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With repeal of Bill C-4 in sight, public sector unions adjust for a new round of bargaining

Teuila Fuatai, rabble.ca, May 27 2016

The Liberals are raising expectations among Canada's public servants once again with its announcement this week that a repeal of unfair bargaining legislation enacted under Bill C-4 is in the works.

Treasury Board president Scott Brison announced on Wednesday that the repeal (relating to division 17 of the Tory government's Bill C-4) is due to be tabled in Parliament's fall session.

Three of Canada's public service unions, currently engaged in negotiations over collective agreements that expired two years ago, have called on the government to honour its intention by implementing interim measures to ensure progress at the bargaining table.

Contract renegotiations made little progress under the Stephen Harper administration. While public sector unions had hoped for change with Justin Trudeau -- who campaigned on a promise of improving relations between civil servants and the federal government -- negotiations have continued to be difficult.

Debi Daviau, president of the Professional Institute of the Public Service of Canada (PIPSC) -- which represents nearly 60,000 members -- said an immediate change in bargaining rules would greatly benefit ongoing contract negotiations.

"We appreciate the opportunity to work with a little bit more goodwill with this government... [but] what we're concerned about is how we have a fair round of bargaining in the current round of collective bargaining. That will require some creative interim measures that the government will hopefully be ready to commit to," Daviau said.

Under Bill C-4 rules, bargaining is heavily skewed in favour of the government as unions have few rights when negotiations reach an impasse.

The bill, which amended the Public Service Relations Act, means the government can effectively decide which unions can choose to go to arbitration and which ones are allowed to strike.

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It also removes the impartiality of the arbitration route, giving preference to criteria favouring the government when settlement offers are made. Union input over the designation of essential workers -- who are not allowed to strike -- is also not required under C-4.

A constitutional challenge against C-4 filed by a coalition of Canada's 18 public sector unions, which includes PIPSC, is due to be heard in the Supreme Court of Canada next month.

"We know that this is what is driving the government to consider repealing the legislation because they've got a losing case in court," Daviau said.

Last year's decision from the court in favour of the Saskatchewan Federation of Labour over a similar provincial law that restricted which workers were allowed to strike has strengthened the case of the federal unions.

"In order for us to not pursue that matter through the court -- which is certainly not our desire - - we would need some commitment from the government on its undertaking to repeal the legislation and also what types of interim measures will be put in place to ensure this round of bargaining can proceed fairly," she said.

Emmanuelle Tremblay, president of the Canadian Association of Professional Employees, agreed with Daviau.

For many of her members, amendment of arbitration rules would make a significant difference.

"I represent policy analysts, economists, statisticians -- this is my biggest group and there's 12,000 of them throughout government.

"That group has never ever taken a conciliation strike in its history. Right now, in the current state of affairs, we are on a conciliation strike route."

Arbitration is normally this unit's preferred route if negotiations break down, however, the current legislation enacted under C-4 stacks the deck in favour of the employer -- making the strike route a better option, she said.

"We would need to have a clear commitment in writing that the intention and the actual arbitration would be unfolding with an equal balance of factors [before agreeing to this]."

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Robyn Benson, president of the Public Service Alliance of Canada, said the announcement signaled " an attempt to correct some of the harm done by the Conservatives."

"We are looking forward to further discussions to ensure that this round of bargaining will be conducted in a fair manner."

A spokesman for the Treasury Board confirmed the government would "work with the public sector unions to ensure interim solutions are in line with the government's intent to repeal the offending provisions."

Les syndicats saluent la décision d'abroger C-4

Paul Gaboury, Le Droit, le 27 mai 2016

Les deux principaux syndicats du secteur public fédéral ont salué la décision du gouvernement libéral de présenter cet automne un projet de loi pour abroger des parties de la loi C-4 du gouvernement conservateur portant sur les services essentiels, les négociations collectives et les processus de résolution des griefs et des conflits.

Après plusieurs mois de consultations avec les syndicats, le président du Conseil du Trésor Scott Brison a confirmé la décision cette semaine alors que les négociations avec les syndicats pour le renouvellement des conventions collectives se poursuivent toujours.

«Nous prenons un autre pas de l'avant pour rétablir les ponts avec la fonction publique en abrogeant ces changements mis en place par le gouvernement précédent» a indiqué le ministre Brison.

En 2015, la Cour suprême du Canada avait invalidé les mesures législatives sur les services essentiels de la Saskatchewan, lesquelles comprenaient des dispositions similaires à la loi fédérale adoptée en 2013 par le gouvernement Harper.

En janvier 2016, le gouvernement libéral avait annoncé qu'il abrogeait les mesures prévues à la Loi C-59 lui permettant de remplacer le régime actuel de congés de maladie par un nouveau régime d'assurance-invalidité à court terme.

Toutefois, il n'avait pas fait de même avec la loi C-4, s'engageant plutôt à consulter les syndicats sur cette question. Des discussions régulières ont eu lieu avant la décision annoncée cette semaine.



