

Press Clippings for the period of July 13th to 27th, 2015  
Revue de presse pour la période du 13 au 27 juillet, 2015

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

## **Marco Mendicino beats Eve Adams for Liberal nomination in Eglinton-Lawrence**

**Jane Taber, The Globe and Mail, July 26, 2015**

Liberals in Eglinton-Lawrence sent a message to federal leader Justin Trudeau, picking a young lawyer and family man from the riding over Conservative floor-crosser MP Eve Adams to run as their candidate in the upcoming federal election.

**Marco Mendicino** won the nomination Sunday after an afternoon of intrigue and suspicion from Mr. Mendicino's supporters over whether Mr. Trudeau's team had somehow tried to fix the vote.

In the end, however, Mr. Mendicino won with about 1,100 votes compared to 800 for Ms. Adams, according to insiders at the nomination meeting.

He will run against Conservative MP and finance minister Joe Oliver, who won the riding in 2011, beating veteran Liberal Joe Volpe.

"Are you fired up? Who wants to take on Joe Oliver?" Mr. Mendicino said to his cheering supporters.

Later, Mr. Mendicino noted he was now a "full member of Team Trudeau."

This was a closely watched race after Mr. Trudeau appeared to endorse Ms. Adams, welcoming her to the party in a nationally-televised news conference in February.

Mr. Trudeau had said that the nomination process was an open one – but there were many in this riding who felt that Ms. Adams was been given a boost from the Ottawa team.

Tom Allison, a well-respected and savvy Liberal organizer, became her campaign manager in a riding where she had no connections.

Ms. Adams is the MP for the suburban riding of Mississauga-Brampton South, elected as a Harper Conservative in 2011, but she had sought to run in an Oakville riding. She was

told by the Conservatives she couldn't run for them after alleged misconduct in a nomination race last year.

Her partner, Dimitri Soudas, a long-time aide of Stephen Harper, also left the Conservative Party amid allegations he interfered in her nomination in the Oakville riding.

She had been campaigning for the Eglinton-Lawrence nomination since the spring.

Now she is without a riding. She said she will take a couple of days to think about her future and "be a mom."

Asked about how her loss will affect Mr. Trudeau, she dodged the question, saying that Mr. Trudeau is "actually an extraordinary leader." She said in caucus meetings, Mr. Trudeau speaks from the "heart" where Prime Minister Stephen Harper is "fully scripted."

She noted that in her five-month campaign she brought together many diverse groups, and especially attracted a lot of women.

"We had so many women who really came out and led during this campaign," she said.

Mr. Mendicino had been campaigning much longer. He used the fact that he lives and works in the riding as his trump card, playing up that aspect up during his speech before the voting began.

"My life is in the riding," he told voters.

Eglinton-Lawrence Liberal MPP Mike Colle was a key supporter of Mr. Mendicino. He told reporters before the result that Ms. Adams' supporters were "instant Liberals" and said the riding association would be split if she won.

In fact, just before she delivered her nomination speech, an audience member stood up and asked her to "withdraw" for the sake of the party.

Mr. Colle said the silver lining in the nomination battle was her candidacy revived the federal riding association: "Good or bad she has activated the Liberals."

And Mr. Mendicino said that Mr. Trudeau had promised the nomination would be open and "that's exactly what you all see ... you see more participation, you see more engagement. This has done wonders for the Liberal Party," he said.

The question now is whether Ms. Adams' supporters, many of whom were recruited from the Somali community and other ethnic communities, will support Mr. Mendicino.

One of her volunteers, who would not give her name, told The Globe that she had paid \$30 to sign up herself and her two daughters. But she said her name was not on the voters' list, so she was not allowed to vote. She said she was "insulted" and is not sure how she will vote in the federal election.

Others, however, such as Pietro Cugliari, the president of the provincial Liberal riding association for Eglinton-Lawrence, said that he could not have supported Ms. Adams. "She's not a true Liberal."

Another Mendicino supporter said he would have voted NDP.

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## Conservative defector Eve Adams trounced in Liberal nomination fight



*Former Conservative MP Eve Adams, left, is seen with rival Marco Mendicino as Liberals chose a candidate to represent them in the Toronto riding of Eglinton-Lawrence on Sunday, July 26, 2015. THE CANADIAN PRESS*

**By Colin Perkel, The Canadian Press, Ottawa Citizen, July 26, 2015**

TORONTO — Conservative defector Eve Adams failed on Sunday in her bid to run as a Liberal candidate in the looming federal election.

The sitting member of Parliament, welcomed personally into the fold by Liberal Leader Justin Trudeau, was handily beaten for the party's nomination in the Toronto riding of Eglinton-Lawrence by lawyer Marco Mendicino.

The vote tally was about 1,100 votes for Adams and 1,936 for her victorious rival, party officials said, prompting ecstatic applause from his supporters.

The result means Mendicino, 42, a married father of two, will now face off against Tory Finance Minister Joe Oliver in the election that must be held no later than Oct. 19.

“There’s no booing for Eve,” he said in a victory speech.

Adams said she would spend some time with her family but suggested she would not disappear from politics.

Adams, 40, who once berated a garage attendant over an unsatisfactory car wash, left the Conservatives under a cloud related to another nomination fight, and Trudeau's warm embrace of her angered some party members.

Some of that disaffection was on display as Adams, who does not live in the constituency, made a final, unsuccessful appeal to riding Liberals to let her carry their standard against Oliver.

She had barely begun her pitch to about 150 members in a steamy high school auditorium when a man stood up in the audience.

"I urge you today for the sake of the party, if you love the Liberal party, please withdraw," he said.

Adams ignored the heckle.

Instead, the MP for Mississauga-Brampton South west of Toronto began her 10-minute speech with a passing nod to Mendicino, before stressing her own political credentials.

"I'm a fighter. That's pretty clear. I will fight harder for you than Joe Oliver ever will," Adams told the crowd.

"I'm a fighter, I'm progressive, I'm also a young mom, a full-time mom."

Adams pledged to move into the riding if chosen, and talked up her work ethic. She said nothing about her former party affiliation.

She also paid tribute to the Liberal leader, who both sides said stayed out of the bitter nomination fray.

"Justin Trudeau has a vision," she said. "He is the most inspired leader I have ever worked for."

Her speech received mostly polite applause, in contrast to the standing ovation and chants of "Marco!" that greeted the end of her rival's speech.

Nominated by longtime provincial Liberal Mike Colle, who once said Adams would represent the riding over his dead body, Mendicino began by reminding the audience of Adams' past.

"The decision to cross the floor was a courageous one and I salute you," Mendicino said.

"I am not a career politician but I have learned that at its heart, politics is about the people. Our life is in this riding."

Mendicino, a former prosecutor for almost 10 years, criticized Prime Minister Stephen Harper and his Conservatives for failing to deliver for "hard-working" Canadians.

Adams left the Harper Conservatives amid allegations of dirty tricks related to a Tory nomination battle last year. Her fiancé Dimitri Soudas, who was for years a spokesman for Harper and became the Conservatives' executive director, was also excommunicated from the party establishment.

Despite the controversy over her defection, Adams' attempt to run in Eglinton-Lawrence attracted some heavyweight support, including from the man who helped engineer Ontario Premier Kathleen Wynne's surprise win last year.

Pundits are divided on how much damage Adams has done to Trudeau. Some said his welcoming her was old news, but others suggested he had shown questionable judgment that could still hurt him.

Oliver was quick to rub salt into the wound, issuing a statement on the heels of Adams' defeat accusing Trudeau of trying to override the wishes of local Liberals.

“Justin Trudeau has demonstrated, yet again, poor judgment in trying to parachute his chosen candidate into a riding against the will of the local community,” said the emailed statement.

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## La transfuge Eve Adams, non investie, perd son pari

**La Presse, le 26 juillet 2015**

L'ex-députée conservatrice devenue libérale Eve Adams a échoué dimanche dans sa tentative d'obtenir l'investiture dans la circonscription torontoise d'Eglinton-Lawrence.

C'est un libéral de longue date, l'avocat torontois Marco Mendicino, qui l'a emporté avec 1127 voix contre 792 pour Mme Adams.

M. Mendicino, père de deux enfants, affrontera donc le ministre des Finances, Joe Oliver, aux prochaines élections fédérales.

Mme Adams est la fiancée de Dimitri Soudas, l'ancien directeur des communications du premier ministre Stephen Harper.

En février dernier, elle avait causé une commotion à Ottawa en annonçant, en compagnie du chef libéral Justin Trudeau, qu'elle claquait la porte du Parti conservateur afin de briguer les suffrages sous la bannière du Parti libéral.

Eve Adams représente actuellement le comté de Mississauga-Brampton-Sud, dans la banlieue ouest de Toronto, tandis qu'Eglinton-Lawrence se trouve au coeur de la Ville-Reine.

«Il n'y a pas de huées pour Eve», a dit M. Mendicino dans son discours de victoire.

La candidate défaite a annoncé qu'elle passerait du temps auprès de sa famille, mais a laissé entendre qu'elle ne quitterait pas la politique.

La politicienne de 40 ans a quitté les conservateurs dans une certaine tourmente entourant une autre bataille pour la nomination. Selon certaines allégations, elle aurait utilisé de stratégies malhonnêtes. Son fiancé M. Soudas a également été écarté du Parti

conservateur. Le fait que Justin Trudeau a accueilli la candidate à bras ouverts a choqué des membres du Parti libéral, qui ne l'ont pas caché à certains moments de la campagne. Dans un dernier discours de Mme Adams aux libéraux de la circonscription avant le vote, un homme dans la salle s'est levé.

«Je vous prie aujourd'hui, pour le bien du parti, si vous aimez le Parti libéral, s'il-vous-plaît, retirez-vous», a-t-il lancé.

Mme Adams l'a ignoré.

Elle a plutôt commencé son discours en saluant M. Mendicino, avant de souligner ses propres qualifications politiques et de promettre qu'elle allait déménager dans la circonscription. Elle n'a pas mentionné son affiliation aux conservateurs. Son discours avait reçu des applaudissements polis, en comparaison avec ceux qu'a reçus Marco Mendicino.

Sa tentative d'obtenir l'investiture libérale dans la circonscription lui avait toutefois attiré le soutien de pointures majeures, dont celui de l'homme derrière la campagne qui a porté Kathleen Wynne au pouvoir en Ontario, l'an dernier.

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## The man who defeated Eve Adams: Who is Marco Mendicino?

**Michelle Zilio, CTVNews.ca, July 26, 2015**

During the battle for the Liberal nomination in Eglinton-Lawrence, much of the focus was on candidate Eve Adams, a former Conservative MP. But who is the candidate who defeated the Tory defector?

Marco Mendicino is a Toronto lawyer and co-owner of Ellis Mendicino, a boutique law firm focusing on professional regulation, labour, and employment and criminal law. He is also an adjunct professor at the Osgoode Hall Law School at York University.

According to Mendicino's candidacy website, he has been a "dedicated Liberal" for years, volunteering on several provincial and federal campaigns for the party. He also served as the legal counsel on Ontario Liberal MPP Mike Colle's campaign in the spring 2014 provincial election.

And Mendicino's been a member of the Eglinton-Lawrence riding association executive, giving him a leg up on opponent Adams, who ran in Mississauga-Brampton South in the 2011 election.

Mendicino has an extensive legal career. He worked as a federal prosecutor for nearly 10 years, during which time her prosecuted the 'Toronto 18' terror group. He has also worked at the Law Society of Upper Canada **and served as the president of the Association of Justice Council**, an organization representing some 3,000 federal prosecutors and government lawyers. Finally, Mendicino has testified before the House of Commons and Senate on organized crime laws and access to justice.

