Un procès pour trafic de cocaïne annulé en raison d'un manque de juge
Plus de 22 mois se sont écoulés depuis l'arrestation d'un homme sans qu'il ait eu accès à un procès
Radio-Canada
22 mai 2018

Un homme de Caraquet, dans la Péninsule acadienne, a été acquitté en vertu de l'arrêt Jordan de la Cour suprême du Canada. Il faisait face à deux accusations de trafic de cocaïne

Cet arrêt fixe une limite dans le temps aux procédures judiciaires.

Flavien Savoie, 60 ans, de Rang St-George, ne subira pas son procès, a tranché vendredi la juge Johanne-Marguerite Landry de la cour provinciale de Caraquet.

Plus de 22 mois se sont écoulés depuis son arrestation sans qu'il ait eu accès à un procès.

Cela est notamment attribuable à un manque de juge dans la Péninsule acadienne à ce moment-là.

Le plafond fixé par la Cour suprême du Canada dans l'arrêt Jordan, est de 18 mois.

Flavien Savoie a été arrêté dans le cadre de l'Opération J-Tobey qui avait été lancée en 2016 et dont l'objectif était d'endiguer le trafic de cocaïne et de marijuana dans le nord-est du Nouveau-Brunswick.

Vice journalist 'eager' on eve of his press-freedom hearing at Supreme Court
RCMP seeks access to material for Ben Makuch's story on ISIS member Farah Shirdon
CBC News
Nazim Baksh
May 22, 2018

Ben Makuch says he is nervous but relieved that he is one step closer to putting his fight with the RCMP behind him.

"I am eager to go to the Supreme Court, I wish I could just fast forward to May 23 and have it over with," said Makuch.

Makuch spoke to CBC News from Vice's Toronto office a few days before the Supreme Court of Canada is set to listen to arguments by lawyers representing Vice Media Inc. and the RCMP.

The CBC and a coalition of 12 press freedom and civil liberties groups from around the world were granted leave to intervene and will make brief presentations at the hearing in Ottawa.

"I think it has the potential to be a landmark decision," said Paul Schabas, counsel to the international coalition, which includes Reporters Without Borders. "We wouldn't know until we see what the Supreme Court writes at the end of the day."

According to Schabas, "This case raises the important issue of when should journalists and the material they gather be accessed by the state for the purposes of law enforcement."

In early 2014 an English-speaking man popped up in an ISIS propaganda video burning his Canadian passport and threatening to inflict death and destruction on Canada and the United States.

National security reporters at major media organizations took an interest in identifying the mysterious ISIS fighter.

CBC News identified him as Farah Shirdon, connecting him to a cluster of men from Calgary's infamous 8th and 8th mosque who had left to join ISIS.

Makuch, a 26-year-old journalist at Vice with a keen interest in national security, was curious about Shirdon and his networks of foreign fighters from Western Europe and North America.

"To know that there was a young guy like me from a similar city who decided to just pick up and go fight for the most infamous terrorist organization in the world, that blew me away," said Makuch.

He embedded himself in Shirdon's online world and soon persuaded Shirdon to explain ISIS's online recruiting and radicalizing strategies.

ISIS recruiting was 'quite sophisticated'

Shirdon described the ISIS command structure and explained how and why certain types of people were selected for specific tasks.

"It was actually quite sophisticated," said Makuch.

Between June and October 2014 Makuch's online interaction with Shirdon led to several articles and a Skype interview with Shirdon that was conducted by Vice's co-founder and CEO, Shane Smith.

In early March 2015 Makuch arrived back in Canada after an assignment in Russia and was informed by his editor that Vice had been served by the RCMP with a production order.

The information to obtain the order, known as an ITO, was granted in secrecy by a judge at the Ontario Court of Justice. It compelled Vice and Makuch to hand over all KIK Messenger chats, paper printouts, screen captures and any computer records of all communications between Makuch and Shirdon.

"I was shocked. I thought it was an aggressive play. I was angry about it, not just as a journalist but as a citizen of Canada," said Makuch.

He told CBC News he believes the RCMP "was on a fishing expedition" and the force wanted to prosecute Shirdon in absentia using his information.

Lawyers for the RCMP declined to be interviewed by CBC News. They pointed to a factum that has been submitted to the Supreme Court, in which they deny that the RCMP was on a "fishing expedition."

"The police are seeking to obtain highly reliable evidence relating to serious terrorism offences, which they cannot obtain from any other source," the factum reads.

Police, it says, "are not required to go further and establish that the prosecutor will actually need that evidence to prove the case at trial; nor are they required to exhaust all other investigative avenues."

Schabas believes the RCMP's argument is lopsided.

He argues there should be a standard of real necessity in the investigation, where police have no alternatives to obtain the information.

Schabas says, "There must be a balancing between the public interest in law enforcement and the public interest in protecting the press and protecting journalists' ability to do their job."

Makuch says he reported anything he had of national security interest, not because it was good journalism but because "I wanted to make sure the authorities knew what these individuals were saying."

The journalist believes the production order essentially co-opts him and journalists in general to give up information that police or an intelligence agency wish to have in prosecuting a criminal.

Schabas says that if the RCMP was after Makuch's confidential or non-confidential source, he could have sought protection under the Journalistic Sources Protection Act, enacted in 2017.

But the RCMP was aware that Makuch had been corresponding with Shirdon months before Shirdon was killed by a drone strike in Iraq in July 2015, which the U.S. Central Command announced in September 2017.

"What makes this case different from a confidential source case is that it's about material a journalist has gathered but keeps to him or herself and uses as the journalist sees fit in a story," said Schabas.

'You always protect the source'

Schabas fears that if the Supreme Court rules in favour of the RCMP it could mean a journalist's source material will become "fair game to be used in a prosecution."

"To me a source is a source is a source. You always protect the source," said Makuch.

"If you don't do that, people will not talk to journalists."

Robert Steiner, director of the Munk School global journalism program at the University of Toronto, said, "Journalists are not cops."

Steiner is afraid the RCMP's actions in this case will have a chilling effect on journalists trying to do their jobs.

"If sources start to think that speaking to a journalist is like speaking to a police investigator they will stop speaking to journalists and if they do, the pipeline around us starts to shut down," said Steiner, a former award-winning correspondent for the Wall Street Journal.

"If you keep a journalist from doing her or his job," Steiner says, "democracy is weakened."

Makuch says journalists have told him, "I've talked to this individual; do you think what happened to you could happen to me?"

He says, "That's a chilling effect not just on sources talking to journalists but on journalists pursuing stories. That's what I am trying to prevent from happening."

6 months or more for a decision
Vice challenged the initial production order and lost. An appeal was filed, and a judge at the Ontario Court of Appeal also ruled against Vice.

Now Makuch may have to wait six months or more for a decision from the top court.

He says he often vacillates between whether this has been the worst thing that has happened to him or the most interesting thing he has encountered.

"I've paid a toll already. I am not the same person," he said.

"I was going after a story I really thought was important for the public good. I don't regret any of this."

Lack of Indigenous jurors indicative of a systemic problem, experts say
Star Metro Edmonton
Claire Theobald
May 22, 2018

EDMONTON—Connie Oakes was in for what she called a fight for her life.

But when she walked into a Medicine Hat courtroom and didn’t see a single Indigenous juror on the panel, she felt as if her fate had already been sealed.

“I was given a life sentence,” said Oakes, who was convicted in November 2015 of second-degree murder in connection to the 2011 death of Casey Armstrong based on shaky testimony from a questionable witness.

The Court of Appeal heard how the witness who implicated Oakes, Wendy Scott, later recanted her statements to police — which she gave over the course of a series of police interviews where she first

identified other suspects — and was found to have a very low IQ and cognitive difficulties that impaired her ability to understand and recall complex matters.

Oakes' murder conviction was overturned, but not before she was locked up in a federal prison for nearly two and a half years.

While she was incarcerated, Oakes' son died of cancer. She never got to attend his funeral.

"I wasn't guilty," said Oakes, who has filed a million-dollar lawsuit against members of the Medicine Hat police and the Crown prosecutor involved in her conviction.

Oakes, a member of the Nekaneet First Nation and a residential school survivor, said she was concerned from the outset that there were no Indigenous jurors at her trial and believes that the trial's outcome could have been different if there had been even one Indigenous person on the panel.

"My voice would have been heard," said Oakes. "Whether it be just one strong Aboriginal male or female, one would have been good enough."

Her voice joins calls from across Canada for the government to look at systemic issues that are limiting the participation of Indigenous people on juries, calls that became louder after the high-profile acquittal of Gerald Stanley in the killing of Colten Boushie.

After an all-white jury acquitted Stanley, a white Saskatchewan farmer, of second-degree murder in February in the shooting death of Boushie, a 22-year-old from the Red Pheasant Cree Nation, Indigenous legal advocates decried the use of peremptory challenges that they argue allowed Stanley's lawyers to reject potential Indigenous jurors without cause.

"The law in Canada is colonization," said Sharon Venne an Indigenous rights attorney, during a panel discussion at MacEwan University days after Stanley was acquitted. "It's the same thing, because they use the system to oppress our people."

Fellow panellist Janice Makokis, an Indigenous scholar and activist, said the process of decolonization of Indigenous people in Canada includes changing "laws and legal structures" that she says currently serve to "dispossess, to depress and keep us where we are."

"We want to have a jury that is representative of the community, and it's a problem if there are members of groups in our society who face very significant barriers in having the opportunity to serve," said Steven Penney, professor in the faculty of law at the University of Alberta.

