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Press Clippings for the period of June 7 to 14, 2014
Revue de presse pour la période du 7 au 14 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

OTTAWA CITIZEN

Unions rejected 'olive branch': Tony Clement

KATHRYN MAY, The Ottawa Citizen, July 8, 2014

Treasury Board President Tony Clement said federal unions spurned the "olive branch" he extended by inviting them to take part in discussions on a new short-term disability plan that will replace banked sick leave in Canada's public service.

Clement said he was disappointed all 17 federal unions refused to have any part in the consultations Treasury Board is having to discuss the framework of a proposed short-term disability plan for Canada's public servants before the two sides hammer out the details at the bargaining table.

"The purpose … was to have the bargaining agents on the ground floor of any new bargained plan so they could work with us on some of the details and have their input on the framing of this plan," said Clement in an interview.

"I actually thought I was extending the olive branch and I was being reasonable in giving them that kind of input. They have spurned the offer."

The unions' outright rejection of any participation in these separate consultations has cranked up the tension early in this round of collective bargaining, which is slowly winding into gear. Treasury Board negotiators have been meeting quietly with unions as their contracts expire but the biggest player, the Public Service Alliance of Canada, is having its first meetings with the government this week.

Clement said the "door is always open and ajar" if the unions change their mind and want to sit in on the consultations to provide their input on the shape of a new short-term disability plan that the government is committed to introducing.

"The operators are standing by … I would love to have that kind of conversation with them," he said.

But the unions argue the consultations are usurping collective bargaining because such massive changes to the management of sick leave should be worked out at the bargaining table and not presented as a fait accompli with only details, such as the number of annual sick days, to be haggled over.

The unions argue a short-term disability plan is unnecessary. They acknowledge the existing accumulated sick leave system has problems but believe it can be fixed without replacing it with a new scheme.

Clement indicated any discussion over whether a new plan is necessary is not in the cards.

"I think it (short-term disability) is a better way to do things," he said. "We have a current system that has been around for several decades, which no longer reflects the needs of employees and no longer protects the interests of taxpayers, so I believe we can come up with a better system that will in fact be there for employees when they need it."

Unions argue the government has already decided how the plan will work. Treasury Board negotiators have sketched an approach to some unions that would reduce the number of paid sick days public servants get and introduce a waiting period that some say would encourage employees to go to work ill rather than not get paid.

The model being proposed calls for an unpaid seven-day waiting period that kicks in after public servants use all their allotted sick leave. After the waiting period, employees would go on short-term disability and collect 100 per cent of pay for 25 days. Pay drops to 70 per cent for the next 105 days.

Employees who are still unwell and can't return to work after 130 days on short-term disability will then go on long-term disability.

Under this plan, the number of paid sick days public servants get will be a contentious issue. The government clearly wants to reduce the 15 days public servants now get every year and have pointed to the five days private sector employees get.

But negotiators have so far been silent on what the government has in mind for $5.2 billion worth of unused sick leave public servants have banked over the years. Public servants can bank their sick leave but they can't cash out when they leave or retire.

The government doesn't want any further accumulation of unused sick leave but many argue the $5.2 billion bank could be a powerful bargaining chip in negotiations.

The government could kill unused sick leave credits or it could compromise and offer to carry some over as top-ups to be used to help employees who have used all their sick days or top up the 70-per-cent salary they collect on short-term disability.

Clement wouldn't comment on plans for banked leave but suggested some could be used to help manage the transition between the existing and new plans.

"That's getting into details of my negotiation strategy. All I can say, is I intend to be fair and reasonable in my proposals. I understand there would be a transition for some period of time and that is as far as I will say in this interview."

PS union files labour complaint over Conservatives' sick-leave changes

KATHRYN MAY, Ottawa Citizen, July 10, 2104

The Conservative government could face a barrage of unfair labour practices complaints for charging ahead with a new short-term disability plan to replace public servants' existing sick leave scheme.

The giant Public Service Alliance of Canada was the first of the 17 unions to wade in with a formal bad faith bargaining complaint against the government for sending "misleading and false" communications to employees that it was introducing a short-term disability plan as the centrepiece of a new "wellness and productivity" strategy.

PSAC is the largest of the federal unions that have all pledged to present a unified front in current contract bargaining against a new disability plan that could claw back existing sick leave benefits. PSAC had no sooner filed its complaint when other unions initiated plans to do the same.

Shannon Bittman, vice-president of the Professional Institute of the Public Service of Canada, said the union is filing its own complaint with the Public Service Labour Relations Board on Friday and expects other unions will do the same.

The complaints are the first salvo in what is expected to be a tense round of collective bargaining since the Conservatives introduced sweeping new rules in 2013 that blunt the unions' bargaining clout. Unions argue that enforcing the government's duty to bargain

in good faith is one of the few tools left in their arsenal since the government changed the rules.

“Our position has remained consistent, we will work with the bargaining agents, at the negotiating table, to reach an agreement that is fair and reasonable to both taxpayers and employees,” said Treasury Board President Tony Clement, whose department is negotiating the new deal.

“We hope to see the PSLRB interpret the legal concept of good faith in an outcome that is equitable to all parties.”

The unions have complained for months that the government has presented the short-term disability plan as a fait accompli and only details like the number of sick days remain to be negotiated at the table.

They complained about communiqués posted on websites, letters sent directly to employees in May and then the “consultations” that Treasury Board recently invited unions to attend to help design details of the plan before it seeks bids from the insurance industry to manage it.

Clement further inflamed unions this week — in the midst of contract talks with PSAC — when he said unions “spurned” his “olive branch” by rejecting his invitation to the consultations.

“The (government’s) messages have all been extensions of the same theme: ‘There is no point in discussing sick leave because our mind is made up,’ ” said Ron Cochrane, co-chair of the labour — management National Joint Council.

A bad faith complaint is typically based on what’s said at the bargaining table but Clement’s public remarks, which seemed to close the door on any meaningful discussion of sick leave, will be part of the grounds for the PIPSC complaint, said Bittman.

“If it was said away from the bargaining table, the case is harder to make except that the speaker happens to be the boss of the negotiator, so either way I think the minister may have made a crucial error in the opening round of negotiations,” said Cochrane.

The unions argue a new short-term disability plan is unnecessary and they want to negotiate improvements to the existing system.

In its complaint, PSAC alleges the mass communications to employees since May clearly stated the government was in the process of implementing the “wellness strategy” that included the new disability plan, “giving the impression these terms and conditions of employment are a fait accompli rather than a bargaining proposal.”

Chris Aylward, PSAC’s vice-president, said the union asked the government to stop sending these letters but that wasn’t done. The complaint argues the emails and other communications were “false and misleading,” violating the duty to bargain in good faith and interfering with the union’s representation of its members.

LeDroit

L'AFPC a déposé une plainte contre le Conseil du Trésor

Paul Gaboury, Le Droit, le 11 juillet 2014

L'Alliance de la fonction publique du Canada (AFPC) n'apprécie guère les moyens utilisés par le gouvernement pour modifier le régime des congés de maladie de la fonction publique.

Lundi, le jour même où les premières séances de négociations débutaient, le plus important syndicat du secteur public fédéral déposait une plainte pour pratique déloyale contre le Conseil du Trésor auprès de la Commission des relations de travail dans la fonction publique.

«Le Conseil du Trésor cherche à imposer unilatéralement un régime d'invalidité à court terme, malgré les dispositions des conventions collectives relatives au congé de maladie payé. Le Conseil du Trésor cherche aussi à induire le public et les fonctionnaires en erreur», fait-on valoir l'AFPC.

Dans sa plainte, l'AFPC allègue que «le Conseil du Trésor déroge à son obligation de négocier de bonne foi et empêche l'AFPC de bien représenter ses membres, ce qui contrevient à la Loi sur les relations de travail dans la fonction publique».

En tentant d'imposer un régime d'invalidité à court terme, le syndicat précise que le Conseil du Trésor a enfreint les dispositions de la Loi sur la période de gel des conditions de travail.

«Le congé de maladie est inscrit aux conventions collectives et ne peut être modifié qu'à la table de négociations. Si le Conseil du Trésor veut réellement parler de la santé et de la vie professionnelle des fonctionnaires, les équipes de négociation sont prêtes à en discuter», a rappelé le syndicat.

L'AFPC n'est pas le seul syndicat à dénoncer les moyens utilisés par le Conseil du Trésor dans ce dossier. Au début juin, l'Association canadienne des employés professionnels avait aussi déploré la stratégie du gouvernement. Le syndicat affirmait avoir reçu de nombreuses plaintes de ses membres au sujet de messages transmis par l'employeur au sujet du régime de congés de maladie, message qui laissait entendre qu'ils devront accepter les changements.

Federal workers say they won't give up major concessions, as negotiations begin

BY GIUSEPPE VALIANTE, Ottawa Sun, July 8, 2014

OTTAWA — The federal public service union said it won't give up sick day benefits, likely leading to a showdown with the government that could last months.

The federal government is looking to find billions of dollars in savings by cutting back benefits to its unionized workers.

According its most recent budget, the plan includes forcing workers to pay for 50% of health plans, up from 25%.

The government will also "look to implement a sick leave and management system that is modern, comprehensive, and responsive to the needs of all employees," according to the 2014 budget.

That's proving to be a hard sell.

"We will not bargain concessions," said Chris Aylward, national executive VP for the Public Service Alliance of Canada (PSAC), which represents roughly 100,000 Ottawa-area government workers.

Allowing the government to scale back sick day benefits would be a "major concession," he said.

Aylward said PSAC members currently collect 1.25 paid sick days per month. Unused days can be banked throughout the term of employment, but they cannot be taken in cash.

PSAC and government representatives met for negotiations in person for the first time Tuesday.

Aylward said he hasn't seen specific government proposals to cut sick day benefits or privatize the program, but he said he knows the government is looking to find cost savings in that general vein.

Finn Poschmann, VP of policy analysis at the C.D. Howe Institute, said the government has been "nudging for years" to make public sector benefits closer to what private sector workers receive.

"Rather than lowering the bar for everyone and having a race to the bottom, we should all have equal benefits," he said.

Negotiations between the government and PSAC are scheduled until January 2015.

Treasury Board President Tony Clement's office did not respond to a request for comment.

Clement wants to tackle sick leave in the public service

KATHRYN MAY, Ottawa Citizen, July 7, 2014

The new short-term disability plan the Conservative government has in mind for Canada's public servants could reduce the number of paid sick days they now get and introduce a waiting period for benefits that some predict would push employees to go to work ill rather than not get paid.

