AJC-AJJ
ASSOCIATION OF JUSTICE COUNSEL
ASSOCIATION DES JURISTES DE JUSTICE

Press Clippings for the period of June 23 to July 7, 2014
Revue de presse pour la période du 23 juin au 7 juillet 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

AJC in the News/L'AJJ fait les manchettes

OTTAWA CITIZEN

Justice department aims to cut $52 million in legal services

Kathryn May, Ottawa Citizen, June 25, 2014

The federal Justice department is taking steps to cut $52.2 million worth of legal services it provides government over the next three years with "two waves" of reforms that will eliminate jobs, change the working relationship with client departments and, it hopes, improve efficiency.

The department, often called Canada's largest law firm, is introducing several changes following a year-long review.

In the first wave, the changes will eliminate the positions of 65 lawyers and 15 management jobs by 2017, which the department believes can be done by attrition rather than layoffs.

According to a memo circulated to staff, a key area for reform is "re-defining" Justice's relationship with client departments "to strike the right balance between supply and demand of legal services."

Many Justice department lawyers are "embedded" or work on-site in other departments and agencies as legal counsel. They also draft legislation and regulations, and represent the government in court.

"We're confident these changes will put Justice on a sustainable path for the future," said the memo from assistant deputy minister Marie-Josée Thivierge. "These changes reflect the government's commitment to delivering better public services – while reaching a zero deficit target for 2015 – as well as the changing nature of the legal industry in Canada and internationally."

A key goal is to reduce overall demand for legal services. The department will do that by focusing on services "where Justice brings its highest value and on better aligning resources with complexity, risk and priorities."

The Association of Justice Counsel, which represents nearly 2,100 of the 2,600 lawyers in government, said its big concern is more work being piled on lawyers.

Len MacKay, the union's newly elected president, said that, coming off yeas of cuts, the workforce is already stressed, and more reductions will be a blow to morale. The cuts are on top of the nearly 100 legal positions eliminated since 2012.

The measures being proposed include:

- Restructuring and rationalizing the delivery of Aboriginal law services in co-operation with the Aboriginal Affairs and Northern Development Canada;

- New "formal" relationships with client departments on the scope of services, including work the department will no longer provide or will offer differently;

- Using technology to streamline and reduce the massive costs of producing volumes of documents filed for litigation;

- Targets to increase the proportion of time lawyers spend on legal services from 1,310 hours a year to 1,400 hours, by reducing the time spent on non-legal work. Using more paralegals.

The review calls for more consolidation and streamlining of units, such as the Major Projects Management Office, which is responsible for managing federal environmental and regulatory reviews of natural resource projects across the Canada that could be worth billions. The review suggests assigning lead counsel to each of the major projects and reducing the total number of lawyers involved in the various resource development initiatives.

Other measures include saving on space by creating "virtual libraries" and centralizing legal research services.

The department appears to be planning a "second phase" of reforms but these are not tied to savings targets. The reforms include a "sustainable" funding regime for legal services;

using more mechanisms to prevent and resolve disputes; and improvements to "litigation disclosure standards."

A new deputy ministers' committee – the Strategic Legal Issues Management Committee – will oversee the rollout.

Carole Saindon, a Justice spokesperson, said the traditional model for legal services had to change in the face of restraint, new technology, cheap and accessible legal information, and increased competition.

Legal-services costs have been rising nearly five per cent a year in recent years. The department took a run at those costs during the Conservatives' strategic review and deficit-reduction plan and reduced that annual growth rate to three per cent. The reductions from the legal services review come on top of that and are expected to reduce projected legal services costs from $552 million to $500 million by 2016-2017.

The government has faced a steady increase in legal services costs over the years. A 2007 auditor general's report found the complexity and volume of litigation increased, along with legislation and legal advice to departments, since the 1982 Charter of Rights.

More recently, the Conservative government has come under fire for major increases in legal fees for outside law firms.

OTTAWA CITIZEN

Unions sit out PS sick leave discussions

Kathryn May, Ottawa Citizen, July 6, 2014

All 17 federal unions have refused to have any part in "consultations" about the Conservatives' proposed short-term disability plan, saying such a massive overhaul in managing public servants' sick leave should be hammered out at the bargaining table.

The unions formally declined Treasury Board's offer to take part in a series of discussions about the new short-term disability plan that's at the heart of the government's "wellness and productivity" strategy to reduce sick leave in the public service by getting employees better and back to work faster.

The unions argue the consultations show the government is bent on introducing a new short-term disability plan to replace the existing accumulated sick leave system and has no intention of negotiating the plan in upcoming contract talks, leaving only details to be sorted out, such as the number of annual sick days public servants will be entitled to.

Sick leave is the big issue in this round of bargaining that has been slowly grinding into gear over the past several months. This week, the giant Public Service Alliance of Canada has its first meeting with Treasury Board negotiators for about 100,000 of the employees it represents.

As lawmaker, the government can introduce a short-term disability plan but has to negotiate the terms and conditions of sick leave, which are enshrined in the contracts of all public servants.

The unions want the government's short-term disability plan to be brought to the bargaining table to be negotiated during contract talks and not introduced as a fait accompli with only details to be worked out.

"To be honest, they (the government) know exactly what they want but have to give the impression that they consulted with us for appearances only," said Claude Poirier, president of the Canadian Association of Professional Employees.

"We believe we can fix the problems they have identified in a cheaper way than changing everything and replacing it with a more expensive system."

Treasury Board President Tony Clement claims he's open to negotiate ways to better manage ill and injured public servants but they would have to fit with his "commitment" to a new short-term disability plan. The government announced the overhaul as a priority in the last budget.

"Our government is committed to introducing short- and long-term disability plans that will help public servants get healthy and get back to work," he said in an email. "We will work with the bargaining agents to find ways to reduce the incidence and duration of disability in the public service and to improve workplace wellness. "

The unions are in a tough spot. The Conservatives introduced sweeping new rules for this round of bargaining that will strengthen the government's hand at the table while diminishing the unions' bargaining clout.

Despite the changes, the unions argue the government is still obliged to bargain in good faith and that approaching sick leave reform with a "predetermined outcome" could be tantamount to flouting those rights.

The unions participated in the disability management initiative that Treasury Board launched several years ago to get a handle on the problems with the system. The unions acknowledged there were weaknesses but have maintained those gaps can be fixed without scrapping the existing regime and introducing a new scheme.

Public servants now accumulate 15 days of sick leave annually that they can carry over from year to year. Banked sick leave is estimated at about $5.2 billion. Public servants typically aim to bank 13 weeks of sick leave in case they fall ill to cover the waiting period before they can go on long-term disability.

Debi Daviau, president of the Professional Institute if the Public Service of Canada, said a new short-term disability plan that affects the terms and working conditions of employees should be negotiated and not "worked out in some backroom with you-scratch-my-back-I'll-scratch-yours kind of dealings."

"We can't take something like this out of the hands of our members and say this is a leadership decision and negotiate outside the collective agreement and then turn around and pay lip service at the bargaining table. That is unethical."

Daviau said taking part in consultations could be construed as accepting the new plan. Also, engaging in consultations could pose a legal dilemma in the event of an impasse if the government can successfully argue those discussions satisfied its legal obligation to consult with unions.

She said unions want to see the business plan, data and evidence of why a new plan is justified and that should be done at the bargaining table.

"Let's talk about what the real problems are and then be in a position to solve them in a way fair to taxpayers and employees at the same time. They have reversed this by wanting to decide outside the negotiating table and circumvent the established process afforded by the law."

Reforms to bring neutrality to public service could lead to 'government by the unelected': think tank

KATHRYN MAY, Ottawa Citizen, June 27, 2014

Reforms proposed by a controversial policy paper to restore neutrality in Canada's public service would increase the power and independence of bureaucrats at the expense of ministers and open the door to government by the unelected, warns the Institute on Governance.

Maryantonett Flumian, president of the institute, a think-tank devoted to public service issues, said a debate on the nature of governance is long overdue, but the answer to the trust gap between politicians and bureaucrats isn't to isolate the public service and protect it from politics.

“That means Canadians would have a public service that no one wants. There is already an official opposition in this country and no one wants to be governed by the unelected. That is not the role of the public service,” she said.

The role of the public service was recently thrown into the spotlight when think-tank Canada 2020 released a paper calling for a new ground rules for public servants, ministers and MPs to protect the neutrality of the public service from being eroded by partisan politics.

The paper, written by University of Ottawa professor Ralph Heintzman, has provoked much debate about the shifting role of the public service and its relationship with ministers but few agree on the causes or how to fix them.

Heintzman calls for a new charter of public service, a “moral contract” that would include a code of conduct, new rules for communications, more accountability for deputy ministers and a new appointment system for them, so they aren’t beholden to the top bureaucrat and clerk of the Privy Council. He argues the charter would set boundaries between politics and the public service and provide tools to reinforce the line between them.

