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

Press Clippings for the period of February 2 to 9, 2015
Revue de presse pour la période du 2 au 9 février, 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

The AJC in the News – L'AJJ fait les manchettes

**** We invite you to read this Calgary Herald editorial that followed the publication of an article on Crown prosecutors in Alberta. The AJC is quoted in both the editorial (and the article we have shared again below).**

**** Nous vous invitons à lire cet éditorial du Calgary Herald qui a suivi la publication d'un article sur les procureurs de la Couronne en Alberta. L'AJJ est citée dans l'éditorial (et nous avons partagé à nouveau le récent article).**

Editorial: Tough on crime agenda taxes justice system

Calgary Herald Editorial Board, February 3, 2015

The federal government claims getting tough on crime is one of its top priorities. If it wants to be taken seriously, in Alberta at least, it needs to back up its bluster with some badly needed action to ensure the wheels of justice in this province continue to turn smoothly.

Legal reforms introduced by the federal Conservatives have increased the workload on the court system.

As a result of mandatory minimum jail terms and the removal of conditional sentences, defendants are less likely to plead guilty, opting instead for time-consuming court proceedings.

It is dismaying to learn that not enough federal prosecutors are being hired to deal with the growing burden in Alberta's courts.

"The workload is going up because of the complexity of files and the number of people doing the work is going down," according to Len MacKay, president of the Association of Justice Counsel.

The association makes a good case for why the federal government should loosen the purse strings to fill vacant positions for these prosecutors in Alberta.

MacKay charges that the government's push to cut costs and streamline the public service is at odds with the legislation it has introduced to crack down on crime.

Not only is there a shortage of crown prosecutors, the federal government has also kept the lid on the number of Court of Queen's Bench justices in Alberta. Our population has soared and criminal charges tried in that court have jumped 35 per cent since 1996, but only two new positions have been funded.

As a result, trials are being booked more than a year ahead, raising the disturbing possibility that serious cases are at risk of being thrown out because of undue delays.

That's unacceptable from a government that so enthusiastically embraced the mandatory minimum sentences that have contributed to the growing burden faced by the court system.

If the Harper Conservatives don't want to pony up to pay for the consequences of their legislative changes, perhaps it's time to consider amendments to make administration of these laws fairer and more effective.

These mandatory sentencing requirements leave little discretion and flexibility in the system.

It's no wonder many accused are reluctant to plead guilty and opt for a trial instead.

A law that allows judges to see only black and white, with no shades of grey, increases the burden on our courts and drives the price of justice steadily higher.

It's past time for the Harper government to rethink some of its tough-on-crime provisions that do little to make Canada safer and cost us all more.

Federal prosecutors feel burden of tough-on-crime agenda

JASON VAN RASSEL, CALGARY HERALD, January 19, 2015

The number of federal prosecutors working in Alberta's courts is not keeping pace with a bigger workload created by increasingly complex cases and Ottawa's tough-on-crime agenda, says the union that represents them.

The Association of Justice Counsel, which represents more than 400 federal Crowns who work for the Public Prosecution Service of Canada (PPSC), said Alberta is one of several regions across the country where the federal agency is not filling vacant positions as a way of trimming costs.

Although criminal courts are administrated by provincial and territorial governments, the PPSC is responsible for prosecuting matters involving federal statutes, particularly drug-related cases and the seizure of proceeds of crime connected to them.

In Alberta, there are supposed to be 58 lawyers working for the PPSC, but the Association of Justice Counsel said the actual number stands at 50.

"The workload is going up because of the complexity of files and the number of people doing the work is going down," said Len MacKay, the association's president.

Statistics in the PPSC's recent annual reports show the number of cases handled each year by federal prosecutors has remained steady at approximately 81,000 since 2010, as has the number of staff positions on the books.

"What happens instead is they don't fill the vacancies," MacKay said.

But the PPSC's statistics also show the average number of hours spent on each file is going up. One likely reason is that drug cases and financial crime prosecutions, by nature, are often complex and time-consuming. At the same time, landmark rulings by the Supreme Court have increased the legal requirements on authorities in areas such as disclosing evidence to the defence.

However, MacKay and others in the legal profession point to a suite of legal reforms introduced by the federal government in recent years — particularly the elimination of conditional sentences and the imposition of mandatory minimum jail terms — as another factor increasing the burden on prosecutors.

“People facing those charges are more likely to litigate them,” said Pawel Milczarek, vice-president of the Calgary Criminal Defence Lawyers’ Association.

MacKay agreed that a defendant facing jail time is more prone to plead not guilty, necessitating a one- or two-day trial in a case that might have been settled via a plea agreement negotiated in half a day.

MacKay added he doesn’t doubt the legislative changes are aimed at cracking down on crime, but said they’re at odds with the federal government’s moves to cut costs and streamline the public service.

“It is one of the ironies of this government,” he said.

The federal government is also responsible for appointing judges to the provinces’ superior courts, and has come under fire for not expanding the number of benchers in Alberta’s Court of Queen’s Bench. Although Ottawa recently filled two vacancies in Queen’s Bench, Justice Minister Jonathan Denis has said the court’s roster — which hasn’t grown since 1996 — must increase further to accommodate Alberta’s population growth.

Milczarek said Queen’s Bench trials in Calgary are already booking into 2016 and the defence lawyers’ association said an increasing number of cases will be in jeopardy of being thrown out due to undue delays.

PPSC spokesman Dan Brien acknowledged the organization has had challenges recruiting and retaining federal Crowns — particularly in jurisdictions where their provincial counterparts are paid more — but he stressed the vacant prosecutor positions haven’t placed any cases in jeopardy due to delays.

The PPSC can temporarily shift lawyers to other regions if they’re short of manpower, said Brien, adding the agency also uses a network of private-sector lawyers who act as agents in part-time circuit courts that serve more remote communities.

“We’ve never had to discontinue a prosecution for staffing reasons,” he said.

Brad Wall open to using 'notwithstanding clause' over labour ruling

Saskatchewan could invoke clause in response to Supreme Court ruling against province

CBC New Saskatchewan, February 4, 2015

Saskatchewan Premier Brad Wall is open to using the Charter of Rights and Freedoms' notwithstanding clause to address his government's essential services legislation, which the Supreme Court has ruled violates charter rights.

Saskatchewan's labour legislation prohibits some public-sector employees from striking.

On Wednesday, Wall said he will try to recraft the legislation to conform with the court's ruling, but he is ready with a backup plan.

"If it looks like we cannot do that, then the only option we would have is to use the notwithstanding clause and simply say to the Supreme Court that we want to put public safety and welfare at the foremost, as our top priority for the people of Saskatchewan," Wall said.

The notwithstanding clause is laid out in Section 33 of the Charter of Rights and Freedoms. It allows the federal government or a provincial legislature to enact legislation to override several sections of the charter that deal with fundamental freedoms, legal rights and equality rights.

The Supreme Court ruling gave the province one year to bring the legislation into conformity with the Charter.

Wall noted Saskatchewan has already passed, but not proclaimed, a new essential services law that will be examined further to see if it satisfies the court's ruling.

"We're going to look at the court's ruling with respect to our new legislation to see if we can accommodate what they're saying, but still have essential services protection for people, so that a strike or lockout does not threaten public safety or health," Wall said.

After winning power in 2007, the Saskatchewan Party introduced essential services legislation, which said employers and unions had to agree on which workers could be deemed essential and not allowed to legally strike. The law also said that if the two sides couldn't agree, the government could choose who was an essential worker.

Labour groups challenged that legislation all the way to the Supreme Court. In its 5-2 ruling, the court affirmed the principle that any labour relations law that gives management a final say over the conditions of its workers violates the charter.

"I was hoping that the government would accept the decision and respect the decision of the Supreme Court of Canada," said Larry Hubich, president of the Saskatchewan Federation of Labour, on Wednesday after learning of Wall's remarks. "It was a pretty resounding defeat."

Wall floats notwithstanding clause in response to SCOC labour ruling

JONATHAN CHARLTON, THE STARPHOENIX FEBRUARY 4, 2015

Premier Brad Wall could invoke the rarely-used notwithstanding clause in response to the Supreme Court's rejection of his government's essential services act.

