Nunavut judge slams lawyers for sloppy work
"The lawyers in this case failed to do their due diligence"
Nunatsiaq News
Steve Ducharme
April 09, 2018

Justice Paul Bychok of the Nunavut Court of Justice accused lawyers of making sloppy sentencing submissions during a decision he delivered last week that threw out a recommended jail term for a Pond Inlet man guilty of breaking and entering.

"In my view, some lawyers who appear before this court have developed a cavalier attitude towards joint submissions," Bychok wrote on Thursday, April 5, in a written decision for Lanny Kippomee, 36, who pleaded guilty to charges related to a break-in at the Pond Inlet co-op store last December.

Joint submissions by lawyers are negotiated recommendations for sentencing. These are often drafted in return for an offender's guilty plea, sparing the court from spending time and resources on a lengthy trial.

Judges are expected to honour submissions presented to the court, but the submissions are "not sacrosanct" and judges can choose to depart from them, Bychok said, especially if the submissions themselves are not rooted in law.

"[Joint submissions] bring a high degree of certainty and efficiency to our busy courts when they are properly negotiated and responsibly presented to the court," he said.

But Kippomee's recommended sentence of one month in jail and 12 months of probation did not give sufficient weight to deterrence and denunciation, Kippomee's past criminal record, or cite any relevant case law, Bychok told **Crown lawyer George Dolhai** and the offender's lawyer, Sara Siebert.

Bychok said in his decision that if the lawyers in charge of the file had reviewed the relevant case law, they would have found that the appropriate range of jail time for breaking and entering was four to six months, not the one month proposed.

Police arrested Kippomee shortly after he was discovered hiding in the storage closet of the Pond Inlet co-op by the store's owner during the morning of Dec. 8 last year, after stealing keys from the building's office.

Kippomee was sober and deliberate at the time he committed the crimes, Bychok said.

The judge said the lawyer's submission failed to recognize Kippomee's 39 prior criminal convictions, including five for breaking and entering, as well as jail stints for more serious crimes like sexual assault and unlawful confinement.

And while the Crown argued that a one-month jail sentence was “a step up” from a suspended sentence Kippomee received for a break-and-enter charge in 2014, “he neglected the 18-month sentence the offender received in 2004 for the very same offence,” Bychok said.

The one-month sentence, in light of Kippomee’s criminal record, amounted to little more than “a slap on the wrist,” Bychok said.

After allowing lawyers a few hours to revisit their submission, they returned with a two-month sentencing recommendation that was still below the appropriate jail time for breaking and entering.

The judge cited two other recent cases in his decision where lawyers returned with more appropriate sentencing submissions after they were given a chance to review the case law.

Bychok said the reasoning by many lawyers practising in Nunavut appears to be that “we can clear this file from a docket with a joint submission.”

“In my long experience, it is the rare case when counsel come to court prepared to justify their joint submission with reference to relevant case-specific factors as well as [case law].”

Bychok sentenced Kippomee to a total of seven months in jail for the combined offences of breaking and entering and breaching his probation.

Kippomee’s jail term will be followed by a probation of 12 months.

“The words joint submission are not some form of magical incantation,” he said.

“The lawyers in this case failed to do their due diligence,” Bychok said, adding, “the joint submission in this case was not fair and consistent with public interest.”

Charges stayed in Canada’s first paper terrorism case
Global News
Sarah Kraus
April 9, 2018

The man at the centre of Canada’s first paper terrorism case walked away from court a free man after the charges against him were stayed Monday.

As the court was scheduled to hear from the first witness in what was expected to be a week-long trial, there was a unexpected turn. The Crown prosecutor asked to stay both of the charges against Allen Boisjoli.

Boisjoli’s court case dates back to May 2015 when he was pulled over by a peace officer in Beaver County. The interaction was recorded by Boisjoli and posted on YouTube.
“You have a reason for speeding today?” the officer is heard saying.

“I don’t know if speeding is a crime. Where’s the victim? Is speeding a crime or what?” the driver responds.

“It’s against the law,” the officer says.

“I beg to differ,” Boisjoli explains.

After he was handed a speeding ticket, Boisjoli placed a $225,000 lien on the home of the officer who wrote up the ticket.

He also flooded the court with other paperwork, tying up the system. Police called it paper terrorism and he was charged with engaging in conduct with the intent to provoke a state of fear in a justice system participant and a breach of probation. He was later forced to pay the speeding ticket.

In court Monday, Boisjoli questioned the court’s position to rule over him, arguing there was no way to definitively prove he was in Alberta when the alleged offences were committed, as he doesn’t recognize it as a physical place.

“All of their laws and all of their statute codes rely on the fact that you’re within their jurisdiction, that you’re within their imaginary borders,” he said. “Any of these political subdivisions are actually just a fiction of law. It’s basically an imaginary construct that they make up.”

He also told Court of Queen’s Bench Justice Sterling Sanderman he never agreed to be bound by the rules of society.

But he said he does follow certain rules that he believes are of a higher form, adding “I’m not lawless.”

Even after the judge explained how Canadian laws were made, Boisjoli did not recognize the court’s authority.

“If they just followed the rules, I’m sure everybody would get along. But they seem to think the rules don’t count for them.”

Sanderman patiently listened to Boisjoli’s repeated objections in court, but eventually said “it’s sort of an Alice in Wonderland argument.”

He also called his pages upon pages of supporting documentation “gibberish” and “nonsense.”

Sanderman also challenged the crown, saying “it appears as though you’re going after a mosquito with a bazooka.”

At a lunch break, Boisjoli expressed his frustration with the process.
But when court resumed Monday afternoon to hear the first witness, the crown asked for a stay, allowing Boisjoli to leave a free man.

Before he left the courtroom, Sanderman warned, “You shouldn’t be looking a gift horse in the mouth. The less you say, the better your legal position will be. You should be thanking [the crown] Ms. Papadatou.”

Outside the law courts, Boisjoli expressed his shock.

Opinion: We must end discrimination in jury selection
The Globe and Mail
David Tanovich
April 9, 2018

David Tanovich is a professor of law at the University of Windsor and fellow of the Royal Society of Canada. He has co-authored a book on jury selection and has argued leading jury selection cases in the Supreme Court of Canada and Ontario Court of Appeal.

The peremptory challenge − the unfettered ability of lawyers to exclude a limited number of otherwise qualified jurors from serving − has come under intense scrutiny over the last 35 years.

In 1986, the U.S. Supreme Court placed peremptory challenges under the control of its Equal Protection Clause in the famous Batson v Kentucky case. In 1988, they were abolished in England. In 1991, the Aboriginal Justice Inquiry (Manitoba) recommended that they be abolished in Canada. Other jurisdictions, including in Australia, have reduced the number. In New Zealand, lawyers only have four challenges. In Tasmania, six challenges are available but only to the accused.

This is a wealth of experiences, perspectives and research that the federal government could rely on in deciding what path to chart for Canada. It used Bill C-75 to abolish peremptory challenges. The reaction has largely focused on the impact of abolition on jury representativeness and the ability of the defence to remove a juror where there is lingering concern about bias or disinterest.

However, as Professor Kent Roach has observed, the peremptory challenge is a poor tool to address these important concerns. Bill C-75 has increased a trial judge’s jurisdiction during jury selection. This is a good first step. Removing many of the barriers to eligibility, incentivizing service and expanding the process we use to screen jurors for bias (known as challenges for cause) will more effectively enhance representativeness, impartiality and confidence in the process. There is much more work here for the government to do.

The real issue is that peremptory challenges are an open invitation for discrimination.

The Aboriginal Justice Inquiry found that “it is common practice for some Crown attorneys and defence counsel to exclude Aboriginal jurors” and expressed grave concern for a “system that permits Aboriginal people to be so often and so easily excluded from sitting on a jury.” We saw this in the Gerald Stanley case.

In the United States, there is a long history of peremptory challenges being used by the prosecution to exclude black jurors. In 2012, a Michigan State study revealed that over a 20-year period in North Carolina, prosecutors in death-penalty cases struck black jurors at a rate of 2.5 times the rate for non-black jurors.

What is often overlooked in the discussion in Canada is the impact of discriminatory challenges on the excluded juror. We tell citizens that it is their civic duty to serve on the jury. We make it an offence to ignore a jury summons, something we do not do with any other aspect of democratic participation.

The right of citizens to sit on a jury and act as the conscience of the community in a process of collective fact-finding has been recognized by the Supreme Court of Canada and a number of provincial Jury Acts.

Denying an individual a fundamental democratic right on the basis of race or other prohibited ground creates a profound harm to them, the community and the administration of justice. It is certainly not going to engender trust in excluded communities and increase their willingness to participate in the criminal justice system.

In JEB v Alabama, the U.S. Supreme Court recognized that a discriminatory challenge "reinvokes a history of exclusion from political participation" and sends the "message" that certain individuals are presumptively "unqualified" to participate. Indeed, the unstated and troubling assumption in many of the cases is that a black or Indigenous juror is incapable of being impartial in an interracial case as compared to a white juror.

The harm is compounded by the lack of any meaningful redress, as our courts have held that an accused does not have standing to vindicate an excluded juror's equality rights.

Is repeal the only solution? The only other viable option is the Batson regime which attempts to control discriminatory use. This is a time-consuming and challenging three-step process requiring evidence, rebuttal and a judicial determination of purpose. It would appear that the general consensus from judges and academics in the United States is that the Batson process has failed miserably.

That is precisely why Justice Thurgood Marshall predicted in Batson that "only by banning peremptories entirely can such discrimination be ended."

« Les conditions de libération engorgent les tribunaux! »
Pour cette avocate, des comportements qui ne sont pas criminalisés le deviennent et transforment les marginaux en briseurs de conditions à répétition
Droit Inc
Céline Gobert
9 avril 2018

De 2013 à 2015, Me Marie-Ève Sylvestre, professeure au Département de droit civil de l'Université d'Ottawa, a réalisé avec son équipe plusieurs entretiens sur le terrain de personnes marginalisées, telles

les travailleuses du sexe, les itinérants ou les consommateurs de drogues, visées par des conditions de libération.

Ces conditions de remise en liberté imposées à ces personnes ne font qu'engorger les tribunaux, dit celle qui enseigne le droit pénal, le droit des peines et la théorie du droit. Bien évidemment, ajoute-t-elle, il s'agit d'une problématique de taille dans un contexte post-Jordan où la réduction des délais judiciaires est une priorité.

Pourtant, les juges et les avocats avec lesquels elle s'est entretenue sont en désaccord: ils estiment que ces conditions favorisent avant tout la réhabilitation de l'individu et empêchent la récidive.

Le projet de loi C-75, déposé il y a deux semaines à la Chambre des communes, semble plutôt donner raison à Me Sylvestre. Il propose de modifier le processus de liberté sous caution, entre autres pour imposer des conditions « raisonnables et pertinentes » aux détenus.

Le projet de loi propose aussi de donner la possibilité aux policiers d'imposer des conditions sans avoir à demander l'approbation du tribunal et ce, afin notamment de réduire la pression sur les ressources judiciaires.

Droit-inc s'est entretenu avec Me Marie-Ève Sylvestre.

Qu'est-ce qui explique le nombre aussi élevé d'imposition de conditions de libération aux personnes libérées après détention?

Me Marie-Ève Sylvestre : En étudiant les données statistiques de la Cour municipale de Montréal, on a constaté que 95% des personnes libérées le sont avec des conditions. Pourtant, le code criminel et le droit en vigueur exigent qu'elles le soient sans condition. C'est un problème! Il faut libérer les gens sans condition, il est nécessaire de le rappeler. Pourquoi les personnes acceptent-elles ces conditions? Parce qu'elles n'ont aucun rapport de force. Quand on est détenu depuis 24 ou 48h, on est prêts à tout accepter pour sortir, même des conditions irréalistes ou déraisonnables.

Par exemple, quelles types de conditions? Et si le droit exige de ne pas en imposer, pourquoi le fait-on?

On va imposer à un itinérant de se présenter une fois par semaine au poste de police, on va lui interdire de fréquenter tel parc ou certaines rues de Montréal qu'il fréquente habituellement, ou encore interdire à certaines personnes dépendantes de consommer de l'alcool. Pourquoi le fait-on? Ça c'est une question qu'il faudrait leur poser! Pour les acteurs judiciaires, il est surtout essentiel de s'assurer que la personne soit là pour son procès, ou d'éviter qu'il y ait une récidive. Mais ce sont justement les conditions imposées qui ramènent les gens devant les tribunaux et vont créer la récidive! Personnellement, malgré leurs bonnes intentions, je pense qu'ils n'atteignent pas les objectifs visés.

Concrètement, que se passe-t-il quand les personnes libérées brisent ces conditions?

C’est une nouvelle infraction criminelle! Pour des comportements qui ne sont pas criminalisés au Canada. Consommer de l’alcool n’est pas un crime au Canada, ou bien se trouver à tel ou tel croisement de rue, mais quand l’interdiction figure dans une ordonnance de probation, ça devient un crime, une infraction. Une statistique est intéressante : deux-tiers des personnes qui ont deux dossiers et plus devant les tribunaux ont fait un bris de condition. Ça ramène les gens devant les tribunaux! Dans le contexte post-Jordan, c’est vraiment contre-productif!

Que préconisez-vous?

Beaucoup de gens sont détenus avant procès pour des infractions qui ne posent pas de réels problèmes de sécurité pour le public, comme des vols à l’étalage parfois de moins de 10 $, des bagarres, de simples voies de faits ou de la détention de petites quantités de cannabis. Ils sont détenus parfois pendant 3 ou 4 jours pour de tels motifs. Il faudrait que les détentions provisoires soient réservées aux cas dans lesquels il y a une menace pour la sécurité d’autrui. Ça va trop vite à la Cour, et il n’y a pas le temps d’évaluer les conséquences sur les personnes marginalisées.

