

Tax Credit Like Free Liquor: Feds

Federal revenue agents feared one of Ottawa's most popular tax credits had become an "open bar" for Corporate Canada, according to an unpublished government report.

Canada Revenue Agency commissioned the study but withheld it from MPs and initially declined to release it to the Department of Finance, according to records released through the *Access to Information Act*.

"What I find distressing is that Canada Revenue Agency would not share this analysis," said MP Geoff Regan, Liberal vice-chair of the Commons industry committee.

The cabinet-level study investigated the Scientific Research & Experimental Development tax credit, a program dating from 1963 that cost \$3.6 billion last year in subsidies for innovative research by manufacturers, food processors and other industries.

The confidential 2010 research *SR&ED Tax Incentive Program: An Appraisal*, concluded payments were growing too fast; that many claims were "debatable"; and that awarding credits without limits was like giving away free liquor.

"Whether you agree with this assessment or not, the fact Canada Revenue Agency would not share this is odd," said Regan, MP For Halifax West. "Let them come before

the committee; let's have the discussion."

Cabinet reduced the SR&ED credit from 20 to 15 percent last year and imposed other restrictions, including the elimination of capital expenditures from eligibility; and a cut in the rate used for wages eligible towards credited expenses from 65 to 55%.

In its analysis, Canada Revenue warned annual claims had grown too quickly, from 17,900 applicants to 27,000 over a five-year period, and that eligibility was poorly defined: "Since determining a project's scientific eligibility to an Investment Tax Credit is often a debatable point, claimants and their associations, as well as claim preparers, are incentivized to continuously test and push the boundaries of eligibility."

On average 16 percent of claims were disallowed with higher rates for agri-food applicants, the study noted. Canada Revenue also expressed alarm over the cost of multiple technical appeals by claimants – "CRA would be rapidly overwhelmed by a mountain of requests, some of them frivolous" – and warned of skyrocketing costs:

"If another agency such as Industry Canada were administering SR&ED there would be a cap on spending, which might be lowered when the government is in deficit. You can't have an uncapped

FIRST, WE DO
EVERYTHING IN
OUR POWER TO
BUILD BRIDGES,
AND IF THAT
DOESN'T WORK...
**WE BURN THEM
DOWN!**

Personal Injury
Environmental Litigation
Commercial Litigation
Wrongful Dismissal

beamentgreen
Lawyers

www.beament.com



program without a focus on compliance, or else it would be an 'open bar'".

Some 23,000 companies received credits under the program last year, with 11 percent of claims worth \$425 million disallowed, according to financial accounts tabled in the Commons.

"Establishing eligibility for an SR&ED credit is complex," said David Aston, a Wellington, Ont.-based consultant who assists small and medium-sized claimants.

"Without the help of someone who knows both the claimant's technology

and the SR&ED regulations, many small manufacturing companies would not rationalize their research and development work into the project format that Canada Revenue Agency requires," said Aston.

The agency said it will report to Parliament next year on consultations to ensure that claimants "better understand" how the program works.

 BY TOM KORSKI

Cash-For-News Scheme Is Kaput

The Canadian International Development Agency says it will not resurrect a cash-for-news scheme that saw federal grants paid to journalists to report on the agency's work.

A CIDA official said the last funds have been paid out through the program this past February, to the Fédération professionnelle des journalistes du Québec. The provincial federation received almost \$150,000 in grants since 2008, according to department records.

"The program was in no way an intervention of CIDA in journalism," said Claude Robillard, former secretary general of the federation. "Some good, independent features have been made possible."

The agency paid out more than \$4.7 million in grants over four years for media coverage of CIDA and related foreign-aid programs, according to accounts tabled in Parliament.

Robillard said that, in Quebec's case, the federation received block funding it then parceled out in \$6,000 grants to journalists reporting on foreign aid and development issues.

No grant recipient contacted by *Black-*

lock's expressed qualms in soliciting government subsidies of their work.

Le Devoir journalist Lisa-Marie Gervais confirmed she received \$15,000 in 2008 for articles on displaced persons in South Africa and Columbia; Gervais said CIDA exercised no editorial control over the content, though the agency vetoed her original plan to add a third country to her itinerary.

"CIDA wouldn't accept my project for three," she said. "For two, they told me it would be accepted."

Le Devoir also accepted \$38,493 for a 2007 feature on Afghanistan that "reminds readers of the central role that Afghanistan plays in CIDA's international assistance program," according to an agency description.

Other grants included \$57,198 paid to Northscape Productions for a 2006 climate-change documentary *Land Unlocked* that reported on "economic impacts on First Nations communities" for broadcast on APTN, and a related "news story packaged for radio broadcast on CHON-FM followed by in-studio interviews"; \$34,000 to journalist Patrick



Alley for a 2006 photo essay on global warming for *The Walrus* magazine that asked, "How do Canada and Canadians mobilize and join the international community to save the world's common good?" \$28,184 paid to Transcontinental Media Inc. in 2007 for two *Homemakers Magazine* articles on women in Rwanda and Honduras that profiled the work of CIDA and other organizations; and \$26,117 paid to CTV Kitchener for a 2007 news broadcast on construction of schools in Kenya "with the help of Canadian donations".

 BY JUSTIN LING

PRICE CHECK ON AISLE FOUR

A Department of Finance "test case" of the retail impact of tariff cuts is limited in scope and may not get the answers the government is after, says an industry group.

The Retail Council of Canada, which advised Finance Canada on its tariff survey, questioned whether the federal study will "capture the full effect of the tariff changes", an executive said.

"We see warehouses of stock," said Karen Proud, council vice president of

federal government relations. "Clearly any benefit from the elimination of tariffs is lost on those products."

