Problèmes de Phénix: Ottawa offre une avance salariale

Paul Gaboury, Le Droit, le 30 juin 2016

À la veille du congé du 1er juillet, le gouvernement fédéral a fait parvenir un message à tous les employés fédéraux pour leur rappeler qu'ils peuvent demander une aide ou une avance de salaire en cas de problème avec leur paye. En remplissant un formulaire à cet effet, ils peuvent en même temps signaler le problème avec leur paye afin qu'il puisse être corrigé le plus rapidement possible.

« L'information que nous recevrons nous permettra de faire un suivi des enjeux et de les résoudre plus adéquatement ainsi que de réduire le nombre d'appels que reçoit le Centre de services de paye », indique Marie Lemay, sous-ministre au ministère des Services publics et de l'Approvisionnement.

La missive aux employés rappelle que les demandes d'aide salariale ou avance de salaire, seront acheminées quotidiennement au dirigeant principal des finances des ministères où il y a problème.

« Au cours des prochaines semaines, je vous fournirai de nouveaux renseignements à l'égard de la paye des employés et je ferai le point sur les mesures prises pour régler les enjeux qui en découlent », conclut la sous-ministre Lemay.

Devant la Cour fédérale

Plutôt cette semaine, l'Alliance de la fonction publique du Canada, avec l'appui d'autres syndicats, a entrepris un recours juridique devant la Cour fédérale lui demandant une ordonnance pour forcer Ottawa à mettre en oeuvre un système de paye lui permettant de payer à ses employés le salaire qui leur est dû, en vertu des obligations prévues à la Loi sur la gestion des finances publiques et la directive sur les conditions d'emploi.

Jusqu'à maintenant, plus de 2000 lettres rapportant de graves problèmes de paye ont été envoyées à la ministre Foote dans le cadre d'une campagne de lettres lancée la semaine dernière par l'AFPC.

« Croyez-moi. Ce n'est que le bout de l'iceberg. Cela fait 6 mois que je ne suis pas payé ! Je suis employé du gouvernement canadien depuis plusieurs années ! » nous a écrit dans un courriel un fonctionnaire à bout de patience.

L'Institut professionnel de la fonction publique a réagi aussi en offrant à ses membres rencontrant des problèmes de paye des prêts allant jusqu'à 5 000 $.

Les syndicats dénoncent les problèmes liés à Phénix depuis des mois, et avaient même exigé du gouvernement Trudeau qu'il mette un frein à l'implantation de la deuxième phase de Phénix en avril dernier.

Leur demande a été rejetée par le ministère des Services publics et de l'Approvisionnement qui, tout en reconnaissant rencontrer des problèmes pour certains groupes d'employés, avaient quand même maintenu le calendrier de mise en oeuvre prévu.

Plus de 190 000 dossiers de paye sont traités à Miramichi et 110 000 dans les différents ministères maintenant branchés au système Phénix, mis en oeuvre sous le gouvernement Harper au coût de 300 millions $.

La semaine dernière, la ministre Judy Foote a annoncé la mise sur pied d'un centre satellite dans les bureaux du ministère à Gatineau, avec l'embauche de 100 employés supplémentaires pour venir en aide aux 550 agents de rémunération de Miramichi qui n'arrivent plus à répondre aux demandes et aux plaintes des fonctionnaires.

Public Services steps in to take charge of PS pay complaints

Kathryn May, The Ottawa Citizen, June 29 2016

Public Services and Procurement Canada wants federal employees to directly report pay shortfalls and other problems caused by the malfunctioning Phoenix pay system to the department rather than the central pay centre in Miramichi.

Deputy minister Marie Lemay sent a letter Wednesday to senior management in all departments that employees should use an online Phoenix feedback form to report any problems.

She said the forms will help the department — as the government’s paymaster it’s responsible for the new pay system — to better track and resolve problems and reduce the number of calls swamping the pay centre.

Lemay said the form is another way to ensure that employees who aren’t getting paid or have been shortchanged will get pay advances. She said employee requests for advances will be sent

daily to the chief financial officers in the departments where they work. Weekly summaries would also be sent to all deputy ministers.

Complaints about the pay glitches and the resulting complications have escalated since Phoenix went live and was rolled out to the first wave of departments in February. This week, an alliance of 13 unions, fed up with delays in fixing the problems, went to Federal Court for an order that would force the government to pay its employers properly and on time.

Public Services Minister Judy Foote, who has taken a series of measures to improve the situation, has said there is no reason any employees should go without pay.

Departments have provisions to issue priority and emergency payments, but unions complained that wasn't working as expected and many employees were unaware they could ask for them. With the feedback form, Public Services will send the request to the department flagged with a "priority status."

Lemay promised senior managers they will be updated in the coming weeks with "additional information on employee pay and progress being made to address associated issues." She also attached a letter that deputy ministers could use or adapt to send to their employees, updating them on what the department was doing.

In that letter, the government acknowledges that, despite a "significant amount" of planning and preparation for the Phoenix rollout, "this situation is unacceptable, and PSPC is working hard to ensure that all employees are paid what they are owed.

"While many of the issues raised have been addressed, more needs to be done, and the remaining issues are not being addressed as quickly as we would like."

That tone is a significant shift from the early days of the Phoenix rollout when department officials argued problems were largely growing pains as people got used to the system and were expected for a project of this size and complexity, with some 80,000 pay rules and policies.

The big push has been getting a satellite pay centre up and running in Gatineau to reduce the backlog of files that have overwhelmed compensation advisers at the pay centre and to speed the resolution of problems. The first of the centre's 100 employees started work this week. The government laid off hundreds of compensation advisers in departments when it decided to centralize pay in Miramichi and many found other jobs in government.

By next week, Lemay said the centre will begin tackling the backlog and "over the next few months, we expect this unit will resolve many long-standing, frustrating pay issues."

Many say part of the problem is that the pay centre was clogged with a backlog of files from the first stage of the pay modernization project when departments transferred their pay files en masse to Miramichi. That was compounded by glitches that cropped up with Phoenix.

One glitch left employees who temporarily or permanently leave the public service unable to get a record of employment (ROE) to apply for employment insurance. Unions complained the ROE backlog snowballed into a logjam at Service Canada, which issues EI benefits.

On Wednesday, Public Services said that problem is fixed and the backlog should be resolved because Phoenix will now issue ROEs during each pay cycle, complying with the rules and timelines for ROEs the department enforces on other employers.

