AJC-AJJ
ASSOCIATION OF JUSTICE COUNSEL
ASSOCIATION DES JURISTES DE JUSTICE

Press Clippings for the period of January 12 to 19 2015
Revue de presse pour la période du 12 au 19 janvier, 2015

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

thestar.com

Supreme Court strikes down rule that bans RCMP union

The federal government has a year to rewrite the laws that govern the Mounties — a huge undertaking that will restructure labour relations for the country's national police force.

Tonda MacCharles, Toronto Star, January 16, 2015

OTTAWA — The Supreme Court of Canada has ruled that a law barring RCMP officers from forming a union is an unconstitutional breach of their right to form an labour association and collectively bargain with their employer.

The country's top court gave the federal government 12 months to rewrite the laws that govern the Mounties — a huge undertaking that will restructure labour relations for the country's national police force, the only police service in the entire country that is not unionized.

Advocates of unionizing the RCMP will no doubt cheer it as a victory.

But the groundbreaking 6-1 decision written by Chief Justice Beverley McLachlin and the retiring Louis LeBel on behalf of the majority does not go so far as to say explicitly the RCMP should be unionized, nor what kind of labour relations scheme Parliament should craft.

The high court says that any new association might not look like a traditional union, but it must be independent of RCMP management and allow the rank-and-file members some choice in what that association is. And it lowered the threshold for determining whether a labour relations scheme is adequate, saying it must not "substantially interfere" with "meaningful" collective bargaining.

Right now, rank-and-file Mounties have no such choice.

The Public Service Labour Relations Act excludes Mounties from the definition of "employee" and regulations under the RCMP Act impose a certain in-house scheme.

Under federal regulation, the RCMP's 21,000 regular and civilian members are represented in the workplace by 34 staff relations representatives, who are elected and work with RCMP senior executives to resolve workplace issues. But they do not sit directly across from Treasury Board to negotiate pay, benefits or other issues as other public service unions do.

Three informal RCMP associations organized in Ontario, B.C. and Quebec, backed by civil liberties groups and large union groups like the Canadian Labour Congress and Quebec's Confederation of National Trade Unions, argued the ban on a union goes too far, and has been used to suppress dissent within RCMP ranks.

Those informal associations have about 2,000 Mounties as members. However, they have no bargaining power at all.

And before the court, they cited cases of Mounties who were threatened with disciplinary action for speaking out and lobbying against the RCMP's in-house staff relations representative program and expelled from its activities, and said the RCMP has a "history of anti-union animus."

Staff Sgt. Abe Townsend, speaking for the national executive of the RCMP's current SRR program, said: "We thank the Court for it's work. We will take time over the next few days to carefully review both decisions to determine the full impact of the decisions on the membership of the RCMP and the Staff Relations Representative Program."

McLachlin and LeBel wrote the current scheme is constitutionally inadequate because it was imposed on RCMP members.

"Simply put, in our view the SRRP is not an association in any meaningful sense, nor a form of exercise of the right to freedom of association. It is simply an internal human relations scheme imposed no RCMP members by management. Accordingly, the element of employee choice is almost entirely missing under the present scheme," the ruling says. It said the government's union ban could not be justified under section 1 of the Charter as a reasonable limit, pointing to no evidence that Ottawa brought to show unions to be disruptive.

In fact, the judges pointed out that the work of police forces across Canada has not suffered from collective bargaining, even under many different kinds of schemes.

The decision comes more than 15 years after the high court first dismissed a challenge by Gaetan Delisle to the RCMP's unique management-employee system. Only part of the labour relations scheme was under scrutiny at the time, and it was before the Supreme

Court of Canada had clearly defined the Charter guarantee under s. 2 (d) of freedom of association as including a right to collectively bargain.
The federal government had argued that changing management-staff relations from its current "non-adversarial and collaborative" scheme to a unionized model might lead to illegal job action or walkouts if their demands weren't met.

But the high court dismissed those arguments, pointing to unionized forces across Canada and provincial laws which reasonably limit the right to strike.

The judges agreed with lawyers for the Mounted Police Association of Ontario and for the Canadian Police Association, who said there is no evidence anywhere that illegal police strikes have occurred by any of the members of the 254 other police services across Canada.

The court heard that the only strikes that ever occurred were legal under statutes that were later changed to outlaw police work stoppages. Since then, only reasonable job actions have been carried out, she said, such as wearing police ball caps or reducing speeding fines.

Justice Marshall Rothstein was the only dissenting judge in the main ruling Friday, finding that the SRR program did not render collective bargaining "effectively impossible" and therefore it did not violate the constitutional freedom to associate.

The federal government last year overhauled the RCMP act to provide RCMP management new powers to respond to internal grievances and discipline issues, and to restructure outside oversight.

Although Mounties who favour a union won a significant victory Friday, in a separate but related case, rank-and-file members lost a bid to challenge a wage rollback that Ottawa imposed on them after the global recession struck in 2008-09.

In that second case, the high court found that through the RCMP's Pay Council which negotiates pay and benefits, RCMP staff members had been adequately consulted, and their rights not "substantially interfered" with. The rollback partially froze wages at the same level as all the public service, and in fact the RCMP members were able to get certain other benefits, such as service pay, increased.

****

Click on the link below to read the Supreme Court judgment:
http://scc-csc.lexum.com/scc-csc/scc-csc/en/14577/1/document.do

Cliquez sur le lien ci-dessous pour lire le jugement de la Cour suprême :
http://scc-csc.lexum.com/scc-csc/scc-csc/fr/14577/1/document.do

****

ICI RADIO-CANADA .ca + NOS CHAÎNES

Les employés de la GRC ont droit à la négociation collective, tranche la Cour suprême

Denis Ferland, Radio-Canada, le 17 janvier 2015

Dans un jugement à six contre un, la Cour estime également que les membres de la GRC sont aussi privés du droit de négocier collectivement leurs conditions de travail. L'exclusion des membres de la GRC de l'application de la Loi sur les relations de travail dans la fonction publique avait explicitement pour but de leur enlever le droit de négocier, selon la Cour.

Le plus haut tribunal du pays estime que « l'exclusion prévue par la première Loi sur les relations de travail dans la fonction publique et le décret C.P. 1918-2213 [qui constituait le régime de relations de travail applicable aux membres de la GRC au moment de l'adoption de la première LRTFP], par leur effet combiné, ont constitué un régime de relations de travail conçu pour entraver le droit à la liberté d'association des membres de la GRC » et que « ces deux volets de ce régime de relations de travail avaient un objet commun. Ils visaient tous les deux à priver les membres de la GRC de l'exercice de leur droit constitutionnel à la liberté d'association ».

Or, la Cour estime que le gouvernement n'a pas démontré que cette exclusion était nécessaire pour « préserver et renforcer la confiance du public à l'égard de la neutralité, de la stabilité et de la fiabilité de la GRC à titre de force policière indépendante et objective ».

La Cour soutient qu'au « niveau de la structure institutionnelle, le PRRF [Programme de représentants des relations fonctionnelles] n'est manifestement pas indépendant de la direction de la GRC. Au contraire, il se trouve carrément sous le contrôle de cette dernière. Le programme appartient à la structure de la GRC relative aux relations entre les employés et l'employeur ».

Vers la syndicalisation?

La Cour donne douze mois au gouvernement pour en arriver à un nouveau régime de relations de travail à la GRC qui permettrait à ses membres d'exercer pleinement la liberté de choix de leur représentation tout en leur offrant la possibilité de décider de leurs intérêts et de leur défense en toute indépendance par rapport à la direction, ce qui n'est pas le cas actuellement.

La Cour ne précise pas que la syndicalisation des membres de la GRC est la seule voie à suivre pour assurer le respect de ces droits, mais elle note que la GRC est le seul corps

policier au pays à ne pas permettre l'association de manière indépendante de ses membres.

Elle cite les exemples de différentes formes de regroupements de certains corps policiers provinciaux, dont la Sûreté du Québec et la Police provinciale de l'Ontario, qui permettent la négociation de conventions collectives et qui prévoient des procédures de règlement de griefs ou encore de conciliation et d'arbitrage.

« À moins qu'on établisse que la GRC est substantiellement différente des forces policières provinciales, son exclusion totale d'un régime véritable de négociation collective ne peut clairement pas constituer une atteinte minimale. Une différence substantielle n'a pas été établie. De plus, dans des régimes comme celui de la Loi actuelle, les préoccupations quant à l'indépendance des membres de la Force pourraient facilement être examinées au moment de déterminer l'étendue de l'unité de négociation - sans qu'une exclusion totale ne soit nécessaire », soutient la Cour.

Supreme Court backs Mounties' right to collective bargaining

SEAN FINE, The Globe and Mail, January 16, 2015

The Mounties have the right to engage in "meaningful" collective bargaining, free from the control of their employer, the Supreme Court of Canada has ruled, striking down the negotiating system created by Parliament for the RCMP as deeply unfair to its members.

While the 6-1 ruling does not explicitly create a "right to unionize," it is a major victory for labour rights under the Constitution, expanding the meaning of the right to free association in the Charter of Rights. The court did not wish to prescribe the form that unions be allowed to take, but said in whatever form, workers must be allowed equal leverage at the table with management.

"The RCMP is the only police force in Canada without a collective agreement to regulate the working conditions of its officers," Chief Justice Beverley McLachlin and the now-retired Justice Louis LeBel wrote for the majority. "It has not been shown how or why the RCMP is materially different from the police forces that have the benefit of collective bargaining regimes that provide basic bargaining protections."

The Mounties argued that the constitutional right to freedom of association means that they are entitled to set up an association of their choosing, and to have a bargaining unit that is independent of management. They say that many grievances – from unpaid overtime, to unfair promotion practices, to a high rate of medical leaves for post-

traumatic stress – have festered under the current system. Three associations representing Mounties in British Columbia, Ontario and Quebec challenged the government's refusal to allow them to unionize.

Federal law bars the Mounties from bargaining alongside the vast majority of the public service, and creates the Staff Relations Representative Program, led by elected Mounties, to discuss workplace issues with management. The government argues that the country's national police force should avoid an adversarial approach to labour relations, in order to be seen as neutral and objective. Most police forces in the country are unionized.

"In policing, a high level of employee-management trust and alignment of interests are vital to the effective delivery of police services to the citizenry," the government argued in documents filed with the Supreme Court. "This is particularly so given the real possibility of circumstances where the RCMP could be the only provider of a particular police service in a specific area or region of the country. In such circumstances, the possibility of a strike or other form of conflict imposes disproportionate direct costs on the citizenry."

The case is the latest on what has been a winding road of rulings in labour-rights cases under the Canadian Charter of Rights and Freedoms. In 1987, the Supreme Court said freedom of association, as protected by Section 2(d) of the rights charter, does not include the right to bargain collectively. It reversed itself in a 2007 case involving B.C. health workers. But then in 2011, a divided court upheld an Ontario law restricting the right of farm workers to bargain collectively.

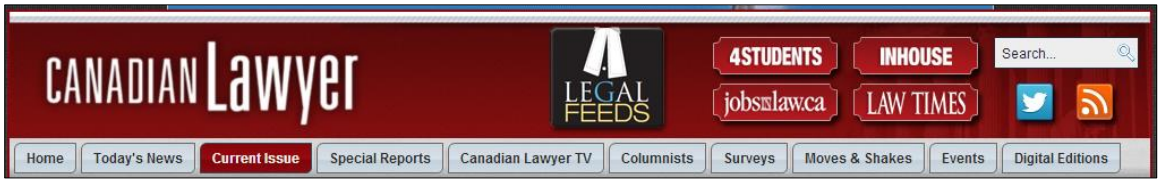
The Mounties won at trial, when Justice Ian MacDonnell ruled in 2009 that the Mounties have a "constitutional right to form an independent association for labour relations purposes, free of management interference or influence."