But Flumian doesn’t think the public service is politicized and argues that Heintzman’s proposals, particularly taking the appointment of deputy ministers out of the hands of the clerk, would jeopardize their critical role in Canada’s democracy.

She said deputy ministers are the “linchpins” between the government and the public service. They bridge the two worlds. They have to translate the prime minister’s agenda into action by the public service. Similarly, they explain the views of the public service to politicians.

Flumian argues the clerk, not the Public Service Commission as recommended by Heintzman, is ideally positioned to select deputy ministers who have the capabilities, skills and personalities best-suited to work “this two-way relationship” with ministers.

She argues turning these appointments over to the Public Service Commission makes bureaucrats independent of their political masters and risks politicizing the public service.

“Who will become those linchpins?” Does the deputy minister role get taken over by the ministers’ chief of staff?” she asked.

“If senior public servants are cloistered priests and nuns who don’t speak to the outside world and who don’t think their jobs is to understand the governance from the party in power, through to the prime minister and cabinet, then who will do that bridging?

Flumian believes Canada needs a neutral public service so to can work with any party in power. As a result, public servants don’t have an “independent voice” and their advice must be given in confidence “because it is the government that has a positions on issues, not the public service,” she said.

She acknowledged public servants are obliged to act in the public interest but the public interest is determined by the government and public servants must implement its policies whether they like it or.

“Politicians are elected, not public servants and they get to set the ground rules and, as long as they are not breaking the law, they are boss. That is what democracy is. “=

Flumian also rejected Heintzman’s proposal for deputy ministers to be more accountable like their counterparts in Britain. She said Canada’s Westminster system has evolved in its own way and become more “ Washminster,” a hybrid of the U.S. federal system and Britain’s Westminster system of responsible government.

“Our political world is getting closer to a Washminster as we model more on Washington rather than other Commonwealth countries and yet we say our public service should be more Westminster?”

LE DEVOIR
Libre de penser
ACTUALITÉS OPINION CAHIERS SPÉCIAUX

FEMMES ET MAGISTRATURE

Le Barreau canadien veut voir des statistiques

Marie Vastel, Le Devoir, le 28 juin 2014

Le manque de femmes sur les bancs des tribunaux fédéraux préoccupe l’Association du Barreau du Canada. Mais si le gouvernement veut y répondre, il ne suffit pas qu’il s’inquiète lui aussi. Il faut qu’il récolte et fournisse des statistiques pour connaître les obstacles et y remédier, somme le président du Barreau canadien.

La faible place des femmes dans la magistrature fédérale a fait les manchettes la semaine dernière, après qu’il fut révélé que le ministre de la Justice Peter MacKay avait expliqué cette réalité par le fait que celles-ci ne briguent pas les postes de juge, car elles ne veulent pas s’éloigner de leur progéniture. Des propos qu’il aurait tenus lors d’une rencontre de l’Association du Barreau de l’Ontario et qui l’ont aussitôt mis sur la sellette.

« Si on commençait avec les données, plutôt que les stéréotypes, on pourrait comprendre où sont les problèmes dans notre système, où sont les obstacles, et trouver les moyens de les franchir », a plaidé le président de l’Association du Barreau canadien (ABC), Fred Headon, en entretien téléphonique avec Le Devoir vendredi.

Un argument repris en après-midi lors d'un discours devant juristes et experts du pays, qui étaient réunis en conférence pour la journée à Ottawa. Lors du discours de clôture de la rencontre, Me Headon a sommé le gouvernement de récolter des données pour répertorier le nombre d'hommes et de femmes qui déposent leur candidature, et de les rendre publiques. « Nous avons besoin de renseignements tangibles et probants pour savoir où nous en sommes et les progrès que nous réalisons, ou peut-être les secteurs dans lesquels nous reculons », a-t-il lancé, en invitant ses auditeurs réunis en conférence pour la journée à Ottawa à poser leur candidature.

Seules de telles données permettront, explique-t-il, de vérifier si un si petit nombre de femmes brigue des postes à la magistrature fédérale. Et si le gouvernement retient ou non leur candidature.

Car ce même débat a été tenu en Colombie-Britannique, où certains expliquaient aussi qu'il y avait moins de femmes dans la magistrature provinciale parce que celles-ci ne briguaient pas ces postes. Le gouvernement de la province s'est mis à colliger les données et lorsqu'il les a publiées, on a appris que beaucoup de femmes avaient tenté leur chance, note Me Headon.

« C'est possible qu'il n'y ait pas assez de femmes qui posent leur candidature au niveau fédéral. Mais il faudrait travailler à partir de données pour constater qu'il est là, le problème », a dit le président de l'ABC au Devoir. Quant à M. MacKay, Me Headon ne veut pas commenter ses propos, car il n'était pas là lors des faits allégués.

Harper doit rectifier le tir

Me Headon appelle en revanche de nouveau le premier ministre à clarifier les commentaires qu'il a tenus à l'égard de la juge en chef de la Cour suprême, Beverley McLachlin, et à lui réitérer sa pleine confiance, de même qu'au système judiciaire fédéral. Dans la foulée de la nomination du juge québécois Marc Nadon au plus haut tribunal du pays, Stephen Harper affirmait le mois dernier qu'il aurait été « très approprié » qu'il prenne l'appel de la juge en chef, laquelle voulait lui signaler que la nomination d'un juge de la Cour fédérale comme le juge Nadon risquait de poser problème.

« Nous croyons qu'il n'y a pas de problème, nos juges sont compétents […] Mais quand le premier ministre fait des commentaires comme il l'a fait ce printemps, ce pouvait être interprété d'une façon qui remettait en question la confiance qu'on peut avoir envers le système judiciaire. Ce n'était pas mérité », a reproché Me Headon.

Parlant de nominations à la Cour suprême, l'ABC réclame un processus plus « transparent », plutôt que le comité à huis clos de députés qui « opère selon des règles qui ne sont pas publiques et qui se base sur des critères inconnus », a fait valoir le président dans son discours. L'ABC souhaiterait voir un processus comme celui d'autres cours fédérales — supérieure, fédérale, d'appel — qui réunirait les députés, mais aussi des représentants du ministère de la Justice fédéral, de celui de la province concernée, de même que de la communauté judiciaire et du public. Ce qui permettrait d'assurer une diversité de points de vue et « que l'élément politique ne joue pas un rôle démesuré », a expliqué Me Headon en entrevue. Le gouvernement s'engagerait en outre à ne nommer que des candidats recommandés par le comité.

Le gouvernement est « en train de revoir le processus en vue des nominations qui seront faites à l'avenir », s'est contenté de répondre une porte-parole du ministre MacKay.

Commons justice committee to meet on prostitution bill

JORDAN PRESS, Postmedia, July 4, 2014

MPs on the House of Commons justice committee will return to Parliament Hill Monday for four full days of meetings to review the government's proposed prostitution bill.

The bill would make it illegal to advertise sex for sale, or buy sexual services, but only make it a crime to sell sex if the transaction happens near a school, mall or other place where children may be found.

A deadline from the high court

When the Supreme Court of Canada ruled the country's prostitution laws were unconstitutional because they did not protecting sex workers' Charter right to "security of the person," it gave the government one year to come up with a new law. That one year expires in December.

The government wants the committee to approve the bill, with or without changes, by the end of this week, although the full Commons won't deal with it until it returns in September. Not everyone likes that plan. "Summer has more than four days," said NDP justice critic Françoise Boivin. "If we want to do a serious job, I think that type of legislation deserves … the time to ponder a bit."

A long list of Canadian witnesses

About 60 witnesses are currently scheduled to testify, though not all names are finalized. They come from all over Canada: two chiefs of police; the Adult Entertainment Association of Canada; anti-human trafficking groups; sex trade workers associations; The Native Women's Association of Canada – just to name a few. "We could have had so many more because there were so many people who wanted to come and speak," Boivin said.

A few international voices as well

By criminalizing the buying of sex, the Conservatives' bill is in part similar to the "Nordic model" — used in Sweden, Norway and Iceland — under which police target the customers, pimps and sex-trade traffickers, but not the sex workers themselves.

Those international voices will also be heard next week, including a member of the European Union's parliament. "It's as useful as many other things," Boivin said. But, "It's going to be their view, based on their own laws." Meaning it may not necessarily work within the scope of Canadian laws, or the thrust of the Supreme Court ruling.

The more things change …

Critics argue that the bill could force the sex trade underground with less time for sex workers, concerned about their own safety, to screen clients. Justice Minister Peter MacKay said Thursday that the government is open to constructive amendments on the bill. The way next week is set up, those amendments would be introduced and debated on Friday — just hours after the last witness testifies.

This is going to get a lot of ink

The justice committee has a full day of hearings each day for four straight days. It is the only Commons committee meeting at the moment, since Parliament has risen for the summer — making it the only show on Parliament Hill until the end of the summer break in September. With little else happening, and a bill that has drawn much attention and criticism, there will be a high level of interest from the news media.

