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New cabinet committee signals shift in litigation strategy: Cotler

Committee chair Dominic LeBlanc assigned as a 'babysitter' to the justice minister, say Tories.
Peter Mazereeuw, The Hill Times, August 31 2016

The Trudeau government's new Cabinet Committee on Litigation Management is likely a first in Canada, and could signal a new approach to the way the government handles lawsuits, says former Liberal justice minister Irwin Cotler.

The move comes with the government tied up in 42,000 legal suits with a range of actors, according to the Justice department, including the politically-charged Equitas Society benefits suit by Afghan veterans, and a range of First Nations claims that could—if they lose too many—put the feds on the hook for hundreds of billions of dollars in liabilities, committee chair and Fisheries Minister Dominic LeBlanc (Beauséjour, N.B.) told the CBC.

The official opposition is lambasting the government for naming Mr. LeBlanc as chair of the committee instead of the federal justice minister, going so far as to call him a "babysitter" for Jody Wilson-Raybould (Vancouver Granville, B.C.) on the committee.

Ms. Wilson-Raybould says the committee was her idea, and that not being the chair will allow her to "more fully engage" in discussions around the committee table.

Managing from the top

The government announced the creation of the Litigation Management Committee during its Aug. 22 mini-shuffle of cabinet responsibilities. The committee is intended to support the justice minister by reviewing the government's litigation strategy and considering the legal, financial, and policy implications of litigation involving the federal government.
Cabinet committees are comprised only of government ministers, and meet behind closed doors regularly to help manage government priorities.

Right now, the government is staring down about 42,000 legal cases, including 29,000 in which Canada is the defendant or respondent, 5,000 where Canada is the plaintiff, applicant, or

appellant, and 8,000 in which Canada is an interested third party, according to Justice Canada spokesperson Andrew Gowing.

Some of those suits are political hot potatoes, and pursuing them in court has generated the sort of headlines that make politicians shudder—for example, the CBC's, ''Hauling veterans back to court over benefits a 'disgrace,' opposition says" from May 18.

The Litigation Management Committee could be a way for some of the government's top lieutenants to manage those suits and develop a cohesive political strategy to deal with, for example, the many suits involving First Nations in Canada, in a less confrontational way, said Mr. Cotler and Nelson Wiseman, director of the Canadian Studies Program at the University of Toronto.

"I'm quite certain there has never been such a committee in the history of Canadian politics," said Mr. Wiseman.

Neither Mr. Cotler nor another former justice minister, ex-Conservative MP Peter MacKay, could recall such a committee having existed before either, though Mr. MacKay noted that such matters would have been handled in one of the central operations cabinet committees.

The Privy Council Office did not respond to a request to confirm whether that was the case. "This government must be anticipating some very high-profile and perhaps protracted and difficult litigation on the horizon," said Mr. MacKay, who pointed to the Equitas suit as well as potential liabilities linked to the Liberal government's promise not to buy the F-35 fighter jet.

Litigation a justice minister's 'core' responsibility

Both Mr. MacKay and Conservative and NDP justice critics singled out the decision to name Mr. LeBlanc as chair of the committee as unusual or worse.

"If I was Jody Wilson-Raybould, I would be pretty upset that anyone other than the justice minister is chairing this committee," said Mr. MacKay, now a partner at the Baker and McKenzie law firm in Toronto.

Mr. LeBlanc was named chair of the seven-member committee, while Status of Women Minister Patty Hajdu (Thunder Bay-Superior North, Ont.) was made vice-chair. Ms. Wilson-Raybould was named as one of the regular members of the committee.

The legal and financial implications of government litigation “are matters that fall squarely within the core responsibilities of the minister of justice and attorney general,” said Conservative deputy justice critic Michael Cooper (St. Albert-Edmonton, Alta.).

“[Naming Mr. LeBlanc as chair] raises serious questions about whether the prime minister has confidence in the minister of justice and attorney general,” said Mr. Cooper.

“I can’t understand why it is that he would see the need for Dominic LeBlanc to be a go-between, a babysitter of the minister of justice on areas that fall squarely within her core responsibilities,” he said.

NDP Justice critic Murray Rankin (Victoria, B.C.) stopped short of criticizing the decision to install Mr. LeBlanc as chair, but said it did raise questions as to why Ms. Wilson-Raybould (Vancouver Granville, B.C.) was not given the job.

In an emailed statement, Ms. Wilson-Raybould responded to those criticisms by saying that “as the chief law officer of the Crown, I am responsible for conducting all litigation for the federal government. This committee does not change this fact.”

“This cabinet committee will review litigation from many angles, including finance, policy, and law, and will be an opportunity for my colleagues to provide input more broadly. Not being chair will allow me to more fully engage in these discussions,” said the statement.
Ms. Wilson-Raybould recommended that the committee be created as part of her review of the government’s litigation strategy, the statement said.