Treasury Board has sketched the proposed approach of its new "wellness and productivity strategy" in negotiations with unions in recent weeks as the two sides gear up for what's expected to be a round of tough collective bargaining.

At the centre of that strategy is the short-term disability plan that Treasury Board President Tony Clement wants rolled out to replace accumulated sick leave.

The government points to the private sector as the model: Eighty-seven per cent of employers have short-term disability plans and employees typically get five days of yearly paid sick leave.

That compares to the 15 days of paid sick leave a year public servants now receive under existing collective agreements. Public servants can bank unused leave and roll it over year-to-year. Any change in the terms of sick leave, such as the number of days of sick leave, must be negotiated with unions.

The model the government is proposing calls for an unpaid, seven "calendar-day" waiting period, which kicks in after public servants use all their allotted sick leave. After the waiting period, employees go on short-term disability and can collect 100 per cent of pay for 25 days. Pay slips to 70 per cent for the next 105 days.

Employees who are still unable to return to work after 130 days on short-term will then go on long-term disability.

The big worry about fewer sick days – combined with a waiting period – is that public servants could end up going to work ill and making their colleagues sick, rather than staying at home, because they have run out of sick days. The waiting period wouldn't apply to those hospitalized.

"How can the government say this plan would be an improvement or has anything to do with wellness when it will be encouraging people who are sick to go to work?" asked Ron Cochrane, co-chair of the National Joint Council, a joint union-management agency that deals with employment issues.

Public servants take an average of 11 days off in sick leave every year. At that rate, the average employee could find himself or herself without pay for a few days if ill longer than the allowable discretionary leave.

Treasury Board's statistics show 15 per cent of employees in the core public service had at least one absence for illness that lasted longer than five days in 2011-12. The average absence was 24 days. About 6,500 took leave without pay for about 40 days; the majority were women and half of them were under age 45.

With a new short-term disability plan comes case management – done by the plan administrator – with case workers dispatched early during an illness to ensure workers get the rehabilitation, support and medical care needed to get back to work faster.

These are the kind of issues the two sides will wrestle with as negotiations kick into high gear. The collective agreements for about 27 bargaining units expire this year. This week, the giant Public Service Alliance of Canada is having its first meeting with Treasury Board negotiators for about 100,000 of the employees it represents.

The two sides, however, have already have hit an impasse over what's up for negotiation.

All 17 unions have refused to take part in the "consultations" on short-term disability that the government is holding separately from the contract talks. The unions argue the plan should be part of negotiations and not presented as a fait accompli with only details such as the number of sick days to be sorted out at the bargaining table.

The unions argue many of the problems with the existing sick leave regime can be fixed without replacing it.

The government has pitched the short-term disability as a fairer approach than the current one. It says the new plan would help get employees back to work faster, especially those

who don’t have enough banked sick leave to cover the 13-week unpaid waiting period now in place before they can collect long-term disability.

It points to young and new employees who can’t bank enough to cover a prolonged or chronic illness. At the same time, healthy and older workers who have lots of banked sick leave must exhaust it before getting the rehabilitation they need and going on disability.

Treasury Board estimates 65 per cent of employees don’t have the needed 13 weeks, and 25 per cent have less than two weeks banked, which means they are off work with no pay other than employment insurance benefits.

Those with 13 weeks or more of banked leave, however, must use it all before they qualify for disability benefits. About 35 per cent of all public servants have 13 weeks or more or banked sick leave, which they must use before going on disability.

LeDroit

Assurance invalidité: le fédéral dévoile sa stratégie

Paul Gaboury, Le Droit, le 5 juillet 2014

Malgré l'opposition manifestée par les syndicats, le gouvernement Harper reste toujours déterminé à modifier le régime de congés de maladie de la fonction publique. La stratégie du Conseil du Trésor touchant ce volet important de la prochaine ronde de négociations a été mise à jour dans un document de 24 pages daté de juin, dont LeDroit a obtenu copie.

Les négociations avec plusieurs éléments du plus important syndicat du secteur public fédéral, l'Alliance de la fonction publique du Canada (AFPC), débutent à Ottawa, ce lundi. Plus de 102 000 fonctionnaires parmi les 175 000 membres de l'AFPC sont touchés. Des rencontres de négociations ont déjà eu lieu avec certains syndicats, incluant l'Association canadienne des employés professionnels et l'Association des juristes de justice. Au total, 27 conventions collectives impliquant 17 différents syndicats se négocieront en 2014.

Une priorité du fédéral

Pour justifier sa réforme, le gouvernement souligne que les employés n'ont pas accès aux services d'assurance-invalidité de longue durée avant la fin de la période d'attente de 13 semaines, et que les employés qui ont plus de 13 semaines de crédits de congés de maladie doivent d'abord épuiser tous leurs congés.

Le document de stratégie précise que «65% des employés n'ont pas accumulé 13 semaines de congés de maladie et 25% en ont accumulé moins de deux semaines». Enfin, que «15% des employés (33 500) ont eu au moins un épisode de maladie d'une durée de plus de 5 jours consécutifs, épisodes qui ont une durée en moyenne 24 jours et 6 500 employés ont pris un congé sans solde d'une durée moyenne de 40 jours (75% étaient des femmes et 50% avaient moins de 45 ans)».

Citant une étude du Conference Board qui révèle que 87% des employeurs utilisent des régimes d'assurance-invalidité de courte durée dans les secteurs public et privé, le gouvernement prévoit notamment «la mise en place d'un nombre de congés de maladie discrétionnaires (habituellement cinq jours d'après la norme de l'industrie), d'un régime d'assurance-invalidité à court terme pour remplacer le modèle d'accumulation de crédits de congé de maladie, d'un régime d'assurance invalidité à coût partagé complètement assuré pour l'ensemble des employés, d'un mécanisme de gestion active des cas, d'un programme d'aide visant la prévention et le mieux-être et une indemnisation simplifiée en cas de blessure au travail».

Le modèle proposé

Le régime d'assurance-invalidité à court terme s'appliquerait à toutes les absences où la prise en charge médicale peut aider un employé. Selon le modèle proposé dans ce document, la période d'attente serait de sept jours civils, avec remplacement du revenu à 100% du salaire pour 25 jours, et à 70% du salaire pour 105 jours, pour une durée totale de 130 jours.

Lorsque la demande sera approuvée, la période d'attente avant que l'employé puisse avoir accès au remplacement du revenu prévu par le Régime sera ainsi de sept jours civils. En cas d'hospitalisation, ou en cas de récurrence de la maladie dans les 30 jours ou de maladie chronique, il n'y aura pas de période d'attente (zéro jour), souligne le document.

Le régime serait parrainé par le Conseil du Trésor pour les employés des ministères, des organismes distincts ou des employeurs participants désignés.

«Ce régime serait autoassuré et pour des services administratifs seulement (SAS), l'assureur offrirait les services d'évaluation des demandes, de gestion des cas, de retour au travail et de déclaration des données».

Le règlement des demandes par une tierce partie serait géré de façon centralisée par le Secrétariat du Conseil du Trésor et versé par les ministères. Au niveau de l'admissibilité, les employés occupant un poste d'une durée indéterminée seraient admissibles à la date de leur nomination. Idem pour les employés embauchés pour une période déterminée de plus de six mois.

Les syndicats préfèrent «améliorer» le régime actuel

Plusieurs dirigeants syndicaux du secteur public fédéral ont déjà indiqué qu'ils ne souhaitaient pas l'abolition du régime de congés de maladie actuel, comme le propose le gouvernement, et entendent plutôt faire des propositions pour l'«améliorer» lors de la prochaine ronde de négociations.

«Le document a été présenté à la table de négociation à titre d'information parce que nous refusions que la consultation remplace la négociation, explique Claude Poirier, président de l'Association canadienne des employés professionnels. On nous dit que le document évolue au fur et à mesure des rencontres avec les intervenants... Nous croyons plutôt que les ordres donnés par les politiciens sont très clairs. Vous devez mettre sur pied un régime d'invalidité de courte durée, peu importe le prix, peu importent les conséquences pour les travailleurs.»

Le vice-président de l'Alliance de la fonction publique du Canada de la région de la capitale nationale, Larry Rousseau, a déjà confié que son syndicat ne souhaitait pas abolir le régime actuel. Il a bien l'intention de faire des propositions visant à l'améliorer dans le cadre de la prochaine ronde de négociations, principalement pour aider les employés ayant moins d'ancienneté qui n'ont pas le nombre de congés de maladie accumulé suffisant pendant les premières années de travail.

Par ailleurs, l'idée de confier l'administration de l'assurance-invalidité à un assureur ne sourit guère aux syndicats, qui préfèrent le régime actuel gérer par les gestionnaires de la fonction publique fédérale.

«Quand vous allez téléphoner pour faire une demande et que la personne de la compagnie d'assurance vous mettra en attente au bout du fil pour régler votre dossier, eh bien, je dis bonne chance pour essayer d'obtenir votre argent», avait lancé avec ironie M. Rousseau, devant des centaines de fonctionnaires descendus dans la rue à Ottawa pendant la Semaine nationale de la fonction publique, le mois dernier.

ICI RADIO-CANADA .ca

Début du bras de fer entre Ottawa et ses fonctionnaires

Radio-Canada, le 8 juillet 2014

Les négociations commencent ce matin entre le gouvernement et les syndicats de fonctionnaires fédéraux. Les enjeux sont importants pour les représentants syndicaux qui devront se mesurer à un gouvernement souhaitant diminuer ses coûts de main-d'œuvre, notamment en diminuant la taille de la fonction publique.

Les équipes de négociation de l'Alliance de la fonction publique du Canada se sont réunies à Ottawa hier afin de faire le point sur la situation. Le plus important syndicat de fonctionnaires fédéraux, l'Alliance de la fonction publique du Canada, a déjà fait connaître plusieurs de ses chevaux de bataille, notamment les salaires et le processus de mises à pied.

Quant au gouvernement, il souhaite implanter un nouveau système de gestion des congés de maladie et d'invalidité, afin de réduire les coûts du régime actuel. L'accumulation de journées de maladie dans des banques représente une dette de cinq milliards de dollars pour le gouvernement. Le gouvernement souhaite ainsi réformer le système, mais les syndicats n'entendent pas faire de concession sur ce point.

