

Indigenous groups release booklet for workers in the criminal justice system

The new booklet is being distributed across the Atlantic region

CBC News

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A new booklet designed for people working in the criminal justice system aims to give more context and understanding when working with Indigenous people involved with the system.

It provides information about the Indigenous groups in Atlantic Canada, a brief history of Indigenous-Crown relations and The Indian Act, as well as how generational trauma, such as the residential schools, are still having an effect today.

Bringing Balance to the Scales of Justice was designed by the Mi'kmaq Confederacy of P.E.I. in partnership with the Elsipogtog Restorative Justice Program in New Brunswick, the Miawpukek First Nation in Newfoundland and Labrador and the Mi'kmaq Legal Support Network in Nova Scotia.

It was released in the last month and is now being distributed to police, court officials, probation officers, judges and lawyers throughout the Atlantic region.

Giving context

Sheri Bernard, Indigenous justice coordinator with the confederacy, says it's important that systemic issues within the Indigenous community are given a proper historical context — particularly around the residential schools.

"There are certainly effects that have come from that ... in areas of high unemployment, lack of opportunities, lack of education, the increase in lateral violence, increase in isolation, higher rate of suicide," she said.

"When you're looking at all these and how they contribute to an offender, they play a huge role. ... There's also the issues around child apprehension, like the 60's Scoop, the effects that it's had, not just on that one generation but how it has affected the offender intergenerationally, so those issues come down the line."

Bernard said these problems do not disappear with the passing of time alone.

"The trauma that the parents, or grandparents or great-grandparents had experienced comes down through the generations," she said.

"So the intergenerational trauma, whatever trauma hasn't been resolved from one generation gets passed down to the next."

Gladue reports

Gladue reports are pre-sentencing or bail hearing reports that give recommendations to the court about sentencing, and offer insight into the specific background of Indigenous people involved in the justice system.

Bernard said over half of Indigenous people involved with the justice system opt to have a Gladue report.

Taking a more contextual approach to criminal justice, she said, would help not only offenders, but the system itself.

"Identifying whether it's an issue of substance abuse for example, then addressing that issue, it serves much more of a purpose than sending the person to jail where the issue is not resolved," she said.

'Transportation is a huge issue'

Bernard said a lack of understanding of the issues affecting Indigenous people can cause a cycle of offences keeping them perpetually in the system.

"Whenever we're looking at higher rates of incarceration ... it's usually with offences for crimes against the system, so for example people breaching," she said.

"The issue there primarily is transportation. Transportation is a huge issue ... if they can't make their meetings with probations."

Bernard said the hope is the booklet will help educate everyone working within the criminal justice system.

"For people just to have as a resource and to just understand and hopefully beat down some of the stereotypes that are out there. At least provide some understanding as to why Aboriginal people are in the current situation that they're in with the high rates of incarceration."

More lawyers, not more money, is remedy to legal woes?

Vancouver Sun

Ian Mulgrew

March 12, 2018

Anyone who thinks 5,000 lawyers in chains at the bottom of the ocean is a good start hasn't met Victoria lawyer Kevin McCullough.

"We need more lawyers!" he insists. "More lawyers, that's the answer."

While the rest of the legal community wrings its hands about an onslaught of self-represented litigants, the lack of access to justice and beggarly legal aid rates, McCullough sneers: "Give me a break."

He thinks the current Legal Services Society tariff of about \$80 an hour is just fine: “Last time I looked, that’s more than \$500 a day.”

Don’t tell McCullough you can’t make ends meet on that: “Their overhead is between 15 and 25 per cent, three or four lawyers can share an assistant, and you’re not going to work in Bentall 5. Why should all lawyers get to make \$250,000 a year? Why can’t there be twice as many lawyers as there are today? How can there possibly be too many lawyers if there are lawyers who won’t take legal aid?”

He is tired of hearing the legal system needs increased funding to fix a “crisis” that has existed for 15 years since the first provincial Liberal government of Gordon Campbell slashed legal aid by some 40 per cent.

McCullough, who is a partner at McCullough Gustafson Watt, became a celebrity lawyer during the high-profile 2010 corruption trial over the \$1-billion privatization of B.C. Rail, with his penchant for Churchillian cigars and flamboyant courtroom performances.

But he has been in the trenches for a quarter century. And the bulk of the 33 murder cases and the 29 dangerous and long-term offender cases he has handled have been on behalf of First Nations’ accused.

In light of the recent uproar over the acquittal of the Saskatchewan farmer and the composition of juries, it’s also good to remember as trial counsel in *R. v. Williams* in 1994, McCullough tried to challenge potential jurors about their biases toward First Nations.

“My position was there was widespread systemic bias in Canadian society which merited this,” he said. “Thankfully, (the Legal Services Society) funded the appeal of the matter to the (Supreme Court of Canada), where we ultimately prevailed.”

The high court’s landmark decision said that it was better to allow jurors to be questioned about prejudice when there is concrete evidence of bias: “The expectation that jurors usually behave in accordance with their oaths does not obviate the need to permit challenges for cause where it is established that the community suffers from widespread prejudice against people of the accused’s race sufficient to create a realistic potential for partiality.”

Still, today, McCullough finds himself disagreeing with many defence lawyers, who for years have been protesting what they consider penurious legal aid rates, by picking up the work.

He maintained if there is more money available from government, it should fund programs and services for people, not end up in the pockets of his peers.

“I might not have a QC, but I can do math,” he quipped. “Supply and demand does not get talked about as a real solution. Law students are willing to article for free and can’t find jobs. I just finished interviewing for ... two positions last month. I was turning down people I wanted to hire.”

