Despite complaints, government intent on second rollout of new pay system

Kathryn May, the Ottawa Citizen, April 17 2016

The federal government is going ahead with the second rollout of its new automated pay system to 67 more departments next week despite pleas from the employees at the New Brunswick pay centre to delay it.

Public Services and Procurement, which is leading the massive transformation, says the project can't be delayed.

On Thursday, the new Phoenix system will add 170,000 files to a congested and overloaded system that has left untold numbers of public servants unpaid, paid too much or paid too little.

One of the worst examples involves the Canadian Coast Guard, where many employees have complicated scheduling and pay rules around work at sea and in port. Several ships' crew members have returned home after weeks at sea and found they weren't paid and, as a result, utility cheques have bounced and their services have been cut off.

The union that represents the coast guard's marine communication and traffic services officers says all 300 have faced some kind of pay problem since their files were transferred to Miramichi, N.B., last year.

"There are a million stories with a million excuses. It's a horrible situation," said Unifor local president Allan Hughes. "Management is frustrated. They are overwhelmed with pay issues across the country and they have other things to do than track down pay for someone."

The coast guard's regional pay offices closed when employee pay files were moved to Miramichi but people working at sea don't have access to Phoenix so the government had to hire people to input their pay data.

Postmedia spoke to or exchanged emails with public servants waiting for pay, and the problems aren't limited to those working in operational jobs in the regions.

An Ottawa bureaucrat, who didn't want his name published, has been caught twice in pay delays. Last summer, his term contract was renewed and he went 10 weeks without pay. With a young family and a new home, he took out a loan to tide him over.

Today, he hasn't been paid for four weeks and "counting." He is back at work from a five-week parental leave he asked for months ago that has yet to be formally processed. He is surrounded by colleagues facing similar fates because they went on leave, got a promotion or a contract renewed, including one who "hasn't been paid a thing, nothing" since January.

It's unclear how many people are not getting paid, as opposed to those who are getting paid but not all they are owed.

To complicate matters, the government and unions are completely at odds over the extent, scope and even the nature of the problems.

The department says everything is in hand. Phoenix is working and proceeding as expected for such a massive and complex project. Unions say the pay centre is swamped, Phoenix isn't working and employees are so stressed they won't be able to cope when thousands of new files are dumped on them.

"There is always risk when implementing a big system but we really believe Phoenix is the solution," said Brigitte Fortin, assistant deputy minister of accounting, banking and compensation at Public Services and Procurement.

"It brings automation, reduces pressure on the centre in Miramichi and operates as planned and (operates) well."

Chris Aylward, vice-president of the Public Service Alliance of Canada. vehemently disagrees.

"They are full of s—," said Aylward. "They have put so much pressure on the pay centre and Phoenix doesn't work, plain and simple. Not only that, employees are told to say the problems are not because of problems with Phoenix."

The PSAC is in the firing line of angry employees not getting paid and the 550 compensation advisers. Aylward met with them in Miramichi on Friday and got an earful. They claimed the centre now has a backlog of 115,000 cases yet to assigned.

Aylward said employees say there are 15,000 files sitting in the queue for people retiring and leaving the public service who can't get their severance or pensions until they are processed. He said an employee typically processes three or four such "separations" a day, but they have been ordered to do 25 a day because "Ottawa is watching."

Aylward says he can't understand why management has such a tin ear. He is asking Public Services executives to come to Miramichi to meet first hand with employees.

"It is totally frustrating. … It is like executives in Public Services have no clue about the total impact this is having on employees," he said.

"People don't know what to do. They open a file, don't know what to do, so leave it and open another file and if Phoenix can process it, that's great, but if not, it is left behind.

"And I can tell you they all say it will get worse this week."

Donna Lackie, president of PSAC's Government Services Union, said it is difficult to lay blame when "there is a whole bunch of shared responsibility here," but she believes slowing the pace would help.

"The transfer of files will be like increasing a conveyor belt so it keeps going faster and faster," she said.

"We have asked for more respect for the human factor. … I support the initiative but pump the brakes, slow it down. Don't over-commit and under-deliver."

Anecdotally, it seems the new system works for anyone who gets a regular paycheque with no deviations.

"The pay system works just fine for anyone who works Monday to Friday from 8 to 4, but anything outside that standard, whether it's overtime or shift work, then they have problems," said Unifor's Hughes.

The glitches begin with changes, adjustments or supplementary payments such as overtime, acting pay, increments or maternity leave. There have been problems with casual and term contracts, new hires and terminations, which require someone to activate the transactions.

Fortin said the government has found no "major systemic problems" for the three paydays since the first rollout. It claims to have received 300 complaints on 625,000 transactions, which were dealt with as priorities.

Rather, they say, any glitches are largely the result of a huge learning curve for such a large and complex system that will be worked out as people master it. In some cases, the problem is employees and departments not providing timely information for the centre.

Fortin said the priority is to get rid of the backlog at the pay centre. She said the centre deals with 50,000 to 60,000 "open cases" of pay requests on any given day. That's four weeks of

work, the “normal” volume for the centre to meet the department’s service standard of processing requests within 21 to 45 days depending on type.

Fortin said the department has added another 40 trained compensation advisers to the centre and an additional 50 temporary employees to deal with the avalanche of calls and complaints, and allow compensation advisers to catch up on files.

One compensation adviser said the pay centre gets thousands of calls a day, leaving it so far beyond capacity that calls are dropped and go unanswered.

Aylward said Miramichi employees scoffed at the utility of putting extra staff on the phones when “all they can do is take a message and say someone will call back when, in fact, no one will call back.”

At the same time, the department says it has fixed the glitches around overtime and other extra duty pay, such as promotions and acting pay. Requests will now be done automatically rather than needing someone at the pay centre to activate them. Fortin said the department is making more “automation” improvements in June.

It is also forestalling problems by sending departments lists of all payments processed by Phoenix before payday so any errors can be caught and fixed.

Miramichi will only get about 50,000 of the 170,000 files going to Phoenix this week, with the rest handled by in-house compensation advisers in the departments.

The government no longer has a backup, having decommissioned the old system since the April rollout.

Phoenix is the last of the two-stage “pay transformation” that the previous Conservative government initiated in 2009 when it decided to put the pay centre in Miramichi as a tradeoff for jobs lost when it closed the long-gun registry.

The pay transformation plan was divided into two major projects. The first consolidated all pay services for 46 departments in Miramichi and transferred the 184,000 pay accounts by December 2015.

Then came the Phoenix installation and the transfer of 101 departments in two waves. Phoenix went live in late February with the first round of 34 departments.

The project was plagued with problems from the start, largely because few of the 1,700 experienced compensation advisers working in departments moved to Miramichi. The government has the biggest and most convoluted pay system in Canada, with some 80,000 rules that take advisers years to master.

By all accounts, Phoenix aggravated delays and backlog at the pay centre where newly trained advisers were already swamped by the thousands of transferred files.

Debi Daviau, president of the Professional Association of the Public Service of Canada, said pay has become a No. 1 concern of the union's 60,000 members because "if you aren't getting paid and can't pay your mortgage, what else matters?

"They should have made sure this was working like it should before implementing it. I have people who can't pay their mortgages. People don't keep two months of back pay in the bank anymore. If your pay is late, you can't make ends meet. That's serious.

"Let's face it, pay is a fundamental term and condition of employment, protected under collective agreement so they are obliged to pay employees in a timely fashion."

Daviau said the PIPSC will contact deputy ministers to issue priority payments to their employees who are waiting for paycheques.

Some question how the system will be able to handle the deluge of summer students the government is hiring now. Parks Canada, for example, hires hundreds of employees for the summer and is among departments going live on Phoenix this week.

Fortin said changes have been made to speed up pay for summer students. They will be entered directly into Phoenix, reducing the paperwork and people involved in processing "so pay should kick in immediately." A dedicated team has also been set up at Miramichi to process student hires.

Public servants have been complaining about late and botched pay for years. That's a key reason the government updated its creaky 40-year-old pay system.

Last year, for example, 9,240 public servants were asked to repay $14.3 million they received in overpayments, according to documents released under access-to-information legislation.

The pay modernization project is one of the few large technology projects green-lighted during years of restraint. The auditor general warned for years that the government was headed for trouble if it didn't modernize aging technology.

Daviau said the PIPSC supports the project but it met the same problems that have bedevilled Shared Services Canada — poor planning, being under-resourced and a focus on saving money rather delivering good service.

“The service focus of government has deteriorated so badly in the past few years that we hope this government will invest in service delivery and realize employees need to receive timely pay, especially if you are talking about respecting employees,” she said.

Système de paye Phénix: le fédéral «joue à l'autruche», dit l'AFPC

Paul Gaboury, Le Droit, le 14 avril 2016

L'Alliance de la fonction publique du Canada (AFPC) accuse le gouvernement fédéral «de jouer à l'autruche» au sujet des problèmes liés au nouveau système de paye de ses employés.

«Les représentants de Services publics et Approvisionnement Canada (SPA) ont accepté d'examiner les problèmes soulevés par l'AFPC. Ils se sont engagés à remédier au manque de personnel, mais n'ont pas voulu admettre que le nouveau système Phénix présente des problèmes. Si le gouvernement est d'avis que le système Phénix fonctionne très bien, l'information obtenue de nos membres qui travaillent au centre de paye et dans d'autres ministères montre plutôt le contraire», a indiqué l'AFPC dans un message destiné à ses membres.

Selon le syndicat, la situation ne semble pas vouloir s'améliorer, bien au contraire alors que «bon nombre d'employés (au centre de Miramichi) sont en congé de maladie ou cherchent activement un autre emploi». L'AFPC déplore que les erreurs de paye entraînent des situations fâcheuses, incluant des chèques sans provision et des retards de paiement de factures.

