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## **Liberals' stance on sick-leave savings unclear**

**Kathryn May, Ottawa Citizen, November 1 2015**

The incoming Liberal government has promised to bargain “in good faith” with its public sector unions, but so far it appears to be counting on the hundreds of millions of dollars in savings the Conservatives had booked from their scheme to replace existing sick-leave benefits with a new short-term disability plan.

It’s unclear what the Liberal government wants to do with sick leave. Union leaders, who campaigned against the Conservatives in the federal election, are confident the Tories’ take-it-or-leave-it plan to roll back 15 yearly sick days to six, and abolish the banking of sick leave, is not in the cards when the next round of collective bargaining begins with the new government in place.

“I doubt that if Justin Trudeau is serious about restoring faith, respect and transparency in government that he would continue along the course set by his predecessor,” said Ron Cochrane, co-chair of the joint union and management National Joint Council. “Hopefully, no.”

The giant Public Service Alliance of Canada returns to the table Dec. 1. “I assume there will be a new mandate and they won’t stick with the Harper mandate because they got elected on the promise of change,” said PSAC president Robyn Benson.

“We have no intention of negotiating a short-term disability plan that makes our members choose between going to work sick or a full pay cheque.”

In an open letter to public servants, Liberal leader Justin Trudeau said he opposed the Conservative plan to impose a new sick-leave deal rather than negotiate one. Instead, he said, a Liberal government would “bargain in good faith” and “finalize its financial plans upon completion of negotiations, not at the beginning.” A Liberal spokesman contacted by the Citizen reiterated that pledge Friday.

Hanging over the promise, however, is the \$900 million the Conservatives had already booked as “sacrosanct” savings for 2015-16 by abolishing millions of days of unused banked sick leave.

As well, the Conservatives projected that the elimination of sick leave and lower long-term disability costs resulting from the new plan would result in \$200 million in savings next year and the year after, and \$100 million in each of the following two years. The Liberal fiscal plan currently includes these sick-leave savings. That raises the question of whether the Liberals intend to write down the savings and add the amount to the deficit, or whether a Liberal

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government will hope for those savings but — unlike the Conservatives — negotiate a deal, rather than impose one.

The Liberal plan that begins in 2016-17 is based on a July report by the Parliamentary Budget Officer, which updated the Conservative government's fiscal projections in the 2015 budget using more recent figures from the Bank of Canada.

Assistant PBO Mostafa Askari said the Conservative projections used in the PBO report included the booked sick-leave savings. If the Liberals don't proceed with the Conservatives' sick-leave reforms, the savings will have to be rolled back and added to the deficits the new governing party plans to run.

That adjustment could be done when the government releases its economic and fiscal update in the fall, or later when a new deal is reached, then reflected in the years in which it is implemented.

"For now, there are savings on the books and they will have to decide how they want to deal with that," said Askari. "It depends on the contract. If there's a modification of sick leave but not as far as (the Conservative government) wanted, then there will be some savings but not as much as booked now."

The Liberals' plan is built on three years of deficits and reaching a slim surplus by 2019-20. Reversing or reducing the sick-leave savings could make that target more difficult.

Some say it would be politically easier for the Liberals to take the hit and write down the \$900 million savings this year, blaming the Conservatives for booking savings before any union deal had been reached.

That would suit union leaders.

"The \$900 million of supposed savings was nothing more than a convenient accounting exercise manipulated by the previous Conservative government to contribute to a pre-election balanced budget," said Debi Daviau, president of the Professional Institute of the Public Service of Canada (PIPSC).

"It represents no real savings and, worse still, it fails to account for the very real costs of implementing a new system."

Milt Isaacs, president of the Association of Financial Officers, also called the \$900 million saving a myth. Public servants are entitled to 15 sick days but it is part of their salary and they aren't

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replaced when they are sick. They can't cash out unused sick leave, and most retire with months of banked leave, which disappears with them.