"It's just an option," Wall told reporters Wednesday after a question-and-answer session at the annual meeting of the Saskatchewan Urban Municipalities Association.

In a historic decision issued Jan. 30, the Supreme Court of Canada struck down Saskatchewan's 2008 Public Service Essential Services Act, ruling unionized Canadian workers have a constitutionally guaranteed right to strike.

By a 5-2 majority, the court granted an appeal by the Saskatchewan Federation of Labour (SFL) of the controversial essential services law, which lets the province itself decide which government employees can take part in strikes — without any appeal mechanism.

Bill 128, which has been passed but not proclaimed, is a set of amendments to the Saskatchewan Employment Act that must now be closely studied to meet requirements laid out Friday by the Supreme Court, the SFL has said.

"We're going to look at the court's ruling with respect to our new legislation to see if we can accommodate what they're saying but still have essential services protection for people so that a strike or a lockout does not threaten public safety or health," Wall said.

"If we can do that, we'll make a few changes to the legislation and we'll proceed. If it looks like we cannot do that, then the only option we would have is to use the notwithstanding clause."

The notwithstanding clause allows Parliament or a provincial legislature to override certain sections of the charter. It has been used only four times by a province or territory and never by the federal government, according to the Centre for Constitutional Studies at the University of Alberta.

Joseph Garcea, head of the University of Saskatchewan political studies department, said he sees two possible reasons Wall would broach the subject: it could be a symbolic gesture to the business constituency, or Wall may think the one year of leeway provided by the Supreme Court won't be enough time for a smooth transition to the revised legislation.

“Is it a bargaining strategy vis-a-vis the SFL — in essence, saying, ‘Look, we’re willing to discuss this with you, but don’t get too pushy because we do have this constitutional instrument we can use if we want to’ ?”

SFL president Larry Hubich said he was disappointed to hear that Wall may consider resorting to the notwithstanding clause.

“Our intention is to work co-operatively with the government to have the Supreme Court of Canada ruling complied with,” he said.

Among other shortcomings, Bill 128 doesn’t satisfy the Supreme Court’s decision because its definition of an essential service remains too broad, Hubich said.

One in five public servants claims harassment on the job

KATHRYN MAY, Ottawa Citizen, February 5, 2015

Almost 20 per cent of public servants say they were harassed on the job over the past two years and the main culprits were their bosses and co-workers, according to a newly released survey of Canada’s federal workforce.

The triennial public service employee survey, released by Treasury Board Thursday, is the first to distinguish between the kinds of harassment workers face on the job.

Previous surveys found nearly 30 per cent of all employees said they faced some type of harassment over the previous two years – a level that workplace experts felt was high and could be contributing to the government’s rising disability claims for depression and anxiety.

MPs on the Status of Women Committee also prodded Treasury Board to use the survey to get at the nature of the harassment and why employees who feel harassed don’t lodge formal complaints.

The government added or modified 30 questions this year to get a better handle on harassment, as well as on discrimination and performance management, two other issues that have bubbled up since the 2011 survey.

The survey found 19 per cent claiming harassment. The most common types reported were offensive remarks, unfair treatment and being excluded or ignored. Sexual

harassment, whether a comment or gesture, was reported by nine per cent of those who felt harassed, and two per cent said they faced "physical violence."

"The way I look at it is that one in five people say they have been harassed and that's a problem …and when 63 per cent say it came from the people with authority over them, that's a red flag the government should take seriously," said Robyn Benson, president of the Public Service Alliance of Canada.

The public service employee survey, which began in 1999, was sent to 250,000 employees in 93 departments and agencies. More than 71 per cent of the public service responded between August and October of 2014.

The survey is conducted every three years to gather employees' views on the state of the public service. Questions are bundled around four broad themes: employee engagement, leadership, the workplace and the workforce.

This was the first such survey since the Conservative government's downsizing, and federal officials were braced for the survey to reflect some turmoil when employees were asked their views about engagement, leadership, workforce and working conditions. But the overall numbers didn't show any big swings from previous results.

Unions were eager to see this year's results, particularly with their goal, during contract negotiations, of getting provisions on wellness, mental health, anti-bullying, transparency and fighting harassment embedded in their contracts.

The survey has always shown that public servants like their jobs and are committed to the work they do but some responses suggest the pressure of the downsizing is starting to chip away at morale, said Benson.

She points to the 66 per cent who feel they don't have the support to "provide a high level of service" compared to 75 per cent in 2011. The proportion who felt they had support at work to juggle the demands of work and home dipped slightly.

"It is starting to show me what the cuts are doing to employees and for the PSAC, I feel somewhat vindicated on the (contract) demands we're making for mental health," she said.

The nearly 106 questions are aimed at highlighting where departments are doing well, as well as rooting out problems. With this information, departments are expected to draft action plans to "address people management issues." Less than half of the respondents felt senior management would address concerns raised in the survey.

Canada's top bureaucrat, Janice Charette, issued a statement promising the findings would be considered as part of the Blueprint 2020 exercise underway to help make the public service more open, innovative and "high-performing."

"I am committed to a meaningful response to the results," she said. "Public servants need to be engaged in dialogue and discussion on these results. Our modernization efforts will

need to address concerns and continue to build on our strengths to ensure that Canada's Public Service is well positioned for the future. "

In this survey, the government introduced a new definition of harassment to guide employees in answering. By the definition, the number who reported harassment was 19 per cent but that can't be compared to the 2011 survey, in which nearly 30 per cent said they were harassed, because that survey didn't define harassment the same way or distinguish between types.

For discrimination, the survey found eight per cent of respondents said they were discriminated against compared to 14 per cent in 2011, and they pointed to bosses and coworkers as the primary culprits.

In this survey, the government was also trying to get at why so few people have formally complained or used the various processes available to them.

About 25 per cent of those who felt harassed took no action at all. About seven per cent filed a grievance or formal complaint. The main reasons cited by those who didn't were fear of reprisal; they didn't think it would make a difference; concerns about the complaint process; and thinking the incident wasn't serious enough.

Treasury Board's harassment policy, which has been revamped over the years, is aimed at prevention and building a "respectful workplace." It has acknowledged a lack of respect can breed harassment in the workplace. That's also been a big focus of both unions and executives who have raised concerns about the lack of civility and respect for employees that comes from the top.

Overall, public servants seem to feel they work in a "respectful" and "ethical" workplace with 80 per cent saying colleagues behave in a respectful manner and 94 per cent reporting positive working relationships with colleagues. About 82 per cent said employees in their departments work in the public interest, compared to 78 per cent in 2011.

On leadership, employees are generally happier with their immediate supervisors than with senior management – a gap that has widened over time. About 75 per cent had favourable views about their supervisors but only half felt the same about the top brass.

Employees expressed frustrations about the impact cuts and other organizational factors had on their work: 48 per cent cited having to do more with fewer resources; 48 per complained about too many approval stages; and 37 per cent cited the lack of stability.

The government is releasing the survey in two parts. The first is a top-of-the-waves analysis of the overall results, followed later by a detailed breakdown of the findings in the 93 departments and agencies that took part in the survey. The survey was done by Statistics Canada.

"Our ultimate goal is that the government is safe and healthy workplace where public servants can provide quality public services to Canadians," said Benson. "I know I sound like a broken record but that is the goal of any employer and union."

Survey results, at a glance:

Employee Engagement:

– 93% say they will put in the extra effort to get the job done

– 79% like their job, a decrease from 84% in 2008

– 74% of employees report a sense of satisfaction from their work

Leadership:

– 75% of employees feel their supervisor keeps them informed about issues affecting their work

– 47% of employees say essential information flows effectively from senior management to staff

Performance Management:

– 79% say their work is assessed against identified goals and objectives

– 72% say they get useful feedback about their job performance

Training and Development:

– 63% say they get the training they need to do their job
– 52% feel their organization does a good job of supporting career development

Empowerment:

– 66% feel they have support to provide a high level of service

– 62% of employees believed that they have opportunities to provide input into decisions that affect their work, down from 68% in 2011

Work-life balance and workload:

– 78% say immediate supervisors supports the use of flexible work arrangements

–70% say they can complete their assigned workload during their regular working hours

–71% of employees say they have support for work-life balance

Respectful and ethical workplace:

– 94% say they have positive working relationships with colleagues

– 80% feel their colleagues behave in a respectful manner

– 79% feel that their organization respects them

–82% believe that employees in their organization carry out their duties in the public's interest

Harassment:

– 19% say they were harassed in the past two years

Discrimination:

– Eight per cent of employees said they faced discrimination in the past two years. (The most common types were: Sex at 24 per cent; age at 23 per cent; and race at 20 per cent.)