Citing the Supreme Court's 2007 ruling affirming the importance of collective bargaining rights, he wrote, "It is difficult to conceive of as a negotiation, let alone as bargaining, a process in which employees can make no offer to management of a quid pro quo because management can have the quid regardless of whether it surrenders the quo."

But then came the Supreme Court's 2011 ruling limiting the rights of farm workers. And in 2012 the Ontario Court of Appeal overturned Justice MacDonnell's ruling and upheld the law.

Joel Bakan, a law professor at the University of British Columbia, said the case is important "because it's a chance to confirm ideas it's been developing from the very first cases back in the late 1980s. . . judges have always drawn a link between the right to organize and bargain collectively and fundamental principles of democracy."

Speaking before the court published its ruling, he said that if the Mounties were to lose the case, it would mean that "unions and those who wish to form unions and bargain collectively might not be as confident that their rights are constitutionally protected, which translates into government potentially having greater leeway to interfere with the rights to form and join employee associations, and the right to bargain."



SCC grants Mounties bargaining rights, but permits wage-restraint laws

By David Dias, Canadian Lawyer, January 16, 2015

The Supreme Court of Canada today issued a pair of RCMP-related rulings that, on the one hand, open the door to meaningful collective bargaining rights for officers, while simultaneously affirming the right of government to restrict officers' wages unilaterally.

The ruling prohibits government from enacting laws or imposing a labour-relations process "that substantially interferes with the right of employees to associate for the purpose of meaningfully pursuing collective workplace goals."
The ruling prohibits government from enacting laws or imposing a labour-relations process "that substantially interferes with the right of employees to associate for the purpose of meaningfully pursuing collective workplace goals."
In the first case, Mounted Police Association of Ontario v. Canada, a 6-1 majority struck down provisions that excluded RCMP officers from the Public Service Labour Relations Act, which in effect imposed a management-controlled labour-relations regime on RCMP officers.

Laura Young, who represented the MPAO, says that the management-controlled Staff Relations Representative Program was never intended to create a legitimate means for bargaining, but rather to thwart bargaining by instituting a false substitute.

"It was created to forestall association. It was to block association really," she says. "And that historical evolution is recognized in the decision, so it's nice to see that openly acknowledged and to have a full and fair history of what we've been dealing with here."

Indeed, today's decision, written by Chief Justice Beverley McLachlin and Justice Louis LeBel on behalf of the majority, says the SRRP was never "an association in any meaningful sense, nor a form of exercise of the right to freedom of association.

"It is simply an internal human relations scheme imposed on RCMP members by management. The element of employee choice is almost entirely missing and the structure has no independence from management."

The ruling prohibits government from enacting laws or imposing a labour-relations process "that substantially interferes with the right of employees to associate for the purpose of meaningfully pursuing collective workplace goals."

In evaluating the sufficiency of the SRRP, the court invoked two core principles — choice and independence —both of which were lacking in the RCMP's labour-relations program.

While the program did allow RCMP officers to elect representatives on various boards, Young says that's a far cry from the right to true association.

"You have to distinguish a program of representation from an association," she says. "It's not sufficient to simply populate a structure chosen by management as if that constitutes choice."

"What we have in the staff relations program is an internal program. It's part of the RCMP, it's not external. It doesn't actually constitute an organization or an association. It's simply a model or a mode within the organization — a department really."

While a dissent by Justice Marshall Rothstein raises the spectre of an adversarial model where police services can be withheld from the public, Young points to the determination of the majority that states there's nothing inherently adversarial about an independent collective bargaining model.

"When you have the need to take a stand on an issue, you can be adversarial. You can say that these are important rights. So it's not that it's necessarily adversarial, but it gives you the opportunity to choose where and how you take a stand on issues."

The court has suspended its ruling for 12 months, giving parliamentarians time to bring the applicable provisions in line with the Charter.

In June 2010, the federal government introduced draft legislation in response to the original ruling at the superior court level, which sided with RCMP members. That legislation was taken off the table after a win at the Ontario Court of Appeal.

Now, with a final decision in hand, it remains to be seen whether Ottawa will retable its draft legislation, impose a new system that offers RCMP members greater choice and independence in their bargaining, or simply apply a collective-bargaining framework already in place at the provincial police level.

In the second of today's companion cases, Meredith v. Canada, the SCC has issued a starkly contrasting judgment, ruling against RCMP officers who challenged the constitutionality of the 2009 Expenditure Restraint Act, which had unilaterally rolled back wage hikes from 2008 to 2010 for officers, instead imposing a cap of 1.5 per cent annually.

The 6-1 ruling sides with the government this time, determining that the legislation did not single out RCMP officers or restrict their freedom of association. Regardless of the constitutional insufficiency of the bargaining process, the decision states that, "in this

case, the ERA did not substantially interfere with the process so as to infringe RCMP members' freedom of association.

"The limits imposed by the ERA were shared by all public servants, were consistent with the going rate reached in agreements concluded elsewhere in the core public administration and did not preclude consultation on other compensation related issues, either in the past or the future."

Christopher Rootham, a partner at Nelligan O'Brien Payne LLP in Ottawa, who represented the RCMP officers in Meredith, says the ruling is significant in that it creates a perception that wage-restraint legislation is constitutionally permissible in certain circumstances.

"It doesn't go so far as to create a licence for wage-restraint legislation — it just doesn't; this is a unique circumstance — but I think governments are at least going to have some comfort that certain forms of wage-restraint legislation is not automatically unconstitutional."

LeDroit

La Cour suprême donne raison aux employés de la GRC

Paul Gaboury, Le Droit, le 17 janvier 2015

Les membres de la Gendarmerie royale du Canada (GRC) ont remporté vendredi une importante victoire en Cour suprême dans leur lutte pour faire reconnaître leur droit de se syndiquer.

Dans cette décision favorable rendue à six contre un, les juges du plus haut tribunal du pays ont conclu que le régime non syndical de relations de travail imposé actuellement aux membres réguliers et civils de la GRC ne respecte pas la liberté d'association.

Pour la Cour, il s'agissait «d'un cas d'entrave substantielle au droit de s'associer en vue de réaliser un processus véritable de négociation collective à l'abri du contrôle de l'employeur». La Cour ne propose pas de modèle de relations de travail, mais accorde une période de 12 mois au gouvernement pour se plier à la décision.

«Une victoire totale»

Présents sur place lors du prononcé du jugement, plusieurs représentants des associations de membres impliquées s'accordaient pour parler d'une «grande victoire». La décision devrait permettre d'établir un nouveau régime de relations de travail pour régler de

nombreux problèmes au niveau de la rémunération, des ressources, des outils de travail et du harcèlement, entre autres.

«C'est une victoire totale», a déclaré au Droit André Girard, un retraité de la GRC et secrétaire de l'Association de la police montée du Québec. «La Cour a retenu tous les points que nous avons défendus depuis des années tant sur le plan juridique que politique.»

La GRC compte plus de 25000 employés, dont près de 3100 travaillent à Ottawa. Environ 1200 membres réguliers, civils et employés de la fonction publique travaillent au Québec. La décision vise les membres réguliers, les policiers, ainsi que les membres civils (incluant des spécialistes, des employés de laboratoires, des pilotes d'avion et plusieurs autres).

AUTRE DÉCISION

Par ailleurs, dans un autre jugement rendu hier, la Cour suprême a maintenu une décision antérieure de la Cour d'appel fédérale qui avait conclu que le gouvernement fédéral était en droit de diminuer les salaires des membres de la GRC en réaction à la crise financière de 2008.

Debi Daviau, la présidente de l'Institut professionnel de la fonction publique du Canada, aurait préféré que soit renversée la décision qui a permis au gouvernement d'abaisser les salaires. Mais elle a en même temps salué la décision accordant le droit de se syndiquer à la GRC.

«Il est évident que la Cour suprême a confirmé le principe démocratique fondamental du droit à la négociation collective», a fait valoir Mme Daviau.

OTTAWA CITIZEN

Tribunal slams 'wilful and reckless' discrimination against employee by Service Canada

DON BUTLER, Ottawa Citizen, January 18, 2015

Doug Nicol’s six-year battle with the federal government cost him his livelihood, his health and his marriage. The 55-year-old former public servant in Edmonton was forced

to rely on food banks and scrounge for empty bottles for cash. Twice he almost lost his house.

Last month, Nicol got his best Christmas present ever. An adjudicator awarded him three years' pay and $38,000 in damages after finding that his employer, Service Canada, made no real effort to accommodate his disabilities and engaged in discriminatory practices "wilfully and recklessly."

The Public Service Labour Relations and Employment Board upheld a June 2008 grievance by Nicol, a former EI claims assessor with Service Canada who took medical retirement in December 2011.

Nicol alleged that Service Canada denied him accommodation for physical and mental disabilities, causing him "serious financial, physical and psychological damages." He also alleged his employer discriminated against him on the basis of his disability.

The board heard the grievance over 12 days in 2012, but it took more than two years to issue its decision. When it finally came, though, it was a withering indictment of the department's handling of Nicol's case.

Arbitrator Deborah Howes said the medical evidence was "overwhelming" that Nicol had physical and mental disabilities that required him to seek accommodation.

Though Service Canada offered Nicol three positions in August 2008 — two of which were demotions — none was a reasonable offer of accommodation in the circumstances, Howes said.

The department ignored recommendations made by its own medical assessor and "failed or refused" to give Nicol the opportunity for further employment. It did so, Howes concluded, "based solely on his medical disabilities because the employer did not want to take the steps to properly accommodate him."

It also repeatedly sent letters threatening termination directly to Nicol, rather than to his bargaining agent, as he had explicitly requested.

"The letters were sent at a time when he had no income and he was becoming increasingly desperate for funds for basic necessities," said Howes, who concluded the letters were meant "to frustrate (Nicol) and prompt him to take a desperate action, like quitting."

The department's slow response to Nicol's requests for accommodation "exacerbated his situation and resulted in his health deteriorating," Howes said.

His medical condition worsened to include post-traumatic stress disorder and his financial situation "could only be described as desperate," she said. "He borrowed from family, extended his credit card debt and borrowed against his house. He contemplated suicide."

Ultimately, Nicol was “cornered” — by his employer’s pressure and its “passive resistance” to his return to work — into applying for medical retirement.

The adjudicator ordered Service Canada to pay Nicol lost pay and benefits from June 1, 2008, until his medical retirement in December 2011, an award likely worth about $150,000.

She also awarded the maximum $20,000 in damages for pain and suffering and special damages of $18,000 for the department’s discriminatory treatment. “In my view, the conduct was repeated, sustained and calculated to ensure (Nicol) would not return to work.”

In an interview, Nicol said his bosses at Service Canada treated him “almost criminally bad,” but he toughed out the long struggle because he was “99.9 per cent sure I was going to be vindicated. And I have been.”

He said he had a spotless employment record for two decades before developing neck and back problems that made it impossible for him to work all day at a computer. He suggested an accommodation that would let him work halftime on other tasks, “but they had no interest in that.

“They’ve just tried to draw this out as long as they can,” he said. “That’s what they do.” He now suffers from agoraphobia and expects to be on medication for the rest of his life.

During the long battle, his wife left him and he became alienated from his family. “This has gone on for so long that people get sick of you calling them to help you with money. I’ve practically been disowned by my family over this.”

In an unusual move, the tribunal sealed the exhibits presented at the hearing because of the extensive medical information presented about Nicol. Howes ruled the potential harm to him outweighed the open-court principle.

