How the Supreme Court got the 'free the beer' ruling exactly backwards

It would have been highly instructive for the court to have considered the array of decisions of the World Trade Organization

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Lawrence Herman

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Now that some time has passed since the surprising Supreme Court of Canada decision in the Comeau case, it's worth reflecting on some of the concepts enunciated in that judgment in upholding New Brunswick's ban on cross-border beer imports.

The central issue in that case, of course, was whether Section 121 of the Constitution was breached by the New Brunswick law under which Mr. Comeau was charged. Section 121 says: "All Articles of the Growth, Produce, or Manufacture of any one of the Provinces shall . . . be admitted free into each of the other Provinces."

Note that the words are "shall . . be admitted free." Section 121 doesn't say "duty free" but "free" — full stop. That word would in a normal sense seem to mean admitted into the province without restriction or hindrance and that any provincial law imposing a total ban on the flow of goods into the province would be unconstitutional.

Not so, said the court. Even though Section 121 talks about goods being admitted "free," the court said that doesn't really mean free of all restrictions. Only if the "primary purpose" of the measure restricts trade does it run afoul of the Constitution. As stated by the court: " . . . a party alleging that a law violates s. 121 must establish that the law in essence and purpose restricts trade across a provincial border."

Establishing that a provincial law "in essence and purpose" restricts trade is a very high bar indeed. Many laws, regulations and measures have a variety of objectives, only one of which could be to restrict trade. A provincial law ostensibly aimed at other factors, when its genesis is examined, could include a disguised trade barrier even if that is not its "essence and purpose." Under the Supreme Court's dictum, that law would still pass muster.

Of course, the court is charged with interpreting Canadian law and doesn't have to look at larger international treaties or jurisprudence under Canada's trade agreements. But it would have been highly instructive for the court to have considered the array of decisions of the World Trade Organization and its predecessor, the General agreement on Tariffs and Trade (GATT), two bodies that have had over 60 years of experience dealing with border issues and trade barriers. Had it done so, it may well have used different language and come to a more balanced decision.

The WTO and GATT agreements aimed at opening up markets and dealing away direct and disguised trade restrictions. These differ in obvious respects from Canada's Constitution and so we can't ascribe total comparability between the two. However there are aspects of the WTO agreement that inform

aspects of Canada's Constitution, particularly the free-trade aspects of Section 121, and these weren't even considered by the court.

The WTO agreement obliges signatory states to maintain open markets, subject to only very limited exceptions. Canada's Constitution is not so direct, except if one considers the use of the word "free" under Section 121, which implies the objective of open markets from coast to coast. In that sense, Canada's Constitution shares common attributes with the GATT and WTO agreements in that, while creating Canada as a confederation, the Constitution was — and is — based on the principle of a single political and economic union where, one would expect, goods are allowed to enter markets freely from one end to the other.

Under the WTO agreement and the GATT, countries can only deviate from free-trade obligations where a restrictive measure is demonstrably "necessary" to protect life, health or the environment and, importantly, isn't either arbitrary or discriminatory or a "disguised restriction on international trade."

The WTO's panel decisions and appeal decisions have been very successful at ferreting out such disguised trade restrictions, making it clear that even if a measure meets the test of necessity it is still not considered acceptable if there are less trade-restrictive alternatives that could be employed,

In the WTO's famous "Asbestos Case," where Canada challenged the EU's restrictions on asbestos imports, the WTO panel and the Appellate Body (to which Canada had appealed) looked carefully at the measure and its human health underpinnings balanced against the rules of free trade and concluded that there were no reasonable alternatives available to the European Union other than preventing asbestos imports.

Had the Supreme Court looked into some of this WTO-GATT jurisprudence, it might well have modified its "primary purpose" test, placing a burden on the province to justify interfering with the flow of goods within Canada's economic union on the basis of "necessity" and lack of available alternative measures.

In other words, instead of concluding that under Section 121 the burden is on the complaining party to prove that the "essence and purpose" of a provincial measure is to restrict trade, the court might have concluded — as in the WTO-GATT — that the burden is on the province to show that the measure is necessary, that it isn't a disguised protectionist device, and that no reasonable alternatives exist other than prohibiting imports. It seems that the Supreme Court got this backwards.

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'Disturbing level' of bullying, intimidation in public service must be rooted out, says PCO clerk
Clerk of the Privy Council Michael Wernick says fixing the problem-plagued Phoenix pay system is his top priority in 2018, but he also plans to combat harassment and improve mental wellness in the workplace.
The Hill times
Emily Haws
May 2, 2018

Canada's top bureaucrat says while the kind of sexual harassment that sparked the #MeToo movement exists within the public service and needs to be addressed, there is a "disturbing level" of other harassment such as bullying, intimidation, and conduct issues.

"We need to get to the bottom of where that's coming from and how to root it out," Privy Council Clerk Michael Wernick said in a sit-down interview with The Hill Times last week.

According to the 2017 Public Service Employment Survey, 18 per cent of public servants said they have been a victim of workplace harassment in the previous two years. This was only one percentage point lower than the 2014 results, which was the last time the survey was administered. Eight per cent said they had been discriminated against.

In the 25th annual report on the public service to Prime Minister Justin Trudeau (Papineau, Que.) released last week, Mr. Wernick said he is "resolved in my commitment to ensuring that all employees feel respected and safe to come forward if they feel they have been a victim of harassment." He and Mr. Trudeau meet periodically, usually in Mr. Trudeau's Centre Block office, and he said Mr. Trudeau is keenly interested in the bureaucracy.

He said the Treasury Board's policy on harassment prevention and resolution will be strengthened by Bill C-65, but in his report, Mr. Wernick said he's launched a team to "spearhead a targeted review of our culture, our harassment framework, and areas we can better support employees."

In addition to adding sexual harassment to the section of the Canada Labour Code that deals with other harassment and workplace violence, Bill C-65 also extends the same protections already allowed to employees in federally regulated workplaces to the House of Commons and the Senate. The House Human Resources Committee tabled its report following study of the bill on April 23.

Unlike Parliament Hill, the bureaucracy isn't "short of laws, and policies, and institutions" to address harassment, he said, but "if anything, there might be some confusion on how to navigate through it." The team is in "a listening mode" right now to determine what the issues are, and what kinds of changes need to happen.

The project is being led by Janine Sherman, the PCO's deputy secretary to the cabinet of senior personnel and public service renewal, said Mr. Wernick, and so far he's met with deputy ministers, executives, national managers, and people working in human resources. In the future, he will meet with people with disabilities and other groups.

The Public Service Employee Survey has been shifted to occur annually, instead of every three years, and the government has been creating the authorities and tools to do quick "pulse surveys" which it didn't have until a few years ago, he said.

More data "means we can get much more evidence and data about what's going on, identify hotspots, areas that are going well, and areas that seem to be showing particular stress indicators," he said, adding that doing workplace health assessments helps them see what's going on. He didn't respond when asked when the team will finish its work, or if its report will be made public.

Along with harassment, the annual report reiterated that fixing the troubled Phoenix pay system, which has left public servants with incorrect pay for two years, is Mr. Wernick's main priority for 2018.

He's also prioritizing diversity and inclusivity in the workforce, remaining committed to mental health and wellbeing, and modernizing workplace tools, processes, and organizational structures.

Inclusion more important: Wernick

Sixty-seven per cent of public service survey respondents said their department does a good job of raising awareness of mental health in the workplace, and 81 per cent felt comfortable discussing matters affecting their well-being at work with their supervisor.

Fifty-six per cent said their workplace is psychologically healthy, which may seem low in comparison, but Mr. Wernick said each one measures different aspects.

People, departments, and agencies are working hard to de-stigmatize mental health issues and ensure people are comfortable coming forward, he said, but suggested he's "sure that not everyone" knows where to turn.

"I think making that easier to navigate and making sure that those support services are there, that's a challenge for us as it is for every employer," he said, adding the bureaucracy has a duty to be a mental wellness leader.

"[Workplace mental health is] related to all kinds of things, it's related to civility and respect and harassment issues, in some cases, it's related to workload issues in others, it's related to people who simply develop mental health conditions as they do across the general population."

The 2018 budget earmarked $20-million over five years for a Public Service Centre of Diversity, Inclusion, and Wellness housed within the Treasury Board Secretariat, which will better support bureaucrats in dealing with sexual harassment on the job, and support departments and agencies in creating healthy workplaces.

As for diversity, he noted that although it's important to focus on recruitment and intake, you also have to look at the promotion process, professional development, and those in their mid-career because only about 8,000 people turn over annually in the 262,000 person public service.

As well, Mr. Wernick said it's not just about diversity, or "counting for employment equity scores," but inclusion, which ensures that management teams are aware of different ways of working and learning that "draw in all kinds of perspectives."

He also noted that they're working at making workplaces more accessible for people with disabilities. As depression is the most common reason for claiming long-term disability insurance, he added that mental health and disability are linked.

The report said the representation of persons with disabilities in the public service exceeds estimates of their availability in the workforce, but "they are under-represented in the technical and operational categories, and overall representation in the Public Service has decreased" over the last decade.

The government's accessibility legislation to be tabled this year will affect the bureaucracy, he said, but he is looking into more sophisticated issues, such as learning, career advancement, and role models within the executive community.

About 41 per cent of respondents said their work suffers because of complicated business processes, and Mr. Wernick suggested both the processes and layers of executives could be simplified. He's talked to Treasury Board President Scott Brison (Kings-Hants, N.S.) and Mr. Trudeau about simplifying the executive levels, but acknowledged it's a big undertaking and not a priority for 2018.

Arrêt Jordan: 327 dossiers abandonnés par le DPCP
Plus d'une trentaine d'entre eux concernent des crimes contre la personne
Droit Inc
Delphine Jung
2 mai, 2018

Pour éviter d'investir du temps sur des dossiers qui seront, d'après lui, arrêtés par le tribunal, le Directeur des poursuites criminelles et pénales (DPCP) a choisi de suspendre les procédures dans 327 dossiers criminels et ce, depuis l'arrêt Jordan.

Dans la dernière année seulement, le DPCP a demandé l'arrêt des procédures dans 193 dossiers criminels, a reconnu mardi la directrice des poursuites criminelles et pénales, Me Annick Murphy.

« Ça envoie le signal que la justice est très malade et que le système a mis des énergies dans des causes (mais que, lorsqu'on) arrive à l'autre bout, on n'est pas capable d'aller jusqu'au bout », a dit la députée péquiste Véronique Hivon, comme le rapporte Le Devoir.

La majorité des dossiers abandonnés sont des dossiers de conduite avec capacités affaiblies, des méfaits, ou encore de complot, mais 36 d'entre eux concernent des crimes contre la personne, 26 sont liés à des accusations pour fraude et 21 relèvent d'enquêtes sur la drogue.

Depuis le jugement Jordan, qui vise à ce qu'un dossier soit traité dans un délai raisonnable (18 et 30 mois selon la cause), pas moins de 1680 requêtes en arrêt des procédures ont été présentées par des accusés qui voulaient échapper à un procès.

Au total, 137 ont été acceptées, tandis que 225 ont été rejetées, selon les chiffres fournis par le DPCP.

À ce jour, 36 % des dossiers criminels présentés devant les cours supérieures dépassent les délais prescrits.

La ministre de la Justice, Stéphanie Vallée, a insisté sur les « changements importants dans la façon de présenter, de traiter les dossiers » et a voulu rassurer les citoyens.

Elle a rappelé que 200 000 dossiers sont traités chaque année.

Poursuite des barreaux : les opposants ignorent les faits historiques
C'est en tout cas ce que prétend cet avocat montréalais qui veut remettre les pendules à l'heure
Droit Inc.
Delphine Jung
2 mai, 2018

Me Edmund Coates souhaite que les opposants à la poursuite des barreaux contre le gouvernement prennent un peu de recul et changent de perspectives.

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

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

« Les faits historiques justifient cette démarche. On occulte tout le fond de la question », déplore Me Coates, Barreau 2003.

