# Arrêt Jordan : ne blâmez pas les avocats et les juges

Droit-Inc
Stéphane Lacoste  25 avril 2017

*Les délais déraisonnables font souffrir tant les victimes des crimes que les familles des accusés, présumés innocents. Au gouvernement de prendre les mesures nécessaires…*

En tant que président de la Division du Québec de l'Association du Barreau canadien, je me sens interpellé par plusieurs commentaires négatifs publiés sur les médias sociaux ou diffusés à la télévision ou à la radio alléguant un manque de sagesse des juges, ou encore la mauvaise foi d'avocats de la défense qui provoqueraient des délais dans le seul objectif d'obtenir un arrêt des procédures.

Ces commentaires m'apparaissent injustes et non fondés. Ils ne peuvent que reposer sur une incompréhension de la tâche des juges et ainsi que sur des préjugés généralisés à l'ensemble des avocats.

Le droit à la tenue d'un procès dans un délai raisonnable est un droit fondamental qui protège l'ensemble de la société et impose aux gouvernements de prendre les mesures nécessaires afin d'assurer que les procès criminels se tiennent dans un délai raisonnable.

Cela protège les accusés, qui sont présumés innocents, d'avoir à supporter trop longtemps le poids et les impacts négatifs des accusations. Selon la nature des accusations et les circonstances de chaque cas, certains accusés seront détenus durant la période précédant leur procès. D'autres devront composer avec la simple existence d'accusations portées, mais non encore adjugées, ce qui est de nature à entacher leur réputation et limiter leur capacité d'occuper un emploi et de gagner leur vie. Les délais déraisonnables avant la tenue d'un procès ne changent en rien l'innocence ou la culpabilité des accusés. Ils ne sont au bénéfice de personne.

Ce droit protège aussi les familles des accusés. Ces familles sont dans la plupart des cas innocentes de quoi que ce soit.

Les victimes des crimes souffrent également des délais encourus avant la tenue des procès dans lesquels elles sont impliquées.

Le désormais célèbre arrêt Jordan de la Cour suprême du Canada, que trop peu de gens ont lu en entier, voire en partie, avant de le commenter, n'a pas créé un nouveau droit, il a plutôt balisé l'application d'un droit reconnu avant l'entrée en vigueur de la Charte canadienne des droits et libertés. Ce qui caractérise cet arrêt est l'imposition de normes plus claires et précises afin d'assurer la protection de ce droit.

Nous pouvons compter sur une magistrature qui fait l'envie partout dans le monde. Nos juges sont hautement compétents et soucieux des intérêts supérieurs de la justice. Aucun juge ne prend à la légère une demande d'arrêt des procédures et c'est toujours par sens du devoir, à contrecœur, qu'il ordonnera un arrêt de procédures criminelles.

Les avocats de la défense sont soumis à un code de déontologie et jouent un rôle fondamental dans toute société libre et démocratique. Il ne faut pas présumer que les avocats de la défense tentent de créer artificiellement des délais. Ils n'y gagneraient de toute façon absolument rien. En effet, dans le calcul des délais prescrits par l'arrêt Jordan, seront exclus tous ceux dont la responsabilité revient à la défense. La Cour suprême impose des limites seulement aux délais dont l'État est responsable.

Le problème des délais déraisonnables n'est d'ailleurs pas limité au Québec, mais est plutôt commun à l'ensemble du pays.

L'Association du Barreau canadien et les divers acteurs impliqués dans l'administration de la justice travaillent d'ailleurs depuis longtemps à trouver des solutions aux délais devant les tribunaux, que ce soit en matière criminelle ou civile. Il s'agit d'un problème qui ne connaît pas une solution unique et qui impliquera certains changements de culture.

De façon concrète, l'Association du Barreau canadien a proposé 10 voies de solutions pour accélérer le déroulement des procès criminels :

1- nommer un nombre suffisant de juges;
2- fournir de l'aide juridique adéquate;
3- mettre l'accent sur un règlement dès les premières étapes;
4- utiliser les technologies;
5- régler la question de la surreprésentation des Autochtones;
6- retirer des rôles les accusations mineures;
7- affecter les ressources nécessaires;
8- améliorer les pratiques de communication de la preuve;
9- conserver les enquêtes préliminaires;
10- abroger les peines obligatoires.

Les gouvernements doivent continuellement faire des choix quant à leurs priorités et doivent en assumer la responsabilité. L'épineuse question des délais de notre système judiciaire est désormais une priorité incontournable. Il faudra du temps et des ressources suffisantes pour mettre en place les changements requis.

Dans l'immédiat, il est urgent de combler les postes de juges vacants et d'en créer de nouveaux. Nous saluons la décision du gouvernement du Québec de nommer 16 nouveaux juges à la Cour du Québec et d'embaucher 45 nouveaux procureurs. Nous appuyons la position prise par l'ABC quant au gouvernement fédéral et saluons la nomination la semaine dernière du Comité

consultatif sur la magistrature Québec - Est (le comité chargé d'étudier les candidatures des avocats de l'est du Québec qui désirent devenir juges).

Les juges et les avocats ne sont pas les responsables des délais déraisonnables et ne doivent pas être blâmés pour les impacts actuels de l'arrêt Jordan. Ils continueront d'être les gardiens des droits et libertés et de notre démocratie, en ne ménageant aucun effort pour représenter et juger dans des circonstances hors de leur contrôle et qui doivent être améliorées.

## Editorial: The benefits of name-blind hiring in the public service

Tyler Dawson
Ottawa Citizen Editorial Board
April 24, 2017

Scrubbing résumés of names is the latest strategy the federal government is trying in its efforts to build a more diverse public service.

The logic to name-blind hiring is that if you remove the identifying details from job application packages, it will help root out unconscious bias in the hiring process. Treasury Board President Scott Brison and Immigration Minister Ahmed Hussen have both hailed the six-department pilot project as a way to better reflect Canada's diversity in the federal bureaucracy.

Overall, the public service is already a relatively diverse workplace: 14.5 per cent of all public servants are visible minorities (compared to 19 per cent of the population); 5.6 per cent have disabilities (nearly 11 per cent of those aged 15 to 64 have a disability); 5.2 per cent are aboriginal (compared to 4.3 per cent of the population); and 54.4 per cent are women (compared to about half the population.)

Research so far supports the premise of this pilot: Those with names that don't sound English have a harder time getting jobs. A look by University of Toronto economist Philip Oreopoulos into hiring in Vancouver, Montreal and Toronto concluded those with English-sounding names were 35-per-cent more likely to get calls back from potential employers, compared to people with Chinese, Indian and Greek-sounding names.

There's another side to this as well, beyond the government's goals of building a more diverse workforce. Name-blind hiring can also help ensure hiring is done based upon merit. With only qualifications stacked up against one another, the best candidates should be more likely to carry on to the next stage. Subconscious discrimination based on a name could easily see the best candidate screened out of the job process.

Challenges abound, of course. While the federal plan is to remove names from applications, it doesn't take sophisticated detective skills to deduce from a résumé certain information about a

candidate. Previous workplaces, volunteer experience and education credentials can all offer clues to ethnic background. No hiring system can be foolproof.

So, will the federal pilot project work? There's only one way to find out, and the results are due in October. The federal government should ensure the results are public, so the program may be weighed by other Canadian employers.

Meanwhile, there are still other major problems with public service hiring, such as onerous applications and long delays (to say nothing about the impacts the Phoenix pay system could have for new hires). There's plenty more work to be done to recruit Canada's best and brightest.

## Supreme Court to hear case on justice system delays

*Accused drug dealer James Cody argues his constitutional right to a timely trial was violated*
CBC News
Kathleen Harris and Alison Crawford
April 25, 2017

The Supreme Court of Canada is hearing a case today that could ultimately fine tune an earlier ruling that's been widely criticized for allowing people accused of a crime to walk free without trial.

Provinces hope today's case will give them more wiggle room when it comes to wrestling with clogged courts and chronic delays.

James Cody, an accused drug trafficker from Newfoundland, has argued his charter rights were violated when he had to wait five years for a five-day trial.

His case reaches the top court as public frustration mounts over a controversial ruling last July known as the Jordan decision, where the Supreme Court stayed drug charges against Barrett Richard Jordan after he waited 49 months for a trial.

That split 5-4 judgment said criminal trials at Superior Court must be wrapped up within 30 months, and that cases in lower provincial courts should take no longer than 18 months.

Since then, there have been cases tossed out for taking too long to reach trial, including murder and assault charges.

"There's no question that Jordan has been a bit of an earthquake," said University of Ottawa law professor Carissima Mathen.

Prosecutors and provinces have said it's unreasonable to hold parties to timelines on past cases that weren't previously in place.

University of British Columbia law professor Benjamin Perrin called it a "fortuitous opportunity" to revisit the transition rules around cases that were already in the pipe when the Jordan decision came down.

Confusion, consternation

"Those have been the source of a great deal of confusion, consternation and varying decisions and inconsistent practice in terms of how to apply this new test on cases that were already in the system," he said.

Lawyers and judges have been baffled by rules that were vaguely spelled out, Perrin said, and the Cody case gives the high court a chance to clarify.

He said there is also a long-shot chance one judge could flip on his or her previous position, which would have the effect of the court overturning the Jordan ruling.

"All it takes is one judge. I am quite sure the four judges who dissented in the case have not changed their minds, if anything that has happened post-Jordan bears out their criticism," he said.

Impact on victims

Perrin believes one of the major problems with the Jordan decision is that it did not consider the severity of the crime or the impact on victims.

Stephen Coughlan, a law professor at Dalhousie University in Nova Scotia, does not expect Supreme Court justices will reverse course on their earlier ruling.

"There's no reason for the court to do anything differently this time, in its very first case after Jordan was decided," he said. "The court should, most of the time, simply be applying the existing law rather than rewriting that law."

Coughlan said over time there will be more clarity over what could constitute a defence-caused delay or considered an exceptionally complex case, for example when there are several co-accused.

The federal government has been under pressure to help the provinces tackle the court delays to ensure cases aren't tossed out due to unreasonable delays.

Appearing before the Senate legal affairs committee in March, Justice Minister Jody Wilson-Raybould said the Cody case will consider the "framework" laid out by the Jordan decision.

