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The AJC Press Clippings provides articles in both English and French. The articles appear in the language of publication. La revue de presse de l'AJJ partage des articles en français et en anglais. Les articles apparaissent dans la langue de publication.

Ottawa accused of dragging its heels on new contract for federal lawyers

Government's last-minute cancellation of 3 days of collective bargaining angers lawyers
Alison Crawford, CBC News, November 8 2016

The head of the union representing federal government lawyers says the Liberals have been dragging their heels on contract negotiations and have been "profoundly professionally discourteous" in collective bargaining.

"We booked the meeting space on our own and we're still eternally optimistic that they'll give us the courtesy of showing up," said Ursula Hendel, president of the Association of Justice Counsel.

The union, which represents lawyers who litigate and prosecute cases, draft legislation and develop criminal policy, was scheduled to meet for three days of collective bargaining starting Tuesday in Ottawa.

The AJC has been without a contract since May 2014.

Hendel said the Treasury Board notified her by email on Friday evening that it was cancelling this week's meetings.

One of the holdups, according to Hendel, has been a wage comparability study conducted by the federal government.

The AJC says data obtained from the Canadian Association of Crown Counsel clearly shows federal lawyers are paid less than their provincial counterparts in Ontario, Manitoba, B.C. and Saskatchewan. Yet the Treasury Board insisted on conducting its own wage comparability study, Hendel told CBC News.

According to the union, the federal government was supposed to give it a copy of the study on Oct. 31 but refused to, claiming it suffers from "serious methodological flaws."

"Well, they don't like the answers, do they?" Hendel asked rhetorically.

Workload an issue

The majority of AJC members live in Ontario, where the union says a provincial Crown prosecutor makes $199,149 and his or her federal counterpart makes $137,886.

But wages aside, Hendel said she doesn't feel there is any legitimate reason for the federal government to cancel this week's negotiations, as her bargaining team also wants to address issues such as the excessive workload federal lawyer's face. Hendel said the union could pursue binding conciliation.

A spokesperson for the office of the president of Treasury Board told CBC News that it respects the confidentiality of the collective bargaining process and will not engage in "bargaining directly with public servants through the media."

Update: PSAC pulls out of bargaining with federal government, calls for mediator

Kathryn May, The Ottawa Citizen. November 10 2016

The Liberal government and largest federal union walked away from a marathon collective bargaining session with no deal and their backs against the wall.

The Public Service Alliance of Canada pulled the plug Thursday on contract negotiations after 10 days of talks and called for a mediator to help sort out their differences.

The latest breakdown leaves the union facing the prospect of a possible strike against a highly popular prime minister and the government struggling to fulfill its promise of a more respectful relationship with its employees – while being fiscally responsible.

At stake in these talks is a relationship the government and 18 unions have been trying to rebuild since Prime Minister Justin Trudeau made an election promise to restore bargaining 'fairness' and respect for Canada's public servants they argue were trampled by a decade of Conservative rule.

"Both want the relationship to work. They are tired of the stress of fighting all the time and threat of legislation. It has taken its toll and they do need a better way of working with each that is respectful and responsible," said Ron Cochrane, the former co-chair of the joint union management National Joint Council.

"The last thing the union wants to do is strike but if they are pushed into the corner there may not be too many alternatives."

Cochrane said the big test of this session was whether the Liberals would back off on the previous government's agenda of "mining employee benefits to save money and how the employees' unions will respond."

And many argue the fact the union and Treasury Board negotiators met for 10 days and that PSAC is proposing mediation suggests compromises have been made – especially on the thorny issues around sick leave.

PSAC is the largest union, with five large bargaining groups representing 90,000 federal workers. The union has common issues that affect all employees, but each bargaining group has its own specific issues to be hammered out. It's unclear which issues were at the centre of the latest impasse.

But PSAC President Robyn Benson went into these 10-day talks saying they would be the last if progress wasn't made. On Thursday, the giant union says it is still open to further talks and requested a mediator be appointed for talks that would resume within two weeks.

"We've gone as far as we can," said PSAC president Robyn Benson after the union left the talks. "This government promised to respect public service workers and restore the integrity of the public services Canadians rely on. They have not yet delivered on that promise.

It appears the government moved on several critical fronts for the first time. It offered a pay raise and a proposal that could remove the logjam around sick leave reforms that have been on the table for the past two years.

Until now, the Liberals stuck with the previous Conservative government's plan to replace the existing regime, which gives public servants 15 days of sick leave a year. Unused leave can be banked and used later.

This time, it proposed an "employee wellness" plan that would be discussed separately from the contract talks. The proposal called for a memorandum of understanding that would take sick leave off the table for this round to be dealt with in a separate and independent process.

The memorandum Treasury Board is proposing would create a task force with a mandate to improve "employee wellness" and ways to reintegrate employees back to work after prolonged absences due to illness and injury. It's unclear whether the government is still pursuing a short-term disability plan, but it wants the task force to examine a range of issues around disability leave and income replacement.

The task force would create a steering committee and technical committee within 90 days of signing a collective agreement. The steering committee would include union and management representatives.

It will examine the barriers to full income replacement when employees are sick or injured, the range of medical conditions, work and personal situations such as chronic and episodic illness, privacy issues and options for alternative medical treatments. The task force's recommendations could be brought back to future bargaining rounds.

Treasury Board President Scott Brison, has said he was committed to "modernizing" sick leave. It appears Treasury Board's proposal would only defer dealing with the sick leave reforms until the next bargaining round, which could be within months if the parties sign a three-year contract.

Getting a deal that gets sick leave off the table would be a significant coup for PSAC. It has been the most vocal opponent to changing the existing sick leave regime and it got the backing of other unions in a solidarity pact promising not to make any concessions on sick leave.

"Instead of imposing a plan like we saw under the previous government, this government wants to have something negotiated with unions. This is a lot better than what was put to us before…… but the devil is in the detail," said Claude Poirier, a negotiator with the Canadian Association of Professional Employees.

With sick leave deferred and off the table, many say public servants wouldn't have an appetite for strike.

Unions would also be hard-pressed to win public support — and some say even that of their members — if they end up in a dispute or strike against a popular government that many feel has already has set a new conciliatory tone with employees.

The other big issue is wages. Earlier this week, the government proposed a 2.25 per cent raise over three years. It was the first move on wages in months.

The unions, however, are quick to point out MPs gave themselves a 2.3-per-cent raise last year and a 1.8-per-cent hike this year. Senators got 2.7 per cent and 2.1. The Conservatives gave executives .5 per cent raises in the same years.

“I don’t see how this government could offer its’ employees less,” said Cochrane.

“If the government is going to gain credibility it will need to find a way to be fiscally responsible while at the same time recognizing that it ensured its’ own MP salaries are protected against inflation.”

This whole round of bargaining, which has dragged on for more than two years, has been dogged by the baggage of the previous Conservatives government.

The Tories introduced sweeping legislative changes that hobbled unions bargaining power, reduced public servants benefits and took aim at sick leave. They also built the disastrous Phoenix pay system, which has created havoc with the government’s fundamental relationship with its employees to pay them on time and properly.

The Liberals took over the reins of collective bargaining from the Conservatives a year ago and quickly took steps to undo Tory-era legislations. Relations at the bargaining table were already strained and talks were all but at a stalemate.

“The Conservative government repeatedly demonstrated its lack of respect for the public service, we are restoring that respect,” said Jean-Luc Ferland, a spokesperson for Brison.

“We are repealing a number of unfair Conservative laws that targeted unions and their members. We have a strong mandate to implement an ambitious agenda focused on the middle class, and we know the important role our public servants will play in delivering on our commitments.”

Unions had high hopes when the Liberals came to power with their promise to restore fairness and respect. The biggest letdown has been at the negotiating table where the Liberals picked up the Conservatives’ plan to replace sick leave – with some improvements — and offered a 1.5 per cent raise over three years.

“Unions are running out patience,” said Ursula Hendel, president of the Association of Justice Counsel, the union representing federal lawyers.