Fierté et tensions chez les onctionnaires fédéraux

PAUL GABOURY, Le Droit, le 5 février 2015

La satisfaction et la fierté des fonctionnaires fédéraux à l'égard de leur travail reste inébranlable, malgré les compressions budgétaires et le réaménagement des effectifs.

Mais bien des choses se sont détériorées pendant cette période de turbulenceL les relations et la confiance envers la haute direction, la formation et les outils dont ils disposent pour effectuer leur travail, de même que le niveau de confiance pour régler les cas de harcèlement.

Les résultats du Sondage 2014 mené auprès des fonctionnaires fédéraux ont été dévoilés jeudi. Il a été réalisé auprès de 250000 employés de 93 organisations fédérales. Depuis 2008, le sondage est mené à tous les trois ans. Cette fois, il comptait 106 questions, dont 82 où les gens sondés devaient exprimer leurs opinions. Le taux de réponse a été de 71,4%, alors qu'il était de 72,2% en 2011 et de 65,8% en 2008.

Même mobilisation

Plus de 88% des fonctionnaires fédéraux sont fiers du travail qu'ils accomplissent, alors que 79% indiquent aimer leur emploi. Moins de 18% des employés éligibles à la retraite ont indiqué qu'ils voulaient quitter, un pourcentage qui reste stable depuis 2008.

Toutefois, moins de fonctionnaires (71%) estiment recevoir le soutien nécessaire pour concilier travail et vie personnelle qu'en 2011 (75%). Les employés sont aussi plus nombreux (78%, comparativement à 75% en 2011) à déclarer que, selon les nécessités du service, leur superviseur immédiat accepte les régimes de travail flexibles (horaire, semaine, télétravail, etc.).

Si les répondants affirment à 75% avoir de bonnes relations avec leur supérieur immédiat (il tient ses engagements et garde son personnel informé), il en est autrement de la haute direction alors que moins de la moitié des répondants (47%) estiment qu'elle communique efficacement les renseignements essentiels.

Source et nature du harcèlement

Pour la première fois, les fonctionnaires ont identifié les sources et la nature du harcèlement en milieu de travail, une situation qu'un fonctionnaire sur cinq indique avoir vécu au cours des deux dernières années.

Le plus souvent, il s'agissait d'un supérieur (63%), alors que des collègues étaient la source dans 50% des cas. Le commentaire désobligeant vient en tête de liste avec 57%, suivi du traitement injuste à 46% et de l'exclusion à 43%.

Le commentaire ou geste à caractère sexuel était mentionné dans 9% des réponses et la violence physique 2%. Les employés pouvaient sélectionner plus d'un choix de réponse dans cette catégorie, si bien que l'addition des pourcentages n'équivaut pas à 100%.

Le sondage a aussi permis de constater que la confiance de voir leur organisation tout mettre en oeuvre pour prévenir le harcèlement est en chute, à 64%, comparativement à 72% en 2011.

Les problèmes persistent, selon l'AFPC
Même si le sondage réalisé auprès des fonctionnaires fédéraux confirme leur engagement, il vient mettre en lumière plusieurs problèmes qui persistent, selon le vice-président régional de l'Alliance de la fonction publique du Canada (AFPC), Larry Rousseau.

Selon lui, les employés restent engagés, mais ont de plus en plus de difficultés à offrir des services de haute qualité parce qu'ils ne reçoivent pas la formation et n'ont pas les ressources nécessaires pour accomplir les tâches. «Puisqu'il y a moins de gens pour faire le travail, c'est évident qu'il y a un impact sur la capacité à offrir des services de qualité, même si 93% des gens se disent prêts à fournir un effort supplémentaire», souligne-t-il.

La santé mentale des employés reste préoccupante et le fait de devoir se faire concurrence pour conserver leur emploi a pu ajouter du stress, estime le dirigeant syndical.

Le sondage met aussi en lumière le fait que plusieurs employés n'ont pas déposé de plainte ou de grief dans des cas de harcèlement, notamment parce qu'ils craignaient des représailles, ce qui démontre qu'ils n'ont pas tout à fait confiance dans le régime en vigueur pour les protéger, estime M. Rousseau.

Canadians have right to doctor-assisted suicide, Supreme Court rules

Sean Fine, The Globe and Mail, February 6, 2015

Canadian adults who are mentally competent and suffering intolerably and permanently have the right to a doctor’s help in dying, the Supreme Court ruled unanimously on Friday morning.

The court suspended its ruling for 12 months to give the Canadian government, medical regulatory bodies and the provinces a chance to draft new laws and policies around assisted dying. It said doctors have the ability to address whether an individual is capable of consent, and said the intolerable suffering can be physical or psychological.

In its direct effect on how Canadians are permitted by their government to die, the ruling may be the one out of the court’s 140-year history that most directly and powerfully touches Canadians’ lives. The decision was signed by “The Court,” signifying its institutional weight.

Lee Carter – who took her mother Kathleen, 89, to Switzerland for a doctor-assisted death because of a degenerative spinal condition, and who brought a court challenge that led to Friday's ruling – said that Friday's decision means Canadians "have a choice to die with dignity in our own country, surrounded by friends and family." She said that, after her mother's death, as she and other family members were leaving, she felt happy. "We were elated. She got what she wanted."

The ruling does not appear to compel unwilling doctors to take part in assisted dying, said Chris Simpson, president of the Canadian Medical Association. "That's going to be very reassuring for our members, who of course are very strongly insistent that the right to conscientiously object is preserved," he said in an interview from Yellowknife.

Dr. Simpson said there is hard work ahead for his organization, which intends to be a "leader at the table" as new laws on assisted death are crafted.

At the Toronto headquarters of Dying With Dignity, a non-profit organization that has been advocating for doctor-assisted death for years, a cheer went up when CEO Wanda Morris emerged with the news. "I am so pleased that today the courts have dragged our laws into line with the values of Canadians, those values of compassion and autonomy we hold so dear," Ms. Morris said, crying. Ms. Morris thanked the B.C. Civil Liberties Association and the plaintiffs who brought the case.

Critics of the ruling said it puts disabled people at risk. In a joint statement, the Council of Canadians with Disabilities and the Canadian Association for Community Living said they are "profoundly disappointed" with the ruling.

“As we each near the end of our lives, at the time when we are likely to be most vulnerable to despair and fear, we have now lost the protection of the Criminal Code,” the groups said. “Where shall we now find that protection? CCD and CACL caution that our collective response to this question must go far beyond the technical exercise of so-called 'safeguards.' ”

Catherine Ferrier, a doctor who practices geriatric medicine at Montreal’s McGill University Health Centre, said she is concerned the court’s ruling could put the elderly patients she treats at risk.

“Suffering is very hard to define,” said Dr. Ferrier, who is also the president of the Physicians’ Alliance Against Euthanasia, a Quebec-based doctors’ group that fought that province’s medical-aid-in-dying law, which passed last year. “Competency in people who are either aging or close to the end of life is variable and is sometimes also hard to determine. That worries me a lot.”

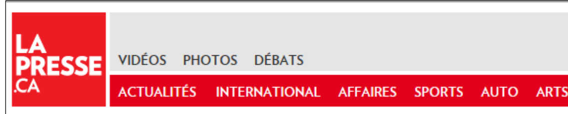
Quebec's assisted-suicide law, which is expected to take effect by December at the latest, was passed despite federal opposition and the Criminal Code. Opinion polls in the province showed widespread support for assisted suicide, and the issue received all-party support in the legislature. “Quebec has showed leadership on this issue. We worked in an extremely collegial manner to adopt our law for end-of-life care,” said Health Minister Gaétan Barrette.