"We will be following that very closely," she said.

# The preliminary inquiry: A relic that needs reform

The Globe and Mail
Heather Stephanson Manitoba's Justice Minister
April 24, 2017

Much has been debated and plenty of ink spilled about the value of preliminary inquiries. But the questions surrounding the need to reform preliminary inquiries are not new.

In 1991, the Manitoba Aboriginal Justice Inquiry recommended that preliminary inquiries be eliminated and replaced with an out-of-court discovery process. It noted that having Provincial Court judges preside over preliminary inquiries was "an inappropriate and wasteful use of their time and talents."

In 2012, the federal, provincial, and territorial Ministers responsible for Justice and Public Safety discussed the need for preliminary inquiries given that the Crown must provide full disclosure to the defence and more effective Crown screening practices.

In 2016, the Supreme Court of Canada ruled in R. v. Jordan that,"Parliament may wish to consider the value of preliminary inquiries in light of expanded disclosure obligations." This decision also created strict time frames for determining when charges should be dropped due to unreasonable delay.

On December 21, 2016, I along with the Chief Justices and Chief Judge of the three levels of court put forward a draft Manitoba proposal to the Federal Minister of Justice requesting her to consider a four-year pilot project which replaces preliminary inquiries with an out-of-court discovery process for offences punishable by 10 years or more.

The Canadian Bar Association responded on March 14 by urging the Federal Minister of Justice to reject the Manitoba proposal and retain preliminary inquiries. I hold a much different view.

The Manitoba proposal reflects the evolution of preliminary inquiry reform in Canada. If implemented, it will ensure timely justice while still maintaining a pretrial discovery process for the most serious offences.

The preliminary inquiry is quite simply a relic of the past. The expansion of Crown disclosure obligations in the 1990s renders preliminary inquiries an outdated process which has outlived its useful purpose.

Since the Supreme Court ruled in 1991, in R. v. Stinchcombe, defendants have a Charter right to access all of the evidence held by the Crown.

The Manitoba proposal will mean shorter wait times for trial dates. Right now, the time between the request for a preliminary inquiry hearing date and when the inquiry ends often adds anywhere between 8 to 18 months to the court process.

Taking out the preliminary inquiry step will shorten the process. It will reduce the time an accused has to spend in pretrial custody awaiting trial. And it will mean the discovery process is less distressing for victims and their families.

That's one of the reasons why the Manitoba Organization for Victims Assistance supports what we've proposed saying that, "legal proceedings for homicides result in constant revictimization for families of homicide victims," and that "by eliminating preliminary inquiries, one of those experiences of re-victimization and trauma would also be eliminated."

The Manitoba proposal will also free up valuable court time. As the Aboriginal Justice Inquiry pointed out, if preliminary inquiries were eliminated, provincial court judges would no longer be presiding over them freeing up their time to hear other matters.

Among the other benefits are that it will save police officers the time it takes for them to come to court to testify at preliminary inquiries, and it will save corrections authorities the costs relating to the time spent in pretrial custody.

Finally and most importantly, by reducing the time it takes to bring a case to trial, the Manitoba proposal will ensure fewer cases are thrown out because of unreasonable delays.

The Manitoba proposal is a balanced and responsible approach to preliminary inquiry reform. It not only keeps in place a form of discovery process that will allow accused persons to know the case they have to meet, but it also provides for timely justice.

The time has come to find solutions and to modernize the antiquated, inefficient and costly preliminary inquiry process. The status quo is simply no longer an option.

## PSAC members rally to voice frustration over Phoenix pay system

The Guardian
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CHARLOTTETOWN, P.E.I. - Some federal government employees dealing with the fallout of the broken Phoenix pay system held a demonstration Saturday in Charlottetown.

Dozens of Public Service Alliance of Canada (PSAC) members gathered outside Charlottetown MP Sean Casey's office to show their frustration with the pay system.  Jeannie Baldwin, PSAC's

regional executive vice-president, called on the federal Liberals to fix it. “Imagine working for the Government of Canada and not getting paid on time and accurately,” she said.

Since the federal government started using the Phoenix payroll system about a year ago thousands of workers have been paid incorrectly or not at all.

The government is still working to resolve issues with the system.

## Supreme Court wary of prosecutors’ requests for trial-delay tolerance

The Globe and Mail
Sean Fine
April 25, 2017

Federal and provincial prosecutors urged the Supreme Court of Canada to be more tolerant of unexpected delays in criminal proceedings, and to crack down on defence lawyers who unnecessarily prolong trials, at a hearing on what constitutes unreasonable delay.

But the court expressed concern Tuesday about a return to the bad old days – before last summer – when in its view all players in the justice system complacently accepted delay. Some judges also asked about maintaining fairness to defence lawyers and accused persons.

The case of James Cody of Newfoundland and Labrador, accused of drug trafficking, is the first to reach the country’s top court since it set time limits for criminal proceedings in R v Jordan last July. The limit is 30 months in superior court – the court in which Mr. Cody was to go to trial. Mr. Cody’s case was set to take double that time to reach trial – five years – when the trial judge dismissed the charges over delay. The federal prosecution service argues the delay was justifiable and reasonable.

The hearing comes as federal Justice Minister Jody Wilson-Raybould and all provincial justice ministers prepare for an emergency meeting on Friday in Gatineau, Que., to discuss solutions to backlogged courts. Judges have dismissed four murder cases in three provinces over delay since the Jordan ruling. Five provinces appeared as intervenors in the case. (Only one Supreme Court member, Justice Richard Wagner, a dissenter in the Jordan ruling, mentioned the dismissed murder charges in the hearing.)

“Trials are not well-oiled machines,” Croft Michaelson, a lawyer representing the Public Prosecution Service of Canada, which handled the case against Mr. Cody, told the court. “Unforeseen developments can cause cases to quickly go awry, leading to delay.”

On its face, the case is about how to apply the new time limits to proceedings well under way by the time of the Jordan ruling. But the federal prosecution service and several provinces asked the court to demand a faster, more efficient approach from defence lawyers, and to be flexible when unforeseen events arise – each of which would influence most post-Jordan cases.

In Mr. Cody's case, after the trial judge dismissed the charges, the Newfoundland and Labrador Court of Appeal, in a 2-1 decision, said the actual delay was just 16 months, and ordered a new trial. Mr. Cody, alleged to have been involved in a drug ring linking British Columbia and his home province, appealed to the Supreme Court.

The Supreme Court heard the case Tuesday with seven members present, of whom the entire five-member majority from Jordan was represented. It reserved its decision.

The case turns on how the Supreme Court defines several periods of delay in which the Crown and the defence became embroiled in disputes. Delay caused by the defence must be deducted from overall delay. So, too, must delay caused by unexpected events or exceptional circumstances, though prosecutors are not permitted to simply sit back and watch those unfold; they must take steps to speed things up, where possible. One such event involved an officer who was alleged to have committed misconduct in a separate case. The Crown had to disclose that information to the defence. But the police did not appear to have told the Crown until the last minute. The result: months of delay.

"This is the kind of thing that has been going on that we're trying to put an end to … the complacency we're talking about in Jordan," Justice Michael Moldaver, one of three co-authors of the Jordan ruling, told Mr. Michaelson.

"The Crown was never complacent," Mr. Michaelson replied. "The Crown was constantly trying to push this case forward."

He and lawyers for provinces such as Alberta, Manitoba and Quebec warned the court that the time limits in Jordan may give defence lawyers an incentive to act in ways that delay trials – for instance, by bringing a flurry of motions defending their clients' perceived rights. The court said in Jordan that "frivolous" defence motions count as "defence delay," but federal prosecutors and the provinces argued that even well-intentioned defence motions may be fruitless and unnecessary, and should count against the defence.

"Don't let one side create delays that the other side has to answer for," Ami Kotler, representing Manitoba's Attorney-General, told the court.

Justice Russell Brown, a co-author of Jordan, asked if defence tactics need to be deliberate and calculated to cause delay, as set out in the ruling. "Absolutely no," Mr. Michaelson replied.

"Sometimes defence lawyers can be very persuasive at the outset," and trial judges let them proceed with various challenges – that then fail. He said the court needs to send a message to trial judges to take a harder line against defence motions that unnecessarily prolong proceedings.

Justice Rosalie Abella, another member of the Jordan majority, pointed out that, in the Cody case, the trial judge had accepted a particular defence challenge (launched over errors in a statement of facts entered into the court record) as having raised a legitimate concern. “I hear your words. I’m having trouble actually applying them in this case.”

“We’re in a post-Jordan world now,” Mr. Michaelson said. “Most of the time taken up in many cases is associated with defence applications. You can’t ignore that. You need to go back and clarify what you meant in terms of defence delay.”

Michael Crystal, an Ottawa lawyer representing Mr. Cody at his Supreme Court appeal, said Jordan holds all players at criminal trials, including defence lawyers, accountable. “Every courtroom we walk into, we have to explain everything we do.”

He said if the court allows a five-year delay, it could only be based on “ex post facto hocus pocus inaccessible to everyone but lawyers. No matter how you do the math, such a delay would be a return to a culture of complacency.”

## SCC poised to clarify Jordan, backtracking unlikely

Lawyer’s Daily
Cristin Schmitz
April 25, 2017

Judges of the Supreme Court of Canada signalled their openness to clarifying how their new Jordan analytical framework for s. 11(b) Charter claims should treat defence delays, as well as criminal cases in the system before Jordan was handed down last July.

But the very engaged seven-judge bench that reserved judgment April 25 in R. v. Cody did not seem poised to retrench from the court’s controversial 5-4 decision in R. v. Jordan 2016 SCC 27, that shook the Canadian criminal justice system by imposing new presumptive ceilings on trial delays of 18 months in provincial court, and 30 months in superior court, from the date of charge to the anticipated end of trial.

“On the whole, I thought that the court seemed fairly comfortable with Jordan,” commented University of Ottawa law professor Carissima Mathen after the two-hour hearing in which Chief Justice Beverley McLachlin and Justice Malcolm Rowe did not sit.

Mathen pointed out that the court’s criminal law expert, Jordan co-author Michael Moldaver, emphasized that the some of the delays in Cody were of the very type that motivated the Jordan majority to condemn the insidious “culture of complacency” around court delays.

