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Press Clippings for the period of September 29 to October 6, 2014
Revue de presse pour la période du 29 septembre au 6 octobre 2014

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

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Un automne occupé à la Cour suprême

Hugo de Granpré, La Presse, le 30 septembre 2014

(Ottawa) La Cour suprême du Canada aura un automne occupé, alors qu'elle s'apprête à entendre des appels dans des dossiers chauds comme l'abolition du registre des armes d'épaule, l'aide médicale à mourir et l'abolition de la prière au conseil municipal à la Ville de Saguenay. Un nouveau juge québécois doit aussi être nommé pour remplacer Louis LeBel, qui prendra sa retraite à la fin du mois de novembre.

Registre des armes à feu

Le litige qui oppose le gouvernement du Québec au gouvernement du Canada sur l'abolition des données du registre des armes à feu non restreintes sera entendu le 8 octobre. Québec, qui souhaite conserver le registre, affirme que cette abolition unilatérale est inconstitutionnelle. La Cour supérieure lui a donné raison, mais la Cour d'appel a infirmé ce jugement.

Aide médicale à mourir

Le dossier Carter sera entendu une semaine plus tard, le 15 octobre. Vingt ans après son arrêt historique dans l'affaire Sue Rodriguez, la Cour devra déterminer si l'interdiction criminelle de l'euthanasie et du suicide assisté est toujours valide. La décision pourrait avoir des répercussions importantes sur les nouvelles règles adoptées au Québec. Ottawa, en effet, plaide dans cette cause qui émane de la Colombie-Britannique que ses compétences en matière criminelle ont préséance sur les compétences provinciales dans le domaine de la santé. C'est en vertu de ces compétences que Québec a justifié l'adoption de son projet de loi 52, la Loi concernant les soins de fin de vie. Le gouvernement québécois est intervenu dans le dossier.

La prière à Saguenay

La veille, le 14 octobre, l'appel dans le dossier Mouvement laïque québécois et Alain Simoneau contre la Ville de Saguenay et son maire, Jean Tremblay, sera entendu. Les appelants demandent que la récitation de la prière cesse au conseil municipal et que les symboles religieux comme le crucifix soient retirés des salles de délibération. Le Tribunal des droits de la personne leur a donné raison, mais la Cour d'appel du Québec a infirmé la décision.

Peines minimales constitutionnelles?

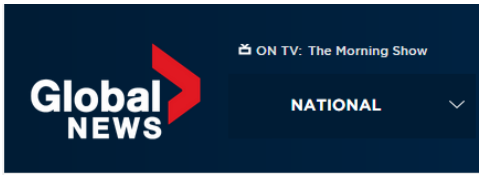
Trois semaines plus tard, le 7 novembre, les peines minimales chères au gouvernement Harper seront à l'ordre du jour dans les dossiers Nur et Charles, qui émanent de l'Ontario. Les deux hommes ont plaidé coupables à l'infraction de possession d'arme à feu prohibée et chargée, mais ils ont contesté la peine minimale de cinq ans d'emprisonnement qui y est rattachée. La Cour d'appel de l'Ontario a déterminé que cette peine minimale porte atteinte au droit à la protection contre toute peine cruelle et inusitée de l'article 12 de la Charte canadienne des droits et libertés.

Dernier recours pour Réjean Hinse

Trois jours plus tard, le 9 novembre, la victime d'erreur judiciaire Réjean Hinse retournera devant la Cour suprême du Canada. L'homme condamné à 15 ans d'emprisonnement pour vol qualifié dans les années 1960, mais acquitté par la Cour suprême 30 ans plus tard, réclame 12 millions de dollars au gouvernement fédéral, qu'il accuse d'avoir exacerbé le préjudice qu'il a subi en refusant de reconnaître et de corriger l'erreur. Il a réglé à l'amiable avec la Ville de Mont-Laurier et le gouvernement du Québec pour plus de cinq millions de dollars et la Cour supérieure a ordonné à Ottawa de lui verser près de 6 millions $, mais la Cour d'appel a infirmé la décision.

Nouveau juge du Québec

Le gouvernement Harper, enfin, devra nommer un nouveau juge du Québec pour remplacer Louis LeBel, qui doit prendre sa retraite à la fin du mois de novembre, car il est arrivé à l'âge de la retraite obligatoire. M. LeBel pourrait continuer à entendre des causes jusqu'à la fin de son mandat, mais un remplaçant devrait tout de même entrer en poste d'ici deux mois. Or, le gouvernement n'a pas encore annoncé de successeur, ni le processus en vertu duquel il sera nommé. Les ratés connus lors de la nomination du juge Marc Nadon ont poussé le gouvernement fédéral à revoir le bien-fondé du processus actuel.



Supreme Court to hear long-gun registry, assisted suicide, mandatory minimums this fall

Laura Stone, Global News, September 30, 2014

OTTAWA – Canada's top court will hear cases this fall that could impact the Conservatives' tough-on-crime agenda.

The long-gun registry, assisted suicide and mandatory minimum sentences for gun crimes are all on the docket at the Supreme Court of Canada, with potentially huge ramifications for the government.

The first case takes place on Oct. 8. The Quebec government is taking Ottawa to court over the destruction of long-gun registry records, which Quebec argues is unconstitutional. The issue is: can the federal government order the Quebec registry to be destroyed?

The Conservatives repealed the registry – a major platform promise – in 2012, in every province but Quebec.

On Oct. 15, the high court will revisit the issue of assisted suicide, which is illegal in Canada.

The court will consider whether or not it's a crime to help someone, typically suffering from a degenerative disease, to end their lives – an issue first debated in 1993 during the Sue Rodriguez case, which upheld the law.

This year's case essentially considers the same arguments of whether the section of the Criminal Code violates someone's Charter rights – except this time the plaintiffs say the "moral values" of the country have changed.

Based on filings with the court, the government will argue "absolute prohibition" on assisted suicide – saying it is necessary to protect the vulnerable.

Fun fact: Chief Justice Beverley McLachlin was also on the bench during the Rodriguez case, and was among the dissenting opinions.

Another two cases to watch will be heard together on Nov. 7, and consider whether mandatory minimum sentences for weapons offences constitute "cruel and unusual punishment."

The first has to do with a 19-year-old offender in Ontario who received a three-year sentence for possessing a fully loaded pistol at a community centre. And the second deals with a repeat offender with two prior convictions who received a seven-year sentence for illegally possessing a loaded semi-automatic gun.

Both pleaded guilty, but challenged their mandatory sentences.

Other cases this fall will consider:

- whether an airgun, or BB gun, constitutes a firearm;
- the proper representation of aboriginal people on juries;
- if religious objects in public violate someone's freedom of religion and right to dignity.

Conservatives can't resist one last kick at the union scapegoat

JIM STANFORD, Special to The Globe and Mail, October 6, 2014

Enmity for organized labour has been a key feature of the Conservative brand ever since the Harper government came to power. Laws imposing contracts, banning strikes, cutting pensions, and limiting union freedoms have figured prominently in the legislative agenda. And throwaway swipes at union bosses, inflexibility, and fat contracts regularly pepper party communications, from ministerial speeches to fund-raising letters.

Perhaps union-bashing was once a potent button for Conservatives. Whatever ailed the economy, they could blame "big labour" – and many recession-fatigued Canadians would agree. More recently, however, the calculus of anti-unionism has changed. Union-bashing may be doing more harm than good to Conservatives (both federally and provincially). How will this influence the Harper strategy leading to next year's election?

A key moment in this sea change was June, 2013, when the government suffered an extraordinary defeat at the hands of Conservative Senators. Bill C-377 (nominally a private members' bill about union financial reporting, but in practice a broad attack on unions overseen directly by the Prime Minister's Office) was amended in the Senate – so dramatically as to defeat its purpose. The amendments were backed by 16 Conservatives,

led eloquently by Hugh Segal, who pilloried the bill as "flawed, unconstitutional, and technically incompetent."

The bill was also denounced by privacy experts, constitutional lawyers, and investment and insurance executives (aghast at the requirement that any union payment over $5,000 must be disclosed). The amended bill went back to the Commons – but then the Prime Minister prorogued parliament, and the whole process started over. The Conservatives re-introduced C-377, unamended, last October, but signalled it would likely die on the Senate order paper.

Fast forward a year, however, and it seems the government wants to take another kick at the "big labour" scapegoat. They want to change Senate procedural rules to limit debate on private members' bills. They've resuscitated C-377 from the dead for second reading, and are also accelerating another anti-union private members' bill: C-525, which makes it harder to form a union, and easier to get rid of one. The new procedures would allow the government to push both bills through with less fuss. Senator Segal, meanwhile, has retired – although that alone won't flip the outcome since the initial vote to amend it wasn't even close (49-33, with 7 abstentions).

C-377 would probably never take effect anyway, even if passed, since it almost certainly violates provincial constitutional authority and federal privacy standards. But that's beside the point for the Conservatives. With a year (at most) to the next election, it is an opportunity to distract voters from a disappointing economy and Mike Duffy, buff their business-friendly credentials, and – above all – motivate their core supporters. A reinvigorated crusade against union bosses will certainly sell well with the hard-core base (the ones who write cheques and hand out leaflets). But will it help with the broader electorate? Not anymore.

In addition to the C-377 debacle, several other labour issues unfolded badly for the Conservatives (and their provincial counterparts) in the last year. Ottawa backtracked dramatically on its Temporary Foreign Worker program in the face of public outrage – opposition led by unions. In Ontario, PC leader Tim Hudak self-immolated in fiery anti-union rhetoric. In B.C., Premier Christy Clark's attempt to paint the teacher's union as public enemy number one backfired; she finally withdrew (after a needless three-month strike) her plan to unilaterally seize control over classroom sizes. Even in Alberta, the least unionized province, new Premier Jim Prentice quickly abandoned two confrontational (and likely unconstitutional) anti-union pension bills, told by MPPs they were hurting badly in their constituencies.