Friday's ruling comes 22 years after the court narrowly rejected the claim of 42-year-old Sue Rodriguez, dying of amyotrophic lateral sclerosis, to a right to a physician’s help in ending her life.

The case at issue involved two women, both of them now dead: Kathleen Carter, who died in 2010, and Gloria Taylor, who suffered from the same condition as Ms. Rodriguez and died of an infection in late 2012.

The court called the law against assisted suicide “cruel” and said that, far from protecting the vulnerable, it harms those who suffer terribly and unchangingly. It did not strike down the Criminal Code’s prohibitions on assisted suicide, but said they no longer apply “to the extent that they prohibit physician-assisted death for a competent adult person who (1) clearly consents to the termination of life and (2) has a grievous and irremediable medical condition (including an illness, disease or disability) that causes enduring suffering that is intolerable to the individual in the circumstances of his or her condition.”

The court quoted Ms. Taylor's wishes at length. "What I fear is a death that negates, as opposed to concludes, my life," she said. "I do not want to die slowly, piece by piece. I do not want to waste away unconscious in a hospital bed. I do not want to die wracked with pain."



L'aide médicale à mourir approuvée par la Cour suprême

Hugo de Granpré, La Presse, le 6 février 2015

(Ottawa) L'interdiction de l'aide médicale à mourir est inconstitutionnelle dans certaines circonstances, a tranché la Cour suprême du Canada vendredi, donnant 12 mois aux gouvernements pour faire les ajustements nécessaires.

Dans un jugement unanime et historique, la Cour a statué que l'interdiction contenue aux articles 14 et 241 du Code criminel du Canada porte atteinte à l'article 7 de la Charte canadienne des droits et libertés qui garantit le droit à la vie, à la liberté et à la sécurité.

Cette invalidité s'applique toutefois à un groupe restreint de personnes : elle vise les personnes adultes capables; qui consentent clairement à mettre fin à leur vie; qui sont affectées par des problèmes de santé graves et irrémédiables; et dont ces problèmes leur causent des souffrances persistantes et intolérables.

La Cour n'a pas donné de détails sur l'application de ces critères. Par exemple, on ignore si les problèmes de santé « graves ou irrémédiables » peuvent être de nature strictement psychologique, de même que la forme que prendrait l'aide du médecin (prescription de médicaments, administration de soins, etc.). Elle ne mentionne pas non plus la notion de « fin de vie », une préoccupation centrale de la loi québécoise. La décision précise néanmoins que la souffrance « persistante et intolérable » peut être de nature physique ou psychologique.

Ce sera donc aux gouvernements fédéral et des provinces d'encadrer cette nouvelle réalité et d'en prévoir la mise en oeuvre. La Cour a suspendu l'application de son jugement pendant 12 mois pour leur donner le temps de s'ajuster. Les articles concernés du Code criminel resteront donc valides durant cette période.

Ce jugement rendu dans cette affaire Carter qui émane de Colombie-Britannique vient renverser l'arrêt de cette même cour rendu il y a plus de 20 ans dans l'affaire Rodriguez en 1993.

« Le caractère sacré de la vie "n'exige pas que toute vie humaine soit préservée à tout prix", ont écrit les juges en citant Rodriguez. Le droit en est venu à reconnaître que, dans certaines circonstances, il faut respecter le choix d'une personne quant à la fin de sa vie. »

Quant à la « pente glissante » évoquée par les opposants de l'aide médicale à mourir, la cour s'en est remise à l'évaluation de la juge de première instance, qui « a conclu qu'aucune preuve émanant des endroits où l'aide médicale à mourir est autorisée n'indique que les personnes handicapées risquent davantage d'obtenir une aide médicale à mourir ».

Une dizaine d'États à travers le monde ont autorisé une forme ou une autre d'aide médicale à mourir depuis 1993, dont la Belgique, la Suisse et l'Oregon.

Il s'agit d'un revers de taille pour le gouvernement Harper, qui a défendu bec et ongles la constitutionnalité de cette interdiction.

Le jugement pourrait par contre donner un sérieux coup de pouce au gouvernement du Québec, dont la loi sur la mort dans la dignité constitutionnalisée est elle-même contestée devant la Cour supérieure. Ottawa faisait valoir que le droit criminel a préséance sur la compétence provinciale en matière de santé. La Cour a statué que « les deux ordres de gouvernement peuvent validement légiférer sur des aspects de l'aide médicale à mourir, en fonction du caractère et de l'objet du texte législatif ».

Read the Supreme Court judgement on the right to die
http://scc-csc.lexum.com/scc-csc/scc-csc/en/item/14637/index.do

Lisez le jugement de la Cour suprême sur l'aide médicale à mourir
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Peter MacKay: Government in no rush to pass new law on assisted suicide

JORDAN PRESS, OTTAWA CITIZEN, February 6, 2015

The federal government, facing an election later this year, signalled Friday it was in no rush to craft a law to legalize physician-assisted suicide.

The Supreme Court of Canada's unanimous decision to lift the prohibition on doctor-assisted suicide gives Parliament 12 months to respond legislatively.

Should the court-imposed deadline pass without a bill becoming law, the Criminal Code prohibition on physician-assisted death will be lifted, leaving the issue in the same legal realm as abortion: it won't be legalized, but it won't be illegal, either.

Justice Minister Peter MacKay said the government had 12 months and was going to take its time to review and respond to the court decision.

"There is a wide and obviously very emotional range of perspectives on this issue, but (the decision) has very far-reaching implications. We intend to take the time to look at this decision carefully, and thoughtfully," Justice Minister Peter MacKay told reporters.

MacKay said this year's federal election, slated for October, is "a consideration" in how soon the government crafts a bill, "but not the primary consideration."

"The most important part of what Parliament will do is how we protect all Canadians' rights and interests in this particular case," he said.

The Opposition NDP called on the government to react immediately, and introduce legislation before it becomes too late for Parliament to pass a bill before the election, slated for October.

"At the speed that (the government) can work on certain files, believe you me, it's ample time. Nobody, I hope, was dumb enough to wait for the decision to start the process," said NDP justice critic Françoise Boivin.

Conservative MP Stephen Woodworth, who opposes doctor-assisted suicide, said Parliament has to act, given the court's invitation to do so. "What worries me the most is that anyone would be in the position of being asked to take another person's life. I just find that to be really a bad situation," he said.

"The Supreme Court has invited Parliament to do something, and I think that Parliament should always respond to an invitation like that."

Physician-assisted suicide opponents regroup after Supreme Court ruling

DANIEL LEBLANC, The Globe and Mail, February 8, 2015

After suffering a clear loss in the Supreme Court, opponents of physician-assisted suicide now want to persuade the federal government to impose the tightest possible restrictions on the medical procedure.

Ottawa has three options after the ruling that struck down a key provision of the Criminal Code: do nothing and let the provinces oversee a new system; invoke the notwithstanding clause to keep the legislation on the books; or enact a new law determining how and when competent adults suffering intolerably from a medical condition have the right to a doctor-assisted suicide.

Constitutional-law experts and political insiders said the most likely option at this point is new legislation within the 12-month time frame that was offered by the Supreme Court in its unanimous ruling on Friday.

Stockwell Day, a former senior Conservative minister, said opponents of physician-assisted suicide such as him need to contact their MPs to ensure that any new legislation remains restrictive.

"The Supreme Court has ruled already on the right, now [the issue is] what the law looks like," he said in an interview. "This should be written as narrowly as possible."

Mr. Day said there is much opposition to physician-assisted suicide in the Conservative caucus, stating this is a moment for "active democracy" to ensure that Parliament imposes clear limits on who has access to physician-assisted suicide.

"There will be the temptation for some MPs to shrug and say, 'The Supreme Court has ruled and c'est la vie,'" he said. "But in fact, it's a very important democratic moment."

Carissima Mathen, a law professor at the University of Ottawa, said she doubts the government would invoke the notwithstanding clause to bypass the Charter, saying it would be an unprecedented move at the federal level. She added that doing nothing, and allowing provinces to oversee the medical element of the debate, would create havoc.

