



Press Clippings for the period of January 10th to 16th 2017 / Revue de presse pour la période du
10 au 16 janvier 2017

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(QUEBEC) Impasse dans les négociations avec les juristes de l'État

Robert Dutrisac, Le Devoir, le 13 janvier 2017

Les négociations entre l'État et ses quelque 1100 juristes sont une fois encore dans l'impasse. Le gouvernement Couillard évalue toutes les avenues qui lui restent, ce qui pourrait comprendre une loi spéciale pour forcer le retour au travail.

« *On n'a pas statué sur la suite des choses. On évalue nos options* », a indiqué Catherine Poulin, l'attachée de presse du président du Conseil du trésor, Carlos Leitão.

« *Le gouvernement est étonné et déçu que LANEQ [Les avocats et notaires de l'État québécois] ait brisé l'accord de confidentialité et rompu les échanges alors que le gouvernement a fait un pas significatif*, a-t-elle affirmé. *Le gouvernement estime avoir fait sa part.* »

Les représentants de LANEQ, dont son président Me Jean Denis, et les négociateurs du gouvernement ont tenu une « *rencontre exploratoire* », mercredi à Montréal, rencontre qui a duré quelques heures. Lors d'une assemblée le 21 décembre, quelque 900 membres du syndicat avaient rejeté à 97 % les offres du gouvernement et plus de 90 % d'entre eux avaient voté en faveur de la poursuite de la grève, qui dure depuis le 24 octobre dernier.

Les discussions achoppent sur les salaires et les conditions normatives. Mais, surtout, les juristes insistent pour obtenir la reconnaissance, dans une loi, de leur indépendance juridique. Ils veulent aussi échanger leur droit de grève contre le recours à l'arbitrage, comme c'est le cas pour les procureurs de l'État.

Lors de cette rencontre exploratoire, le gouvernement, qui, jusque-là, avait rejeté d'envisager le recours à l'arbitrage, a proposé de former un comité pour évaluer le statut des juristes de l'État.



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« Ça, ça nous insulte au plus haut point », s'est indigné Jean Denis dans un entretien avec *Le Devoir*. Dans leur dernière convention figurait une lettre d'entente où le gouvernement s'engageait à se pencher sur la réforme du mode de négociation de ses juristes. En outre, un rapport datant de 1986 et signé par René Dussault a déjà défini le statut et le rôle des juristes de l'État québécois, a fait valoir le président de LANEQ.

Quebec government lawyers decry stalling contract negotiations

La Presse Canadienne, Montreal Gazette, January 12 2017

Contract negotiations between state lawyers and the Quebec government have fallen apart.

The parties held four exploratory meetings since Dec. 27 but never formally sat down to negotiate, according to *Avocats et notaires de l'État québécois* union president Jean Denis.

Quebec made its last offer, which included creating a committee to evaluate the role of state lawyers and notaries in government, but that committee would not have any decision-making power.

"They're not compromising at all. Obviously, it takes two parties to compromise," said Denis.

The 1,100 notaries and lawyers work for various ministries and have tried, since March 31, 2015, to renew their collective bargaining agreement with the province.

"Our request is simple: we, we want exactly the same thing as Crown prosecutors," said Denis. "Both on a monetary and working conditions level.

"For that, it takes a recognition of our independence, a recognition of our unique and particular work. And, for that, it takes a bill that will frame the whole thing. And, what's more, we'll never strike again because we won't have the right to."

The lawyers went in strike last October, while maintaining essential services. A strike mandate was renewed with a 90 per cent majority vote at the union's last general assembly in Montreal on Dec. 20.



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Asked about the strike mandate Wednesday, when lawyers and notaries had just finished protesting in Montreal, Natural Resources Minister Pierre Arcand said he wanted to conclude negotiations quickly, given the importance of lawyers in the legislative process.

(Québec) Négociations rompues avec les juristes du gouvernement

Lia Levesque, La Presse, le 12 janvier 2017

Les négociations sont maintenant carrément rompues entre les juristes de l'État et le gouvernement du Québec.

Les parties ont eu quatre rencontres exploratoires depuis le 27 décembre, mais aucune rencontre de négociation formelle, a indiqué jeudi au cours d'une entrevue avec La Presse canadienne Me Jean Denis, des Avocats et notaires de l'État québécois.

Québec a fait une proposition prévoyant un comité pour évaluer leurs tâches, mais un comité qui n'aurait pas de pouvoir décisionnel. Me Denis juge la dernière proposition gouvernementale «ridicule».

Les quelque 1100 avocats et notaires à l'emploi des différents ministères et organismes gouvernementaux tentent depuis le 31 mars 2015 de renouveler leur convention collective avec le gouvernement du Québec. Ils demandent d'être traités comme les procureurs de la Couronne.

Ils ont déclenché une grève générale illimitée le 24 octobre dernier, tout en assurant les services essentiels. Le mandat de grève a d'ailleurs été renouvelé avec une très forte majorité, lors d'assemblées générales tenues à Montréal et Québec, le 20 décembre dernier.