« Nous pouvons continuer de gérer le système actuel et l'améliorer, c'est ce que nous voulons, c'est ce que nous allons proposer », a déclaré le vice-président et directeur régional de l'Alliance de la fonction publique du Canada - le plus grand syndicat de fonctionnaires au pays - Larry Rousseau. « Ou bien, nous pouvons privatiser le système comme le gouvernement [le] propose, et demander que ce soit une grosse compagnie d'assurance qui gère le [système des congés] de maladie de la fonction publique. Et ça, je ne vois pas où il y aurait un terrain d'entente. »

Les négociations pourraient être ardues sur ce point, puisque les dirigeants syndicaux ont déjà annoncé leur intention de s'opposer à tout changement relativement aux congés de maladie. Les syndicats, qui présentent un front uni en vertu d'un pacte de solidarité réunissant 17 syndicats, n'écartent aucun moyen de pression, pas même la grève. Ils précisent que ce sera la décision de leurs membres.

LeDroit

Le compte à rebours est lancé pour juillet 2015

Paul Gaboury, Le Droit, le 9 juillet 2014

Le compte à rebours pour la mise en oeuvre complète du projet de modernisation des services de paye de la fonction publique fédérale, à compter du 1erjuillet 2015, a été lancé.

Dans moins d'un an, près de 60 ministères et organismes fédéraux devront avoir complété toutes les étapes visant le transfert des activités de rémunération vers la ville de Miramichi, au Nouveau-Brunswick, une initiative de 300 millions $ annoncée par le gouvernement Harper en août 2010.

Dans sa dernière mise à jour, la directrice générale de l'Initiative de transfert de l'administration de la paye, Rosanna Di Paola, souligne que pour bien réussir la transition du 1erjuillet 2015, il faudra que les ministères et organismes soient «prêts», incluant le personnel, les processus et la technologie pour la mise en oeuvre de Phénix, le nom donné au nouveau système de paye.

«En juin, l'équipe s'est concentrée sur la mise à l'essai du système. Il s'agit d'une activité essentielle de la phase de développement, où chaque composante de Phénix fait l'objet d'une vérification avant le début des essais d'intégration prévus à l'automne», explique la gestionnaire principale du projet.

La transition se déroule au même moment où le gouvernement connaît une période occupée, avec la modernisation de la gestion des ressources humaines, la transformation des services de courriel et le regroupement de l'infrastructure et des services en technologie de l'information.

«L'équipe est tout à fait consciente des difficultés que posent ces priorités concurrentes à chacun des ministères et organismes, notamment sur le plan de leur interdépendance. Cela implique que nous devons collaborer étroitement avec d'autres secteurs de Travaux publics et services gouvernementaux, ainsi qu'avec les équipes d'autres initiatives de transformation des ressources humaines et de la technologie de l'information, par souci d'intégration et d'harmonisation», indique Mme Di Paola.

Phénix

Le nouveau système Phénix est conçu pour offrir un traitement sans papier, qui remplacera le Système régional de paye qui reposait traditionnellement sur le support papier. Le Système de gestion des ressources humaines de PeopleSoft utilisé par le gouvernement sera intégré dans Phénix. Celui-ci offrira une fonctionnalité libre-service qui éliminera la nécessité de toutes ces opérations papier.

De plus, Phénix permettra des calculs automatisés de la paye, comme le rajustement des augmentations d'échelon annuelles et le calcul des retenues des cotisations syndicales normales lorsqu'un employé change de poste. Après le déploiement de Phénix, tous les employés n'auront qu'un seul code d'identification de dossier personnel.

Un premier groupe d'environ 150 employés a déjà été embauché en 2012, suivi de près de 200 autres en septembre2013. Les processus d'embauche se poursuivent toujours, et on prévoit qu'un total de 550 fonctionnaires travailleront à compter de 2015 dans des locaux temporaires à Miramichi, jusqu'à la fin de la construction du nouveau centre permanent prévu en 2017.

Au moment de l'annonce, on prévoyait que le projet impliquerait l'abolition d'au moins la moitié des 1700 postes d'agents de rémunération des ministères, alors que le gouvernement prévoit économiser 78 millions $ à compter de 2016-2017 grâce au projet.

LeDroit

Les négociations avec le fédéral au point mort

Paul Gaboury, Le Droit, le 11 juillet 2014

La première semaine de négociations entre l'Alliance de la fonction publique du Canada (AFPC) et le Conseil du Trésor s'est terminée comme elle avait commencé: dans le désaccord. Les deux parties prendront maintenant une pause pendant la période estivale et reprendront les pourparlers à la mi-septembre.

Le dossier du régime de congés de maladie et de l'assurance-invalidité, qui reste l'élément prioritaire pour le gouvernement dans cette ronde, n'a pas vraiment avancé. L'AFPC maintient que la stratégie du gouvernement de vouloir tenir des «consultations» plutôt que des «négociations» sur ces éléments est «inacceptable».

«Le Conseil du Trésor et Tony Clement tenaient à faire une consultation concernant les congés de maladie et l'assurance-invalidité. Mais nous avons insisté pour dire que nous n'étions pas en consultation, mais plutôt en négociations. Et le gouvernement le savait très bien puisque les rencontres de négociations étaient prévues depuis des mois. Cette semaine, le Conseil du Trésor a fait une présentation, mais à ce jour, il n'y a eu aucune proposition du gouvernement en ce qui concerne le régime de congés de maladie dans le cadre des négociations», a expliqué Larry Rousseau, vice-président exécutif de l'AFPC de la région de la capitale nationale.

Lundi, l'AFPC a d'ailleurs déposé une plainte pour pratique déloyale contre le Conseil du Trésor auprès de la Commission des relations de travail dans la fonction publique.

Le gâteau déjà «tout cuit»

Selon M. Rousseau, c'est comme si le gouvernement avait déjà tout décidé et il essaie maintenant de modifier unilatéralement le régime de congés de maladie. «Le Conseil du Trésor cherche à induire le public et les fonctionnaires en erreur», fait-il valoir.

C'est comme si le gouvernement avait décidé lui-même de la recette et des ingrédients du «gâteau», et qu'il demande maintenant aux syndicats de goûter à son «gâteau déjà tout cuit» pour savoir s'il est bon, poursuit-il.

«Nous ne sommes pas des idiots. Dans une négociation, ce n'est pas comme cela que ça se passe. Nous avons des négociateurs chevronnés qui font bien attention à ce genre de choses. Sans doute que le gouvernement espérait faire passer le tout dans le cadre de consultations pour faire accepter son régime unilatéralement en dehors de la négociation», souligne M. Rousseau.

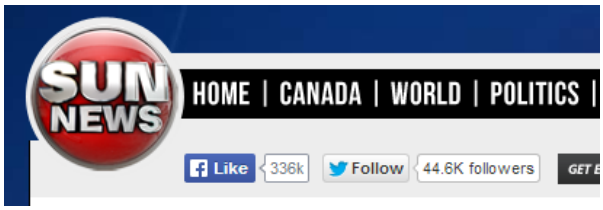
De récents changements à la loi sur les relations de travail font en sorte que le gouvernement ne peut imposer des changements à la rémunération, notamment, que lorsque les syndiqués se retrouvent en grève.

L'AFPC a tout de même profité des rencontres pour déposer plusieurs demandes visant à améliorer les milieux de travail, et d'autres éléments pour améliorer leurs conditions de travail.

Les demandes touchant les salaires font toujours partie des derniers éléments de la négociation et les deux parties n'ont pas encore abordé ces questions, a expliqué M. Rousseau.

Plus de 102 000 membres de l'AFPC sont visés par ces négociations, le plus important groupe étant celui des PA (administration des programmes) avec 77 000 syndiqués.

L'AFPC n'est pas le seul syndicat à dénoncer les moyens utilisés par le Conseil du Trésor dans ce dossier. Au début juin, l'Association canadienne des employés professionnels, syndicat de 12 000 économistes et analystes, avait aussi déploré la stratégie du gouvernement.



Sick of Union Entitlement

QMI AGENCY, Sun News, July 10, 2-14

The public sector entitlement culture has got to end.

It used to be that government jobs didn't offer the same pay and benefits as private sector jobs, but at least there was job security. That was the trade off.

Now, public servants generally get better benefits than their private sector counterparts. Nothing proves this more than the ridiculous conversation currently being had over paid sick days for public sector workers.

Negotiations are underway this week between the Public Service Alliance of Canada and the Treasury Board with the latter hoping to "modernize" the sick leave program by replacing it with a new short-term disability plan.

PSAC represents roughly 100,000 workers.

"We will not bargain concessions," Chris Aylward, national executive VP of PSAC, said in a QMI Agency story. He said scaling back the program would be a "major concession."

So what, exactly, are we talking about? Here's what public sector workers receive under the current program: 1.25 paid sick days per month. That's 15 per year.

Let's be clear here: this is not about vacation days. This is three weeks of sick leave - on top of vacation days - that all workers are entitled to.

These days can be banked throughout the term of employment. Although thankfully there is no cash payout at the end.

So this is one of the perks the union is willing to take to the streets for? Taking away this luxury is one of the mean tactics those nasty old Conservatives are unleashing upon society? Give us a break!

It's common sense to get rid of this. Many people in the private sector don't get designated sick days. In fact, a lot of people in the private sector don't even get paid vacation days. Yet these are the folks who are paying the wages of public sector workers. The only major concession here is that taxpayers are forking out for this in the first place.

To want to eliminate this program isn't about judging the quality of work or type of person holding the position. It's a "no hard feelings" proposition. It's simply about creating a sustainable future.

Is it too much to ask public servants to face the same realities as the people they serve?

Fonction publique fédérale: des candidats pris à tricher aux examens

ANNABELLE BLAIS, La Presse, le 14 juillet 2014

Depuis 2010, au moins 125 fonctionnaires ou aspirants fonctionnaires ont été pris en flagrant délit de fraude ou de conduite irrégulière pour obtenir un poste au gouvernement fédéral, selon des documents obtenus par La Presse grâce à la Loi sur l'accès à l'information. Et près de la moitié des cas proviennent du Conseil du Trésor.

C'est une enquête de la Commission de la fonction publique (CFP) qui a permis de découvrir les problèmes de fraude liés à un examen du Conseil du Trésor en 2011 et 2012. Dans un concours externe visant à pourvoir 100 postes dans différents ministères, 714 candidats avaient fait l'examen en ligne à la maison. En tout, 57 personnes ont vu leur candidature rejetée parce qu'ils avaient copié les réponses sur internet.