Several sources pointed to Mr. LeBlanc’s political experience and close relationship with Prime Minister Justin Trudeau (Papineau, Que.) as the reason for his appointment as chair of the committee, including Mr. MacKay.

“It’s because he’s politically savvy, and he’s a trusted pair of hands in the mind of the prime minister and he’s close to the prime minister,” he said.

Both Mr. LeBlanc and Ms. Wilson-Raybould are lawyers.

However, the decision to appoint a minister with an unrelated portfolio to lead the cabinet committee was also typical of the Trudeau government so far.

Sport and Disabilities Minister Carla Qualtrough (Delta, B.C.) leads the Open and Transparent Government and Parliament Committee, not Democratic Institutions Minister Maryam Monsef

(Peterborough-Kawartha, Ont.). Health Minister Jane Philpott (Markham-Stouffville, Ont.) leads the Growing the Middle Class Committee, not one of the ministers that help manage the economy. Heritage Minister Mélanie Joly (Ahuntsic-Cartierville, Que.) leads the Environment, Climate Change, and Energy Committee, and Natural Resources Minister Jim Carr (Winnipeg South Centre, Man.) chairs the Defence Procurement Committee.

Under the last majority Conservative government, cabinet committees were almost always chaired by a minister responsible for a related portfolio.

Go back further, however, and there are exceptions. During the 2008-2011 minority Conservative government, the Environment and Energy Security Committee was chaired for roughly two years by John Baird while he served as Minister of Transport, Infrastructure, and Communities. During that time—from October 2008 to October 2010—Jim Prentice was serving as environment minister, while Lisa Raitt and Christian Paradis handled the Natural Resources file.

Mr. Paradis took over the role of chair of the Environment and Energy Security cabinet committee about nine months after taking on the Natural Resources file. Mr. Baird served as environment minister both before and after his time as chair of that committee.

During the first Harper minority government from April 2006 to September 2008, that same cabinet committee was chaired by Mr. Prentice while he served as the Indian affairs and northern development minister, then by Tony Clement while he served as health minister.

Judicial discipline needs more public input

Alex Robinson, Law Times, August 30 2016

Alberta Judge Robin Camp's upcoming hearing concerning misconduct allegations will likely shine a spotlight on the judicial discipline system this fall, as the federal government looks to reform the process.

While Justice Canada has announced a consultation to examine how the process can be changed to deal with delays and significant costs that observers say have damaged the public's confidence in the system, legal scholars say there is a pressing need to go beyond the reforms being discussed.

The changes discussed in the consultation paper consider giving the public more of a role in the process, but legal scholar Adam Dodek says the reforms need to make laypersons full members

of the Canadian Judicial Council, which is responsible for overseeing the judicial discipline process.

"They're looking at much more tinkering than serious wholesale reform," says Dodek, who is vice president of the Canadian Association for Legal Ethics — a nonprofit that submitted comments in the consultation.

In 2014, the CJC issued a paper discussing a number of potential reforms. The CJC then adopted changes after a consultation period, which included attempts to cut out duplication in the process and to include a member of the public on one of its panels. Justice Canada's new consultation paper was released this summer, recognizing more needs to be done.

Dodek says the Canadian Association for Legal Ethics would like to see a "much broader reform of the Canadian Judicial Council and the discipline process than is currently envisioned in the consultation document, which we see as overly narrow."

In its submission, CALE proposed four key recommendations that it urged the federal government to consider in any reforms.

The first of these was that the CJC should look at the way other self-regulating professions, such as lawyers, conduct disciplinary proceedings.

The other key recommendations included that members of the public, or laypersons, should be full members of the CJC and that they should be involved in all steps of the judicial discipline process.
Review panels must have one layperson, but the other committees in the process do not include members of the public.

"Ultimately, this is about public confidence in the administration of justice and representatives of the public are best positioned to speak for the public," Dodek says.

Osgoode professor Allan Hutchinson says judges may be reticent to allow members of the public on to the CJC because of fears they will lose their independence, but they do not need to be.

"It doesn't wave 'bye to independence because the judges can no longer exclusively discipline themselves," he says.

"It shows a more mature system, which involves judges, of course, but allows other responsible

parties to ensure they're maintaining the standards they set for themselves."

Hutchinson says opening up the process and making it more transparent would go a long way toward ensuring the public's confidence in the system.

"Justice needs not only to be done but seen to be done. . . . If they want to continue to maintain the respect of Canadian society, they need to show that it's not a closed shop they're operating," he says.

Observers say long, drawn-out inquiries into judicial conduct over the last decade have highlighted problems in the process.

