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Press Clippings for the period of September 8th to 14th, 2015
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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

AJC in the news –
L'AJJ fait les manchettes

Feds accused of 'nickel and diming' lawyers

Law Times Cover Story

By Shannon Kari, Law Times, September 14, 2015

Budget cuts that include restrictions on access to paid legal databases and ordering transcripts and directives that include requirements to carpool to courthouses are the latest source of frustration for federal government lawyers, especially in southern Ontario.

The head of the association that represents lawyers at the Department of Justice and the Public Prosecution Service of Canada says the "nickel and diming" policies are sending a poor message to those who work for "the government's law firm."

Len MacKay, president of the Association of Justice Counsel, says "the product is going to suffer" if the federal government doesn't invest more in its law firm. "We can only conclude the prime minister does not care," says MacKay of the Conservative government led by Stephen Harper.

The cuts, which can make it difficult for federal lawyers to access even basic work materials, is somewhat "ironic" given the Conservatives' reputation as a law-and-order government, says MacKay.

Federal lawyers made substantial wage gains in a 2012 contract after lengthy negotiations with the government. They are now the third-highest-paid government lawyers behind provincial Crowns in Ontario and Alberta.

Budget cuts imposed by the government have focused primarily on work-related expenses, says MacKay, since most of the department's overall cost involves salaries.

As a result, work tools not considered luxuries in the private sector, such as technologically up-to-date smartphones, aren't necessarily available for federal government lawyers.

The department issued BlackBerrys about four years ago but it isn't replacing them even if they're no longer working properly, says MacKay. He recounts how, when going on leave, he was asked to turn in his phone for another colleague to use despite broken keys on the device.

"If they are not working, we go without BlackBerrys," says MacKay.

Federal lawyers can purchase their own phones, but it's often difficult to use them to access the remote server and retrieve work e-mails, he notes. "It would be nice to look up a case in court" on a phone, but that's not always possible, he adds.

A policy for federal civil servants called "cut the cord" requires them to choose between a wireless phone or a landline in their offices. While MacKay says the government has exempted most federal lawyers from that policy, even some managers at the Department of Justice have recently lost landlines.

A past audit of the use of subscription-based legal databases led to them no longer being accessible for many federal lawyers and prosecutors. "We are getting used to relying on CanLII and court web sites," says MacKay.

Ordering transcripts also requires approval. And a directive in southern Ontario states that if more than one lawyer is travelling to an out-of town courthouse, even if it's a short distance such as Toronto to Brampton, Ont., they must carpool rather than both claiming mileage.

For further distances, the government encourages lawyers to find a rental car from an approved list rather than using their own car and claiming mileage. A lawyer familiar with the policies in the national capital region says that in some cases, the rental cars cost more than mileage.

Other policies in that area have included a requirement to fill out a requisition form for exhibits or index tabs for written legal materials. "People were supposedly using too many tabs," according to the lawyer.

In response to the concerns, the Department of Justice and the prosecution service both noted their commitment to ensuring that staff in all offices have "the tools they need to effectively do their work" while also considering ways to save money.

They say they make travel expense decisions in compliance with the national joint council directive that states that "the selection of the mode of transportation shall be based on cost, duration, convenience, safety, and practicality." And the rules around

BlackBerry devices are pursuant to a government-wide operating standard for the provision of telecommunication devices, say spokeswomen for the prosecution service and the Justice Department.

MacKay says he understands the desire to try to reduce expenses but he suggests that at some point, the policies can interfere with the ability of federal lawyers to do their jobs effectively.

Francoise Boivin, justice critic for the federal NDP, says she has sympathy for federal lawyers and their working conditions. “We are very aware of the issues. They are awesome professionals, yet they are being asked to do more with less,” she says.

“They are not being given the tools to perform,” she adds.

An NDP government would make it a priority to review how the government has administered the Justice Department in the past decade, including its dealings with its lawyers, says Boivin. “We will need a time out to analyze the impact [of the Conservative government] on the administration of justice,” she says.

Harper says public servants should not fear Conservative election victory

Mark Kennedy, Ottawa Citizen, September 13, 2015

Conservative Leader Stephen Harper says public servants in the national capital should not be worried if his party gets re-elected to govern in the Oct. 19 election.

However, he warned that reforms to sick leave and disability benefits will be designed to strengthen the system so it helps people who are “actually ill.”

As well, he thinks most public servants “respond positively” to the Tories’ efforts to run the federal government “efficiently.”

Harper made the comments Sunday in response to a question at a campaign news conference held at a private manufacturing factory, where he warned supporters that Canadians could lose their jobs if either the Liberals or New Democrats gain power and raise taxes.

Harper was asked about how, as prime minister, he is the “boss” of the region’s single largest employer and that federal public servants are worried about their jobs, benefits and pensions.

“They really should not be worried,” said Harper.

“I think as you see in the last few years, obviously we’ve made sure that our operations are more efficient. That’s an ongoing job. Any management is responsible for making sure that its operation remains efficient.”

In the 2012 budget, the Conservative government slashed federal spending by billions of dollars and eliminated about 20,000 jobs.

“But where we have reduced numbers we have done so largely by attrition and made sure that people are treated very generously and fairly,” said Harper.

Currently, sick leave is the big issue at the ongoing round of collective bargaining with the unions that has slowed down since the federal election campaign began in early August.

Thirteen of the 17 federal unions recently filed a motion seeking an injunction to stop the government from invoking the new powers it gave itself in C-59, the budget omnibus bill, to unilaterally impose a new sick-leave agreement.

Unions have filed constitutional challenges against the bill that allows the Conservatives to override the Public Service Labour Relations Act and impose a new deal whenever it wants. They argue the changes violate the right to free and collective bargaining as guaranteed by the Charter of Rights and Freedoms.

The Conservatives want to scrap the existing sick leave regime and replace it with a new short-term disability plan.

The government proposes reducing the number of annual sick days a year from 15 to six and abolish much of the 15 million days of banked unused sick leave.

The Conservatives’ legislation leaves the timing for a deal wide open but Treasury Board President Tony Clement has said he wants a deal before the Oct. 19 election.

“We are committed to a strong package of employee benefits, but one that is in line with what exists in the private sector — not out of line with that,” Harper said Sunday.

“We’re reforming sick leave and disability benefits to make sure that sick leave and disability benefits are there, and in fact, the system is stronger for people who are actually ill and need help.