McCullough said there is no reason lawyers shouldn’t be able to oversee multiple students.

The Law Society of B.C., however, rejected his request to hire a third and maintained that only in exceptional circumstances could a lawyer have more than two articling students.

“There is an articling crisis happening across B.C. where students cannot find positions,” McCullough fumed. “There is an access to justice crisis that has been going on for more than a decade. In these circumstances, and when there are lawyers who are experienced principals prepared to take on students, the only issue should be whether the lawyer can discharge their responsibilities. I think this decision is out of step with today’s reality.”

Noting that he pays students even if they will work for free, McCullough maintained the legal aid/access to justice crisis wasn’t about funding — it was about breaking the legal monopoly of lawyers.

“More lawyers equal cheaper fees for everyone — an undeniable solution in every other business for busting monopolies,” McCullough said. “The critics will say it will become a race to the bottom. I say you will get access to justice for many, many more people.”

He said there were all sorts of practical solutions to improve access to justice that would not require more money, yet they are not being robustly pursued.

“What happened to every initiative to allow paralegals to do more work?” he asked rhetorically.

The Law Society has been dragging its feet on that.

“What if the Law Society required each lawyer to do one pro bono criminal or family case a year, or two days of duty counsel?” he continued. “What an impact that would immediately have. Is that a big ask? Why have they not done this?”

Good questions. Good points.

“Access to justice,” he said, rolling his eyes. “Give me a break!”

Federal government to pay what is owed before recovering Phoenix overpayments

The Ottawa Citizen
Shaamini Yogaretnam
March 13, 2018

The union representing public service employees is hailing as a victory the federal government’s decision to stop pursuing Phoenix overpayments from any individual employee whose pay issues are not sorted out.

The Public Service Alliance of Canada, in a statement to members and the public posted on its website, said the move means that “employees will receive any and all funds they are owed before they must reimburse the employer for any overpayments or emergency pay.”

The Treasury Board's terms and conditions of employment were changed as a result of union pressure. While public service unions have announced the changes to their members, the government has yet to formally announce the new measures.

The decision acknowledges the reality of thousands of government employees who continue to grapple with the ins and outs of the failed pay system — for many, it hasn't always been a strict overpayment or underpayment, but a complicated mess that's got progressively worse.

"Many of our members who received overpayments have also been underpaid, are missing entitlements, or are owed retro pay from the collective agreements signed last year," PSAC president Robyn Benson said in the statement. "That is why PSAC has been pushing for a whole-person approach to pay files before beginning any recoveries."

One paycheck could see an employee overpaid, another could have them underpaid and not receiving short-term supervisor pay, for example. Each pay issue exists on a separate ticket that would be processed individually. Overpayment recoveries were happening in a silo.

Employees, in theory, will now be made whole — have all of the money owed to them paid back — before the government recovers any overpayments.

But, Benson warned, as with many Phoenix woes, the union and its members remain "vigilant" and will be monitoring to see if this is actually implemented.

In addition to having to have been paid all money owing to them, employees will also have to experience three stable pay periods before any recovery payments can be withdrawn.

The next major hurdle for unions will be trying to fix yet another discrepancy — where the government is taking back the gross amount of an overpayment when employees were only paid the net value.

The wrong kind of justice warriors at Canada's law schools

With a few exceptions, law schools are increasingly determined to follow other faculties where SJWs are all about anti-racism, gender equity and wholesale reform

National Post

Christie Blatchford

March 13, 2018

No law school in the country may be more frank about producing social justice warriors than the University of Victoria, where Dean Jeremy Webber says in his welcoming message the following: "...this faculty has prided itself on its commitment to social justice.

"That's an elusive aim, one that everyone claims to pursue. At UVic, it means all members of faculty accept that legal education ought to speak to all members of society, including those who are marginalized.

"Our focus on Indigenous legal traditions, for example, has been second to none.

“Different faculty members define their particular focus differently, but all share the general objective...”

Aside from the unsettling suggestion that all the law professors at UVic think the same (surely an odd bragging point) or at least agree on the larger goals – this after all is not so different from the Law Society of Ontario’s insistence that its members acknowledge their obligation to promote progressive values — Webber has it pretty much right too.

With a few exceptions, Canada’s law schools are increasingly determined not to be left behind by other faculties, such as education studies and social work, where SJWs, as they’re often called, make no bones about being all about anti-racism, gender equity and wholesale reform to the institutions of the country.

That’s what social justice means, as Queen’s University law prof Bruce Pardy noted a couple of weeks ago in the National Post.

He was writing about the verdict in the Colten Boushie case and the University of Windsor’s law school statement about it, in which the school pronounced the legal system as oppressive and said “a reinvention of our legal system is necessary.”

Now for as long as there have been lawyers, there have been lawyers fighting for the progressive values of their day, and against injustice, in a range of ways — representing poor clients pro bono (short for pro bono publico, which is Latin meaning a service provided free and for the public good), taking on unpopular causes or clients, even focussing their practices in areas they believe are under-served, and working for peanuts in legal aid clinics or on legal aid certificates.

(I know many who fit that bill, but the one I always think of when I hear the pro bono phrase is Peter Rosenthal of Toronto, a University of Toronto math professor and a lawyer who for decades has doggedly represented those who cannot afford even the cheapest lawyer.)

That’s all good, of course, even noble. And the same holds true for law professors and law students: As Pardy said in an email Tuesday, it’s perfectly legitimate for prof and student to “pick apart judgments as they see fit and articulate the values that they believe the law should reflect.”

It’s qualitatively different, though, when law schools get into the muck of things, espouse and impose a particular set of values or opinions and a way of thinking. In the theatre that is a law faculty, the dean and the administration are the equivalent of the judge in a courtroom, and when judges do this, they’re invariably criticized for “descending into the arena”, meaning getting down and dirty.