Le syndicat demande toujours de reporter à plus tard le transfert de 170 000 comptes de paye d'employés de 67 ministères au nouveau système Phénix, prévu le 21 avril, une demande jusqu'ici refusée par les gestionnaires de SPA.

Lundi, les gestionnaires de Phénix avaient indiqué en entrevue au *Droit* que le projet était un succès et qu'il n'était pas question de reporter la mise en oeuvre de la phase 2 du projet.

New parental leave rules may mean dedicated time off for dad

'If you have children under 2, it's a real challenge for those families,' labour minister says

The Canadian Press, CBC News, April 17 2016

The federal government is signalling that when it finally unveils changes to parental leave rules, there will be provisions dedicated exclusively to new fathers.

When Prime Minister Justin Trudeau mused about the idea last month at the United Nations, it was in the context of more gender equality and increasing opportunities for women in the workforce.

- **Trudeau tells N.Y. crowd to 'ask any woman' about what work remains on gender equality**
- **18 months of parental leave: Would it work?**
- **San Francisco approves fully paid parental leave**

In an interview this week, Labour Minister MaryAnn Mihychuk said she's interested in making dedicated paternity leave a part of promised changes to parental leave under the Employment Insurance program.

Dedicated leave for biological fathers is already in place in Quebec, where biological fathers are allowed to take five weeks of leave with the provincial benefits system covering 70 per cent of their salary. That's on top of the 18 weeks of leave available to new biological mothers and the 32 weeks of joint parental leave that can be shared between new parents.

Elsewhere in Canada, new parents can split up to 35 weeks of leave between them, on top of the up to 15 weeks biological moms can take on their own.

Mihychuk said she's keen to see dedicated leave for fathers allowed on a national scale.

"I'm open to promoting some fairly large changes in that whole sector because families have a tough time — especially when you have preschoolers," she said in an interview with The Canadian Press this week.

"And if you have children under two, it's a real challenge for those families, so I think we want to modernize the system."

The Liberals promised during the election to extend parental benefits under the employment insurance system to 18 months from 12.

The new system wouldn't have a similar increase in benefits, but would instead allow parents to spread one year's worth of payments over a year and a half.

Critics of the plan say such a system would only benefit those women and families who have enough resources to cover expenses during a year where one or both parents have reduced income.

As well, research suggests that the more time women take on maternity leave, the less likely they are to return to full-time work.

The federal budget unveiled last month widened employment insurance eligibility and increased benefits, but didn't make any changes to parental or compassionate care leave for Canadians caring for a seriously ill family member.

Instead, the budget said changes to each program "will be advanced over the course of the government's mandate."

That disappointed some parents, including the group Toronto Mommies, which started an online petition with more than 37,000 signatures demanding the government fulfil its election promise.

Mihychuk said the government is going to consult with Canadians in the coming months about changes.

"We're going to look at the overall program on maternity and family leave or parental, and compassionate (care), we're going to make it more flexible, but maybe we need to look at it even bigger," she said.

"This is like Phase 2 of the EI reforms."

Un congé de paternité pourrait voir le jour au fédéral

Jordan Press, Le Devoir, le 18 avril 2016

Le gouvernement fédéral laisse entendre que ses nouvelles mesures sur les congés parentaux comprendront une partie réservée exclusivement aux pères.

Le premier ministre Justin Trudeau avait jonglé avec l'idée d'un congé de paternité le mois dernier, aux Nations unies, alors qu'il discutait d'égalité entre les sexes et de la place des femmes sur le marché du travail.

En entrevue cette semaine, la ministre du Travail, MaryAnn Mihychuk, a affirmé qu'elle s'intéressait au congé de paternité dans le cadre de sa réforme des congés parentaux, inclus dans le programme fédéral d'assurance-emploi.

Des congés de paternité sont déjà en vigueur au Québec, où les pères peuvent prendre cinq semaines de congé avec les prestations du gouvernement provincial, qui verse 70 % de leur salaire. Ailleurs au Canada, les pères peuvent partager avec les mères jusqu'à 35 semaines de congé.

Réservé au père

La ministre Mihychuk voit d'un bon oeil l'adoption d'un congé exclusivement réservé aux pères à l'échelle fédérale. Mme Mihychuk a expliqué qu'elle était ouverte à modifier profondément le système des congés parentaux parce que plusieurs familles ont du mal à se débrouiller actuellement — surtout ceux avec des enfants en d'âge préscolaire. *« Nous voulons moderniser le système »*, a-t-elle résumé.

Lors de la dernière campagne électorale, les libéraux avaient promis de prolonger la période des prestations parentales de 12 à 18 mois. Les prestations ne seraient pas majorées, mais ces changements permettraient aux parents d'étaler les paiements d'un an sur un an et demi.

Le plan des libéraux a été critiqué par certains, puisqu'il avantagerait seulement les femmes et les familles qui peuvent se permettre d'allonger leur congé pendant une période où la mère ou la famille reçoit un salaire moindre. De plus, selon certaines études, les femmes qui prennent

des congés de maternité plus longs sont moins susceptibles de retourner au travail à temps plein.

Le budget fédéral présenté le mois dernier a élargi l'admissibilité aux prestations d'assurance-emploi et a augmenté les bénéfices, mais aucun changement n'a été apporté au congé parental ou au congé de compassion pour les personnes qui prennent soin d'un proche gravement malade. *« Des progrès à l'égard de ces objectifs seront réalisés au cours du mandat du gouvernement »*, peut-on lire dans l'énoncé budgétaire.

Mme Mihychuk a indiqué que le gouvernement allait consulter les Canadiens dans les prochains mois sur le sujet. *« Nous examinerons le programme en général sur les congés de maternité, de famille ou parental et celui de soignant, nous allons le rendre plus flexible, mais peut-être que nous aurons besoin de regarder la question plus globalement »*, a-t-elle soutenu.

PSAC seeks nine-per-cent wage hike over three-year contract

Kathryn May, The Ottawa Citizen, April 15 2016

The largest federal union is seeking a nine-per-cent raise for public servants over three years as part of the first wage proposal tabled since the current marathon round of bargaining began two years ago.

The Public Service Alliance of Canada's five bargaining teams tabled the same three-per-cent-a-year wage hike during its latest bargaining session with Treasury Board negotiators this week.

PSAC president Robyn Benson said the union tabled the proposal as a bid to move bargaining forward after two years of making little progress.

"We have given the Liberals ample time to reach a fair agreement with federal government workers that will strengthen the public service," said Benson. "We expect the government to respond with proposals that are a real change from the previous government's agenda."

The contentious round of contract talks has dragged on over the hot-button issue of sick leave. The Liberals, like the Conservatives before them, want to replace the existing banked sick leave regime with a new short-term disability plan. That proposal is a non-starter with PSAC and other unions, which have signed a solidarity pact vowing not to make concessions on sick leave.

Until now, wages have barely been discussed. Wage increases and the length of a contract are typically the last issues sorted out before reaching a deal. It's unclear whether PSAC negotiators are heading into the final stretch or whether the union is simply trying to change the channel off sick leave.

The PSAC proposal comes as there has been speculation that the Liberal government would like a longer-term contract – up to five years — that would ensure labour peace through its mandate. Public service compensation costs $45 billion a year and the Liberals have warned unions of the need for restraint.

The previous Conservative government opened talks with a proposed a 0.5-per-cent increase a year for three years, and that offer remains. The Liberals took over bargaining in January with a promised new mandate but the government side has not tabled its opening wage position.

Some argue the PSAC opening proposal is low considering inflation and the effective wage decrease public servants faced with the Tories' reforms to pensions and benefits that shifted more of the cost to them. Public servants now have to pay half of their pension premiums.

The previous government's opening offer of 0.5 per cent a year is four times less than the wage hike that went to MPs and Senators on April 1. MPs got a 1.8-per-cent raise for this year and a 2.3-per-cent boost last year. Senators received 2.1 per cent this year

Federal legislation automatically gives MPs an annual pay hike on April 1 that's equal to the average percentage increase negotiated by unions with 500 or more employees in the private sector. The data is published by Employment and Social Development Canada.

The 6,500 executives in the public service were given a 0.5-per-cent increase for last year and 0.5 per cent this year.

The Professional Institute of the Public Service of Canada, the second-largest union, has yet to table its monetary demands. PIPSC president Debi Daviau said the union has so far focused on its priorities of contracting out and scientific integrity. She said, however, that PIPSC is "getting close" to presenting proposed wage increases.

Benson has been the most outspoken union leader about the Liberals' decision to propose the same controversial sick-leave plan as the previous Conservative government. She has called it a "missed opportunity" that could lead to labour unrest.

Many of the 17 unions were surprised that the Liberal government, elected on promises to restore respect for the public service and fair bargaining, went to the bargaining table the same Tory proposal — with some modest improvements — for a short-term disability plan that the unions solidly rejected for more than a year.

The PSAC has said from the start that it will not give up the existing sick-leave regime but it is willing to negotiate fixes that would improve it.

The PSAC has tabled many demands for its various groups, including some that affect all employees. Its latest communiqué to members said it had three objectives in this round: restore public services, healthier workplaces and fair wages that keep up with inflation and the job market.

Federally appointed courts grow restive as Ottawa slow to fill vacancies

Sean Fine, The Globe and Mail, April 11 2016

The chief justice of Alberta's top trial court says his province's courts are in desperate shape, as the Liberal government has yet to name a single judge to a federally appointed court anywhere in Canada since taking office.

"The word I use is desperation. We're desperate. I don't know how else to couch it," Chief Justice Neil Wittmann of the Court of Queen's Bench told The Globe and Mail.

Just more than a dozen jobs on federally appointed courts were open when the federal election was called last summer. There are now 38 vacancies across Canada. Of those, 10 are in Alberta – four on its appeal court, out of only 14 judges, and six on the Court of Queen's Bench.

It's not only Alberta judges who are growing restive. The Canadian Judicial Council, made up of chief and associate chief justices across the country, expressed its concerns to Justice Minister Jody Wilson-Raybould recently.