Penney said the issue of peremptory challenges, whereby lawyers can disqualify potential jurors without having to give a reason, was highlighted as an area of contention in Stanley's trial.

“The argument has been that these challenges can be used in ways that effectively discriminate against Indigenous people or other minority groups and make it less likely that they end up in the jury,” Penney said.

Edmonton lawyer Simon Renouf brought forward a constitutional challenge in 2015 prior to the trial of Jeremy Lyle Newborn — an Indigenous man who was eventually found guilty of second-degree murder and sentenced to life in prison — arguing a complete lack of Aboriginal jurors in the pool called for selection at Newborn’s trial was indicative of a systemic problem.

In an expert report presented as part of Renouf’s challenge, sociologist Jacqueline Quinless estimated that if all were truly equal, based on the population of Indigenous persons in the Edmonton catchment area there should be approximately eight or nine Indigenous persons in a pool of 178 potential jurors.

“To have zero tells you you have a systemic problem,” Renouf said, in an interview with StarMetro Edmonton.

There are numerous barriers standing in the way of Indigenous people participating on juries, Renouf said, and the problem starts long before the selection begins.

“(Lawyers) don’t have a problem with people using peremptory challenges to get Aboriginal people off the jury, we can’t find a way of getting Aboriginal people on the jury,” Renouf said.

Part of the problem, Renouf said, is that jurors are selected using the Alberta Motor Vehicles System.

“Indigenous people are statistically less likely to be on that database,” said Renouf.

At the same time, the Jury Act excludes anyone who is currently charged or has been convicted of a criminal offence.

While there is no data measuring the rate of criminal convictions, studies have repeatedly shown Indigenous people experience disproportionate rates of crime and victimization and higher rates of incarceration than non-Indigenous Canadians.

“I am disappointed that the jury act in Alberta has this sweeping prohibition against people with criminal records, it’s very easy to fix,” said Renouf, suggesting it could be as simple as changing the rules to create a limited period of exclusion following a criminal conviction.

Quinless’ report identified other factors that amount to Indigenous peoples’ systematic exclusion from juries: Indigenous people are more likely to move than their non-Indigenous counterparts — meaning their information on databases is more likely to be out of date —the upfront cost of attending a lengthy jury trial can be prohibitive, and documented issues with getting mail delivered to people living on-reserve making it difficult to receive a summons even if they are selected.

Having even one Indigenous person on a jury can help dispel subtle cultural misunderstandings and negative stereotypes that could otherwise sully a fair trial, said Renouf.

“Even having one or two members on the jury who are Aboriginal can help to dispel those stereotypes,” Renouf said.

The risk of not having Indigenous persons serving on juries in a system where Indigenous people are disproportionately represented as both victims and those punished for crimes is grave, Renouf said, and contrary to the ideal of an unbiased judicial system.

“We risk getting wrong decisions from juries, that’s the ultimate problem,” he said.

“Sometimes these are very fine lines between guilty and not guilty in a jury trial, so we have to do everything we can to ensure that we have a fair, representative process for selecting a jury,” he continued.

Penney said making reforms to break down systematic barriers is critical for restoring faith among Indigenous persons in a justice system that many feel has not served them well.

“It sends a message of equality and it also sends a message of fairness to those who are charged in the criminal justice system and those who are allegedly victimized by crime that the system is representative of the entire society that we live in,” Penney said.

Claire Theobald is an Edmonton-based reporter who covers crime and the courts. Follow her on Twitter: @clairetheobald

MPs call for better compensation, mental health support for jurors
CTV News
Rachel Aiello
May 22, 2018

OTTAWA -- A committee of MPs is unanimously calling on Justice Minister Jody Wilson-Raybould to champion new supports for jurors, recommending a new approach to how jurists are treated by the justice system post-trial.

On Tuesday, the House Justice and Human Rights Committee tabled its report "Improving Support for Jurors in Canada" in the House of Commons.

Canadians who get selected for jury duty can face difficulties afterwards, and the committee argues that, to date, these former jurists haven’t been properly informed or compensated for their experiences. Depending on the nature of the case, the experience of being a jurist can include being subjected to graphic or traumatic content, being isolated from family and friends, and having to weigh the impacts of a verdict.

As the committee heard, this stress can result in former jurists developing mental health issues like post-traumatic stress disorder and depression.

"One of I think the most anguishing things for all of us that we heard was stories from jurors about when they left the trial, and they had to go seek their own mental health counselling, and that they had trouble integrating into their normal daily lives," said committee chair Liberal MP Anthony Housefather during a press conference outlining the proposed new supports.

"They had trouble at work, they had trouble relating to their spouse and their children and they couldn't even communicate with them about what had happened in deliberations which is often the cause of the stress," he said.

The report is unique in at least a couple ways: it is the first-ever parliamentary report on jurors, and its 11 recommendations have unanimous support among the parties on the committee.

After spending a dozen meetings studying the issue, including hearing from nearly 40 witnesses, the committee's recommendations include:

providing jurors an information package about the role of jurists, the impacts sitting through some trials can have, and how to get help;
providing free counselling sessions without a time limit on jurists accessing them;
amending the Criminal Code to allow former jurists to discuss deliberations with a mental health professional afterwards;
offering jurists a minimum $120 a day in compensation throughout the trial and additional compensation for related costs like daycare;
minimalize interactions between jurists and others involved in an ongoing trial, both in and around the courthouse; and,
funding programs to raise awareness within the court system about jurists' mental health needs, including the federal government chipping in for the upfront costs to implement these recommendations.

As well, the committee is calling on Justice Minister Jody Wilson-Raybould to respond to their call for action, and share the recommendations with the provinces and territories at the next meeting of federal and provincial justice ministers, as the majority of changes fall under provincial and territorial jurisdiction.

Already, Alberta, Ontario, Saskatchewan, and Yukon have started moving ahead with programs to support jurors, but the committee wants to see national standards.

Currently, the amount jurors are compensated across Canada differs from province to province, along with the kinds of costs jurists are reimbursed for like travel, food, and child care.

Housefather said that now the work turns to convincing the provinces that these steps should be taken.

The one recommendation that will require federal legislation is amending the Criminal Code to change the secrecy rule, letting former jurists discuss deliberations with mental health experts after the trial concludes. Housefather characterized this as a “relatively simple” change that he’s hopeful the all-party approval will help bring to fruition.

"We all came together and we agree with it because we are absolutely convinced this is the right thing to do," said Conservative MP and committee member Rob Nicholson.

As bargaining restarts, largest federal union threatens to campaign against Liberals if talks go south
The Hill Times
Emily Haws
May 23, 2018

The Public Service Alliance of Canada has set bargaining dates for groups representing the majority of its federal workers to negotiate their next contract, and newly minted national president Chris Aylward says if the government doesn’t fairly negotiate, it will be more ammunition for PSAC to use, should they campaign against the Liberals in 2019.

He said PSAC, the largest federal public service union, is optimistic the government will come ready to play ball. Other than the Phoenix pay system that has left the majority of public servants with pay problems for more than two years, he said PSAC’s relationship with the government is “no doubt” better than before the Liberals took the reins in 2015. This is a chance for the government to demonstrate its respect for the bureaucracy, he said.

“It is simply unacceptable number one, for the [pay] delays. And then [if] they come to the table and they’re not prepared to negotiate with us in a fair manner, then absolutely, we will certainly be looking at and considering that [in the] federal election in 2019,” said Mr. Aylward.

Treasury Board spokesperson Martin Potvin said in an emailed statement the government “will continue to bargain in good faith with bargaining agents, toward reaching timely agreements that are fair for all involved.” He wouldn’t comment on negotiation priorities or proposals.

When asked if the union would endorse the NDP because the Conservatives commissioned Phoenix and the Liberals launched it, Mr. Aylward wouldn’t say, keeping the focus on holding the Liberals to their 2015 platform promise to “bargain in good faith with Canada’s public sector unions.”

With the exception of Conservative MP Pierre Poilievre (Carleton, Ont.), all seats in the National Capital Region are red. The NCR is home to about 41 per cent of the government’s more than 262,000 civil servants.

Previous PSAC national president Robyn Benson had encouraged members to campaign against the Liberals in 2019 as part of the union’s “escalating action,” if Phoenix isn’t fixed. At their recent convention, PSAC delegates adopted an action plan on the pay system, demanding damages, fair

treatment by the tax system, sick leave compensation due to Phoenix, a new pay system that works, and a public inquiry into the boondoggle to ensure it doesn't repeat.

Mr. Aylward didn't indicate what actions PSAC could use if it decides to campaign against the Liberals, but in the past it's used billboards, posters, radio segments, and targeted online content. In 2015, it pledged to amass a $5-million war chest to campaign against the Conservatives.

More than 90,000 of PSAC's 140,000 federal members are collectively represented by its program and administrative services (PA), technical services (TC), education and library sciences (EB), and operational services (SV) groups. They respectively represent communications and secretarial staff, drafting and illustration staff, federal librarians, and government cooks, firefighters, and tradesworkers, among others.

All four had signed their last contracts on June 14, 2017; those expire between June 20 and Aug. 4. When notice to bargain is served—in this case, it was served for all four groups by PSAC on April 12—the current contract freezes.

Overall, there are 27 contracts among 15 different bargaining agents within the core federal public service. These groups represent workers in different departments, but all have the Treasury Board as their employer.