Cette poursuite a suscité l'émoi chez les avocats. Une pétition a même été lancée pour demander aux barreaux d'abandonner les procédures. Et le Barreau du Québec a dû ajouter une période de questions sur cette poursuite controversée lors de la prochaine assemblée annuelle.

Négligence envers le texte anglais

« Les efforts des barreaux pour dénoncer la négligence dans la préparation des textes anglais ont eu un long cheminement », explique Me Coates dans un long rappel historique envoyé à Droit-inc. « Par exemple, on peut lire, dans le quotidien The Gazette du 29 décembre 1993 que le bâtonnier Bloom dénonce depuis un an le piètre texte anglais pour le nouveau Code civil du Québec. Pourtant, le texte anglais du Code civil n'a été corrigé qu'après deux décennies d'efforts de la part du Barreau du Québec

et de la Chambre des notaires du Québec, à force d'une vingtaine de rapports découlant du travail d'un aréopage de juristes bénévoles. »

Il rappelle également qu'en 2016, alors que le Québec s'est doté d'un nouveau Code de procédure civile, la préparation de cette loi a donné lieu aux mêmes négligences et aux mêmes avertissements.

Discordances, ambiguïtés, problèmes de style et choix problématiques de terminologie sont venus agrémenter le texte anglais, dit Me Coates.

« La négligence envers le texte anglais entache la qualité de maintes autres lois (pour s'en convaincre, il suffit, par exemple, de feuilleter le Code du travail). L'accès au droit est donc réduit, pour les francophones et les anglophones, par des textes anglais préparés en silo par de non-juristes, dans l'agitation fébrile de dernière minute à l'Assemblée nationale », poursuit-il.

Sans affirmer haut et fort soutenir l'action des barreaux, Me Coates estime qu'elle est « une défense de l'intérêt public. Tous devraient être en faveur de lois bien rédigées. »

Realizing the full potential of restorative justice
Restorative justice has more to offer than just diverting people from the criminal justice system. It's a powerful way of thinking that can reshape justice.
Policy Options IRPP
Jennifer Llewellyn
May 2, 2018

There is a wide consensus on the need for criminal justice system reform – a recognition that the system is slow, inaccessible, re-traumatizing, expensive, stigmatizing and ineffective in securing public safety. Worse still, the over-representation of people from marginalized communities in the system reinforces and amplifies their social inequality and vulnerability. There is also support for restorative justice as a way to address these issues (for examples, see the Prime Minister's mandate letter to the Justice Minister, the recent Senate report on delays in the criminal justice system, and the recent report from the Federal Ombudsman for Victims of Crime.)

Despite this interest and the investment in restorative justice, its full potential remains to be tapped. So far, it has largely been viewed as an option to divert cases from the criminal justice system and into other processes. Nova Scotia implemented one of the earliest and most comprehensive restorative justice programs for youth in Canada. Accessible at all points in the criminal justice process and across the province, the program diverts young people to justice processes offered by community-based restorative justice agencies. In 2016, this program was expanded to adults across the province.

The Youth Criminal Justice Act has been a catalyst in jurisdictions throughout Canada for the development and implementation of restorative justice alternatives for youth. In fact, the recent Department of Justice survey on restorative justice programs lists 407 operational restorative justice programs in Canada, of which only 27 do not serve youth.

The application of restorative justice has resulted in positive outcomes for individuals and the criminal justice system, including greater accountability and compliance by offenders, higher satisfaction for all parties concerned, greater efficiency, and cost effectiveness as compared with the mainstream criminal justice system.

However, this limited use of restorative justice as diversion fails to realize its greatest potential. It leaves intact the current criminal justice system, with its hardboiled logic, as the standard-bearer for justice against which restorative justice appears to be a soft-option.

But appearances are mistaken. To see clearly the potential of restorative justice for the transformation of the criminal justice system, we must pay attention to the idea of justice it offers, as well as the challenge it represents to the logic of the current system. Restorative justice is more than just another path to the goals of the current criminal justice system – it is a different way of thinking that offers a new roadmap for justice.

Understood like this, restorative justice has much more to offer the reform of criminal justice than does merely diverting people away from the current system. It supports a proactive and preventative approach to justice within communities and across systems, so that matters do not reach the criminal justice system at all. It is also a powerful framework with which to reshape the current pathways within the criminal justice system.

Restorative justice and building just relations

Those who are at all familiar with restorative justice point to the importance of relationships to it's practice. Indeed, the current restorative archetype is a face-to-face encounter between victim and offender with their communities. Success too is often cast in relational terms as restorative stories tell of relational repair, reconciliation and transformation.

Restorative justice is a relational approach to justice, but this does not mean it is only focused on mediating interpersonal relationships. Justice viewed restoratively is fundamentally about just relations. In simple terms, as an approach to justice it says relationship matters to the way we understand justice and the issues at stake, as well as how we respond. This relational view extends beyond interpersonal relationships to relations at the level of groups, of institutions, of systems, and of society.

In many situations, relations between those involved have never been just. In all situations, restorative justice is focused on figuring out what would be required to arrive at just relations in the future and how to move away from the current injustice(s) to justice.

This way of thinking about justice is different from the current criminal justice system's focus on individuals and on breaches of law. Instead, restorative justice is concerned with individuals in relation to one another and all that surrounds them.
Nova Scotia is taking this approach within communities and with various human services. For example, it has invested significantly in a restorative approach in schools that now extends to over 100 institutions across the province. The province's schools now consider the impact of policies and practices on

relationships in classrooms, on the playground, among staff, with parents, and with the community at large. This attention to building and maintaining just relations in schools has resulted in greater school attachment, less conflict, better behaviour, fewer exclusions and better learning outcomes. All of these outcomes are significant factors in the reduction of young people's risk of coming into conflict with the law.

A restorative approach is also being implemented at the post-secondary level to address issues of conflict on campus, or to reverse a negative climate. Dalhousie University, for example, employed a restorative justice process to address issues around sexism and standards for professionalism at the Faculty of Dentistry, building on the broader restorative approach that was already being used on campus to build a safe and inclusive community.

Restorative approach within the criminal justice system

When cases must or should remain within the system, a restorative approach supports processes that are less harmful, traumatizing or damaging, particularly to people who are vulnerable or marginalized. But the current criminal justice system is rigid and fixed in its processes. To get justice, people have to fit their issues and needs into the system and accept what it has on offer. The system's failure to appreciate or respond to peoples' needs underlies the many current demands for reform of the way the system deals with sexual and gendered violence.

Restorative justice offers a common and predictable set of principles to guide practices and processes; it is not one fixed model or practice. Through a principle-based approach, restorative justice is able to respond to the nature of the situation and needs of the parties. This factor could be the one that could make the greatest difference for criminal justice reform.

A restorative approach to justice would reshape criminal justice to become

Relationship-centred: focused on understanding and promoting just interconnections between individuals, groups and communities
Comprehensive and holistic: taking into account the contexts and causes of harm and its impacts
Inclusive and participatory: culturally appropriate, and trauma-informed; attentive to the safety and well-being of participants
Responsive: contextual, flexible in practice
Focused on individual and collective responsibility
Collaborative and nonadversarial
Forward-focused: educative, not punitive; problem-solving, preventative and proactive
Nova Scotia has begun to integrate a restorative approach within its criminal justice system based on these principles.

Nova Scotia's Mental Health Court, now 10 years in operation, is guided explicitly by restorative principles. It is supported by a collaborative, multisector, interdisciplinary team that works together to support the individuals who come before the court, by recognizing and addressing their needs in order to support them to take responsibility and change their behaviour.

A similar approach is now being taken by its newly established Domestic Violence Court, which will support assessment and treatment for those charged, while working with the individuals and families impacted.

Nova Scotia is also taking a restorative approach in other parts of its criminal justice system, including the youth correctional facility, and more recently in response to a death in custody.

The criminal justice system is facing complex situations related to systemic issues that need to be addressed through a relational approach. Solutions to these issues must be imagined and implemented in collaboration with other systems and sectors. The success of Nova Scotia's restorative approach to criminal justice transformation lies in the partnerships and collaborations it facilitates within and beyond the criminal justice system.

The collaborative and inclusive nature of restorative justice is key to securing the knowledge, understanding, commitment and skills needed to address the root causes of the issues that are plaguing the current criminal justice system. In this way, the restorative approach has the capacity to generate and support the collaborative involvement of all systems – health, social service, labour, education – on the road to a meaningful and lasting transformation of justice.

The Liberals break promise by outsourcing pay processing jobs to IBM: Union
iPolitics
Kathryn May
May 2, 2018

The Trudeau government broke a promise that it would not privatize pay processing to manage the Phoenix crisis with a new contract that turns over the work of public servants to IBM, says the Public Service Alliance of Canada.

PSAC Vice-President Chris Aylward said the union was given assurances that no work done by public servants would be contracted out to stabilize the pay crisis by Public Safety Minister Ralph Goodale. Goodale heads the working group of cabinet ministers assigned by Prime Minister Justin Trudeau to oversee the Phoenix fiasco.

He said similar assurances were given by Les Linklater, the associate deputy minister at Public Services Procurement Canada, who is stickhandling the government's effort to stabilize of Phoenix.

"The government has broken its commitment to the PSAC, a commitment they made they would not outsource any work to stabilize the payroll system," said Aylward.

"We are opposed to all contracting out…All pay processing should be done by public service workers and if more people are needed, the government should be hiring staff and not contracting out to IBM."

Aylward said the contract will take over the work of public servants at the Gatineau satellite pay centre, who handle the 24-hour run of pay transactions and flag and fix errors as they crop up. He said that

work will be given to 100 IBM employees and public servants will be reassigned to other work processing pay.

Linklater said no employees will lose jobs in the move and the government is continuing to hire additional staff to look at technical fixes. In addition, PSPC continues to hire more compensation advisers. He said the staff who worked the shifts in pay operations will be moved to more "challenging and interesting" strategic work on technical fixes, leaving the more routine tasks to IBM to perform.

These 60 employees have data and technology skills that will help the government in its review of pay processes and the department is looking to hire as many as 50 more individuals to work on "strategic" fixes.

"At the end of the day this is about all hands on deck, growing crown's capacity and drawing on best experience we can to solve problems," said Linklater.

The government hired IBM in 2011 to implement Phoenix, which it built using PeopleSoft, an off-the-shelf software developed by Oracle. The government has so far agreed to pay IBM more than $227 million. This work with IBM is part of that massive contract. That contract expires in 2019.

The Professional Institute of the Public Service of Canada, which represents federal IT workers, has led the charge against contracting out and is pushing the government to dump IBM and have public servants maintain Phoenix once IBM's contract expires. She wants IBM to "transfer knowledge" to federal IT workers so they are ready to take over when the contract expires.

Linklater said IBM is doing that, and similarly, the government is transferring knowledge to IBM in the drive to get Phoenix stabilized.

Linklater said the department is mapping the various processes in the paying public servants, which will help the government decide how to maintain Phoenix when IBM's contract expires.

Aylward said the union recognizes that working with IBM, the system's builder, is an "ongoing necessity" but it is "unacceptable" for public servants to have to train IBM employees to take over their jobs.

News that IBM had landed more work under its longstanding Phoenix contract that displaced public servants brought howls of protest at the union's triennial convention in Toronto where the more than 500 delegates were debating a resolution calling for 'escalating action" to force the government to pay employees properly.

One delegate noted that the $29 million contract to replace public servants is more than the $16 million the government gave Treasury Board to start looking for a replacement for Phoenix..

The government also gave Public Services and Procurement Canada $431 million to stabilize Phoenix and ensure employees continue to get paid and the bulk of that will be spent over the year.

The publicity around the Phoenix debacle is a major black eye for the IBM. The government, however, has insisted that IBM has done the work it was hired to do.

Public Services Minister Carla Qualtrough has said, however, the original contract with IBM has been renegotiated with IBM now assuming more risk and responsibility.

Under the previous "task authorization" arrangement, the government specified the work to be done. That meant PSPC would tell IBM what it wanted and prescribe how it would be done.

