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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

OTTAWA CITIZEN

Federal government to extend sick-leave changes to 6,500 executives

KATHRYN MAY, OTTAWA CITIZEN, February 23, 2015

Federal executives are bracing for news that their sick-leave benefits will be replaced by the same short-term disability plan Treasury Board President Tony Clement hopes to see unions accept at the bargaining table.

So far, the Conservative government's plan to crack down on absenteeism, while revamping sick leave and disability management in the public service, has focused on unionized employees. But studies obtained by the Citizen show the government also plans to move 6,560 federal executives into the new short-term insurance scheme.

Linda Duxbury, professor at Carleton University's Sprott School of Business, said taking away sick leave sends executives the message that they are abusing it and can't be trusted. Duxbury has long argued that absenteeism is a symptom of a toxic workplace that won't be fixed by a new short-term disability plan.

"It's wounding. (Executives) work hard, are available 24/7 to answer emails and implement changes and cuts they may not even agree with, and they are treated like they all abuse it," she said.

Currently, executives get the same 15 days a year of paid sick leave as unionized employees. They can also request an advance of another five weeks of sick leave, which, like unionized employees, they have to pay back. The government is proposing to reduce the number of annual sick days for employees to six.

Unlike unionized employees, executives can get an extra 130 days of paid sick days once in their careers – at the discretion of deputy ministers – which they don't have to repay.

They can use it all at once for a prolonged illness or draw upon it as needed for a recurring illness or during recovery. It's expected this special leave would disappear under the Conservatives' plan.

Many executives have banked more unused sick leave than other workers as a cushion in the face of prolonged illness. That stockpile would disappear too.

The government has paid 100 per cent of the executives' premiums for disability insurance since 1990, while unionized employees contribute 15 per cent of their premium costs. It's unclear what would happen to that perk.

Executives – along with diplomats and scientists – use the least amount of sick leave in the public service, although they claim more than their counterparts in the private sector. They typically take off less than half the number of sick-leave days of other public servants, who average about 11.5 days a year.

The Association of Professional Executives of the Public Service of Canada (APEX) said the latest five-year trend showed 75 per cent of executives took less than five days annually; 54 per cent took less than one or two days and 30 per cent took no sick leave at all.

Still, APEX, which has tracked the health and work of executives with studies for more than 15 years, found executives are taking more sick days than ever. They averaged 3.5 days in 1997; 3.3 days in 2002 – then 4.3 days in 2007 and 5.4 days in 2012.

APEX's most recent health survey found executives use their vacation as "stress" leave and half say they routinely go to work sick. They go to work ill on average 7.5 days a year. Those who felt their performance was affected by their illness said they worked at least 30 per cent below their normal capacity.

APEX hasn't taken a position on Clement's proposal to eliminate the existing sick-leave scheme, but it has emerged as a driving force to fix an increasingly sick and stressed federal workplace.

It was the first to urge the government to adopt the Mental Health Commission's national standard on a psychologically healthy workplace. It strongly argued this should be a key piece of the Blueprint 2020 plan to modernize the public service, so that departments would be obliged to take a hard look at the policies and practices that could be making employees sick.

The 17 unions have also taken up that call at the bargaining table, where they asked that the standard be mandatory and embedded in employees' contracts.

It's unclear whether a growing number of executives are ending up on disability with mental health issues, as is happening with other employees. Nearly half of all claims in the disability plan for unionized employees are mental health claims.

The APEX study only surveyed working executives – none on sick leave or disability. It found 11 per cent of them reported mental health problems, nearly double the number in

2011. It also found 20 per cent of executives are taking medication to treat insomnia, depression or anxiety.

Treasury Board says it doesn't have a breakdown of mental health or any other illnesses leading to disability claims for executives. The last major compensation study of the public service, led by former senior bureaucrat James Lahey, noted "mental/nervous" illnesses were on the rise and accounted for 58 per cent of claims in the Public Service Management Insurance Plan (PSMIP) by 2002.

The PSMIP, managed by Industrial Alliance Insurance, provides disability insurance for the government's elite employees. The executives are among the plan's 53,000 members, which also includes parliamentarians, judges, order-in-council appointees and 37,000 "excluded" employees working in managerial or confidential jobs. It has not publicly posted a report since 2012.

The public service is in the midst of a major transition and people management is one of its biggest challenges and priorities. It's still swallowing budget cuts and has been hit with a rush of new technologies, new data, a diminishing policy role and an unprecedented generational turnover among its ranks.

Executives are under huge pressure to come up with new and faster ways to manage, develop policy and deliver services.

Duxbury said executives – particularly those at the director and director-general levels – have very stressful jobs. They end up as "toxic handlers" who shoulder the frustration and anger from up and down the organization, especially when changes are underway. The power of those jobs has diminished so much over the years that many can't even "order a pot of coffee" without sign-off from their bosses, she said.

"Executives in the private sector have more decision-making autonomy and control over their work day," said Duxbury.

"All my data shows these are really stressful jobs in the public service because they don't have the increased control most people get as they go up the hierarchy. All they get is being closer to the people with the power, who can change their minds in a heart beat."

Lisanne Lacroix, APEX's chief executive officer, said the health of executives has to be a priority because they are responsible for leading the public service through the transition.

"Reform of the public service will require the full commitment and engagement of executives," she said. "The degree to which they rise to the challenge will depend, in large part, on their state of health, which will largely be determined by the quality of the work environment," she said.

Lacroix said four changes could make a dramatic difference in the health of executives; they need more respect, more recognition, more control over their jobs and more support from colleagues, especially bosses.

But the APEX study reveals a worrisome combination of rising stress, falling commitment and "disengagement" and health problems among executives, which raises questions about how able they are to lead that change.

The APEX study shows executives are more stressed than 75 per cent of all Canadian adults. Their organizational commitment is on the decline – from 64 per cent to 52 per cent. About 32 per cent are disengaged, feeling disconnected from their work and unable to deal with job demands.

They feel they have little control over their work, receive little support from colleagues and supervisors, and scant recognition for their efforts. They complained about incivility in the workplace and bosses who harass. About one-quarter reported symptoms of burnout, ranging from emotional exhaustion to cynicism and a declining sense of accomplishment and usefulness.

Executive Sick Days, By The Numbers

5.4 – Number of sick days executives took in 2012

50.7 – Number hours a week executives work, on average

51 – Percentage who say most days are stressful

11 – Percentage of federal executives who report mental health problems

22 – Percentage who reported they were "verbally abused" by superiors in the past year

13 – Percentage who say their health is fair or poor

20 – Percentage who say they take medication to treat insomnia, depression or anxiety

60 – Percentage who report imbalance between their effort at work and the recognition they receive

Source: APEX 2012 Executive Work and Health Survey

Federal health professionals fear showdown in public service talks

Kathryn May, Ottawa Citizen, February 16, 2015

The Supreme Court of Canada's landmark decisions upholding workers' rights hang over this week's round of collective bargaining between the Conservative government and federal doctors, nurses and other health professionals who fear they might be pushed into a possible strike.

The 3,400 health professionals, represented by the Professional Institute of the Public Service of Canada, are back at the bargaining table, and a big question for them is why the government seems intent on leaving them with no alternative but a strike if they can't reach a deal. In previous negotiations, the union could choose arbitration to solve an impasse.

"It is so far beyond unreasonable to back public service professionals like these doctors and nurses into a corner like this, forcing them into a strike position against their will," said PIPSC president Debi Daviau. "We are just asking for reason to prevail."

PIPSC argues that more than 85 per cent of these workers have already been declared essential and could never mount an effective strike. More importantly, however, forcing them to strike "absurdly" violates the very legislation the Conservatives passed to change the rules for collective bargaining in the public service.

PIPSC has appealed to Treasury Board to allow these workers access to arbitration in the event of an impasse, and has sent several letters to Treasury Board for a response. So far it has received no reply. It could be a key issue on the table Monday when contract talks between the parties resume.

"We want to give the government one more opportunity to do the right thing. Our members deserve the courtesy of a response," said Isabelle Roy, PIPSC general council.

PIPSC's position is strengthened by recent Supreme Court decisions that changed the landscape for labour rights and collective bargaining in Canada. In a historic ruling, the court affirmed workers' right to strike when it granted an appeal by the Saskatchewan Federation of Labour of the province's controversial essential services law.

That law, which gave the province carte blanche to decide which employees are essential, was ruled unconstitutional. The decision found that employees can't effectively bargain if there isn't a fair and impartial dispute resolution mechanism — such as arbitration — to solve any impasses at the negotiating table.

The federal Conservatives' massive changes to collective bargaining in the public service, passed in omnibus budget bill Bill C-4, are almost identical to the Saskatchewan legislation that the Supreme Court overturned, particularly the provisions dealing with essential services.

PIPSC's looming showdown with Treasury Board could also set a precedent for other unions with bargaining units where the majority of workers are essential and find themselves forced into a strike position.