A self-professed family man, Mendicino is a father of two girls -- Michaela and Gemma-- and husband to Diana. He also volunteers with the John Wanless Childcare Centre in Toronto, the North Toronto Soccer Club, the Toronto Symphony Volunteer Committee, and Heart and Stroke Canada, among other organizations.

Medicino received endorsements from a number of prominent Liberals and local politicians, including former Liberal leader Bob Rae, Colle and Liberal MP Judy Sgro.

Medicino's rival Adams shocked Ottawa in February when she left the Conservative Party after a contentious Tory nomination battle when her existing riding was split. She crossed the floor to the Liberals. Adams is engaged to Dimitri Soudas, a former spokesman for Prime Minister Stephen Harper and a controversial player in Canadian political circles.

Sunday's vote was contentious, as Liberal Leader Justin Trudeau's decision to welcome Adams to the party has angered some members.

Speaking to Liberals in Toronto Sunday, Adams was interrupted by a heckler who urged her to withdraw from the race.

"I urge you today for the sake of the party, if you love the Liberal party, please withdraw," the man said.

Adams ignored him.

### **Adams mention met with boos**

In his victory speech Sunday night, Mendicino thanked his supporters and gave a brief shout out to Adams, which was met with booing.

"I want to pay a special tribute to my companion in this race, Eve Adams," said Mendicino, as the crowd booed. "There's no booing for Eve. Eve ran a tremendous campaign and she kept working until the very end."

Medicino saluted Adams' "tremendous courage" in crossing the House of Commons floor to join the Liberals.

Medicino will represent the party in this fall's federal election, tentatively scheduled for Oct. 19. He warned Conservative Finance Minister Joe Oliver, who currently holds the seat, to get ready for a tough race.

"Joe, enjoy your sleep tonight because tomorrow we're coming after you."

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## **Eve Adams crashes, grassroots repudiate Trudeau choice: Tim Harper**

Tim Harper, Toronto Star Columnist, July 26, 2015

In this summer of melting Liberal fortunes, this Sunday afternoon in a steamy high school auditorium was supposed to be all about Eve, Dimitri and Justin.

Instead it turned out to be all about prominent Toronto lawyer Marco Mendicino and an Eglinton-Lawrence Liberal repudiation of interloper Eve Adams, her fiancé and one-time Conservative heavyweight Dimitri Soudas, and Justin Trudeau, the Liberal leader who brought the duo and their steamer-size luggage aboard the listing Liberal ship.

The winner was supposed to be the drama queen with the temper, the woman who had run afoul of Conservative brass for the bare-knuckles style — known generically as bullying — that she and Soudas employed in a previous Conservative nomination battle so tainted that she left before both contestants were tossed from the ring.

Soudas, the one-time Conservative power broker and loyal spokesperson for Harper had lost his job. Adams had abandoned a nomination bid and lost the support of her party. And then Trudeau found the pair while rooting around in Harper's blue bin.

Now the one-time, would-be power couple have been cast aside by two parties and the Liberal leader has taken another political hit at the worst possible time.

Adams lost her first political race of any kind, Soudas was left to shrug when asked what went wrong and Trudeau's judgment can be questioned anew.

We snickered when he trotted out Adams last February as some major catch for the Liberals. Check that. We guffawed.

But Adams was supposed to be the woman to take on Finance Minister Joe Oliver in the riding in October, ready to brawl with the man whose praises she once sang loudly and proudly.

This was to be a victory for defectors everywhere, any man or woman whose principles run so deeply they are prepared to run across the street to work for the competition they once vilified.

It was supposed to be a victory for the long reach of a central party apparatus spreading its tentacles deep into the grassroots of a riding.

Instead the grassroots recoiled and the man who had spent a year campaigning for this nomination actually won it.

To be fair to Adams, she was an interloper who ignored detractors — including one who urged her to resign before she strode to the mike Sunday — and worked hard.

Those bare knuckles were replaced, she told us, by what she called cracked and bleeding knuckles from knocking on doors in the riding during cold winter nights.

For Trudeau, there was no clear win-win, but there was a lose-lose.

He found that spot.

Most Liberals believed Mendicino had a better shot at besting a sitting finance minister, but at least the party, had it chosen Adams, would have loyally followed the leader's wishes and given the riding the candidate hand-picked from headquarters.



Mike Colle, the Liberal MPP who had crowed that Adams would win this nomination over his “dead body” was very much alive Sunday, declaring Trudeau has to start listening to the “ordinary Joes and ordinary Janes” of the Liberal party instead of declaring candidates in a so-called open nomination process.

Mendicino pointedly told the audience he was no career politician but his life was in Eglinton-Lawrence.

A pledge by Adams to move into the riding was met with silence by the audience.

Mendicino had won the endorsement of the party’s former interim leader, Bob Rae, York West Liberal MP Judy Sgro, former MP Maria Minna and, most loudly, Colle.

They appeared resigned to defeat. Mendicino’s supporters had charged the riding association had signed up people who had no idea what they were signing. They charged this nomination vote had been delayed until Adams had enough support for victory. They blamed Liberal headquarters for pulling strings behind the scenes.

Adams’ backers were called “instant Liberals” by Colle who predicted a split party in the riding if she won.

But she’s also a lightning rod for controversy, whether being accused of shopping in New York on Remembrance Day while parliamentary secretary to the minister of veterans affairs, blocking traffic at an Ottawa gas station in a fit of pique over the quality of a car wash, or citing a concussion as reason for removing her name from an earlier Conservative race.

Now she’s going back to being a mom, for the time being, she said.

Before the vote, she told me she had never lost a political race. Afterward, she paused when asked if she chose the wrong riding, praised Trudeau when asked about his judgment.

Trudeau didn’t have to put his party through this. He scooped up the drama queen and we got a lot of drama. But in the end, a grassroots victory only raises more questions about the upper echelon of this party.

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## What’s next for Eve Adams?

**By BJ Siekierski, iPolitics, July 27, 2015**

Former Conservative MP Eve Adams, left, is seen with rival Marco Mendicino as Liberals chose a candidate to represent them in the Toronto riding of Eglinton-Lawrence on Sunday, July 26, 2015. Adams' welcome into the party by Liberal Leader Justin Trudeau angered some party members. THE CANADIAN PRESS/Colin Perkel

Former Conservative MP Eve Adams, left, is seen with rival Marco Mendicino as Liberals chose a candidate to represent them in the Toronto riding of Eglinton-Lawrence

on Sunday, July 26, 2015. Adams' welcome into the party by Liberal Leader Justin Trudeau angered some party members. THE CANADIAN PRESS/Colin Perkel

Minutes after Eve Adams lost the Liberal nomination in Eglinton-Lawrence to Marco Mendicino on Sunday night, she scrummed with reporters and was asked a predictable question: was she going to try to find another riding to run in?

She gave a predictable answer.

“I’m going to go home and spend a little time with my family and my friends, and make sure that I call and thank all of my supporters and volunteers,” she said.

Though she’d lost, she was still very much a Liberal. She was “absolutely” going to campaign for Mendicino, and she was just as enthusiastic about Justin Trudeau’s offerings.

“I’ve actually sat in caucus meetings, both in the Conservative caucus meetings and the Liberal caucus meetings, and I can tell you categorically that Justin is completely underestimated. The negative publicity that Stephen Harper throws at him is unbelievable,” she said.

“You know, Stephen Harper in a caucus meeting is fully scripted. He reads each and every word as he reviews what he did in the past week. Justin Trudeau can actually remember strategy — he can actually remember points — and he speaks from the heart. He’s an extraordinary leader and I think he’s going to do so much for Canada.”

She didn’t exactly sound like she was throwing in the towel.

A Liberal strategist suggested shortly after that Adams could end up in Hamilton Mountain. She was raised in the city, they pointed out, and it’d certainly be easier to win there than in Eglinton-Lawrence. She would’ve been running against the finance minister, after all.

Chris Charlton, who’s been the NDP MP in the riding since 2006, isn’t running for re-election. In his place Hamilton Mountain councillor Scott Duvall will carry the NDP banner.

There was speculation that another Hamilton councillor, Tom Jackson, would seek the Liberal nomination. At the moment, there are three candidates: a teacher named Shaun Burt, a nurse practitioner named Jan Park Dorsay, and Bruno Uggenti, a lawyer who made headlines for successfully suing the city of Hamilton for \$900,000 over serious injuries he suffered in a tobogganing accident.

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**AJC IN THE NEWS / L’AJJ FAIT LES MANCHETTES**

**Federal lawyers taking on  
government over political candidacy**

**By Tali Folkins, The Law Times, July 13, 2015**

The issue over when federal government lawyers can run for office is heating up with a senior official in the Department of Justice launching a legal challenge over the issue and a prosecutor making the political leap despite a decision denying her leave to do so.

‘I decided I really wanted to do this and I don’t want to be someone who passes an opportunity just in the interest of job security,’ says Emilie Taman.

‘I decided I really wanted to do this and I don’t want to be someone who passes an opportunity just in the interest of job security,’ says Emilie Taman.

Earlier this month, Emilie Taman cleaned out her office and turned in her security pass at work as she began what she terms an “unauthorized leave of absence” from her job with the Public Prosecution Service of Canada. As of early last week, Taman hadn’t yet heard back from her employer but she expects to lose her job.

The move comes as a senior official in the department who’s hoping to run in the election for the Liberals in Quebec has launched a legal challenge over the constitutionality of provisions in the Public Service Employment Act. Claude Provencher, general counsel and a regional director at Justice Canada, is, like Taman, asking the Federal Court to overturn a Public Service Commission decision denying him leave. In his affidavit, Provencher stated: “I feel that the law and the Public Service Commission are placing on me an excessive burden with respect to the exercise of my constitutional rights.”

Taman, who wants to run for the NDP nomination in the riding Ottawa-Vanier, had applied for a leave of absence about 10 months ago. Her employer, however, refused after concluding her ability to return to her work after taking part in an election campaign might be “impaired or perceived to be impaired.” Taman applied for a judicial review, but the hearing won’t happen until next September. That’s too late for her to wait.

Despite the consequences, Taman is philosophical about her situation. “I decided I really wanted to do this and I don’t want to be someone who passes an opportunity just in the interest of job security,” she says. “I thought if this doesn’t pan out, there’s something out there for me and I look forward to finding out what that is.”

Was it a difficult decision?

“Yes and no,” she says. “It was a lot to walk away from. A lot.”

Losing her job will mean saying goodbye not only to the rewards of working for the public service but also losing her former status as an internal candidate for federal jobs in Ottawa. If her bid fails, she says, she knows she may be facing a period of unemployment. But she’s confident she has the skills to land on her feet.

Taman says her decision to run was the culmination of a dream she’s had for a long time. She has had political aspirations, she says, since she was very young, although her career as a lawyer led her for a time along a different path. Then, over the past five years, she says, her interest in politics grew as she became “incredibly frustrated” with the cynicism she saw in the system, legislation she feels was disrespectful of the Charter of Rights and Freedoms, and what she describes as the executive’s disrespect toward the courts. “It’s

just one of those things,” she says. “The more it kind of chips away at you, the more frustrated you feel with how things are going.”

Taman has already won the endorsement of one prominent Canadian, her mother. She’s the daughter of former Supreme Court justice Louise Arbour, who voiced her approval on Taman’s Facebook page the Sunday after she left her job.

Another source of encouragement for Taman is a Conservative candidate. Maureen Harquail, who will be representing the Conservatives in the Toronto riding of Don Valley East next fall, says she has spoken to Taman about similar difficulties she herself faced in 2004. Harquail, also a public prosecutor at the time, has also faced challenges in her efforts to run for public office. She challenged the Public Service Commission’s decision on her request for leave before the Federal Court. The court found problems with the decision to deny her leave, and the commission approved a second request in order to run in the 2011 election.