Négociations: l'AFPC demande la mediation

Paul Gaboury, La Presse, le 10 novembre 2016

Après un blitz de dix jours de négociations, l'Alliance de la fonction publique du Canada (AFPC) vient de demander l'intervention d'un médiateur, en vue d'une reprise des pourparlers dans deux semaines.

« Les négociations se sont poursuivies pendant 10 jours. Nous avons réalisé des progrès, mais certaines questions fondamentales liées au respect des fonctionnaires et à l'amélioration des services publics ne sont toujours pas résolues », a indiqué la présidente nationale de l'AFPC, Robyn Benson, dans un communiqué jeudi.

Le syndicat avait accepté de retourner négocier après avoir eu l'engagement qu'un nouveau mandat avait été accordé aux équipes du Conseil du Trésor par le gouvernement Trudeau.

L'AFPC n'a voulu donner de détails ni sur les enjeux qui achoppent toujours, ni sur la nouvelle offre salariale ou encore la nouvelle proposition sur les congés de maladie.

Mais la présidente syndicale a souligné que les offres n'arrivaient pas à la hauteur des promesses faites aux fonctionnaires par le gouvernement libéral.

« Nous avons fait tout ce qui était en notre pouvoir. Le gouvernement avait promis de respecter les fonctionnaires et de rétablir l'intégrité des services publics sur lesquels compte la population canadienne. Il n'a pas tenu ses promesses », a souligné Mme Benson.

« Nous sommes encouragés par les progrès réalisés, a indiqué Jean-Luc Ferland, porte-parole du président du Conseil du Trésor, Scott Brison. Nous négocions de bonne foi avec les syndicats du secteur public et nous sommes déterminés à négocier des ententes qui sont justes pour les fonctionnaires et tous les Canadiens. »

« Pour négocier de bonne foi, a-t-il ajouté, il faut que nous respections le rôle des syndicats en tant qu'agents négociateurs exclusifs. Nous allons donc continuer de respecter la confidentialité du processus de négociation collective et nous ne négocions pas directement avec les fonctionnaires par la voie des médias. »

Offre salariale de 0,75 %

Pour sa part, l'Institut professionnel de la fonction publique (IPFPC) a révélé dans une note à ses membres que « la proposition de 0,75 % par année pour trois ans offerte lors des négociations avec l'AFPC est nettement insuffisante ».

« Malheureusement, cette nouvelle offre ne compense même pas la hausse du coût de la vie et reconnaît encore moins la valeur des professionnels de la fonction publique », a martelé Debi Daviau, présidente de l'Institut professionnel, dans un bulletin émis aux 55 000 membres. L'offre salariale précédente du gouvernement était de 0,5 % par année.

En vertu d'un nouveau mandat, le Conseil du Trésor tente d'obtenir une lettre d'entente pour la création d'un comité technique qui étudierait la question des congés de maladie, selon nos sources. De son côté, l'AFPC réclame depuis le début de cette ronde des améliorations aux conditions dans les milieux de travail et insiste surtout sur des améliorations au régime de congés de maladie actuel.

Sick-leave issue looms large as PSAC, federal government talks enter Day 9

Kathryn May, The Ottawa Citizen, November 10 2016

The federal government and the largest union representing Canada's public servants return to the bargaining table today in an extended push to reach a deal after more than two years of stalled talks.

Negotiators for Treasury Board and the Public Service Alliance of Canada are back for an ninth day of discussions in a bid to reach a deal for about 90,000 federal employees, including a way to address the thorny issues around sick leave.

So far, the federal government has offered a pay raise and a proposal to defuse the politically fraught sick leave reforms that have been on the table with an "employee wellness" plan that would be discussed separately from the contract talks.

The government's proposed 2.25 per cent raise over three years is the first move on wages in months.

PSAC is the largest union, representing more than 90,000 public servants at five bargaining tables, and has been the most intractable on changes to the existing sick leave regime. A deal with PSAC could also set the pattern for other federal unions, which are closely watching the outcome of these talks.

PSAC and Treasury Board negotiators have been bargaining since last Tuesday, duking it out over issues common to employees represented by the five tables. Two of those issues are sick leave and changes to the workforce adjustment directive, which governs how the government manages downsizing.

Along with common issues, the five tables have very specific issues for the workers they represent, from the large table representing nearly 70,000 administrative employees, to operational workers and border guards.

The talks opened last week with a “revised” Liberal proposal to take sick leave reforms off the table so they could be dealt with in a separate and independent process.

Treasury Board President Scott Brison has said he wants to “modernize” sick leave. Until now, the Liberals have stuck with the previous Conservative government’s plan to replace the existing regime, which gives public servants 15 days of sick leave a year. Unused leave can be banked and used later. All the unions signed a solidarity pact when this round of bargaining began, more than two years ago, vowing not to make any concessions on sick leave.

Treasury Board is proposing a memorandum of understanding to create a task force with a mandate to improve “employee wellness” and ways to reintegrate employees back to work after prolonged absences due to illness and injury. It’s unclear if the government is still pursuing a short-term disability plan, but it wants the task force to examine a range of issues around disability leave and income replacement.

The task force would create a steering committee and technical committee within 90 days of signing a collective agreement. The steering committee would include union and management representatives.

The task force will be examining a range of wellness issues, such as ways to eliminate harassment, discrimination, workplace violence, bullying and abuse of authority.

It will examine the barriers to full income replacement when employees are sick or injured, the range of medical conditions, work and personal situations such as chronic and episodic illness, privacy issues and options for alternative medical treatments. The task force’s recommendations could be brought back to future bargaining rounds.

PSAC has pushed for the existing system to remain or be improved. It has been adamant about keeping sick leave provisions enshrined in collective agreements, guaranteeing people get paid when they are sick and allowing public servants to keep the sick leave they have banked over the years.

Sources say Treasury Board has also increased its long-standing wage offer of 1.5 per cent over three years to 2.25 per cent over three years, far less than PSAC's original wage demand for more than nine per cent over three years.

PSAC president Robyn Benson previously said this could be the last round of talks if the parties don't make progress. The next step would be the appointment of a public interest commission to act as a conciliator. The union would also have to call a strike vote.

The Canadian Association of Professional Employees was scheduled to begin another negotiating round this week but with PSAC talks underway was asked to reschedule. The union representing federal lawyers was also asked to reschedule but those talks are proceeding.

PSAC and Treasury Board reached a similar a memorandum of understanding under the previous Conservative government on improving mental health in the workplace. Within the public service, mental health claims account for nearly half of all disability claims.

That plan was accepted by the all 18 unions and management, and a task force developed the mental health strategy now being rolled out in departments. Treasury Board officials wouldn't comment on the latest proposal citing the "confidentiality of the bargaining process."

"We have a strong mandate to implement an ambitious agenda focused on the middle class, and we know the important role our public servants will play in delivering on our commitments, said Jean-Luc Ferland, spokesman for Brison.

Les avocats et les notaires du gouvernement contestent les services essentiels exigés d'eux

ICI Radio-Canada, le 8 novembre 2016

Dans deux requêtes qu'a obtenues La Presse canadienne, Les Avocats et notaires de l'État québécois (LANEQ) contestent ainsi la décision du Tribunal du travail rendue le 23 octobre dernier.

Dans leur requête, ils soulignent que, en vertu des ordonnances qui ont été rendues par le Tribunal du travail, de 60 à 70 % de leurs membres, dans un cas, ou 50 %, dans l'autre cas, sont visés par les services essentiels. Selon eux, cela prive « un nombre considérable » de membres de leur droit de grève.

Ils demandent donc à la Cour supérieure d'annuler la décision du Tribunal du travail. Pour ce faire, ils invoquent notamment l'arrêt de la Cour suprême du Canada dans la cause touchant la Fédération du travail de la Saskatchewan, qui avait pratiquement reconnu le droit de grève comme un droit constitutionnel faisant partie de la liberté d'association.