The department contracted the survey firm Nielsen Co. to conduct price checks over a twelve-month period on selected goods that were subject to random tariff relief in the 2013 budget, including infant wear, water skies and trampolines.

Finance Minister Jim Flaherty did not take *Blacklock's* questions, but earlier told the Senate finance committee he expected retailers to promptly cut prices in line with the tariff reductions: "If it works, then we will do more; if it does not work, I suppose we can do less."

But the Retail Council noted stores typically contract orders with offshore suppliers months, even a year in advance, and that prices may not reflect immediate tariff reductions.

"We have members right now who are ordering product for delivery in the fall of 2014," said Proud. "Those prices are contracted."

"We know consumers benefit – that's obvious; if the government is to monitor it, that's fine," said Proud; "If you want to see the full effect it can take from 12 to 24 months from when an order is placed."

The finance department removed an 18


percent tariff on infant clothing, as well repealing customs duties ranging from 2.5 to 20% on an assortment of imports including ice skates, hockey helmets, ski boots, snowboards, snowshoes, curling rocks, golf balls, footballs, cricket gloves, baseballs, automated batting cages, sailboards, water skis, and clay pigeons for trapshooting.

Proud said the impact of tariff reductions may not be measurable in price alone, but in "a variety of ways" including quality and selection of goods from different suppliers.

Nielsen Co. price-checkers will "systematically visit a variety of retail stores across Canada to determine how retail prices have changed," the finance department reported.

Authorities did not disclose the cost of the Nielsen survey, estimated at up to \$100,000 by Opposition New Democrat MPs.

Flaherty's March 21, 2013 budget also targeted a billion-dollar increase in tariff revenue over five years with the removal of China, South Korea, India and other leading suppliers off a low General Preferential Tariff list.

 BY STAFF



Operating in Canada *and beyond*

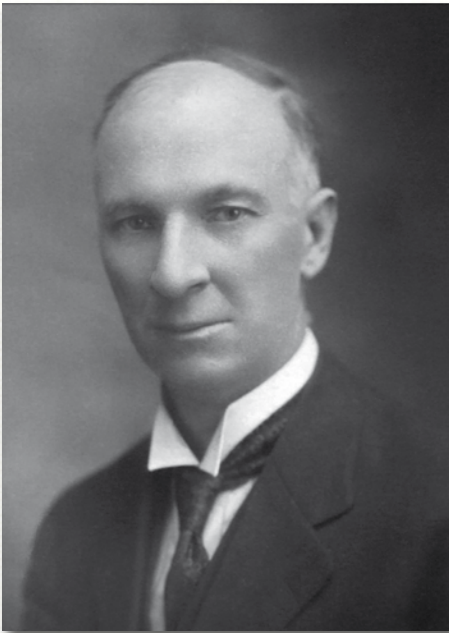


The Canadian life and health insurance industry is one of Canada's most successful home-grown export industries. Companies operate in more than 20 countries around the globe with almost 43 per cent of worldwide premiums generated abroad.

To learn more, visit clhia.ca



**Canadian Life
and Health Insurance
Association Inc.**



Tom Hyland Blacklock

A pioneer publisher and war correspondent, confidante of three prime ministers and 1922 president of the Ottawa Press Gallery, Tom Blacklock was mourned at his passing in 1934 as “a keen observer blessed with a sense of proportion.” Born in Halton County, Ont. in 1870, he became a frontier editor and first mayor of Weyburn, Sask. in 1903. Assigned to Parliament Hill by the Winnipeg Telegram in 1912 he remained a gallery man for life with columns published from Victoria to Halifax: “As Tom Blacklock used to say, ‘That ain’t the way I heard it.’”

BLACKLOCK'S REPORTER PUBLISHES DAILY ONLINE AT BLACKLOCKS.CA WITH A WEEKLY DIGEST OF NEWS AND SHARP-EYED FEATURES PUBLISHED EACH MONDAY, 50 WEEKS A YEAR.

Copyright 1395804 Ontario Limited

Head Office:

409 Third Avenue, Ottawa, Ontario K1S 2K6

Editorial:

350-N Centre Block, House of Commons,
Ottawa, Ontario, K1A 0A6

HST no. 87055 5372

Holly Doan, Publisher

613-422-6823
holly@blacklocks.ca

Tom Korski, Managing Editor

613-992-4511
tom@blacklocks.ca

EDITORIAL BOARD:

Kaven Baker-Voakes, Economics Editor

613-992-4511
kaven@blacklocks.ca

Alex Binkley, Resources Editor

613-992-4511
alex@blacklocks.ca

Courtney Tower

NOTES FROM THE PRESS GALLERY

I came to work on Parliament Hill in 1955, for the first of three sojourns here, and still get a lift every time I walk in the front door. In part it's the whole idea of the Centre Block – the history, symbolism and beauty. Other reasons are less profound: I've been here so long, and remember the friendships and personalities.

There was C.D. Howe, so contemptuous of Parliament and the Opposition that he'd open up a newspaper and ostentatiously read it during Question Period. And Diefenbaker, who in his histrionics was outrageous and used Parliament for all it was worth, but loved it too. And Trudeau, in whose office I worked for three and-a-half years, till 1976; I left after becoming uncomfortable with new advisors who adopted a weaker version of what we now see as PMO management and restraint of the press.

“I shall always be loyal to you,” Trudeau told me at our last meeting. I never tested the sentiment.

I was born at our farm near Norquay, Sask. in 1932. My father Courtney homesteaded there before it became a province. We had a wood-burning stove in the kitchen, and a big battery-powered cabinet radio that played *Fibber McGee & Molly* and all the disheartening reports on the price of No. 1 Northern Wheat.