Prostitution: le projet de loi à l'étude

La Presse, le lundi 6 juillet 2014

Témoignages poignants et vifs échanges politiques seront vraisemblablement au menu du comité permanent de la justice et des droits de la personne qui étudiera cette semaine le nouveau projet de loi gouvernemental sur la prostitution.

Le gouvernement Harper dit qu'il doit se presser car la Cour suprême du Canada lui a imposé une échéance - le mois de décembre - pour faire adopter cette nouvelle loi.

La porte-parole du NPD en matière de Justice, Françoise Boivin, veut que le gouvernement ralentisse la cadence et rédige avec soin un nouveau projet de loi qui se conformera à la Charte au cours de la saison estivale.

Le plus haut tribunal du pays a annulé l'ancienne loi sur la prostitution en décembre et a donné un délai d'un an au gouvernement pour en faire adopter une nouvelle qui sera conforme à la Charte des droits et des libertés.

Le ministre de la Justice, Peter MacKay, a dit que le message du gouvernement au cours de la prochaine semaine sera d'expliquer la nécessité de faire vite. Il sera le premier témoin à être entendu par le comité. Celui-ci n'aura que trois jours pour écouter les témoignages alors qu'en temps normal, il eut fallu au moins un mois, sinon plus.

Il existe quelques précédents concernant des réunions de comités parlementaires pendant la pause estivale. L'agenda de la semaine à venir est ambitieux, alors que le comité devrait entendre les témoignages de plus de 60 personnes au cours de 20 heures d'audiences devant débuter lundi et prendre fin jeudi matin. «Ce sera une semaine intense, indique Mme Boivin par courriel. C'est comme un train qui irait très vite.»

La néo-démocrate indique cependant qu'elle réclamera davantage de temps pour que les membres du comité puissent examiner le contenu du projet de loi à tête un peu plus reposée pendant les mois d'été, «afin de voir si certaines suggestions d'amendements seraient pertinentes, et pour au moins prendre cinq minutes pour y penser».

Le ministre MacKay a confié à des journalistes qu'il était ouvert à l'idée d'apporter des amendements, avant de préciser qu'il ne sera pas trop indulgent; il affirme que le projet de loi est viable sur le plan constitutionnel et représente une réponse adéquate à la décision de la Cour suprême.

La longue liste des témoins compte des travailleuses du sexe, des femmes autochtones, des travailleurs communautaires et des experts provenant d'Europe.

Le nouveau projet de loi conservateur crée de nouveaux crimes pour les clients et les souteneurs, mais ne criminalise pas les prostituées. Il s'en prend également à la publicisation des services sexuels et la vente de services sexuels dans des endroits où un enfant pourrait se trouver. En plus de nouvelles dispositions pour «améliorer la sécurité des prostituées», le gouvernement s'engage à verser 20 millions de dollars pour aider les travailleuses du sexe à changer de métier.

NATIONAL NEWSWATCH

NEWS OPINION ENTERTAINMENT THE MIX

Changes to prostitution law welcome: MacKay

Mike MacDonald, The Canadian Press, July 3, 2014

HALIFAX - The federal government is open to amending its proposed prostitution law, but Justice Minister Peter MacKay says the Commons committee reviewing the bill must move quickly to meet a tight deadline.

MacKay said Thursday he's looking forward to taking part in hearings that start Monday in Ottawa.

The Conservative government is open to constructive changes, he said, but he added that the bill is constitutionally sound and adequately responds to a Supreme Court decision that recently struck down parts of the existing laws.

"We're always open to amendments if they're constructive amendments that we believe it," he said after a funding announcement in Halifax. "This is what the committee process in all about."

MacKay said the committee is under pressure to act quickly because the court ruling in December stipulated that a new law must be in place within a year, which is why hearings are being held during the summer recess.

"Our message is: pass the bill," he said. "There is a sense of urgency."

The minister said the bill has already been subject to extensive consultations including online input.

Under the old laws, prostitution itself was actually legal but almost all related activities — including communicating in a public place for the purposes of prostitution, pimping and running a brothel — were criminal offences.

The Supreme Court was concerned that the provisions unduly increased the risk to sex workers and declared them in violation of the basic Charter right to security of the person.

The Conservative bill criminalizes the purchase of sexual services, targets those who benefit from prostitution and outlaws the sale of sex near places where children gather.

Some sex trade workers and their supporters have argued the bill will make it even more dangerous for prostitutes to work because it will force them to move to more isolated areas.

The Opposition New Democrats have said the proposed law is likely unconstitutional because it does not adequately protect women, failing to meet the court's primary concern.

NDP justice critic Francoise Boivin, a committee member, wants to wait to hear from witnesses before recommending what specifically needs to be amended.

But she predicted there will be no shortage of suggestions by the time the four days of hearings have been completed.

"There's going to be tons of suggestions for either amending, or making it more compliant to the decision," Boivin said in an interview.

"I think we need to reflect on it so we don't create something as non-Charter compliant as the previous sections in the Criminal Code were."

The government says the new offences are intended to reduce demand for sexual services, shield sex workers from exploitation and safeguard children and communities.

Prime Minister Stephen Harper has said his government is cracking down on johns and pimps because legalizing their activities would be unacceptable to Canadians, saying activities related to the sex trade are harmful to women and society in general.

"I'm not sure that the solution from the government is going to make the sex workers life more secure," said Boivin.

One of the provisions of the bill would be to ban all advertising on the sale of sexual services in print media or on the Internet.

Boivin said that could force prostitution "underground" creating more risk for already vulnerable women.

Tribunal can deny in-person appeals in disability benefits cases

GLORIA GALLOWAY, The Globe and Mail, July 7, 2014

Some Canadians who believe they have been wrongly denied federal disability benefits are being told, under new rules, that they have no right to plead their case directly to the adjudicator of the new Social Security Tribunal who will decide their appeal.

A lawyer who handles Canada Pension Plan disability cases says his clients will be stripped of their right to basic justice if they cannot appear before the tribunal. And a retired doctor who heard appeals under the previous system says he could not have made fair decisions without meeting claimants face to face.

“I can tell you there were a couple of times when you would say to yourself, ‘This is a slam dunk for denial,’ until the human walked in,” said George Sapp, who lives near Halifax. “Then you would see the person that’s attached to the file. And sometimes it took you back. And you listened.”

CPP disability benefits are available to people who paid into the pension plan and cannot work because of a serious and prolonged ailment. Until the spring of last year, anyone

who was told by the government that they were not entitled to collect them, had the right to tell a three-person review tribunal why that decision was wrong.

But, in April 2013, the Conservative government eliminated the roughly 350 part-time members of those panels, including Dr. Sapp.

They were replaced by 35 full-time members of the new Social Security Tribunal (SST) which, despite inheriting a backlog of 7,224 cases, managed to hear just 348 appeals in its first year of operation. By last month, the backlog had grown to nearly 10,000, some of them dating back several years.

New rules introduced when the SST was created allowed adjudicators to hear cases by teleconference, video conference, in person, or by written question and answer. But the adjudicators could also decide, unilaterally, that the written material given to them by the claimants and the government was sufficient and that no further live input was necessary.

In the first 13 months of the SST's operation, 57 cases were decided on the basis of the existing written record alone. In the same period, 173 appeals were heard by teleconference, 52 by video conference and 123 were done in person.

Dominique Forget, the senior director of the tribunal, said in a telephone interview on Friday: "It's a question of flexibility and efficiency." Appellants can express their preference, she said, but "we're trying to move files and to be as quick as we can."

Ms. Forget said the tribunal does not keep statistics to show the relative success of appellants who are permitted to present their case in person versus those who are not.

Allison Schmidt, a Regina-based consultant who helps people appeal denials of CPP disability benefits, said it has only been in recent weeks that her clients have been told that an adjudicator would make a decision without hearing directly from them.

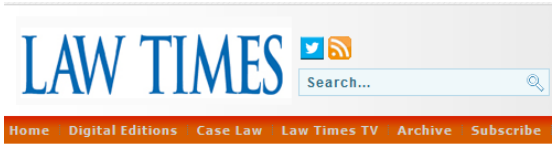
"It appears that the way the Social Security Tribunal is going to manage the enormous accumulation of backlogged appeals is to unilaterally deny Canadians the right to be heard in an in-person hearing," said Ms. Schmidt. "By denying this right to this type of appeal, the federal government has found another way to tilt the playing field in their favour."

One of Ms. Schmidt's clients who was told he would not get a hearing was Stu Lang, a British Columbia man who had to quit his job building airplanes after a catastrophic shoulder injury. He was denied CPP disability benefits and launched an appeal in 2011.

Mr. Lang, who does not yet know what the adjudicator will decide in his case, said he was "a little peed off" to be told three years later that he would not be able to explain, in person, why he believes he is owed the benefits.