The bargaining dates for the four PSAC groups extend from late May to mid-July, with the first taking place May 29-30, the second from June 20-21, and third from July 10-12. Through the meetings, the negotiators on both sides will exchange both group-specific proposals and common issues affecting all employees.

Phoenix is PSAC members' most significant issue, said Mr. Aylward. The program was supposed to consolidate payroll services and save the government about $70-million annually, but so far the Liberals have sunk more than a billion dollars into trying to fix it. The 2018 budget announced $16-million over five years for the Treasury Board to start looking for an alternative system.

Liberal MP Steve MacKinnon (Gatineau, Que.), the parliamentary secretary to Public Services and Procurement Minister Carla Qualtrough (Delta, Que.), reiterated in an interview last week that there's no timeline on fixing Phoenix, but they're working on it full tilt.

Mr. MacKinnon said he's proud of the "productive and positive interactions" the government has had with unions, adding they have "responded incredibly quickly and thoroughly to all of our election commitments" including negotiating in good faith.

"[Phoenix] was a mess, and it is a very large mess… . Will [that] reassure that individual public servant [who has] had catastrophic pay issues?" he said. "Obviously not."

"That's why every day when I look at that queue go up or down, mostly down lately, I say to myself 'that's another 5,000 [or] 10,000 people with peace of mind.'"

Pay raise of 1.25 per cent not going to cut it this time: Aylward
It's early to determine exact priorities for each bargaining unit, said Mr. Aylward, as the negotiating teams are still meeting, but he said pay, pensions, and a respectful deal are the main issues overall.

"They dragged our members through [pay issues these] last two and a half years," he said. "We certainly hope they're not going to drag us through a couple of years of bargaining now when there's absolutely no need to do that."

In the last round, the government generally gave each group a 1.25 per cent pay raise, but Mr. Aylward said he doesn't think that rate "is going to cut it" this time.

He didn't say when asked what rate he thought was reasonable, indicating it's too early.

When Prime Minister Justin Trudeau (Papineau, Que.) came to power in 2015, all 27 core federal public service contracts were expired. Since 2015, 23 of the 27 contracts have been settled, with the rest held up in dispute resolution mechanisms. The contracts generally run four years and were reached largely in 2016 and 2017, but cover a period running generally 2014 to 2018.

If the government is willing to work with the unions, Mr. Aylward said they could have new contracts in a couple of months, but he didn't want to put any timelines on it.

Payments from last round of bargaining still outstanding for some
Because the last round of contracts for 2014 to 2018 weren't settled until well after the previous contracts expired, a lot of retroactive payments were needed, which Phoenix can't handle. The government has at least 90 days to implement a contract once it's signed.

Pay advisers have had to manually implement the agreements by retrieving data from the old pay system and calculating it through Phoenix. The process has left a backlog of unimplemented contracts.

As of May 2, there were still 14,000 collective agreement open backlogged cases, according to a government website tracking the issue.

PSAC has filed several complaints with the Federal Public Sector Labour Relations and Employment Board, which sided with them on the issue and ordered the government to give an update on when the unions can expect the contracts to be implemented.

Talks about damages owed to union members for the implementation delays, as well as other Phoenix issues, are still ongoing, said Mr. Aylward.

"The delay is totally inexcusable…[it] is very frustrating for us for sure, but that will not impact us for this round of bargaining," he said.

It could be more than year before the last round of negotiations is wrapped up for these groups, said Mr. Aylward.

He said the only indication they've been given is that the government will be able to give them more details about when contracts will be all implemented in June 2019.

"They say it's because of Phoenix—regardless to us, you had an obligation to implement the collective agreements, you didn't meet that obligation, and now our members are out money that they're supposed to be receiving," he said.

Les avocats, l'IA et la lutte contre le blanchiment d'argent
L'intelligence artificielle ne va pas que servir des nobles causes.
Droit Inc
Delphine Jung
23 mai 2018

La section montréalaise de l'Association of certified anti-money laudering specialists (ACAMS) organise une conférence sur le sujet de l'intelligence artificielle et du blanchiment d'argent. Il semblerait en effet que l'IA soit parfois utilisée à ces fins.

« Nous organisons des déjeuners-causeries sur des thèmes actuels et l'IA nous intéresse beaucoup, d'autant plus que Montréal est une plateforme de développement », explique Michael Librizzi, co-président de la section ACAMS Montréal et détenteur d'une maîtrise en droit.

Trois conférenciers seront présents pour parler du sujet : Myriam Côté, directrice exécutive de l'Institut des Algorithmes d'apprentissage de Montréal, Wesley Girdharry, spécialiste national en solutions, Crimes financiers et renseignements stratégiques en matière de sécurité, SAS Canada et Nathaniel Kennedy-Noble, spécialiste en solutions, Data Science Team, SAS Canada.

Après un retour sur l'histoire de l'IA, les conférenciers expliqueront comment cette technologie est parfois utilisée pour blanchir de l'argent à travers des exemples concrets.

Pour M. Librizzi, les avocats devraient s'y intéresser pour « offrir un meilleur service à leurs clients et parce qu'une partie de leur travail est en lien avec la lutte contre le blanchiment d'argent. L'idée est de leur montrer les outils qu'ils pourraient utiliser pour continuer dans ce sens », explique-t-il.

La formation aura lieu le 5 juin, de 7h30 à 9h30, au Centre de conférences Sunlife, au 1155 rue Metcalfe, 7e étage, à Montréal.

OPINION: When it comes to pensions, Ottawa and the public service are setting an example no one else should follow

The Globe and Mail
Frederick Vettese
May 23, 2018

It is a sad fact that only 20 per cent of private-sector workers are covered by pension plans in their workplace. In stark contrast, nearly 100 per cent of public-sector workers are covered. Of course, none of this is news; pension envy among private-sector workers is as Canadian as hockey and Timbits.

What is perhaps more interesting and less well understood is the garbled message the government is sending with the pension programs it provides to its own employees. I will single out the federal Public Service Pension Plan (PSPP), not only because it has more than half a million members, or because it is generous even by public-sector standards, but also because the federal government has the power to effect change in a way that would benefit millions of Canadians.

The classic defence of plans such as the PSPP is that everyone benefits when civil servants can retire in dignity. Besides the obvious advantages for the participants themselves, good government-sponsored pension plans create a benchmark for other employers to emulate.

In the case of the federal government, however, this rationale contains a fatal flaw. The last thing the federal government would ever want is for all private-sector employers to adopt pension plans like the PSPP. The consequences would be disastrous for both the Canadian labour force and for tax revenues.

Consider the labour force first. At present, we have about four workers for every retiree. Fifty years ago, that ratio was 6.6 to 1 and in another 20 years it is forecast to dwindle to just 2.3 to 1. Barring a robotic revolution, we will probably not have enough workers to keep the economy running.

Don’t count on immigration to make up for the looming shortage of workers. It is already running at the highest rate in a century (with the exception of 1956, when the Hungarian refugee crisis occurred); the general public is unlikely to want to see immigration rise much more, even if we had the infrastructure to support it.

A higher birth rate is another possible way to change the worker-to-retiree ratio, but it is not clear what, if anything, would cause the birth rate to rise any time soon. Besides, the impact on the worker-to-retiree ratio would be negligible for at least 30 years.

The inescapable conclusion is that the only viable way to ensure there will be enough workers in the future is to encourage people to keep working longer. Alas, the federal PSPP does just the opposite. The plan’s retirement rules incentivize long-term civil servants to retire as early as age 50. If private-sector employers had maintained similar pension plans all along, the labour force today would have roughly one million fewer workers.

The effect on income-tax revenues if everyone had a PSPP-like pension plan would be equally damaging. A C.D. Howe paper by Malcolm Hamilton estimates that the average Canadian worker contributes about 14.1 per cent of pay toward retirement. (This includes employee and employer contributions to registered retirement savings plans and pension plans but not tax-free savings accounts.) In the case of federal public-sector workers, the contribution rate could exceed 25 per cent in a year when the PSSP has a big deficit. If private-sector workers (and their employers) made tax-deductible contributions at that rate, overall tax revenues would drop by more than $15-billion a year. Clearly, the federal government would never allow this to happen.

The time has, therefore, come to change the federal PSPP to better reflect the public interest. (Or actually, to change it further. Some amendments were made during the Harper era though they did not go nearly far enough.) The plan is a relic from an era during which the country had more potential workers than the economy could absorb but this is no longer the case.

So what should the federal government do to set a good example for private-sector employers? First, it should remove all incentives within the PSPP to retire early. Employees could still retire early, of course, but with the same penalty that applies to all participants in the Canada Pension Plan. Retiring early in comfort may require them to save a little extra in an RRSP and/or a TFSA, the same as what most other Canadians already do.

Second, it should reduce total employee and employer contributions under the PSPP to 18 per cent of pay, including any deficit payments that may have to be made in the future. Even at 18 per cent, the amounts being contributed by, and on behalf of, federal civil servants would still be at the high end of the spectrum.

Of course, these recommendations will not go over well with all stakeholders. No doubt the public-sector unions would strenuously defend the status quo on the basis that PSPP members contribute a high percentage of pay and should be entitled to a generous pension benefit in return. On this point, I would note that over the 12-year period from 2006 to 2017, PSPP contributions by members constituted barely one-third of total contributions (37 per cent to be exact). In most large public-sector plans, member contributions fund 50 per cent of the total pension cost and that includes the cost of paying off any plan deficits that may arise. It is time the federal PSPP fell into line.