Avez-vous des exemples concrets à nous donner?

Oui, il y a le cas de cette personne bannie de l’île de Montréal et dont la mère meurt. Elle se fait arrêter pour bris de condition alors qu’elle doit vider son appartement. Ou d’un manifestant forcé de quitter son logement et son quartier. Ou d’un itinérant qui doit se rendre au poste de police une fois par semaine, mais qui se situe très loin de son refuge. Il n’a pas de moyen de transport, pas d’agenda. C’est compliqué. Il y a aussi souvent une violation des droits des prévenus, dans le cas des manifestants de la liberté d’expression, de réunion ou d’association, dans celui des personnes marginalisées leur droit à la sécurité n’est pas respecté quand elles se voient forcées de s’éloigner de lieux nécessaires à leur survie comme les banques alimentaires ou encore, dans le cas des travailleuses du sexe, de postes de police.

Le projet de loi C-75 présenté par Ottawa présente certaines mesures encourageantes, non?

Le projet de loi C-75 prévoit de tenir compte du statut d’autochtone ou de personnes vulnérables. Il indique que les policiers pourront imposer des conditions: « sauf en conformité avec les conditions prévues, s'abstenir d'aller dans un lieu ou de pénétrer dans tout secteur géographique précisé qui est lié à une victime, un témoin ou autre personne nommée ». Donc en principe, cela interdira les conditions géographiques sauf si la présence de l'accusé pose une menace aux personnes, et non pas en cas de risque de récidive. Je pense donc que cela peut être une mesure intéressante qui limitera les conditions géographiques. Il stipule enfin que si une personne passe devant le juge pour bris de condition, celui-ci peut décider de retirer les accusations. On espère donc qu’il y aura moins de cas de bris de condition ainsi!

Mark Norman says he's 'anxious to get to court' in breach-of-trust case
The vice-admiral's trial may turn into a debate on the limits of leaking in a government town
CBC News
Murray Brewster
April 10, 2018

Canada's second-highest-ranking military commander, who faces a single corruption charge, broke his long silence Tuesday following his first court appearance.

Vice-Admiral Mark Norman, in full uniform, did not enter a plea in Ottawa on a single charge of breach of trust in an extraordinary case that will offer a new test of the RCMP's sensitive investigations unit.

His lawyer, Marie Heinen, and the Crown agreed to dates for a pretrial, to lay the groundwork for later court proceedings.

Norman, who had been silent since his suspension in January 2017, signalled he intends to fight.

"I'm anxious to get to court and get this dealt with as quickly as possible and get back to serving the people of Canada," he said.

The hearing is just the beginning of the legal process, which could culminate in a trial sometime next year, just prior to the federal election.

Heinen said she wants the case heard as quickly as possible.

"I am tired of shadow boxing," she said. "It's time to step in the courtroom and deal with the evidence. I don't try my cases on the courthouse steps. I try them in a courtroom. And that is what we are ready to do so we want to get this going get this dealt with and let the public know exactly what this case is about."

The charge against Norman was laid last month following nearly two years of Mounties investigating an alleged leak of cabinet secrets.

The RCMP focused their probe on published reports in November 2015 that the Liberal government, newly elected at the time, was having second thoughts about a $668 million contract to lease a supply ship for the navy.

The leak embarrassed the government, which relented and allowed the leasing project, being run out the Chantier-Davie shipyard, in Levis, Que., to proceed.

The RCMP unit leading the probe is the same one that investigated the Senate expense scandal, which ended with Sen. Mike Duffy being charged with — and later acquitted on — 31 counts of fraud, breach of trust and bribery.

Both Norman and Heinen addressed the court on Tuesday.

A small group of supporters were on hand to witness the proceedings. Some were handing out small Canadian flags and many have contributed to a fund to pay his legal fees.

There's a lot at stake for just about everyone involved in the case, said a military law expert.

Retired colonel Michel Drapeau said this case represents the first time a senior leader in the Canadian military has been prosecuted for alleged corruption.

A high legal hurdle

The legal bar that the Crown will have to meet in order to prove a breach of trust was set fairly high by the Supreme Court of Canada.

In a landmark 2006 case against a former local police chief in Quebec, the high court said that prosecutors must prove criminal intent in order to prove breach of trust — that there has to be some personal benefit involved, and that the actions of the government official have to amount to a "marked departure" from acceptable standards of conduct.

That's going to be a steep hill for the Crown to climb, said Drapeau.

"It has to be demonstrated that he had a culpable intent. Wow. To do that you have to look at what benefit, what personal advantages there were. Does he get a promotion out of it?"

The Mounties alleged, in search warrants unsealed last year, that they believed Norman was carrying on an inappropriate back-channel conversation with an old friend who is now a senior executive at the Quebec shipyard where the leased supply ship was being outfitted for the navy.

When the Liberals put the project on hold, RCMP claimed Norman leaked the decision to the shipyard, which passed it along to lobbyists and, eventually, the media.

"I believe Norman did this to influence decision-makers within government to adopt his preferred outcome," RCMP Cpl. Matthieu Boulanger wrote in the warrant used to search Norman's home.

Whether the Crown can point to a motivation more nefarious than a wish to win a bureaucratic turf war remains to seen, said Drapeau.

The other major obstacle facing prosecutors is something that may be outside their control: the fact that information is used as political weapon in Ottawa every single day.

Leaks and off-the-record briefings are standard tools deployed by politicians and public servants to shape the political message.

Drapeau said the Crown's ability to argue Norman's alleged behaviour was a "marked departure" from the Ottawa norm is being sorely tested almost every week.

The Daniel Jean factor
The most recent example is the political brawl over whether national security adviser Daniel Jean revealed sensitive cabinet information in background discussions he had with journalists during Prime Minister Justin Trudeau's recent trip to India.

On Monday, Parliament's national security committee announced it was conducting a review of Jean's actions that would look at, among other things, "inappropriate use of intelligence."
The Liberal government has insisted Jean didn't cross the line. But the key question in the Daniel Jean affair — what is, and is not, a cabinet secret, and how such secrets should be handled — is also in play in Norman's case.

"You can define what a cabinet confidence is. That is pretty easy," said Drapeau. "But you have to live it. Ministers and other people of government use confidences and purposely leak information that is and should be protected as cabinet confidences."

Another perceived point of vulnerability for the Crown likely will be Prime Minister Trudeau's own words. On at least two occasions, Trudeau said he expected the case against the admiral to end up in court.

Norman has been suspended but not removed from his position as vice-chief of the defence staff since shortly after his home was raided by the RCMP in early January 2017.

Drapeau said that, even if he is acquitted, Norman could face separate administrative charges in the military justice system, notably charges of prejudice to good order and discipline.

"If they really wanted to draw blood and punish him, which seems to be the intention of government, they could get it done that way," he said.

Norman's next court appearance will be May 16.

Grève générale pour les avocats et notaires de l'AMF
La grève est devenue le seul moyen de ramener l'employeur à la table de négociation, disent les juristes
Droit Inc
Céline Gobert
April 10 2018

Au terme d'une assemblée générale extraordinaire, les avocats et notaires de l'Autorité des marchés financiers (AMF), représentés par Les avocats et notaires de l'État québécois (LANEQ) ont voté à 88% pour une grève générale de 5 jours consécutifs ou non consécutifs, qu'ils débuteront quand ils le jugeront opportun.

Selon Me Marc Dion, président de LANEQ, la grève est devenue le seul moyen de ramener l'AMF à la table de négociation. D'autant plus que l'Autorité avait récemment annulé trois séances de négociation.

« Le signal de nos membres est clair. Le mode de négociation où l'AMF est entièrement à la solde du gouvernement Couillard, dans la détermination des conditions de travail de ses avocats et notaires, démontre le simulacre d'autonomie de l'AMF comme organisme public autonome », a-t-il déclaré.

LANEQ réclame, pour les avocats de l'AMF, en toute équité, sur le plan salarial des augmentations de 2,5 % par année comme il a été octroyé à leurs confrères en droit criminel.

La grève aura notamment pour conséquence de retarder les audiences du dossier Audace, procès pénal impliquant un important délit d'initié au pays, ainsi que celui de PlexCoin dans lequel les avocats de l'Autorité ont fait cesser le financement illégal international de plusieurs millions de dollars d'une cryptomonnaie.

Harassment stats flat, mental health middling among federal employees: survey results
Union reps say the government should do more to reduce workplace harassment and address stress caused by the Phoenix pay system
The Hill Times
Charelle Evelyn
April 11, 2018

As an employer, the federal government isn't doing enough to stop harassment within the public service, says a union leader, after results of a large-scale survey of federal employees indicate that workplace harassment has stayed consistent over the past few years.

"In my mind, if the government's doing its job to reduce harassment in the workplace, this should constantly be going down," said Sean O'Reilly, a vice-president of the Professional Institute of the Public Service of Canada (PIPSC), which represents 57,000 government scientists and IT workers.

According to results of the 2017 Public Service Employee Survey (PSES) released March 29, 18 per cent of public servants said they've been victims of harassment on the job in the preceding two years. That was only one percentage point lower than those who answered affirmatively in 2014, the last time the survey was administered.

The figure has flatlined after seeing more of steady decline over the past few surveys, Mr. O'Reilly said. "But it seems like now we get to a point where they've done something, but they need to do more, because, theoretically, harassment should go to near zero."

The 2017 survey was conducted Aug. 21 to Sept. 29 and gathered responses from 174,544 employees in 86 federal departments, a response rate of 61.3 per cent. The survey has been conducted every three years since its introduction in 1999, but will now be done on an annual basis.

According to the Treasury Board Secretariat, the external contractor to carry out the new annual survey is expected to be named this month. It cost $1.7-million to administer public service surveys in 2017, up from the $1.34-million it cost in 2014.

The extra cost "was a reflection of additional survey and dissemination activities that were undertaken in 2017, including the development of a new tool specifically designed to produce custom departmental summary reports, additional content, additional testing to ensure that the new content was appropriate and easily understood, and normal operational cost increases that come over time," spokesman Martin Potvin said in an email.

Continued harassment 'of great concern,' says union rep
During a March 29 press conference in the Commons foyer, Treasury Board president Scott Brison (Kings–Hants, N.S.) touched briefly on the issue, telling reporters that "harassment has no place in our society or in our public service," and that work to create harassment-free, healthy, and diverse workplaces continues.

Of those who say they've been harassed on the job, 63 per cent say the abuse came from someone with authority over them.

Mr. O'Reilly pointed to the March 20 report by Joe Friday, Canada's federal public sector integrity commissioner, who found two Correctional Service of Canada executives had "committed gross mismanagement and a serious breach" of the agency's discipline and ethics codes, after an investigation into a complaint about the behaviour of CSC director Brigitte de Blois, and subsequent lack of action by assistant commissioner Larry Motiuk.

"The fact this is still happening today is a great concern to us," Mr. O'Reilly said.

Employees at the Correctional Service of Canada were the third most likely to say they've been harassed at work in the past two years, with 34 per cent checking off 'yes' on the questionnaire. They were beat out only by the Canadian Northern Economic Development Agency (38 per cent) and the Office of the Correctional Investigator (37 per cent).

These departments were also among those indicating they were the least satisfied with their department or agency. The overall public service indicated it was 68 per cent satisfied, but 40 per cent of the Canada Border Services Agency (CBSA) employees were unsatisfied, followed by Correctional Service Canada and Shared Service Canada's 33 per cent non-satisfaction.

Other agencies within Public Safety Canada's portfolio also made up the top 10 least satisfied and most harassed federal workplaces—and have for many years.

"Harassment and toxic workplace behaviour are completely unacceptable. Public Safety Minister Ralph Goodale [Regina-Wascana, Sask.] is committed to ensuring that his department and all of the agencies in his portfolio are healthy workplaces free from harassment and sexual violence," said Scott Bardsley, spokesperson for Mr. Goodale, in an email.

“The employees of the Public Safety portfolio have a challenging job, and the vast majority work very hard and professionally to make a positive difference, whether it is corrections officers caring for the 23,000 offenders they are responsible for across the country, or CBSA officers ensuring both the security and efficiency of our border ably while representing Canada for the first time to visitors.”

Mr. Bardsley noted that it was difficult to generalize the issues contributing to the low scores given the portfolio’s wide range, but “it is important to note that in the course of their daily work keeping our communities safe, public safety personnel are repeatedly exposed to traumatic incidents, which can put them at great risk for operational stress injuries, including [post-traumatic stress injury].”

Mental health in the workplace was queried for the first time last year, with 56 per cent of the public service saying they would describe their workplace as psychologically healthy.

Correctional Service Canada and Canada Border Services Agency employees responded the most negatively to the question, with 53 per cent and 43 per cent, respectively, saying their workplaces were not psychologically healthy. The Military Grievances External Review Commission and the Office of the Public Sector Integrity Commissioner had the most positive responses, with 97 per cent and 96 per cent, respectively, saying their workplace was psychologically healthy.

While the fact that nearly half of the public service doesn’t find they have a psychologically healthy workplace is concerning, Mr. O’Reilly said he has some hope for improvement now that the government is asking the question.

Every employer wants their staff to be productive, but “it’s hard to perform at 100 per cent when you’re constantly worrying about things that aren’t even related to your work, that you’re being harassed by your boss, that no one is really properly addressing mental health,” he said.

Adding to that mental anguish is the problematic Phoenix pay system, which for the past two years has left thousands of public servants underpaid, overpaid, or not paid at all.