"The main problems have been that they have been allowed to be bogged down in procedural issues and judicial reviews and that most of these inquiries go on for a number of years," Dodek says.

"And that's really in nobody's best interest."

Dodek says the process can be cumbersome for judges who are living under a cloud of allegations and hope to clear their name. Delays also do little to cement the public's confidence in such a system, he says.

Camp's disciplinary hearings will begin in September and will concern allegations he made inappropriate comments during a sexual assault case in 2014.

Legal observers say his trial will likely highlight the process as others have.

"Every hearing that comes up exposes different problems in the process," Dodek says.

"They all tend to expose the problem of how long and cumbersome these inquiries have become, but different problems arise in different challenges. I'm sure the Camp inquiry will raise different challenges."

Ordinary citizens must get more say in disciplining judges, legal ethics group says

Ian MacLeod, the Ottawa Citizen, August 30 2016

Ordinary citizens must get more say in disciplining judges accused of misconduct, a legal ethics group is urging federal officials scrutinizing how high court judges are judged.

The advice from the Canadian Association for Legal Ethics comes as the disciplinary inquiry for Federal Court Justice Robin Camp is to begin in Calgary Monday. He faces a reprimand for berating a 19-year-old woman during the trial of a man accused of raping her. Camp acquitted the man, but his ruling was overturned on appeal and a new trial is scheduled.

Then an Alberta provincial court magistrate, Camp has since acknowledged he was insensitive and his comments were inappropriate. He could be removed from the bench by the Canadian Judicial Council (CJC), the federal watchdog for superior court chief justices and associate chief justices.

The case is one of three high-profile incidents in recent years involving alleged judicial misconduct. Justice Canada is reviewing the CJC's disciplinary process.

The department posted an online discussion paper June 30 on reforming the system, including the need for transparency and accountability. There was no public announcement of the paper's release, nor was it highlighted on the department's homepage, say legal observers. The deadline for submissions is Wednesday.

At present, the only way for people who are neither judges or lawyers to participate is to be named to the sole lay position on CJC review committees that determine whether an alleged misconduct is serious enough to warrant the judge's removal from office. If so, it recommends an inquiry committee be struck and hold a full hearing before three to five judges and lawyers, but no lay people.

Responding to the discussion paper, the Canadian Association for Legal Ethics wants ordinary people given full roles in regulating federal judges.

"This is largely a judge-driven process, you don't have a strong sense of the public's involvement in the process. It looks different from a lot of other modern, regulatory approaches," said Alice Woolley, the association's president and a University of Calgary law professor.

Another key issue is the need to clarify the applicable standards for judicial behaviour, she says.

"There should be some sense in advance of what the outcome (of the complaint-disciplinary process) is likely to be. It is really hard to get a sense of what is really bad behaviour by a judge,

what is somewhat concerning behaviour and what is behaviour that may seem odd to the public but is actually just fine," she said.

"It is really important that judges … be able to make those tough calls that might be unpopular, but independence cannot become a licence to do whatever."

Now-retired Manitoba associate chief justice Lori Douglas was the subject of a CJC hearing into allegations she failed to disclose the existence of nude, online photographs of herself when she applied to become a judge in 2004, and that the photos could undermine public confidence in the justice system.

Douglas retired in 2015 after a settlement with the council that included abandoning the inquiry, which took more than three years and reportedly cost at least $3 million. The CJC has changed its bylaws to so it can respond faster to complaints and complete inquiries sooner.

In another case, Quebec Superior Court Justice Michel Girouard was accused in 2010 of trying to buy cocaine before he was appointed to the bench. A CJC inquiry panel concluded the allegation could not be proven, but said Girouard's testimony was not credible and recommended he be removed. The CJC rejected the advice.

Federal Justice Minister Jody Wilson-Raybould and Quebec Justice Minister Stéphanie Vallée recently asked the council to reconsider and reopen the inquiry.

Justice Canada quietly seeks input on how federal judges are disciplined

Federal government considers changes to Canadian Judicial Council amid high-profile cases in Quebec, Alberta

Alison Crawford, CBC News, August 31 2016

The federal government may change how judges are disciplined in Canada, and it wants the public's ideas.

But act quickly: a consultation process announced quietly in June with a single tweet ends on Wednesday.

Justice Canada wants input on — among other things — how judges should be punished, whether taxpayers should foot the bill for their appeals, and how to speed up what is often a long, clunky discipline process.

"It's cumbersome, it's unprofessional, it's out of step with how modern professional regulation tends to look, and it doesn't involved the public in any meaningful way," said Alice Woolley, who teaches law and is president of the Canadian Association for Legal Ethics (CALE), which has responded to the government's call for input.