The effect of the suggested changes would not be felt immediately since new retirement rules can be applied only to future service. They are, nevertheless, important if the federal government truly wants to set a good pension example for the rest of the country.

“Frederick Vettese is a partner of Morneau Shepell and author of “Retirement Income for Life: Getting More without Saving More”.

Media must not be turned into an investigative arm of police, Vice lawyer tells Supreme Court
Toronto Star
Tonda Maccharles
May 23, 2018

OTTAWA—The media's ability to shield their sources, notes and reporting materials from police "fishing expeditions" could be strengthened after a senior federal Crown attorney made several concessions in a high-profile media case Wednesday at the Supreme Court of Canada.

Vice Media is fighting the RCMP's effort to seize reporter Ben Makuch's 2014 texts and communications with Farah Shirdon, a self-declared Canadian ISIS fighter.

Although Shirdon is reported to be dead, the Crown and the RCMP have not given up the pursuit of Vice Media materials, and federal lawyer Croft Michaelson hammered the fact Shirdon could still be alive, could still return to Canada, and the public interest in prosecuting him remains high.

He urged the Supreme Court judges not to grant journalists any greater privacy protection against police searches than the state grants anyone involved in a criminal investigation.

"The newsroom should not be entitled to any more protection than that most sensitive part of human society, the bedroom," he said.

However Michaelson conceded the common law could be "tweaked" to underline the importance of a journalist's right to privacy and the right to free expression in a democratic society, and to set out clearer instructions for judges reviewing seizure orders.

It was a significant move that sets the stage for the Supreme Court of Canada under its new chief justice, Richard Wagner, and an almost entirely re-cast judicial bench to revisit earlier decisions, and Vice Media's lawyer Phil Tunley was quick to invite the court to do so.

Tunley called the RCMP's application for a production order against Vice a "fishing expedition," saying the chances of prosecution are remote. Makuch, the reporter who communicated with Shirdon over a Kik text messaging app and wrote three articles in 2014 on the Canadian, agreed and went further. He believes Shirdon is dead, and the RCMP is simply trying to expand its reach in a digital age.

The case drew a slew of black-robed lawyers for various media organizations who were supportive intervenors. Tunley argued that even a new federal law that requires prior notice to media of police applications for production orders, and sets out other protections for "confidential" sources, doesn't go far enough because it doesn't protect communications with "non-confidential" sources.

Vice says Shirdon never asked for nor was granted confidentiality or anonymity by its reporter, and that the reporter's work materials should remain off limits to the police.

Michaelson made a snarky comment that Vice was the one constraining Shirdon's freedom of expression, but was quickly reined in by Justice Russell Brown who said "Mr. Shirdon does not have constitutional right to have media be his amplifier."

Michaelson said Canada already has a robust legal framework that sets out a case-by-case analysis which requires courts to weigh the public interest in investigation and prosecution of criminal offences against the public interest in a vibrant free press.

However, several judges challenged whether that was enough or whether additional steps — like advance notice to the media in the first instance when police seek a warrant; or when an appeal judge reviews a warrant or production order — are required to really protect the right.

Justices Rosalie Abella and Brown asked Michaelson what exactly he believes the Charter protects. He replied the constitutional freedom of expression guarantee expressly protects "freedom of the press" including a right to gather and disseminate information. He conceded that certain protections should be extended not just to "confidential" sources but also to the private, "off the record" or "not for attribution" communications between reporters and their sources who agree to be named.

Michaelson, a senior Crown attorney who has long prosecuted high-profile criminal and terrorism cases, admitted he occasionally speaks to reporters but only on condition his remarks not be attributed.

He suggested the Supreme Court of Canada might want to "tweak the test" in the common law to capture the public interest in freedom of expression, even as he argued it is already recognized.

Abella pressed Michaelson whether it would be "helpful" if the court outlined specific considerations for appeal courts to use when reviewing a lower court order, rather than sticking to what the current "deferential" model of review that leans toward upholding the authorizing judge's take.

"Why not?" said Michaelson. "I mean other courts have, so if you're inclined to do so, why not to make it clearer" that the standard of review in cases where journalists's rights are involved "is a modified standard that must reflect" the principles he said the high court has already recognized.

Justice Michael Moldaver drew giggles in the court when he told Michaelson. "That's a very fair concession on your part."

Lawyer Paul Schabas representing a dozen international media organizations called on the Supreme Court to set out a new, clearer test in law as other countries have.

Another media lawyer, Justin Safayeni said on top of concerns about a "chilling effect" on sources, or self-censorship by reporters, there could be a real impact on public confidence in the impartiality and independence of the media if reporters are turned into an investigative arm of the police. He argued all of a journalists' "work product" — notes, source contact lists, and recordings of interviews — should be protected.

Civil service union calls for Trudeau to help 'stalled' Phoenix pay compensation talks
Toronto Star, Ottawa Citizen, CTV News, Globe and Mail
The Canadian Press
May 23, 2018

OTTAWA—The country's largest civil service union called on Prime Minister Justin Trudeau on Wednesday to intervene in "stalled" talks aimed at compensating federal government employees affected by the Phoenix pay system fiasco.

Those talks are suddenly going nowhere, with government negotiators saying they haven't been told how to proceed, said the Public Service Alliance of Canada.

The leaders of 17 unions issued a letter to Trudeau in February, demanding compensation for civil servants who have suffered as a result of the pay crisis.

For more than two years, tens of thousands of federal workers have been affected by problems plaguing the Phoenix system, which was supposed to streamline pay services across government.

Some haven't been paid at all for months at a time while others were paid either too little, or too much.

In its 2018 budget, the Liberal government promised to work with the unions to deal with the mental and emotional stress caused by Phoenix.

The unions have not disclosed the amount of compensation they are seeking, nor has the government said what it's prepared to offer.

The unions are seeking damages for their members for stress, the time spent dealing with pay issues and the catastrophic financial losses caused by Phoenix pay problems.

While there appeared to be movement as talks got underway last month, they have since come to a standstill, PSAC national president Chris Aylward said in a statement.

"Government representatives at the table say they are waiting for a mandate," Aylward said. "Well, it's time Prime Minister Trudeau gave them one."

Public Services and Procurement Minister Carla Qualtrough has said her department would continue working closely with public sector unions to limit the financial hardships faced by government workers.

She has also apologized to employees for the ongoing pay problems.

The compensation talks have been spearheaded by the Treasury Board Secretariat, which said Wednesday it would "negotiate in good faith at the bargaining table, not in public or through the media."

The costs associated with Phoenix, including the $309 million spent to set up the system, continue to escalate as the government hires compensation advisers and other staff in efforts to stabilize the problem.

The budget also committed $16 million to determine whether a new pay system could be found to replace Phoenix.

The auditor general is to release a report next week detailing what went wrong with the system.

Opinion: How America and Canada are diverging on the sad legacy of torture
Ottawa Citizen
Andrew Stobo Sniderman & Kent Roach
May 25, 2018

Canada recently apologized and gave $10 million to a Canadian tortured by Americans. Meanwhile, the United States just promoted someone who oversaw torture to the post of CIA director.

The political contrast between the Canadian and American approaches is jarring. The differences owe a lot to stronger protections in Canadian law.

In 2002, Gina Haspel ran a CIA black site in Thailand where at least one detainee was tortured with waterboarding, which is a way to make someone feel like they are drowning without killing them. In 2005, shortly after a Senate investigation into torture began, Haspel executed (and reportedly advocated for) an order to destroy recordings of the interrogations.

A dying John McCain urged his colleagues to reject her nomination to become CIA director. He said: “Ms. Haspel’s role in overseeing the use of torture by Americans is disturbing. Her refusal to acknowledge torture’s immorality is disqualifying.”

Despite McCain’s call to conscience, the U.S. Senate confirmed Haspel as CIA director, thereby ensuring the CIA’s record of impunity remains unblemished.

Not a single CIA officer has ever been held criminally liable for any of the systemic torture practised worldwide during the George W. Bush era. This reflects the politicization of the prosecutorial function, which skewed toward U.S. President Barack Obama’s statements that “I’m more interested in looking forward than looking backwards.”

Nor was there ever a successful civil suit against U.S. officials or the U.S. government. American law provided ample and effective shields to protect torturers and the architects of torture policy. Their courts are highly deferential to Congress and the executive when it comes to finding liability in the national security context and come close to viewing such matters as non-reviewable political matters. One after another, lawsuits were dismissed without proceeding to the macabre merits.

For example, Khalid El-Masri tried and failed to sue CIA officials who assisted in his extraordinary rendition from Macedonia to Afghanistan, where he was allegedly tortured. He was eventually released on the grounds that his capture was a mistake. He later noted: “it seems the only place in the world where my case cannot be discussed is in a U.S. courtroom.”

In the end, no U.S. official or institution was held accountable, though it took plenty of dirty hands for all that sweeping under a massive, rancid rug.

By contrast, the Canadian approach is more admirable in large part because of stronger laws that promote accountability. In 1985, the Supreme Court of Canada decided that it had an “obligation” to review rights violations by the executive branch, even if it involved sensitive national security matters. It rejected the U.S. “political questions doctrine,” which counsels the kind of judicial deference which ultimately insulated the Bush administration.

Section 24(1) of the charter gives those whose rights were violated a right to apply for an appropriate and just remedy. The Canadian governments that have settled a number of lawsuits before and after the Omar Khadr case did so in part because of concerns that those who had been tortured with Canadian complicity might receive large damage awards from the courts.