Justice Moldaver pointed out during the Cody hearing that the case of the appellant accused drug trafficker, who waited  more than five years for a five-day trial of mid-complexity, was

sidetracked for  more than half a year alone due to defence motions sparked by an innocuous error in an agreed statement of facts.

“One mistake — a mistake in an agreed statement of fact that the defence had as well as the Crown — and somehow this turns into seven months of motions,” the former criminal defence counsel remarked incredulously. “This picture is not right on anybody’s scale.”

“Mr. Justice Moldaver, I couldn’t agree with you more,” responded James Cody’s co-counsel, Michael Crystal, who asked the court to stay drug and weapon charges due to the violation of his client’s Charter s. 11(b) right to be tried within a reasonable time.

“This is the old cold war thinking” said Crystal of the handling of the case which started in 2010, long before Jordan was decided. The Ottawa criminal law specialist urged the judges to resist various pleas from the federal Crown, and intervener Ontario, Quebec, Manitoba, Alberta and B.C. Crowns, to be more lenient on cases that arose before Jordan took a more hardline, and less discretionary, approach to trial delays. “I would submit to you that Jordan bumps up against, not particular individuals but an established culture. ... and unless Jordan is an aggressive decision that departs from the [previously] established law there won’t be changes,” warned Crystal. “There will be just more of this.”

Justice Russell Brown, who co-wrote Jordan with Justices Moldaver and Andromache Karakatsanis, asked Crystal how trial judges are to determine whether defence motions go too far or are ill-conceived and thus the time they took should be deducted from the total delays in a case. And then once a judge determines that the defence actions did go too far or were ill-conceived, “how does that fit within the framework set out in Jordan?” asked Justice Brown.

“I would say the question is whether the motion is frivolous, or intended in any way to create further delay,” replied Crystal.

Co-counsel Frank Addario of Toronto’s Addario Law Group pointed to a study which shows there is only a 12 per cent increase post-Jordan in stays granted for s. 11(b) claims across Canada.

“But you cannot ignore the hundreds of motions for stays in the province of Quebec,” interjected Justice Richard Wagner, who dissented in Jordan.

Counsel for the intervener Criminal Lawyers’ Association, Megan Savard of Addario Law Group, asked that the court tell trial judges to be cautious before identifying a category of delay as deductible. “There is a high bar for defence delay,” she stressed. “Waiver must be clear and unequivocal and other types of defence delay have been described in terms like ‘frivolous’ ... The higher bar I submit is warranted because defence delay and other deductible categories like ‘discrete events’ are the only type that are considered at the outset [of the calculation of delay].

There must be some clarity at the outset of the Jordan analysis about which side of the line the case is likely to fall on."

But Justice Brown noted that if "predictability is what we're seeking, predictability is just as easily served by a low bar as by a high bar. Why else should we be adopting, or be recognizing that Jordan set a high bar" for defence delay and other deductible delay? he asked.

Savard replied that the presumptive ceilings are high enough to take into account any type of unfairness that would otherwise be occasioned by a cautious and limited approach to deductible delay. "So, for example if you tell trial judges only clear and unequivocal delay ... of any type should be categorized as a defence delay, or as a discrete event, there's still room for the necessary flexibility to happen under the ceilings."

She warned, "anything other than a cautious approach to deductible delay is going to return, in practical terms, to a mathematical micro counting and that is a problem still in trial judgments across the country."

Justice Moldaver queried "what better test can we create" for determining whether a court should relax the presumptive ceilings when the Crown claims discrete events (i.e. unforeseen illness) amount to "exceptional circumstances.

"If the matter is reasonably foreseeable, or reasonably avoidable, they are not going to be able to get out from underneath, they're going to have to show what they did. But how better can we describe a discrete event?" Savard suggested "the best way to clarify what is a discrete event, I submit, is to make it clear that it doesn't encompass anything that could be characterized as a routine problem."

## Globe editorial: Is the Supreme Court reconsidering the Jordan decision? Let's hope so

The Globe and Mail
April 27, 2017

Criminal law, a bit like crime itself, can be quite messy. Last year, however, the Supreme Court of Canada tried to make it more efficient in order to protect accused people from having to live too long under the shadow of alleged guilt while awaiting trial.

In their split decision in the case of R. v. Jordan, the majority ruled that an individual's right to a speedy trial was presumptively violated if they had to wait more than 18 months for cases tried in provincial court, and 30 months for cases tried in superior court.

The result has been chaos. Cases involving serious offences, murder included, have been thrown out, an outcome that likely to damage the public's opinion of the justice system.

Five provincial attorneys-general, plus their federal equivalent, are pleading for room to manoeuvre. And a current case before the Supreme Court of Canada is giving them some hope.

R. v. Jordan involved an alleged drug trafficker in B.C. who had to wait 49 months for a verdict. Lawyers for another alleged drug trafficker, James Cody in Newfoundland, have been arguing that their client's superior court trial will have gone twice as long as the 30-month limit in the Jordan ruling if and when it is completed, and that all charges should be stayed.

They are now before the Supreme Court of Canada, where Justice Michael Moldaver, one of the coauthors of the Jordan decision, raised questions about its exacting standards in oral argument on the Cody case.

The big issue is, who is the cause of the delays in a trial – the Crown, or the defence? And who gets punished for delays? What if the accused changes – or has to change – lawyers? What if Charter challenges come up? What about complex white-collar criminal cases, often featuring thousands of documents – should such cases, which clearly need extra time, get extra time?

Michael Crystal, Mr. Cody's lawyer, has praised the Jordan decision for forcing defence lawyers and Crown attorneys to "abandon their silos and Cold War posturing." Maybe. But there's also a widespread sense that Jordan's rigidity has upset a delicate balance, causing legitimate cases of serious law-breaking to be dropped.

When it issues a ruling in the Cody case, the Supreme Court has an opportunity to restore a degree of flexibility to the courts. In doing so, it can protect the reputation of the justice system.

## Government takes new approach to fixing Phoenix pay system

Global News
Monique Scotti

After more than a year of technical problems and stubborn backlogs, the Liberal government is changing its approach to fixing the Phoenix pay system.

On Thursday morning, Prime Minister Justin Trudeau announced that a new working group is being formed, led by Public Safety Minister Ralph Goodale, to tackle Phoenix.

The ongoing pay issues, which have resulted in tens of thousands of federal public servants being overpaid, underpaid or not paid at all over the last 14 months, are "completely unacceptable," the prime minister's office wrote.

Early Thursday, the CBC also reported that Ottawa will provide $200 to any employee in the public service who needs help covering costs linked to their tax filing, which has been complicated by the payroll issues.

Public Services and Procurement Canada, the department responsible for Phoenix, faced backlash earlier this spring after it was revealed executives in the department had been awarded $4.8 million in performance bonuses during the meltdown.
In addition to the working group's efforts, the government is reportedly diverting an extra $140 million to help departmental officials hire additional help and cover other costs linked to fixing Phoenix.

Deputy Minister Marie Lemay has been offering updates on the department's progress every two weeks since last summer, and although the backlog of files has diminished, there are ongoing problems and Phoenix still isn't back to the so-called "steady state" the government wanted to see reached last fall.

The minister in charge of the file, Judy Foote, is currently on a temporary leave of absence for family reasons, unrelated to Phoenix. She is being replaced on an interim basis by Jim Carr.

The members of the working group:
•Public Safety Minister Ralph Goodale
•Treasury Board President Scott Brison
•Finance Minister Bill Morneau
•Acting Minister of Public Services and Procurement Jim Carr
•Environment Minister Catherine McKenna
•Parliamentary Secretary to the Minister of Public Services and Procurement Steven MacKinnon

## MPs, senators getting salary boost this year

iPolitics
Kathryn May
April 26, 2017

Members of Parliament and senators are getting a $2,300 boost in salary this year - giving them slightly bigger raises than the federal government gave Canada's public servants and executives. The wage increases of 1.4 per cent for MPs and 1.6 per cent for senators come as Treasury Board is signing final contacts for most of the public service, which is getting a 1.25 per cent raise in base salary this year.

The 338 MPs saw their annual salaries rise to $172,700 effective April 1. Prime Minister Justin Trudeau receives an additional $172,700 for his prime ministerial duties, so he now earns $345,400 a year.

Cabinet ministers, ministers of state, interim Opposition Leader Rona Ambrose and House Speaker Geoff Regan get paid an extra $82,600 on top of their MP salaries and will now make $255,300.

Senators, whose salary increases are tied to those of MPs, will also get a raise.

The raise for senators, who previously earned a base salary of $145,400, will be slightly higher in percentage terms. By law, senators must be paid $25,000 less than MPs. That means senators earn a $147,700 base salary starting April 1, a 1.6 per cent increase.

The secretive Board of Internal Economy, a group of MPs which oversees the administration of the House of Commons, was advised of the increase and all MPs were notified of the raises shortly after they kicked in on April 1.

NDP Leader Tom Mulcair, parliamentary secretaries, party whips and chairs of House of Commons committees also get raises for the additional duties of their jobs.

The increase comes as the government is signing final contracts with many federal unions after a two-year standoff in collective bargaining over controversial sick leave reforms proposed by the previous Conservative government.

The Liberal government ended up taking the sick leave reforms off the bargaining table and was able to strike a four-year wage deal that gave employees an annual 1.25 per cent raise, retroactive to 2014. Most employees received an additional "wage adjustment" or signing bonus on top of those raises. These new contracts will expire in 2018.

Treasury Board has yet to reach settlements with unions representing 11 bargaining groups, including border guards and prison guards who are considered among the most militant workers in the public service.

The formula for parliamentarians' wage increases is spelled out in the Parliament of Canada Act. It links MPs' pay to the average increases negotiated by unions for large, private sector firms with more than 500 employees. The data is collected by the labour program at Employment and Social Development Canada.

That means they are automatically entitled to the average 1.4 per-cent wage hike private sector employers gave their employees in 2016.

Aaron Wudrick, federal director of the Canadian Taxpayers Federation, said MPs should have shown leadership at a time when the country is facing a large deficit by refusing a raise. He said it's also harder to hold the line on public service wages when senators and MPs are getting raises. "A lof of this is about leadership and symbolism and at a time when there are large deficits ... a pay cut is symbolic and gives them moral credibility when negotiating with public servants," said

Wudrick. "Do they have to take a cut? No, but it is easier for (Treasury Board President) Scott Brison to go back and say, 'We're taking cuts so you need to hold the line as well.'
"Any way you slice it, we have a large deficit. Much larger than pledged, and we need ways to save money and the fact they have a raise isn't going to help them when negotiating with the public service."