Richard Fink, a Toronto lawyer who handles CPP disability cases, said none of his clients have yet been told they will not get a hearing. On the other hand, said Mr. Fink, there is such a backlog at the SST, none of his clients have received a hearing of any kind in recent months.

But “the rules of natural justice say you are entitled to an oral hearing if there is some value in having it,” said Mr. Fink. “There is judicial precedent that where your rights are being decided, you are entitled to appear before the party making the decision.”



Lawyer who posted Crown disclosure online admits ‘terrible mistake’

Peter Small, Law Times, July 7, 2014

An Ottawa lawyer has made an emotional apology to the Law Society of Upper Canada for “foolishly” posting Crown disclosure from a client’s criminal case on the Internet.

“This has been a terrible mistake,” David Ian Anber told a three-person disciplinary panel at a law society hearing in Toronto on June 25.

“It was wrong because the Crown attorney trusted me to keep my undertaking,” he said, his voice breaking.

“It was wrong because my client trusted me to protect her information. It was wrong because the court expected more of me. It was wrong to the profession, [which] depends on undertakings.”

Anber, a 33-year-old lawyer who focuses on vehicular offences, admitted to committing professional misconduct.

The disciplinary panel, chaired by Lyle Kanee, found Anber had breached his client’s confidentiality and his undertaking to the Crown to keep the disclosure “strictly confidential” and had failed to maintain the integrity of the profession.

Anber admitted that on Nov. 25, 2012, he “mistakenly and foolishly” posted Crown disclosure in PDF format for his client’s fraud case on freelancer.com, an Internet site where people can bid on jobs offered by individuals.

According to an agreed statement of facts, Anber asked on his posting if anyone could provide a program to remove “black boxes redactions” from documents.

“As a lawyer, I frequently get pdf documents that have been redacted by the other party which should not be redacted,” he wrote.

“It wastes time to have to ask a judge to order the other party to unredact information.”

He posted disclosure in his client Kimberley Billings’ fraud case as a sample of the kind of material he wanted unredacted.

It included her address as well as photocopies of her birth certificate and bank card; the Crown synopsis of her charges; witness statements; loan application forms filled out by Billings identifying her phone number and income; a preauthorized debit form that included her bank account number; payroll verification from the Ottawa Hospital; and a copy of her online bank account statement.

An Australian freelancer saw Anber’s online notice and, in a confidential message to the poster, warned that the PDF contained private information. He also contacted the Law Society of Upper Canada and Ottawa police.

An Ottawa police officer involved in the Billings case, Mitch Proteau, devised a sting operation. Posing as a Florida freelancer, Proteau called Anber and offered to sell him a program for $500 that would remove redactions from such files. Anber expressed interest.

Proteau also notified the Ottawa Crown’s office. It made an urgent application in the Superior Court to have Anber remove any electronic criminal disclosure in his possession from any web site and return it to the Crown.

Anber retained counsel and immediately reported himself to the law society.

In a hearing before Superior Court Justice Robert Maranger, Anber agreed to remove the Billings material from the web and return all electronic disclosure he had for any case to the Crown. He offered and arranged a mentoring program for himself with three senior defence lawyers that became part of the judge’s subsequent order. The judge declined, despite the Crown’s urging, to bar Anber from uncontrolled access to all future disclosure. Nevertheless, he chastened Anber.

“What took place here are egregious violations of several rules of professional conduct,” Maranger stated in his ruling.

Law society prosecutor Suzanne Jarvie asked the panel to penalize Anber with full costs of $7,205 and a “short but sharp” two-month licence suspension. “We are looking at a very serious breach of client confidentiality,” she said. “There is certainly not another case . . . that is anything like this.” The law society needs to send a message that it views this breach as egregious, she added.

Among the factors tempering Anber’s misconduct was his admission of wrongdoing, his expression of remorse, and the agreement to get mentoring, she said. Otherwise, she said, she could have sought a six-month suspension.

Anber’s lawyer, Michael Johnston, asked for a reprimand but no suspension. He didn’t challenge costs, stating his client feels law society members shouldn’t bear the financial burden of his case.

Johnston described Anber as a young and dedicated but previously somewhat isolated sole practitioner who made an impetuous, life-altering error late one night "with one click of a mouse."

Called to the bar in 2009, Anber practises over a wide geographical area and is viewed as an outsider by lawyers at some of the courts in which he appears, said Johnston. He had few mentors until after this incident, he added.

"He now has been chastened," said Johnston.

"He hears proverbial footsteps before he makes a decision."

He settled for $16,520 after his former client sued him.

Federal and provincial Crown offices in Ottawa now deny him access to electronic disclosure. As a result, he must view the material on their premises "under gazes of suspicion and, in some cases, hatred," said Johnston. He has been "publicly shamed," he noted.

The ordeal has taken a toll on his family. His wife, who was at the hearing with their two-month-old son, said Anber is under so much stress that he sleeps only two hours a night and has gained weight, according to Johnston.

"He has learned from his errors," Johnston added. A suspension, in a way, "would be non-responsive" because he needs an opportunity to learn, he said.

The panel reserved its penalty decision.

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'I know people in the federal system who were fired because they blew the whistle'

Allan Cutler helped blow the whistle on the Liberal Sponsorship Scandal in 2004. Today, he says whistleblowers still aren't protected

By BEA VONGDOUANGCHANH, The Hill Times, July 7, 2014

The Hill Times presents the third of an eight-part series titled, "The Whistleblowers." We wanted to find out from some of the country's best-known government whistleblowers if

their actions have actually made a difference to government policy today and if, given the personal costs to their lives, would do it again.

Almost 10 years after the federal Liberal government's sponsorship scandal and subsequent attempts to legislate whistleblower protection in Canada, very little has improved, says Allan Cutler, a key figure in exposing bid-rigging and political interference in advertising procurement contracts at Public Works, better known as the Liberal Sponsorship Scandal.

"Are more people willing to speak out? Yes. Has the situation improved? Debatable. In Canada, people are more aware about what whistleblowing is about, but you still face being destroyed. I know people in the federal system who have been fired because they blew the whistle. This is after the sponsorship scandal, this is after I've testified," Mr. Cutler told The Hill Times recently. "They come to me, they talk to me. I continue to get referrals. It all deals with government corruption. I made a statement recently. I said it's one of two things. I said it's either worse or there's more of it, but then I thought about it—maybe it's both. But I would not say that it's better."

Mr. Cutler founded the Canadians for Accountability in June 2008 to help educate Canadians about whistleblowing and to promote a culture of integrity in the public service after he faced reprisals and harassment for trying to do the right thing at Public Works and Government Services Canada in 1996 as a procurement officer. As the bureaucrat responsible for negotiating the terms and prices of government advertising contracts, he tried to raise his concerns about bid-rigging and political interference in the sponsorship program.

Between 1994 and 1996 he said he refused to go along with improper practices at Public Works such as backdating contracts, payments for no work, and breaking Treasury Board rules and regulations.

He was sidelined, blew the whistle in 2004 and later left the government in 2004.

"It was contracts being awarded to firms for no work. We were told to increase the rates we were paying to firms because they wanted to pay them more, not because the firms wanted more, backdating documents which you're supposed to go through a legal proceeding to ratify, but, 'No, no, just issue the contract as if it was given two months ago,'" he said.

"It was everything against what I knew was the right thing to do and the legal thing to do. I'm not talking just about policy, this was more than policy, and this was breaking the law. Giving money to somebody for nothing—that's breaking the law. I had no choice in my opinion because of the nature of who I am," he told The Hill Times. "It wasn't a hard decision. The decision was made very quickly to just refuse to sign documents."

At the time, Liberal prime minister Jean Chrétien's government, rattled by Quebec separatism and the Parti Québécois government, created the Canadian federal advertising sponsorship program through Public Works and Government Services Canada aimed at raising awareness in Quebec of the federal government's contributions to Quebec's industries and cultures. The program ran from 1996 to 2004, but its administration was

broadly corrupted. Ad firms with close ties to Liberals organizers and fundraisers were paid for little or no work and those firms donated money back to the Liberal Party.

High-ranking bureaucrats and Liberal Party political players were later implicated in the scandal, which also led to the defeat of the Liberal government in the 2006 election.

Mr. Cutler said he started by trying to fix a problem, at first talking to his managers about what he was seeing, but getting nowhere. He had refused to sign document after document, he said, all the while keeping records which nobody knew about.

"At one point in time, there was a million dollars worth given to a firm for virtually nothing, and after I reviewed the documents, they told me to destroy them. What I always said to people is that I always made certain to follow orders. So I photocopied them and then destroyed the originals," he said. "If questioned, I followed the orders. They never said, 'Don't photocopy,' they said, 'Destroy.' And I followed my orders strictly. I knew those records were important to keep because they demonstrated something. But still, they told me to do it so I followed my conscience. If there was no photocopier, I would've just kept the originals because they were too important to destroy."