Harquail, who now works as general counsel and deputy director at a Crown agency, the Ontario Racing Commission, hasn’t had to apply for leave to run this fall since provincial rules allow it. “I fully support Emilie. I wish her well in her run and certainly in her judicial quest as well,” says Harquail. “It’s a shame that we have to revisit these things 10 years later.”

Harquail acknowledges that she, too, will have to say goodbye to her job if she wins but she’s fine with that. “For me actually, it’s not something I struggled with at all because it’s something that I’m striving for,” she says.

For Paul Lefebvre, another lawyer planning to run this fall, the decision to run wasn’t entirely easy. Lefebvre, a tax lawyer and former commissioner of the Ontario Human Rights Commission who will be running for the Liberals in Sudbury, Ont., says that on the one hand the decision to run was simply a logical next step in serving the community, something he already does as chair of a number of local community organizations.

On the other hand, Lefebvre says he had to carefully weigh family considerations before making his decision. And if he wins, he says, he’ll definitely miss the practice of law, something he had done at firms of all sizes before becoming a sole practitioner.

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## **Saut en politique: la procureure Taman persiste et signe**

**Paul Gaboury, Le Droit, le 18 juillet 2015**

Avant même que ne soit connue la date de l’investiture néo-démocrate dans la circonscription fédérale d’Ottawa-Vanier, la candidature de l’avocate Emilie Taman suscite déjà beaucoup d’intérêt, tant sur le plan politique que juridique.

Fille de Louise Arbour, l’ancienne juge à la Cour suprême et Haut-Commissaire aux droits de l’homme aux Nations unies, l’avocate Taman risque son emploi de procureure au

Service des poursuites pénales du Canada en étant candidate à cette investiture néo-démocrate. Sa demande de congé sans solde lui a été refusée par la Commission de la fonction publique du Canada.

Le risque de perdre son emploi est donc bien réel pour l'avocate et mère de trois jeunes enfants. Mais cela n'influencera pas sa décision de se présenter dans cette course à cinq candidats pour l'investiture, a-t-elle expliqué au Droit.

La date, d'abord prévue pour la mi-juin, a été remise et devrait être fixée dans les prochains jours.

«Le 3 juillet, j'ai laissé mes affaires, ma carte de sécurité et mon BlackBerry au bureau et tous mes dossiers bien notés pour l'autre procureur, comme si je partais en congé. [Jeudi] soir, j'ai reçu une troisième lettre de mon employeur m'indiquant que si je ne retourne pas à mon poste dans les 24 heures, ce sera considéré comme un abandon de poste. Je vais remettre la lettre à mon syndicat et je n'ai pas l'intention de changer d'idée», a-t-elle expliqué.

L'avocate conteste d'ailleurs la décision de son employeur devant la Cour fédérale, avec l'appui de son syndicat, l'Association des juristes de justice. La cause devrait être entendue au début septembre.

Dans son refus, le gouvernement soutient qu'elle occupe un poste trop visible du public, ce qui l'empêche d'être candidate à l'investiture en prévision des élections fédérales prévues le 19 octobre prochain. «Pourtant, dans les provinces, les procureurs ont le droit de se présenter à des élections, les policiers aussi. Ils font affaire directement avec le public. Alors pourquoi c'est différent pour moi. C'est important de clarifier les règles pour moi, et pour les autres qui viendront après», a-t-elle expliqué.

### **Des appuis de taille**

En lui accordant son appui, l'ancien chef néo-démocrate Ed Broadbent a salué l'engagement pour la justice et le courage de Mme Taman.

«Malgré le fait que le gouvernement lui ait dit qu'elle ne pouvait se présenter à cette élection, elle a pris une décision courageuse en se présentant. Elle sera une députée formidable et elle a mon appui inconditionnel», a indiqué M. Broadbent, tout en soulignant le fait qu'elle soit bilingue, un atout pour la candidate qui souhaite déloger Mauril Bélanger dans le château-fort libéral qu'est Ottawa-Vanier.

L'appui de M. Broadbent s'ajoute à ceux de la mère de la candidate, l'ex-juge Arbour, ainsi que des députés néo-démocrates, Rosane Doré Lefebvre (sa cousine), Craig Scott, Joe Comartin et David Eby.

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## **Public sector union launching anti-Harper ad campaign**

## **One of Canada's largest public sector unions is urging Canadians to "vote to stop cuts" to public services.**

**By Alex Boutilier, Toronto Star, July 14, 2015**

OTTAWA—One of Canada's largest public sector unions is planning a nation-wide ad campaign targeting Conservative government policies, the Star has learned.

The Public Sector Alliance of Canada will roll out the campaign Tuesday morning, labelled as "public awareness" on cuts to various public services under Prime Minister Stephen Harper's government.

PSAC told the Star Monday they don't consider the "Vote to Stop the Cuts" campaign as attack ads, despite repeatedly referencing the "Harper government" or "Harper Conservatives."

"No, they are to raise awareness within the public of what the cuts that the Harper Conservatives have introduced and actually carried out, what those cuts really mean to Canadians each and every day," said Chris Aylward, the national executive vice-president of PSAC.

In addition to newspaper, radio and television advertising, the union plans to launch a website featuring the ads, which they say will be fully backed up and sourced.

The campaign will focus on six areas — Veterans' Affairs, search and rescue, food safety, environmental protection, border security, and employment insurance benefits — that PSAC said have all seen cuts over the recent years of Conservative rule.

One of the ads the Public Sector Alliance of Canada is planning in its nation-wide ad campaign targeting the Conservative government's policies.

The PSAC campaign is the latest in a controversial string of third-party advertising in the lead-up to the federal election, scheduled for October. Another group, the pro-Conservative HarperPAC, closed its operations after the Conservative Party publicly denounced their use of the prime minister's name.

Working Canadians, another Conservative-supporting initiative attempting to raise money to fight back against what they call the "financial and economic consequences of union bosses having too much power," have launched ads targeting both the NDP and Liberals. Engage Canada, a left-leaning pressure group, has recently begun airing ads accusing the Conservatives of neglecting Canada's middle class.

Third-party advertisers are free to spend unlimited amounts of money outside of an official election period but their limits begin when the election writ is officially dropped.

Michael Pal, a law professor at the University of Ottawa specializing in electoral law, said the recent rise in third-party advertising is the result of a number of factors — including the Conservative party's own perceived success in advertising outside an election period.

“The fixed election date matters, that’s a big factor for sure, (but) I think it’s also that the Conservative Party showed . . . how using your money before the spending limit kicks in, so before the campaign, can be very effective,” Pal said.

“It’s also that we have a clear example from the U.S.”

While PSAC is promising a “fact-based” campaign, it will be difficult to actually assess their claim because the government has been very reluctant to release those facts.

The Parliamentary Budget Office, a creation of the Conservative government, has resorted in the past to taking departments to court over their reluctance to release information about the front-line effects of the 2012 budget’s belt-tightening. That led to a very public disagreement with former parliamentary budget officer Kevin Page.

Aylward repeatedly stressed that PSAC’s claims in the ad campaign will be backed up with facts. He also said the union is not supporting — or telling their members to vote for — any specific party or candidate.

“Our message to our members specifically is to get out and vote,” Aylward said. “And then number two, you know, is obviously you have to take the information that we’ve compiled, and . . . make a conscious decision when you cast that ballot. And it’s the same thing with this overall public campaign.”

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## L'AFPC lance une campagne 2,7 M\$

**Paul Gaboury, Le Droit, le 15 juillet 2015**

L'Alliance de la fonction publique du Canada (AFPC) a lancé, mardi, une campagne pancanadienne de 2,7 millions \$ pour rappeler aux citoyens qui iront aux urnes, le 19 octobre, l'impact des compressions de 14,5 milliards \$ imposées annuellement par le gouvernement Harper aux services publics fédéraux.

La décision d'aller de l'avant avec cette campagne avait été prise au Congrès national de l'AFPC, le printemps dernier. Ils avaient alors donné le mandat à l'exécutif de sensibiliser la population aux répercussions des coupures imposées par le gouvernement conservateur.

Puisque la campagne électorale n'est pas encore officiellement lancée, les dépenses de cette offensive publicitaire ne seront pas comptabilisées par Élections Canada. D'autres groupes ont d'ailleurs lancé des campagnes pour appuyer ou dénoncer le gouvernement, au cours des dernières semaines, afin de profiter de cette période pré-électorale.

La campagne Votez pour stopper l'hémorragie comprendra d'immenses panneaux publicitaires, ainsi que des messages à la radio, dans des réseaux sociaux et sur des sites web ciblés. Elle dénonce les compressions dans les services aux anciens combattants, à la sécurité frontalière, dans les opérations de recherche et de sauvetage, à l'assurance-emploi, de même qu'à la protection de l'environnement et à l'inspection des aliments.

«De nombreux services publics sont menacés par les décisions irresponsables prises par le gouvernement Harper sans égard à la sécurité et au bien-être de millions de Canadiennes et Canadiens. Il est important que la population soit au courant de l'impact de ces coupures sur les services et en tienne compte au moment de voter», déplore la présidente nationale de l'AFPC, Robyn Benson.

Cette dernière a rappelé que les membres de l'AFPC, qui servent directement la population canadienne, sont témoins de la frustration de ceux qui ont besoin de ces services.

«Certains chômeurs peuvent attendre des semaines avant de toucher un chèque d'assurance-emploi ou d'apprendre qu'ils n'y auront pas droit. Tout ce que veulent nos membres, c'est de s'assurer que les aliments qu'achètent les gens sont sans danger, que nos vétérans obtiennent les soins dont ils ont besoin, et que nos frontières soient sécuritaires, ajoute Mme Benson. Mais comme le gouvernement a coupé à blanc le budget des ministères, nos membres doivent faire des pieds et des mains pour continuer à offrir ces services essentiels dans des circonstances extrêmement difficiles.»

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## **Sick leave changes prompt one public service union to create strike fund**

**Canadian Association of Professional Employees wants to 'level the playing field'**

**CBC News, July 17, 2015**

Canada's third largest federal public service labour union has voted to create a strike fund in response to the Conservative government's plan to overhaul public sector sick leave.

The Canadian Association of Professional Employees (CAPE) will set aside \$1 million as seed money for the fund, which president Emmanuelle Tremblay says may be necessary if there's an impasse at the bargaining table.

"What we are doing right now is demonstrating to the employer — in this case the Treasury Board — that we mean business and we are ready to really try and level the playing field," said Tremblay.

A strike in the near future by CAPE employees, which include translators, economists and some librarians, remains unlikely, Tremblay added.

CAPE is one of 12 public service unions that has filed a legal challenge against the government's 2015 budget bill, which plans to carve out \$900 million in savings by introducing massive changes to sick leave and disability programs, on the grounds the changes violate Canada's Charter of Rights and Freedoms.



The budget bill was passed in April, and its proposed changes to federal civil servants' sick leave provisions are one of the most contentious issues in talks with public service unions.

Treasury Board president Tony Clement has said the government wants to replace the current system — whereby public sector employees can bank sick days — with one that instead provides them access to short-term disability benefits that were previously unavailable.

Clement previously called the \$900 million figure "sacrosanct."

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## Un fonds de grève de 1 million\$

**PAUL GABOURY, Le Droit, le 16 juillet 2015**

Pour faire face à la « nouvelle réalité » imposée par le gouvernement Harper dans les relations de travail de la fonction publique fédérale, l'Association canadienne des employés professionnels (ACEP) vient de se doter, pour la première fois de son histoire, d'un fonds de défense et de grève doté d'une somme d'un million \$.