Father was a man of few words. He'd left school in Ontario to take up Saskatchewan land with his brothers, then left to fight at Vimy and Passchendaele. He suffered afterwards from the effects of gas attacks in the trenches.

Funny, it's always the little vignettes that stay with you. I recall the time we'd been to the Red & White store in Norquay when Father noticed the clerk had paid him 2¢ too much in change; he walked back to return the pennies.

And I remember a hot summer day, driving in the 1935 Ford near our place when Father pointed to a relief work gang scrubbing out brush in the ditches: “Do you want to do that or do you want to go to school?” he said.

My mother Hope was a schoolteacher; she was wedded to education. I'd studied Grade 9 and 10 Latin and trigonometry

by correspondence in our one-room school – none of which I mastered. But at 17 I took the train from Melville to Ottawa to study journalism at Carleton College. It was my first time on a train; I sat up the whole way.

My introduction to newspapering was at the *Financial Times* in Montreal. I sat on a stool in this Dickensian office, decoding the stock ticker and doing small rewrites. It was mindless.

Later I worked at the *Victoria Daily Colonist*, and in the Press Gallery at different times for *Maclean's* and *Reader's Digest* and *TIME* magazine. I spent six years with Reuters, on assignment from London to Karachi. They sent me to Saigon in 1964, when the world still refused to acknowledge there was serious fighting underway.

I remember attending the twilight execution of a Vietcong supporter; they took him, dull and unresisting, from an army vehicle to a square in Saigon and shot him. The whole town was sullen all that day leading to the execution; you could feel the pall. It was obvious even then the war couldn't be won. Air strikes might pound the villages, but you weren't going to defeat guerrillas that could melt into the bush.

I joined the Prime Minister's Office in 1973. Trudeau was no ogre to work for; he was courteous always, never abrupt or snide. Peter C. Newman said Trudeau “had a heart like an ice pick”, but that was inaccurate. Trudeau schooled himself to be composed in all circumstances. I subsequently refused book offers. It was not my place to break confidences or profit from experiences I'd had.

I work today in the same Press Gallery where I started nearly 60 years ago. However tenuous it is, I like to be at the fringe, at least, of the political action. That's the main reason. The extra money is fine, and I love walking through the buildings.

There's something about this place, there truly is.

(Editor's note: the author is publisher of the trade newsletter *The Bar-Code Border*, and at 81 the most senior working reporter in the Parliamentary Press Gallery).

False Claims De-Regulated

The Canadian Food Inspection Agency proposes more deregulation of the fertilizer industry, including repeal of a ban on misleading claims by manufacturers.

The proposals, part of a “red-tape reduction” program, are to be drafted this winter following the close of public consultations Sept. 17.

The Department of Agriculture earlier repealed clauses of *Fertilizers Regulations* that forced manufacturers to seek federal approval on safety, effectiveness and labeling before selling their product.

“I think the key is that the requirement for guaranteed analysis remains,” said John Cowman, vice president of the Grain Farmers of Ontario.

“This makes sure that the option or opportunity for a farmer to have the product tested is still available.”

However, critics have said they fear regulators have surrendered oversight of products and left disputes resolution to civil litigation.

“They’re going to download the responsibility,” Guelph MP Frank Valeriote, Liberal agriculture critic, earlier told *Blacklock’s*. “The question is what if something happens? Who’s responsible? Do we now rely on the courts?”

Repeal last April 26 of the requirements on pre-approval of registered fertilizers by the Food Inspection Agency was calculated to save industry \$1.2 million a year, by federal estimate. Under new proposals,

the agency says it will:

- Repeal regulations against “incorrect, misleading or deceptive information on a product label”, noting the rule is now irrelevant since federal inspectors no longer verify the efficacy and quality of fertilizers;
- Extend terms of federal registration from 3 to five years;
- Raise registration fees on a cost-recovery basis, noting charges unchanged since 1997 include \$350 to register a fertilizer product, \$500 for a safety assessment; \$50 to alter a product name and other charges to a maximum \$1,000 per application – a rate that “is not representative of the costs incurred by the Canadian Food Inspection Agency in providing the



services,” officials reported.

Regulators had processed 730 industry applications a year on fertilizer prior to the repeal of pre-approvals.

 BY STAFF
(PHOTO BY LOUISE IMBEAULT)

A PENNY TAX ON BEEF

Consumers face a penny tax on imported beef with the ruling of a Department of Agriculture agency.

The Farm Products Council said a levy of \$1 per head on U.S. cattle – the equivalent of a penny a kilo at the meat counter – will help finance industry marketing and research.

“It benefits consumers with increased access to

information on products, including their quality and nutritional values,” said Laurent Pellerin, council chair.

Producers had lobbied for the levy since 1999, noting the United States imposed a similar marketing tax on Canadian beef in 1985.

“It creates a level playing field,” said Agriculture Minister Gerry Ritz.

Martin Unrau, president of the Canadian Cattlemen’s Association, said \$800,000-a year proceeds from the

levy “will help increase the profitability of Canada’s beef sector.” Revenue will help finance Canada Beef Inc., a marketing and research agency established in 2002 under the Farm Products Agencies Act.

Canada Beef currently collects some \$7 million a year from a similar domestic levy on beef sales, with two-thirds of proceeds spent on promotions and the remainder invested in research.

Ron Glaser, vice president

of corporate affairs at Canada Beef, noted the national cattle herd has been shrinking for years.

The number of beef cows in Canada totaled 4.2 million last year, a decline of 19 percent from 2006, according to a Statistics Canada report *Cattle Statistics 2012*. Alberta and Saskatchewan account for two-thirds of the national herd.

 BY ALEX BINKLEY

I Love A Mystery

Environment Canada has lifted import controls on 11 new mysterious chemicals, but declined to publish them on a routine list of industrial substances citing “confidential business information.”