"The government argued in the case that it was concerned about the risk [of abuse]," Ms. Mathen said. "Clearly it can't let that risk be managed on an ad hoc, case-by-case basis."

The most likely result is new legislation that "will establish federal standards," although the results will be closely scrutinized by the groups that won at the Supreme Court. "Could the government design standards that are overbroad? They'd be vulnerable to a new challenge if they did that," Ms. Mathen said.

Many Conservatives hope that Prime Minister Stephen Harper will allow a free vote if and when the matter comes to the House of Commons. There are clear divisions in the caucus on the matter, with social-conservative MPs such as Stephen Woodworth angered by the ruling.

"I do not agree with legalizing the ability of anyone to take another's life," he said on Friday.

Others agree with the need for new legislation, including Steven Fletcher, who has introduced a private member's bill that would amend the Criminal Code "to allow physicians to assist individuals to end their life."

Tim Powers, a Conservative political commentator, said the goal for the Prime Minister is to manage the matter like he did on the issue of same-sex marriage. Many Conservatives opposed the legislation but the government did not ultimately change it.

The Liberal Party endorsed the legalization of medically assisted death at its policy convention last year, and Leader Justin Trudeau has called on his troops to canvass voters on the matter.

“The rights of the suffering are a personal and emotional issue for me, having cared for my father in his final days. As you’ve heard me say many times, I feel that being a Liberal means we need to respect people’s freedoms and choices while ensuring that as a society we protect our most vulnerable,” he said in a message to his MPs and candidates on Friday.

The NDP called on Ottawa to consult widely on new legislation, in a non-partisan fashion.

“We are calling on the federal government to abide by this decision and to take immediate steps to begin a constructive national conversation on medically assisted suicide,” NDP MP Françoise Boivin said on Friday.

Ottawa must now draft an assisted-suicide law. It should look to Quebec

ROBERT LECKEY, Contribution to The Globe and Mail, February 6, 2015

Robert Leckey *is director of the Paul-André Crépeau Centre for Private and Comparative Law at McGill University.*

On Friday, the Supreme Court of Canada declared that the law banning assisted suicide violates constitutional rights. The law, aimed at protecting the vulnerable, reached too broadly by denying physician-assisted death to competent adults whose terminal medical condition inflicts intolerable suffering on them. While the ball is now in Parliament’s court, many difficult questions face our elected representatives at the federal and provincial levels.

Quebec’s experience on these matters is instructive. In June, Quebec adopted legislation regarding end-of-life-care. The law sets out a rigorous process by which terminally ill individuals can obtain medical aid in dying. It also recognizes a right to receive palliative care. We can draw three lessons.

First, respectful, meaningful public deliberation on delicate moral and legal questions remains possible. Quebeckers had numerous opportunities to participate in the legislative process. The bill that was finally adopted drew support across party lines.

Of course, not everyone in Quebec approves of the law. There's a general sense, however, that the path exemplified the legislative process at its best. This is reassuring at a moment when social media intensify the shrillness of public discourse and it seems that politicians often prefer to leave hard social questions to judges.

In the wake of another recent Charter judgment, the federal government turned its reform regarding sex work into a divisive, ideological exercise. Canadians should demand better from the government on this matter.

Second, Quebec's law shows the complexity of legislating in this area. It's one thing to agree, as polls show most Canadians do, that a total ban on assisted suicide goes too far. It's another to attempt the delicate line-drawing between permissible and impermissible cases.

For example, Quebec's law tightly circumscribes medical aid in dying. Having a serious and incurable illness and experiencing constant and unbearable suffering aren't enough if the patient isn't at the end of her life.

The law imposes requirements for verifying that a patient requesting lethal medical aid has given consent freely and informedly. For some, the conditions are too onerous. For others, they don't do enough to protect individuals vulnerable to pressure.

Third, whatever our view on the big questions of morality, life and death, concrete questions of resources are inescapable. Like those in other provinces, Quebec's government is strapped for cash. The palliative-care community is worried that budget constraints will undermine the law's promise of a right to end-of-life care.

It can be uncomfortable to combine the moral questions of how we wish to end our lives with the financial questions of the health care our governments can afford. But denying the connection is illogical. Whatever our views on assisted suicide, it is beyond dispute that the health care system dedicates ever-growing amounts of public funds to prolonging life, often without prolonging quality of life.

By striking down the criminal ban on assisted suicide, Friday's judgment assigns homework to the Parliament of Canada. This issue's health-care dimension means that our provincial governments also have work to do. Let's hope all are up to the task.

Next step in assisted suicide: Ensuring it can be done humanely

ANDRÉ PICARD, The Globe and Mail, Feburary 6, 2015

The Supreme Court of Canada, to no one's surprise, has made physician-assisted death legal. It did not strike down the Criminal Code provision making assisted suicide a crime, but said it did not apply to a situation where a gravely ill, competent people seek help to end their lives.

As the court said plainly, denying Canadians who are suffering "intolerably and permanently" the right to hasten death is cruel.

If a person chooses to die, they should be able to do so humanely, with the aid of a physician, not have to poison themselves with pills or flee to a country like Switzerland for a life-ending cocktail.

So now that the principle of death with dignity has been given legal status, how do we give that ruling life? (Excuse the pun.)

The court has given the federal government and other regulatory bodies 12 months to draft new rules – or not.

The next big question is: Do we need a new law with restrictions that reflects the court's concern, or is a law needed at all?

When Canada's abortion law was struck down in 1988, the court provided a similar grace period and Parliamentarians never adopted a new law.

So, for the past quarter-century, abortion has been legal, and its provision guided by ethical rules of health professionals. That has been ideal – at least legally. (Provision of services by provinces is a different matter.)

Civil libertarians are suggesting that, similarly, no laws are required to regulate the provision of physician-assisted death. Rather, it should be an individual decision made between a patient and their physician, like any other medical procedure.

Others believe that more formal rules are required to avoid abuses – like hastened death being imposed on the frail elderly, people with profound disabilities and those with severe mental illnesses. (All of which would be unethical, it should be made clear.)

If Canada is going to try and legislate delicate end-of-life choices, the new law (or laws) must, first and foremost, respect the parameters set out by the court: To request a hastened death, a person must be suffering intolerably and permanently – though, interestingly, their death need not be imminent. They must also be capable of consent.

If the legislative route is going to be taken, there are two starting points for debate.

Conservative MP Steven Fletcher has drafted two private members' bills. Bill C-581 addresses virtually all the concerns of the Supreme Court, by amending the Criminal Code provision on assisted suicide and using remarkably similar language to the ruling.

It could be implemented tomorrow and fully comply with the court's ruling. If this government wasn't stubbornly opposed to choice at end-of-life, that's what would happen. (Or, more to the point, what would have happened in lieu of a drawn-out legal process.)

Mr. Fletcher's draft Bill C-582 proposes the creation the Canadian Commission on Physician-Assisted Death, an independent body that would "support law and policy reform with respect to physician-assisted death," by proposing rules and collecting and analyzing data on deaths. (And let's not forget that, despite the fierce debate about this issue, very few people would actually resort to physician-assisted death; based on the experience of other countries, it would not be more than a few hundred deaths above the 300,000-plus deaths in the country each year.)

Another model is Quebec's Bill 52, which codifies the rules for physicians.

Under the law – which has already been adopted – physician-assisted death would be allowed only where these four criteria are met:

1) **The person making the request is competent and opting to end their life of their own free will;**
2) **the patient has an incurable condition at an advanced stage and is nearing death;**
3) **at least two physicians have been consulted, they agree on the diagnosis and are willing to administer a lethal dose of medication and;**
4) **there is a 15-day "period of reflection" between the request and the final act.**

In other words, there are ballasts in place to ensure that a patient's choice to die is a rational, thoroughly considered choice.

Is legislation necessary to ensure those protections, or are the ethical standards of the medical profession enough?

That needs to be the focus of the debate: Not whether people have the right-to-die, but how to ensure they can do so humanely.

Senate holdup means two bills could die before election

Jordan Press, The Ottawa Citizen, February 2, 2015

They are two of the most watched private members' bills in the Senate. They have both been stalled for months. They are both before a Senate committee. And they are both at risk of dying.