The 2017 survey included questions about how Phoenix is affecting employees, and the numbers weren’t a surprise, Mr. O’Reilly said.

Two-thirds of the public service indicated some level of impact to their pay or compensation due to Phoenix, with 14 per cent spending 40 or more hours trying to resolve issues. Only 16 per cent of employees said they were satisfied with the support they received from the Pay Centre in Miramichi, N.B., to resolve their issues.

“It’s almost like a game and you’re trying to find the person who hasn’t been affected, because they’re very rare,” Mr. O’Reilly said.

The Public Service Alliance of Canada (PSAC), the largest union in the federal public service, conducted its own survey of its members earlier this year to gauge the depth of the Phoenix problem.

“Phoenix has clearly had a devastating effect on the mental health and well-being of federal public service workers,” Robyn Benson, PSAC national president, said in a press release. “Employees deserve compensation for the stress and anguish Phoenix has caused for more than two years, as well as the time they have spent dealing with their pay problems.”

The PSAC survey, an online sampling of 2,053 employees conducted by Environics Research between Feb. 13 and 27, suggests 82 per cent of the union’s members have been personally affected by the pay system. Half of those who said they’ve been affected said they’ve made work choices based on Phoenix, such as 25 per cent who delayed transferring positions, 24 per cent who avoided asking for leave and six per cent who delayed their retirement.

More than three-quarters of the respondents said Phoenix problems have negatively affected their mental health. The most common hardship reported by PSAC members due to Phoenix was an inability to correctly file their taxes (32 per cent), while 29 per cent said they incurred out-of-pocket expenses and 20 per cent said they couldn’t make payments for goods and services such as car payments or groceries.

“I want to acknowledge that the results confirm the challenges that many public servants are facing and the unacceptable emotional and financial hardship the pay system has had and continues to have” on employees and their families, Mr. Brison said last month.

Phoenix causing 'great hardship' for 1 in 5, PSAC survey shows
Ottawa Citizen
Blair Crawford
April 11, 2018

More than 80 per cent of federal workers say they’ve been affected by Phoenix pay issues and nearly 20 per cent say it’s caused them “great hardship”, according to a poll commissioned by the Public Service Alliance of Canada.

The survey, released Wednesday, also showed that PSAC members had avoided asking for leave, delayed transferring positions or turned down a chance for an acting assignment because they feared the troubled, two-year-old pay system would mess up their pay.

“The unfortunate is that the brightest and the best are being held back. No one wants to change their position for fear that they’ll be Phoenixed,” PSAC national president Robyn Benson said in an interview Tuesday. “They’re not taking an acting (position), they’re not going to take a different position … and the government is losing out.”

The PSAC study comes on the heels of the government’s annual Public Service Employee Survey, which found that two-thirds of the more than 174,000 public servants who responded said they’d had Phoenix pay problems. Of those, 34 per cent reported they’d been underpaid, 18 per cent were overpaid and 22 per cent said they were missing pay.

Ninety-three per cent of those in the federal survey said they had worked on their own time to deal with Phoenix issues. Half of those said they'd spent one to nine hours of their own time and 14 per cent reported spending more than 40 hours trying to resolve pay issues.

"The public service employee survey and our survey said the same thing. Their employees and our members are spending hours of their own time on Phoenix," Benson said.

The pay woes have added up to hardship and mental anguish for PSAC members, the union says, with 23 per cent reporting Phoenix had had major negative effect on their mental health and 53 per cent saying it had some negative effect. Twelve per cent reported that Phoenix had had a major negative effect on their ability to work and 17 per cent said the same about the pay system's effect on their personal lives.

"You can't not be affected if you don't know if you're going to get paid or whether you're going to get paid too much or too little or not at all," Benson said. "It's an anxiety I can't even imagine."

Among those who reported Phoenix problems in the PSAC survey, 55 per cent said they had not received entitlements they were owed, 40 per cent said they were underpaid for one or more pay periods, 31 per cent said they were overpaid and 22 per cent said they received no pay at all in one or more pay periods. Other complaints included incorrect deductions, problems with retroactive pay, maternity pay, disability leave, or vacation or leave days that were calculated incorrectly.

One in four of those surveyed said they had delayed transferring or pursuing new opportunities because of Phoenix, 24 per cent had avoided asking for leave and 20 per cent had turned down an acting position. Six per cent said they'd delayed their retirement because of Phoenix.

Nearly one in three said Phoenix had caused them an inability to file their taxes correctly, 29 per cent said they'd incurred out-of-pocket expenses, 28 per cent said they had cancelled a vacation or other personal activity and 10 per cent said Phoenix had made them unable to make rent or mortgage payments.

The online survey was conducted by Environics and sampled 2,053 PSAC members between Feb. 13 and 27. Results are considered accurate to within plus or minus 2.2 percentage points, 19 times out of 20.

Responses came from across the country, with 334 of them, or 16 per cent, from the National Capital Region. PSAC members at Employment and Social Development Canada made up 17 per cent of the respondents, the highest number from any department. The department with the second-highest number of respondents? Canada Revenue Agency.

Alternative justice system now covers Mi'kmaq fisheries offences on P.E.I.

Indigenous people will have opportunity to use restorative justice if charged under federal Fisheries Act

CBC News
Karen Mair
April 13, 2018

In a first for Atlantic Canada, the Mi'kmaq Confederacy of P.E.I.'s restorative justice system is being expanded to cover offences under the federal Fisheries Act.

The Confederacy, Lennox Island First Nation, Abegweit First Nation, Department of Fisheries and Oceans (DFO) and the Public Prosecution Service of Canada (PPSC) held a formal ceremony to sign the agreement on Tuesday. It builds on the MCPEI Indigenous justice program already in place.

There is a similar agreement on the West Coast, but this is the first agreement of its kind in Atlantic Canada.

"This is an important step in building relations with the Department of Fisheries and Oceans by supporting and developing a restorative justice protocol that will see Mi'kmaq people rehabilitate through reconciliation with the community," Brian Francis, chief of the Abegweit First Nation, said in a news release.

Restorative justice is an alternative to the traditional court system. It allows Indigenous and other groups to use an approach that personalizes the offence by having victims and offenders mediate a restitution agreement, one that often involves the community. Restorative justice considers crime and wrongdoing to be an offence against an individual or community.

"It was a natural progression to extend the approach of community healing and rehabilitation to offences related to the fishery," said Matilda Ramjattan, chief of the Lennox Island First Nation.

"As with Criminal Code offences, it is important to recognize that this approach does not provide the offender with a free pass; rather it is a comprehensive process aimed at healing and reconciliation."

Step forward for reconciliation
The work began on this protocol in 2002.

"It's all part of reconciliation and a meaningful step forward," Francis said in an interview. "The traditional, western system of justice is adversarial and punitive. You pay your fine and move on. That doesn't work for our people. This way the whole community is involved."

Sheri Bernard, the Confederacy's Indigenous justice co-ordinator, said restorative justice was a "powerful process."

"We would receive a request from DFO and would then organize the circle. The circle includes the victim, the offender, community members and elders and DFO," she said.

"The offender has the opportunity to apologize, the victim can ask questions, it starts a dialogue for healing."

The DFO is currently working on the development of a national action plan for restorative justice to become a standard enforcement tool for all regions.

NDP MP calls for criminal investigation into drug companies' role in opioid crisis
The Globe and Mail
Andrea Woo
April 12th 2018

An NDP MP is calling for a criminal investigation into the role opioid manufacturers have played in Canada's overdose crisis.

Vancouver Kingsway MP Don Davies noted that pharmaceutical giant Purdue Pharma L.P., the maker of OxyContin, has pleaded guilty in the United States to misleading the public about the drug and has paid hundreds of millions of dollars to settle criminal and civil charges.

Canadian officials have not sought similar accountability or meaningful compensation from Purdue in Canada, which operates independently.

"It's hard to believe that very aggressive marketing, minimizing the negative impacts of their products [and] flying doctors to exotic locations happened entirely in the United States and didn't happen at all in Canada," Mr. Davies said in Vancouver on Thursday.

"I'm calling for an investigation to look into that. I would suspect that that evidence will be found."

In Canada, victims have attempted to seek justice on their own, filing a class-action lawsuit against Purdue's Canadian operation that led to a proposed $20-million settlement, with $2-million going to provinces and territories and no admission of guilt.

Courts in Ontario, Quebec and Nova Scotia approved the settlement, but Saskatchewan did not, with Justice Brian Barrington-Foote of Queen's Bench saying in March that he was not satisfied the settlement was "fair, reasonable and in the best interests of the class as a whole."

"The Saskatchewan judge said what I think needs to be said: $2-million proposed for every government of Canada to deal with the public health consequences of opioid addiction is a joke," Mr. Davies said.

It's estimated that more than 4,000 people died of opioid overdoses in Canada last year.

Purdue Pharma in Canada did not make a spokesperson available for an interview on Thursday. In a statement, the company said it promotes and markets its products in line with the Health Canada-approved product monograph and the Pharmaceutical Advertising Advisory Board code.

"Canadians are facing a complex public health issue in which all stakeholders, including the pharmaceutical industry, have a role to play to provide practical and sustainable solutions," the statement said.

Health Canada approved OxyContin in 1996 for the treatment of moderate to severe pain. A marketing campaign ensued, in both Canada and the U.S., with Purdue sales representatives promising long-lasting relief for a wide array of ailments, from back pain to fibromyalgia, while downplaying the risk of addiction.

The drug became the top-selling long-acting opioid in Canada for more than a decade. At the same time, reports of addiction and overdoses climbed – both among those who had been prescribed the drug and those who used diverted pills illicitly, often by crushing and snorting them.

In 2007, Purdue and three top executives pleaded guilty to charges that they misled the U.S. public about the drug. The company paid more than US$634.5-million to settle criminal and civil charges. It has not made a similar admission in Canada.

Health Canada said it is following the proceedings and outcomes of the U.S. case. And changes in 2014 to the Food and Drugs Act mean the maximum penalty for inappropriate marketing practices is now $5-million for each offence, up from $5,000, and there is no cap on offences that involve "knowingly or recklessly causing a serious risk of injury to human health."

The federal government also acknowledged that payments to physicians from pharmaceutical companies can create conflicts of interest and said Health Canada "is exploring federal options to increase transparency" in this area.

Ten of Canada's largest pharmaceutical companies have voluntarily disclosed that they spent at least $48.3-million collectively on payments to physicians and health-care organizations in 2016, but critics say the figures are incomplete and fall well short of genuine transparency.

British Columbia, the first province to sue Big Tobacco for health-care-related costs, is considering its options in light of Saskatchewan's decision.

"B.C. government legal counsel will provide the Ministry of Mental Health and Addictions with an update once they make a decision regarding next steps," ministry spokeswoman Lori Cascaden said in an e-mail.

McLachlin's diplomacy, caring helped defuse tensions, build consensus at SCC: ex-judge LeBel
Lawyer's Daily
Cristin Schmitz
April 12, 2018

Beverley McLachlin's behind-the-scenes diplomacy in dealing with the inevitable disagreements and rivalries among the Supreme Court of Canada's competitive and "ambitious" nine members helped the

top court achieve a remarkable level of consensus during her 18 years as its leader, says retired Supreme Court Justice Louis LeBel.

Now counsel with Langlois lawyers in Quebec City, the ex-Quebec Court of Appeal judge who joined the top court in January 2000 when McLachlin became of chief justice of Canada, drew back the curtain of secrecy that normally screens the personal interactions among the judges.

LeBel acknowledged that the court's members differ not only over the weighty legal questions they are required to resolve, but also over how best to manage their internal work processes, including the issue of who writes which of the court's majority or unanimous decisions (the chief justice makes those assignments).

"I think that … the chief justice was able to create what I would call a climate of harmony and mutual tolerance within the court," LeBel said of McLachlin, who retired from the Supreme Court last December.

"This is not an easy thing to achieve," he informed lawyers and judges attending the second day of an April 10-11 conference on McLachlin's legacy, organized by the common law section of the faculty of law at the University of Ottawa.

LeBel praised the former chief justice's skill in managing human relations. "Nine judges, the chief [justice], the puisne judges, they all come to the court with their egos, their views of themselves," he said in bilingual remarks. "They think that they're very good — that they have very much to offer — and that sometimes if they don't get their own way, the sky will fall, the world will somehow disappear."

"And they're ambitious. They want to write. They want to make their mark," stressed the soft-spoken prolific former judge, who wrote and co-wrote some of the court's most cited judgments, including R. v. Ipeelee 2012 SCC 13, and Dunsmuir v. New Brunswick 2008 SCC 9.

"There are rivalries between judges," he disclosed. "The assignment of files, there never was a perfect solution. … But I was always struck by the care [McLachlin] took to the settlement of these delicate questions, and her open mind to discuss, to re-examine the different processes that were used by the court. … Despite this climate of competition, latent tension, different views about some key issues, you could see that the court would work together."

LeBel said the court's track record of unanimity demonstrates "that under Beverly McLachlin the court learned to work with one voice in a number of major cases. It was not always the case. There were different opinions. But the trend was there for the court to speak with one voice, [to] try to speak clearly. It may not have succeeded in every case, but I would say that sometimes it did in respect of some pretty big issues. But what is not well known, and should be better known, is the way that the chief justice addressed those issues of relations between colleagues."

LeBel, who retired from the court in 2014, cited the ex-chief justice's "diplomacy," and her continuing efforts to smooth interactions in an environment that some ex-colleagues have likened to an arranged marriage with eight other people.