No department official would agree to an interview.

“This information can be extremely sensitive,” said Deep Khosla, a consultant to the Chemical Industry Association of Canada;

“Synthesizing a new substance can require a lot of money.”

Authorities added a total 16 new elements to the *Domestic Substances List*, a menu of chemical compounds used in manufacturing, textiles, pharmaceuticals and fuel refining that has been published by the Department of the Environment since 1994. Under the *Canadian Environmental Protection Act*, the import or manufacture of new chemicals is limited to 1,000 kilograms per

year till regulators assess their “human health and environmental impacts.”


Of 16 new substances to make the list, eleven were unnamed under *Masked Name Regulations* that allow manufacturers to ask that Environment Canada conceal the information from the public.

“The act of putting those names on the inventory list is like telling it to the world,” said Khosla. “Companies involved with innovative processes are extremely

secretive; they do not want competitors to know that a new application is underway.”

Khosla said no health or environmental factors were involved in industry’s request for the masking of chemical names: “It has to be commercially sensitive.”

The federal inventory of chemicals exempt from import controls is amended an average ten times a year.

 BY STAFF

Pets Or Meat

Canadian attempts to promote seal exports remain "a priority in our dealings with China" despite a continued ban on the trade, according to cabinet-level documents.

Briefing notes and memoranda released through the *Access to Information Act* indicate the departments of fisheries and trade rate the sale of seal meat and oil to the People's Republic as crucial, though Beijing has yet to lift its prohibition on the products.

"We agree the China market is very important," said Frank Pinhorn, executive director of the Canadian Sealers Association. "We're sitting on a resource that numbers eight million harp seals."

In 2011 China signed a tentative agreement with then-Minister of Fisheries Gail Shea to lift the ban. Beijing never ratified the "co-operative arrangement".

"We're looking at a global market," said Pinhorn.

The value of the annual seal hunt has declined 96 percent since 2006 from \$34.3 million to \$1.3 million, according to federal data.

The Department of Fisheries estimated this year's harvest totaled 90,783 harp seals with a slight improvement in prices for pelts.

"We believe that Chinese consumers should be free to make their own purchasing decisions," a department

official told *Blacklock's*; "We continue to work with the Chinese government."

Actual harvests have fallen so far below quota that fisheries department did not set a limit on this year's harp seal hunt.

"There are so few people engaged in this," said Sheryl Fink, director of the International Fund for Animal Welfare's Canada Seals Campaign. "It's a part-time job, making \$25 a pelt; there's no money in it."

"On an economic basis, this should be transitioned out like tobacco farming or asbestos mining," Fink added.

The advocacy group noted the Department of Fisheries, trade department and Government of Newfoundland & Labrador have attempted to sell seal meat and oil in China since 1993.

"They are pitching it as the last hope to keep the industry alive," said Fink. "In terms of a large global market for seal, this is a product the world does not need or want."

The Senate earlier endorsed a fisheries committee report, *The Sustainable Management of Grey Seal Populations*, that urged greater promotion of seal products in Asian markets as pet food and waterproof clothing, and suggested seal oil be identified as a supplement to the *Canada Food Guide*.



BEES. TROUBLE.

Health Canada is denying a claim it's delaying regulation of chemicals blamed for widespread damage to bee colonies.

The department said it is "carefully examining" documentation of bee deaths attributed to neonicotinoid pesticides typically used by corn growers, but planned no response till 2014 at the earliest.

The Sierra Club called the department's action "an unacceptable response to a crisis", noting that data linking farm chemicals with bee deaths has been substantiated in the U.S., U.K., France, Italy and other European Union countries.

"We found twenty studies in a few hours on the internet," said John Bennett, executive director of the Sierra Club; "There is no need to wait any longer; there is plenty of evidence linking neonicotinoid pesticides with killing bees."

Heavy bee losses last year in Ontario and Québec were suspected due to accidental poisoning by the pesticides Imidacloprid, Clothianidin and Thiamethoxam, all substances restricted from use in the E.U.

The Department of Health said it is now attempting an accurate count of bee deaths since 2012.



"We are carefully examining the incident reports," the department told *Blacklock's* in a statement, adding it would propose voluntary measures "in time for the 2014 planting season." Some \$2 billion in Canadian farm production relies on bee pollination, according to the Department of Agriculture.

"There are a number of factors that enter into bee mortality here in Canada as well as around the world," said Agriculture Minister Gerry Ritz; "There are a number of different new mites and diseases that bees are taking on, as well as pesticide residue."

Ritz said any measures to protect bee colonies will follow the Health Canada investigation.

"We understand they're doing everything they can to get it out as quickly as they can," he said.

Canada has 645,000 bee colonies with two-thirds located west of Manitoba, by federal estimate.



ON A FAMOUS RIVER, NO FISHING

One of Canada's largest runs of wild Pacific salmon has dropped to its lowest level in generations, prompting the closure of local commercial and sport fishing.

The dwindling population of returning salmon in British Columbia's Skeena River led the Department of Fisheries to suspend the catch for 2013.

"It's probably the worst I've seen and I have been here for thirty years," said Dr.

Brian Riddell, president and CEO of the Pacific Salmon Foundation; "We have had two bad years of marine survival back to back, and that is leading to an extraordinarily poor return in sockeye."

The federal fisheries department suspended this year's catch after concluding the Skeena River's sockeye population – the second-largest in the country – is "forecast to return in numbers

below the threshold to allow for retention in recreational fisheries."

Department officials did not take *Blacklock's* questions.

"Things can change quickly," said Riddell. "In the past if you had a bad year you might recover very quickly."