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De l'avis des syndicats, qui ont entamé des démarches devant les tribunaux dans ce dossier, la section 17 de C-4 accordait au gouvernement le contrôle absolu sur le droit de grève et le droit à l'arbitrage, et l'employeur pouvait décider unilatéralement du travail considéré comme «essentiel».

«C'est un geste qui vise à corriger le tort fait par les conservateurs. Nous entamerons d'autres discussions pour faire en sorte que la ronde de négociations se déroule dans un climat de respect», a réagi Robyn Benson, présidente nationale de l'AFPC. Pour nous, c'était une attaque contre les droits constitutionnels de nos membres, un affront à la démocratie.»

Debi Daviault, présidente de l'Institut professionnel de la fonction publique du Canada (IPFPC), a rappelé pour sa part qu'avec C-4, la plupart des groupes n'avaient plus accès à l'arbitrage et devaient suivre la voie de la conciliation-grève pour régler les différends avec l'employeur. En cas d'impasse, un groupe ne pouvait plus recourir à l'arbitrage pour en arriver à une entente et les travailleurs se trouvaient donc devant le dilemme de renoncer à leurs priorités ou de déclencher une grève.

«Les règles instaurées par le gouvernement précédent restent en vigueur jusqu'à ce que leur abrogation soit mise en application. C'est pourquoi nous continuons à nous efforcer d'obtenir des mesures provisoires qui nous permettront de boucler la présente ronde de négociations», a expliqué la présidente Daviault.

Public service news: Liberals to repeal hated Tory legislation on PS bargaining

Kathryn May, Ottawa Citizen, May 26 2016

The Liberal government is promising to unwind controversial Tory-era legislation that significantly diminished the power of federal unions and blunted their right to strike.

Treasury Board president Scott Brison said Wednesday the government will introduce legislation in the fall to repeal the contentious provisions of Bill C-4, the massive budget bill passed in 2013 that rewrote the 50-year-old rules for collective bargaining in Canada's public service.

Brison said the move, which brings back the rules that previously governed collective bargaining, shows the government is committed to "restoring fair and balanced labour laws" and to rebuilding the trust with public servants that eroded under the Conservatives.

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“As another important step in rebuilding the relationship with Canada’s public service, we are moving to repeal changes to the public service labour relations regime brought into law by the previous government,” Brison said in a statement.

Ron Cochrane, the co-chair of the joint union and management National Joint Council, said unions and government have been discussing possible changes to C-4 for months.

He said the promised repeal sends all the right signals about restoring trust and respect but added the old rules will remain in force during the ongoing round of bargaining.

“It’s a good step in the right direction. It creates a fairer relationship and shows in words and action that (the government) is working on building a better relationship.”

The Tory reforms effectively put the government in the driver’s seat when determining which unions get to strike and which ones go to arbitration to resolve contract disputes.

They also gave the government the exclusive right to decide which workers were essential and couldn’t strike. The changes also reduced the independence of arbitrators and ensured they base awards on the government’s budgetary priorities.

Brison said the government will rescind the most contentious provisions, such as those affecting essential services, the way collective bargaining is conducted and the processes for grievances and dispute resolution.

Until now, Brison, had only agreed to review the worrisome provisions.

Debi Daviau, president of the Professional Institute of the Public Service of Canada, said that as pleased as she is about the promise, PIPSC will be seeking some written commitments to “level the playing field” for the rest of this round of bargaining.

“This is the last legislated barrier and (we will) be very happy to see the tail end of it all, but the legislative agenda is full and we see how long it takes for legislation to be enacted so, therefore, we are going to need some interim measures to get us through this round of bargaining, she said. “That is where our focus will be.”

Public Service Alliance of Canada, the largest of the federal unions, also issued a cautious response.

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“We recognize this as an attempt to correct some of the harm done by the Conservatives. We are looking forward to further discussions to ensure that this round of bargaining will be conducted in a fair manner,” said PSAC president Robyn Benson.

“PSAC has asserted that Bill C-4 is an attack on our members’ fundamental charter rights and not consistent with a free and democratic society.”

Brison’s promise comes as unions are preparing for their constitutional challenge of C-4, which is scheduled to go to court in early June. Daviau said the PIPSC won’t be withdrawing its legal case before the legislation is repealed.

The unions have long argued their position was strengthened by last year’s Supreme Court of Canada ruling, which struck down Saskatchewan’s essential services legislation and affirmed workers’ right to strike.

That law, which gave the Saskatchewan carte blanche to decide which employees are essential, was ruled unconstitutional. The decision found that employees can’t effectively bargain if there isn’t a fair and impartial dispute resolution mechanism – such as arbitration – to solve any impasses at the negotiating table.

The Conservatives’ C-4 changes were almost identical to those that were overturned in Saskatchewan.

Brison’s move marks the latest legislative concession the Liberals have made since elected to patch up relations with unions and restore their power.

Sick leave is the big issue bogging down the current round of bargaining. The government wants to replace the existing sick leave regime with a new short-term disability plan that is strongly opposed by unions.

The Liberals have already repealed the Tory legislation that gave the government power to unilaterally impose a new sick-leave regime. That signalled a major change in tone and direction with unions.