Complaints about judges' conduct are made to the Canadian Judicial Council (CJC), which investigates, holds hearings and makes recommendations to the minister of justice about whether judges should be removed from the bench.

Next week it begins a public hearing into the conduct of Federal Court Justice Robin Camp, who apologized after making insensitive and inappropriate comments about a sexual assault victim in 2014 when he was a provincial court judge in Alberta.

Camp's case has progressed quickly compared to other high-profile cases over recent years.

By contrast, the first request to review the conduct of Quebec Superior Court Justice Michel Girouard — who is accused of buying cocaine before being appointed to the bench — was made in 2010, yet his case is ongoing.

Earlier this year the Canadian Judicial Council decided Girouard could go back to work.

Justice Minister Jody Wilson-Raybould and her Quebec counterpart asked the CJC to reopen the case.

Public consultations close Wednesday

Justice Canada announced its public consultation at the end of June and has asked questions about what role the public should play in investigating judges' conduct, whether there should be deadlines for different steps of the review process and how to be more transparent at the time of a public hearing. It has also asked for suggestions on how to streamline the entire process.

Yet the only way Justice Canada notified the public was through a single tweet linking to its public consultations website at 4 p.m. on June 30, which, Woolley pointed out, was the Friday before a long weekend. The consultation period ends Aug. 31.

"I think it is very inadequate and I'm concerned about that, but I do think starting the conversation about reforming is really a good thing and important," she told CBC News.

In its submission, CALE recommends members of the public be involved in all steps in the judicial discipline process, judges pay to appeal any decisions and that the CJC expand the range of sanctions for misconduct.

"CALE believes that the lack of intermediate sanctions has led to an all-or-nothing approach where disciplinary sanction has not been available for findings of misconduct which are thought to fall short of justifying removal," reads the submission.

The group recommends Justice Canada give the CJC latitude to order suspensions, apologies, counseling and education, as well as to issue warnings and reprimands.

A spokesman for Justice Canada said the department also wrote directly to representatives of the judiciary, the Canadian Bar Association, the Federation of Canadian Law Societies, the Council of Canadian Law Deans, as well as the provinces and territories and to individuals who had been involved in past inquiries.

Andrew Gowing said in addition to CALE, the department has heard from the CJC and the Canadian Superior Court Judges' Association as well as some provinces and six members of the public, and expects to hear from the other organizations and provinces shortly.

Accès à l'information : un automne à surveiller

Brigette Bureau, ICI Radio-Canada, le 1er septembre 2016

Par exemple, le ministère de la Santé et le ministère de l'Immigration, des Réfugiés et de la Citoyenneté ne nous ont toujours pas remis des documents demandés il y a près de 10 mois.

Rappelons que le délai prévu par la Loi sur l'accès à l'information est de 30 jours. La loi permet des prorogations dans certains cas, par exemple, si la demande nécessite une recherche importante.

Or, à ma connaissance, nos demandes ne nécessitaient aucune recherche.

En novembre dernier, après l'assermentation du premier conseil des ministres du gouvernement Trudeau, nous avons envoyé des demandes d'accès à l'information à 13

ministères, afin d'obtenir les cahiers de breffage et les documents d'information remis aux nouveaux ministres.

C'est une pratique courante pour des journalistes de réclamer ces cahiers - souvent caviardés - qui offrent tout de même une vue d'ensemble éclairante du fonctionnement des ministères et des enjeux de l'heure.

Aucun des 13 ministères n'a respecté les 30 jours prescrits par la loi.

Et près de 10 mois plus tard, deux des ministères nous font toujours languir.

Quand Santé Canada et Immigration Canada nous enverront, enfin, les cahiers de breffage réclamés, il y a fort à parier que les priorités, les enjeux et les problèmes de ces ministères auront changé...

Une loi sans mordant

La Loi sur l'accès à l'information est désuète et son application, défectueuse. La commissaire à l'information, Suzanne Legault, le dit et le répète depuis des années.

Le gouvernement Trudeau a pourtant promis de faire mieux.

Le président du Conseil du Trésor, Scott Brison, a déjà annoncé certains changements pour faciliter l'accès à l'information, comme l'élimination de tous les frais - mis à part les 5 $ initiaux par demande.

Mais les changements en profondeur restent à venir.

Le gouvernement a tenu des consultations en ligne, qui ont pris fin le 30 juin dernier.

De son côté, le Comité permanent des Communes de l'accès à l'information a aussi déposé, en juin, un examen en profondeur de la Loi sur l'accès à l'information.

Ce comité a formulé 32 recommandations, en vue de faciliter grandement l'accès aux documents gouvernementaux.

Les consultations terminées et les rapports déposés, les regards se tournent maintenant vers le ministre responsable, Scott Brison, et son équipe.