In the latest court action, the unions argue the government is breaching its duty and legal obligations as an employer to pay its workers accurately and on time. They want the court to compel the government to implement a pay system that works even if it means writing cheques by hand.

Système de paye Phénix : Les syndicats se tournent vers la Cour fédérale

Paul Gaboury, Le Droit, le 29 juin 2016

Les syndicats de fonctionnaires fédéraux demandent à la cour de forcer Ottawa à payer les employés touchés par les problèmes de paye reliés au nouveau système Phénix.

Avec d'autres syndicats du secteur public fédéral, l'Alliance de la fonction publique fédérale a demandé une ordonnance de la Cour fédérale afin que le gouvernement adopte un système lui permettant de payer à ses employés le salaire qui leur est dû.

Ces obligations sont prévues à la Loi sur la gestion des finances publiques et la Directive sur les conditions d'emploi, a rappelé l'AFPC dans un communiqué.

La semaine dernière, le syndicat avait lancé une campagne de lettres incitant ses membres à écrire à la ministre fédérale des Services publics et de l'Approvisionnement, Judy Foote, pour lui raconter leurs problèmes de paye à la suite de l'implantation de Phénix.

Jusqu'à maintenant, plus de 2000 lettres rapportant de graves problèmes de paye ont été envoyées à la ministre Foote.

Public service unions file Federal Court application to force government to pay up for problem-plagued Phoenix paycheque delays

Despite the pay system update that began in February, hundreds of federal employees have reported delays in paycheques, not receiving paycheques at all, and receiving consistently incorrect amounts.
Rachel Aiello, The Hill Times, June 28 2016

The Public Service Alliance of Canada, the largest union representing federal public servants, along with other unions representing government workers, filed a Federal Court notice of application today to force the federal government to pay its employees impacted by problems with the new Phoenix pay system.

In filing the application, PSAC was joined by the Association of Justice Counsel; the Canadian Association of Professional Employees; the Canadian Federal Pilots Association; the Canadian Merchant Service Guild; the Canadian Military Colleges Faculty Association; the Federal Government Dockyard Chargehands Association; the Federal Government Dockyard Trades and Labour Council (West); the Federal Government Dockyard Trades and Labour Council (East); the International Brotherhood of Electrical Workers; the Professional Association of Foreign Service Officers; the Research Council Employees' Association; and Unifor.

According to a press release from PSAC, the unions argue in their notice of application with the Federal Court that the government is responsible for paying public servants on time under its Financial Administration Act and the Directive on Terms and Conditions of Employment obligations.

The new automated payroll system for all Government of Canada employees has been in place for its estimated 300,000 employees since early May, replacing a 40-year-old payment system. The military, the RCMP, and Crown corporation workers are not a part of the Phoenix pay system.

Despite the update that began rollout in February, hundreds of employees have reported delays in paycheques, not receiving paycheques at all, and receiving consistently incorrect amounts.

PSAC has previously told *The Hill Times* that pay problems more likely happen for anyone who has a "complicated and variable" schedule, as opposed to those working consistent hours and getting the same amount of money each pay period.

PSAC says it's also calling on its estimated 140,000 members to send letters to Public Services and Procurement Judy Foote (Bonavista-Burin-Trinity, Nfld.) calling for the Phoenix pay system to be fixed.

On June 20, Ms. Foote announced she instructed her department to "immediately hire 100 employees to work in a temporary pay unit," that will begin work this month and remain in operation until the backlog issues have been resolved. She has also asked the Auditor General Michael Ferguson to investigate the planning and implementation of the Phoenix.

The new system is said to have cost $300-million, according to the department.

Treasury Board president invites frustrated public servants to call about pay problems

'We want to help public servants get through this ... because this is totally unacceptable'
Julie Ireton, CNC News, June 29 2016

Still having problems getting paid at your federal government job? The guy in charge wants you to pick up the phone and give him a call.

Treasury Board President Scott Brison is responsible for federal public servants in this country.

"We want to help public servants get through this," Brison said from his Nova Scotia riding.

He stressed that workers should first call the pay centre to seek resolution to their problems, but failing that "they can phone my office, because this is totally unacceptable," Brison said.

Brison has already heard his share of complaints about the fledgling government pay centre's problems.

- **Public service unions go to court over federal payroll problems**
- **Minister deluged with complaints from unpaid workers**
- **Minister says pay problems "unacceptable"**

The new Phoenix pay system that was implemented in February has been plagued with issues. Workers from several federal departments across the country have complained their pay cheques have been incorrect, late or haven't been issued at all.

Some workers just scraping by

Natalie Snow, a graduate student working at Indigenous and Northern Affairs Canada in Toronto, said she's been underpaid since her federal student work exchange program contract began in April.

She's one of several students CBC news has talked to who are not being properly paid for their work.

'I signed a contract in good faith that I'd be paid accordingly. I still come to work five days a week, I still do everything I'm supposed to be doing and you're not holding up your part of the bargain.'- *Natalie Snow, federal government worker*

When it comes to her bills, Snow said she can only manage the minimum payments.

"I just have enough to cover what I'm doing, not to do anything else. No extra food, no entertainment. I'm barely covering my credit card. Then my tuition, I'm trying to save for that," said Snow. "I'm just [getting] by."

Snow said she tried calling the Phoenix call centre 75 times before 9 a.m., but kept getting a busy signal.

She said on other occasions she has managed to get through, but then gets cut off. Snow has her own message for Brison.

"I want to tell him to fix this thing. I want to be paid and not in two months, not in three weeks, I want to be paid on the next pay day," said Snow. "I signed a contract in good faith that I'd be

paid accordingly. I still come to work five days a week, I still do everything I'm supposed to be doing and you're not holding up your part of the bargain."

Snow said she's had five student contracts with Indigenous Affairs over the past couple of years and four out of five times she's been improperly paid.

Emergency funds available, Brison says

Brison and the minister in charge of the pay system, Judy Foote, have both said the problems stem from a new system brought in by the previous government.

They said as a stop-gap, departments have funds to dole out to workers who aren't being paid. "Individual departments have funds to fix this," said Brison. "There are funds available to deal with this quickly."

But Snow tried that and said it hasn't been an option for her.

"So I did apply for an emergency salary advance and I was denied because I'm getting a portion of a pay cheque," said Snow. "It was denied by the pay centre. They closed the account without telling me."