L'avocate Emilie Taman gagne sa cause

Paul Gaboury, Le Droit, le 9 janvier 2017

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La Cour d'appel fédérale vient de donner raison à l'avocate Emilie Taman, qui contestait le refus de la Commission de la fonction publique (CFP) de lui accorder la permission de participer à l'élection fédérale d'octobre 2015.

Dans le jugement rendu le 6 janvier dernier, la Cour d'appel fédérale a ainsi renversé la décision précédente de la Cour fédérale qui avait refusé la demande de contrôle judiciaire de l'avocate Taman contre la CFP.

Dans sa décision, la Cour d'appel fédérale indique que la CFP n'a pas justifié son refus d'accorder à M^{me} Taman, alors procureure au Service des poursuites pénales du Canada, la permission d'être candidate.

« La décision n'était pas raisonnable, manquait de justifications, de transparence et était incompréhensible », peut-on lire dans le document de 19 pages, dont *Le Droit* a obtenu copie en anglais et qui n'a pas encore été traduit.

Malgré le refus de la CFP, M^{me} Taman, fille de l'ex-juge de la Cour suprême Louise Arbour, avait quand même décidé de se présenter comme candidate néo-démocrate dans Ottawa-Vanier, mais avait perdu l'élection, remportée par Mauril Bélanger. Elle avait ensuite été congédiée par son employeur, un congédiement qu'elle a contesté dans une procédure de grief distincte de sa demande à la Cour fédérale.

Emilie Taman a depuis quitté le gouvernement fédéral, avec lequel elle a conclu une entente pour son grief. La décision n'aura donc pas de conséquences pour elle, puisqu'elle est passée à « autre chose » dans sa vie professionnelle. Elle occupe un nouvel emploi comme professeur à temps plein à la Faculté de common law de l'Université d'Ottawa.

« Je suis très heureuse de voir que la Cour a reconnu le principe que je défendais, a réagi M^{me} Taman. La décision n'aura pas d'impact pour moi, car je suis passée à autre chose. Mais elle en aura certes pour les fonctionnaires qui voudront être candidats à l'avenir. La Commission de la fonction publique ne devra pas simplement dire qu'un employé occupe un poste visible pour lui refuser d'être candidat. Elle devra démontrer comment cela peut avoir un impact. Je crois que cela va être difficile à établir. »

L'avocate est à nouveau candidate néo-démocrate pour l'élection partielle fédérale dans Ottawa-Vanier, dont la date n'est pas encore connue. « Avec mon nouvel employeur, j'ai droit à un congé de 30 jours payés pour participer à l'élection. J'attends toujours de connaître la



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date de l'élection pour savoir quand je vais m'absenter. C'est vraiment le monde à l'envers pour moi », a reconnu M^{me} Taman.

Reevely: Federal lawyer Emilie Taman was wrongly forbidden to run for NDP, appeals court rules

David Reevely, The Ottawa Citizen, January 9 2017

The Public Service Commission has to have really strong and clear reasons for stopping a federal employee from running for office, the Federal Court of Appeal says, and it didn't supply them when it ordered lawyer Emilie Taman not to run for the New Democrats in 2015.

So, a three-judge panel said in a ruling issued Friday, "the decision lacks justification, transparency and intelligibility" and can't stand.

Taman decided to challenge Liberal Mauril Bélanger in Ottawa-Vanier anyway, left her job as a federal prosecutor without authorization, and was fired.

The decision doesn't give Taman her job back. It doesn't even precisely say that the decision that led to her firing was wrong. It does say that she was treated unreasonably, and gives all federal public servants much firmer ground to stand on if they want to enter politics themselves.

"I'm thrilled with the decision that will allow others in my position to run in future elections without being put in such an untenable position," Taman said in a written statement. "I don't regret the choice I made to leave, but wish it could have played out differently. The court's ruling feels like a true vindication."

Public servants, including lawyers, are supposed to do their jobs apolitically — with loyalty to the government, not to any party. They're allowed to have political views and to participate in party politics as long as it doesn't interfere with their work. To run for federal or provincial office, though, they need to get permission from the Public Service Commission, which defends non-partisanship in the public service.

The commission gave dozens of public servants authorization to run in the 2015 election, mostly for the Liberals or the NDP. Taman's boss at the time thought her running would be OK — it would create conflicts but they could manage them, he believed. That boss's boss, the director of the public prosecution service, thought not, and the commission sided with him. So did the Federal Court. But not the three judges on the Federal Court of Appeal, which ruled

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unanimously in Taman's favour. (Judge Denis Pelletier wrote the ruling, supported by Judges Marc Nadon and André Scott.)

Taman said when she declared her candidacy that she didn't like the Conservatives' anti-terrorism legislation, Bill C-51, which expanded police powers in ways she believed were unconstitutional. Taman thought many of the Tories' criminal justice moves were bad and ineffective — mandatory minimum sentences for certain crimes was another one that stood out, because they took away judges' discretion to deal with the specifics of cases before them.

Her job at the time was in the "regulatory and economic" part of the prosecution service, which doesn't deal precisely with terrorism and crime but does handle refugee and immigration offences. She was uncomfortable with the prospect of working under laws she believed were wrong.