The government also introduced legislation to repeal two other controversial Conservative-era labour bills that would have forced all unions to publicly disclose their books and changed the process for union certify and decertify.



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“By restoring fair and balanced labour laws, the government is recognizing that labour unions play an important role protecting workers’ rights and strengthening the middle class,” Brison said in a news release Wednesday.

Liberals to repeal anti-strike legislation that redefined 'essential service'

2014 budget bill measure gave federal government exclusive power to decide what an essential service is

John Paul Tasker, CBC News, May 25 2016

Treasury Board President Scott Brison will repeal changes the Harper government enacted that made it more difficult for federal public servants to strike by expanding the definition of what constitutes an essential service.

"As another important step in rebuilding the relationship with Canada's public service, we are moving to repeal changes to the public service labour relations regime brought into law by the previous government," Brison said in a statement Wednesday, noting the legislation will be introduced in the fall.

The 2014 budget omnibus bill made it illegal for any federal bargaining unit to strike if 80 per cent or more of the positions in that unit are declared necessary for providing an essential service.

The legislation also allowed the government to define what exactly an essential service is, and how many positions are required to provide that service. Unions feared that the government would use these new powers to raise the number of workers deemed essential and remove their ability to strike.

Prior to the legislative change, an essential service was strictly defined as anything necessary to ensure the safety and security of Canadians, including food inspection, correctional officers, border security, search and rescue and marine safety, among other positions.

- [Tories threaten to block Liberal efforts to repeal controversial union laws](#)
- **2014:** [Public sector union launches legal challenge against budget bill](#)
- **2014:** [Public service unions fighting proposed changes in court](#)
- **2014:** [Bill C-4 an 'outright attack on workers'](#)

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The Public Service Alliance of Canada (PSAC), the largest union representing federal public servants, filed an Ontario Superior Court challenge against the legislation in 2014.

Clement opposes change

The union has argued the legislation undermines the constitutional rights of federal public service employees to collective bargaining, as it would undermine their right to strike. "The designation of employees under the act is so extensive that it renders the freedom to associate and strike meaningless," the union wrote in its court filing.

"I disagree with the way that the public sector unions termed the legislation, and I disagree with the repeal of the legislation," said former Conservative Treasury Board President Tony Clement, who spearheaded the law when it came in.

"The legislation was designed to protect the public interest, to make sure that it aligned with what were considered to be essential services and the way that the design of the act, and certainly my practice was, to always consult with the unions before we designated something essential," he said.

Clement said because the legislation was designed to work in consultation with the unions, he is confident no court would "uphold a situation where a government would unilaterally declare huge swaths of the public service essential and therefore deny them the right to strike."

Tense collective bargaining over sick days

Brison's announcement comes amid ongoing negotiations between the federal government and PSAC to hammer out a new collective agreement.

The minister had been non-committal on repealing the essential services definition — saying only that the government would study the issue — until now.

The union welcomed the promise to enact new legislation Wednesday calling it a "correction" to "some of the harm done by the Conservatives."

"PSAC has asserted that Bill C-4 is an attack on our members' fundamental charter rights and not consistent with a free and democratic society. Our members worked tirelessly to lobby members of Parliament about the injustices of this bill. I want to thank them for their continued vigilance," PSAC national president Robyn Benson said in a statement to CBC News.



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But the biggest sticking point between the government and the 18 unions that represent public servants is sick leave benefits. Brison has already tabled legislation in the House that reverses some of the [unilateral changes the former government made to sick leave benefits](#).

The Liberal government is still seeking to "modernize" the program, but the unions are against any changes to the current system, which allows workers to bank their sick days.

The latest move comes after the Liberal government tabled legislation in January that [repeals two other Conservative changes to the laws that govern labour unions](#), including Bill C-377, which requires unions to disclose how they spend members' dues, and Bill C-525, which makes it harder for unions to organize in federally regulated workplaces.

"By restoring fair and balanced labour laws, the government is recognizing that labour unions play an important role protecting workers' rights and strengthening the middle class," Brison said.

Liberals move to rescind Conservative changes, revamp public-sector bargaining

Canadian Press, May 25 2016

The federal Liberals say they'll roll back changes to public-sector bargaining brought in by the previous Conservative government.

Treasury Board President Scott Brison says in a release that portions of the 2013 omnibus budget bill will be formally repealed with new legislation when Parliament returns from the summer recess next fall.

The Conservative changes allowed the government to unilaterally decide which employees offered essential services and therefore determine who was allowed to strike.

The 2013 bill also made salary arbitration dependent on the government's budget priorities, curtailing the independence of the process.

Public-sector unions promised a constitutional challenge to what they said was an attack on collective bargaining.

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The Liberal government has already introduced legislation to repeal two other controversial Conservative-era labour bills that would have forced all unions to publicly disclose their internal financial workings and changed the process for union certification and de-certification.

"By restoring fair and balanced labour laws, the government is recognizing that labour unions play an important role protecting workers' rights and strengthening the middle class," Brison said in a news release Wednesday.

"As another important step in rebuilding the relationship with Canada's public service, we are moving to repeal changes to the public service labour relations regime brought into law by the previous government."