Brison's office said the pay centre in Miramichi, N.B., is currently dealing with 117 active complaints and they're "working hard to resolve these issues."

But the Public Service Alliance of Canada, the biggest union representing government workers said it has heard from 2,000 workers experiencing pay problems, a number PSAC said rises each day.

La contestation annoncée se matérialise

Une première malade demande aux tribunaux d'invalider C-14 et de réitérer son droit
Hélène Buzzetti, Le Devoir, le 28 juin 2016

Les opposants à C-14 l'avaient prédit, et c'est exactement ce qui est arrivé lundi : une malade qui estime avoir été exclue du régime d'aide médicale à mourir mis en place par Ottawa en conteste la constitutionnalité devant les tribunaux. Et elle pourrait n'être que la première d'une longue série.

C'est l'Association des libertés civiles de Colombie-Britannique (ALCCB) qui pilote cette contestation, le même groupe dont la victoire l'an dernier en Cour suprême avait obligé le gouvernement fédéral à légaliser l'aide médicale à mourir. Pour illustrer sa cause, l'ALCCB a cette fois recruté Julia Lamb, une jeune femme de 25 ans atteinte d'amyotrophie spinale et habitant Chilliwack, en Colombie-Britannique. Cette maladie héréditaire entraîne l'atrophie des muscles, qui finissent par ne plus répondre. Parfois, les muscles de la déglutition et la respiration sont attaqués.

À l'heure actuelle, Mme Lamb se déplace en fauteuil roulant et a besoin d'aide pour ses soins corporels, par exemple, mais elle est suffisamment autonome pour occuper un emploi à temps partiel.

« Ma plus grande crainte est que mon état se détériore au point que je devienne prisonnière de mon corps, ce qui pourrait arriver n'importe quand, a expliqué Mme Lamb en conférence de presse. *Je pourrais perdre la capacité de respirer par moi-même. Je devrais utiliser un respirateur, ce qui affecterait ma capacité à parler. »*

Julia Lamb ne veut pas mourir maintenant et ne réclame pas non plus le droit de demander par anticipation la mort quand telle ou telle condition sera remplie. Elle veut plutôt avoir la certitude que, lorsqu'elle n'en pourra plus de souffrir, elle pourra recevoir une injection létale. Mais Mme Lamb prétend que ce droit lui a été retiré par l'adoption du projet de loi C-14.

Une cause théorique

Selon la loi fédérale, une personne n'est admissible à l'aide à mourir que si sa mort naturelle est devenue raisonnablement prévisible. Comme Mme Lamb pourrait vivre encore plusieurs années dans son état, même diminuée, un doute subsiste quant à ses chances de trouver un médecin qui accepterait de l'aider à mourir. *« Avec cette loi, je n'ai plus la paix d'esprit de savoir que j'ai le choix »,* dit-elle.

La contestation judiciaire porte donc sur ce critère de mort naturelle raisonnablement prévisible. *« La loi ne permet pas l'aide médicale à mourir pour ceux qui souffrent sans que la fin*

soit en vue, a rappelé le directeur exécutif de l'ALCCB, Josh Paterson. *Les Canadiens atteints d'amyotrophie spinale, de sclérose en plaques, de sténose du canal rachidien lombaire, du syndrome de verrouillage, de lésions traumatiques de la moelle épinière, de la maladie de Parkinson ou d'Huntingdon, toutes ces personnes-là ne sont pas admissibles. »*

Reste à savoir si les tribunaux accepteront d'entendre une cause théorique. Car Mme Lamb n'ayant pas demandé l'aide à mourir, elle n'a pas essuyé de refus. *« Y a-t-il besoin qu'une demande se fasse refuser ? Je ne pense pas. Je pense que Julia peut dire qu'elle subit l'impact de cette loi. Elle s'inquiète tous les jours »,* a expliqué l'avocate Sheila Tucker, qui mène cette cause en tandem avec un collègue. En coulisses, certains murmurent néanmoins que la cause serait plus solide si elle était portée par un malade qui réclame maintenant la mort.

En entrevue avec *Le Devoir,* l'avocat spécialisé dans le droit des usagers du système de santé Jean-Pierre Ménard affirme que cette contestation *« était inévitable ». « C'était écrit dans le ciel »,* dit-il. Si la chose était si inéluctable, comment alors expliquer que la loi québécoise, qui limite elle aussi l'accès de cette aide aux personnes en fin de vie, n'ait pas été contestée en sept mois d'application ? Me Ménard reste évasif, disant être en *« conversation »* depuis des mois avec certaines personnes. On sent que d'autres causes sont à prévoir.

Sociofinancement

La bataille est loin d'être gagnée d'avance. L'ALCCB reconnaît qu'une telle croisade judiciaire coûte cher. Elle estime que la dernière bataille s'étant soldée par une victoire en Cour suprême a coûté plus de 200 000 $, sans compter le temps que Me Tucker avait donné à la cause. L'Association lance dont un appel au sociofinancement. De la même manière, le groupe invite toute personne qui estime que son droit à l'aide à mourir a été bafoué par le C-14 à contacter l'ALCCB.

Le gouvernement fédéral a répondu par une courte déclaration écrite dans laquelle la ministre de la Justice, Jody Wilson-Raybould, réitère sa conviction que sa loi est constitutionnelle et est la *« meilleure »* approche pour le pays.

Critics of Canada's assisted dying laws to launch new court challenge

Laura Kane, Winnipeg Free Press, June 27 2016

Just days after Canada's physician-assisted dying law came into force, a 25-year-old British Columbia woman with a degenerative muscle disease is challenging it in court.

Julia Lamb who lives in the Fraser Valley city of Chilliwack has spinal muscular atrophy and worries her body will weaken and she will be left in a state of intolerable suffering because she doesn't qualify for doctor-assisted death under the new law.

"My biggest fear is that if my condition suddenly gets much worse, which could happen any day, I will become trapped," she told a news conference on Monday.

"I feel a shadow looming over me. I know I could lose the ability to breathe well enough on my own and require a ventilator, which could affect my ability to speak."

Lamb was diagnosed with the muscle disease at 16 months and required a wheelchair at age six, but she said she has lived a fulfilling life with a loving family and enjoys her part-time job as a marketing assistant.