David Orfald, a spokesman for Nicol’s union, the Public Service Alliance of Canada, called the decision “a very big win,” saying it sends a clear message to the government about its obligations to disabled employees.

What was tragic, he said, was the lengthy delay in hearing and deciding Nicol’s grievance, which forced him into medical retirement. “This is a problem around how the system as a whole works,” Orfald said.

Fiona MacLeod, a spokeswoman for Treasury Board, said the government “respects” the board’s decision and will not appeal it.

The government “remains committed to developing and supporting an inclusive and barrier-free work environment that accommodates individuals with physical and mental disabilities,” she said.

LeDroit

Retour au travail difficile: un fonctionnaire remporte son grief

Paul Gaboury, Le Droit, le 17 janvier 2015

Un fonctionnaire fédéral comptant 20 ans de service vient de gagner son grief contre le gouvernement, qui devra lui verser près de trois ans de salaire et 38000$ en dommages, pour ne pas avoir facilité son retour au travail après un congé de maladie.

Dans sa décision, la Commission des relations de travail dans la fonction publique indique qu'il n'existait aucun doute que le fonctionnaire Doug Nicol, qui occupait un poste de CR-5 à Service Canada, souffrait d'invalidités appuyées par des preuves médicales qui l'obligeaient à demander des mesures d'adaptation. Son employeur était bien au courant de ces invalidités, ayant reçu des rapports médicaux exhaustifs précisant les restrictions quant au travail et aux mesures d'adaptation demandées.

Dans sa décision, la commission a tranché en faveur du fonctionnaire représenté par l'Alliance de la fonction publique du Canada (AFPC).

«Je conclus que l'employeur s'est livré à des pratiques discriminatoires de façon délibérée et inconsidérée. Il a refusé et omis de créer un plan de mesures d'adaptation pour le fonctionnaire qui tenait compte des contraintes liées à ses invalidités», indique l'arbitre de grief Deborah M. Howes.

Entre 2008 et 2011, le fonctionnaire n'est jamais retourné au travail. Il a demandé à son employeur de l'aide pour être transféré à un autre ministère, mais Service Canada n'a pas donné suite à sa demande. En 2011, placé dans une situation financière très précaire, le fonctionnaire a finalement décidé de prendre sa retraite pour des raisons médicales, la seule façon pour lui d'obtenir un revenu quelconque.

Les mesures de réparation

À titre de réparation, la Commission des relations de travail dans la fonction publique a ordonné au gouvernement de verser au fonctionnaire Nicol toutes les sommes perdues en rémunération, incluant celles découlant du refus de le reclassifier, en crédits de congé annuel, en avantages sociaux et en cotisations au régime de pension pour la période entre juin 2008 et la date d'entrée en vigueur de son départ à la retraite en 2011.

L'arbitre lui a également accordé 20000$ pour le préjudice moral, ainsi que 18000$ pour des dommages spéciaux, soit le maximum prévu à la Loi canadienne sur les droits de la personne.

Female PS workers's disability claims outnumber men's two-to-one

KATHRYN MAY, Ottawa Citizen, January 18, 2015

Women in the public service go on disability leave at almost twice the rate of men, a problem some experts say should be addressed as part of the government's new disability management scheme.

The federal disability insurance plan, managed by Sun Life Financial, is the biggest in Canada. A Sun Life report obtained by the Citizen shows women have ended up on long-term disability at rates vastly disproportionate to their numbers in the public service for more than a decade, especially for mental health conditions.

"It's a crisis, a toxic mix of gender, age and work strata … and it can no longer go unnoticed. The government has an obligation and duty to care," said Joseph Ricciuti, president of SEB Benefits and HR Consulting.

"In the meantime, the poor disability-claims numbers speak for themselves and will continue to impact women in the workforce, who are the hardest-hit and paying the socio-economic price."

The Sun Life report shows 11,670 federal employees are now on disability collecting benefits for anywhere from a few months to 25 years or more. The plan's membership hit a peak in 2010, when it covered about 242,000 public servants. (The bureaucracy has been shrinking with the Conservatives' downsizing, falling to about 219,400 today, while the average age of those covered increased from 43.8 years old to 44.6.)

In absolute numbers, 1,968 women were approved for disability in 2013 compared with 864 men. Women on disability have outnumbered men by at least two-to-one every year for the past decade.

Some of this difference can be explained because there are more women than men in the public service: women today account for about 55 per cent of the workforce.

But even accounting for this, the rate of approved claims per 1,000 women is still 80 to 90 per cent higher than the rate per 1,000 men for the period between 2006 and 2013.

In 2013, the rate of approved claims per thousand for women was 92 per cent higher than for men.

Experts have scratched their heads for years over what's behind the gender imbalance, but the issue doesn't appear to be among the reasons the government is overhauling the way sick leave and disability are managed in the public service. Its overhaul is the first major change in nearly 45 years.

Shannon Bittman, vice-president of the Professional Institute of the Public Service, said unions hoped the issue would be addressed when Treasury Board launched its $5.6-billion disability management initiative several years ago in a bid to get a handle on absenteeism and improve workplace health.

The main reform from that initiative is the government's current offer at the bargaining table to scrap sick leave and replace it with a short-term disability plan, a move unions say won't fix the problem.

"If they are truly interested in the health of their employees and ensuring they have a healthy workplace, then I find it difficult to comprehend why they are not trying to get to the root cause of why this happening," Bittman said. "Unless we identify the causes, we are blindly going for solutions."

This week, the giant Public Service Alliance of Canada upped the ante at contract negotiations with a "mental health" proposal aimed at getting at those root causes.

The government has four separate disability plans covering federal employees. The plan managed by Sun Life Financial is the largest and covers all unionized federal workers.

The report shows the largest numbers of men and women go on disability in mid or late career, with most claims clustered around those aged between 45 and 59. The average age for women approved for disability in 2013 was 46 years, compared with 49 for men.

By far the biggest driver of claims is mental health, led by depression and anxiety.

These claims have doubled since the 1990s, when they accounted for 24 per cent of claims. They represented nearly half of all claims by 2012, dipping to about 45 per cent in 2013 when Sun Life took steps to tighten up claim approvals. The next closest cause of claims is cancer, which accounted for about 14 per cent of claims.

In 2013, 47 per cent of all claims approved for women were for mental health conditions. Among men, claims for mental illness accounted for 39 per cent.

Linda Duxbury, a professor at Carleton University's Sprott School of Business, said she would expect women's claims to be 20- to 30-per-cent higher because there are more of them and women always report more. But she said an almost two-to-one difference "is much higher than what I consider normal and there is something serious underlying there."

Duxbury worries the problem is too often dismissed as a gender issue, blamed on women who can't cope with menopause, child or elder care, or with juggling the demands of home and work.

"If I was the government I would want to know what is behind those numbers. Is it gender and age? Or is it the position or level or years of service?" she said.

"My point is: Don't assume it's gender just because it looks like a gender problem. If you have scotch and water you get drunk; if you have vodka and water or rye and water you get drunk — so people conclude that water is the problem.

"So don't blame it on gender because it's easy. The fix is very different if the job is the problem, and so are the consequences."

That gender gap was even more pronounced among the younger, under-40 population, where claims in 2013 were fewer but the rate of disability among women compared to men was closer to three-to-one for some age groups, such as those between 35 and 39, and between 40 and 44.

The number of claims is higher among all workers over age 45, but the gap between men and women narrows.

Duxbury said the reasons aren't clear, but those under age 40, especially women, are typically dealing with family responsibilities and small children, while older workers may be dealing with burnout from work stress.

There's been much speculation over what's wrong with the federal workplace that was once dubbed the "depression capital of Canada."

A Statistics Canada report found that Canada's public servants are absent — including on disability — more than workers in the private sector, and that much of that difference can be explained because they are unionized, a higher proportion are women, and they are older than the rest of the labour force.

Sir Cary Cooper, an international expert on workplace issues at Britain's Lancaster University Management School in England, said the pattern of more women on disability is similar in all developed countries, whether in private or public sectors, especially for mental health claims.

The big shift began more than a decade ago as countries lost their manufacturing jobs and work became more knowledge-based. Almost overnight, claims shifted from physical to mental ailments.

Cooper said women are more likely to admit a problem in the workplace and seek help than men. Women are still largely the front-line caregivers and those in their mid-40s are at the peak of family, work and financial demands. They are shooting for promotions, putting kids through college, and still "hitting the glass ceiling" while getting paid less than men.

For public servants, however, Cooper said a big job stress is the lack of clarity and autonomy in their work.

Cooper said the only way to reduce mental health claims is to audit the practices and culture of departments, which is what the Mental Health Commission of Canada's national standard for a psychologically healthy workplace was designed to do.

The government's own executives have pressed to adopt that standard in all departments as part of the ongoing Blueprint 2020 plan to modernize the public service. The mental heath demand that PSAC tabled at negotiations last week calls for the standard to be enshrined in employees' contracts.

"You have to get at what is causing this. Is it bullying, harassment, a long hours culture, poor management, people overloaded with work, inflexible work culture, women hitting the glass ceiling? Unpack that and you save a lot of money by dealing with it rather than redefining the benefits," said Cooper.

Duxbury expects an audit would find big problems with middle managers in the public service, who are mostly women. She calls them "stress sandwiches" between the upper and lower ranks who set the workplace's tone and culture.

Those middle managers include what the government calls the nearly 33,000 Ex minus 1 and 2s, the managers and supervisors in training for the executive jobs. They are typically between 46 and 48 years old.

Stephanie Rea, a spokeswoman for Treasury Board President Tony Clement, noted that women have higher claims for different illnesses. "For instance, there are more claims from women for cancer, and men significantly outnumber women for claims related to back pain," she said in email.

She said the department doesn't have the data to examine a possible correlation between occupation groups and long-term disability.

"We do, however, know that disability increases with age, a phenomenon that exists across the Canadian population as a whole."

To the unions, now locked in a standoff at the bargaining table over surrendering sick leave, it's all evidence of problems that must be addressed. Clement is proposing a new short-term disability plan that includes fewer paid sick days, more case management and earlier rehabilitation.

The unions have pushed for years for more case management and rehabilitation to get people back to work faster and off the path to disability. But they argue the government can do that without taking away existing sick leave.

"If the problem is a toxic workplace, which I think it is, then absenteeism is a symptom and the government is confusing the symptom with the problem," said Duxbury.

By the numbers for 2013

11, 670: Number of unionized federal workers on active

disability claims

219,400: Number of unionized public servants covered by the federal disability insurance plan

44.6: Average age of public servants in the plan

3,777: Number of claims lodged by male and female public servants

2,832: Number of claims approved for disability

1,968: Number of women approved

864: Number of men approved.

12.9: Incidence rate or number of claims per 1,000 plan members. For women, 16.5 of every 1,000 were approved for claims. For men, 8.6 of every 1,000 were approved.

44.8: Percentage of total disability claims for mental health conditions

Source: *Sun Life Financial report on the Federal Government Disability Insurance Plan.*

Tories prepare for further spending restraint due to cheap oil

BILL CURRY, The Globe and Mail, January 18, 2015

The Conservative government is warning for the first time that falling oil prices could trigger new spending cuts in order to deliver on a promised balanced budget.

On the heels of the surprise decision to delay the federal budget until at least April, the government is putting Canadians on notice that it is prepared to cut spending further rather than abandon its goal of balancing the books.

Federal Employment Minister Jason Kenney is also pledging that Ottawa can hit its target without dipping into a $3-billion contingency fund, a comment that is at odds with recent statements from Finance Minister Joe Oliver, as well as analysis from several private-sector economists.

The messaging from the government is shifting quickly in the face of growing signs that current, dramatically lower oil prices will be around for some time. The Bank of Canada

will release its quarterly Monetary Policy Report on Wednesday, which is expected to expand on recent warnings that prices could go lower, or remain low, "for a significant period."