What made him go public and in essence "blow the whistle" was a meeting he had with Mario Parent, coordinator of advertising and sponsorship branch at Public Works, in which Mr. Parent told him that Chuck Guité's, director of the sponsorship program, "was getting fed up" with his refusal to sign the contracts and that he was "going to have to pay for it."

Mr. Cutler took it seriously. "That was a personal threat. That was a trigger that moved me. There could have been other things—it could have been sooner, it could've been later but the issue he was talking to me about was something worth about $23,000, really small. I was refusing to sign almost million dollar documents, so on a 20-odd thousand dollar one, is where this threat came. It doesn't make sense. I said enough is enough," he said.

With the help of his union, he went to internal audit to make a formal complaint.

"We went to internal audit, and they said, 'Oh, we'll keep your name confidential.' Ha, there was no one else who had the information I had so there was no confidentiality and anonymity that could even be perceived or given to start with," Mr. Cutler said.

"They did guarantee that they would protect me, that I would not suffer negative consequences. They would ensure that. So I went there, started the process and all hell broke loose."

He said a day after he gave internal audit the documents he had, he was called into Mr. Guité's office.

"He told me that there had been some discussion for some months—which turned out to be false, by the way, when they checked my records—and my position was going to be declared surplus, meaning I was being fired," Mr. Cutler said. "All of a sudden, the instructions came out that I was to get no work. I was not involved with any file,

previous, new, I had zero work. And that went on for three months. And, of course, everyone in the office knew I was deep in the shit, so nobody would talk to me. Try going to work for three months with nothing to do. Internal audit did not support me and get me out of there. They were supposed to have gotten me out of that situation in three weeks. Three months later, I was still there."

He said he was ostracized at work and back then there was no internet to surf to keep occupied, so he spent his days counting the minutes and playing chess in his head. He said that he had a friend he used to drive into work with and they would play chess by calling out moves in the car with no board.

"I can't do it now, but at that time, I could go into a game about 10 or 15 moves and keep it in my head. At that point it would break down, because the two of us could do it and we'd start getting into a dispute over where the pieces actually were, so we'd lose it eventually," he said. "I was able to sit there and play an imaginative chess game. You just find a way to get through the day."

Mr. Cutler said he didn't want to give management any reason to reflect badly on him so he deleted the games on his computer and he didn't talk on the phone for personal matters.

He also couldn't read any books or magazines except for training manuals related to his work. "You look at your watch and say, 'Oh, there's another three minutes gone.' You know you can't come in late because they'll watch for you, you can't leave early, you can't take long lunches, so you have to be at your desk, even if there was nothing to do," he said.

"No one in the office is really talking to you because they're all afraid that they're going to be in the same position as you're in. That's where it was. I survived."

He said that those closest to him know he is more of a "relaxed type of individual" but during this time, Mr. Cutler went on stress medication for the first and only time in his life. "It helped me get through the day."

His complaint prompted a departmental audit of the advertising and public opinion division in 1996. By the time it was underway, later that year, Mr. Cutler was transferred to the technical and special services division of Public Works. "When they audited all my documents, they were asking me questions and I said, 'I'll let the documents speak for themselves.' Their own internal notes said that everything I gave them was valid," he said.

In 2004, auditor general Sheila Fraser reported on the sponsorship program, aimed at promoting the federal government in Quebec after the 1995 referendum on separation, in her annual report. She found that Public Works paid more than $100-million to various communications agencies that produced little to no work of value to Canadians. Officials "broke just about every rule in the book" when it came to awarding contracts, a large portion of which went to Groupaction.

Her report also showed that the RCMP, VIA Rail, the Old Port of Montreal, the Business Development Bank of Canada and Canada Post played a role in transferring money through questionable means.

Then-Liberal prime minister Paul Martin called a public inquiry into the scandal and appointed Justice John Gomery to head it up. After a one-year inquiry and $14-million, Mr. Gomery found there was "partisan political involvement in the administration of the Sponsorship Program; insufficient oversight by senior public servants; deliberate actions taken to avoid compliance with federal legislation and policies; a culture of entitlement among political officials and public servants involved with Sponsorship initiatives; and the refusal of Ministers, senior officials in the Prime Minister's Office and public servants to acknowledge any responsibility for the mismanagement that had occurred."

Mr. Guité was convicted on five counts of fraud in 2006.

At the time he was blowing the whistle, Mr. Cutler said, he didn't feel like he was making any difference, but after the Gomery Commission, he found his actions helped prove that something serious was going on.

"I was blowing the whistle in '96 and I was dead-ended in the job for years afterwards, but I had all my records. When the Gomery Inquiry and when the sponsorship scandal blew up, I had the records, I had the documents. The auditor general at that time was looking for documents from about '97 onwards and I went and said, I have '94 to '96, are you interested? I had all the important documents. [Jean] Lafleur [former CEO of Lafleur Communication Marketing Inc.] was actually convicted on my documents."

Mr. Lafleur pleaded guilty to 28 counts of fraud in April 2007 for giving 76 falsified invoices to Mr. Guité. He was sentenced to 42 months in prison and ordered to pay back $1.6-million to the federal government.

In his report, Mr. Gomery also concluded that Mr. Cutler was penalized for his whistleblowing and Mr. Parent and others adopted a complacent attitude to the mismanagement of the program likely because they did not want to suffer the same reprisals as him.

In 2006, Mr. Cutler ran for the Conservative Party in the riding of Ottawa South, Ont. The party was running on a campaign of accountability and transparency and promised to introduce a Federal Accountability Act, which contained whistleblower protection provisions. Incumbent Liberal MP David McGuinty defeated him in the election. Since then, Mr. Cutler has criticized the Conservatives for not bringing in stronger legislation and not practising what they preach.

"I'm on record of having said that a weak law is better than no law and a person I was talking to said no law is better because no law leaves a void rather than telling you what you have to do. I will put a caveat on that," he said.

"If you have an integrity commissioner who wants to make the law work, it can be made to work, but you have to have the will to do so. You can't say, 'No I can't do this, I can't do that.' Then they really don't do anything. If you really want something to work, even

weak legislation can be made to work. But you've got to have that will, that push behind it."

It starts at the top, he said.

Mr. Cutler said the government needs to implement a culture that actually protects whistleblowers and does not automatically move to punish them when they speak out. The burden of proof should also rest on management and not the whistleblower, he said.

Despite the lack of protection in his own case, Mr. Cutler said he would have no choice but to blow the whistle again.

"Would I do it again knowing the consequences? Yes. Would I have the same consequences? No. I learned a lot. I know a lot and I would know how to fight back better," he said, noting that he would've gone to the media first and exposed it sooner rather than giving management the benefit of the doubt that they wanted things to improve and were trying to fix it internally.

He said he would have also threatened a lawsuit over how he was treated at work.

"But I didn't know better at the time. You're living through a situation, in hindsight we can all improve," he said. "You have a choice to give up or to keep fighting. … If you stop trying to improve, you're going to see things get worse. Are things getting better? I think there's a slow, slow, improvement. I don't think there's a lot of improvement, but there's more sensitivity to the need to have integrity. There's a long way to go, but if we don't keep speaking out, if we don't keep trying to push the subject, we'll never succeed and actually it will get worse."

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How public servants support democracy: a response to latest Canada 2020 study

By MARYANTONETT FLUMIAN, KARL SALGO, The Hill Times, July 7, 2014

In a newly-released Canada 2020 study, Renewal of the Federal Public Service: Toward a Charter of Public Service, distinguished former public servant Ralph Heintzman argues that a new "moral contract" is needed to rescue the values of a professional, non-partisan federal public service. Heintzman contends that, at the hands of successive governments and the public service's own leadership, the lines between political and public service values have blurred. He prescribes a new Charter of Public Service that would restate public service values and ethics; revamp the role of deputy ministers as accounting officers; redesign the process for appointing deputy ministers; and set new rules for government communications.

Heintzman's study identifies real challenges and raises important, even existential, questions about Canada's public service. Moreover, he is certainly right that the Government of Canada does not belong to the government of the day and that institutional boundaries need to be respected. But his take on the rightful place of the public service in the broader scheme of things is off the mark—like the Gomery Report that he champions, it would carve out a role for public servants that neither ministers, nor public servants nor an informed public would ever really want— namely government by the unelected.

Just what is the role of the public service?

If you were to look at departmental legislation (not that we'd advise it) you'd find that ministers are presumed to have monumental capacities—to set economic and social policies, write regulations, negotiate treaties, manage programs, issue passports, and on and on.

And so the law recognizes that ministers necessarily act through public servants – that when legislation says "the minister" may grant a licence for this or that it's actually some obscure bureaucrat who does the granting. Hence our working definition of the role of the public service (borrowed from the government itself): to provide policy advice and operational support to the government of the day. What's more, it must be able to provide this support to successive governments of whatever political stripe, which means it must be non-partisan or "neutral."