However, the "dreadful" salmon numbers are not limited to the prized sockeye, said Jezz Crosby, chair of the Skeena Angling Guides Association.

"The Chinook salmon

is about half of what it should be," said Crosby; "It's desperate. Something has got to break and it will."

The Department of Fisheries tracks the salmon count through its Skeena Tye Test Fishery. Authorities tracked 289,000 salmon "when it should be two million," said Crosby.

Fisheries biologists have tracked salmon on the Skeena River since 1955.



FEDS TAKE SCISSORS TO REGULATIONS



The Department of Northern Development proposes a major deregulation of northern petroleum and mining ventures, analysts tell *Blacklock's*.

Amendments are expected to reduce the number and scope of federally-mandated regulators in the Northwest Territories. The region currently has twelve boards on land use, environmental impact, wildlife, energy and water.

"It's really just about deregulation," said Kevin O'Reilly, of the Yellowknife group Alternatives North.

The department in a little-noticed change in 2012 clawed back a requirement for public hearings on the disposal of toxic waste in the Arctic. Under the amendment to the *Northwest Territories Waters Regulations*, oil and gas companies can bypass local land and water boards in applying for National Energy Board permits for on-site disposal of chemical and saltwater drill waste. Companies had previously been required to truck the waste to disposal sites in Alberta and British Columbia, or submit to public environmental assessments.

"Obviously there is an overarching agenda to chip away at the regulatory system wherever possible," said Shauna Morgan, a Yellowknife-based analyst for the Pembina Institute.

Parliament on May 22 passed Bill C-47, *An Act To Enact The Nunavut Planning*

And Project Assessment Act And NWT Territories Surface Rights Board Act, that standardized surface rights regulations in the territories.

Analysts said the next step for cabinet would be to amend the federal law that oversees existing boards overseeing the petroleum and mining industries, the *Mackenzie Valley Resource Management Act*. A 2010 cabinet document, *Action Plan to Improve Northern Regulatory Regimes*, contemplated a single board in Yellowknife to centralize regulation of land and water issues.

"Once the feds are sure they have control over future amendments they will likely move forward with the proposed amendments to the Act," said Morgan.

"No one in the North thinks this is a good idea," said Western Arctic MP Dennis Bevington, New Democrat northern development critic. "It's been more a case of, 'This is what the government wants it to be, this is what it's going to be.'"

In the Northwest Territories, currently five land and water boards are responsible for gauging community views and environmental impacts of development. First Nations to date have yet to finalize two large land claim agreements, and completed only one land use plan with zoning for development and conservation.

The Department of Northern Development did not comment on pending regulatory changes. In a statement, authorities said their objective was to "ensure timely, efficient and effective project reviews, promote business confidence and capital investment, while strengthening our environmental standards and Aboriginal consultations."

CPR CITED FOR "ANNOYANCE"



A two-year noise complaint against one of the nation's biggest railways has ended with a Canadian Transportation Agency order that's cheered residents of a Prairie neighbourhood.

The agency, citing Canadian Pacific Rail for "a high degree of annoyance", ordered the railway to restrict overnight traffic of locomotives into its Alyth Yard shops in southeast Calgary.

"It took dogged determination to deal with this," said L.J. Robertson, one of a band of neighbours who took their noise complaint to federal regulators. "We were told there was no way our group was going to take on the CPR; we hope this decision gives impetus to others with similar issues who are thinking of throwing in the towel."

Neighbours in Calgary's Inglewood district counted up to 25 locomotives a day shunted in and out of an Alyth Yard maintenance centre, often idling nonstop overnight. The Transportation Agency cited evidence the low frequency rumble of the engines was enough to rattle windows and dishes.

"Residents of those dwellings cannot escape the noise within the confines of their own houses and, as a result, they are exposed to this disturbing noise during all hours of the day and night," the agency reported.

Investigators ruled the CPR was in contravention


of the *Canada Transportation Act*, Section 95.1 that states railways "shall cause only such noise and vibration as is reasonable"; and banned locomotive traffic within 400 metres of the Alyth Yard shop between 11 pm and 7 am.


"The railway has always been an integral part of the neighbourhood," said Robertson, redevelopment director of the Inglewood Community Association. "We used to find the sound of the yards charming – until the traffic doubled, and then it became hell."

CP counsel had argued the noise was "not unreasonable" under federal law, noting that neighbours were subject to daytime jet flyovers and sounds of traffic from nearby freeways – a submission the agency dismissed as irrelevant since they did not occur when residents would normally sleep.

The agency last March similarly cited a U.S. railway, CSX Corp. for idling locomotives at a switching junction in Huntingdon, Que. In the CSX case a panel also determined the rumble from engines idling around the clock was loud enough to rattle windows.

Investigators calculated the noise from the Alyth Yard locomotives reached 68 decibels. A reading of 50 decibels is the sound of a typical dishwasher; 70 decibels is a lawnmower at thirty metres.

 BY JUSTIN LING

 BY STAFF

“On Paper It Sounds Great”

New Department of Immigration rules that target the hiring of foreign workers who speak neither French nor English do not go far enough in curbing the practice, says a union that challenged the department in Federal Court.

Regulations stipulate employers must now demonstrate a “bona fide” need for workers to speak a language other than French or English when applying for permits to hire foreigners.

“On paper it sounds great,” said Mark Olsen, business manager for the Construction & Specialized Workers’ Union Local 1611 of Vancouver; “But if you are a company that already has a large number of workers who cannot speak French or English, the incentive is there to hire even more foreign-language speakers as a ‘bona fide’ requirement of the workplace.”

Labour Minister Kellie Leitch was unavailable for comment, and no immigration department official agreed to an interview. In a regulatory notice, the department did not define its “bona fide” criteria.