Last year, ministers Freeland and Goodale apologized for Canada’s role in Omar Khadr’s sordid and illegal treatment, and he received a bit more than 25 cents from every Canadian: 10 million taxpayer dollars in all.

This provides some accountability, if not justice. Institutions are more likely to change their behaviour when mistakes are costly.

One of us was involved in the early political discussions bout a possible settlement with Omar Khadr, when the government faced the iron certainty of mounting legal costs in a losing legal battle. What is perhaps most significant, in contrast to the United States, is that the government felt any real legal pressure at all.

Gina Haspel is far from the only American complicit in torture, but a Senate confirmation was one of the few available mechanisms in the United States to hold anyone responsible. To the extent that Gina Haspel is a scapegoat for a more systematic evil, it is because the American legal system catastrophically failed to demand any further accountability.

That Canada has done more to come to terms with some of our torture legacy is as much a triumph of our law as of our politics or any alleged Canadian moral superiority.

—

Andrew Stobo Sniderman was the human rights policy adviser to Foreign Affairs Minister Stéphane Dion and is a Visiting Researcher at the University of Ottawa’s Human Rights and Research Center. Kent Roach is a professor of law at the University of Toronto.

Hassan Diab case calls into question Canada's extradition process

Diab was sent to France for alleged involvement in Paris synagogue bombing despite scant evidence against him

Middle East Eye

Jillian D'Amours

May 25, 2018

OTTAWA - Hassan Diab often has to remind himself that he can move around freely.

The former university professor who was accused of but never charged with a terrorism offence, spent three years in near-solitary confinement in a French prison, and almost six years under strict bail conditions in Canada.

For more than half a decade, he wore a tracking device around his ankle and he couldn't go outside between 9pm and 7am or leave the Ottawa area. Every time he left his home, he had to be within view of a surety, who had put down money for his bail.

Today, he is free.

"It's been more than 10 years, when things started. It's been a very long ordeal," he told Middle East Eye at a coffee shop in Ottawa only a few kilometres from Canada's parliament building.

It's been more than 10 years, when things started. It's been a very long ordeal

- Hassan Diab

Wearing a blue, flowered shirt that looks a little too big for his slight build – he lost a quarter of his body weight due to stress, he says – Diab speaks softly as he recounts his ordeal.

"Take 10 years of your life, take it and throw it away. Not just throw it away, I wasn't in a coma and nothing happened- no. Ten years of struggle, 10 years of fear, 10 years of really living in uncertainty," he says.

"What could be worse than living in uncertainty? Nothing."

The case

But Diab's fight isn't over. New information recently surfaced about the involvement of a Canadian government official in his extradition to France, despite the unreliable - and secret - evidence used in the case against him.

A Canadian who also holds Lebanese citizenship, Diab was accused of being involved in a deadly bombing at a Paris synagogue in 1980, but he was never formally charged with a crime.

He was arrested in Canada at the behest of French authorities in 2008, and sent to France in 2014 after spending years fighting his extradition in Canadian courts.

The French authorities relied almost entirely on secret evidence and handwriting samples that they said matched Diab to the suspected bomber.

That evidence was highly questionable and refuted by handwriting experts called in by Diab's defence team.

Diab has always denied being involved in the bombing, maintaining that he was in Lebanon when it happened.

An Ontario judge described the evidence against Diab as "weak, convoluted and confusing", but his extradition went ahead anyway, prompting concerns about the low evidentiary standard required to grant an extradition request in Canada.

Diab spent three years in a maximum-security prison as his case stalled in France and French prosecutors vetoed several court decisions ordering his release. In January, they finally let Diab out of prison due to lack of evidence.

He returned to Ottawa soon thereafter, reuniting with his wife and two young children.

Diab is now calling on Canada to overhaul its Extradition Act and launch an independent inquiry into his ordeal.

"My first mission," he told MEE, "is to get rid of this extradition law as we know it, because it's not a law. I don't consider it a law; it's just a trap. Anybody can fall in it."

Ottawa's involvement

According to a report by CBC News, "the 'smoking gun' evidence that secured Diab's extradition to France in 2014 was obtained at the direction of a senior Canadian Department of Justice lawyer".

The lawyer, Claude LeFrançois, worked in a specialised division within the department known as the International Assistance Group, CBC reported in early May.

LeFrançois alerted France that Diab's defence team had presented evidence that put into question the claim that Diab's handwriting matched that of the alleged Paris bomber, the report said.

He then encouraged French officials to find new evidence to tie Diab to the handwriting sample, and "he also obtained a series of court delays that gave France the time it needed to find the evidence".

The lawyer also instructed France to send fingerprints of the bombing suspect to Canada, where federal police (RCMP) would test them against Diab's.

When the fingerprints didn't match; however, those results were never presented to the Canadian court deciding Diab's extradition, the CBC report said.

Those results were also never presented to the defence team, said Diab's longtime Canadian lawyer, Donald Bayne.

"You can be sure they wouldn't have failed to put it before the judge, had it identified Dr Diab. So because it exonerated him and showed his innocence, they suppressed it," Bayne told Middle East Eye in a telephone interview.

Simon Rivet, a spokesperson for the Ministry of Justice, said the IAG "reviews and coordinates all extradition and mutual legal assistance requests made either by or to Canada".

You can be sure they wouldn't have failed to put it before the judge, had it identified Dr. Diab. So because it exonerated him and showed his innocence, they suppressed it

- Donald Bayne, Diab's lawyer

Providing assistance to a country requesting extradition "with respect to the efficiency of their requests" falls under its mandate, Rivet told MEE in an email.

But Bayne said Canadian-sourced evidence – like the fingerprint test – is governed by local rules of evidence, which "require full disclosure of all evidence in possession of the Crown, helpful to or harmful to the Crown case".

"The evidence was generated right in Ottawa, by the RCMP and the Department of Justice, and in the letter to the French, the Department of Justice lawyer conceded that this would be very powerful, if not conclusive, evidence that they intended to put before the judge," Bayne said.

He said Diab's case makes it clear that the Extradition Act is "unjust and needs substantial reform".

Asked to comment on demands for the Extradition Act to be reformed, Rivet told Middle East Eye that the act isn't formally under review.

"The minister is seeking guidance from her officials regarding the effectiveness of existing protections" in the act; however, "and has asked them to look at any lessons learned in relation to the Diab case", Rivet told MEE.

"That work is ongoing."

Call for answers
In the meantime, prominent human rights and civil society groups have joined Diab's call for an independent inquiry into his case.

That includes the British Columbia Civil Liberties Association, Amnesty International Canada and the Canadian Association of University Teachers, which condemned Ottawa for enabling "the suffering and jailing of one of its citizens in a foreign prison for 1,156 days without proper evidence".

Alex Neve, secretary general of Amnesty International Canada, said the report that the justice department played such a large role in Diab's extradition raises "very serious concerns".

It indicates that "the Canadian government certainly was not [a] neutral, uninterested bystander" in the extradition process, he told Middle East Eye, and instead played "an active role behind the scenes".

Neve said this involvement came "even as it became clear that the evidence to back up the accusations against [Diab] was beyond weak and was crumbling quickly".

"That paints a very different picture as to what Canada's role was in this case, and certainly raises very serious concerns of even wrongdoing on the part of government lawyers," he said.

Bayne said the government's conduct must be examined in an independent, public inquiry conducted by a respected judge.

"The conduct of the department of justice is in question here and they can't do the inquiry. It can't be an internal inquiry. They can't credibly inquire into their own conduct," he said.

For his part, Diab said he wants the independent inquiry to help him understand why things happened the way they did – and who was involved.

"It's not just about me; it's about how they do things in this country," said Diab, adding that he hopes to gain "something positive out of this whole negative experience".

"I don't believe things will be easy," he said.

"It's an uphill battle, but the only thing we can do is to keep trying. Because if we don't try, I'm sure we'll lose, but if we try, we may win. That's the difference."

Des palais de justice non sécuritaires?
Un avocat craint un drame car des palais de justice ne disposent pas de lieux sécuritaires pour que les juristes rencontrent leurs clients détenus.
Radio-Canada
25 mai 2018

L'avocat Rodrigue Joncas, qui pratique à Rimouski, estime que les palais de justice du Bas-Saint-Laurent ne sont pas sécuritaires pour les employés de l'État. Il croit que les agents de sécurité ne sont pas suffisamment nombreux pour assurer la protection des avocats et des citoyens.

Rodrigue Joncas explique que parmi les gens qui ont des démêlés avec la justice, bon nombre de personnes souffrent de troubles mentaux ou ont des comportements à risque qui demandent une attention particulière. « Mont-Joli, Amqui sont des palais de justice qui ne disposent pas de lieux sécuritaires et encadrés pour que les avocats rencontrent leurs clients détenus et on craint qu'il arrive un drame un bon matin», dit Me Joncas.

L'avocat salue le projet d'investissement au palais de justice de Mont-Joli présenté récemment par la ministre de la Justice, Stéphanie Vallée, mais déplore le manque de fonds pour garantir la sécurité des gens sur place. Ses collègues du Barreau et lui envisagent même d'éviter certains palais de justice si rien ne change.

De leur côté, les agents de sécurité déplorent aussi la situation. « Certains de nos palais de justice au Bas-Saint-Laurent remontent à l'âge de pierre pour ce qui est de la façon de fonctionner », estime Mathieu Lavoie, président national du Syndicat des agents de la paix en services correctionnels du Québec (SAPSCQ).