A federal lawyer can be uncomfortable with parts of the law as long as he or she follows it. The question for the Public Service Commission was whether running for the New Democrats — picking up a particular party's banner — would be a problem for Taman doing her job properly if she lost.

Maybe it would be, the appeals court ruled. But the commission didn't explain how, exactly, being a known New Democrat would get in the way of Taman's being a government lawyer. Observing that Taman's job as a prosecutor gave her a lot of autonomy, discretion and public visibility, and therefore a lot of potential room to be partisan, wasn't enough.

The prospect she might handle cases under the Lobbying Act or the Canada Elections Act wasn't enough, either. She could stay away from cases where she'd have a personal conflict of interest, as lawyers do all the time. To forbid her to run, the commission had to conclude she couldn't do her job after running and losing, and it had to explain how it reached that conclusion.

"Ms. Taman's autonomy, discretion and visibility would have been the same before and after the election. If they did not contribute to the impairment of her ability (as opposed to a perception of her ability) to discharge her duties before the election, why would they have done so after the election? The opportunity to act in a partisan manner would have been the same before and after the election. If Ms. Taman's political opinions did not colour the exercise of her discretion before the election, why would they do so after the election?" the judges asked.

There might be good answers to these questions but the Public Service Commission didn't supply any. It also, rather sloppily, didn't distinguish between actual conflicts and the perception of conflicts, which are related but separate ideas.

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“While this suggests a deficiency in the preparation of the commission’s reasons, it also suggests errors in reasoning which make the decision unreasonable,” the judges ruled.

Ordinarily the matter would go back to the commission for a fresh look but since the election has been over with for more than a year, there’s no point.

In 2015 of course, Taman ran into the Liberal meatgrinder. She teaches at the University of Ottawa’s law school now and is running again for the NDP now that Bélanger’s death from amyotrophic lateral sclerosis last summer has opened the seat again. The byelection hasn’t yet been called but a date has to be set within a few weeks.

Appeal court sides with ex public servant denied leave to run for election

**Emilie Taman is the NDP's candidate in Ottawa—Vanier again
CBC News, January 9 2017**

The Federal Court of Appeal has ruled that the Public Service Commission acted unreasonably when it refused to grant former public servant Emilie Taman an unpaid leave of absence to run as a candidate in the 2015 federal election.

In October, the **Federal Court ruled** that the Public Service Commission used "proportionate balancing" when it denied Taman a leave of absence without pay to seek the federal NDP nomination in Ottawa—Vanier.

She had applied for a judicial review after losing her job when she decided to run against then Liberal incumbent Mauril Bélanger. Bélanger won the election but later died of ALS, or Lou Gehrig's disease.

In a judgment delivered in Ottawa last week, Justice J.D. Denis Pelletier allowed the appeal and set aside previous decisions, and awarded costs to Taman.

Pelletier concluded that the Public Service Commission didn't justify its refusal to grant Taman permission to seek elected office, and that the commission "did not distinguish between actual impairment of ... Taman's ability to perform her duties in a politically impartial manner and a perception of impairment of her ability to do so."

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"I'm grateful for the support I received from the Association of Justice Counsel who chose to staunchly defend the rights of federal lawyers to fully participate in the democratic process," Taman is quoted saying in a news release issued Monday.

Taman is now a professor of criminal law at the University of Ottawa and is the NDP's candidate in the upcoming federal byelection in the riding of Ottawa—Vanier.

PIPSC wants temporary parallel pay system until 'Phoenix fiasco' is fixed

PIPSC also demands wider access to emergency pay
CBC News, January 12 2017

The head of the Professional Institute of the Public Service of Canada wants the federal government to set up a temporary parallel pay system until Phoenix is fixed, and to give more employees access to emergency salary advances.

The temporary system would be used for employees receiving substantially reduced pay or no pay at all, Debi Daviau said at a news conference late Thursday morning.

"I was, frankly, shocked to learn yesterday ... that no mention of this much-needed temporary parallel pay system was forthcoming," Daviau said, referring to [a Wednesday update on the Phoenix situation by Marie Lemay](#), deputy minister of Public Services and Procurement Canada, or PSPC.

Phoenix, a computerized pay system, rolled out last February, leading to complaints by tens of thousands of federal employees. Some were underpaid, others were overpaid and some were not paid at all.

'It's been almost a year'

Daviau also said unions were told in December that Treasury Board and PSPC would look into expanding salary advances — a move that would require some policy changes.

'This was not their fault, and they should not be paying the price for this ill-conceived project.' - Debi Daviau, PIPSC

"We were promised that the shortcomings with emergency pay would be addressed, and that someone who has not been adequately paid could have access to these salary advances," she said.

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"Right now, they have nothing. It's been almost a year since the Phoenix fiasco was foisted on our members, and we need to see better systems in place to help struggling civil servants. This was not their fault, and they should not be paying the price for this ill-conceived project, and they should definitely not be asked to shoulder the burden of chasing down their pay."

PIPSC has so far issued loans to about 15 members who have demonstrated financial hardship, Daviau said.

Asked by a reporter whether having to set up a temporary system would only complicate matters more, Daviau said it's necessary.

"In my view, no amount of administrative burden is too much for the government to shoulder, given its obligation to pay its employees," she said.