Federal health workers have never been on a picket line. One reason is they have always been considered essential, which legally prohibited them from striking and made arbitration the only recourse.

Most of these employees work for Health Canada, Public Health Agency of Canada, Correctional Services Canada and National Defence in areas of public health or providing care for inmates, veterans and those in northern communities.

The other reason is that PIPSC historically shunned strikes and picked arbitration to resolve disputes at the bargaining table.

The Conservatives, however, changed that with its new labour legislation, patterned after Saskatchewan's, giving the government, not the union, the right to pick strike or arbitration to resolve impasses.

Unlike Saskatchewan, the federal law allows unions access to arbitration, but only in cases where 80 per cent of employees have been designated essential. The government has the "exclusive" right to decide which workers are essential.

But the new law also introduced "transitional" rules, which says the 80 per cent threshold that gives employees access to arbitration doesn't kick in for this first round of bargaining. This is why the health professionals — of whom more than 85 per cent are essential — feel they are denied arbitration in this round and must go the strike route.

"Amazingly, they've (the government) managed to contradict both their own law and the top court in the land, which has just ruled against it. And, if they don't see reason, they will be sticking all Canadians with the bill," said Daviau.

The Conservatives' response to PIPSC demands could indicate whether it will change its law in light of the Supreme Court decisions or will continue fighting the constitutional challenge previously filed against C-4.

The biggest union, Public Service Alliance of Canada, filed a constitutional challenge against C-4 when it was passed, arguing the law violated employees' right to freedom of association. The Supreme Court ruling opens the door for other unions to follow suit or join the PSAC case if the Conservatives don't change the law.

Until now, Treasury Board President Tony Clement has said the government is still studying the Saskatchewan decision and has not commented on the impact of the look-alike federal legislation.

"The decision is a direct challenge to this Conservative legislation, which has imposed the most radical changes to federal public service labour relations in 40 years," said Daviau.

This is the first round of bargaining under the new rules, which the unions have argued form the start shifts the balance of power to the government. The big issue is the existing

sick leave regime, which the Conservatives want scrapped and replaced with a short-term disability plan.

Health workers' union leaves talks with Treasury Board

KATHRYN MAY, OTTAWA CITIZEN, February 17, 2015

Federal doctors, nurses and other medical professionals working in Canada's public service have pulled out of this week's round of collective bargaining while awaiting Treasury Board's response to their concerns that they are being forced into a possible strike if contract talks break down.

The Professional Institute of the Public Service of Canada (PIPSC), which represents 3,400 health professionals across the country, has been locked in battle with Treasury Board over its interpretation of a "transitional" provision in the legislation the Conservatives passed to revamp public service bargaining.

Most of these employees work for Health Canada, Public Health Agency of Canada, Correctional Services Canada and National Defence in areas of public health, or provide care for inmates, veterans and northern communities.

The contentious issue in this round of bargaining with the 17 federal unions is sick leave and many predict talks will end in a stalemate. The Conservative government wants to replace the existing sick leave with a short-term disability plan.

PIPSC rejects Treasury Board's position that because of the "transition" rules governing this round of bargaining, these professionals – who are largely considered essential workers and have never been on a picket line – must follow the strike route in the event of an impasse. PIPSC has made several appeals to allow these workers access to arbitration, rather than pushing them into a strike against their will.

The union had hoped to resolve this disagreement by the time it met Treasury Board negotiators for another round of bargaining Monday, especially in light of recent Supreme Court of Canada decisions that appear to have strengthened workers' rights in collective bargaining.

The two sides met Monday for negotiations as planned, but Treasury Board indicated it couldn't respond to PIPSC's concerns until it had fully assessed the impact of the top

court decisions on the public service. The board hoped to have that sorted out by the end of February.

That's when PIPSC decided to bow out the remaining two days of negotiations, said PIPSC President Debi Daviau.

"We think we have the Supreme Court and common sense on our side so we are hoping the government will see the light of day. I don't think anyone wants to see these medical professionals disgruntled or go on strike against their will," said Daviau.

PIPSC maintains its position was strengthened when the Supreme Court granted an appeal by the Saskatchewan Federation of Labour of the province's controversial essential services law, which restricted which workers could strike.

The Conservatives' massive changes to collective bargaining in the public service, passed in omnibus budget bill Bill C-4, are almost identical to the Saskatchewan legislation that the Supreme Court overturned – particularly the provisions dealing with essential services.

The top court said the Saskatchewan law, which gave the government the unilateral right to decide which employees are essential, is unconstitutional. The decision also found that employees can't effectively bargain if there isn't a fair and impartial dispute resolution mechanism – such as arbitration – to solve negotiating impasses.

This is the first round of bargaining under the new rules, which the government says will be governed by transitional rules. Under the new legislation, patterned after Saskatchewan's, the government, not the union, has the right to pick strike or arbitration to resolve standoffs.

Unlike Saskatchewan, the federal law allows unions access to arbitration but only in cases where 80 per cent of employees have been designated essential. The government also has the "exclusive" right to decide which workers are essential.

In this case, more than 85 per cent of these health workers have been designated as essential. But Treasury Board interprets the "transitional" provisions to say that the 80 per cent threshold giving employees access to arbitration doesn't apply in this initial round of bargaining for these workers, and they have to go the strike route.

PIPSC argues Treasury Board's position is absurd because it not only violates its own legislation but also flouts the constitutional protection affirmed by the top court for "meaningful" collective bargaining, which includes access to a fair dispute mechanism such as arbitration.

It also shifts the balance of power to the government because any bargaining unit in which more than 85 per cent of employees are deemed essential, could never mount an effective strike.

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Aide à mourir: les libéraux veulent un cadre législatif avant les élections

La Presse, Presse Canadienne, le 22 février 2015

Le Parti libéral de Justin Trudeau veut que les Canadiens connaissent les grandes lignes de la nouvelle loi qui régira l'aide médicale à mourir d'ici le milieu de l'été, avant les élections prévues en octobre.

Les libéraux déposeront mardi une motion pour la création d'un comité parlementaire spécial qui aurait pour mandat de consulter des experts et les Canadiens sur ce sujet sensible qui ne fait pas l'unanimité. Ils veulent que le comité soit sur pied d'ici le 11 mars et qu'il livre un rapport et un cadre législatif à la Chambre des communes avant le 31 juillet.

Les conservateurs doivent élaborer un projet de loi depuis que la Cour suprême a invalidé, plus tôt ce mois-ci, l'interdiction de l'aide médicale à mourir.

Le plus haut tribunal du pays a donné au Parlement 12 mois pour présenter un projet de loi qui reconnaîtra aux adultes consentants en situation de souffrance le droit d'obtenir de l'aide médicale pour mettre fin à leurs jours.

Division interne chez les conservateurs

Le gouvernement Harper ne semble pas pressé. Le ministre de la Justice, Peter MacKay, a déjà indiqué que le gouvernement prendra son temps pour étudier en profondeur les détails du jugement de la cour et pour s'informer des procédures suivies par d'autres juridictions, dont le Québec.

À cause de cette réaction, certains soupçonnent que le gouvernement Harper préférerait ne pas débattre publiquement de ce sujet, qui pourrait exposer les divisions internes du parti juste avant les élections.

La motion qui sera déposée cette semaine par les libéraux signale néanmoins que la date limite imposée par la cour n'est pas si éloignée, considérant qu'il y aura la pause parlementaire estivale et une campagne électorale. Il ne reste au Parlement que 12 semaines avant de prendre une pause de 13 semaines à partir du 24 juin. La campagne électorale devrait être déclenchée à la mi-septembre, juste avant la date prévue de la reprise des travaux parlementaires.

Tories' badly made anti-terror bill needs serious scrutiny

Campbell Clark, Globe and Mail columnist, February 16, 2015

Security: are you for it or against it? That's how the Conservative government has framed the debate over its new anti-terror legislation. Would the opposition dare stand up against it?

So far, they haven't, or not much anyway. But there are signs the NDP is mustering the gall to raise objections – and that they'll press them Wednesday, when debate on the bill starts in the Commons. They'll be doing a public service. This is shoddily crafted legislation.

There was a danger this bill was going to slide through the Commons without even serious questioning, because politicians fear being labelled anti-security. Justin Trudeau's Liberals decided to fold: they lamely raised concerns but said they'd vote for the bill anyway.

The Liberals are cowering after voting against the military mission against Islamic State. An Ipsos-Reid poll released Friday found 76 per cent favour that mission. Why would the Liberals compound their political error by opposing security legislation? Another poll, by Léger Marketing, found 74 per cent of Quebeckers back more anti-terror powers.

Yes, the Conservatives think they have a winner, that the public wants more security measures after two attacks in Canada in October, as well as in Australia and France. They're trying to talk about jihadis. When police foiled a Halifax mall shooting this weekend, Justice Minister Peter Mackay argued the young people involved were the kind who might have been radicalized by Islamic State – struggling to construct a non-existent jihadi link.