The board of internal economy always has the option of refusing an increase and freezing salaries. MPs salaries were frozen for three years between 2009-10 and 2012-13, in the aftermath of the financial crisis.

Since the freeze was lifted, MPs have seen their salaries rise 9.3 per cent and those of senators have increased 10.9 per cent. The largest federal union, the Public Service Alliance of Canada, received increases of 7.5 per cent for their members.

The 6,400 executives working in government have had raises of only two per cent since 2013-14 - and have received no raises for last year or this year. They are typically told of their raises by April 1.

BY THE NUMBERS:
- 1.4 per cent: Pay increase MPs received as of April 1.
- 1.25 per cent: Annual pay increase the government has offered its public sector unions
- $172,700: New base salary for an MP
- $147,700: new base salary for a senator
- $345,400: Total amount the prime minister will earn as of April 1
- $255,300: Salary of cabinet ministers, the speaker and leader of the opposition



## As Phoenix woes continue, federal government to forgo $140 million in expected savings

*Measures announced Thursday to bail out the Phoenix pay system will erase the expected savings anticipated when Phoenix was introduced.*

The Canadian Press
Terry Pedwell
April 28, 2017

OTTAWA—Federal civil servants will be reimbursed for hiring tax accountants to sort through their pay problems and departments will be allowed to re-hire laid-off payroll employees, the federal government said Thursday as it tried to bail out its sinking Phoenix pay system.

A high-powered cabinet committee is also being created to fix the pay process, although a statement from the Prime Minister’s Office doesn’t provide a deadline for achieving that goal.

In announcing the measures, the government acknowledged it will have to forgo $140 million dollars it expected to save over the next two years from implementing the new electronic payroll system.

A cabinet working group, led by Public Safety Minister Ralph Goodale, will work to bring Phoenix to a so-called “steady state,” Prime Minister Justin Trudeau said in a statement.

“This working group will bolster the actions we have already taken and ensure that we fulfil our commitment to the public service to fix the issues that have impacted employees,” he said.

As tens of thousands of improperly paid civil servants face a tax filing deadline this weekend, they are being assured that any costs they incur as a result of pay issues will be covered.

“Employees who encountered Phoenix pay issues may seek up to $200 in reimbursement for tax advisory services in relation to their 2016 or 2017 income taxes,” the Treasury Board Secretariat said.

That amount could go higher if government workers can provide receipts for tax services in excess of $200, a government source said.

The government began sending income tax slips to its over 290,000 employees across 98 federal organizations in the last month.

But as many as 50,000 of those tax slips had to be reissued for 2016 because of Phoenix-related problems.

The pay problems began shortly after the new system was launched nearly 15 months ago, initially affecting 82,000 civil servants who were either underpaid, overpaid or not paid at all — in some cases for months.

But as of April 5, the department overseeing the pay system said pay transactions still needing to be processed stagnated at 284,000 from the previous month, with no end in sight to the problems.

Trudeau has acknowledged the hardship the pay problems have caused many civil servants, but, until recently, has accused the previous Conservative government of setting the pay modernization program up to fail by cutting corners on training and eliminating payroll system jobs.

# Québec veut ses juges, Ottawa, un changement de culture

La presse Canadienne | Le : 2017-04-27 11h30

*Rencontre au sommet vendredi à Gatineau entre le fédéral et les provinces pour réduire les délais judiciaires... Canadian justice ministers plan emergency meeting as court delays threaten thousands of cases*

Québec continuera de faire pression sur le gouvernement fédéral pour la nomination de nouveaux juges alors que d'autres provinces demanderont d'éliminer les enquêtes préliminaires pour accélérer le processus judiciaire.

Les ministres de la Justice fédéral et provinciaux se réunissent à Gatineau vendredi pour discuter des façons de régler le problème des délais judiciaires.

Les arrêts de procédures se multiplient depuis l'arrêt Jordan émis par la Cour suprême l'été dernier et les provinces en subissent les contrecoups. Certains de ces arrêts de procédures ont soulevé l'indignation, comme celui de Sivaloganathan Thanabalasingam qui était accusé d'avoir tué son épouse.

L'arrêt Jordan fixe le délai pour les procès criminels à 18 mois en Cour du Québec et 30 mois en Cour supérieure.

La Cour suprême voulait ainsi s'attaquer à la « culture de complaisance à l'égard des délais » qui s'est installée au fil des ans dans l'appareil judiciaire et qui brime le droit d'un accusé d'être jugé dans un délai raisonnable.

Il a eu l'effet d'un électrochoc.

La ministre fédérale de la Justice, Jody Wilson-Raybould, critiquée pour sa lenteur à nommer de nouveaux juges, a promis mercredi de pourvoir six postes de juge vacants au Québec « le plus rapidement possible » dans une lettre ouverte au Devoir.

La ministre québécoise de la Justice, Stéphanie Vallée, soutient plutôt avoir besoin de 14 nouveaux juges en Cour supérieure.

Mme Wilson-Raybould a également écrit que l'ajout de juges ne réglera pas entièrement le problème des délais, et qu'il faut un changement de culture au sein système de justice pénal.

La lettre suscite une certaine exaspération au bureau de la ministre Vallée qui estime avoir fait son bout de chemin. Québec a injecté des dizaines de millions de dollars pour désengorger le système et annoncé en octobre un plan d'action pour faire ce changement de culture.

**Provincial and territorial justice ministers will gather on Friday in Gatineau, Que. for an emergency meeting with federal Justice Minister Jody Wilson-Raybould.**

The Canadian Press
Joanna Smith
April 28, 2017

OTTAWA—The federal Liberals came to power promising sweeping reforms to the criminal justice system, but now the provinces are championing some ideas of their own as they focus on cutting backlogs in the courts.

“I think for the most part, the provinces recognize the status quo isn’t an option and we need those changes to take place,” Manitoba Justice Minister Heather Stefanson said in an interview.

“Time is moving on and now is the time for action.”

Stefanson and other provincial and territorial justice ministers are gathering Friday in Gatineau, Que., for an emergency meeting with their federal counterpart, Jody Wilson-Raybould, to discuss how to tackle delays in the criminal courts.

It is not a new problem, but finding a solution has become more urgent.

The Supreme Court of Canada issued a groundbreaking decision last summer, R. v. Jordan, that set out a new framework for determining whether a criminal trial has been unreasonably delayed, citing a “culture of complacency” for contributing to the problem.

The Charter of Rights and Freedoms says someone charged with an offence has the right to have their case tried within a reasonable amount of time. In a 5-4 decision, the high court defined that period as 18 months for provincial courts and 30 months for superior courts.

There is room for exceptions, and the ruling came with a transitional measure for cases already in the system, but a dissenting minority opinion argued the new time limits could lead to thousands of prosecutions being tossed out.

“That was a way of the Supreme Court throwing its hands up and chastising both federal and provincial governments for decades of neglect,” said New Democrat MP Alistair MacGregor, the justice critic for his party.

“The chickens have come home to roost and I think the Supreme Court has finally forced the government’s hand.”

Prime Minister Justin Trudeau gave Wilson-Raybould a mandate to work with the provinces and territories "to improve the efficiency and effectiveness of the criminal justice system," but her marching orders focused on solutions such as the better use of digital technology, bail reform and sentencing alternatives.

Those ideas, along with the ongoing need for judicial appointments, will no doubt come up Friday, but some provinces will also be urging the federal Liberals to change the Criminal Code to either curtail or eliminate the use of preliminary inquiries, which take place in certain serious cases to determine if there is enough evidence for a matter to go to trial.

Ontario Justice Minister Yasir Naqvi is one of those behind that idea.

"We've got a challenge that has been given to us by the Supreme Court of Canada," Naqvi said in an interview. "They have said there is complacency within the system, and bold reforms are needed."

Manitoba is also pushing hard for that change, so the province can go ahead with a four-year pilot project to replace preliminary inquiries with an out-of-court discovery process, or, for less serious cases, do away with them altogether.

Wilson-Raybould said in a statement Wednesday that she is aware of the proposals from Ontario and Manitoba and looks forward to discussing it with them.

According to Statistics Canada, preliminary inquiries took place in less than three per cent of cases in the adult criminal court system in 2014-15, and 81 per cent of those cases were completed within a 30-month period.

The number of vacancies on the bench has also been getting a lot of attention.

"I think it's a huge part of the problem and it's certainly one that can be addressed," said Conservative justice critic Rob Nicholson.

The Liberals brought in a new appointments process last fall, but as of April. 1, there were 59 vacancies for federally appointed positions.

Eric Gottardi, one of the defence lawyers in R. v. Jordan, said the problem goes far beyond empty seats on the bench.

"If they were all filled tomorrow, it's not like the delay problem would disappear in the next three months," he said.

The higher number of mandatory minimum sentences the previous Conservative government brought in contributed to the problem, he said, as it took away a lot of discretion from both judges and prosecutors to find ways to divert trials.

“I think in promising to take a more comprehensive look at the criminal justice system and sentencing in general, maybe (the federal Liberals) didn’t realize how big a problem it was and how far-reaching that would have to be,” Gottardi said.

“It is a huge job and that may in fact be slowing them down,” added Gottardi, who like other defence attorneys does not think doing away with preliminary inquiries is the answer.

“Some of the solutions that have been floated are more political ploys rather than thought-out justice reforms.”

James Pickard, president of the Alberta Crown Attorneys’ Association, said he is in favour of cutting back on preliminary inquiries, but would like to see more data on how that would save time in the courts.

Pickard said the issue is complicated, but most of it boils down to the need for more resources.

“There is a shortage of judges. There is a shortage of clerks. There is a shortage of prosecutors. Legal aid could use more money,” he said.

“The problem is a system-wide problem.”

## Five things to know about what's up for discussion at justice ministers meeting

The Canadian Press
Joanna Smith
April 28, 2017

OTTAWA — Five things justice ministers from across the country are expected to talk about a meeting in Gatineau, Que., Friday.