As Pardy said, “It is not legitimate for a law school to do so, because then the institution becomes a political actor imposing an ideology on their professors and students.”

And lots of the law schools are doing it, not just at Windsor and Victoria.

On Feb. 13, Adam Dodek, the dean of the common law faculty at the University of Ottawa, sent a message about the Boushie verdict to his students, extending “our deepest sympathies” to the Boushie family and Indigenous people, which is fair enough.

Then he said, in part, “We recognize that the legal institutions of this country have not only failed to deliver justice to Indigenous peoples of this country but have in fact continued to perpetrate many injustices. We acknowledge that racism still very much exists in our justice system.

“As jurists, professors, and law students, it is incumbent upon us to speak out against injustice, especially within our justice system.”

As one U of O law student said, the email made clear that “There are acceptable and unacceptable views at Canada’s universities.”

A self-described conservative student, he said while he rolled his eyes at professors expressing their views in class, the dean’s email “really got to me.”

He’d read a lot about the Boushie trial, he said, and formed his own views, “which were that this was a complicated case” that raised all kinds of questions, including about race.

“But as the dean’s message made clear, these kinds of ideas are not acceptable. All 12 of the jurors were bigots.” The message wasn’t as strong as Windsor’s, he said, “but its purpose is pretty much the same.

“As students of the faculty, we had our marching orders. The decision was racist and so is our legal system.”

As Pardy said in his email, when universities take on social justice mandates, they “become combatants in the culture wars” and this is “especially insidious when it comes to the law schools, since they are training tomorrow’s lawyers and judges.

“They will graduate from institutions funded with public money to promote the views that legal justice and progressive values are synonymous and that Western legal principles are oppressive.”

Feds to temporarily halt collection of Phoenix overpayments from civil servants: officials

National Post

Terry Pedwell

The Canadian Press

March 13th 2018

The federal government will no longer try to recover money overpaid to its employees until all of their outstanding pay issues have been resolved, officials confirmed Tuesday.

Under an agreement reached with civil service unions last weekend, collection of overpayments or emergency salary advances will be halted until employees' individual pay disputes have been resolved — and their paycheques are correct for at least six weeks.

However, the Treasury Board Secretariat indicated final details of the agreement had not been completed.

“The Government will work with bargaining agents over the coming weeks to finalize details of how these new recovery processes will work and what steps employees may need to take to establish a repayment plan,” a Treasury Board spokesman told The Canadian Press.

But under the arrangement, the government also won't act to recover so-called priority payments until pay files have been cleared of all outstanding transactions, the Public Service Alliance of Canada said.

Tens of thousands of civil servants have been underpaid, overpaid or not paid at all for long periods over the past two years as a result of problems created by the Phoenix system, which was supposed to streamline pay systems across dozens of federal departments.

Many of those who received overpayments, however, have also been underpaid or faced other problems with their paycheques.

Under a new government directive, employees must be notified in writing when overpayments are discovered, but recovery of the money should only begin after all monies owed to the employee has been paid out, government workers experience three stable pay periods and employees agree to a reasonable payment plan.

“Many of our members who received overpayments have also been underpaid, are missing entitlements, or are owed retro pay from the collective agreements signed last year,” PSAC national president Robyn Benson said in a statement.

“Thanks to the hard work of our members and our union, the government is finally listening.”

Some civil servants remained skeptical, however, saying they've been told before that they'd be notified in writing before overpayments are recovered, only to have large amounts deducted from their paycheques, seemingly at random, with the government frequently clawing back more money than was overpaid.

But more power to decide how to proceed with overpayment recoveries is now being put into the hands of civil servants, said Treasury Board spokesman Martin Potvin.

“Employees who are in an overpayment situation will be notified and will be given multiple options to repay the government,” he said in an e-mail.

“They will be provided all reasonable discretion in determining their repayment schedule.”

The government's latest budget promised \$16 million over two years to aid in the search for a replacement of the trouble-plagued Phoenix pay system.

In addition, it also earmarked more than \$400 million to deal with the backlog of pay problem case files that have accumulated since Phoenix was brought online two years ago, bringing the total allocated to the pay project so far to nearly \$1 billion.

When the new pay system was initially approved, the previous Conservative government estimated it would save taxpayers about \$70 million annually.

Unions cautiously optimistic about Treasury Board leading post-Phoenix fix, but worry about more delays

The Hill Times

Emily Haws

March 14, 2018

The two largest public service unions are applauding the decision in the 2018 federal budget to have the Treasury Board lead the search for a Phoenix pay system alternative, but caution the government can't cut corners this time.

Both the Public Service Alliance of Canada (PSAC) and the Professional Institute of the Public Service (PIPSC) said they applaud any measure to get their members paid properly, but PIPSC is concerned the extra time needed to get Treasury Board officials up to speed will cause more delays in solving the two-year-old problem.

Public Services and Procurement Canada (PSPC) has developed expertise, said PIPSC vice-president Stéphane Aubry, and "now transferring [the system] to another department, another minister dealing with a system they don't know from under the hood, we're kind of concerned that they're going to be starting from scratch again, instead of building on the experience that PSPC had."

The project could have just as easily been done within PSPC, he added. PIPSC represents 52,000 of the government's scientists and IT workers, and has been advocating for scrapping Phoenix and building a new one by using its members' expertise since November.

The budget announced \$16-million over two years to "work with experts, federal public sector unions, and technology providers on a way forward for a new pay system." PSPC—the bureaucracy's pay master—has generally been handling the boondoggle, but the search has been handed to the Treasury Board Secretariat, which holds the government's purse strings and is the bureaucracy's official employer.