Interrogé au sujet de cette brèche, le Conseil du Trésor maintient que les directives aux participants étaient claires. «Les mécanismes permettant d'établir si les candidats respectaient les consignes fournies étaient efficaces. Toutes ces mesures ont permis aux responsables de déceler la fraude commise», affirme Kelly James, responsable des communications au Secrétariat du Conseil du Trésor du Canada.

La tricherie aux examens et particulièrement le plagiat sur internet sont l'objet d'une grande part des enquêtes de la CFP visant quelque 200 250 fonctionnaires de 79 bureaux ou ministères.

Cela s'explique notamment par le recours de plus en plus important aux examens en ligne pour des raisons de logistique et de coûts. «La fonction publique est un employeur de choix, des gens veulent se dévouer pour la société, il y a de bonnes conditions, de bons salaires, une forme de stabilité, une caisse de retraite, alors beaucoup de gens postulent, explique Jacques Bourgault, professeur associé à l'ENAP et à l'UQAM. Quand 15 000 personnes posent leur candidature à un poste, on fait quoi?»

Parmi les cas de fraude, il y a par exemple celui d'un fonctionnaire qui, dans un concours interne, a utilisé son temps de préparation lors d'une entrevue pour téléphoner à un collègue afin de lui demander de l'aider à répondre aux questions.

Plus troublant, en 2012, une gestionnaire d'embauche à la Commission de l'immigration et du statut de réfugié a muté une personne afin d'offrir ce poste à son propre fils. Et pour être certaine qu'il réussisse l'examen, elle lui a donné accès au matériel d'évaluation au préalable.

Les sanctions peuvent varier de l'obligation de suivre des séances de formation sur l'éthique à la suspension des pouvoirs de nomination pour une personne en autorité ou à la révocation de la nomination.

- Avec William Leclerc

OTTAWA CITIZEN

Government mulls debit cards for federal benefits

Jordan Press, Ottawa Citizen, July 9, 2014

The federal government is considering handing out pre-paid cards to Canadians who don't receive their federal benefits via direct deposit payments.

The idea was floated in a public opinion research report commissioned by Public Works and Government Services Canada, which asked about 500 Canadians what they thought about re-loadable cards. The question was asked as the government prepares for 2016 when, it plans to eliminate all paper cheques in favour of direct deposit for payments such as Old Age Security, the Canada Pension Plan, disability benefits, Employment Insurance or tax returns.

Participants in the survey were told the government "is considering the possibility of a prepaid card in some exceptional circumstances for those who are not able to or not ready to use direct deposit." Half of those surveyed agreed a prepaid card would be an acceptable alternative to cheques or direct deposit.

"Alternative options, including prepaid cards, continue to be evaluated as a means of providing payments to beneficiaries who do not voluntarily enrol" in direct deposit plans, a Public Works spokeswoman said in an email to the Citizen. "The government will ensure that everyone receives the payments that are owed to them."

While novel in Canada, prepaid cards for government payments have been used in other places.

In the United States, Visa offers a prepaid credit card that governments and public agencies can use to transfer money to citizens who either don't have a bank account, or where they are cutting back on the cost of paper cheques. The cards can be used to buy goods, and they also work at bank machines to withdraw cash.

Some experts suggest there are benefits to prepaid cards if direct deposit isn't an option: the cards are cheaper than printing, processing and mailing paper cheques; there are fewer opportunities for fraud; and the money arrives in recipients' hands faster. Public Works says each direct deposit payment costs the government 11 cents, compared to 83 cents for each cheque.

"An electronic transaction is cheaper than a paper one," said Mati Dubrovinsky, a senior policy analyst with the C.D. Howe Institute.

"These are really new technologies and people are adapting to them. But overall, it's going to reduce costs to society as a whole."

But while half of respondents in the government survey liked the idea of re-loadable cards, that number could have been higher "if the concept of no fees associated with the cards had been added to the description of the re-loadable card," the report reads. Banks and credit card companies tend to charge maintenance, network and withdrawal fees whenever a prepaid card is used.

The government could use its heft buying power to negotiate a reduced rate, or cajole banks and credit card companies to eliminate fees that might be too high for low-income earners or seniors, said David Macdonald, a senior economist with the Centre for Policy Alternatives.

And if the government went with a Visa or Mastercard prepaid card, as in the U.S. model, merchants would be more likely to accept it rather than having to adapt to a new payment method, Dubrovinsky said. The government could issue its own cards, but it's not clear if Public Works is contemplating that option.

Of those surveyed for the report who weren't already receiving their benefits via direct deposit, only 13 per cent were aware that paper cheques are supposed to be all but eliminated in less than two years. The government made the pledge in the 2012 budget, hoping to save $17 million annually by cutting to almost zero the 55 million cheques it prints and mails out each year. The target is April 2016.

The government commissioned the research to determine how it could craft an ad campaign to get Canadians signed up for direct deposit payments. The report says any ad campaign should focus on the "convenience and speed" of direct deposit, and says some people will be sufficiently motivated by "knowing that there is a looming (and mandatory) deadline."

Direct deposit by the numbers

The government plans to stop mailing out cheques to Canadians in April 2016 in exchange for electronic transfers. Why? To save time and money.

- 55,000,000: Cheques the federal government issued in the last fiscal year.
- $17,000,000: Expected savings should the government stop issuing paper cheques in favour of direct deposit.
- 225,000,000: Direct deposit payments the federal government issued in the last fiscal year.
- 2 to 4: Average percentage increase in direct deposit registrations per year since the government first introduced it in the early 1990s.
- 20: Percentage of participants in a government survey who weren't sure how direct deposit works.
- 90: Percentage of Canadians who have experience with direct deposit in some form.
- 13: Percentage of participants in a government survey who aren't interested in receiving direct deposit payments from the federal government.
- 4.4 : Margin of error (per cent, plus or minus) in the survey of 500 people 16 and older who receive paper cheques from the government
- $31,472.43: Cost for the research report from EKOS Research Associates

(Source: Public Works and Government Services Canada, EKOS Research Associates study)

Federal government looks to buy, sell and trade 'Buro-crats'

JASON FEKETE, Ottawa Citizen, July 9, 2014

The Conservative government is examining a whole new business model to effectively buy, sell and use the time and skills of federal employees: Meet the BURO-crat.

The government has been planning a pilot project at some federal agencies that would apply “market principles” to more efficiently use federal bureaucrats and help smooth out busy and slow work periods, according to government records.

The three-year pilot project is based on a model called “The Buro,” which the government explains is “like the Euro for bureaucrats,” according to a presentation deck prepared for the federal government’s deputy ministers’ committee on policy innovation. (The Euro is the currency used by many European Union countries.)

The Buro concept, which would face its first test at the government’s regional economic agencies, would “establish an electronic market and currency (the Buro) to allow bureaucrats to ‘sell’ their time to each other in a pinch,” say the documents, obtained by the Citizen using the access to information law.

The government hopes to address a problem in the bureaucracy of “stretched and stressed resources” during busy periods, and “sub-optimal resource use” during slow times.

Under the model, federal directors general would get an allotment of Buros each year, with an electronic marketplace website established in which Buro-crats “can be traded.”

Busy work groups within the federal government could post micro-contracts on a website, according to the presentation, which is titled “The Buro: Using Market Principles for Efficient Human Resource Allocation.”

Employees working in other areas or departments who have some extra time could accept the additional work, and their section could earn some Buros back from that group.

Some of the advantages of the Buro, according to the presentation, are that it’s more flexible than current human resources tools, because secondments, co-ops, new hires and casual employees “are impractical for short-term needs.”

Also, because the Buros use market forces and have value, "people respond to incentives," say the documents, which were prepared between August, 2013 and February, 2014.

The documents say that, depending on rollout, there would be "variable costs" for the government, including incentives, oversight and maintenance.

But there would also be significant overtime savings, as well as "fewer stressed-out employees," better work and more deadlines met. Buros would also mitigate the effects of temporary employee absences, according to the presentation. The government would then reinvest the savings, the documents say.

The Conservative government has been planning the pilot project as it cuts billions of dollars and thousands of federal employees in an effort to balance the books by 2015-16.

The federal presentation to the policy innovation committee was provided by Nikola Sydor-Estable, a senior policy analyst for the Federal Economic Development Agency for Southern Ontario, and by Jason McKay, a policy analyst with Shared Services Canada.

The deputy ministers' committee is co-chaired by Graham Flack, deputy secretary to the cabinet, and by Bill Pentney, deputy minister of justice.

The government's three-year pilot project is proposed first for policy analysts at regional development agencies, such as the Federal Economic Development Agency for Southern Ontario, Canada Economic Development for Quebec Regions, Western Economic Diversification Canada and the Atlantic Canada Opportunities Agency.

The skills, knowledge and economic analysis required at the various regional agencies are all similar, says the government.

However, other potential target groups include administrative services, communications, IT services, finance, legal and human resources staff.

The pilot project, as envisioned, would see a working group spend six months on research, consultations and business-case development.

If the initial work confirms that the pilot project is feasible, the government would then take one year to design the system for the pilot (including develop software, rules of use), followed by a one-year trial run, then a post-mortem to measure its effectiveness.

The pilot project would then inform the government on "potential wider deployment."

The system could potentially be modelled after blueprints such as eBay, InnoCentive (a company that crowd-sources innovative solutions) and Google Answers (a former online knowledge market), the documents say.

The Buro market, while requiring rules, would largely be self-policing, with ratings for all parties in transactions, "like eBay," and dispute resolution "as last resort."

Buro transactions would be transparent under the planned model, to allow monitoring for misuse via a "panopticon effect: visibility keeps people honest."

The deputy ministers' committee on policy innovation that is examining the changes was created in November 2012. It was initially mandated to consider links between social media and policy-making, including new models for policy development and public engagement.

As of December 2013, the committee was asked to move beyond social media to examine trends and new technologies to help improve policy development.

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thestar.com

Prostitution bill likely to face court challenge, Peter MacKay says

Justice Minister Peter MacKay says the government's new prostitution bill is constitutionally sound.

Mike Blanchfield, The Canadian Press, Toronto Star, July 7, 2014

OTTAWA—Justice Minister Peter MacKay says the government's new prostitution bill is constitutionally sound, but he fully expects it will be challenged again at the Supreme Court of Canada.

MacKay was the first witness Monday as a marathon round of hearings by the House of Commons justice committee on the Harper government's new prostitution bill got underway.

The Supreme Court struck down Canada's old prostitution law last December and gave the government a year to replace it with one that would comply with the Charter of Rights and Freedoms.

MacKay says the bill is sound law and is highly "defensible."