1) R. v. Jordan. The Charter of Rights and Freedoms guarantees someone charged with an offence the right to have their case tried within a reasonable amount of time. Last summer, the Supreme Court of Canada ruled that the B.C. drug convictions of Barrett Richard Jordan must be set aside due to an unreasonable delay. The Jordan decision, as it has come to be called, put a firm timeline in place: 18 months for provincial courts and 30 months for superior courts.

2) Cases getting thrown out. The 5-4 ruling came with a transitional measure for cases already in the system, but a dissenting minority opinion argued the new time limits could lead to thousands of prosecutions being tossed out. There have been some high-profile examples of charges being stayed due to lengthy delays. But Stephen Coughlan and Jessica Patrick, a law professor and student at Dalhousie University, analyzed cases from before and after the Jordan decision and found that overall, judges were either granting or denying those requests for the same reasons as they would have under the old framework.

3) Vacancies. The Liberal government had promised to change the way it names judges, partly as a way to boost diversity on the bench, but did not unveil the new process until a year after the election. The 2017 federal budget also committed to creating 28 new positions — but as of April 1, there were 59 vacancies.

4) Other ideas to solve a backlog of cases. The Canadian Bar Association has come up with 10 ideas, including getting rid of mandatory sentencing, diverting minor charges and improving legal aid. The Senate committee on legal and constitutional affairs has recommended using electronic monitoring devices to reduce the number of people incarcerated in remand centres. Some provinces are hoping to move away from preliminary inquiries.

5) Cannabis. The justice ministers are also hard at work on figuring out how to handle another big file — the pending legalization of marijuana for recreational use. No formal presentations are expected but it's likely to come up over dinner and lunch.

## Justice Ministers across Canada meet to tackle court delays

The Globe and Mail
Sean Fine
April 28, 2017

Long-standing rules of criminal justice will be on the table when federal Justice Minister Jody Wilson-Raybould sits down with her provincial counterparts in Gatineau, Que., on Friday to discuss solutions to backlogged courts and serious criminal charges being thrown out over delay.

The meeting comes nine months after the Supreme Court of Canada’s cri de coeur, in a case known as R v Jordan, that a “culture of complacency and delay” was afflicting the criminal-justice system. The court set time limits for trials of 18 months in provincial court (from the time a charge is laid), and 30 months in superior court, putting pressure on the provinces, which administer the courts. Judges have thrown out four murder cases since then – two in Quebec, one in Ontario and one in Alberta – over delays.

Quebec Justice Minister Stéphanie Vallée, who is co-chairing the meeting, is one of several ministers who say they will push Ottawa to make changes to the Criminal Code to speed up proceedings – and she wants to see at least one or two changes implemented by the summer.

Ms. Wilson-Raybould said in a comment piece this week in Le Devoir that she convened the meeting to make a "culture shift" in criminal justice, through law reform and the sharing of best provincial practices, but Ms. Vallée says the matter requires urgent federal action.

"We're beyond cultural changes and wishful thinking," Ms. Vallée told The Globe and Mail. "It's been nine months since the decision was rendered, and there haven't been any legislative amendments made by the federal government."

Quebec is pumping an additional $175-million over four years into criminal justice as a result of the Supreme Court ruling – the biggest cash infusion of any province.

She said she intends to raise the possibility of reversing the burden of proof in some crimes, so that the defendant would need to disprove a fact in dispute, rather than the Crown having to prove it.

"It's useful so that the full burden of making the evidence is not on the Crown, but it's up to the defendant to make the argument to the contrary," she said. "We're not talking about big files."

Also on Ms. Vallée's list of "talking points" for the meeting is the law of disclosure, which refers to the state's obligation to reveal its case to the defence. Since a Supreme Court ruling in 1991 mandated full disclosure in every case, police forces and prosecutors have struggled at times to make sure the information reaches defence counsel in a timely way.

Ms. Vallée declined to go into detail on her ideas, saying she preferred to do so first with her counterparts at the meeting.

She said the provincial ministers will also put on the table a procedural protection for accused rights known as the preliminary inquiry – a pretrial hearing in which a judge screens charges to determine whether there is enough evidence to go on to trial. Quebec, Ontario, Manitoba and Alberta favour limits on, or the elimination of, this stage in the process, which has been used since the beginnings of Canada's Criminal Code in the 1890s.

"I think that there's a general consensus across the country that the status quo is not an option," Manitoba Justice Minister Heather Stefanson said in an interview.

Ironically, the right to a trial within a reasonable time is a constitutional protection for the accused person – but some of the proposed changes could make life more difficult for the accused and defence counsel.

“I always say that efficient justice is for the society, efficient justice is for the victim, even more than for the accused,” Ms. Vallée said.

The Canadian Bar Association is concerned enough about the possibility of abolishing preliminary inquiries that it sent a letter to the federal and provincial justice ministers opposing the move, and providing a top-10 list of ways to reduce court delays (appoint more judges, provide adequate legal aid and prioritize early resolution are the top three).

“There’s not going to be rigid, backward steps in criminal justice – it’s just not going to happen,” William Trudell, chair of the Canadian Council of Criminal Defence Lawyers, said in an interview. Another defence lawyer said reversing the burden of proof would face a serious constitutional challenge, because it affects the presumption of innocence. The justice ministers were scheduled to hold a preliminary discussion on Thursday night with a small group of justice participants, including a defence lawyer.

Quebec is not the only province under pressure. In Alberta, prosecutors dropped hundreds of cases – some involving violent crime or drunk-driving – to save their resources for major crimes. The cash-strapped province then announced the hiring of dozens of new prosecutors. In Ontario, about 6,500 cases – 6.5 per cent of the caseload in Provincial Court – are at or beyond the 18-month limit.

“We need to demonstrate to Canadians that we take this matter very seriously,” Yasir Naqvi, the Ontario Justice Minister, said in an interview. “We would not benefit if there is an erosion of trust between the public we serve and our justice system.”

British Columbia offers another approach. It has ceased prosecuting most drunk-driving offences as crimes, treating them as administrative offences – thus removing thousands of cases from the criminal-justice system.

Quebec has been under more pressure than most. Since the Jordan ruling, lawyers there have applied for about 865 stays – dismissals – because of delay, Ms. Vallée said. Ontario, by comparison, has had about 300, according to Mr. Naqvi. And in some jurisdictions, notably Montreal, Laval and Longueuil, it is difficult to set trial dates within the times mandated by the Supreme Court, Ms. Vallée said.

“It’s not normal that a file takes five, seven years before being completed. I agree that we need to change our culture. I’m a lawyer. For 12 years, every Monday morning I was at the Maniwaki Courthouse with a criminal file. How many adjournments have I seen? How many postponements for no reason have I seen?”

# Médiation obligatoire pour les juristes de l'État

La Presse Canadienne
28 avril, 2017
La prolongation de leurs négos est un échec. LANEQ dénonce un simulacre...

Les Avocats et notaires de l'État québécois (LANEQ) font un « constat d'échec » à la suite de la prolongation de leur négociation avec le gouvernement, a appris La Presse canadienne.

Ils passeront donc à l'étape suivante, celle d'une médiation obligatoire.

Québec avait forcé le retour au travail de ses juristes, le 28 février dernier, par une loi spéciale. Ils étaient en grève générale illimitée depuis le 24 octobre, tout en maintenant les services essentiels.

Cette loi spéciale prévoyait également une période de négociation pour une durée maximale de 45 jours, pouvant être prolongée une seule fois.

Ainsi, le 12 avril dernier, les juristes de l'État avaient accepté de prolonger leur négociation avec Québec jusqu'à la fin du mois, le temps d'étudier des documents déposés par le gouvernement quant à leur rôle, à leur statut et à la réforme du régime de négociation.

Mais même après cette prolongation, LANEQ juge que les parties n'ont pas réussi à se rapprocher et que le gouvernement n'a répondu à aucune de ses demandes.

Au cours d'une entrevue, jeudi, le président de LANEQ, Me Jean Denis, a exprimé une grande déception. « On est très amer, très amer parce que c'est un simulacre de négociation ou de médiation. On a eu en face de nous un gouvernement intransigeant », s'est-il exclamé.

LANEQ demandait une reconnaissance du statut professionnel particulier de ses membres, de même que la parité avec les procureurs aux poursuites criminelles et pénales. Après avoir commandé une étude à un économiste travaillant pour le Syndicat canadien de la fonction publique, elle en conclut qu'un écart moyen annuel de 15 600 $, au niveau expert, existe pour la période du 1er avril 2015 au 31 mars 2019 en défaveur de ses membres.

Elle voulait également un nouveau mode de négociation. Mais la proposition gouvernementale reçue « ajoute la possibilité que le comité puisse évaluer les régimes de négociation autres que traditionnel, tout en refusant que le comité puisse émettre quelques conclusions à cet égard dans le cadre de son mandat express », explique-t-on dans le document qui fait le point sur les négociations.

La loi spéciale prévoit l'étape suivante: celle d'une médiation obligatoire pendant 30 à 45 jours.
Me Denis note que ses membres sont encore plus frustrés du fait qu'ils doivent en plus subir un prélèvement sur leur chèque de paie, afin de rembourser l'emprunt qui avait dû être contracté

pour verser des indemnités pendant la grève. Dans son cas, une somme de 146 $ est prélevée par période de deux semaines, a-t-il précisé.

Les Avocats et notaires de l'État québécois contestent déjà devant les tribunaux la loi spéciale.

LANEQ représente 1100 avocats et notaires à l'emploi de différents ministères et organismes du gouvernement du Québec.

## La Cour suprême entendra l'appel de Québec sur sa loi sur l'équité salariale

La Presse Canadienne
28 avril 2017
*La Cour d'appel a déjà confirmé l'inconstitutionnalité de trois articles de la nouvelle version de la loi...*

La Cour suprême du Canada a annoncé jeudi matin qu'elle entendra l'appel du gouvernement du Québec contre des syndicats qui ont attaqué la loi québécoise sur l'équité salariale.

Selon ces syndicats, à qui la Cour d'appel du Québec a donné raison, la révision en 2009 de la Loi sur l'équité salariale de 1996 a affaibli cette loi. La Cour d'appel a ainsi confirmé l'inconstitutionnalité de trois articles de la nouvelle version de la loi.