« Pour notre syndicat, il s'agit d'un moment excitant, d'une révolution, parce que nous n'avions jamais eu de fonds de défense et de grève avant. Pour le moment, nous allons y consacrer un million \$, c'est la première pierre de l'édifice », a confirmé Emmanuelle Tremblay, présidente de l'ACEP, un syndicat comptant environ 12 000 membres, des économistes, analystes, traducteurs et autres professionnels de la fonction publique fédérale.

« Les changements imposés par le gouvernement ne nous donnaient pas le choix. Il fallait s'outiller pour faire face à cette nouvelle réalité afin de défendre les droits collectifs de nos membres qui sont attaqués. C'est un investissement qui va nous permettre de nous outiller pour faire face à cette nouvelle réalité », a poursuivi Mme Tremblay.

Historiquement, les membres de l'ACEP avaient souvent privilégié la voie de l'arbitrage dans les négociations, plutôt que celle de la grève. Mais les modifications apportées dans les relations de travail, notamment par la loi C-59, permettent désormais au gouvernement d'abolir le régime de congés de maladie et d'imposer un nouveau régime d'assurance invalidité en dehors du processus de négociations.

### **Mieux se défendre**

En plus d'avoir un accord de solidarité avec les autres syndicats du secteur public fédéral, les syndicats ont déjà riposté en contestant devant les tribunaux le C-59. Le fonds de défense et de grève servira notamment à défrayer les sommes reliées à ces démarches juridiques.

« Bien sûr, les résultats des élections pourraient changer la donne. Mais nous voulons nous équiper pour être en mesure de bien se défendre à l'avenir »

Au cours des prochains jours, la présidente aura des discussions en ligne avec les membres pour discuter de différents dossiers. « C'est une nouvelle ère pour notre syndicat, et nous comptons beaucoup sur le dialogue avec nos membres » a-t-elle mentionné.

Mardi, l'Alliance de la fonction publique du Canada avait pour sa part lancé une campagne publicitaire de 2,7 millions \$ pour dénoncer les compressions de 14,5 milliards \$ par années imposées par le gouvernement Harper dans les services publics fédéraux.

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## **ADMs have become too insular and inexperienced: study**

**Kathryn May, Ottawa Citizen, July 10, 2015**

Many executives in the pool from which the next generation of Canada's deputy ministers will be picked are too insular, change jobs too often and don't have the skills and depth of experience for the top positions of the future, says a new University of Ottawa study.

The study, by former senior bureaucrat James Lahey and Mark Goldenberg at the Centre on Public Management and Policy, calls for a major rethink and "structural" overhaul of how senior talent is recruited, developed and managed to get the leaders needed to modernize the public service.

The pair examined the changing job of assistant deputy ministers, whose scope and authority have dramatically diminished over the past 25 years as power increasingly shifted to the Prime Minister's Office and its bureaucratic arm, the Privy Council Office. The shift has left the once-powerful ADM job too "small and narrow" as a training ground for future top leaders. Many of today's 400 ADMs find themselves doing work and vetting files once done a few layers below, with much of the authority bumped upstairs to the minister and deputy minister. They recommend fewer ADM jobs but say these jobs should be "bigger" — focused more on shaping and delivering change and less on process.

"ADMs used to own the business of the government. They were the ones who led and delivered on the key files. They were indispensable to setting and delivering on the policy agenda," said one senior bureaucrat interviewed for the study.

"Today, ADMs are in danger of becoming no more than a glorified older executive assistant to the deputy (minister) ... We have been forced to become form-fillers rather than decision-makers."

The report also calls for fewer associate deputy ministers, associate assistant deputy ministers, directors general and other direct reports to ADMs and directors that have mushroomed over the past 25 years.

“The overall objective must be to achieve a de-layering and flattening of organization structures,” concluded the report. “To clarify roles and expectations and to position ADMs to lead in a more forceful way than at present. There would be larger ADM jobs and, over time, fewer ADMs.”

These conclusions are echoed by public administration expert Donald Savoie, who, in a new book, calls the public service a “big whale that can’t swim” because of too many management layers, oversight bodies and time spent churning out performance and accountability reports.

“The public service has to come clean, look at its organizations and say mea culpa,” said Savoie, of the University of Moncton. “There are a lot of things the public service can’t change, like the role of the Prime Minister’s Office, but what it can fix is the too many management layers.”

Lahey and Goldenberg tracked the profile and composition of ADMs over 25 years, from the 1980s to 2012. The authors conducted roundtable discussions and interviews with current and former deputy ministers, experts, and academics as well as officials in other levels of government, the private sector and the United Kingdom about their executives.

Canada’s public service has seven levels of executives. There are 6,500 executives at the first five levels (Ex 1-5) with associate deputy ministers and deputy ministers at the top of the heap.

The assistant deputy ministers – known as Ex 4s and Ex 5s – earn between \$179,000 and \$200,000 a year. About seven of them a year will be promoted into deputy minister ranks.

The role of ADMs became smaller as the executive cadre grew over the past 25 years. Executive numbers soared nearly 50 per cent in that period, outpacing 12-per-cent growth in the overall public service. The big surge came in the 2000s when the size of the bureaucracy grew 35 per cent. The number of ADMs shot up 49 per cent while the numbers of those at Ex 1 to 3 levels jumped 68 per cent. The number of deputy ministers, led by new associate deputy minister positions, increased 25 per cent over the past decade.

But the study shows the makeup of ADMs hasn’t changed much in the past quarter-century. They are older and include more women but their career paths are largely the same. They are almost exclusively recruited from the public service and rise through the ranks in the same department and in the same type of position. They typically work in the public service for 20 years, with 12 years as an executive in six different positions. They are pushing 50 years old when first promoted to ADM from within their departments. Most work the National Capital Region and nearly half work in programs, services and

operations. About 15 per cent work in central agencies and 13 per cent are in corporate services. Only five per cent work in the regions where most services are delivered.

Once they have become ADMs, they tend to move from job to job and spend less than two years in a position. Most of those moves are within their own departments.

“ADMs move too much and don’t necessarily make the right moves. ADM churn needs slowing down. They are moving too frequently, and not always making the kinds of moves that can broaden and deepen their knowledge, experience and skills,” said Lahey.

“It is absolutely wrong to have ADMs who are generic managers divorced from policy and content. There has been a kind of managerialization of ADM jobs ... bringing those jobs down below what they should be.”

The report offers five areas of reform to “raise the bar” for managing and recruiting these senior executives so they have more responsibility, experience, knowledge and leadership skills. It says future ADMs should be a strategic thinkers and visionary; should focus on results, effectiveness and economy; have strong interpersonal skills; and be able to work collaboratively.

Lahey said the overall executive cadre could be significantly cut but this must be managed slowly while targeting the talent in the lower executive levels to develop for the future. Slashing jobs to delay is too disruptive; instead, the key is to figure out the roles and responsibilities for each level of management. This means adjusting the expectations of ministers and political staff – which could be tough in an era of mistrust between politicians and bureaucrats.

The report also urged bringing in new blood from outside the public service with external recruits accounting for up to 15 per cent of ADM appointees. It also suggests fast-tracking younger executives in their 30s and 40s so they become ADMs – and DMs – at a younger age and having them stay in the jobs longer before retiring.

The study also suggested ADMs stay in a position at least three years before moving to another. In fact, it argued that staying in the job, mastering it and leadership should be tied to performance pay.

### **ADMs: By the numbers**

**400:** Current number of ADMs

**54:** Average age of Ex-4s and Ex-5s

**20:** Average years worked in the public service

**12:** Years spent as executive before promoted to ADM

**40:** Percentage of ADMS who are women

- 50:** Percentage who held three of their last four jobs in the same department
  - 87:** Percentage of ADMs in the National Capital Region
  - 42:** Percentage of ADMs who work in programs, services or operations
  - 15:** Percentage of ADMs who work in central agencies
  - 8:** Percentage working in policy
  - 3:** Percentage working in communications
  - 7:** Average number who get promoted to deputy minister annually
  - 10:** Percentage who retire each year
  - 59:** Average age at retirement
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## **Federal government mulling ‘Buro’ scheme to make public service more efficient**

**Jason Fekete, Postmedia News, July 9, 2015**

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 Ottawa 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 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 crowdsources 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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## **One-third of public service executives have mentally 'checked out,' study suggests**

**Kathryn May, Ottawa Citizen, July 14, 2015**

Almost one-third of Canada's federal executives, who are expected to lead the modernization of the public service, are actively disengaged or have "mentally checked out," says a report by the association representing executives.

The Association of Professional Executives of the Public Service of Canada (APEX) commissioned a white paper to examine what makes executives committed to the job, after its 2012 health study indicated that the level of disengagement among executives was on the rise and higher than the average in the private sector.

The survey found 68 per cent – slightly more than two-thirds – are engaged but the level of engagement has fallen over the years. "Engagement" is an indicator of how well a person is connecting with their work and consequently how able that person is to deal with the demands of the job.

"Reform of the public service will require the full commitment and engagement of executives," said Lianne Lacroix, APEX's chief executive officer. "The degree to which they rise to the challenge will depend, in large part, on their state of health, which will largely be determined by the quality of the work environment."

The engagement paper is among three white papers APEX has commissioned since the association's health and work surveys revealed issues in the workplace that are affecting the productivity, performance and loyalty of the 6,400 executives in the public service.

"We wanted to not simply raise problem areas but do our part to offer solutions that can be implemented at the individual, team and organizational levels," said Lacroix.

The white paper, written by leadership consultant Craig Dowden, provided an overview of the major research into engagement, as well as ways to solve and prevent disengagement.

The findings will be part of a compendium of “best practices” for a joint union-management task force that’s trying to understand what’s making the public service an unhealthy workplace. APEX has a seat on that task force, whose first report is expected in September.

Gallup estimates disengaged employees cost U.S. employers up to \$550 billion a year. The disengaged tend to kill time and count the days to their next holiday or retirement. They no longer care if the organization meets its goals and priorities.

Dowden said research shows the unhappiness of the disengaged can be infectious and can have a damaging impact on colleagues. They can derail a project or reforms by not putting in the effort, or dismissing a change as “I’ve seen this all before.” This could be particularly problematic for public servants who have lived through many attempts at reforming the workplace.

Dowden said they are also at risk of “presenteeism”: physically going to the office but having mentally checked out. Studies have shown that even engaged employees lose about 7.6 days a year to presenteeism – but the disengaged lose twice that.

Dowden said the problem is that “actively disengaged” employees aren’t just unhappy at work but often act out their unhappiness by working against the organization that employs them.

“Given the importance of executives in bringing out the best out of their teams, one can easily see how actively disengaged leaders represent a major problem,” he said.

APEX’s survey found half of all executives think about leaving their job once a month or more frequently, another sign of disengagement. They are also more likely to move when faced with “positive pulls” such as better opportunities elsewhere, rather than negative “pushes” such as undesirable working conditions.

Dowden said the key drivers for engaged employees are: making progress; meaningful work or purpose; autonomy in what they do; and being permitted to use their personal strengths.

A Harvard study that tracked hundreds of knowledge workers found that making progress was the top contributor to performance. Motivation plummeted if they felt like they were spinning their wheels or hitting roadblocks in moving their work forward.

Studies show those who do whatever they can to remove obstacles for employees have highly motivated staff – a phenomenon whose importance is typically underestimated by leaders, according to Dowden.