Federal 'unmuzzling' has gone beyond government scientists with scrapping of Harper-era system

Marie-Danielle Smith, National Post, May 29 2016

The Liberal government has scrapped the elaborate system Conservatives were using to organize central message control within the government, replacing it with... nothing, according to the Privy Council Office.

It's not just the scientists who've been unmuzzled. Anyone in the government who wants to organize a public event, or speak at one — and anyone who wants to talk to journalists — is affected by this change in policy.

The PCO, which acts as a support to Prime Minister Justin Trudeau and his cabinet, confirmed the shift this week.

Under this government, it is no longer using documents called "Message Event Proposals," which came into practice under Stephen Harper's Conservatives, to vet events and media requests across the federal government. The documents "have not been replaced with something new," said spokesperson Raymond Rivet.

"The PCO's new communications process looks like another positive step," said Debi Daviau, president of the Professional Institute of the Public Service of Canada.



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The union represents about 57,000 government scientists and other professionals, mainly at the federal level of government. It has been one of the most vocal advocates for the government “unmuzzling” its scientists.

Though she said there’s clear support for science from the Liberal government, Daviau warned that policies and directives are always at the whim of the government of the day, noting a “chill” under Harper.

“A lot of work needs to happen so that science is never silenced again by a federal government. What we need now is to safeguard it from future attacks and ensure we are consistent across government departments,” Daviau said.

Despite the shift at PCO, Rivet noted some departments might still use Message Event Proposals or similar products internally.

“Departments and ministers are responsible for their own communications, though co-ordination remains important,” said Olivier Duchesneau, a spokesperson for Trudeau. Some inquiries are still flagged to the PCO when more than one agency or department is involved, Rivet added.

Duchesneau said the government is basing its communications on the concept of “government by cabinet,” though he didn’t comment specifically on the scrapped Harper-era system.

With civil service shakeup, Trudeau brings youth, diversity to top jobs

Simon Doyle, The Globe and Mail, May 23 2016

Retirements of Ottawa’s highest-ranked bureaucrats have accelerated under the Justin Trudeau government as the Liberals shuffle the leadership of the public service after years of management under Stephen Harper.

The government has made a series of moves with its highest-ranked bureaucrats since coming into office last fall, most recently promoting senior officials who had worked on the Environment and Foreign Affairs portfolios.

Ian Shugart, a bureaucrat who for a couple of years managed Environment Canada under Mr. Harper, and Daniel Jean, the Foreign Affairs deputy minister who has advised the Trudeau

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government on key files from refugees to Canada at the UN, both received promotions as about seven senior mandarins announced their retirements.

David Zussman, a former senior government official and a professor of public-sector management at the University of Ottawa, said the number of appointments are high, with more than 20 changes in the senior ranks of the public service since late December, including retirements.

“I’m sure word would have gone out that: ‘We’re in a process of renewal, and any of you guys thinking of leaving, do me a favour and tell me now,’ ” Dr. Zussman said.

“A lot of them are really long-standing public servants who I think hung around for the election to help out [former clerk] Janice Charette, and now, six months into it, they decided to trigger their retirements. They’ve all got their 35 years,” he said, indicating they can collect pensions.

Privy Council Clerk Michael Wernick, the head of the public service [appointed by](#) Mr. Trudeau in January, has been working on the appointments, recently promoting Louise Levonian to deputy minister of Employment and Social Development Canada. Ms. Levonian had been serving as an associate deputy for the department and prior to that was a senior Finance Department and tax policy official under the Conservatives.

Mr. Jean, who had served as deputy minister of Foreign Affairs since 2013, was heading the department as the Trudeau government implemented key foreign-policy priorities after the election, including Canada’s withdrawal from air strikes in Syria and Iraq and the resettling of 25,000 Syrian refugees.

Mr. Jean, in his new position as national security adviser to the PM, takes on one of the most important public-servant roles in government, advising Mr. Trudeau on top-secret national-security issues. He replaces Richard Fadden who retired in March.

Malcolm Brown, who served as special adviser to Mr. Wernick in the efforts to welcome the 25,000 Syrian asylum seekers, was also promoted in April, to deputy minister of Public Safety.

“Some ministers may want a new deputy, and it’s their prerogative to say they would like someone new. The clerk may decide that he feels someone should move, or sometimes deputies will go and say they would like to move,” said C. Scott Clark, former deputy minister of finance and a senior adviser to the prime minister under the Jean Chrétien government.

“It takes time for a minister and a deputy to form what I would call a good relationship, a professional, working relationship. Sometimes they do, sometimes they don’t,” Mr. Clark said.



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The Prime Minister has also promoted Hélène Laurendeau from associate deputy of Indigenous and Northern Affairs to full deputy minister of the department, and Peter Boehm, former senior associate deputy of Foreign Affairs, was moved up to deputy minister of International Development.

The new deputies also reflect efforts by Mr. Trudeau and the clerk to renew the public service and, as with the makeup of the Prime Minister's cabinet, introduce some youth and diversity into the government's leadership.

"He's been very clear about the importance he attaches to having a professional, non-partisan, responsive, agile, creative public service," Mr. Wernick told The Globe and Mail in an interview earlier this year. "It's the only way he's going to accomplish the goals he put in front of Canadians."