Where unions were once portrayed as greedy and unruly, they now survive (and even win) by successfully positioning themselves as defenders of public interest and universal rights. This reframing of the union message has been essential in their recuperated influence. Unions cannot be seen as "special interest" groups, enriching their own members at the expense of consumers or taxpayers. They must be seen as an institutional bulwark on the side of all those who work for a living, defending vulnerable people within a social order that is increasingly lopsided. As unions succeed in that effort, the political value of union-bashing will continue to erode.

But this lesson will likely be lost on the federal Conservatives. They are desperate to change the political channel, and eager to throw one more bone to their strident base. In that case, it is safe to expect more anti-union rhetoric in the year ahead.

Cyberbullying bill C-13 moves on despite Supreme Court decision

JOSH WINGROVE, The Globe and Mail, October 1, 2014

A federal cyberbullying bill that includes controversial new surveillance powers – and immunity for telecommunications companies that voluntarily hand over private data to police – has taken another step toward becoming law, despite a recent Supreme Court ruling that critics say is at odds with the bill.

Bill C-13, which had sat idle in Parliament since MPs adjourned for summer, passed in a vote at its report stage Wednesday shortly after a separate vote that capped the amount of time that will be spent in the House debating it.

Bill C-13 makes it illegal to circulate an intimate image without the subject's consent, but also includes a host of new "lawful access" powers, such as new warrants for police access to online data, phone records or for digital tracking. Critics have warned the bill's thresholds for warrants are too low and that the cyberbullying law is too broad and vague.

The bill also grants immunity to telecoms that voluntarily hand over data, a sticking point raising privacy concerns. The Supreme Court's Spencer decision in June ruled that warrants are generally required when seeking subscriber information from telecoms.

In Wednesday's brief debate on the bill, Justice Minister Peter MacKay insisted C-13 is needed to give police the tools to fight cyberbullying, including high-profile cases such as Rehtaeh Parsons, Amanda Todd and Jamie Hubley. He brushed aside questions of whether the bill will be found unconstitutional in the wake of the Spencer decision.

"We believe strongly that this not only passes constitutional muster, but it does what it is intended to do, and that is allow police with judicial oversight to do proper investigations that protect the public at large," Mr. MacKay told the House of Commons.

Mr. MacKay insisted the bill "does not create warrantless access" to information, saying it's an "incorrect, factually wrong statement" to say otherwise. However, the bill plainly opens the door to police getting information without a warrant – through the immunity

provisions that apply broadly, not just to telecoms, which received 1.2 million data request from law enforcement agencies in 2011.

“We know the Supreme Court has already quashed one of the clauses … because it provided access to data without a warrant,” NDP MP Charmaine Borg said in the House, questioning Mr. MacKay. “… His bill allows people to have warrantless access to data with no judicial verification. Is he prepared to say that [the bill] is constitutional? Because the Supreme Court has already said that it is not.” Mr. MacKay said the question was a “false dichotomy.”

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Supreme Court strikes down court fees for barring access to justice system

Courts have the right to charge administrative fees, but they can't be so high as to prevent litigants from accessing the legal system, the Supreme Court of Canada says.

Canadian Press, Toronto Star, October 2, 2014

OTTAWA—The Supreme Court of Canada has ruled that British Columbia has the right to charge administrative court fees, but they can't be so high as to prevent litigants from accessing the legal system.

The justices say the effect of the B.C. fee scheme would be to deny some people access to the courts, so they struck it down as unconstitutional by a 6-1 margin.

It is a landmark ruling on the issue of public access to the courts.

The case stems from a child-custody dispute in which a woman said she could not afford the $3,600 she was charged for a 10-day trial.

B.C.'s superior court originally ruled the fees unconstitutional, because, while the very poorest are exempt, they still apply to other people of modest means and prevent them from pursuing their legal claims.

The B.C. Appeal Court agreed but widened the exemption to include other people in need.

CBABC applauds Supreme Court of Canada ruling and Access to Justice win

Canadian Bar Association, British Columbia Branch, October 02, 2014

(October 2, 2014) Vancouver, BC – The Canadian Bar Association, BC Branch welcomed today's Supreme Court of Canada ruling declaring civil hearing fees unconstitutional.

In a landmark decision, by a majority of 6:1, the Supreme Court of Canada today ruled court fees to be a barrier to access to justice, not just for very poor people, but for people of modest and middle incomes as well. This decision affirms the earlier judgment of Supreme Court of BC Justice Mark McEwan in Vilardell, which had been overturned in part at the Court of Appeal of BC.

"The highest court in our country has sent a strong message to all provincial governments that imposing fees on people who face financial barriers to accessing the courts is no longer acceptable," said Alex Shorten, CBABC President. "Access to our courts is a protected right, not just for those who are 'indigent' and could have their fees waived, and not just for those who have significant financial resources. This decision confirms the same right exists for anyone for whom the payment of court fees may impact on their ability to fund other essentials – the modest and middle-income majority, for whom access to justice has become a very real challenge."

The Canadian Bar Association, BC Branch (CBABC) was an intervenor on the Vilardell case at the Supreme Court of BC at the request of Justice McEwan, and again on the appeal. The CBABC and the Trial Lawyers Association of BC (TLABC) jointly pursued the case as parties at the Supreme Court of Canada, on the basis that it provided a unique opportunity to challenge the constitutionality of provincially-imposed court fees (in essence 'user fees') for people who require access to the courts to resolve a legal dispute. It is the position of the CBABC that access to the courts is a protected right in Canada, and court fees are a barrier to access. CBABC co-counsel Sharon Matthews, QC and Dr. Melina Buckley, who have been dedicated champions to the cause of access to justice for decades in Canada, provided their legal expertise pro bono on behalf of the CBABC at all three levels of court.

"Today's verdict is a huge win for the public in the fight for Access to Justice," says CBABC President Alex Shorten. "Removing barriers to access to the courts is what this case was all about. The CBABC was represented by exceptional pro bono counsel Sharon Matthews, QC and Dr. Melina Buckley, working in partnership with lead TLABC

counsel Darrell Roberts, QC. We are grateful for their tenacity and dedication to both the legal profession and the public's right to access justice. We say thank you to the many lawyers involved in this fight, and to Access Pro Bono BC and West Coast LEAF, who also contributed to today's ultimate success."

"This ruling has far-reaching impact across the country in terms of a resounding statement of the legal principles that support equal access to justice," added Shorten. "On behalf of our 6,900 members in BC, I am proud of the advocacy work of the CBA and our role as both intervenor and party in the ongoing fight to protect access to justice across Canada."

Unvetted Quebec judge Clément Gascon takes Supreme Court seat

SEAN FINE, The Globe and Mail, October 5, 2014

The first judge in a decade to join the Supreme Court of Canada without any parliamentary scrutiny takes his seat Monday, just in time for a fall session featuring important cases on assisted suicide, religion in the public sphere and an Ottawa-Quebec dispute over gun-registry data.

Justice Clément Gascon of Quebec is a commercial law expert with little background in criminal law. No selection panel of parliamentarians put his name on a shortlist. No public hearing was held in Parliament about his appointment. And Prime Minister Stephen Harper did not cite any of his rulings when he named the 54-year-old Montrealer to the court.

Justice Gascon, who has declined to give interviews since his appointment in June, fills a spot that has been empty for a year, the longest vacancy in the court's 139-year history. Mr. Harper had chosen Justice Marc Nadon for that spot last September, but the Supreme Court ruled him ineligible.

After the Nadon rejection, the federal government chose not to use a panel made up of government MPs and opposition members in winnowing down candidates to a short list of three, or to hold a public hearing in Parliament at which the judge could be questioned.

"One of the byproducts of the Nadon fiasco is 'we're going to blame the process, instead of looking at ways to fix it. We're just going to appoint whoever we want.' There's no sense of the considerations that fed into the government's ultimate pick," University of Ottawa law professor Carissima Mathen said.

Asked about the criticism, Clarissa Lamb, a spokesperson for Justice Minister Peter MacKay said "these appointments have always been a matter for the executive and continue to be."

Where Justice Nadon was described as a "vocal arch-conservative" by author Rosemary Sexton – whose husband Edgar was a colleague of his on the Federal Court of Appeal – Justice Gascon is more comfortable in applying precedent than in striking out in new directions, a Quebec observer said. "He is not going to be pushed by his own thoughts about what the Constitution should be; he will be trying to decipher what it is, and how to apply it to the detailed facts at hand," lawyer Simon Potter of Montreal says. He describes him as a judge of "absolute intellectual rigour."

In his first two weeks, he will almost certainly be asked to take part in three intensely watched cases. The biggest of the three is a test of when judges should defer to Parliament and when they should make policy. The Criminal Code prohibits helping a person to die by suicide. The question for Justice Gascon and the rest of the court is whether that prohibition is so shockingly unfair to sick people in extreme pain that the government must scrap it.

The other two are Quebec cases. One asks whether the Saguenay municipal council's use of Christian prayer before its meetings and its display of Christian symbols violate a duty of neutrality and the constitutional rights of non-believers. In the other, Quebec will try to persuade the Supreme Court that it should support "co-operative federalism," and not allow the Conservative government to destroy the data from its defunct long-gun registry. Quebec wishes to use the data for its own registry.

And next month, a central feature of Mr. Harper's crime agenda, mandatory minimum jail sentences for illegal gun possession, will be challenged as a form of cruel and unusual punishment.

Justice Gascon is Mr. Harper's sixth appointee to a nine-member court that has handed the Conservative government a series of stinging defeats, softening its crime laws. He was not on the secret list of six candidates drawn up by the Prime Minister's Office and the Justice Department a year ago, a list obtained by The Globe.