La convention collective de ces 1100 avocats et notaires est échue depuis le 31 mars 2015, soit depuis plus d'un an et demi.

Liberals propose pay raise, 'employee wellness plan' in PSAC talks

Kathryn May, The Ottawa Citizen, November 8 2016

The federal government has returned to the bargaining table with its largest union with an offer of a pay raise and a proposal to defuse the politically fraught sick leave reforms with an “employee wellness” plan that would be discussed separately from ongoing contract talks.

The Public Service Alliance of Canada and Treasury Board negotiators are locked in an extended bargaining session, duking it out over two big issues common to all 18 federal unions: wages and sick leave. The government’s proposed 2.25-per-cent raise over three years is the first move on wages in months.

PSAC is the largest union, representing more than 90,000 public servants at five bargaining tables, and has been the most intractable on changes to the existing sick leave regime. A deal with PSAC could set the pattern for other unions.

The talks opened last week with a “revised” Liberal proposal to take its sick leave reforms off the table to be dealt with in a separate and independent process.

Treasury Board President Scott Brison has said he wants to “modernize” sick leave. Until now, the Liberals have stuck with the previous Conservative government’s plan to replace the existing regime, which gives public servants 15 days of sick leave a year. Unused leave can be banked and used later. All the unions signed a solidarity pact when this round of bargaining began more than two years ago, refusing any concessions on sick leave.

Treasury Board is proposing a memorandum of understanding to create a task force with a mandate to improve “employee wellness” and ways to reintegrate employees back to work after prolonged absences due to illness and injury. It’s unclear if the government is still pursuing a short-term disability plan, but it wants the task force to examine a range of issues around disability leave and income replacement.

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Sources say Treasury Board has also increased its long-standing wage offer of 1.5 per cent over three years to 2.25 per cent over three years, far less than PSAC's original wage demand for more than nine per cent over three years.

PSAC and Treasury Board have been meeting in a last-ditch bid to reach a deal since last week. Some consider the negotiations a do-or-die round.

PSAC president Robyn Benson previously said this could be the last round of talks if the parties don't make progress. The next step would be the appointment of a Public Interest Commission to act as a conciliator. The union would also have to call a strike vote.

The Canadian Association of Professional Employees was scheduled to begin another negotiating round this week but with PSAC talks underway was asked to reschedule. The union representing federal lawyers were also asked to reschedule but those talks are proceeding.

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"We have a strong mandate to implement an ambitious agenda focused on the middle class, and we know the important role our public servants will play in delivering on our commitments, said Jean-Luc Ferland, spokesman for Brison.

Last-ditch contract talks underway today between PSAC, federal government

Kathryn May, The Ottawa Citizen, November 7 2016

The largest federal union is meeting again with Treasury Board negotiators today after a weekend-long round of contract negotiations that were called in a last-ditch bid to revive stalled talks.

The Public Service Alliance of Canada and its five large bargaining tables — representing all its members working in the federal government — have been meeting with negotiators since last week and continued talks all weekend. Monday is the last day scheduled for talks.

PSAC officials were unavailable for comment but issued a terse statement.

"We are still in the early stages of bargaining, talks continue and we're cautiously optimistic."

As this session of talks began, PSAC president Robyn Benson said the union agreed to another round because Treasury Board negotiators signalled the government was willing to move on key issues, including the contentious issue of replacing the existing sick leave regime.

The union had threatened to pull out of deadlocked contract negotiations. Last week, though, Benson said the union was returning to the table in the hopes the government would present a "Liberal" mandate to replace the former Conservative position, particularly on sick leave.

Benson has suggested that this could be the last round of talks if the parties don't make progress. If they reach an impasse, the next step would be the appointment of a Public Interest Commission to act as a conciliator. The union would also have to call a strike vote.

This round of talks comes on the heels of PSAC's latest advertising campaign calling on the prime minister "to make good on his word," which also admonished: "Prime Minister Trudeau, you promised to be different." The union has also staged demonstrations in recent weeks.

PSAC has since picked up its campaign against Trudeau and expanded its advertising campaign, which began in Ottawa, Gatineau, Toronto and Halifax, to radio and newspapers across the country.

Benson argued many public servants voted for Liberals with their promise to restore respect for public servants and the collective bargaining process, which she said hasn't materialized at the bargaining table. The Liberals have so far stuck with the same short-term disability proposal the Conservatives made — with some improvements.

PSAC entered last week's round of talks expecting an updated position on the proposal to replace sick leave with a short-term disability plan. The proposal is fiercely opposed by unions, which have signed a solidarity pact against making concessions. PSAC previously asked the government to take sick leave off the table so it could be discussed separately.

Sick leave isn't the only issue. The unions have also made unconventional bargaining demands, such as calling for integrity to be brought back to government science, and for improved transparency, health and wellness in the workplace.

There is also the issue of wages. The Liberals are offering the same raises the Conservatives gave executives — a 0.5 per cent increase for last year and 0.5 per cent for this year. MPs gave themselves a 2.3 per cent raise last year and a 1.8 per cent hike this year. Senators got 2.7 and 2.1.

The talks are unfolding against the backdrop of the Phoenix pay system debacle, which has left thousands of public servants overpaid, underpaid or not paid at all. Benson said this has further complicated talks and eroded trust in the government.

Lawyers lose battle for moratorium on contentious part of citizenship law

Judge says individual stays are available to people seeking to keep citizenship
Kathleen Harris, CBC News, November 7 2016

Hundreds of Canadians could lose their citizenship without a hearing after a Federal Court rejected a bid to suspend a contentious law being challenged as unconstitutional, a Toronto-based lawyer says.

Under C-24, brought in by the previous Conservative government, a person who receives a notice of citizenship revocation has no right to a hearing or an appeal, and has no chance to argue that he or she ought to retain citizenship on humanitarian grounds.

The process can include people who had incorrect information on their applications and claims, which has prompted some to suggest Democratic Institutions Minister Maryam Monsef could be ensnared by the law. Monsef recently revealed she was born in Iran, not in Afghanistan as she had always believed.

The law is being challenged as unconstitutional but until that case is settled, the Federal Court has since January been systematically granting stays to individuals who apply for them.

Immigration lawyer Lorne Waldman, who had argued for a moratorium on all cases pending the outcome of the Charter challenge, called today's decision "very disappointing."

"There are going to be a number of people who will likely lose their citizenship as a result of this," he said.

Waldman said hundreds of people could fall through the cracks because they don't know their rights, or don't have the financial resources to pursue legal action.

Individual stay vs. moratorium

Earlier this year, the Federal Court issued a temporary stay of proceedings in a number of revocation cases — but Waldman and other lawyers had sought a blanket stay, or moratorium, for all Canadians facing the loss of their citizenship.

Today's ruling said because each individual can seek a stay, it is therefore an "avoidable harm."

"The failure of a person, for whatever reasons, to take advantage of the de facto stay available, does not change the fact that it is available to them and that it will avoid the harm," reads the decision by Judge Russel Zinn

Senate 20151203
Minister of Democratic Institutions Maryam Monsef has revealed she was born in Iran, not Afghanistan as she had previously believed. (Adrian Wyld/Canadian Press)

Today's decision comes just one week before the constitutional hearings over the law begin in Toronto on Nov. 15.

Waldman said he will now focus his efforts on striking it down on grounds it is procedurally unfair and a violation of the Charter of Rights and Freedoms. He called it "puzzling" the Liberal government has acknowledged it's unfair, yet persisted in enforcement.

Immigration Minister John McCallum could "order a stop to it tomorrow. The reason why he won't is something I don't understand," he said.

Ruling 'a disappointment'

Laura Track, counsel with the British Columbia Civil Liberties Association, is also puzzled the government is enforcing the process "with gusto." No matter what the circumstances of the case, every person should have the right to a fair process, she said.

Now, until the federal court rules on the constitutional case, each individual will have to hire a lawyer, spend money and use the court's time to obtain a stay.