"If I were the new government, I would completely ignore it and work with us, the unions, to see what a better way forward would look like," Isaacs said.

Daviau said Trudeau's promise to negotiate and not book savings until a deal is completed would "level the playing field.

"Once that is done, no one will be happier to get back on it to deliver results for our members and for all Canadians."

Emmanuelle Tremblay, president of the Canadian Association of Professional Employees (CAPE), said she is taking the Liberals at their word that they will consult with unions and negotiate.

"It would be a fabulous gesture if the Liberals say we won't consider the (Tory) model as the starting point. That would be a sign of good faith. They have to show they mean business when talking about respect for the public service," she said.

## **Court hearing on injunction to stop sick-leave deal postponed**

**Kathryn May, Ottawa Citizen, October 27 2015**

With the defeat of the Conservatives, this week's hearing for an injunction to stop the federal government from imposing a sick leave deal on Canada's public service has been postponed until March.

Ontario Superior Court Justice Robert Beaudoin rescheduled the Oct. 29 hearing – with the support of all the unions and government lawyers – until March 1 and 2.

Federal unions went to court during the election for an injunction to the Conservatives to stop the government from invoking new legislative powers that would allow it to force a sick leave deal. The Conservatives legislation, buried in omnibus bill C-59, left the timing for a deal wide open and unions feared that Treasury Board President Tony Clement would impose one during the election.

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It's unclear what the Liberals plan to do with sick leave other than they promised unions a new "mandate" for the current round of collective bargaining. Liberal Leader Justin Trudeau told public servants in an open letter that he opposed the changes in C-59 and would let unions negotiate a sick leave deal and not force one like the Conservatives.

Despite the Liberal promise, the Conservatives are still the caretaker government and its legislation remains in force until it is changed or repealed.

As a result, the unions decided to keep their options open and proceed with an hearing only at a later date. Beaudoin previously issued an order that if the government intends to impose a deal it has to give five days' notice of that plan and the court will decide whether to hear the case earlier.

That five-day order remains in place, offering unions further security against the government unilaterally impose a deal as contract negotiations resumes.

Sick leave is the big issue at the bargaining table. The Conservatives wanted to scrap the existing sick leave regime and replace it with a new short-term disability plan. It intended to reduce the number of annual sick days a year from 15 to six and abolish much of the millions of days in unused sick leave that public servants have banked to save \$900 million.

The unions have already filed constitutional challenges against C-59, the budget bill that allows the Conservatives to override the Public Service Labour Relations Act and impose a new deal whenever it wants. They argue the changes violate the right to free and collective bargaining as guaranteed by the Charter of Rights and Freedoms.

## **Read: Trudeau is ready, but the public service isn't**

**Johanna Read, Ottawa Citizen, October 30 2015**

Canadians have decided that Justin Trudeau is indeed ready to govern. But the Public Service — essential to delivering the Liberals' agenda — is not ready for Justin.

Canadians elected a new policy agenda and management style. But without a Public Service management agenda made just as important, the realization of Trudeau's policy objectives is at risk.

The public service has been cut and gagged and it is demoralized, marginalized and under-utilized. Few, including many public servants themselves, realize just how bad it is and how much concerted effort it will take to recover.

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This issue is not just about rebuilding from cuts that were too deep and that had to be made too quickly. It is not just about allowing public servants to once again do their jobs unmuzzled.

While important, neither is it just about resolving the so-called accountability measures. Many of these rules and processes actually weakened accountability, and most of them were created not by the Harper government but by the public service itself. Not only are the rules ineffective at improving accountability, they create an inordinate amount of unnecessary work. Public servants must rehash issues at multiple committees, write rationales on multiple forms and briefing notes, secure signatures at every level in the chain of command; decision-making has been delegated upward rather than down.

While not simple, these issues can be resolved.

Two issues of greater importance will be more difficult: rebuilding the public service's capacity to perform its essential role of providing policy advice, and creating a management agenda for culture change so that employees feel engaged, valued and respected — not just by their political masters, but by each other.