“It should be French and English, period,” said Olsen. “You have to speak

the language of the Canadian workplace.”

Local 1612, and the International Union of Operating Engineers’ Local 115 earlier challenged 201 immigration work permits issued in March 2012 to HD Mining International Ltd., operator of a coal mine at Murray River, British Columbia. The mine hired temporary foreign workers from mainland China after identifying Mandarin as a language at the worksite, though federal regulations state employers must take “reasonable efforts” to hire Canadians ahead of migrant workers.

A federal judge upheld the permits in a May 21 ruling. However court documents showed the Department of Human Resources worried the Mandarin worksite “raises some concerns regarding the employer’s ability to attract, train and transition to Canadian workers” as required under the Temporary Foreign Worker Program. An official who approved the Chinese coal miners’ permits wrote in an assessment report he was “unaware of any Temporary Foreign Worker Program policy that would allow for a refusal based on workplace language.”

Under amendments to *Immigration and*

Refugee Protection Regulations, employers who now apply to hire foreigners, excluding farm workers, must require that migrants speak French or English – or “provide a justification that their requirement for a language other than French or English is essential for performing the duties of the job.”

Authorities gave no examples, but wrote in a notice that language rules would mainly affect employers in B.C., Alberta, Ontario and Québec; and that it would impact trucking companies, manufacturers, food processors, contractors, building trades, cooks, hotel workers and performers.

Olsen said the program has acted as a disincentive to firms to provide wages and benefits that attract Canadians job-seekers.

“There are employers who’ve proven the highest wage they want to pay is the minimum wage, whether it is at Tim Hortons or an underground mine,” said Olsen. “Who works for that kind of wage? It will be the poor from overseas.”

The immigration department reported that each year 5,845 Canadian employers apply for migrant labour permits in workplaces that speak neither English nor French.

 BY TOM KORSKI

FEDS FIX FOREIGN HIRE FEES

Employers face millions of dollars in new user fees to hire foreign workers.

A \$275 flat fee will be charged for every position that employers apply to fill through the Temporary Foreign Worker Program, according to new rules by the Department of Citizenship and Immigration. The charge will not apply to farm workers.

“Industrial contractors can probably absorb that fee, but it is really going to hit the food services and hospitality industries,” said MP Brent Rathgeber. “Employers are going to be hit very hard, especially in low-margin sectors.”

No immigration official would consent to an interview. Authorities wrote in a regulatory notice that the user fee – expected to raise more than \$23 million a year – was intended to cover the costs of processing applications.

A total 182,714 jobs were filled under the migrant worker program last year, by official estimate.

“In regions of this country like mine, temporary foreign workers are not a luxury; they are a necessity,”

said Rathgeber, Independent MP for Edmonton-St. Albert. “Even a small franchisee might have twelve to twenty temporary foreign workers on the payroll.”

Edmonton has a jobless rate of 4.6 percent, compared to 3.7 percent in Regina; 3.9 percent in Saskatoon; 6.3% in Winnipeg and Ottawa; 6.5 percent in Vancouver; 6.6 percent in Halifax; 7.1% in Moncton; 7.8 percent in Toronto; 8.2 percent in Montréal; and 11.2 percent in Saint John.

“There are regions of this country where our members have no option but to hire temporary foreign workers,” said Joyce Reynolds, executive vice president of government affairs for the Canadian Restaurant and Foodservices Association.

“Without temporary foreign workers businesses would shut down,” said Reynolds. “This program has been a lifesaver; it’s a real concern to us that the program has been maligned.”


Changes under the *Immigration and Refugee Protection Regulations* followed a public outcry over uses of the system by the Royal Bank of Canada, which

publicly apologized after instructing 45 IT staff in Toronto to train their South Asian replacements; and HD Mining International Ltd., a Murray River, B.C. operation that contracted 201 mainland Chinese miners after listing Mandarin as a language requirement.

“Our members are prepared to help carry the cost of the program if it leads to service improvements,” said Reynolds, who noted restaurant and food service employers have waited months for processing of work permit applications.

“There are very, very long delays now,” said Reynolds. “If attaching a fee improves service, we’re okay with that – but it has to lead to improvements in how long it takes to process applications.”

The immigration department also imposed a new requirement that employers who require workers to speak other than English or French must demonstrate a “bona fide” need for foreign language in their workplace. The department estimated some 1,700 employers would be impacted by the change.

 BY STAFF

Must Be Contract Workers

Canada has among the “lightest regulations” on contract workers of any industrialized country, according to an OECD study.

Of 34 nations, Canada ranked 32nd just ahead of New Zealand and the U.S. with the fewest regulatory protections of temporary workers, according to analysts at the Paris-based Organization for Economic Co-operation and Development.

The OECD rated factors such as job protection, notification of firing, severance pay, and rules on contracts and employment agencies in its study, *Protecting Jobs, Enhancing Flexibility: A New Look At Employment Protection Legislation*.

“These are workers who not only have lower levels of income, they have greater insecurity,” said Jim Stanford, economist with the Canadian Auto Workers. “It’s clearly given rise to inequality and what we call the working poor.”

“Not knowing how much you’re going to make or how many hours you’re going to get next month or next season absolutely inhibits families from making the investments that are needed for healthy communities,” Stanford added.

Analysts contacted by *Blacklock’s* noted an increasing number of contract workers in industries like telecommunications.

“We’ve seen a substantial increase since 2005 when companies put new language on contracting-out into the collective agreement,” said Lee Riggs, president of the Telecommunications Workers Union. “The numbers are substantial.”

There is no federal count of Canadian workers hired by contract. Analysts noted the state of regulations on contracted employment has led to increased



complaints by self-represented workers at provincial employment standards agencies.