The Liberal government's Bill C-14 received royal assent on June 17. Lamb said she opposes the law's requirements that a doctor's help can only be given if death is reasonably foreseeable and the patient is in an advanced state of irreversible decline.

"If my suffering becomes intolerable I would like to make the final choice about how much suffering to endure," said Lamb, who has joined the B.C. Civil Liberties Association to file a constitutional challenge in B.C. Supreme Court.

Grace Pastine, a lawyer with the association, said the law excludes a class of people who are suffering with no immediate end in sight from diseases, such as muscular dystrophy, Parkinson's and Huntington's disease.

A Supreme Court of Canada ruling last year gave people the right to end their lives with a doctor's help when pain management, hospice care and medical treatments have not helped, Pastine said.

"The new legislation has the perverse effect of forcing some critically ill Canadians to resort to violent methods or the back alley. People will find ways to end lives that have become unbearable," she said.

Pastine said the association is asking other Canadians with chronic conditions who want access to assisted dying to join the legal challenge.

Justice Minister Jody-Wilson Raybould said the legislation was a principled, cautious response and she is confident it is constitutional.

"It represents the right approach for Canada at this important time in our country's history by striking the balance between personal autonomy for those seeking access, protection of the vulnerable, and respect for the conscience rights of health-care providers."

The husband of Elayne Shapray, a key witness in the Supreme Court case, said his wife's victory had been stripped away by the legislation.

Howard Shapray said his wife died peacefully at home with a doctor's help in May after her multiple sclerosis became intolerable. She died under the Supreme Court's criteria, which only required a "grievous and irremediable" condition.

"While Elayne had a smile on her lips knowing that she would finally find peace, she died dismayed that others like her would be deprived of the same right by Bill C-14."

Some observers, including Independent Sen. Murray Sinclair, have said the "reasonably foreseeable" requirement is open to interpretation and does not necessarily mean the patient must have a terminal disease.

Asked whether the case would be stronger with a plaintiff whose request for assisted death had already been rejected by a doctor, Pastine replied that Lamb lives every day with the fear of her disease progressing.

She said Lamb could suffer unbearably for years and therefore her death would not be reasonably foreseeable.

Dr. Ellen Wiebe, who is not part of the court challenge, said in an interview that she had been preparing to help another woman who qualified under the Supreme Court's criteria, but restrictions under the new law ended those plans.

Just three days before the woman's intended death, Wiebe said she was informed Friday that she could be prosecuted for taking part. Her patient was extremely upset, she said.

"This is part of the problem with C-14. It is difficult to interpret the foreseeable future issue and I feel terrible about my part in what (her patient) went through," Wiebe said.

"I am willing to take some risks for my patients, but when the lawyer says I am at a high risk for prosecution, I say, 'No.' "

PM's recent changes to top ranks of public service seen as renewal, wants 'responsive, adaptive' senior players

Queen's University's Kathy Brock says the government is 'sending a signal out to people that they want a leadership that can move with these changes' and that some longtime public servants 'don't necessarily want to learn a whole new way of doing things.'
Derek Abma, The Hill Times, July 4 2016

Upper-level adjustments to the federal public service keep coming under the Trudeau government, and experts say these changes have more to do with efforts to renew the public service—a process started under the former Conservative government—than being any sort of branding effort by the new Liberal government.

Since taking office on Nov. 4, Prime Minister Justin Trudeau's (Papineau, Que.) office has issued 11 announcements about changes to the public service, indicating new people in 31 different positions and 10 senior officials retiring from the public service. In June alone, there were three separate announcements about new people in 11 different senior public service positions.

One former senior office government official, who did not want to be identified, said there's little to indicate these changes are political in nature, and are more likely a case of longtime public servants reaching a point when they feel it's the right time to retire.

"If you look at the tenure of the people who have retired or been replaced, they've all been there for eight or 10 years as deputies, let alone 30 years as career public servants. So in that

sense, it's not surprising," this person said. "And there'll be more to come because the deputy cadre is very experienced, shall we say."

The average age of deputy ministers in the federal public service was 58 as of March last year, according to this year's annual report on the public service prepared by the Privy Council clerk for the prime minister.

This former government official said the changes that have been announced could also be related to ongoing efforts to transform the public service into a more effective and adaptable body.

"How do you transform the public service?" the person said. "You don't take late-50s public servants and expect them to be the agents of change. The way you do it is you replace them with bright, young, up-and-coming types. And, arguably, that is what they have done. … It certainly isn't about partisanship, and anybody who tells you that, I think, is smoking something."

This individual said it's unlikely that there's a problem with senior public servants working with the new Liberal government after a near-decade of Conservative rule. He reasoned that Prime Minister Trudeau "sees a positive role for government, as do the senior public servants. I'm not convinced that [former prime minster Stephen] Harper (Calgary Heritage, Alta.) saw a positive role for government."

Kathy Brock, a professor of policy studies at Queen's University, agreed that the transition being seen among senior public servants doesn't seem to be partisan in nature.

"In part, it's because we're dealing with an aging public service and we're going to see a lot of people shifted," she said.

"But there's something else that's operating, too, here … and that is, if you look at the public sector reforms that are going on right now with Destination 2020, Blueprint 2020, the government is really focusing on adapting to new ways, that we aren't just going to be doing things the old way. The message is very clearly being put out that they want a government that's responsive, that's adaptive to the new technology it's using, and they're sending a signal out to people that they want a leadership that can move with these changes.

"That means that some people that were looking at retirement, thinking about it in a couple of years, are probably going to move their retirements up because they aren't comfortable; they don't necessarily want to learn a whole new way of doing things."

Efforts to renew the public service were underway before the Liberals' election last fall. Destination 2020 is a report that was issued in 2014 by the Privy Council Office, based on a process launched a year earlier called Blueprint 2020, which was based around renewing the public service through things such better worker engagement, modernizing technology, and becoming more results-oriented, among other things.

Retirement announcements in the public service, as announced by Prime Minister's Office in recent months, include **Andrew Treusch** as revenue commissioner, **Anita Biguzs** as deputy minister of Immigration, Refugees and Citizenship, **Margaret Biggs** as senior adviser to the Privy Council, **Ward Elcock** as special adviser to the PCO, **George Da Pont** as deputy minister of Public Services and Procurement, **Matthew King** as deputy minster of Fisheries and Oceans, **Krista Outhwaite** as president of the Public Health Agency, **Daphne Meredith** as deputy minster of Western Economic Diversification, **François Guimont** as deputy minister of Public Safety, and **Colleen Swords** as deputy minister of Indigenous and Northern Affairs.