With its new "managed service" approach, PSPC tells IBM what outcomes or results it wants and leaves it up to IBM to decide how to do it. PSPC officials have said the new arrangement will cost more because IBM is assuming more risk and responsibility but it frees up government resources for the "strategic technical fixes."

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Ontario court decision on bias against black Canadians called 'a game changer'
Lawyer's Daily Magazine
Ian Burns
May 2, 2018

Canadians in reaching a sentence in the case of a young black man who pleaded guilty to illegal possession of a firearm. But the practical implications of the decision are receiving a mixed reaction from legal experts, with some calling it transformative but another saying it is merely an example of a judge doing his job properly.

Jamaal Jackson, 33, pleaded guilty to possession of a prohibited firearm with ammunition and breach of a prohibition order after a search by police discovered a .380-calibre Kruz firearm in the waistband of his pants. The pistol had one bullet in the chamber, and Jackson was subject to five separate weapons and ammunition prohibition orders under the Criminal Code. He also had a long rap sheet, having been convicted of assault, carrying a concealed weapon, uttering threats and numerous counts of robbery (R. v. Jackson 2018 ONSC 2527)

Justice Shaun Nakatsuru, in a decision brought down April 23, acknowledged the seriousness of Jackson's crime as well as his record, but also noted his "personal history of early racial conflict, identity

confusion, and family disruption," which created the "conditions for him to slide easily into criminality." He pointed out Jackson suffered racist treatment in both Ontario and his home province of Nova Scotia and dealt with a mother with serious mental health issues.

And Justice Nakatsuru also noted, "African Canadians have been jailed three times more than their general representation in society for quite some time."

"Too many African Canadians are serving time in jail. Something more needs to be done," he said. "In this case, I hope to take a small step in changing that."

Justice Nakatsuru said his authority in looking at social context and systemic racial issues flows from s. 718.2(e) of the Criminal Code, which states that a "court that imposes a sentence shall also take into consideration … all available sanctions, other than imprisonment, that are reasonable in the circumstances and consistent with the harm done to victims or to the community should be considered for all offenders, with particular attention to the circumstances of Aboriginal offenders." He also said the framework set out in R. v. Gladue [1999] 1 S.C.R. 688, in which the Supreme Court said Indigenous people were also jailed too often and for too long, can provide useful guidance.

"While there is much to be gained from the jurisprudence regarding the sentencing of Indigenous persons, the sentencing of African Canadians should not be approached by simply layering a Gladue template on top," he said. "[But] within the sentencing principles that currently exist, I believe there is room to build a framework of analysis that can begin to address the issue of disproportionate incarceration of African Canadians."

Justice Nakatsuru said two decisions of the Ontario Court of Appeal, R. v. Borde [2003] O.J. No. 354, and R. v. Hamilton [2004] O.J. No. 3252, had "much to offer in analyzing the sentencing issues raised." In Borde, the court declined to apply the analysis of Gladue to black defendants, noting s. 718.2(e) specifically places an affirmative duty on judges that only applies to Indigenous offenders. But the court also held that background factors were far from irrelevant because they could impact on the offender and the crimes he committed.

In the Hamilton decision, Justice David Doherty upheld a sentence against two black women convicted of importing cocaine, but noted "a sentencing judge is … required to take into account all factors that are germane to the gravity of the offence and the personal culpability of the offender," including racial and gender bias.

Justice Nakatsuru noted, although Justice Doherty said that the evidence of difficult socioeconomic circumstances of the offender had to be a "direct" result of systemic racial and gender bias, he did not interpret that as a "rigid requirement that the offender show a direct and causal connection."

"Seldom can such a direct causal connection ever be proven, in life or in law," he said. "It should not be required in sentencing where the balancing of numerous, often competing factors, is more an art than a science."

Justice Nakatsuru sentenced Jackson to five years for the firearm charge and one year for the breach of prohibition. He credited him with 1,203 days for his pretrial custody of 803 days on a 1:1.5 basis, with a total sentence of two years 257 days in prison.

“This is not a race-based discount,” he said. “Rather it is a fit sentence when all the circumstances are taken into account, including historical and systemic factors. It is a just sentence that recognizes that each sentence is individual based upon well-recognized principles of law. But also one that takes into account the long-standing and pressing problem of disproportionate incarceration of African Canadians.”

Faisal Mirza of Mirza Kwok Criminal Defence Lawyers, who represented Jackson, pointed out Justice Nakatsuru said a Gladue-type of analysis is not what is appropriate, and in fact that is not what he was arguing. But he said the ruling “provides a roadmap to say I recognize that discrimination against black people in criminal justice is distinct and that is how it should be factored and applied in sentencing.”

“We’re not trying to equate the experiences of Indigenous people and African Canadian offenders, but there are commonalities that should be used as an interpretive tool,” he said. “The Supreme Court of Canada has made it quite clear that sentencing is about individualization, which means you have to explore those aspects of what has brought the person before the court in order to get the right sentence. Only time will tell what the value of the decision is, but what I think it’s going to contribute is that roadmap to lawyers and judges on how to apply anti-black racism to criminal sentencing.”

Brian Gray, spokesperson for Ontario’s Ministry of the Attorney General, said it would be “inappropriate” to comment specifically on the Jackson case as it is still within the appeal period, but added “everyone in Ontario deserves to be treated fairly by our public institutions so that they can reach their full potential, no matter who they are, what they look like, what they believe or where they are from.”

Aba Stevens, secretary for Legal Aid Ontario’s Black Legal Action Centre (BLAC), said actors and decision-makers need to acknowledge the central role that their anti-black racism plays in the overrepresentation of black people in the criminal justice system.

“It is important that courts fairly and consistently apply the sentencing principles to help ensure equitable treatment of young black people within the justice system and to treat the mistakes of the young Jamaals of this world with the same understanding and empathy as the justice system affords to young white people,” she said. “Instead, imprisonment is often the default for black people because police, Crowns, justices and judges often view black people as inherently criminal and beyond saving.”

Faisal Bhabha, an associate professor at Osgoode Hall Law School who teaches human rights and anti-discrimination law, said the decision is “remarkable on many levels and it’s a game changer.”

“This judgment is radical in that takes quite a bit of liberty with the notion of stare decisis and binding precedence from appellate courts in order to push the law in a way it wasn’t going to go on its own,” he said. “That’s what makes it radical and transformative and truly remarkable.”

Bhabha said Justice Nakatsuru adopts an interpretation of s. 718.2(e) that represents a "deliberate shift in the way we think about sentencing principles for all offenders."

"Gladue is specific to Indigenous communities, but [Justice Nakatsuru] has now said we can derive some general principles for s. 718.2(e) that support a shift in sentencing beyond just Indigenous offenders. We can also do this in the case of this vulnerable community that we've clearly established are disproportionately affected by the criminal justice system," he said. "It is opening a door to a more compassionate sentencing regime writ large and I think that's a good thing."

But Lisa Kerr, a professor of criminal law at Queen's University Faculty of Law, said "at the end of the day" the actual sentence imposed didn't seem like it was particularly affected by the attention paid to the history and systemic discrimination that African Canadians have faced.

"If you look at the defence and Crown positions, the defence was asking for four years and the Crown was thinking between eight-and-half and 10 years," she said. "It's not usual to see a sentencing judge come somewhere down the middle, which is exactly what happened here. I think you have to think about what this defence was and this particular defendant's criminal record — I think those factors were just so significant in this case."

Kerr said the decision was indicative of the discretion given to judges in sentencing and how "profoundly individualistic" the sentencing process in Canada is, pointing to the wording in s. 718.2(e).

"Judges in sentencing are allowed to think about the social context within which the offence occurred," she said. "It's not a race-based sentencing discount. It's a sentencing process that is highly individualized that pays attention to collective experiences where they are relevant. Canadian sentencing judges can do the same thing for African Canadian defendants [as they are required to do for Indigenous defendants]. They could before this decision and they can going forward."

Stevens said the language of s. 718.2(e) is clear: "all available sanctions, other than imprisonment … should be considered for all offenders."

"While courts already have tools to take account of circumstances faced by African Canadians, Parliament also has a role to play," she said. "As criminal justice reforms are currently tabled in Parliament, the government has an opportunity to amend s. 718.2 to better and more clearly address the particular inequities faced by persons of African descent in the Canadian justice system."

OPINION: Hassan Diab is another Canadian let down by our government
The Globe and Mail
Monia Mazigh
May 2, 2018
Monia Mazigh is an academic, author and human rights advocate.

On the morning of Nov. 14, 2014, Hassan Diab was extradited to France, just one day after the Supreme Court of Canada dismissed hearing his case. His wife, Rania Tfaily, was pregnant with their second child.

She didn't get to see her husband when the Canada Border Services agents came to the Ottawa-Carleton Detention Centre to put him on a plane to Paris. She didn't kiss him goodbye. All the doors were shut in his face. His fate was left in the hands of the French legal system.

Hassan Diab is neither a refugee nor an illegal worker; he is a Canadian citizen. He was a sociology professor who taught at Carleton University before he was fired for being "a suspected terrorist." In fact, Prof. Diab's story starts in the classroom, when a French journalist attended one of his lectures and later informed him that he was the main suspect in the 1980 bombing of a synagogue on Copernic Street in Paris. Prof. Diab was shocked by the allegations and denied being involved in any terror activities. All along, he pleaded his innocence.

A memo recently obtained by the CBC revealed that, not only was Prof. Diab left to his own fate when he was extradited, but Canadian lawyers from the Department of Justice were working hard to "prove" he was guilty. Claude LeFrançois, a senior counsel at the department, regularly exchanged memos with his French counterparts pushing for and obtaining court delays until the French authorities could find a "smoking gun."

For those who still consider the Diab case another "simple and innocent" mistake of our legal system or a shortcoming of our extradition laws, these recent revelations should demonstrate that what we are seeing here is an accumulation of disturbing behaviour, a series of repetitive "mistakes" spanning years.

For me, this case is solid proof of the "institutional racism" that many people from racialized communities and vulnerable groups have been facing in Canada for years. Prof. Diab is not the only Canadian citizen of Arab Muslim background who fell victim to a witch hunt, characterized by "information sharing" or "delaying justice."

While my husband, Maher Arar, was in a filthy dungeon in Damascus, he hoped for one thing: that Canadian officials would work on his behalf to secure his release. That turned out not to be the case. Gar Pardy, now a retired director of consular affairs, once wrote to me in an e-mail: "A major part of the problem here is that not everyone in the Canadian government is in agreement with what we are doing to support Maher."

Another Canadian citizen, Abousfian Abdelrazik, was detained in 2009 in Sudan for six years and labelled a "terrorist." While in prison there, he was "visited" by Canadian intelligence officers whom he had met previously in Canada. They had threatened him at that time, saying that if he did not collaborate with them, he would regret it one day.

And then there are the cases of Abdullah Almalki, Ahmad El-Maati and Muayyed Nureddin, three Canadians who were all tortured in the same prison as my husband. Justice Frank Iacobucci, in charge of conducting a judicial inquiry into Canada's role in their detention and torture, found that Canadian documents containing information about raids on Mr. Almalki's home in Ottawa made their way into the hands of Syrian officials, along with questions submitted by the RCMP. Justice Iacobucci concluded that these actions indirectly led to Mr. Almalki's mistreatment.

Prof. Diab spent more than three years in the infamous Fleury-Mérogis Prison. He was kept in solitary confinement. He missed his children's milestones and lost precious moments with his family. He lost his academic career. If it were not for the "legal mission" of some high-ranking government lawyers, working so hard to criminalize him, he would have been in Ottawa, attending the birth of his son and walking his daughter to her first day at school.

Today, the only thing we can do to help him and his family mourn this loss is to call for a full public inquiry into the shameful actions of Canadian government officials.

Freeland will monitor Justice probe of Canada's role in Diab extradition
NDP and Amnesty International calling for a public inquiry
CBC News
David Cochrane and Lisa Laventure
May 2, 2018

Foreign Affairs Minister Chrystia Freeland will closely monitor an internal Department of Justice review of Hassan Diab's extradition on terrorism charges to ensure the Canadian university professor "gets the answers he deserves," a government official with direct knowledge of the file told CBC News.