In a series of interviews broadcast over the weekend, Mr. Kenney said balancing the books has important symbolic value and that "it may take some additional spending restraint" in order for the government to deliver on its promise.

"We'll have to certainly look at potentially continued spending restraint. For example, we've had an operating spending freeze. The Finance Minister may have to look at extending that," Mr. Kenney told CTV's Question Period in an interview broadcast Sunday.

In a separate interview with Global's The West Block, Mr. Kenney ruled out using the annual $3-billion contingency fund to achieve balance: "We won't be using a contingency fund. A contingency fund is there for unforeseen circumstances like natural disasters."

If a government is in surplus and has not spent the contingency, that money goes toward paying down the national debt. However, Mr. Oliver suggested last week that the government was not planning to do that and would instead "bring the surplus down to zero" in order to provide benefits to Canadians.

The government says it is taking a few extra weeks to release a budget in order to get a better understanding of the current changes in the economy. The price of oil has dropped by more than half since June, a development that will mean billions less in tax revenue for Ottawa than had been previously expected.

In a prebudget letter to Mr. Oliver, the NDP urges the Finance Minister not to delay the budget and to instead scrap the recent tax cut that allows parents with children under 18 to split their income for tax purposes. The NDP says Ottawa should cut spending on advertising, the Senate and corporate subsidies.

The letter calls for more spending on health care, child care and pensions and the creation of a credit for small businesses that make new hires.

The 2014 federal budget reintroduced a two-year freeze on departmental operating budgets that runs through the 2015-16 fiscal year, which is when the Conservatives are promising a return to balance. The 2014 budget said this freeze would save the government $550-million in 2014-15 and $1.1-billion in 2015-16. Mr. Kenney did not explain how extending the freeze might help the government achieve its balanced-budget promise.

"They spent the surplus before they had it and now they're scrambling to figure out how to make one plus one equal three," said NDP finance critic Nathan Cullen.

Economists say it makes no practical difference whether Ottawa posts a small surplus or a small deficit, given that federal finances are sound overall in terms of debt levels and

long-term spending trends. But Mr. Kenney said balancing the books remains an important goal.

“It’s a commitment we made to Canadians in the last election,” he told CTV. “It’s important that, when possible, we no longer go back and borrow money to pay for government spending.”

Federal departments say they're doing better with less, PBO reports

KATHRYN MAY, The Ottawa Citizen, January 13, 2015

Federal departments claim they are doing a better job today delivering their programs and services than before the Conservative government cut $5.2 billion from their budgets and wiped 20,000 employees off the payroll.

The assertion is contained in a report released Tuesday by the Parliamentary Budget Officer.

In it, departments report they only met 46 per cent of their performance targets last year. Still, that’s an improvement over the two years before the watershed 2012 budget cuts – when they hit about 42 per cent of those targets.

“It is hard to believe service could improve … because the implication is that the 20,000 people (already) laid off were not making any contribution at all to service levels, and I can’t believe that 20,000 people did not make any contribution to the level and quality of services in the government,” said Mostafa Askari, the assistant parliamentary budget officer.

The PBO report questions whether this slightly improved performance can be sustained as spending cuts continue to make their way through the system and federal departments are poised to get rid of another 8,900 jobs over the next three years.

Federal spending cuts are ramping up to hit $14.6 billion in 2014-15 – including the $3.8 billion in cuts that came into effect on April 1, 2014.

The findings defy critics who argued the government couldn’t cut billions in spending and thousands of staff without eroding the quality of services. These critics pointed to the

flood of complaints about diminishing service after the government closed Veterans Affairs offices and reduced staff at Service Canada offices.

Askari said the findings are surprising in light of the massive downsizing, but he said the PBO had to take the departments "at their word" and was not provided the data to independently evaluate whether they were meeting those targets.

The PBO has been locked in a longstanding battle to get information from departments about the nature of the 2012 cuts; it even took the government to court. The government has so far refused to provide the data, and Askari said that without it, the PBO is unable to determine whether the modest improvements can be maintained.

The government has faced an endless outcry from veterans who say their services are deteriorating. Critics, including former PBO Kevin Page, predicted that the closure of Veterans Affairs offices was the beginning of lower-quality services Canadians will face in the government's drive to balance the books by 2015.

Veterans Affairs, however, reported it met seven of its nine performance targets, failed to meet one, and another couldn't be evaluated.

The PBO study was based on the programs and performance targets departments presented in the two sets of reports they gave Parliament – Plans and Priorities, and Performance reports – over the past four years.

It examined about 1,500 targets the departments set for 500 programs, to compare performance for the two years before the 2012 budget and the two years after. It found 46 per cent met their targets, 16 per cent didn't, and 38 per cent didn't have enough data to evaluate performance.

As part of the study, the PBO also ensured the measures were the same over the four years. The ratings are based on the department's self-evaluations using Treasury Board guidelines.

The reported improvements were driven by better performance of smaller programs within departments. The larger programs, with bigger budgets, have historically performed better than the smaller programs but the study found they have deteriorated over the four years. The report said overall 54 per cent of total program spending met performance targets in 2013-14 compared to 66 per cent the year before.

This corresponded with an increase in the spending for which performance couldn't be measured. The PBO estimated $80 billion of federal spending doesn't have "conclusive performance measures" attached to it that can be evaluated to determine if it's being spent well.

The government could point to the modest improvements contained in the PBO report as evidence of its promise with the 2012 budget that spending reductions would come from "back office" operations and wouldn't affect front-line services.

Departments hitting less than half of their performance targets raises questions about the effectiveness of the Conservatives' focus on performance management. Treasury Board President Tony Clement made it a priority to change the culture of the public service and make it more "cost-effective" while rewarding the stars and weeding out the poor performers.

Last summer, the PBO released a report showing the government paid little attention to the performance of programs when deciding which programs to cut.

The government's expenditure management system is based on "performance-based budgeting" to ensure that spending is tied to results and departments are expected to reallocate funds from low-priority and poor-performing programs to higher-priority and successful programs.

PSAC seeks to adopt mental-health standards in public service

KATHRYN MAY, Ottawa Citizen, January 13, 2015

Canada's largest federal union went to the bargaining table Tuesday with proposed contract changes to adopt national standards for a "psychologically healthy" workplace to reduce the rising number of mental health disability claims in the public service.

The Public Service Alliance of Canada tabled a proposal with Treasury Board negotiators to enshrine the Mental Health Commission's national standard for psychological health and safety in the workplace in the contracts of the 100,000 employees it represents.

If accepted, this would be the first time federal contracts would extend to protect the psychological health of employees.

Although the union wants the commission's standard part of the collective agreement, it is also urging the government to work with unions to identify the toxic factors in the workplace that are behind the public service's high levels of depression and anxiety.

It wants to identify working conditions and practices that could lead to harassment, discrimination, verbal abuse, unfairness, and disrespect. Experts have found that job pressures, unreasonable deadlines, work overload, and too little influence over day-to-day work can lead to stress and depression.

Mental health conditions have accounted for nearly half of all disability claims among unionized federal employees.

“PSAC recognizes the importance of positive workplace psychological health and safety. We see it as contributing to the overall wellness and productivity of the federal public service,” said PSAC president Robyn Benson in statement.

The union also tabled demands to increase childcare access, such as providing free space in government buildings, as part of its drive to promote wellness in the workplace.

This proposal was sparked by Treasury Board’s changes to its long-standing childcare policy, which many argue led to the bankruptcy and closure of the Tupper Tots at the Sir Charles Tupper Building on Riverside Drive.

The popular centre opened in 1994 as part of the government’s Workplace Daycare Policy that was aimed at providing affordable day care for federal employees.

The union argues the shift in policy will contribute to a shortage of quality and regulated day care across the country. It wants joint union-management committees to discuss where childcare is needed for federal employees from offices to 24-hour operations at airports and border crossing.

The big issue in this round of bargaining is the sick leave proposal the government tabled with PSAC in November.

The government’s last offer would give public servants six paid sick days a year compared to the 15 days a year they now get and can bank from year to year. After using those six days, employees would face an unpaid seven-day waiting period before they can apply for sick benefits under the new short-term disability plan.

PSAC’s proposal for a national standard to be enshrined in its contracts is clearly part of the union’s response to the government’s sick leave proposal. If successful, it could set a precedent for rest of the 17 unions representing public servants.

Ron Cochrane, co-chair of the labour-management National Joint Council, said both proposals are related to the government’s promise to reduce stress and promote wellness in the workplace.

He argued the government would be “disingenuous” if it didn’t consider the standard after insisting the planned short-term disability plan is aimed at promoting wellness.

”I am happy to hear the PSAC is proposing this. Those are two key components of a healthy workplace that I think all the unions would support,” said Cochrane. “It is all part of a bigger wellness program and if the government doesn’t accept, then their proposals to promote wellness are disingenuous.”

With a looming election, the negotiations are entering a critical stage. Of late, Treasury Board President Tony Clement has avoided commenting on negotiations or on proposals being tabled.

Last spring, Clement he said he was committed to reducing rising mental health claims and was considering adopting the national standard. He noted, however, that his planned sick leave and disability overhaul is key to getting "public servants to be healthy and in a position to fully contribute to the best of their abilities."

The Conservative government has been under tremendous pressure to adopt the standard. Its own executives represented by Association of Professional Executives in the Public Service of Canada (APEX) urged its adoption.

The executive group urged then-Privy Council clerk Wayne Wouters to adopt the standard as part of his Blueprint 2020 reforms to modernize the public service.

Similarly, mental health advocates have long argued that the government, as Canada's largest employer, should be a role model and adopt the standard. Its mental health claims are among the highest in the country.

Quebec doesn't need a new hate law

YVES BOISVERT, Special to The Globe and Mail, January 15, 2015

Yves Boisvert *is a columnist with La Presse.*

Quebec is the only province in Canada where almost all the mainstream media, in a show of solidarity last week, published a Charlie Hebdo cartoon of the Prophet Mohammed.

But if we listen to our provincial human rights commission, those who oppose free speech could have a shiny new tool to challenge the legality of such "offensive" material.

In a little-noticed intervention last month, the Quebec human rights commission asked the government to amend Quebec's Charter of Human Rights and Freedoms.

In an era of massive and ultra-rapid communication, bullying and hate speech have to be tackled with new legal weapons, says the commission, in its well-meaning proposal. When a group is targeted, it says, libel laws are irrelevant and the Criminal Code hardly applies.

The criminal "wilful promotion of hatred" requires extreme language against an "identifiable group." Charges are rarely laid and convictions are scarce. So, the commission would like to make it a civil offence to "expose someone to hatred" on

illegal grounds of discrimination. These include gender, language, ethnic origin, race, religion and political convictions.

Unlike other provinces, Quebec's human rights commission does not have jurisdiction over what is published in the news media, on the Internet or in artistic productions. However, the commission could have looked at the rest of Canada, which has been a legal laboratory on a very touchy subject.

Remember when Maclean's went through a five-day day human rights tribunal in British Columbia in 2008 to justify so called "Islamophobic" articles? The complaint was dismissed. Earlier, it was rejected by the Canadian Human Rights Commission before going to tribunal. In Ontario, the human rights commission said it did not have jurisdiction over the case, but nonetheless issued a statement saying the incriminated articles were of the kind that cultivate prejudice against religious minorities.

When Ezra Levant and the Western Standard published the Danish Mohammed cartoons in 2006, a complaint was filed in Alberta by a Muslim cleric – and later withdrawn. Forget about the costs and the trouble. What about the chilling effect on freedom of speech?