“Hiring and firing is the tip of the iceberg,” said Ali Li Lim, executive director of the Vancouver-based West Coast Domestic Workers Association.

“One of the biggest issues that we are facing is the enforcement of bare minimums,” said Lim. “It is up to you as the individual with a complaint to seek enforcement, which is difficult given the power differential between employer and employee.”

Canada’s ranking in the OECD study was similarly low in previous comparative surveys in 2004 and 1999.

“One difference is we are dealing with issues that we never dealt with before, in part because of a new crowd of human resources staff,” said Toni Hawkins, business manager for the Canadian Energy Workers Association. “We do our best to at least force employers to follow legislation.”

 BY TOM KORSKI
[IMAGE LIBRARY & ARCHIVES CANADA]

Best of Sheree



“SOME SERIOUS BAD BLOOD”

A British Columbia man is claiming victory after years of court challenges by his employer over the unfulfilled promise of a bonus.

A Supreme Court dismissal handed Olaf Bork a \$60,000 bonus after his employer, Canwood International Inc., reneged on its written promise to pay up. Canwood had disputed the payment through years of hearings at B.C.’s Employment Standards Tribunal, Superior Court and Court of Appeal.

“Experienced counsel typically know when to hold ‘em and when to fold ‘em,” said Prof. Mark Thompson, of the

University of British Columbia’s Sauder School of Business. “There has to be some serious bad blood for people to be doing this.”

Bork received a written promise of the bonus from Canwood International in 2007. He was subsequently laid off as an employee and rehired on a contract basis – a point the company cited in claiming its offer of the bonus was void.

“That is an argument that does not have much sophistication,” said Professor Thompson; “It’s not what you are now, it’s what you were then. Lots of people cease to be employees; that is usually when

they launch action under the *Employment Standards Act*.”

The B.C. Director of Employment Standards ruled Canwood was in breach of its promise and ordered the company to pay Bork his \$60,000 plus vacation pay, statutory interest and a \$500 penalty.

Canwood Inc. had unsuccessfully argued it was not subject to provincial labour law since it operated a federally-regulated business, harvesting lumber on First Nations lands.

A Supreme Court panel declined to hear Canwood’s final appeal.

 BY DALE SMITH

Review: David v. Goliath

In 2012 three residents of Huntingdon, Que. complained one of the biggest transport companies on the continent, CSX Corp., was ruining their lives. CSX began shunting freight cars through the town at all hours. Locomotives idled for days at a time; the rumble of diesel engines was so disruptive it rattled windows. Neighbours could not escape the noise inside their own homes.

One resident, Shirley O'Connor, said she begged CSX to expropriate her house; no one would buy it, and she could not afford to move. Finally driven to desperation, Mrs. O'Conner filed a formal complaint with the Canadian Transportation Agency – and won. A federal panel ordered the billion-dollar corporation to find another place to switch its freight cars.

So, we come to the poignancy of *Unjust By Design*, an analysis of the nation's administrative tribunals like the Transportation Agency. These are the obscure boards that rule over pensions, labour standards, workplace compensation, landlord and tenant disputes and a million other David and Goliath battles that affect ordinary lives.

Not all tribunals are as competent as the Canadian Transportation Agency.

"What judicial tribunals do really matters – often desperately," writes author Ron Ellis. Yet they are held to little independent scrutiny; they are often run by patronage hacks; and many people are indifferent to their function. As Ellis puts it, "Hardly anyone cares."

Ellis is an Osgoode professor and a member of the bar for 50 years. *Unjust by Design* is an unnerving exposé of a system with sweeping powers – like the notorious Ontario Rental Housing Tribunal that evicted more than 150,000 tenants in a five-year period without any judicial scrutiny.

"What judicial tribunal members do is too important for them to be pursuing their own political or ideological goals, or dabbling in public service, or wending their way to a comfortable retirement," writes Ellis. "Just like judges, they are engaged in serious business where the consequence of getting things wrong may be the infliction on the parties

Unjust by Design

Canada's Administrative
Justice System

Ron Ellis

who appear before them, and on their families, of injustices and hardships of the gravest kind."

In the U.S. adjudicators have been vetted for competence since 1946. In the U.K. tribunals have been scrutinized by a federal agency since 1958. In Australia the work of panels is similarly reviewed by statute since 1975.

In Canada – nothing. Appointments are subject to patronage, with little oversight of decisions or checks for competence.

"In many U.S. states, a judge's position is an elective office, and Canadian lawyers have always been smugly dismissive of the U.S. practice of electing and/or re-electing judges," Ellis writes; "Never do we stop and think that, in Canada, thousands of judicial tribunal adjudicators with as much power as elected U.S. judges to decide rights disputes, inflict injustice, and cause harm are subject to a system of idiosyncratic renewal that is obviously far less principled than even an election-based system."

Unjust by Design is unsettling. It documents a kind of back-alley justice system that functions without any of the controls we impose on courts. "A train wreck," Ellis calls it. And it does not appear to matter – unless you are a tenant, or an injured worker, or a homeowner whose lifetime equity is lost to CSX Corp.

BY HOLLY DOAN

Unjust by Design, by Ron Ellis; UBC Press; 388 pages; ISBN 9780-7748-24781; \$34.95

"REUNIFICATION" a poem by Peter Gibbon

My favourite Korean folk tale
is designed to teach children proper hygiene
although it plays out like a nightmare:

If you cut your toenails & forget to clean
up the clippings
rats will eat it, become an exact replica
of yourself
& turn up at your door.

Your identities will be indecipherable to
your father
& your position in the household is
diminished
by at least half.

My second favourite folk tale concerns a
pickled, yellow king
who sends his Turtle Doctor to find a
new liver.
The first animal outside the kingdom he
finds
is a rabbit.

