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pour la période du 28 décembre 2016 au 9 janvier 2017

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## **(QUEBEC) La grève des oubliés de l'État**

**Gilbert Lavoie, Le Soleil, le 4 janvier 2017**

En pleine tempête de neige, alors que les fonctionnaires reprenaient confortablement leur travail, les grévistes se sont rassemblés à partir de 8h30. Ils ont attendu sagement qu'on leur donne le mot d'ordre d'aller porter leur piquetage autour des édifices parlementaires. Un piquetage symbolique, puisque les bureaux des députés et des ministres étaient encore déserts. Même la police de Québec, qui surveillait leurs piquets de grève avant Noël, avait pris congé en ce mercredi matin.

C'est ça, le problème des juristes : ce sont des travailleurs de l'ombre, des professionnels qui représentent le gouvernement devant les tribunaux et qui conseillent les ministères. Contrairement aux Rambo de la FTQ-Construction qui paralysent les chantiers, contrairement aux policiers qui font la grève des contraventions, contrairement aux Autochtones ou aux agriculteurs qui bloquent des routes... Bref, contrairement à tout le monde, les avocats et les notaires du gouvernement n'ont pas de moyens de pression évidents pour le grand public. Ils ne jouissent pas de la sympathie accordée aux infirmières, par exemple, parce que ce sont des professionnels bien payés qui ne font pas pitié. Et comme si ce n'était pas suffisant, la plupart des journalistes ont des amis ou des proches parmi ces grévistes, ce qui est mon cas, et ce qui commande une certaine retenue.

Personne ne croyait que le gouvernement laisserait «sécher» ces serviteurs de l'État sur le trottoir aussi longtemps. Tout le monde pensait que ça se terminerait par une loi spéciale, mais le gouvernement a opté pour la ligne dure. L'explication officielle est que l'on créerait un précédent coûteux en cédant aux demandes des juristes qui veulent le même traitement que les procureurs de la Couronne. On m'a expliqué que contrairement aux procureurs, les avocats du gouvernement ne plaident pas devant les tribunaux. C'est faux. On m'a aussi déclaré que les procureurs doivent être indépendants du pouvoir dans leur travail, comme les juges. Serait-ce que le gouvernement croit que ses avocats et ses notaires sont les valets des politiciens?

En fait, les juristes avaient auparavant un statut et des conditions de travail s'apparentant à ceux des procureurs de la Couronne. Ils avaient même fait la grève ensemble en février 2011, avant de se faire rappeler au travail par une loi spéciale. Mais les juristes ont réglé les



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premiers, en juillet 2011, sur une simple promesse de discuter d'un nouveau mode de négociation, ce qu'on leur a refusé par la suite. Les procureurs ont laissé traîner les choses deux mois de plus. C'est ce qui leur a permis d'obtenir un nouveau mode de détermination des salaires basé sur les recommandations d'un comité indépendant. J'ai l'impression que c'est à ce moment-là que les juristes se sont fait avoir, en réglant sans attendre les procureurs. Ils veulent aujourd'hui corriger cette disparité.

Je ne sais pas trop qui gagne et qui perd dans ce conflit. À première vue, c'est l'employeur parce qu'il n'a rien cédé et que les grévistes avaient surestimé leurs moyens de pression. Mais le gouvernement avait sous-estimé la détermination des grévistes qui ont rejeté à 97 % les dernières offres, juste avant Noël. Après un tel vote, c'est le cul-de-sac. Ça finira par se régler, mais imaginez un peu l'atmosphère de travail quand ces 1100 employés reprendront le travail avec une importante dette de grève qu'il leur faudra rembourser pendant des années.

## **(QUEBEC) Les juristes réclament la reprise des négociations**

ICI Radio-Canada, le 4 janvier 2017

**De retour aux piquets de grève mercredi à Québec et à Montréal, les avocats et notaires de l'État québécois demandent la reprise des négociations avec le gouvernement pour renouveler leur contrat de travail échu depuis le 31 mars 2015.**

Les juristes membres de l'association des avocats et notaires de l'État québécois (LANEQ) ont manifesté en matinée à Québec au parc de la Francophonie et devant le bureau du Conseil du Trésor pour mettre de nouveau de la pression sur le gouvernement.

Le président de LANEQ, Jean Denis, soutient que les avocats et notaires de l'État québécois, bien qu'en grève générale depuis plus de 10 semaines, gardent le moral et sont plus déterminés que jamais à en arriver à une entente.