"It is pretty clear that what happened to Hassan Diab never should have happened in the first place," the official said.

"We are going to be watching very closely and asking tough questions."

Diab, 64, was extradited to France in 2014 and spent more than three years in prison there in near-solitary confinement conditions while being investigated on terrorism charges that were later dropped.

A confidential memo obtained by CBC News revealed the efforts made behind the scenes by a senior Department of Justice lawyer to ensure Diab's extradition by strengthening the French case when it was on the verge of falling apart.

This week, after the CBC News report came out, a Justice spokesperson defended the Canadian efforts to bolster the French case, and to not disclose them to the court, as normal practice.

When Diab was released and returned to Canada in January, Justice launched an internal review of the case. But Diab and his lawyer say they doubt that anything short of a public inquiry will get the answers they want.

The open letter
"(Freeland) is personally very seized with ensuring that Mr. Diab receives the answers that she feels he deserves from the government about their role in his ordeal," the government official said.

"If, as it seems to appear, Canada was somehow involved in prolonging his ordeal before the French courts, that is something that warrants answers."

In question period in the Commons Thursday, NDP justice critic Murray Rankin also called for a public inquiry.

"Does the prime minister really think we can rely in an internal departmental review which by definition lacks independence?" he asked. "Will he launch a public inquiry to get to the bottom of this grave injustice and find ways to reform our unacceptable extradition laws?"

Freeland's parliamentary secretary, Omar Alghabra, replied that the Trudeau government had "advocated on behalf of Mr. Diab on every level to his return to Canada" but made no commitment to a public inquiry.

"We are very glad he's back to Canada with his family. We have read the reports, the involvement of government officials in his extradition, this obviously happened under the previous government, and I think this matter is worth looking into."

Amnesty International and the B.C. Civil Liberties Association made the call for a public inquiry in an open letter to Freeland and Wilson-Raybould earlier in the week.

"Given the revelations that Canadian government lawyers may be directly implicated in the shortcomings, failures and possible wrongdoing that led to his extradition, it is clearly not appropriate for this to go forward as a largely internal review carried out by the very Department that may be responsible for transgressions which need to be objectively and independently examined, and for which there may need to be eventual accountability," the letter says.

On Thursday, the Canadian Association of University Teachers added their voice to the call for an inquiry. A spokesman for Wilson-Raybould's office told CBC the minister would "review the correspondence from Amnesty International and BCCLA" and "respond in due course."

Calls for compensation and an apology

The letter also calls on the government to consider appropriate forms of redress for Diab and his family — including an official apology and financial compensation for what the two groups call a miscarriage of justice.

The extent of Freeland's efforts to monitor the review could create an interesting internal dynamic for the Trudeau government.

Diab's wife Rania Tfaily and his lawyer Donald Bayne have consistently credited Freeland with trying to secure Diab's release and return to Canada. Freeland has personally raised Diab's case with French officials on several occasions since 2016, when she was serving as International Trade minister.

But Tfaily and Bayne have expressed deep frustration with how the Department of Justice has handled the case, and with their inability to arrange a meeting with Justice Minister Jody Wilson-Raybould.

First Nations chiefs want UN to examine racism in Canada's justice system
The Globe and Mail
Gloria Galloway
May 2, 2018

First Nations chiefs want the United Nations to take a hard look at Canada's justice system, which they say is rife with racism and is failing people like Colten Boushie, a 22-year-old Indigenous man who was shot to death by a Saskatchewan farmer.

The family of Mr. Boushie, who was killed in August, 2016, addressed a special gathering of the Assembly of First Nations (AFN) in Gatineau, Que., on Wednesday afternoon to emphasize the need for an international review.

Jade Brown Tootoosis, Mr. Boushie's cousin, told the two hundred or so chiefs that most people in the room probably had a missing or murdered family member.

"As an Indigenous person, we are not seen as worthy of justice," Ms. Tootoosis said. "And yet, this is our homeland, this is our territory, this is our home. And those who are settling within our home are benefiting off of the land, the resources, and have put forth a system that continues to oppress us, criminalize us and exclude us because they do not see us as human beings. And this is unacceptable."

The chiefs voted unanimously for a resolution calling for the federal government to reform the Criminal Code to ensure equitable treatment for First Nations.

It also asks Ottawa to invite Victoria Tauli-Corpuz, the UN Special Rapporteur on the Rights of Indigenous Peoples, to investigate the justice system's treatment of Indigenous people in Canada, including the actions of lawyers, Crown attorneys, probation officers, social workers, juries, police officers and judges.

Debbie Baptiste, Mr. Boushie's mother, told the chiefs that no family should have to endure the pain hers has suffered. "I am here to make sure no other family gets the unfair treatment that we got in that courtroom, the injustice that we got," she said.

Gerald Stanley was acquitted of second-degree murder in February in the killing of Mr. Boushie, a member of the Red Pheasant First Nation.

Mr. Stanley, a 56-year-old white farmer, acknowledged holding the gun that killed Mr. Boushie, who was sitting in the front seat of an SUV that he and his friends had driven onto the Stanley farm. But, Mr. Stanley testified, he believed the weapon was no longer loaded and that it "just went off," shooting Mr. Boushie in the back of the head.

His acquittal sparked protests across the country by Indigenous people and others who said the handling of the case and its outcome demonstrated that Canada's criminal and judicial processes are tainted by racism.

The outcry prompted the federal government to introduce legislation aimed at changing the way juries are selected. When the jury was being chosen in Mr. Stanley's trial, potential jurors who appeared to be Indigenous were rejected under a provision known as a peremptory challenge.

The Civilian Review and Complaints Commission for the RCMP is also investigating the conduct of the police who handled the case.

The Wednesday meeting was not the first time Mr. Boushie's family and supporters have tried to draw international attention to what they say are inequities in Canada's courts and criminal investigations. Last month, they appeared at a side event at the United Nations Permanent Forum on Indigenous Issues in New York to talk about their experiences.

Perry Bellegarde, the National Chief of the AFN, told the chiefs that "there is no justice system for First Nations people." He called the Boushie family members to the stage to thank them for their advocacy and to wrap them in star blankets that symbolize warmth, love and protection.

The motion passed by the chiefs was seconded by Chief Billy Joe Laboucan of the Lubicon Lake Band in Alberta. His daughter, Bella Laboucan McLean, fell to her death from the 31st floor of a Toronto high-rise in 2013. Her family believes she was murdered, but no charges were ever laid.

"There's so much blatant discrimination in the Canadian legal system. I mean, it's across the board," Mr. Laboucan said in an interview. "So there needs to be an investigation from the international community. Canada is not going to police itself."

Supreme Court Justice Rosalie Abella elected to American Philosophical Society
The Globe and Mail
Sean Fine
May 3, 2018

Supreme Court Justice Rosalie Abella has become the first Canadian judge to become an elected member of the 275-year-old American Philosophical Society.

Justice Abella, 71, is the longest-serving judge on the Supreme Court of Canada, having been appointed by Prime Minister Paul Martin in 2004. She is known for rulings defending the rights of children, refugees and religious minorities. She is also known for heading a 1984 commission that led to the creation of Canada's federal employment equity law, and for coining the term employment equity.

The American Philosophical Society was founded by Benjamin Franklin in 1743 to promote "useful knowledge," and describes itself as that country's oldest learned society. Its early members included George Washington and Thomas Jefferson, and later, Charles Darwin and Albert Einstein. "Philosophical," at the time of the group's founding, referred to the study of nature, the society says.

The society said in a statement that it "recognizes Justice Abella as a leading voice for human rights among judges of the world's high courts. Her 14 years on the Canadian Supreme Court have been

distinguished for the clarity and wisdom of her opinions. At an earlier phase of her career, her work on equal employment opportunity established an analytical framework that the Canadian Supreme Court and courts around the world have adopted."

Current society members include U.S. Supreme Court justices Stephen Breyer, Ruth Bader Ginsburg, Elena Kagan and Sonia Sotomayor. The society has 983 members, of whom 161 are international members.

The society encourages its members to attend its twice-yearly meetings that "express the universal spirit of the 18th-century 'Age of Reason' " and "convey the conviction of its members that intellectual inquiry and critical thought are inherently in the public interest."

Justice Abella, who was born in a displaced persons' camp in Germany after the Second World War, is the first child of Holocaust survivors to sit on the Canadian Supreme Court. Last year, she was named global jurist of the year by Northwestern Pritzker School of Law's Center for International Human Rights in Chicago. Two years ago, she became the first Canadian woman to receive an honorary degree from Yale University in its then-315-year history.

Last year, in a speech at Brandeis University in Massachusetts, she said the independence of a free media and independent judiciary were under attack internationally, decrying "a shocking disrespect for the borders between power and its independent adjudicators like the press and the courts."

Ontario gets 17 new justices of the peace
Lawyer's Daily Magazine
Carolyn Gruske
May 3, 2018

Sapna Butany-Goyal has been working as an assistant Crown attorney in Halton Region since 2017. She has also served as a senior staff lawyer at Legal Aid Ontario, and as vice-chair of the Halton Human Services Justice Coordinating Committee. Justice of the peace Butany-Goyal has a masters of law from Osgoode Hall. She will preside in Brampton.

Kyle William Cachagee has worked with the Ontario Ministry of Natural Resources for over 25 years, most recently, holding the position of staff sergeant with the enforcement branch. As part of his duties, he regularly meets with Indigenous communities to develop a restorative justice framework. Justice of the peace Cachagee will preside in Sault Ste. Marie.

Tanya Simone Chin has been a part of the Ministry of Community Safety and Correctional Services since 2013. Her most recent position was as executive assistant in the private security and investigative services branch where she provided support and recommendations to the director/registrar on operational, administrative and financial matters. Before joining the Ministry, she was a paralegal in a criminal law office for 10 years. Justice of the peace Chin will preside in Toronto.

Stéphanie Goffin-Boyd is a family and child protection lawyer who founded the firm Addison Goffin-Boyd Law in 2014. She has also served as a personal rights panel member at the Office of the Children's Lawyer and worked as a duty counsel and legal panel member at Legal Aid Ontario (LAO), dealing with family law and child protection matters. Justice of the peace Goffin-Boyd will preside in Ottawa.

Kevin James Alexander Hunter is criminal defence lawyer who has been a sole practitioner and a member of a large firm. Before passing the bar, he served as a police office with the York Regional Police Service for 11 years. Justice of the peace Hunter will preside in Oshawa.

Kathryn Elizabeth Kellough has worked as a staff criminal lawyer at the Legal Services Board of Nunavut since 2011, where she has represented Inuit clients in remote communities. Her previous job was as an associate criminal lawyer at Hicks Adams, LLP. Recently, she has served as president of the Nunavut branch of the Canadian Bar Association (CBA) and has been the CBA representative on the judicial advisory committee in Nunavut. Justice of the peace Kellough will preside in Toronto.

Brian Wilfrid Snyder has been a member of the Cornwall Community Police Service for 39 years, most recently serving as staff sergeant. During his service, he twice received the police exemplary service award as well as the Order of Merit for police from the governor general of Canada. Justice of the peace Snyder will preside in Cornwall.

Kenneth Bhattacharjee has served as vice-chair of the Human Rights Tribunal of Ontario since 2008. Before that, he was an investigation officer with the Ontario Human Rights Commission. He has also sat on the board of directors for the South Asian Legal Clinic of Ontario. Justice of the peace Bhattacharjee will preside in Toronto.

Moira Jean Callahan held the title of senior legal counsel for IBM Canada Limited for over 10 years. Prior to that, she was an associate at Gowling Lafleur Henderson, LLP (now Gowling WLG). Justice of the peace Callahan will preside in Toronto.