Mr. Treusch told *The Hill Times* in an email that he worked until June 17 after a 36-year career in the federal public service, and his focus is now on renovating his new cottage.

"My career in the public service has been challenging but very rewarding," he said. "I have worked in central agencies and large operating departments and enjoyed it all. Towards the end of my career, I took a special interest in modernizing service delivery and encouraging next-generation employees."

Mr. Treusch had been revenue commissioner since 2012. His other government roles have included associate deputy minster positions with Environment Canada and Public Works.

He said he decided to retire a year ago and purposely stayed on long enough to help the government with the budget and be available until close to the end of the parliamentary session.

Mr. Treusch said new National Revenue Minister Diane Lebouthillier (Gaspésie–Les Îles-de-la-Madeleine, Que.) has been "wonderful to work with."

As for the many retirements happening in the public service lately, Mr. Treusch said: "It's demographics. The baby boomer generation is moving into retirement. The average age of senior executives is 52 or 53. Over 50 CRA (Canada Revenue Agency) executives are eligible to retire over the next five years, offering an opportunity for recruitment and renewal."

Among those replacing the previously mentioned retirees are: **Bob Hamilton** as revenue commissioner as of Aug. 1, **Marta Morgan** as deputy minister of Immigration; **Catherine Blewett** as deputy minister of Fisheries; **Marie Lemay** as deputy minster of Public Services; **Dylan Jones** as deputy minister of Western Economic Diversification; **Siddika Mithani** as president of the Public Health Agency; **Hélène Laurendeau** as deputy minister of Indigenous Affairs; and **Malcolm Brown** as deputy minister of Public Safety.

PCO spokesman **Raymond Rivet** said there was "no information to provide at this time" in terms of specific replacements for Mr. Elcock and Ms. Biggs at the PCO.

The unidentified former government official who spoke to *The Hill Times* said: "Nobody who's been appointed is a surprise. It's not like they're politicizing with replacements. They're bringing up people who were in the system already, by and large."

Looking at some of the people filling in for the retiring senior public servants, Ms. Blewett and Mr. Jones were among the rare cases of individuals coming from outside the federal government. Ms. Blewett had been working for the Nova Scotia government since 2011, but has previously been with federal Citizenship and Immigration department as director of operations for Nova Scotia between 2009 and 2011, and had senior roles within the federal government's Atlantic Canada Opportunities Agency between 2001 and 2009, before which she spent more than a decade in the Nova Scotia public service.

Mr. Jones had been CEO of the Canada West Foundation since 2012, and he was previously deputy minister of Intergovernmental Affairs in Saskatchewan and spent about a decade in different roles within that provincial government. Federally, he held jobs with the Canadian

Radio-television and Telecommunications Commission (CRTC) between 1997 and 2000, and was a law clerk with the Federal Court from 1996 to 1997.

Mr. Hamilton, who's slated to become the revenue commissioner on Aug. 1, has been deputy minister of Natural Resources since 2014, and spent two years prior to that as a deputy minister with Environment Canada. He's held a variety of roles in the public service, dating back to 1985, according to a profile included on the PMO website.

Ms. Morgan's position in Immigration is her first deputy minster's job, though she has held associate deputy minister's roles at Finance and the former Industry department. Before that, she spent three years as a vice-president at the Forest Products Association of Canada, and has held previous roles in the federal government as early as 1993.

Ms. Lemay was president of the Economic Development Agency of Canada for the Regions of Quebec for almost three years before taking over at Public Services this year. She has previously been an associate deputy minister of Infrastructure, and before that was CEO of the National Capital Commission.

Before taking over as president of the Public Health Agency, Ms. Mithani was an associate deputy minister with Environment since 2015, and previously held the same rank at Agriculture and Agri-Food Canada, and at Fisheries, with other federal government jobs dating back to 1987.

Before her recent appointment, Ms. Laurendeau had been the associate deputy minster of Indigenous Affairs since 2013, and held a variety of federal government positions since 1991.

Mr. Brown was a special adviser to the Privy Council clerk on the Syrian refugee initiative between November last year and taking on the most senior bureaucrat's job at Public Safety in April. Before that, he had spent about a year as deputy minister of International Development and held a variety federal government positions dating back to 1995.

The former senior government official who talked to *The Hill Times* said of all the public service changes Mr. Trudeau has announced so far, the only one that seems odd was the January announcement that **Michael Wernick**, who as previously deputy clerk of the Privy Council, was replacing **Janice Charette** as clerk. This former official said it was out of the norm to send a

press release for this type of change while travelling overseas, as Mr. Trudeau was doing at the time, and because it fell in the middle of new Liberal government's transition into power, rather than right at the start or at least delayed until after the first budget.

Ms. Charette was reported in May by *The Globe and Mail* as being in line to be Canada's next high commissioner in the United Kingdom. The PMO, when it announced Mr. Wernick's appointment in January, said Ms. Charette was staying on as a senior adviser to the PCO, pending a new assignment. Mr. Rivet said Ms. Charette remains in that position.

Most recent announcements

Among the changes to the senior levels of the public service announced in June were: Mr. Hamilton announced as the next revenue commissioner; Ms. Morgan named deputy minster of Immigration; **Christyne Tremblay**, deputy minister of sustainable development with the Quebec government's environment ministry, becoming deputy minister of Natural Resources on Aug. 1; **Philip Jennings**, an assistant deputy minister with Innovation, Science and Economic Development, becoming associate deputy minister of Natural Resources on July 11; **Leslie MacLean**, former associate deputy minister of Fisheries and Oceans, becoming associate deputy minister of Employment and Social Development on July 4; **Kevin Stringer** becoming deputy minster of Fisheries and Oceans on July 4 after being assistant deputy minister in the same department; **Serge Dupont**, deputy clerk of the Privy Council, gaining additional responsibilities as deputy minster of intergovernmental affairs; **Manon Brassard** becoming president of the Economic Development Agency of Canada for the Regions of Quebec after being assistant deputy minister for the Treasury Board Secretariat; **Stephen Lucas** being appointed a senior associate deputy minister in Environment and Climate change after being a deputy secretary to the cabinet in the PCO; **Chantal Maheu** moving to deputy secretary to cabinet for plans and consultations in the PCO as of Sept. 6 after being an assistant secretary in that department; and **Ian McCowan** becoming deputy secretary to the cabinet for governance in the PCO after being deputy secretary for legislation, House planning, and machinery of government in the same department.