New Democratic MP Randall Garrison argues one warning sign about the security legislation is that Prime Minister Stephen Harper couldn't say whether it would have prevented either October attack. He notes the government cut the RCMP's budget, though the Mounties say their national-security resources are thin. This bill is being rushed out because of the October attacks, Mr. Garrison said, so "you ought to be able to say it would have helped prevent them."

Maybe that's too hypothetical. But the government certainly ought to be able to say what this bill does. Its big feature is a mandate for CSIS spies to disrupt threats, rather than collect intelligence. But when the NDP asked in the Commons for examples of what CSIS would do differently, Mr. MacKay danced.

Here's the problem: no one knows what this bill really means. Not Mr. Mackay, not Mr. Trudeau, not Mr. Harper. They cannot. Its major changes are written in broad terms with vague language. The courts will define parts of it, eventually. So will CSIS, in secret, over many years.

What are CSIS's new powers to disrupt threats? The bill actually says CSIS "may take measures, within or outside Canada, to reduce the threat." It doesn't say what. It does say a judge must authorize measures that break the law or violate the Charter of Rights – opening a new era of judges defining the legality of unspecified illegal actions.

In briefings of journalists, the government's examples of "measures" were talking to families of radicalized individuals and tampering with plotters' equipment. But the definition is wide open. CSIS will be able to run covert agents to infiltrate groups for more than just intelligence. That power had previously been reserved to the RCMP, which is more accountable.

You might want CSIS to do more to thwart terrorists. But the new powers aren't only for use against terrorists, or even people breaking the law. CSIS can disrupt any national security threat – and that is widely defined, including undermining Canada's diplomatic relations, economic stability, or critical infrastructure.

Of course, Canada won't suddenly turn into a police state. CSIS is not allowed to target lawful dissent – their hands are already full. But free societies don't rely on spies and police to set their own limits.

Before MPs went away for last week's Commons break, the NDP was asking increasingly pointed questions. Let's hope they follow through with enough gall to at least question the flaws in this badly made bill.

Thirty years after Air India: Inquiry head 'comfortable' with new anti-terror act

IAN MACLEOD, OTTAWA CITIZEN, February 16, 2015

The mission of prosecuting terrorists should return to the Department of Justice and be led by a special prosecutor with a dedicated team of litigators, retired Supreme Court justice John Major told a Senate committee Monday.

The creation of a "director of terrorist prosecutions" was one of two suggestions Major made to the committee inquiring into security threats facing Canada. The other is an enhanced role for the national security adviser.

Beyond that, the man who headed a four-year commission of inquiry into the 1985 terrorist bombing of Air India Flight 182, said he is "comfortable" with the Conservatives' proposed Anti-terrorism Act.

Bill C-51 gives significant new powers to the Canadian Security Intelligence Service (CSIS) to carry out covert activities to disrupt national security threats. It also criminalizes the promotion of terrorism; makes it easier for police to arrest and detain individuals without charge as suspected national security threats; allows government departments to share personal information about individuals suspected of "undermining the security of Canada"; and much more.

Commons debate on the bill begins Wednesday.

"When you're faced with a serious crisis such as we have facing us now, you want to be sure that you're not handicapping the investigating authorities," Major, 83, told the committee via a videolink from Calgary.

Judicial oversight through warrants and the "good faith" of organizations such as CSIS are adequate safeguards against potential state abuses of any expanded national security laws, he said.

"Warrants are required from a judge in certain circumstances," such as search-and-seizure and communications intercepts. "But I think it comes down to a certain amount of faith in our agencies not to abuse the authority. I'm not aware of incidents where they are. I am comfortable with what I see."

Major characterized political and expert legal opposition to the proposed new CSIS powers as exaggerated.

"I think we have to do the right thing, the agencies have to be responsible, we have to safeguard citizens rights … but from what I've seen with warrant protection and undoubtedly the good faith of the agencies, I'm quite comfortable."

A new critique of the bill by noted national security law and constitutional law scholars Craig Forcese and Kent Roach suggests Canadians should be anything but. They argue the government proposes radically restructuring CSIS and turning it into a "kinetic" service – "one competent to act beyond the law."

By amending the 1984 CSIS Act, the legislation would empower CSIS to actively "reduce threats to the security of Canada," even though CSIS is not a law enforcement agency and its officers have no powers of arrest. Under the proposed CSIS amendment, judicial warrants issued by a Federal Court judge for any such "disruption" activities would only be required in instances where the measures would breach the Charter or other Canadian laws.

Forcese and Roach argue that this new special warrant system goes radically beyond the conventional role of judicial warrants.

Major's call for a director of terrorist prosecutions and a greater role for the national security adviser were among his 2010 recommendations from the Air India inquiry. The mid-air bombing of the Boeing 747 killed 329 people, including 268 Canadians, many of south Asian descent. It remains Canada's worst terrorist strike.

Terrorism prosecutions are currently the responsibility of the Public Prosecution Service of Canada, created in 2006 under the Federal Accountability Act. It is an independent body that prosecutes federal crimes and reports to Parliament through the minister of justice. It replaced the federal prosecution service, which was part of the Department of Justice.

Though the public prosecution service has a system of prosecutors and administrators dedicated to terrorist cases, Major believes there is an inherent weakness in its independence from government.

"In terrorism cases, the public interest is the aggregate of considerations which includes national security, international relations and the impact of prosecutions on sensitive intelligence operations. For this reason, decisions about proceeding with a terrorism prosecution should be made by the Attorney General of Canada… (who) has the resources and the legitimacy to take into account the public interest in a way that a delegate does not," he wrote in his 2010 final report.

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Former CSIS officer warns new federal anti-terror bill will 'lead to lawsuits, embarrassment'

Stephen Maher, PostMedia, February 13, 2015

Former CSIS officer Francois Lavigne is alarmed by the Conservative government's new anti-terror bill.

He believes the measures proposed in C-51 are unnecessary, a threat to the rights of Canadians and that the prime minister is using fascist techniques to push the bill.

Mr. Lavigne started his career with the RCMP security service in 1983, before the CSIS was established.

“I was hired by the barn burners,” he said in an interview last week. “I went to work for the FIU unit, the foreign interference unit. And that was where the barn burners came from.”

The barn burners were the off-the-leash Mounties whose law-breaking ways led to the McDonald Commission, which led to the establishment of Canadian Security Intelligence Service in 1984.

Mr. Lavigne, who went from the Mounties to CSIS and later worked overseeing spies in the solicitor general’s office, likes CSIS’s design. It was set up as an intelligence-gathering body, not an enforcement agency, actively overseen by an inspector general and reviewed by the Security Intelligence Review Committee.

Mr. Lavigne, 55, left government in 1999, but follows intelligence news closely.

He spent years tracking dangerous radicals without the powers the government wants to give to CSIS.

“I find it a little convenient that in the past few years that these radicalized people are the biggest threat to ever hit us,” he said. “There are more people dying because of drunk drivers or because of gang violence.”

The changes in C-51 will give CSIS broad powers to take action to disrupt plots and reduce threats, in Canada and abroad. This is a recipe for trouble.

“If you give them more powers, if you lower the threshold, if you allow them to collect even more information, follow more people, detain people, inevitably it’s going to lead to lawsuits, to embarrassment. It’s not if it will happen. It’s when.”

The prime minister uses strong language to warn Canadians about the “jihadist” threat, pointing to the attacks on Parliament Hill and in Saint-Jean-sur-Richelieu.

Mr. Lavigne said the public doesn’t have enough information about those attackers to justify new powers.

“We know they have some kind of link to the ISIL group, whether it’s from having seen something on YouTube or discussed things with a couple of people, but they’re not organized,” he said. “It’s not like they’re part of an organization. These are people who for their own reasons decided to act.”

Mr. Lavigne said that by proposing broad new powers, the government is either getting bad advice from security officials or ignoring good advice.

“I have never seen the RCMP and CSIS have such a cosy relationship with government,” he said. “They’re not supposed to be.”

On Thursday, law professors Craig Forcese of the University of Ottawa and Kent Roach of the University of Toronto, released a hair-raising 37-page analysis of C-51.

CSIS will be able to get warrants at secret hearings to violate Canadians' rights, which risks creating "a secret jurisprudence on when CSIS can act beyond the law."

CSIS will have "open-ended authorization whose proper and reasonable application will depend on perfect government judgment."

They worry that Canadians can't have confidence CSIS won't be used to target political enemies of the government.

In 2012, the government shut down the office of the CSIS inspector general, which provided active oversight. Since then, after-the-fact review is provided by the Security Intelligence Review Committee, a part-time committee formerly headed by an accused fraudster.

Mr. Forcese and Mr. Roach said expanding CSIS's powers without improving oversight is "breathtakingly irresponsible."