Phénix: Ottawa ne sait pas quand tout sera réglé

Paul Gaboury, Le Droit, le 11 janvier 2017

Malgré les efforts et les ressources supplémentaires de plus de 50 millions \$ consentis pour désengorger le système Phénix qui traite la paie des employés de la fonction publique, le gouvernement fédéral ne sait toujours pas quand les 8000 cas encore en retard pourront être définitivement réglés.

Ceux-ci ont été confrontés à des problèmes relatifs à leur paie, certains ayant été trop ou pas assez rémunérés, d'autres n'ayant pas été payés du tout. Environ 5000 des 8000 cas toujours problématiques ont été partiellement résolus, mais pas entièrement, a affirmé la sous-ministre de Services publics et Approvisionnement Canada, Marie Lemay, en conférence de presse mercredi.

« Notre objectif n'était pas de régler tous les cas en arriéré, et de reprendre le retard représentant deux mois et demi que nous avons accumulé depuis l'été dernier. Nous voulions surtout nous concentrer sur les cas urgents et la préparation des T-4 en prévision de la période des impôts », a expliqué Marie Lemay. Bon nombre des dossiers qui restent à être résolus sont « compliqués », a-t-elle fait valoir, précisant que certains cas demandent une journée entière d'attention et parfois plus, en moyenne, pour être solutionnés.

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Ainsi, deux mois et demi supplémentaires seraient nécessaires pour tourner la page sur les ratés de Phénix

« En décembre, nous atteignons notre norme de service dans 20 à 30 % des cas. En février, nous devrions voir une progression. Mais je ne suis pas en mesure de donner de date où nous aurons atteint l'état stable », a indiqué la sous-ministre Lemay.

À la suite d'une ordonnance de la Cour fédérale, le gouvernement et les syndicats ont convenu de travailler ensemble au sein d'un comité consultatif patronal-syndical pour régler les problèmes de Phénix. La présidente de l'Institut professionnel de la fonction publique, Debi Daviau, discutera des problèmes persistants de Phénix, jeudi, lors d'une conférence de presse qu'elle a convoquée sur la Colline parlementaire.

De toute évidence, les 50 millions \$ déjà prévus en 2016-2017 ne suffiront pas à régler Phénix puisque le gouvernement s'est déjà engagé à maintenir aussi longtemps qu'il le faudra les bureaux satellites en appui au Centre de Miramichi.

Environ 40 agents de rémunération en formation depuis un an pourront dès janvier commencer à travailler à Miramichi, alors que 90 autres stagiaires commenceront bientôt leur formation.

Enquête

Une enquête sur les causes ayant mené au fiasco Phénix sera effectuée prochainement par le Conseil du Trésor, a indiqué la sous-ministre Lemay. Plus tard cet automne, le vérificateur général du Canada, Michael Ferguson, doit aussi faire connaître les conclusions de son enquête sur Phénix.

Mais il est peu probable qu'une seule personne soit tenue responsable des déboires survenus avec le système de paie Phénix, a déjà indiqué M^{me} Lemay.

Au chapitre des « bonnes nouvelles » liées à Phénix, la sous-ministre Lemay a indiqué que le versement de la rétroactivité fait aux employés de l'Agence du revenu du Canada, mercredi, s'est déroulé sans problème.

C'était la première fois qu'une paie de rétroactivité était versée avec Phénix, des filets avaient mis en place pour éviter des ratés du système.

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No one person likely to blame for Phoenix debacle, says Lemay

Terry Pedwell, The Ottawa Citizen, January 11 2017

It's unlikely that any single person will be held accountable for the government's failed employee pay system, a senior federal bureaucrat told a news conference Wednesday.

The costs of dealing with the pay problems will also likely continue well into the new fiscal year, which begins April 1, said Marie Lemay, deputy minister of Public Services and Procurement Canada.

The department continues to struggle with a backlog of about 8,000 cases of government employees who have experienced problems with their paycheques, ranging from being underpaid to being overpaid — or not being paid at all.

About 5,000 of those files have been partially resolved but are not yet completed, said Lemay.

And while resources are focused on clearing that backlog, the government has been unable to meet its 20-day standard deadline for new, incoming pay changes and requests, said Lemay, who has been the public face of the department since last summer when it faced a backlog of about 82,000 cases.

Many of the remaining files are "complicated," Lemay said, adding that some cases are taking a full day each, or longer, on average, for pay system employees to rectify.

And that has meant it takes about two-and-a-half months longer than it should to deal with incoming pay requests.

"That's very frustrating," said Chris Aylward, national executive vice-president of the Public Service Alliance of Canada, which represents the majority of federal civil servants.

"In the last 48 hours I was still getting emails about people not receiving proper pay," he said.

The deputy minister said Treasury Board will take the lead in investigating what went wrong with the Phoenix system, which was launched early last year with the double goal of moving away from the government's antiquated paper-based pay system while saving money. But she expressed doubts that any individual would face repercussions as a result of the failed launch.

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“In projects like this, especially with an organization like ours, when you have the equivalent of 100 companies implementing a system ... there’s going to be ... multiple points of failure,” said Lemay.

“If the hope is to find one person (responsible), I don’t think that’s going to happen.”