Dowden said people want to feel like they are making a meaningful contribution and, as long as they are fairly paid, will go the extra mile. The public service historically attracted people who wanted to make a difference, so they came to the job with a strong sense of purpose.



“Leaders and executives in an organization very much want to live their values and when they perceive gaps ... or disconnect between values and purpose, that can be incredibly challenging to work through.”

Dowden said autonomy is another key driver of engagement and motivation. In the majority of organizations, executives have the most autonomy, with more control the higher up the chain they move. APEX’s surveys, however, show executives often feel they have little authority and are micromanaged. Surveys found executives feel this lack of control regardless of level, whether Ex 1 or Ex 5.

Autonomy comes almost entirely from the culture created by the direct supervisor. Those who don’t micro-manage and who give workers the freedom to work on projects in the way that suits them – while still being accountable – get the best results.

There are two kinds of micro-managers. The perfectionist – à la Steve Jobs – who have high standards and like control over the projects for which they are responsible.

The more toxic micro-manager seems to have a need for people to know who is charge, gives little autonomy to direct reports, doesn’t accept feedback and gets involved in the minutiae of a project.

The 2014 public service survey gives mixed messages on this front. Generally, employees – including 84 per cent of executives – are satisfied with their direct supervisors and feel they can count on them. They aren’t as positive about senior management, especially when it comes to making “timely and effective” decisions and ensuring critical information flows down to staff.

But Dowden said so much about leadership and management comes down to trust.

The Conservatives have made little secret of their distrust of the public service. Experts, including the Public Policy Forum, have cited the “trust gap” between politicians and public servants as the biggest challenge facing the next generation of leaders.

APEX has also flagged its concern about this relationship and the need to improve “understanding” between the two.

The lack of trust, coupled with the concentration of power and decision-making in the Prime Ministers Office and the Privy Council Office, has intensified the lack of control and authority many executives complain about today.

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## **STEPHEN HARPER’S COURTS**

***For a decade, the Prime Minister has been on a quest to take back the judiciary from the Liberals. Sean Fine goes inside the opaque world of judicial appointments to reveal the making of a Conservative legacy***

**By Sean Fine, Globe and Mail, July 25, 2015**

The judge looked down at the full-bearded young man who sat relaxed and smiling before him. Omar Khadr, a former teenage terrorist, was in a Canadian courtroom for the first time.

Years earlier, through various channels, the judge had lobbied Prime Minister Stephen Harper for a promotion – and got one. Part of his new job was assigning cases, sometimes to himself. Now, in 2013, the case before him involved an individual in whom Mr. Harper had expressed an emphatic interest. In the end, Associate Chief Justice John Rooke of the Alberta Court of Queen’s Bench ruled for the government and against Mr. Khadr, deciding he had been convicted as an adult, not a juvenile.

No one, including Mr. Khadr’s defence lawyer, said the judge was in any way biased or unfair. But some familiar with the judge’s lobbying said the appearance was unfortunate – that justice must also be seen to be fair.

The Rooke episode is one glimpse of a much bigger, untold story. It is the story of how Mr. Harper and the Conservatives have reclaimed the judiciary from the Liberals, who had held power for the 13 years before Harper took office and for most of the previous century.

“Dripping blue ink into a red pot,” is how one Alberta Conservative who has been involved in the appointment process described it. In the public glare of Parliament, the Conservatives have passed dozens of crime laws that reduced judges’ power to decide on a sentence. Behind closed doors, the government has engaged in an effort unprecedented since 1982, when the Charter of Rights and Freedoms took effect: to appoint judges most likely to accept that loss of discretion – the little-noticed half of Mr. Harper’s project to toughen Canadian law.

Mr. Harper’s battles with the Supreme Court are well known. The court has struck down or softened several of his crime laws. When the Prime Minister named an outspoken conservative, Marc Nadon, to the Supreme Court in 2013, the court itself declared Justice Nadon ineligible. Mr. Harper would go on to publicly assail the integrity of Supreme Court Chief Justice Beverley McLachlin, turning an institutional dispute into a very personal battle – another Canadian first.

But while those public conflicts were playing out, the government was quietly transforming the lower courts. The Conservative government has now named about 600 of the 840 full-time federally appointed judges, or nearly three in every four judges on provincial superior courts, appeal courts, the Federal Court and Tax Court.

These are the courts that, at the appeal level, decide how the government’s crime crackdown is to be implemented. At the trial level, they decide high-profile cases like Mr. Khadr’s. In constitutional cases, they rule on what are called social and legislative facts – anything that establishes the real-world context in which a law plays out, such as whether

prostitution laws endanger sex workers. Higher courts, including the Supreme Court, do not change these facts, unless they view them as wildly wrong. Constitutional rulings depend on these facts.

The judges, who can serve until they are 75, may be sitting long after other governments have come along and rewritten the laws. They also are a farm team or development system for the Supreme Court. They are Mr. Harper's enduring legacy.

In the course of this transformation, entire categories of potential candidates, such as criminal defence lawyers, have been neglected; prosecutors and business attorneys have been favoured. So cumbersome is the system of political scrutiny that vacancies hit record-high levels last year. And sometimes, critics say, judges and politicians, even cabinet ministers, have come into close contact in the appointment process, raising questions about neutrality and fairness.

Underlying the appointments issue is a covert culture war over who gets to define Canadian values, Parliament or the courts, and what political party puts the most indelible imprint on the nation's character.

The rules in the appointments system are few, and all previous governments have used the bench to reward party faithful. But Mr. Harper is the first Prime Minister to be a critic of the Charter, and early on he told Parliament that he wanted to choose judges who would support his crackdown on crime.

The Globe spent months exploring the secret world of appointments to understand the extent of the changes and how the government set out to identify candidates who share its view of the judiciary's proper role. We spoke to dozens of key players – political insiders, members of judicial screening committees, academics, judges and former judges – often on a condition of anonymity, so they could talk freely.

Neither Mr. Harper nor his justice minister, Peter MacKay, would grant an interview.

### **Chopping at the living-tree doctrine**

The appointments system has five steps, four of them political. The first – screening committees spread across the country – is intended to be neutral and independent. Its members originally consisted of lawyers nominated by law societies, bar associations, provincial governments and the federal government, and a provincial chief justice or other judge. In 2006, the Conservative government added a police representative, and took away the judge's vote – ensuring that federal appointees had the voting majority on the committees.

Next, cabinet ministers responsible for patronage appointments in their regions make recommendations, chosen from the committees' lists, to the justice minister. The minister's judicial affairs adviser scrutinizes those picks, and the minister sends his choice to the Prime Minister's Office for review. Finally, cabinet decides.

Long before he became prime minister, Mr. Harper made it clear that he objected to the judiciary this system produced, and that the deck was stacked against his view of constitutional rights. A Liberal prime minister, Pierre Trudeau, was the driving force behind the Charter. He made the first Supreme Court appointments of the Charter era,

choosing liberal judges such as Brian Dickson and Bertha Wilson, who were determined that the Charter would make a difference in Canadians' lives.

Gay rights were a flashpoint. In 2003, as Canadian courts began to legalize gay marriage, Mr. Harper, then opposition leader, hired Ian Brodie as his assistant chief of staff. Mr. Brodie, at the time a political scientist at the University of Western Ontario, had just published a book in which he decried "judicial supremacy" – the notion that Supreme Court judges had usurped the role of Parliament.

At Western, Mr. Brodie teamed up with Grant Huscroft, a young law professor who would go on to organize conferences, write articles and edit books to give life to U.S.-style "originalism," which holds that constitutions mean what their drafters said they meant, and don't change with the times. This is the philosophy of Antonin Scalia and Clarence Thomas, the most conservative U.S. Supreme Court justices.

That year, Mr. Harper made a daring accusation, based on originalism, in the House of Commons. The Charter's framers deliberately did not protect gays and lesbians in the equality clause, he said. Therefore, the Supreme Court, which had read such protection into the Charter back in 1995, had violated the Constitution, he argued. And now, in 2003, that decision had become the legal foundation for gay marriage.

"I would point out that an amendment to the Constitution by the courts is not a power of the courts under our Constitution," he said.

Mr. Harper was challenging a status quo rooted in modern women's rights. In 1928, the Supreme Court ruled that women could not be appointed to the Senate because they were not "persons" – they did not vote or run for office in 1867, when the country's founding Constitution was written. But the Judicial Committee of the Privy Council in England said on appeal that the Constitution should be seen as a "living tree capable of growth and expansion within its natural limits." Women were indeed persons, because constitutional interpretation changed with the times.

The living-tree idea has been at the heart of Charter legal rulings since the beginning: It has not been a matter of dispute on Canadian courts. The Supreme Court has rejected originalism in several rulings, including the landmark same-sex marriage case of 2004. But to Mr. Harper and his circle, the living tree means rule by judges. "We have in very significant measure ceased to be our own rulers," Conservative MP Vic Toews told a pro-life group in Winnipeg in 2004, after quoting from a book by conservative U.S. jurist Robert Bork.

Two years later, Mr. Toews became the first justice minister in the new Conservative government. He quickly revamped the appointments process, giving the government its voting majority on the screening committees. A furor erupted. The country's chief justices complained that judicial independence was at risk.

Mr. Harper did not back down. He got to his feet in the House of Commons and said something no prime minister in the Charter era had ever said publicly. He declared that his government wished to appoint judges who saw the world in a certain way – that is, those who would be tough on crime.

"We want to make sure that we are bringing forward laws to make sure we crack down on crime and make our streets and communities safer," he said on Feb. 14, 2007. "We

want to make sure that our selection of judges is in correspondence with those objectives.”

But even with voting control on the screening committees, the Conservative government’s choices were constrained. There were few proponents of originalism like the Americans’ Justice Scalia, who dissented bitterly from last month’s landmark gay-marriage ruling and as late as 2003 supported a state’s right to criminalize homosexual sex. There was nothing like the Federalist Society, a grassroots national movement in the U.S. that encourages young lawyers to promote conservative views and support the doctrine of original intent. There was no single defining political issue like abortion. In the U.S., judicial conservatism is much more about activism – judges trying to roll back precedents such as *Roe v. Wade*, which established women’s right to abortion on demand, or to reject gun controls, or limit affirmative action policies.

In Canada, judicial conservatism tends to mean judges who accept the wishes of legislators – judges who defer to Parliament’s primary role as lawmaker and are reluctant to find fault with a government’s choices. Judges who know their place.

### **Finding reliable judges**

The key to the Conservative strategy is identifying prospects with the right views. The Prime Minister has eyes and ears across Canada.

These belong to the cabinet members responsible for dispensing patronage appointments (known as political ministers). They use their local contacts, such as party fundraisers (or “bagmen”) to identify lawyers, academics and sitting judges who fit their specifications, and recommend them to the justice minister. Appointments under the Liberals, worked in much the same way: A cabinet minister opened the door.

“You always have to have a champion,” a Conservative from Alberta explained. “Nobody gets appointed without somebody walking them through, in one way or another.”

In Ontario, the political ministers are Joe Oliver in Toronto, Pierre Poilievre in Ottawa, Diane Finley in the southwest and Greg Rickford in the north. Mr. MacKay is the political minister in Nova Scotia. Defence Minister Jason Kenney and Health Minister Rona Ambrose are the political ministers in Alberta. Some political ministers are more intent on identifying conservative-minded candidates for the bench than others. (Strangely, three leading criminal defence lawyers have been appointed on Mr. MacKay’s home turf. What he supported in his own backyard he did not foster in the rest of the country.)

Mr. Kenney has a political office in Calgary separate from his constituency office, with separate full-time staff. Both he and Ms. Ambrose need to sign off on each candidate either one recommends for a judicial appointment, another Alberta source said. “The person has to make it by both Jason and Rona. They both have a veto. In Calgary, there’s generally a respect on Rona’s part for Jason’s picks and vice-versa.”