Rare case sees Toronto police suing Crown prosecutors

Gabrielle Giroday, Legal Feeds, June 27 2016

Three Toronto Police Service officers are suing the Attorney General of Ontario after they say accusations made by an armed robbery suspect he'd been beaten by police went unchallenged in court by the Crown.

The lawsuit by the three officers — Jamie Clark, Donald Belanger, and Steven Watts — happened after two suspects were arrested for an armed robbery in June 2009 that took place at a crane supply company.

If the officers win the case, one lawyer says it could be precedent-setting.

"This is, indeed, a rare kind of case," says David Robins, a partner with Sutts Strosberg LLP.

The lawsuit relates to allegations made by a man involved in an armed robbery at a crane supply company. During the robbery, the suspects carried a gun and zip-tied a victim before taking off with $389,000 worth of copper tubing.

Months later, police arrested the suspects and their statements were video taped. However, one of the suspects, Randy Maharaj, alleged police had beaten him during the arrest.

During court proceedings against Maharaj, he alleged he'd suffered serious rib injuries because of physical damage caused by the officers — an allegation police said is false and was allowed to stand in court proceedings, thereby greatly harming them. Maharaj was convicted in connection with the robbery, but judges involved in the case as it wended its way through the courts had harsh words for police.

The lawsuit names three Crown attorneys, Sheila Cressman, Frank Armstrong, Amy Alyea, and other agents of the Crown as participating in a "negligent and unlawful act."

A later investigation by the Special Investigations Unit concluded that allegations made by Maharaj were not substantiated by evidence like the video-taped statement he gave after his arrest.

The lawsuit alleges "had Ms. Cressman, Mr. Armstrong, Ms. Alyea, and other Crown law officers conducted a reasonable and lawful prosecution the resulting irreparable damage to the officers' livelihood and reputation never would have occurred.

"Any careless, negligent and/or unlawful decisions made by a crown attorney, during the course of a prosecution, could result in irreparable harm to the livelihood and reputation of the investigating police officers. The prosecution is conducted under the sole discretion of the crown attorney, and a police officer is powerless to ensure that there is no injustice to themselves or to the administration of justice," said the lawsuit, filed in the Ontario Superior Court June 22.

"As a result, this foreseeability and proximity established a prima facie duty of care that the crown attorney has to the investigating police officers."

According to court documents, the officers are seeking $500,000 in general damages for "negligence and misfeasance in Public Office" and $250,000 each for "aggravated, exemplary and punitive damages."

Robins says, the lawsuit asserts "the Crown owes a duty of care to investigating officers to ensure that there is no injustice in the prosecution of a case to those investigating officers or to the administration of justice."

"I believe that there will be a real debate concerning whether the Crown owes a prima facie duty of care to investigating police officers," he says.

He adds, he doesn't believe there is "a wide body of jurisprudence in which the issue of whether the Crown owes a duty of care to investigating police officers has been thoroughly canvassed."

"In the event that the Crown is imposed with a duty of care by the court to investigating police officers, I do believe it will set a new precedent," says Robins.

Murray Klippenstein, founding principal of Klippensteins Barristers and Solicitors, says, "the facts as set out in the statement of claim do raise some significant questions about certain parts of the evidence about police brutality, and whether a rib injury allegedly due to police action was in fact that.

"However, the alleged rib injury was not the only evidence of mistreatment by police, so the claim by the police may itself be focusing on only a small part of the picture, and leaving some important things out. It's hard to tell at this point," he says.

'Incivility' case heads to top court

Cristin Schmitz, The Lawyers Weekly, July 1 2016

The Law Society of Upper Canada's (LSUC) controversial decision to sanction Toronto litigator Joseph Groia for improperly casting aspersions on opposing counsel in court has landed on the Supreme Court's doorstep in an appeal which asks whether judges or law societies are the final arbiters of lawyers' courtroom conduct.

The securities lawyer is seeking leave to appeal an Ontario Court of Appeal ruling June 14 which upheld, 2-1, the regulator's decision below finding him guilty of professional misconduct for unreasonably making unfounded allegations against Ontario Securities Commission (OSC) prosecutors during the high-profile insider trading prosecution of John Felderhof, the former chief geologist of Bre-X Minerals Ltd: *Groia v. Law Society of Upper Canada* 2016 ONCA 471. The gold mining company collapsed in scandal in 1997, costing shareholders billions.

Groia has been a catalyst for heated discussion within the legal profession about lawyer incivility. It has sparked debate about whether the law society should have prosecuted him, at its own behest, in the absence of a complaint, and about whether the regulator's move inhibits barristers' independence, commitment to their clients' causes, and duty to advocate zealously. The organized bar, including the Criminal Lawyers' Association, the Advocates' Society, the Ontario Crown Attorneys Association, and now the Ontario Court of Appeal, have been deeply divided about the case, which could weigh in favour of the top court granting leave.

"We believe the case is worthy of the Supreme Court of Canada's consideration," said Cara Faith Zwibel, counsel for the Canadian Civil Liberties Association (CCLA) which intervened to argue that professional disciplinary proceedings should only be brought on the basis of incivility that has caused, or is reasonably likely to cause, a miscarriage of justice.

"While it may look like a case focused on lawyers, the interests at stake are really those of clients and the public interest," Zwibel explained. "There has been enough debate in the profession about this case [that] it is probably wise for the Supreme Court to provide guidance."

One novel and overarching issue the Court of Appeal divided over was the standard of curial review applicable to law societies' decisions to discipline lawyers for in-court behaviour, which rested on sharply differing views about the respective roles of judges and law societies in

regulating lawyers' conduct in court. The majority took a stance deferential to the law society, scrutinizing the law society's decision through the lens of reasonableness, while the dissent argued the standard is correctness, and thus via judicial review, "the courts remain the final umpires of the propriety of what barristers do in courtrooms."

Notably, for the profession at large, the panel also split in its 178-page decision over the test for determining when lawyer "incivility" crosses the line into professional misconduct in the context of impugning opposing counsel's integrity and conduct in court — possibly a matter of first impression at the appellate level in Canada.