The core business of the public service is providing fearless advice and loyally implementing government decisions. This work is driven by a code of public sector values and ethics, rare in bureaucracies. Our professional, non-partisan public service, a core pillar of Canadian democracy, was once the envy of the world.

But public servants haven't had much of a chance to practice their advice skills. They have faced challenges in loyally implementing some recent government decisions. And public service values — particularly how public servants treat each other — are not as high priority as they once were.

The Harper government is not the only one to blame. Not since Jean Chrétien was at 24 Sussex has a prime minister and his cabinet valued "speaking truth to power." There hasn't been much of a market for advice, fearless or otherwise, under the prime ministerships of Paul Martin and Stephen Harper, especially when that advice came from the public service.

The Harper government was characterized by power games, cliques, and little interest in listening to anything but what they wanted to hear. The Martin government wasn't dissimilar.

It takes time, but values, attitudes and behaviours from the top eventually trickle down. Power games, cliques, and little interest in listening to anything but what they want to hear is now what characterizes much of the public service too.

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What was first tolerated eventually became valued and even rewarded. Power gamers and self-promoters advance to higher levels, and they in turn promote loyal members of their “posse” — those willing to play along and never speak out of turn. Too many public servants have put their empire building and desire to look good in front of their bosses and peers (caring less how they treat their subordinates) ahead of doing the right things for the right reasons.

This needs to change, or the Public Service is in danger of being unable to serve the current government and governments of the future.

Prime Minister Trudeau needs to give clear and ongoing signals that the management agenda and policy agenda are of equal importance. He and the clerk of the Privy Council need to hold deputy ministers to account — deputies the same in their chains of command — so that truth can be spoken to and heard at all levels of power, all public servants are engaged and respected, and so that good management is practiced and rewarded. New values, attitudes and behaviours need to pour, not trickle, down.

*Johanna Read is a former Public Service executive who specialized in policy and leadership issues. When her position was cut, she chose to retire early to pursue her passion for travel and international development.*

## **Trudeau’s next test: Make change a reality**

Lawrence Martin, Special to the Globe and Mail, October 27 2015

Justin Trudeau has an eye on overhauling the political culture. He wants to be Ottawa’s renaissance man. His timing for the mission could hardly be better. If Canadians thought the operation run by Stephen Harper was ugly before, look at what we’re hearing now. Not from Mr. Harper’s opponents, but Conservatives themselves.

“They had almost a Stalinistic way of looking at things,” [Philippe Gervais](#), a former Tory campaign co-director, told iPolitics. “You were either on-side, or you were dead.”

Here’s Geoff Norquay, the long-time Harper defender on TV panels. In the next edition of Policy magazine, he writes what the political operation was really like under Harper favourite Jenni Byrne: “They ran a closed circle, they humiliated staff, they berated candidates, they pushed every reasonable argument far beyond its logical limit, they shut out others with a different view.”

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Party members are finally feeling free to speak out. A reckoning is on the way. For the leadership, many Tories will be looking for a candidate who wasn't an integral part of the Harperland culture. For the likes of Jason Kenney, that won't make it any easier.

But the reckoning sets the table for prime-minister-designate Trudeau. He probably won't be able to make much headway on major issues such as the low-wattage economy. Factors beyond Ottawa's control determine those outcomes. But as a stylish white-knight reformer of a debased democracy, there are all kinds of gains too to be made.

Style doesn't make the man, but as Ronald Reagan and John F. Kennedy illustrated, it can change the morale, bring a new spirit to a country. Mr. Trudeau is no Reagan and he is no Kennedy but he has some of their charismatic attributes. If he doesn't settle for half-measures, he could bring a new spirit.

He has already signalled important changes to the way Ottawa works. For the first time, there will be gender parity in the federal cabinet. Instead of refusing to meet collectively with the premiers, he's joining hands. **Freedom of speech will be restored to the gagged public service.** A new voting system may be on the way.