“But we’re not going to pay people who are not sick, sick leave.”

Harper received a strong round of cheers and applause from supporters at his campaign event when he delivered this blunt warning.

“Look, this is the responsible thing to do,” he said.

Harper said his party has done “very well” in the National Capital Region in recent years.

“In fact, it’s been one of our stronger parts of Ontario.

“And part of the reason for that is that the vast majority of public servants, they join the public service because they want to contribute to the country. They want to be productive. They want to contribute.

“They expect as taxpayers themselves that things will operate effectively and efficiently and that big proportion of the public service responds very positively to what we are doing.”

Harper's remarks were in stark contrast to what former prime minister Jean Chretien told a crowd of Liberal supporters just a day earlier in Ottawa-Vanier.

In his speech Saturday at candidate Mauril Belanger's office, Chrétien spoke strongly about how things have gone sour for the federal bureaucracy and diplomats since the Conservatives took power in 2006.

He said Canadian ambassadors abroad don't have the freedom they should have to do their jobs.

"The ambassadors are well-educated with a lot of experience. If they have to talk to the chamber of commerce in one town in the country where they are, they have to send their speech to a kid in Ottawa in the PMO to approve it. Come on. It's unacceptable."

Chrétien, who first came to the House of Commons in the early 1960s, said he learned a long time ago that bureaucrats "are not partisan. They are there to do a good job.

"For me, if you are succeeding as a minister, they succeed. If they fail, you fail, too. So they are your partners.

"It's why we were enjoying good relations and it was working. And the mood was, in the bureaucracy, when we were there, much better than it is today."

Earlier this month, Ottawa Centre NDP candidate Paul Dewar said repairing federal politicians' relations with public servants would be an NDP government's top local priority.

When asked what is the most-neglected federal project in the capital, Dewar replied: "It is the deterioration in the relation between public servants and the government."

"I think that's something that really has undermined our city and its reputation, frankly. It's no longer something that's just in the bubble. It's across the country, frankly."

Unions complain Tories breaching international labour conventions

Kathryn May, Ottawa Citizen, September 9, 2015

An international labour federation is filing a formal complaint against the Conservative government for unilaterally giving itself the power to change the negotiated sick leave benefits of its employees.

Public Service International and the Canadian Labour Congress are expected to file the complaint Thursday with the Geneva-based International Labour Organization (ILO) on behalf of the 18 unions representing Canada's public servants.

The complaint is aimed at the provisions of the Conservatives' latest omnibus budget bill, C-59, which overrode existing labour legislation to allow the government to impose new terms and conditions for the sick leave benefits.

The Association of Canadian Financial Officers, which represents finance officers working in government, drafted the complaint and asked the two labour organizations to jointly file it.

"Quite frankly, we're frustrated that it has come to this," said ACFO President Milt Isaacs. "The fact we've had to look internationally for support speaks to just how punitive the actions taken against public servants have been. This is an erosion of our most basic rights."

The two labour organizations are taking their complaint to the ILO's Committee on Freedom of Association, accusing the government of violating the conventions and principles to protect the rights of workers.

Sick leave is the big issue at the ongoing round of collective bargaining with the unions that has slowed down since the federal election campaign began five weeks ago.

The Conservatives' changes will allow the government to open all contacts, get rid of the existing sick leave regime and replace it with a new short-term disability plan whenever it wants. Many feared this could happen during the campaign because Treasury Board Tony Clement has insisted he wanted a deal before the election.

The complaint is the latest legal step the unions have taken in an attempt to repeal the legislative changes that unions argue have eroded collective bargaining in the public service.

The unions have filed unfair labour practice complaints and constitutional challenges against the bill, arguing that bypassing the Public Service Labour Relations Act violates the Charter right to free and collective bargaining.

More recently, they sought an injunction to put those new powers on hold until the court rules on the constitutionality of the law.

An Ontario Superior Court judge ordered the Conservative government to give five days' notice if it plans to impose a new sick-leave deal on Canada's public servants before the Oct. 29 hearing into the case.

Canada was a founding member of the ILO, the United Nations agency that deals with labour issues, but has taken a drubbing in recent years over its record of violating international standards for workers' rights.

The ILO will investigate whether the government lived up to its international obligations, but it can't change domestic laws or impose sanctions. Canada's courts, however, take the ILO's standards and rulings into consideration when making decisions.

The complaint alleges that C-59 reforms violate ILO's convention 87, which Canada ratified in 1972 to protect free collective bargaining and the right to strike.

The complainants cited a number of ways the government has violated the convention, including no consulations with unions, reducing the scope of bargaining, and stripping workers of previously negotiated benefits.

They argued the government had no "exceptional circumstances," such as fiscal pressures to justify getting rid of existing sick leave benefits especially after the Parliamentary Budget Officer argued they were not a "fiscally material cost."

The complainants noted the legislation was passed while bargaining was underway and the parties had not hit a deadlock; the government refused to compensate workers for taking away the benefits and provided no details on the business plan for a new disability plan.

Keep your noses out of our election, Foreign Affairs warns diplomats

By Amanda Connolly, iPolitics, September 8, 2015

The Canadian government has issued a warning to the heads of foreign diplomatic missions in Canada to keep their noses out of the country's federal election and multiple ex-diplomats say they view the move as unprecedented and concerning.

The note, dated July 16 and stamped with the seal of the Department of Foreign Affairs, Trade and Development's Office of Protocol, asks that the heads of missions distribute it to all members of their teams and stresses that under the terms of the Vienna Convention on Diplomatic Relations and the Vienna Convention on Consular Relations they have a duty "not to interfere in the internal affairs of the receiving state" — namely, in the then-yet-to-be-called federal election.

"During an election period, the Department has the honour to remind the Heads of Mission that these duties include ensuring that diplomatic and consular personnel do not conduct activities which may either be perceived as inducing electors to vote for a particular candidate or prohibiting them from voting for a particular candidate in any way," the letter reads.

It continues on, warning that diplomatic and consular personnel are also forbidden from making any financial contributions to candidates or political events, and directs them to the Public Service Commission of Canada's Guidance Document for Participating in Non-Candidacy Political Activities for guidelines on how the heads of mission can "support employees on making an informed decision about the type of activities that may be regarded as inappropriate during an election period."