Justice Gascon spent two years on the Quebec Court of Appeal, and 10 years on the Superior Court. He did not sit on the Superior Court division that deals with criminal cases. He wrote a 2009 ruling giving bank customers the right to sue in a class action. A former labour lawyer with Heenan Blaikie in Montreal who worked for the employer side, he ruled against the unions in a major 2003 challenge to federal employment insurance. Had he been vetted by a parliamentary selection panel, he would have had to choose five of his rulings to submit, and the public would have been able to read them after he was chosen.

The son of a doctor, Justice Gascon is a father of three married to a Quebec judge. He could spend two decades on the court; mandatory retirement age is 75. He has led seminars for judges in how to write judgments.

Liberal MP Irwin Cotler, a former justice minister who developed the country's first process for involving Parliament in the selection of Supreme Court judges in 2004, said "secrecy" harms the integrity of the Supreme Court, and is unfair to Parliament, to Quebec and to the judge himself.

"There's nothing here to hide, and everything to be gained by a public, inclusive process," he said in an interview.

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New PCO Clerk Charette takes on 'battered' PS, reform issues in federal election year

MARK BURGESS, The Hill Times, October 6, 2014

With a background on both sides of the often thorny relationship between bureaucrats and political staff, new Privy Council Clerk Janice Charette "is particularly suited to manage that tension," an eminent public administration expert says, as she takes on a federal public service reeling from cuts, low morale, a battered public perception and a lack of trust with elected officials.

For the first time in more than five years, the federal public service has a new chief starting Oct. 6, with the retirement of the long-serving Wayne Wouters, who was appointed in July 2009. Ms. Charette, the PCO's deputy clerk since January 2013, has moved into the job. Michael Wernick, who ended eight years as deputy minister for Aboriginal Affairs in July, takes over as deputy clerk.

Donald Savoie, a leading expert on the machinery of government who holds a Canada Research Chair in public administration and governance at the Université de Moncton, said there will always be an element of distrust between politicians and the bureaucracy.

"Janice Charette is particularly suited to manage that tension," he said in an interview. "She knows both worlds. She has worked in both worlds. I think she would be extremely adroit in managing that tension."

She can "explain to both sides how the system can work better and take advantage of the skills of both the political side and the public service side. I think she's particularly well-suited to do that," he said.

The change in clerk comes as the public service faces a number of challenges: competition with other sources of information for providing advice to government; distrust and tension between politicians and bureaucrats; a blueprint for reform that needs implementation; and a battle between the government and public sector unions over sick leave following thousands of job cuts over the last three years. The federal government has cut an estimated 26,000 jobs over the last three years and is planning to eliminate another 8,900 jobs by 2017, according to the plans and priorities reports and the Parliamentary Budget Office.

University of Ottawa research professor Ralph Heintzman published a paper for think-tank Canada 2020 in June calling for a "charter of public service" or "moral contract" that would set clear borders between the bureaucracy and the elected government.

In its submission to the Blueprint 2020 exercise—Mr. Wouters' broad consultation for public service reform that many are calling his legacy—the Association of Professional Executives of the Public Service of Canada (APEX) called for a recommitment to codes of conduct for public servants and ministers and for "more structured learning opportunities for ministers, their staff, and public servants to develop a better mutual understanding of their respective roles and responsibilities."

Prior to becoming deputy clerk in January 2013, Ms. Charette held several senior positions, including deputy minister of Human Resources and Skills Development, chairperson of the Canada Employment Insurance Commission, deputy minister of Citizenship and Immigration and associate deputy minister of Health.

She also worked as chief of staff to former PC leader Jean Charest from 1997 to 1998. As a public servant, she worked on secondment in former prime minister Kim Campbell's office and also as a departmental liaison in the ministerial offices of former PC Cabinet ministers Michael Wilson and Don Mazankowski. It's this experience that Mr. Savoie said would help her bridge the traditional political-bureaucratic divide.

"There's no question the federal public service is crying out for some sense of direction," Mr. Savoie said. "I think it's been battered about, not just the past 10 years, but it's been battered about for the last 20-30 years. In some ways it's lost its moorings. It's not anchored like it used to be, in terms of knowing it was there to provide evidence-based policy advice, it was there to deliver programs in a professional manner."

Part of the problem has been the trend across English-speaking democracies to view "the latest management fad coming out of the private sector as a panacea to dress the public sector to look like the private sector," Mr. Savoie said, which has undermined the public service's values.

In his final report as chair of the Prime Minister's Advisory Committee on the Public Service, former Conservative and Liberal Cabinet minister David Emerson warned that public servants had to work to remain relevant amid the digital revolution and global economy.

The report recommended pushing authority down in the organization and empowering people to make changes; streamlining business processes; investing in learning and

leadership development, especially in middle management; and focusing on longer-term thinking.

Former clerk Mel Cappe, who served under prime minister Jean Chrétien, said keeping the bureaucracy relevant and attracting bright young people will be Ms. Charette's biggest challenge.

"I think the challenge is going to be adapting to the Twitterverse and modern communications and the transformation that's taking place in the political world, and keeping the public service relevant to be the privileged adviser to government," he said in an interview.

The clerk of the Privy Council is the country's top bureaucrat and reports directly to the prime minister. The Privy Council Office is staffed by about 850 full-time public servants who provide non-partisan support and advice to the Prime Minister's Office. The annual budget for the PCO for 2014-15 is $121-million.

Ms. Charette, 52, is the second woman to lead the public service after Jocelyn Bourgon, who was clerk from 1994 to 1999.

Everyone The Hill Times talked to for this article considered both Ms. Charette and Mr. Wernick immensely qualified and inspired choices for the top jobs, commenting on both their policy acumen and managerial capabilities. A PCO spokesperson declined interview requests with Mr. Charette and Mr. Wernick for this article.

But their tenure begins amid several challenges, not least of which is the timing. The pair will be dealing with a Prime Minister set in his ways and a government already in election mode, which will mean an implicit demand to avoid risk and having administrative issues become political ones. They will also have to prepare for a possible government transition following the next election, scheduled for Oct. 19, 2015.

"Leading and directing the public service of Canada at a time when a government has a new mandate or when there's new government is very different from moving into these positions at a time when we're moving toward the last year of the mandate of a government," Public Policy Forum president David Mitchell said in an interview.

"The role and responsibilities are not focused on setting an agenda, setting a pace for a mandate ahead but for concluding a mandate of a government that's been in office for a while, and also preparing for an election and potential transition. That's a very different kind of challenge and a different kind of skill set that's required."

Mr. Wouters also leaves just as the Conservative government prepares to table a surplus budget in 2015 after a period of austerity following the recession beginning in 2008.

Mr. Mitchell said much of the hard work is done now and that there's probably a sense of relief in the public service at the return to fiscal balance.

“We can now look forward to the elaboration of programs, the implementation of policy, the development of policy options in a very different environment, and I think that’s very positive,” he said.

Ian Clark, a former Treasury Board secretary and senior PCO official who’s now a professor at the University of Toronto’s School of Public Policy and Governance, said this wasn’t necessarily the case.

An anticipated period of slower growth combined with demographic changes leading to fewer workers will put pressure on federal finances, he said, so there will be “more reason than ever to focus on cost reduction and efficiency maximization within government.” And public service compensation as compared to the private sector will continue to require attention until the two are more comparable, he said.

Debi Daviau, president of public service union the Professional Institute of the Public Service of Canada (PIPSC), said she hopes the new clerk and deputy will demonstrate more independence from the Conservative government, particularly in the implementation of Destination 2020, Mr. Wouters’ reform document.

“We would hope that that they’re not sort of handcuffed to Conservative rhetoric in reaching their goals under Destination 2020. They’re going to need some new tactics,” she said in an interview.

Destination 2020, released in May, calls for new and innovative ways to engage, empower, and manage employees, and to communicate the public service brand. It proposes establishing a central “Innovation Hub” in the Privy Council Office to help departments apply new approaches to policy development, such as behavioural or “nudge” economics, big data and social innovation.

But some critics said the document showed a public service cut off from government and criticized its development in a silo, without participation from elected officials.

At a House of Commons committee meeting in June, NDP MP and Treasury Board critic Mathieu Ravignat (Pontiac, Que.) questioned Mr. Wouters for “glossing over” some of the major challenges facing the public service.

“He claimed that there was no trust issue, for example, between the government and the public service, [which] is just patently wrong,” Mr. Ravignat, a former public servant whose riding is home to many bureaucrats, told The Hill Times last week.

Part of the problem, he said, is that the Conservative government doesn’t want an independent voice in the Privy Council Office, so Ms. Charette will have her work cut out for her.

“I hope with Madame Charette that we can have an honest voice that can speak about the real conditions that the public servants are facing directly,” he said.

Liberal Treasury Board critic Gerry Byrne (Humber-St. Barbe-Baie Verte, N.L.) said there’s an “inherent conflict” in the clerk’s role under a Conservative government keen to

attack and politicize the civil service, making it a challenge to maintain the bureaucracy's integrity and professionalism.

"Their jobs will not be an easy one because if they do indeed do their jobs and stand up to a Prime Minister who has attempted to pervert and subvert the very core, the very function of the public service, this will inherently lead to conflict," Mr. Byrne said in an interview, describing Ms. Charette and Mr. Wernick's roles.

Mr. Mitchell also spoke of the challenge of generational change in the public service. Eleven deputy ministers or associate deputy ministers have retired already in 2014, according to a list provided by the PCO. This means a generational shift within the senior ranks has been taking place, Mr. Mitchell said, but attention now needs to be paid to getting emerging leaders into assistant deputy minister and director general positions.