Bientôt un projet de loi

Le Secrétariat du Conseil du Trésor confirme que la prochaine étape est le dépôt d'un projet de loi pour améliorer l'accès à l'information cet automne - ou au plus tard au début de 2017 - suivi d'un examen complet d'ici 2018.

De son côté, la commissaire à l'information, Suzanne Legault, se montre encouragée, dans un blogue publié en juillet, par « les signes positifs de la volonté du gouvernement à améliorer le régime d'accès à l'information ».

Mais Mme Legault avait un message pour le gouvernement :

« Le prochain test demeure toutefois la concrétisation de ces engagements par la présentation d'un projet de loi promis par le gouvernement à l'automne. Ce projet de loi doit être audacieux et à la hauteur des attentes grandissantes du Comité parlementaire, des institutions et des demandeurs d'accès. »

Une façon diplomatique de dire au gouvernement qu'il est temps de passer de la parole aux actes.

Marion Buller, head of MMIW inquiry, says 'don't expect to hear from us right away'

Families of victims say lack of communication is a source of mounting frustration
Catharine Tunney, Tim Fontaine, CBC News, August 31 2016

The chief commissioner of the inquiry into missing and murdered Indigenous women and girls in Canada says it could be a while before the panel will have much to reveal about its work.

"We're going to go carefully and respectfully, so don't expect to hear from us right away," Marion Buller told CBC *Power & Politics* host Rosemary Barton on the eve of the inquiry's start.

Next week the commission will start meeting to plan the inquiry's process and get to know each other. Buller said the first time the five met in person was at the Canadian Museum of History in Gatineau, Que., for the inquiry's official launch in early August.

The commission officially starts Thursday and runs until Dec. 31, 2018, at an estimated cost of $53.8 million, higher than the $40 million earmarked in the budget.

'Satisfied' with terms of reference

"The good thing about the inquiry — it isn't just me. There are four other commissioners. It's going to be a team effort ... we have a lot of groundwork together," Buller said.

But she said it "may be some time before the hearings actually start."

"I just hope the public expectation is somewhat qualified by the fact that tomorrow we're starting at square one, we're going to develop our own processes and it's going to take some time."

Frustrated families

But advocates and families who've lost loved ones say they've been frustrated by the lack of information from the newly appointed commission. They've been waiting to hear what the inquiry will look like and what its first steps will be.

Mag Cywink, whose sister Sonya Cywink was killed in London, Ont., in 1994, said she understands the commission has to deal with staffing, planning and other logistics, but the lack of regular updates has added to mounting frustration and confusion.

"I'm sure that it's going to take time, but put something out there so we [families] at least know," she said.

Manitoba New Democrat MLA Nahanni Fontaine said she's been trying her best to answer questions and concerns from families in Manitoba, but it's been a difficult job without information.

"Not a good start. They really should be sending out some updates to families across the country," she said.

Vancouver headquarters

The commission has so far made one hire, a public relations contractor.

Malcolm Bernard of Ottawa-based Interplay Media said more details will emerge in the coming weeks.

He did confirm the commission's headquarters will be located in Vancouver and that more staff

will be hired soon, including an executive director and lead counsel.

"There'll be no formal business for the next couple of days, it's literally getting infrastructure in place so that they can take phone calls from people like families."

The panel's final report will be highly anticipated. The families have been demanding an inquiry for years. With that in mind, Buller said she's "not daunted, but careful."

The commission will examine the factors driving a systemic, high rate of violence against Indigenous women and girls, and the role of various institutions, including police forces, governments and coroners' offices.

Buller, British Columbia's first female First Nations judge, said the inquiry will look at those underlying issues through traditional hearings, collecting statements and sifting through a mountain of research, including existing reports, studies and past inquiry findings.

"I think we're ready to move forward with a new relationship between Canada and Indigenous peoples across Canada," she said.

The commission has the authority to summon witnesses, compel documents and can refer matters to police. However it can't find anyone criminally liable, a sticking point with some critics.

Buller said she's "satisfied" with the terms of reference.

Ball ends in government's court

"The other terms of reference do not require us to reinvestigate closed cases. We are not empowered to have our own separate police investigators," she said.

Buller said she, and the other commissioners, know it'll be a painstaking two years but she'll rely on the "strength and courage" of family members of the missing and murdered Indigenous women to "move forward."

"It's going to be difficult and I accept that," she said.

Buller said it's the commission's responsibility to propose concrete and realistic recommendations, "after that it's up to the government and there's really nothing we can do to control their decisions."

Before she was appointed to the provincial court bench, Buller worked as a civil and criminal lawyer. She also led an initiative to open the province's first First Nations court, taking a restorative justice approach to sentencing on criminal and family court matters.

The commission's interim report is due before Nov. 1, 2017, and a final report with their expectations a year later.