Le mandat est extrêmement fort et les gens ont même dit : quand on n'aura plus de fonds de grève, on va continuer quand même!

Le président de LANEQ, Jean Denis

Jean Denis rappelle que le 21 décembre dernier, lors d'une assemblée générale, les offres du gouvernement ont été rejetées à 97 % et les membres ont voté à 90 % pour la poursuite de la grève.



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### **Projets de loi en attente**

Sans dévoiler les sommes qui subsistent dans le fonds de grève, M. Denis soutient néanmoins que les avocats et notaires peuvent maintenir la grève suffisamment longtemps pour perturber les activités de l'Assemblée nationale.

« On est tellement capable de continuer un joli bout de temps qu'on va mettre en péril les projets de loi qui devront être déposés d'ici le 21 janvier à l'Assemblée nationale et on peut mettre en péril également tout ce qui a trait au dépôt du budget. »

Actuellement, les légistes qui préparent les projets de loi sont en grève et seuls les projets de loi qui sont déjà déposés à l'Assemblée nationale vont pouvoir être étudiés en commission parlementaire, souligne M. Denis.

LANEQ affirme que la grève des juristes a déjà conduit à la suspension d'une vingtaine de projets de loi et au report de 3000 causes devant les tribunaux.

Durant les fêtes, deux rencontres « exploratoires » ont eu lieu, le 27 décembre et le 3 janvier, avec la secrétaire associée à la négociation intersectorielle, mais sans reprise véritable des négociations. Le président de LANEQ demande au gouvernement de « mettre de l'eau dans son vin » afin de dénouer le conflit.

Les grévistes souhaitent obtenir la parité avec les procureurs aux poursuites criminelles et pénales. Leurs demandes portent principalement sur la réforme de leur régime de négociation.

## **Phénix: le gouvernement devra travailler avec les syndicats**

**Paul Gaboury, Le Droit, le 6 janvier 2017**

Après avoir été à couteaux tirés depuis l'implantation du système de paye Phénix, le gouvernement devra désormais travailler de concert avec les syndicats pour tenter de résoudre le plus rapidement possible tous les problèmes.

En juin 2016, l'Alliance de la fonction publique du Canada (AFPC), avec une douzaine d'autres syndicats fédéraux, avait déposé une « requête en mandamus » pour obliger le gouvernement à payer ses employés à temps. Or, après plusieurs mois d'attente, le tribunal a rendu une ordonnance, avec le consentement des deux parties, qui risque de changer bien des choses d'ici à ce que la saga Phénix soit réglée.

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Le juge James O'Reilly précise que le gouvernement fédéral travaillera avec les syndicats par le biais d'un comité de consultation syndicale-patronale pour résoudre les problèmes d'administration de la paye survenus à la suite de la mise en oeuvre de Phénix.

Le Comité servira de tribune « ouverte et transparente » pour discuter de l'éventail des options possibles pour résoudre ces problèmes. Ce comité consultatif pourra, s'il le juge utile, rendre des rapports publics et partager de l'information avec la population.

« Le gouvernement pourra au besoin continuer à présenter des comptes rendus publics techniques ou autres et à tenir les employés, le Parlement ou toute autre entité au courant des progrès réalisés en ce qui concerne les problèmes d'administration de paye », précise le juge O'Reilly.

Le gouvernement devra maintenir une équipe spécialisée de conseillers en rémunération « aussi longtemps qu'il le faudra pour remédier aux perturbations de revenu subies par toute personne qui prend un congé d'invalidité, un congé de maternité ou un congé parental », et qu'il prendra « toutes les mesures nécessaires pour voir à ce que de tels problèmes se règlent le plus rapidement possible ». Il devra aussi veiller à ce que toute personne qui prend un congé d'invalidité, un congé de maternité ou un congé parental ne se voie pas refuser les « services de paiement d'urgence » ou la « paye prioritaire » parce qu'elle est en congé.

L'ordonnance réaffirme l'engagement déjà pris par le gouvernement, soit « de maintenir les bureaux de paye satellites et des centres d'appel ouverts aussi longtemps qu'il le juge nécessaire pour régler les problèmes d'administration de la paye qui subsistent ».