One senior government official said Mr. Trudeau, in late January, made a rare appearance at the Deputy Ministers' Breakfast, a gathering of all the public service's most senior mandarins who meet in Langevin Block. Prime ministers typically address the breakfast once or twice per year.

While it's unclear what was said, the PM has been emphasizing with senior officials a program [for getting results](#) and revitalizing the public service. Mr. Trudeau attended the meeting shortly after he appointed Mr. Wernick as Clerk.

The handful of deputies who have retired include Mr. Fadden, François Guimont, Colleen Swords, George Da Pont, Matthew King, Krista Outhwaite and Daphne Meredith.

Mr. Scott expects more changes in the fall after the government takes the summer to regroup. "I would expect there will probably be more moves coming," he said. As Mr. Wernick said in [a recent letter](#) to the PM: "It is clear to me that we are entering a period of dramatic generational change in the Public Service."

Liberals considered referring assisted-dying law to top court: minister

Joan Bryden, The Globe and Mail, May 27 2016

The federal government considered referring its proposed assisted dying law to the Supreme Court to see if it's constitutional, Justice Minister Jody Wilson-Raybould disclosed Friday.

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But she said that option was ultimately rejected because the court had indicated it's up to parliamentarians to come up with a legislative response to its landmark ruling last year, which struck down the ban on medical assistance in dying.

Wilson-Raybould suggested that the court would have bounced the matter right back to Parliament.

"To be very honest ... we considered it, but how I feel is that we've been asked by the Supreme Court of Canada to do our job," Wilson-Raybould told delegates at the Liberal party's first convention since taking power last fall.

"If I was to put a reference to the Supreme Court of Canada, I fundamentally believe that our honourable justices would say, 'Do your job'."

Wilson-Raybould and Health Minister Jane Philpott were called on to defend the proposed law at the convention, where some delegates have been pushing for a more permissive approach to assisted dying.

Wendy Robbins, the policy chair of the Liberal women's commission, spear-headed an effort to have the convention debate an emergency resolution calling on the government to drop its insistence that people must be near death to qualify for medical assistance to end their lives.

That provision has been widely panned by civil liberties and legal experts who believe the proposed law does not comply with the Supreme Court's ruling or with the charter of rights.

But the party's national policy committee rejected the resolution late Thursday.

"Is there a mood to prevent this from being discussed? A hundred per cent sure," Robbins said Friday.

"It's like opening a can of worms."

Noting that Prime Minister Justin Trudeau promised a new era of openness and transparency and bottom-up decision-making, Robbins asked: "Why not let people at a forum on policy talk about the most important policy of our generation?"

But Liberal delegates themselves showed little inclination to rock the boat.

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A couple of hundred showed up for a panel on social justice issues, which offered an opportunity to grill Wilson-Raybould and Philpott. Only Robbins and one other delegate asked about assisted dying.

By contrast, several thousand delegates showed up for a celebratory speech by Katie Telford, national campaign director and now Trudeau's chief of staff, in which she recounted how the Liberals won the last election.

At the panel, Robbins asked Wilson-Raybould to disclose the legal opinion on which she bases her assertion that the assisted dying bill is constitutional. And she urged the minister to refer it to the top court to test its constitutionality, sparing the families of grievously ill and dying individuals "the agony and expense" of launching a court challenge themselves.

The justice minister acknowledged many people believe the legislation "doesn't go far enough or that it goes too far." She maintained it strikes "the right balance between personal autonomy and ensuring that we protect the vulnerable."

"I'm confident that this approach is justifiable, it's responsible given the time frame that we have in order to respond to the Supreme Court decision," she said.

Bill C-14 would make assisted death available only for clearly consenting adults "in an advanced stage of irreversible decline" from a serious and incurable disease, illness or disability and for whom natural death is "reasonably foreseeable."

That's considerably more restrictive than the criteria set out by the Supreme Court, which ruled that consenting adults with "grievous and irremediable" medical conditions who are enduring suffering that is intolerable to them have the right to seek medical help to end their lives.

Wilson-Raybould and Philpott both insisted there are "significant risks" if the proposed law is not enacted by June 6, the date on which the ban on assisted dying will be formally lifted, in accordance with the court ruling.

They warned there'll be "no significant safeguards" to protect the vulnerable and that doctors will refuse to provide the service in the midst of legal uncertainty.

Neither minister acknowledged that medical regulators in every province have issued guidelines instructing doctors how to proceed with assisted dying. Most include requirements for more than one doctor to agree on eligibility and for witnesses to verify requests for assisted dying; some have imposed conditions more stringent than those proposed by the federal government.



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In any event, it seems virtually impossible that the bill will be enacted by June 6, although Dominic LeBlanc, the government House leader, said he hasn't given up hope yet.

He said the bill will be put to a vote at report stage in the House of Commons on Monday and is scheduled for a final vote on Tuesday.

It will then be sent to the Senate, leaving just two sitting days for senators to put the bill through all its legislative stages by June 6. Few senators have shown any inclination to rush the bill and the government has no levers to control the agenda in the more independent upper house.