A bill to legalize single-game sports betting, C-290, and another to force unions to disclose information on their finances, C-377, appear unlikely to pass the Senate before the summer.

The bills are buried on the order of precedence at Senate committee that has 13 private members' bills to deal with in the coming months. The committee is also expecting more government legislation to land on its agenda. Government legislation tops the queue under Senate practice, which would bury C-377 and C-290 even deeper on the to-do list.

That makes it unlikely that C-377 or C-290 will pass third reading by June, when the Senate expects to rise. Senators won't return before the scheduled October federal election.

"There are presently bills on the order paper that are just languishing there in the ether, and they will remain there until Parliament closes and then that's the end of it," said Sen. George Baker, the committee's deputy chairman.

"We have these bills, some of them like C-290, that will never see the light of day," he added. "That (C-290) will just languish there because the majority of (senators), Conservatives senators, aren't going to allow the bill to see the light of day."

The holdup for the NDP-backed C-290 dismays the New Democrats, who want to abolish the Senate. They chided the upper chamber for standing in the way.

"You need to listen to the House of Commons and the people that elected us to be here. We have passed this unanimously," NDP finance critic Nathan Cullen told reporters. "It is not up to the Senate of Canada to suddenly decide that they have something better to do."

It's been three years since both bills arrived in the Senate. C-377 was amended, and C-290 never came to a final vote. Parliament's prorogation meant they were both then sent back to first reading in the Senate.

The MP behind C-377 said in the months the bill was held up that he met with senators and had seen a softening in its attitude toward the legislation. The bill would require unions and employee associations to publicly disclose financial transactions.

“I’m optimistic. I have been speaking with senators, some senators who were on the fence last time,” said Conservative MP Russ Hiebert. “Their views have changed.”

Hiebert said he wasn’t concerned about the amount of time C-377 has spent in the Senate.

“I’ve been here for almost 11 years. Things don’t move quickly in this place unless there’s a crisis,” he said. “That’s how our parliamentary democracy works.”

The Senate’s own rules set no time limits on debate of private members’ bills, meaning a bill with steep opposition could be held up for months. That’s what happened with C-290, the sports-betting bill; with C-377, the holdup was part of an unofficial political protest by the Senate over a bill Conservative senators believed was badly written.

A second issue has also arisen since C-290 entered the Senate: The NDP MP behind the bill, Joe Comartin, became deputy speaker in the Commons.

As well, House rules won’t allow MPs to debate amendments the Senate may make: the House must agree to or nix any changes the upper chamber makes to a bill. That means Senate amendments to C-290 would effectively kill it.

“We cannot amend that or we will be defeating the will of the House of Commons. Now, what a predicament for the Senate to be in,” Baker said.

Peter MacKay confirms he’ll run again

Paul McLeod, Halifax Chronicle-Herald, February 5, 2015

Peter MacKay will run again in 2015, despite rumours to the contrary.

The justice minister has long been the subject of speculation that he would step away from politics. This week’s resignation of Foreign Affairs Minister John Baird sparked more talk that MacKay would be next out the door.

MacKay has a new wife and child, and he could easily land a private-sector job that requires less travel than being an MP. Stepping away could also position him well for a return to politics when Prime Minister Stephen Harper eventually loses or steps down.

Also of note is that MacKay has not yet solidified his nomination in Central Nova, despite most of his fellow incumbents locking in their candidacy already.

But MacKay put those rumours to rest Wednesday when he confirmed he will reoffer for the Conservative party in the riding.

Reached briefly coming out of the House of Commons, MacKay confirmed he had recently filed his nomination papers. His nomination will be confirmed at a future riding association meeting.

The news is hardly surprising to some of MacKay's longtime colleagues. One Conservative who knows MacKay said Wednesday he has no doubt the minister will run again, while a former colleague said MacKay has never given the indication that he is looking to leave politics any time soon.

The news will be a relief to Conservative strategists. Along with being one of the most recognizable faces in cabinet, MacKay's riding is far and away the safest Conservative seat in Nova Scotia.

Meanwhile, one of MacKay's key pieces of legislation as justice minister took a big step forward in the Commons on Wednesday. Bill C-32, dubbed the victims bill of rights, gives victims new access to information and involvement in the court system and is highly touted by the government.

It also makes some controversial changes, including removing the long-standing concept of spousal immunity. MacKay called such immunity "the last vestiges of a very antiquated area of the law."

C-32 has passed through committee and returned to the House on Wednesday. The government passed time allocation on report-stage debate, moving it a step closer to third reading and ultimate passage.

MacKay's most landmark legislation as justice minister, so far, is new prostitution laws passed last year after the Supreme Court of Canada struck down the previous ones. A string of court defeats has led to opposition criticism that his ministry does not properly vet new legislation for whether it is constitutional.

Ottawa to delay parole eligibility for convicted killers

SEAN FINE, The Globe and Mail, February 4, 2015

The federal government will delay parole eligibility for a decade or more beyond the current 25 years for some murderers, backing off a plan to make life truly mean life in prison by denying some convicted killers any hope of parole.

The new plan would also require the Justice Minister to approve release on parole for some categories of first-degree murder, reintroducing a political element that was removed in the 1950s.

The change came after senior government officials become increasingly concerned about the constitutionality of sentencing people to life in prison without any prospect of release, and The Globe and Mail reported on the plans last week.

A bill setting out the changes could be introduced in Parliament as early as this week, a source said.

Political approval of a release would hark back to an era when parole for federal prisoners did not exist. From 1899 until the 1950s, the governor-general decided on the conditional release of prisoners on the recommendation of what today would be called the public safety minister. That ended with the creation of the Parole Board in 1959. The death penalty was mandatory for capital murder (now known as first-degree murder) until 1961.

Life without parole is a common sentence in the United States, found in all states except Alaska; 40,000 prisoners, including some who committed their crimes before they turned 18, are serving it. But Canadian Justice Department lawyers advised Justice Minister Peter MacKay, Public Safety Minister Steven Blaney and the cabinet that the courts would almost certainly rule life without hope of release unconstitutional, and pressed that case especially vigorously.

“They must have pressed so hard because I know they press on every other issue, and rarely win the day,” the source said, citing federal laws such as the one that toughened early parole rules in 2011 for non-violent first-time federal offenders. The Supreme Court of Canada unanimously struck down a part of that law because it applied retroactively.

Under federal law, first-degree murder brings an automatic life sentence, with parole eligibility after 25 years and parole supervision after release lasting for life. The new rules would not apply to all first-degree murders. They would apply automatically to those who kill police officers and jail guards, and those who kill someone while

committing another crime, such as sexual assault, hijacking, forcible confinement or terrorism. The rules would be at a judge's discretion for especially brutal planned and deliberate killings, and thereby compel the conclusion that the killers would always be too dangerous to set free.

The Globe reported last week that the government was developing a plan that had not yet received cabinet approval to deny parole to these categories of killer.

"We finally have a government that has the backbone to stand up to some of these individuals," Sharon Rosenfeldt, president of Victims of Violence, a national advocacy group, said of the most violent killers.

She said toughening the rules of release is not vengeance. "To me, it's proper morals. Once they cross over the line into degrading violence, they cannot turn to the same human rights that they so blatantly walked over. They were the judge, jury and executioner."

Legal experts said they believe the long mandatory wait without a government objective to justify it would still be deemed unconstitutional.

"Forget about cruel and unusual [punishment]," said Allan Manson, who teaches law at Queen's University in Kingston. "It's the notion of arbitrariness – that people's right to liberty can't be affected by state action that is arbitrary in the sense of not pursuing a legitimate societal objective."

Archie Kaiser, who specializes in criminal law at Dalhousie University's Schulich School of Law in Halifax, said he thinks justice ministers might introduce "invidious" considerations into the release process. "The minister might think about community reaction or political gains or losses."

A spokesperson for Mr. MacKay repeated the government's message from last week, which cited the 2013 Throne Speech on the need to make a life sentence mean life. "Canadians do not understand why the most dangerous criminals would ever be released from prison."