Mr. Lavigne agrees. He said that CSIS "sanitizes its files" before handing them to SIRC.

"To say that SIRC is any kind of oversight body is really misleading and the government knows that."

A lot of what the government says about this issue is disturbing to Mr. Lavigne.

On Monday, standing next to German Chancellor Angela Merkel in Ottawa, for instance, the prime minister said: "As you are aware, Madame Chancellor, one of the jihadist monster's tentacles reached as far as our own Parliament."

Mr. Lavigne said the prime minister's advisers must tell him that using inflammatory language increases the risk.

"When our leaders start talking about tentacles and jihadis and barbarians, it's adding fuel to the fire. It's actually increasing the likelihood of that happening."

Mr. Lavigne said the prime minister's language reminds him of fascist leaders like Mussolini and Franco.

"Some of these tactics are taken right out of the fascist playbook," he said. "Create an enemy that is hard to identify. Make it an enemy that is nebulous and seems to be able to do things that nobody else can. Don't define the enemy. Just identify. Generate fear around that enemy, Then send out the message that the only people who can deal with this enemy are us."

But the government isn't fascist, I said. Rhetoric aside, it is not crossing the line to fascist actions.

He agrees. “They’re not crossing the line. They’re using the language to appeal to the emotions, which is one of the first stages. Disinformation being the second, which I think they also use. But they’re not fascist. I’m not saying the government’s fascist.”

He laughs.

“Don’t detain me.”

How far should a doctor go? MDs say they ‘need clarity’ on Supreme Court’s assisted suicide ruling

SHARON KIRKEY, PostMedia, FEBRUARY 23, 2015

Canada’s doctors are seeking clarity from the federal government on what the Supreme Court of Canada intended in its landmark ruling on assisted dying, including the question of how far a doctor is permitted to go in contributing to a patient’s death.

“We’ve got a few key questions that we think need clarity and this is one of them: Is it euthanasia or is it assisted dying?” said the Canadian Medical Association’s director of ethics and professional affairs, Dr. Jeff Blackmer.

The powerful doctors’ lobby said it is not clear whether the high court has opened the door not just to assisted suicide — where a doctor writes a prescription for a lethal overdose of drugs the patient takes herself — but also to something many physicians find profoundly more uneasy: pushing the syringe themselves.

Its own internal polling has found that 26.7% of doctors would be wiling to participate in assisted suicide if requested to by a patient, compared with 20.9% for voluntary euthanasia.

“It’s not huge discrepancies, but when you extrapolate that out to actual numbers, that’s many thousands of physicians who see those things differently,” Dr. Blackmer said.

A strong, philosophical argument could be made “that you’re probably splitting hairs from a moral standpoint — that the act of writing the prescription is probably morally

equivalent" to actively administering a lethal injection with the intention of ending a patient's life, Dr. Blackmer said.

"But regardless of that, there's clearly a certain percentage of doctors who feel that that's not the case — that they would be comfortable with writing that prescription where they would not be comfortable with injecting the medication directly," he said.

Doctors say the difference is the distance it puts between them, and the final act of death.

In Oregon, about one-third of patients who seek doctor-prescribed suicide drugs never end up taking them.

Doctors who agree to write the prescriptions "might feel like, 'I'm giving it to the patient because they're really desperate, but chances are they won't use it,' as opposed to, 'they're here, this is what they want now and there's no turning back," said Dr. Manuel Borod, director of supportive and palliative care at the McGill University Health Centre.

"You give the shot, and you have to stay there until the patient dies."

Dr. Blackmer said strong federal leadership is needed to clear up "exactly what this [high court ruling] includes, because obviously the medical profession and the public are going to want to know."

Others say the decision clearly extends the scope of "permissible activities" to include voluntary euthanasia performed by a doctor, which remains outlawed even in many jurisdictions that have legalized assisted suicide.

The Supreme Court justices struck down section 241(b) of the Criminal Code that prohibits "aiding or abetting someone to commit suicide."

However, they also suspended section 14, which states, "No person is entitled to consent to have death inflicted on him, and such consent does not affect the criminal responsibility of any person by whom death may be inflicted on the person by whom consent is given."

"The decision clearly and plainly extends to termination of life by act of a doctor at a patient's request," said Sheila Tucker, co-lead counsel for the plaintiffs, including the B.C. Civil Liberties Association.

"That is the sole reason for the striking of 14 of the Criminal Code, which addresses the effect of consent for the purposes of the homicide provisions."

The court's ruling would limit physician-assisted death to "a competent adult person who clearly consents to the termination of life" and has a "grievous and irremediable medical condition" causing enduring and intolerable suffering, the justices wrote.

“It does not say anywhere that the patient must do it himself or herself — it does not say anything about mode whatsoever,” said Queen’s University bioethicist Udo Schuklenk.

“There will be patients who meet all this criteria but who are incapacitated and not able to do it themselves.”

“The reality is, once you agree that death is what is in the best interest of a competent patient who requests assisted dying…. there is no morally relevant difference between assisted suicide and voluntary euthanasia,” Mr. Schuklenk said.

“The outcome is the same: death of the patient.”

The Supreme Court said nothing in its landmark ruling would compel doctors to participate in physician-assisted dying. But it was more circumspect about whether MDs who refuse a patient’s request for aid in dying based on their own religious or moral views would have a duty to refer the patient to another doctor willing to help them.

The issue has become a flashpoint in the assisted-death debate. The College of Physicians and Surgeons of Ontario is preparing to finalize a draft policy that would force doctors who conscientiously object to providing a service for moral or religious reasons to refer patients to a “non-objecting” doctor.

According to the college, while physicians have a Charter right to freedom of conscience and religion, that right does not trump “the fundamental rights and freedoms of others.”

The CMA does not have a policy on the issue. Its policy on abortion, however, is silent on mandatory referral. “That has been interpreted as meaning that the CMA does not support mandatory referral, and I think that is probably a reasonably accurate interpretation,” Dr. Blackmer said.

But, “We are currently really grappling with this,” he said.

“I can tell you that I get emails from members on a daily basis, five or six in the last hour alone — mostly from those who want to not have to refer patients, but some as well who say the profession is shirking its responsibilities by not stepping up and clarifying that, yes we do need to suspend our own personal morals and we need to put patient care first.’”

When asked to clarify whether the Supreme Court ruling on doctor-aid in dying would extend to voluntary euthanasia, the federal justice department responded in an email that the government is studying the ruling and that it “cannot provide specific legal interpretation for the public.”

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Coyne: Recent rulings from surprisingly liberal Supreme Court beginning to become alarming

Andrew Coyne, Postmedia columnist, February 13, 2015

The dust is still settling from last week's historic ruling of the Supreme Court in the matter of euthanasia. One early casualty: judicial restraint, the fading notion that the courts, in interpreting the law, should be bound by … something — the written text, the historical record, precedent, logical consistency. One by one, the court in recent years has liberated itself from these constraints; with the legalization of "assisted death," it has slipped free altogether.

Indeed, the record will show that it was the Conservative Prime Minister Stephen Harper who presided over, indeed selected, the most liberal-activist court in our history. Not just liberal: activist.

On the first half of that statement, there can be no argument. This is indisputably Harper's court. He appointed seven of the nine judges. Of these, two — Marshall Rothstein and Thomas Cromwell — were appointed while the government was still in a minority position. The other five — Michael Moldaver, Andromache Karakatsanis, Richard Wagner, Clément Gascon and Suzanne Côté — were appointed in the last four years, after the Conservatives had won their long-sought majority. If the court more and more resembles a runaway train, it is Harper's train, as it will be Harper's wreck.

Indeed, there is but one Liberal appointee, Rosalie Abella, on this most liberal of courts, Chief Justice Beverley McLachlin having been appointed by the Conservative Brian Mulroney. Yet in one decision after another — prostitution, hate speech, the Nadon and Senate references, the right to strike — the court has taken it upon itself of late to push the boundaries of Canadian law to the limit, going where no previous Supreme Court would have dared. In some cases it has ignored precedent, in others it has rewritten the constitution. In the aggregate it has become almost impossible to discern any coherent underlying philosophy in the Court's rulings, or to predict with any confidence how it will rule on a given question.

'Twas ever thus, of course — up to a point. The courts will inevitably put someone's nose out of joint no matter how they rule, and while conservatives have long railed against "judicial activism," they too often seem to mean any exercise of judicial review: the mandate, assigned to the courts by Parliament, to compare the law in front of them

with another, more fundamental law — the Constitution — and to the extent of any discrepancy between the two to declare the former to be of no force or effect.

What makes a decision "activist," then, is not merely that it results in this or that law "passed by a democratic Parliament" being overturned, but whether it does so in accordance with Parliament's own previously expressed wishes: that is, whether the grounds for the decision can in fact be found in a sensible reading of the Constitution, or whether the court made it up. Even allowing for some difference of opinion over what is reasonable, it is clear that not every such reading can be defended, as it is sometimes clear that no reading was even tried.