Ms. Wilson-Raybould would not commit to a starting date for appointments when she spoke to the judicial council, said an Alberta lawyer with knowledge of the meeting. "The government is

considering the full scope of the appointments process, including the composition and operations of the Judicial Advisory Committees," a spokeswoman for the minister said in an e-mail to The Globe.

"Any potential changes will be examined in light of the government's objectives to achieve transparency, accountability and diversity in the appointments process and they will be carefully considering how best to achieve this goal, taking into account views of key stakeholders and interested Canadians in this regard."

The appointments process is not up and running yet. And Ms. Wilson-Raybould has made little progress toward putting a new process in place – having not even begun consultations with the legal community and leaving a critical position unfilled.

At the system's foundation are 17 judicial advisory committees – eight-member groups that screen candidates for federally appointed courts such as provincial appeal and superior courts, the Federal Court and the Tax Court. Several of these committees have no members at all – two of Ontario's three committees, both of Quebec's, plus all four committees in Atlantic Canada.

The Alberta committee, however, has all eight of its members, and met as recently as mid-March to recommend candidates for the bench, Chief Justice Wittmann said.

"Nobody is against reform if it betters the system," he said, "but you can't change locomotives and stop the train; the train's got to keep running while you're doing it."

Criminal and civil trials that need more than five days are being scheduled for "well into 2017," Chief Justice Wittmann said. "If the public through their elected representatives say that's fine, well, I guess it's fine. But there seems to be an expectation that it's not fine."

For the court's judges, "it increases their stress and their sense of helplessness, because they can't handle everything they're asked to do. The public thinks they're not getting the access they've come to expect. We cannot sacrifice quality to increase the quantity of cases that we process. It just can't work that way."

Ms. Wilson-Raybould has yet to discuss the system's pressing questions with the legal community: what to do about the changes to the process that the former Conservative government put in place, whether to commit to gender parity in judicial appointments, and whether to begin tracking the numbers of visible minority and aboriginal applicants.

She has not filled an essential job, known as judicial affairs adviser – which every government of all stripes has used to screen candidates for federally appointed courts. Without a judicial affairs adviser, it is doubtful any judges could be appointed.

Chief Justice Wittmann said the minister "indicated that she understands the problem. She talked about getting a judicial affairs adviser imminently. But she also talked about a greater degree of diversity."

He questioned whether the search for diversity will hold up appointments: "Everybody can support [diversity] on an ideal level, but if, for example, persons from some diverse area aren't going to law school and getting law degrees, are we supposed to wait until that happens and hold the vacancies open? That doesn't make sense to me, but I'm in my little position, I'm not in a big position."

Previous governments were not so slow off the mark. Former prime minister Stephen Harper took office in February, 2006, and the justice minister, Vic Toews, made his first appointments in June, or roughly the time that has now elapsed since the Liberals were elected last October. (Under Mr. Harper, vacancies hovered at times around 50, drawing the ire of judges and the legal community.) Jean Chrétien was first elected in November, 1993, and Allan Rock, the justice minister, made his first appointments in January, 1994.

Few legal observers believe Prime Minister Justin Trudeau will stick with the process on which the Harper government put its imprint. That government added a police representative to each committee. It then ensured that the federal government's four members on each committee would have a voting majority by removing the vote from the committee chair (a chief judge of the provincial court, or that judge's delegate). That drew a rare public rebuke from the country's chief justices, who said the system lacked an appearance of independence. And the Canadian Bar Association, representing lawyers, complained it had not been consulted on the changes.

The Harper government also removed a category known as "highly recommended." The advisory committees could only recommend, or not. Critics said the change made it easier for government to put political considerations ahead of merit.

But if the Liberal government intends to change the system, it has not yet consulted with the Canadian Bar Association, said its president, Janet Fuhrer.

Another key job, that of chief of staff to the minister, has not been filled. The initial chief of staff, Kirsten Mercer, did not last long in the job. It is being filled on an interim basis by Cyrus Reporter, a senior aide in the Prime Minister's Office, who is doing double duty.

Treasury Board strategic IT modernization report finished, June implementation planned

Meanwhile Shared Services Canada's email migration delayed further, department has Tentative Start Dates With All But One Department.
Rachel Aiello, The Hill Times, April 11 2016

About five years into Shared Services Canada's amalgamation of government IT, the Treasury Board has completed an "IT Strategic Plan."

According to department spokesperson Michael Gosselin, the plan "puts forward principles and supporting activities to ensure that it delivers IT services that are secure, reliable, agile and valued. This will enhance service delivery and increase workforce productivity."

It is organized around four themes: IT service delivery, IT management, IT security, and workforce development and support.

Now, the report is in the hands of Treasury Board President Scott Brison (Kings-Hants, N.S.) to approve it. Once that's done it will be made publicly available. The department is aiming to have it ready to implement by June.

Not having a plan in place at the beginning of the transition was one of the key criticisms Auditor General Michael Ferguson leveled against Shared Services Canada and the Treasury Board in his Fall 2015 report, Chapter 4, dealing with Information Technology Shared Services.

It was also raised by MPs on the House Public Accounts Committee when they had a chance to ask SSC executives and Treasury Board chief information officer John Messina when they appeared before the committee on March 10.

"Was there not a strategic plan before Shared Services Canada was established?" asked Liberal MP Chandra Arya (Nepean, Ont.), who also questioned how many billions of dollars were spent without a plan.

To this, Mr. Messina replied: “There was no official version of the strategic plan in place. There was a draft version that had been circulated and it was around in 2013 but the strategic plan was not in place.”

At this meeting, Mr. Messina said his department would be completing an overall government IT plan by the end of March, which has happened.

Tuesday morning the House Public Accounts Committee is meeting in-camera to complete their report on Chapter 4, Information Technology Shared Services of the AG’s report.
Shared Services Canada will also be updating their transformation plan in fall 2016. Right now they are consulting chief information officers across departments and are having a conversation about the scope, pace, and cost going forward.

The committee has voiced support for having representatives from both Shared Services Canada and Treasury Board back before the committee to discuss their plans going forward in the coming months.

Shared Services Canada’s email migration delayed again

Migration of government email systems by Shared Services Canada have been delayed once again as the department continues to “resolve outstanding issues,” after it had planned to resume migrations last week.

The department says it is working on it with Bell Canada and CGI Information Systems, the vendor that was given the $398-million seven-year contract to complete the migration back in 2013.

According to a source familiar with the email transformation initiative, staff was notified at the end of March that email migrations were scheduled to resume in April.

The email migration to the new your.email@canada.gc.ca format was put on hold back in November 2015 after “hardware component issues.”

Last week, Agriculture and Agri-Food was set to migrate, according to the source, but that was cancelled indefinitely, along with the Immigration and Refugee Board of Canada and the Canadian Food Inspection Agency, which were also scheduled to start this month.

The Hill Times has been told that once Bell and CGI had assured Shared Services Canada that the issues had been resolved and were able to sustain the new email system, migrations would be reestablished.

"A new migration schedule is being developed in collaboration with partners and the vendor. The new schedule will be made available to partners once it has been finalized," department spokesperson Stephanie Richardson told *The Hill Times* last week.

So far, 12 departments have migrated to the new system, but within those departments problems with the email functioning have been reported.

According to Ms. Richardson, tentative start dates have been negotiated with all departments, except for one "which will require additional discussions due to the complexities of its environment."

According to a transition schedule from February 2016 obtained by *The Hill Times* there were five departments listed without start dates including the Department of National Defence. A handful of other departments or agencies were not listed at all, including the Privy Council Office, Treasury Board, and the Department of Foreign Affairs. Final completion dates have not been determined.

All three of the department's main initiatives: consolidating government-wide email systems; merging 485 data centres that house large computing systems and government servers into seven or fewer enterprise data centres; and streamlining government networks are all behind schedule.

Public Services and Procurement Minister Judy Foote (Bonavista-Burin-Trinity, Nfld.) who oversees the department has said the government is committed to delivering on the program.

Announced in the Tuesday, March 22 budget, under the banner of "investing in government information technology" the federal government is giving Shared Services Canada an additional $383.8-million over the next two fiscal years towards the IT consolidation initiatives.

The department says this injection of cash will pay for replacing "mission critical" legacy hardware and software and renewing maintenance contracts for critical network, data storage units, servers and security devices.

The $383.8-million is being provided on a cash basis over 2016-17 and 2017-18.

Egan: The PS, its giant grievance machine and a five-year fight over $80

Kelly Egan, Ottawa Citizen, April 12 2016

The federal public service does not have a grievance procedure. It has a grievance industry, if not a grievance culture.

How else to view the way minor workplace complaints are handled in a union-locked, rule-bound environment?

It is not an exaggeration to say there are floors full of well-paid people, and rosters of accomplished lawyers, and panels of smart adjudicators, who are spending their working hours examining the ridiculous and parsing the frivolous. Honestly, it seems beneath them, and us.

The story in Monday's paper about Cecilia Close is a reminder that Ottawa is a capital city that contains a pretty canal and a separate planet with different air.

The Nova Scotia public servant was snowed in on Feb. 9, 2011, and — because she had to clear her own driveway, as hubby was laid up — got to work three hours late. A dispute arose about whether the contract permits her to be paid for those hours under special "leave" provisions.

So, sound simple enough?

Please keep this fact in mind as we wind up the orchestra: Close, a service delivery agent for Citizenship and Immigration Canada, is classified as a CR-05, earning roughly $50,000 a year. The three hours of disputed pay is about $80.

How far should we go over 80 bucks?

There was a two-day hearing in Sydney. (To be fair, a second case on the same theme was lumped in.)

There was the presence of two lawyers, apparently based in Ottawa. Unless they walked, presumably there were travel and hotel expenses. There was the time and skill of Kate Rogers, the lawyer and adjudicator, who probably does not live in Sydney either.