Citizenship only requirement to vote, say two expatriates denied ballots

Ian MacLeod, The Ottawa Citizen, August 29 2016

Citizenship – and nothing more – guarantees the right to vote, say two disenfranchised Canadian expatriates whose legal struggle to reclaim their votes is headed to the Supreme Court of Canada in a case affecting more than one million non-resident Canadians.

Gillian Frank, a Toronto native, and Jamie Duong, a Montreal native, wanted to vote in the 2011 general election but, since both work at U.S. universities, were refused online ballots under a 1993 Canada Elections Act rule that bars citizens from voting if they've lived outside Canada for more than five years.

The rule was loosely enforced until 2007, when the then-Conservative government said expats' short-term visits back home no longer reset the five-year clock, as had been the practice.

Frank and Duong, who maintain close ties to Canada through family and other interests, took the federal government to court in 2014 and had the law struck down for violating Section 3 of the Charter of Rights, which states: "Every citizen of Canada has the right to vote."

The decision, however, was overturned by the Ontario Court of Appeal in June 2015, again preventing the pair from casting ballots in last fall's election. The appellate court found the Section 3 violation was saved by Section 1 of the Charter, which guarantees rights and freedoms, "subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society."

The majority on the court reasoned that "the electorate submits to the laws because it has had a voice in making them. This is the social contract that gives the laws their legitimacy."

The dispute is to go before the Supreme Court in February.

“In this era of a global community, many Canadian citizens who reside outside the country for employment-related or other reasons, maintain strong ties to Canada and care deeply about the country, are prevented from having a voice in the political direction of the country, even while many others, who may be less connected or concerned, are allowed to vote,” Frank and Duong say in written arguments just filed with the top court.

“If being a citizen is not sufficient to sustain the individual’s connection to Canada for the purpose of voting, then making the effort to engage in the act of voting itself evidences the connection and obviates the need for arbitrary and overly broad limitations.”

The appellate court’s notion of preserving the social contract, they say, was never the intention of Parliament when it created the law and was raised by government for the first time at the Court of Appeal.

Even if voting rights could be tied to it, a social contract must mirror the Charter and reflect the inclusive Canadian vision of democracy and history of progressive enfranchisement, they say. “There is no rational connection between limiting the right to vote and preserving the social contract, given that the legitimacy of the social contract should depend on the right to vote for all citizens.

“The impact of laws may be one measure of an individual’s connection to the country, but it is not the defining feature of our right to vote. The defining feature, as determined by the framers and adopters of the Charter, is citizenship.”

The impact of laws may be one measure of an individual’s connection to the country, but it is not the defining feature of our right to vote

Their 113-page factum raises other legal issues, including the arbitrary nature of the Election Act’s five-year grace period. As well, many other Canadians abroad are entitled to vote, regardless of how long they have been absent, including members of the military, government workers, employees of certain international organizations and individuals who live with people in exempt categories.

The government’s factum for the case is not yet available.

Les expatriés privés de leur droit de vote présentent leurs arguments

Colin Perkel, Le Devoir, le 30 août 2016

Aucun objectif urgent ne peut justifier l'interdiction faite aux expatriés canadiens de longue date de voter aux élections, un droit par ailleurs garanti par la Constitution, plaident les deux requérants dans leur appel en Cour suprême.

Dans leur mémoire déposé au plus haut tribunal du pays, Gillian Frank et Jamie Duong soutiennent que la résidence au Canada ne constitue pas une condition essentielle au droit de vote. Ils estiment aussi que la Cour d'appel de l'Ontario, dans une décision partagée (2-1), n'aurait pas dû valider la décision d'Ottawa afin de préserver le *« contrat social »* conclu entre le gouvernement fédéral et la population.

Ils soutiennent que les débats parlementaires n'ont jamais évoqué cette notion de « contrat social » pour justifier une telle privation du droit de vote pour les Canadiens qui sont installés à l'étranger depuis plus de cinq ans. Les requérants plaideront aussi que les parlementaires n'ont jamais évoqué la thèse selon laquelle les non-résidents ne devraient pas avoir le droit de vote parce qu'ils ne seront plus touchés par les lois adoptées ensuite par les élus au Parlement.

La Cour suprême du Canada doit entendre l'appel en février prochain. Jusqu'ici, les gouvernements du Québec et de la Nouvelle-Écosse ont demandé à intervenir.

La loi touche en théorie jusqu'à 1,4 million de Canadiens, mais selon des données, un très petit nombre ont tenté de se prévaloir de leur droit de vote lors des plus récentes élections. Le premier ministre Justin Trudeau et d'autres libéraux ont promis de réformer la loi.

