à mourir. Il a donné un an au gouvernement fédéral pour écrire une loi qui respectera le droit, pour les adultes consentants aux prises avec des souffrances physiques ou mentales intolérables, de demander l'aide de leur médecin pour mettre fin à leurs jours.

En se penchant sur la requête du gouvernement Trudeau, qui souhaite reporter l'échéance au mois d'août, la cour pourrait considérer les efforts d'Ottawa - ou le manque d'effort, si tel est le cas - pour respecter la date limite du 6 février.

Le précédent gouvernement conservateur avait traîné les pieds jusqu'à la mi-juillet, lorsqu'il a instauré un comité de trois membres pour consulter les Canadiens et les intervenants du milieu.

Ce comité, créé tout juste deux semaines avant que les conservateurs ne déclenchent les élections, a remis son rapport au nouveau gouvernement libéral le mois dernier.

Le document n'a pas encore été rendu public, mais l'un des membres du comité, Benoît Pelletier, a précisé que ses collègues et lui avaient conclu presque à l'unanimité qu'il devait y avoir un meilleur accès aux soins palliatifs pour les patients en phase terminale. Selon l'ancien ministre québécois, le rapport reflète les diverses opinions du comité sur les autres enjeux, dont la nécessité de protéger les personnes vulnérables dans le cadre de l'aide médicale à mourir, d'établir une surveillance efficace et de décider ce qu'il adviendra des institutions qui refuseraient de fournir cette aide.

Dominic LeBlanc a reproché aux conservateurs d'avoir trop tardé avant de se saisir de la question et il s'est insurgé contre le Bloc québécois qui avait initialement refusé de donner au gouvernement le consentement unanime nécessaire pour créer le comité spécial.



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«Nous avons des échéanciers très serrés et ils vont s'assurer, franchement, que les Canadiens et les Québécois ne seront pas entendus sur un enjeu aussi important que l'aide médicale à mourir», avait tonné M. LeBlanc.

La motion avait finalement été approuvée le 11 décembre. Le Sénat a immédiatement nommé cinq sénateurs qui siégeront au comité, mais aucun député n'a encore été convoqué.

La sénatrice conservatrice Judith Seidman a utilisé son compte Twitter, jeudi, pour se plaindre des délais. «Des membres du Sénat - dont moi - ont été nommés et sont prêts à travailler sur cela. Qu'est-ce qui tarde tant à la Chambre?», a-t-elle écrit.

Selon des sources gouvernementales, tous les partis n'ont pas encore nommé les membres qui participeront au comité, mais il devrait commencer ses travaux bientôt.

Cependant, le comité a déjà perdu un mois pendant lequel il aurait pu débattre de la question. Le comité doit mener ses consultations et déposer ses recommandations d'ici le 26 février.

Cette échéance a été établie pour donner du temps le temps au gouvernement de rédiger une nouvelle loi, qui sera débattue et étudiée par la Chambre des communes et les comités sénatoriaux. Les deux chambres se prononceront ensuite sur le texte avant la pause estivale, à la fin du mois de juin.

Mais ce plan du gouvernement présume que la Cour suprême acceptera de lui accorder le délai de six mois. Si le tribunal refusait, le gouvernement aurait moins d'un mois pour combler le vide législatif.

Marijuana: Trudeau devrait prendre son temps, disent ses conseillers

Fannie Olivier, La Presse Canadienne, le 5 janvier 2016

Des fonctionnaires fédéraux conseillent à Justin Trudeau de ne pas se précipiter pour remplir sa promesse de légaliser la marijuana.

Dans des notes de breffage préparées pour le nouveau premier ministre, ces fonctionnaires invitent M. Trudeau à «prévoir suffisamment de temps» pour coordonner son approche avec les provinces et les territoires.

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Ils signalent également que le Canada est signataire de trois conventions internationales en matière de drogues qui exigent la criminalisation de la possession et de la production du cannabis. Aller de l'avant avec la légalisation du cannabis placerait ainsi le Canada en contravention avec ses engagements internationaux. Les conseillers du gouvernement fédéral notent qu'Ottawa devra «se pencher sur la façon d'informer la collectivité internationale» de ses intentions.

Ces documents ont été obtenus par La Presse Canadienne en vertu de la Loi sur l'accès à l'information.

Justin Trudeau a signalé avant les Fêtes vouloir légaliser la marijuana d'ici «un an ou deux». Il entend par ailleurs mettre sur pied un groupe de travail fédéral-provincial pour mener des consultations sur cet enjeu à travers le pays.