"What really struck me throughout these years was the time that she spent to precisely make sure — not always the convergence of positions — but to make sure that … the disagreements which are almost unavoidable on questions of law, did not turn into interpersonal conflicts between colleagues," LeBel explained. "I can't count the number of times where she sent a note to a colleague to suggest a change, a modification — or to meet personally … [with a judge] — to discuss certain questions, and to suggest: … 'I respect your disagreement, but there are words that can hurt, there are words that can assault. Could you not tone [your words] down or withdraw them — your opinion will not be diminished or weakened, but the harmony of relationships will be all the more improved.' "

McLachlin also devoted much effort to caring for her colleagues' welfare, whether it was seeking out a good chef to prepare them healthy meals, inviting newly arrived judges to her home for breakfast to ensure they would not feel lonely or isolated, or inviting diverse guest speakers, including prominent physicists, to deepen the judges' understanding of science and other non-legal fields, LeBel said.

He described McLachlin's legacy as "a masterwork" — not only for the many landmark judgments — but also for her successful "maintenance and protection of the institution that is the Supreme Court."

Un employeur peut-il invoquer la liberté d'expression pour contrer un syndicat ?
La liberté d'expression peut se heurter à la liberté d'association des travailleurs, explique notre chroniqueur
Droit Inc
Sébastien Parent
12 avril 2018

Le 14 mars dernier, le Tribunal administratif du travail (TAT) rendait jugement dans une affaire fort intéressante soulevant la validité constitutionnelle du processus de syndicalisation édicté au Code du travail, au motif que celui-ci violerait la liberté d'expression de l'employeur.

Une autre décision parue le même jour aborde également cette question et arrive aux mêmes conclusions.

Une campagne éclair de syndicalisation et un employeur sans mot

Par un vendredi soir d'octobre 2015, l'Union internationale des travailleurs et travailleuses unis de l'alimentation et du commerce lance une campagne éclair en vue de syndiquer « secrètement » les salariés de l'entreprise Life Science Nutritionals, en les sollicitant pour signer leur carte de membre directement à leur domicile.

Ce n'est que le lendemain, en soirée, que la nouvelle se rend aux oreilles de l'employeur. Dès le dimanche après-midi, celui-ci s'empresse de remettre un communiqué aux salariés, par lequel il

explique son point de vue relativement à la venue potentielle d'un syndicat dans son entreprise. Coup d'épée dans l'eau cependant, l'association requérante avait déjà déposé sa requête en accréditation au TAT à ce moment.

En vertu du Code du travail, dès lors qu'une association regroupe la majorité absolue des salariés au jour du dépôt de sa requête en accréditation, il n'est pas requis de procéder à un vote au scrutin secret. Ce dernier est plutôt prévu dans les cas où l'association n'a réussi qu'à obtenir l'appui de 35 à 50 % des salariés visés par l'unité de négociation.

C'est dans ce contexte que l'employeur conteste la constitutionnalité des articles 32 et 36.1 du Code. Pour lui, le fait que ce régime de rapports collectifs n'impose pas un vote au scrutin secret, dans cette situation bien précise, l'empêche de bénéficier du temps nécessaire pour exprimer sa position à ses employés.

La liberté d'expression ne donne pas le droit d'intervenir partout

D'emblée, le TAT signale que la signature des cartes de membre se veut l'expression de la volonté individuelle des salariés désirant adhérer au syndicat requérant. À cet égard, la décision de s'associer et le choix du moment pour demander l'accréditation appartiennent exclusivement aux salariés et à leur association ; l'employeur ne pouvant s'immiscer dans ces matières.

Le Tribunal reconnaît qu'il dispose tout de même d'un pouvoir discrétionnaire pour ordonner un vote un scrutin secret, dans l'optique où un doute est soulevé quant au consentement des salariés membres de l'association.

Encore là, le Code mentionne expressément que l'employeur n'est pas une partie intéressée sur la question du caractère représentatif, et qu'uniquement les salariés pourront intervenir au débat. Comme l'indique le TAT dans sa décision, la « liberté d'expression en soi ne donne pas nécessairement à une personne le droit d'intervenir partout et en tout lieu ».

Par ailleurs, aucune disposition de cette loi n'encadre précisément la liberté d'expression de l'employeur. En cela, l'État n'a aucune obligation positive de favoriser la liberté d'expression d'autrui. Il n'appartient pas non plus aux tribunaux de se substituer au législateur dans le choix d'un modèle particulier de relations du travail.

Par conséquent, si atteinte à la liberté d'expression il y a, elle découlerait bien plus de la stratégie syndicale mise en place que des dispositions du Code du travail. Le Tribunal rejette donc le moyen constitutionnel.

La liberté de s'exprimer … pour empêcher l'arrivée du syndicat ?

L'argument soulevé par l'employeur paraît peu séduisant en ce sens qu'il s'appuie sur sa liberté d'expression pour attaquer une loi dont le résultat est d'accorder l'accréditation à une association regroupant une majorité claire de salariés. Cela revient à dire, en quelque sorte, que s'il avait vu venir la

syndicalisation, l'employeur aurait eu le temps d'user de sa liberté d'expression pour empêcher l'arrivée du syndicat au sein de son entreprise.

Or, l'objectif fondamental de ce régime est justement de favoriser la formation de syndicats, par un processus administratif simple et rapide de délivrance d'un « permis d'exercice » à l'association requérante. D'ailleurs, en ce qui a trait au mécanisme du vote au scrutin secret que l'employeur souhaitait utiliser en sa faveur, cette mesure vise en réalité à faciliter l'accréditation d'une association n'ayant pas atteint une majorité absolue de salariés, à partir de la méthode de signature des formules d'adhésion, et non l'inverse.

Pour tout dire, la liberté d'expression de l'employeur est plutôt mal reçue au regard d'un régime législatif spécialement conçu pour favoriser la liberté d'association des travailleurs.

Me Sébastien Parent est doctorant en droit du travail et libertés publiques à la Faculté de droit de l'Université de Montréal. Il est aussi chargé de cours à Polytechnique Montréal où il enseigne le droit du travail. Auparavant, il a complété le baccalauréat ainsi que la maîtrise en droit à la Faculté de droit de l'Université de Montréal. Il est également titulaire d'un baccalauréat en relations industrielles de la même institution. Écrivain dans l'âme et procureur devant la Cour suprême du Canada dès le début de sa carrière, Me Parent est l'auteur de divers articles en matière d'emploi et agit aussi à titre de conférencier.

Supreme Court to decide case on protection of journalists' sources
iPolitics
Kevin Dougherty
April 12, 2018

QUEBEC – The first case challenging Bill S-231, which has given journalists greater protection to keep the names of their sources confidential, will be decided by the Supreme Court of Canada.

A three-judge Quebec Court of Appeal panel handed down its decision Thursday, ruling the Supreme Court has jurisdiction in this case, after arguments for and against hearing the appeal in the provincial appeals court.

Lawyer Christian Leblanc, representing Radio-Canada and journalist Marie-Maude Denis, had sought a Quebec Court of Appeal hearing, arguing that the provincial appeal process is not subject to the same delays as a Supreme Court appeal.

Until the issue is decided, the trial of former Quebec deputy premier Nathalie Normandeau, former Quebec Liberal minister and fundraiser Marc-Yvan Côté and their five co-accused, is suspended.

The seven are charged with fraud, corruption and conspiracy, with the Crown alleging that illegal political contributions to the ruling Quebec Liberals were rewarded with government contracts and subsidies.

Quebec's first fixed-date provincial election will be Oct. 1 and allegations of corruption against the ruling Liberals will almost certainly figure in the election campaign. But the delays, before the Supreme Court decides whether to hear the case, and then hears the actual case, mean the Normandeau trial will not take place until after the election.

Defence lawyer Jacques Larochelle, representing Côté, has argued that the case should be thrown out because media reports about his client mean Côté cannot have a fair trial.

Maxime Roy, the lawyer defending Normandeau, now wants a separate trial for his client, but with the case suspended, no decision can be made until the trial resumes.

Larochelle says Radio-Canada reports implicating his client were based on police evidence, suggesting that the sources of the leaked evidence were in the senior levels of UPAC, Quebec's police anti-corruption squad.

Larochelle subpoenaed Denis to testify, but trial judge André Perreault, of Quebec Court, ruled that S-231 applied and in the interests of preserving a free press, Denis did not have to testify.

Ruling on Larochelle's initial appeal of the Perreault decision, Quebec Superior Court Justice Jean-François Émond ordered Denis to testify, because her reports did not respect the principle that Côté's case was before the courts.

Last Friday Justice Louis Dionne of Quebec Superior Court ruled in favour of a motion by Larochelle that the trial of Normandeau and her co-accused should not go ahead until the issue of whether Denis has to testify is settled.

The Quebec Court of Appeal confirmed Thursday the trial may not go ahead until the S-231 issue has been resolved.

Crown attorney Catherine Dumais noted this was "the first decision by an appeal court in Canada on the new legislative measures to protect journalists' sources."

Dumais said the prosecution wants the S-231 issue resolved "as quickly as possible," noting that the Crown has its witnesses ready to testify.

"Our witnesses are waiting."

Christian Leblanc, the lawyer for Radio-Canada, said an appeal to the Supreme Court, under S-231, required the permission of the high court.

"In the Court of Appeal we could have had a hearing much sooner," Leblanc said.

In addition to the requirement that the Supreme Court must give its permission, as the highest court in the land, the Supreme Court has to deal with appeals "from everywhere in Canada," he said.

Leblanc is confident the Supreme Court will give its permission, because the protection of reporters' sources is "a question of capital importance" and judges in Canada need guidance in applying S-231, adopted unanimously in Parliament last October.

He is hopeful the high court will act quickly.

"There would be no investigative journalism without the protection of sources," Leblanc said. "And investigative journalism, everyone knows, has been very important in our society in recent years. Think of all the scandals that have been revealed by journalists.

"That is why Marie-Maude Denis and Radio-Canada will fight to the end and today the Court of Appeal said that would be in the Supreme Court."

La Cour d'appel refuse d'entendre la cause de Marie-Maude Denis
La question de la confidentialité des sources risque donc de se transporter en Cour suprême
Radio-Canada
12 avril 2018

La Cour d'appel du Québec estime qu'elle n'a pas juridiction pour entendre le débat entourant le témoignage de la journaliste Marie-Maude Denis dans le cadre des procédures liées au procès de Nathalie Normandeau, Marc-Yvan Côté et leurs coaccusés. La cause risque donc de se transporter en Cour suprême.

La juge qui entendait la demande d'appel de Radio-Canada, jeudi, a évoqué son souci de ne pas multiplier les étapes dans cette affaire.

« Comme c'est une première canadienne, le dossier risque de se retrouver en Cour suprême, donc on ne ferait qu'ajouter une étape », soutient la juge Julie Dutil.

C'est effectivement la première fois que la loi canadienne sur la protection des sources journalistiques est testée devant les tribunaux.

À sa sortie de la salle d'audience, l'avocat de Radio-Canada, Me Christian Leblanc, a confirmé qu'il a « le mandat de porter la cause en Cour suprême ».

Me Leblanc estimait que la Cour d'appel devait entendre le débat, puisque la décision obligeant la journaliste à révéler ses sources émane de la Cour supérieure, le tribunal précédant la Cour d'appel.

« La Cour suprême, c'est sur permission, la Cour suprême, c'est beaucoup plus compliqué », soutient Me Leblanc.

Suspension du témoignage de Marie-Maude Denis

L’avocat de Radio-Canada a aussi plaidé une requête pour demander à la Cour d'appel de suspendre la décision du juge Émond ordonnant à Marie-Maude Denis de témoigner devant le tribunal.

« Tout ce que je veux m'assurer, c'est qu'on tranche ce débat sur le témoignage », a indiqué Me Leblanc, soulignant qu'il souhaite protéger le droit de la journaliste de ne pas révéler ses sources.

L'avocat a dit souhaiter que cette suspension tienne jusqu'à la fin des procédures d'appel du jugement du juge Émond.

« Comme on dit, une fois que la pâte à dent est sortie du tube, on ne peut pas la remettre dedans », ajoute Me Leblanc.

« La requête en suspension, je ne la conteste pas », a lancé de son côté le procureur de Marc-Yvan Côté, Me Jacques Larochelle.

« Logiquement, la suspension du procès entérinée la semaine dernière par le juge Louis Dionne va tenir jusqu'à ce que le présent dossier soit réglé, possiblement jusqu'en Cour suprême », précise le procureur.

La Cour d'appel a rejeté la requête de Me Leblanc concernant la suspension du témoignage, mais les avocats se sont entendus pour dire que Mme Denis n'aurait pas à témoigner avant la fin des procédures.

Federal crime bill misses the mark, says N.W.T. defence lawyer
Lawyer concerned changes proposed in Bill C-75 could negatively impact justice in the North
CBC News
Emily Blake
April 13, 2018

A Yellowknife-based defence lawyer says the new federal omnibus crime bill misses the mark when it comes to efficiency and fairness in the criminal justice system and that it fails to consider the unique Northern context.

Federal Justice minister Jody Wilson-Raybould has touted Bill C-75 as including changes that will reduce court delays, ensure juries are more representative and strengthen the court's response to intimate partner violence.

But some defence lawyers have been critical of the proposed changes, including Caroline Wawzonek, who said if the bill is passed as is, it could have serious negative impacts on justice in the North.

Wawzonek noted the bill proposes eliminating preliminary inquiries — pretrial hearings that determine if there is sufficient evidence for trial — in all but the most serious cases. These can alert lawyers if more work needs to be done, she said, and are especially important in the North where there are limited police resources and a high rate of sexual offences.

"You need the best possible information to have the right and the best outcome," she said.