La loi électorale avait été modifiée en 1993, mais c'est le gouvernement conservateur de Stephen Harper qui l'avait appliquée pour la première fois en 2007. La Cour supérieure de l'Ontario avait invalidé ces articles en 2014, mais la Cour d'appel a ensuite infirmé cette décision en 2015.

« Les impôts [des requérants] *vont à Washington, pas à Ottawa »*, avaient rappelé les deux juges majoritaires de la Cour d'appel, dont le juge en chef.

Pas tout à fait juste, rétorquent les requérants, qui rappellent que de nombreux expatriés paient des impôts au Canada, et qu'une telle privation de leur droit de vote fait d'eux des citoyens de seconde classe, sans voix au chapitre. Ils soutiennent aussi que les lois adoptées par les élus peuvent avoir un impact sur les expatriés.

Le juge dissident de la Cour d'appel, John Laskin, avait plutôt conclu que le droit de vote est uniquement lié à la citoyenneté, pas au lieu de résidence.

Les requérants citent par ailleurs une décision de la Cour constitutionnelle d'Afrique du Sud, qui concluait en 2009 que les expatriés qui déploient tous les efforts pour aller voter démontrent *« la persistance de leur attachement »* à la mère patrie.

Crown prosecutors seek to skip conciliation step, move to strike option

Court backlog looms after 97% of Crown prosecutors reject latest contract offer from New Brunswick government

Bobbi-Jean MacKinnon, CBC News, September 1 2016

The union representing Crown prosecutors in New Brunswick wants the labour board to declare an impasse in contract negotiations with the province to give them the right to strike "sooner rather than later," likely before the end of the year.

It comes after 97 per cent of members rejected the government's latest offer of a one per cent wage increase for each of the next four years, said Steve Hindle, a vice-president with the Professional Institute of the Public Service of Canada.

"The government doesn't seem to be willing to change its position and it's not giving us any indication that further discussions would result in any material difference to a tentative agreement, so we would be encouraging [the labour board] to say we're at a deadlock," said Hindle.

"Based on the current state of affairs, I think it's very likely that we will see some job action by the Crown prosecutors probably by the end of 2016," he said, possibly sooner if the labour board agrees to skip the conciliation board step as being nothing more than a "pro forma exercise."

Hindle expects a decision by the New Brunswick Labour and Employment Board as early as this month.

A strike would result in "a significant backlog" in the court system, primarily provincial court, said Hindle.

Only 28 of the province's 61 prosecutors would be deemed essential and continue to work through any job action to handle "the more serious cases."

"There is going to be an awful lot of waiting that people will have to do if they're expecting a court date," he said, urging the province to "consider making a better offer."

Lowest salaries in Canada

New Brunswick's prosecutors have been without a contract since March 31, 2013.

They are the lowest paid prosecutors in the country, earning between $42,562 and $115,804, said Hindle, referring to 2009 statistics, the latest available figures and the ones used in the current negotiations.

By comparison, prosecutors in neighbouring Nova Scotia are paid between $56,096 and $125,000, while those in Ontario have the highest salaries at between $74,520 and $196,965.

"It's completely unacceptable for the government to offer our members a symbolic one per cent wage increase and no improvements in their working conditions after years of salary freezes and an ever-increasing workload," Chris Titus, president of the New Brunswick Crown Prosecutors' Association, said in a statement.

"All we're asking is to be compensated fairly for our efforts and expertise."

Government remains 'hopeful'

The PIPSC sees pensions as deferred wages and says it may be time to explore including them as part of contract negotiations, like other compensation.

Vicky Deschênes, a spokeswoman for the Department of Human Resources, said it would be "premature for government to comment on the details."

But she described it as "an active file."

"The bargaining process has not been exhausted and we remain hopeful the parties will reach an agreement," she said.

Hindle said wages are "the big stumbling point."

But he also believes "pent up frustration" over the government's switch to a shared-risk pension model for public service employees — and the ongoing lawsuit — has also played a role.

"We think of it as the total compensation that the province gives to its employees and even though it wasn't at the bargaining table, pensions has been hanging over the relationship with this government and the previous government and it's affecting how people deal with the offer," he said.

'If that's what it takes, then that's what it takes.'- *Steve Hindle, PIPSC*

Hindle contends it might be time for the government to consider legislative changes to allow pension arrangements to be handled through contract negotiations.

"It's part of compensation, so why isn't it negotiable? It's a legitimate question," he said.

"I'm not suggesting that the answer is it has to be negotiable, but I am suggesting an exploration of the question is not out of order."

No talks are currently scheduled, said Hindle.

"We always prefer to have a negotiated agreement … without having to resort to using the labour capital that we control, but in the end if that's what it takes, then that's what it takes."

The Professional Institute of the Public Service of Canada represents approximately 55,000 scientists and other professionals across Canada's public sector.