That document only applies to members of the federal public service, not to foreign diplomats working in Canada, and lists examples of "non-candidacy political activities," other than voting, as:

- Volunteering or fundraising for a candidate or a political party;
- Supporting or opposing a candidate or a political party by displaying political material such as a picture, sticker, badge or button, or placing a sign on the lawn;
- Attending events, meetings, conventions, rallies, or other political gatherings in support of, or in opposition to, a candidate or a political party;
- Developing promotional material such as writing campaign speeches, slogans and pamphlets for a candidate or a political party;
- Using blogs, social networking sites, a personal Web site or video sharing to express personal views in support of, or in opposition to, a candidate or a political party.

The letter has many in Ottawa's diplomatic community concerned, with one saying it goes beyond the definition of acceptable behaviour towards foreign missions.

"I don't think it's something you would expect from a liberal democracy to send such a warning," one senior foreign diplomat in Ottawa said of their reaction to receiving the letter.

The vice president of the Canada Global Affairs Institute says letters containing information about the election have normally been sent to the heads of foreign missions as well as the heads of Canada's diplomatic missions abroad during elections — they just weren't as strongly-worded as the current letter.

"In past elections it was customary to inform but it may have been done verbally or in a shorter note," said Colin Robertson, also a former Canadian diplomat. "What the government has done, it may be more specific and spelled out in greater detail but it is what governments have done in the past."

The Department of Foreign Affairs' media team declined to say whether it has issued similarly-worded notices before, saying only that the federal government regularly engages with the diplomatic community in Canada on a variety of matters, including upcoming elections.

"All host countries operate in this fashion," said Nicolas Doire, spokesperson for the department.

However, several former diplomats contacted by iPolitics expressed surprise at seeing the text of the letter, saying they can't recall ever coming across a similarly-worded letter during their years of service.

"I've never seen it nor have I heard of it," said Michael Bell, former Canadian ambassador to Israel, Egypt and Jordan.

Gar Pardy, former head of Canadian consular services, echoed that sentiment and called the move "most unusual."

"I cannot recall ever seeing such a communications before either when abroad or when here in Ottawa," Pardy said. "The only reasons for such a note would be if there were enquires from the local embassies on the matter or if something had happened to occasion such a warning."

Lawrence Lederman, former Canadian chief of protocol, said he was disappointed — but not surprised — that the government would instruct the Office of Protocol to issue such a letter.

“I have not seen any similar instruction during my tenure at Foreign Affairs,” he said. “I find it in bad taste and can’t understand why they decided to take this action.”

Rick Kohler, also a former Canadian chief of protocol, said the same thing.

“I had never seen such a message,” he told iPolitics. “On the other hand, this is the type of message quite typical of the attitude of the current folks.”

None of the former diplomats contacted could point to a specific incident that may have inspired the wording in the letter, such as a foreign diplomat or consular official in Canada advocating for a candidate or supporting a particular party.

Bell said diplomats are generally well aware of their responsibilities while working in a host country, although many will have their own personal views of the parties and candidates.

“They’re obviously going to have particular views on which government would best suit their national interests,” Bell said. “But that would be very different from open advocacy.”

Labour unions across Canada preparing to launch major anti-Harper offensive

Giuseppe Valliante, The Canadian Press, Montreal Gazette, September 5 2015

Canada’s largest unions say if enough of their members vote strategically in key ridings across the country, Stephen Harper and the Conservatives will not get a fourth term in office.

The anti-Harper strategy requires a highly organized communications attack that will give the union-selected candidate in a targeted riding the ability to use scarce election resources more freely.

Workers say their assault will begin shortly after Labour Day and will be the culmination of months of preparation.

Union heads have been training workers across the country on election campaign basics while collecting data through polling and focus groups on which ridings to target and what messages resonate most with voters.

Two main organized labour groups leading the charge are the Quebec Federation of Labour, which will focus on French Canada, while Unifor will be a major player in Ontario and in the rest of the country.

QFL secretary Serge Cadieux said the plan starts with the union calculating how many members it has in key ridings where the Conservatives won in 2011 or could win this time around.

“For example, take the riding of Denis Lebel,” Cadieux said, referring to Harper’s former infrastructure minister who represents the Lac Saint-Jean region north of Quebec City.

“Let’s say we have 9,000 members in that riding and our research shows that the Bloc Quebecois candidate has the best chance of beating Lebel. I’ll meet with the candidate and tell them we will visit every single one of our 9,000 members in the riding to get out their vote and the candidate can concentrate on the other voters.”

The number of union votes in certain ridings can be significant: the QFL boasts a membership of 600,000 people in Quebec while Unifor claims to be the country’s largest private-sector union with a membership role of 305,000 people.

Offering to contact thousands of people in a riding on behalf of a candidate is a precious time-saver, Cadieux explained, and allows the lucky party to concentrate limited resources elsewhere.

Cadieux said the federation will support any party — be it the Liberals, NDP, Bloc — which has the best shot at winning the riding, in order to keep the Tories out.

Unifor President Jerry Dias said his union’s strategy outside Quebec is similar. However, his people will be supporting all the incumbent NDP candidates.

Dias said his union will focus on ridings with a “critical mass” of unionized voters, and will be encouraging strategic voting in ridings without NDP incumbents.

“We don’t believe we can just tell our members how to vote,” he said. “We are going to be very active — very active — on getting out Harper’s record. Our whole strategy is engaging our members so that they’ll participate in the democracy of our country.”

Dias said unions used polling companies to collect data on voters who chose the Conservatives in 2011 by relatively small margins and could swing to the Liberals or the NDP this time around.

Part of that data was collected by Engage Canada, an anti-Harper organization known as a third party. Third parties are not affiliated to political parties but can campaign for certain issues by collecting donations. Third parties face strict limits on advertising spending during election campaigns but can spend virtually unlimited amounts of money before Parliament is dissolved.

Two well-placed sources with ties to the union movement said Engage Canada spent — at least — several million dollars on anti-Harper ad-buys on radio and television targeting voters considered as soft Tory supporters.

Much of Engage’s money came from unions, sources said, which was neither confirmed nor denied by the organization.

“Engage Canada received donations from across the country â ¦We did approach the unions and are very grateful for their generous support of our campaign,” a spokesperson responded by email.

Dias said Unifor was “a major supporter of Engage — we played a significant role. There is no question there was significant money raised but I won’t get into it.”

The research conducted by Engage will be used by unions in the targeted ridings, Dias said.

“Engage was incredibly effective,” Dias said, at convincing former Tory supporters to reconsider their prior choice.