In addition to Mr. Wouters' longevity and steady management during a trying period of austerity, Mr. Mitchell said the outgoing clerk's legacy is also his appointment of virtually everybody occupying a senior bureaucratic role.

During Mr. Wouters' tenure, the Prime Minister made 173 senior public service appointments on the clerk's advice, a PCO spokesperson said. This includes all but one current deputy minister.

"The public service that Janice Charette inherits, that Michael Wernick inherits, is very much the product of Wayne Wouters' role as architect of the modern public service of Canada, because he appointed every one of those leaders, including Janice Charette and Michael Wernick. I think his legacy, in that respect, is stability, continuity and providing a face to the public service that we know today," Mr. Mitchell said.

In their word

On Janice Charette

• PPF president David Mitchell: "I think her personality is extremely well-suited to addressing the engagement and morale issues that were identified in [Destination 2020]."

• Ian Clark, U of T: "Janice is no shrinking violet. She has a reputation for making gutsy moves."

• Former clerk Mel Cappe: "I think Janice is the perfect person at this time to be clerk. I don't mean 'at this time' being a caveat. I think she's a terrific, experienced and capable person with all the right values."

• Donald Savoie, Université de Moncton: "She is a safe pair of hands. I don't think you will hear any criticism of her appointment, so she's earned it. Full marks for her and to the PM for appointing her."

On Michael Wernick

• Ian Clark, U of T: “He’s kind of your ideal, central-casting role of deputy minister in terms of being a brilliant policy guy, a very good manager and leader.”

On outgoing clerk Wayne Wouters

• Former clerk Mel Cappe: “I think Wayne Wouters was an exemplary Clerk of the Privy Council in difficult times.”

• Liberal MP Gerry Byrne: “He’s done an excellent job. He certainly navigated some difficult waters… He clearly did not win every battle but I think his legacy will be of a civil servant of the highest caliber.”

La Cour suprême n'entend pas l'appel de la Fédération des médecins spécialistes

La Presse Canadienne, La Presse, le 2 octobre 2014

Les journées d'étude prises par les médecins spécialistes en 2002 leur auront coûté plus de 800 000 $.

La Cour suprême refuse d'entendre la Fédération des médecins spécialistes du Québec qui a perdu sa cause en cour d'appel au printemps dernier.

Un recours collectif avait été intenté en 2003 par le Conseil pour la protection des malades. L'organisme reprochait aux médecins trois journées d'étude prises à l'automne 2002 et à l'hiver 2003, journées où des examens et des chirurgies non urgentes ont été annulés.

Les médecins, qui réclamaient de meilleures conditions de travail, voulaient ainsi protester contre l'adoption d'une loi d'exception qui assurait la prestation continue de services médicaux d'urgence.

Le conseil a allégué que les médecins n'avaient pas le droit à ces moyens de pression, qu'ils devaient prodiguer des soins à leurs patients en vertu de la Charte des droits et libertés, de la Loi sur les services de santé et les services sociaux et du Code de déontologie des médecins.

Le conseil réclamait 7,5 millions. Un premier procès avait ordonné le paiement de 2,5 millions en dommages moraux et de 2 millions en dommages exemplaires. Mais la cour d'appel a réduit le premier montant à 837 750 $, annulé les dommages moraux et revu à la baisse le nombre de plaignants ayant droit au recours collectif.

C'est donc cette décision qui tient maintenant que la Cour suprême a choisi de ne pas entendre la cause. Le plus haut tribunal du pays ne donne jamais de raisons pour entendre ou non un appel.

MP asks government to change law on blood-alcohol samples

DYLAN ROBERTSON, Ottawa Citizen, October 2, 2014

Justice Minister Peter MacKay is mulling a request to extend the period during which police can obtain warrants for blood-alcohol samples from impaired drivers after accidents.

Potentially impaired drivers who are injured in a crash are often sent to hospital before police start investigating. In these cases, Criminal Code section 256 currently allows police four hours to get a warrant to for a blood sample if a physician believes the driver is unable to consent.

The issue arose after NDP MP Kennedy Stewart submitted a 1,000-signature petition in February urging the federal government to extend the four-hour period. A nurse from his Burnaby-Douglas riding was killed in a crash with an allegedly impaired driver. Facing a power outage, police criss-crossed a rural area of central B.C. to obtain and deliver a warrant, but were 13 minutes over the four-hour cutoff. As a result, they couldn't get the sample to ascertain the driver's blood-alcohol levels, and the driver was not tried.

In a written response to Stewart's petition, MacKay said "the Government of Canada is reviewing the proposal to increase the time period for the police to seek a warrant for blood samples under section 256." MacKay repeated his statement recently after Stewart, feeling the government was dragging its feet, re-submitted the petition.

MacKay's spokesperson, Clarissa Lamb, told the Citizen that the department is "reviewing the proposal." The government plans to introduce legislation possibly as early as this month on impaired driving.

Stewart, who was elected in 2011, says changing the law is a chance to step past "political football in the House" to prevent further such tragedies.

MacKay consulted with impaired-driving interest groups this summer, including Andrew Murie, CEO of Mothers Against Drunk Driving (MADD). But Murie says he's concerned that the well-intentioned proposal to widen the four-hour rule is not scientifically sound.

Harold Kalant, professor emeritus of toxicology at the University of Toronto, is also worried.

"Measuring the sample within two to three hours will probably not give you too wide of an uncertainty around the (alcohol) level. But the further back you go, the bigger the range of error," said Kalant. A sample taken after six hours could produce a result that wouldn't have enough certainty for most court cases, he said.

Oliver Abergel, a criminal defence lawyer with Ottawa firm Abergel Goldstein Partners who specializes in impaired-driving cases, says current laws are effective.

"I don't think we should be making law and policy based on the outliers," said Abergel.

MADD's Murie would prefer the government just streamline the process by implementing mandatory alcohol testing at the site of all accidents causing serious injury or death.

"That would resolve a lot of problems; that's the norm in other countries," said Murie, who says impaired drivers are often not prosecuted "on slim technicalities" and because of the difficulty in getting a warrant.

Abergel isn't a fan of that idea, saying that the Charter of Rights right to be free from unreasonable search and seizure "is a fundamental human right.

Lamb, meanwhile, said a bill on impaired driving "will be introduced in due course," but refused to say what it will include, whether toxicologists have been consulted on Stewart's proposal or whether the bill will address the four-hour period for a warrant.

"I would like to give the minister a chance to do the right thing here," Stewart said. And while Stewart wants the government to act faster, he's trying to avoid making his grieving constituents' idea into political fodder.

But Murie says more needs to be done. He says the government has spoken with him about changing laws around impaired driving back in 2009.

"It's not like they've been speedy with these things," said Murie.

LeDroit

Des demandeurs de pardon devront attendre plus longtemps

Guillaume St-Pierre, Le Droit, le 1er octobre 2014

Le gouvernement fédéral s'apprêterait à changer les règles du jeu pour des centaines de demandeurs de suspension de casier judiciaire, anciennement appelé demande de pardon.

Selon nos informations, les demandeurs ayant commis des crimes plus graves et qui ont envoyé leur dossier à la Commission des libérations conditionnelles du Canada (CLCC) avant février 2012, pourraient devoir recommencer les procédures à partir de zéro, en plus de devoir s'acquitter des frais de traitement de 631$.

La CLCC n'a pas voulu confirmer les informations obtenues par LeDroit de sources sûres au sein du ministère de la Sécurité publique du Canada.

Un porte-parole a toutefois indiqué que certaines demandes faisant parti de l'arriéré de travail n'étaient plus traitées selon l'ordre d'arrivé, ce qui contrevient à la politique officielle de l'agence, donnant un indice des changements à venir.

«Actuellement, nous traitons les demandes visant des infractions punissables sur déclaration de culpabilité par procédure sommaire avant celles qui concernent des infractions punissables par voie de mise en accusation», affirme par courriel le porte-parole, Mark Prieur.

Or, selon ses règlements en vigueur, la CLCC a l'obligation de «traiter les demandes de pardon de l'arriéré selon l'ordre dans lequel elles ont été reçues», lit-on dans le site Internet de l'agence.

La CLCC évoque des contraintes budgétaires pour justifier en partie sa nouvelle politique.

«Cette mesure a été prise pour permettre à la CLCC de continuer à traiter les demandes de pardon faisant partie de l'arriéré tout en respectant son enveloppe budgétaire existante et de s'acquitter de ses autres obligations législatives», poursuit le porte-parole.

L'arriéré de travail concerne les demandes de pardon soumises avant l'adoption du projet de loi omnibus sur la criminalité adopté par la Chambre des communes, lorsque le gouvernement Harper a fait bondir le frais de demande à 631$. Avant février 2012, il en coûtait environ 150$ pour faire une demande de suspension du casier judiciaire.

Des bâtons dans les roues

Selon le criminologue Jean-Claude Bernheim, la mesure ne fait que mettre des bâtons dans les roues de personnes qui souhaitent réintégrer la société.

«Les gens qui font une demande se considèrent comme des citoyens s'étant réhabilités, affirme-t-il. On est dans le prolongement de cet acharnement, de la part de ce gouvernement, sur l'exclusion sociale. On doit comprendre que toute personne qui commet un geste dérogatoire, sauf s'il prend de l'argent au Sénat, ne mérite pas de faire parti de la société.»

En ce qui a trait à l'argument économique avancé par la CLCC, M. Bernheim estime qu'il n'est pas recevable, en raison du coût social qu'entraînerait la nouvelle mesure.

«En général, les gens qui demandent le pardon, c'est pour accéder au marché du travail. Socialement, on maintient des gens dans une situation économique déplorable, ultimement qui aboutissent à l'aide social. Donc socialement, on paye», explique-t-il.

La nouvelle politique de la CLCC, si elle devait être mise en vigueur, serait de plus assise sur des bases juridiques fragiles, selon des experts.