Wawzonek also took issue with the bill's plan to do away with peremptory challenges, which give lawyers the ability to reject potential jurors without giving reasons. She called it a "knee jerk reaction" to public concerns with the lack of Indigenous jurors in the trial of Gerald Stanley, who was acquitted of second-degree murder in the death of Colton Boushie.

These challenges help ensure fairness, Wawzonek said, and removing them could actually reduce Indigenous representation on juries. She suggested there are better ways to increase representation, including drawing from Indigenous governments' election lists for jury rolls.

"There needs to be more Indigenous names on the list in the beginning, and then you don't need to worry so much about the back end and saying, 'Well, we've got to hang on to the one or two people in the room who look like they might be Indigenous,'" she said.

Mandatory minimum sentences remain
Wawzonek was also critical of sections of the bill that could increase maximum sentences for repeat intimate partner violence offences and make it more difficult to be released on bail.

She said this doesn't address the root causes of violence, like addictions and trauma, unlike treatment options and alternative forms of justice like the domestic violence treatment option in the Northwest Territories.

"That's actually a meaningful way to break the cycle of violence and not just show the public you're being tough on crime," she said.

Finally, Wawzonek noted what's missing in the bill: it makes no mention of eliminating mandatory minimum sentences in the Criminal Code, which the Liberal government has highlighted as a goal. Some defence lawyers have challenged these minimums as unconstitutional and in several cases, they have been struck down by the Supreme Court of Canada.

"This is a lost opportunity, there's nothing in this that I can see right now that really speaks meaningfully to restorative justice, to a change in philosophy, to an approach that looks at healing as opposed to punishment," Wawzonek said.

As of Thursday afternoon, neither the federal nor territorial Departments of Justice returned requests for comment on concerns with Bill C-75. The Public Prosecution Service of Canada, which is responsible for criminal prosecutions in the territories, also declined to comment.

Blanchir de l'argent avec des bitcoins ?
Les cryptomonnaies peuvent servir elles aussi au blanchiment d'argent
Droit Inc
Jean-François Parent
13 avril 2018
L'Association des spécialistes de la lutte au blanchiment d'argent, section Montréal, offre une formation portant sur le potentiel que les cryptomonnaies ne soient utilisées à des fins inavouables.

À l'heure du bitcoin et autres ether, les cryptodevises sont susceptibles d'être utilisées par les organisations criminelles ou terroristes. D'où la pertinence pour les juristes aux premières lignes de la prévention de ces activités de s'informer sur les tendances et les enjeux inhérents à ces questions.
« Les avocats qui travaillent avec les institutions financières, les autorités de réglementation, bref tous qui sont impliqués dans la lutte au blanchiment d'argent sont susceptibles d'être intéressés par la formation », selon l'avocat Pierre Bilodeau, l'un des organisateurs de la formation offerte le 19 avril prochain à Montréal.

Celui qui est responsable des communications pour l'ACAMS (de son acronyme anglais Association of Certified Anti-Money Laundering Specialists) insiste : le potentiel de blanchiment d'argent avec des cryptodevises existe.

Au Canada, la Loi sur la lutte au blanchiment d'argent et au financement des activités terroristes impose aux institutions financières, aux casinos, et à toutes les entités transigeant d'importantes sommes d'argent, de faire rapport au Centre d'analyse des opérations et déclarations financières du Canada, le CANAFE, afin d'y rapporter les transactions jugées douteuses.

À cet égard, l'utilisation de la cryptomonnaie fait aussi partie des transactions sous surveillance.

Des policiers expliqueront donc les défis posés par les cryptomonnaies pour les organismes d'encadrement.

Il s'agit de François Côté-Duhamel, enquêteur à l'Équipe intégrée de la police des marchés financiers, et de Aaron Gilkes, au Groupe intégré de la criminalité technologique, deux unités de la GRC.

Par ailleurs, Nassiba Idebdou, analyste au CANAFE, discutera du renseignement financier et de l'avenir des cryptomonnaies.

La formation donne droit à un crédit de formation continue de 1h30 auprès du Barreau du Québec.
Quoi: Petit-déjeuner causerie: spécial cryptomonnaies
Quand: 19 avril 2018, de 7h30 à 9h30
Où: Centre de conférence Sunlife, 1155 Metcalfe, 7e étage

Phoenix pay system problems drop slightly, but bigger decline unlikely until late spring
"This decrease is promising," the Public Services and Procurement Canada said on its website But a significant decline in the backlog isn't expected for some time.
The Toronto Star
Terry Pedwell
The Canadian Press
April 13, 2018

OTTAWA—The backlog of problem pay files created by the federal government's Phoenix pay system fell slightly in March — the second straight monthly decline, figures released Friday show.

But a significant decline in the backlog isn't expected for some time, warned Public Services and Procurement Canada, the department that oversees the troubled pay system for nearly 300,000 civil servants.

The central pay centre in Miramichi, N.B., was still dealing with 625,000 transactions as of March 21, the department said — down from a peak of about 633,000 transactions that were awaiting processing in late January.

"This decrease is promising, but with additional work left to do on overpayments and collective agreements, a continual decline is not expected until later this spring," the department said on its website.

The March backlog included 377,000 cases that went beyond the pay centre's normal monthly workload of 80,000 pay transactions.

The percentage of pay transactions that were processed by the pay centre within the government's own self-prescribed service standard grew to 59 per cent, up from 51 per cent in late February. However, that rate is also expected to fluctuate as the April 30 income tax filing deadline draws near.

Today's new figures follow a survey, commissioned by the Public Service Alliance of Canada, that suggests more than 80 per cent of federal workers have been impacted by Phoenix — severely, in the case of nearly 20 per cent of respondents.

"Phoenix has clearly had a devastating effect on the mental health and well-being of federal public service workers," said PSAC national president Robyn Benson.

"Employees deserve compensation for the stress and anguish Phoenix has caused for more than two years, as well as the time they have spent dealing with their pay problems."

The 17 unions representing federal employees have called on Ottawa to pay "damages" for the stress and financial burdens caused by Phoenix. Talks with union officials have been ongoing since the Trudeau government opened the door to compensation in its February budget, although neither the unions nor the Treasury Board Secretariat, which is overseeing the talks, have revealed the extent of the demands.

The survey results were similar to findings of a wider-ranging poll conducted by the government in 2017, which found about one in three respondents reporting that "pay or compensation issues cause stress at work to a large or very large extent," a Treasury Board spokesman said in an email.

"The poll commissioned by PSAC reflects what we already know about the impact of compensation issues on employee and workplace well-being," said the email.

Later this spring, an auditor general's report is expected to take a deeper dive into the causes of the Phoenix pay debacle.

Government gets ready to bypass internal controls to handle Phoenix emergencies
iPolitics
Kathryn May
April 13, 2018

Treasury Board is asking all departments to sign blanket approvals allowing it to bypass federal financial rules in the event of Phoenix emergencies that could leave large numbers of Canada's public servants unpaid.

Departments are being asked to seek ministerial permission to surrender or 'delegate' their financial authority to approve salary spending to Public Services and Procurement Canada (PSPC) so pay can be rushed through during an emergency.

The government has already had three such emergencies, including what was called a near catastrophe this past Christmas. PSPC sought a rush authorization then to make payroll fixes on time and departments were told it was a one-time request.

Treasury Board is now seeking a standing or open-ended approval that would remain in force until March 2021. The need to extend beyond that date will be re-assessed then.

The approvals at the centre of the request are provisions in the Financial Administration Act (FAA), the government's bible for financial management and accountability. Under the FAA, only mangers with delegated authorities for sections 33 and 34 – can approve transactions to trigger payments.

Canada's public service is anchored in a system, in which cabinet ministers are responsible for their departments. A department needs the minister's approval to turn over its financial authority over to another department.

The request sent to departments said PSPC won't exercise the approvals without first getting the blessing of Comptroller-General Roch Huppe, the government's chief financial officer. He would confirm the nature of the emergency and whether using the blanket authorization is appropriate.

With Huppe's approval, PSPC Associate Deputy Minister Les Linklater, the point man on stabilizing the error-prone Phoenix system, will be able to exercise sections 33 and 34 on behalf of departments if an emergency erupts risks leaving people unpaid.

Departments would immediately be notified of all the emergency transactions approved on their behalf.

According to the request, an emergency is described as any "instance where there is a significant risk that employees will not receive their pay" and there is not enough time to approve transactions through the normal approval route.

“Such situations are characterized by their timing. They occur at, or close to, the end of the pay period and result in operational challenges for departments to validate and authorize pay transactions in the normal manner,” said a memo prepared for ministers.

The big worry is that Phoenix could run into some kind of glitch or failure, which leaves departments without enough time for the normal approvals for outstanding transactions before the bi-weekly pay run.

This situation could be caused by any number of problems: system or power outages; major system failure; bugs or errors in the pay system or the various systems that feed into it.

“This means that outstanding transactions cannot be processed and affected employees would not receive their pay,” said the memo.

Departments have until May 1 to sign the request.

PSPC wouldn’t elaborate on the nature of the previous emergencies other than they related to ‘technical’ problems. The first was a Bell-Aliant server outage; the second resulted from “performance issues” with the pay administration system and the most recent was “critical bugs in the system.”

That one resulted in the possibility of 27,000 people not getting payments. Most would have been paid, but payments usually withdrawn from their pay cheques, such as mortgage and family support payments, would not have been deducted.

The glitch at Christmas created panic when it was realized a backlog of transactions, such as overtime, time sheets and some allowances, hadn’t been approved which would have affected the Dec. 27 pay run for 50,000 employees.

Most would have paid but not received any ‘extra duty payments,’ but for 7,000 people, their regular pay was at stake.

A notice was fired off to all deputy ministers, heads of human resources and chief financial officers asking for rush and blanket approvals of all their departments’ pay transactions as required under sections 33 and 34 of the Financial Administration Act. By all accounts, most of the approvals were issued in less than an hour.

Some say the need for a standing approval drives home just how fickle and unfixable Phoenix is when problems that risk disaster keep cropping up — and PSPC clearly worries that could continue for a few more years.

Paying employees is a top priority for the government and the bureaucracy is under incredible pressure to stabilize Phoenix. The crisis has damaged its reputation, demoralized employees and unions are ramping up demands for damages.

The Treasury Board proposal raises alarms for Dany Richard, the president of Association of Canadian Financial Officers, which represents federal accountants. He said the plan is risky and the government has clearly decided in managing Phoenix that paying people is more important than rules and oversight.

"I'm assuming the government did a risk assessment and determined that the consequences of many employees not being paid is greater than having a few isolated pay issues that can be corrected at a later time," he said.

"Who will be accountable? When there is an issue, and it will happen, people will be asking who authorized this especially if it's a large amount. The government may be willing to take that risk versus people not getting paid, which is more important.

Richard said the risk is delegating section 34, the central internal control that ensures whatever goods, service or pay for work the government is being charged for was, in fact, done.

For example, an employee enters an overtime claim into Phoenix. The manager with section 34 authority must approve the time worked and employee with section 33 issues the payment.

Richard said only the departmental manager with section 34 authority will know if an employee is entitled to the $5,000 being claimed or catch a mistaken overtime claim for 200 hours which should have been two hours. PSPC won't know.

"These blanket approvals can be very dangerous. There needs to be some type of oversight to attest to these transactions which they might have in the background.

The departments have been told they must conduct a "post payment verification," to later validate the payments.

"The department will ensure that appropriate reconciliation takes place and that post payment verification will occur on a timely basis to certify the accuracy of salary payments made under such circumstances. Any payment inaccuracies will be addressed through the normal salary reconciliation process," said the memo.

Richard warned that can create problems too.

"I want my members to be paid on time, but we can't bypass internal controls as that might create bigger problems."

Judges denounce 'egregious' delays at one of Canada's busiest courthouses
In less than two years, 21 narcotics cases in Brampton have collapsed. Judges and defence lawyers point to problems in the federal prosecution office.
Toronto Star
Jacques Gallant
April 14, 2018

At the beginning of the year, a Brampton judge sounded the alarm over federal prosecutors taking far too long to disclose their evidence to the defence in drug cases, resulting in criminal charges being tossed due to delay.

“There are other judges in this jurisdiction that have issued judicial condemnation about the period of time it has taken the federal prosecution service of Canada to complete the disclosure process to permit the parties to proceed and/or move the matter along in non-complex importing cases,” wrote Ontario Court Justice Paul O’Marra in a January ruling, staying a man’s heroin-related charges due to unreasonable delay in getting his case to trial.

“I join that chorus of condemnation. The period of time that it took to provide disclosure to counsel in this case was unacceptable.”

The issue of court delays across the country has come under heightened scrutiny since the Supreme Court of Canada, in a landmark 2016 ruling known as R v. Jordan, set strict timelines to complete a criminal case in order to meet the constitutional right of an accused person to be tried in a reasonable time: 18 months in provincial court and 30 months in Superior Court. Unless the Crown can prove there were exceptional circumstances for the delay, the case is tossed.

As provincial governments pour millions of dollars into beefing up court resources and the federal government looks to amend the Criminal Code to speed up the trial process, judges and defence lawyers alike have pointed to serious delay issues in the Brampton office of the Public Prosecution Service of Canada (PPSC), the federal agency tasked with prosecuting drug offences.

The fact that Brampton is one of the busiest court jurisdictions in Canada and handles a large amount of drug smuggling cases given its proximity to Pearson airport in Mississauga makes the problem of delay even more pressing.

“The history of delay in Brampton is well documented and well known, to the point where the bench recognizes that kind of embarrassing feature of the courthouse,” said criminal defence lawyer Edward Prutschi.

“One would have thought that by now the PPSC office operating out of Brampton knows all of these things: not a surprise that it is a busy jurisdiction, not a surprise that it is where the airplanes land and the drugs get brought in, so staffing and resourcing and being responsive to those kinds of cases ought to not be a surprise there.”