He says it balances the need to protect communities from prostitution, including children, while protecting the prostitutes themselves, whom he says the government considers victims.

MacKay has said the government's message this week is to pass the bill because there's a sense of urgency.

MacKay has said he is open to amending the bill, but he's dropping strong hints that will have limits.

"As sure as night follows day, there will be challenges when new bills are presented," MacKay told the committee. "So we believe that the likelihood that it will be challenged is very real."

He says the bill is constitutionally sound and is an adequate response to the Supreme Court.

Justice Department officials, who advised the government, will be open to questioning by all parties later Monday after MacKay has finished his testimony, says Bob Dechert, the minister's parliamentary secretary.

Prostitution itself was actually legal in Canada under the old law, but most related activities — including communicating in a public place for the purposes of prostitution, pimping and running a brothel — were criminal offences.

The Supreme Court said that amounted to a violation of the basic Charter right to security of the person was concerned that the provisions unduly increased the risk to sex workers.

The Conservatives new bill creates new offences for clients and pimps, but does not criminalize prostitutes themselves.

It also cracks down on advertising and selling sexual services in public places where a child could reasonably be expected to be present.

Parliamentary committees rarely convene during the summer recess.

This week, the committee expects to hear from more than 60 witnesses over 20 hours of hearings that will run into Thursday.

NDP justice critic Francoise Boivin says she wants the government to slow down and thoughtfully craft a new, Charter-compliant law over the summer months.

The vast list of those testifying includes sex workers, indigenous women, community workers and experts from Europe.

Prostitution: le projet de loi à l'étude

Hugo de Granpré, La Presse, le 6 juillet 2014

Un nombre important de témoins qui comparaissent cette semaine devant le comité parlementaire de la justice demandent à Ottawa d'amender le projet de loi C-36 pour que les prostituées et les travailleurs du sexe ne soient plus considérés comme des criminels.

Ce comité de la Chambre des communes a entamé hier une étude intensive de quatre jours sur ce projet de loi, qui modifie les règles criminelles sur la prostitution. Une demi-douzaine de groupes, dont le gouvernement du Manitoba et l'Alliance évangélique du Canada, ont demandé au gouvernement de retirer les dispositions qui criminalisent l'offre de services sexuels.

«J'ai de sérieuses préoccupations à l'égard des dispositions du projet de loi C-36 qui traiteraient les victimes d'exploitation sexuelle comme des criminels», a déclaré le ministre de la Justice du Manitoba, Andrew Swan.

Ces dispositions isoleraient les prostituées, a-t-il ajouté, ce qui les mettrait en danger et pourrait menacer la constitutionnalité du projet de loi.

D'autres appels semblables suivront: une dizaine de groupes qui témoigneront au cours de la semaine donnera une conférence de presse demain sur la colline parlementaire. «Tous les groupes disent que c'est un bon projet de loi; les objectifs sont les bons. Par contre, la criminalisation des femmes doit disparaître», a précisé Diane Matte, porte-parole de l'un de ces groupes, la Concertation des luttes contre l'exploitation sexuelle.

Ces groupes réclament en outre plus que les 20 millions de dollars en cinq ans promis par Ottawa pour venir en aide aux personnes qui souhaitent sortir de la prostitution.

Le ministre de la Justice s'est déjà dit disposé à faire des amendements, mais il n'a pas précisé lesquels.

«Le modèle Pickton»

La réforme des règles sur la prostitution a été rendue nécessaire par l'arrêt de la Cour suprême du Canada, qui, dans l'affaire Bedford, a donné au gouvernement jusqu'à la fin de 2014 pour revoir certaines dispositions clés du Code criminel.

Le gouvernement Harper a présenté en juin son projet de loi, qui repose en bonne partie sur la criminalisation de l'achat de services sexuels. Mais il a maintenu la criminalisation de l'offre de services sexuels dans certaines circonstances, notamment dans des lieux où des mineurs pourraient se trouver.

Plusieurs autres témoins ont dénoncé le projet de loi et affirmé qu'il ne passerait pas le test des tribunaux, car le fait de traiter les clients comme des criminels maintient l'état de clandestinité des prostitués et compromet leur sécurité. «Le projet de loi C-36 va continuer de permettre à des prédateurs violents comme Robert Pickton de s'attaquer à des travailleurs du sexe qui ont été repoussés vers des aires moins publiques de la ville», a même déclaré Jean McDonald, directrice de Maggie's, un groupe d'aide aux travailleuses du sexe de Toronto.

«C'est pourquoi plusieurs surnomment le projet de loi C-36 "le modèle Pickton".»

«Constitutionnelle»

Le ministre fédéral de la Justice, Peter MacKay, a défendu sa réforme et affirmé qu'elle est bel et bien constitutionnelle. Il a dit néanmoins s'attendre à ce qu'elle soit contestée devant les tribunaux. Plusieurs groupes ont déjà signalé leur intention de le faire rapidement après son adoption.

«La possibilité que le projet de loi soit contesté est très réelle, a déclaré M. MacKay, mais je crois que cette législation est constitutionnelle. C'est une bonne loi et une bonne politique publique, qui aidera à protéger les personnes vulnérables.»

John Lowman, criminologue à l'Université Simon Fraser, a émis des doutes à cet égard. «C'est le même gouvernement qui a fait valoir que les règles invalidées dans l'affaire Bedford passaient le test de la constitutionnalité. Et le gouvernement avait complètement tort.»

Plusieurs témoins ainsi que les partis de l'opposition ont demandé au gouvernement de soumettre le projet de loi à la Cour suprême pour qu'elle se prononce sur sa légalité, mais le ministre de la Justice a refusé.

MacKay s'attend à ce que sa réforme sur la prostitution soit contestée

Hugo de Granpré, La Presse, le 7 juillet 2014

(Ottawa) Le ministre fédéral de la Justice, Peter MacKay, s'attend à ce que sa réforme sur la prostitution soit contestée devant les tribunaux, mais il est convaincu qu'elle passera le test.

Le ministre MacKay était le premier témoin dans le cadre d'une étude intensive du projet de loi C-36 entreprise par le comité parlementaire de la justice cette semaine. La réforme répond à l'arrêt de la Cour suprême du Canada dans Bedford, qui a invalidé des dispositions clés du Code criminel en matière de prostitution et donné au gouvernement jusqu'à la fin de 2014 pour en adopter de nouvelles.

«Nous croyons que la possibilité que [le projet de loi] soit contesté est très réelle», a reconnu le ministre de la Justice au cours de son témoignage d'une heure.

Il a cependant rejeté la demande des partis de l'opposition de renvoyer la réforme à la Cour suprême pour lui demander son avis sur sa constitutionnalité.

Le comité parlementaire entendra des dizaines de témoins jusqu'à jeudi, dont plusieurs qui ont déjà annoncé leur intention de contester les changements apportés au Code criminel.

Ces changements criminalisent l'achat de services sexuels, plutôt que la vente. Ils maintiennent cependant la criminalisation de l'offre de services sexuels dans les lieux où des mineurs pourraient être présents.

Certains estiment que les nouvelles règles maintiendront le caractère dangereux de la prostitution en forçant les travailleurs du sexe à travailler dans la clandestinité, et seront dès lors invalidées par les tribunaux.

«Je crois que cette législation est constitutionnelle et est une bonne loi et une bonne politique publique, qui aidera à protéger les personnes vulnérables», a répliqué Peter MacKay lundi.

NATIONAL NEWSWATCH

NEWS OPINION ENTERTAINMENT THE MIX

Sex trade bill unconstitutional: expert

Mike Blanchfield, Canadian Press, National Newswatch, July 9, 2014

OTTAWA - One of the architects of Sweden's anti-prostitution strategy — a model the Conservatives are trying to emulate — says the government's proposed new law is likely unconstitutional.

A provision of the Tory bill which still criminalizes prostitutes in some circumstances is also a violation of Canada's Charter of Rights and Freedoms, as well as international human rights obligations, lawyer Gunilla Ekberg said Wednesday.

"I would argue that is unconstitutional because it targets those who are victims of first of all a human rights violation but also a crime," Ekberg told the House of Commons justice committee via video link from Denmark.

Ekberg is a Canadian citizen who was an adviser for the Swedish government in the 1990s when it crafted a law that makes it illegal to be a pimp or a john, but not a prostitute.

The Harper government has introduced a similar bill in response to last year's decision by the Supreme Court of Canada to strike down the country's prostitution law as

unconstitutional. For the most part, the bill treats prostitutes as victims and shields them from criminal prosecution.

A portion of the bill, however, makes prostitution illegal if it is carried out in a public place where children could be.

Ekberg and numerous other witnesses at this week's lengthy hearings on the bill are urging the committee to amend that section in order to strengthen the legislation.

Otherwise, another Charter challenge before the Supreme Court appears inevitable.

Earlier, this week, Justice Minister Peter MacKay said he fully expects another challenge to the law, but he wouldn't say where it might be vulnerable.

Still, witness after witness — including Ekberg, sex workers, Manitoba's attorney general and a coalition of more than 200 legal experts — has zeroed in on the provision that still allows the police to arrest a prostitute under certain circumstances for communicating for the purpose of selling sex.

MacKay and Conservative MPs say they are proposing a made-in-Canada law that treats prostitutes as victims, and targets the demand for their services by making it illegal to pimp them out or purchase their services.

Vancouver lawyer Georgialee Lang, who represented the Evangelical Fellowship of Canada as an intervener before the Supreme Court in last year's challenge, came to the government's defence in her testimony Wednesday.

The legislation, she said, "speaks to the real issue, which is the exploitation of women and the commodification of the commercialization of women's bodies, which is just a frontal assault on human dignity and is a breach of human rights."

"There's no doubt" that the bill will face a constitutional challenge, but many legal experts believe Bill C-36 would survive one, she added.

The government's new approach draws from the apparent success in Sweden, or so-called "Nordic model," which many researchers — Ekberg among them — say has witnessed a decline in prostitution since it took that approach in the late 1990s.

However, as one of the people who helped Sweden craft that policy, Ekberg told MPs on the Justice committee that the Harper government's current policy direction comes up short against the Swedish model.

In fact, Ekberg said she finds the government's position "troubling" because there has been so much evidence to the contrary from academics, researchers, those being trafficked, and some provinces.

"Not only are they discriminatory but they are contrary to the human rights obligations that Canada has signed on to."

Ekberg also took aim at the long-term goal of the government with the bill: eliminating prostitution all together.