Mr. Kenney and Ms. Ambrose are not lawyers. They ask their contacts to recommend candidates.

“It’s not, ‘Is this person going to be tough on crime?’ ” the first Alberta source said. “It’s, ‘Can you recommend this person, are they reliable?’ There’s a little bit of code in there.” Reliability means being both right-of-centre and competent – a two-level filter.

Reliability has a more nuanced meaning, too, according to an appeal court judge, not in Alberta, who follows judicial appointments closely: judges who are technically minded and stick to precedent, who won’t “play with the rules or make new rules.”

Finding reliably conservative judges is a challenge. In Alberta, roughly one-third of federal judicial appointees are not right-of-centre, the first source said, but are chosen for being competent and not left-of-centre. The ideological requirement is not a litmus test around a single issue, but around a general worldview involving a lack of sympathy for minority causes or convicted criminals – which some Conservatives see as the demarcation line between right and left.

“You either see a criminal as a victim of society or as someone who needs to pay his debt to society,” the source said. “One’s a little bit to the left, one’s a little bit to the right. You don’t always get that right either when you pick. People sometimes surprise you when they get up there and have no boss other than their own conscience.”

This either-or view of sentencing incenses legal observers such as Allan Wachowich, a retired chief justice of the Alberta Court of Queen’s Bench. Mr. Wachowich, a long-ago Liberal “bagman” by his own description, was a Liberal appointee who was named associate chief justice by a Progressive Conservative prime minister, Brian Mulroney. (His champion was cabinet member Don Mazankowski, but he didn’t know until Mr. Mulroney told him, he said. He told the prime minister jokingly that it was all part of a “Polish conspiracy.”) “You have to treat every case as an individual case,” Mr. Wachowich said in an interview. “Is there any hope of redemption? Is there a prison where he isn’t going to be influenced by hard-core criminals? You’ve got to sit there and listen and contemplate, and give it a weekend sometimes.”

About four years ago, at a time when judges had begun striking down Conservative laws on crime and drugs, political ministers such as Mr. Kenney and Ms. Ambrose came under increased pressure to choose judges who would defer to legislators.

“Deference became a buzzword when a number of laws were being struck down, mostly for Charter violations,” said former Conservative MP Brent Rathgeber, now an Independent.

As one of the few lawyers in the Alberta caucus from 2008 to 2013, he was sometimes consulted on appointments by a political minister. “The PMO decided it would be better if we had a judiciary more deferential to Parliament’s authority.”

In at least one case in Alberta, Mr. Kenney and Ms. Ambrose personally checked out a new candidate for the bench, according to a source familiar with the process. The candidate first attended a series of get-to-know-you breakfasts and lunches with Conservative Party insiders, before a chat with the two ministers, and was ultimately named to the Court of Queen’s Bench, the province’s top trial court, the source said.

There are no written rules prohibiting such contacts between prospective judges and cabinet members or other politicians. A Conservative, who did not confirm that the

meeting took place, said there would be nothing wrong if it did, because the appointments are for life and mistakes can't be undone.

But mention of the meeting often brings a shocked reaction from lawyers and judges, who view it as compromising independence. Peter Russell, a political science professor emeritus at the University of Toronto and a leading expert on judicial appointments, explained the sense of shock.

“Yes, the public should be concerned about partisan interviews of prospective candidates for judicial appointment,” Prof. Russell said. Such interviews mean that, in Canada, “appointments to the highest trial courts and courts of appeal in the province remain open to blatant partisan political favouritism in selecting judges – something most provinces and most countries in the liberal democratic world have reduced or eliminated.”

Both Mr. Kenney and Ms. Ambrose refused to speak to The Globe for this story. They would not confirm or deny that they interviewed a candidate for the Court of Queen's Bench. An Alberta source said the appointment process is a matter of practice and tradition. “It's not even really written down anywhere.”

### **‘Interested in a promotion? Play with us’**

The government's strategy is to change the judges at the same time as it toughens the Criminal Code. And sitting judges have a record that can be monitored.

Former prosecutor Kevin Phillips of Ottawa had barely taken his seat as a provincially appointed judge in the fall of 2013 when his fellow judges began rebelling openly against a new law. The victim surcharge, a financial penalty used to subsidize victim services, had just become mandatory; even the poorest criminals would have to pay. Judges in several provinces refused to force them. In Edmonton and Vancouver, some judges allowed 50 or even 99 years to pay. In Montreal, a judge found a way to make the surcharge \$1.50. An Ottawa judge ruled the law unconstitutional without even giving the government a chance to defend it.

The surcharge was typical of the government's crime laws: It removed discretion from judges, with a mandatory minimum penalty. It took from criminals and gave to victims.

Instead of joining the rebels, Justice Phillips, a police chief's son, turned against them. Thwarting the will of Parliament is a “recipe for arbitrariness,” he said in a ruling released eight weeks after he joined the Ontario Court of Justice in Brockville, and “arbitrariness is antithetical to the rule of law.”

His stay on that court didn't last long: On April 13, four months after Justice Phillips took his public stand, Mr. MacKay announced his promotion to the Ontario Superior Court, the top trial court in the province.

This is not to imply that Justice Phillips is less than fair-minded. As a prosecutor, he received high praise for his fairness from criminal defence lawyers in Ottawa interviewed for this story. But his appointment sent a message to judges on lower courts – those appointed by the provinces.

As a veteran lawyer in Toronto put it, “ ‘You're interested in a promotion to the Superior Court? Play with us.’ ”

A provincial court judge in Western Canada, speaking not about Justice Phillips but generally, says he is concerned that some judges have a “career plan” that involves a promotion.

“I worry that some judges hear the footsteps,” he said. “They read the headline in The Globe and Mail before it’s written, and maybe, just maybe, they temper their judgment as a result. As soon as you get to that stage, the integrity of the system crumbles. But do I think that happens? Yes, I do think it happens.”

## **The judge, the PM and the promotion**

Some judges make their case for promotion directly to politicians – despite a Canadian tradition that usually keeps judges and legislators apart to ensure that the system appears to be, and is, neutral.

On three separate occasions when he was still a Conservative MP, Mr. Rathgeber says judges came to him. “I can tell you of one Court of Queen’s Bench judge and a couple of Provincial Court judges who were seeking elevation to the Court of Appeal and Alberta Court of Queen’s Bench,” he said. “The judge would tell me why they thought they were not a good fit on the Court of Queen’s Bench trial division and why their skill set might be better doing appellate [work] at the Court of Appeal. And if there’s anything I can do to help that occur.”

Some in the legal community view aggressive lobbying by sitting judges as unseemly. Sometimes it backfires. Other times, though, it is rewarded – as appears to be the case with Justice Rooke.

In 2009, the judge on the Alberta Court of Queen’s Bench lobbied the Prime Minister through channels for the job of chief justice, multiple sources told The Globe. He put together a dossier on his record. Jim Prentice, then the federal environment minister, spoke to Mr. Harper on Justice Rooke’s behalf. Justice Rooke and Mr. Prentice had been “little Clarkies” – party workers who had supported Progressive Conservative leader Joe Clark decades earlier.

Justice Rooke also reached out personally to well-regarded figures in the legal community who tend to be consulted by the Conservative government in judicial appointments, an Alberta Conservative said.

Some of Justice Rooke’s colleagues resented his lobbying, believing that Neil Wittmann of Calgary, then the associate chief justice, deserved to be chief justice. Justice Myra Bielby, the senior judge in Edmonton, would probably then become associate chief justice. According to a 100-year-old tradition – never broken – if a chief justice was appointed from Calgary, the associate chief was chosen from Edmonton, and vice-versa.

A committee of his colleagues on the bench approached Justice Rooke about a rumour he had even met personally with Mr. Harper. (The Prime Minister appoints chief and associate chief justices.) In the Canadian system, such a meeting would have been seen as irresponsible, and the committee’s approach was a sign that the judges were alarmed by the prospect. Justice Rooke vehemently denied that the meeting took place, which the judges accepted.



But some made known who they felt should be chief and associate chief. “There were a lot of ‘bank shots’ [from Justice Rooke’s colleagues] to make sure that for an appointment like that, you have the right person, because the system has to work,” the source said. To make a bank shot is to have someone else send your message – “you get the justice minister [of Alberta] to make a call, you get the chief of staff to make a call, you get three or four senior lawyers to make a call.”

Mr. Harper named Justice Wittmann, who joined the bench as a Liberal appointment, as chief justice. Then, despite the century-old tradition, he chose Justice Rooke as associate chief. The government later promoted Justice Bielby to fill the first vacancy on the Court of Appeal.

In 2013, Justice Rooke took on the Khadr case. On the day of the hearing, Mr. Harper publicly stated his support for the most severe punishment possible. Politicians rarely comment on cases before a court because it may look like an improper attempt to influence a judge. Still, Justice Rooke said his ruling in favour of the Canadian government – to treat Mr. Khadr as an adult – was a straightforward matter of statutory interpretation.

Six months later, the Alberta Court of Appeal overturned the ruling in a 3-0 vote. Among the three were two Conservative appointees, including Justice Bielby. This spring, the Supreme Court also ruled in Mr. Khadr’s favour – adding insult by deliberating for just a half-hour.

No one has suggested that Justice Rooke was unfair, or that there was a quid pro quo for his appointment as associate chief justice. Dennis Edney, an Edmonton lawyer who represented Mr. Khadr, said he found the judge “attentive and fair in his dealings with me and my representations. That is all I ask.”

To some Conservatives, the appointment of Neil Wittmann ahead of John Rooke showed that ability matters more than politics in Conservative appointments. “It’s a very, very good example to show where skill and talent and colleagues’ confidence trumped political bias,” a party source said.

But to outside observers, when judges lobby for promotions, they undermine the appearance – and perhaps the reality – of judicial independence.

“If you’re starting to get into a lobbying process, are you not then beholden to those who make the appointment?” said John Martland, a former president of the Alberta Law Society, speaking generally.

The Globe contacted Associate Chief Justice Rooke through his assistant and asked if he wanted to correct any facts or provide comments. Diana Lowe, his executive counsel, replied that judges speak only through their judgments and a response would not be appropriate.

In an ironic postscript to these events, the federal government went before the Alberta Court of Appeal in May to block Mr. Khadr’s release on bail. A single judge heard the case – Justice Bielby.

Mr. Khadr is now free on bail.

## **Tapping a ‘very small pool’**

Because there is rarely a straight line from what an appointing government expects to how a judge actually rules, the Conservative strategy is designed to reduce uncertainty, using broad categories as a convenient shortcut to predicting the ideological orientation of candidates for the bench.

Criminal defence lawyers are underrepresented, according to a Globe and Mail review of all appointment notices since 1984. Academics are, as well, with some notable exceptions. So, too, is anyone who has a senior role in a group with the word “reform” in its title. (One such group is – or was – the Law Reform Commission of Canada, later known as the Law Commission of Canada; in the Conservative government’s first year in power, it scrapped the organization.)

Business lawyers are favoured. Prosecutors are favoured.

Judges appointed by Progressive Conservative prime ministers Mulroney and Kim Campbell look very much like judges appointed by Liberal prime ministers Jean Chrétien and Paul Martin, apart from the underlying political affiliations. They appointed more criminal defence lawyers than prosecutors. They did not shy away from academics, either. And Mr. Mulroney chose leading liberals such as Louise Arbour and Rosalie Abella in Ontario, and Morris Fish in Quebec; Liberal governments later named them to the Supreme Court.