The research (Engage conducted) “was about identifying the issues that Harper is weak on. He’s vulnerable on health care. He’s very vulnerable on the economy,” Dias said.

Unifor and the QFL’s invective towards Harper hasn’t gone unnoticed by the Conservatives.

Lebel, in a message to Conservative supporters, said the QFL has “secretive plans to target and defeat Conservatives. Even worse, they are working with other union groups to defeat Conservatives in 60 ridings across Canada. This is a clear attempt to return to the days when big money and secretive third parties influenced Canadian democracy.”

Hassan Yussuff, president of the Canadian Labour Congress, said he is convinced this strategy will work — if members vote.

“The reality is we represent 3.3 million workers and if you add one family member to that equation, you’re looking at potentially 6 million votes,” he said. “If they go out and vote and bring their family along … there is no question we’re going to change the outcome.”

Dias said the messaging to Unifor members will focus on what he said were the Conservatives’ attacks on unions, the government’s scaling back of health care funding and what he said was the poor performance of the Canadian economy.

“There are no restrictions on us communicating directly with our members,” he said. “We know which ridings they’re in, we know which ridings we’re targeting and we are very organized when it comes to our communications strategy.”

Unions are battered but not broken: Editorial

Canada’s labour movement is still struggling to re-shape the workplace with unions now pressing to help the precariously employed.

Toronto Star Editorial, September 8, 2015

Battered by the decline of heavy industry and sapped by the rise of “precarious” employment, Canada’s labour movement faces a difficult future. But it was born in hard times, when determined printers in Toronto committed what was then considered a crime and walked off the job in 1872 demanding an end to workdays lasting more than nine hours.

The challenge today is far different. Blue-collar jobs are fast disappearing. Southern Ontario, Canada’s industrial heartland, is being described as “the new rust belt.”

Where labour once fought to work nine hours daily or less, some people today don’t work much more than that in a week. Permanent, full-time jobs are being replaced by temporary or part-time work, with secure employment a thing of the past. More Canadians are toiling for fewer benefits — often they’re deemed contractors instead of employees — and usually they’re young people, women, recent immigrants and visible minorities.

Unions need to reach out to these people, draft alternate bargaining strategies, and set new goals if they are to continue a 140-year tradition of making a difference in Canadian society. That’s the challenge this Labour Day as union members take to the streets carrying banners and waving flags to choruses of “Solidarity Forever.”

There’s evidence of movement in the right direction. A deal struck in August between the United Food and Commercial Workers and Ontario’s 60 Loblaws Great Food and Superstores has opened a way to more predictable scheduling and better hours for thousands of part-time workers.

As reported by the Star’s Sara Mojtehedzadeh, the agreement sets up a series of test runs with a goal of implementing lasting change. The first provides part-timers with 10 days advance notice on scheduling — up from just three. If there are no significant problems after an eight- to 12-month trial, the change becomes permanent.

Erratic scheduling has long been the bane of part-time workers. The Star has in the past highlighted the stress caused by this lack of predictability, especially on parents with young children who are struggling to plan time with their kids.

The new deal includes another pilot initiative giving half of part-time staff a guaranteed minimum number of work hours, ranging from 20 to 28 hours a week, based on seniority. That, too, marks a big step forward for those engaged in precarious work.

The agreement follows an earlier breakthrough deal between Metro grocery stores and Unifor Local 414, representing the chain’s 4,000 employees across Greater Toronto. This contract, ratified in July, grants part-timers a minimum of 15 hours of work weekly, after one year of service, and 24 work hours on eight years’ seniority.

That may not seem like much to old-school veterans of traditional Canadian workplaces. But these employees previously had no right to minimum hours at all.

The pact also gives workers five days notice on scheduling, up from just two. A union member described some staff as “practically in tears” on receiving word of that provision.

Ontario’s outdated Employment Standards Act offers workers almost no right to predictable timetables and fair hours. But many have obtained some measure of

protection this summer through collective bargaining. This serves to underscore the role of organized labour as a force for social good. Indeed, there's sound reason for Statistics Canada to list union membership as a key "indicator of well-being."

That's why it's cause for concern that such membership continues to slip, with just 28.8 per cent of employed Canadians, aged 17 to 64, in a union last year. The overall unionization rate has fallen from almost 40 per cent in the early 1980s. This unfortunate slide has been especially pronounced in the private sector, where organized labour now covers only 15.2 per cent of workers.

Unions are well aware of the problem; it's one reason they're striving to win gains for part-time and precarious employees. The long-term future of organized labour might well depend on making inroads among these workers. Organizations such as Unifor, Canada's largest private-sector union, have made a priority of reaching out to such people and bargaining on their behalf.

It won't be easy. Part-timers, people in temporary jobs, those doing contract work, the self-employed and freelancers are notoriously difficult to organize. How well this effort will succeed remains unclear, but the well-being of a great many Canadians is riding on the outcome.

Newest SCC Judge Brown won't toe Harper's line, lawyers predict

Appointee 'was a scholar of the first order,' says Calgary law dean

By Cristin Schmitz, The Lawyers Weekly, September 18, 2015

Justice Russell Brown's 31-month rocket ride from torts professor up through two court levels to the Supreme Court this month could not have been foreseen when he was growing up in a small B.C. lumber town, working part-time in his parents' hardware store before taking off to play semi-professional rugby in Europe.

Before heading to law school at the University of Victoria, the gregarious University of B.C. arts graduate also worked as executive assistant to Stan Hagen, a cabinet minister in the Social Credit government of Bill Vander Zalm. His passion for politics continued as a University of Alberta law professor, writing acerbic posts on the faculty's blog targeting the federal Liberals and sundry legal sacred cows, while supporting the Harper Conservatives.

By the time he was sworn in Sept. 2 following his Aug. 31 appointment by Prime Minister Stephen Harper, his political leanings were on full display.

However, lawyers familiar with his professional track record say people should not assume that the self-described libertarian will be ideologically driven in his new post — or that he will reflexively give a constitutional pass to the government's tough-on-crime, or other contentious policies.

“I think Russ is a conservative, but that’s his politics, not his law,” said University of Alberta emeritus law dean David Percy, who hired Brown to teach torts and civil procedure in 2004.

The judge is not Canada’s answer to Antonin Scalia, added Percy, who studied under the U.S. Supreme Court’s most outspoken conservative.