There was testimony from Close, her husband and one of her several bosses. There were exhibits that showed snowfall and evidence about the length of the driveway and the condition of Mr. Close's back, her unfamiliarity with the snowblower and questions about the availability of taxis or ride-sharing.

We did not hear what she had for breakfast, which seems a gross oversight. We did hear that she made up the three hours by working later in the days that followed, which seems like a sensible resolution.

But it did not end there. It was resolved on March 2, 2016, more than five years later, when her employer was ordered to pay her the 80 bucks. Five years?

You know, I belong to a union, so I know that defending a contract clause matters and certain principles are worth fighting for, though the costs sometimes seem disproportionate.

But here's another, bigger principle: piss not away the public's money. Honestly, does anyone out there think this is prudent use of public dollars and resources?

I tried this week to get a handle on how and how often the public service "complains" about things at work and pretty much gave up. There are only so many circles of hell any person can walk through.

In any case, the final, full-bore airing seems to take place at the Public Service Labour Relations and Employment Board, which heard the Close case.

(It has a "procedural guide" on its website to help those with "staffing complaints." The guide is 47 pages long.)

Incidentally, the board also heard the case of the RCMP's pot-smoking civilian employee reported in Tuesday's paper. He was fired after a police officer's house party went a little gonzo with booze and reefer in July 2012, a day when Dudley Didn't Do-Right.

By the time the grievance made its way through "the system," almost four years had passed and buddy was working somewhere else. So compensation was ordered instead. That took four years?

And you may recall the case about Mr. X, another doozy from the board earlier this year. He was the public servant accused of being loud, barefoot, profane and flatulent by a co-worker, distractions so severe they sparked in her a mental health crisis.

It took years to resolve, but the government was eventually ordered to accommodate the besieged worker by putting her in a different building. Go ahead. Have a quiet cry.

According to its website, the board rendered 93 decisions in 2015. It has 12 members, about 90 employees and an annual budget of about $17 million. I'm not sure how many complaints they mediate or adjudicate every year because I couldn't find a live human being to answer the phone there this week or answer an email.

I would complain about this but, you know, it's terrifying what might happen.

Le projet de loi sur la traite des personnes pourrait être réécrit

Fannie Olivier, Le Devoir, le 13 avril 2016

Le gouvernement libéral confirme qu'il évalue la possibilité de réécrire le projet de loi sur la traite et l'exploitation des personnes, qui avait pourtant eu l'aval des Communes et du Sénat.

En février dernier, des mères de jeunes fugueuses du Centre jeunesse de Laval sous l'emprise de proxénètes avaient envoyé une lettre au premier ministre Justin Trudeau pour lui enjoindre de promulguer le projet de loi de l'ex-députée Maria Mourani. Ne manquait que le décret du Conseil des ministres, avec l'aval de M. Trudeau, pour que C-452 ait force de loi.

« La situation actuelle ne peut être tolérée. Ce sont de véritables prédateurs qui s'attaquent [à] *des jeunes filles vulnérables »*, pouvait-on lire dans cette lettre signée par cinq parents.

Deux mois après ce cri du coeur, le décret n'a toujours pas été signé.

Or, il se pourrait bien que la législation ne voit jamais le jour, du moins sous cette mouture, puisque le gouvernement étudie actuellement la possibilité de réécrire la loi.

« Nous examinons les options », a indiqué mardi Joanne Ghiz, du bureau de la ministre de la Justice, Jody Wilson-Raybould.

Interrogée à ce sujet à la sortie d'une rencontre du cabinet, Mme Wilson-Raybould a répété qu'elle travaillait sur le dossier, sans toutefois préciser si elle planchait actuellement sur l'élaboration d'une toute nouvelle version.

« Nous travaillons là-dessus. Nous reconnaissons la réalité de l'exploitation des personnes, il s'agit d'un sujet incroyablement important. Nous continuons à collaborer avec nos homologues au Québec et à travers le pays, et nous allons y revenir », a signalé la ministre.

Le projet de loi C-452 renverse le fardeau de la preuve vers l'exploiteur et permet que puissent être confisqués les biens issus de la criminalité de celui qui est reconnu coupable d'exploitation et traite de personnes. Il permet également les peines consécutives, donc des sentences potentiellement plus lourdes.

Voté à l'unanimité

Les libéraux disent craindre que le projet de loi contrevienne à la Charte canadienne des droits et libertés.

Mais pour l'auteure du projet de loi, l'ex-députée Maria Mourani, cet argument ne tient pas la route.

« C'est incompréhensible, parce que c'est un projet de loi qui a passé toutes les étapes du Parlement et du Sénat, qui a été analysé et réanalysé par différents experts, qui a été voté à l'unanimité, dont par M. Trudeau lui-même », a-t-elle rappelé en entrevue.

Selon celle qui a été députée bloquiste de 2006 à 2013, puis indépendante, avant d'être candidate néodémocrate défaite en 2015, le gouvernement agit par esprit partisan. *« Si j'étais libérale, je peux vous dire qu'ils auraient signé le décret depuis longtemps »*, a-t-elle affirmé.

À ses yeux, le temps presse, parce que des jeunes filles se font recruter par des gangs de rue *« chaque jour »* et que la législation proposée permettrait d'endiguer le problème.

D'autant que cela fait longtemps qu'elle est dans les cartons. Le projet de loi s'est d'abord éteint au feuilleton en 2011, pour être finalement adopté aux Communes en 2013, puis au Sénat en 2015.

Il a reçu la sanction royale le 18 juin 2015 et n'attend donc plus qu'un décret, une affaire de *« quelques minutes »* seulement, selon Mme Mourani. *« Des gens souffrent pendant qu'on tergiverse »*, a-t-elle plaidé.

Doctor-assisted dying bill a 'minimalist response' to Supreme Court ruling, designed to pass: Ogilvie

Sen. Kelvin Kenneth Ogilvie, co-chair of the special Joint House and Senate Committee on Physician-Assisted Dying, is disappointed the government's right-to-die bill didn't go further, saying it was designed to pass with the least controversy.
Rachel Aiello, The Hill Times, April 18 2016

The new medical-assistance-in-dying bill introduced by the government last week is a "minimalist response," designed to pass with reduced objection, says Conservative Sen. Kelvin Kenneth Ogilvie, co-chair of the special Joint House and Senate Committee on Physician-Assisted Dying.

He told *The Hill Times* the law, as it's been introduced, will be challenged in the courts, and he is disappointed the government didn't take more of the committee's recommendations.

"Frankly I think the legislation is a minimalist response to the Supreme Court decision and, therefore, a number of the individual personal objects to the legislation should probably not be there," Mr. Ogilvie said.

His committee spent a month studying the issue and tabled a report in February that included 21 recommendations that went further in many regards than the bill does.

On Thursday, Justice Minister Jody Wilson Raybould (Vancouver Granville, B.C.) tabled the government's legislative response to the February 2015 unanimous Supreme Court ruling in Carter vs. Canada that banning physician-assisted dying is unconstitutional.

The bill—Bill C-14, An Act to amend the Criminal Code and to make related amendments to other Acts (medical assistance in dying)—if passed would allow Canadians who have access to publicly funded health care for assistance in dying if they are 18 years of age or older and considered mentally competent. To qualify, the law says these individuals must have an illness, disease, or disability, which they are suffering from intolerably and that a "natural death has become reasonably foreseeable."

The bill provides protections for doctors, nurses, pharmacists, and other independent aids to assist in administering a noxious substance to patients who qualify. The new law as proposed does not provide for patients to give advance directives and excludes those with psychiatric conditions, which the government promises to study further, as it will with allowing mature minors to have access, according to Health Minister Jane Philpott (Markham-Stouffville, Ont.).

"Looking through it, it's apparent the ministers are taking a slightly more cautious approach then the committee had recommended," said Liberal MP and member of the special committee, John Aldag (Cloverdale-Langley City, B.C.).

He said the bill seems to be in line with where Canadians are, but he has already been getting calls in his office from people on both sides saying the bill goes too far or not far enough.

Mr. Aldag said despite not going quite as far as was recommended, he will support the bill and be speaking in favour of it because he thinks it's important to get something in place before the current law expires.

The new law must pass by June 6, which is the deadline for the old law to expire. To meet this deadline, Government House Leader Dominic LeBlanc (Beauséjour, N.B.) said during a press conference that after discussing it with opposition House leaders at their weekly Tuesday meeting, he's considering extending the hours for debate later into the evenings and possibly cutting the length of individual speeches from 20 to 10 minutes to allow everyone that wants to speak to have the chance.

Mr. LeBlanc has also asked the Senate to pre-study the bill that Senators expected, and has other procedural instruments at his disposal, like time allocation, but said he hopes he doesn't need it. According to his office, there has been no consideration of changing the sitting calendar for this bill.

It is going to be a free vote for a majority of the Liberal caucus. Backbench MPs and parliamentary secretaries have been told to vote their conscious, while cabinet ministers will be voting in line with the government. Both the Conservatives and NDP have been given a free votes by their caucus whips.

"We thought the best way to have a conversation around what is the appropriate legislative framework, how does Parliament deal with a difficult and sensitive issue ultimately was to allow members of Parliament who are not ministers to vote freely, and that was a decision that the prime minister took," Mr. LeBlanc said Thursday.

He added that it keeps the conversation around the substance of the bill, but he reminded his caucus that if they decide to defeat this legislation, they need to understand the legal consequences of "having a complete vacuum in terms of a Criminal Code framework around this particularly sensitive issue."

Liberal MP John McKay (Scarborough-Guildwood, Ont.) said he thinks Bill C-14 pulls away from some of the more "aggressive" or "proactive" elements of the issue, and is considering supporting the bill, despite his past opposition.