Milena Commisso has been employed by the City of Mississauga as a litigation law clerk and, most recently, as a prosecutor, where she has provided prosecution-related advice, education and training to internal and external enforcement agencies. She has been a member of the board of directors of the Prosecutors's Association of Ontario, and was co-chair of its education committee. Justice of the peace Commisso will preside in Brampton.

Jennifer Annette Forde is a law clerk with a certificate from the Institute of Law Clerks of Ontario. She has worked with the Law Society of Ontario for over 20 years, including serving as a discipline paralegal, which saw her prosecute conduct, capacity and licensing hearings and provide early legal and strategic advice to investigators. She has also been a trainer at Legal Aid Ontario, where she presented interactive sessions and conducted workshops on advocacy. Justice of the peace Forde will preside in Peterborough.

Christine Leclair is a sub-region director for the North East Local Health Integration Network. In this position, she is required to demonstrate a high level of proficiency in French and Indigenous cultural

competency. Previously, she founded Leclair Planning Consultancy, which offered strategic and systems planning, issue resolution, policy and advocacy services. Justice of the peace Leclair will preside in Timmins.

Frank Leddy is a senior education specialist with the Ministry of Education and before that, he was the superintendent of education for the St. Clair Catholic District School Board and a secondary school principal. Justice of the peace Leddy will preside in London.

Carolyn Anne Noordegraaf has been a federal Crown agent at the Public Prosecution Service of Canada for the past seven years. Before that, she was a duty counsel panel member for LAO. Justice of the peace Noordegraaf will preside in Barrie.

Roger Domingos Pereira Rodrigues is a lawyer who spent 20 years working as a sole practitioner, with a focus on criminal, refugee and immigration cases. Since 2015, he has been a board member of the Landlord and Tenant Board. Justice of the peace Rodrigues will preside in Toronto.

John Jeremy MacNair Scarfe has been a criminal defence lawyer for over 20 years. He is an advocate for LGBTQI2-S issues and for people with intellectual disabilities. Justice of the peace Scarfe will preside in Toronto.

Shiree Scribner has been a parole and probation officer with the Ministry of Community Safety and Correctional Services for over 30 years. She has also been involved in safety and anti-violence organizations in the Dryden area. Justice of the peace Scribner will preside in Dryden.

Stop executive bonuses until rank-and-file employees are paid properly: PSAC
iPolitics
Kathryn May
May 3, 2018

In the wake of the Phoenix fiasco, the Public Service Alliance of Canada (PSAC) is taking aim at federal executives and demanding the government stop paying them performance bonuses until employees are paid properly.

The union's demand for bonuses paid to executives to be put on hold "until every worker is correctly paid every time" is part of a sweeping Phoenix resolution for "escalating action" that more than 500 delegates unanimously passed Wednesday at PSAC's triennial convention.

The resolution calls for a number of measures aimed at cranking up the pressure to resolve the Phoenix disaster and hold the government accountable for the thousands of public servants who have been overpaid, underpaid or not paid at all.

The union argues that executives in all departments bear a collective responsibility for the ill-planned and botched rollout. They also have an obligation to pay employees for their work.

“Public service executives have an obligation to pay their employees accurately and on time, every time. They have now failed that obligation for more than two years. If you’re a manager and you’re not doing your job, you should not get paid bonuses,” said PSAC President Robyn Benson.

There are 6,480 executives working in government, in addition to deputy ministers. They received about $75 million in performance pay in 2015-16.

The Association of Professional Executives in the Public Service of Canada (APEX), which represents executives, didn’t comment on the union’s proposal but said it “looks forward to working with public service union leaders to continue to address the pay issues we all face.”

“Executives have at heart the wellbeing of their employees and they are highly dedicated to working together with their employees to ensure they get paid right and on time,” APEX said in email.

The Phoenix resolution was the top priority at the week-long convention and it sailed through unanimously with little debate. The resolution called Phoenix fiasco and the government’s failure to pay employee properly a “national disgrace.”

“The employer is not treating federal public service workers with dignity or respect. Members have lived through this nightmare for too long. The government isn’t paying workers accurately and on time and adds insult to injury by making it too difficult to rectify pay problems that they are responsible for creating” said the resolution.

The resolution also calls for a public inquiry into why Phoenix failed so miserably “so that no worker ever suffers the same fate.” Auditor General Michael Ferguson is expected to deliver his second report later this month on how Phoenix went off the rails and who is to blame.

The resolution now moves to the union’s board of directors, who have been charged with implementing it. The union has approved a $1.3 million political action fund but some of the cost will absorbed by other parts of the union’s operations.

The resolution called for various measures that “will change and grow as long as we are not getting paid what we are owed.”

They include:
Damages for the “health, emotional and financial” impact of Phoenix;
Paid leave for the personal time to resolve pay problems;
Reimbursement of sick leave taken because of Phoenix foul-upsTax relief for employees who were overpaid;
More and permanent compensation advisors;
Understandable pay stubs;
A review and reconciliation of payroll for all workers paid by Phoenix after the backlog is cleared;
A new system that works;

Consultation and publicly reported testing of any future technological changes that affect pay and benefits;
Adequate funds for emergency and priority payments who those who aren't paid.

The union's call for "escalating action" is clearly aimed at turning up the pressure on the government to pay damages to compensate employees for the stress and hardships caused by Phoenix. Unions have been negotiating with the government for months for damages and want the matter settled before the 2019 election.

PSAC is also threatening to campaign against the Liberals in next year's federal election – as it did against the Conservatives in the last election — if pay issues aren't resolved. Delegates are marching on Finance Minister Bill Morneau's Toronto constituency office today.

"We have no other course but to escalate and keep pressure on government and we'll do that by reminding them that next fall is coming and we will not forget what they done and when we tell them that they will listen more closely" PSAC Vice President Chris Aylward told delegates.

Delegates described the financial and emotional hardship they faced because of pay foul-ups and how the aggravation of pay problems consume the time and energy of people at work.

One delegate spoke about "condescending" bosses who dismissed concerns of their unpaid staff with remarks like "consider it a forced saving" or "now you have an excuse to spend your husband's money.''

Randy Howard, president of the Government Services Union, described the frustrations of frazzled compensation advisers at the pay centre in Miramichi, N.B. where 626,000 pay transactions it in backlog.

He told the story of the worker found crying, curled in a fetal position in the office washroom, after being unable to pay a client. He said the employees have the "knowledge and skill" to process transactions but the erratic Phoenix "wouldn't do it."

The resolution to stop executive bonus comes at a time when executive pay has become a hot-button issue.

Executives have not received the raises and have watched their salaries fall up to 11 per cent behind those of unionized employee over the last five years. They are pressing for raises and a major review of their overall 'salary and non-salary' compensation packages, which will include performance pay. There's been much speculation that Phoenix may be the reason why executives haven't had a raise. Some say the government partly blames executives for their departments not being ready when the Phoenix was rolled out.

Others say the government wants all collective agreements implemented and the files of rank-and file employee sorted out before adding raises and back pay for 6,480 executives.

Last year, Privy Council Clerk Michael Wernick, the country's top bureaucrat, raised the stakes for deputy ministers and tied performance pay and bonuses to progress in stabilizing, recognizing "the pay system and well-being of our employees is a collective responsibility."

The government put a hold on the performance pay and bonuses for the executives who headed the project team responsible for Phoenix at Public Services and Procurement Canada pending a review. It later decided no bonuses would be paid to them.

Court of Appeal Justice Marc Richard appointed chief justice for New Brunswick
Prime Minister Justin Trudeau announced Richard will replace retiring Justice Ernest Drapeau
CBC News
Jacques Poitras and Bobbi-Jean MacKinnon
May 4, 2018

New Brunswick Court of Appeal Justice Marc Richard has been appointed the new chief justice for the province.

Prime Minister Justin Trudeau made the announcement on Friday morning, describing him as one of Canada's "pre-eminent jurists."

Richard "has been widely recognized throughout his 15-year judicial career for his ability to apply the law in a way that is both principled and thoughtful," Trudeau said in a statement.

"He leads by example, and I wish him well in this new role."

Richard, 59, replaces Justice Ernest Drapeau, who announced his retirement in February, after 20 years on the bench.

He told reporters on Friday that he wants to continue Drapeau's effort to make the courts more accessible and understandable.

"I think we have an obligation ensure that the public has good confidence in the justice system, so transparency is important," he said.

"I would like to see more reporting of some of what we do, because there probably is a misunderstanding of what the role of the Court of Appeal is."

Richard said that's particularly important for people who can't afford lawyers and represent themselves in court and then in appeals.

"Their expectation [of the Court of Appeal] is sometimes different from what reality is … We can't retry cases. A lot of people expect us to retry cases."

Chief justices are appointed by the Governor General, on the advice of cabinet and the recommendation of the prime minister. They are responsible for the leadership and administration of their courts.

They also serve as members of the Canadian Judicial Council, which works to improve the quality of judicial service in the superior courts of Canada.

Richard, a Moncton native who has Acadian roots and is bilingual, was appointed to the Court of Appeal in 2003 by Jean Chrétien's Liberal government.

He was among the first cohort of students to enter the University of Moncton law school after it opened in 1978, and is the first alumnus of the school to become the province's chief justice.

In the early days of the law school, "we had to work hard because a lot of the materials were not in French, so we had to learn the terminology as we went," he said.

"Over the years I knew that if I was called to the bench, I would be happy. Never did I think that I was going to end up being the Chief Justice of New Brunswick."

Richard's former law partner, John Barry of Saint John said Richard was one of two finalists for a Supreme Court of Canada appointment in 2016, which went instead to Justice Malcolm Rowe from Newfoundland and Labrador.

Barry said Richard is the most qualified jurist for the chief justice position here.

"There isn't a better appointment for that job in our province," Barry said.

"He was the only one who was proper for the job. He was head and shoulders above anybody else. He is a star."

'Intellect and empathy'
Richard declined to comment Friday on the controversy over changes to the Judicature Act passed in 2017. The Liberal amendments took away the power of Court of Queen's Bench Chief Justice David Smith to move judges on his court without government consent.

Richard said because there's a criminal appeal pending before the appeal court that touches on the issue, it would be inappropriate for him to discuss his views.

The statement from the Prime Minister's Office announcing the appointment said Richard has earned a reputation for his "judgment writing, his generosity of spirit, and his genuine love of the law," reads the statement from the Prime Minister's Office.

He has "brought intellect and empathy to decisions in all areas of law heard by the Court of Appeal, including criminal, family, insurance, administrative, and constitutional law."

Richard said Friday that while he doesn't believe judicial activism is "a good thing," the courts have a role in defending constitutional rights.

"Since 1982 we've been given that awesome responsibility of making decisions on the validity of legislation, of passing judgment on government action as to whether or not it violates any aspects of the Charter of Rights, for example. We have to do our job. That's what the Constitution says."

In 2016, Richard denied Dennis Oland bail while he waited to appeal his second-degree murder conviction in the 2011 bludgeoning death of his father, Saint John multimillionaire Richard Oland.

Bail had never been granted to a convicted murderer in New Brunswick before and there had only been 34 cases across Canada in which someone convicted of murder was granted bail, according to Oland's lawyers.

Richard ruled "the confidence of the reasonable member of the public in the administration of criminal justice would be undermined" if Oland were to be released.

A three-justice panel of the Court of Appeal upheld his decision, but the Supreme Court of Canada later ruled Oland was wrongly denied bail.

"Parliament did not restrict the availability of bail pending appeal for persons convicted of murder or any other serious crime and courts should respect this," the country's highest court said.

Prior to his appointment to the bench, Richard was recognized as one of New Brunswick's foremost litigators and served as president of the New Brunswick branch of the Canadian Bar Association and president of the Law Society of New Brunswick.

He was named Queen's Counsel in 2002.

Drapeau is continuing to serve part time as a supernumerary judge.

B.C. police fear shorter deadlines, spiking costs are the 'new normal' after Supreme Court ruling
Amid the continuing fallout from the R. v. Jordan Supreme Court decision, some police forces say they are now watching costs as pressure mounts for officers to complete investigations faster.
Star Vancouver
Michael Mui
May 4, 2018

VANCOUVER—Police forces in British Columbia are keeping an eye on costs as the effects of a Supreme Court of Canada decision setting strict timelines for how long prosecutors have to wrap up criminal trials cascade through the justice system.