L'ordonnance de la Cour fédérale ne met pas un terme à la poursuite judiciaire lancée par l'AFPC et d'autres syndicats en juin. Les syndicats pourront retourner en cour s'ils jugent que le gouvernement ne fait pas le nécessaire pour régler les problèmes du système.

« En sachant mieux ce qui a causé les ratés de Phénix, l'AFPC pourra garder un oeil sur le gouvernement et veiller à ce qu'il ne répète pas ses erreurs au moment de lancer d'autres projets de modernisation », a réagi l'AFPC.

Pour sa part, la ministre Judy Foote a fait savoir que le gouvernement entend continuer à travailler en collaboration, et ce à tous les niveaux, pour remédier le plus rapidement possible au problème Phénix, héritage laissé par l'ancien gouvernement conservateur, a-t-elle rappelé vendredi dans un courriel transmis au *Droit*.

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« Cette entente illustre encore une fois l'engagement qu'a pris notre gouvernement de résoudre les problèmes de paye liés à Phénix qu'éprouvent actuellement les employés. (...) La priorité consiste à régler ce problème dont nous avons hérité », a indiqué la ministre Foote.

## **Senior bureaucrat overseeing troubled Phoenix pay system to retire**

**Brigitte Fortin to leave Public Service and Procurement Canada at the end of January**  
**Katie Simpson, CBC News, January 6 2017**

One of the most senior bureaucrats overseeing the Canadian government's troubled Phoenix pay system is retiring.

Brigitte Fortin, an assistant deputy minister at Public Services and Procurement Canada (PSPC), will leave her post as of Jan. 28, according to an internal memo obtained by CBC News.

"We are writing to announce the retirement of Brigitte Fortin after more than 35 years of public service," the notice says.

"She has served our department in a variety of leadership roles in this branch since 2005, has had a remarkable career and has made significant contributions to the public service."

Fortin is one of several architects of Ottawa's payroll modernization plan, which has caused financial hardship for tens of thousands of public servants and their families. Workers have been underpaid, overpaid or not paid at all since Ottawa implemented the new Phoenix program last February.

As assistant deputy minister responsible for the accounting, banking and compensation branch of the department, Fortin had extensive involvement with the planning, launch and subsequent attempts to resolve problems related to Phoenix.

Fortin will be replaced by Alex Lakroni, a former assistant deputy minister who recently led the Canada Post Corporation Mandate Review.

"Alex will bring a strong track record of financial management to his new role," the memo says.

### **Department turnover**

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The announcement of Fortin's retirement comes after another senior bureaucrat involved in the Phoenix pay controversy was shuffled out of her role last fall.

Rosanna DiPaola, who served as an associate assistant deputy minister at PSPC and also had extensive involvement with the pay modernization program, was relieved of her decision-making duties and given a new "special advisory" role.

Fortin did not personally respond to questions from the CBC about her retirement.

A spokesperson from her office, James Stott, said in an email that "Fortin's retirement was a planned, personal decision."

No managers have been fired as a direct result of the bungled implementation of Phoenix.

### **Pay problems continue**

PSPC won't release the total number of employees who have experienced problems since the launch of Phoenix.

As of July 1, at least 80,000 workers had been paid incorrectly; however, the department won't say exactly how many employees have come forward to complain since that date.

PSPC officials have explained it is tracking the number of transactions being processed, rather than the number of people who have experienced problems.

The government missed its own self-imposed deadline to clear that backlog by Oct. 31, 2016.

At the department's last technical briefing on the Phoenix system, it said 10,000 employees were still waiting for their issues to be resolved.

The department blamed complicated cases, with problems that predated the new system for the slow resolution time.

Since pay problems gained national attention last summer, Ottawa has hired more than 200 compensation advisors to resolve pay issues and opened a call centre in Toronto to field inquiries.

The system was supposed to save the government \$70 million per year as of 2016.

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But because of the additional staffing hires, and other complications, problems have cost \$50 million to fix.

## **PHOENIX FALLING - Tax headaches expected from payroll fiasco**

**Public servants with pay problems will have to do own calculations and carefully check T4s**  
**Julie Ireton, CBC News, December 30 2016**

With the new year on the way, many federal public servants who are still caught in the midst of the Phoenix payroll fiasco are worried and confused about filing their taxes.

Global Affairs policy analyst Jonathan Chambers said his pay problems started in January — and he's now owed more than \$16,000. And he's not alone.