The big test will come on openness and on how Mr. Trudeau responds to dissent. The wise leader doesn't demand agreement from everyone in his party. If the news media gets all excited about an MP going offside on some issue, he should take it in stride, as in, "So what? That's what a democracy is all about. The freedom to speak your mind."

A sure way for him to change politics would be to depoliticize the environment. The Conservatives were pilloried for running a permanent campaign. Mr. Trudeau won't have to face the electorate for another four years. If he is smart, he won't look at his standing in the opinion polls for the first three. If he is preoccupied with what's good for the public as opposed to the party, it will pay off.

To diminish patronage and channel bipartisanship, Mr. Trudeau needs to resurrect the good idea that Mr. Harper had – and subsequently discarded – of an independent public appointments commission.

Mr. Harper brought the West in. The new-generation leader needs to find a way to bring the youth in. A minister of youth or a youth secretariat of some kind might help.

To open information flows, the integrity of the access-to-information system needs to be restored. A tough-minded journalist (I nominate the CBC's Neil Macdonald) would be a good choice to run it.

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The language of leadership has become trite and banal. If Mr. Trudeau wants to be an inspirational leader, he needs (as Ottawa author Andrew Cohen who has written an engaging book about JFK points out) someone who knows how to make the language soar.

To restore civility to our politics, Mr. Trudeau should ban personal attack ads. To restore sanity to Question Period, the Speaker needs to be empowered so that questions are answered.

Reforms are needed – and wanted – by the score. No leader has ever had a better opportunity to change Canada’s political culture.

## **Tory laws pose constitutional issues for Liberals**

**Ian MacLeod, Ottawa Citizen, October 27, 2015**

The incoming Liberal government is expected to uproot several constitutionally contentious laws and policies sown by the defeated Conservative government.

So far, the Liberals have pledged to repeal or amend at least six pieces of Conservative legislation, most notably the two signature proclamations of the Tory era: the Fair Elections Act and Bill C-51, otherwise known as the Anti-terrorism Act of 2015.

The Grits say they also will repeal sections of Bill C-24, the Strengthening Canadian Citizenship Act, which allows senior government politicians to strip Canadian citizenship, without a trial, from dual nationals convicted of serious crimes.

They have promised to fully restore limited and temporary health benefits to refugees and refugee claimants, which were cut in 2012 because the government claimed bogus refugees were coming to Canada to get free medical care. The Federal Court of Canada ruled that was unconstitutional and the Conservative government appealed. That case was to resume Monday but has been postponed.

And it seems highly likely the incoming government will abandon the Conservatives’ recent leave-to-appeal application to the Supreme Court of Canada to overturn a lower court ruling that it is illegal to ban Muslim women from wearing niqabs at citizenship swearing-in ceremonies. During the recent election campaign, Prime Minister-designate Justin Trudeau vigorously defended the right of Muslim women to wear the religious veil.

Some rights groups want the new government to go even further.



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The British Columbia Civil Liberties Association (BCCLA) says it will call on the government, “to take a very hard look at whether certain measures will pass constitutional scrutiny,” executive director Josh Paterson said Tuesday.

“Where they think there is a reasonable chance of a successful constitutional challenge, they ought to be looking at amendments. That’s not to say they should choose to amend every single thing, but it is the responsibility of government to do that.”

The BCCLA and others want the new government to target some Tory laws and policies beyond what’s in their election playbook. For example, the association and John Howard Society are suing the government over the Correctional Service of Canada’s increasing use of solitary confinement, officially called disciplinary or administrative confinement. They argue it violates the Charter protection against cruel and unusual punishment.

The civil rights group also is pursuing a class-action suit on behalf of Canadians who use wireless devices, alleging the Communications Security Establishment (CSE), Canada’s foreign signals intelligence agency, is violating citizens’ constitutional right to privacy by spying on the domestic electronic metadata generated by emails, Internet searches and Wi-Fi traffic in public places such as airports.