Here again, this is nothing new: activism was with us, in one form or another, long before the Charter, as for example in the decisions of the Judicial Committee of the Privy Council that essentially eviscerated the strong federal government the authors of the British North America Act had envisaged scant years after they drafted it.

But on its current tear, the court has ventured much further into the long grass than ever before. It isn't its radicalism I mind: I think the prostitution decision was wholly justified in the name of Charter guarantees of "security of the person," even if it made life difficult for the government. It's the absence, all too often, of any rational basis for its rulings — the sometimes cheery disregard for the whole concept — that is beginning to become alarming.

Indeed, in its 2013 decision upholding the Saskatchewan Human Rights Code provisions against hate speech, the court amply demonstrated that activism can be as much a matter of omission as commission. The court has always been wobbly on speech cases but it had never before gone so far as to justify restricting speech in the name of freeing it (a failure to ban hate speech, it mused, might be "more rather than less damaging to freedom of expression") or to suggest that truth was no defence ("the use of truthful statements should not provide a shield in the human rights context").

That was perhaps an early warning sign of a court that was going off the rails. From there, it was on to the Nadon decision (on the eligibility of Federal Court judges from Quebec for appointment to the court) involving not only an unusually selective, not to say capricious reading of the relevant act, but an assertion of a wholly fictitious legislative record from which the court prudently did not bother to quote.

The Senate reference was nearly as bad: the court found, on the strength of a vague unease about the constitutional "architecture," that a provision allowing "significant changes to the powers of the Senate and the number of senators" did not allow them to be as significantly changed as all that: or at any rate that they could not be changed to zero.

But it is with its last two decisions that we find a court seemingly detached from any intellectual moorings whatever. The decision finding public employees, even those deemed essential, have a constitutionally guaranteed "right to strike" seems to have been drafted, as the two dissenting judges noted, as if workers were still doffing their cloth caps to their 19th century overlords.

As for the euthanasia decision: what can one say about a ruling that finds a right to death in a section of the constitution devoted to the right to life — that does so in breezy defiance, not just of Parliament's stated preferences, but of the court's own ruling in a similar case, rendered two decades before? The court goes to elaborate and unconvincing lengths to suggest it had been moved by changes in "the matrix of legislative and social facts" since then. The reality, one suspects, is rather simpler. It did it because it wanted to.

Conrad Black: Supreme Court on the loose

By Conrad Black, contribution to The National Post, February 16, 2015

When Pierre Trudeau introduced individual rights as a method of muddying the waters in the onslaught by Quebec nationalists on the division of federal-provincial rights in 1968, I supported it, although I was one of the many who predicted that the Charter of Rights and Freedoms, adopted in 1982, would turn our judges into chronic and often idiosyncratic meddlers in almost every aspect of life. The recent Supreme Court of Canada judgments on strikes in the public sector and assisted suicide have confirmed this widespread fear, which is amplified by the Harper government's aversion to contentious non-fiscal issues. In this legislative vacuum, courts, usually with feckless glee, interpret generally formulated rights according to their own tastes in social policy or the state of current opinion.

Our bench, as my distinguished colleague George Jonas wrote several years ago, is "the zeitgeist in robes." The Charter asserts that Canada is founded on recognition of "the supremacy of God and the rule of law." Judicial decisions are not laws, and with this Supreme Court on the loose, God's position should not be a subject of complacency.

The 5-2 decision of the Supreme Court of Canada on Jan. 30 in Saskatchewan Federation of Labour v. Saskatchewan, interpreting the Charter of Rights guaranty of freedom of association (section 2) as the right of public service employees to strike is, on its face, nonsense. Freedom of association does not normally imply any such right. Even before any consideration of matters of public interest and the maintenance of essential services, the court pronounced that that right of association is infringed if there is "substantial interference with a meaningful process of collective bargaining." There is no authority for this definition other than that, on behalf of the majority of the court, Justice Rosie Abella, a delightful person but a militant supporter of organized labour all her adult life, including carrying water on both shoulders for all the unions in Ontario when she was on that province's Labour Relations Board, said so.

Justices Rothstein and Wagner, in dissent, flatly contradicted the majority and correctly stated that "Democratically elected legislatures are responsible for determining the appropriate balance between competing economic and social interests in … labour relations. Constitutionalizing a right to strike restricts governments' flexibility, impedes their ability to balance the interests of workers with the broader public interest and interferes with the proper role and responsibility of governments … [and] enshrines a political understanding of the concept of 'workplace justice' that favours the interests of employees over those of employers and even over those of the public."

Of course it does. The high court has no authority to try to asphyxiate the rights of the public and its governments in homage to Rosie Abella's nostalgic affection for organized labour, which is a retrograde, Luddite anachronism in an era of proper legislative protection for the rights of employees. The Saskatchewan Legislature would strike a powerful blow for sane government and the public interest if it invoked the Notwithstanding Clause (section 33 of the Charter), and vacated the applicability of this absurd decision, that is of a piece with the rest of this court's passion for affirmative action, feminism, and the soft faddish left. The federal and provincial parliaments should assert their right to define statutes, including the Charter of Rights, and it is time to smack these courts back into their place. The people elected the legislators and the legislators installed the judges, not the other way round.

More serious in its implications was the Supreme Court of Canada's unanimous decision on Feb. 6 in Carter v. Canada, a British Columbia case, revoking the illegality of doctor-assisted suicide. Again the Charter of Rights and Freedoms was invoked, this time, just as implausibly. Section 7 holds that "Everyone has the right to life, liberty, and security of the person, and the right not to be deprived thereof except in accordance with the principles of fundamental justice." There is only the most laboured and threadbare attempt to explain how anyone's life, liberty and security are assisted by the right of a doctor to help them commit suicide.

Illogical though the reasoning is, and although it is ostensibly an alteration of the (federal) Criminal Code, this is another egregious direct trespass in the provincial authority over property and civil rights and can be, and should be, partially overturned in the individual provinces. The high court takes unto itself the imposition of the only acceptable grounds for assisted suicide — "the irremediable discomfort (of a) terminal illness" provoking a spontaneous will to die, or the fear of a lingering helpless death. This makes no allowance for doctors' errors, surprising recoveries, or the agitation of greedy or lazy relatives and doctors.

The Supreme Court piously asserts that "a permissive regime will protect the vulnerable" and that "eight jurisdictions," including the demographic immensities of Luxembourg and Switzerland, three U.S. states containing 3% of the American population, and that pillar of the rule of liberal law, Colombia, have "produced a body of evidence about the practical and legal workings of physician-assisted death and the efficacy of safeguards for the vulnerable." Only in the absence of those who were killed. Obviously the survivors who advocated them thought the suicides a howling success. The Supremes scraped the barrel and triumphantly cite the recommendations of the Royal Society of Canada and a committee of the National Assembly of Quebec, giving no hint of what colour of

legitimacy distinguishes the opinions of those unlikely sources (many of the Quebec legislators, it should be noted, were not re-elected last year).

The high court is, but should not be, an opinion-sampling organization, but if it performed that task efficiently, it would not confine recognition of the opposition of jurisdictions representing 99.5% the world's population to superficial references to a few U.S., British and Irish cases.

The experience of the jurisdictions that have taken this step is ambiguous. Canadian adults who want to commit suicide can do so now and doctors so inclined can provide them the best medical methods of doing so, and say that if the dosage is substantially exceeded, death will result. Legally enabling doctors to do that, as many already are, is the farthest we should go. This is a phony issue that makes no allowance for fluctuating mood or conditions, and throws open the door to wholesale disposal of the (usually aged) inconvenient. In the same way, we have fumbled our way into a pandemic of abortions at the opposite end of the cycle of life, because the federal government refuses to address life and death issues, or even to tolerate a debate and non-partisan vote on the point at which the rights of the unborn compete with the right of a woman to control all activity within her own body. A valid case can be made for every variation of the answer, but we should have the debate and the vote.

The court unctuously claims an interest in balancing "the autonomy and dignity of a competent adult" with "the sanctity of life." There is, in fact, not even a doffing of a judicial wig toward the sanctity of life. This is a step to the commoditization of life, the debunking of any spiritual notions of life, and is a usurpation of jurisdiction from legislators who have abdicated their responsibility to clarify the Charter of Rights and to determine who has a duty to live and who may legally dispose of their own or others' lives, sanctity and all. Of course, people will commit suicide, for many reasons and not just that authorized by the Supreme Court. This measure is redundant in practical terms, and odious in its self-arrogation of rights ultra vires to any court.