Between July 8, 2016, when the Supreme Court handed down the Jordan ruling, and April 6 judges in Brampton have tossed 11 drug-related cases due to delay, according to the PPSC. Federal prosecutors have also entered 10 stays in cases affected by delay, meaning the prosecutor chose not to proceed.

The Star requested an interview with the head of the federal prosecution office in Brampton to inquire about how prosecutors are meeting their disclosure obligations and bringing cases to trial in a reasonable time, but was told an interview “is not possible.”

“The PPSC is dedicated to ensuring that disclosure is collected and presented in a timely fashion and consistent with the timelines set by the recent jurisprudence,” said spokeswoman Nathalie Houle in an email.

Meanwhile, the union representing federal prosecutors has complained that the Brampton office is overworked and has suffered from recruitment and retention problems, which is contributing to the delays.

In at least seven of the 11 drug cases tossed in Brampton since 2016, delays in the disclosure process were either one of the reasons or the main reason for the overall delay that led to the case being thrown out, the Star found.

Some of the cases involved smuggling offences (Justice O’Marra referred to two other such cases in his January ruling), but others dealt with different drug offences such as possession for the purpose of trafficking.

While the federal prosecution office provided the Star with a list of the cases stayed by judges, it said a list of cases stayed by prosecutors “is not available.”

“Cases stayed by the PPSC are the product of a decision-making process that considers the reasonable prospect of conviction,” Houle said.

Crown attorneys are constitutionally obligated to disclose their evidence to the defence so that they can prepare their case, as guaranteed by an individual’s charter rights when charged with a crime.

In an opium importation case that was stayed due to unreasonable delay last August, Ontario Court Justice Bruce Duncan found that following the accused’s arrest in Dec. 2015, there had been an “unusually long delay in completing disclosure — a period of about nine months.”

In that case, the accused was arrested in Markham after receiving a package containing 6.6 kilograms of opium sent from Istanbul via the United States. The RCMP had obtained judicial authorization to conduct a “controlled delivery” of the package after being alerted of its contents by U.S. customs agents, according to Duncan’s ruling.

The judge, finding that the case was not complex, referred to what is known as the “information to obtain,” a document prepared by police outlining their case and submitted to a justice of the peace in order to get a warrant. Duncan found the ITO should have been disclosed very early in the process.

“The disclosure involved police officer notes and notes of customs officers in Canada and the U.S. plus the ITO and relevant videos. None of these items was exotic, unusual or difficult to obtain,” the judge said. “Notes of police officers involved in the case and the ITO for the warrant are items of first-tier disclosure and should have been provided spontaneously without the necessity of a request from the defence at all.”

ITOs are common in drug prosecutions, and the significant delay in disclosing them also contributed to the collapse of two other Brampton cases within months of the Supreme Court releasing the Jordan decision.

In the first case, involving two people charged with possession for the purpose of trafficking drugs worth about $500,000, the nine-page ITO wasn't disclosed to the defence until eight months after the arrest.

"The Crown states that this was because the ITO had to be vetted to protect the identity of a confidential informant and the Crown's office was short-staffed," wrote then-Ontario Court Justice Andras Schreck, who has since been elevated to the Superior Court in Toronto, in a December 2016 ruling.

"I accept that such vetting is necessary at times. However, the ITO in this case was only nine pages long and only two small portions on the second page needed to be excised. I find it difficult to accept that the Crown's office was so short-staffed that it took eight months to vet nine pages. Even if it was, the Crown's failure to allocate sufficient resources to the prosecution of serious criminal offences cannot justify delay that is otherwise unreasonable."

Two months later, Ontario Court Justice Kathryn Hawke threw out trafficking charges against two individuals in a case where it took seven months to get the ITO to the defence. She noted that such disclosure is "your 'bread and butter' work if you are in the business of prosecuting drug cases."

Criminal defence lawyers have argued that some of the blame for the delay in cases rests at the feet of the police, as Crown attorneys first have to wait to get evidence from officers before vetting it and turning it over to the defence.

"You can only surmise that the culture of complacency that was criticized by the Supreme Court of Canada has similarly infected the police agencies tasked with providing disclosure in a timely manner," said Michael Lacy, president of the Criminal Lawyers' Association.

"For the most part, what needs to be disclosed has already been gathered either before arrests are made or on the day of arrest. Police forces need to be mindful of the need to gather information in a manner that can be disclosed at the outset of an investigation."

The president of the union representing federal prosecutors said the Brampton federal prosecution office has a history of being overworked and under-resourced, which can lead to delay.

"If you have 70 per cent of your complement trying to do 100 per cent of the work, those folks are overtaxed ... and we have a retention problem because our salaries and working conditions are unfavourable compared to our counterparts," said Ursula Hendel, president of the Association of Justice Counsel, referring to provincial Crown attorneys, who prosecute the bulk of criminal offences in Ontario.

"I can walk across the street and make 30 per cent more money, and still be in the same courtroom the next day."

According to figures provided by the union, most federal prosecutors can receive a maximum annual salary of $138,000, compared to a maximum of $199,000 for provincial Crown attorneys doing comparable work.

(A spokesperson for the federal prosecution office said the agency has added to its complement of prosecutors in Brampton since July 2016, but would not say how many.)

Hendel said there are a number of factors that can lead to disclosure delays, including finding the time to sit down with the police officer to vet an ITO to ensure there is nothing in it that refers to a confidential informant, a key feature in many drug prosecutions.

“There are a lot of confidential informers in search warrants and drug files, it’s very loaded, you can’t get it wrong,” she said.

“You need to work closely with the police officers who are familiar with the circumstances because they are the only ones who can tell you whether the information is innocuous or whether it’s loaded. And that takes some time. As busy as we are, the police also have their pressures. And so trying to get everyone together at the same time, and to get the information that we need, is often time consuming.”

She explained that recruiting and retaining senior Crowns has been particularly problematic in the Brampton office given the wage disparity versus the provincial Crown office, and she said there are less senior prosecutors readily available to review an ITO to ensure there is nothing in it that refers to a confidential informant.

“When the new lawyers are hired, they’re junior, they can’t carry the same load, so we’re getting back to the issue of warrants and confidential informers,” she said. “You can’t give that work to a junior person.”

Like other criminal defence lawyers who have done drug cases in Brampton, Jennifer Penman said she found it hard to believe that delays in disclosure were mostly the result of resourcing issues. She represented one of three accused men in a marijuana grow operation, a case where the defence was still receiving disclosure nearly a year after the three men’s February 2013 arrest.

In a ruling delivered in April 2016, just two months before the Jordan ruling and so using the previous framework to calculate delay in a criminal case, Superior Court Justice John Sproat blasted the federal prosecution office for the disclosure problems.

“There was no good reason why the Crown provided disclosure in dribs and drabs over such an extended period,” he said, going on to say that Crown delay in the case had been “both glaring and egregious.”

Penman told the Star that getting the ITO in the case “took forever,” saying that the vetting process involving the Crown and police should be relatively simple in many cases.

She chalked up the problem to attitude.

“I think there’s an apathy, there’s an attitude, regarding making disclosure and the rights of the accused a priority,” she said. “I don’t know, maybe not enough of these cases are being tossed, they think they can get away with it.”

OPINION - Jody Wilson-Raybould: My vision for the future of the Charter
As the Canadian Charter of Rights and Freedoms turns 36, Canada’s Justice Minister says there’s plenty of work still to do—especially on Indigenous rights
Macleans
Jody Wilson-Raybould
April 15, 2018

Jody Wilson-Raybould is the Minister of Justice and Attorney-General of Canada.

The Canadian Charter of Rights and Freedoms celebrates its 36th anniversary on Apr. 17—but the story of our Charter didn’t begin 36 years ago. It started when the world recognized basic rights and fundamental freedoms through the Universal Declaration of Human Rights after the gross denial and violation of them in the Second World War—the best and worst, respectively, of human capacity.

To this day, the Universal Declaration remains an iconic affirmation of our capacity for human good. It remains, too, a ready reminder of the many ways in which human rights are declared for everyone, but not everywhere recognized.

Our Charter is Canada’s Universal Declaration: our vision of freedom within the human family. Over the past 36 years, it has inspired a culture of rights within our governing institutions and within our peoples.

The transformative change brought about by the Charter is also in important ways owed to the leadership of our courts. The global reputation of our Charter now also stems from the jurisprudence that now underpins it. That jurisprudence is the result of individuals and groups seeking respect for their rights before our courts and of the courts, in turn, affirming the political and legal priority of our rights.

There is no question that the past 36 years of judicial application of the Charter has strengthened our laws and our policies and made our country better. But what of the next three-and-a-half decades? What will mark its success?

The success of our Charter should now increasingly be measured by political leadership. The success of the Charter’s future will be advanced by the ability of our elected leaders to demonstrate that respect for Charter rights fully guides the development of our laws and policies, and how the government relates to and interacts with all Canadians.

As an elected leader and a cabinet minister myself, it is with great humility that I see my role in this work. Underlying the role of minister of justice and attorney-general of Canada is the incredible privilege

and duty to be an ambassador of the Charter. In that regard, the Charter is not a constraint on the actions we take under threat of judicial review, but rather a guide for respecting the rights of Canadians within the activity of governing.

Political responsibility for the Charter has motivated our commitment to re-establish an expanded Court Challenges Program, to repeal those laws declared unconstitutional by the Supreme Court of Canada, and demonstrate with a statement tabled in Parliament for every new government Bill why it complies with the Charter.

But I am the first to acknowledge that we have more to do.

Apr. 17, 1982 marked not only the beginning of our Charter, but also the "recognition and affirmation" of Aboriginal and treaty rights in section 35 of our Constitution. It states:

35. (1) The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed.

(2) In this Act, "aboriginal peoples of Canada" includes the Indian, Inuit and Métis peoples of Canada.

(3) For greater certainty, in subsection (1) "treaty rights" includes rights that now exist by way of land claims agreements or may be so acquired.

(4) Notwithstanding any other provision of this Act, the aboriginal and treaty rights referred to in subsection (1) are guaranteed equally to male and female persons.

But the original vision—that political conferences would chart the course for the implementation of section 35—was never realized. Over the past three and a half decades, Indigenous peoples have taken to the courts to achieve basic recognition and implementation of their rights. And the courts have responded, time and again, through hundreds of cases, that those rights are important, have meaning, and are far-reaching.

The story of the past 36 years has been the story of Indigenous peoples having to advocate for the judicial recognition and implementation of their section 35 rights. That is because successive governments had carried on past tendencies to deny the existence of Indigenous rights and treat these rights differently than other rights, such as Charter rights. When we think or speak about freedom of expression, freedom of religion, or equality, we have a deep sense that these rights are part of what makes us uniquely Canadian. We do not question the existence of these rights—rather, we celebrate them and organize government to respect them. In the case of Indigenous rights, the Crown has too often put the onus on Indigenous peoples to prove that their rights exist through long and expensive litigation.

Here again, transforming this reality lies in political leadership—leadership by the Crown to transform outdated laws, policies and practices, and to partner with Indigenous peoples to forge new patterns of collaboration and understanding. The promise of section 35 is reconciliation; it is a promise that does

not lend itself to fulfilment through the courts. Reconciliation can be fulfilled only through respectful nation-to-nation, Inuit-Crown, government-to-government relationships based on the recognition of rights.

Like all rights, Indigenous rights have real meaning only when we respect and apply them through our institutions, create space for their implementation, and foster respect for them in our communities. In February, Prime Minister Trudeau announced before the House of Commons that we will be developing, in full consultation with Indigenous peoples, a recognition and implementation of rights framework. This is one of many steps that government and Parliament must take in order to chart a different future for section 35. It is a significant step and, if done right, it will be a transformative one.

The history of Canada is the story of building a human rights community in a context of tremendous diversity. That story is incomplete. But no matter the challenges, we know that the path to a more just society cannot be the work of courts alone.

Phoenix and taxes: Practical tips for the public servant
Ottawa Citizen
Blair Crawford
April 15, 2018

April 30th is fast approaching. Your T4 is a mess. So is your revised T4. In public service terms, you've been "Phoenixed." What do you do now?

Don't miss that deadline

"The first piece of advice is try to make sure you file on time with as accurate information as you can have at the time," said Steve Hindle, vice-president of the Professional Institute of the Public Service of Canada. "It's in your interest to avoid any late filing penalties. Whatever you do, your life is already complicated. Phoenix is complicated. Taxes are complicated. There's no need to add late filing penalties with arguments about whether they should apply or not apply to all that confusion."

Who you gonna call?

CRA has a hotline for public servants affected by Phoenix who need assistance. If you need help (it's not a complaint line), call 1-888-556-5083

Answers to some frequently asked questions are available on the CRA website.

Use the slips you have

If the T4 you were issued is wrong, it's important to let your employer know right away so it can be reviewed and amended, if necessary.

In an email to the Citizen, CRA said, “If an individual is expecting an amended T4 with their correct annual earnings but has not received it by the April 30, 2018 tax filing deadline, the CRA will not consider them to have filed a false return if they file using the most recent 2017 T4 received from their employer. The CRA will reassess the individual’s return when an amended T4 is issued by the employer at a later time.”

“But my T4 is wrong. And the revised T4 is wrong. And the …”

Johanna Jenkins, a fishery officer based in Nanaimo, B.C., whose Phoenix problems were described in an earlier Ottawa Citizen story, knew her 2016 T4 was wrong and stayed wrong even after several attempts to have it fixed.

Jenkins put all her pay stubs in a spreadsheet and calculated her own values for her pay and deductions. It’s “pretty basic math,” she said.