The current Conservative government has appointed few judges in the past nine years who have liberal reformist credentials. Three judges it named to the Ontario Court of Appeal since late in 2012 represented groups arguing against gay marriage at the Supreme Court in 2004. As of this winter, it has appointed 48 prosecutors, compared with 12 lawyers who did primarily criminal defence work, and 10 academics.

Conservatives say the system is no more ideological today than it was under the Liberals. “I can’t see the difference,” a Conservative said. “When someone is a committed federal Liberal and has worked for the party for 30 years and gets to be of a certain age and a certain standing where some political heavyweights recommend them [for the bench], it’s because they’re ideologically framed by working for the party.”

But David Dyzenhaus, a University of Toronto law and philosophy professor, says he is deeply worried by the pattern of appointments.

“It’s very clear that it’s almost impossible for a judge who comes from the political centre or to the left to be appointed,” he said. “Which means that the appointment of judges is from a very small pool of lawyers. That invariably means people of considerable ability are being passed over. The quality of the bench is going to be lower. It will invariably take its toll on the Canadian legal order.”

## **How to evade ‘lefties’**

The screening committees set minimum standards for the selection of judges. Across the country there are 17 such judicial advisory committees (JACs), as they are known, and they are the only stage of the appointment process whose rules are public.

Until 2006, the committees had three choices when presented with a candidate: highly recommend, recommend or not recommended. Mr. Toews changed that, however, stripping out the first option; now committees can only recommend, or not.

The loss of the highly recommended category “removes a lot of the committee’s ability to express to the minister its view as to who really should be appointed to these positions,” said Frank Walwyn, a Toronto business lawyer appointed by the Ontario government to the screening committee in the Greater Toronto Area.

Of the 665 applicants in 2013-14, the committee recommended 300, or nearly one in every two. Of those 300, the government anointed a chosen few – 66 judges, or roughly one in five of the recommended group. Under the last year of the old rules, 2005-6, the committees “highly recommended” 76 applicants; if a government wished, it could find enough highly recommended judges to fill all the vacancies.

In practice, despite the changes that put federal government appointees in the voting majority, the committee members tend to seek common ground. “What I’ve found is that consensus really is the order of the day,” Mr. Walwyn said. “If you have a number of people saying this person is not balanced either in the prosecution or defence of individuals, the committee will take that very seriously.”

From the Conservative government’s perspective, the committees sometimes stand in the way of the judges it wishes to appoint. So the government has taken deliberate steps to evade the committees, at least in Alberta, a local source said. It has a kind of express lane to bypass the need for a committee recommendation: choosing from judges already serving on the Provincial Court, a lower level of court appointed by the province. (The committees comment on these judges, but make no recommendation.) These tended to be right-of-centre judges with a known track record.

The advisory committees “were not letting through tough-on-crime candidates because they wanted some lefties to be appointed,” the source said. “Liberal judges had control of the screening committees. One of the ways [the government] could get around this is if you were already appointed to another court, the screening committee could not block you; they could only comment.” In this fashion, a Provincial Court judge, Brian O’Ferrall, made an unusual leap straight to Alberta’s highest court, the Court of Appeal, in 2011. Several others went to the Court of Queen’s Bench.

This is not against the rules. The appointments system has wide discretion.

The next steps: recommendations from the political ministers, then the judicial affairs adviser checking out the candidates. One such adviser, Carl Dholandas, was a former member of the national Progressive Conservative Party executive who served as executive assistant to Nigel Wright when he was chief of staff in the PMO. The justice ministry declined to make him available for an interview. He left the post early this year, and the ministry would not even reveal the name of the new adviser. (It’s Lucille Collard, who was an official at the Federal Court of Appeal.)

After the Justice Minister’s recommendation goes to the PMO, an appointments adviser, Katherine Valcov-Kwiatkowski, screens the candidates yet again, before a name makes it to a cabinet vote.

This unwieldy process has slowed the system. Chief justices grew restive at the high numbers of vacancies on their courts: at record levels last year – more than 50 open seats. That number plummeted to 14 in June, with an avalanche of appointments before the official start of the federal election campaign. Quebec Court of Appeal judges were stretched so thin last fall that Chief Justice Nicole Duval Hesler asked Superior Court chief justice François Rolland if she could borrow some judges on an ad hoc basis, a source said. Chief justice Rolland said no.

In his annual public address in September, chief justice Rolland complained that one of the vacancies on his court went back to August, 2013, and four others to April, 2014. Civil trials expected to take longer than 25 days must be booked four years in advance, he said. He jokingly asked if anyone could get Justice Minister MacKay on the phone, because he had tried and failed. The judge has now retired.

One seat that was filled: In 2013, an opening on the Manitoba Court of Queen's Bench went to former justice minister Vic Toews.

## **The judge who doesn't like Canadian law**

It is easy to see why Mr. Harper would be a fan of Grant Huscroft, Ian Brodie's friend and co-editor, and why the Conservative government named the Western law professor to Ontario's highest court, effective in January. (Mr. Brodie, now at the University of Calgary, tweeted his congratulations.)

In his published work, Mr. Huscroft has rejected virtually everything at the heart of the Canadian constitutional order. He is opposed to judges reviewing rights claims under the Charter – an important part of his job. He believes it's undemocratic and judges are no better than anyone else at deciding whether a law is consistent with the rights commitments of the Charter. He has made the same point as Mr. Harper on gay rights and the Charter – that the framers deliberately did not protect gay rights. He has written that democracies do not “grossly violate rights,” but put “thoughtful” limits on them.

Wil Waluchow, a legal philosopher at McMaster University who strongly disagrees with Mr. Huscroft's originalism, describes him as open-minded and respectful of different viewpoints. “He may fight against the mainstream to some extent, but I don't think it will be in a way that is disrespectful or dishonest,” Prof. Waluchow said. “I respect Grant an enormous amount.”

Prof. Dyzenhaus, who co-edited a 2009 book of essays with Mr. Huscroft, is also familiar with his work, and has a somewhat different view. “He's an attractive choice for Stephen Harper because he shares with Harper an antipathy for entrenched bills of rights and the way of interpreting those rights that Canadian judges have developed for 30 years,” Prof. Dyzenhaus said by phone from Cambridge University, where he is the Arthur Goodhart Visiting Professor of Legal Science.

So why does Mr. Huscroft want to be a judge? In Canada, unlike in the U.S., there is no public review of the federal appointments of new judges in which that question could be asked. Or this one: How can he stay true to his principles while respecting precedent?

Mr. Huscroft declined multiple requests for an interview. But Prof. Dyzenhaus believes Mr. Huscroft hopes to bring change from within.

“If I’m right that he thinks large chunks of the Canadian legal system are illegitimate, one reason for taking office is he wants to get involved in a kind of damage-limitation exercise. So to the extent he can, he will try to prune the living tree.”

## **The constitutional romance**

Constitutional romantics assume the worst of elected legislators and the best of judges,” Mr. Huscroft has written. For nearly 10 years, the Conservative government has been dripping blue ink into a red pot – attempting to expunge, bit by bit, the country’s 30-year romance with the Charter, and with judges who go out of their way to be the guarantor of rights.

The moves have produced mixed results. The government is up against a culture of unanimity; when Liberal and Conservative appointees sit down together, they tend to find common ground. It also faces a tradition of judicial independence, as some Conservative-appointed judges have demonstrated in striking down tough-on-crime legislation. “This, irrespective of who appointed you, is always the dominant culture,” one appeal court judge said.

There is no strong evidence, in a statistical sense, of more severe criminal sentencing. But there are other areas of the judicial system where the effects can be seen. Perhaps the clearest sign of change is on the Federal Court. Refugees whose claims are rejected by the immigration board can ask this court to review their case. The review is not automatic, and Conservative appointees on the Federal Court agreed to a review in just 10 per cent of cases, compared with 17.6 per cent for Liberal appointees, a study found. David Near, a former judicial affairs adviser for the Conservatives, accepted 2.5 per cent of requests for judicial review he heard on the Federal Court. In 2013, he was appointed to the Federal Court of Appeal.

As an election approaches that will be fought in part on security from terrorism and crime, the Prime Minister and his cabinet continue their determined effort to reshape the judiciary. In June, they promoted Justice Bradley Miller, another former Western professor and proponent of originalism, to the Ontario Appeal Court. He opposes gay marriage and asks whether the Supreme Court has lost its moral centre. Business lawyers were again prominent, criminal defence lawyers scarce.

Mr. MacKay’s office has given only one answer when The Globe has asked questions over the past eight months about individual appointments and the judicial appointments process: “All judicial appointments are based on merit and legal excellence and on recommendations made by the 17 Judicial Advisory Committees across Canada.”

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## **Supreme Court unfair to Harper government, new Ontario justice says**

Sean Fine, The Globe and Mail, July 26, 2015

The newest judge on Ontario's top court has an explanation for the Conservative government's well-known losing streak at the Supreme Court of Canada: The court's reasoning process is unfair, making it almost impossible for the federal government to defend its laws, such as those involving assisted suicide, prostitution and the war on drugs.

Ontario Court of Appeal Justice Bradley Miller, whose appointment was announced last month, is part of Prime Minister Stephen Harper's vanguard on the bench – a leading dissenter, along with fellow appeal-court Justice Grant Huscroft, from much of what Canada's judges have said and done under the 1982 Charter of Rights and Freedoms.

As *The Globe* reported on the weekend, Mr. Harper has been on a decade-long quest to transform the lower courts by finding judges who would be less activist, and less likely to stand in the way of policies such as a crackdown on crime. Justice Miller and Justice Huscroft offer an approach that is more deferential to government than is currently the norm on Canadian courts. If over time they are able to point the court in a new direction, judges will become less likely to strike down laws in which broad moral issues are at stake; government would be given more respect as the authority to decide such issues.

Justice Miller also brings a passionate voice for freedom of religion, arguing that the right to morally disapprove of gay marriage is vital to freedom of conscience. Justice David Brown, appointed to the appeal court last December, makes a similar argument.

But Justice Miller's most important effect on the law could be on the interpretation of the right to life, liberty and security in Section 7 of the Charter of Rights. This was the section used by the Supreme Court to strike down a ban on assisted suicide this year and prostitution laws (2013), and to reject the government's attempt to close Insite, a Vancouver clinic where illegal drug users shoot up in the presence of nurses (2011).

A judicial "blind spot" explains the government's losing streak in those three cases, Justice Miller said in his published work as a law professor. (As a lawyer, he represented the Christian Legal Fellowship in arguing at the British Columbia Supreme Court against physician-assisted suicide.)

Canadian judges have become blind to certain kinds of harm – harm to important principles and harm to culture, he said. They understood such broad social harms in the 1990s, when the Supreme Court allowed criminal laws on hate speech and pornography to stand, he said.

A bit of background on the Charter is necessary to understand Justice Miller's argument that the court's approach to Section 7 is unfair to government.

The Charter's very first section allows government to put "reasonable limits" on rights, if it can show that the limits are justified "in a free and democratic society." But the court has never allowed an infringement of the Section 7 right to life, liberty and security to stand. The reason is to be found in the wording of Section 7: Any limits have to be in

accordance with “the principles of fundamental justice.” It would be illogical to say a government could violate a principle of fundamental justice in a free and democratic society.

The result, according to Justice Miller, is a drastically unfair approach.

“The Court remains entirely focused on the rights-holder,” such as a sex-trade worker, he wrote in an essay last year published on a British constitutional blog. “Justice and justification are to be considered from one side only. All other considerations are to be postponed to the second stage [Section 1] that never comes.”