The R. v. Jordan decision in 2016 resulted in the Supreme Court of Canada setting 18-month delay deadlines for criminal trials in provincial courts, and 30 months for criminal cases tried in superior courts, such as the B.C. Supreme Court.

After the deadline is passed, charges against the accused may be stayed, regardless of the seriousness of the offence and the amount of time police and prosecutors have already spent.

“If they’re in custody, it’s a long time to sit on ice waiting for your day in court,” said Richmond criminal defence lawyer Jason Tarnow.

These delays could have been caused by factors such as vacations scheduled at the same time as trial or procedural missteps due to no fault of the accused.

According to Dan McLaughlin with the BC Prosecution Service, a big part of meeting the deadline involves making sure police have completed and presented the vast majority of their evidence documents prior to approving a criminal charge. Then, the clock starts to tick.

Police departments in the province contacted by StarMetro said they are now watching their costs.

Delta Police Department conducted a review of their cases due to concerns about the increased workload. One major file alone, involving a single arrest, resulted in an extra $2,484 in overtime to meet the new deadlines. The costs primarily came from having to transcribe video and audio files for Crown prosecutors much faster than before.

“This is definitely an issue that our department believes will have significant financial implications,” said Cris Leykauf, spokesperson for the force.

The Vancouver Police Department said its officers must now “front-load” investigations so that not only interview transcripts but other evidence, such as forensic lab results, are included in the first package of information sent to prosecutors.

The VPD doesn’t have a cost assessment yet, but expects that this means more work for support staff, including crime analysts, assistants, transcribers and forensic workers.
The B.C. RCMP, meanwhile, said the court decision has meant a “new normal” for day-to-day policing.

Staff Sgt. Annie Linteau said the force’s major crimes unit has had a 90 per cent increase in workload from 2014 to 2017, and that the Jordan decision will only increase that weight.

“For example, gang and organized crime investigations are often extremely complex and take a tremendous amount of resources to investigate and prosecute,” she said.

Both West Vancouver Police and Abbotsford Police say they are monitoring costs, but have yet to feel a financial impact from the Supreme Court of Canada decision.

For the accused, police moving faster to provide evidence documents could help them determine how strong the prosecution's case is, and decide earlier how they should plea, Tarnow said. The plea determines whether or not the case goes to trial.

Often, he said, an accused person would sit waiting for the results of laboratory tests — for DNA, as an example — to assess the strength of the prosecution's evidence. This wait could take months.

"So let's say it's not til six months until these important pieces of evidence has been disclosed," Tarnow said. "By that time, six months ... has already ticked away."

Michael Mui is a Vancouver-based investigative reporter. Follow him on Twitter: @mui24hours

Two sons of KGB spies will soon learn if Canada's top court will hear their appeal to remain Canadian citizens

With the Supreme Court about to announce if it will hear their case, here's everything you need to know about the strange saga of the Vavilov brothers

Macleans

Michael Friscolanti

May 4, 2018

The Vavilov brothers—born in Toronto, but famously stripped of Canadian citizenship after their parents were exposed as elite Russian spies living in the West under stolen identities—are back in the headlines this week. Yet another judge has rendered yet another ruling in the brothers' epic legal battle to regain their lost citizenship. This time it was Timothy, the eldest sibling, convincing the Federal Court that Ottawa was indeed wrong to revoke his status.

The Supreme Court will have what should be the final say in the coming days. On May 10, the high court is expected to announce whether it will hear one last appeal in the stranger-than-fiction saga—declaring, once and for all, whether the children of deep-cover KGB officers qualify as Canadians.

The brothers' sensational life story—which helped inspire the acclaimed FX television series The Americans, now in its final season—was the subject of a recent Maclean's cover article that revealed exclusive new details about their mom and dad's secret double life in Canada. As the Supreme Court prepares to write the next chapter, here is what you need to know.

Who are Timothy and Alexander Vavilov?

Born at Women's College Hospital in Toronto (Tim on June 27, 1990, Alex on June 3, 1994), their original names—as registered on their Ontario birth certificates—were Timothy Andrew Foley and Alexander Philip Anthony Foley. Growing up Canadian, the boys had no idea their surname was a fraud, or that that their mother and father were not the Canucks they claimed to be.

Who are their parents?

Their real names are Andrey Bezrukov and Elena Vavilova, a husband-and-wife team of Soviet-era KGB "illegals" deployed overseas during the Cold War. After slipping into Canada sometime in the late-1980s

(the exact date is still a mystery), the couple assumed the stolen identities of two dead babies from Montreal: Donald Howard Heathfield and Tracey Lee Ann Foley. (The KGB was notorious for sifting through foreign cemeteries and newspaper obituaries, on the hunt for potential aliases.) “Don” and “Tracey” spent the next two decades entrenched in the West, using coded radio transmissions and encrypted computer messages to communicate with their Moscow handlers. As part of his cover, Don even opened his own company in Mississauga: a diaper-delivery service. When their sons were still young, the couple moved to France, then to Boston, where the pair was ultimately busted in 2010 as part of a sweeping FBI investigation that rounded up 10 so-called illegals.

What happened to the brothers after the bust?
Tim was 20 when heavily armed federal agents stormed their Massachusetts home; Alex was 16. “I was shocked in ways words cannot describe,” Tim later wrote, in a sworn affidavit. The brothers eventually flew to Russia, where officials revealed the truth about their mom and dad; days later, after Washington and Moscow orchestrated an historic spy swap, the family was reunited. “My parents live their lives like everyone else, making choices along the way,” Alex told Maclean’s last year. “It was quickly apparent to me that the reason they chose to engage in their work was out of a sense of patriotism. They deeply cared about the welfare of their countrymen and the fate of their homeland, and still do.”

Were Tim and Alex truly oblivious to the fact that their parents were Russian spies?
That’s correct, they insist. But plenty of doubt lingers, even eight years later. Although authorities have never suggested that Alex knew anything about his mother and father’s true identities, the same can’t said for his older brother. After the bust, reporters asked Richard DesLauriers, then the special agent in charge of the FBI’s Boston office, if Tim had any inkling. “It’s logical to presume, and we suspect he knew something toward the end, before their arrests,” DesLauriers replied. Two years later, The Wall Street Journal reported that Tim not only knew the truth but had pledged to join his parents in the world of espionage—agreeing to travel to their homeland to begin formal training. During one conversation with his parents, the article alleged, Tim “stood up and saluted ‘Mother Russia.’ ” The most damning allegation comes courtesy of Canada’s spy agency, the Canadian Security Intelligence Service (CSIS). According to a report prepared by a senior immigration official, CSIS has informed the federal government that Tim was “sworn in” by the SVR, the KGB’s post-Soviet successor, before his parents were exposed.

Tim now works in Asia; he has never been charged, and adamantly denies any involvement. “I am aware that there have been some media reports that my parents were ‘grooming’ me for espionage,” he wrote in his affidavit, filed as part of the ongoing citizenship proceedings. “These allegations are not true. It has been stated by the FBI that for over 10 years my home was bugged, however no evidence of my involvement has ever been presented.”

The brothers were born on Canadian soil. How can the government strip them of citizenship, a supposed birthright?
This is the key question. After the FBI operation triggered headlines around the world, the spies’ sons—now 27 and 23—were granted Russian citizenship; they also changed their last name to Vavilov. In the meantime, immigration officials in Ottawa concluded that both brothers were never Canadian to begin with, despite being born here, because their parents were “employees in Canada of a foreign

government," a rare exception to the birthright rule under the Citizenship Act. Like their mom and dad, they were suddenly banished from Canada.

Despite all the intrigue surrounding their story—and all the suspicion that continues to swirl around Tim—the brothers' parallel court challenges hinge on a granular question of law: the definition of "employee of a foreign government," as outlined in section 3(2)(a) of the Act. Ottawa contends (and the Federal Court agreed, in a 2015 ruling in Alex's case) that the clause means exactly what it says: any employee of a foreign government, including a deep-cover Russian spy. But the Vavilovs argue that the clause is limited to only those employees who enjoy diplomatic privileges, such as an ambassador. The sole purpose of the law, they say, is to ensure that a child born to a visiting diplomat is not granted both Canadian citizenship and state immunity. Because their parents were undercover spies who had no affiliation with the Russian embassy in Ottawa—and therefore didn't enjoy any form of immunity—Tim and Alex insist the clause does not apply to them.

Last June, the Federal Court of Appeal agreed with that interpretation, ruling 2-1 to overturn the 2015 judgment and reinstate Alex's citizenship. Armed with that precedent-setting ruling, Tim convinced a Federal Court judge last week that his citizenship should not have been cancelled, either.

What now?
Last September, the Trudeau government sought leave to appeal Alex's ruling to the Supreme Court, arguing that the case raises important questions about "the integrity of Canadian citizenship" and "who is entitled to it." Although the high court has yet to make an official announcement, lawyers for both sides have been informed that the Supreme Court will decide on May 10 whether to weigh in. If the judges decline to intervene, Alex will keep his newly reinstated citizenship—and Ottawa will have no choice but to restore Tim's status, too. If the court grants leave to appeal, a hearing will be scheduled in the coming months to finally decide whether the two men are Canadian. Alex is here now, awaiting the outcome; in January, a judge said he should be allowed to return to his birth country pending the Supreme Court's decision.

Is Ottawa determined to punish the brothers for the sins of their parents?
They certainly think so. "I have done nothing to warrant the harsh treatment and exile I have received," Alex told Maclean's. "Whether or not the government decides to reissue my citizenship, I will always be Canadian at heart. I have grown up that way and believe it to be my only identity. It is something I would fight to the end to retain. I am confident that the law is on my side, because I know I haven't done anything wrong." In his affidavit, Tim accuses the federal government of "stretching the written law beyond its meaning" in an attempt "to tarnish our lives" for political purposes. "I am first and foremost Canadian," he continues. "I have lived for 20 years believing that I was Canadian and I still believe I am Canadian. Nothing can change that."

The real Donald Heathfield and the real Tracey Foley died in 1962. What do their families think of this bizarre case?
Both were shocked to find out that Russian intelligence operatives had stolen the names and birthdays of their dead loved ones—and they have little sympathy for Tim and Alex in their fight to regain Canadian citizenship. "They should both be left in Russia," says David Heathfield, Donald's older brother.

Pauline Foley, Tracey's mother, says if the sons are declared Canadian once again, she would appreciate the chance to meet them face-to-face. "I would like them to know what affect this has had on the two families, because of what their parents have done," she says.

Where are the former spies now?
Bezrukov is now a senior adviser at Rosneft, a major Russian oil company, and also a university professor who writes and lectures on U.S. public policy. He is still married to Vavilova, who works as an adviser at Moscow-based Norilsk Nickel. The couple is helping to pay their sons' legal bills. "We have spent a substantial sum, but have no regrets," Alex says.

Does the family watch The Americans, the hit series inspired by the same FBI bust that upended their former lives?
Yes. In a 2015 interview with a Russian reporter, Bezrukov said the show "looks pretty much like reality, but of course without the murders and the wigs…The creators of the series succeeded in showing both the atmosphere and the internal feelings of the illegals, as well as the difficulties, including the personal ones, that you have to deal with." Alex said watching the show can be "very odd" at times. "In particular, during the calm everyday scenes, I start to reflect about my own childhood experiences and my parent's reasons for choosing the career they did," he said. "Of course, when they show murders and life and death circumstances, I am reminded again of Hollywood's insatiable desire for action and suspense."

Public services minister opens new N.B. pay centre, says troubled Phoenix pay system is improving
Carla Qualtrough made an appearance at a Mirimichi, N.B., pay centre on Friday, which is expected to process paycheques for 300,000 federal workers.
The Star Halifax
Michael Macdonald
The Canadian Press
May 4, 2018

MIRAMICHI, N.B.— The federal government is trying to hit the reset button on its two-year-old bid to repair and replace the problem-plagued Phoenix pay system.