Jenkins used her official T4 numbers in her return, but filed by paper so she could include a letter that disputed the official T4 information and added the values from her own calculations. She backed it up with copies of her paystubs and emails with her employer about her pay issues.

“Pay Centre issued me a T4 which over-reported my income and under reported the taxes they had deducted from my pay. I was lucky (because) I could prove it since my paystubs for the year all appeared to be based on actual numbers. I was paid wrong, but at least what I did get paid was reflected on my biweekly paystubs.”

Jenkins said CRA did appear to use the numbers she provided for its 2016 assessment and she plans to do the same this year.

CRA’s answer: “The CRA recognizes that some federal public servants affected by Phoenix payroll system errors may not want to file using the most recent T4 available if the T4 does not reflect the amount of income they were paid. In these cases, they can file by the filing deadline using estimated amounts based on their own calculations from their pay stubs. The CRA will correct the tax return, if required, and reassess the return, once it receives the amended T4 from the employer.”

Stumped? Get professional help — and the government will help pay for it.

Treasury Board Secretariat announced earlier this year that it will kick in up to $200 for public servants who use a professional to prepare their taxes.

“To ensure that employees are treated fairly, and that they understand the tax implications caused by errors in their pay, the Government of Canada will reimburse expenses related to obtaining tax advice,” it said, adding, reassuringly: “Filing a claim will not impact your pay, since claims are not processed through the Phoenix pay system.” (The bolding is the government’s.)

Rosa Iuliano, a certified professional accountant and a partner in Collins Barrow in Ottawa, said even a professional can have little luck fixing Phoenix problems.

“We’ve had a lot of people reach out. I can’t say we’ve been able to help a lot of people because it’s not an easy thing to deal with. CRA is really just a big computer that matches to another computer that has wrong data,” she said.

“Most people who’ve called, I’ve been honest and said, ‘I’m happy to help you. You’ve got your own numbers. Fine. I’m happy to use those. But I’ll tell you, you’re going to get reassessed and (CRA) will say you didn’t match your T4s. You didn’t file properly. You have to prepared to have that happen.’”

E-file or paper file?

When filing electronically, you can’t submit your return without first clicking a box to attest that everything in the return is accurate. That’s a problem if you know your T4 slip is wrong.

This year, Johanna Jenkins, the fishery officer who says she’s a ‘stickler for detail’, is again using paper and pencil and sending in her tax return the snail mail way.

“Had I just Netfiled with the incorrect 2016 T4s I kept getting issued, I would have eventually been forced by CRA to pay taxes I do not owe,” she said. She didn’t sign the first page of her return, the one detailing her income, and included a note of explanation to the tax man.

Though she notes she’s not a tax expert, Jenkins wrote a guide for do-it-yourselfers that she shared with the 6,500 members of a Facebook page for public service workers with Phoenix trouble.

Jenkins’ Point No. 3: “Trust yourself. You have the math skills for this — a lot of finding the errors is not proving what wonky formula pay centre used to get things wrong, but are really about knowing what your salary is, what entitlements you get, how much overtime you make at what rate, rates of Actings you did and knowing how to add and subtract.”

Overpaid, underpaid or just bad slips?

The easiest problem is if the T4 issued doesn’t match the information on your payslips. In that case, Jenkins’ DIY T4 is an option. But what if your slips match what you were paid, but the amount you were paid was incorrect?

“I think there’s even more cases of people being overpaid or underpaid,” said Iuliano. “That’s where it get difficult. CRA will say ‘Did you receive these funds?’ and if you did, in theory you’re supposed to pay taxes on it. You can say, ‘I wasn’t supposed to be paid this and I’m going to have to pay it back.’ Well, do you have anything that says you have to pay it back? It’s not an easy answer.”

Is there light at the end of the tunnel?

This is year 2 for Phoenix and tax returns. Are things improving?

“The problems faced by government employees as a result of the Phoenix pay system are unacceptable, and the Government of Canada is doing everything it can to resolve pay issues as quickly as possible,” CRA said in an email to the Citizen.

“I think it’s worse this year,” said Hindle of PIPSC. “People are more aware that they might have a problem. They’re paying more attention. Plus, the passage of time — 2016 and 2017 — without a resolution to the problem has just added to the number of people who are affected. We probably now have people who had incorrect information for 2016 and for 2017. How long that takes to get reconciled remains to be seen. I think this is going to go one for a while yet.”

Correction: An earlier version of this story said Johanna Jenkins made out her own T4 slip. In fact, she used the T4 slip she was issued but calculated her own values from her paystubs and included those figures in a cover letter with her return. The story has been updated.

Libs’ omnibus justice bill could get a rocky ride in Parliament
Justice Minister Jody-Wilson Raybould isn’t apologizing for controversial reforms laid out in Bill C-75 that she has said will make the courts faster and fairer.
The Hill Times
Peter Mazereeuw
April 16, 2018

Conservative MPs and Liberal and Independent Senators are joining the pile-on atop the Liberals’ criminal justice reform bill, C-75, complaining the bill does too much, not enough, or is merely an omnibus shortcut to make up for the government’s legislative mismanagement.

“It appears that under the guise of making Canada’s justice system more efficient, the government is, through the backdoor, watering down sentences for serious crimes,” said Conservative MP Michael Cooper (St. Albert-Edmonton, Alta.) his party’s deputy justice critic.

Liberal, Conservative, and NDP members of the House Justice Committee say the wide-ranging bill will require extensive study, and several Liberal and Independent Senators have already criticized it for ignoring what they say are needed justice reforms, suggesting Bill C-75—already the subject of some criticism from criminal lawyers—will be a topic of heated debate in Parliament in the coming months.

The Office of Government House Leader Bardish Chagger (Waterloo, Ont.) would not say whether the government intends to try to pass C-75 before the summer break in June, or whether it plans to use time allocation to speed up the bill’s passage. In an emailed statement, spokesperson Sabrina Atwal said the government plans to work “cooperatively” with other Parliamentarians to ensure a “robust debate.”

Conservative MP Rob Nicholson (Niagara Falls, Ont.), his party’s justice critic, took issue with the government’s move to reclassify numerous serious criminal offences as hybrid, rather than indictable,

meaning Crown prosecutors will now have the option of pursuing lighter penalties for some cases of crimes like advocating for terrorism, infanticide, abducting a child, and a wide range of other crimes.

“Reducing those penalties, I think, is a mistake,” he said.

A group of Independent and Liberal Senators also took aim at the bill last week, issuing a press release that said the roughly 300-page bill ignored problems in Canada’s prisons.

One of them, Independent Senator Kim Pate (Ontario), said she would be introducing her own private bill into the Senate to remove mandatory minimum sentences from the criminal code if the government did not signal it was serious about doing so itself. Justice Minister Jody Wilson-Raybould (Vancouver Granville, B.C.) said last summer she would seriously examine dropping some mandatory minimum penalties from the Criminal Code, but did not do so in Bill C-75, instead telling reporters that “mandatory minimum penalties and sentencing reform needs to be dealt with,” without specifying when the government would do so.

Liberal MP Anthony Housefather (Mount Royal, Que.) said he believed the House Justice Committee, which he chairs, would require a “substantial amount of time” to study the bill once it passes from second reading to the committee stage, and said the committee could sit for extended hours to give the bill the time it needs.

“I think it’s a good bill, but my mind is open and I look forward to hearing what witnesses have to say,” he said.

NDP MP Murray Rankin (Victoria, B.C.), his party’s justice critic, said it was too early to say whether the NDP would oppose the complex bill. He pointed to words of caution and criticism made publicly by criminal lawyers about parts of the bill—for example that get rid of preliminary inquiries, hearings to determine if there is enough evidence to go to trial—as reason to give the many proposed changes in the bill a close examination.

“I intend to make sure that I do whatever I can to make sure that it is scrutinized carefully,” he said, adding he would support the Justice Committee sitting longer hours.

Bill C-75 won’t likely be debated this week, as the government has devoted the debating time to the budget implementation bill, C-74.

‘These are not light offences’

Mr. Nicholson said the government should not be allowing lighter penalties for serious crimes by reclassifying them as hybrid offences. He said he had never heard calls for such a move during his time as a justice minister in the previous Conservative government.

“I think most people would agree with me that some of these are very, very serious charges here, that they’re not light offences,” he said.

The government is reclassifying offences as hybrid as a way to reduce delays in the courts, said David Taylor, Ms. Wilson-Raybould's communications director.

"Reclassifying offences will give Crown [prosecutors] the discretion they need to elect the most efficient mode of prosecution, evaluated on a case by case basis. This will reduce the amount of court time consumed by less serious offences, while freeing up limited resources for more serious ones," he wrote in an emailed statement.

"Indictable offences involve more complex rules and processes so cases typically take longer to complete. These changes will allow prosecutors to pursue summary convictions for offences that would have a shorter sentence. The proposed amendments will not change the fundamental principle of sentencing requiring courts to impose sentences that are proportionate to the gravity of the offence and the degree of responsibility of the offender."

Mr. Nicholson slammed the move to allow lighter sentences for serious crimes in a letter published on his Facebook page earlier this month, and sent it to several newspapers. He also took issue with changes the government made to Criminal Code offences against clergymen and religious services, arguing the government was eliminating some of those offences. However, Mr. Taylor said C-75 would only make those offences hybrid, not get rid of them, and Mr. Nicholson's office responded that the language in the bill was unclear, and he would seek clarity from the government on the issue.

Mr. Housefather did not take issue with hybridizing offences in the criminal code.

"I trust judges to give the right sentences," he said, noting C-75 also increased the maximum allowable sentence for summary offences from 18 months to two years.

Mr. Nicholson said he supported some measures in C-75, such as a reverse onus for repeat domestic abuse offenders seeking bail, forcing them to demonstrate why they should get bail, instead of the prosecution having to prove that the offender should not get bail. He also said he supported the government's decision to do away with most preliminary inquiries for all but the most serious cases.

The government and many in the legal world have argued that modern requirements for the Crown to disclose evidence to the defence before the trial have made preliminary inquiries unnecessary in most cases.

Mr. Nicholson said he would withhold judgement on the government's decision to scrap peremptory challenges, which allow Crown and defence lawyers to dismiss potential jurors without reason, until he had heard witness testimony on the issue.

Mr. Cooper said the government's omnibus justice bill was only an attempt to make up for its failure to move forward on individual bills on criminal justice issues in the House, such as stalled changes that would have removed the listing of anal intercourse as a criminal offence.

He said he supported some of the measures to remove obsolete clauses from the Criminal Code, but added it was “ironic” that the lengthy bill was coming from the Liberals, who campaigned on a promise to do away with omnibus bills.

“This is a 300-page bill, some aspects of this bill impact Charter rights, and so we need to review this bill very, very carefully,” he said.

Bill C-75 also includes changes to relax or add flexibility to punishments for administrative offences or bail violations, changes the government has said are intended to ensure marginalized people are not disproportionately caught up in the justice system.

However, Mr. Rankin said the bill may not do enough to adequately address the root causes the delay in the justice system: petty drug crimes, and charges tied to individuals with mental health problems or to living in poverty.

Sen. Pate said she wanted the government to tackle mandatory minimums, and to direct the Correctional Service of Canada to change the way it interpreted and set rules based on the Corrections and Conditional Release Act. She said the public servants working in CSC had been implementing policies that were far too restrictive on offenders, and effectively blocked the use of restorative justice programs.

Sen. Pate, fellow Independent Senators Wanda Thomas Bernard (East Preston, N.S.) and Nancy Hartling (N.B.) and Liberal Senator Jane Cordy (N.S.) each signed the press release entitled “Bill C-75 Ignores Warning Signs in Prisons” and issued last week. They are all members of the Senate Human Rights Committee, and in the midst of studying the human rights of prisoners.

Changes a response to Jordan ruling

A few criminal lawyers have already gone public with their own concerns about the government’s decision to do away with preliminary inquiries for any case where a life sentence is not an option, and to scrap peremptory challenges, which give defence and Crown criminal lawyers the right to dismiss potential jurors without reason.

Ottawa-based criminal defence lawyer Solomon Friedman told the CBC last month that peremptory challenges can be used by defence lawyers to challenge white potential jurors, and thereby ensure that visible minority clients are not tried by all-white juries.

Bill Trudell, chair of the Canadian Council of Criminal Defence Lawyers, told the Canadian Press that preliminary inquiries can narrow the range of legal issues covered in a trial, or even eliminate the need for some trials.

Ms. Wilson-Raybould and her spokespeople have said many of the reforms in Bill C-75 are intended to speed up the criminal justice system in response to the Supreme Court of Canada’s so-called “Jordan ruling” of 2016, which set hard limits on the length of time a criminal case can spend in the courts: 30

months for serious cases in superior courts, and 18 months for cases in provincial courts. More than 200 criminal cases had been dismissed in Canada for going over those limits as of July 2017, the Canadian Press reported.

Some of the reforms in Bill C-75 also responded to concerns about the fairness of jury selection that made headlines earlier this year when Saskatchewan farmer Gerald Stanley was acquitted of the murder of a young Indigenous man, Colten Boushie. Mr. Stanley was acquitted by an all-white jury, after several jurors who appeared to be Indigenous were dismissed through the use of peremptory challenges, which C-75 would eliminate.

Ms. Wilson-Raybould told reporters when she introduced C-75 that scrapping preliminary inquiries would "reduce revictimization of witnesses by ensuring speedier trials and reducing the need for vulnerable witnesses to testify twice"—once at the preliminary hearing, and again at trial—and said changing the jury selection rules would "make juries more representative of the Canadian population."