“Russ isn’t driven by dogma, and I’m afraid my former professor is,” Percy told The Lawyers Weekly. “I’d be surprised if he shaped the law the way he thought it should be, like Scalia does. I think he is, first and foremost, a good lawyer. I think he respects legal precedent…From what people have read in the daily papers, I would think they’re in for a surprise. I think they’re in for a very well-educated, thoughtful, principled judge.”

“I’ve never had the impression that he hates the Charter as much as Harper does,” said Shannon Prithipaul, past-president of the Criminal Trial Lawyers’ Association of Alberta. “From what I saw of him on the bench, and from what I’ve read of his decisions, he respects the rule of law. I think he would be mindful of the rights of the accused people, as well as of deference to the government when it is appropriate. So I’m not expecting him to just toe the line as a Harper appointee.”

“Russ is immensely aware of his responsibilities, and he will deal with each case as it comes along — I don’t think he has an agenda going into that position,” said Dean Lawton, who from 1996 to 2003 worked with Brown at Victoria’s Carfra and Lawton, where his associate connected well with clients and mentored younger lawyers, while honing his skills in commercial, medical negligence, personal injury, trusts and estates, and competition law.

Determined to teach law, Brown in his thirties took a year-long leave of absence from Carfra Lawton to earn his master of laws at the University of Toronto in 2003. A doctorate followed in 2006. His sterling academic reputation attracted more than one job offer.

“When I was the dean at Western, I tried to hire him when Russ wanted to move into the academic market — I didn’t get him,” recalled University of Calgary law dean Ian Holloway. “He was a scholar of the first order. He was a very good teacher, very dedicated to the craft of teaching. He possessed…in my judgment, a real scholarly mind of inquiry. He’s got definite views about the world, as we now know, but I never saw that get in the way of his scholarly mission.”

A clear and incisive writer, Brown went on to write many articles on torts, as well as the 2011 book Pure Economic Loss in Canadian Negligence Law.

When the prime minister elevated Justice Brown to the top court after the judge had spent just 13 months on the Alberta Court of Queen’s Bench and 18 months at Alberta’s Court of Appeal, it provoked speculation that he got the job over more experienced jurists because of his political orientation and conservative connections.

“But there are many judges who were appointed because of supposed party loyalties who turned out to surprise their appointers,” noted Percy, who believes the judge is worthy of the Supreme Court on his own merits, leaving politics aside.

Certainly francophone jurists will be pleased that the judge can hear appeals in French, without simultaneous interpretation, said Prithipaul, who argued and lost a sentencing appeal in French before a bilingual Alberta Court of Appeal panel that included Justice Brown.

“All the inflection that you want to give to your voice, all the choices of words that you use, he understands and is totally fluent,” she said.

The father of two young boys, who coaches his children’s rugby team, also has the necessary discipline and work ethic for the Supreme Court, said Lawton, who has known Justice Brown for nearly 20 years.

“I can tell you when he was writing his book on pure economic loss, he would be up at four in the morning to work on that, before he…had to go and do other things.”

“I love the guy because he’s a fantastic colleague,” said Alberta Court of Appeal Justice Marina Paperny. “He works hard. He engages in dialogue. He’s open-minded. And he’s prepared to consider everybody’s point of view.”

He can also hold his own in a court of strong-minded judges, she added. “I don’t have any doubt that he will not be pushed around [in Ottawa], but he also gives people their space. He is respectful of his colleagues and respects the law.”

As a civil litigator, Brown “engaged in the same way he appears on the bench, so he is affable but direct,” said Lawton. “Intermixed with some of his submissions he may use metaphor. He may use a historical anecdote, because he has a very strong background in history, so that enriches his submissions.”

As a judge, senior counsel give him good reviews.

“I’ve appeared before him on several occasions and found him to be extremely well prepared — open-minded, asked very incisive questions and did everything that you would expect of a really good judge,” said Calgary criminal lawyer Hersh Wolch.

Based on his track record so far in criminal cases, defence counsel said they expect the new Supreme Court justice to be “fairly balanced” as between Crown and defence.

“He doesn’t seem to have a bandwagon that he is jumping on, and he doesn’t seem to be pushing any kind of agenda, so I do think that we have an independent-minded judge,” Prithipaul said.

Wolch, who successfully challenged “expert” opinion evidence a police officer provided in a drug case, said Justice Brown “was very receptive to the arguments. He’ll be open-minded. He’ll do what the law dictates, and he’ll be fair.”

Edmonton civil litigator Murray Engelking described the judge as “perceptive” and very intelligent.

“I found him a bit rigid from the point of view that he is sort of black-and-whitish — there isn’t much gray,” Engelking said. “But he is very courteous to counsel. He’s very thorough in terms of his analysis of the issues.”

Prithipaul also said the judge is patient. “He gives you the opportunity to say what you need to say. He doesn’t cut you off. He never gives the impression that he’s already decided the case. He seems quite open-minded and willing to listen to whatever arguments you have to present. His decisions, as far as I’ve seen of them, have been well reasoned…They seem to follow a certain order and they’re comprehensive. You can make sense of them. And so you may not always agree with them, but you can understand how he got to the position he did.”

Justice Brown grew up in Burns Lake (pop. 2,726) in north-central B.C., where he attended local schools with Mennonite and First Nations children. One of his two brothers still runs the family business there. An avid outdoorsman, he enjoys hiking mountain and wilderness trails, as well as fly fishing for trout, his friends say. The judge and his spouse, Heidi, a homemaker, camped with their sons this summer in a tent trailer towed behind their car. The judge attended the Anglican Church in Edmonton when based in the city.

This trade union bill will undermine our fundamental human right to protest

Britain does not have a strike problem – so why the need for new legislation? The government should be working constructively with unions to raise productivity

Vince Cable and Frances O'Grady, The Guardian, September 10, 2015

The Conservative government plans legislation later this year that will heavily circumscribe workers’ already limited freedom to take industrial action.

Neither the coalition, nor the previous Labour government, saw any need to revisit strike legislation. So, what has changed?

Strikes, when they happen, are not always popular. The public, and business, face disruption. Strikers themselves lose pay. But the right to withdraw labour as a last resort in industrial disputes is fundamental to free societies, as the European Convention on Human Rights recognises.

Moreover, it is far from obvious that Britain has a “strike problem”. There have been periods in 20th-century history of intense industrial strife. But in the 1990s and 2000s strikes accounted for well under a million days a year. The trend continued under the coalition, despite strong disagreements over pay, pensions and redundancies. The 6.5 million British people who belong to a union – just over a quarter of the labour force and over half of public sector workers – withdrew their labour, on average, for one day in 15 years. By any standards, historically or in comparison with other democratic countries, Britain is remarkably strike-free.