Lemay added that the auditor general will conduct a separate evaluation.

At its last briefing in December, the department said about 10,000 cases remained in the backlog of current and former public servants being paid improperly.

As well, the overall cost for fixing the computerized pay system was expected to exceed \$50 million.

That cost will likely continue to rise as the government retains employees hired to operate a call-in centre and process claims for several more months, said Lemay.

Before the system was launched, the previous Conservative government had banked on it saving taxpayers \$70 million annually.

Both Aylward and Lemay said the government and unions are working closely to ensure that lessons learned from the Phoenix debacle are applied to any new, major government programs affecting federal employees.

Phoenix caseload hits 8,000 as response times lag

'We continue to work toward the elimination of our backlog,' deputy minister says
CBC News, January 11 2017

The federal government is struggling to clear a backlog of 8,000 cases of civil servants experiencing problems with their pay under the troubled Phoenix system, and is failing to meet standard response times for new requests.

Marie Lemay, deputy minister of Public Services and Procurement Canada, said in Ottawa Wednesday that about 5,000 of those 8,000 issues are partially resolved but not complete.

The focus on clearing the backlog means that the government isn't meeting its 20-day standard deadline for new, incoming pay changes and requests, Lemay said.

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It's still taking about two-and-a-half months longer to deal with incoming pay requests. The department expects a "gradual return to expected service standards" as the backlog is cleared and workers can focus on new requests.

At the last briefing in December, the government said about 10,000 cases of current and former public servants having problems getting paid properly remain in the federal government's backlog, and the overall cost for fixing the Phoenix pay system this year could rise above \$50 million.

Phoenix, a computerized pay system, rolled out last February, leading to complaints by thousands of federal employees. Some were underpaid, others were overpaid and some were not paid at all.

The government originally gave itself a deadline of Oct. 31, 2016 to resolve all Phoenix pay issues. Lemay said Wednesday that it wouldn't be wise to set a new deadline, in part because the complexity of the cases surprised them.

"We continue to work toward the elimination of our backlog," Lemay said.

Accountability

An evaluation of what went wrong will be handled by Treasury Board, Lemay said, adding that she hopes that will happen soon. The auditor general is also investigating.

"The tough part is, I don't know that there's going to be one point of accountability," Lemay said. "In projects like this, especially with an organization like ours, when you have the equivalent of 100 companies implementing a system ... there's going to be ... multiple points of failure.

"If the hope is to find one person [responsible], I don't think that's going to happen."

Public sector workers took a record number of sick days last year

Expect the disparity between public and private sector sick leave to keep growing
Jason Kirby, Maclean's, January 10 2017

Is a health crisis ravaging Canada's public sector workers?

One might wonder after looking at the latest stats on worker absenteeism in Canada. In 2016, civil servants missed a record number of workdays, according to annual job market statistics

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released last Friday by [Statistics Canada](#). All told, the average public sector worker missed 13.5 days of work last year, the most ever. That compares with 8.3 days for workers in the private sector.

As a result, the inactivity rate of government employees—a measure of the number of hours lost as a share of the usual full-time work week—hit a record high last year.

The above figures reflect both sick days (for illness or disability) as well as days missed for personal or family reasons, though the former accounts for the vast majority of missed days.

The gap between public and private sector absenteeism has been widening for years. Last year that disparity hit an all-time high, as government workers took 5.2 more sick days than those in the private sector.

Under Stephen Harper’s government, reform of sick-leave benefits in the federal public service sparked a backlash among government employees and became an issue during the last federal election.

Union agreements allow federal employees to take up to 15 days off work each year, over and above their vacation time, and any unused sick days can be banked and carried forward into future years. At last count, federal employees had banked 15 million days of unused sick leave.

In 2015 the Conservatives passed legislation allowing the government to override existing union contracts, limit the number of sick days and scrap sick-leave banks, replacing them with new short-term disability programs. The Harper government claimed doing so would save Ottawa \$1.3 billion, and the government booked those savings in its final budget.

The Trudeau government, on the other hand, campaigned on a promise to repeal that legislation, and when Finance Minister Bill Morneau released the government’s first budget in March 2016, he reversed the \$1.3 billion in savings. Treasury Board President Scott Brison scrapped the measures in March, ahead of negotiations with public sector unions, saying only that he wanted to “modernize” sick leave rules.

Then in a series of announcements in December, just before the Christmas holidays, Ottawa [signed agreements](#) with three unions representing federal workers (the Professional Institute of the Public Service of Canada, the Canadian Association of Professional Employees and the largest, the Public Service Alliance of Canada) leaving the existing sick-leave programs untouched.

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At least for now. The unions agreed to create an “employee wellness” task force that, at some indeterminate point down the road, will re-examine sick leave practices within the federal civil service. Whether that task force will look at replacing the existing sick-leave regime with a short-term disability program, similar to what the Conservatives envisioned, is unclear.

So just why do public sector workers take so many more sick days than their private sector counterparts?

According to a 2013 [StatsCan study](#), as much as 80 per cent of the sick-leave gap is the result of the make-up of government workforces. It noted that workers in the public sector are generally older, there are more females than males, and most are unionized, and that all three of those groups tend to take more time off. After those factors are accounted for, StatsCan said, the sick day gap between the public and private sector in 2012 fell from 4.1 to 0.8 days.