There has been little, if any, public discussion of dangers posed by paroled first-degree murderers. The National Parole Board says it does not keep statistics on the number of murders they commit. Statistics Canada's justice branch also says it does not keep such data. Correctional Service Canada says its numbers are not readily available.

A study of 658 murderers released on full parole between 1975 and 1990 found that five were convicted of committing another murder – but none of the five was originally convicted of first-degree murder.

The change, which still needs to be debated and voted on by Parliament, would be the third major reform of punishment in the past four years. In 2011, the Conservative government did away with the faint-hope clause, which allowed some killers to apply to a jury after 15 years for an early parole hearing. That clause was part of the compromise that ended capital punishment in 1976, when Parliament created the 25-year wait for a

first chance at parole but, in view of the feeling of some members of Parliament that it was cruelly long, supplied an earlier way out.

Also in 2011, the government passed a law in which the wait for parole could be made consecutive for multiple murderers. One killer of three has since been jailed for 40 years without parole, and another for 75. That law has not been challenged in the courts.

Long-form census back on lawmakers' radar

Angela Mulholland, CTV News, February 2, 2015

Five years after the federal government scrapped the mandatory, long-form census, business leaders and policy makers are still urging its return, pinning their hopes on a private member's bill making its way through Parliament.

Roger Martin, a former dean of the Rotman School of Business at the University of Toronto and the current academic director of the Martin Prosperity Institute, is one of those pushing for the revival of the long census.

He argues that, without the more detailed census data, policy makers are essentially flying without a radar, unsure of whether government programs are working now, and with no way of effectively planning for the future.

"The real problem is… we now don't have nearly the same capability to try public policy things… and figure out did that work or not? And that's just sad, it's really sad," Martin told CTV's Canada AM Monday.

The long-form census asked Canadians for details on a range of subjects, including income, employment, and religious affiliations. It was scrapped by the federal Conservatives in 2010, over concerns it took too long to complete and asked too many personal questions. The government replaced the census with the voluntary National Household Survey.

That move came despite the advice of the country's chief statistician and other experts who worried the response rate to a voluntary census would drop and skew the results. Indeed, those predictions appear to have come true: when the results of the 2011 survey were released, data on more than 1,000 Canadian communities had to be withheld because the response rate was too low to draw any conclusions.

Ted Hsu, a Liberal MP for Kingston and the Islands, has sponsored the private member's Bill C-626 which calls for the return of the long-form census.

His bill would amend the Statistics Act to make the long-form census a permanent feature of the census process every five years. The legislation would also require the federal government to consult a selection committee when appointing a new chief statistician.

MPs are due to vote Wednesday on whether to send the bill to a Commons committee for further review.

Under the old rules, it was mandatory for all Canadians to fill out the census, including the 20 per cent of Canadians who were randomly chosen to receive a long form of the survey. Martin says the problem with a voluntary census is that only certain people will fill it out.

Those people tend to be more well-educated, well-to-do, and urban, with disadvantaged, minority groups less likely to fill it out.

"We're missing a true picture of Canada, because the only people who fill out the voluntary census are those who feel like filling it out. That means we get a sample of folks who like filling out censuses," he said.

The result is that all sorts of policy makers, from city planners to school board trustees to public health officials can't figure out what Canada looks like as a whole, says Martin. "Pretty much every economist and public policy person in Canada would say you can't measure Canada by having some people voluntarily decide to tell researchers about themselves," he said.

The federal Conservatives say the current National Household Survey is working fine, but Martin says he doesn't buy that.

"It is just disinformation to say this is a survey that works," he said.

Anti-terrorism bill will unleash CSIS on a lot more than terrorists

Globe and Mail Editorial, Feburary 5, 2015

Liberal Leader Justin Trudeau has announced his party will support the government's new anti-terrorism bill and sort out any vexing details later on. That's a bit like buying a bull because you hope its excrement can be sold as perfume. The NDP – the Official

Opposition – actually intends to do its job and oppose the legislation. Here are some questions to help it along:

Why does the bill do so much more than fight terrorism? One part of Bill C-51 creates a new definition of an “activity that undermines the sovereignty, security or territorial integrity of Canada” that includes “terrorism,” “interference with critical infrastructure” and “interference with the capability of the Government in relation to ... the economic or financial stability of Canada.”

But wait. If a terrorist blew up critical infrastructure – a pipeline, for instance – wouldn’t that be terrorism?

So what is this other class of security-underminer the bill refers to? A political party that advocates Quebec independence (there goes our “territorial integrity”)? Indian activists who disrupt a train line? Environmental activists denounced as radicals by a cabinet minister?

These things are on a par with terrorism now?

If that is what the government is saying, will CSIS – which can already investigate very broadly defined “threats to the security of Canada” – be allowed to spy on and interfere with Canadians suspected of being involved in such activities? Against whom will CSIS be given the power to seek warrants to install wiretaps?

On close inspection, Bill C-51 is not an anti-terrorism bill. Fighting terrorism is its pretext; its language reveals a broader goal of allowing government departments, as well as CSIS, to act whenever they believe limply defined security threats “may” – not “will” – occur.

So why does this bill exist? What is it fighting? And why is it giving intelligence officers powers that are currently reserved for the RCMP and other police forces?

CSIS is an intelligence agency. It is secretive, and it is supposed to be. Why does it suddenly need police powers to do its job? Until now, police powers were reserved for the police – an organization that is public, and which in a democracy must be.

Have you ever met a CSIS agent? Was he out in uniform, walking the beat? No. CSIS works in secret. It is furthermore immune from Parliamentary oversight.

And now, if Bill C-51 passes, CSIS will be able to disrupt anything its political masters believe might be a threat. As the bill is currently written, that includes a lot more than terrorism.

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Ontario judge rules will had racist intent, setting precedent

JANET MCFARLAND, The Globe and Mail, February 2, 2015

An Ontario court judge has ruled that a Toronto minister could not disinherit his daughter for having a mixed-race child, creating new grounds to challenge a will based on perceived intolerance that breaches human rights standards.

A January ruling by Ontario Superior Court Justice Cory Gilmore has shifted the landscape in estate law, giving judges the power to strike provisions from a will because of the deceased person's racist beliefs, even if the will contains no racist language.

Emanuel Spence, a black minister, cut off all contact with his daughter, Verolin Spence, in 2002 after she told him she was pregnant with a child whose father was white. Ms. Spence said her father told her he would not allow a white man's child in his house.

After Mr. Spence's death in 2013 at the age of 71, Ms. Spence challenged her father's will, which left his entire $399,000 estate to his other daughter, Donna, and her children, even though they were also estranged from him and they hadn't seen each other in decades. Donna Spence did not participate in the trial, but the trustee overseeing the estate, BMO Trust Co., argued for upholding the will as it was written.

Mr. Spence wrote in his will that he bequeathed nothing to Verolin, "as she has had no communication with me for several years and has shown no interest in me as a father."

Although the explanation contained no suggestion of racism, Justice Gilmore said she was persuaded by "uncontradicted evidence" from a witness that he was in fact motivated by his hatred for white people.

Justice Gilmore ruled Mr. Spence's treatment of his daughter breached "public policy" standards, which allow provisions in wills to be overturned when they offend human rights standards.

"Does it offend public policy that the deceased's other daughter, Donna, should receive the entire estate simply because her children were fathered by a black man?" Justice Gilmore wrote in her ruling. "That, in my view, offends not only human sensibilities but also public policy."

Estate lawyer Les Kotzer, who was not involved in the case, said many previous rulings have established that clearly racist provisions will not be upheld in a will, such a bequeathing money to a racist hate group, or including a provision in a will forbidding a beneficiary from marrying outside of the family's faith or race in the future.

But he said he has never seen a will overturned when no specific provision is racist. He said the ruling expands previous definitions of what offends public policy standards, and

could open the door for many others to challenge being excluded from a will based on their perceptions of deceased parent's intolerance in a variety of areas.

"It's sort of a slippery slope. If this continues, what happens next?" Mr. Kotzer said. "Do they look beyond, into the life of everybody? Can anybody make a challenge, bring witnesses and talk about the man's life. … Does he have to say a racist word to one person, to 10 people? What if someone overheard him tell a joke?"