When they improvidently show their hand
Rabbit insists it's too valuable to travel with.
He is released in good faith
& according to the story, he ends all
benders.

When the doctor demands his dues
the rabbit stifles a laugh: "Why would I
give you that?
You know I can't live without it,"
& bounds off.

(*Editor's note:* the author is manager of Conduit Canada and currently lives in South Korea; he has published with Ottawa's *In/Words Magazine*, Apt. 9 Press, *Bywords* and Toronto's *The Puritan*)



Agostinho, Luis – of Toronto, reappointed a member, Immigration & Refugee Board, Toronto Office, effective Nov. 15

Archibald, Bruce – of Ottawa, appointed president, Canadian Food Inspection Agency, with a salary in the range of \$216,900 to \$255,100, Aug. 12

Belisle, Richard – of Longueuil, Que., appointed a member, Parole Board of Canada, Quebec Division, July 2

Biggs, Margaret – of Ottawa, appointed Senior Advisor, Privy Council Office, with a salary in the range of \$216,900 to \$255,100, July 8

Cunningham, Lynne – of Calgary, reappointed a member, Immigration & Refugee Board, Calgary Office, Sept. 1

Ellis, Karen – of Ottawa, appointed president, Federal Economic Development Agency for Southern Ontario, with a salary in the range of \$188,600 to \$221,800, Aug. 12

Fraser, Graham – of Ottawa, reappointed Commissioner of Official Languages, effective Oct. 17

Gagnon, Yves – of Ottawa, appointed Ambassador to Cuba, with a salary in the range of \$131,200 to \$154,300, Aug. 12

Glover, Paul – of Ottawa, appointed Associate Deputy Minister of Health, with a salary in the range of \$188,600 to \$221,800, July 8

George, Roland – of Calgary, reappointed a member, National Energy Board, Aug. 8

Glover, Paul – of Ottawa, appointed Associate Deputy Minister of Health, with a salary in the range of \$188,600 to \$221,800, July 8

Hall, James – of Toronto, appointed a director, Atomic Energy of Canada Ltd., Aug. 1

Kowal, Harry – of Ottawa, appointed Principal, Royal Military College, with a salary in the range of \$167,700 to \$197,200, Aug. 1

Lafleur, Annie – of Montreal, reappointed a member, Immigration & Refugee Board, Montreal office, effective Nov. 15

McKenzie, Guy – appointed president, Economic Development Agency of Canada for the Regions of Quebec, with a salary in the range of \$216,900 to \$255,100, July 1

Natynczyk, Gen. (Ret'd.) Walter – of Ottawa, appointed president, Canadian Space Agency, with a salary in the range of \$216,900 to \$255,100, Aug. 6

Oden, Marlie – of Vancouver, appointed a director, CBC, July 30

O'Sullivan, Susan – of Ottawa, reappointed Federal Ombudsman for Victims of Crime, with a salary in the range of \$121,700 to \$143,100, Aug. 16

Paradiso, David – of Ottawa, appointed interim chair, RCMP External Review Committee, with a salary in the range of \$139,900 to \$164,500, Aug. 1

Paul, David – of Perth Andover, N.B., appointed Deputy Chief Commissioner, First Nations Tax Commission, Aug. 6

Payette, Julie – of Montreal, appointed CEO, Montreal Science Centre, and vice president, Canada Lands Company, July 15

Saccomani, Bruno – of Ottawa, appointed Ambassador to Jordan, with a salary in the range of \$131,200 to \$154,300, August 30

Sokolyk, Diane – of Montréal, appointed acting Assistant Deputy Chair, Immigration & Refugee Board, Montreal Region, with a salary in the range of \$121,700 to \$143,100, June 27

Uppal, Atam – of Toronto, reappointed a member, Immigration & Refugee Board, Toronto region, July 17

Vreeswijk, Wilma – of Ottawa, appointed Associate Deputy Minister of Citizenship & Immigration, with a salary in the range of \$188,600 to \$221,800, effective Sept. 17

Zicherman, Doris – of Montreal, reappointed a member, Immigration & Refugee Board, Montreal Office, effective Oct. 18

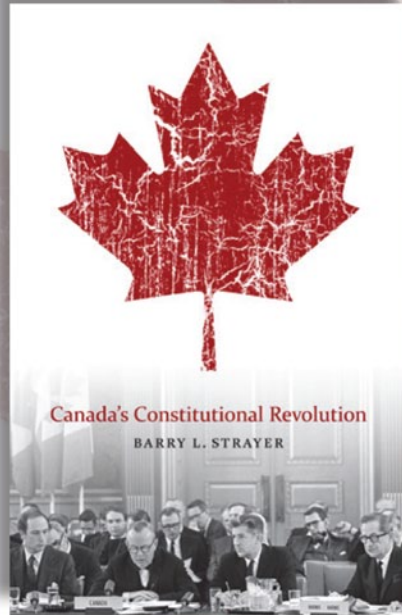
HAVE YOU READ US LATELY?



THE UNIVERSITY of ALBERTA PRESS

Canada's Constitutional Revolution

Barry L. Strayer



The Honourable Barry L. Strayer's political memoir on Canadian constitutional reform, 1960–1982.

360 page
\$34.95 paper

978-0-88864-649-1

www.uap.ualberta.ca

Orders | 1 877 864 8477
Info | ccrooks@ualberta.ca

Droits devant
Rights for you

www.plaideurs.ca

At CazaSaikaley, our experience in advocacy is to your benefit. We provide bilingual litigation and service excellence in all areas of media law, public law and civil litigation. Our knowledge and talent ensure that you receive excellent legal representation.



www.robinbakerartist.com

On the environment,
on the record.

EnviroHansard.ca

www.blacklocks.ca