"That's a disappointment because we know not everyone has the resources, the capacity, the knowledge to take those steps and seek that remedy through the court process," she said. "So people will continue, we fear, to lose their citizenship under a process that is unfair, and we believe, unconstitutional."

Meantime, Independent Senator Ratna Omidvar, who is sponsoring another citizenship-related bill in the Senate, is planning an amendment that would allow those deemed to have misrepresented themselves to appeal a decision to revoke their citizenship.

'We have to be smarter,' says Department of Justice on new trial time limits

Department of Justice says most cases in NL dealt with in reasonable time
Chris Ensing, CBC News, November 8 2016

The new guidelines for trial time limits in Canada means that people involved in court cases "have to be smarter" when setting trial dates, says the director of public prosecutions in Newfoundland and Labrador.

While Frances Knickle says most cases in this province go to trial in a reasonable time, the July ruling by the Supreme Court of Canada will prevent complacency.

The R. v. Jordan ruling threw out the drug trafficking conviction of a British Columbia man and sex charges against an Ontario man, saying both had waited too long for trial.

- **A provincial first: N.L. judge halts voyeurism trial citing new Supreme Court deadlines**
- **Supreme Court sets new deadlines for completing trials**

"The bottom line or the central core part of their decision is that there's now a time limit in which trials must happen or there will be a presumption that the delay is unreasonable," Knickle told the CBC's Central Morning Show on Tuesday.

If you go beyond this point the Supreme Court of Canada has now said there will be a presumption that there has been unreasonable delay."

Knickle said the time limits are now 18 months for provincial court trials which is extended to 30 months if there's a preliminary inquiry.

The Crown would have to prove that delays are reasonable. Knickle provided examples of exceptional circumstances such as a complex case, delays beyond the court's control, or because of the defence.

One case already thrown out

In early November, a provincial judge in Grand Falls-Windsor cited the Jordan ruling in his decision to stay proceedings for a trial that had lasted more than 30 months.

The Department of Justice said it is the first time a provincial judge has applied the recent Supreme Court of Canada ruling to find unreasonable delay in the province, but Knickle said the decision wasn't centred on that ruling.

"Judge (Mark) Linehan found in that particular case that he would have found unreasonable delay under the new framework or the old framework," she said.

"The delay was of such a nature that it would not have even met the old framework."

Knickle believes there will be cases that are impacted by the new ruling but it isn't immediately clear how many. She said the case involved provinces with delays worse than in Newfoundland and Labrador's court system.

"I'm not sure there's the same level of systemic delay in Newfoundland. There are probably problematic areas but for the most part I think cases that come in to problems have individual problems," said Knickle.

"For the most part cases do get to trial within a reasonable time and within the Jordan time limits and where they don't usually there are good explanations for it."

New standard

Knickle said the Jordan ruling has set a new standard for courts in Canada.

"There's clearly direction for all stakeholders — not just the Crown — but courts and defence counsel [need] to be proactive in trying to ensure that cases are dealt with expeditiously, as reasonably as possible," said Knickle.

"We just have to be smarter ... In the past people might have been a little more complacent about when trial dates are set," said Knickle.

"Knowing that there are these timelines, I think all parties and in particular the Crown will be more proactive in ensuring that trial dates are set as soon as everyone is reasonably ready to do so."

Federal government offers first gender-neutral travel document

Visitors flying into, or through, Canada will be able to choose 'other' on their application
Dean Beeby, CBC News, November 7 2016

The federal government has begun accepting gender-neutral travel documents for people planning to fly into, or through, Canada.

Canada's new Electronic Travel Authorizations, or eTAs, which become mandatory for visitors to Canada starting Thursday, for the first time allow travellers a third choice on the online application form under gender: other.

Until now, applicants had to choose between male or female, which prevented some potential visitors from completing the form — an issue that was noted in an internal report obtained under the Access to Information Act.

"The system cannot finalize applications when the client indicates that they are of a third-sex designation," says the May 2 troubleshooting document from the Ministry of Citizenship and Immigration.

- **Gender-neutral ID issues on Ottawa's radar for more than a year**
- **New gender-neutral Ontario health cards make it harder to get a passport**

A spokeswoman for the department confirmed the application has since been altered to allow foreign visitors who have a third-sex designation on their passports to enter "other" as their gender.

At least seven countries — Australia, Bangladesh, Germany, India, Nepal, New Zealand and Pakistan — permit citizens to choose an option other than male or female on their passports.

Canada's move is another small step in a complex process promised by the Liberal government to ensure identification documents reflect "gender inclusiveness" — that is, accommodating people who identify as neither male nor female.

Reviewing its forms

A further step: Canadian citizens who have transitioned to a different gender than the one they were assigned at birth will soon be able to change their designation on some official government documents.

"The department has already taken steps to facilitate changing the sex designation, from female to male and vice-versa, on passports and travel documents, citizenship certificates and documentation for temporary and permanent residents," spokeswoman Sonia Lesage told CBC News.

The government "is also currently reviewing its forms and products to better reflect gender inclusiveness."

The issue dates from at least 2015, when the department grappled with how to complete standard immigration documents for people arriving in Canada with a third-sex designation on their passports.

And Prime Minister Justin Trudeau said in early July that his government was exploring the use of gender-neutral options on federal identity cards — a human rights issue raised repeatedly by transgender and other Canadians, especially with regard to passports.

Starting Nov. 10, eTAs will become compulsory for travellers flying to or transiting through Canada who are from countries for which no Canadian visa is required. U.S. citizens are exempt from both the eTA and visa requirements.

The new requirement does not apply to Canadian citizens, Canadian dual citizens and permanent residents.

ETAs can be processed on a self-serve website, and cost $7 each. Most are issued electronically within a few minutes, once the application is complete. About two million have been produced to date.

The 2016 requirement for an eTA in advance of travel has been essentially voluntary, after the department announced a leniency period from March 15 to Sept. 29 this year to spread the word to travellers and to work out kinks in the system.

On Sept. 20, the leniency period was again extended, up to and including Nov. 9.

The additional time also allowed Citizenship and Immigration to fix other problems plaguing the eTA website.

Other glitches

The troubleshooting document from May noted "that the application form continues to time out quickly for many clients, that some language in the application form is not clear for some clients and that the system is erroneously not issuing eTAs to some eligible clients."

Lesage said there have been other unusual bugs in the system, launched with the help of Shared Services Canada in 2012-2013 with a $77-million, four-year budget.

'In the old days, it was important to know if somebody was a man or a woman because only one class of those people could vote, inherit property, be senators.' - *Nicole Nussbaum, lawyer*

"For a period of time, visa-exempt Israeli nationals were experiencing difficulties when applying for an eTA," she said. "This issue has now been resolved."

The initial time limit of 20 minutes to complete the web form has been changed, allowing applicants to request an additional 20 minutes.

The recent change to a gender-neutral format on the federal form follows the Ontario government's decision in June to issue health cards with no reference to the gender of the holder.

And next year, Ontario driver's licences will permit holders to select X as their gender, rather than M or F.

- **Victoria schools drop gender identity from class lists, add neutral washrooms**
- **Saskatoon police to open gender-neutral washroom in headquarters lobby**

The decision on genderless health cards, apparently made without consulting the federal government, created problems for some Ontarians who could not use them to apply for a passport because of the missing information.

A London, Ont., lawyer with expertise in sex- and gender-related issues questions why any government needs to collect such information in the first place.

"In the old days, it was important to know if somebody was a man or a woman because only one class of those people could vote, inherit property, be senators," Nicole Nussbaum said in an interview.

But in modern societies that purport to value equality, Nussbaum said, the onus should be on governments to produce bona fide reasons for the collection or display of information about the sex or gender of individuals.

Built to crash: The ugly, sputtering beginning of Shared Services, and how politics conspired against it

James Bagnall, The Ottawa Citizen, November 11 2016

Liseanne Forand really didn't know what to expect. On Aug. 4, 2011 she was making her way on foot to Phase III of the Gatineau office complex known as Place du Portage.