«Quelqu'un pourrait avoir un argument fort s'il tentait de démontrer que c'est une tentative de légiférer de façon rétroactive», affirme l'avocat spécialisé en droits individuels, MeJulius Grey.

Les infractions sommaires sont considérées comme étant les moins graves. Il peut s'agir, par exemple, voies de fait, de vol de moins de 5000$, ou de méfait.

Les infractions punissables par voie de mise en accusation incluent les infractions les plus graves dans le Code criminel, comme les voies de fait graves ou les agressions sexuelles.

Selon les données de la GRC, 4,1 millions de Canadiens ont un casier judiciaire, représentant environ un adulte sur cinq au pays.

Top court asked to block Romeo Phillion wrongful prosecution lawsuit

By Colin Perkel, The Canadian Press, Global News. October 1, 2014

TORONTO – The longest serving inmate in Canada to have a murder conviction thrown out faces a potential new obstacle in his bid to sue those involved in his prosecution.

Ottawa police and the province of Ontario are asking the Supreme Court of Canada to block Romeo Phillion, who spent 31 years in prison protesting his innocence, from pursuing his lawsuit for negligence and prosecutorial wrongdoing.

“They’re ragging the puck,” his lawyer, David Robins, said Wednesday.

While it is far from certain the country’s top court will agree to hear the appeal, Phillion’s supporters are unhappy at having to fight anew simply to have his lawsuit considered on its merits.

The Association in Defence of the Wrongly Convicted planned a news conference for Thursday – on the first International Wrongful Conviction Day – to draw attention to the case.

Now in his mid-70s, Phillion was convicted of second-degree murder in 1972 in the death of Ottawa firefighter Leopold Roy based on a confession he recanted almost immediately. He was jailed for life but always refused to seek parole, saying it would amount to an admission of guilt.

The federal government ultimately referred the case to the Ontario Court of Appeal, which quashed his conviction and ordered a new trial in 2009. The Crown then withdrew the charge, arguing too much time had passed to try him again.

In quashing the conviction, the Appeal Court found that police had initially verified an alibi showing Phillion’s innocence but never told the defence about it, apparently because investigators subsequently found it to be untrue.

Phillion sued for $14 million, alleging negligence and wrongdoing by prosecutors and two Ottawa police officers.

In April last year, an Ontario Superior Court justice decided the suit would be an abuse of process because the Appeal Court had already rejected suggestions of wrongdoing by police or Crown and that too much time had passed to try Phillion’s claim now.

However, the Court of Appeal ruled in July that Phillion should at least have a chance to put his case to a jury.

“It would further bring the administration of justice into disrepute to grant a stay in these circumstances and deprive the appellant of any opportunity to seek financial redress for his conviction when he did not have the opportunity to present a full defence at his trial,” the Appeal Court ruled.

Lawyer Kirk Boggs, who represents the Ottawa police service and two officers involved, said the Appeal Court made mistakes in overturning the lower court ruling and allowing the lawsuit to proceed.

“The approach that they took raised significant issues with respect to the doctrine of abuse of process and how it should be applied,” Boggs said Wednesday.

“It warrants the Supreme Court of Canada taking a significant look at it.”

Boggs said he also wants the top court to take a look at the scope of a police officer’s duty of care in relation to investigations.

Harper’s election timing? Expect the unexpected

LAWRENCE MARTIN, The Globe and Mail, September 30, 2014

A federal election this fall? Don’t rule it out. Top Liberal Party strategist Gerald Butts says his party is preparing for that scenario, among others. While most speculation has centred on the possibility of Prime Minister Stephen Harper moving up the election date from next fall to next spring, the Liberals believe it’s even possible he could drop the writ a month from now.

Mr. Harper’s office has denied any intent to go to the polls early, but nothing is set in stone. As he has shown in the past, this Prime Minister isn’t one to be deterred by convention or by hurdles such as a fixed-date election law.

His Conservative government is long in the tooth. It’s nearing a decade in office, which is what you might call the natural life cycle for modern Canadian governments. Waiting for another year, a span that will include the Mike Duffy trial, may just increase the fatigue factor and the sense that it’s time for a change.

Here are four possible scenarios:

By the book. Mr. Harper waits until next October. The thinking here is that he needs the time to make up ground on the leading Liberals. Also, he doesn’t want to risk alienating voters by changing the set October date. The timing of the Duffy trial, slated to run from April to June, is troublesome, but it’s better than being seen as forcing an early election to avoid it. The image of being morally bankrupt (see last week’s Paul Calandra fiasco) is already hurting the government. It doesn’t want to fuel that perception.

Early spring. Mr. Harper brings in a February budget that contains highly controversial measures, then triggers an election on it for the end of March. Many would see this as blatantly opportunistic, coming just ahead of the Duffy trial. But Mr. Harper would rely on the hope that the timing is an issue only for the campaign’s first few days, as we’ve seen in the past. Not to be ignored in these calculations is the chance that the Duffy charges could be settled out of court, or that the trial’s timing is pushed back. No doubt,

the Prime Minister's men will be pulling all strings possible to bring about such outcomes.

Early December. If Justin Trudeau's popularity numbers start to slide, Mr. Harper may pounce right away. There is concern in Liberal circles and hope in Conservative precincts that the reason Mr. Trudeau is rushing an autobiography into print (it will be released in three weeks) is that there are embarrassments from his past that he wants to disclose on his own terms, instead of leaving the deed to the Harper attack machine. The Conservatives have a budget update to deliver, and if they're gaining ground, they may use it – with some big tax-cut promises – as a springboard for a snap election. It would be 31/2 years into a majority mandate. Jean Chrétien went to the polls twice on a similar time frame.

Pass the torch. The PM reads the tea leaves/billboards and concludes that it's time. He calls a Conservative leadership convention to be held in February. The option has much to recommend it. He goes out as one of the big winners in party history, having moved the conservative agenda appreciably forward in many policy areas. He avoids the distinct possibility of a humiliation at the hands of a Trudeau.

Looking at these choices, the cautious wagering would be on the first option, the set date. But Mr. Harper is an aggressive tactician, well capable of rolling the dice. He is behind in the polls and has to shake things up somehow. In other words, expect the unexpected.

Saskatchewan courts miss mark in aboriginal sentencing, former judge urges

SEAN FINE, The Globe and Mail, September 28, 2014

An outspoken retired judge is accusing the judiciary of failing Canada's aboriginal peoples by ignoring their history of disadvantage when crafting sentences – even as the proportion of aboriginal men and women behind bars continues to rise.

Cunliffe Barnett, who sat on British Columbia's provincial court from 1973 until 2006, singled out Saskatchewan as a notable example of a more widespread problem in which judges don't understand how historic injustices against aboriginal peoples, such as the residential schools, continue to affect the choices made by young natives.

He mentions a case from June in which a 23-year-old with fetal alcohol spectrum disorder and the mental age of a seven-year-old was sentenced to a year in prison for aggravated assault. That 23-year-old, Trevor Machiskinic, had no criminal record until a cousin who had long bullied him teased him about his sexuality. He attacked the cousin

with a baseball bat, fracturing his skull. Justice M.L. Dovell of the Saskatchewan Court of Queen's Bench, though she discussed Mr. Machiskinic's difficult background, still gave him one year in prison and one year probation.

"Is putting him in jail the answer to anything for anybody?" Mr. Barnett said in an interview. Nearly 80 per cent of inmates in Saskatchewan's provincial jails are aboriginal, the highest percentage of any province.

In 1996, the federal Liberal government passed a sentencing law that stressed jail should be a last resort for everyone, "with particular attention to the circumstances of aboriginal offenders." In 1999, in a case called R v. Gladue, the Supreme Court said that law obliges judges to take a close look at the history of disadvantage of aboriginal offenders and their communities. At the time, aboriginals accounted for 12 per cent of all federal prisoners. Today, they make up 23 per cent of the federal prison population, government figures show. Aboriginals make up 4 per cent of the Canadian population, and 17 per cent of Saskatchewan's.

Gerald Seniuk, a retired chief judge of the province's Provincial Court, took issue with Mr. Barnett's criticisms. In his experience, "the fact that the reports aren't there doesn't mean the judges aren't attuned to the Gladue factors, whether they say it in their judgments or not. Our judges are quite competent and compassionate and were leaders in trying to fight for things like the Gladue considerations," he said in an interview.

"I would be careful in assuming that they're not doing the best they can. The biggest thing is what does the Court of Appeal say, and what limits are there on the sentencing range that our judges can implement. What options are prosecutors prepared to develop? The judges can find ways to make things work, depending on the legal framework and the things people bring to it."

The Supreme Court urged in-depth reports be prepared for judges on the aboriginal background of offenders and their communities. But Mr. Barnett, the author of Judge Barnett's Guide to Understanding the Decisions of the Supreme Court of Canada in the Gladue and Ipeelee Cases, said he is aware of only three cases in Saskatchewan in which such reports have been prepared. And alternatives to jail sentences, as urged by the Supreme Court, is non-existent in the province.

"I have not found a single Saskatchewan decision – not in the Provincial Court, the Court of Queen's Bench, or the Court of Appeal – where any judicial attention was paid" to the Supreme Court's call for a new approach.

Saskatchewan gives infrequent consideration to aboriginal background in sentencing, new research from Saskatoon lawyer James Scott shows. Judges applied principles set down by the Supreme Court in the Gladue case in just 23 of 169 reported sentencing decisions published on the website of the Canadian Legal Information Institute between 1999 and June, 2014.

HUFF POST POLITICS CANADA

Bill C-377, the Anti-Union Bill, Is Back

Bill Daniels, Contribution to Huffington Post Canada, September 25, 2014

Bill Daniels is International Vice-President of IBEW Canada, proudly representing all IBEW Local Unions in Canada & our 67,000 + members from coast to coast

Just one week into the new parliamentary session and news breaks about Conservative Senators limiting debate on Private Members business, which will include anti-worker Bills C-377 and Bill C-525.