So what is the problem new legislation is designed to address? There have recently been several short but disruptive public service strikes, notably at Transport for London. Regardless of which side you take and whatever your view on the dispute, how can anyone justify designing industrial relations law affecting millions around a few thousand?

Several major changes are envisaged, all of which were considered by the coalition and rejected on their merits by Lib Dem ministers (who had absolutely no self-interest in defending trade unions that sometimes seemed as angry with them as the Conservatives, if not more). But the Lib Dems simply regarded the proposals as ideologically driven, unnecessary and bad policy.

A central proposal will allow employers to substitute agency workers for strikers during disputes, effectively undermining the industrial action. If employers use it, the proposal risks long-term damage to cooperative working and could also mean that agency workers are asked to undertake technically demanding jobs they are not qualified or experienced for.

The Conservative proposals are ideological rather than practical and have a weak evidential and legal basis

The legislation will also require longer notice to employers of impending action (14 rather than seven days) and this seemingly innocuous proposal is linked to another, altogether more alarming. Unions will have to publish, 14 days in advance, a written plan of any intended protest and specific details about it, including social media use. Demonstrations are to be severely circumscribed and discouraged in a way that we would not expect to see in a modern democracy such as the UK. Basic civil liberties are under attack, which will have implications way beyond the union movement.

Another set of proposals concern the thresholds of voter turnout required for a legal strike ballot. Some strikes have been called on the basis of a majority but a low turnout. But, in practice, fewer than one in five ballots result in strikes. Where there is lukewarm support, unions are unlikely to undermine their own bargaining power by precipitating action that is likely to fail. And attempts to impose restrictive conditions will almost certainly ensure that where there is a deeply felt and widely shared grievance, the subsequent action is more bitter and protracted with less willingness to settle.

There is also an issue of principle. In public sector disputes, the employer is accountable to politicians – mayors, councillors or ministers in parliament – whose own democratic mandate may be weaker than that of the trade union.

The coalition government was unable to agree on a Conservative proposal to stop "check-off" arrangements for deducting union dues through wage payment systems. It was established that check off involved no cost to the public purse and so Lib Dem cabinet ministers continued to support the practice in their departments, believing that it maintained good relations with staff at no cost.

Check off will now end across government, with central government unilaterally imposing its views on all public sector employers.

The Conservative proposals are ideological rather than practical and have a weak evidential and legal basis. An opportunity is being missed to work with unions on a positive and forward-looking basis. Unions represent a substantial and, now, growing proportion of the workforce. Many good employers, private and public sector, work constructively with unions to raise productivity, and thence pay. As the TUC has argued, we should be seeking to strengthen industrial democracy, involving the workforce in genuine consultation around the transition to a digital age, in training and worker education and – yes – in pay differentials from top to bottom.

If the government genuinely wants to make unions responsive to their members there is one useful step they can take: remove the legal impediments to electronic balloting. There are security issues here (as with postal voting) but they can be overcome. There are good models overseas and digitisation is evolving rapidly. Refighting the battles of the 1980s is a poor substitute for constructive engagement.

Obama Orders Federal Contractors to Provide Workers Paid Sick Leave

By PETER BAKERSEPT, New York Times, September 7, 2015

BOSTON — President Obama signed an executive order on Monday requiring federal contractors to provide up to seven days of paid sick leave a year, even as he accused Republican congressional leaders of endangering the economy and Republican presidential candidates of undercutting American workers.

Addressing a union audience gathered here for Labor Day, Mr. Obama said he was glad not to be on the ballot but then sounded like a candidate himself as he went after the Republicans who hope to succeed him in the White House. He mocked them individually and as a group for portraying themselves as champions of the middle class while opposing labor unions.

"You can't just talk the talk," Mr. Obama said to cheers. "You've got to walk the walk. You can't talk middle class and then do things that hurt the middle class."

In January, President Obama visited Techmer PM, a plastic fabrication company in Clinton, Tenn. He spoke about the administration's efforts to create jobs.As His Term Wanes, Obama Champions Workers' RightsAUG. 31, 2015

President Obama at a meeting in the Oval Office on Tuesday. The administration has drafted an executive order addressing paid sick leave for companies that contract with the federal government.Obama Drafts Order on Paid Sick Leave for Federal ContractorsAUG. 5, 2015

He also chastised abortion opponents in Congress for threatening to shut down the federal government in an effort to cut off taxpayer financing for Planned Parenthood, saying such a move could damage the economy at a time of global volatility.

"A shutdown would be completely irresponsible," Mr. Obama said. "It would be an unforced error, a fumble on the goal line."

Mr. Obama's executive order on paid leave was his latest use of executive power to change the rules of the American workplace and was designed to appeal to his union base. A fight over trade this year ruptured the usual alliance between the Democratic president and the organized labor movement.

The executive order will have no real effect until after Mr. Obama's presidency. Because it must first go through a public comment period, it will apply only to new federal contracts starting in 2017. But the White House hopes it will set a standard that will prod lawmakers, private employers, and state and local governments to expand their leave policies.

Speaking in shirt sleeves to more than 700 people at a Boston hotel, a relaxed Mr. Obama appeared almost gleeful as he went after the Republican presidential candidates as a group. He also singled out a few of them, including Gov. Scott Walker of Wisconsin and Gov. Chris Christie of New Jersey, by ridiculing recent statements they have made, although he did not mention their names.

He noted that one candidate (Mr. Walker) said his battles with labor unions would prepare him to take on terrorists, and that another candidate (Mr. Christie) said a teachers' union deserved a punch in the face. After each, he asked with a smile and disdain, "Really?"

Mr. Obama, who invited labor leaders to fly with him here on Air Force One, said the "constant war against unions" undermined regular workers. "It reminds me of something our old friend Ted Kennedy used to say," he said. "What is it about working men and women they find so offensive? Why are they so mad about folks just trying to make a living?"

At a campaign stop later in the day at the Pink Cadillac Diner in Rochester, N.H., during a motorcycle tour of the first primary state, Mr. Walker defended his battle with unions and portrayed Mr. Obama as a tool of entrenched interests.