The legal disarray is aggravated by the government's tendency to jam measures together in omnibus bills and ram them through by enforcement of closure of debate. The parliamentarians don't debate, the legislators don't legislate, and the judges are writing important laws with spurious rationalizations of vague enabling statutes like the Charter. The one area of federal government proactivity is in its substitution of itself for judges in matters of sentencing, to truckle to the Neanderthals in the most tenebrous thickets of Reaction (who are unlikely to vote for the Liberals or NDP anyway).

Canada's true path to greatness is as an innovative laboratory for intelligent social and fiscal policy. The high court seems perversely to grasp some of this. But transforming the legislators into mute robots, and leaving a vacuum to be filled by trendy judges who should have bells on their heads like medieval lepers to warn the unsuspecting of their approach, will not get us where we should be going.

The New York Times

Opinion: The Cost of a Decline in Unions

Nicholas Kristof, The New York Times, February 19, 2015

Like many Americans, I've been wary of labor unions.

Full-time union stagehands at Carnegie Hall earning more than $400,000 a year? A union hailing its defense of a New York teacher who smelled of alcohol and passed out in class, with even the principal unable to rouse her? A police union in New York City that has a tantrum and goes on virtual strike?

More broadly, I disdained unions as bringing corruption, nepotism and rigid work rules to the labor market, impeding the economic growth that ultimately makes a country strong.

I was wrong.

The abuses are real. But, as unions wane in American life, it's also increasingly clear that they were doing a lot of good in sustaining middle class life — especially the private-sector unions that are now dwindling.

Most studies suggest that about one-fifth of the increase in economic inequality in America among men in recent decades is the result of the decline in unions. It may be more: A study in the American Sociological Review, using the broadest methodology, estimates that the decline of unions may account for one-third of the rise of inequality among men.

"To understand the rising inequality, you have to understand the devastation in the labor movement," says Jake Rosenfeld, a labor expert at the University of Washington and the author of "What Unions No Longer Do."

Take construction workers. A full-time construction worker earns about $10,000 less per year now than in 1973, in today's dollars, according to Rosenfeld. One reason is probably that the proportion who are unionized has fallen in that period from more than 40 percent to just 14 percent.

"All the focus on labor's flaws can distract us from the bigger picture," Rosenfeld writes. "For generations now the labor movement has stood as the most prominent and effective voice for economic justice."

I'm as appalled as anyone by silly work rules and $400,000 stagehands, or teachers' unions shielding the incompetent. But unions also lobby for programs like universal prekindergarten that help create broad-based prosperity. They are pushing for a higher

national minimum wage, even though that would directly benefit mostly nonunionized workers.

I've also changed my mind because, in recent years, the worst abuses by far haven't been in the union shop but in the corporate suite. One of the things you learn as a journalist is that when there's no accountability, we humans are capable of tremendous avarice and venality. That's true of union bosses — and of corporate tycoons. Unions, even flawed ones, can provide checks and balances for flawed corporations.

Many Americans think unions drag down the economy over all, but scholars disagree. American auto unions are often mentioned, but Germany's car workers have a strong union, and so do Toyota's in Japan and Kia's in South Korea.

In Germany, the average autoworker earns about $67 per hour in salary and benefits, compared with $34 in the United States. Yet Germany's car companies in 2010 produced more than twice as many vehicles as American companies did, and they were highly profitable. It's too glib to say that the problem in the American sector was just unions.

Or look at American history. The peak years for unions were the 1940s and '50s, which were also some of the fastest-growing years for the United States ever — and with broadly shared prosperity. Historically, the periods when union membership were highest were those when inequality was least.

Richard B. Freeman, a Harvard labor expert, notes that unions sometimes bring important benefits to industry: They can improve morale, reduce turnover and provide a channel to suggest productivity improvements.

Experts disagree about how this all balances out, but it's clear that it's not a major drag. "If you're looking for big negatives, everybody knows they don't exist," Professor Freeman said.

Joseph Stiglitz notes in his book "The Price of Inequality" that when unions were strong in America, productivity and real hourly compensation moved together in manufacturing. But after 1980 (and especially after 2000) the link seemed to break and real wages stagnated.

It may be that as unions weakened, executives sometimes grabbed the gains from productivity. Perhaps that helps explain why chief executives at big companies earned, on average, 20 times as much as the typical worker in 1965, and 296 times as much in 2013, according to the Economic Policy Institute.

Lawrence F. Katz, a Harvard labor economist, raises concerns about some aspects of public-sector unions, but he says that in the private sector (where only 7 percent of workers are now unionized): "I think we've gone too far in de-unionization."

He's right. This isn't something you often hear a columnist say, but I'll say it again: I was wrong. At least in the private sector, we should strengthen unions, not try to eviscerate them.

Law Society seeks to break down damaging racial barriers

JEFF GRAY, The Globe and Mail, February 16, 2015

While he has encountered blatant racism – a client once called him a "sandwich boy," – Toronto lawyer Shawn Richard says it is the invisible barriers non-white lawyers face that remain harder for many to overcome.

Mr. Richard, 36, an associate at a Toronto family law firm, says in law school he felt surrounded by white students who, unlike him, all seemed to have family members in the profession or appointed to the bench.

"The legal profession is still a profession where you find that lawyers are often the children of lawyers. Race affects that issue only because the legal profession is still a white profession," he said in an interview. "If you're not white, chances are your parents are not lawyers and judges and politicians in this country."

This kind of subtle barrier is among those laid out in a Law Society of Upper Canada consultation paper that says many lawyers from black, Asian and Middle Eastern backgrounds feel alienated by the dominant white culture of many of the province's law firms, where conversations among white lawyers are often about "playing golf, going to the cottage and watching hockey."

This feeling of not fitting in, the report says, has real consequences. The lack of a built-in network of family and friends already in the legal profession, the report says, adds to the trouble some from non-white backgrounds have finding mentors to champion careers. The result is that many non-white lawyers end up leaving larger firms for smaller firms or to practise on their own.

The Law Society's report says 57 per cent of Ontario lawyers who self-identified as "racialized" told an online survey they felt disadvantaged in their career. Large percentages also said their background was a barrier to entering the profession, and felt they had to perform to a higher standard than other lawyers.

The report, on which the law society has been holding consultations, recommends a series of proposals to address these barriers, including improved mentoring programs. But the report also suggests that law firms be forced to disclose demographic data on their diversity, or lack of it, to the Law Society, which regulates lawyers in Ontario.

Many firms are already being asked to collect and hand over this data in order to comply with the diversity policies of certain clients, such as large U.S. companies and a growing number of major Canadian banks, including the Bank of Montreal. No major law firm discloses it publicly.

The law society itself already collects demographic data from all individual lawyers in Ontario, but the submission of the data is voluntary. That data do show a large increase in the number of lawyers who self-identify as "racialized," up from 9 per cent in 2001 to 17 per cent in 2010. (Aboriginal lawyers are not included in this statistic.)

Arleen Huggins, a partner with Koskie Minsky LLP and the former president of the Canadian Association of Black Lawyers (CABL), said any data reporting to the Law Society should be mandatory: "To make some real and very concrete steps, is the data collection necessary in order to allow us to move forward, in order to allow us to track, in [a] way that's accountable, the progress? Our view is yes."

Linc Rogers, a partner with Blake, Cassels & Graydon LLP and long an active member of CABL, applauds the report. But he said the Law Society should be promoting, not regulating, diversity in the profession.

"Part of the problem with mandatory requirements is it can often just become a check-the-box exercise," Mr. Rogers said. "You don't necessarily have the buy-in and commitment that you are looking for."

Janet Minor, who as the elected treasurer is head of the Law Society, said the proposal to collect the data is just one option in a menu of ideas in the consultation paper, entitled Developing Strategies for Change: Addressing Challenges Faced by Racialized Licensees.

"There is a range, from voluntary and providing it just willingly to the public, to the more requiring it, and requiring it to be reported," Ms. Minor said. "And we're looking for feedback on that."

White, male lawyers should say 'no' to judicial appointments

DAVID TANOVICH, Contributed to The Globe and Mail, February 18, 2015

David M. Tanovich *is a law professor at the Faculty of Law, University of Windsor, where he teaches in the areas of criminal law and legal ethics.*

The latest round of federal judicial appointments in Ontario has further entrenched inequality in our courts and has led me to think about the following provocative question: Should white male lawyers have an ethical duty to say no the next time the federal justice minister comes calling, in order to force systemic change? In my view, the answer is yes.

It is not an understatement to say that we are in the midst of a crisis of representativeness in our federal judiciary.

For example, since 2012, 46 practising lawyers (including three professors) have been appointed to the Ontario Superior Court of Justice or Court of Appeal by Conservative justice ministers. Just over three quarters (78 per cent) of the appointments have been men (36/46). Only one of the appointments appears to be from a racial minority, although an exact number cannot be discerned because of the government's refusal to collect this necessary information. Things aren't much better in the other provinces or in the elevation of judges from the provincial to federal courts.