"I'd like time to reflect on it, to be candid and I'd like time to hear from others. … We have crossed the Rubicon, the Supreme Court has crossed the Rubicon, and they crossed it nine-to-nothing, so that is the law of the land whether I like it or whether I don't, whether it treats life the way I would treat it as opposed to the way its now being treated," Mr. McKay told *The Hill Times.*

Mr. McKay said he's happy that the government evolved its opinion on whether the vote on the bill will be whipped.

"This is unique legislation," Mr. McKay said. "To my mind, this is not a confidence issue. This is not a budget, this is not other core elements of the platform which would require discipline. And so I think MPs should be able to speak and vote as they see fit."

He said letting MPs think for themselves on this bill will help develop a broader consensus.

Mr. McKay raised similar concerns to other Parliamentarians *The Hill Times* spoke with about the timeline. He suggested having the justice minister consider asking the Supreme Court for another extension, given the progress that's been made.

"Parliament, at the best of times, moves quite slowly and you still have to get it through the Senate. … The government has come about as close as can be to getting some points of consensus. … If there's not alternate methods of trying to have the appropriate debate, get it through committee, get it back out of committee, have more debate, vote on it, send it off to the Senate, have them debate it and vote on it and do their committee thing. Even if it's going like Grease lightening around here, that's a pretty formidable task," he said.

The House Justice and Human Rights Committee is expected to study and report on the bill first, chaired by Liberal MP Anthony Housefather (Mount Royal, Que.). Once it's in the Senate it would go to the Senate Legal and Constitutional Affairs Committee, chaired by Conservative Senator from Ontario Bob Runciman. The committees will have extensive background research to draw on that could help speed up their work.

The House debate will begin at second reading for **Bill C-14** on Wednesday.

Tuesday is a Conservative opposition day, and Thursday is a New Democrat opposition day. The motions they House will consider those days have not yet been disclosed.

On Monday, MPs will be debating **Bill C-10**, the bill from Transport Minister Marc Garneau (Notre-Dame-de-Grâce-Westmount, Que.) that clarifies where Air Canada can carry out aircraft maintenance. Last week, NDP MP Alexandre Boulerice (Rosemont-La Petite Patrie, Que.) spoke out against the bill, saying it puts 2,600 jobs in danger, and the members of the International Association of Machinists and Aerospace Workers have started a petition and lobbying campaign to stop the bill.

In addition to government business, last week MPs began debating private members' bills, and that will continue this week with a new bill each day. First up on Monday is Conservative MP Pat Kelly's (Calgary Rocky Ridge, Alta.) Motion **M-43**, Taxpayer Bill of Rights. His motion seeks to have the House Finance Committee undertake a study to prepare a bill to eventually be re-entered in his name, on the Canada Revenue Agency's duty of care to taxpayers, no later than Dec. 15, 2017.

"Drawing that low number. … I had to very quickly react to that and that's why I chose to go with a motion and to structure it the way it is," Mr. Kelly told *The Hill Times* last week.

He said the inspiration behind the motion was drawn from an issue a constituent was having. He's hopeful it'll get support across the aisle because he thinks it's complimentary to the Liberal promise to make the CRA more client friendly.

On Tuesday, the House is scheduled to debate New Democrat MP Brian Masse's (Windsor West, Ont.) **Bill C-221**, Safe and Regulated Sports Betting Act. It's the second time this bill will be going through Parliament. Last session, former MP Joe Comartin introduced it and it passed the House with all-party support, but it was held up in the Senate where it died just short of passing when the session ended.

On Wednesday, Liberal MP Ron McKinnon's (Coquitlam-Port Coquitlam, B.C.) **Bill C-224**, Good Samaritan Drug Overdose Act will be debated. Last week he told *The Hill Times* his bill would save lives by helping to avoid the tragic problem of unnecessary drug overdoses by people who are too scared to call for help.

However, there had been some discussion about possibly deferring his turn to fellow Liberal MP MP Mauril Belanger (Ottawa Vanier, Ont.) to get his bill through, **Bill C-210**, An Act to amend the National Anthem Act (gender), which Mr. McKinnon said he would be "very happy to defer it for him." MPs can switch places on the private members' bill order of precedence at any time.

Liberal MP Peter Fragiskatos (London North Centre, Ont.) is then up with his **Bill C-242**, An Act to amend the Criminal Code (inflicting torture), on Thursday. His bill seeks to make a life sentence an available option in instances of torture carried out by a private individual.

Friday, it's Conservative MP Ben Lobb's (Huron Bruce, Ont.) chance to move an initiative forward. He will begin debate on his bill, **Bill C-232**, An Act to amend the Excise Act 2001 (spirits). He is seeking to change the rates of excise tax paid by distillers and brewers in Canada, depending on how much they produce.

Meanwhile, two Liberal Senator-sponsored bills are approaching entrance into the House after having made their way through the Senate over the last few months. The first is Senator James Cowan's **Bill S-201**, An Act to prohibit and prevent genetic discrimination, which is at third reading; and Senator Céline Hervieux-Payette's **Bill S-208**, National Seal Products Day Act. This bill is currently at the consideration of committee report stage.

Un cadre fédéral strict pour l'aide médicale à mourir

Emmanuelle Latraverse, ICI Radio-Canada, le 13 avril 2016

De plus, les députés libéraux, à l'exception des ministres, pourront voter selon leur conscience.

« Si nous avions suivi les recommandations du comité parlementaire, le Canada serait devenu du jour au lendemain l'un des pays les plus progressistes au monde, indique une source près du dossier, qui a requis l'anonymat. Nous avons préféré aller dans la voie avec laquelle l'ensemble de la société canadienne est à l'aise. »

Une aide médicale pas seulement en « fin de vie »

Dans son jugement de février 2015, la Cour suprême avait tranché que l'interdiction en vertu du Code criminel de l'euthanasie volontaire et du suicide assisté contrevenait au droit à la vie, à la liberté et à la sécurité de la personne en vertu de la Charte des droits et libertés.

En dressant les grandes lignes des circonstances dans lesquelles une telle aide médicale à mourir devait être accordée, le plus haut tribunal avait déjà signifié que celle-ci ne devait pas se limiter aux patients en phase terminale ou en « fin de vie », tel que le stipule la loi québécoise.

La Cour suprême ouvrait la porte à l'aide médicale à mourir à trois conditions :

- un adulte capable d'offrir un consentement éclairé;
- que celui-ci soit atteint de problèmes de santé « graves » et « irrémédiables »;
- que celui-ci éprouve des « souffrances persistantes qui lui sont intolérables au regard de sa condition ».

Selon de telles normes, la Cour avait donc ouvert la porte à ce que l'aide médicale à mourir soit accessible à des adultes légalement compétents qui souffrent par exemple de maladies dégénératives douloureuses, mais qui ne sont pas à l'article de la mort.

C'est là un élément central du régime d'aide médicale à mourir que s'apprête à confirmer le gouvernement fédéral dans son projet de loi. Mais il est clair qu'Ottawa préfère procéder avec prudence, afin d'assurer un plus grand consensus au sein de la société.

Les débats les plus litigieux remis à plus tard

Selon les informations obtenues par Radio-Canada, le gouvernement libéral fait le pari d'attendre et de permettre un débat plus large dans la société avant de permettre la mise en place d'un cadre légal très permissif sur l'aide médicale à mourir, tel que lui avait recommandé le comité parlementaire mixte en février dernier.

C'est ainsi que, selon nos sources, l'option de permettre aux personnes de moins de 18 ans d'obtenir l'aide médicale à mourir serait mise de côté dans le projet de loi qui doit être déposé jeudi, tout comme d'autres éléments proposés qui n'avaient pas réussi à faire consensus.

En février dernier, le rapport déposé par la majorité libérale et l'opposition néo-démocrate proposait également d'ouvrir la porte à ce que l'aide médicale à mourir soit offerte à des gens souffrant de problèmes de santé mentale. Le comité craignait qu'en refusant de leur accorder un tel service, ceux-ci ne soient abandonnés à leurs souffrances et s'enlèvent la vie prématurément. Là encore, Ottawa n'est pas prêt à aller aussi loin.

Le comité avait aussi envisagé de permettre que des patients puissent donner un consentement préalable à l'aide médicale à mourir avant, par exemple, d'être atteints de démence. Mais cette option avait soulevé beaucoup de réticences auprès de certains acteurs de la communauté médicale qui craignaient justement qu'une telle application soit extrêmement complexe et difficile.

D'ailleurs, le Parti conservateur s'était inscrit en faux face aux recommandations du comité mixte, jugeant que de telles avenues ratissaient beaucoup trop large et ne permettraient pas de protéger adéquatement les personnes les plus vulnérables de notre société.

À lire aussi :

- Le rapport fédéral sur l'aide à mourir va au-delà de ce que permet la loi au Québec
- La Cour suprême dit oui à l'aide médicale à mourir

Un vote libre, sauf exception

Radio-Canada a aussi appris que le gouvernement Trudeau permettra un vote libre sur l'aide médicale à mourir, sauf pour les membres du Conseil des ministres.

Le leader du gouvernement à la Chambre des communes, Dominic LeBlanc, avait d'abord indiqué que le vote serait soumis à la ligne de parti, puisqu'il s'agissait d'un enjeu qui touche les droits et libertés fondamentaux des Canadiens. Mais en raison du tollé au sein du caucus, il avait assoupli sa position sans pour autant établir de règle claire.

Avant même le dépôt du projet de loi, la chef par intérim du Parti conservateur a annoncé que ses troupes seraient libres de voter selon leur conscience et auraient une totale liberté de parole dans ce dossier.

Le Parti conservateur s'est par ailleurs inquiété du très court délai pour l'adoption du projet de loi. En effet, la Cour suprême a donné jusqu'au 6 juin au Parlement pour adopter la loi.

Une échéance arrivant dans moins de deux mois pour faire adopter une loi aussi importante, tant aux Communes qu'au Sénat, en inquiète plusieurs.