Since then the average public sector worker has only grown greyer, and more unionized—in just the four years since 2012, the unionization rate among public sector workers rose from 75.2 per cent to 76.3 per cent, while the private sector unionization rate fell to 16.1 per cent from 17.5 per cent.

In other words, expect the disparity between public and private sector sick leave to keep growing wider.

La taille de la fonction publique augmente

Paul Gaboury, Le Droit, le 10 janvier 2016

Pour la première fois depuis 2010, la fonction publique fédérale a pris du poids lors du deuxième trimestre de 2016-2017, selon un rapport du Directeur parlementaire du budget (DPB).

Au cours du deuxième trimestre de 2016-2017, la croissance des dépenses de rémunération, qui composent les deux tiers des dépenses de fonctionnement du gouvernement, ont connu une légère hausse de 1 %, soit 23 millions \$ pour atteindre 18 milliards \$.

Cette croissance des dépenses en personnel a ainsi mis un terme à une tendance à la baisse, qui durait depuis trois ans, et est attribuable à la toute première augmentation de la taille globale de la fonction publique depuis 2010.

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Citant les chiffres du Secrétariat du Conseil du Trésor, le rapport du DPB indique que l'effectif de la fonction publique comptait près de 282 500 employés en 2010, un nombre qui a par la suite dégringolé à un peu plus de 260 000 en 2013, 255 000 en 2014 et 2015, pour remonter à près de 257 000 en 2016. C'est tout de même encore près de 25 000 employés fédéraux de moins qu'il y a six ans.

Ententes

Selon le DPB, la croissance des dépenses en personnel du gouvernement devrait continuer, alors qu'Ottawa a commencé à conclure des ententes avec les syndicats pour le renouvellement des contrats de travail.

Par ailleurs, la majeure partie de la hausse de 650 millions \$ (+7,2 %) enregistrée par rapport au deuxième trimestre de l'année dernière dans les dépenses des affaires gouvernementales est attribuable aux programmes de gestion des locaux et des biens (+54 % ou 550 millions \$) et des programmes et services spécialisés (+119 % ou 16 millions \$) de Services publics et Approvisionnement Canada.

Federal public service ranks in capital grow to highest level in 7 years

Ottawa federal public service jobs rose by 9,000, while Gatineau saw increase of 5,000 jobs
Laura Fagan, CBC News, January 10 2017

The number of federal civil servants employed in the national capital area is at its highest since 2010, when the previous Conservative government began slashing public service jobs.

According to Statistics Canada, the total number of federal government employees working in the National Capital Region in 2016 jumped by 14,000 to 145,000, representing a 10.5 per cent increase over the previous year.

Ottawa saw an increase of 9,000 employees while the number working in Gatineau rose by 5,000.

Experts say the growth in employment numbers is directly tied to the Liberal government carrying out election promises to create new programs for Canadians.

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'A hyperactive government'

"This is a hyperactive government," said Emmanuelle Tremblay, president of the Canadian Association of Professional Employees. The union represents 13,000 federal workers including economists, translators and policy analysts.

"After deep cuts into public services there has been a realization or a wake-up call, after two or three years of cuts you have departments waking up and realizing that you cannot function below the bare bones."

Stephen Harper's government slashed thousands of federal government jobs in the Ottawa area during its almost 10-year mandate.

Tremblay cautions the apparent revival could be due to the temporary hiring last spring to carry out the federal census, as well as other non-permanent workers brought in to fix the trouble-plagued Phoenix pay system.

She said more civil servants are needed to carry out the Liberals' ambitious slate of new policies. Tremblay said she's hearing from members who say their workload has increased substantially.

"[The Liberals] have committed to advancing on key policy deliverables, and for that you need people to do that," Tremblay said. "You need people to think them through, to analyze and come up with options and put forward the infrastructure to deliver on those."

Growth not sustainable, says prof

Political scientist Geneviève Tellier, who teaches at the University of Ottawa, characterizes the increase as a natural swing of the pendulum after years of cuts to the civil service. But she cautions a double digit increase isn't sustainable.

"You cannot continue with a 10 per cent increase every year," Tellier said. "It's 14,000 new hires last year and the Conservatives cut about 19,000, so we're not very far from the level that we had before the Conservatives took power."

Tellier said the increase is likely good news for restaurants and other businesses in Ottawa and Gatineau that saw profits fall in the wake of public service layoffs.

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Statistics Canada said the bulk in the hiring occurred in the fall of 2016 and was not related to the census.

Honour killings to voting rights: Hot-button issues coming up at Supreme Court

Sean Fine, The Globe and Mail, January 9 2017

The case of a young woman who had her throat slit for love in an alleged honour killing in India will be at the centre of the Supreme Court of Canada's winter session of hearings, which begins Wednesday. It is a session with several high-profile cases, including two in which the importance of stopping violence against women goes up against competing principles – the right to a fair trial, and to be protected from torture or neglect in foreign prisons.