M. Lavoie considère qu'il y a plusieurs problèmes d'aménagements à Amqui et Mont-Joli, mais aussi à Matane. « Au palais de justice de Matane, il n'y a pas d'endroit sécuritaire pour débarquer les personnes incarcérées, dans le fond, on les débarque dans le stationnement du palais de justice », dit-il.

Il estime que Québec doit investir pour conserver les services de justice de proximité et assurer la sécurité de la population.

Federal government recognizes land claim settlements of three Saskatchewan reserves
MBC News
Joel Willick
May 25, 2018

The Federation of Sovereign Indigenous Nations is applauding an announcement on land claim settlements for the James Smith, Peter Chapman and Chakastaypasin First Nations.

The organization says the federal government has decided to recognize and acknowledge the land claims for the three First Nations.

"These are affirmations of our Inherent and Treaty Rights to this land that was taken and colonized by settlers," said FSIN chief Bobby Cameron in a media release. "This is the first of many recognitions to come as First Nations people continue to fight the Federal Government for what has always been rightfully ours."

Chakastaypasin chief Calvin Sanderson says this is a great day for his community after decades of work.

"I started working on this file 33 years ago and our people will finally see recognition of all of the hard work our leadership, community and elders have put into this file" said Sanderson in the release.

The chief now says they will begin putting together committees to work on the negotiations.

The three bands are located east of Prince Albert.

Invalidation des lois : L'AGE s'oppose à 52 % au Barreau
L'ambiance était pour le moins animée hier soir à l'AGE où s'opposaient les « pour » et les « contre » à la démarche controversée du Barreau
Droit Inc
Céline Gobert
25 mai, 2018

L'Assemblée générale extraordinaire (AGE) des membres du Barreau du Québec s'est tenue jeudi soir au centre-ville de Montréal en présence de quelque 750 avocats.

Une mince majorité d'avocats, soit 52%, a exigé que le Barreau retire ses procédures demandant l'invalidation de toutes les lois du Québec.

Il s'agit de la deuxième AGE dans toute l'histoire du Barreau, après celle concernant l'affaire Khuong qui demandait à l'époque la démission en bloc du CA et de l'ancienne bâtonnière Lu Chan Khuong ainsi que la tenue de nouvelles élections.

Cette fois, l'objet de la discorde est la décision des barreaux de Québec et de Montréal de demander à la Cour supérieure l'invalidation de toutes les lois québécoises. Ils déplorent en effet que celles-ci n'aient pas été adoptées simultanément en français et en anglais à l'Assemblée nationale, conformément à l'article 133 de la Loi constitutionnelle de 1867.

Beaucoup d'émotions!
Dans le clan des « opposants » aux barreaux, on trouvait Me Félix Martineau, l'un des avocats à l'origine d'une pétition qui voulait les faire reculer dans leur démarche, ou encore Me François Côté, l'un de ceux qui ont plaidé pour la tenue de cette AGE et qui, en 2014, avait porté plainte à l'Office québécois de la langue française contre une publicité de l'humoriste Sugar Sammy.

Dans ceux des défenseurs du Barreau, se trouvaient Me Alexandre Forest de Gowling WLG, Me Magali Fournier de Brouillette Legal, Me Anne-France Goldwater de Goldwater Dubé, Me Nicola Di Iorio avocat chez Langlois et député libéral ou encore Me Brian Mitchell, l'ancien bâtonnier de Montréal.

Si l'ambiance était « animée, cordiale et respectueuse » selon Me Martineau, on pouvait quand même sentir beaucoup d'émotions dans la salle. D'ailleurs, des tracts ont été distribués par Me Mitchell et ses alliés à l'entrée pour rappeler aux membres les actions que le Barreau avait entreprises depuis 2010 dans ce dossier linguistique controversé.

Ces tracts ont ensuite été jugés contraires aux règles du code Lespérance (code qui encadre le déroulement d'assemblées générales, dérivé du code Morin) par le président de l'Assemblée l'ancien juge de la Cour d'appel, Pierre J. Dalphond.

Trois résolutions, trois votes

Les membres ont été appelés à voter sur trois résolutions.

La première, adoptée à quelque 52 % - selon les chiffres rapportés par Me Martineau - demandait le retrait par le Barreau des procédures instituées en Cour supérieure.

La seconde, adoptée à quelque 52 %, demandait que le Barreau s'abstienne de réinstituer de nouvelles procédures dans le même dossier.

Enfin, la troisième demandait que le Barreau consulte électroniquement ses membres avant d'entreprendre de telles démarches à l'avenir. Celle-ci a été battue, à environ 60 %.

« Nous sommes très satisfaits du résultat. Une voix claire s'est exprimée pour dire : « Nous ne faisons pas de politique! » lance Me François Côté au bout du fil.

« La profession d'avocat s'est exprimée sur le rôle et la mission du Barreau et sur son devoir de s'abstenir de participer à des dossiers politiques », dit à Droit-inc celui qui a pris le micro hier soir pour défendre les trois propositions devant l'Assemblée. « Dans ce dossier, le Barreau met en péril son indépendance, son impartialité et son apparence de neutralité. »

Que répond le Barreau?
Le Barreau du Québec a déclaré par voie de communiqué prendre acte des recommandations des membres et des points de vue échangés lors de cette AGE tenue hier soir.

Contacté par Droit-inc, le Barreau a toutefois décliné toute demande d'entrevue. « Le CA va maintenant délibérer et prendre en considération l'avis de ses membres », a déclaré la porte-parole Martine Meilleur. Il communiquera en temps opportun avec eux, a-t-elle ajouté.

Pour le bâtonnier du Québec Me Paul-Matthieu Grondin, l'AGE a été une opportunité d'échanger directement avec les membres et « d'écouter ce qu'ils ont à dire ».

« L'idée n'est pas d'avoir des gagnants ou des perdants. Il s'agissait d'un échange d'idées et je trouve stimulant le fait que nous ayons eu des débats respectueux au Barreau sur la question de la protection du public qui est notre mission », a-t-il ajouté, par voie de communiqué. « Notre ordre professionnel est démocratique et nous avons tous des opinions. L'action du Barreau a été et continuera d'être axée sur la défense de la primauté du droit et la protection du public. »

Pas de politique pour le Barreau
Me Félix Martineau s'est déclaré « très content » du résultat du vote, même si « déçu » par le fait que l'AGE se soit déroulée en plein centre-ville de Montréal, à l'heure de pointe, empêchant les membres habitant plus loin de s'y rendre.

« Que les deux premières résolutions soient adoptées est manifestement un désaveu du Barreau et un réalignement de ses missions. Il doit s'abstenir de faire de la politique. Parfois, la ligne entre politique et droit peut être mince », dit-il.

Après le discours donné par la bâtonnier Grondin hier soir, Me Martineau se dit « confiant » quant au fait que le Barreau respectera la volonté de ses membres.

Cela dit, le CA du Barreau n'est pas tenu d'agir (comme ce fut le cas dans l'affaire Khuong d'ailleurs). « Il pourrait ne pas y faire suite, conçoit Me Côté, mais personne ne veut revisiter une telle situation. »

« C'est clair que le Barreau doit revenir sur sa décision d'instituer le recours », affirme Me Alexandre Thiriault-Marois, avocat au service des affaires juridiques de la ville de Laval, qui a voté « pour » la demande de retrait. « Les membres ont envoyé au Barreau le message clair qu'il n'aurait pas dû les instituer dans la forme où il les a institués. »

D'autres recours auraient pu être justifiés, poursuit-il. « Je pense notamment aux représentations que le Barreau a faites sur les peines minimales. Si le Barreau était allé chercher des conclusions de type "déclaratoires", le résultat aurait sûrement été différent. L'Assemblée nationale aurait pu prendre acte de cette déclaration. Là, le Barreau demandait des conclusions trop larges, trop radicales », dit-il, faisant référence à la demande d'invalidation de l'ensemble des lois québécoises.

« La menace de l'arme nucléaire »

Enfin, pour Me François Côté, le Barreau ne devrait pas « chercher à sortir la menace de l'arme nucléaire comme « argument de négociation » dans un dossier aux accents politiques.

Pour Me Thiriault-Marois, c'est surtout la nature du dossier qui pose problème : « éminemment politique », dit-il.

« Si vous n'êtes pas satisfait d'une négociation avec une autre partie, et en l'occurrence ici le gouvernement du Québec, le fait de recourir à des procédures judiciaires pour forcer la main de votre interlocuteur est discutable », explique Me Côté.

Pour lui, c'est aussi cette méthode qu'a condamnée l'AGE hier soir.

Notons qu'à l'heure d'écrire ces lignes, aucun des avocats contactés par Droit-inc et ayant voté « contre» aux deux premières propositions de l'AGE n'a retourné nos demandes d'entrevue.

Justice minister's tweet on Boushie verdict inspired wave of angry emails, letters
Jody Wilson-Raybould was accused of bias, interference after post on Gerald Stanley acquittal
CBC News
Tom Parry
May 26, 2018

Hundreds of Canadians sent messages to the office of Justice Minister Jody Wilson-Raybould after the minister posted a comment on Twitter about the second degree murder trial of Saskatchewan farmer Gerald Stanley.

In February, a jury found Stanley not guilty in the death of Colten Boushie, a 22-year-old Cree man. Stanley shot Boushie after he and a group of other young people drove onto his farm near Biggar, Sask.

Soon after the verdict, Prime Minister Justin Trudeau expressed his grief and sorrow to Boushie's family on Twitter.