[Tens of thousands of bureaucrats have been overpaid and underpaid](#) since the federal government launched the Phoenix pay system earlier this year.

"My first problem was that I didn't get paid at all for the work that I was doing from January to mid-February," said Chambers, who said he's still only getting paid about half of what he should be making.

Chambers is worried that if he's not paid what he's owed by December 31, then gets the lump sum reimbursed, there will be an impact on his 2017 taxes. He said he hasn't been able to get straight, easy answers when he's called Public Services and Procurement Canada or the Canada Revenue Agency.

### [CRA 'prepared' for Phoenix-related tax issues](#)

CRA director general Randy Hewlett said he wants to reassure public servants that these types of situations are not complicated.

"The CRA is prepared for issues specifically related to Phoenix," Hewlett said.

Marie Lemay, the deputy minister of Public Services and Procurement Canada, recently told the media that the government is aware that workers are concerned about the tax problems created by Phoenix.

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"We have been working very hard. We've worked with the Revenue Canada agency to minimize potential problems and provide the information they need," said Lemay.

According to the frequently asked questions about Phoenix on the [CRA website](#), "if an amount is owed to you in 2016, but is only paid to you in 2017, that payment will be reported on your 2017 T4 even though it was owed for 2016."

In Chambers' case, he will likely pay lower income taxes than usual in 2016 — and higher income taxes than usual in 2017.

That means Chambers, and others like him, will likely be in a higher tax bracket when he is finally paid what he is owed.

### Financial decisions delayed

Unions representing federal government workers said these issues still need to be addressed by the departments.

"Until it gets resolved, it's going to be hard to kind of move forward with the financial decisions that we were going to be making, in terms of putting it away for savings," said Chambers, who figures he may have to hire an accountant to figure out his taxes over the next couple of years.

Ottawa tax lawyer, David Debanham, doesn't think the tax confusion is the biggest problem for those caught up in the Phoenix fiasco.

"To my mind the real problem is people who are living paycheque to paycheque. So that if they don't get their paycheque on time, they're now in negative cash flow and they have to borrow at exorbitant rates to make up the difference," Debanham said.

Added to his tax concerns, Chambers said it also appears on his pay stub that he's not paying into either the pension or benefit plan — but he doesn't know how those omissions will affect him.

"It's been a bit challenging to say the least, both financially and kind of personally, as well. It's created a situation of uncertainty where we're just not really sure when this is all going to be resolved," said Chambers.



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## **Unions put lawsuit against federal government over Phoenix fiasco on hold**

**Federal Court approved consent order just before Christmas to suspend suit, share more information**

**CBC News, December 28 2016**

The Public Service Alliance of Canada and another dozen unions agreed to put their lawsuit against the federal government over the Phoenix payroll fiasco on hold in exchange for more "information sharing and communication" from the government, [according to a consent order approved by Federal Court on Dec. 22.](#)

The unions, which represent federal government workers, launched legal action against the Treasury Board earlier this year in hopes of forcing the federal government to pay its employees properly and on time.

Since moving to the problem-plagued Phoenix pay system in early 2016, tens of thousands of workers have been short-changed or not paid at all. Some have even been overpaid, causing confusion about how they should pay that money back.

But just before Christmas, the unions and the government agreed to a list of conditions, approved by the Federal Court, that will see the Phoenix experts share more information and expertise with the newly resurrected Union Management Consultation Committee.

### [Unions to have access to experts](#)

The agreement calls for the government "to resolve the pay administration issues that have arisen following the implementation of Phoenix." The new union committee is also free to "release reports and share information as it determines necessary for public distribution."

The government can still give technical briefings and updates to the public. It must also make Phoenix experts available to the committee as the group works to help resolve the payroll issues.

According to the consent order, the government will continue to have a dedicated team of advisors as long as there are still payroll problems, and keep satellite pay officers and call centres open to handle Phoenix issues.



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The order made particular mention of workers beginning disability, maternity or parental leave. Workers who changed their pay status often ended up with problems in getting paid. The consent order said these folks will not be denied "emergency replacement pay services" or "priority pay" because they are on leave.

The unions still have the option of resuming court action if they are not satisfied with the government's progress on the issue.

## **Judge shortage forcing Ottawa courts to prioritize criminal trials over civil cases**

**Currently 43 vacancies for federally appointed judges, with 12 more set to retire  
Judy Trinh, CBC News, January 9 2017**

Delays by the federal government in appointing judges are crippling the criminal justice system, Ottawa lawyers say, and causing a domino effect on civil cases across the country.