This is so Public Services Minister Carla Qualtrough (Delta, B.C.) can focus on getting the current system working properly, said Treasury Board spokesperson Martin Potvin. Headed by President Scott Brison (Kings-Hants, N.S.), Treasury Board is light on exact details about the swap.

Mr. Potvin said the government will consult stakeholders and take recommendations from an independent consultant and the auditor general's report on the pay system into account to "make sure we get the next generation of the Government of Canada's pay system right," he said.

"The Ministerial Working Group will continue to be engaged in this effort," he added, referring to the cabinet-level group headed by Public Safety Minister Ralph Goodale (Regina-Wascana, Sask.) that was assembled to manage the problem. "We will continue to work closely with Public Services and Procurement Canada, as well as other departments and agencies, to find a sustainable solution."

PIPSC is concerned \$16-million over two years means there's an extended timeline to study the problem without "actually doing something," said Mr. Aubry.

"We would like a [working] solution...to be put in place faster," he said, adding it is possible to implement a new system in smaller chunks that are extensively tested and work well, known as agile development.

He said he understands it costs money to study options and test them, but said the \$16-million is "money lost" if it's all used for analysis.

Because of the lack of details, PSAC wouldn't comment on the \$16-million until the budget implementation bill is tabled. National president Robyn Benson, who represents 189,000 bureaucrats, didn't directly comment on Treasury Board taking on the project, but reiterated in an emailed statement the importance of employee input.

Ms. Benson said "that the federal public service workers who will be working with the pay system and administering pay will need to be part of the process from the very beginning," and that any new system will require thorough testing. In the meantime the government must do everything it can, she added, "including hiring more compensation advisers in departments and the pay centre, supporting workers with Phoenix issues, and mitigating problems."

Mr. Aubry said his union believes the government as a whole is taking the heat for Phoenix, not one department over another. However, PSPC has borne the brunt of the Phoenix fallout.

A government-commissioned report released in October provided 17 "lessons learned" from Phoenix, including that the government assign accountability and authority to a single office, and fully test the software before launch.

David Zussman, a former public service commissioner and professor at the universities of Ottawa and Victoria, said having a fresh set of eyes is a good idea, as PSPC deputy minister Marie Lemay "probably doesn't have any new ideas."

Auditor general Michael Ferguson harshly critiqued both departments in his November report, saying it would cost far more than the \$540-million planned for the fix. Phoenix was meant to save \$70-million

annually, but so far the government has sunk in \$460-million. The budget announced another \$431.4-million over six years to fix pay issues.

Former parliamentary budget officer Kevin Page, now head of the University of Ottawa's Institute of Fiscal Policies and Democracy, said the government has been forced to get out ahead Mr. Ferguson's upcoming spring report about Phoenix, which is expected to highlight implementation failures.

"This will include [the] role not appropriately played by the Treasury Board Secretariat and the Treasury Board Cabinet Committee," he said.

New judge appointed to Yukon Supreme Court

Justice Edith Campbell 'a great addition to our bench,' says Yukon justice minister

CBC News

March 15, 2018

The federal government has appointed the first woman to be a resident Yukon Supreme Court judge.

Edith Campbell, a longtime federal prosecutor in Yukon, was named to the post on Thursday by federal Justice Minister Jody Wilson-Raybould.

Campbell was appointed under the new judicial application process announced by Ottawa in 2016. She fills a new position at the Yukon Supreme Court, joining Justice Ron Veale (the court's senior judge) and Justice Leigh Gower as resident judges.

Campbell worked for many years with the regional offices of the Public Prosecution Service of Canada in Quebec and Yukon, and first moved to Yukon in 2003. As a prosecutor in the territory, she has been assigned to circuit court in several communities outside of Whitehorse.

Campbell is bilingual, and has served as vice-president of the Yukon Francophone School Board.

Yukon Justice Minister Tracy-Anne McPhee said Campbell's fluency in French "will serve Yukoners well."

"We currently have to bring judges from outside, if there's a trial at the Supreme Court level that needs to proceed in French. So that will be a great benefit for us," McPhee said.

"I'm very excited for her, and for the Yukon territory. It's a great addition to our bench."

Social Justice: Perspective of a Criminal Defence Lawyers

The Post Millennial

Sayeh Hassan

March 16, 2018

Christie Blatchford's recent thought-provoking article "the wrong kind of justice warriors at Canada's Law School's" got me thinking about social justice and access to the Criminal Justice System in Canada.

In recent months there has been much discussion, and some debate about the obligation of lawyers to promote equality, diversity and inclusion and our judicial system has come under criticism for perceived differential treatment of certain groups within the Canadian Society.

As a lawyer practicing in Ontario, I am now required by the Law Society of Ontario to create a statement of principles to “promote equality, diversity, and inclusion generally and in my behaviour towards colleagues, employees, clients and the public.”

While this may all be well meaning I am troubled by the fact that promoting all the above-noted concepts seem to focus on one factor alone: race of both lawyers and clients, whereas in my experience as a lawyer who has practiced law for over ten years there are many factors which may be barriers to access to the justice system. These factors include but are not limited to economic disparity, mental health and addiction issues and the lack of government-funded programs to address those issues, as well as lack of support system for accused people before the courts.