"In 16 years that we have been doing this (in Sweden), we will not be able to eliminate prostitution and trafficking completely."

Two other witnesses, sex worker Amy Lebovitch and former prostitute Valerie Scott, argued Wednesday that the bill ought to be scrapped in its entirety because prostitution should be completely legalized.

Along with retired dominatrix Terri-Jean Bedford, the two women were the principals in the case that succeeded last December before the Supreme Court.

"Bad laws serve us up on a silver platter to sexual predators," said Scott.

Anti-gay laws in places such as Uganda, Nigeria and Russia have led to increased violence against homosexuals, so it stands to reason, Scott argued, that anything short of outright legalization of prostitution would bring harm to prostitutes as well.

Why won't MacKay release his legal advice on prostitution?

Adam Dodek, Contributed to The Globe and Mail, July 8, 2014

Adam Dodek is a member of the University of Ottawa's Public Law Group and the author of the new book Solicitor-Client Privilege.

Minister of Justice Peter MacKay has confidently asserted two things about Bill C-36, the Government's new proposed prostitution law: that it will certainly be challenged in the courts and that it is constitutional. Mr. MacKay is undoubtedly correct that there will another round in the legal battle over the country's prostitution laws that will make its way back to the Supreme Court. Until then, we will not know if he is correct about the bill's constitutionality.

Mr. MacKay can, however, back up his second claim by showing Members of Parliament and Canadians the legal advice that supports his confident assertion. And he should.

Canadian governments have remained steadfast in their refusal to publicly reveal the legal advice that forms the basis for many of their decisions. Governments love to rely on solicitor-client privilege – the protection afforded by the law to confidential

communications between a client and lawyer. The Supreme Court of Canada has recognized solicitor-client privilege as a fundamental legal and civil right that enjoys constitutional protection in certain circumstances. For reasons that I have argued elsewhere, it does not make a lot of sense to talk about the government enjoying such constitutional protection.

However, this right of solicitor-client privilege applies to the client, and the client – in this case the government – can waive that right. Rarely have governments chosen to do so. In this, the Harper government is no different from its predecessors. If anything, it is better. It opened the door to the musty secret world of legal advice in the Nadon appointment when it released the legal opinion provided to the government by former Supreme Court of Canada justice Ian Binnie. Kudos to Mr. MacKay and the Harper government for doing so. The release of the Binnie opinion facilitated a vibrant debate about the legality of the Nadon appointment. That the Supreme Court of Canada ultimately decided against the government's opinion is beside the point.

The point is that the government released a legal opinion and the sky did not fall. I have argued that government should release legal opinions because it is in the public interest to do so. Governments exercise great power in enacting laws or in making appointments and they do so based on legal advice that authorizes them to exercise such power. They should demonstrate the basis for the exercise of that power.

This assertion frightens many people in government, especially lawyers. I have had great debates with some government lawyers about this who fear a "chilling effect" if their legal advice is or can be released. I don't buy that argument. First, all public servants have a duty to provide "fearless advice." Lawyers in government are no different. Second, other countries release their government legal advice without the state collapsing.

In the United States, you can find legal opinions from the Department of Justice's Office of Legal Counsel on a special website. The Attorneys General of each of the 50 states release legal advice, to varying degrees. In Britain, the public inquiry in to the Iraq War sifted through the various legal advice. It is not clear why legal advice in Canada should be a special case.

This government is uniquely placed to lift the veil of secrecy that shrouds government legal advice. It came to power in 2006 promising Canadians more accountability. Releasing some legal opinions would be consistent with this pledge. On Bill C-36, Mr. MacKay is surely correct: a legal challenge is inevitable. The government should place its legal cards on the table now.

THE VANCOUVER SUN

ENTERTAINMENT LIFE HEALTH TECHNOLOGY TRAVEL CARE

Ian Mulgrew: B.C. legal aid system fails to meet basic needs, report says

Inadequate funding has far-reaching implications, lawyers warn

BY IAN MULGREW, VANCOUVER SUN COLUMNIST, JULY 10, 2014

B.C.'s legal aid system fails to meet the most basic needs in the province, says a draft report by Lawyers' Rights Watch Canada that slams Liberal government cutbacks and lack of funding.

In the course of the 60-page document, the legal lobby group argues Victoria should pass a new law guaranteeing support for needy individuals in civil, administrative and criminal cases as stipulated by international conventions.

Under those much more generous global instruments, legal aid also is provided even to victims and witnesses of crimes in appropriate cases — not just litigants or defendants.

"Once a leader within Canada in the provision of comprehensive legal aid programs, B.C. is now the third-lowest province in Canada in per capita legal aid spending," say the authors of The Right to Legal Aid: How B.C.'s Legal Aid System Fails to Meet International Human Rights Obligations.

"While cuts and service reductions have impacted many people in B.C., they have had the greatest impact on women and marginalized people. The impact of inadequate funding, including the elimination of poverty law services and the narrowed scope of family law services, continues to undermine the entire justice system and has far-reaching implications for the health, relationships and social fabric of British Columbians and their economy."

Though alarming, the conclusions are not surprising.

After conducting a one-man public commission, Vancouver lawyer Len Doust concluded in March 2011 that B.C. had "fallen from being a leader in legal aid provision to seriously lagging behind other jurisdictions."

Echoing his concerns, Supreme Court Chief Justice Beverley McLachlin in August 2013 referred to access to justice as "the greatest challenge facing the Canadian justice system."

Under the provincial Liberal administration, which took office in 2001, support for legal aid has been drastically cut and remains threadbare, with funding at last-century levels.

As a result, B.C. has been singled out for criticism by the UN Human Rights Committee, the UN Committee on the Elimination of Discrimination against Women and the UN Committee on the Elimination or Racial Discrimination.

B.C. judges also have complained that the cost of legal fees and poverty-level thresholds mean middle-class litigants are seriously compromised.

They can't get legal aid, can't afford a lawyer and appear before judges with little idea of what to do, without the documents required or even without knowing what constitutes evidence.

"With all the goodwill in the world," noted one judge quoted in the draft report, "the court cannot lead their cases for them, cross examine for them, argue for them and thus ensure their cases have been properly put forward. It is shameful that in our wealthy province we no longer have resource available which would give real help to parties in this situation."

Still, the crisis in B.C. is not unique.

Elsewhere in Canada, legal aid also falls short of international obligations to provide effective access to court and justice.

Underfunding, gaps in coverage and fragmentation in legal aid services mean there is unequal protection under the law across the country. Women, people with disabilities, minorities and the poor are disproportionately hurt.

The Canadian Bar Association's attempt to litigate these issues was tossed out by the B.C. Supreme Court in 2006 because international agreements don't create enforceable domestic rights absent from the Charter of Rights and Freedoms.

The B.C. Court of Appeal agreed and the Supreme Court of Canada refused leave to appeal in July 2008.

In cases where someone requires a lawyer to ensure a fair hearing, there are some statute mechanisms to provide assistance and there is a limited right to state-funded counsel under Section 7 of the charter, even in limited circumstances for civil cases.

But Canadian law does not recognize a general constitutional right to counsel and the right to access the courts is not absolute.

The Supreme Court has stated "guaranteed legal services would lead people to bring claims before courts and tribunals who would not otherwise do so. Many would applaud these results. However, the fiscal implications of the right sought cannot be denied …. It is a huge change that would alter the legal landscape and impose a not inconsiderable burden on taxpayers."

Lawyers, nevertheless, still dream of finding a test case that will support their contention that legal aid should be an essential service and funding mandated whether it's a criminal, civil or administrative dispute.

Written by Lois Leslie, with assistance from Connor Bildfell, Gail Davidson and Catherine Morris, the final version of the report will be released Oct. 1 with a companion manual, The Right to Legal Aid: A Handbook on Legal Aid at International Law.

The project was funded by the Law Foundation of B.C. and LRWC members.

Harper does the summer shuffle of top bureaucrats

KATHRYN MAY, July 11, 2014

The longtime deputy minister who stickhandled the federal government's attempts to reform First Nations education for the last eight years is among several senior bureaucrats who have moved to new posts in Prime Minister Stephen Harper's latest shakeup of the public service's upper ranks.

Michael Wernick is leaving Aboriginal Affairs and Northern Development Canada for the Privy Council Office later this month, where he will become a special adviser. Wernick joined Aboriginal Affairs in 2006 and is one of the longest-serving deputy ministers in the history of the department, which has been renamed under various reorganizations since Confederation.

In a bureaucracy where deputy ministers rotate through jobs every couple of years, Wernick stood out for his tenure at Aboriginal Affairs. Senior colleagues said he was determined to see the education act reforms through before moving on and was "crushed" when they were derailed.

The Conservative government dropped its plan for an overhaul of First Nations education recently after the country's aboriginal chiefs disagreed on the necessary reforms. The government put the education bill, C-33, on hold following the sudden resignation of Assembly of First Nations national chief Shawn Atleo.

Wernick will be replaced by Colleen Swords, who after less than a year as the deputy minister at Canadian Heritage, is returning to Aboriginal Affairs where she spent four years working as Wernick's second-in-command.

Graham Flack, PCO's deputy secretary to cabinet for plans and consultations and intergovernmental affairs, moves to his first deputy minister posting and takes over as the head of Canadian Heritage.

The shuffle, announced Friday, is the second in less than a month. Other changes include:

– **Stephen Lucas**, PCO's assistant secretary to the cabinet for economic and regional development, fills Flack's position.

– **Lori Sterling**, the associate deputy minister at the Department of Justice, will become the deputy minister of Labour. She replaces Hélène Gosselin, who is retiring after a 33-year career in the public service.

– **Bill Jones**, deputy commissioner at the Canada Revenue Agency, is moving to National Defence as senior associate deputy minister.

– **Marta Morgan**, associate deputy minister of Industry, moves to Finance where she will become associate deputy minister.

– **Bill Matthews**, Treasury Board's assistant secretary of Expenditure Management, will take over as the new Comptroller General of Canada, replacing James Ralston who is retiring after 30 years.

Judicial activism in Canada

Charter fights

The Economist, July 7, 2014

THE ruling Conservatives in Canada never much liked the charter of rights and freedoms embedded in the constitution by a Liberal government in 1982. In opposition they feared that making the charter part of the constitution would undermine the supremacy of parliament; courts would be able to strike down laws as unconstitutional if they violated charter rights. In power, they have seen cherished bits of their legislative agenda suffer that very fate.