However, we need to be clear on what "public service neutrality" means. The public service is not neutral as between the opposition and the government of the day: it serves the latter and, within the boundaries of the law and public service values and ethics, works to the achievement of government's agenda. That is how public servants serve democracy.

Public servants do not serve democracy by having an independent voice: they provide their advice in confidence precisely so that there is no "public service" position on any issue, as opposed to the position of the government. And they don't take ownership of the government's positions either. They just provide information about them, explain them—and obey them.

But doesn't there come a point where a public servant—whose ethical code requires that he or she act "in the public interest"—must say no? Indeed there does. But the threshold is high, and the public servant's responsibility to act in the public interest does not mean the public service determines the public interest.

For an unelected official, acting in the public interest essentially means three things: 1. not acting in one's private interest or in the special interests of those one personally favours; 2. bringing one's best professional expertise to bear on the tasks one performs; and 3. acting consistently with the agenda and direction set by one's minister, provided it is consistent with the law, with formal government policies, and with public service values and ethics. So, yes, a public servant could and should refuse, say, to provide support for a partisan event. But he or she could not decline to implement a policy because he or she judged it not in the public interest.

With these basics in mind, let's consider each of the four elements in Heintzman's proposed Charter of Public Service.

First, to re-articulate public service values and ethics. Whether such a re-articulation would be worth the effort is hard to say. The government already has a lot of principles and guidance, including in the Values and Ethics Code for the Public Sector adopted in 2012. And the official documents generally get the theory right. Perhaps more words on paper would improve how the theory is put into practice, perhaps not.

It might, for example, be possible to reinvigorate the public service responsibility to provide fearless advice. However, what we suspect Heintzman longs for is a public service that feels less responsibility for the reputational health of the government.

Heintzman's concerns here are fair enough, but the public service doesn't operate in an ivory tower. Policies and practices that embarrass governments have never been matters of indifference for public servants. What has intensified in recent years is the pressure of the public environment. Instantaneous digital technology and 24/7 media are undercutting the deliberative, process-driven way in which governments have traditionally responded to issues. "Issues management" has emerged as a growing government need and perhaps the most in-demand skill for an up-and-coming public servant. This reality makes for fine lines that demand vigilance, but it does not mean that the public service has gone political.

It also seems that Heintzman would like to carve out added space for public servants to stand as independent guardians of the public interest—for example, by making deputy ministers as accounting officers autonomous managers of their departments, directly accountable to Parliament.

Canada's existing accounting officer system requires deputy ministers to provide Parliament with the information it needs to hold government to account for departmental management without making them accountable in the political forum of Parliament.

It is true that in the United Kingdom permanent secretaries really do take responsibility for the management of their departments before the Parliament's Public Accounts Committee. But importing the U.K.'s model here—where deputies have far less administrative independence and the Public Accounts Committee is much more politicized—would be unfair and could politicize public servants.

The third pillar of Heintzman's charter would be a new appointment system for deputy ministers. It would replace the Clerk of the Privy Council as the de facto selector of deputies with the Public Service Commission—ostensibly to make them less beholden to the allegedly politicized Office of the Clerk.

This simply would not work. The deputy minister is the lynchpin between the public service and the minister. He or she has the hugely challenging job of translating the minister's agenda into public service action. That requires deep attunement to public service values combined with the sharpest political savvy—which is no contradiction—as well as an effective working relationship with the minister. The Public Service Commission is not well placed to make these determinations. The Clerk's capacity to

select the appropriate deputy—and to make a different selection on a moment's notice if need be—is a critical tool in his or her ability to support the Prime Minister and the government's agenda. It's also a key tool for making the Clerk's statutory position as head of the public service more than honorific—which is important if the public service is to be a true institution that functions in a coordinated way.

Finally, Heintzman seeks "new rules" on government communications. No one can disagree with the principle that he seeks to realize: public resources should not be used for partisan purposes. Government communications are a high-risk area for politicization, and some governments push the boundaries more than others. But here again the existing rules are essentially consistent with Heintzman's principles, so it's hard to see what new rules would do. And to suggest something like the complete elimination of PCO's communications secretariat is to lose track of the basic legitimacy of the communications function, especially in the 24/7 media age.

We don't deny that there are problems in all of the areas that Heintzman identifies, and while we cannot agree with most of what he proposes by way of solution, we welcome this dialogue. It will help support a healthy, respectful relationship between two vital institutions—the ministry and the public service—as both evolve to meet the changing world of the 21st century.

Maryantonett Flumian, president of the Institute on Governance (IOG), was a long-time senior public servant and former deputy minister of Service Canada. Karl Salgo, executive director of the IOG's Public Governance Exchange, is also a career federal public servant on interchange from the Privy Council Office.

Ottawa's refugee health-care cuts 'cruel and unusual,' court rules

SEAN FINE, The Globe and Mail, July 4, 2014

Federal cuts to health care for refugees have been struck down as "cruel and unusual treatment" and an equal-rights violation by the Federal Court of Canada.

The case was a test of Ottawa's get-tough policy toward refugees from countries the government considers safe, such as Mexico and Hungary.

In a 268-page ruling on Friday, Justice Anne Mactavish wrote: "With the 2012 changes to the Interim Federal Health Program, the executive branch of the Canadian government has intentionally set out to make the lives of these disadvantaged individuals even more

difficult than they already are in an effort to force those who have sought the protection of this country to leave Canada more quickly, and to deter others from coming here."

The limits on refugee health care demean and endanger those from countries the government deems safe, said Justice Mactavish, a former chairperson of the Canadian Human Rights Tribunal who was appointed in the last days of prime minister Jean Chrétien's term in office. "It puts their lives at risk, and perpetuates the stereotypical view that they are cheats, that their refugee claims are 'bogus,' and that they have come to Canada to abuse the generosity of Canadians. It undermines their dignity and serves to perpetuate the disadvantage suffered by members of an admittedly vulnerable, poor and disadvantaged group."

Several federal tough-on-crime laws have been struck down this year or had their impact diminished by rulings from the Supreme Court.

Until two years ago, the federal government covered medical costs for refugee claimants until they were eligible for provincial coverage or their refugee claims were rejected. Since July, 2012, different classes of refugee claimants have been created. Those who are government-sponsored have the same coverage as before. Those from a list of countries deemed safe receive coverage only in a public-health emergency.

The government says the move was a legitimate policy choice aimed at those who overstay in Canada. But lawyers for two refugees, and refugee advocacy groups, argued that the restrictions were discriminatory on the basis of national or ethnic origin, and violated the refugees' right to security of the person. They also argued that the limits were not imposed through an act of Parliament, or a government regulation, and were therefore illegal. Ottawa said they were put into effect under its discretionary powers, known as the royal prerogative.

Lawyers documented 40 cases for the court in which they said refugee claimants' health had been put at risk. Daniel Rodriguez, a failed claimant from Colombia, was denied an operation after his retina detached. Hanif Ayubi, an Afghan claimant who could not be sent back because of a moratorium on deportations, was denied insulin for his diabetes.

The Canadian government says refugee claimants have other options, including showing up in emergency wards. Several provinces have stepped in to ensure refugee claimants receive care.

La diminution des soins de santé aux réfugiés contrevient à la Charte

Hugo de Granpré, La Presse, le 4 juillet 2014

(Ottawa) La diminution importante des soins de santé offerte aux réfugiés par le gouvernement canadien était inconstitutionnelle, a tranché la Cour fédérale dans une décision rendue vendredi.

La contestation des mesures adoptées en 2012 avait été faite par les Médecins canadiens pour les soins des réfugiés. Ils étaient appuyés par l'Association canadienne des avocats et avocates en droits des réfugiés.

La Cour s'est rendue en partie à leurs arguments, et statué que les changements violent les articles 12 et 15 de la Charte canadienne des droits et libertés.

L'article 12 protège contre les traitements « cruels et inusités » et l'article 15, contre la discrimination.

« Bien que les conséquences négatives des modifications apportées au PFSI en 2012 soient loin de toucher exclusivement les enfants de demandeurs d'asile au Canada, la cruauté engendrée par ces modifications est en particulier évidente dans le sens où celles-ci affectent les enfants », a écrit la juge Anne L. Mactavish.

Elle a qualifié ces enfants de victimes innocentes qui ne choisissent pas le pays où leurs parents décident de se réfugier, dans le contexte où le gouvernement Harper a voulu sévir contre ce qu'il décrit comme des « demandes d'asile bidon ».

« Néanmoins, la capacité de ces enfants à avoir accès aux soins de santé a été considérablement réduite par le gouverneur en conseil dans sa tentative de dissuader leurs parents et d'autres personnes de venir au Canada et de demander sa protection », a ajouté la juge MacTavish.