For that very reason, in 2012, Parliament voted to take away the federal Human Rights Commission's power to hear complaints about hate speech. The provision that made it discriminatory to communicate any material that "exposed a person to hatred or contempt" was removed from Canadian Human Rights Act and left for the courts to decide, not tribunals.

This is not to say that "anything goes," or should go. Simply, Quebec doesn't need a cheap version of hate propaganda laws.

The road toward a conviction under the Criminal Code is very steep – and rightly so. If only polite and consensual speech were to be protected, we would not need to guarantee it in the Constitution.

As former French president Nicolas Sarkozy said in 2006, he preferred "an excess of caricature to an excess of censorship." France, though, has a very strict criminal law against hate and racist speech that arguably would not stand up constitutionally in Canada.

Arguably? Well, just maybe. In 2013, the Supreme Court held that the Saskatchewan Human Rights provision against hate speech was a reasonable limit to freedom of expression, in an attempt to fight against discrimination "likely to expose" some groups to hatred. But the court erased the part of the section making it illegal to "ridicule, belittle or otherwise affront dignity."

On the other hand, former Supreme Court justice Ian Binnie wrote in 2008 that "the law must accommodate commentators such as the satirist or the cartoonist who seizes on a point of view, which may be quite peripheral to the public debate, and blows it into an outlandish caricature for public edification or merriment. Their function is not so much to

advance public debate as it is to exercise a democratic right to poke fun at those who huff and puff in the public arena. This is well understood by the public to be their function."

Set aside criminal speech – threats, hate propaganda, abetting violent acts – and libel: Wrong ideas should be attacked the classical way – with contradictory debate. New means of communication may allow for more stupid speech, but also for quicker replies.

We should still bet on human reason, even if some days it seems harder to find.

New anti-terror laws could be 'slippery slope': U.S. expert

DYLAN ROBERTSON, The Ottawa Citizen, January 12, 2015

An American expert on radicalization warns that looming Canadian anti-terror legislation has the potential to imprison people who don't pose a threat to society, while existing laws may conflate radicalized thoughts with terrorist actions.

The federal government will soon table a bill to allow for certain kinds of preventative arrests to thwart potential terror acts.

"I think that's a very, very slippery slope, to be honest," said John Horgan, director of the Center for Terrorism and Security Studies at the University of Massachusetts Lowell. Horgan has authored more than 70 publications on terrorism and political violence, including for the British government and the U.S. Department of Homeland Security.

"I think there is a real risk that we are confusing radicalization with terrorism. There are far more people that are radicalized than those who would ever become involved in terrorism," said Horgan. "There is profound risk in losing perspective."

Horgan's comments echo those of Toronto imam Muhammad Robert Heft, who went to Iraq in 2003 to act as a human shield but came back disillusioned with militant groups.

"I don't think anyone really becomes deradicalized; I think they become disengaged from the idea of this violence and this narrow understanding of (Islam)," said Heft, who has also said he still thinks radically but would never act violently.

Horgan says Canada also has to be careful how it identifies terrorists. He cited a 2012 U.K. court case that saw a woman convicted for downloading al-Qaida's Inspire

magazine under a charge of possessing "a record of information of a kind likely to be useful to a person committing or preparing an act of terrorism."

"We are dealing with a complex phenomenon; we have shifted to this preventative paradigm," Horgan told the Citizen. "It's remarkable to me as a scholar how we seem to have lost any sense of proportion in that."

Horgan's remarks came just days after the RCMP arrested two Ottawa twins, Ashton Carleton Larmond and Carlos Honor Larmond, both 24, after a lengthy anti-terror investigation.

Carlos Larmond was arrested at Montreal's Pierre Elliott Trudeau Airport with police alleging he planned to participate in terrorist activity. Ashton Larmond was arrested in Ottawa and charged with offences related to facilitating a terrorist activity.

On Monday, the RCMP said it had charged a third man, Suliman Mohamed, for participation in the activity of a terrorist group, and that the arrest was "linked to the arrests of Ashton and Carlos Larmond."

"A lot of counter-terrorism legislation conveys a confused idea of what it means to be involved in terrorism," Horgan said. "Since 9/11, certainly the issue of what it means to be involved is now more confusing than ever."

The RCMP has declined to provide further details about the three Ottawa men beyond brief press releases on the arrests, listing the charges.

Horgan has helped shape Boston's "Countering Violent Extremism" strategy, in which authorities and counsellors help deter people from acting violently on radical beliefs. The program is among three the White House will showcase next month in an international summit Canadian government officials will attend.

"There's a lot of justified cynicism and criticism about CVE. Some people see it as just an empty political gesture," said Horgan. "But I think there are really valuable local initiatives that need to be showcased.

"We are way past due in terms of a cohesive, strategic framework," he said, adding that researchers are still trying to design scientific means to evaluate CVE programs.

Canada will launch its own CVE program in the coming weeks. The RCMP has trained some officers to recognize people at risk of becoming radicalized and link them to local mentors, social workers, psychologists, community groups, relevant preachers and anyone else likely to help.

Horgan said Canada's program can't espouse "a one-size-fits-all-solution" but needs flexibility based on communities' locations and demographics.

For instance, "the kind of thing one would do to reduce the risk of those falling to ISIS is totally different to what you would do to prevent Americans from trying to join the White Power movement," he said.

Horgan has visited CVE programs in countries such as Saudi Arabia, which provides former militants with religious teachings in a sort of halfway house. Authorities occasionally pay for weddings and provide public-sector jobs for these former militants.

"It's a Saudi solution to a Saudi problem," he said. The country claims a 10-percent recidivism rate, but Horgan stresses there's no scientific way to evaluate the success of CVE programs.

Q and A: Senator Colin Kenny on anti-terror legislation

BY DYLAN ROBERTSON, OTTAWA CITIZEN, JANUARY 13, 2015

A founding member and former chair of the Senate national security committee says the government is politicizing terrorism by proposing redundant laws. Senate Independent Liberal Colin Kenny spoke to the Citizen's Dylan Robertson.

Q. The government has indicated a new anti-terrorism bill will include preventive arrests. What do you think of that?

A. I have a list of eight bills with the word "terrorism" in the title since 9/11. It's a whole lot of legislation, none of which seems to do very much.

If you go back to 2001, the Anti-terrorism Act seems pretty comprehensive. Preventive arrests are dealt with in that act. It seems sort of strange that the government is forging ahead on legislation that isn't being asked for, and isn't providing more funding, when (spy agency Canadian Security Intelligence Service) CSIS and the RCMP don't have enough people to chase down the bad guys.

Q. Tell me more about that.

A. We had both the RCMP and CSIS testify about how many people it takes to plant a listening device: somewhere between 15 and 17 people. Or how many people it takes to follow someone 24/7; beyond a week you're talking 32 or 34 people.

They also have to track about 90 people who have either returned from working with a terrorist group, or want to. The agencies have made it very clear that they don't have enough folks to accomplish that.

If government wants to do something more about terrorism, they've got to up the spending.

My colleagues ask why Canada isn't arresting more people, but you need to have cops to collect the evidence. And arrests may not be the entirely appropriate measure. I think almost anyone would suggest we need both intervention and arrests.

Q. What laws did people ask for at the Senate committee?

A. Police are concerned with how people are designing cellphones and computers so that when you do go to a judge and get a warrant even manufacturers have difficulty getting into what's inside the machine.

And the RCMP have asked for a lower standard for peace bonds to convince a judge that somebody should be restrained for a while.

Q. Why, then, is the government suggesting preventive arrests?

A. The government sees this as a wedge issue, and they hope to appear as strong, forceful people in favour of taking action against terrorists. I think they hope their opponents will be concerned about civil rights, but I suspect the opposition will instead talk about redundancy.

I think we have an increasingly concerned populace. The handling of this issue is, at least in the government's mind, fundamental to their re-election.

Q. Gunman Michael Zehaf-Bibeau took a video that the RCMP says includes his political motives. Why do you think the force backtracked last month on releasing that video?

A. The government's got a position on the motive, and they've told the cops what the motive is. The guy's a terrorist? The cops didn't have that point of view until they were told, 'This is your position.' You have a government directing cops how to answer a question about criminal matters.

This interview has been condensed and edited for clarity.

---

thestar.com

Are Canadian publishers afraid of Islamic extremists?

If "freedom of the press" is a guiding principle for so many Canadian news outlets, why are they not printing the Charlie Hebdo cartoons?

By Gillian Steward, Contributor to the Toronto Star, January 12 2015

The last time people died because of cartoons of the Prophet Mohammed there were only two publications in Canada that dared reprint them.

Both publications were based in Calgary and quite small compared to TV networks and daily newspapers.

But they took the risk anyway and paid the price with hate mail, death threats and lengthy proceedings before the Alberta Human rights Commission after a complaint was filed.

The rest of the news media refused to republish the so-called "Danish cartoons" even though they had provoked worldwide violent demonstrations in the Muslim world. And they used the same lame excuses then — respect for religious beliefs — as they are today following the massacre at Charlie Hebdo in Paris.

One would never guess that "freedom of the press" is the leading principle of all these news organizations as stated in their code of ethics.

The Danish cartoons depicted the Prophet in various humorous scenes and were first published in September 2005 by the Jyllands-Posten newspaper in Copenhagen.

The editor of the culture section where they appeared had invited Danish cartoonists to submit their representations of the Prophet in an effort to deal with what he saw as a creeping form of self-censorship that was muzzling public discussion both within and without the Muslim community in the name of respect for religion.

By mid-February Danish embassies, as well as those of other European countries had been attacked. Dozens were injured and at least 30 people were killed.

So why did the Calgary-based Jewish Free Press and the Western Standard publish them?

Richard Bronstein, the publisher/editor of the Jewish Free Press and an experienced journalist who once worked for CBC Radio in Toronto decided to publish after he saw Canadian Muslims on TV proclaiming that the cartoons cannot be published out of respect for the Prophet.

"Yes they can, this is Canada," he thought and proceeded to publish them in his bi-weekly newspaper that is distributed mainly to Calgary's Jewish community.

But he won't be publishing the Charlie Hebdo cartoons.

"I made my point then. I don't need to make it again," he said during an interview.

Bronstein is pleased this time around that Canadian Muslims aren't calling for censorship.

But he is dismayed that major news organizations including the Star, the Globe and Mail, the Sun Newspapers, the CBC and CTV are refusing to republish the Charlie Hebdo cartoons on the grounds that to do so would be an insult to Muslims.

"Published cartoons of the Prophet are a rare occurrence … but how are we ever going to publicly discuss how we deal with freedom of expression — our most important value — if the major media won't even publish them?" Bronstein said.

The now-defunct Western Standard had a circulation of about 40,000 and espoused the right-wing code of its publisher, Ezra Levant, who now has his own TV program where he delights in insulting just about everyone.

But he was right in 2006 when he told Global television: "We don't live in a Muslim country. If I was in Saudi Arabia, I'd follow their laws. I live in Canada, we have a free press. I don't have to follow Muslim law."

At least one other editor at a major newspaper has come around to that view in the intervening years. On Saturday Licia Corbella, editor of the editorial pages at The Calgary Herald, wrote that she regretted her decision not to publish the Danish cartoons when she was running the editorial pages at the Calgary Sun.

At the time she explained to readers that the newspaper chose not to publish out of respect for Muslim readers.

"What hooey. It was a lie then. It's a lie now. In short, we are not all Charlie Hebdo. We are, instead, all afraid of Islamists. The terrorists have won. They have cowed us. Their tactics work. In short, we didn't publish the Danish cartoons because we were afraid we'd be bombed," Corbella wrote in last Saturday's Herald.

Nevertheless, The Herald didn't publish this round of cartoons either, although its big brother The National Post did.