(Some of) what Bill C-75 does
simplify the forms of release (bail) that may be imposed on an accused, and require that particular attention be given to the circumstances of Aboriginal accused and accused from vulnerable populations when making interim release decisions
provide more onerous interim release requirements for offences involving violence against an intimate partner
abolish peremptory challenges of jurors, modify the process of challenging a juror for cause so that a judge makes the determination of whether a ground of challenge is true
increase the maximum term of imprisonment for repeat offences involving intimate partner violence and provide that abuse of an intimate partner is an aggravating factor on sentencing
restrict the availability of a preliminary inquiry to offences punishable by imprisonment for life and strengthen the justice's powers to limit the issues explored and witnesses to be heard at the inquiry
hybridize most indictable offences punishable by a maximum penalty of 10 years or less, increase the default maximum penalty to two years less a day of imprisonment for summary conviction offences and extend the limitation period for summary conviction offences to 12 months
remove the requirement for judicial endorsement for the execution of certain out-of-province warrants and authorizations, allow receiving routine police evidence in writing
allow the court to exempt an offender from the requirement to pay a victim surcharge if the offender satisfies the court that the payment would cause the offender undue hardship
remove passages and repeal provisions that have been ruled unconstitutional by the Supreme Court of Canada, repeal section 159 of the Act related to anal intercourse
amends the Youth Criminal Justice Act in order to reduce delays within the youth criminal justice system and enhance the effectiveness of that system with respect to administration of justice offences

New approach whittling down Phoenix backlog, government says
Devoting pay advisers to specific departments showing promising results
CBC News
Ryan Tumilty
Apr 16, 2018

A federal government pilot project aimed at helping public servants solve their Phoenix pay problems appears to be yielding results, and could finally help reduce the huge backlog of cases.

Both the backlog and the number of employees experiencing pay issues dropped across three departments where the new approach, described as a "pod model" that pairs advisers from the government's pay centre with specific bureaus, is being tested.

The three participating departments are Innovation, Science and Economic Development, Veterans Affairs Canada and the Federal Economic Development Agency for Southern Ontario.

Over three months, 25 advisers worked exclusively with 10,000 employees in those departments. During that time the number of backlogged cases dropped by 15 per cent, and the number of employees experiencing pay issues dropped by seven per cent, according to numbers provided by Public Services and Procurement Canada, the federal department overseeing Phoenix.

Building expertise

On March 21 Public Services Minister Carla Qualtrough said that based on the pilot project, her department would apply the same approach to the entire public service.

"It is a team of compensation advisers, administrative assistants and others who are dedicated to a specific department or departments and agencies," Qualthrough told the Senate finance committee.

She said the approach was helping forge relationships between the pay advisers and human resources staff, and building internal expertise about the kinds of problems that tend to crop up within particular departments.

"If it's the Coast Guard you can imagine there are different transactions than if it is Elections Canada," she said.

No easy fix

Qualtrough said under the new approach, advisers attempt to solve an employee's numerous pay problems all at once, rather than dealing with the issues one at a time.

"It wasn't treating people as a whole," she said.

Robyn Benson, president of the Public Service Alliance of Canada, said the union has been advocating for such a change, and is glad to see it showing results.

"They will do the whole account, and so of course that will decrease the number of problems, because everything will be fixed," she said. "They're giving individual attention. They're working through each client's account."

Benson said the government will have to hire more pay advisers, because Phoenix won't be either fixed or replaced any time soon.

"It's not an easy fix, in that a system can not just be brought over tomorrow."

The government put aside $16 million in this year's budget to begin the work of finding a new pay system.

Local businesses support Ottawa Food Bank by competing in annual food sorting challenge
Fundraiser tests speed and accuracy as teams race to sort and pack 1,000 pounds of items
Ottawa Business Journal
Caroline Phillips
April 16, 2018

A team that sorts together, comports together.

Local businesses and organizations looking to give back to their community while creating morale-boosting moments of bonding among staff were quick to participate in Friday's fun Food Sort Challenge for the Ottawa Food Bank, presented by Escape Manor.

It was the biggest and best year yet for the sold-out fundraiser, which filled the spacious Aberdeen Pavilion at Lansdowne Park. Inside, some 48 teams of up to 10 members raced to sort and pack 1,000 pounds of food the fastest.

With music blaring, the teams hustled to organize dried pasta, jars of peanut butter, cans of beans and other non-perishable items commonly donated to the Ottawa Food Bank.
Organizers threw in extra challenges, like having participants don oven mitts to complete their task. As well, rule-breaking contestants were punished by the refs with a mandatory timeout that involved wearing a silly hat.

"I feel shame, I really do," Brian Murray, director of leasing and business development for Sakto Corp., said, tongue-in-cheek, while serving his penalty for putting a food item in the incorrect box.
First-year participants included Napkyn, a Hintonburg-based analytics and consulting firm. It registered three teams for the event and pretty much had its entire 27-person company out.

"All of our work is in the U.S. and all of us work too hard, so we wanted to take an opportunity to do something for the community and to have some fun together," founder and CEO Jim Cain, who was joined by the firm's president, Nick Bennett, told OBJ.social.

Cain, who showed up with his teams wearing hats from Dollarama, got to take a step back from his leadership role, while competing in the challenge.

"I'm pleased to be told what to do for once."
Also new to the event was Magnet Forensics. The software company's engineering manager, Thusha Agampodi, convinced her colleagues to go head-to-head against their friends at Trend Micro.

Food, she said, plays a contributing role in her workplace. Staff often have shared meals, including breakfast with waffles.

“We have bonded a lot over food, so doing something to help other people who are hungry — because they don’t have enough food to eat — is dear to my heart,” Agampodi told OBJ.social.

Competing like a man wanting to win was Mathieu Fleury. The city councillor for Rideau-Vanier Ward was part of the Ottawa Community Housing team. He's chair of its board.

Also participating were the Association of Justice Council lawyers, who were easy to spot with their gavel headwear. "Justice lawyers work in service of their communities every day," president Ursula Hendel told OBJ.social. "Phoenix [pay system glitch] has certainly made us aware of what it's like to not be able to count on a paycheque."

Participants, which paid $1,000 to register a team, could win prizes for fastest team, top fundraisers and most spirited.

Each month, the Ottawa Food Bank helps more than 38,000 people.

Des avocats identifient des jurés grâce à Facebook
Ils utilisent une faille dans Facebook pour tenter d'identifier les jurés potentiels.
Droit Inc
Delphine Jung
16 avril 2018

La protection de l'identité des jurés est l'un des fondements du système judiciaire canadien.

Cela vise, par exemple, à éviter qu'ils ne soient victimes d'intimidation ou de représailles pendant ou après un procès.

Pourtant, lorsqu'ils se présentent au palais de justice avec leur téléphone intelligent en poche, les jurés prennent le risque de se faire identifier par les avocats, et ce, à leur insu, rapporte Le Journal de Montréal.

Beaucoup d'avocats de la défense comme de la Couronne, diront qu'il peut leur être utile de mieux connaître les candidats d'un jury. La religion, l'opinion politique, la catégorie socio-professionnelle, sont autant d'indicateurs qui peuvent amener les avocats à mettre en place leur stratégie de plaidoirie.

Les journalistes du Journal racontent ainsi avoir été témoins d'une recherche d'informations de la part de la défense lors d'un procès.

La défense aurait exploité une fonctionnalité de Facebook qui propose de devenir ami avec des gens dont vous ignorez le nom, mais que vous pourriez connaître, par exemple si vous les côtoyez tous les jours à l'école ou au travail… et donc aussi au tribunal.

Les avocats ont ainsi pu identifier des jurés qui se trouvaient devant eux. Dans le cas d'un juré en particulier, les recherches se sont poursuivies pour découvrir, en plus de son nom, une foule de renseignements personnels dont son adresse, sa ville d'origine, des informations sur son employeur et même, les relevés de ses constats d'infraction.

« Si elle est avérée, une telle situation est très préoccupante », a réagi Caroline St-Pierre, porte-parole de la magistrature. Selon elle, il n'existe aucune directive concernant l'utilisation de téléphones intelligents équipés de Facebook en cours de procès.

« Le seul moment où les téléphones cellulaires sont interdits, c'est pendant les délibérations du jury », précise-t-elle au Journal.

« Au début d'un procès, nous pouvons avoir accès au nom, à l'âge et à l'emploi d'un juré. Aujourd'hui, ces informations sont suffisantes pour retrouver quelqu'un », explique Me Alexandra Longueville, une avocate interrogée par le Journal et habituée aux procès devant jury.

La juge retraitée Nicole Gibeault va encore plus loin en affirmant que les réseaux sociaux ont « changé la game » tellement il est facile d'obtenir des informations sur un individu.

Les deux expertes s'entendent pour dire que la loi qui protège les jurés devrait être mise à jour en tenant compte de tout ce que les réseaux sociaux ont changé.

Les barreaux veulent invalider les lois québécoises!
Elles ne sont pas simultanément traduites et manquent de cohésion, ce qui serait inconstitutionnel
Droit Inc
Delphine Jung
16 avril 2018

La demande introductive d'instance a été déposée vendredi, au palais de justice de Montréal. Elle a été signifiée par Mes Louis Brousseau et Marie France Tozzi, du cabinet Jeansonne Avocats au président de l'Assemblée nationale, Jacques Chagnon, et à la procureure générale du Québec, Stéphanie Vallée.

Les deux barreaux, qui sont présidés par Paul-Matthieu Grondin et Brian Mitchell, estiment que le processus d'adoption des lois par le législateur québécois n'est pas conforme à la Constitution canadienne.

D'après l'article 133 de la Loi constitutionnelle de 1867, l'adoption des textes législatifs doit se faire simultanément en français et en anglais.

Les deux barreaux affirment plutôt que l'Assemblée nationale établit un processus législatif pratiquement unilingue, suivi d'une traduction à la toute fin du processus d'adoption.

« Le gouvernement du Québec respecte ces obligations constitutionnelles. On ne partage pas du tout l'opinion tant du Barreau de Montréal que du Barreau du Québec. On va donc faire valoir nos arguments devant les tribunaux pour contester les allégations qui se trouvent dans la requête », a déclaré la ministre de la Justice, Stéphanie Vallée.

Pour défendre leur position, les demandeurs reviennent sur l'adoption du Code de procédure civile en 2014.

Allégations contre la ministre de la Justice
Ils parlent d'un texte de loi « qui ne reflète pas pleinement la réelle volonté du législateur, privant ainsi tous les justiciables du Québec du droit à deux versions de loi adoptées conformément à la norme constitutionnelle », peut-on lire dans le document que s'est procuré Droit-inc.

« Face au constat de l'absence de cohésion entre la version française et anglaise, voire des incohérences et contradictions, la ministre de la Justice du Québec a eu recours au processus dit d'amendement administratif afin de tenter de « corriger » le texte », poursuivent-ils.

Ces changements dépasseraient les simples corrections de style, fautes de frappe ou erreurs grammaticales. Ils seraient donc de véritables amendements. Or, la ministre de la Justice ne peut pas modifier le droit de manière substantielle.

« La ministre de la Justice contourne la législature, modifie le droit substantiel et écarte le Parlement du Québec du rôle qui lui revient », peut-on encore lire.

Des questions soulevées dès 2011
Déjà en 2011, lors de la révision du Code de procédure civile, le bâtonnier du Québec de l'époque, Me Gilles Ouimet, et le bâtonnier de Montréal, Me Marc Charbonneau, avaient demandé au ministre de la Justice, Me Jean-Marc Fournier, d'éviter le sort de la version anglaise du Code civil du Québec qui avait alors requis des milliers de modifications afin de la concilier avec la version française.

En juillet 2015, la bâtonnière de Montréal, Me Magali Fournier, écrivait aussi à la ministre de la Justice que le Code de procédure civil n'a pas été adopté conformément à l'article 133 de la Loi constitutionnelle de 1867.

Dans la requête, les demandeurs rappellent que de nombreuses négociations en ce sens ont été menées, en vain.
Aujourd'hui, ils estiment que la version anglaise du Code de procédure civile « n'est pas l'œuvre du législateur, mais plutôt le fruit de l'interprétation qu'en ont fait les traducteurs de l'Assemblée nationale ».

Autre exemple qui prouverait que les versions anglaise et française ne stipulent pas toujours exactement la même chose, et donc n'ont pas la même valeur juridique : l'article 439.1 du Code de la sécurité routière.

Dans sa version française, il prévoit que le cellulaire ne peut être utilisé lorsque le conducteur le tient dans ses mains, alors que la version anglaise a été interprétée de manière plus large par les tribunaux, sans que le conducteur ait nécessairement à avoir l'appareil en main.

La question peut se poser quant à la version qu'un juge privilégiera.

Pour ces motifs, les deux barreaux demandent à la Cour supérieure du Québec de déclarer inconstitutionnels tous les règlements et décrets qui n'ont pas été adoptés selon les exigences de l'article 133 de la Constitution.

Ils souhaitent enfin que la Cour détermine le délai raisonnable pour que le « Parlement du Québec adopte, imprime et publie toutes les lois du Québec ».

S'ils n'ont pas gain de cause, les demandeurs réclament qu'à tout le moins, le Code de procédure civile du Québec soit déclaré « inconstitutionnel, inopérant, nul et sans effet ».

Droit-inc a essayé de joindre plusieurs professeurs constitutionnalistes, mais tous ont décliné les demandes d'entrevues, expliquant qu'ils faisaient partie des experts au dossier.

Le Barreau du Québec a de son côté mentionné qu'il ne réagira pas ni ne commentera ce dossier qui est devant les tribunaux.

Quant au bâtonnier de Montréal, il n’avait pas répondu à nos demandes au moment de publier ces lignes.