The Court of Appeal's majority upheld as "reasonable and functional" the LSUC Appeal Panel's test that it is professional misconduct to make allegations of prosecutorial misconduct or that impugn the integrity of opposing counsel, unless the allegations are (1) made in good faith and (2) with a reasonable basis.

"The test recognizes that, while advocates may be required to use strong and forceful language to advance the client's interests, there are limits on what an advocate can say. It recognizes the interests of multiple participants in our justice system, including those who are the targets of uncivil comments," Justice Eleanore Cronk wrote with the backing of Justice James MacPherson. The majority rejected as "unnecessary and unduly restrictive" the divisional court's restated test for professional misconduct which layered on the appeal panel's test — in order to better protect the importance of zealous advocacy — the additional requirement that the uncivil behaviour must have undermined, or had a realistic prospect of undermining, "the proper administration of justice."

In dissent, Court of Appeal Justice David Brown also rejected the divisional court's formulation ("too vague"), arguing the test for in-court professional misconduct must "robustly" take into consideration all of the surrounding circumstances of what happened in the courtroom, under the rubric of three main factors: what the barrister did; what the presiding judge did about the barrister's conduct and how the barrister responded to the directions of the presiding judge; and what effect the conduct complained of had on the fairness of the in-court proceeding, including the ability of the opposing side to present its case. The law society "must demonstrate that the barrister's conduct would undermine, or would have the tendency to undermine, trial fairness," he stipulated.

The panel split, too, over whether Groia's advocacy amounted to professional misconduct. The LSUC appeal panel's critical findings about his actions — which included repeated unsubstantiated accusations that the prosecution failed to live up to its word on disclosure and on the admission of evidence, and was pursuing a conviction without regard to the fairness of

the proceeding — were "amply justified," the majority held. The majority ruled that the appeal panel was "both reasonable and correct" in concluding that Groia breached "the requirement for professionalism for lawyers, both inside and outside a courtroom, including zealous advocacy accompanied by courtesy, civility and good faith dealings" which "secures the nobility of the profession in which lawyers in this province are privileged to practise."

His remarks were "uncivil and discourteous and exceeded even the most broadly defined reasonable boundaries of zealous advocacy," said Justice Cronk. "They struck, without a reasonable basis, at the heart of the OSC prosecutors' duties to the court, to opposing counsel, and to the administration of justice."

Justice Brown agreed the appeal panel was correct that Groia "used inappropriate language and impugned the integrity of the prosecutors without foundation" while making allegations of prosecutorial misconduct. But looking at the trial circumstances in their entirety, it was neither correct, nor reasonable, to find him guilty of misconduct, he urged. "A hard-fought, high-profile criminal trial saw inappropriate submissions and allegations by Mr. Groia over the court of several days in phase one. The trial judge responded to the prosecution's complaints about that inappropriate conduct," Justice Brown stressed. "He ultimately directed Mr. Groia to stop making allegations of prosecutorial misconduct. Mr. Groia complied with the trial judge's rulings…This court found that the fairness of phase one of the trial had not been compromised by Mr. Groia's conduct and the prosecution was not prevented from having a fair trial," he wrote. "Great weight must be given to Mr. Groia's compliance with the directions of the courts and to the fact that his conduct did not affect trial fairness."

On the issue of the standard of review applicable to law societies' discipline decisions on in-court behaviour, Justices Cronk and MacPherson said trial judges and law societies play complementary roles in regulating conduct in the courtroom, and, applying the *Dunsmuir* analysis and recent Supreme Court jurisprudence on lawyer regulation, the majority held the lens of reasonableness had to be used to scrutinize the decision of the LSUC's Appeal Panel, a specialized disciplinary body.

But citing the constitutional interplay between the executive and judicial branches of government, Justice Brown argued in dissent that the standard of correctness applies to curial review of regulatory decisions on in-court lawyer conduct and, in that context, the role of law societies is, in effect, subordinate to that of judges, who are the masters of their courtrooms under the Constitution. "The judiciary's constitutional responsibility for what goes on in its courtrooms points to the application of a standard of correctness so that the judiciary retains the last word, so to speak, about what happens in its courtrooms," he explained. "If the reviewing court disagrees with the discipline tribunal's conclusion, it would be free to substitute

its own opinion."

The Court of Appeal's majority upheld the appeal panel's penalty of one month's licence suspension and its order that Groia pay the law society $200,000 for costs. Justice Brown would have allowed Groia's appeal and slapped the law society with $280,000 in legal costs: $50,000 for the appeal; $200,000 for the costs of the hearing panel; and $30,000 for Groia's unsuccessful appeal to divisional court.

University of Calgary law professor Alice Woolley, president of the Canadian Association for Legal Ethics, argues in an e-mail the issues in the case merit the Supreme Court's consideration.

Justice Brown's dissent is "a game changer," she said, that "introduces squarely into the debate on courtroom civility the role of the trial judge, and how the lawyer responded to the trial judge, [and] it makes the case about lawyer regulation and judicial independence in a way that has been argued before, but never so well articulated."

Woolley, who was called as a defence expert at the law society's first-level discipline hearing, added, "It also shows the problem with the actual result in *Groia* because, as Justice Brown makes clear, while Groia may have expressed himself rudely, the trial judge dealt with [incivility] issues that arose, and Groia responded appropriately and respectfully to direction from the trial judge, and nothing Groia, or the judge, did affected trial fairness."

Groia's counsel, Earl Cherniak of Toronto's Lerners, confirmed his client will seek leave, but neither he nor Groia commented on the case.

Law society spokeswoman Susan Tonkin said the regulator will consider its options on the leave application once it is filed. "The law society is pleased that the majority of the court reaffirmed the important role of the law society in regulating in-court conduct, and the importance of both civility and zealous advocacy," she said by e-mail.

Paul Cavalluzzo of Toronto's Cavalluzzo Shilton, counsel for the intervener Ontario Crown Attorneys Association whose members periodically face allegations of prosecutorial misconduct from defence counsel, noted that such icons of the criminal law bar as G. Arthur Martin and Austin Cooper never strayed into incivility when zealously defending their clients.

"The Crown attorneys agreed that lawyers have to vigorously defend their client in the courtroom, however…there are limits on that, and when you come to casting aspersions on the integrity of opposing counsel, without reason or good faith, that by definition is unprofessional conduct which should be disciplined," Cavalluzzo said.