Federal cabinet minister Carla Qualtrough was dispatched Friday to Miramichi in northeastern New Brunswick, where she officially opened the centralized Public Service Pay Centre, which processes paycheques for 300,000 federal employees in 46 departments.

"We have reason to celebrate the hard work of the people working here in Miramichi," the public services minister said after a ribbon-cutting ceremony outside the new building, which actually opened for business in January.

"They work every day to resolve these problems. We have seen progress, even if it's not as fast as we would like."

The feel-good photo-op comes more than two years after the government implemented the IBM-built Phoenix system. The previous Conservative government said Phoenix would save taxpayers more than $70 million annually.

Instead, it has caused so many snafus across the country that the backlog of transactions stood at 625,000 as of March 21.

That number is expected to dip only slightly when the latest figures are released later this month, Qualtrough said.

However, a pilot project developed at the centre will be rolled out across the country to ensure more timely payments, she added.

“This pilot that we have done has reduced the queue in the departments in the pilot project by 24 per cent,” Qualtrough said. “That’s not a small amount.”

Under Phoenix, tens of thousands of civil servants have been underpaid, overpaid or not paid at all for long periods since 2016. The ongoing mess has prompted protests across the country and a class-action lawsuit.

On Thursday, about 800 members of the Public Service Alliance of Canada — the country’s largest federal union with 180,000 members — marched to the Toronto office of Finance Minister Bill Morneau, where they staged a noisy rally.

In February, Qualtrough issued a public apology on behalf of the government.

More than half of all federal employees have experienced pay problems since Phoenix was brought online, the government has confirmed.

Some federal workers have come forward to say they continue to live in fear of payday, citing the stress and anguish caused by Phoenix.

There have been stories of employees struggling to pay their bills — some lost cars and even homes before the government and unions were made aware of the extent of the problem.

Earlier this year, the Trudeau government committed $16 million over two years to finding a replacement system. However, the government also said it could take another six years to make it work.

Morneau has also earmarked more than $400 million to deal with the backlog, bringing the total allocated to the pay project so far to nearly $1 billion.

The 17 unions representing federal employees have called on Ottawa to pay “damages” to their members, and the government opened the door to compensation in its February budget. Talks with the unions are ongoing.

Though the backlog of problem appears to be shrinking, a significant decline isn't expected until later this spring, federal officials say. The backlog peaked at 633,000 transactions awaiting processing in late January.

Government of Canada announces new approach to address pay issues
PRNewswire
May 4, 2018

MIRAMICHI, NB, May 4, 2018 /CNW/ - The Government of Canada is committed to resolving public service pay issues as quickly as possible and supporting affected employees.

Today, the Honourable Carla Qualtrough, Minister of Public Services and Procurement, announced the introduction of a new, more effective approach to addressing pay issues while visiting the new Public Service Pay Centre in Miramichi, alongside Pat Finnigan, Member of Parliament for Miramichi–Grand Lake.

Following a successful pilot project, Pay Pods are being introduced at the Miramichi Pay Centre to better support employees by processing pay transactions. Pay Pods, a concept developed by Pay Centre employees, group together compensation advisors assigned to a specific department or agency. These groups will work with client departments to address all outstanding transactions in an employee's pay file, in contrast to the current approach of addressing pay issues by transaction type. This new approach will result in more efficient and comprehensive resolutions of pay issues, and a reduction in backlogged cases.

Pay Pods will be rolled out to all departments and agencies serviced by the Pay Centre in phases starting this month and will be fully implemented by mid-2019. The partnership between the Pay Centre and participating departments and agencies is the hallmark of this initiative. Ongoing communication and collaboration is not only improving human resources and pay processes, it reflects the whole-of-government approach needed to resolve pay issues and ultimately ensures that public servants are paid accurately and on time.

The Government of Canada is working on multiple fronts to address pay issues. In addition to the Pay Pods, an outreach campaign was recently launched to encourage timely and accurate entry of information: key factors in preventing pay issues.

Quotes

"Through innovation and continual improvement, we are working to stabilize the pay system and ensure that employees are paid accurately. We feel confident that the Pod approach will provide more tailored support to departments and agencies and help address employee pay issues as quickly as possible. I'm happy to welcome our Pay Centre employees to this beautiful new facility in Miramichi."

The Honourable Carla Qualtrough
Minister of Public Services and Procurement

"We are honoured to be the permanent home of the Public Service Pay Centre. We recognize that public servants are still experiencing discrepancies with their pay; however, the solutions being developed by the dedicated staff here in Miramichi are helping to solve these pay issues for public servants, and we are very proud of that. The construction of the new Pay Centre has created enormous economic opportunities for our community and is providing good quality middle-class jobs here in New Brunswick."

Pat Finnigan
Member of Parliament for Miramichi–Grand Lake

Quick facts

- The Pay Pod pilot project was conducted with three departments: Veterans Affairs Canada; Innovation, Science and Economic Development Canada, and Federal Economic Development Agency for Southern Ontario.
- Since December 2017, when the pilot began, the overall backlog for the three pilot departments was reduced by 24%, the number of employees with pay issues decreased by 11% and service standards for new incoming transactions were met in 88% of the time using this new approach.
- The pilot project is part of the suite of measures introduced in November 2017 to stabilize the pay system and better support employees.
- Construction of the new long-term leased facility began in May 2015 and created jobs for an estimated 200 tradespeople.
- The Pay Centre, which is home to the current Pay Pod pilot project, houses more than 530 employees. This state-of-the-art building is designed with employee well-being in mind, offering a healthy and pleasant workplace.
- The building is targeting a Leadership in Energy and Environmental Design (LEED) Gold certification and is one of the largest projects in New Brunswick.

Pourquoi est-ce si dur d'innover en droit ?
Le milieu juridique est si conservateur qu'il freine parfois les ambitions d'innovation des avocats
Droit Inc
Delphine Jung
4 mai 2018

Pour discuter de la question, Éric L'Heureux, associé chez Intellia Consulting, Me Alexandre Shee, directeur des programmes pour Element AI et Tessa Manuello, fondatrice de Legal Creatives, ont participé à une rencontre sur le droit et les technologies organisée par et à l'UQAM.

Pour M. L'Heureux, il faut avant tout se demander quelles sont les ambitions des juristes qui veulent innover. « Voulez-vous vous améliorer dans vos opérations courantes ou voulez-vous occuper une place dans le marché futur ? », questionne-t-il.

Car ce sont de ces questions que dépendront les moyens à mettre en œuvre.

Des freins indéniables
Mais au-delà de cela, plusieurs freins existent et empêchent le droit d'innover. Pour un avocat venu assister à l'événement, il y a un frein structurel. « On nous demande d'innover à chaud, et ça, c'est difficile. Structurellement parlant, on n'est pas vraiment dans une situation optimale », dit-il.

Éric L'Heureux acquiesce. « On donne aux avocats quelques heures, le vendredi, pour réfléchir. Innover demande du recul, ce n'est pas quelque chose qui s'improvise », ajoute-t-il.

Me Shee ajoute trois autres facteurs d'explication : « le monopole du Barreau, l'incapacité d'investir sans avoir peur de ne pas avoir une BMW et le côté très conservateur du milieu juridique. »

Présent dans la salle, le doyen de la Faculté de science politique et de droit de l'UQAM, Hugo Cyr, en est aussi allé de sa théorie. « Un autre facteur de frein est celui lié à la structure des cabinets. Ceux qui ont le poids décisionnel sont des seniors, pas loin de prendre leur retraite, alors pourquoi devraient-ils innover ? Ceux qui sont le plus disposés à innover ne sont pas forcément en position de le faire », dit-il.

Alexandre Shee n'est pas d'accord. « On voit quand même certaines grosses structures qui ont pu évoluer », dit-il.

Pour lui, la capacité d'innover est à l'intérieur de chacun. Tessa Manuello va dans le même sens en expliquant qu'il faudrait que les avocats se demandent ce qui les passionne, car « l'innovation, ça commence avec nous-même ».

Sortir de sa bulle
Mais alors, comment innover ? « Les cabinets doivent développer une place pour l'exploitation, doivent tolérer l'erreur », dit M. L'Heureux.

Tessa Manuello explique aussi qu'il est important de ne pas s'enfermer dans sa bulle, avec ses collègues avocats, que la clé du succès, c'est la diversité. Elle donne son cas comme exemple, en détaillant comment elle a décidé de s'entourer de gens qui avaient des compétences totalement différentes des siennes. Elle encourage d'ailleurs les juristes à participer à des événements comme le hackathon.

Pour elle, l'avocat qui a l'esprit d'innovation doit se démarquer dans une niche liée à ses compétences et sa personnalité.

Rita Baker, consultante principale de Baker Marketing qui a mené le débat conclut : « n'ayez pas peur, trompez-vous et innovez ».

Une fac s'ouvre aux Autochtones, et des étudiantes retournent… au primaire
Droit Inc
Delphine Jung
4 mai 2018

Des places réservées à l'UQAM pour les autochtones
Le Département des sciences juridiques de l'UQAM annonce que, dès septembre 2018, quatre places seront réservées au sein du programme de baccalauréat en droit à des étudiants autochtones âgés de 21 ans et plus. Ils doivent compter l'équivalent d'au moins deux années d'expérience professionnelle ou d'engagement social auprès de conseils, groupes ou organisations autochtones.

La date limite pour soumettre une candidature est le 1er juin 2018, puisque les admissions pour ces places réservées n'ont lieu que pour le trimestre d'automne.

Cette initiative s'inscrit dans l'instauration de nouvelles mesures d'intégration des étudiantes et des étudiants autochtones à l'UQAM.

Un étudiant en droit de la fac de droit de l'Université de Sherbrooke récompensé
Simon Bouthillier, qui a choisi le parcours droit-MBA de l'Université de Sherbrooke a reçu, avec trois autres étudiants de différents cursus, la Médaille du Lieutenant-gouverneur du Québec pour la jeunesse.

Une cérémonie a eu lieu dernièrement en leur honneur, à l'École secondaire de la Montée.

Simon Bouthillier est à l'origine de la création du Club de débat de l'Université de Sherbrooke et agit à titre de président depuis trois ans. Aujourd'hui, plus de 60 étudiantes et étudiants participent régulièrement à ses activités. Il est également président de la section des étudiantes et étudiants de l'Association du barreau canadien pour le Québec, une organisation où il occupait le poste de représentant pour sa faculté depuis deux ans.

Les autres étudiants sont Marie Simoneau (biologie), Sophie Valence-Doucet (environnement), et Rémi Proteau (environnement).

Des étudiantes retournent à l'école primaire
Des étudiantes en droit civil de la fac de droit de l'Université d'Ottawa, membres de l'Association étudiante canadienne pour les droits de l'enfant et du Collectif droit et diversité, se sont rendues dans des classes de l'école élémentaire FrancoJeunesse à Ottawa.

Pendant un mois, elles y ont présenté des ateliers visant à promouvoir les droits de l'enfance.

Cette initiative visait à informer et sensibiliser les jeunes sur leurs droits fondamentaux. Les étudiantes ont pu partager leurs connaissances qu'elles ont acquis, tout en s'engageant au sein de leur communauté.

Laurita Keneza, Zohra Bouzitoun, Valentina Rios Schiappa, Émilie Morissette, Safie Diallo, Claudia Duong et Bianca Lessard sont les étudiantes qui sont allées à la rencontre des élèves de 7 à 12 ans.

« À la faculté de droit, c'est facile d'oublier qu'il y a un monde à l'extérieur des murs et on oublie souvent de redonner à la communauté. Cette activité m'a permis de reprendre contact avec la

communauté et le bénévolat », dit Zohra Bouzitoun, vice-présidente de l'Association étudiante canadienne pour les droits de l'enfant, par voie de communiqué de presse.