Le Parlement devra s'entendre sur l'aide à mourir

La dernière ligne droite commence avec des propositions aux antipodes

Hélène Buzzetti, Le Devoir, le 30 mai 2016

C'est ce lundi soir que débute la dernière ligne droite à la Chambre des communes en vue d'adopter le projet de loi encadrant l'aide médicale à mourir. Les partis d'opposition tenteront une dernière fois de modifier le C-14, les uns pour en restreindre encore plus la portée, les autres pour l'élargir et ainsi le rendre, à leur avis, plus conforme au jugement de la Cour suprême.

La Chambre des communes sera saisie de dix propositions de changements, dont la plus significative est présentée par le NPD. Le parti de Thomas Mulcair ne suggère rien de moins que de biffer tout le mécanisme d'encadrement prévu à l'aide à mourir. Il ne resterait dans le projet de loi que les changements devant être apportés au Code criminel pour soustraire les professionnels de la santé à toute poursuite judiciaire, les dispositions obligeant les professionnels de la santé à fournir certains renseignements aux autorités et celles autorisant la ministre de la Santé à instaurer, si elle le désire, un mécanisme de surveillance.

En coulisses, on explique que le NPD avait tenté en comité parlementaire de rayer seulement les dispositions du projet de loi restreignant l'accès de l'aide médicale à mourir aux personnes en fin de vie. Comme ce changement avait été refusé, il n'est pas possible de le présenter à nouveau dans une forme identique, d'où cette proposition de changement plus radicale.



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Mort prévisible et auto-administration

Les conservateurs pour leur part proposent plusieurs amendements dont certains, s'ils étaient acceptés par le gouvernement, en limiteraient encore plus l'accès. Ainsi, le député Garnett Genuis propose de remplacer le critère d'admissibilité le plus critiqué — que la « *mort naturelle* » du patient soit devenue « *raisonnablement prévisible* » — par un critère plus restrictif : que la « *mort naturelle imminente* » soit « *devenue prévisible* ».

En entrevue avec *Le Devoir*, le député conservateur explique qu'il veut ainsi « *aligner le modèle fédéral sur le modèle québécois qui exige que le patient soit en phase terminale* ». M. Genuis rappelle que ce critère de mort naturelle raisonnablement prévisible a été critiqué de toutes parts parce que ne voulant rien dire. Il préfère le clarifier en le rendant plus limitatif. « *C'est la première fois que nous faisons quelque chose comme ça au Canada. Alors il est sensé de vouloir procéder de manière modeste dans un premier temps, quitte à l'élargir plus tard.* »

Mais ne risque-t-on pas ainsi de déroger au jugement de la Cour suprême, qui semble indiquer que l'aide médicale à mourir doit être offerte au plus grand nombre ? Garnett Genuis ne le croit pas. Il rappelle qu'en accordant un délai d'application de son jugement, la Cour suprême a mis en place un régime d'exemption permettant aux patients pressés de s'adresser aux tribunaux pour obtenir quand même de l'aide. La Cour n'a pas étendu ce régime au Québec, jugeant que la loi québécoise ferait l'affaire. « *Ce que je comprends de cela, c'est que la Cour estime que le régime québécois [qui limite l'aide aux patients en fin de vie] est respectueux de la Constitution et donc que le régime fédéral qui l'imiterait la respecterait aussi.* »

M. Genuis propose un autre amendement afin que les médecins ne soient pas autorisés à administrer un cocktail médicamenteux mortel à un patient qui serait en mesure de se l'administrer lui-même. C'est, dit-il, pour s'assurer du consentement du patient jusqu'à la dernière minute. « *C'est le modèle en Oregon où il n'y a que l'auto-administration qui est permise.* »



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La chef du Parti vert, Elizabeth May, défendra pour sa part un amendement forçant le gouvernement à entreprendre dans les 45 jours suivant l'adoption de C-14 une étude pour autoriser les directives anticipées dans le cas de personnes atteintes de maladies dégénératives et pour élargir l'aide médicale à mourir aux mineurs matures et aux personnes atteintes de maladie mentale. Le C-14 prévoit plutôt que cette étude débutera dans six mois.

Après les votes de lundi soir, la Chambre reprendra le débat une dernière fois mardi puis enverra au Sénat le projet de loi. Selon nos informations, le leadership au Sénat a signifié au gouvernement son ouverture à accélérer le pas, notamment en n'étudiant en comité plénier que les portions de C-14 ayant été amendées à la Chambre des communes plutôt que l'entièreté du projet de loi.

Date butoir ratée ?

Le NPD, qui contrairement au conservateur Garnett Genuis croit que le jugement de la Cour suprême commande d'offrir le plus largement possible l'aide médicale à mourir, demande au gouvernement libéral de soumettre le C-14 à la Cour sous forme de renvoi pour en avoir le coeur net. Le gouvernement s'y refuse. Vendredi, alors que les libéraux étaient réunis à Winnipeg pour leur congrès bisannuel, la ministre de la Justice, Jody Wilson-Raybould, a expliqué qu'elle pensait que les juges renverraient les parlementaires à leurs devoirs si un tel renvoi était logé.