The most serious criminal and civil trials requiring a jury are tried before Ontario Superior Court judges who are appointed by the federal government.

However, there are currently [43 vacancies for federally appointed judges](#), with another 12 slated to retire in February.

Ottawa medical malpractice lawyer Andrea Gironesi was told just before Christmas that one trial which was set to start in February had been cancelled, even though it had been booked more than a year earlier.

"They set a trial date, and then it collapsed because there's no judge available," Gironesi told CBC News.

Gironesi is representing the parents of a severely disabled girl in a multi-million dollar lawsuit against a doctor and hospital in northern Ontario.

The five-year old girl suffered brain damage during birth after not getting enough oxygen.

They set a trial date, and then it collapsed because there's no judge available.- *Ottawa medical malpractice lawyer Andrea Gironesi*

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Gironesi hasn't been told when the jury trial will be rescheduled, and said it was difficult telling her clients that their fight for compensation has been postponed indefinitely.

It took two years to get the case ready for trial, she said, and hundreds of hours of discovery and depositions.

"One of the parents has to stay at home and care for the child. They've lost that income. The child has mobility problems, so they need ramps, they need an accessible home and extra therapies that [Ontario health insurance] doesn't pay for," said Gironesi.

"There's all kinds of early treatment these people can't access because they are just struggling to survive."

### Postponements until 2019

Cases like Gironesi's — a civil trial being delayed so that criminal trials can be dealt with first — could just be the tip of the iceberg, said Joseph Obagi, an Ottawa personal injury lawyer.

Earlier in 2016, in a case known as Regina v. Jordan, the Supreme Court of Canada ruled that [criminal trials involving serious offences such as murder should be completed in 30 months](#), from the time the charge is laid until the trial's conclusion.

Provincial court trials should be completed within 18 months of charges being laid, the court ruled, but can be extended to 30 months if there is a preliminary inquiry.

"Right now, if a [civil] case is ready to go to trial, and requires more than two weeks and a jury, the next available date is February 2019," Obagi said.

Obagi was told about the delay last week when he arrived at the Elgin Street courthouse in Ottawa to set a trial date. One of his clients is suing an insurance company for damages after suffering "catastrophic injuries" in a motor vehicle accident.

It's the longest delay, said Obagi, that he's seen in his 20-year career as a trial lawyer. In eastern Ontario, there are currently four Superior Court Judge vacancies, he said.

Obagi is criticizing the federal government for being unprepared for those vacancies.

"I want to see the federal government appoint the judges that need to be appointed. We know when these vacancies are coming. We know when judges are going to retire," Obagi said.

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"We know these dates in advance, yet it always seems the government is playing catch-up."

### Supreme court decision causing delays

Anne Weinstein, the president of the Defense Counsel Association of Ottawa, said she also believes courts are under pressure to deal with the backlog in criminal cases first.

Weinstein said she came to that conclusion after an accused murderer walked out of court a free man on a technicality in November 2016.

A first-degree murder charge against 33-year-old Adam Picard was stayed after [a judge found that his case took 44 months to wind its way through the legal system](#), violating his constitutional right to a timely trial.

That decision is [now being appealed](#).

Because of the danger of charges being stayed, my feeling is that civil trials are being pushed back to a later date. *Anne Weinstein, president of the Defense Counsel Association of Ottawa*

"Because of danger of charges being stayed, my feeling is that civil trials are being pushed back to a later date and time and criminal trials ... are getting priority," Weinstein said.

Ontario's Ministry of the Attorney General has not yet provided CBC News with the number of civil trials being pushed back to make room for criminal cases.

But in an email, a ministry spokesperson wrote that a comprehensive plan was in place to "improve the performance of Ontario's criminal justice system so it is faster and fairer."

In December, Attorney General Yasir Naqvi announced that [13 more judges would be appointed to the Ontario Court of Justice](#), while 32 assistant Crown attorneys would also be hired.

The province has also planned to provide more funding to legal aid and hire more court support staff — however, ministry officials did not provide a timeline for when these new hirings would take place.

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## **Lawyers urge government to hire judges to fix 'unacceptable delays' in criminal justice system**

**With more vacancies opening up, shortage expected to worsen**

**Kathleen Harris, CBC News, January 5 2017**

Lawyers from across the country are renewing calls for the federal government to speed up judicial appointments to lessen delays they say are crippling Canada's justice system.