A career bureaucrat, Forand had, the day before, been appointed president of Shared Services Canada — a new federal department that would manage the government's email, data centres and telecommunications.

Her mandate — representing about one-third of the federal government's $5-billion-a-year technology services budget — was breathtaking in its scope and complexity. She was to simultaneously streamline and modernize the government's electronic backbone, and keep the old gear running. Sixty-three email systems would be collapsed into one. More than 500 data centres were to be decommissioned, to be replaced by a mere handful. Fifty telecommunications networks connecting 3,500 federal buildings were to be upgraded.

Forand was to do this with staff cobbled together from 43 different departments. But on this day, she had no office, and the paperwork had been approved for just 1,200 of an eventual 6,000 employees.

As she entered Phase III, she was surprised, seemingly touched, to see that a small army of government workers had gathered in the main foyer to greet her.

After introductions, she was escorted to the 17th floor. There, Forand found a temporary office. She sat down and began making lists of things to do.

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As Forand tapped out her notes, Public Services minister Rona Ambrose and Treasury Board president Tony Clement were in the National Press Theatre, directly across from Parliament's venerable West Block.

Ambrose said she and Clement were there to introduce "new measures that will improve the efficiency of information technology services." Shared Services would lead this effort, Ambrose said, and generate "substantial savings" through economies of scale.

It was up to Forand to flesh out a strategy that had little substance at launch.

Not that a more detailed plan would have mattered.

What Forand didn't realize was that the seeds of failure were already being sown. Prime Minister Stephen Harper was preparing a government-wide spending strategy that would hobble Shared Services before it could even get going.

It's rare that issues involving information technology intrude on Ottawa's political agenda — rarer still that they do so with the force displayed in 2016.

All of Shared Services' core projects are behind schedule, substantially so, in the case of email transformation. Not only have promised savings not materialized, the agency is spending tens of millions of dollars more than forecast maintaining networks that should by now have been decommissioned.

But it's not just Shared Services that's struggled. Federal departments — from Agriculture and Agri-Food Canada to Veterans Affairs Canada — are upgrading software and IT infrastructure that falls outside the Shared Services mandate.

Some, such as the $300-million project to modernize the government-wide pay system known as Phoenix, are fumbling badly.

At one level, Shared Services and Phoenix are very different. The first is a new department with a specific mandate; the second is a single project — albeit a large one — being managed by Public Services. Indeed, Phoenix is one of nearly two-dozen major IT projects underway across government.

But Shared Services and Phoenix have something in common — a botched introduction caused, it appears, by deep flaws in how government operates. In both cases, cabinet ministers and bureaucrats underestimated complexity and risk. In this, they were hardly unique — it was the scale of the misjudgment that set the federal IT agenda apart.

Standish Group, a Boston-based consulting firm, has been tracking the performance of IT projects since the mid-1990s — with surprisingly little variation in results. The consultants last year examined 50,000 projects worldwide, including government and private sector. About 30 per cent of these efforts succeeded — that is, they were on time, on budget and produced a payoff. Roughly half the projects ran into difficulty and nearly 20 per cent failed outright. The larger and more complex the project, the higher the rate of failure.

Carol Bellringer, the auditor general for the B.C. government, last month offered three key reasons why IT projects fail: Government departments, she said, lack in-house expertise; they attempt "overly ambitious" programs; they justify the latter through "incomplete" business cases.

All three elements were present at the launch of Shared Services. Most of the responsible bureaucrats were not trained in IT, yet were tasked with remaking on the country's electronic infrastructure. Many also lacked experience in project management with a heavy IT component.

"I don't know how many times I heard from deputy ministers that they didn't understand information technology," said a senior Shared Services official, "They didn't like IT and they hoped never to see anything to do with IT for the rest of their career."

Yet it is a group of deputy ministers — the ones in charge of the most IT-intensive departments — who determine the shape and scope of large IT projects. And when it came to launching Shared Services — the centrepiece of the government's online renewal — the already high risks were exacerbated by a political agenda that stripped it of the capital necessary to get the job done.

It will likely end up costing taxpayers a fortune to set things right again.

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It had seemed so simple in the beginning. The idea for Shared Services emerged from the Conservatives' fifth budget, tabled March 4, 2010. The themes were clear: The economic recession was over; it was time to regain control of government spending.

One aspect of the strategy — little noticed at the time — was the launch of a "comprehensive review" of government spending on administration and overhead expenses. This should have offered easy pickings: Federal government employment was near high tide; and most departments and agencies had expanded rapidly.

Daniel Jean, the deputy secretary to the cabinet of the Privy Council Office, was picked to run the review, making it a big deal. The PCO is home to 950 bureaucrats who provide advice to cabinet and the Prime Minister's Office, and oversee the development of the civil service.

Jean reported directly to Wayne Wouters (pronounced "Waters") — the clerk of the privy council and the government's top bureaucrat. Among the members of the review helping out Jean were Benoit Long, a senior manager seconded from the office of the government's chief technology officer, and Liseanne Forand, then chief operating officer of Service Canada. The latter department offers Canadians online access to pensions and employment insurance.

The administrative services review was carried out in secret, typical PCO modus operandi. Its members roamed the bureaucracy, collecting information and searching for ways to consolidate or standardize how things were done. Some departments were already moving down this path.

The Department of National Defence, for instance, calculated it was spending $30 million annually more than necessary because its 16,000 Ottawa-area employees were inefficiently spread across more than 40 facilities. Late in 2010, the government bought the former Nortel campus to allow for a major consolidation.

Information technology offered an even richer vein of potential savings. For half a century, computer networks and software applications had multiplied willy-nilly as individual departments and agencies looked after their own needs. The result was a patchwork of incompatible, higher-cost systems. Standardizing common, basic technologies such as email, data storage and telecommunications seemed logical.

It had been tried before. But attempts to centralize the buying of high-tech gear and services had failed, largely because federal departments were allowed to opt out. Most did so. They did want to give up control of their IT networks to a central agency.

The PCO determined this time would be different. The prime minister had the authority to create a new federal department through a simple cabinet approval known as an order-in-council. Most departments, including a reluctant Canada Revenue Agency and Department of National Defence, would be forced to carve out a significant portion of their IT groups and budgets — about 40 per cent on average — and hand them over to Shared Services.

Crucially, the move would not be subject to scrutiny by Parliament. And so Shared Services was born on Aug. 3, 2011.

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Speed was demanded of the agency from the start. Minutes of meetings involving senior Shared Services staff are studded with references to “tight schedules” and the “urgency” of getting projects done.

Part of that had to do with the sheer age of the government’s infrastructure. The hardware was in danger of breaking down and the underlying software for many applications was so old that suppliers such as Microsoft, PeopleSoft and Adobe had stopped supporting it.

The faster Shared Services could install new networks, the less money it would be forced to throw at solving the problems caused by older technology.

But that wasn’t the only reason Shared Services was pressed for time. Senior Shared Services officials said the Conservatives were eager to see cost savings, and impressed upon them the importance of securing an early win.

The PCO framed the upgrade in simple terms: Consolidate, modernize and reap the savings. And Shared Services would have nearly a decade to get it done. By 2020, the thinking went, the government of Canada would be able to offer its citizens secure, online services that would be the envy of the world; and Shared Services would be a magnet for attracting the best and the brightest employees in government.

But cabinet — and to some extent the PCO — failed to account for the complexity. They were proposing to create a new organization using bits and pieces from other departments and loading it up with a series of mandates on a tight schedule. The entire production was fraught with risk.

"They had articulated the problem and come up with an organizational response (in the form of Shared Services)," an independent adviser to the PCO said in an interview, "but they completely underestimated the scale."

Start with the logistics. Forand would not receive the bulk of her new workforce until mid-November in 2011. And it wasn't just a matter of transferring 4,000-plus workers from 43 departments. Shared Services didn't immediately have any place to put them. The employees in question were in more than 500 locations across the country — and worked out of 80 buildings in the national capital region alone. They would remain in place for the moment.