Liberals revisiting plans to build showcase federal court in Ottawa

Building previously named after Pierre Trudeau would complete 'judicial triad'
Cristin Schmitz, The Lawyers Weekly, July 8 2016

The Liberal government has quietly revived an oft-postponed plan to build national headquarters for the four federal courts whose offices are scattered around Ottawa, *The Lawyers Weekly* has learned.

Known as the Pierre Elliott Trudeau Judicial Building when it was deep-sixed a decade ago by the incoming Conservative government, the acclaimed Carlos Ott-designed, stone and copper-roofed building would complete the "judicial triad" in Ottawa's Parliamentary and Judicial Precinct that was first planned in 1912.

Estimated to cost about $151 million in 2006 when it was shelved by the Harper government, the design has nine stories, two-below-grade parking levels with 350 spaces, 10 courtrooms and 87 chambers on the upper floors for the judges of the Federal Court, Federal Court of Appeal, Tax Court and Court Martial Appeal Court. There is also room for registry staff and administrative services (476 people in all) in the 48,000-square-metre building that would sit west of the Supreme Court of Canada (where the Conservatives planned to build the controversial National Memorial to Victims of Communism) and across from the Justice Building, the historic headquarters of the federal Department of Justice which now houses MPs offices. The communism victims' memorial has been moved to another location but may ultimately be shelved.

"We are in discussion with [the Department of] Public Works right now about continuing on the project, and there's certainly an intent on their side in continuing with the project," confirmed Silvio Baldassarra, lead architect on the project and Toronto-based president of NORR Canada Architects Engineers and Planners. "They're looking at continuing with the building and there's a lot of desire, certainly on the government's side, to do that," he said.

NORR has stayed under contract with Ottawa, as architects and engineers on the project, after winning an open competition in 1991 to build the "Federal Judicial Building" in association with famed Uruguayan architect Ott, who designed the $400 million Bastille Opera House in Paris as

well as Canada's largest courthouse, the Calgary Courts Centre in 2007. (NORR has twice redesigned the project and former Liberal prime minister Jean Chretien renamed it the Pierre Elliott Trudeau Judicial Building in 2003 to honour the late prime minister. It's not known whether Prime Minister Justin Trudeau would keep his father's name on the building if and when it is built).

Baldassarra told *The Lawyers Weekly* the working drawings for the new headquarters are ready to go out to tender, when the government gives the green light, but "there may be some changes.

"Could it go out [to tender] today? Absolutely," he said. The National Capital Commission "has approved the design…courts have approved the design and signed off on the design, so…it's shovel-ready, with all of the approvals in place."

Asked whether he anticipates construction will start in the coming year, Baldassarra replied "perhaps.

"I've got my own impression of where I think they're going to go with this, but they are actively looking at it, I can tell you that," he said.

Federal Court Chief Justice Paul Crampton says there are good reasons to put the judges and support staff, currently scattered throughout Ottawa in leased commercial space, under one roof. "We are optimistic," he told *The Lawyers Weekly*. "There have been murmurings that the building that was ready to go in 2005 may move forward…so we're keeping our fingers crossed, and we will convey our view that to be a strong national institution we should have the visibility that comes with having a building [and] that it would probably be efficient, from a public expenditure perspective, for us to have a building, as opposed to be paying rent in a commercial building where there are all sorts of security issues."

The Canadian Bar Association called on the government more than a decade ago to get going "immediately" on building a permanent home for the four courts. The federal Courts Administration Service estimated in 2006 that $25 million would be saved over 20 years if the courts were consolidated in one building.

Building a courthouse fits in with the Liberals' pledge to spend money on infrastructure, said Chief Justice Crampton. "I see it as an infrastructure project. I don't know why it shouldn't be looked at as an infrastructure."

Public Services and Procurement Canada spokesman Nicolas Boucher said by e-mail his

department "continues to evaluate various options to permanently accommodate the Federal Courts…and the Courts Administration Service. No decisions have yet been made in respect to design, location or name of the building."

The Ott/NORR design was singled out a decade ago for design excellence as an "outstanding justice facility" by the American Institute of Architects — the first time the organization honoured a yet-to-be-built structure. "It's a 2006 design which I think has survived the test of time," Baldassarra said. "It's quite an elegant building. It gives the [four] courts the importance, but it also works with the [Justice and] Confederation Building and the Supreme Court of Canada in being very sympathetic to those buildings."

Like the existing buildings near it, the federal courts headquarters would have a copper-clad mansard roof and be built primarily of natural stone. "The stone that was selected was an Ontario stone — Queenston limestone — and…it's a noble material that does again match the other buildings that are on Parliament Hill," Baldassarra explained. "When you're doing composition like that, the last thing you want is to have a gold glass building stuck in the middle of it."

As principal architect on the project and team leader for half-a-dozen NORR-designed courthouses, Baldassarra disagreed that the building is overly lavish, a criticism made about the original design by the Auditor General of Canada in 1997. "It's not lavish," he said. "It's a quality building" designed to a standard befitting an Ottawa architectural landmark. "The Federal Judicial Building site is the last remaining site on Parliament Hill, and because of that it's the most important," he said. "The materials are quality materials…that are going to last 100 years."

According to the book NORR published about the building this year, interior finishes include honed granite and marble, walnut, stainless steel and back-painted glass. The building is designed to green standards.

Its "exterior cladding consists of rough cut sandstone, copper panels, aluminum curtain wall system with insulated glazing units and copper solar control shade screens. Roofing consists of a planted green roof on top of the parking podium and a single-ply PVC roof membrane with skylights on the main building."

The building "is layered in a two-story courtroom base, three administrative support levels and four levels of judges' chambers above. At the heart of the complex are two stacked atria that open to the north and the Ottawa River and beyond. The lower atrium, five storeys in height, is the primary public space around which the court rooms are organized. Floors 3-5, which

contain the registry and courts administration offices, wrap around the public atrium and share the views to the river but are screened from below by a stainless steel fabric curtain.

“Above the five-story public space is another light-filled four-storey upper atrium, which provides a private sanctuary for the judges and their staff. On each floor, private judges’ chambers ring the perimeter of the building, providing a variety of picturesque views to the east, south and west. Between the judges’ chambers and atrium are the open work areas for the judicial assistants and the law clerks. Linking the four levels is a feature stair that provides convenient access and reinforces the sense of camaraderie between the various courts.”