I recently had an occasion to spend an entire day in a bail court where all of the accused were charged with drug-related offences. I had the opportunity to observe tens of accused be brought before the Court and observed the following:

- Accused with apparent mental health problems, some of whom were self-aware enough to ask about a mental health worker who could possibly assist them. Unfortunately, there were no mental health workers in Court to assist those accused.
- Accused of obvious drug addiction issues who in my opinion should have been in rehabilitation or medical facilities, but whom unfortunately would be spending the foreseeable future in prison.
- Accused who did not have lawyers or whose lawyers were not in court on that day and whose cases were adjourned to other dates because of lack of representation.
- Lack of family and community support for many of the accused who were already at a disadvantage due to their economic status, addiction or mental health issues.
- Accused who had lawyers and sureties present, but whose cases could not be reached for a bail hearing because there was only one courtroom, one justice of the peace and one Crown who was available to deal with tens of matters that were in court that day.

What didn't appear to be an issue, however, was the race or ethnicity of the accused, as the accused were from many diverse backgrounds including Caucasian, East and West Asian and African American, and they all faced the same issues that would make access to the justice system difficult.

I treat my clients individually based on their legal needs and any factors that may affect their legal defence and their navigation of the criminal justice system. While those issues have been extremely

diverse, in my experience race or ethnicity was not a factor that played a role in their legal defence and protection of their rights.

I believe focusing on race or ethnicity alone will set a dangerous precedent which may lead to ignoring other key factors that make access to the justice system difficult for many accused. Focus on race and ethnicity may also have the opposite effect and further marginalize certain groups and create prejudice.

As lawyers and lawyers to be (law students) it's important to focus on the individual needs of our clients rather than putting them in a box based on their race or ethnicity, to ensure obtaining the best result possible for each and every client.

Sayeh Hassan is a Toronto-based criminal defence lawyer, blogger, and an advocate for human rights and democracy in Iran.

Phoenix backlog down 4,000 cases last month, but could still climb, feds say

The total number of cases awaiting processing is now 626,000, according to a government website tracking the issue.

The Hill Times

Emily Haws

March 16, 2018

There was some good news for the public servants affected by the troubled Phoenix pay system today: for the first time in more than half a year, the backlog has dropped.

The February update of a government website tracking the issue—known as the Public Service Pay Centre's "dashboard"—showed 4,000 fewer open cases in the backlog on Feb. 21 than the previous month on Jan. 24, bringing the number of cases above the pay centre's normal workload to 380,000. Open cases are known as "transactions" on the website.

The backlog started out last summer getting smaller. Between June and the end of July, it went down 37,000 cases to 228,000 cases above normal workload. But in August the number began creeping up again to 237,000. By December it had grown to 367,000 cases, as the staff trying to resolve the pay problems found themselves saddled with processing retroactive payments associated with dozens of recently signed employee contracts.

Although the decrease sounds promising, it's possible the numbers will tick up again, according to an explanatory note posted with the update.

"A continual decline is not expected until later this spring," it reads.

The total number of cases waiting to be processed at the pay centre has gone down in the last month by 7,000 to 626,000 as of Feb. 21.

That includes: 460,000 cases with financial impact (380,000 cases that are beyond normal workload, and 80,000 case part of the normal workload); 91,000 cases with no financial impact, such as address changes or other inquiries; 41,000 collective agreement cases left to be processed; and 34,000 transactions waiting to be closed.

Between Jan. 24 and Feb. 21, the pay centre received 73,000 cases and processed 77,000, the website says. The centre also manually processed 5,000 cases associated with putting in place the new contracts. When Prime Minister Justin Trudeau (Papineau, Que.) came to power in 2015, all 27 contracts with the core public service has expired. The government has now settled all but six of the contracts, but the pay changes resulting from that has caused headaches for the pay centre.

The contracts were generally negotiated for 2014 to 2018, necessitating retroactive payments. Pay advisers manually retrieved data from the government's old pay system and entered it into Phoenix, which is time consuming.

The government blamed the ballooning backlog on the contract implementation, as the pay centre had to take advisers off other tasks to deal with it.

The previous Conservative government decided to move to the Phoenix pay system to centralize payroll for federal public servants, but since the Liberals implemented it almost two years ago it has left many employees overpaid, underpaid, or not paid at all.

The system was supposed to save the government \$70-million per year, but so far the government has coughed up hundreds of millions of dollars to fix it. Originally the government promised to have the backlog of pay issues resolved in October 2016, but now it's proposed to spend \$16-million over two years to look at switching to other options to the pay system in the long term.

The project included two parts: that the government replace its existing system with off-the-shelf payroll software configured to government human resources systems, and that compensation advisers for more than 40 government departments be centralized at the Public Service Pay Centre in Miramichi, N.B. Other government departments still use the Phoenix software but have their own in-house pay advisers.

Departments with in-house advisers reported just over 35,000 cases greater than 30 days old on Feb. 21, affecting about 26,000 employees. Those cases are not necessarily pay problems, but the number of pending pay transactions.

Despite the generally good news, the number of non-collective bargaining cases processed within the government's service standards had dropped slightly from 54 per cent on Jan. 24 to 51 per cent on Feb. 21. The target is to have 95 per cent of transactions processed within standards.

"We expect the percentage of [cases] that meet service standards to continue to fluctuate as the implementation of collective agreements continues and work related to the issuing of correct T4s moves forward for the 2017 tax season," reads the section's explanatory note.

Overpayments due to Phoenix were a cause for concern in December because the end of the calendar year was the original deadline by which people who had been overpaid had to have their 2017 issues dealt with to avoid having to give back their gross overpayment that year instead of the net. Those affected swamped the pay centre to let it know of their problems, unions pushed to have the government make alternative arrangements, and pay advisers at the centre rushed to make corrections before tax deadlines.

However, the government has since delayed the collection of Phoenix overpayments, saying it will collect them once an employee's file is settled and is stabilized for three consecutive pay periods.