The latest setback came on July 4th with a federal-court ruling that the government's cuts to health care for refugees made in 2012 represented "cruel and unusual treatment", specifically prohibited under the charter. In his tersely worded response, Chris Alexander, the immigration minister, said the government would appeal against the decision at the Supreme Court. If recent rulings are anything to go by, the government is unlikely to achieve satisfaction there. In the past year, the Supreme Court has invoked the charter to strike down Canada's prostitution laws on the ground that they put the security and lives

of prostitutes at risk; to declare unconstitutional a law allowing police to wiretap without a warrant; and to restore early parole for some convicts.

A number of high-profile Supreme Court decisions not involving the charter have also gone against the government, even though the majority of justices now on the court were appointed by Stephen Harper, the prime minister. The setbacks include the humiliating rejection of his latest nominee to fill one of spots on the bench reserved for Quebec, and the rejection of Mr Harper's plans to reform the Senate without reopening the constitution.

The muttering among Conservative supporters about "judicial activism", which began in the early days of the charter when the Supreme Court upheld same-sex marriages and struck down abortion laws, is growing louder. Following the prostitution ruling, Jason Kenney, the employment minister, said "the judiciary should be restrained at the exercise of judicial power in overturning a democratic consensus". More recently, the prime minister's office tried to suggest the chief justice had acted inappropriately in the rejection of its nominee.

Yet the government itself, not meddling judges, may be more to blame. Edgar Schmidt, a former lawyer in the justice department, is suing the government for not subjecting proposed legislation to sufficiently rigorous scrutiny to see if it conforms to the constitution prior to presenting it to parliament. Simon Potter, a former head of the Canadian Bar Association, cited Mr Schmidt's points in a speech to the association last month in which he accused the government of not doing enough to defend the charter and of fostering disrespect for the judiciary. If Mr Schmidt's allegations are correct, says Mr Potter, "the executive has decided to take as many freedoms away from us as possible, rather than as few as possible". He is dismayed that there is more legislation in the pipeline that looks ripe for charter challenges.

One step this government is not prepared to take is to revoke the charter itself. It would involve lengthy, arduous and potentially inconclusive constitutional negotiations with the provinces. More importantly, even the government's own surveys show the charter is hugely popular with the majority of Canadians. When it asked Canadians to suggest the people and feats they want celebrated in 2017, the country's 150th birthday, Medicare, peacekeeping and the charter of rights and freedoms were the top three accomplishments. Pierre Trudeau, the former Liberal prime minister who brought in the charter, was the most inspiring Canadian.

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.”

THE VANCOUVER SUN

ENTERTAINMENT LIFE HEALTH TECHNOLOGY TRAVEL CARE

Calls flooding into snitch line designed to catch offshore tax evaders

DEAN BEEBY, THE CANADIAN PRESS, JULY 13, 2014

OTTAWA - The Canada Revenue Agency has 80 new leads on taxpayers who may be hiding money offshore after getting hundreds of calls on its new snitch line.

The flush of information has even the agency's harshest critics acknowledging the initial success of the hotline, established Jan. 15 to help ferret out billions of dollars stashed overseas.

The so-called OTIP line — for Offshore Tax Informant Program — was promised in the March 2013 budget but took 10 months to set up.

As of May 31, more than 800 people rang the number, drawn by a cash reward system that gives the tipster up to 15 per cent of the amount in taxes that the agency eventually collects.

Only 251 of those calls were actual informants, and only 100 went to the next required step, filing a written submission identifying themselves and providing detailed information on the alleged overseas tax evasion.

The agency closed 20 of those written files as dead ends, but is pursuing the remainder.

Details of the program's first few months were obtained under the Access to Information Act, supplemented by information provided directly by the Canada Revenue Agency.

"I've been surprised, pleasantly surprised," said Jonathan Garbutt, a Toronto tax lawyer who has been a vocal critic of the way the program was established.

"I'm not ... as pessimistic as I was," he said in an interview, adding that at least two of the tipsters have become his clients, and other potential offshore whistleblowers are consulting him.

The program is modelled on a U.S. counterpart that is much more generous, offering rewards as high as 30 per cent, for example. The Internal Revenue Service paid out US$104 million to one snitch after collecting US$5 billion in back taxes from Swiss banks.

The Canadian program pays between five and 15 per cent only if the CRA successfully collects more than $100,000 in taxes owed, and the tipster must pay income tax on the reward. Some classes of informants are excluded, including most public servants or criminals.

The snitch must also reveal his or her identity, unlike another snitch line at the CRA, which is focused on domestic tax fraud and pays no rewards.

Sen. Percy Downe, long a critic of the agency's efforts to collect on money hidden offshore, said he welcomes the initiative.

"I'm glad it's finally up and running," he said in an interview from Charlottetown.

But the reward level should match the American program, he said, and massive job cuts at the CRA raise doubts about whether it can properly pursue the leads.

"The department fails to put the resources into fighting overseas tax evasion and this is another example of it, rather than doing 30 per cent (rewards) they're doing 15 per cent."

Garbutt also praised the American system, which generally requires tipsters to have legal counsel to help the IRS winnow out the soft leads. "They only see wheat, they don't see chaff," he said.

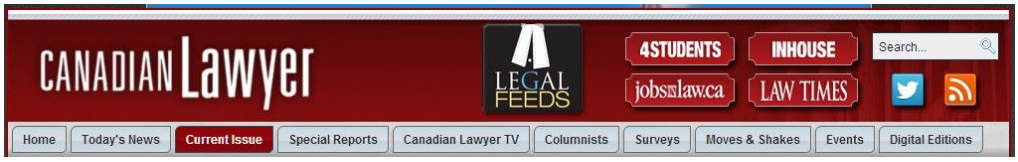
Garbutt also raised questions about diminishing resources at the agency, which has shed more than 2,500 jobs in recent years.

"They don't seem to be overwhelmed yet, but I think they could probably get there pretty quick."

The snitch program, with an annual budget of about $700,000, has not paid out any rewards to date.

"It may take several years from the date of entering into a contract with the CRA until the additional federal tax is assessed," said agency spokesman Philippe Brideau.

"The CRA believes this is a good start to the program. ... The early call and submission statistics indicate that there is interest on the part of informants to participate in this program."



CAMH agrees to rare SCC re-hearing

But deadlock of eight-judge panel was not a given

David Dias, Legal Feeds Blog, Canadian Lawyer, July 9, 2014

The Supreme Court of Canada's unusual request to re-hear a case in order to allow newly appointed Justice Clément Gascon to participate has led many observers to assume an even split among judges, requiring a tiebreaker — but there are other possibilities to consider.

The request was sent yesterday to counsel in Conception v. R., a case that will decide whether hospital administrators at overcrowded mental-health facilities can deny a court order to immediately admit a patient.

Conception was one of seven cases heard in the fall by a short-handed panel of eight sitting judges. The court has issued its decisions for the other six, leading to speculation about divisions at the top court. If an even number of sitting judges has resulted in a split, Gascon will break the deadlock by reviewing video of the hearing and, if necessary, posing questions to counsel in writing.

Counsel have until July 14 to decide whether to accede to the SCC's request. When approached for comment, Jonathan Lisus at Lax O'Sullivan Scott Lisus LLP, who represented the Center for Addiction and Mental Health in the case, quickly confirmed

his client has agreed to a re-hearing. Counsel for the other parties and the Crown could not be reached.

“Although this certainly isn't a common request, it is a process that has been adopted before,” says Lisus. “We don't think anything can be inferred about the state of the panel's deliberations and we look forward to providing the court with whatever assistance it requires to reach a decision.”

That’s no surprise, according to Eugene Meehan, of Supreme Advocacy LLP. “It would be difficult for counsel to say no. The practical reality at the Supreme Court of Canada is that, if the chief justice says jump, most counsel say ‘how high?’”

Meehan, who has been doing SCC work for 20 years, says this kind of a request is exceedingly rare. It happened twice in 1998, where a 4-3 split led to a re-hearing with nine panelists (on the off chance that two dissenting opinions could swing the vote). It also happened in 2004 and 2005, although no reasons were given in those instances.

The obvious assumption, he says, is the court has split down the middle, but a more nuanced — although equally plausible — reading of the tea leaves could point to Chief Justice Beverly McLachin’s own style of consensus building and a desire for a more inclusive ruling.

“This chief justice, McLachlin, is demonstrably a consensus builder. She tends to sit nine much more [than previous Chief Justice Antonio Lamer], so there’s a more full bench. And when you are arguing cases at the Supreme Court, you can see that she has nearly continual eye contact along the bench,” says Meehan. “She's very live as to her own colleagues.”

It follows, then, that the SCC may not be at loggerheads, but rather the chief justice’s office, which decides the quorum of each hearing, may simply be looking for Quebec representation and a full complement of judges.

“It's juridical common sense to have provincial inclusivity wherever that is possible,” says Meehan. “The more voices and thoughts you have at the table, generally speaking, the better.”

Want To Be A Law Prof? Data On Whether You Should Do A Doctorate

By Craig Forcese, Associate Professor, Faculty of Law (Common Law), University of Ottawa. July 9, 2014

As suggested here, I am in the midst of a giant data gathering exercise reviewing the professional profiles of Canada's 614 common law profs. In my prior post, I shared data on where these profs went to grad school. In this post, I examine the question of the "teaching degree" -- that is, the highest degree profs obtain before being hired as an Assistant Professor. (NB: These data are preliminary, and subject to double-checking as I write my article.)

I will discuss this more in the article I am writing, but in 1981, only 12.6% of Canada's common law profs had doctorates in law, with another 4.3% possessing doctorates in other disciplines.

Today, 49.8% of those in common law law schools for which data were available (564 of the 614 profs in my data set) have a doctorate. An LLM is the highest degree for 42.6%, while 5.5% have undergraduate law degrees as their highest law degree. Another 2.1% have other highest degrees (MA, MBA, MLS, M.Litt). The proportion of profs with doctorates in each academic rank are interesting:

Full: 42.7%

Associate: 59.2%

Assistant: 51.0%

The Assistant figure is misleading -- my data captured the highest degree obtained by the professor as of June/July 2014. It does not include the many instances in which the Assistant Prof is still a doctoral candidate. On an anecdotal review of the data, the latter is a common status (that is, profs are hired on their LLMs with their doctorates "in progress"). It stands to reason that by the time that today's Assistant Profs are promoted to Associate, the proportion holding a doctorate will look more like the current figure for Associates than that for the older Full Professors.