Marc Richard devient juge en chef
Il était juge à la Cour d'appel du Nouveau-Brunswick depuis 15 ans
Radio-Canada
4 mai 2018

Le juriste originaire de Moncton, Marc Richard, est le nouveau juge en chef du Nouveau-Brunswick, a annoncé le premier ministre Justin Trudeau, vendredi.

Marc Richard remplace Ernest Drapeau à titre de juge en chef. M. Drapeau occupait le poste depuis 20 ans.

« En tant que l'un des plus éminents juristes du Canada, Marc Richard a été reconnu au fil de ses 15 ans de carrière de juge pour sa capacité à appliquer la loi de façon raisonnée et réfléchie », a déclaré Justin Trudeau.

Marc Richard est devenu juge à la Cour d'appel du Nouveau-Brunswick le 28 octobre 2003.

Il a été coprésident du Comité consultatif sur la déontologie judiciaire du Canada. Depuis 2004, il préside l'Association canadienne des juges des cours supérieures.

Canada's counter-terrorism record weak: Expert
The Siasat Daily
May 5, 2018

Toronto [Canada]: Canada's record in dealing with terrorism cases over the years has, by and large, been weak in response, according to a former Canadian Broadcasting Corporation (CBC) journalist.
In an article written for Quillette, a platform for free thought, former CBC senior correspondent Terry Milewski focuses on the impact of Khalistan, a movement aimed at creating a separate homeland or state for Sikhs out of the existing north Indian state of Punjab, and the many incidents of terror it has been associated with from the 1980s.

Milewski suggests in his article that there currently exists a dichotomy within the Sikh community, especially in Canada. On the one hand, he says that a vast bulk of "Canada's 450,000 Sikhs seeks no return to the bloody 1980s and 1990s, when the battle for Khalistan took some 20,000 lives in India, most of them Sikh", while on the other hand, "Khalistani fervour is (still) alive on social media" and Sikh hardliners "are a well-organised political force, still raising the cry of "Khalistan Zindabad!"-long live Khalistan-in some Canadian gurdwaras where "martyred" Sikh assassins are memorialised as models for the young."

To back his claim, he refers to a 2018 tweet from a person going by the name “George” (@PCPO_Brampton) in which he declares: “Indira’s (former Indian Prime Minister Indira Gandhi) assassins are HEROES. Sikhs should glorify them.”

“The endurance of such attitudes in Canada reflects the weak record of its justice system in deterring violence. For years, it seemed, Canadian courts were where terrorism cases went to die,” Milewski claims in the article appearing in the Quillette.

Giving a historical perspective to his conclusions that Khalistan is an on again-off again movement, Milewski, in his article, takes us back in time to July 1984, when New York City allowed Canada-based sawmill worker Ajaib Singh Bagri, then widely regarded as number-two in the Babbar Khalsa International, a terrorist group engaged in an armed struggle to win that state to be called Khalistan or Land of the Pure, to address a huge angry gathering in Madison Square Garden on the occasion of the founding convention of the World Sikh Organisation (WSO).

“Bagri’s leader was Talwinder Singh Parmar, also a resident of British Columbia. He was wanted for murder in India, and therefore, was barred from the United States. So in New York, Bagri spoke on Parmar’s behalf,” says Milewski, adding that Canada did not also bar either man (Parmar or Bagri) from being granted Canadian citizenship much earlier.

In 1982, the government of then Prime Minister Pierre Elliot Trudeau refused to extradite Parmar to India. So, he was spared the need to stand trial for the killing of two Indian policemen, and was free to collect donations from Sikh gurdwaras, or temples, across Canada. He was eventually eliminated in an encounter with Punjab Police in 1992
The New York event took place less than two months after the Indian Army’s assault on the Golden Temple complex in Amritsar to weed out Sikh extremists led by Jarnail Singh Bhindranwale, the militant leader of the Sikh-dominant Damdami Taksal.

Who was to know that more than three months later, India’s then Prime Minister Indira Gandhi would be assassinated by two of her own Sikh bodyguards inside her official residential complex?

Today, in 2018, according to Milewski, Sikh hardliners are a well-organised political force, still raising cries of “Khalistan Zindabad!”-long live Khalistan-in some Canadian gurdwaras where “martyred” Sikh assassins are memorialised as models for the young. These include the two bodyguards who machine-gunned Indira Gandhi.

Canada’s inaction against votaries of terrorism, he points out, surfaces again in 1985, when Canadian Sikh moderate Ujjal Dosanjh, who publicly condemned Indira Gandhi’s murder, was severely thrashed in Vancouver by a Khalistani thug with an iron bar.

“No one was convicted,” Milewski says.

“The same year, Balraj Deol, another vocal moderate, was beaten by a group of Sikh militants in Ontario. Again, no-one was convicted,” he adds.

The destruction of Air India Flight 182, from Toronto to New Delhi via London over Irish air space by a bomb, killing 329 passengers and crew on June 23, 1985, is another example of Canadian government inaction. A Canadian commission of Inquiry concluded that the mastermind of that incident was none other than Talwinder Singh Parmar.

All the other eight accused of that crime have been either absolved, died naturally and or released.

Today, the parents who lost their children are old, the orphaned children have their own children and the Sikh struggle for independence is moribund in India. Last year, in fact, Sikh voters overwhelmingly supported a united India and were key to the election of the Congress Party-the party of Indira Gandhi-to govern the Sikh homeland of Punjab," says Milewski.

Critics, he says, claim that he has failed to grasp the "cultural" reasons for the veneration of Parmar, and argued that he was a victim of "persecution" whose "confession to the Air India bombing came under torture" by the Indian police.

Today, Sikh hardliners are a political force in Canadian politics. An example of this is 39-year-old Jagmeet Singh, an Ontario resident, who has successfully captured the leadership of Canada's left-leaning New Democratic Party (NDP).

Jagmeet has appeared at Khalistani events in North America, been denied a visa to visit India, and has campaigned for clemency for a confessed Babbar Khalsa terrorist involved in the 1995 assassination of Punjab's Chief Minister, Beant Singh. He has also taken part in a successful drive to have the Ontario legislature declare the 1984 massacre of Sikhs as a "genocide." Now, he hopes to achieve the same in parliament.

He has only now acknowledged Parmar's guilt as the mastermind behind the 1985 terror air crash and condemns the posters honouring him, this, after years of denial and refusing to name him as the main conspirator.
Milewski says Jagmeet Singh's defenders have denounced his interview with him in several angry tweets.

He recalls, "Some declared flatly that the Indians were behind the bombing. Others condemned the CBC and me for asking about the Parmar posters "just because Singh is Sikh."

He adds that, "Jaskaran Sandhu, a WSO board member, called me 'racist and bigoted'."

Harjit Sajjan, another Sikh with alleged connections to Khalistan, is Canada's Minister of National Defence.

"Although there's no evidence that Sajjan has done anything to promote Sikh separatism, he has long been viewed with suspicion by Sikh moderates," despite him being a decorated Afghan war veteran and a former copy, says Milewski in the article.

Their preferred candidate was secular moderate Barj Dhahan.

Milewski quotes Kashmir Dhaliwal, former head of the Khalsa Diwan, Canada's oldest Sikh society, as saying "the Liberal Party, especially Justin (Prime Minister Trudeau), is in bed with extremist and fundamental groups. That's why I decided to leave the Liberal Party."

The incident of Jaspal Atwal convicted for the attempted murder of a Punjab cabinet minister on Vancouver Island in 1986 being invited to attend a reception in Delhi for Prime Minister Trudeau in February 2018 is still too fresh to forget, even though the Canadian delegation rushed to contain the damage by rescinding the invitation.

Trudeau's team nevertheless found a way to make it worse by "trotting out a dubious theory that unnamed "rogue elements" within the Indian government had somehow conspired to manufacture the Atwal affair in order to sabotage the trip. This Indian Plot theory did not sell well-certainly not with the Modi government, which called it "baseless and unacceptable."

According to Milewski, the opposition Conservatives are always eager to paint the Liberal government as being soft on terror, but has often had to succumb to the pressure of the WSO and other hard line Sikh affiliates. (ANI)

N.W.T. defence lawyer on what legalized cannabis will mean for justice system
'I have never seen a fight associated with cannabis,' says lawyer Peter Harte
CBC News
May 6, 2018

As N.W.T. draft legislation for the legalization of cannabis is under review, many have wondered how it will affect the criminal justice system and policing.

Prime Minister Justin Trudeau renewed his promise Thursday that recreational cannabis use will be legal by summer. The N.W.T.'s Cannabis Legalization and Regulation Implementation Act, or Bill 6, is currently under review.

The CBC's Lawrence Nayally spoke with N.W.T. defence lawyer Peter Harte who has more than 30 years of experience in northern courtrooms.

This interview has been edited for length and clarity.

What effect do you think legalization will have on your work?

I have never seen a fight associated with cannabis, I have never seen an assault or a crime of violence associated with just cannabis — cannabis and alcohol, yes but not just cannabis.

Alcohol creates a huge amount of work for the criminal justice system in the N.W.T. and in fact throughout Canada but here there is a huge amount of violent crime associated with alcohol.

My hope is that if people turn to cannabis as their recreational intoxicant that we'll see rates of violence decline in the N.W.T. and that would be a significant difference, have a huge impact on local communities, because the violence that we see affects family members, affects the whole community, affects the law enforcement community and if we're able to get that under control by giving people a peace-inducing intoxicant then it's going to make a huge difference to the criminal justice system.

How are police, prosecutors and judges dealing with marijuana charges right now?

What I have seen so far in 2018 is that police tend to be simply throwing away minor amounts of marijuana. For significant amounts of marijuana, I would expect charges to be laid and then it would be up to the Crown to decide whether or not to proceed with the charges.

I suspect that in the event that charges proceed to trial or result in a conviction, fines would be moderated to some extent by the fact that the legalization is on the horizon. But generally speaking when something ends up in front of a judge it's going to be dealt with in a way that is consistent with the way judges have dealt with marijuana in the past.

What about people who have already been convicted of marijuana offences? What will happen to them once it's made legal?
I don't know of any proposals to deal with prior convictions associated with marijuana trafficking or possession.

It may be that there is pressure put on Parliament to make some sort of amnesty available for people who apply for it. But at this point the critical point to bear in mind is regardless of whether it was marijuana or not that was being sold or possessed, it was still illegal at the time and so the focus is on breaking the law not necessarily how you were breaking the law.
It also may be possible to obtain a record suspension more easily in respect of prior convictions for marijuana offences, but at this point nothing has been discussed to my knowledge about how that might work.

What penalties should people be aware of when it comes to cannabis after legalization?

Cannabis and driving is going to change the environment associated with driving while impaired and it's going to be easier for police officers to pull people over and demand that they provide samples of saliva or breath for enforcement purposes.

The limits on the amount of intoxicant you can have in your system as far as cannabis goes are quite strict and police officers will have the power to administer what are called field sobriety tests, although in this case they'll be associated with whether or not people are stoned.

Police officers right now are being trained to identify symptoms associated with having too much cannabis in your system and they will be able to administer those tests with a relatively low threshold.

It would be extremely important that people stay away from cannabis while they're driving because the fines and penalties that are associated with cannabis and driving will be similar to those associated with drinking and driving.

In the event that it proves to be as much of a problem as alcohol and driving, those penalties can be expected to be stepped up because it's something that the government is desperately trying to bring under control.

How ready do you think the police force and justice system are to manage the changes in the law that you're seeing in Bill 6?

My experience in dealing with the RCMP is that generally speaking they're ahead of the curve. I know that officers are receiving field sobriety testing training and so in that regard they will be in a position to begin enforcing cannabis and driving legislation immediately.

To the extent that drug enforcement activities are already taking place, the enforcement activities that are necessary to deal with, for instance, having too much cannabis and selling it illegally, they're already in place, those officers are experienced and well trained and that part of the legislation is going to be enforced without any difficulty at all.

The one area which I think will take some additional work is saliva testing and gathering buccal samples [cheek swabs] that will be used to determine how much THC [active ingredient in cannabis] is in your system. That's something that's going to require some additional training and probably some new equipment.