Thus, he says, it is “profoundly difficult” for the federal government “to articulate the reasoning behind much criminal legislation.” Courts do not perceive the harm done by removing the prohibition against intentional killing in the assisted suicide case, he said in a 2012 interview with Cardus, a Christian think tank with offices in Canada and the United States.

He underlined that point in an interview with Western Law Alumni Magazine two years ago, explaining the success of Vancouver lawyer Joseph Arvey, who represented the individuals seeking the right to a doctor’s help in ending a life.

“Joe’s success – and he does this better than anyone – depends on persuading the court that his client’s personal drama is of the utmost significance, and that those persons who will be stripped of the law’s protection in order to accommodate Joe’s clients just don’t matter all that much.” (Mr. Arvey said at the time that he tries to show it isn’t necessary to trounce his clients’ rights to protect the rights of others.)

Carissima Mathen, a law professor at the University of Ottawa, offered another perspective on the courts’ approach to life, liberty and security. “Arguments extending beyond the right holder are certainly considered,” she said in an e-mail. “They just come up earlier in the process, when thinking about ‘fundamental justice,’ which is really Section 7’s core guarantee.”

She added that in the prostitution, assisted suicide and supervised-injection cases, the law’s impact was severe. “If you have horrific suffering or risk of death on one side, you’re going to need really strong arguments on the other. And it’s probably true that symbolic purposes (such as simply promoting a certain moral vision) are not going to make the cut. But I think that is actually a strength, and not a weakness, of the Charter.”

Justice Miller is a proponent of “natural law” – the idea that universal, unchanging moral principles are inherently human, and form the true underpinnings of law. Iain Benson, a lecturer visiting his law school at the University of British Columbia, introduced him to the philosophy and gave him a book by Canadian philosopher George Grant called *English-Speaking Justice*. (Justice Miller went on to obtain a doctorate in law at Oxford under a leading natural-law philosopher, John Finnis.)

The George Grant book described the contemporary West as having “lost our confidence in speaking about what is good for human beings,” Mr. Benson said in an interview from France, where he lives. “He actually refers to it as ‘the terrifying darkness that has fallen on contemporary justice.’” Justice Miller, he added, offers “a set of insights that the system desperately needs.”

On gay marriage, Justice Miller’s main themes come together – that government has the right and duty to protect society from harm to its natural moral principles.

“Natural is code for Catholic values with Brad,” in which sex between same-sex individuals is seen as unnatural, or sinful, University of Toronto law and philosophy professor David Dyzenhaus said.

Justice Miller says government is obliged to protect marriage between a man and a woman. “In the same way that government is obligated to steward the political community’s forests, fresh water and other resources, it is obligated to identify the morally valuable aspects of a national culture and its morally valuable institutions and to preserve them from one generation to the next,” he wrote in a 2011 paper, “Sexual Orientation and the Legal Regulation of Marriage.”

“There would seem to be no reason why this obligation to protect a political community’s cultural property should not extend to protecting a morally valuable concept and culture of marriage.”

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## **SURETTE: As election nears, civil servants tossing the PMO’s muzzles**

**Ralph Surette, Columnist for the Halifax Chronicle-Herald, July 10, 2015**

Here’s more regarding my standing prophecy that federal civil servants, seething under Stephen Harper’s repressive yoke, will spit out the full story between now and the election.

After my column of two weeks ago saying that the “Mother Canada” statue for Cape Breton Highlands National Park was a cook-up by the Prime Minister’s Office served up through clenched teeth by Parks Canada officials, I got a call from a Deep Throat within Parks Canada saying “right on,” but here’s another one you might want to know about.

In 2010, a “legacy centre” was opened at Cupids, Nfld., west of St. John’s across Conception Bay, commemorating the 400th anniversary of the first English settlement — led by merchant John Guy of Bristol, England in 1610 — in what is now Canada.

The centre cost some \$4 million to build. Prince Charles and his wife, the Duchess of Cornwall, were there for the festivities, along with the prime minister and Peter MacKay.



A big deal, in other words.

There was only one problem, said my informant. There's not a lick of evidence that Cupids was the actual site of the John Guy settlement, although oral tradition tends to put it there. Parks Canada archaeologists produced internal studies on this, trying to raise the issue, but were snuffed. Never mind. Harper doesn't need facts.

And that's not all. Now, a scant five years later, there's a huge uproar in Cupids because the powers that be — through the politically connected citizens group that runs it — want the town of 800 to take it over. In April, there was a rowdy public meeting in which, according to CBC, a citizen and a councillor “nearly came to blows” amid accusations of official skullduggery.

In May, there was a referendum in which the proposal that the town take it over was soundly defeated. Citizens feared tax increases to maintain the centre and are apparently not happy that Harperist politics has disturbed the peace of their town.

Which raises an issue with regard to the Mother Canada statue, said my informant. After Harper and his friends have had their moment with it, who's going to pay for its upkeep? Good point.

Meanwhile, a spitting match has erupted over how the discovery of one of the lost ships of the fabled Franklin expedition in the Arctic was handled. This is supposedly one of the crowning projects of Harper's Arctic policy, laying down Canadian jurisdiction and poking the Russians in the eye. Getting political credit is the key to the whole thing. Now Paul Watson, a Pulitzer-prize winning journalist who was following the complaints of scientists about how the event was politically manipulated, has quit the Toronto Star after he was allegedly told to drop the story. But he's continuing to dig.

The details of the intrigue have yet to play out, but it looks like another Harper machination spinning out of control.

Further, an old friend I hadn't heard from for years dropped a line out of the blue saying he'd retired from the civil service early because he couldn't take it any more. His job was to publicize and promote the work of federal scientists — obviously an impossible job in the bizarre Harperist world where scientists are muzzled. Before Harper came to power, he says, government of Canada communications documents spoke of a “responsibility” of public sector employees to communicate with the public. After Harper, the word “responsibility” quietly disappeared. Amen.

Meanwhile, a survey of top civil servants by the Public Service of Canada reports that 80 per cent of them feel they have been virtually reduced to the level of clerks, amid a deteriorating relationship with politicians — Harper ministers have a tendency to blame civil servants for their own messes — and “an air of distrust and disrespect” that reduces their capacity to do their jobs.

Harper's problem with the “liberal state” had a certain resonance at its starting point — too much bureaucracy getting ever bigger. However, Harper never had a good point that he didn't take to extremes. His solution was to take an ideological axe to the public service and swing wildly — starting with his damaging blow to Canada's highly regarded long-form census shortly after coming to office, plus the firing of a number of heads of federal regulatory commissions and the micro-control of every aspect of the

governmental machinery from the Prime Minister's Office. It wasn't just scientists who were muzzled. Even employees as non-controversial as librarians could no longer speak to library professionals without going through the stultifying ideological machine of Harper's office.

All of this will surely be biting back as the election approaches. Indeed, if we have any self-respect as a nation, it's surely one more reason to send this band of despots, jailbirds, ideologues and incompetents packing.

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## **Indemnisation à Lac-Mégantic: la requête du CP rejetée**

**La Presse, le 13 juillet 2015**

Un juge de la Cour supérieure du Québec a rejeté la requête du Canadien Pacifique visant à renverser une décision sur l'indemnisation des victimes de la tragédie de Lac-Mégantic.

Quelque 25 compagnies accusées d'avoir une part de responsabilité dans la catastrophe ayant tué 47 personnes en 2013 ont mis en place un fonds de 431,5 millions \$.

Le Canadien Pacifique s'opposait à cette entente. L'entreprise plaidait notamment que la cause aurait dû être tranchée par la Cour fédérale et non par la Cour supérieure du Québec. Elle affirmait aussi que certaines dispositions de l'entente limiteraient considérablement sa capacité à intenter des poursuites contre les autres sociétés impliquées dans la tragédie.

Dans un jugement publié lundi, le juge Gaétan Dumas a dit que la Cour était compétente en la matière, ajoutant que le processus pour indemniser les victimes pouvait aller de l'avant.

Le Canadien Pacifique a dit étudier le jugement et ne fera aucun autre commentaire à ce sujet dans l'immédiat. Bien que l'entreprise peut interjeter appel de la décision, elle doit obtenir l'autorisation d'un juge d'un tribunal d'appel pour ce faire.

L'avocat Jeff Orenstein, qui représente les victimes de la tragédie, a affirmé que si le CP n'obtenait pas le droit d'interjeter appel, il espérait voir les millions de dollars distribués aux victimes le plus tôt possible.

«Nous ferons pression pour que les chèques soient envoyés avant la fin de l'année, a-t-il dit. Si c'est possible, nous allons le faire.»

Vingt-cinq entreprises menacées par un recours collectif ont accepté de verser des millions de dollars en indemnités, un règlement qui les exonère par ailleurs de toute responsabilité civile. Ce règlement à l'amiable a été accepté à l'unanimité par les victimes et les créanciers lors d'une assemblée spéciale, le 8 juin dernier, à Lac-Mégantic.

Le 6 juillet 2013, un convoi de 72 wagons-citernes de la Montreal Maine and Atlantic (MMA), laissé sans surveillance pour la nuit à Nantes, avait dévalé une légère pente sur

13 kilomètres puis dérailé en plein centre-ville de Lac-Mégantic, avant d'exploser et de prendre feu. Une partie du centre-ville a littéralement été rasée par l'explosion et les flammes, et le bilan s'élève à 47 morts.

La MMA ne disposait pas d'une couverture d'assurances suffisante pour payer les victimes et les créanciers, et elle a déclaré faillite, au Canada et aux États-Unis. Le règlement à l'amiable est d'ailleurs lié aux procédures de cette faillite de MMA des deux côtés de la frontière.

Les entreprises ayant accepté de contribuer au règlement ne pourront plus être tenues responsables.

Bien que le CP a déjà dit qu'il ne contestait pas la pertinence de compenser les familles des victimes, il persiste à dire qu'il n'est pas responsable de ce qui est survenu.

Au moment de la tragédie, a rappelé l'avocat du CP, Alain Riendeau, le mois dernier, les locomotives, les wagons et la cargaison impliqués n'appartenaient pas au CP, le train n'était pas conduit par des employés du CP, et il ne roulait pas non plus sur des voies du CP.

Les 25 entreprises seraient par ailleurs à l'abri d'une contre-poursuite du CP si jamais elles décidaient de récupérer auprès du transporteur les sommes qu'elles devraient déboursier en vertu de l'entente.

Le juge a affirmé que le fonds mis en place dans le cadre de l'entente était équitable et que «rien n'empêchait le CP de se défendre des actions en justice contre lui».

«S'il n'est pas responsable (pour le déraillement), alors ces actions seront rejetées», a fait valoir M. Dumas.

Me Orenstein a obtenu l'approbation pour une action collective au nom des victimes du déraillement, et puisque toutes les autres entreprises seront exonérées de responsabilité civile, seul le CP peut être traduit devant les tribunaux.

«Assurément, nous avons l'intention de poursuivre dans notre cause contre (le CP)», a dit l'avocat.

Me Riendeau avait aussi plaidé que le règlement à l'amiable est, techniquement, illégal, puisque les lois canadiennes qui régissent la faillite ne permettent pas à des tierces parties d'être exonérées de toute responsabilité civile dans certains types de procédures en matière d'insolvabilité, comme celles qui touchent la MMA.

L'entente prévoit le versement de près de 200 millions \$ au gouvernement du Québec et à la municipalité de Lac-Mégantic, pour le nettoyage, la décontamination et autres coûts afférents. Les familles des victimes recevraient quant à elles des indemnités d'environ 111 millions \$, alors que 21 millions \$ sont prévus pour les honoraires d'avocats. Le reste - près de 100 millions \$ - sera consacré à d'autres réclamations, comme l'aide psychologique et les dommages matériels.