Quant à la discrimination, les conclusions de la cour reposent sur le fait que le niveau de couverture a été diminué pour les ressortissants de certains pays « désignés » par le gouvernement fédéral.

Le ministre fédéral de l'Immigration de l'époque, Jason Kenney, avait dit vouloir limiter les demandes d'asile présentées par des résidants de certains pays d'Europe de l'Est. Les changements ont diminué et dans certains cas éliminé le financement des soins de santé qui est accordé à ces réfugiés.

Les demandeurs ont applaudi la décision. « L'impact des coupes du gouvernement fédéral conservateur a été dévastateur », a déclaré Philip Berger, membre fondateur des MCSR et directeur médical du programme des soins de santé civiques à l'hôpital St-Michael's à Toronto.

« Depuis plus de deux ans maintenant, les médecins à travers le Canada ont vu ces coupes poser des risques sérieux aux grossesses de femmes réfugiées, engendrer des refus de traitement pour des enfants malades et priver de couverture pour de la chimiothérapie des réfugiés aux prises avec le cancer », a ajouté le docteur.

Dans un communiqué, le groupe a souligné que le Programme fédéral de santé intérimaire, qui a été l'objet de ces coupes, est entré en vigueur en 1957. Ce programme défraie le coût des soins de santé pour des réfugiés en attendant qu'ils soient admissibles aux régimes provinciaux. « Sans avis ni consultation, le gouvernement fédéral a aboli le programme en juin 2012, et l'a remplacé avec un programme qui prive des milliers de demandeurs d'asile de soins médicaux de base, d'urgence et susceptibles de leur sauver la vie », a dénoncé le communiqué.

LeDroit

Courriels des fonctionnaires: du gaspillage de temps et d'argent

Paul Gaboury, Le Droit, le 27 juin 2014

La refonte du système de courriel du fédéral est bien mal partie.

Lancée il y a plus d'un an, la mise en oeuvre accuse déjà six mois de retard sur l'échéancier, en plus de présenter des lacunes au chapitre de la sécurité, déplore l'Institut professionnel de la fonction publique du Canada (IPFPC).

«La sous-traitance coûte plus cher, est moins fiable et soulève de graves problèmes d'éthique et de sécurité pour les Canadiens», estime la présidente de l'IPFPC, Debi Daviau. «Nos craintes initiales sont malheureusement confirmées.»

Il y a un an, Services partagés Canada a décidé de confier les services de courriel fédéraux aux grandes sociétés Bell et CGI. Le projet de 400 millions$, visant à rationaliser et consolider les différents systèmes, s'est heurté à des problèmes dès le départ.

«Un an après le début du contrat, ils ont déjà six mois de retard. C'est inacceptable, estime la présidente Daviau. Nous disions dès le départ le processus n'était pas nécessaire. [...] Services partagés Canada dispose déjà à l'interne de toutes les compétences et ressources humaines nécessaires. Ce projet s'annonce comme un énorme gaspillage de temps et d'argent.»

Selon l'Institut, les mauvaises nouvelles ne s'arrêtent pas là. Un audit daté d'avril dernier formule des critiques accablantes sur la question des travailleurs contractuels chez Services partagés Canada.

Les données sur les ressources contractuelles étaient souvent insuffisantes ou «incomplètes et éparses». Quelque 41% des dossiers d'approvisionnement examinés

étaient également mal documentés; le document qui manquait le plus souvent touchait la confirmation de sécurité.

«Le gouvernement actuel a recours à la sous-traitance pour rien, même quand le personnel en place peut fournir les services plus efficacement, poursuit la présidente Daviau. [...] On dirait que la décision par défaut est d'impartir le travail en espérant pour le mieux, ce qui est de la mauvaise gestion.»

LeDroit

Les agents correctionnels déposent leurs demandes

Paul Gaboury, Le Droit, le 4 juillet 2014

La période estivale ne sera pas de tout repos pour les agents négociateurs représentant les fonctionnaires fédéraux, déjà prêts à se lancer dans la prochaine ronde avec le gouvernement fédéral.

Jeudi, les 7500 agents correctionnels fédéraux qui travaillent dans 50 prisons à travers le pays ont dévoilé leurs demandes en vue du renouvellement de leur convention collective signée en novembre2013, soit il y a à peine 240 jours.

Pour leur part, les équipes de négociation de l'Alliance de la fonction publique du Canada, représentant les syndiqués des groupes PA, FB, TC, SV et EB (plus de 102000 syndiqués) sont attendues à Ottawa du 7 au 11 juillet, pour entreprendre les pourparlers avec le Conseil du Trésor.

Le Syndicat des agents correctionnels du Canada (UCCO-SACC-CSN) est l'un des 27 groupes avec lesquels le gouvernement doit négocier cette année. Déjà, le gouvernement Harper a indiqué que le régime de congés de maladie et d'invalidité à court terme ferait partie des principales demandes patronales lors de cette ronde.

Comme il l'avait fait pour plusieurs conventions venant à échéance cette année, l'employeur avait déposé l'avis de négociation au syndicat des agents correctionnels le 17 février dernier. C'était la première fois que l'employeur était le premier à déposer cet avis.

Les agents correctionnels ont tenu hier divers rassemblements de type tailgate, dans plusieurs villes du pays, pour souligner le début de ces négociations et rappeler que le dernier contrat de travail a été signé il y a moins d'un an.

Être agent, «une vocation»

«Être agent correctionnel, ce n'est pas seulement un titre d'emploi, c'est une vocation, a fait valoir le président syndical, Kevin Grabowsky. Nos membres sont fiers de contribuer à la sécurité publique du Canada. Cependant n'eut été de la détermination de nos membres dans les deux dernières rondes de négociation pour obtenir des outils adéquats et des conditions de travail décentes, la notion même de sécurité dans les prisons aurait été caduque.»

Selon le président Grabowsky, les agents correctionnels n'auraient pas non plus réussi à assurer leur propre sécurité alors que les mesures répressives contre la criminalité du gouvernement Harper ont pour conséquence la surpopulation des pénitenciers et l'augmentation du nombre de cas de violence envers les agents correctionnels.

Les demandes syndicales des agents correctionnels incluent une augmentation salariale de 8,1% sur trois ans, l'armement de toutes les escortes de détenus à partir des établissements multiniveaux médiums et maximums, de même que l'inclusion des instructeurs dans l'unité d'accréditation syndicale d'UCCO-SACC-CSN. Le droit aux repas et pauses repas que les agents soient en escorte ou en heures supplémentaires, la majoration de l'indemnité en fonction de l'ancienneté et une amélioration des vacances et diverses primes font aussi partie de la liste pour cette ronde.

Soulignons que l'équipe de l'Association des juristes de justice (2700 membres) a amorcé les négociations il y a plusieurs semaines avec le gouvernement. Du côté de l'Institut professionnel de la fonction publique du Canada, la plupart des contrats ne viendront à échéance qu'à la fin de l'année.

What Access to Justice Can Look Like

by Karen Dyck, Slaw Canada's online legal magazine, July 2, 2014

In February 2011, Legal Help Centre ("LHC") first opened its doors to the public. Since then, more than 5000 individuals have been served through the Centre's drop-in clinics. The sole criteria to access LHC's drop-in clinic services is household income < $50,000 per year, ensuring that those who are ineligible for Legal Aid but cannot afford private legal services have a place to go for information and support.

The LHC's pro bono legal clinic model is unique in Canada in two key ways:

- LHC was started by and continues to be supported by two universities – the University of Manitoba and the University of Winnipeg

- LHC takes a multi-disciplinary approach to problem-solving, drawing on both the legal and social work professions

Students form the backbone of the services provided by LHC. Law and social work students provide front-line triage in LHCs semi-weekly drop-in clinics, as well as in the weekly family law clinic and monthly outreach clinics. Criminal Justice students provide essential support in terms of ongoing program evaluation.

Law students gain valuable experience at LHC, translating the theoretical concepts taught in law school into the practical realities of legal problem-solving for those who might otherwise have no access to legal services. Law students are employed in the summer, work in internships programs through the school year and volunteer through the local chapter of Pro Bono Students Canada.

Collaboration is critical to the success of Legal Help Centre – among universities, faculties, community based organizations, various programs and stakeholders. Indeed, the Centre is one of the members of the Access to Justice Stakeholders Committee established by the Law Society of Manitoba. The family law program was developed in collaboration with the Court of Queen's Bench Family Division. The duty counsel provided at Summary Conviction Drug Court is in collaboration with the Provincial Court of Manitoba. Monthly outreach clinics take part through collaborations with Siloam Mission and Indigenous Family Centre.

Quite recently, Legal Help Centre moved into new premises in a storefront location in Portage Place, a mall in downtown Winnipeg. Already, more space has translated into more people served each week. The demand for the triage, problem-solving and legal services LHC provides has only increased in the more than 3 years of its existence.