The Canadian Bar Association has written a letter to Justice Minister Jody Wilson-Raybould saying the shortage of judges is contributing to an "acute access to justice problem in Canada." The shortage is causing court delays that have "seriously undermined public confidence in our justice system," the letter reads.

CBA president René Basque told CBC News "unacceptable delays" are affecting the administration of justice.

"It's taxing the whole system: the victims, the accused, the procedures," he said.

According to the website of the Office of the Commissioner for Judicial Affairs, there were 43 vacancies for federally appointed judges as of Dec. 1, 2016. And according to the Privy Council Office website, the situation is growing worse, with another 12 slated to resign or retire by Feb. 16.

The issue of judge shortages and other factors that cause delays in the justice system was thrown in the spotlight last year with a Supreme Court ruling that put a limit on the time a case must reach trial.

**The landmark R. v. Jordan ruling imposes a deadline** of 18 months for provincial court cases, or 30 months in a Superior Court, to uphold an accused person's Charter right to a trial without unreasonable delays. At least two murder cases were thrown out after the decision.

Steps to unlog court system

But Basque expects the ruling will have a positive impact in the long run because it will force politicians to take steps to unlog the court system.

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"It has brought it to light, and brought it to the forefront for decision-makers, the politicians," he said.

"Hopefully it will be on the front burner and they will act more quickly."

In October, Wilson-Raybould appointed 24 new judges and reformed the appointment process, including the makeup of judicial advisory committees that evaluate candidates for the bench and make recommendations to the minister.

### **No advisers appointed yet**

Valérie Gervais, spokeswoman for the minister, confirmed that no appointments to the judicial advisory committees have been made to date, but said they are expected "very soon."

Meantime, hundreds of judicial applications have been submitted since the changes, awaiting assessment by the advisory committees. People who had applied before the new process was implemented were required to reapply.

"Ensuring that criminal matters proceed efficiently and effectively through the justice system is a priority for the minister as well as for her provincial and territorial counterparts who are responsible for the administration of justice," Gervais said. "The government continues to work with all stakeholders to respond to the pressures experienced by our courts across the country."

## **Purging Criminal Code of defunct 'zombie laws' no simple task**

**Outdated offences that are still included in Canada's Criminal Code include duelling, abortion and pretending to practise witchcraft**

**Alyshah Hasham, the Toronto Star, January 1 2017**

Given the epidemic of fake news and the influence it may have had on the U.S. election, Section 181 of Canada's Criminal Code would seem particularly noteworthy.

The charge: spreading false news.

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“Every one who wilfully publishes a statement, tale or news that he knows is false and that causes or is likely to cause injury or mischief to a public interest is guilty of an indictable offence and liable to imprisonment for a term not exceeding two years,” it states.

Except, of course, it was struck down by the Supreme Court of Canada in 1992 for violating the right to freedom of expression, and ever since has been, in legal terms, “of no force and effect.”

You wouldn’t know that, however, from the publicly available version of the Criminal Code on the government website.

“It doesn’t take much to think it’s kind of outrageous, that the government would say: ‘Here is the law of the land. Go look it up. Here online is the Government of Canada website saying the criminal law of Canada.’ And it’s wrong,” said Steve Coughlan, a criminal law professor at the Schulich School of Law at Dalhousie University in Halifax.

Also still listed as offences: abortion, duelling, making and selling comic books that show crimes being committed, advertising Viagra, blasphemous libel and pretending to practise witchcraft.

Some of the offences are clearly archaic. Others were found unconstitutional by the Supreme Court, but remain in the Criminal Code as what legal experts call “zombie laws.”

One such law lurched into headlines earlier this year when an Alberta judge accidentally used a defunct section of the code to find Travis Vader guilty of murder — a decision that just happened to be broadcast live in a milestone for cameras in the courtroom. After the mistake was realized, the verdict was changed to manslaughter.

The family of Vader’s victims, Lyle and Marie McCann, have called for the government to update the Criminal Code so it accurately reflects the current state of the law.

The simplest solution is a sort of charter cleanup bill that would remove offences that have been voided or are no longer relevant, Coughlan said.

“It just never rises to the top of anyone’s agenda ... it never seems like the most pressing thing,” he said.