Wilson-Raybould put out a tweet of her own.

"Thank you, Prime Minister @JustinTrudeau, My thoughts are with the family of Colten Boushie tonight. I truly feel your pain and I hear all of your voices.

"As a country we can and must do better — I am committed to working everyday to ensure justice for all Canadians."

That message prompted a flurry of responses from Canadians to Wilson-Raybould's office. CBC News has obtained more than 500 pages of correspondence through the access to information law.

Almost all of those messages are negative in tone and content, with many writers angrily accusing the minister of undermining the judicial system.

"Your tweet 'feeling their pain' and commenting that 'our country can do better' is inappropriate and serves to undermine the difficult decisions that the jurors faced," wrote one person.

"Tweets like yours (as we see from the President of the U.S.) do nothing to advance an agenda or drive peace in our great country."

'How dare you?'
"How dare you interfere with the very justice system for which you are responsible?" wrote another.

"Your personal opinion is irrelevant and inappropriately voiced as the 'Minister of Justice'. Surely you comprehend the meaning of 'political interference'."

"You have truly overstepped with your comments on this case," wrote another person who self-identified as a criminal defence lawyer.

"You have put me in the very uncomfortable and unwelcome position of agreeing with the Conservative MPs who have spoken out on this issue."

While criticizing the justice minister and prime minister, many writers expressed sympathy for Gerald Stanley and his family.

"I personally know Gerry Stanley as a law abiding, quiet, even tempered man," wrote one person who said they were from North Battleford, Sask.

"I think he feared for the safety of his family that day. I am sure that he has wished a million times over that he had never taken out his gun that day to scare them off. But I also wonder what would have happened to his family that day if he had not."

"You are blaming the victim for defending himself," another person wrote. "You do not deserve to be Minister of Justice."

The documents released by Justice Canada include some internal departmental communications. Much of it — including an email chain titled "Update:Boushie Correspondence" — is blacked out.

The documents do show the Department of Justice was closely tracking reaction to Trudeau and Wilson-Raybould's Twitter posts. Officials shared media stories and planned answers to reporters' questions. The department also kept a close eye on the House of Commons, where the opposition was grilling the government on its response to the verdict.

Calls for reform

While the letters and emails about the minister's comments on Twitter are overwhelmingly negative, they stand in sharp contrast to other correspondence Wilson-Raybould's office received in the wake of the Stanley verdict. Many of those messages expressed shock over the jury's decision and support for the Boushie family.

CBC News has reported on how the minister received hundreds of messages calling for an appeal and for reform of the jury selection process.

The minister's spokesperson, David Taylor, said Wilson-Raybould's office has received 1,722 letters and emails about the Stanley trial. Of those, 376 were related specifically to the minister's comments.

Taylor said each person who contacted the department will receive a response. In one of the documents released by Justice Canada, one person who wrote is warned that "due to the significant increase in the volume of correspondence, there may be a delay in processing your email."

Taylor provided a written statement to CBC News in which Wilson-Raybould once again defended her Twitter post.

"My remarks were not a comment on a specific verdict, but rather, meant to speak to the need to do better for Indigenous Canadians involved with the criminal justice system, and to take the necessary steps to prevent them from becoming involved in the system in the first place," the message reads.

'Unprecedented ... and dangerous'
The Canadian Council of Criminal Defence Lawyers wrote to Trudeau and Wilson-Raybould soon after they posted their Twitter comments, calling them "unprecedented, inappropriate and quite frankly dangerous." Other criminal lawyers also waded in to warn about the perception of political interference in the judicial system.

Trudeau and Wilson-Raybould were not the only federal politicians who used Twitter to comment on the Stanley verdict.

Indigenous Services Minister Jane Philpott called the jury's decision "devastating news" for Boushie's family.

"My thoughts & prayers are with you in your time of grief & pain. We all have more to do to improve justice & fairness for Indigenous Canadians," Philpott wrote.

NDP Leader Jagmeet Singh was more direct in his post: "There was no justice for Colten Boushie."

Since the verdict, the federal government has introduced reforms to the criminal justice system — among them an end to peremptory challenges in jury selection, which became a flashpoint in the Stanley trial.

May 25th 2018
The Honourable Jody Wilson-Raybould, Minister of Justice and Attorney General of Canada, today issued the following statement:

“150 years ago this week, the Department of Justice Act was passed in Parliament, creating the Department of Justice. Over the past century and a half, the Department has helped shape Canada’s history, and played a key role in such historic moments as the repatriation of the Constitution in 1982, which entrenched of the Charter of Rights and Freedoms and recognized and affirmed Aboriginal and treaty rights.

Every day, Department of Justice employees across the country are responsible for ensuring that the Government’s legal actions are consistent with Canada’s Constitution and with the values of Canadians. They draft all Government of Canada legislation that comes before Parliament, and work to ensure that our justice system is fair and just for all Canadians.

As with everyone’s history, Canada’s is not a simple one – nor is that of the Department of Justice. By working together, we can learn from the past and work together to make Canada a more fair, just and inclusive society for all Canadians.

As the Minister of Justice and Attorney General of Canada, I extend my gratitude to all Department of Justice employees for their dedication and contributions to modernizing Canada's justice system. I invite all Canadians to look toward the next 150 years and what each of us can do to make Canada a more just place for all."

Who's to blame? Auditor General report puts Phoenix under the microscope
iPolitics
Kathryn May
May 28, 2018

There is lots of blame to go around for the Phoenix pay crisis, but will Auditor General Michael Ferguson determine who is ultimately accountable for one of the colossal public management failures in Canadian history?

Not likely.

"How can you point to one person? The whole initiative had so many hands in the soup that trying to find the culprit is like grabbing smoke," said Donald Savoie, one of Canada's leading public administration experts.

"I bet dollars to donuts the auditor general will say he found lots of problems by several people, but he can't point the finger at one. It is not doable."

On Tuesday, Ferguson delivers his second and much-awaited report on Phoenix, putting the decade-long planning and implementation of the faulty pay system, under the microscope.

But many say Ferguson's report will reveal a broader cultural problem — the weakness of accountability in modern government that is increasing the risk of project failures, financial mismanagement and the loss of trust in government.

Many expect it will raise questions about the competence of Public Services and Procurement Canada, the federal paymaster responsible for Phoenix, and the senior project team's ability to manage a complex project that would transform how people work and are paid.

At the same time, a culture has grown up around 'blame avoidance,' downplaying or obscuring the facts when things go wrong — dangerously eroding the sacred principle of "speaking truth to power" that the public service and democracy is built upon.

Elmer MacKay, long-time Conservative politician and cabinet minister, best summed up the state of accountability in government, said Savoie: "There is never a culprit in Ottawa." MacKay felt his biggest frustration as an MP and minister was no matter what went wrong, "there was never a culprit."

But Savoie said ‘finding a culprit’ shapes the culture and drives so much of what government does. Canadians paying the $1-billion and counting for Phoenix want someone to blame and so do politicians and the thousands of federal employees who faced hardships because of botched pay cheques.

The public service, however, dodges blame and argues failure is an opportunity to learn lessons for the future, said Savoie. Both senior bureaucrats and Public Services Minister Carla Qualtrough, have often said the priority is to fix Phoenix and build on lessons learned so it never happens again, not finding someone to blame.

“It’s time to think if the bureaucracy model we have had since the 1850s still works. There are serious flaws to be addressed and Phoenix defines the problem: You can’t find a culprit. Can Canadians and politicians live in a world where we will be never be able to find the culprit,” said Savoie.

“Phoenix speaks to the inability of modern government to grab a project, identify the people responsible for it, and say ‘run with it and see you at the finish line.’ There is no finish line in government anymore. It’s always a moving target. It’s like Shared Services or any major project where there are so many hands in the soup. That defines modern government.”

Conservative Senator Elizabeth Marshall, a former auditor-general, expects Ferguson’s report will put together the Phoenix puzzle rather than lay blame.

“I would be surprised if assigns blame but I could be wrong. Audits are strange beasts. They don’t always deliver what you think and others deliver things you would never have expected.

Ferguson has said the audit is about the “whole project management” from business case to implementation in February 2016.

His report goes back to when the massive ‘pay transformation’ project, of which Phoenix is a part, was conceived under the Conservatives in 2009 and why senior management made the decisions they did in managing the project.

The central players are the project management team, centered at PSPC’s accounting, banking and compensation branch – the same branch that rolled out the successful pension modernization plan a few years earlier.

Ferguson examined what the team did to make sure the system and public servants using Phoenix were ready to go live. Was it tested and secure, and could it deliver the functions to pay people? He looked at whether PSPC supported departments in making the move to Phoenix.

He didn’t examine the IBM contract because the Phoenix team managed the project and took the risks.

The big mystery is what went into the decisions that proved so disastrous for Phoenix.

It's confounding that Phoenix wasn't fully tested; the pilot was cancelled and warnings of experts, other departments and even IBM — the IT giant that built Phoenix — to stop or delay rollout were ignored. Unions pleaded to stop or delay going live.

The project team decided to scrap IBM's planned change management and training and drop critical pay functions – including the processing of retroactivity – to ensure Phoenix went live by its target date.

And many have wondered why senior bureaucrats ever charged ahead with a risky plan built on booking savings, laying off 1,200 pay experts and mothballing the old pay system before knowing if Phoenix even worked.

PSPC led the project, but what about Treasury Board, Privy Council Office, the Office of the Comptroller General, the Chief Human Resources Officer and the army of public servants on the various Phoenix committees, which all had roles to play in the implementation?