I won't breakout the data here, but there are notable institutional differences as well. Some schools are predominantly staffed by doctorate-holding profs (with the highest proportion 77.1%) while other schools are dominated by profs whose highest degree is an LLM (the lowest proportion of doctorates is 24%). It is a generalization, but most (but certainly not all of the) Ontario schools and McGill seem to place a higher premium on doctorates among their full-time profs. Obviously, there are "cultural" differences in hiring.

Putting all these data together is starting to make me feel insecure. Can't wait to do the number crunching on publication tempo.

THE ARNOLD REPORT

Brian J. Arnold

June 26, 2014

Brian Arnold is a professor and tax lawyer. He publishes "The Arnold Report" for The Canadian Tax Foundation

MAMAS DON'T LET YOUR BABIES GROW UP TO BE TAX ADVISERS

Tax advisers ain't easy to love and they're harder to afford.

They tell you what you can't do, not what you can.

Rollovers, step-ups and those old bumps and grinds,

And each tax return begins a new year.

If you don't understand them, and they don't bore ya to death

They'll probably just fade away.

Mamas, don't let your babies grow up to be tax advisers.

Don't let 'em read statutes and search for loopholes.

Let them be doctors and dentists and such.

Mamas, don't let your babies grow up to be tax advisers.

They'll always be nerds and not part of the herds,

Even when they want to be.

[With apologies to everyone out there who loves country music]

As Erik Jensen says, "Those of us in the tax law business know that we are bright, engaging, and athletic; we combine animal magnetism with erudition."[1] You may never have heard of the perceptive and insightful Erik Jensen, a longtime tax professor at Case Western Reserve Law School. Despite living in Cleveland and trying to get law students interested in US tax law, Professor Jensen was able to fight through the prevailing orthodoxy that tax lawyers were nerds and wrote the definitive 1991 article establishing convincingly that tax lawyers are in fact intrinsically heroic. "The Heroic Nature of Tax Lawyers" is a wonderful read. Its references to pop culture are somewhat dated and US-centric, but I like to think it is equally applicable in Canada today.

It must be said, however, that Professor Jensen did make a mistake, a completely forgivable mistake given the cutting-edge nature of his research. His mistake was to suggest that accountants were somewhat less than heroic, and that tax lawyers have suffered by being associated in the public imagination with them. For example, he notes that there are no books, movies or television shows about "Frontier" or "Swashbuckling" accountants, but that charge could equally be leveled at tax lawyers. Professor Jensen was, I think, unfair to tax accountants by lumping them together with accountants generally, who are clearly an inferior species – boring, nerdy, with thick glasses and no personality.[2]

Tax lawyers are similarly tainted by being lumped together with lawyers generally. The public view of the legal profession – mouthy, greedy, arrogant, sleazy, conniving (have I missed anything?) – is quite different from that of accountants, but no less unflattering. I will refrain from referring to the extensive body of research as to which species – lawyers or accountants – is less evolved.

Professor Jensen failed to see tax accountants and tax lawyers as being in the same boat, as allies in the struggle for recognition and legitimacy. In the public mind, tax lawyers probably don't register at all: tax is done by accountants or H&R Block. And if they ever think about tax lawyers, they probably think we do the same things as tax accountants.

The reality is that tax lawyers and tax accountants are nothing like the great unwashed bodies of lawyers and accountants. We should be recognized as a separate and superior species. As a public service, let me provide an honest, objective and completely unbiased evaluation of tax lawyers and tax accountants compared to the mill-of-the-run lawyer or accountant.

First, our basic working materials – the Income Tax Act and the Excise Tax Act – are the two largest statutes, by far. And then there are the provincial tax statutes and all the tax treaties, as well as 4 or 5 volumes of tax cases every year. Nor should we forget the

mountains of important administrative materials put out by the CRA – rulings, technical interpretations, interpretation bulletins (folios), etc.

Corporate and securities lawyers, with their undeserved air of superiority and inflated sense of importance, deal with corporate statutes that are a small fraction of the size of the tax acts. They think working hard is doing an all-nighter proofreading documents. Ha! Child's play!

The accountants have it a bit harder than the corporate/securities lawyers; they have to deal with generally accepted accounting principles, consisting of International Financial Reporting Standards (IFRS) and Accounting Standards for Private Enterprises, as well as some special rules for charities and public enterprises. But if you've read those standards or principles, you know they read like a primary school reader compared to the ITA and the ETA. And they aren't rules like the tax rules; they're principles or standards with lots of room for judgment as to their application.

Then there is the little matter of the pace of change. The challenge of keeping up with all the developments in Canadian tax law became impossible many years ago. It is difficult enough to stay on top of major changes in your particular field – corporate, personal, international, resource industries, etc. – and the practice of tax is becoming increasingly specialized. We face at least two major tax bills every year, including a major technical bill just before the holidays, in addition to all of the cases, CRA administrative material and the occasional discussion draft from the Department of Finance and the OECD and Auditor General's reports.

And what do our non-tax colleagues face? As far as I can tell, corporate and securities law haven't changed in any major way in 40 years. Before the adoption of IFRS in 2011, nobody would have said that Canadian GAAP was constantly changing in response to the evolving needs of the users of financial statements; only accountants would describe accounting standards as dynamic (at least in comparison with tax law).

So the statutes we deal with are much larger and more complex, and they change much more frequently, than those dealt with by other lawyers and accountants.

But there's more – much more. Tax lawyers have to know some accounting, but all tax advisers have to know a lot of law (in addition to tax law) because our tax system is imposed on our legal system. To determine the tax consequences of any transaction you have to know what are the legal rights and obligations of the parties to the transaction. This could mean provincial, federal or foreign law, and it could involve property law, contract law, corporate law, employment law, trusts and estates etc. So tax advisers really are amazing polymaths – we are the real philosopher kings and queens.

Given the inherent difficulty of tax, you would think that tax advisers and tax officials would be highly regarded by the other members of their larger professions and by the public generally. But no – from my limited experience, tax advisers usually don't get the respect they deserve even from their own firms. They are often cast in the role of servicing firm clients and undervalued because they don't have clients of their own. In terms of billable hours, little or no allowance is made for the disproportionate burden borne by tax advisers in order to maintain their human capital.

But at least tax advisers in private practice are paid well. Consider for a moment the plight of the tax lawyers and accountants who work for the CRA or Justice or Finance. Some of you may consider them to be your enemies or adversaries, but they are our professional brothers and sisters. And they have it far worse than any of us in the private sector. They are generally despised by the general public, undervalued and unsupported by their employers, overworked and underpaid. Yet they have the same difficult jobs that we have. Perhaps private-sector tax advisers bear more financial risk than government employees, but in the whole scheme of things what the public tax advisers do is relatively much more important. Taxes are essential for the funding of public goods and services – without which we have no civilization – and our tax system relies on the public officials who make it work.

I must also mention the lowly tax academics. Having taught at Western for many years and been a visiting professor at laws schools in the US, Europe, South Africa and Australia, I have some experience with how tax as a subject and tax professors are regarded by the academic profession generally. I don't know of any Canadian business schools that treat tax seriously. In Canadian law schools, fringe subjects – Law and "fill-in-the-blank" – get more respect than tax. Many law professors think tax doesn't belong in a law school curriculum. In their view, tax is just plumbing; it's what accountants do; it's practical; it doesn't have any theoretical content worthy of lofty academic minds. My colleagues and I tried to build a tax program at Western, with an area of concentration in tax in the LL.B. program (since shelved) and a master's degree in tax. It was a struggle the entire time. Funding was committed and then withdrawn. The master's program was approved by the University and the provincial government, but then cancelled by the Dean without any consultation just before we were ready to take our first students. I left in frustration soon after.

There are a few specialized masters programs in tax at Canadian universities (Osgoode, Sherbrooke, Waterloo's well-established MTax program and a new one starting at UBC). But in comparison to the programs available in the United States, Europe and Australia, Canadian universities are far behind. Why? Because tax is undervalued and unappreciated here.

There you have my sad tale of woe on behalf of Canadian tax advisers – we don't get any respect. What can we do about it? What should we do about it?It's too late to adopt the ideal solution: create our own tax profession separate from other lawyers and accountants. But one small thing we can and should do is to start honouring our own. Every other profession, industry and group does it. The entertainment industry is especially good at honouring its stars; their awards shows are an extravaganza of self-indulgence. I am not suggesting that we have a Tax Academy Awards every year to celebrate, say, "the best tax adviser in a merger and acquisition," although the thought of thousands of screaming fans is pretty intoxicating. Annual awards don't fit well with our profession. But we can and should honour those who have made important contributions to our profession over their careers – with a lifetime achievement award. The award should be given to those in private practice, government service, or academic positions who have demonstrated high standards of professionalism, who have brought credit to our profession and who provide role models for the younger members of our profession.

I have had this idea for many years now and put it forward on a couple of occasions without much success. The idea resurfaced with the passing of Bob Brown earlier this year. On the basis of any standard, Bob was a giant of our profession and we should have recognized his contributions in an appropriate fashion before his death. And there are many others whom we should have acknowledged: David Timbrell, Al Short, David Ward, Doug Sherbaniuk, just to name a few.

The Canadian Tax Foundation is the appropriate organization (actually the only organization) to give such awards. If the parent organizations of the CTF – the Canadian Bar Association and the Chartered Professional Accountants of Canada – were to give them, tax advisers would be lumped in with lawyers and accountants generally and would not be given their due.

I realize that selecting the tax advisers to recognize and honour would be a delicate and difficult task. The process must be rigorous and fair (voting by CTF members, somewhat like induction in the Baseball Hall of Fame? An awards committee consisting of senior practitioners from across the country?) and seen by everyone to be so. But just because it's difficult doesn't mean we shouldn't do it.

I am interested in gauging what the readers of this report think about the idea of a lifetime achievement award for tax advisers. I know that readers are generally reluctant to comment on my reports (which I, of course, construe as your wholehearted endorsement of everything I say) but, without indicating your name, just click below to vote on whether you agree or disagree on what I've suggested.

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[1] Erik Jensen, "The Heroic Nature of Tax Lawyers," (1991) vol. 140 University of Pennsylvania Law Review 367.

[2] If you Google tax accountants in popular culture, you get a lot of hits about accountants in pop culture but nothing about tax accountants. Some will no doubt disagree with my characterization of accountants. One website dedicated to the rehabilitation of the reputation of accountants mentions something called "extreme accounting." No, this is not a reference to the questionable practices used by Enron's accountants. It refers to the remote locations that accountants must visit to ply their trade. An accountant on the international space station – who knew!