A first step in that direction came through a recent move by the government to repeal a provision that banned anal intercourse with exceptions for heterosexual couples over the age of 16 and all adults over the age of 18 — discriminating against gay and bisexual teenagers.

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But the problem is more complex than just removing the obviously outdated or defunct sections, Coughlan said.

Some sections have been effectively rewritten through Supreme Court of Canada decisions, so the Criminal Code section won't accurately reflect what the law really is. There is also the issue of new sections being drafted with language that is different from older ones, creating confusion about important terms.

"It is now literally impossible to insert a new section into the Criminal Code in a way that won't contradict the language of some other provision," he said.

Coughlan said there needs to be a thorough overhaul of the code to make it manageable and consistent.

"The police look at the Criminal Code before they arrest people, so if we are telling police the wrong thing about what behaviour is illegal, that is a bad thing," he said. "We should have some obligation for it to be accurate."

Federal Justice Minister Jody Wilson-Raybould has instructed her officials to conduct a review of Criminal Code provisions that are outdated or have been found unconstitutional "with a view to making changes to reflect these decisions, where appropriate," according to a spokesperson for the ministry.

"This work is ongoing and the minister intends to bring forward legislation as soon as is practical," the spokesperson said.

## **How Canada could actually become a world leader in pension innovation**

**Keith Ambachtsheer and Ed Waitzer, Financial Post, January 4 2017**

The federal government's introduction of Bill C-27, legislation to facilitate the offering of target-benefit (TB) pension plans, has reignited the tiresome debate over defined-benefit (DB) versus defined-contribution (DC) and which is the better design for Canadian workplace pension plans. Countries that lead in pension innovation (such as Australia and the Netherlands) have moved on, and are now debating how TB plans should be designed and managed. In this sense, the Bill C-27 initiative should be applauded, as it creates an updated legal platform for necessary innovation in workplace pension-plan design in Canada.



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Why are TB pension plans a logical response to the 21<sup>st</sup>-century workplace pension-plan design question? Because this form of plan integrates the best elements of the traditional DB and DC plans: an explicit target pension benefit; a recognition that long-term compounding of investment returns makes the target benefit affordable; and it offers fair and sustainable risk-pooling and clearly spelled-out property rights and obligations among the employer, employees, pensioners and the pension-management organization.

TB plans are not a totally novel idea in Canada. A number of thought-leading public-sector pension plans have been steadily moving away from DB plans, where employers bear all of the embedded investment and longevity risks. Increasingly, such risks are being spread more fairly in these plans, thus ensuring their long-term viability in a world of increasing lifespans and more modest investment-return prospects.

Canada's major financial institutions have the scale and skills needed to offer cost-effective plans

These positive public-sector pension developments raise an important question. While the workplace pension plans of Canada's public-sector employees and retirees are mainly managed by world-class expert pension-management organizations, this is not the case in the private sector. For starters, fewer than 25 per cent of private-sector workers are members of a workplace pension plan at all. Even for this fortunate minority, the pension-management functions created by private-sector employers don't have the scale, skill sets or governance design of their world-class public-sector counterparts. Meanwhile, those without any workplace pension plan at all are largely left to fend for themselves in a confusing world of RRSPs, TFSA's, RRIFs, financial advisers and high-cost mutual funds. The general result is inadequate retirement income security at a too high a cost. Inevitably, that will become a public policy problem.

Of course there is a better way. Canada's major financial institutions have the scale and skills needed to offer cost-effective workplace TB plans with the key features set out above and with requisite expertise in investing, actuarial modelling and member administration and communications. They could deliver such TB plans not only across Canada, but also in the U.S. and other parts of the world not as lucky with their workplace pensions as the Australians and the Dutch. Offering such TB plans represents a major opportunity for Canada's financial sector to innovate on a global scale and to demonstrate its ability to design and cost-effectively deliver a high-value financial service to millions of workers inside Canada and beyond. What better



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opportunity for our financial services sector to develop products and services with high revenue potential and high-impact social benefit?

## **It's time to walk away from Shared Services Canada**

**SSC's dysfunction has become, for the programs and operations of many, perhaps even most, client departments, more disruptive than any hacker attack they have yet experienced. Billed in part as an efficiency measure and in part as a cybersecurity enhancement measure, Shared Services Canada has proven to be neither.**

**Wayne Smith, The Hill Times, January 9 2017**

With the 2017 budget approaching, the government is likely facing a decision with respect to Shared Services Canada: retreat or plunge forward with additional infusions of taxpayer dollars. It will not be—it should not be—an easy decision, given the long list of expensive government promises awaiting funding and the uncertain prospects of this flailing IT initiative.