Some may recall the last time they heard about Bill C-377, Conservative Senator Hugh Segal shot holes through the Bill, questioned its constitutionality, and then made several amendments that were passed in the Senate on June 26, 2013 (see story here). Normal procedure would have sent the amended Bill back to the House of Commons, however since Prime Minister Stephen Harper prorogued parliament during the summer of 2013, Private Members Bill C-377 was reverted back to its original form as passed by the Conservative majority in the House of Commons in December of 2012. The Bill returned to the Senate upon their return after prorogation in the fall of 2013 and was left on the backburner, until now.

In an interesting move this past spring; Senator Hugh Segal announced his retirement from the Senate effective in June 2014 as he decided to take on the role of Master of Massey College in Toronto. With Senator Hugh Segal removed from the picture the Conservatives have decided to limit debate on Private Members Business, including anti-union Bills C-377 and C-525. But there is much more to this story.

Let's have a look at some of the possible reasons for fast-tracking this legislation: Senator Hugh Segal retires from the Senate, Ontario PC leader Tim Hudak loses the Ontario election, the effectiveness of the Ontario Working Families campaign, the number of union members who volunteered in the provincial election after Hudak threatens unions with union busting legislation, Federal Conservatives polling numbers have been dropping, and of course the lobbying of Merit Canada.

A quick search of Canada's Lobbying Registry one can see that on September 9, 2014 the President of Merit Canada met with the Leader of the Government in the Senate's Chief of Staff to discuss "Taxation and Finance" or Bill C-377. The same individual met with the Prime Minister's Office a miraculous 16 times previously to discuss the same legislation.

One has to wonder what influence this organization has in the Prime Minister's office and beyond? Merit Canada and its provincial counter parts claim to be the "leading voice" in

the construction industry and represent approximately 3,500 contractors across the country. Taking these numbers into account the following comparison between Merit Contractors Associations contractors/ members and data provided by Statistics Canada, the members of Merit Canada (defined as the membership of their eight provincial organizations) only made up 1.0 per cent of the total of contractors in the eight provinces where the Merit Contractors maintained active associations.

Furthermore their highest representation of contractors in any province was in Manitoba where they represent just 2.3 per cent of all construction related contractors and a low of just 0.2 per cent of construction contractors in the Province of Ontario. (Note: Merit does not have provincial representation in Quebec or Prince Edward Island.)

The IBEW Canada's late International Vice-President Phil Flemming penned an article called "The Ugly Truth About Bill C-377" and I urge you to read the article and more specifically look at his last paragraph and the question he poses to all Canadians.

LeDroit

Des agents correctionnels font du porte-à-porte

Paul Gaboury, Le Droit, le 30 septembre 2014

Des électeurs de la circonscription d'Ottawa-Ouest-Nepean ont eu la surprise de voir des agents correctionnels fédéraux cogner à leur porte mardi pour leur expliquer les conséquences des attaques du gouvernement Harper sur les fonctionnaires et les travailleurs canadiens.

Leur message «Attention: Danger» fait partie d'une campagne visant à chasser les conservateurs lors des prochaines élections fédérales.

Venus du Québec et de l'Ontario, plus de 200 membres du Syndicat des agents correctionnels du Canada (UCCO-SACC-CSN), se sont rassemblés pour venir appuyer leurs dirigeants syndicaux réunis à l'occasion de leur congrès de mi-mandat. Puis ils se sont dirigés pour aller faire du porte-à-porte auprès des électeurs d'Ottawa-Ouest-Nepean, la circonscription fédérale du ministre John Baird. Les syndiqués ont profité du fait qu'ils étaient en congé de leur travail pour venir à Ottawa, a-t-on expliqué. Une lettre avait été préalablement envoyée aux électeurs pour les aviser de la visite des agents correctionnels. Nepean-Ottawa-Ouest a été choisie en raison de sa proximité et parce que son député est un ministre influent du gouvernement Harper.

Pour le syndicat qui compte plus de 7500 membres, l'activité, qu'il souhaite répéter au cours des prochains mois dans des circonscriptions ciblées à travers le pays, visait à

permettre un échange avec les électeurs de la façon dont tous les travailleurs canadiens seront lésés dans leurs droits démocratiques de s'unir et de négocier collectivement leurs conditions de travail en raison des changements initiés par le gouvernement Harper.

«Nous avons atteint un point de non-retour avec ce gouvernement qui ne veut pas nous parler. C'est pourquoi nous nous adressons directement à la population pour lui expliquer qu'en s'attaquant aux syndicats, Harper s'en prend à tous les Canadiens», a indiqué le président national, Kevin Grabowsky, lors d'un point de presse.

Des lois antisyndicales

La campagne dénonce une série de lois qui affaiblissent les droits syndicaux pour les travailleurs en vertu du Code canadien du travail et un certain nombre de résolutions politiques adoptées au dernier congrès du Parti conservateur «qui détruiraient le mouvement syndical», selon M. Grabowsky.

L'activité de «porte-à-porte» avait d'ailleurs connu du succès lors du congrès des conservateurs à Calgary en 2013, alors que les agents correctionnels avaient frappé aux portes des électeurs du comté de Stephen Harper, a expliqué pour sa part Michel Bouchard, coordonnateur de la CSN. «Nous avions alors été très bien reçus par les électeurs et nous avons eu beaucoup de messages d'appui par la suite» a-t-il indiqué.

Parmi les nombreuses attaques contre les syndicats, les récentes modifications contenues dans le C-4 modifiant la définition de «danger» dans le lieu de travail touchent directement les agents correctionnels. L'ancienne définition était cruciale pour rendre leur milieu de travail plus sûr et sécuritaire, a-t-on expliqué.

OTTAWA CITIZEN

Court system undermines the legal presumption of innocence, forum hears

ROBERT SIBLEY, Ottawa Citizen, October 2, 1014

The legal presumption of innocence, a bedrock principle of Canadian justice, is being undermined by a court system that keeps people who have not been convicted of a crime imprisoned for long periods, the director of the Canadian Civil Liberties Association’s public safety program told a public forum Wednesday.

“Our courts are not doing their job in applying the law” when it comes to respecting the constitutional principle of innocent until proven guilty, Abby Deshman told 60 attendees at the University of Ottawa.

A second speaker, Jacqueline Tasca, a policy analyst with the John Howard Society, echoed that view: “So many people are being detained needlessly.”

Indeed, 250,000 people are being held in provincial and territorial detention centres across the country while they await a trial or a bail hearing — triple the number of only a decade ago. In Ontario alone, 50 per cent of the jail population is on remand. Many, Deshman said, are “legally innocent” under the law, but nevertheless “can spend days, weeks, months and even years in pre-trial detention.”

“So much for the presumption of innocence,” she said. “We are increasingly living in a place where you’re guilty until proven innocent.”

The Civil Liberties Association has characterized the situation as a “crisis in our bail system,” saying that lengthy court delays in handling cases and draconian bail conditions are “fuelling crowding, violence and inhumane conditions” in Canada’s jails, including, the speakers noted, the Ottawa-Carleton Detention Centre.

This is not because of any increase in crime, Deshman argued, noting that crime rates generally are at their lowest level in Canada since 1969. Even rates of violent crime are at a low they haven’t seen since 1985.

Deshman, the author of a CCLA report Set Up to Fail: Bail and the Revolving Door of Pre-Trial Detention, recommended a variety of measures the provincial government and those involved in the bail system could adopt to reduce the flow of people into the jail system, including, among other items, a system-wide return to the presumption of innocence, increased judicial attention to Charter violations at the bail stage, the presumption of unconditional release, and reducing widespread overuse of sureties.

Likewise, Tasca, citing her agency’s recent research report, Reasonable Bail?, urged judges to place a “stronger emphasis on the presumption of innocence” and the right of an accused not to be denied reasonable bail without just cause. She also argued that it makes no sense to impose bail conditions requiring abstention for drugs or alcohol on people who are addicted to those substances. To do so is a de facto criminalization of a medical problem.

Forum moderator Justin Piché, a criminology professor at the University of Ottawa, pointed out that the appointment of two local MPPs, Madeleine Meilleur and Yasir Naqvi, as, respectively, provincial Attorney General and Community Safety and Correctional Services minister, provides an opportunity for reformers to push the government “to do something about our dysfunctional bail and criminal justice system that sees so many warehoused unnecessarily.”

"Ontario has perhaps the most dysfunctional system in the country," said Aaron Doyle, another U of O criminology professor. "They are jamming three or four people into small cells with only one or two bunks, in terrible conditions.

"It's not right and it's also costing Ontario taxpayers a fortune."

EMBASSY

NEWS OPINION POLICY BRIEFINGS IMMIGRATION TRADE DEFENCE DEVELOPMENT DIPLOMACY

Merger creating human resources headaches at Foreign Affairs

One proposal suggests merging five job categories into one, which could affect salaries, union make-up.

Kristen Shane, Embassy newspaper, October 1st, 2014

Several local union groups at the Department of Foreign Affairs, Trade and Development are proposing a new human resources system for the merged department that could combine five job classifications into one, possibly affecting the job descriptions, salaries and assignments of thousands of DFATD employees.

The new "international officer" job classification, which one employee involved said was management's idea, would unite the current categories for foreign service officers (FS), policy officers (EC), commerce officers (CO), program administrators (PM) and administrative services officers (AS).

The move, if accepted by DFATD management and the Treasury Board, could mean broad changes, including the end of the Professional Association of Foreign Service Officers union as it exists now, which represents about 1,000 workers only in the FS category, membership loss at other unions and the start of a new super union.