The Liberals say they will limit the CSE’s powers by requiring a court warrant to engage in the surveillance of Canadians, but have offered few additional details.

Other contentious laws that could come under Liberal scrutiny relate mainly to the Conservative’s tough-on-crime campaign. Some are currently under appeal in lower courts, or the subject of a leave-to-appeal application to the Supreme Court. They include mandatory-minimum sentencing, victim surcharges and restrictions on early parole for first-time, non-violent offenders.

The Conservative government spent more than \$4.7 million defending 15 losing court cases during its decade in power, among them seven major defeats at the Supreme Court since 2011, including stinging blows against its anti-crime laws.

Paterson said the new government should reappraise not only the contentious criminal justice legislation but “also identify other areas that are potentially unconstitutional before someone has to spend the resources to bring a legal challenge.

“Deal with some of these things proactively because, ultimately, it is the responsibility of government to ensure that its legislation is constitutional,” he said.

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“Time and time and time again, we have to expend millions of dollars of public money and lots of money from individuals and non-profit organization to get to the result that we should have arrived at in the first place, which is that the legislation is unsound or is unconstitutional.”

## **A list of pending legal, constitutional cases against Conservative legislation**

**The Canadian Press, October 27 2015**

OTTAWA - A list of some current legal and constitutional challenges and appeals surrounding Conservative legislation:

— Federal public service unions have challenged the constitutionality of measures in Bill C-59, the 2015 omnibus budget bill, that permit the government to impose a new sick leave and disability system without collectively bargaining the changes and while limiting the right to strike.

— The B.C. Civil Liberties Association and the Canadian Association of Refugee Lawyers have challenged Bill C-24, the "Strengthening Canadian Citizenship Act," arguing it creates a discriminatory "two-tier citizenship regime" between dual nationals who were born in Canada or abroad and naturalized citizens.

— Lawyers Rocco Galati and Paul Slansky for the Constitutional Rights Centre Inc., challenged Bill C-24, which it gives government the power to strip citizenship from Canadian-born citizens. They say it's an indirect attempt to change the Constitution. The case was dismissed by a Federal Court judge but they lodged an appeal, scheduled to be heard in January.

— The Canadian Civil Liberties Association and Canadian Journalists for Freedom of Expression have challenged the constitutionality of five specific provisions in Bill C-51, the Anti-Terrorism Act, arguing key elements violate the Charter of Rights and Freedoms "in a manner that is not justified in a free and democratic society."

— The federal government is appealing a Federal Court ruling that reversed Conservative cuts to refugee health care services. A scheduled hearing Monday at the Federal Court of Appeal was adjourned to later this fall.

— The Information Commissioner of Canada is challenging the constitutionality of changes in Bill C-59, the 2015 omnibus budget implementation act, that retroactively remove the commissioner's jurisdiction over the long-gun registry records and absolve any past wrongdoing in relation to registry data destruction.

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- Five aboriginal communities won a court order this week allowing them to keep their books closed while they pursue a constitutional challenge to the "First Nations Financial Transparency Act," passed by the Conservatives in 2013.
- A group of medical marijuana users from B.C. received an injunction in March 2014 allowing them to continue growing their own pot while they pursue a constitutional challenge to the Conservative government's "Marijuana for Medical Purposes Regulations."
- The Canadian Federation of Students and advocacy group the Council of Canadians have challenged the constitutionality of Bill C-23, the Conservatives' "Fair Elections Act" reforms of 2014.
- The Supreme Court of Canada agreed in April to hear a constitutional challenge of mandatory minimum sentences for drug trafficking. The same month, the top court struck down mandatory minimums for gun crimes.
- The federal information commissioner is challenging the withholding of documents under the Access to Information Act by the Prime Minister's Office related to four senators.
- The federal government is seeking leave to appeal to the Supreme Court of Canada over lower court rulings that rejected a proposed Conservative ban on wearing a niqab during citizenship oath-swearing ceremonies.