La professeure en criminologie Line Beauchesne, de l'Université d'Ottawa, croit qu'il faut prendre le temps d'établir un cadre que les provinces sont prêtes à accepter, en mettant l'accent sur la sécurité publique. Comme les considérations sont multiples, elle doute que la légalisation sera possible au cours de cette année, mais croit qu'un horizon de deux ans est réaliste.

Jean-Sébastien Fallu, professeur à l'École de psychoéducation à l'Université de Montréal, affirme lui aussi qu'il faut y aller «progressivement», notamment pour favoriser l'acceptation sociale de la légalisation du cannabis.

In copyright law, who owns a family's history?

Kate Taylor, The Globe and Mail, January 8 2016

The Federal Court of Canada will get a break from dry tax law, arcane government disputes and a backlog of immigration cases next week when it turns its attention to a poignant cultural question: Who owns a family's history?

Monday, the court will start hearing a copyright infringement case in which American-Israeli journalist Judy Maltz alleges that the bestselling young-adult Holocaust novel *My Mother's Secret* is cribbed from a documentary she made about her family's escape from the Nazis in wartime Europe. The author, Toronto money manager Jenny Witterick, and her publisher have replied that her new and original book is inspired by a story that is a matter of historical record.

In their application originally filed in 2014, Maltz and two American filmmakers, Barbara Bird and Richie Sherman, seek damages from Witterick and Penguin Canada (now part of Penguin



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Random House Canada) alleging that the 2013 book borrowed its plot and its central characters from their 2009 documentary *No. 4 Street of Our Lady*. That documentary tells the story of Franciszka Halamajowa, a Catholic Pole who hid 15 of her Jewish neighbours in a cellar and pigsty in the town of Sokal in what is now Ukraine. Those she saved included Maltz's grandparents, father, two aunts and an uncle. The plaintiffs also list 30 examples in which lines in the book are similar to dialogue or narration in the film. (These are allegations and have not been proved in court.)

Witterick and Penguin have opposed the application, and have argued that Witterick's book, which she originally self-published as a work of non-fiction, is a new, creative retelling of facts that are not protected by copyright.

How far will a court go in deciding whether Maltz has economic and moral rights over the dramatic family history she unearthed in Ukraine and then turned into a documentary film with Bird and Sherman's help? In Canadian law, copyright infringement has usually been defined narrowly as unauthorized reproduction or direct copying; the unattributed borrowing of plots or ideas, even if it might be considered plagiarism in an academic setting, is not necessarily an infringement.

Meanwhile, a creator's moral rights under the Copyright Act only include the right to the "integrity" of the work, and to have one's name associated with it. The most notorious violation of integrity occurred in 1982 when the Toronto Eaton Centre tied red Christmas bows around the necks of the Canada geese in the *Flight Stop* sculpture that hangs at the shopping mall's Queen Street entrance. Citing his moral rights under the Copyright Act, an Ontario court granted outraged artist Michael Snow an injunction and the bows came down. Apart from that famous example, however, there are very few Canadian cases in which a judge has ruled on integrity.

In next week's case, the defendants may take heart from a prominent British decision in favour of *Da Vinci Code* author Dan Brown, who had been sued by the authors of *The Holy Blood and the Holy Grail*, a non-fiction work about a conspiracy to hide the descendants of a marriage between Jesus and Mary Magdalene. Although Brown's novel uses such a conspiracy as the key to its plot, a 2007 appeal court judge upheld an original ruling against the *Holy Blood* authors, arguing their property rights did not extend to their theories and historical research.

On the other hand, the plaintiffs will look to a 2013 Supreme Court of Canada decision that found that the former Quebec animation house Cinar had infringed the rights of Claude Robinson with a *Robinson Sucroe* cartoon that resembled a registered character the filmmaker had previously pitched to the company. In that instance, the Supreme Court argued that

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copyright protects authors against both literal and non-literal copying if the copying represents a substantial part of the work.

The Federal Court can be expected to deliver its verdict in the *My Mother's Secret* case by the end of the year, but, interestingly, another case involving Penguin that might have given some indication how broad a definition of infringement the court is favouring these days was dropped last June. Three Canadian authors, Wayson Choy, Sky Lee and Paul Yee, had sued Chinese-language writer Ling Zhang and Penguin, alleging that her translated novel *Gold Mountain Blues* infringed upon their copyrights because it used similar plots to those featured in their works about the Chinese immigrant experience in Canada. The parties agreed to settle out of court without any award of damages; Penguin paid the authors' legal costs but *Gold Mountain Blues* is still for sale, and neither side is saying anything more about it.