New Brunswick Crown Prosecutors Massively Reject Government Offer, Stand Their Ground

PIPSC Press Release, August 30, 2016

New Brunswick Crown Prosecutors represented by the Professional Institute of the Public Service of Canada say they are determined to obtain a fair agreement after overwhelmingly rejecting the provincial government's most recent contract proposal, with 97 per cent voting against accepting it.

"It's completely unacceptable for the government to offer our members a symbolic 1% wage increase and no improvements in their working conditions after years of salary freezes and an ever-increasing workload", said Chris Titus, President of the New Brunswick Crown Prosecutors' Association. "All we're asking is to be compensated fairly for our efforts and expertise. We're the lowest paid Crown prosecutors in the country."

"Faced with this outright rejection, the Government of New Brunswick needs to revise its offer significantly if it wishes to truly resolve the labour dispute," added PIPSC Vice-President Steve Hindle. "Pending a new fair proposal, we will consider, with our members, what options to pursue, including possible job actions."

"The citizens of New Brunswick deserve a justice system which works well, and that starts with competent, properly compensated professional prosecutors," concluded Hindle.

The Professional Institute of the Public Service of Canada represents some 55,000 scientists and other professionals across Canada's public sector, including some 60 Crown Prosecutors employed by the Government of New Brunswick. The collective agreement between the Government of New Brunswick and its Crown Prosecutors expired March 31, 2013.

More than 100 Canadians have opted for assisted death since law passed

Federal government is required to record assisted deaths but has yet to begin tracking numbers
Catherine Cullen, CBC News, September 2 2016

Doctors and nurse practitioners have helped hasten the deaths of more than 100 Canadians since the federal law governing medical aid in dying was passed in June.

The actual number of deaths is probably significantly higher because several provinces could not, or would not, provide complete data. Quebec, which was the first province to adopt a law on doctor-assisted death, provided no data whatsoever.

The federal law governing medical aid in dying came into effect June 17, after weeks of passionate, and sometimes very personal, political debate. However, the federal government isn't yet officially tracking the number of deaths.

CBC News called all 13 provinces and territories in an effort to find out:

- Ontario's coroner recorded 49 cases of medically assisted death.
- British Columbia reported 46.
- Alberta's provincial health authority said there were 15 cases.
- Manitoba had eight recorded cases.

- The Yukon, New Brunswick and Nova Scotia all declined to provide a precise number, citing privacy concerns.
- Nunavut, Northwest Territories, Prince Edward Island, and Newfoundland and Labrador all said they had no reported deaths during that two-month period.
- Saskatchewan said there were fewer than five cases.

Newfoundland and Labrador did have one request. "The individual; however, died of natural causes before the service was provided," said a Health and Community Services official.

Officials in Nova Scotia explained their reasons for declining to provide numbers: "Essentially, these are very small numbers and the risk of an infringement of confidentiality or distress for families who may identify with the numbers have resulted in our decision to not provide the numbers."

'Things seem to be proceeding relatively well with respect to availability of physicians and interpretation of federal legislation'- *CMA spokesperson*

In Quebec, where a provincial law has made doctor-assisted death available since December 2015, the Ministry of Health and Social Services said it could not provide a figure yet. An official said the ministry was supposed to receive the data by the end of September.

Federal government isn't counting...yet

The new law requires the federal government to come up with guidelines for what data should be recorded when someone asks for a medically assisted death. But that hasn't happened yet.

"These regulations could include specifying the kind of information to be provided, the body that would analyze the information, and how often reports would be published," said a spokesperson for Health Minister Jane Philpott.

Right now the government is still working on an interim protocol to track the numbers.

There are also dozens of medically-assisted deaths that took place before the legislation was passed.

Initially, when the Supreme Court declared it was unconstitutional to stop suffering Canadians from accessing medical aid in dying, the court gave the then-Conservative government 12 months to put a new law in place.

When the Liberals came into power, the court granted that government a four-month extension, but said, during that time, Canadians who wanted a doctor's help to die could apply to a provincial judge for permission . There was also a brief period of time after the Supreme Court's deadline expired where there was no new federal legislation in place.

'Things seem to be proceeding relatively well'

One group that represents Canadian doctors said things seem to be off to a fairly good start.

The Canadian Medical Association has generally been supportive of the government's approach on this issue. It just wrapped a general meeting with members in Vancouver in August.

"Based on anecdotal reports from CMA members, things seem to be proceeding relatively well with respect to availability of physicians and interpretation of federal legislation, " said a spokesperson in a statement.

However, one civil rights group has already launched a legal challenge, saying Canadians who are suffering, but not nearing the end of life, should still be able to access medical assistance in death. An official with the justice minister's office said it was the only legal challenge of the legislation.