Despite repeated calls by organizations such as the Canadian Bar Association, Indigenous Bar Association, Canadian Association of Black Lawyers, South Asian Bar Association and the Federation of Asian Canadian Lawyers, academics and lawyers for more representativeness in appointments, and thoughtful recommendations to accomplish that end, the government of Stephen Harper refuses to act.

It continues to demonstrate what University of Ottawa professor Rosemary Cairns Way has referred to in a recent paper as "deliberate disregard" for representativeness.

This "deliberate disregard" has serious consequences in individual cases for accurate fact-finding and law reform and, more systemically, for the legitimacy, fairness, impartiality and repute of the administration of justice.

A drastic solution is needed, and one would be to place an ethical obligation on white male lawyers to say no.

Lawyers act in the public interest and we serve as important guardians of the administration of justice and the rule of law. Indeed, lawyers have professional obligations to "encourage public respect for and try to improve the administration of justice."

Lawyers have responsibilities that distinguish us from others. As our Rules of Professional Conduct exhort, "a lawyer has special responsibilities by virtue of the privileges afforded the legal profession and the important role it plays in a free and democratic society and in the administration of justice, including a special responsibility to recognize the diversity of the Ontario community …"

Lawyers also have a professional responsibility to take measures to prevent discrimination. The appointments process is clearly producing discriminatory results by denying opportunities to all equality-seeking groups in Canada.

It is unfortunate that it appears to have come to this.

Judicial appointments are considered by many to be the pinnacle of one's legal career, and come with tremendous financial rewards and security. Lawyers who apply to the bench want to make a difference and meaningfully contribute to the administration of justice. There is no question that saying no would be hard to do and a lot to ask. But as lawyers we are regularly faced with difficult and challenging ethical decisions. Many of them come with personal and financial costs.

Sadly, nothing else seems to have a chance of changing the status quo, for it is clear that the Harper government does not care; or worse, it appears to actually want to have a judiciary that reflects the face and ideology of its base.

Lawyers, and in particular, white male lawyers can make a difference on this issue. And so we should.

Appointment of military judge to Superior Court a first

By Shannon Kari, Law Times, February 16, 2015

A 35-year-veteran of the Canadian military is among the latest round of judicial appointments in Ontario announced by the federal government.

The appointment of Col. Michael Gibson is believed to be the first time someone whose legal experience has been solely in the military justice system, has been named to a Superior Court-level position.

More than two decades ago, a lawyer who practised briefly in the private sector before a lengthy career as a military counsel and judge, was named to the Supreme Court in Prince Edward Island.

Gibson enrolled at the Royal Military College in 1980. He received a law degree from the University of Toronto and two masters degrees in England, while serving in the military. He was also legal counsel with the Judge Advocate General office, a deputy judge advocate and since 2013, has been serving as a military judge.

Gibson appeared a number of times before Parliamentary committees between 2011 and 2013 to explain proposed changes to the National Defence Act, including on one occasion, with then-defence minister Peter MacKay.

The military veteran told members of the standing committee on national defence in November 2011, that only individuals with military experience had the expertise to serve as military judges.

“The bottom line is that there are differences between the civilian justice system and the military justice system,” Gibson stated.

Gibson’s appointment is the second time in less than two months that MacKay has named someone with an unusual background to the bench in Ontario. Grant Huscroft, a constitutional law professor at Western University, was appointed directly to the Court of Appeal. Huscroft, who previously co-authored a text with Stephen Harper’s first chief of staff, is the first law professor in three decades to be named directly to the Court of Appeal.

A different legal background does not serve as a way to predict how someone will perform on the bench, suggests Adam Dodek, a professor at the University of Ottawa law school, who specializes in public law and legal ethics.

“There are examples of fabulous judges, both from amongst those who were superb litigators and from those who never stepped into a courtroom before they were appointed to the bench,” says Dodek, who believes that time spent as a military judge should be good preparation for the Superior Court.

“A lack of substantive experience in civil litigation should not be a concern at all. The Superior Court of Justice has some excellent judges who only practised criminal law prior to their appointment to the bench, for example,” Dodek states.

Gibson was one of four military judges, who presided over a total of about 60 court martial proceedings per year, according to documents filed in 2012 with a military judges compensation committee. His pay will rise from about $225,000 to just over $300,000 as a Superior Court judge.

Four other Ontario appointments were announced by MacKay on Feb. 6, including Kirk Munroe, to preside in Windsor. Munroe is the first criminal defence lawyer to be named to the Superior Court in Ontario, since MacKay was named justice minister in July 2013. There have been 10 former provincial or federal Crown attorneys appointed during that time.

About 83 per cent of new appointments to the bench in Ontario under MacKay’s tenure have been male lawyers.

A number of legal groups have criticized the lack of diversity in judicial appointments by the federal Conservatives and the naming of people with ties to the governing party.

In terms of allegations of patronage, that is nothing new, suggests Troy Riddell, a political science professor at the University of Guelph, who has conducted extensive research on judicial appointments in Canada.

"I am not sure there is any more [patronage] now," than when the Liberals were in power federally, says Riddell. The one group traditionally excluded from federal judicial appointments has been NDP supporters, he observes.

"You are in trouble if you are not a part of the two big parties," he states.

Whether the Conservatives have also looked more closely at the ideology of applicants, is an area that deserves more research, agrees Riddell. "That is a question worth asking."

The miracle of motions court

New system in civil practice court really helps to clear backlog

By Yamri Taddese, Law Times, February 16, 2015

After years of motions backlog in Toronto, lawyers say change is finally in the air at the Superior Court as a new initiative encourages judges to manage cases and not just motions.

Judges sitting in the motions court, recently rebranded as the civil practice court, have started doing some problem solving without requiring parties to bring a formal motion.

"It's like a miracle," says Teplitsky Colson LLP lawyer Harvin Pitch, who's practised civil litigation for 40 years. "On an overview level, this now allows the system to work because problems now get worked out in real time before a judge who applies a practical solution without paperwork."

Last week, Pitch appeared before Superior Court Justice Fred Myers to schedule a summary judgment motion. Pitch says Myers told counsel they could come back to him for guidance if they run into issues during cross-examination, such as someone refusing to answer a question. This is something they previously would have had to resolve with a motion.

The culture of endless motions in Toronto had created a massive backlog that meant up to seven months wait time to bring even the simplest of motions. In 2013, lawyers couldn't find dates for complex motions earlier than 2016.

At the instruction of Chief Justice Heather Smith, a civil justice review committee has been working to bring the wait time for complex motions to four months. In a recent

report, the committee, spearheaded by Justice Geoffrey Morawetz, concluded more case management was needed.

The court sent out a notice to the profession in the fall about the rebranded civil practice court as well as a number of other new rules around booking motions.

In an October report, the civil review project committee said there simply isn't enough time for presiding judges to do all aspects of case management needed in a matter, adding other judges on the civil list will now do case management work as well.

"The objective remains constant: to provide guidance and assistance for matters subject to case management, ensuring they are provided enhanced direction to be resolved in an organized, timely and cost-effective basis," the report says. "Obviously, to ensure that the system works, a significant degree of cooperation from the bar will be required."

So far, the progress has been visible, according to Pitch.

"They've got it set up now that this practice court is primarily a motions court but they recognize that Toronto has a motions mentality," says Pitch. "Instead of fighting it, instead of saying you can't bring motions, they bought into the commercial list process of the 9:30s," he says.

On the commercial list, counsel meet with a judge at 9:30 a.m., half an hour before hearings start, to deal with consent and scheduling matters as well as some case management issues.

"It's all expedited, real time," he says, adding the new structure is an improvement from a system that had counsel bringing motions for disputes that arose within another motion, effectively derailing the original proceeding.

But lawyers have to go to judges for guidance on important issues in the case and not "routine" disagreements, Pitch says.

Instead of a sole judge running the motions court, three or four judges now sit on the civil practice court at the same time, and one of the judges deals with self-represented litigants.

"It's really streamlining the process," says Toronto lawyer Allan Rouben. "It seems to me what they're trying to do is replicate in some way the system that currently exists on the commercial list."

Sotos LLP lawyer David Sterns is involved with the Superior Court's review committee. He says what's happening between counsel and judges under the new protocol is something like a "motion-lite."

"It's not a heavy-handed approach; it's not going to be overbearing and telling counsel you must do this by this date," he says. "It's giving counsel an outlet to have a motion-lite instead of a full-blown motion to break an impasse or to put the case towards trial or summary judgment."

How much case management a judge is willing to do without sending the matter for a motion hearing will depend on individual judges, according to Sterns.

The approach will help achieve the goal of the Supreme Court's summaryjudgment friendly decision in Hyrniak v. Mauldin, says Sterns.

As of November 2014, parties can only book motions in the next 100 days. They may not adjourn a scheduled hearing within two days of the hearing in the absence of "extenuating and exceptional circumstances," according to the review committee.