Another problem for Shared Services was that it had little control over just who would join it. That decision was left up to the departments. During her testimony earlier this year before a House of Commons committee, Forand pointed out that one of the larger departments sent more than 1,000 IT staffers but included just three executives. "If that's true for IT staff, you can imagine what it was for administrative staff," she said. It was difficult to imagine "a single organization ever transferring a really crackerjack finance person or human resources or auditor."

Indeed, in order to fill Shared Services' executive ranks, Forand would later have to advertise for at least a dozen senior managers.

Shifting Shared Services employees into new facilities was a miserable, 17-step process that required nearly a year for each move. The agency reckoned it would take as long as five years to complete the transfer of bodies and responsibilities.

Nor did Forand have access to her chief operating officer right away. Because the formation of Shared Services had been shrouded in such secrecy, the hiring of experienced outsiders happened last minute. Grant Westcott would join Shared Services as COO in mid-September.

Sixty-three years old at the time, Wescott had served as assistant deputy minister of Public Services in the late 1990s, when he managed the federal government's telecommunications networks. In that role, he oversaw the successful effort to prepare systems for the year 2000.

More relevant to his new position at Shared Services, Westcott had also worked for nearly a decade at CIBC. As executive vice-president, he had been instrumental in overhauling the bank's IT infrastructure. Twenty-two of the Canadian Imperial Bank of Commerce's data centres were shrunk into just two, saving the bank more than $40 million annually in operating costs. Among other things, Westcott and his team consolidated 15 global communications networks into a single voice and data system. More savings resulted.

It wasn't without glitches. CIBC was forced on several occasions to apologize to customers for a breakdown in certain banking services.

Nevertheless, Westcott's experience suggested this was not rocket science, at least not in the private sector. Streamlining and modernizing IT networks could be done under the right conditions. But, just weeks after he started, Shared Services was jolted by its first big shock.

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It came in the form of a letter from Treasury Board, the cabinet committee responsible for managing the government's finances. The October 2011 note outlined how the Conservative government was planning significant spending cuts in the upcoming federal budget. Shared Services was expected to contribute its share.

That provoked astonishment among Shared Services' executives; afterall, the agency wasn't even close to being fully formed.

Less than one-fifth of Shared Services' expected workforce had been formally transferred on paper, though they continued working out of their old offices. Forand and her immediate support staff were working out of temporary headquarters, and the agency's financial books were not yet in order. Upon its formation, Shared Services had been allocated an annual base budget — about $1.5 billion. But it was being asked to trim this in stages by five per cent, 7.5 per cent, then 10 per cent over the next three years. Treasury Board was seeking $150 million in total, with the proceeds to help reduce the federal government's deficit.

Forand, according to access-to-information documents, found early savings by renegotiating telecommunications contracts, eliminating telephone lines through consolidation, and leaving open unfilled staff positions. She also pencilled in savings that would result from the consolidation of government email systems and data centres — these would be achieved starting in the third year of the Conservatives' deficit reduction program.

The agency knew it was just buying time, however. Forand, Westcott and other top managers had assumed prior to reading that Treasury Board letter that any savings realized by consolidating Shared Services' electronic infrastructure could be directed toward modernization efforts. In other words, the potential savings were not only an incentive to be efficient, they would serve as seed capital for renewal.

Instead, the Conservatives grabbed the money.

"We did convey strongly at a high level that reductions of that magnitude would create increased pressure and risk," said one official familiar with the Treasury Board request, "We couldn't quite believe they would take the whole 10 per cent and were shocked when they did."

From that moment, Shared Services was forced into an excruciating series of financial tradeoffs.

The agency no longer had the capital to simultaneously modernize its networks and keep the older (legacy) stuff running. The legacy gear got short shrift with inevitable results.

In recent months, the government's networks have been plagued by a series of outages that have left thousands of government employees without access to online services and applications, and brought down government websites. A major culprit: power distribution units that have been pushed well beyond their normal lifespan.

The Conservatives, meanwhile, wanted their early win, so they convinced Shared Services that the quickest and easiest project would be to replace the government's massive email network. While email technology can be complicated, the service is considered something of a utility in the IT world. It shouldn't have been a huge problem. Instead, things would go badly wrong.

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Shared Services Canada Organizational Chart

Judy Foote: Minister of Public Services and Procurement
Ron Parker: President
John Glowacki: Chief Operating Officer
Raj Thuppal: Assistant deputy minister Cyber & IT Security
Patrice Rondeau: ADM, Data Centre Services
Pankaj Sehgal: ADM, Network and End Users

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When government procurement officials invited potential email suppliers for a technical briefing on June 12, 2012, the project appeared daunting but doable. The date proved significant: Shared Services would be granted the authority to do its own buying a couple of weeks later. But because the email competition was already underway, Public Services — the government's traditional procurement authority — would handle it.

The 43 federal departments linked by Shared Services' networks collectively were using dozens of separate email systems — most of them using Microsoft technology. These were to be collapsed onto a single system, also based on Microsoft software. The new setup would require fewer people to operate it, contributing to $50 million per year in savings when it was up and running.

The winning bidder in this contest would be responsible for transferring more than 635,000 electronic mailboxes on behalf of 378,000 employees to a new, outsourced data centre.

When Bell Canada and CGI Group (using Microsoft email) won the competition in 2013, Public Services minister Rona Ambrose said the new $400-million system would be in place by March 31, 2015.

Behind the scenes, there was a much different view. Losing contenders were stunned by the differences in the submitted bids.

Bell said it could develop and run the initial part of the government's single email system for $245 million. IBM was the next lowest bidder ($282 million), followed by HP ($368 million) and Dell ($571 million).

Bid evaluators from Public Services had given technical merit a 30 per cent weighting, compared to 70 per cent for price. Thus Dell, which had the best-ranked technical proposal, really didn't have a chance.

The bitterness of the finalists can be seen in debriefing notes obtained by the Citizen. In them, officials from HP complain that their company's "governance does not allow for under-bidding." HP and Dell had included generous amounts in their proposals to take account of risks and contingencies.

Losing bidders warned they would monitor the single email project closely to make sure Bell met its obligations at the promised price. But if they believed Bell's potential difficulties would somehow escape public scrutiny, they needn't have worried.

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It didn't take long for frictions to surface within Bell's engineering group. By August — just two months after the awarding of the contract — Bell replaced its entire system for establishing the identities and credentials of employees using its email system.

The technology — that, among other things, allowed workers to manage their email accounts and passwords — had been implemented three years earlier on a separate federal government contract. Bell had adapted this technology for its winning bid. Now it was proposing to put in place a new approach. It's not clear why, though it appears to have been an internal decision, not one forced upon Bell by Shared Services — according to a programmer familiar with the re-engineering effort. Bell declined comment on this aspect of the email project.

Bell wasn't the only member of the winning team to experience technical difficulties. It was soon apparent that Microsoft's latest email software — Outlook 2013 — had an unexpected limitation. According to a memo prepared for Forand — and obtained under an access-to-information request — Outlook 2013 could support a maximum of just 10,000 public email folders. Data gathered by Shared Services had revealed more than 800,000 folders in use across government.

The limitation would be dealt with by using an older version of Outlook.

It was clear within months of the launch of the email project that Bell wouldn't be able to shift, or migrate, the government email addresses as promised to its new data centre in Buckingham, Que. The original plan was to spend six months working out details of the overall design. The migration of employee mailboxes was to have been done in three waves, starting in January 2014 and ending in March 2015.

But Shared Services granted Bell a 12-week extension in December 2013 for the start of the transition. Two months later, Bell asked for and received an additional four weeks' grace "to address all outstanding design issues and to ensure a robust, secure and integrated solution." This, again, according to documents obtained through access-to-information requests.

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By November 2014, the email project had been flagged "red" by Shared Services. That meant it was in serious difficulty of meeting its final deadline of March 31, 2015.