It could also see postings abroad opened up, which are currently conducted mostly by foreign service officers and management consular officers in the AS category.

But this is not the only option on the table, and some say it's a long shot, given historical tensions within and among classifications. Proponents of the plan to recognize equivalency between classifications and eventually merge them say it would make a fairer and more merit-based work environment.

Critics recognize that some job categories should be merged, but fear losing what they say is now a professional foreign service. The department is considering all proposals.

The 2013 merger has left DFATD grappling with how it should structure a combined human resources system, including which aspects of the different legacy models should be scrapped or kept.

The timeline for change is still uncertain. Big changes to the two-letter classifications (each with their own job description and competencies) would need Treasury Board approval. That could take more than a year.

The proposal

The proposal, obtained by Embassy, was submitted by local DFATD bargaining agents for the Canadian Association of Professional Employees, Professional Institute of the Public Service of Canada, and two units of the Public Service Alliance of Canada in August.

These groups represent people in EC, CO, PM and AS categories from the former Department of Foreign Affairs and International Trade and the Canadian International Development Agency, which merged to create DFATD.

The union locals discussed the proposal at a meeting with DFATD management on Aug. 25, according to people involved. The local groups had been working on it along with leaders of PAFSO. The foreign service union did not sign to the most recent draft submitted.

Together (including PAFSO), these union locals says they represent thousands of DFATD's Canada-based staff and nearly 80 per cent of officer-level staff. These are the unions representing the job classifications with the largest number of people at the department.

In the short term (two- to six-month timeframe), the proposal suggests that DFATD recognize the equivalency of people working in the FS, EC, PM, CO and AS categories, based on their distance from the EX non-unionized management class. A chart could be created to recognize that a person slotted as an EC3 does similar work to a person slotted as a CO3, for instance, and should therefore be given the same shot at an open assignment.

In the long term, six months to a year, the proposal suggests the department review the competencies and work descriptions for all officer jobs below management. Based on that review, and in consultation with the Treasury Board Secretariat, which oversees broader federal human resources changes, and union negotiators, the proposal suggests "consider[ing] unification of FS, EC, CO, PM, and AS employees under a new, International Officer (IO) classification."

Employees who are now deemed as "rotational," meaning they can be posted abroad, and those now called "mobile," meaning their job moves around at headquarters, would be

united in one pool of "flexible" workers who could be posted to various assignments at home and abroad. Other positions would be non-flexible.

Supporters

Supporters of the proposal say they want internal assignment decisions to be made fairly and based on merit. They say the assignment system under the former Department of Foreign Affairs and International Trade is antiquated. Two people may be doing essentially the same job, but only one is in the first tier of staff with access to postings abroad.

Erik Nielsen, a vice-president with CAPE Local 516, a group that spearheaded the joint human resources proposal, and represents about 630 ECs across the department, said he liked the system of the former Canadian International Development Agency.

"At CIDA, we had a system based on meritocracy," he said in a Sept. 18 interview.

The now-defunct development agency had been using an equivalency chart to link PM positions with similar work by ECs. People with equivalent jobs were eligible for the same positions, no matter their two-letter status.

Over the years, DFAIT had seen a greater mixing of job categories. Policy and commerce officers were coming in to fill jobs meant for foreign service officers. And through that movement, said Mr. Neilsen, the lines between job classifications blurred.

"This division of you as a PM, I as an EC...does not really work anymore," he said.

He noted that PAFSO in its rotating strike in the summer of 2013 used the slogan "equal pay for equal work," which he said alluded to the fact that they were asking the same wages as the higher-paid ECs and COs that do similar work.

The proposal jointly prepared by local units of PSAC, PIPSC and CAPE refers to "chronic inconsistencies in classification, competency profiles, and work descriptions" and the need to "remove formal and informal barriers which stymie effective collaboration...and foster a 'caste system' in the eyes of many."

Mr. Neilsen said, under the old DFAIT assignment system, "the vast majority of posts abroad were reserved for FSs." So, he said, "there was a system of exclusivity, not meritocracy."

The union locals presented the proposal to DFATD HR in August in recognition that in the fall the department would start to determine the next batch of overseas postings. During last fall's process, the newly merged department stuck with the old human resources systems of DFAIT and CIDA. A draft for this year's process has been circulated among local union groups but is not finalized. The listing of the postings abroad is expected to be released in the coming days or weeks.

PAFSO's reaction

While Mr. Neilsen said the CAPE's work with the other union groups on a joint proposal was co-operative and positive, the PAFSO leadership decided not to put their name on the most recent draft of the proposal delivered to DFATD in August. PAFSO switched presidents in early August, but both the outgoing and incoming leaders were involved in the discussions.

The union seemingly has the most to lose. The proposal suggests broadening access to rotatational assignments abroad and at headquarters so FSs currently picked first to go overseas could be competing against ECs and COs. Foreign service officers write a foreign service exam, are given extensive language and other training and top security clearances that folks from the other job categories don't universally do or have.

When asked to comment on why PAFSO decided not to sign on to the joint proposal and related questions, PAFSO spokesperson Chrystiane Roy, said in an emailed statement that the union is working with management and other bargaining agents to develop the merged department's new HR profile.

"Given the internal and ongoing nature of the discussions, this is not something we would comment on at this time."

An October 2012 PAFSO document found on its website and related to its collective bargaining, echoes Mr. Neilsen's argument that foreign service officers do similar work to commerce and policy officers (the document also cites similarities with legal affairs officers)—at headquarters. But, it points to unique work foreign service officers do abroad.

"The work performed abroad often requires FS-02s [a mid-level FS job] to perform management duties as they will often be required to lead a working group of Locally Engaged Staff. The work is also more demanding, subject to tighter deadlines, more complex and definitely more critical and sensitive," states the PAFSO pay proposal document. "There are no internal comparators for the work that FSs perform abroad and the work that FSs perform abroad is unique to the FS group."

Critics of the union groups' proposal argue that if the FS spots abroad were opened up to others, management could be faced with the headache of evaluating 300 resumes to pick the best person for a posting, rather than the handful they might have to look over now. They argue that foreign service officers have unique and extensive training for foreign postings that puts everyone in their assignment pool at the same level of merit.

Other reps

The other union representatives involved in the summertime discussions on the joint proposal wouldn't comment or didn't respond to a request for comment.

The issue is sensitive for the union officials involved. Union representatives have said they've been happy that management is listening to their ideas, and they're afraid that going public could compromise these good relations.

With the proposed creation of a new “international officer” job category eclipsing five existing categories represented by five union groups, it would make sense for them to join as one. That could lead to the ultimate death of the local groups, with the simultaneous birth of a new union representing workers in a new job classification (or the migration of workers from various classifications to one existing union group, creating a larger union). That would mean their dues to their national affiliates would dry up, leaving less money in the coffers of these organizations.

Pay is another sticky issue. The handful of unions involved have negotiated different contracts, leaving people in the job categories they represent with differing pay ranges. There would be winners and losers in a combined new job category. In the short term, the unions’ proposal suggests that successful applicants for a new assignment would maintain their current salary in the new job and not be paid as “acting” in a new role.

This is not the first time the department has looked at joining classifications, but failed for various reasons.

The August proposal is among the “many proposals on how to re-fashion the amalgamated workforce to support greater policy coherence. We are studying all options and look forward to discussing the way forward with bargaining agents as well as DFATD employees,” said John Babcock, a departmental spokesperson, in an email.

"To support the goals of amalgamation, we need a common organizational culture and to get there, a more cohesive workforce is required. That may include both structural change and improvements on how we manage talent, performance and learning. Some steps can be undertaken in the short term, while others are long term. DFATD employees will be informed as soon as possible. "

In the short term, he said, the department is focusing on changes within its authority and not that of Treasury Board.

McGill Publications

Law | Focus online

News from McGill's Faculty of Law / Nouvelles de la Faculté de droit de McGill

Alumni profile: Supreme Court Justice Clément Gascon

McGill Law Focus online, September 2014

The newest member of the Supreme Court of Canada, Clément Gascon, paid a visit to McGill as this year’s orientation keynote speaker. The McGill Law Students’ Association

(LSA) invited Mr. Justice Gascon, who graduated from the Faculty in 1981, to share his experience as a student at McGill and to reflect on his career trajectory so far.

Switching back and forth between English and French with ease in the trademark McGill Law style, Justice Gascon charmingly emphasized the ordinary, everyday nature of his personality and career, throughout his speech and the question and answer session that followed.

"I remember sitting in this Moot Court as a first-year law student in September 1978," Gascon said. "I was 18, fresh out of CEGEP, young, naïve and one of 20-30 Francophones in an Anglophone environment for the first time in my life. If way back then, 36 years ago, someone had told me I would return as a justice of the Supreme Court of Canada, I would have laughed."

Gascon remembers initially struggling in this new environment. "I remember my first lecture in this room: it was about the court structure in Canada and it was given by Professor Steven Scott, who is sitting here today. I was discouraged and felt like an idiot. I did not understand anything."

He approached this challenge with a strategy of hard work and an even-keeled outlook that makes room for mistakes: "J'ai travaillé et je me suis fais confiance. On fait des erreurs au début; c'est normal."

He extolled the academic training he received at the Faculty for its unique blend of languages and legal systems: "McGill vous apporte une diversité culturelle et linguistique inégalée et une approche académique que j'ai trouvé différent : on nous apprenait à penser, d'abord et avant tout."

"You have the advantage of two systems and two languages. Use it," he exhorted.

After graduating from the Faculty, Gascon spent 21 years at Heenan Blaikie in Montreal, choosing to work in litigation, he explained, because he liked "the challenge to persuade and to win a case. In litigation, you are always learning something new and always dealing with people."