Honour killing and extradition to a foreign jail, March 20

It's a Romeo and Juliet story, highlighting hot-button issues of immigration and values in the air in Europe, the United States and Canada.

Jaswinder Kaur Sidhu, 24, who lived in Maple Ridge, B.C, married a man beneath her caste and fled to a tiny village in India to be with him. Travelling by motor scooter, they were waylaid on the road by a group of assassins in a car. Ms. Sidhu died when they cut her throat; her husband was beaten. In *Attorney-General of Canada on behalf of the Republic of India v Surjit Singh Badesha, et al.*, India is trying to extradite her mother, Malkit Kaur Sidhu, and uncle, Surjit Badesha. (They were among 13 charged in her death. Three were convicted of murder and sentenced to life in prison.) It pits the need to protect society against brutal murders against the need to protect the basic rights of accused people once they are out of Canada's control.

The pair argued in B.C. courts that India couldn't be trusted to give them a fair trial, not to torture them in its jails and not to execute them if they were found guilty. Canada received diplomatic assurances from India that the mother and uncle would not be tortured or executed and that Canadian consular officials would have unrestricted access to them in jail and during court proceedings. The trial judge said there was enough evidence to send them to India for trial, but the B.C. Court of Appeal, in a 2-1 ruling, rejected India's assurances that they would be treated properly in jail, while accepting the country's other assurances.

The Attorney-General of Canada said in a legal filing the appeal court had taken "the unprecedented step of reviewing and condemning" the jails of an extradition treaty partner, not for one prison or region "but for the Republic of India as a whole."

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“I think it’s a case with incredibly high stakes,” says Nikos Harris, who specializes in criminal law and the law of evidence at the University of British Columbia’s Allard School of Law. “They’re really commenting on the integrity of another country’s justice system.” He called the B.C. appeal court’s rejection of India’s assurances “a very bold statement from a court,” and said that if the Supreme Court upholds it, extradition to India in other cases may become difficult or impossible. He noted that the appeal court offered alternatives: seek more meaningful assurances from India, or try the pair in Canada.

The law of sexual assault, March 21

It may seem as if the court’s newest member, Justice Malcolm Rowe, appointed this fall, is on trial at the hearing in *R v S.B.* He won’t be, but a ruling he wrote last year in a sex-assault case will take centre stage. Justice Rowe sided with the male accused over the female complainant in a 2-1 majority decision when he was with the Newfoundland and Labrador Court of Appeal. The case arrives as the justice system’s fairness toward complainants is being widely debated – for instance, as Federal Court Justice Robin Camp fights to keep his job after asking a rape complainant why she didn’t keep her knees together.

R v S.B. is an exceptionally nuanced case. A veteran trial judge allowed a jury to hear evidence of the complainant’s prior sexual activity. Under Section 276 of the Criminal Code, such evidence is permitted under limited circumstances. All three judges of the Newfoundland and Labrador Court of Appeal said the judge was wrong to allow it in, in the circumstances of the case. (The jury read a transcript of a sex video made by the accused and complainant, who were husband and wife.) But two of the three judges, including Justice Rowe, upheld the jury acquittal anyway. Juries don’t give reasons for their verdicts, and Justice Rowe said the jury may have found the complainant damaged her credibility through false testimony.

The case will be an important marker for the Supreme Court in a hotly contested area of law. “The whole field of sexual-assault law seems to be caving in on itself under the sheer weight of the rules (and the cultural norms) regarding credibility and proof,” says Constance Backhouse, who holds the Chair in Sexual Assault Legislation at the University of Ottawa’s law school.

“I don’t think anyone has a clear analysis, or simple answers to how to find a path to higher ground on these troubling issues. The interests and perspectives of those victimized by sexual assault, and the interests and perspectives of those accused of sexual assault, are often at opposite ends of the pole. The citizenry is confused and uncertain. The judges are conflicted. The judges don’t agree on how these decisions should come out. And no wonder.”

Justice Rowe won’t take part in the Supreme Court hearing.

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Auditor's duty of care, Feb. 15

A coda to the long-running drama around theatre impresario Garth Drabinsky's publicly traded Livent Inc., producer of *The Phantom of the Opera*, in which Mr. Drabinsky, convicted of fraud, was sentenced to five years in prison, and company co-founder Myron Gottlieb received a four-year term. Deloitte & Touche (now Deloitte LLP) prepared the company's financial statements as its auditor from 1989 to 1998. In 2001, after the company had been sold and went bankrupt, its receiver sued the auditor, alleging it had been negligent in not uncovering the fraud. The trial judge in *Deloitte & Touche v. Livent Inc.* awarded the receiver \$85-million in damages, and Ontario's appeal court dismissed the appeal.

Toronto business lawyer David Vaillancourt, who was not involved in the case, says it has been difficult for shareholders to sue company auditors since a 1997 Supreme Court ruling, but the court could choose to throw out that precedent (known as *Hercules Managements v. Ernst & Young*) and "open up a broader right of recovery by shareholders against the auditors of public companies."