Indeed, a year ago, when the project was six months late, Bell had successfully moved fewer than 15 per cent of the government's mailboxes to the company facility in Buckingham. Bell at that time was forced to halt all migrations after identifying what it called a "hardware" issue (which has since been resolved, according to Shared Services). Shared Services says Bell must resolve “outstanding contracted issues” before shifting the other government mailboxes.

“All elements of the ETI (email) platform have been running smoothly for departments already migrated,” Bell spokeswoman Jacqueline Michelis said this week in response to a Citizen query. “We look forward to resuming migrations as soon as possible.”

It’s not clear when this will be.

“We’re continuing to discuss issues with Bell,” Shared Services president Ron Parker said this week.

“There’s no end date,” added Parker, who took over from Forand in July 2015.

While Shared Services is paying Bell only for the mailboxes it has already moved, the agency is still responsible for keeping the lights on at the government’s legacy data centres — where most of the electronic mailboxes, and much of the government’s software applications, for that matter, are currently stored.

These jumbles of computers, servers, wires and cooling systems are weighed down by far too much history — and it took Shared Services a long time to get its arms around it.

“We were not created with a transformation plan already in place because to do that, we needed to know what we had,” Forand explained to members of Parliament. “So we spent a year counting things.”

Shared Services didn’t have to start from scratch. Prior to the agency’s 2011 launch, the PCO’s administrative review tried to estimate the number of data centres in government by interviewing the IT czars for each of the departments. Symptomatic of the far-flung nature of the government’s IT networks — and how loosely these were managed — the PCO didn’t even come close.

“When I was at Privy Council, we thought there might be about 200 data centres,” Benoit Long, senior assistant deputy minister of Shared Services told the House of Commons committee last May, “After a year, we had counted 495 and I am still discovering others today.”

Most of these data centres were small — less than 1,000 square feet — often set up by government scientists who didn’t bother telling their superiors. Just 22 were larger than 5,000 square feet — and most of these were in the National Capital Region. These were where the bulk of the government’s data and software applications were stored.

In 2012, Grant Westcott organized a six-week tour of these data centres to see for himself what Shared Services was dealing with. According to an agency employee familiar with the tour's findings, Westcott came away profoundly shocked.

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Nearly all the large data centres were decrepit, undercapitalized and inefficient users of energy. Yet just one was in the process of being replaced. This was a Heron Road facility with a leaking roof, considered key because it housed Canada Revenue Agency data.

Bell Canada had been awarded a contract to build and operate a new data centre in Buckingham. The CRA data would be transferred there in the fall of 2013. A separate part of that facility is also meant to host the government's email system.

The remaining data centres offered Westcott a depressing snapshot.

Most of the gear was housed in office towers, rather than facilities tailormade for heavy-duty electronics. With each new generation of computer or servers came requirements for more power and more robust cooling systems. The entire system was approaching a nervous breakdown.

Not only were the data centres inherited by Shared Services running out of space, the arrangements for emergency power bordered on makeshift. One Defence Department data centre, for instance, relied a backup generator powered by a relatively ancient jet engine. While unconventional, there was nothing unique about pressing military hardware into this type of service. The risk had to do with with training — the older the jet engine, the fewer employees there were who knew how to fix it.

The system for backing up data wasn't much better. At Statistics Canada — where Westcott's group was actually required to swear an oath to keep the data confidential before entering the storage rooms — the backup procedure called for storing copies of the data in a separate but nearby facility. While that's OK for most disasters, the relative proximity still meant Statcan's repository of historical data was vulnerable to a bombing or major earthquake.

In the wake of Westcott's tour, Shared Services developed a plan for refurbishing or building new data centres with plenty of distance between them. These include facilities at Buckingham, Ottawa's international airport, Barrie, Borden and Dorval, Que.

Nevertheless, the Buckingham data centre wouldn't be ready until late in 2013 and the contract to set up the Barrie facility, run by IBM, wasn't awarded until the fall of 2014. A public-private partnership to build a large data centre in Borden was signed last May. A separate data centre focused on weather forecasting and other science-related data will be based near Dorval.

These facilities require careful calibration — the gear and supporting wiring and cooling systems have to be capable of handling the software applications and data coming their way.

Collectively, the 43 federal departments run 14,000 software applications, covering everything from human resources software to weather forecasting. These are all meant to migrate from the legacy data centres by 2020. But that milestone very likely will not be met.

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Minutes from a meeting of Shared Services' senior managers held Sept. 29, 2015 give a flavour of the difficulties. Patrice Rondeau, in charge of the agency's data centre efforts, told his colleagues that he had received "a large number of exemption requests" from federal departments that wanted to upgrade their legacy data centres rather than transfer software and data to the new ones operated by Shared Services.

This speaks volumes considering the age of the legacy data centres. The Citizen this week toured one of the larger ones. Located near the ByWard Market, the data centre was launched in 1985 and currently houses data and software on behalf of Elections Canada, Canada Mortgage and Housing Corp., Employment and Social Development Canada, among others.

The facility is clean enough, appears to have adequate backup generators and extra space for additional gear if necessary. But a closer look reveals the weak points — it relies on 11 units for distributing power, and most have been pushed beyond their average life expectancy. A couple broke down recently, temporarily disabling the facility. The other units, who knows? "They're only now starting to fail," explained one data centre employee.

The limiting factor for storage is not the physical space; it's the amount of power available to feed the servers. And power is near its maximum.

The data centre continues to accept new workloads (data, software applications) from the departments it serves but there is now a quid pro quo — the departments have to get rid old data before facility will add the new stuff. "We're pretty much full," said the employee.

There is some hope on the horizon, albeit distant. The Shared Services half of Bell's data centre in Buckingham appears to be successfully hosting data from several federal departments. The IBM facility in Barrie is finally accepting workloads — though still representing less than five per cent of the data centre's capacity. Construction of a new data centre in Borden is well underway and a new science-and-weather focused facility is planned for near Dorval — though bids have yet to be solicited.

Yet, even now, the legacy data centres are the preferred option for many of the government's IT managers. Many are still unimpressed by the untried agency.

The auditor general pointed out early this year that Shared Services had failed to establish the level of service departments should be able to expect. For instance, in the event of outages, how quickly would Shared Services get the systems running again, and how many hours per day was such assistance available?

Nor, the auditor general reported, did Shared Services give reports on the overall health of its networks. A Shared Services executive acknowledged recently customer service is improving are "on a very slow trajectory."

This much is evident on a large schematic posted on a wall on the seventh floor of the Shared Services headquarters at 99 Metcalfe St. in downtown Ottawa. It maps out feedback from the departments it serves on a quarterly basis. Green is good. Orange and Red are bad. Thirteen are green, 18 orange and red, with the remaining departments neutral. Overall, level of satisfaction shows little change over the past year.

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Westcott left Shared Services in the spring of 2015, having extended his three-year stint by seven months. He returned to his vineyard operation just west of St. Catharines. Forand followed him out of the door a few months later into retirement. Aside from their joint testimony last May, the former top guns at Shared Services have not been public about their experiences. Privately, with colleagues, they have expressed frustration with the slow pace of getting things done in government, often related to multiple tiers of oversight by Treasury Board, Public Services, the Privy Council Office and other departments affected by Shared Services' plans.

But the loss of so much of their annual budget upfront undeniably hurt the agency's drive to modernize. When queried about whether he had second thoughts about trimming Shared Services' early budgets, former Conservative Treasury Board president Tony Clement told the Citizen "I wasn't the minister (responsible) for Shared Services. And all the mistakes were made by the Liberals in any event."

Treasury Board did play an important role in establishing Shared Services and influencing its early rollout. Rona Ambrose, the former Conservative minister of Public Services — and the minister directly responsible — declined to comment.

The Liberals were more than a little surprised at the state of affairs at Shared Services. Nevertheless they couldn't lay all the blame at the foot of the Conservatives.

Investing in information technology at the federal level had not been a priority for decades — the government typically spends less than two per cent of its annual revenues on it, compared to more than 10 per cent for large, information-intensive organizations such as Canada's big banks.