During First Nation suicide debate Justice Minister says it's time for First Nations to shed Indian Act 'shackles'

Jorge Barrera, APTN National News, April 12 2016

Justice Minster Jody Wilson-Raybould said Tuesday the Trudeau Liberal government aims to "complete the unfinished business of Confederation" and replace the Indian Act with a "reconciliation framework" that would outlast the life of this administration.

Wilson-Raybould didn't lead the government side in an emergency debate held late into the night which was triggered by a suicide crisis gripping the small fly-in community of Attawapiskat in Ontario's James Bay region. Yet, her speech was the only one that revealed the extent of the historical vision the Trudeau government has when it comes to reshaping the relationship between the state and the original inhabitants on this land.

The Liberals aim to do nothing less than scrap the Indian Act. In its place the government wants to create a new relationship based on section 35 of the Constitution, which guarantees Aboriginal rights, and the UN Declaration on the Rights of Indigenous Peoples (UNDRIP), according to Wilson-Raybould.

"We need to ensure we breathe life into section 35 and that we complete the unfinished business of Confederation," said Wilson-Raybould. "If we do so we will have a strong and appropriate governance in First Nation communities wherein they have moved beyond the Indian Act."

For about five-and-a-half hours on Tuesday evening, the House of Commons, the centre of political life in Canada, turned its full attention to the dark and painful suicide epidemic that seems to cycle through northern First Nation communities.

The latest is Attawapiskat which declared a state of emergency Saturday after recording 11 suicide attempts in a 24-hour period.

NDP MP Charlie Angus, whose riding includes Attawapiskat, called for the debate to not only discuss the Cree community, but also similar tragedies that have hit other First Nation communities: Pimicikamak Cree Nation which declared a state of emergency last month after suffering six suicides and 140 attempts in the span of two months and La Loche, Sask., a Dene community that suffered a school shooting that left four dead in January.

Wilson-Rayboud, a former regional chief for the Assembly of First Nations, who is now the country's top lawyer, wove her own life experience and political track record in a speech that

traced the roots of the suicide crisis to the 140-year-old Indian Act. Her speech laid out the thinking behind much of the symbolism and language the Trudeau government has employed whenever it communicates about the relationship between Indigenous peoples and the Canadian state.

"I am proud to be an Indigenous person and stand up in this honourable house and speak to this important issue," she said. "Indigenous peoples in this country are at an important junction in our history as they seek to deconstruct their colonial legacy and rebuild their communities….Only the colonized can decolonize themselves and change is not easy."

Wilson-Raybould then attacked the Indian Act.

"It is not easy to remove the shackles of 140 years of life under the Indian Act. Our government, and I hope all members of this honourable house, is committed to ensuring, in partnership with Indigenous peoples, to do just that," she said. "For Attawapiskat and for all First Nations, the Indian Act is not a suitable system of government, it is not consistent with the rights enshrined in our constitution, the principles as set out in (UNDRIP) or calls to action from the Truth and Reconciliation Commission report. In addition to the need for social and economic support, urgently needed in Attawapiskat and all First Nations, all Indigenous peoples need to be empowered to take back control of their own lives."

Then, Wilson-Raybould described the scale of the project as nothing short of historical in a portion of her speech addressed directly to Indigenous peoples.

"Indigenous peoples, the challenge is not easy, it is complex, indeed for far too long it has been ignored as a task as too difficult and monumental, but we can and must do better. This work is non-partisan, it is broader than the department of Justice and did not just fall to the department of Indigenous and Northern Affairs," she said. "The nation-to-nation relationship is one of the most challenging public policy issues of our time and I challenge all members of this House to work with us in building this relationship. There are no quick fixes to these issues, a substantive nation-to-nation discussion with Indigenous peoples is needed. We need to sit down and work jointly to ensure Indigenous communities are strong and healthy and in charge and in control of their own destiny."

There were about 20 NDP MPs, from a caucus of 44, in the chamber during the debate at various points, and about 50 Liberal MPs from a caucus of 184. The Conservatives had the lowest number attend, with about five scattered throughout their party's 98-seat section in the House of Commons. Their numbers jumped to 11 when their Aboriginal affairs critic Cathy McLeod stood up for her turn in the debate and most sat around her for the benefit of the House of Commons camera.

When the debate began, MPs from all sides said they wanted Tuesday night to be a turning point, the debate to finally end the debates about another crisis crippling another First Nation.

Angus compared the current suicide crisis as Canada's "Alan Kurdi" moment, referring to the image of the body of the three-year-old Syrian refugee child who drowned in September after a failed attempt to reach Europe.

"It shocked the world," said Angus, who triggered the emergency debate. "This is our moment….Tonight might be the beginning of a change in our country and that is what I am asking us to come together to do."

Angus' voice, with emotion seeping in at the edges, read out messages from First Nation youths he recently received, including the words of Abigail Magnus, from Constance Lake First Nation, who said she wanted to bring "light in a dark time."

NDP MP Georgina Jolibois spoke after Angus and said suicide attempts were starting to rise in La Loche, which sits in her riding, as a result of the January shooting. Jolibois said youth were not getting the help they needed. She said many youth were showing signs of post-traumatic stress disorder as a result of the shooting.

"But they have no one to turn to and nowhere to go," she said. "The families are left alone on their own to mend for themselves and take care of their problems…Young people, children and their families when they are feeling the effects of PTSD they need to go to the health centre or the band office or clinic and say I need to speak to someone because I am feeling stressed and overwhelmed. They walk in and there is no one to talk to them."

Health Minister Jane Philpott said during the debate that she believed those supports should still be there in La Loche, but would discuss the issue with Jolibois. She said the Liberal government would this year be investing $300 million in mental health and wellness in Indigenous communities

Philpott began her Commons speech with the data: First Nation male youth suicide rates are 10 times higher than male non-Indigenous youth; First Nation female youth suicide rates are 21 times than their non-Indigenous counterparts; Inuit male youth rates are 35 times higher than their Canadian counterparts.

"It is a staggering reality, it is completely unacceptable," she said. "When I think there are communities in our country where young people as young as my young 15-year-old daughter and even younger than that, when there are young people in groups are decided that there is no hope their future, we must do better…tonight has to be a turning point for us as a country."

Indigenous Affairs Minister Carolyn Bennett, who was praised for her passion by MPs during the debate, became emotional as she recounted her last trip to Attawapiskat when she was an in opposition and the community was in the midst of a housing crisis.

"I was thinking of my trip to Attawapiskat in one of those terrible homes and seeing this 10-month-old baby on the bed and just thinking that that baby can't pay for whatever else is going on around, that baby deserves a chance," said Bennett.

Bennett, who at one point referred to herself as the "minister of reconciliation," said "these communities need hope" and the children need to know "they are valued and have value." Bennett said she was hoping by the end of the debate that all Canadians would lift these communities up.

"Suicide is not a consequence of individual vulnerability," she said. "It is about the causes of the causes."

She then listed many of the causes of the causes, including racism, Indian residential schools, colonialization, child abuse, over-crowded houses, lack of health services, lack of clean water and healthy food.

"There is no single answer to addressing this," said Bennett.

In her speech, Bennett also focused on the child welfare system, "where we have more children in care than at the height of residential schools," and child abuse.

"We have to talk out loud about that now," said Bennett, referring to an Anglican priest who abused 500 children in Ontario's James Bay region.

"This is 20 years of abuse in that region," she said. "This is not difficult to understand, to make the links."

The Conservatives took a different tact. While for a moment it seemed that the party's Aboriginal affairs critic Cathy McLeod would continue to focus on the suicide crisis facing First Nations by recounting her first week on the job as a nurse in a First Nation community facing three suicides, she eventually shifted gears.

"Moving back from the First Nation Transparency Act is a terrible disservice to band members," said MacLeod.

The Transparency Act was passed by the Stephen Harper government which forced band councils to publicly release their financial information. While the Act has not been repealed, the Liberal government has pulled back from court action to force non-complying First Nations to release the information.

The issue was raised repeatedly by Conservative MPs during the debate.

"To me this is a critical one step," said McLeod. "We shine the light for communities to actually look at their leadership and what their leadership is doing."

MacLeod also said her party remained unapologetic about refusing, while in government, to move forward with $1.9 billion in education investment after First Nation chiefs refused to support accompanying legislation.

“There should be some equal work done, not only is there money, but we are going to create a structure that is going achieve results we want to achieve,” she said, responding to a question from Edmonton NDP MP Linda Duncan.

However, long-time Nova Scotia MP Bill Casey, who left the Conservatives and ran under the Liberal banner in the last election, summed up the sentiment of many MPs present in the House of Commons throughout the evening.

“I was elected 28 years ago for the first time,” said Nova Scotia Liberal MP Bill Casey. “One of the first debates we had was this debate we are having tonight about the plight of Aboriginals….Are we ready to help? Are we ready to do something? Every single one of us, so we don’t do this in another 28 years, so we don’t do this debate in another eight years. That is the question for all of us.”

The debate was expected to wrap up at midnight

Supreme Court rules that Metis, non-status Indians are federal responsibility

Mike Blanchfield, The Canadian Press, April 14 2016

Canada's 600,000 Metis and non-status Indians are indeed "Indians" under the Constitution, the Supreme Court of Canada declared Thursday in a long-awaited landmark decision more than 15 years in the making.

"It is the federal government to whom they can turn," the unanimous 9-0 ruling said.

The high court was also asked to rule on whether the federal government has the same responsibility to them as to status Indians and Inuit, and whether they have a right to be consulted by the government on their rights and needs.

No need, the court said.

"It was already well established in Canadian law that the federal government was in a fiduciary relationship with Canada's Aboriginal Peoples and that the federal government had a duty to

consult and negotiate with them when their rights were engaged," said Justice Rosalie Abella, writing for the court.

"Restating this in declarations would be of no practical utility."

The Congress of Aboriginal Peoples joined with several individuals, including Metis leader Harry Daniels, in taking the federal government to court in 1999 to allege discrimination because they were not considered "Indians" under the Constitution.