He was appointed to the Quebec Superior Court in 2002, the Quebec Court of Appeal in 2012 and to the Supreme Court of Canada in June 2014. Speaking from his experience in the judiciary, Gascon expressed concern for future generations' access to justice.

"The legal profession is supposed to offer a service to society," he said. "In the judiciary, we see a serious problem of access to justice. Most people cannot afford a lawyer and your generation will be tasked to figure it out."

He called for creativity in looking at how law firms can be run and pushed back against the commercialization of the profession: "The mercantile aspect of the law needs to be rethought," he said. "If you want to be a millionaire, maybe you should go into business."

At the age of 54, Gascon is the youngest of the current Supreme Court justices, and he noted that this continues a trend in his career: "J'étais le plus jeune à McGill, le plus

jeune à Heenan…" Surprisingly, the rapidity of his career trajectory was the one thing about which Gascon expressed regret, saying if he could do it over again, he would have taken more time.

After his talk, Justice Gascon was proudly presented with a McGill Law sweatshirt.

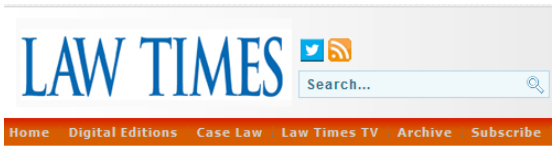
After his talk, Justice Gascon was proudly presented with a McGill Law sweatshirt.

The other tenets of his career, however, would remain unchanged.

Hard work and the ability to communicate are crucial to success: "Preparation is one thing, but to persuade, you also need to be concise," he said. "You need to know the file better than the client, the facts better than the witnesses and the law better than your opponents."

Integrity and credibility are non-negotiable: "You build credibility from day one, and aggressivity with witnesses and opponents seldom if ever pays," he said, adding that the competitive demands of litigation can be met in a civil manner: "You have to kill with kindness."

Gascon opened and closed his talk with the same message, that humility and dedication open doors to great possibilities. "Il n'y a rien d'exceptionnel dans mon cheminement, mais il vous montre qu'il n'y a rien d'impossible."



The Lawyer Therapist: Lots of help available for lawyers in crisis

By Doron Gold, Law Times, September 29, 2014

Two years ago, amid news of lawyer and law student suicides, I penned an article for Law Times that asked why lawyers insist upon torturing themselves. As a lawyer assistance professional, I was intent upon examining and elucidating why, despite the obvious need in the legal community for assistance with issues such as depression, anxiety, career stress, and addiction and the extensive services available across Canada to help those who were suffering, lawyers were nonetheless frustratingly hesitant to reach out. It's now two years later, and recently I learned of another law student suicide in Ontario. How can we prevent these needless tragedies from occurring?

Everyone needs help at one time or another in life. We're not islands no matter how self-sufficient we legal types may think we should be. If we operate on the assumption that law students, lawyers, and paralegals are indeed human beings and we know that these roles are particularly stressful and challenging, we can acknowledge the need exists for organizations that can provide help, support, and healing in times of difficulty.

Across Canada, in addition to health-care professionals such as psychiatrists, psychologists, and social workers and organizations such as the Canadian Mental Health Association and countless hospital-based mental-health programs, there exists a network of lawyer assistance programs offering help geared directly to those in the legal community who need it.

From the Lawyers Assistance Program of British Columbia to the Alberta Lawyers' Assistance Society and the Member Assistance Program in Ontario, lawyers across the country have access to helping resources formulated specifically for their unique needs and challenges. To illustrate the types of services that are available across the country, I can personally speak to the assistance available through the Ontario program. Lawyers, paralegals, judges, law students, and immediate family members can access confidential psychotherapy for free. They have access to career and nutrition counselling, elder and childcare information, health promotion resources, and smoking cessation assistance to name just a few of the free services available. Much like many of the lawyer assistance programs in Canada, online information, courses, and videos on various topics are available. And in addition, a peer volunteer program is in place in Ontario, as well as other jurisdictions such as British Columbia, that matches individuals in need of support with volunteer legal professionals with lived experience of addiction, mental-health, and career challenges who offer their compassion and kindness in times of need.

When I stand at a booth at a legal conference touting these programs, I invariably hear the declaration: "I had no idea all of this was available." Many

people simply don't know that in their province or territory, help is readily accessible to them. But not knowing that such services exist isn't the only barrier to accessing them. As I discussed in my article in 2012, even if there is awareness, there often remains a hesitance to access these services. For some, the caution relates to self-judgment and the feeling that as legal professionals, they should be strong enough to overcome their challenges on their own. They also often feel shame and stigma related to their particular issues, assuming they're the only ones in distress among their colleagues, all of whom seem so pulled together and successful. These individuals feel they're failing and, as such, they often suffer needlessly in silence. I use the word needlessly because, to a mental-health professional like me who has worked in lawyer assistance for eight years, my frustration comes from knowing that all they need to do is visit a web site or call a 1-800 number to begin the process of healing and recovery.

One final potential impediment to seeking assistance in the legal community is the very real concern many have about confidentiality. A lawyer whose life is unravelling due to addiction or depression needs to know whether the program will share that information with anyone, most especially whether it will wind up in the hands of their law society. The truth is that lawyer assistance programs wouldn't exist without strict adherence to the principle that the confidentiality of clients is sacrosanct. It's a core principle of this work

and programs can't repeat that reassurance enough. I can say that in my years of working in lawyer assistance, I've heard virtually every possible story you can imagine and not once have I called the regulator to share that information.

So let's get the word out. No matter where you live in Canada, if you're a legal professional or a law student, free, confidential help and services designed specifically for you and your unique needs and challenges are available. And it's not just about distress. The purpose of these programs is to proactively promote wellness in the community. A healthy and fulfilled bar serves the interests of the public, the profession, and the people who populate it, not to mention their families.

So enough with stigma and suffering in silence. Enough with law student suicides when help and recovery are a mouse click or a phone call away. Let the subject of lawyer assistance come out of the shadows of our profession and let's discuss and share it enthusiastically.

McKercher, BLG lawyer recognized for pro bono work

Written by Jennifer Brown, Legal Feeds blog, Canadian Lawyer, September 30, 2014

A Saskatchewan law firm, a Calgary lawyer, and an Ontario program have received awards for their commitment to providing pro bono services to low-income individuals needing legal help.

The 2014 Canadian National Pro Bono Awards were presented on Sept. 25 in Regina as part of the fifth national pro bono conference, JUSTICE4ALL.

Saskatoon- and Regina-based McKercher LLP received the Canadian National Pro Bono Law Firm Award. McKercher provides pro bono legal services to low-income people and non-profit organizations through Community Legal Assistance for Saskatoon Inner City (CLASSIC), Pro Bono Law Saskatchewan, and Pro Bono Students Canada. The firm was recognized in three areas: helping citizens who are not covered by public funding; working with community organizations; and providing innovative legal services.

McKercher has worked to help deliver legal assistance to remote areas of Saskatchewan where individuals can't get access to legal services.

“Using technology, we set up peer-to-peer opportunities so someone could, for example, go to the local Salvation Army location and one of our lawyers would speak to them over Skype,” says David Stack, pro bono co-ordinator and partner at McKercher LLP.

The firm’s articling students also fill in for law students who would normally assist at the CLASSIC clinic.

“It’s part of their articling rotation to spend time at the inner city pro bono clinic, which they really enjoy,” he says.

Despite the revenue and resource pressures many firms face these days, over the last few years Stack says McKercher’s pro bono “investment” has increased, not decreased.

“We made a commitment that we wanted to help by making sure that access to justice wasn’t just for the privileged few and we also recognized that a lot of the young lawyers were really interested and want to do this. We wanted to provide them with encouragement and opportunity,” says Stack. “I think it makes them enjoy the workplace more.”

Duncan Marsden of Borden Ladner Gervais LLP in Calgary received the Canadian National Pro Bono Distinguished Service Award for his contribution to the provision of pro bono legal services. Marsden was nominated by BLG managing partner and CEO Sean Weir for the work he has done over his legal career.

His practice is exclusively employment focused and some of his pro bono work is related to employment law but also includes human rights issues.

Last year, he represented a 14-year-old gay high school student from a small community in Alberta. The student was in the school band but was told that on a planned overnight trip to a band camp in Banff, he would not be allowed to stay in the dormitory with the other boys.

“We started with a letter and we pointed out to the school the error of their ways,” says Marsden. “To their credit, they realized what they had done and created a number of initiatives that included an equality and anti-bullying assembly and creation of pamphlets that were sent to parents.”

He also helps at the provincial court and the Court of Queen’s Bench as duty counsel. Some of his ongoing cases involve Canadian military veterans with post-traumatic stress disorder and other injuries whose pension entitlement has been denied.

“We are doing a number of judicial review applications on behalf of these individuals who have no money,” he says.

And when a friend’s child was diagnosed with mitochondrial disease, Marsden assisted in establishing MitoCanada as a charity that raises awareness for the disease.

Marsden says BLG is a “trailblazer” in the area of law firm pro bono policies. “In a world where we are ruled by the billable hour, BLG makes it possible for me to do these things

by saying if you have an approved pro bono matter — it goes through a committee — every hour you work on that counts towards your billable hour target," he says. "It allows me to do these things when I otherwise wouldn't."

He says many junior lawyers have gained experience working on pro bono files with him over the years.

"We will be going to the federal court to do a judicial review application and how often are you able to do that? It creates experience you would never otherwise get for junior lawyers," he says.

"In the day of the disappearing trial, how often do we get to go trial as litigators? Almost never."

Finally, Connect Legal, an Ontario organization that advances economic development in Canada by promoting entrepreneurship in immigrant communities, received the Canadian National Pro Bono Program Award.

Connect Legal provides free workshops, resources, and individual assistance to low-resource business owners who cannot afford legal services.