The court has also enhanced the computer program it uses for scheduling motions. The system previously required the scheduling registrar to manually search each day to find the next available time slot for a motion; it's now done automatically.

A duty of commitment

The Supreme Court rules that the solicitor-client privilege must remain "as close to absolute as possible."

National, Legal Insights & Practice Trends, The Canadian Bar Association, February 17, 2015

Last week the Supreme Court of Canada held that search power provisions in the Proceeds of Crime (Money Laundering) and Terrorist Financing Act were unconstitutional when applied to lawyers.

"This is a great victory for both the independence of the legal profession and the public," CBA President Michele Hollins said, reacting to the decision.

Under the Act, financial intermediaries, including lawyers (and notaries in Quebec), have to report suspicious transactions and large cash transactions to the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC). They are also required to collect, record and retain material, including information verifying the identity of those on whose behalf they pay or receive money. What's more the Act allows FINTRAC to search for and seize that material and imposes fines and possible prison terms for non-compliance.

The CBA intervened in the case, supporting the challenge by the Federation of Law Societies that the provisions unjustifiably violated both s. 7 and s. 8 of the Charter. By requiring lawyers to obtain and retain information about their clients, they argued that the scheme turned lawyers into "unwilling state agents" and "law offices into archives for use by the police and prosecution."

The top court agreed: "Lawyers must keep their clients' confidences and act with commitment to serving and protecting their clients' legitimate interests. Both of these duties are essential to the due administration of justice," Justice Thomas Cromwell wrote for the majority. "However, some provisions of Canada's anti-money laundering and anti-terrorist financing legislation are repugnant to these duties. They require lawyers, on pain of imprisonment, to obtain and retain information that is not necessary for ethical legal representation and provide inadequate protection for the client's confidences subject to solicitor-client privilege."

"The case is about clients, not lawyers," says Craig Ferris, a partner at Lawson Lundell who intervened on behalf of the CBA with Laura Bevan " It's exempting lawyers because it is the client's information that has to be protected." Ferris adds that the ruling is important because of the Court's recognition of the lawyer's duty of commitment to a client's cause as new principle of fundamental justice. "There is an ethical duty for the lawyer to be free of conflict of interest," he told National. "The lawyer must be free to zealously defend the client without fear of state interference."

Even so, the top court stopped short of recognizing, as a principle of fundamental justice, the broadest possible interpretation of independence of the bar – one that would make it completely "free from incursions from any source, including from public authorities." That means that self-regulation of the profession is not, in and of itself a constitutionally entrenched notion. Referring to a 2004 decision in Finney v. Barreau du Québec, Justice Cromwell re-iterated the Court's view that "self-regulation is certainly the means by which legislatures have chosen in this country to protect the independence of the bar" but that doesn't necessarily mean "that legislative choice is in any respect constitutionally required."

The majority preferred to accept a narrower version of the independence of the bar, ruling that "the state cannot impose duties on lawyers that undermine their duty of commitment to their clients' causes."

By adopting this narrower understanding, the court leaves the door open for government to develop new regulations which meet required constitutional protections for solicitor-client privilege. The CBA says it's willing to work with law societies and the government to enact a record-collection scheme that complies with the Charter.

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Role of defence counsel poorly understood

Defence lawyer Joseph Groia's case threatens the very foundation of what it means to advocate on behalf of a client.

By Frank Addario, Contribution to the Toronto Star, February 16, 2015

Frank Addario *is a former president of the Criminal Lawyers Association and represented the CLA in the Groia case.*

In an age when wrongful convictions are unearthed regularly and newspapers abound with stories of government misconduct, one might expect the role of defence lawyers to have earned a modicum of respect.

Guess again. The unsettling case of lawyer Joseph Groia is a shining example of how poorly the role of defence counsel is understood.

Groia is accused of defending his client too enthusiastically.

The case has evolved into a historic clash between defence counsel's obligation to represent clients fearlessly and the justice system's desire for courtroom civility and decorum. Beyond dividing the legal profession, it threatens the very foundation of what it means to advocate on behalf of a client.

Thus far, eight judges and eight Law Society of Upper Canada disciplinary adjudicators have taken their turns at bat, weighing allegations of misconduct against Groia for his defence of Bre-X Minerals executive John Felderhof on criminal securities act violations.

The scorecard is grim for Groia. After a slew of hearings, he faces a one-month suspension of his right to practise law and an order that he pay $200,000 in legal costs. Further appeals will likely focus on two central questions: Is there a need to rein in the defence bar? And if so, is there a means to do so that will not endanger the trial process?

The answer to each question is an emphatic no.

Groia's sin during the lengthy Bre-X trial was to allege, noisily, that Felderhof had been abused and railroaded. Depending on one's perspective, his manner was gratuitously rude and bombastic or tough, fearless and effective.

That a lawyer vigorously defending his client could be seen as deserving of professional censure reinforces the popular urban myth that defence counsel are more disruptive than helpful when it comes to achieving justice.

The courtroom is not a trousseau tea, where genteel bewigged lawyers agree to disagree. For the defendant it is a fight for his life; one in which the odds are stacked against him by a better-resourced opponent wearing the white hat. A certain amount of toughness is necessary.

If certain defences are off the table because they are too rude to advance, it is not the defence lawyer who suffers; it is the credibility of the legal system as a vehicle for getting to a just result. If a defence lawyer runs the risk of suffering reprisal, how can she be expected to take an unpopular or even irritating position?

Sometimes defence counsel's work is an obvious ingredient of democracy itself. This spring Canadians will watch defence lawyer Don Bayne put the Conservative government on the hot seat during the trial of Sen. Mike Duffy. Bayne's defence is a live example of government held to account by a defence counsel.

Recently, the Ontario Court of Appeal overturned an attempted murder conviction on the basis that the trial prosecutor behaved with unacceptable zeal. The defendant — an intensely religious man entangled in a vitriolic separation — was accused of inciting the couple's three children to drown their mother. In his closing address to the jury, the Crown referred to the defendant as a dangerous "Jesus nut."

The chance of this prosecutor being disciplined or fined is close to zero. He might be counselled to temper his enthusiasm, an appropriate solution. Groia, on the other hand, saw his reputation and his pocketbook trashed for his transgressions.

Judges have tremendous authority in the courtroom. They are the first line of defence against overzealous lawyering. Lawyers who fling wild accusations lose credibility. They also lose their cases. The profession shuns such lawyers, giving the worst a short shelf life in the private bar. This is a further built-in dynamic, ignored by those who want to rein in defence counsel through the threat of disbarment.

Where the lawyer's conduct is the product of inexperience or poor training, the Law Society can impose retraining as a condition of licensing. But the protracted disciplinary proceedings Groia endured are certain to make defence counsel who fight hard for unpopular clients apprehensive.

Defence counsel are resigned to being asked: "How can you defend those people?" at dinner parties. I'm confident nobody has ever asked a Crown attorney: "How can you prosecute those people?"

If it is too much to expect the general public to understand the importance of what we do, it cannot be too much to ask of those who regulate our profession.

Ottawa couple giving up ‘rat race’ to launch Italian tour company

Trevor Greenway, Metro News, February 19, 2015

Jake Rupert and Lisa Blais want everyone to see the real side of Italy.

The cascading mountains, the secluded coves and the virtually “untapped paradise” that they say makes up Abruzzo, Italy.

The Ottawa couple has purchased an old Italian villa in the picturesque region and are running an Indiegogo campaign to help start a new tour business that will take travellers on an “authentic” trip though one of Italy’s lesser-known vacation spots.

“Abruzzo is stunningly gorgeous and it’s diverse in its geography,” said Rupert, a former Ottawa Citizen reporter and current City of Ottawa strategist.

Both he and his wife, a federal prosecutor, are giving up their careers, or the “rat race,” as Rupert puts it, for the hospitality, vacation business.

“There are mountains, there are high plateaus and then there are beautiful rolling foothills with wineries and olive groves leading down into this beautiful Adriatic coast…Italians vacation here.”

The couple discovered their own little paradise while digging back through Blais’ family history, which led them to the small coastal village of San Sebastiano. It took just 10 minutes before Blais’ 70-year-old mother was sipping wine with her 93-year-old cousin.

“We heard these crazy stories and we saw people that looked like us and confirmed all the stories that my grandfather had told my mother,” added Blais. “We met 60 second cousins. It’s been really an enriching life experience. We have gone back every year.”

They won’t have to go back every year come 2016 when they open Amazing Abruzzo Tours, but they are hoping to raise the final $150K through their online funding campaign.

The tour promises an authentic voyage into the heart of Italian culture – with its high quality wines, its delicious food and its simple way of life.

“We are going to be taking people to local festivals, taking them to local restaurants and villages and basically giving them an authentic Italian experience,” added Rupert.

Donors can take advantage of discounted vacations as rewards if they contribute to the online campaign at several different price points.

There are 36 days left in the campaign and so far, they have raised just over $21,000.