Some 17 years later, the ruling is sure to have an impact on the relationship between the federal government and 600,000 Metis and off-reserve Indians across the country.

Daniels died in 2004, and his son Gabriel was added as a plaintiff the following year.

"I'm overwhelmed, I have a heavy heart right now," an elated Gabriel Daniels said after the decision was handed down.

"I am just thinking about my dad. I'm not going to start crying... He would be climbing the walls … he would be happy but he'd be focused on things to come."

In the moments following the decision, the building's foyer filled with Metis and aboriginal stakeholders, all of them barely able to contain their delight. As they spoke, whoops of joy and hollers of celebration echoed through the building.

One Metis leader said the ruling would have implications for future negotiations with the government over lucrative natural resources.

Ron Quintal, president of the Fort McKay Metis Community in Alberta, said his community is "completely surrounded" by oilsands development.

"The oilsands and government have always walked over top of us and it's been hard for us to get any kind of consultation or any type of mediation for that matter with the oil companies," he said in an interview.

"This is going to allow us to have an actual voice where industry and government have no choice but to work with our people."

Abella said Thursday's ruling was another chapter "in the pursuit of reconciliation and redress" in the long history between Canada and its Indigenous People.

"The constitutional changes, the apologies for historic wrongs, a growing appreciation that aboriginal and non-aboriginal people are partners in Confederation . . . all indicate that reconciliation with all of Canada's Aboriginal Peoples is Parliament's goal," Abella wrote.

Abella cited the Report of the Royal Commission on Aboriginal Peoples, and the Final Report of the Truth and Reconciliation Commission of Canada.

The government considered Metis to be Indians as far back as 1818 and the notion was upheld after Confederation, Abella wrote in a ruling that offered a sweeping review of government inquiries and studies of aboriginal relations dating back decades.

"Both federal and provincial governments have, alternately, denied having legislative authority over non-status Indians and Metis," the ruling said.

"This results in these indigenous communities being in a jurisdictional wasteland with significant and obvious disadvantaging consequences," it added, which included depriving them of programs, services and other government benefits.

Jason Madden, lawyer for Metis National Council, an intervener, said the ruling was a "game changer" and a "slam dunk" because it upheld the notion that the government has a duty to negotiate with Metis.

"There is no way that the federal government can avoid or hide from this issue any longer," he said in an interview. "It's got to be positive negotiations with Metis just as much as there is with First Nations."

La Cour suprême se penchera sur le droit de vote des Canadiens à l'étranger

La Presse Canadienne, le 14 avril 2016

La Cour suprême du Canada évaluera à son tour la constitutionnalité de la loi qui retire le droit de vote aux Canadiens résidant à l'étranger depuis au moins cinq ans.

La cause a été amenée devant les tribunaux par deux citoyens canadiens qui résident aux États-Unis. Gillian Frank et Jamie Duong vivent aux États-Unis pour y travailler et disent qu'ils ont l'intention de revenir au Canada si leur situation professionnelle le permet. En 2011, ils se sont vu refuser des bulletins de vote pour l'élection générale.

Les deux hommes se sont tournés vers la Cour supérieure de l'Ontario qui, en mai 2014, leur a donné raison, déclarant inconstitutionnelles certaines dispositions de la loi électorale canadienne parce qu'elle viole l'article 3 de la Charte canadienne des droits et libertés, celui qui garantit le droit de vote à tout citoyen canadien.

Un peu plus d'un an plus tard, la Cour d'appel de l'Ontario a infirmé cette décision, dans un jugement majoritaire. Le tribunal a estimé qu'au regard de l'article premier de la Charte - celui qui permet les limites raisonnables à un droit - le déni de vote aux citoyens non résidents pouvait être justifié.

Les juges majoritaires s'en sont alors remis à l'objectif du gouvernement de préserver le « contrat social » du Canada. Le raisonnement: Les Canadiens vivant au pays doivent se soumettre aux lois canadiennes adoptées par les élus parce qu'ils ont eu leur mot à dire lors de l'élection de ces élus. Ce contrat, de l'avis des juges majoritaires, ne s'applique donc qu'aux Canadiens résidant au pays.

Ce sera maintenant au plus haut tribunal du pays de trancher la question.

Supreme Court will hear appeal on voting rights for long-term ex-pats

The Canadian Press, April 14 2016

The Supreme Court of Canada will hear an appeal over the voting rights of Canadians who live outside the country for more than five years.

The case involves Canadian citizens who were denied ballots in the 2011 federal election on the grounds of their foreign residence.

The suit was filed by Gillian Frank of Toronto who has lived in the United States since 2001 and teaches at Princeton and Jamie Duong, who left Montreal for high school in Vermont and now works at Cornell University.

The Ontario Superior Court of Justice sided with the applicants, calling the relevant parts of the Canada Elections Act unconstitutional.

The Ontario Court of Appeal, however, overturned that in a split decision.

The Supreme Court, as usual, gave no reasons for deciding to hear the case

Le démantèlement de l'arsenal pénal conservateur se poursuit

La Cour suprême invalide deux autres réformes de Stephen Harper
Hélène Buzzetti, Le Devoir, le 16 avril 2016

Un autre pan de l'héritage juridique de Stephen Harper s'est effondré vendredi à la Cour suprême du Canada alors que les juges ont invalidé une seconde peine minimale qu'il avait instaurée. Le revers donne au gouvernement de Justin Trudeau un argumentaire puissant pour réviser dans son ensemble — et possiblement défaire — la réforme conservatrice en matière de justice pénale.

Deux causes se trouvaient devant les juges. La première concerne Joseph Ryan Lloyd, un toxicomane et trafiquant de drogue de Vancouver. Accro notamment à la cocaïne et à l'héroïne, M. Lloyd vendait des substances pour *« satisfaire son besoin de consommation »* et non pour s'enrichir. Il a été reconnu coupable une première fois de possession de méthamphétamine pour en faire le trafic. Un mois après sa remise en liberté, il a été de

nouveau arrêté en possession de drogues dures. En vertu d'une loi instaurée par les conservateurs de Stephen Harper, cette infraction passée le condamnait à une peine minimale d'emprisonnement d'un an.

Les juges de la majorité font valoir qu'on peut imaginer une foule de cas de figure où la peine minimale serait démesurée. Ces scénarios *« raisonnablement prévisibles »* les conduisent à invalider la loi (même si, dans le cas de M. Lloyd, la peine d'un an est maintenue).

La majorité évoque le cas d'un toxicomane qui aurait partagé avec sa conjointe une petite quantité de cocaïne et qui écoperait d'un an de prison *« parce qu'il a déjà été reconnu coupable de trafic, une seule fois, neuf ans auparavant, après avoir partagé de la marijuana lors d'une réunion sociale ». « La plupart des Canadiens seraient consternés »* par une telle peine, est-il écrit.

Ce concept de scénarios *« raisonnablement prévisibles »* a été élaboré dans un précédent jugement rendu il y a exactement un an. La Cour suprême avait alors invalidé une peine minimale conservatrice s'appliquant aux armes à feu en évoquant le cas hypothétique d'une veuve qui écoperait de trois ans de prison pour avoir omis de renouveler l'enregistrement des armes de son époux.

À l'époque, les juges y étaient allés d'une charge à fond de train contre les peines minimales en général. Plusieurs juristes avaient prédit que ce jugement, le *jugement R. c. Nur*, ferait école. De fait, dans leur arrêt de vendredi, les juges le citent abondamment, ce qui laisse présager d'autres invalidations.

Chez les conservateurs, on déplore que ce revers plombe leur héritage. *« C'est une déception »*, a dit le député Alain Rayes, qui estime que M. Lloyd *« n'est pas le genre de personne qu'on souhaite avoir dans les rues ». « Les libéraux revoient tout ce que les conservateurs ont fait* […]. *Ils ont un objectif clair, c'est d'anéantir dix années des conservateurs. »* C'est une erreur, selon M. Rayes, car les gens *« sont au même diapason »* que les conservateurs.

Le bloquiste Luc Thériault abonde dans le même sens, mais s'en réjouit. *« Le gouvernement est en train de défaire ce que le populisme conservateur essayait de faire, peu importe si ça allait à l'encontre de la Charte. »*

Ménage en vue

Ce n'est que la troisième fois de son histoire que la Cour suprême invalide une peine minimale, mais deux de ces trois cas concernent des lois adoptées sous le régime de Stephen Harper. Le gouvernement conservateur s'était souvent fait reprocher de présenter des lois inconstitutionnelles dans le seul but de plaire à un électorat lui étant favorable.

C'est pour cette raison que Justin Trudeau a promis de faire le ménage dans le Code criminel. La lettre de mandat de sa ministre de la Justice lui demande de *« réviser les changements apportés depuis dix ans à notre système de justice pénale ainsi que les réformes de la détermination des peines apportées ».*

Vendredi, M. Trudeau a indiqué que cet autre jugement le confortait dans sa volonté d'aller de l'avant. *« Il y a des cas où les peines minimales sont pertinentes »*, a-t-il dit, évoquant celles instaurées par des gouvernements libéraux. *« Mais il y a une impression générale, renforcée par cette décision de la Cour suprême, que les peines minimales instaurées par le précédent gouvernement dans un certain nombre de cas vont trop loin. C'est là-dessus que nous réfléchissons. »* Il a indiqué qu'il aurait plus de choses à dire *« dans les jours et les semaines à venir ».*

Du côté du NPD, on s'impatiente, estimant que cette réforme tarde. *« On parle de quelques semaines depuis déjà six mois »*, déplore le député Guy Caron.