Despite their pledges to freedom of expression it's clear most major news organizations in this country are all hat and no cowboy.

Gillian Steward *is a Calgary writer and journalist, and former managing editor of the Calgary Herald. Her column appears every other week.*

The ChronicleHerald
Home News Opinions Business Sports

WONG: Free expression more important than good taste

JAN WONG, Halifax Chronicle-Herald Columnist, January 12, 2015

Trudging to work in sub-zero weather the morning after the Paris massacre, I contemplated asking my class for a moment of silence.

Journalists normally do not participate in commemorations; we cover them. But 12 people were dead after gunmen objected to cartoons published by the French satirical newspaper Charlie Hebdo.

How could I ignore the event? Bravery is part of my fourth-year journalism course. I ask my students to scare themselves every day. I push them out of their comfort zone. Their assignments include four obituaries — real obituaries.

As classmates sipped coffee and caught up with post-holiday gossip, I wrote 12 names on the board: five cartoonists; two columnists, including the sole female victim; a copy editor; a chance visitor; a caretaker; a police bodyguard; and, on the street, a police officer.

I wrote down their ages. Three cartoonists were 73, 76 and 80. And then I wrote: "We are Charlie."

The room fell silent as I described the attack. A cartoonist, late to work because she had to fetch her daughter from daycare, was punching in the security code when two gunmen forced their way in. As she and her daughter cowered in the lobby, the men killed a caretaker.

Upstairs, they burst into the weekly editorial meeting. According to surviving staffers, the gunmen shot to death Stephane (Charb) Charbonnier, a cartoonist who was also the editor. They shot others as they sat frozen in their chairs.

I reminded my students that democracy requires free expression. I said our profession requires courage. I didn't tell them that, as a daily newspaper reporter, I had twice received death threats. The first time, I was unfazed. The second time, I fell apart.

I asked for a moment of silence. Would they stand? Would they hold a pen or pencil or laptop or notebook? I wasn't sure if they would roll their eyes. They stood.

After, I announced a short recess, but no one moved. Instead, we began talking. Someone wondered if we could look at the cartoons. Was this a problem? After all, some news organizations, including the CBC English service (but not the French), decided not to publish the cartoons.

Apparently, the CBC did not want to offend a religious group. Frankly, censorship offends me. Of course we should look at the cartoons, I told the class. Otherwise, how could we make sense of the news?

Some students gasped at the caricatures. They said they were offensive to Islam. As we kept looking, we discovered Charlie Hebdo ridicules any authority, any religion.

We scrutinized cartoons mocking Jews and Catholics, including Pope Francis. This being the Maritimes, we have numerous Catholics in the class, but unfortunately not a single Jew or Muslim. My students agreed these cartoons were offensive, too.

Charlie Hebdo's offices had been firebombed in 2011. Charb had required police protection for years. Some students wondered why the newspaper would deliberately provoke violent extremists. I said that was like asking: why do women wear short skirts when everyone knows there are rapists?

I sketched a blank square on the board. It was a replica of a 2006 New Yorker cartoon, whose caption had read: "Please enjoy this culturally, ethnically, religiously and politically correct cartoon responsibly. Thank you."

Freedom of expression means anyone can mock anyone else's sacred cow. "No one's prophet, avatar or deity gets special treatment," Michael Den Tandt wrote in the National Post. "Because the common human right to free thought and expression trumps an individual's desire not to be offended."

Offensive cartoons are not about taste. They are about freedom.

Cartoons offensive, not hateful 0

Warren Kinsella, Columnist for QMI Agency, Ottawa Sun, January 12, 2015

God gave us the powers of judgment.

In her infinite wisdom, she gave us the ability to look and listen and consider. She bestowed upon us the ability to recognize that there is, indeed, a qualitative difference

between publishing a cartoon poking fun at a religious leader, and publishing a propaganda poster calling for all Muslims to be exterminated.

That distinction was apparently lost on not a few folks the morning after the mass murder at the offices of Charlie Hebdo in Paris. If you look at what the French satirical magazine was doing – and it is advisable that you do so – you will see they weren't in any way agitating for genocide, or knowingly propagating hatred.

Over the years, they were publishing cartoons that poked fun at several religions and religious figures. During the time that they did so, Islam became the world's fastest-growing religion, at a rate of 2.2% every year. While Charlie Hebdo was publishing satirical cartoons, to put a fine point on it, the sky – filled as it is with assorted deities – did not fall.

Decide for yourself. I did. The Charlie Hebdo cartoons are all over the Internet; they're easy to find. My hunch is that if you look at them, some of you will laugh, some of you won't, and all of you will go about your day, undeterred.

It should be added here that the writer who gratefully occupies this space is no anything-goes libertarian kook. And, in the week following the massacre at Charlie Hebdo, it's probably not a popular position to take. When it comes to speech, I believe reasonable limits should indeed exist.

Child pornography. Promoting genocide. Denying the Holocaust in the classroom. All of those things are prohibited by Canadian law, as they should be.

There are reasonable and proper limits on human expression, because certain words and images have power. Words and images indeed have the power to wound and hurt and, sometimes, persuade people to kill.

As a society, we should reproach those who use words and images to deliberately or recklessly inflict harm on others – as with the aforementioned child pornography, promotion of genocide or Holocaust denial. And, yes, as society, we are entitled to object to the expression of actual hatred towards religious faiths. Words and images that expose the tenets of a person's faith to hatred are not helpful. Because expressing actual hatred about someone else's spiritual beliefs is just that: expressing hatred.

Almost a decade ago, a global debate raged about cartoons depicting the prophet Mohammed as a terrorist – and my colleague Ezra Levant's decision to display them in the magazine he then published. The cartoons set off a wave of emotional protests and threats on a global scale – and fostered a vigorous debate about what constitutes free speech. Was the publication of those cartoons satirical, or was it hateful?

When we attempt to answer that question – honestly, diligently, impartially – we will quickly ascertain the difference between an act of mischief (say, spray painting a graffiti artist's tag on the doors of a synagogue), and an actual expression of actual hatred (say, spray painting "DEATH TO THE JEWS" on the doors of a synagogue). Certain words and images can stir up actual fear and pain and hate. Others don't, or shouldn't.

So, again: God gave us the wherewithal to debate and determine where the line should lie. She bestowed upon us critical faculties. We should use them.

When we do so, we know that those who were slaughtered at Charlie Hebdo weren't in any way propagating hatred or promoting genocide. They were being rude, yes. They were being scurrilous, yes. They were being equal-opportunity offenders, yes. But they weren't hating anyone.

The real haters, instead, weren't the men at Charlie Hebdo.

The real haters were the ones who killed them.

Brain drain, staff cuts and red tape blamed for dysfunctional DND purchasing

Murray Brewster, CANADIAN PRESS, Ottawa Citizen, January 14, 2-15

OTTAWA — A new study looking at Canada's politically charged military procurement system suggests the federal government's own policies have contributed to the dysfunction and delay.

The report, entitled "Putting the 'Armed' Back into the Canadian Armed Forces," was written jointly by the Conference of Defence Associations Institute and the MacDonald-Laurier Institute. It was based on over 50 confidential interviews and a workshop with retired and currently serving acquisition officials, political staff, and consultants.

The analysis provides an unvarnished, in-depth look at the system, which has long been beset by delays, cancellations and cost overruns.

The study also provides a useful benchmark for evaluating the Conservative government's record on one of its most politically troublesome files as the country heads into an election.

Re-equipping the military — the lightning-rod F-35 fighter program, replacing the CH-124 Sea King helicopters, long-delayed navy supply ships — has been a persistent political headache for the government.

While acknowledging successes like the purchase of C-17 heavy-lift and C-130J transport planes, the report found a small number of programs with the biggest price tags — fighters and warships — were the source of most of the problems.

And the researchers assign much of the blame to staffing cuts by both Liberal and Conservative governments in the acquisitions branch at National Defence, as well as new reporting requirements introduced by the Conservatives.

The numbers are stark.

There were 9,000 staff dedicated to buying military equipment in the early 1990s; by 2004, over the course of successive Liberal budgets, that number had been slashed by more than half to about 4,200.

After the Conservatives came to power, the number of employees versed in the complex requirements and approval process inched up to 4,355 by 2009, but many positions — especially uniformed ones — remained vacant because of the Afghan war.

Then the budget cuts took hold.

"The situation worsened due to the Strategic Review and the Deficit Reduction Action Plan (DRAP), which (cut) 400 positions through the end of 2014/2015," says the report, which also notes that the cuts took place despite the federal Treasury Board authorizing National Defence to hire more project planners.

"Set against this significantly increased workload, there is simply not enough capacity in the acquisition workforce to manage it."

Prime Minister Stephen Harper has made a point of urging National Defence to cut backroom administration costs, calling for "more teeth and less tail" — a Conservative mantra that one of the report's authors calls short-sighted.

"You cannot double someone's workload and expect things to move in the same way," said Dave Perry, a senior analyst with the Conference of Defence Associations Institute.

The defence department did very little in the way of major procurements under the Liberals. But once the Conservatives took over, they have tried to push forward some of the most complex programs without any additional staff.

Compounding the problem has been a series of new Treasury Board investment and project management accountability policies introduced by the Conservative government.

"Not only has the number of projects increased over the last several years, the reporting requirements for these capital projects have increased by 50 per cent over the last five years alone," the study says.

When controversy erupted over the F-35 project and the government's efforts to buy new fixed-wing search and rescue planes, even more reporting requirements ensued, including a new Public Works secretariat to oversee purchases.

The overhaul of defence procurement last year was hailed by the government as a major step forward to fix the broken system, but the report suggests it could turn out to be a recipe for more delays.

And once there are delays, projects lose their buying power because of the corrosive effect of inflation, which means the military ends up with either few pieces of equipment — or less capable gear, the report says.

LeDroit

Les compressions à blâmer pour les maux de la Défense nationale

Le Droit, le 15 janvier 2015

Les délais parfois interminables et les dépassements de coûts dans l'acquisition de nouveaux équipements à la Défense nationale sont principalement dus aux réductions d'effectifs décrétés par les libéraux et les conservateurs, conclut un rapport d'experts.

Rédigé conjointement par l'Institut de la Conférence des Associations de la défense du Canada et par l'Institut MacDonald-Laurier, le rapport est le fruit de plus de 50 entrevues confidentielles et d'un atelier réunissant des officiers militaires actuels ou à la retraite affectés aux acquisitions, des membres du personnel politique et des consultants.

Depuis son élection, le gouvernement Harper a éprouvé de sérieux maux de tête avec ses programmes de remplacement des fameux avions chasseurs F-35, des vieux hélicoptères Sea King et de navires militaires. Les chercheurs attribuent ces problèmes aux coupes effectuées dans les effectifs du service d'acquisition à la Défense nationale.

Faire autant avec moins

Au début des années 1990, on comptait 9000 employés au service des acquisitions; en 2004, après plusieurs budgets libéraux, cet effectif s'est réduit de moitié, à 4200.

Après l'élection des conservateurs, l'effectif a augmenté légèrement, pour atteindre 4355 en 2009, mais plusieurs postes sont demeurés vacants lors de la guerre en Afghanistan. Puis, en 2011, le budget conservateur prévoyait un nouvel «examen stratégique et fonctionnel», qui visait à obtenir des économies d'au moins 4 milliards$ d'ici 2014-2015.

«La situation a alors empiré, avec l'élimination de 400 postes en 2014-2015», lit-on dans le rapport.

Le premier ministre Harper avait beaucoup insisté à l'époque pour que la Défense nationale réduise ses coûts d'administration, un mantra qualifié de politique à courte vue par l'un des auteurs. «Vous ne pouvez pas doubler la charge de travail d'un employé et vous attendre à ce que les dossiers avancent», soutient l'analyste Dave Perry.