There is a positive energy and a great deal of enthusiasm for helping people among the staff and students at LHC. I'm fortunate to be spending part of my summer working with them. If you're in the neighbourhood sometime this summer, I do hope you'll stop by to see what access to justice can look like.

LAO now covering cost of lawyer for separation agreements

Canada News Wire press release from Legail Aid Ontario, July 3, 2014

TORONTO, July 3, 2014 /CNW/ - Eligible clients who are separating from their spouse can now get help from a Legal Aid Ontario (LAO) lawyer to negotiate and draw up a legally-binding separation agreement to settle custody, access, support and property issues.

With a lawyer representing each party, families can stay fully informed of the potential legal consequences of their decisions or actions, make the most of their time in court, and settle custody and access arrangements for their children, child support, spousal support and property division and equalization.

"Too many Ontarians wind up having to represent themselves in court because they either don't understand their rights or don't have the ability to hire a lawyer," says John McCamus, Chair of LAO. "By covering the cost of a lawyer to help negotiate and prepare a separation agreement, LAO can help clients resolve their issues earlier and help them avoid the family court process."

For those who are financially eligible, LAO will cover the cost of up to 10 hours with a family lawyer to help with:

- obtaining and reviewing disclosure
- preparing a sworn financial statement, where support or property are at issue
- engaging in negotiation and/or settlement discussions with the opposing party
- participating in mediation or an LAO settlement conference (if appropriate)
- preparing and reviewing a separation agreement
- finalizing a separation agreement
- converting a separation agreement into a court order (if appropriate)
- filing a separation agreement with the court (if appropriate)

When one spouse is financially eligible for a lawyer, the other spouse may also be eligible, as long as they earn up to a maximum of $50,000.

Individuals who are separating should contact LAO's toll-free line at 1-800-668-8258 to learn if they're eligible for lawyers.

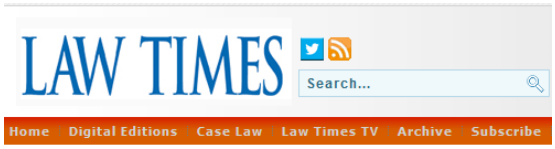
This new initiative to address the unmet legal needs of unrepresented family litigants is part of a larger, long-term strategy to improve access to justice for low-income Ontarians.

One of a number of programs that LAO is developing with the use of $30 million over four years in additional provincial funding, it addresses a society-wide challenge. The Meaningful Change for Family Justice report in 2013 suggests that a number of barriers in accessing justice exist because of the limited resources available and the adversarial culture which pervades the family justice system. The Ministry of the Attorney General suggests that, in Ontario's family courts, approximately half of all persons may be without lawyers, at least at the outset of their court proceeding.

LAO's family law strategy aims to reduce the number of unrepresented family litigants, provide an avenue for consensual dispute resolution, expand the early resolution service sector and provide holistic and integrated services.

Each year, LAO allocates approximately $70 million to help more than 125,000 low-income Ontarians through a wide range of family law services, including summary legal advice, mediation, assistance from lawyers at family law information centres and family law service centres, representation by private practice lawyers, and settlement conferences.

SOURCE Legal Aid Ontario



Lawyer's lucky shopping trip leads to $1-million win

Yamri Taddese, Law Times, June 30, 2014

Criminal defence lawyer Gary Batasar's stroke of luck began with a search for a pair of size 2 Converse high tops for his youngest daughter who needed the shoes for a dance recital.

A pair of size 2 Converse shoes costs somewhere around $30. But a lottery ticket Batasar picked up while shopping at the Erin Mills Town Centre in Mississauga, Ont., turned out to have a value of $1 million.

"I said, 'Holy smokes!'" says the Brampton, Ont., lawyer who didn't check the winning ticket until weeks later on June 18.

"I had to look a few times at the self-checker," he says. "I sat there and I counted the zeros three times. I cannot believe I won the lottery."

He adds: "It's an out-of-body experience. People talk about it, but you don't understand until you've gone through it. It's so surreal."

Batasar, who describes himself as "a simple guy," went to the Ontario Lottery and Gaming Corp. to collect the big cheque the next day.

Batasar says he had been buying lottery tickets for eight months and notes he has already invested his newly acquired fortune in mutual funds. The father of three says hitting the jackpot takes some of the pressure off of paying for this children's education. He's hoping to get "a good 10- or 12-per-cent" interest per year on his investment.

“I got three kids, so I look at it as . . . this is their university, their law school paid for,” he says, adding he can now “take it easy to some extent.”

After having his picture taken with a giant blue cheque at the lottery offices, Batasar says he couldn’t resist a little prank on his wife and some friends. With some Photoshop work, Batasar altered the cheque on the photo to reflect a $14-million win.

The doctored photo ended up spreading on social media, causing some confusion and even a hint of jealousy from others, he says. While some people have been genuinely happy for him on his $1-million win, he says “the sense of reluctant congratulations was palpable” among others, including lawyers.

“I suppose some, upon reflection, should do some introspection to ask themselves why they reacted the way they did about such a happy event,” he says.

“If I knew one of my contemporaries won the lottery, I would be happy for them and if I knew I also got pranked, I would think it was brilliantly hilarious that at such a crazy time he or she could still have a sense of humour.”

Batasar’s friend and fellow lawyer Robert Christie describes him as “a generous guy” who likes helping out colleagues. “If your kids have a fundraiser or something is happening, he’s the first guy to reach into his pocket and say, ‘Here’s $50,’ or whatever,” he says.

“And that’s before he won the money,” Christie adds with a chuckle.

Batasar practises in Peel Region where he says he serves a high volume of clients at Peel Law Chambers. Among his high-profile matters was his work as the defence lawyer for one of the accused in the Toronto 18 terrorism case.

Bay Street law firm launches legal ‘incubator’ in Halifax

JEFF GRAY, The Globe and Mail, July 2, 2014

One of the country’s top business law firms, Torys LLP, is opening a small “insourcing” office in Halifax that it says will be much more than a place where it can simply send Bay Street work to be done more cheaply.

The firm says its new Torys Legal Services Centre, due to open this fall, will act for the Bay Street firm's established corporate clients, performing high-volume, recurring legal work such as reviewing contracts or performing due diligence on corporate deals.

The office will be charged with developing new, more efficient ways of doing this kind of legal work that can then be rolled out across the rest of the firm, which has offices in Toronto, New York, Calgary and Montreal.

"This makes it different from outsourcing, very different," managing partner Les Viner told The Globe and Mail. "It is going to be an innovation incubator."

The move comes as debate over new ways of doing business continue to ripple through the legal profession. The corporate clients that use the country's elite law firms are increasingly demanding they curb the spiralling costs that come with $800-an-hour senior partners, or provide more predictable legal bills with fixed fees or flat rates.

Some law firms and corporate legal departments have started outsourcing routine legal work to operations in India to cut costs. Others have hired Canadian-based legal outsourcing operations for certain tasks, such as reviewing mountains of documents and company e-mails before a litigation battle.

But Torys says it is going in a completely different direction. Mr. Viner acknowledges that locating in Halifax will allow the firm's costs – pay and rent – to come down. But the new office is being given a bold innovation mandate. From the start, it will charge only fixed fees, with the hourly rate banished – a revolutionary move for a major law firm.

And unlike an outsourcing operation, it remains part of Torys. It will be staffed with four or five Torys associates led by long-time Toronto partner Chris Fowles, and eventually staffed with up to 15 experienced lawyers, Mr. Viner said.

Torys says its plan is unique in Canada, although British firm Allen & Overy opened a similar office in Belfast in 2011, where it also moved human resources and other support staff to cut costs.

Mr. Viner said locating in Halifax is not all about costs. "It is cheaper to live there but there are cheaper places to live in Canada. It is a fabulous city where we think top talent will be attracted. We are going to recruit nationally; we think we will get Haligonians returning. They have great law schools, great quality of life."

Mr. Fowles, who articled at Torys in 1994, said the new office is simply a response to client demands: "They want to know upfront what things are going to cost and we'll be able to tell them, and they will be able to rely on it."

Mr. Viner said Torys had experimented previously with outsourcing to India, with little success, so the firm went back to the drawing board. "We've looked at it. We've tested it. It doesn't work for us," he said. " … So we are going to do it ourselves, and we've got a made-in-Canada solution, which makes me feel proud."

Simon Fish, executive vice-president and general counsel of the Bank of Montreal – a long-time Torys client that also engages a large number of law firms – said the move clearly differentiates Torys from its rivals on Bay Street.

Mr. Fish would not say whether BMO itself uses offshore legal service providers in India now. But he said the Torys made-in-Canada concept was appealing.

“This could be seen as an example of ‘nearshoring,’” he said, referring to the trend of companies bringing work they would have otherwise sent overseas closer to home where quality control is easier. “… It is certainly designed, I think, to achieve many of the benefits that one gets from offshoring.”