Billed in part as an efficiency measure and in part as a cybersecurity enhancement measure, Shared Services Canada has proven to be neither. SSC's dysfunction has become, for the programs and operations of many, perhaps even most, client departments, more disruptive than any hacker attack they have yet experienced. Protection of the confidential information of Canadians and their businesses has been weakened in as many ways as it has been strengthened, particularly if one considers that the requirement for most departments is to protect not only from persons outside the federal government, but also from unauthorized and illegal access by persons within the federal government.

SSC's performance on its efficiency objective is no more impressive. The Conservative government created SSC and gave it a mission to transform the IT hardware infrastructure of 43 government departments into a more centralized structure while continuing to operate the legacy infrastructure in support of the government's ongoing programs. To make the job more challenging (or impossible, as it turns out) the Conservative government immediately harvested efficiencies equal to about 10 per cent of the new organization's core budget (assembled from the 43 departments forced into the initiative).

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Unsurprisingly, SSC is floundering. Unable to both transform and operate with a reduced budget, SSC has starved legacy infrastructure by failing to replace obsolete equipment, cancelling service agreements necessary to respond quickly to equipment failure and refusing to maintain capacity in line with the normal evolution of department requirements. As a result, SSC is creating an unprecedented level of risk to the continuity of operations of government programs and augmenting recovery times from the failures that will occur. Yet this failure to properly maintain critical IT infrastructure was cited at the onset of one of the problems that SSC would fix, not aggravate. The impact on services to the public will increase with time.

One might argue that it is rational to starve the legacy infrastructure in order to invest in what is seen as the target infrastructure. This might be true if there was actually a comprehensive and fully costed plan with a known (and near) end date. In fact, no one knows how long the transformation will take or what it will cost but we're looking at decades and billions of dollars, not a year or two and millions of dollars. The legacy infrastructure cannot survive for that long a time without renewal. As the government's experience with its new web site demonstrates, SSC's direct cost for the hardware infrastructure will be dwarfed by the costs incurred in the 43 client departments as they modify their systems to make them transportable to the new infrastructure. This need to transform systems will make this a long-haul project indeed.

From the client departments' perspective this deepening morass is further complicated by the lack of any acceptable governance arrangements around their relationship to SSC. Shared Services Canada is not accountable to its clients. Nowhere is it set down what obligations SSC has to its clients in respect of the base budget already transferred. Cash-starved SSC takes advantage of this situation by constantly redefining, to its own advantage, those things that it is expected to pay for. One of the more egregious examples was the reversal of an earlier Shared Services Canada commitment that it would accept responsibility to expand capacity in line with natural growth in requirements of client departments. So client departments, at the same time they are looking for massive amounts of money to transform systems to work in SSC planned new data centres, find their IT budgets being eaten away by unjustified and unaffordable SSC charges for hardware services. Departments with large budgets and a tendency to surplus funds

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annually might be indifferent (it's not their money) but smaller, tightly run departments may find themselves in serious financial difficulty.

Can SSC turn this situation around? One needs only look at the steady stream of failures and ballooning costs of more modest government IT initiatives (Phoenix, Canada.ca web site, SSC's own stalled email system) as well as the planning to date of SSC itself to conclude this is unlikely. And there are more centralization projects in the pipeline. One is reminded of Albert Einstein's famous quip about insanity being defined as doing the same thing over and over again and expecting different results.

Sometimes what looks like a better outcome on paper is unattainable. Sometimes a collection of human-scale solutions well-integrated into their environments is ultimately more robust and more efficient overall than the grand, massive scheme. There are better things to spend money on than breaking things that work. The government would be better-advised to back away from this initiative, re-think it (look at New Zealand for a more robust approach) and not move forward again until it has a complete, well-programmed and fully costed plan.

So, Canadians should watch the 2017 budget for any new infusion of funds into Shared Services Canada. The government invested hundreds of millions in the 2016 budget to bail out the SSC initiative, but this sum was nowhere near enough. Government IT operations remain at risk and transformation is largely stalled. This is not short term pain for long-term gain, this is an ever-deepening money pit.