Selon l'analyse de la Cour d'appel, ces articles permettent que s'écoulent jusqu'à cinq ans entre un événement justifiant un ajustement de salaire et le paiement de cet ajustement.
Pendant ce temps, le droit à l'équité salariale ne serait « tout simplement pas respecté », de l'avis du tribunal. Aucun paiement rétroactif n'est prévu, non plus.

« Il faut reconnaître que (la Loi) institue des modalités qui ont pour effet de retarder les ajustements financiers dus aux victimes de discrimination, les privent non seulement de ce qui leur revient de droit, mais perpétue l'inégalité dont elles sont victimes », peut-on lire dans le jugement d'octobre 2016.

Ce sera maintenant au plus haut tribunal du pays de revoir le dossier et de décider si la loi québécoise viole la Charte canadienne des droits et libertés et la Charte des droits et libertés de la personne du Québec, comme le prétendent les syndicats.

On ignore quand la cause sera entendue et quand le jugement sera rendu. Et comme d'habitude, la Cour suprême du Canada n'a pas dit pour quelles raisons elle estime que cette affaire mérite son attention.

# « La Cour est à bout de souffle », dit la ministre Vallée

Radio-Canada
28 avril, 2017
*Les ministres de la Justice sont réunis à Gatineau afin de parler des effets néfastes de l'arrêt Jordan…*

La ministre de la Justice du Québec, Stéphanie Vallée, exige un échéancier de la part du gouvernement fédéral pour la nomination de juges en Cour supérieure.

Alors que va commencer vendredi matin une rencontre fédérale-provinciale des ministres de la Justice pour discuter, entre autres, des répercussions de l'arrêt Jordan sur l'administration de la justice – notamment la multiplication des arrêts de procédures en raison de délais déraisonnables –, Mme Vallée lance un autre cri d'alarme.

Selon des données compilées par le Directeur des poursuites criminelles et pénales (DPCP), 822 requêtes en arrêt des procédures avaient été enregistrées au Québec en date du 20 avril dernier. « Je m'attends à ce que le gouvernement fédéral s'engage dans un plan d'action avec des échéanciers précis, a dit la ministre Vallée. L'objectif, ce n'est pas d'aller à une rencontre pour rediscuter des mêmes points en octobre. Il faut agir : la Cour est à bout de souffle.»

En décembre 2016, 95 % des 75 dossiers de la Cour supérieure à Montréal avaient fait l'objet d'une requête de type Jordan.

En juillet 2016, le plus haut tribunal du pays a fixé des plafonds de 18 mois du début à la fin d'un procès pour les cours provinciales et de 30 mois pour les cours supérieures. Les délais dépassant ces durées sont présumés déraisonnables et violent les droits des accusés.

Nomination des juges

Depuis octobre dernier, la ministre Vallée a acheminé plusieurs lettres à son homologue fédérale, Jody Wilson-Raybould, pour lui demander de nommer des juges à la Cour supérieure afin de désengorger les tribunaux du Québec.
En tout, le gouvernement du Québec souhaite la nomination de 14 juges à la Cour supérieure et de 2 juges en Cour d'appel.

« Je suis rendue à quatre lettres et à plusieurs appels, et à plusieurs autres formes de communications », plaide la ministre de la Justice, qui ne veut pas entrer dans une guerre fédérale-provinciale au sujet de ce dossier. « Ce qui me préoccupe, c'est de ne pas sentir l'urgence d'agir du gouvernement fédéral », ajoute-t-elle toutefois.

Stéphanie Vallée est d'autant plus agacée que certains de ces postes sont vacants depuis 2012.

« Il y a trois postes qui n'ont jamais été pourvus, mais ces trois postes-là, à eux seuls, s'ils avaient été nommés en temps opportun auraient pu – suivant l'évaluation qui a été faite de la Cour supérieure – traiter 100 dossiers. Cent procès, au fond. Et pas des petits dossiers. On parle de crimes graves », soutient Mme Vallée.

Autres mesures

Les ministres de la Justice de plusieurs provinces souhaitent aussi des modifications au Code criminel, qui relève du gouvernement fédéral. Il est notamment question de revoir le recours systématique aux enquêtes préliminaires dans les dossiers de nature criminelle.

« Le Québec est la province qui a le plus recours à l'enquête préliminaire, selon Statistique Canada. Donc, pour nous, il y a peut-être quelque chose à faire », rappelle Stéphanie Vallée.

Sans prôner une élimination complète de l'étape de l'enquête préliminaire, la procureure générale du Québec se demande si certaines accusations mineures pourraient être traitées par voie de sommation, c'est-à-dire par la transmission d'un document de promesse à comparaître qui serait transmis à la personne inculpée.

Clause de dérogation

Malgré la libération de certains accusés à la suite d'arrêts de procédures en raison de l'arrêt Jordan, le gouvernement n'a toujours pas l'intention d'utiliser la clause de dérogation pour suspendre l'application de cet arrêt.

Le Parti québécois et sa critique en matière de Justice, Véronique Hivon, ont demandé à plusieurs reprises au gouvernement d'aller dans cette direction pour éviter la libération de personnes, dont certaines accusées de meurtre.

« On l'a analysé. L'utilisation de la clause dérogatoire pourrait générer son lot de contestations », croit la ministre Vallée.

## Justice ministers focus on five areas to cut court delays

Ottawa Citizen
Kelly Egan
April 28, 2017

Canada’s justice ministers, including Ontario’s Yasir Naqvi, were pressed after day-long talks Friday for concrete action to stop accused killers from walking free because of chronic court delays.

Federal Justice Minister Jody Wilson-Raybould said the ministers are focusing on five areas to speed up the criminal process, in light of the so-called Jordan decision from the Supreme Court of Canada, which imposed strict limits — 30 months in higher courts — for concluding cases.

The priorities, she said, are a review of mandatory-minimum sentences, the bail process, the use of preliminary inquiries, the vast number of minor "administration" of justice charges that clog the system and a possible reclassification of some Criminal Code offences to offer quicker settlement options.

Senior bureaucratic work on those files is to be accelerated this summer and the ministers are to meet in September for an update. Some of the improvements can be made provincially but others — like restricting preliminary inquiries — would require law reform by the federal Parliament.

Both the federal minister and her Quebec counterpart, Stéphanie Vallée — on the hot seat after a 2012 murder case was "Jordaned" earlier this month — were asked for their responses to families who lost loved ones in a criminal act, only to see accused persons walk free because of delays.

"Nobody wants this situation," said Wilson-Raybould. "I think I can speak for all the justice ministers standing here that our hearts go out to the families of victims that have had terrible circumstances inflicted upon them."

Vallée, meanwhile, said she couldn't guarantee another serious case would not be tossed out due to violating an accused person's constitutional right to a trial without unreasonable delay.

Naqvi pointed to a number of steps Ontario is taking on its own, from hiring more prosecutors and court staff, to conducting its own bail review and "triaging" the hundreds of stale criminal cases that are in danger of surpassing the Supreme Court time limits.

Ontario has seen about 300 Charter challenges for time delays since the high court ruled in the Jordan case in July 2016. The most high-profile case in Ottawa was in November with the staying of charges against Adam Picard, 33, an ex-military man, in the slaying of Fouad Nayel, 28, in 2012.

The federal government has already promised to review 72 mandatory minimum penalties in the Criminal Code, many of them introduced by the former Conservative government.

Naqvi, Ontario's Attorney-General, compared the effects of the Jordan ruling to changing the rules "in the third period" of a hockey game.

"The Supreme Court is telling us in Jordan is that we have to make structural changes. They have pointed fingers at everyone in the system, from the judiciary, to lawyers, both Crown and defence, to governments," he said as the meeting broke up.

# De nouveaux juges « très prochainement » pour la Cour supérieure

Radio-Canada
28 avril, 2017
Le processus de nomination serait en branle. Mais on ignore combien de juges seront nommés...

La ministre fédérale de la Justice, Jody Wilson-Raybould, assure qu'elle nommera « très prochainement » de nouveaux juges à la Cour supérieure du Québec, mais sans préciser si elle pourra en nommer 14, comme le réclame son homologue provinciale Stéphanie Vallée.

« Nous continuons d'avancer avec la nomination de juges à la Cour supérieure. Je m'attends à faire une annonce à ce sujet dans un très proche avenir », a déclaré Mme Wilson-Raybould à la presse avant l'ouverture de la conférence fédérale-provinciale des ministres de la Justice, qui se tient vendredi, à Gatineau.

Pressée de dire pourquoi de nouvelles nominations tardent à venir, la ministre Wilson-Raybould a dit vouloir « prendre le temps nécessaire pour s'assurer de nommer des candidats à la magistrature hautement qualifiés, pour refléter la diversité du Canada ».

« On me confirme que le processus de nomination est en branle et qu'on devrait, au cours d'un échéancier très raisonnable, pouvoir combler certains postes et pourvoir par la suite aux autres », a indiqué la ministre Vallée, sans donner plus de détails. « J'ai l'engagement de ma collègue de procéder à certaines nominations dans un délai rapproché. Je n'ai aucune raison de douter de sa parole. »

La ministre Vallée est ainsi apparue plus optimiste que la veille, alors qu'elle avait lancé un nouveau cri d'alarme à son homologue fédérale, en rappelant que la nomination de nouveaux juges est nécessaire pour s'attaquer aux répercussions de l'arrêt Jordan, rendue en juillet par la Cour suprême.

Le plus haut tribunal du pays a fixé des plafonds de 18 mois du début à la fin d'un procès pour les cours provinciales et de 30 mois pour les cours supérieures. Les délais dépassant ces durées sont présumés déraisonnables et violent les droits des accusés.

« Je suis rendue à quatre lettres et à plusieurs appels, et à plusieurs autres formes de communications », avait plaidé Mme Vallée. « Ce qui me préoccupe, c'est de ne pas sentir l'urgence d'agir du gouvernement fédéral. »

À l'heure actuelle, 6 postes de juges à la Cour supérieure sont vacants, mais Québec estime qu'il lui en faut 14 pour répondre aux besoins. Québec demande aussi la nomination de deux autres juges à la Cour d'appel.