Des craintes autour du projet de loi pour récupérer l'argent de la corruption

Denis Lessard, La Presse, le 15 janvier 2015

(QUÉBEC) D'accord sur le principe, inquiets quant aux conséquences: plusieurs organisations viendront soulever leurs préoccupations au sujet du projet de loi 26, par lequel Québec entend récupérer les sommes qui ont fait l'objet de fraudes dans le cadre de contrats publics.

Ils viendront se faire entendre aujourd'hui et demain en commission parlementaire pour faire part de leurs observations à la ministre de la Justice, Stéphanie Vallée. D'entrée de jeu, le verdict est dur: «Nos règles de marché public sont devenues des passoires aux communications d'influences, aux appels d'offres dirigés ainsi qu'aux transgressions à répétition, qui ont perduré de nombreuses années», signale la Corporation des entrepreneurs généraux dans son mémoire.

Sans l'Unité permanente anticorruption, l'escouade Marteau et la commission Charbonneau, ces pratiques seraient encore monnaie courante. «Le Québec fait piètre figure en matière de contrôle dans ses appels d'offres publics. Même si nous n'en connaissons pas l'ampleur, plusieurs comportements déviants étaient connus depuis plusieurs années», ajoutent les entrepreneurs.

En décembre dernier, la ministre Vallée avait finalement déposé le projet de loi réclamé par l'opposition péquiste pour permettre à Québec ainsi qu'aux municipalités d'être remboursés par les entreprises frauduleuses.

Le projet de loi 26 différait de celui présenté par le gouvernement Marois. D'abord, il vise l'ensemble des contrats gouvernementaux et ne se limite pas au seul secteur de la construction. De plus, il prévoit que les entreprises délinquantes devront assumer les coûts de cette opération - on prévoit une dizaine de millions pour la mise en place du bureau d'examen, qui sera dirigé par une personne «neutre et indépendante», probablement un juge à la retraite.

Dans un premier temps, les entreprises qui ont transgressé les règles pour obtenir des contrats gouvernementaux pourront volontairement «se mettre à table», dans les 12 mois suivant l'adoption du projet de loi, pour négocier le remboursement des sommes soutirées à l'État. En commission parlementaire, plusieurs groupes exigeront que Québec s'engage alors à donner une «quittance» finale qu'on ne pourra revenir avec d'autres recours par la suite.

Sur des contrats d'une valeur de 20 milliards, «plusieurs dizaines de millions» pourront être récupérés, prédit Québec. Les contribuables n'auront pas à payer la note - autre différence avec le projet de loi soumis par le gouvernement Marois. Les entreprises auront à payer une surprime de 10% sur les sommes versées en trop.

Les firmes seront tentées par ce règlement de récupérer leur droit de solliciter des contrats avec le gouvernement, prévoit Québec.

Les entreprises qui ne se prévaudront pas de cette possibilité s'exposent à être poursuivies par Québec, qui entend donner aux organismes et ministères «des outils exceptionnels» pour leur permettre d'entamer des recours afin de retrouver leur dû.

Retour sur 20 ans

Québec et les municipalités pourront récupérer les sommes versées en trop sur les 20 années précédentes - normalement, la prescription n'est que de trois ans. En outre, lorsque la collusion ou la fraude sera constatée, la présomption sera que le gouvernement s'est fait flouer de 15%. Si la firme est reconnue coupable, elle devra payer une pénalité de 20% des sommes dues, pour couvrir les frais juridiques engagés par le gouvernement ou les villes.

Les entrepreneurs demandent que la loi soit élargie aux sous-traitants et fournisseurs des entreprises fautives. On veut aussi qu'on impose une pénalité de 5% de la valeur du contrat, pendant trois ans, aux firmes qui se sont entendues avec Québec.

L'Association de la construction, qui représente 17 000 entreprises générant 60% des heures travaillées dans l'industrie, observe qu'en reculant de 20 ans pour détrousser des fraudeurs, Québec constatera l'absence de mécanismes de prévention au municipal et au provincial; le manque d'expertise suffisante pour cette période est «manifeste», prévient-on.

Les villes de Montréal et de Laval témoigneront aussi aujourd'hui. La métropole n'avait pas transmis son mémoire à la Commission des institutions, hier. La Fédération des chambres de commerce, qui témoignera en soirée, est d'accord avec le principe du projet de loi, mais s'interroge sur l'importance des embûches qui se dresseront sur la route des entrepreneurs. Au terme de l'expérience, on peut se demander combien d'entreprises lèveront la main pour s'auto-accuser.

L'Institut des administrateurs de société s'interroge de son côté sur les risques de poursuites de ses membres, qui pourraient personnellement être visés par des recours pour des gestes faits il y a 20 ans. Le projet de loi 26 comporte «des conséquences

pratiques désastreuses» pour ces cadres menacés par l'application, «rétroactive», de nouvelles normes de conduite.

Supreme Court won’t hear case involving Sydney tar ponds lawsuit

The Canadian Press, Globe and Mail, January 15, 2015

Cape Breton residents who launched a class-action lawsuit claiming the Sydney tar ponds exposed them to contaminants will not have their case heard by the Supreme Court of Canada.

The Nova Scotia Court of Appeal overturned the certification of a class-action lawsuit in December, 2013.

The appeal court decision came after lawyers for the provincial and federal governments argued that the provincial Supreme Court judge erred in certifying the case because there are too many differences in the individual cases for the matter to be heard as a class-action lawsuit.

The appeal court judges agreed, finding that there was too much variance in the issues affecting the class members and that a class-action suit was not the best way to proceed.

The original lawsuit was filed by local residents Neila MacQueen, Joe Petitpas, Ann Ross and Iris Crawford, who are seeking compensation and a medical monitoring fund for contamination resulting from the operation of the steel plant between 1967 and 2000.

As usual, the Supreme Court did not give reasons for its decision not to hear the case.

Don’t make tobogganers pay for liability chill

ANDRÉ PICARD, The Globe and Mail, January 13, 2015

Screaming down a snowy hill on a sled, a Krazy Karpet, or an inner tube is one of the unbridled joys of Canadian winter.

But, increasingly, municipalities are restricting or banning tobogganing.

Is this sucking the fun out of childhood justified?

Of course not, at least not on safety grounds. While tobogganing is a “high-risk” activity (meaning a lot of kids get hurt), the risks can be mitigated.

What is more difficult to contain is the voracious appetite of personal injury lawyers and the financial fearfulness of cash-strapped municipalities.

In fact, while helicopter parents and overly cautious public health officials often get blamed when ridiculous bans on tobogganing, road hockey, skateboarding and the like are instituted, the real culprit is a torts system that has lost touch with reality.

The recent spate of “war on tobogganing” stories emerged after the City of Hamilton posted signs at popular sledding spots warning that the activity was prohibited and violators could be fined.

This prompted a backlash, including a petition and a catchy protest song by Laura Cole, You Can’t Toboggan In The Hammer Any More.

Hamilton’s bylaw, however, has been in place for 40 years, in response to a lawsuit in the early 1970s when someone was injured tobogganing on city land. The bylaw was never enforced but the city posted warning signs in response after losing a second lawsuit, in which a local lawyer was awarded more than $900,000 after suffering a spinal injury while sledding at a city reservoir.

This kind of award, while rare, has created a liability chill, and children are paying the price by being frozen out of winter fun.

Canada’s legal environment is becoming increasingly like the U.S., where everyone is risk-averse for fear of being sued, and the easiest thing to do is ban activities.

We should also have a legal regime where there are individual and collective responsibilities, and where there is a better balance of rights and responsibilities.

The benefits of being active far outweigh the risks. As a society, we should aim to make activity – especially outdoor activity – easy, accessible and relatively safe.

Instead of chasing kids and their parents away from popular sledding hills, what municipalities should be doing is trying to attract them to safe spots, by grooming hills, and installing lighting and public bathrooms.

At the same time, there should be an obligation on behalf of those using public facilities like sliding hills, playgrounds and beaches to use them responsibly.

The approach of the injury prevention group Parachute Canada is the right one. They actually urge kids to "get outside – have fun on the hill" but, when doing so, to take some common sense precautions.

First and foremost, if you're going hurtle down a hill – be it on skis or a sled, or skating for that matter – you should wear a helmet. The greatest danger in falls and crashes is to the brain, so it should be protected.

You should also pick your hill wisely. Almost all sledding injuries occur when someone hits a stationary object; a good sliding spot should be free of obstacles such as trees and rocks, should not have a road or river at the bottom, and it should be snowy, not icy.

Parental supervision, especially of young children, is important. But that doesn't mean hovering over kids at every instant. And when you create safe spaces – rather than pretending, for example, that every sliding hill is dangerous – it is much easier for parents to give children more freedom to have fun.

Children should always ride in a sitting or kneeling position because it makes a toboggan easier to steer. Young (and not-so-young) adults should be aware that many of their tobogganing injuries occur when there is excess alcohol consumption.

It's also important to retain some perspective. Children today are safer than they have ever been, but a childhood well lived cannot be entirely risk free.

The greatest risk of death and injury, by a long shot, comes when children are in or near motor vehicles, not when they are tobogganing in public parks.

When we demonize marginally perilous activities like sledding, we do our children and ourselves a grave disservice.

When we fashion public policies based on fear – of litigation or otherwise – we create a slippery slope to a place where the greater good is undermined and where public spaces, for all intents and purposes, lose their meaning and their value.

Yukon judge rules phone wedged between ear and shoulder is 'hands-free'

Judge Don Luther says lack of detail in regulations may be an oversight by government

CBC News North, January 14, 2015

A Marsh Lake, Yukon, man has found a legal loophole that could make enforcing the territory's ban on driving while using a cellphone more difficult.

Yukon Judge Don Luther says it was not illegal for Ian Pumphrey to be driving with his phone lodged between his shoulder and his ear.

Luther says it may have been an oversight on the territorial government's part when it passed the law governing the use of electronic devices while driving.

He says the Yukon cabinet would be well advised to clarify the law through regulations.

The judge says Ian Pumphrey was given the ticket by an RCMP officer on Aug. 28 when he was observed to be driving with his phone on his shoulder.

He says Pumphrey had received a phone call several minutes earlier, pulled over, put his phone on speaker, wedged it between his shoulder and ear, and then continued driving. The judge says there was no indication it led to Pumphrey driving in a distracted manner.

Luther notes the legislation that allows hands-free cellphone use while driving does not put any restrictions on what hands-free means. He says while the intent of the law is clear, it's not up to the courts to fill in gaps that could easily be filled by government regulations.

Luther says other jurisdictions, including B.C. and Ontario, had the foresight to specify exactly what hands-free use means.

Pumphrey says he challenged the ticket because he believed at the time, and still does, that he had not broken the law.

"It's unfortunate, I try to be a law-abiding citizen, and you know the way the law reads you may use a cellular device in hands-free mode, and I mean I was clearly doing that when the officer pulled me over."

He says he doesn't want people to take this decision and start driving in a dangerous manner.

That's also the sentiment of Luther, who says citizens should not use this as an excuse to flout the law.

Why lawyers might want to ditch typing for dictation

Mitch Kowalski, The National Post, January 15, 2015

Today's lawyers are focusing too heavily on written communication at the expense of oral communication, putting at risk mastery of fundamental lawyering skills and impeding efficiency at law firms, according to a group of leading Australian lawyers and tests conducted by BigHand and Nuance Communications.

The view that typing an email or developing documents via typing them into a computer is the most efficient use of a lawyer's highly-valuable time is a fallacy, according to tests conducted by BigHand and Nuance.