Ottawa pourrait cependant en appeler, toujours à la Cour suprême, d'un récent jugement albertain autorisant une dame qui n'est pas en fin de vie à obtenir de l'aide à mourir. Puisque, dans cette affaire, Ottawa défend un argumentaire inspiré de son projet de loi C-14, la réponse qu'il obtiendrait serait l'équivalent de celle qu'il aurait avec un renvoi. Ottawa n'a pas encore indiqué son intention à ce sujet.

La Cour suprême a donné jusqu'au 6 juin aux parlementaires pour accoucher d'une loi encadrant l'aide médicale à mourir. Le gouvernement estime qu'il serait néfaste de se retrouver sans loi et exhorte donc les parlementaires à presser le pas pour s'assurer de respecter cet échéancier, même si cela devient de plus en plus improbable. Ottawa pourrait



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encore invoquer la clause dérogatoire, de manière temporaire, pour se donner le temps de parachever le processus législatif.

Ottawa's assisted-suicide legislation contains a fatal flaw

Globe and Mail Editorial Board, The Globe and Mail, May 24 2016

When Prime Minister Justin Trudeau delivered his infamous elbow in the House of Commons last week, his testiness may have been prompted by unwelcome news regarding his government's proposed legislation on physician-assisted suicide.

Bill C-14's most contentious clause – the one that would limit the right to assisted suicide to people with terminal illnesses and exclude anyone suffering from psychiatric diseases – was effectively shot down by the Alberta Court of Appeal the day before Mr. Trudeau's unparliamentary antic. The question now is, will the Prime Minister keep his elbows up, or will he acknowledge the apparent shortcomings in the proposed law?

The Supreme Court of Canada ruled in February of 2015 that the Criminal Code violates the right to a physician-assisted death of a "competent adult person who clearly consents to the termination of life; and has a grievous and irremediable medical condition ... that causes enduring suffering that is intolerable to the individual in the circumstances of his or her condition."

The court gave Parliament one year to craft a new law, then tacked on a four-month extension. But it also said that, in the interim, people could apply to a superior court for authorization to kill themselves with the aid of a doctor.

This has happened about 20 times since 2015, and all the authorizations have been granted without opposition – except for one. It involved an unnamed Alberta woman with a psychiatric disorder that manifests itself in involuntary muscle spasms that cause her terrible pain, and which have effectively rendered her blind, barely able to eat, and wheelchair-bound.

Alberta's Superior Court granted her request to die, but the federal Attorney-General appealed on the grounds that the Supreme Court decision doesn't apply to a person who is not terminally ill or whose condition is essentially a psychiatric disorder.

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The Alberta Appeals Court brusquely rejected Ottawa's arguments. Mr. Trudeau now faces the prospect of yielding to opposition demands to amend his government's bill, or pushing through a law that is vulnerable to constitutional challenge.

The latter option is the government's perfect right – it is Parliament, not the Supreme Court, that writes legislation. But since there is now credible evidence that Bill C-14 misinterprets the intent of the court ought ruling, Mr. Trudeau to at least consider the possibility that his government made a mistake.

'Certainly possible' assisted dying bill can pass before deadline: Liberals' Senate representative

Marie-Danielle Smith, National Post, May 24 2016

The government's representative in the Senate thinks less than a week is a reasonable timeline for the upper chamber to pass assisted-dying legislation, despite pessimism from other parliamentarians.

Sen. Peter Harder says it's "certainly possible" the government will meet its deadline, though he won't say whether he would resort to moving for time allocation to facilitate that.

Bill C-14 is expected to reach the Senate next Tuesday, less than a week before the Supreme Court's June 6 deadline.

Senate rules give Harder the power to move for a vote to limit debate time and expedite the process.

"I hope that the Senate can, as master of its own business, be mindful of the Supreme Court deadline and the urgency of legislation without the need for those kinds of rules, which in themselves can alter the tone," Harder said.

He said he isn't specifically planning to use time allocation, but he didn't rule it out. "I'm an optimist," he said. "I wouldn't want to speculate at this point."

It was immediately before a vote on time allocation for the same bill that a fracas broke out over Prime Minister Justin Trudeau's behaviour in the Commons last Wednesday.

I'm an optimist.



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The motion passed, but debate about a point of privilege raised over the incident ironically ended up delaying Bill C-14. MPs are expected to vote on report stage of the bill next Monday and third reading Tuesday. It's a free vote but the legislation is expected to go through.

Not all senators agree with Harder's assessment that the bill is "very well-balanced" and good to go. The Senate's legal committee already conducted a pre-study of the bill and released a report stating it had "serious reservations."

Jim Cowan, the leader of the Senate's independent Liberals, recently told the National Post he wants major amendments to Bill C-14 and doesn't see June 6 as a "drop-dead date."

Murray Rankin, an NDP MP who has been active on the House side, said last Thursday that "it's hard to believe" the bill will meet the deadline.

"I do think that there is important consequence to not having a framework in place on the 6th," Harder said, but "the sky doesn't fall in" if it doesn't work out.