Goss Gilroy, the consultants Treasury Board hired to examine the fiasco, found a culture of burying the 'bad news' at PSPC and across government. Briefings with 'bad news' were discouraged and typically presented rosier pictures of progress and minimized concerns.

The report said it was unclear whether the Phoenix management team was unaware of the problems; unwilling to accept them or thought they could be addressed. They also found people believed the team knew what it was doing.

"This practice of not providing briefings that contained bad news was exacerbated by a tendency to accord a great deal of leeway to managers with a good track record of managing projects," the report said.

Some, however, suggested the project management team was over its head and didn't see the crash coming because it was so confident the situation was in hand.

In fact, Goss Gilroy found many problems boiled down to the project team grossly underestimating the scope of change they were bringing to government. It saw compensation advisers as low-ranking employees, not pay experts, and saw the project as little more than "replacing a calculator."

Ferguson hinted at the same issues in his first Phoenix report.

"Public Services did not have a full understanding of the extent and causes of pay problems. Until a year after Phoenix was launched, the department was still responding to pay problems as they arose."

Indeed, project leaders Brigitte Fortin and Rosanna Di Paolo assured reporters in the days after Phoenix went live that glitches were merely the result of the normal learning curve for a large project that would be worked out as people mastered it.

Experts have sounded the alarm about the blurring lines of accountability for years. It was at the heart of Justice John Gomery's probe into the sponsorship scandal and some say the blurring became worse with the compliance regime imposed by the Federal Accountability Act.

"Phoenix seems to confirm the lesson of the sponsorship scandal: we still have a grey zone of accountability between deputy ministers and their political masters and the accountability act has done nothing to fix it," said Ralph Heintzman, a professor at the University of Ottawa.

Maryantonett Flumian, a former deputy minister and director of Blockchain Research Institute, calls Phoenix a massive 'governance' failure that drives home how accountability has to be "reconceived" in a complex world. All the government's challenges, from climate change to Indigenous affairs, involve multiple players and jurisdictions that demand "shared accountability."

Heintzman has long proposed a new 'moral' charter to strengthen the lines of accountability between bureaucrats, politicians and the public they serve. He said a charter wouldn't have stopped a massive failure like Phoenix, but it would have given public servants the tools to speak truth to power.
Phoenix was planned and built entirely during the Harper era, when avoiding blame ran particularly high among public servants.

Their relationship with the cost-cutting Tories was tense. They felt side-lined, untrusted, their advice unwanted and neutrality under assault. The government wanted them to implement and execute without question or debate.

"I think there has been, in recent years, a chilling impact and the fear of being perceived as obstructionist is more elevated than in the past," said Karl Salgo, executive director of public governance at the Institute on Governance.

"This was a culture in which no one wanted to come across as a Cassandra or naysayer when decisions are being taken."

Salgo, who teaches a course on risk-management, argues the public service is actually more "blame-averse than risk-averse." Public servants are more likely to be called out on "sins of commission than sins of omission" so they tend to stick with the status quo.

"One thing public servants do is complete their mistakes. Once something is underway, it's hard for anyone to say 'let's cut our losses' or 'stop, we have it wrong.' The mindset is to fix it, tinker, rather than scrap it. The culture is to try and salvage the lemon."'

And all the experts agree there is only one way to change culture — through leadership.

"It needs to be led from the top. The leaders need to model the fact that failures are okay as long as they're flagged early. A failure such as Phoenix is not okay because nobody caught it and nobody said anything until it was too late, said Goss Gilroy's Sandy Moir during a Senate hearing.

Whatever Ferguson finds, the government will be under pressure to find better ways to deal performance – good and bad.

It recently changed the rules to claw back the performance pay of deputy ministers, associate deputy ministers and heads of Crown corporations if they are found guilty of misconduct or mismanagement – even after they have retired.

The claw back won't apply to deputy ministers or associate deputy ministers accountable for Phoenix because they will be grandfathered under the old rules. It also doesn't cover the ranks of the Phoenix management team and the other 6,480 executives in government.

But the push is on for that claw back policy to extend to all executives.

The largest federal union has already argued no executives should get performance pay until Phoenix is fixed and rank-and-file employees are paid properly.

As she left politics, former Public Services Minister Judy Foote said she didn't think the senior executives who led her department's implementation of the ill-fated Phoenix deserved performance pay – but the decision was not hers.

Debi Daviau, president of the Professional Institute of the Public Service of Canada (PIPSC), said the Phoenix project team made bad management decisions and if that's because they ignored warnings or sent the wrong information up the chain of command, they should be singled out and punished for it.

"At the end of the day, bureaucrats are to blame," she said. "They were charged to save money and made devastating decisions, all in the interests of pleasing the government, not whether they had a system that worked."

Phoenix Planning and Implementation
WHAT: The Harper government approved a two-part overhaul of the federal pay system called the "Transformation of Pay Initiative." The $309 million plan included centralizing federal pay operations in Miramichi, N.B. and implementing a new pay system called Phoenix to pay 300,000 employees in 101 departments.

WHEN: The project was planned, designed and built over seven years, beginning in 2009, with Phoenix rolled out in a first wave in February 2016.

WHO?
The Ministers: The project was led by Public Works and Government Services Canada – now Public Services and Procurement Canada under three Conservative ministers: Christian Paradis, Rona Ambrose and Diane Finley. The Liberals came to power in 2015 and Judy Foote headed the department when Phoenix went live. She was replaced by Carla Qualtrough.

The Deputy Ministers: The project has been overseen by four deputy ministers: François Guimont; Michelle d'Auray and George Da Pont. Da Pont retired in April 2016 before the second wave of the Phoenix rollout and was replaced by the current deputy minister Marie Lemay.

Associate Deputy Ministers: Andrew Treusch, Renée Jolicoeur and Gavin Liddy. In 2014, Jolicoeur won the public service outstanding achievement award for leading the pay and pension projects.

The current associate deputy minister Les Linklater is in charge of stabilizing Phoenix.

Phoenix Management Team:

Brigitte Fortin: assistant deputy minister of PSPC's accounting, banking and compensation branch. Retired in January 2017.
Rosanna Di Paola: associate ADM who also worked on the original business plan. She was shuffled out of the post to become a special adviser to Lemay in September 2017. She is now the ADM special projects at the department's Quebec Regional office.

La Cour suprême refuse le retrait de plaidoyer d'un homme qui risque le renvoi
Il vit au pays depuis 25 ans mais est devenu interdit de territoire pour cause de « grande criminalité », Radio-Canada
28 mai 2018

Attention avant de plaider coupable : la Cour suprême du Canada vient de dire non à un homme d'origine chinoise qui voulait retirer sa reconnaissance de culpabilité parce qu'il ignorait qu'il pourrait alors être expulsé.

Wing Wha Wong, un citoyen chinois et résident permanent canadien, a immigré au pays il y a plus de 25 ans. Il vit en Colombie-Britannique avec sa femme. Leur fille est née au Canada et il est le seul soutien financier de sa famille.

L'homme a été inculpé d'un chef de trafic de cocaïne. Il a plaidé coupable et écopé d'une peine de neuf mois d'emprisonnement.

Mais il ignorait alors quelque chose qui s'est avéré lourd de conséquences : en raison du plaidoyer et de la peine de plus de six mois, il est devenu interdit de territoire canadien pour cause de grande criminalité. De plus, il ne pouvait interjeter appel d'une mesure de renvoi qui pouvait être prise contre lui.

Il a alors voulu retirer son plaidoyer au motif qu'il n'avait pas été avisé par son avocat de toutes les conséquences.

La Cour suprême, dans une décision partagée à quatre contre trois rendue vendredi, a rejeté son appel.

Le caractère définitif de la reconnaissance de culpabilité est d'un grand intérêt pour la société et il est important de le maintenir afin d'assurer la stabilité et l'efficacité de l'administration de la justice, écrivent les juges majoritaires.

Mais il faut aussi que le plaidoyer soit enregistré librement et de façon éclairée. Et pour cela, l'accusé doit être au courant des conséquences de son plaidoyer.

Pour pouvoir le retirer, il doit toutefois démontrer qu'il aurait pris une autre décision : soit tenter sa chance lors d'un procès ou plaider coupable sous d'autres conditions.

La Cour estime toutefois que Wing Wha Wong n'a pas démontré qu'il aurait agi autrement. « Il n'y a donc aucune raison de l'autoriser à retirer son plaidoyer », tranche le plus haut tribunal du pays.

Les trois juges dissidents auraient donné cette permission à Wing Wha Wong.

L'obliger à dire dans une déclaration sous serment - et dans un langage précis - qu'il aurait pris une autre décision est « un obstacle procédural ».

« Pareille approche risque de privilégier la forme au détriment du contenu », écrivent les juges dissidents sous la plume du juge Richard Wagner.

« Je suis convaincu de l'existence d'une possibilité raisonnable qu'une personne raisonnable se trouvant dans la situation de M. Wong aurait procédé différemment si elle avait eu connaissance de ces conséquences. Son plaidoyer de culpabilité est donc à l'origine d'une erreur judiciaire et il doit être écarté », ajoute-t-il, en expliquant la méthode d'analyse qu'il aurait privilégiée.

Les juges majoritaires sont en désaccord avec cette approche, qui risque, selon eux, « d'entraîner l'annulation de la reconnaissance de culpabilité même lorsque rien ne prouve que l'accusé aurait lui-même agi différemment ».