« Les demandes du Québec ne sont pas un caprice; elles ont été identifiées à partir de faits objectifs », a déclaré la ministre Vallée, en soulignant que ces besoins ont été identifiés par le juge en chef de la Cour supérieure et le ministère de la Justice.

D'autres mesures à l'étude

Les ministres de la Justice de plusieurs provinces souhaitent aussi profiter de la conférence fédérale-provinciale pour réclamer des modifications au Code criminel, qui relève du gouvernement fédéral. Il est notamment question de revoir le recours systématique aux enquêtes préliminaires dans les dossiers de nature criminelle.
« Le Québec est la province qui a le plus recours à l'enquête préliminaire, selon Statistique Canada. Donc, pour nous, il y a peut-être quelque chose à faire », a observé jeudi la ministre Vallée.

Sans prôner une élimination complète de l'étape de l'enquête préliminaire, la procureure générale du Québec se demande si certaines accusations mineures pourraient être traitées par voie de sommation, c'est-à-dire par la transmission d'un document de promesse à comparaître qui serait transmis à la personne inculpée.

La ministre Wilson-Raybould a aussi fait savoir qu'elle veut discuter des peines minimales obligatoires avec ses homologues des provinces, afin de trouver un meilleur équilibre entre le respect des victimes et la nécessité de préserver la sécurité publique. Elle dit vouloir redonner plus de pouvoir discrétionnaire aux magistrats.

## Reforms an option to tackle Canada’s court delays: justice ministers

The Globe and Mail
Michelle Zilio
Apr. 29, 2017

Justice ministers from across Canada have agreed to consider targeted criminal law reforms, including changes to mandatory-minimum penalties and bail, in an effort to tackle delays in the court system.

Federal Justice Minister Jody Wilson-Raybould met with her provincial and territorial counterparts in Gatineau, Que., on Friday to discuss solutions to backlogged courts and serious criminal charges being thrown out as a result of delays. The emergency meeting comes nine months after a ruling from the Supreme Court of Canada, known as R v Jordan, set time limits for trials of 18 months in provincial court and 30 months in superior court. Judges have thrown out four murder cases since then – two in Quebec, one in Ontario and one in Alberta – over delays.

“It is based on the Jordan decision and the delays that are being faced in courts across the country that we came together to have discussions and put forward some substantive solutions that we’re going to be collectively pursuing,” Ms. Wilson-Raybould said during a news conference following the all-day meeting.

“Ministers agreed on the need for targeted criminal law reform and federal ministers committed to further legislative action.”

The justice ministers identified four main priority areas for officials to work on in an effort to get the courts moving faster: mandatory-minimum penalties, bail, preliminary inquiries and reclassification of offences.

The federal government has already promised to review 72 mandatory minimum penalties in the Criminal Code, many of them introduced by the former Conservative government. It is believed mandatory-minimum sentences have reduced the number of accused willing to accept a plea deal because they can’t negotiate a shorter sentence.

Ontario Justice Minister Yasir Naqvi said officials will look at the bail system. Mr. Naqvi said about 60 per cent to 65 per cent of people in the criminal-justice system are remanded to provincial detention centres, instead of, say, releasing them under supervision into the community. “These are accused, not found guilty yet, but they are being remanded to a detention centre,” Mr. Naqvi told The Globe and Mail in an interview. “That’s too much of a high rate. A lot of these people are low risk. They’re vulnerable. Many of them may have mental-health or addiction issues.”

Some provincial justice ministers are also pushing the federal government to make changes to the Criminal Code to speed up proceedings. Quebec, Ontario, Manitoba and Alberta are in favour of limits on, or the elimination of, the preliminary inquiry – a pretrial hearing in which a judge screens charges to determine whether there is enough evidence to go to trial.

Finally, Mr. Naqvi said the reclassification of offences could entail changing penalties on some convictions so the cases can stay in provincial courts, where the timelines are generally faster, instead of going all the way to the superior court.

Several provinces, including Alberta and Quebec, are also pressuring Ms. Wilson-Raybould to fill judicial vacancies to address the backlog. Quebec Justice Minister Stéphanie Vallée and Mr. Naqvi said they received assurances from the federal minister Friday that the vacancies will be filled.

Justice ministers will consider the reforms over the summer before they meet again in September.

*With files from Sean Fine and the Canadian Press*

# Federal public service unions react cautiously to the government working group on Phoenix

OTTAWA, April 28, 2017 /CNW/ - Representatives from several public service unions reacted cautiously yesterday to the creation of a government working group to tackle the Phoenix pay system.

The "Working Group of Ministers on Achieving Steady State for the Pay System", will be chaired by Ralph Goodale, Minister of Public Safety and Emergency Preparedness and comprises several cabinet ministers, including Finance, Treasury Board and Public Services.

Public Service Alliance of Canada President, Robyn Benson, said that "PSAC welcomes any announcement from the government aimed at fixing Phoenix. We appreciate that the government is finally taking these problems seriously, but we need to see some action." She added that public service employees need a system that pays them accurately and on time. "We have yet to see a timeline for when that will happen."

"This announcement is the result of constant lobbying by public service unions on behalf of their members," added Debi Daviau, president of the Professional Institute of the Public Service of Canada. "In the last federal budget, the government failed to respond to our request to pledge $75 million to help fix Phoenix. While this is not new money, the $70 million per year for the next two years that they have now committed to Phoenix is welcome news. We will continue to make sure that they spend that money to fix the system."

Union representatives will work closely with this ministerial working group on Phoenix and will remind the government that it must compensate affected employees for pain and suffering, and compensate them for loss of interest as a result of delayed pay.

According to André Picotte, acting president at the Canadian Association of Professional Employees, "the Phoenix fiasco is the result of plan that did not take the interests of the public service employees to heart.

For his part, Jason Godin, president of the Union of Canadian Correctional Officers – CSN said: "We want to be positive and believe that this new initiative to settle Phoenix will be the right one, but we remain cautious. We still have new cases that pop up every two weeks, so it's hard to be very enthusiastic at the moment".

Finally, public service unions also demand that the government commit to three things: hire more staff with full access to Phoenix in order to respond to the requests made by employees; hire permanent, not temporary, staff at the call centres who have the training and support to help our members and; keep the satellite pay centres open until all problems with Phoenix have been resolved.

# Income tax season adds to Phoenix pay woes

Kingston Whig Standard
Ian MacAlpine
April 29, 2017

With a large portion of the workforce in Kingston consisting of federal employees, many have been turning to Kingston and the Islands MP Mark Gerretsen's office for help.

And now, since federal income taxes are due Monday, staff from prisons, civilians working for Canadian Forces Base Kingston and other federal employees have lots of questions about how Phoenix will affect their 2016 taxes.

A post on Gerretsen's office Facebook page this month said Gerretsen's office has been inundated with calls and visits from people plagued by the Phoenix pay system and now people are taking their concerns there regarding their income taxes.

"My office has been working as hard as we can to try and help resolve as many cases as possible, as quickly as possible," said Gerretsen's Facebook post. "We have received many questions about how Phoenix pay issues will affect tax filing."

The Phoenix pay system, rolled out in 2016, has been fraught with problems since its inception, either underpaying employees, overpaying employees or not paying them at all.

Parents on maternity leave as well have had their benefits affected in a variety of ways.

As of a few months ago, 8,000 federal employees were still affected by the system. Now employees who had issues with overpayments in 2016 will have to pay tax on the overpayment on their current tax return.

In a telephone interview on Thursday afternoon, Gerretsen said his office wants to provide further help to Phoenix-affected employees during tax time.

"We are just trying to make people aware, federal employees who are paid under the Phoenix pay system, there are resources out there to assist them if they're running into complications with the Phoenix pay system and their tax and T4 information."

Gerretsen's office has provided a link on its Facebook page to Canada Revenue Agency's "Frequently Asked Questions" regarding filing taxes when taking Phoenix into consideration.

Some questions include: How do over/under payments affect one's personal income tax? How does emergency salary advance or primary payment received affect 2016 taxes? and What happens when someone was underpaid in 2016 and did not receive corrected salary until 2017?

The link to the site is www.cra-arc.gc.ca/gncy/prm/phnx-fq-eng.html.

The deadline to file for people owing the government money is April 30, but since that dates falls on a Sunday, the deadline has been extended a day.

Gerretsen said he wasn't aware how many employees were affected by Phoenix locally or nationally, but calls to his office have gone down since an office to help employees was opened in the old Kingston Custom House on Clarence Street in March.

"We're hearing that the new office in Kingston is actually helping a lot of the corrections people and CFB Kingston employees," he said.

## Federal employees across Quebec demonstrate against Phoenix pay system

Canadian Press
April 29, 2017

Federal employees demonstrated in nine cities across Quebec to protest the troubled Phoenix payroll system.

Members of the Public Service Alliance of Canada, Quebec Region (PSAC-Quebec) held rallies in front of the offices of some MPs and ministers, including Prime Minister Justin Trudeau’s riding office in Montreal, to express their exasperation.

Tens of thousands of civil servants have been paid the wrong salary or in some cases received no pay at all over the past year because of glitches with the system.

Demonstrators wanted to send “an unequivocal message to the government that it is high time to settle the pay problems and problems of the Phoenix system,” said Magalie Picard, executive vice-president to PSAC-Quebec.

“We do not see the light at the end of the tunnel. We are extremely fed up. Imagine going to work and not having a paycheque every two weeks. It’s unacceptable and unbelievable in 2017,” she said.

Picard denounced the government’s “very timid” response and questioned why the government has stubbornly persisted in continuing to use this system, “as if Phoenix were the only payroll system the government has at its disposal.”

“Members of the RCMP and Members of Parliament have another payroll system that works very well,” she said.

On Thursday, the Prime Minister's Office announced the creation of a ministerial Task Force to solve the problems with Phoenix, just days before the income tax deadline.

Justin Trudeau said the special ministerial committee, chaired by political veteran and Public Safety Minister Veteran Ralph Goodale, will take on the task of "achieving stability of the pay system." However, the PMO did not specify a timetable for resolving the problems once and for all.

Picard was sceptical, criticizing the government for setting up a committee rather than taking firm action.

"These problems have been known for more than a year. I would really like to know who is accountable, "she said.