Without screening or supports, offenders with FASD face revolving door of justice

TRC called for reforms to address needs of offenders with FASD, and for prevention to be made a priority

CBC News

Kelly Malone

March 19, 2018

Russ Hilsher's criminal record goes back more than a decade, to an assault charge in 2003. The 40-year-old has been in and out of jail for breaching conditions, other assaults and theft since.

On paper, Hilsher's background tells a different story than the one the father of two talks about when he explains how he struggles to understand rules, laws and how to interact with police.

Originally from Ghost River, near the mouth of the Cheepay River in northeastern Ontario, Hilsher's birth mother drank during her pregnancy. He was taken from her soon after and was diagnosed with Fetal Alcohol Spectrum Disorder as a baby.

As a teenager he landed in a foster home in Winnipeg and struggled to adapt to city life. Hilsher often has a wide smile on his face, but his eyes take on a serious expression when he explains how he interprets the world differently. When Hilsher was younger, if he saw something on the street he would take it. He didn't think it was theft.

"Like you guys [who don't have FASD] are knowing it's not yours, but to someone who has FASD it's just lying there, so it has to be mine. Why can't it be mine, right?" Hilsher said.

Eventually that landed him behind bars. Hilsher said the routine and structure of prison worked for his FASD but it also meant he was sharing a space with people who were taking advantage of him. Hilsher said that he would just say "Yes" when people asked him to do things and he would end up getting in trouble, not really understanding that what he had done was not OK.

"It's almost like if I could [serve my time] by myself in my own little space I would be alright," he said.

In the prisons and jails it's easy to mistake somebody's behaviour as antisocial or oppositional when it's really a result of having FASD, said Howard Sapers, the independent advisor on corrections reform to the

Ontario provincial government and former Correctional Investigator of Canada. And in prison when people don't follow orders or don't seem to learn from mistakes, they face more discipline.

"This just creates a very, very negative cycle. And it just reinforces bad behaviour," Sapers said.

The first thing to do in corrections is to recognize that FASD is a real and profound issue, Sapers said.

Signs of FASD

Fetal Alcohol Spectrum Disorder (FASD) is a brain injury that is caused when a fetus is exposed to alcohol. It is the leading known cause of preventable developmental disability in Canada, affecting at least one per cent of Canadians, according to Health Canada.

FASD can range from mild to severe. Some people show physical signs, like a smooth ridge between the nose and upper lip and a smaller head, but many of the conditions associated with FASD are cognitive and those can "have important legal and practical implications for the criminal justice system," the Correctional Investigator's annual report said in 2015.

Many people with FASD have difficulty understanding the consequences of their behaviour, struggle to connect cause and effect, have impulsivity, drug or alcohol problems and struggle to learn from mistakes.

Research is not clear just how large the impact of FASD is in Indigenous communities but a link has been established between substance abuse and people who went to residential schools or were separated from families through the Sixties Scoop — Indigenous children who were removed from their families and adopted to non-Indigenous families — along with the generations that followed them.

Research suggests up to a quarter of inmates in federal corrections could have FASD. But in the three years since the Truth and Reconciliation Commission (TRC) issued its report, which included 94 Calls to Action, there has been little action on developing a national strategy or plan.

In Call to Action #34, the commission called on federal, provincial, and territorial governments "to undertake reforms to the criminal justice system to better address the needs of offenders with fetal alcohol spectrum disorder" including increasing resources for FASD diagnosis, bringing in exemptions from mandatory minimum sentences for offenders with FASD and providing parole resources so people with FASD can live in the community.

Call to Action #33 also called on governments to "recognize as a high priority the need to address and prevent fetal alcohol spectrum disorder."

"Very little is actually being done to address the issues and we are quite disappointed," said Ivan Zinger, the Correctional Investigator of Canada.

Within Correctional Service Canada, which deals with federal inmates, only seven specialized assessments for fetal alcohol spectrum disorder were funded across the country in 2016.

When it comes to provinces and territories, each has a different approach, but most do not do FASD screening upon entry and do not keep statistics.

Even outside of the criminal justice system, funding is extremely limited.

In May 2017, then-federal Minister of Health Jane Philpott, now the Minister of Indigenous Services, announced \$3.6 million in federal funding from the Public Health Agency of Canada for five projects "aimed at preventing and screening for alcohol use in pregnancy." It was also dedicated to better identify "individual and population groups most in need of support."

But the funding was not new at the time. It was the same \$3,650,206 earmarked in 2016 to fund certain projects over a period of five years.

Nor is it an increase in funding. It is actually a decrease compared to the previous federal government.

From 2008 to 2014 — also over a five year period — the Public Health Agency of Canada spent a total of \$12.45 million on the Fetal Alcohol Spectrum Disorder Initiative.

For the families and communities dealing with FASD, the results of inaction are severe. Every time a loved one with FASD intersects with the criminal justice system, research shows they will likely be failed by it.

In prison, people with FASD are more likely to be involved in institutional incidents, are more likely to get charges while behind bars, typically spend more time of their sentence incarcerated and are less likely to complete programs, Zinger said.

"The correctional outcome is actually quite poor," he added.

Invisible disability

In a Winnipeg provincial courtroom last August, defence lawyer Wendy Martin White told a judge that while everyone knew her client, a young Indigenous man sitting in a chair staring at his red running shoes, had FASD — his mother even confirmed she was drinking while pregnant — he had not been formally diagnosed.

Even without the diagnosis "what we think of normally for rehabilitation has to be thought of differently for someone like [my client]," she said.

Martin White's client rocked back and forth in a chair placed between lawyers and in front of the provincial court judge. When asked if he had anything to say, he slowly responded "I don't know what to say."