Lawyer Michael Deverett, who represented Ms. Spence, said he does not believe the ruling will lead to a flood of similar claims because it is unusual to have a case where there is witness testimony demonstrating clearly racist motives that breach public policy standards.

Mr. Deverett presented witness testimony from Mr. Spence's long-time caregiver, who said that on several occasions Mr. Spence told her he disinherited his daughter because she had a child with a white man, referring to the child as her "bastard white son." Imogene Parchment described Mr. Spence as a difficult person with an explosive temper who had virtually no friends, and had no visitors while in hospital before his death.

"The facts are fairly unique, in the sense we had a witness who knew the [deceased] very well and was able to give definitive evidence as to his intentions," Mr. Deverett said.

Mr. Deverett said if Mr. Spence had actually written in his will that he was disinheriting his daughter for having a mixed-race child, the provision would likely have been easily challenged.

"The question is, because he didn't put that in his will, do we just turn a blind eye?" he asked.

Justice Gilmore acknowledged in her decision that she would have accepted Mr. Spence's explanation for excluding his daughter from the will if not for other evidence that his decision "was one based on a clearly stated racist principle."

Mr. Kotzer said he tells clients who have decided to disinherit a child to write an accompanying letter explaining the rationale in case the decision is challenged in court. The latest case makes clarity about their motives even more important, he said.

"I think people have to be aware of this," he said. "I'm just surprised that the judge would go beyond the four corners or walls of the will, and start hearing evidence about his personal life. Where do you draw the line?"

University clinic programs just one part of the roadmap to equal access

By BILL FLANAGAN, Contribution to the Kingston Whig-Standard, February 4, 2015

Bill Flanagan *is the Dean in the Faculty of Law at Queen's University.*

Access to justice is not a new issue in Canada -- ensuring that all members of a society benefit equally and fully from its legal system is a challenge faced by every country. In Canada, however, gaps in access to justice have become even more acute over the last decade.

In 2007, Ontario Chief Justice Roy McMurtry named access to justice as "the most important issue facing the legal system," and he has been joined since then by a chorus of lawmakers, legal scholars and leaders across the country, including the Chief Justice of the Supreme Court of Canada, Beverley McLachlin, and colleagues on the Supreme Court such as Justice Thomas Cromwell.

Many of these issues are captured in Access to Civil & Family Justice: A Roadmap for Change, a report created by the Action Committee on Access to Justice in Civil and Family Matters and released in October of 2013. It paints a stark picture of how ill-served some segments of our citizenry are by the justice system:

- Individuals with lower incomes and members of vulnerable groups experience more legal problems than higher-income earners and members of more secure groups;
- Self-identified disabled and aboriginal people are four times more likely to experience social assistance problems;
- In the area of access to civil justice, Canada ranked 13th out of 29 high-income countries in 2012-13 and 16th out of 23 high-income countries in 2011.
- According to the 2011 study, Canada's ranking was "partially explained by shortcomings in the affordability of legal advice and representation, and the lengthy duration of civil cases."

It is on this last point -- affordability and availability -- that law schools are helping bridge the gap. At Queen's, our faculty of law is embarking on a bold venture to group a number of diverse legal clinics -- previously available only on the university's campus -- at a central location in Kingston, creating a single, multipurpose law clinic that covers everything from family law to business law. It's being built and designed to function like a professional law firm, where clients are served by a staff made up of students and supervising counsel.

Under close supervision, student caseworkers assist clients with a broad range of legal needs that they could not otherwise afford. The tangible difference in how clinic clients experience the justice system is immediately apparent, and the rewards, for our clients and also for the students serving them, are manifold.

This initiative is a new venture for the law school, the university, and also for the city of Kingston. By moving our clinics off-campus and into the community, we hope to better serve those who are currently underrepresented by the system as it exists.

Other law schools across Canada are contributors as well -- the University of Toronto with its Downtown Legal Services clinic, the Innocence Project at the University of British Columbia, the University of Ottawa's Community Legal Clinic -- almost every law faculty in Canada is doing what they can to help address this issue. The clinic itself couldn't exist without the ongoing support of Legal Aid Ontario, the Law Foundation of Ontario, and a matrix of supporting partners and donors. These organizations and people are instrumental to our existence and success.

All of this, however, is only part of any solution. One of the great pleasures I experience as dean at Queen's is watching new generations of legal professionals pass through our halls, bringing with them new ideas, new innovations, and boundless optimism. Innovative programs like a full-service, no-cost legal clinic are a piece of the puzzle, but the Internet, new alternative business models for the delivery of legal services, and a growing public awareness of this issue are all part of the roadmap to success in addressing it.

Lachance on Law

Yes, but are you a *real* lawyer?

Blog by Colin Lachance, President and CEO of CanLII, January 2015

This is not a trick question, but a question that is tricky nonetheless.

On one hand, if one can define who a real lawyer is, then it should be easy to define what a real lawyer does. On the other hand, we wouldn’t expect any among a labour arbitration specialist, criminal defence lawyer, corporate solicitor drafting a tricky intellectual property license agreement, or in-house counsel at a child welfare agency to perform at the top of their game in any but their chosen field.

Notwithstanding any inability to do what the other can do, no one would doubt that each is a *real* lawyer. So what is the common thread?

Hint: it’s a code.

Is "lawyer" what you do or who you are?

Over the past couple years I've developed a short answer to the question "what do you do?"

My answer: I'm a lawyer, but not a useful one.

That is, I can't write your will, handle your divorce, help you with your kid's drunk driving charge, advise you on the sale of your business. Well, I suppose I could if I wanted to. The law society has imposed no restrictions my permitted scope of practice and, like most lawyers, I possess that wee bit of hubris that makes me believe that I could probably figure out how to do any of these things. But in reality I wouldn't dare create a risk to myself or to a prospective client by dabbling in areas of legal practice where I haven't developed the necessary skills.

In truth, my legal skills and experience make me extremely useful. Just not to most people in most circumstances. Are you a phone, cable or internet company with an issue before the CRTC or Industry Canada? Then I'm your guy. Or maybe you need someone to handle the intricacies of running a legal publishing company? I've got you covered there as well.

Throughout my career I've moved closer to and farther from "legal work". I've been the client as often as I've been the lawyer, and in many cases I've been both at the same time (accountable for the business/client interest while working alongside designated counsel in devising the legal strategy or co-drafting the agreement). Given the fluidity of my activities and narrow scope of pure legal expertise, my claim to being a lawyer might be just as surprising to private practice lawyers as it was to the members of my softball team after years of playing together, but I still make the claim. Why?

Like each of the traditional legal specialists I've mentioned in this post, I possess a license to practise law and I've accepted and internalized the obligations and duties that attach to that license.

As we become more different, the common thread becomes more important

If ever there was a time where law students were of a common type and lawyers shared a common experience, those days are long gone. Increasing diversity of experience (life, education, socioeconomic status) among incoming law students and expanding diversity of post-call professional opportunities available to lawyers represents the new normal. Each is far more likely to carve out a unique path of learning and practice than they are to find their choices and options constrained and dictated by others.

A diverse legal profession will also approach current challenges from very different perspectives. Some examples:

How does a law school design a curriculum that prepares future lawyers (assuming that's even a priority!) when no one can predict the work environment?
Which work environments, if any, pose unique threats to a lawyer's integrity? A firm with non-lawyer ownership? A firm with thousands of lawyers across multiple

continents? A government or corporate office with tens of thousands of employees and a rigid, hierarchical reporting structure? An underfunded social agency or not-for-profit organization? A two-lawyer partnership where one partner suffers personal challenges impacting their ability to serve their client?
Where the Venn diagram of what the public needs and what lawyers do clearly shows the majority (by many estimates) of legal needs and justiciable issues going unaddressed or being addressed by other means, what steps will improve access to justice?
Just as what a lawyer does should not define who is a "real" lawyer, neither should opinions on how the legal profession ought to face its current challenges.

Current and future generations of lawyers will have little in common beyond their license to practice and their adherence to a professional code of conduct. While the license may make the lawyer, ultimately it is the strength of code on the conscience of the individual that will define a "real" lawyer.