"Tests show that lawyers are typically three times more efficient when verbalizing their ideas rather than typing them," said Anthony Bleasdale, Director – Asia Pacific at BigHand said. "This is a significant result in an industry where time is money."

"Law firms need to ensure they are not losing efficiencies in how their lawyers are working, provide the right tools to maximize their efficiency and ensure younger lawyers are developing the oral communication skills they need," he said.

Theodora Ahilas, Principal and Director, Maurice Blackburn agrees.

"We are actually becoming less efficient, rather than becoming more efficient in our time by becoming slaves to the computer and typing ourselves, rather than actually thinking about what we are doing and having a system and protocol to develop our ideas through dictation," she said.

"A junior lawyer will say to me 'but I am much more efficient typing it up than actually dictating it.'

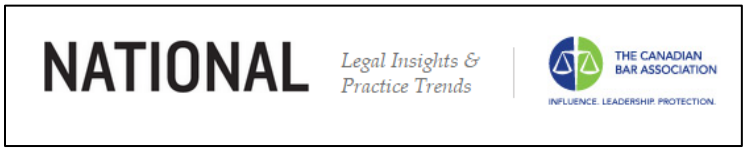
"I don't think that they realize that dictating can be much more efficient because not only do they have clarity of thought, they get it done much quicker than sitting at the computer and actually typing up the document. The best way to do it is to dictate the document, get it back on the system, correct it and then get it out.

"We time cost our work. It is much more efficient for clients that I spend 15 minutes of that hour dictating it and it gets typed by someone else, rather than spending an hour and

a half typing it up and then I've used their quota or the amount of time allocated for the particular task," she said.

"I was certainly a bit surprised at how much quicker I could verbalize something more than typing it. But then typing something is a much more mechanical process and delivering information verbally can be much more fluid," Kirk Warwick, Senior Associate, Norton Rose Fulbright said.

"There is a huge amount of blue sky for digital transcription technology to fill. I think that this technology will really drive efficiency, and really make the way that we operate much more fluid and really save some time."



Has the so-called civility movement already won?

By Justin Ling, Contribution to National Magazine (Canadian Bar Association), January 15, 2015 ,

That's the conclusion from more than one defence lawyer who've found themselves on the wrong end of a legal tribunal.

Attention has focused of late onto Joe Groia, the corporate lawyer on one side of a four-year legal battle with the Law Society of Upper Canada, and the coiner of the term 'civility movement.' The self-regulating body says he crossed the line from vigorous defence to incivility.

But he's not alone. The LSUC has made it their mission to root out incivility in the profession. In most cases, that means reprimanding lawyers whose salty tongues have gotten them in trouble with judges and other lawyers. But in a handful of cases, lawyers have questioned whether the law society's intervention might be counter-productive — discouraging lawyers' vigorous defence of their clients for the sake of politeness.

Joe Groia

The Toronto securities lawyer found himself in the centre of the debate on civility after joining the defence team of John Felderhof, an executive implicated in the massive Bre-X gold fraud that was uncovered in the late 1990s.

In the fallout of the scandal, the Ontario Securities Commission (OSC) laid charges against the company's vice-chairman and geologist, Felderhof. After a protracted legal saga, Felderhof was found not guilty of insider trading and spreading false information.

The OSC was alleging that Felderhof should have uncovered the fraud. Groia argued that he was duped. The court, after eight years of legal battles, sided with Groia.

But the issue stems from a particularly acrimonious leg of the case, culminating in a 2001 effort by the OSC to have the judge removed hearing it. The OSC alleged, among other things, that the judge had failed to "restrain uncivil conduct by defence counsel thus producing an unfair trial and creating a reasonable apprehension of bias in the judge," as the LSUC would later phrase it.

The application to have the judge removed was denied twice, but both the judge conducting the judicial review and the appeal judge later remarked on Groia's inappropriate conduct. The LSUC noticed media reports of that conduct and, after the trial concluded in 2007, the society moved forward on disciplinary hearings, without ever having received a complaint.

In proceedings against Groia, the LSUC argued that he breached the Rules of Professional Conduct, which requires that "a lawyer shall be courteous, civil, and act in good faith." The LSUC argued that Groia's actions did not meet that standard, and he disagreed.

Groia tried to have the entire notice of application quashed, arguing that the process was inherently unfair and ran contrary to his duty as a lawyer, but also that it amount to an "abuse of process arising from the vagueness of the particulars of misconduct."

The LSUC doesn't exactly hone in on any individual action from Groia, but moreso holds him responsible for his general conduct, balancing their allegations on the admonishments from the two judges that found Groia overly aggressive against the OSC prosecutors.

An example of the LSUC's concern with Groia's conduct involves his use of the word "government" to describe the OSC, which is technically a Crown corporation.

"In our view, Mr. Groia's repeated use of the term 'Government' to describe the OSC's lawyers, coupled with the obvious sarcasm with which he delivered his submissions, fell below the standard of professional conduct required of a lawyer before the Court and was inconsistent with the proper tone of professional communication from a lawyer," the LSUC wrote.

Groia lost that decision before the tribunal, and its eventual appeal. He ultimately faced a month-long suspension and was ordered to pay a $200,000 legal bill.

Raj Napal

The Brampton lawyer, of English origin, wound up on one of the country's most-watched trials in 2007.

He was called upon by the court to, initially, help with the defence of ex-cop Richard Wills and, later, become his lead defence counsel. Wills was charged with, and eventually found guilty of, the first degree murder of his partner, who was found in a plastic garbage container in the walls of Wills' home.

After Legal Aid refused to cover Wills, a series of lawyers were shuffled in to defend the accused murderer, at a generous hourly rate. Lawyer after lawyer was fired, or quit, after dealing with the incredibly difficult Wills, who was prone to outbursts in the courtroom.

Wills "had fired every counsel who was not prepared to do his bidding," the LSUC notes in its eventual ruling against Napal.

"The trial record is replete with examples of Napal following his client's instructions even when they were inappropriate and against his better judgment," the decision goes on. "Napal asked questions of witnesses at his client's behest when he knew the questions were irrelevant or otherwise inappropriate."

That practice, which eventually delayed the proceedings and frustrated the trial judge, was eventually what led the LSUC to start proceedings against Napal. Part of the issue, the law society contended, is that Napal was, on the orders of his client, being uncivil to the court.

According to the LSUC, Napal "was in over his head and under siege by an abusive and controlling client," and it noted that "Napal admitted professional misconduct." He was ordered to pay $7,500 in costs, and was suspended for two months.

The LSUC notes that the total cost to their membership would be over $110,000, but — seemingly in part because Napal admitted wrongdoing — they requested only the $7,500 figure.

By comparison, the LSUC notes that Groia's case cost them $246,960.53 — he was ordered to pay that entire amount. (An appeal found that the costs were initially miscalculated, and reduced Groia's fees to $200,000.)

Napal spoke with National and, although he didn't want to rehash the specifics of his case, says there is a definite trend towards 'civility' that should worry defence attorneys.

He says that being called uncivil by the tribunal is a stretch. "I didn't behave badly in court, like swearing at crown counsel and stuff like that. What I did was protect my client, and it was seen as going too far."

Napal says that counsel has to be "very careful in how they conduct their defence," especially of late. There's an obvious change in the atmosphere since the Groia decision, he says, and it's being felt. "The game rules have changed a little bit," he says.

"There's now a line that has been drawn: between what the law society sees as improper and as disrespectful to the court and, the other side of the line, that defence counsel has to put their client's interests forward."

He says high-profile cases that receive significant media attention, like his and Groia's, are the prime targets for this sort of scrutiny.

Brian Ludmer

The Toronto family lawyer found himself suspended for two months and forced to pay $25,000 in legal fees for, as one former judge put it, "wearing the separate hat of an advocate for a cause."

Ludmer admitted to misconduct in the course of an LSUC investigation into one case where, according to the law society, he "communicated with various individuals including his client's former wife, her counsel and [a court-appointed assessor], in a manner that was abusive, offensive or otherwise inconsistent with the proper tone of the professional communication from a lawyer."

Ludmer had taken up the cause of "parental alienation" — the belief that, in some cases, one party in a divorce (usually the wife) can poison their child's opinion about their other parent. The LSUC, through the testimony of a witness they appointed to counsel Ludmer, that "the apparent parental alienation of his own children had a strong impact upon Mr. Ludmer's professional behaviour, which has led to these allegations by the Law Society."

In pages of emails entered into the record as a part of the hearing, Ludmer repeatedly communicates with various individuals involved with the case, both directly and peripherally, in aggressive tones.

He emails his opposing counsel things like: "that you persist in this distracting and silly practice is astounding to both of us," and "why don't you guys stop playing games and just deal with the issues?" Ludmer commonly refers to claims from other parties in the issue as "fraud" and calls the mother's new husband a "usurper" and suggest she is acting as though she has a personality disorder.

Ludmer told the tribunal that his choice of words may have been poor, but that he "took the position that the dynamics of the particular case and his efforts to advocate for his client required him to take the steps and make the comments he did during the litigation."

The LSUC lists the costs of the process at nearly $140,000. Ludmer, like Napal, accepted some of the charges against him, but requested that the penalty be lessened. It was, to $25,000.

Defining and defending civility

There are dozens of cases dealt with by the LSUC tribunal that very obviously required attention — namely, cases where attorneys would shout obscenities at clients and other attorneys both in and outside the courtroom.

However, the handful of cases where the tribunal found issue with the lawyer's attitude or tone, not exactly their words, raise the question of where the tribunal's definition of incivility begins and ends.

“The difficulty with defining civility in these terms is that it is subjective; what is rude or unsociable is in the eye of the beholder,” writes Groia in a 2014 paper entitled Shades of Mediocrity, the Perils of Civility. “The recent civility cases decided by various law societies disclose a myriad of factual circumstances which are difficult to categorize in any meaningful way. Can we seriously contend that the profession has not lost its way if saying “f*** you” to an offensive peace officer in a heated discussion outside of a courtroom merits a professional conduct hearing and punishment?

David Bertschi, a partner at Bertschi Orth Solicitors and Barristers, and Vice President of Canadian Defence Lawyers association, says the principles of civility are longstanding and pretty obvious. “I think you’ll find that it’s always been part and parcel, from our perspective, to be courteous and respectful, while still being effective,” Bertschi told National.

While Napal says he’s noticed an increase in concern of civility, thanks in no small part to the Groia decision, Bertschi says he’s seen no such trend.

“The regulation of the legal profession has been ongoing for many, many years. I’ve not seen an uptake in that sort of complaint in recent years,” he says, adding that, if there is an increase in actual cases of incivility, it may be due to a decrease in mentorship in the profession.

The LSUC specifically noted, in a paper published after they pursued disciplinary action against Groia, that there needs to be a power to arbitrate, outside the realm of criminal contempt, the behaviour of lawyers.

Groia takes a different tract.

“Every trial has its own dynamic, and a lawyer who goes outside the boundaries of what a judge will accept does so at her peril. At the same time, disciplining a lawyer for conduct that is accepted or encouraged, or at the very least not criticized by a judge, is extremely troubling.” he writes.

Groia concludes: “unfortunately, the competing interests of zealous advocacy and civility force lawyers to sacrifice one ideal at the expense of the other.”

For Lorne Sossin, dean of Osgoode Hall Law School. "A civility rule needs to exist for extreme cases but can do real damage if used outside extreme cases, in inconsistent ways or in ways that are not alive to the realities of litigation and the realities of a culturally and socially diverse society," he says. He adds that the Groia cases poses a conundrum, given that it's a case of a well-heeled corporate lawyer, up against government prosecutors. "I might feel differently where incivility is the method by which a more sophisticated party takes advantage of a less sophisticated party."

Justin Ling *is a regular contributor based in Ottawa.*