"It's clear the president stands with the big-government union bosses," Mr. Walker said. "We stand with the hard-working people." He said his actions were "pro-taxpayer" and "pro-worker," adding: "I think the president and his allies fear us more than anybody else

in this race because they know we don't just talk about it; we get it done. We fight, we win, we actually get results."

During his speech here, Mr. Obama made no mention of his support for new free trade agreements with Asia and Europe, which has deeply angered many of the union leaders and Democratic political leaders he was addressing. Among those on the dais was Senator Elizabeth Warren, the Massachusetts Democrat with whom he quarreled bitterly in the spring over legislation authorizing him to negotiate trade pacts like one with 11 other Pacific Rim nations.

Led by Ms. Warren and egged on by labor union leaders, most of Mr. Obama's fellow Democrats voted against him in Congress on the trade negotiation measure, which passed only with the active leadership of Republicans. As he sought to repair the rift on Monday, Mr. Obama emphasized his working-class message after the speech with a stop at Union Oyster House, where he ordered clam chowder to go. He also gave Ms. Warren a ride back to Washington on Air Force One.

The paid leave order is the latest move by Mr. Obama to use his power over federal contracts to institute changes on a small slice of the labor market when he cannot persuade Congress to enact those measures for the whole country. Among other things, he has signed orders requiring contractors to pay higher minimum wages, banning retaliation against workers who discuss their compensation, providing employees more information about their pay and protecting gay and transgender workers from discrimination.

Mr. Obama's assertive exercise of his authority over federal contactors has generated objections from business groups that argue he is going too far and from lawmakers who complain that he is circumventing the legislative process. Critics say he is piling expensive directives onto companies doing business with the federal government as a sop to his political base without accounting for additional costs.

The National Federation of Independent Business, while acknowledging that Mr. Obama has the authority to place conditions on federal contractors, said his latest action was another burdensome government mandate on private firms.

"No business in America would require its suppliers and contractors to increase costs that will naturally boomerang back in the form of higher prices," said Jack Mozloom, the federation's media director. He said any call by the president to follow suit would ignore the fact that most employers are small businesses that cannot afford the benefit.

The president's order will guarantee both full- and part-time federal contract workers an hour of paid sick leave for every 30 hours worked, for a total of up to seven days a year. The workers could use the leave to care for themselves, a member of their family, a domestic partner or another loved one, or they could take the leave to recover from domestic violence, sexual assault or stalking.

Officials said the order would affect about 300,000 workers who otherwise would not have paid sick leave and grant other workers more days than they would otherwise have. Cecilia Muñoz, the president's domestic policy adviser, said the rule should not cost taxpayers more because the benefits of a more efficient work force should outweigh any additional expenditures.

Social media e-discovery: its time is here

Tech Support

By Dera J. Nevin, Canadian Lawyer, September 7 2015

Dera J. Nevin is the director of e-discovery services at Proskauer Rose LLP. The opinions in this article are entirely her own.

Social media and its derivatives are prevalent with many people using social media as their dominant communications channel, preferring some in-app messaging tools to e-mail. Corporations, too, are using these media to target and communicate with their customers. Ignore these sources and you leave potentially game-changing evidence on the table.

Early social media case law largely addressed whether privacy concerns mitigated the obligation to identify, review, and produce social media communications. It was thought that accessing these sources of information was too intrusive. In all jurisdictions in Canada, those questions seem to be settled, largely as social media has become familiar even to judges.

Social media is, without doubt, discoverable and producible if relevant, not only because courts have understood that the point of social media is the erosion of privacy, but also because courts have largely adopted the view that privacy will not trump discoverability of evidence as long as there isn't an impact on third-party interests. Also, redaction tools have improved.

A quick review of recent discovery case law shows that social media is used as evidence in all manner of cases, but it is particularly prevalent in personal injury, employment, family, criminal, and theft of IP or unfair competition matters. And that makes sense: These are primarily personal tools. Furthermore, social media are frequently pictographic or representational: Shorter text accompanies pictures, but this text is economical and direct. It is compelling evidence.

Social media are today's e-mail of yesterday: It's where people display their emotions and thoughts, communicate in real time, and exchange important collateral information, such as photographs, videos, and voice recordings. Moreover, since many people access their social media accounts on mobile devices (such as their phones) and either turn "geolocation" services on within social media apps or have otherwise poor privacy practices, collection of social media yields valuable metadata including date and time stamps for posts.

Embarking on social media discovery is a bit like going on a safari: Everyone knows of and wants to see the Big Five (LinkedIn, Facebook, Twitter, Instagram, Pinterest), but if you look closely, there is an abundance of channels in the social media ecosystem. Spend time early in fact discovery identifying potential sources of social media and custodian interviews. My standard form custodian interviews include developed scripts for social media investigation, tied closely to my scripts on mobile devices and cloud computing.

Many corporations have dedicated teams for their corporate social media accounts. Companies troll LinkedIn for candidates or have writers developing content. Companies tweet and have Facebook and Instagram profiles. A quick Google search (or a search within an app) can help you identify any accounts held by a corporation.

The same searching techniques are available to identify social media accounts for individuals, except a search alone is not conclusive because individuals can both implement privacy settings on their accounts to screen them from search and create profiles using a name other than their legal name. I always directly ask my opponents about their social media activities whether in oral examinations or written interrogatories.

Beware of your ethical responsibilities when working online and ensure you are avoiding behaviour that regulators have identified as irresponsible or unethical. This is particularly important when using social media against an individual litigant, represented or otherwise. Regulators that have issued opinions on the ethical use of social media have noted that “friending” someone in order to gain access to their profile information is never appropriate. It is also not appropriate to invent a fictitious profile to lurk on opposing litigants’ pages. Generally, I stop at Google and in-app searches for public information and then ask opposing parties for information from the accounts I have uncovered.

Once you have identified target social media, you need to develop a plan for its collection. For public accounts (and by this I mean accounts where the entire profile is made public and visible over the Internet), it is possible to collect the information by using a collection tool. The one I use most frequently is X1 Social Media because it can defensibly capture and reassemble most public social media channels. While I always recommend electronic (native) capture of social media, there are times when I have captured screen shots or printouts of postings — particularly where I have been concerned an opposing party would disable or hide an account. The screen captures (with date stamps) have been helpful in proving the existence of the account and content at the time of the screen capture.