Lawyers who fought Nadon's Supreme Court appointment ask for pay

Colin Perkel, The Canadian Press, January 10 2016

The lawyers who challenged the Harper government's ultimately aborted appointment of Justice Marc Nadon to the Supreme Court of Canada go before a court on Monday to argue they should be fully reimbursed for their efforts.

In filings with the Federal Court of Appeal, Rocco Galati argues he deserves to be compensated for what he calls his "exceptional" battle to defend the integrity of the country's Constitution and judicial system.

Citizens have a constitutional entitlement to legal-cost awards if they successfully challenge legislation or government action that goes to the "architecture of the Constitution" and where they derive no personal benefit, Mr. Galati says.

Denying an award in such circumstances would amount to a "denial to the constitutional right not only to a fair and independent judiciary but also access to a fair and independent judiciary," he argues.

In 2013, the former Conservative government under then-prime minister Stephen Harper appointed Justice Nadon to the country's top court. Mr. Galati challenged the eligibility of the Federal Court of Appeal judge to fill one of the three high-court seats reserved for Quebec.

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However, he agreed to put his challenge on hold when the government referred the issue to the Supreme Court, which then scuttled Justice Nadon's appointment, rendering Mr. Galati's fight moot.

For his efforts, Mr. Galati asked for \$51,706.54 – based on a charge of \$800 an hour he says is reasonable for a lawyer with his experience. Lawyer Paul Slansky wanted \$16,769.20 for work he did for the Constitutional Rights Centre in helping Mr. Galati fight Justice Nadon's appointment.

Instead, in December, 2014, Federal Court Justice Russel Zinn awarded the two lawyers a total of \$5,000 to be split between them. Justice Zinn found Mr. Galati's challenge, while important and potentially complicated, had been short-circuited by the Supreme Court reference – a position taken by the federal government.

"The mere filing of it appears to have had the desired result," Justice Zinn said in his judgment.

Mr. Slansky called Justice Zinn's "paltry" award a "slap in the face," and said the Crown's arguments – including that the lawyers are simply looking for a "windfall" – are simply wrong.

"They're taking the position that, 'Oh, we didn't even win because in the end it was won in the Supreme Court in the reference,'" Mr. Slansky said. "But there would never have been a reference without our application."

Justice Zinn's decision, if it were to stand, would create "significant disincentive" to take cases to court purely in the public interest, he said.

Mr. Galati who denounced Justice Zinn's cost award as bizarre and an "affront to the rule of law," maintains in his appeal that the judge was legally wrong on several counts to reject his bill in a case he called "rare."

Among other things, Justice Zinn was mistaken in finding no constitutional right to costs exists in such cases, and to find at least some of the billed hours were excessive, he argues.

Mr. Galati, who says the hours he put in dealing with the parties and preparing for case-management conferences were "indisputable," also faults Justice Zinn for giving no substantive reasons for deciding to award the lawyers \$5,000.

He also says nothing prevents a self-represented litigant from claiming costs.



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Les avocats qui ont contesté la nomination de Marc Nadon veulent être remboursés

La Presse Canadienne, 10 janvier 2016

Les avocats qui ont contesté la nomination, finalement révoquée, du juge Marc Nadon à la Cour suprême iront devant un tribunal lundi pour demander d'être remboursés pour le travail qu'ils ont accompli.

Dans des documents déposés à la Cour d'appel fédérale, Rocco Galati soutient qu'il a droit à une compensation pour sa bataille qui visait à défendre l'intégrité de la Constitution du pays et du système judiciaire.

Les citoyens ont le droit d'être remboursés pour les frais juridiques encourus par la contestation constitutionnelle d'une loi ou d'une action gouvernementale s'ils gagnent leur cause, fait valoir M^e Galati.

Un refus de remboursement dans de telles circonstances serait équivalent à nier «le droit constitutionnel à l'accès à un système judiciaire indépendant et juste».

En 2013, le gouvernement conservateur avait nommé Marc Nadon comme juge à la plus haute cour du Canada. M^e Galati avait contesté son admissibilité à l'un des trois postes réservés à des juges québécois.

Le gouvernement Harper avait référé le dossier à la Cour suprême, qui a elle-même invalidé la nomination de M. Nadon, rendant inutile la contestation de Rocco Galati.

Ce dernier réclamait 51 706,54 \$, un montant calculé sur la base d'un taux horaire de 800 \$, pour le travail effectué. L'avocat Paul Slansky voulait pour sa part 16 769,20 \$ pour le temps consacré à aider M^e Galati.