"I just focused on listening. I never thought about what to say."

Up to 60 per cent of Martin White's clients are either confirmed to have, or are suspected of having, FASD, she said in an interview with CBC News. It means that a lot of her time is spent navigating the challenges that brings.

She talks about a client with FASD who was charged with a serious offence. He was from northern Manitoba but was being held at a remand centre just outside of Winnipeg. Martin White had been sending him materials to review before his trial and she was told he seemed to understand what was going on.

Finally Martin White was able to go and review the materials with her client and quickly realized that something was wrong.

"Not only could he not read or write, he was legally blind," she said.

People with FASD will agree with things even if they don't understand them, Martin White said. Often that means they can plead guilty without understanding the charges or implications.

She said it's an invisible disability that affect their every interaction with the justice system — from encounters with police to plea deals to probation — but the system still doesn't understand what it is, how it affects offenders and what can be done to reduce recidivism or divert people from the courts altogether.

"Are they manageable in the community? If they had the right supports would this have happened? Can we get them on the right system of support so that they are better at reintegrating into the community?" Martin White said.

"Is that not better for them than being in custody, where nine times out of 10 they are going to end up in segregation and their suicide rate goes up or other things go up because they just can't handle that kind of environment well."

Corrections populations show higher rates of FASD

A three-year research study into prevalence in Yukon's corrections population, released last November, found 17.5 per cent of study participants had fetal alcohol spectrum disorder. There were also significant rates of cognitive impairment, addiction and mental health difficulties.

In 2011, Correctional Service Canada did a research study of FASD prevalence at Stony Mountain Institution in Manitoba. It found that 10 per cent of participants had FASD, and another 15 per cent met some of the diagnostic criteria, but were missing information to make a confirmed diagnosis — such as maternal confirmation of drinking during pregnancy. That means the FASD rate was at least 10 times greater in Stony Mountain than in the general population.

It concluded that "there is a population within CSC who are affected by FASD who are currently not being recognized upon intake, and are not being offered the types of services or programs that meet their unique needs."

There's a cost on the community, families and the offender, with such high numbers of people with FASD behind bars. But there's also a significant financial cost when people with FASD enter the criminal justice system.

A recent Canadian cost-of-illness study on FASD estimated that the national cost in 2013 ranged from \$1.3 billion to \$2.3 billion. The second highest contributor to the total cost was corrections, accounting for 29 per cent or \$378.3 million.

A lot of that money goes to managing the person when they are in front of the courts or behind bars, not actually working on a treatment plan.

Research has shown that people with FASD have difficulty following legal supervision orders and don't respond the same to traditional treatments, which often results in high recidivism rates and a revolving door in the criminal justice system.

Difficulty following orders

Trevor Russel, 37, first faced the courts as an adult in 2012 for an assault charge. Like many people with FASD, he also had issues with breaching his probation orders.

Born in Winnipeg, Russel was in and out of foster care before becoming homeless as a teenager. He looks all around the room as he explains how his teachers didn't know what to do with him in school. He hadn't been diagnosed with FASD but everyone thought he had attention deficit disorder and was hyperactive. He struggles to sit still.

"I got arrested a few times when I was AWOL because I was too young The group home dad would call the police and they would come pick me up and I would be drunk on a bench somewhere or sleeping in a bus shack or whatever," Russel said.

When Russel eventually ended up at a remand centre he had difficulty following orders and staying out of trouble, but no one was looking at whether he had FASD, he said.

"I went to the hole once for fighting and that was only like five days. Five days sucked. Even one day sucks because you don't know what day it is," he said.

After being released and hitchhiking around Canada, Russel was connected with a support organization in Winnipeg and was finally diagnosed with fetal alcohol spectrum disorder. At first, he said it didn't really mean anything to him but once he started connecting with organizations that specialize in helping people with FASD he began to understand how he saw the world differently and was able to make changes in his life.

"Most of the challenges I have are just memory things. Like, I will forget. I knew I had something to do today but I just couldn't remember what it was," he said.

He thinks about his life 10 years ago, when he was in and out of jail, and his life now.

"Now I'm in a house, I have pets and I'm speaking to people, and it's fun," he said.

Most jails not screening for FASD

It's not clear how many people behind bars have FASD and there's no consistent strategy on how to tackle the issue throughout the criminal justice system. In some provinces, people with FASD go to a special mental health court that is more equipped to deal with addictions and mental health issues and in others there are dedicated resources to diagnosis when it comes to youth offenders.

Each province and territory has a different approach, but most do not do FASD screening upon entry into a jail and do not keep statistics.

A spokesperson for the government of the Northwest Territories said they have a wellness court but do not track numbers for people in jail with FASD, although they "believe there are a significant number."

In British Columbia, inmates who are accepted into the Integrated Offender Management Homelessness Intervention Program are screened for FASD, but that doesn't include all inmates.

A spokesperson for Correctional Service Canada said it is committed to responding to the needs of federal offenders with FASD. In an email to CBC News, spokesperson Stephanie Stevenson pointed to a mental health screening during intake into a prison and said there is a "multi-pronged approach" when it comes to offenders with mental health needs.

A spokesperson for Justice Canada said in response to the call to action 34 "The Government of Canada believes that the criminal justice system must be responsive to individuals living with Fetal Alcohol Spectrum Disorder, as well as those living with other disabilities and with mental illness."

As part of its justice system review, the government is "examining measures to address the overrepresentation of vulnerable populations, including offenders with FASD, mental illness, and addictions issues. We are also working to address gaps in services for these vulnerable groups that exist throughout the criminal justice system and to improve accessibility, both for victims and offenders."