Une deuxième invalidation

La seconde cause tranchée vendredi par la Cour suprême concernait Hamidreza Safarzadeh-Markhali, un homme qui n'avait pas eu le droit d'être libéré en attendant son procès car il avait déjà un casier judiciaire. Lors de la détermination de la peine, le juge prend en compte le temps

passé derrière les barreaux avant un procès et le majore généralement de 50 %. Mais en vertu d'une loi adoptée par les conservateurs en 2009, cette majoration n'est pas autorisée si la remise en liberté a été refusée pour cause d'antécédents judiciaires. La Cour suprême a aussi invalidé cette loi parce qu'elle ne prend pas en compte les cas particuliers. La cause était théorique car M. Safarzadeh-Markhali a déjà été renvoyé en Iran.

SCC says two tough-on-crime laws are unconstitutional

Jordan Press, CTV News, April 15 2016

The Supreme Court of Canada has struck down two federal laws from the previous Conservative government's tough-on-crime agenda, ruling both to be unconstitutional.

The decisions mean an end to rules for minimum sentences for specific drug crime convictions and limits on credit for pre-trial detention in certain conditions where bail is denied, giving trial judges more leeway in how they deal with offenders.

In both decisions, the top court said Parliament has the right to set laws to maintain public safety, but the rules should not be so overly broad that they capture offenders whose incarceration would benefit neither themselves nor the public.

Speaking in Waterloo, Ont., Prime Minister Justin Trudeau said his government is reviewing the laws around mandatory minimum sentences.

"There are situations where mandatory minimums are relevant," Trudeau said.

"The Liberal party of the past in government brought in mandatory minimums around serious crimes like murder, but at the same time there is a general sense, reinforced by the Supreme Court decision today, that mandatory minimums brought in by the previous government in a number of cases went too far. This is what we are reflecting on."

In a 6-3 ruling, the high court said a mandatory, one-year minimum sentence for a drug crime when the offender has a similar charge on their record constitutes cruel and unusual punishment, a violation of section 12 of the Charter of Rights and Freedoms. Only twice before has the court found mandatory minimums to violate that particular section of the Charter.

The majority ruled that mandatory minimums in this instance cast too wide a net and catch conduct that can range from a "cold-blooded trafficker of hard drugs for profit" to someone who shares a small

amount of marijuana with friends. Chief Justice Beverley McLachlin, writing for the majority, said that in the latter instance "most Canadians would be shocked to find that such a person could be sent to prison for one year."

The case came about after Joseph Ryan Lloyd was convicted in September 2014 of three counts of possessing crack, methamphetamine and heroin for the purpose of trafficking in Vancouver's Downtown Eastside.

An addict, Lloyd also had a 2012 trafficking charge.

The provincial court ruled that while the appropriate sentence for Lloyd was one year, the mandatory minimum sentence constituted cruel and unusual punishment and violated the charter.

Raji Mangat, director of litigation for the West Coast Women's Legal Education and Action Fund, which intervened in the case, said the Supreme Court's decision righted a wrong by giving judges more leeway in sentencing.

"Those sentencing judges, this is what they do day in and day out," Mangat said. "They have the expertise to be able to decide what is going to be a fit and appropriate sentence and we think that that discretion should stay with the judges."

The Supreme Court also unanimously agreed to strike down provisions passed in 2009 that prohibited a trial judge from giving more than one-for-one credit for pre-trial detention if a justice of the peace denied bail to the person because of a previous conviction.

That's what happened in the case of Hamidreza Safarzadeh-Markhali, of Pickering, who was arrested in November 2010 on drug and weapons charges.

He was awarded extra pretrial credit by his trial judge and the Ontario Court of Appeal agreed, noting that three offenders with the same criminal records and given the same sentence could effectively end up serving substantially different amounts of time depending on whether they received bail.

Safarzadeh-Markhali has since been deported to Iran.

The Supreme Court found the law was overly broad and would capture offenders who, for instance, might have been convicted for failing to appear in court.

Safarzadeh-Markhali's lawyer, Jill Presser, said the decision means thousands of people will serve less time in jail "by a factor of days to even years," many of whom couldn't get bail because of their circumstances or a lack of support.

Combined, she said, the decisions continue to dismantle the Harper-era, tough-on-crime agenda.

"The question for Parliament now is do they want to rebuild the structure on solid constitutional grounds, or simply let it come down?"

Indigenous Rights, Canada's National Energy Board and the Supreme Court of Canada

Dwight Newman, Jurist, April 11 2016

The Supreme Court of Canada's decision to grant leave to appeal in the Clyde River case means that it will hear an appeal from the Federal Court of Appeal decision in the case on November 30, 2016.

The case is about allegedly insufficient consultation with indigenous residents in the context of the National Energy Board's approval of seismic testing for energy resources off the Arctic shores of Clyde River, Nunavut. At a more fundamental level, the case will see the Supreme Court of Canada revisit what role administrative boards and tribunals can play in the context of Canadian governments' legal duties to consult indigenous communities. As this comment will show, this has become a particularly heated topic; it is part of the atypical circumstances to the court's granting of leave to appeal in this case, and the decision in this case may yet have significant effects on many resource-sector cases.

The Supreme Court of Canada developed the modern form of this legal duty to consult in a series of cases starting with the 2004 Haida Nation decision. Because Canada constitutionally entrenched Aboriginal and treaty rights during its major constitutional amendments in 1982, Canada's courts are engaged in an ongoing process of defining those rights and the related duties on government.

In these consultation cases, the duty to consult is a proactive duty on governments (federal or provincial) to consult with indigenous communities whose Aboriginal rights or treaty rights might be adversely affected by a government decision prior to making that decision, even where there is ongoing uncertainty on the right. More complex parts to this case law say that the scope of what is owed under the duty varies in different circumstances and attempt to set out how. The duty itself has generated some types of uncertainty, but that has had some

constructive effects, such as in often encouraging the negotiation of impact-benefit agreements between industry and indigenous communities (for discussion, see my May 2014 report for the Macdonald-Laurier Institute).

In 2010 the court considered an issue that many saw as not clearly resolved in the jurisprudence to that point. In the Rio Tinto case, which drew dozens of intervening parties to get at the various polycentric implications of the decision, the court sought to set out the rules on the role of administrative boards and tribunals in relation to the duty to consult. The duty is one owed by governments. The court in Rio Tinto effectively said that governments would define the role of administrative boards and tribunals in their statutory mandates. Some administrative boards or tribunals may carry out consultation, some may review it, and some may have nothing to do with consultation. Even in the latter case, though, the duty to consult does not disappear. The point of Rio Tinto is simply that governments themselves organize how they are going to deal with the duty to consult, and they choose whether they do so through a particular board or tribunal or in some other way.

The argument for leave to appeal in the Clyde River case was that the guidance provided by the earlier Supreme Court of Canada cases has still ended up in a cross-country patchwork in the regulatory context. In the context of the National Energy Board in particular, the applicants claimed that the ongoing application of a 2009 Federal Court of Appeal precedent from before the 2010 Rio Tinto decision, the Standing Buffalo case, results in too little analysis by the National Energy Board of consultation and should be revisited in light of the 2010 Rio Tinto decision. The federal Attorney General and other respondents argued in reply that the law is clear.

Timing, though, seemed to offer a fateful turn. Three days after the initial leave application document in Clyde River was filed, a differently constituted panel of the Federal Court of Appeal issued a split decision about consultation by the National Energy Board (though, notably, in relation to its operations under a significantly different section of its constituting Act). This decision, in Chippewas of the Thames, concerned a pipeline application by Enbridge, which sought to reverse the flow of Line 9 so as to bring Western Canadian oil to Quebec

refineries. Around a month later, only one of the three respondent parties in Clyde River thought to mention the Chippewas of the Thames decision in the course of their written argument against the court granting leave to appeal, but the applicant went on to hammer home to the court the idea that the cases were connected and actually ultimately asked the court to hear them together.

The argument over leave to appeal in the Chippewas of the Thames decision itself saw a further fateful effect of timing. In the Clyde River case, the federal Attorney General filed a government reply opposing the granting of leave, with the filing of this argument taking place before Canada's October 2015 election. After the election, the new Liberal government has announced its intention to seek a different, nation-to-nation relationship with Indigenous communities, and it indicated that it would take a different approach in relation to litigation. When the time came for arguments to be filed in the Chippewas of the Thames case, the federal Attorney General indicated that Canada would take no position on the leave application. This choice stands out as an unusual decision, in the context of the traditional practice of the Attorney General of defending decisions of major administrative boards from attacks and of trying to avoid seeing major legal issues revisited.

There were other unusual aspects to Clyde River as well, as seen in some of the materials filed on argument. The applicant in the Chippewas of the Thames application for leave to appeal appended to the application a lengthy affidavit from the Chief of the Assembly of First Nations (AFN) commenting on why the court should grant leave and introducing a significant political dimension to the case. Although the respondent company, Enbridge, briefly commented on this in its reply, the absence of any Attorney General objection to this use of an affidavit stands out. Moreover, the applicant's reply document introduced for the first time an academic study of the National Energy Board's engagement with the duty to consult, with no other party having a chance to reply to that even when the study's conclusions arguably do not align well with what was asserted from it by the applicant.

It will be interesting to see who says what about it when matters reach the Supreme Court of Canada at the end of November. The court ended up granting leave in Clyde River and

Chippewas of the Thames, to be heard together. Without some fateful timing and some unusual aspects in the leave process, there might or might not have been such a result.

Now, though, the Supreme Court of Canada has significantly opened a set of questions once again on the interaction of the duty to consult with the administrative regulatory process. Clyde River will not be a decision just about seismic testing near one hamlet in Nunavut, significant though that might itself be. Clyde River and Chippewas of the Thames will together see the court pronounce, at least, on the National Energy Board and consultation—and quite possibly in a way bearing on other regulatory contexts as well. With the Federal Court of Appeal having heard consultation-related challenges to the Northern Gateway project in October 2015, with its decision still under reserve, the Supreme Court of Canada will soon be pronouncing on issues that could bear on that case, adding an additional note of complexity. And in an era with many issues related to indigenous rights and regulatory processes, the effects could extend still wider.

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