## 'Don't forgive them and don't forget,' PSAC leader says Phoenix could be 2019 election issue

*Gatineau MP Steven MacKinnon downplays the role Phoenix could play in the next election, but says it's a common concern among constituents.*

Hill Times
Derek Abma
May 1, 2017

The head of the biggest federal public service union in the country says the Phoenix pay system problems, which haven't gone away yet, could end up being an election issue in 2019, particularly for Liberals in the National Capital Region, where many public servants reside.

"It would not surprise me that this would be an election issue," Public Service Alliance of Canada (PSAC) national president Robyn Benson told The Hill Times in an interview last week. "When I speak our members, my members, I say to them, 'Don't forgive them and don't forget.'"

Ms. Benson said it seems plausible that Phoenix problems could carry into next year, and there will certainly be many federal public servants at tax time next year who will be paying more because incorrect T4 slips issued this year meant they paid less in taxes.

She said there are public servants who have delayed retirements because they didn't think their pension plans would be at correct levels due to Phoenix errors.

"Think about this, you have now for this past year have had an upheaval in your paycheque," she said. "Sometimes you were paid right. Sometimes you weren't. Sometimes you think you may have been paid right, but you might not have been because, of course, they didn't bother to have correct pay stubs the way we used to, so you couldn't track anything. … So now I have members who are not able to retire because they haven't had the correct deductions for their pensions."

Ms. Benson also said it was “nauseating” that, despite all the problems Phoenix had with rank-and-file workers when their pay levels or work statuses changed, it was able to get about 340 executives in Public Services and Procurement Canada—some of whom would have been responsible for Phoenix in some capacity—about $4.8-million in performance bonuses.

Debi Daviau, president of the Professional Institute of the Public Service of Canada (PIPSC), the second-biggest public service union, said she understands there is little MPs can do regarding Phoenix, but Parliamentarians from the Ottawa area might nonetheless have to answer for it during the next election campaign.

“I think anyone whose life has been torn apart by this honest mistake. … I’m not sure everyone’s going to be forgiving,” she said. “But I have to admit, knowing all that I know, there isn’t much MPs can do to fix our members’ payroll issues.

“But they’ve all collectively demanded a fix. The media’s been very good to keep this issue public. No one could deny that pressure has been put on politically, and if it was all just about political pressure, this issue would be solved already.”

Liberal MP Steven MacKinnon (Gatineau, Que.), who’s parliamentary secretary to Public Services Minister Judy Foote Bonavista-Burin-Trinity, N.L.), downplayed how much of a role the Phoenix issue will be with the many public servants in his riding, which he said accounts for about 20 per cent of his constituents.

“I think public servants understand that everything possible is being done to remedy this issue,” he said. “They see and they know the people who are involved in this. They hear. I think the informal networks in the public service keep people very abreast of not only the kind of the work that’s going on behind the scenes but also of the interventions of the prime minister, of Minister Foote, and of Minister Carr, and others, and our full willingness to engage and get our hands dirty as we work through these issues.”

Natural Resources Minister Jim Carr (Winnipeg South Centre, Man.) is filling in for Ms. Foote, who’s taken a leave of absence for personal reasons.

Pressed on how constituents might be feeling about the Phoenix issue by the time the next election comes around, Mr. MacKinnon added: “I haven’t thought about that kind question because I don’t think anybody processes the issue that way. I think there’s a public-policy challenge, a public-administration challenge that’s before us … and we wake up every day with a resolve to fix this issue, and that’s what we’re going to do.”

Still, Mr. MacKinnon said he hears a lot about Phoenix from constituents.

“It’s very rare that during a public outing I don’t get approached by a public servant with a Phoenix issue,” he said, adding that his constituency office also gets a lot of calls on this.

He said the issue has emerged as one of the most common problems brought up by constituents, being right up there with things like immigration and passports.

Environment Minister Catherine McKenna (Ottawa Centre, Ont.) said in an emailed statement from her office about Phoenix: “The pay issues currently being experienced by public servants are unacceptable. The government is working collaboratively at all levels to resolve them, and ensuring all employees are paid the money they earned is our priority. As MP for Ottawa Centre, I am actively engaging with constituents affected by these pay issues and am working extremely hard on their behalf to ensure their issues are resolved as quickly as possible.”

Staff in Ms. McKenna’s office did not have data on how many pubic servants lived in her riding. When asked if she’s worried about this becoming an election issue, her office director Lucy Hargreaves replied that Ms. McKenna’s immediate concern is getting the problems fixed.

Conservative MP Pierre Poilievre (Carleton, Ont.), the only non-Liberal representing any part of Ottawa or Gatineau federally, did not respond to an interview request.

The Liberal government flicked the switch on the Phoenix pay system in two phases in February and May 2016 after the previous the Conservative government made the decision to move to this new system. Efficiencies realized from this technology were supposed to save the federal government about $70-million a year.

Treasury Board President Scott Brison (Kings-Hants, N.S.) announced last week that savings generated from Phoenix, for the next two years, would be kept by departments to ensure employees are paid proper amounts. As well, he said financial help of up to $200 per worker would be provided for those who had to hire accountants to sort through tax problems created by Phoenix.

As well, Prime Minister Justin Trudeau (Papineau, Que.) announced the government has created a “ministerial working group,” led by Public Safety Minister Ralph Goodale (Regina-Wascana, Sask.), tasked with solving Phoenix problems. The group also includes Ms. McKenna, Mr. Brison, Mr. Carr, and Finance Minister Bill Morneau (Toronto Centre, Ont.).

Union leaders said they blame both the Liberal and Conservative parties for what’s gone on with Phoenix. Ms. Benson said the Conservative government was foolish to lay off 2,700 compensation advisers before the system become operational (Mr. MacKinnon put that figure at 700.) Yet union leaders also say they warned the Liberal government before Phoenix went live that it was not ready to go.

“We were pretty vocal at the start of this project, as were other unions, about the fact that it was doomed to failure before it was actually in this horrible state, and this [Liberal] government did not heed our words and went full-steam ahead,” Ms. Daviau said.

There are mixed signs regarding progress in fixing the Phoenix problem. An online dashboard set up Public Services and Procurement Canada shows the number of transactions having gone to the pay centre tasked with dealing Phoenix problem that were taking longer than its targeted times to process them was 284,000 at the end of March. That number was unchanged from a month earlier. However, a note on the website said this included about 16,000 transactions for which payments had been made but had not been cleared from the system.

The way the cases are sorted on this website reflects how most problems involve workers whose employment or pay status has changed.

The percentage of problems involving parental leave being solved within the standard period of 20 days was at 95 per cent compared to 19 per cent at the end of the previous month, the website said.

Over a month’s time, the success rate has risen to 42 per from 28 per cent for pay problems involving employee transfers being solved within a standard of 45 days.

It went to 24 from 17 per cent among for those who had left the public service getting their pay problems solved within a standard of 20 days.

It had inched up to 29 per cent from 28 per cent for those returning from leave, which also has a 20-day standard.

The rate for solving problems for people in acting positions was unchanged at nine per cent within a 30-day standard, and it had gone to 46 per cent from 33 per cent for people in the category of “other,” which has a 20-day standard.

There were, however, some regressions. That rate for solving disability-related pay problems fell to 37 per cent as of March 31 from 43 per cent a month earlier in terms of being cleared within a 20-day window.

The success rate for the promotions category, which has a 30-day standard, dropped to 21 per cent from 24 per cent. For new hires, the success rate fell to 22 per cent from 24 per cent, in terms of being solved within 20 days.

Public Services officials say, theoretically, no one should be going months without any kind of paycheque since all departments are able to cut cheques on an emergency basis. Most of the issues that continue involve incorrect amounts, they say.

Mr. MacKinnon said measures put in place early on in the Phoenix pay crisis “have largely, if not eliminated, have virtually eliminated these issues where people are going without pay. There are provisions for salary advances. That system is working very well. There are provisions for coming to the aid of all public servants where income is not coming in.”

## The solution to court delays

Canadian Lawyer
Tim Wilbur
May 1, 2017

Did the Supreme Court of Canada help anything when it released R. v. Jordan last July, giving courts a timeline before criminal charges are stayed due to delay? Regardless of how you answer that question, you can’t deny that the decision has had an effect. The SCC essentially launched a grenade into the debate about trial delays and how to fix them.

There are a number of critics of the decision who think the court overstepped its bounds. These include some in the media who have accused the court of letting criminals off “scot-free” and threatening “legal anarchy.” The dissenting SCC judges put it more mildly, saying it is Parliament’s job to make those kinds of rules. These critics see it as the government’s job, not the courts, to deal with how the system is — or isn’t — funded.

But the problem with this argument is that without a grenade, the government will likely never act. As lawyers all know, pumping money into our justice system doesn’t buy votes. And as politicians all know, spending money on education and health care often does. People understand that the sick need to be cared for and children need to learn. Voters don’t sympathize so much when you throw money at “criminals.”

That is why Jordan, instead of overstepping any bounds, was actually a gift to politicians who privately acknowledge that fixing trial delays should be a political priority. Provincial governments can now tell their voters that they are working with Ottawa to prevent murderers from walking the streets.

Like any complex problem, however, there are entrenched interests and wide-ranging views on just how to fix the problem. And as our cover story (p. 24) explores, solutions are starting to bubble up across Canada. Some ideas are not so good, such as eliminating preliminary inquiries that often speed up, not slow down, the resolution of cases. But other ideas — such as Alberta’s “triage protocol” for Crown Counsel or B.C.’s use of pre-charge screening by the prosecution and administrative penalties for impaired driving cases — may be working.

As many less dramatic commentators have pointed out, the fear that a flood of people facing serious criminal charges are going to be released may be misplaced. The real meat of the problem is not the high-profile murder cases where someone could potentially be “let off.” It is the mid-level offences, such as theft, impaired driving and failing to comply with a court order.

Solving the bottlenecks for these offences may not be as politically urgent — theft charges being stayed does not make as dramatic a headline as murder charges being dropped — but expediting these cases is where the real reform is needed. But Jordan again may help, if governments can argue that “diversion” programs are more necessary so that scarce criminal justice resources can be redirected to the more serious cases.

Certainly, Jordan didn’t solve the problem of court delays. The Supreme Court can’t do that. But it launched a grenade, which will always cause people in the room to focus their attention and speed things up.