Voting rights of Canadians abroad, Feb. 16

A federal law barred Canadians from voting in federal elections if they have lived abroad for more than five years. In *Gillian Frank, et al. v. Attorney-General of Canada*, two Canadian academics at Ivy League universities say that law violated the constitutional right of all citizens to vote. One judge of the Ontario Court of Appeal agreed, saying the law turned them into second-class citizens, and that even federal prisoners have a constitutional right to vote; but two judges said the government had put a reasonable limit on that right, because expatriates don't live with the daily consequences of their voting decision. The Liberal government has since introduced a law to repeal the legislation barring voting from abroad, but it has not passed yet. The government argues the case is now moot; the court has not decided yet whether it is.

Privacy and text messages, March 23-24

In two cases, the court will decide whether gun- and drug-trafficking convictions can stand where the police obtained text messages not from the person who sent them but from the phones of accomplices or buyers. The question in *R v Marakah* and *R v Jones* is whether people have a reasonable expectation of privacy in their text messages after they reach their destination and are out of their control. Ontario Court of Appeal Justice Harry LaForme, dissenting in *R v Marakah*, would not have allowed police to view the texts without a warrant, calling texting an "increasingly central element of the private sphere that must be protected" under the Charter of Rights.

The law of discrimination, March 28

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On a road-improvement project in British Columbia, a consulting engineer from one company was exposed to insulting, derogatory behaviour by a foreman from another company. The foreman, Edward Schrenk, repeatedly mocked the place of birth, religion and sexual orientation of Mohammadreza Sheikhzadeh-Mashgoul, who was his supervisor. When the engineer's employer complained to the foreman's employer, Mr. Shrenk was fired. Mr. Sheikhzadeh-Mashgoul complained to British Columbia's Human Rights Tribunal about Mr. Shrenk, and the tribunal upheld his complaint. But British Columbia's Court of Appeal unanimously said the tribunal had no jurisdiction because Mr. Shrenk was not in a position to force him to endure the insults. "Not all insults inflicted upon employees, even in the course of their employment, amount to discrimination regarding employment," it ruled. The Supreme Court, in a website posting, says a key question is whether discrimination in employment refers only to "relationships marked by economic power imbalance."

CUPE makes 1st move to unionize some members of RCMP

Unionization of frontline officers likely to take much longer

Alison Crawford, CBC News, January 13 2017

The RCMP's 911 dispatchers could be the first sworn members of the national police force to be unionized.

The Canadian Union of Public Employees (CUPE) has applied to the Public Service Labour Relations Board to represent all 745 civilian RCMP members.

The move comes two years after the Supreme Court of Canada [granted RCMP members the right](#) to form an association.

CUPE spokesman Philippe Gagnon told CBC News the telecom operators asked CUPE to be their unit. He refused to say whether the union is negotiating to represent thousands of other civilians working for the RCMP, such as those who work in the forensic lab or who monitor wiretaps.

While it has yet to file an application, the Public Service Alliance of Canada (PSAC) also wants to represent the telecom operators. PSAC already represents a number of public servants who work in administrative roles at the RCMP.

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"It has always been our intention to organize more civilian workers at the RCMP because of our experience with these workplaces and this employer," PSAC president Robyn Benson said in a statement sent to CBC News.

"I believe PSAC is in the best position to represent them. Although CUPE has filed, the process is still ongoing. PSAC is still engaged in the process, and we are meeting with the workers."

- [Still no answers for Mounties on pay raise or unionization](#)
- [Senators remove controversial limits in RCMP union bill](#)
- [More people apply to become Mounties under new rules](#)

Brian Sauvé, who is with the National Police Federation (NPF), one of two major groups working towards certifying thousands of frontline officers, said he thinks it's a "good move."

"This is going to be, in essence, a dry run for when the regular member association makes an application and goes down that road."

Terry McKee speaks for the other group hoping to certify Mounties, the Mounted Police Professional Association (MPPAC).

"We support any process that will afford better benefits and workplace conditions for our members," he said.

Even so, McKee and Sauvé both say it's disappointing that the civilians won't be able to join their groups, which they argue was in the original spirit of the Supreme Court of Canada decision in January 2014.

Frontline Mounties likely to take longer

When the federal government drafted Bill C-7, which would have officially set out the conditions for Mounties to unionize, civilians were excluded from representation.

Civilian members are, despite not being gun-toting police officers, sworn members of the RCMP.

In 2013, Parliament enacted legislation that gave the government discretion to turn those employees into public servants, but that has yet to happen.

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As for frontline members, they remain the only unrepresented police in Canada.

There has been no movement on Bill C-7 since the flawed piece of legislation was overhauled by the Senate and sent back to the House of Commons last June.

MPPAC and the NPF have continued their efforts to sign up Mounties. Sauvé says his group should be ready to submit its application for certification by early March.

Heavy workload and lower salaries

Yet many Mounties have expressed their desire for both associations to amalgamate in order to present a stronger, united front against RCMP management and Treasury Board.

"We are working towards that," McKee told CBC News. "We have started communication between both associations and we're hopeful that we can get some results to this in the near future."

Heavy workloads and salaries are by far the biggest issue for Mounties right now.

RCMP members used to receive an average of the top three police agency salaries in Canada. Since around 2008 though, RCMP salaries have fallen steadily behind. McKee says the national police force's salaries rank 73rd out of 82 agencies.