Where accounts are subject to privacy settings, access to the account may be required, and collection will fall to the account holder to implement. Some apps, such as Facebook and Google+, have developed in-app collection capabilities. There are excellent guides available about how to use these tools, and I frequently use Google Takeout to collect anything on Google Drive. I always ask my client to temporarily change the password to something innocuous before turning over the account to me or a third party for collection, and then immediately re-change the password after collection.

The value of a proper collection is that metadata is preserved. The metadata might include information to align the elements of social media with each other (re-aggregating the page when reassembled after collection). However, many social media have geolocation or geotagging capabilities and the metadata can reveal a lot about the post and where the user was at the time of the post. This information will not be available if social media is not collected electronically.

There are additional and idiosyncratic challenges associated with social media collection. For example, Twitter can “cap” the number of tweets it retains, meaning the longer you

leave collection of Twitter, the more likely it is that "older" messages will be difficult to retrieve. However, social media collection is becoming increasingly documented and is currently a hot topic in the CLE circuit, so there's no longer any reason to avoid this valuable source of evidence.

Who's afraid of future law?

BY DERA J. NEVIN, Legal Insights & Practice Trends, Canadian Bar Assocation, September 9, 2015

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We need technology to adapt and grow our existing legal institutions and the very fabric of law. Technology extends our reach; it can also change the way we understand the world, and a different world view can itself be a precursor to discovery, including of new laws.

The recent CBA Conference in Calgary, AB explicitly invited lawyers to consider the future of law and of legal practice. As always, this year's Conference offered the opportunity to network with peers, but also time and space to think about the future and what it holds. Keynote speakers, including Chief Justice McLachlin, asked lawyers to embrace new technology. Conference sessions explored topics such as innovative legal practices, work life balance, and protecting confidential client information in the digital age. Vendors in attendance demonstrated a range of technology to assist in the delivery of legal services and the identification of legal resources and precedent.

I had the privilege of participating on a panel about artificial intelligence and the law with Ian Kerr, professor of law at the University of Ottawa and Noah Waisberg, CEO of Kira systems (a technology that automates elements of contract review). These men are innovators in legal thinking and practice and our panel's discussion ranged from the abstract to the practical, but consistent themes of our discussion were that technology could help lawyers accomplish more with less, but would require us to work, and possibly think, differently.

New technology is at once a challenging and an optimistic promise: change, even if welcome, is difficult and stressful, and change management is hard, even when change is planned. Many lawyers experience technology innovation as unplanned, and therefore unwelcome. In my discipline, eDiscovery, I frequently encounter reluctance to use

technology to enhance the ability to retrieve and categorize documents. In response to ever-growing volumes of fact documents (or legal documents, like case law), most people instinctively rely on technology and taxonomic systems that are familiar to them so they won't have to absorb change. Rather than rely on metadata and document hashing to identify unique document and label them, lawyers still insist on typing up schedules to affidavits manually, even though these list serve a narrower function in document identification for the record than unique document identifiers that can be automatically generated (for free) by a computer. Some lawyers are attached to solutions to past problems that have been mostly rendered moot by the new technologies; they don't yet trust the new solutions to new problems.

So it was not surprising to me that a participant in the CBA session on Artificial Intelligence and the Law spoke nostalgically of the Canadian Abridgement. I miss the Abridgement too, but because it's familiar, not because it's necessarily better. I learned legal research through Halsbury's and the Abridgement. When I was a law student, these were excellent taxonomies within books, the most compelling organization technology for law available at the time. The taxonomies were necessary because books are an inert technology that cannot be easily searched. Paper is a powerful technology that has served humankind well for a couple thousand years. When paper, combined with the technologies of the modern alphabet and of the printing press, met widespread literacy (the skill required to use those aforementioned technologies), the result was an economic revolution. Paper is incredibly useful, but has its limitations. However, because the taxonomic systems for searching paper are good for that purpose (locating a case in a book), it does not necessarily follow that these taxonomies are themselves inherently good, just that they were useful in solving the problem generated by that technology.

For example, Halbury's and the Canadian Abridgement have no entries for some more recent human dignity interests, such as marriage equality, which rights did not widely exist under that system of technology and information organization. When a technology or taxonomy of information is upended, we can sometimes see the blind spots in the prevailing world view, and the shake up allows for the collision of previously disparate ideas into a new understanding of the world around us and the information it holds and, possibly, of justice. These changes are unlikely causal, but some changes can be correlated.

New technology introduces normative, ethical and practical questions and our laws will, over time, respond to all of these questions. So it will not surprise me when new technologies already invented and those to come change our understanding of what the law should be, and how we produce and consume it. Technology changes society, and changes in society change our understanding of what laws are needed.

Almost always, technology itself is neutral, usually neither moral nor immoral, and so much depends on its application. Technology generally serves to enlarge us, to extend our reach outside ourselves. Fire helped us warm ourselves when the sun was not

present. Boats and the wheel extended our range and sphere of motion. The lens enabled us to see far and see close. The telephone helps us hear far away, to speak to someone not present. These technologies improve the range and strength of our physical bodies and of our senses. Other technologies ingrate with our mental and imaginative faculties; many directly extend the reach and power of our brains. Computers extend computational speed and accuracy. Portable devices extend (though perhaps do not improve) our memories by externalization of information. Artificial intelligence applications may extend our ability to access repositories of information. All of this will happen whether we as lawyers wish this or not, because it is happening in society; as lawyers, we are uniquely positioned to help shape legal discourse and response to these changes.

eDiscovery has evolved as a discipline only because people and the organizations they belong to adopted optical and digital means for creating and storing information. Because the law retains the discovery processes associated with the adversarial system and disclosure of paper-based information, it has adapted that system imperfectly to the search, retrieval and presentation of digital information. Our current eDiscovery framework is a hybrid of the computational process for creating and storing information with the fact gathering processes invented by the courts in the nineteenth and early 20th century, when fact finding was a manual process performed by a single researcher or small team of learned experts. However, increasingly, facts are on-line and accessible and algorithms increasingly automate fact finding. Over time, fully accessible on-line facts may have a more pronounced impact on our system of dispute resolution than the invention of “eDiscovery”, which is the canary in the coal mine of technological change. In the future, we may dispense with existing notions of discovery and its function altogether.

I won’t pretend to know what the future will look like, but I do know the future needs us as lawyers to embrace and incorporate technology into the law and our practice of it. Indeed, law is itself a technology for organizing society, and an adaptive and flexible one. Societies we describe as lawless often lack basic technology. To embrace new technologies in the delivery of our services is to improve the very technology we’ve chosen as our calling.