Quite simply, the bill for under investing is now coming due.

Parker, Shared Services' new president, found out as much during his first briefings, when he learned his department's "projected expenses were much greater than expected." Indeed, a July 2015 briefing note obtained under access-to-information requests warned him the data centres branch alone was facing a $200-million shortfall.

Finance Minister Bill Morneau in his first budget added nearly $400 million to Shared Services' coffers. It's meant to keep the older gear going years longer than planned.

Finance Minister Bill Morneau early this year allocated a two-year lump sum of nearly $400 million in his first budget to help Shared Services keep the legacy networks operating until the new data centres are ready. Any pretense that transforming the government's electronic networks would produce immediate savings is gone.

Will the investment be enough? Probably not. The problems are compounding. Delays in the construction of the new electronic backbone have pushed back the rollout of hundreds of software programs now overdue for replacement. Indeed, over the next few years, thousands of applications are scheduled to migrate from legacy data centres to Shared Services' new sites. It may prove the most difficult phase of the government's IT planned transformation.

Consultants say departments are impatient at the thought of further delay, and have been pressing for the right to move more of their applications to cloud-based (third party) services such as those offered by Amazon Web Services. Some, such as those involving websites used by the public are already hosted in the United States (a Treasury Board project). But sensitive information and software — for reasons of security and data sovereignty policy — should be hosted from data centres or cloud services supported from Canadian soil.

Just how this will play out should be made clear in coming weeks, as Shared Services prepares a revised plan for approval by cabinet.

With any luck, it will incorporate the many lessons learned to date — above all, that you cannot book savings first, then build the system.

Rebuilding electronic infrastructure requires serious upfront investment, followed by careful attention to detail. In a complex project, it is better to take small steps, be sure of your ground, then move on. Because trying to fix something on the fly costs far more than getting it right from the beginning.

A Shared Service executive said of the journey to date. “The private sector is really good at understanding you need to fix the infrastructure first,” he said. “The (software) applications that ride on that infrastructure, that’s *really* hard to do. But if you try to do both at the same time, it’s overwhelming.”

So it proved.

Shared Services Canada Timeline

March 4, 2010: Federal budget outlines three-part plan to return to surplus by 2015. Included is a comprehensive review of government spending on administration.

April 6, 2010: That review is to be carried out in secret by bureaucrats operating out of the Privy Council Office – which provides advice to cabinet and the prime ministers’ office. The team handling the administrative services review, led by Daniel Jean, reports directly to Clerk of the Privy Council Wayne Wouters.

Aug., 2011: Public Works Minister Rona Ambrose and Treasury Board President Tony Clement announce the launch Shared Services Canada. This new federal agency will take over government-wide email service, data centre operations and telecommunications, with a view towards significant savings through consolidating operations. The first 1,200 plus employees are transferred from department of Public Works’ information technology group.

Aug. 15, 2011: Deloitte awarded $20 million contract to advise on trimming operational expenses across government.

Nov. 15, 2011: Cabinet approves the transfer to Shared Services of IT infrastructure and related budgets from 43 federal departments. About 5,000 employees will eventually be moved.

March 29, 2012: Federal budget trims $75 million (5 per cent) from Shared Services annual budget. The plan calls for further cuts of 7 per cent and 10 per cent in the following two years.

April 1, 2012: Shared Services becomes a standalone department.

June 29, 2012: Shared Services Canada Act becomes law, giving the agency responsibility for buying information technology on behalf of most federal departments.

June 25, 2013: Bell and CGI Group win a $245 million, 7-year contract with 1-year option to consolidate 63 email systems across government into one. The new system is to be running by March 31, 2015.

November 2013: Shared Services establishes an enterprise data centre in Gatineau at a facility owned and operated by Bell Canada. The data centre is to be one of a handful meant to take over from more than 500 aging data centres across government.

April 2014: Second data centre is established, in Base Borden. It is government owned and operated.

June 2014: Citizen reports Bell's single email project eight months behind schedule.

Oct. 7, 2014: Third data centre to be set up, in IBM's Barrie facility.

February 2015: Internal Shared Services documents show the following projects with "yellow" status, indicating delays and/or technical problems: Gatineau data centre, Borden data centre, Internet data communications project, Borden data centre expansion, Barrie data centre, legacy data centre closures. Among the projects with 'red' status – indicating serious issues – are the single email project.

February 2015: Bell acknowledges it will be unable to meet the March 31, 2015 deadline for delivering the new email system.

May 11, 2015: Allstream and Telus selected to provide Internet data communications for 43 departments. Contract, which could extend to 2025, expected to exceed $100 million.

July 2015: Ron Parker takes over as president from a retiring Liseanne Forand

Oct. 19, 2015: federal election

November 2015: Bell Canada halts migration of email boxes to new system while it addresses a "hardware issue" involving one of its subcontractors. Deadline for new email system is shifted to September 2016.

Feb. 2, 2016: Auditor General Michael Ferguson excoriates Shared Services for its sloppy operations and casual disregard for meeting the expectations of the federal departments it's meant to serve. Shared Services says it will let departments know by Dec. 31, 2016 exactly how it will deliver information technology services.

March 22, 2016: Finance Minister Bill Morneau allocates an extra $383.8 million to Shared Services to help agency keep its aging infrastructure operating while it copes with delays in modernization program. Morneau also added $77.4 million to bolster computer security at Shared Services.

May 24, 2016: Shared Services awards $322 million, 25-year contract to expand and run Borden data centre. Winning consortium led by Forum Equity Partners, Walsh Contractors and Balfour Beatty.

June 11, 2016: Treasury Board president Scott Brison orders an independent review of Shared Services, to be completed by March 31, 2017.

Dec. 1, 2016: Shared Services to make public a revised strategy for upgrading the government's electronic backbone.

Judge Throws out Blacklock's Reporter's first copyright case against federal government

Graeme Gordon, Loonie Politics, November 14 2016

In a Federal Court judgment released Thursday, Justice Robert Barnes ruled that the government did not infringe on the start-up and strict-paywall online news outlet *Blacklock's Reporter*'s copyright when a Finance Canada employee obtained—without request—two of the news site's articles about the federal department via email, and then shared with several other Finance employees.

In Justice Barnes ruling he stated the Defendants had the legal right to use and share the two articles with others in Finance under the Copyright Act's fair dealing because "[a]s a source, the

Department had a direct and immediate interest in their content." Justice Barnes also highlighted in his ruling that the two articles were not infringed copies as the *Blacklock's* subscriber, who sent Finance the articles, and the Finance employees were unaware and had not "agreed" to *Blacklock's* terms and conditions. Justice Barnes also found the provisions within the terms and conditions "did not unambiguously prohibit the circulation of *Blacklock's* copy for personal or non-commercial purposes."

The Federal Court judge made it clear he thought the news site was overreaching its rights under the Act: "…*Blacklock's* is not entitled to special treatment because its financial interests may be adversely affected by the fair use of its material."

Justice Barnes also threw out the government's counsel's argument that *Blacklock's* is a "copyright troll" abusing its rights to its copy.

Blacklock's publisher Holly Doan had no comment after the ruling. But Doan, before the trial, said, "The facts in the cases are all different and *Blacklock's* intends to litigate each one."

Some of the other nearly dozen other claims *Blacklock's* has filed against multiple federal departments and agencies involve employees registering for single user accounts with the news outlet and then proceeding to distribute to dozens or hundreds of people within the department. These other cases—currently under a stay of proceedings—will likely further define what scale of distribution is acceptable as fair dealing under the Act, and may also test the Harper government's Copyright Modernization Act legislation, which amended the Act to include "technology protection measures" (i.e. paywalls) as a legitimate tool for creators to protect their content online.

Whether the other cases go to trial will depend on the lifting of the stay of proceedings and if *Blacklock's* and its counsel decide to continue to pursue litigating the government after this unfavourable ruling.

Justice Barnes's dismissal of *Blacklock's* claim also includes the plaintiff covering the legal costs of the defendant.