The high-profile assisted-dying law will offer a first real test of a more-independent Senate's ability to expeditiously pass government legislation.

Related

- ['Clarity' urged as Liberal's likely to miss June 6 deadline for assisted dying bill](#)
- [Federal rationale for restricting assisted dying shot down by Alberta appeal court](#)
- [June deadline for assisted dying bill 'not a drop-dead date': Liberal senator](#)

It'll be a test for Harder, too. With no control over a government caucus, he can't whip votes — not even for a time allocation motion. "We don't have the tools of usual politics," he explained. He doesn't have the usual funding for a government leader either, with the Senate denying his request for the \$800,000 budget last week.

But Harder said he wants to be known as the Senate's representative to government, not just the other way around.

With vacancies being filled, independent senators will likely outnumber both Liberals and Conservatives within a year — and they shouldn't be punished for "wearing the sweater of partisan representation," Harder said.

His own role will likely evolve over time. "I keep saying this will work in practice better than it does in theory," he said.



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C-51: un projet de loi et un comité au cours des prochaines semaines

Hugo De Grandpré, LaPresse.ca, le 27 mai 2016

Le gouvernement Trudeau commencera à présenter au cours des prochaines semaines son plan pour modifier le projet de loi antiterroriste C-51 et pourrait présenter ses propres amendements avant la pause estivale.

Un document de consultation doit être présenté au cours des prochains jours par le ministre de la Sécurité publique, Ralph Goodale, afin d'engager une discussion avec la population sur le contenu du projet et les changements envisagés par les libéraux.

«Vous allez voir Ralph Goodale et moi dans les prochaines semaines présenter une partie de la solution », a ajouté le leader du gouvernement à la Chambre des communes, Dominic LeBlanc, en s'adressant à des militants libéraux réunis au congrès du Parti libéral du Canada à Winnipeg.

Cette «partie de la solution», a précisé M. LeBlanc, prendra la forme d'un comité parlementaire qui sera chargé de superviser les activités des agences fédérales chargées de la sécurité nationale.

«Il y a 19 agences du gouvernement qui ont des responsabilités liées à la sécurité nationale. Et ce groupe pourra jouer un rôle de supervision pour toutes ces entités», a-t-il déclaré.

Le comité serait formé de parlementaires de tous les partis et inclurait des députés et des sénateurs, et un président aurait déjà été choisi, selon des informations obtenues par *La Presse*.

À l'heure actuelle, il n'y a pas de supervision parlementaire des agences de sécurité et de renseignements au Canada. Quelques entités, dont le Service canadien du renseignement de sécurité, voient leurs activités examinées par des organismes indépendants dont les membres sont nommés par le gouvernement. Mais plusieurs, dont l'Agence des services frontaliers du Canada, ne sont pas soumises à de tels examens.

Pas de débat sur l'aide médicale

Le ministre LeBlanc a fait ces commentaires au cours d'une séance de questions-réponses où quelques militants libéraux ont posé des questions au sujet du projet de loi C-14 sur l'aide médicale à mourir.



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La tentative d'une militante d'obtenir un débat d'urgence sur cette question a été rejetée tard jeudi soir par les hautes instances du parti. Ils ont jugé que cette demande ne répondait pas aux critères pour la tenue d'un tel débat en vertu des règles du parti.

Mais Wendy Robbins, qui a présenté la résolution, estime que le PLC a plutôt voulu éviter une controverse au moment où le projet de loi devrait être adopté par la Chambre des communes vers le début de la semaine prochaine.

«C'est comme d'ouvrir une boîte de Pandore», a-t-elle souligné.

M^{me} Robbins a tout de même pu poser trois questions sur le sujet à Dominic LeBlanc et la ministre de la Justice, Jody Wilson-Raybould, lors de la séance de questions-réponses en avant-midi. Selon M. LeBlanc, cette réalité illustre le fait que le parti ne cherche pas à museler ses militants.

Pas de pipeline, exhorte Guilbault

Environ 3000 délégués, membres de la formation ou observateurs sont présents au palais des congrès de la capitale manitobaine de jeudi à samedi pour discuter d'un ensemble de résolutions de politiques et d'adopter des modifications à la Constitution du PLC.

Lors d'une allocation vendredi matin, l'environnementaliste Steven Guilbeault a exhorté le Parti libéral à s'éloigner de l'exploitation pétrolière et à refuser de construire des pipelines. «Le Roi charbon est mort, a-t-il lancé. Le pétrole est le prochain.»

Le gouvernement devra se prononcer prochainement sur plusieurs projets de pipelines, dont Énergie Est qui traversera le Québec. Les troupes de M. Trudeau ont évité jusqu'ici de se prononcer pour ou contre ces projets, martelant que leur position repose sur une conciliation des intérêts économiques et environnementaux du Canada.

La ministre de l'Environnement, Catherine McKenna, a remercié M. Guilbeault d'être venu offrir son point de vue. Ce dernier s'est dit conscient que sa position va plus loin que celle des libéraux, mais il a néanmoins loué leur ouverture pour lui avoir permis d'ainsi s'exprimer sans tenter de le censurer.