The spokesperson added that last year's budget committed \$5 billion over 10 years toward making mental health care more accessible across Canada.

Resources and support need to be funded before a person comes into contact with the criminal justice system, said Kim Pate, a Canadian senator and member of the Aboriginal Peoples Senate Committee. The criminal justice system shouldn't be the default way to deal with people with FASD, she said.

"Individuals with FAS often have cognitive challenges that make it very difficult for them to manage in a prison. So, most prisons would say that they really can't address the needs that individuals with FAS come in with," she said.

If Canada keeps cycling people with FASD through the criminal justice system it's a "recipe for more disaster," she said.

"I think it's absolutely vital that we not just talk about it," she said.

"The reason the TRC didn't make recommendations but calls to action is exactly that. They were calling us to action and I think it's time we take up that."

Alberta prosecutors raise concerns about dwindling ranks

The Globe and Mail

The Canadian Press

March 18th 2018

A provincial wage freeze and increased caseloads resulting from a Supreme Court of Canada ruling are making it difficult to recruit new prosecutors to fill Alberta's dwindling ranks, says an organization representing Crown lawyers.

In 2016, the Supreme Court's Jordan decision imposed time limits on how long a criminal trial can take before it is deemed unreasonably delayed.

The ruling said people charged with an offence have the right to have their case tried within a reasonable amount of time – 18 months for provincial courts and 30 months for superior courts.

Damian Rogers, treasurer of the Alberta Crown Attorneys' Association, says a recent government announcement about hiring an additional 10 prosecutors for regional offices is a step in the right direction.

But he points out that in the past year alone, 20 prosecutors have left rural offices, particularly in northern Alberta.

"One reason we see people ... moving on is they simply don't feel that they can competently manage the caseloads that they have," Rogers said in an interview. "Either that causes them to be under stress and impacts their lives, or causes them concerns about their professional responsibilities to practice in a competent manner.

"They're concerned there's so many files, so many balls in the air, that they're going to drop a ball on something that's important."

A 4-1/2-year wage freeze imposed by the Alberta government is also a disincentive, he said.

The starting salary, right out of law school, is \$81,500. A senior prosecutor with at least 15 years experience receives \$168,000.

"If they go to another province where all of their experience is recognized, they see increases of \$10,000, \$20,000 or \$25,000 a year in their compensation," Rogers said.

“It’s leading to our prosecution service being much more junior now than it was five years ago. A lot of experience is departing the prosecution services.”

Alberta has 306 Crown prosecutors and 105 of them work in regional offices.

Rogers said there is no problem finding recruits in larger centres such as Edmonton and Calgary, but cities such as Fort McMurray and Grande Prairie – where the caseloads are highest – remain a problem.

Alberta’s justice minister said her department is monitoring staffing levels in the prosecution service and acknowledges increased caseloads are a problem.

“The Jordan decision had a significant impact in terms of our timelines, so we put in some more resources ... and we’ve done some moves in terms of efficiency,” said Kathleen Ganley.

“I think we just keep monitoring the situation to ensure that we have the right mix.”

Ganley said it’s true that caseloads are a bit higher in rural areas where there are smaller offices which puts added pressure on remaining staff. She said she also understands that the wage freeze is a problem, but added the government has “finite resources.”

“It can be particularly difficult because very skilled professionals like lawyers have other options.”

Public service union says it's owed \$10M due to Phoenix

PSAC wants more focus on fixing system for workers, but also money from feds

CBC News

Julie Ireton

March 19, 2018

A union representing tens of thousands of public servants says the federal government now owes more than \$10 million in union dues due to ongoing problems with the Phoenix payroll system.

In a letter obtained by CBC News through access to information legislation, the Public Service Alliance of Canada expresses its concern for the "substantial reduction in dues" the union has received.

The letter — dated Oct. 4, 2017, and addressed to the Treasury Board Secretariat — states the government owes the union approximately \$7.5 million.

PSAC officials now confirm the amount is more than \$10 million and say no money has been remitted to the union, even though the letter requested "an immediate remittance" to offset the substantial debt.

'Affects our ability to carry on operations'

"There has been no change in our membership demographics or compensation which can explain or account for this discrepancy. A financial shortfall of this magnitude affects our ability to carry on operations and properly fulfill our statutory mandate," the union's letter states.

In the 2018 federal budget released last month, there are provisions to provide unions with money.

"The government will also take action to reimburse missing and inaccurate dues that are owing to public sector unions," the budget reads.

The budget has also committed hundreds of millions of dollars to address Phoenix issues, hire additional staff and eventually work toward a new pay system.

PSAC officials would not say how much the government has agreed to remit, but to date, no money has been recovered.

"PSAC's top priority still remains doing everything we can to help get our members paid correctly," said Robyn Benson, the union's president. "Our union filed an interference complaint with the Federal Public Sector Labour Relations and Employment Board because the government owes PSAC over \$10 million."

No exact figures

Ongoing Phoenix accounting issues mean that neither the government nor PSAC know exactly how much is owed to PSAC, according to the union.

"The \$7.5 million was our best estimate in October, but that estimate has grown to over \$10 million as we've done more research," said Michael Aubry, a PSAC communications officer. "The issue, of course, is that Phoenix is causing errors for the union, the government and federal workers, so there's no easy way to do a proper accounting of dues owed."

Aubry also said the system often cannot properly track when workers join or leave the federal public service. That means the union may not have an exact cost estimate of the dues it's owed until Phoenix is fully functional.

This isn't the first time a union has called on the government to pay dues lost to the problem-plagued Phoenix pay system. Last year, the Professional Institute of the Public Service of Canada was also seeking unpaid dues.

PIPSC officials would not provide an update on how much it's owed.