Bilinguisme : « Pourquoi j'appuie les barreaux »

L'ex-député estime juste et légitime que l'on demande aux tribunaux de déterminer s'il y a bel et bien entorse à la constitution

Droit Inc

Jean-François Parent

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Au lendemain de l'assemblée générale extraordinaire où le Barreau du Québec essuyait une rebuffade de certains de ses membres, Nicola Di Iorio, l'un des défenseurs de l'initiative persiste et signe : le processus d'adoption des lois québécoises brime le droit constitutionnel de la minorité linguistique anglophone.

C'est pourquoi le Barreau de Montréal, à l'origine de la contestation juridique, et le Barreau du Québec, devaient s'en mêler, soutient l'avocat et ex-député libéral de Saint-Léonard-Saint-Michel. Il a récemment annoncé qu'il quitte la vie politique pour reprendre la pratique.

Le 24 mai, trois résolutions ont été soumises au vote lors d'une AGE portant sur les procédures judiciaires contestant la validité des lois québécoises.

La première, adoptée à quelque 52 %, 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 %.

Pas conforme à la constitution

La protection de certains droits des minorités linguistiques est enchâssée dans la loi constitutionnelle de 1867. À cet égard, l'adoption de lois en français et en anglais lors d'un même processus est un de ces droits constitutionnels que l'actuel processus législatif québécois met de côté.

On se borne pour l'essentiel à traduire les lois une fois qu'elles sont adoptées, sans égard à l'esprit ou à l'intention du législateur, plaident en substance les requérants, les Barreaux du Québec et de Montréal. Ils déposaient une requête plus tôt ce printemps alléguant que le processus d'adoption des lois par le législateur québécois n'est pas conforme à la Constitution canadienne.

Ainsi, on retrouve plusieurs incongruités entre les lois votées en français et leur traduction en anglais.

« À Ottawa, à tous les jours, je dois me battre pour ce principe ; que les lois ne soient pas simplement traduites, mais adoptées en français », relate Nicola Di Iorio.

Une simple traduction s'attarde à la lettre de la loi, mais non à son esprit.

Ce qui est contraire à la constitution, plaide Me Di Iorio, qui estime que le Québec doit respecter ce droit de sa minorité linguistique.

Le test des tribunaux

Il voit donc la démarche du Barreau comme une illustration des mécanismes propres à la procédure démocratique.

« C'est la norme dans l'état de droit que de poser des questions légitimes et pertinentes et de demander aux tribunaux d'y répondre, et de façonner un remède adéquat » pour corriger une situation, affirme celui qui pratique et enseigne le droit du travail.

« Comme législateur, quand on adopte une loi, on n'a pas la vérité absolue. C'est donc normal que l'on teste la loi devant les tribunaux », dit-il.

À cet égard, l'initiative des barreaux est légitime, dit-il. Et dans sa mission de protection du public.

« On pose une question, qui concerne la validité de toutes les lois du Québec, ce qui tombe le rôle de la protection du public du Barreau. Si on estime qu'un accroc aussi majeur que la constitutionnalité et la protection des droits des minorités se produit, ça fait partie des pouvoirs de l'ordre professionnel de poser ce genre de question. Ce que les tribunaux supérieurs lui ont d'ailleurs reconnu », poursuit Me Di Iorio.

Des lacunes depuis 40 ans

Quand on lui demande si le Québec, province française, ne devrait pas d'abord adopter ses lois en français, il rappelle que la province s'est engagée à protéger ses minorités linguistiques. Comme le veut la constitution canadienne.

À cet égard, malgré des dispositions telles la clause nonobstant, et l'essor des revendications linguistiques du Québec depuis les années 1970, il reste que l'adoption des lois au Québec comporte des lacunes depuis une quarantaine d'années.

« C'est un litige qui est latent depuis 1977 », croit-il. Le barreau étant fidèle au régime de protection des droits linguistiques, il se préoccupe de la situation et cherche des façons de la corriger.

Questionné quant à l'opportunité d'avoir recours à l'« arme nucléaire » pour faire avancer le dossier, soit l'invalidation des lois, Me Di Iorio rappelle que plusieurs démarches avaient été entreprises par le Barreau pour faire avancer ce dossier. « Le Barreau avait déjà fait des représentations auprès des législateurs, il en était donc rendu là ».

Pour ne pas amender la requête ?

Cela fait sept ans que les représentants des barreaux plaident pour que la situation se règle. Dans les mois précédant la requête, ils avaient rencontré le président de l'Assemblée nationale, la ministre de la Justice et de la ministre responsable des Relations avec les Québécois d'expression anglaise pour dénouer l'impasse.

Mais faire invalider toutes les lois ? « Ce que veulent des demandeurs, c'est qu'on reconnaisse les droits constitutionnels des minorités. Quant au remède, l'invalidation, quand on va devant les tribunaux, on plaide (les extrêmes), mais ce qu'on veut surtout c'est que le tribunal propose un remède approprié », comme la correction des lacunes dans les lois existantes.

Disant trouver curieux que les opposants à l'initiative « ne veulent pas entendre la réponse des tribunaux », il estime que qu'ils « auraient dû demander à ce que l'on amende la requête afin que l'on révise le remède ». Au lieu de quoi, ils ont plutôt demandé au Barreau qu'il abandonne la procédure.

Ces derniers justifient leur opposition en soutenant que la recherche d'un jugement déclaratoire aurait été tout aussi, sinon plus adéquate.

« Les membres ont envoyé au Barreau le message clair qu'il n'aurait pas dû les instituer (les procédures) dans la forme où il les a institués », a déclaré Me Alexandre Thiriault-Marois au sortir du vote qui donnait 52 % de voix à la résolution demandant le retrait des procédures instituées en Cour supérieure.

Beverley McLachlin and Ruth Bader Ginsburg inspiring trailblazers
Toronto Star
Judith Timson
May 28, 2018

Welcome to a tale of two extraordinary senior female justices. They've not only reached the pinnacle in distinguished judicial careers, but they're rocking it in popular culture as well.

Beverley McLachlin, 74, the longest serving and first female Chief Justice of the Supreme Court of Canada, with a list of groundbreaking achievements to her name, began her retirement recently by publishing Full Disclosure, a titillating crime novel that is now climbing Canadian bestseller lists.

Ruth Bader Ginsburg, 85, is not only still serving as an associate justice — and much needed liberal voice — on the U.S. Supreme Court, but she's also an internet meme, known as "Notorious R.B.G." (after the late rapper B.I.G.) and a cultural icon revered for being a "badass" supreme court justice.

You can see her face with her trademark huge glasses on coffee mugs and tee shirts along with such declarations as "You can't spell Truth without Ruth" and "I dissent."

Ginsburg is now the star of RBG, an entertaining and inspiring documentary that showcases everything from her fearless legal career laying the groundwork for gender equality in the U.S, to her vigorous workout sessions with a personal trainer. (I'm sorry, she's 85 and she does how many planks?)

RBG, directed by Betsy West and Julie Cohen, also tells the moving story of Ginsburg's 56 years of devoted marriage to Marty Ginsburg, a respected tax lawyer who supported his wife's career in a way few men did in that era. (He also did most of the cooking because Justice Ginsburg's cooking was "terrible.")

McLachlin and Ginsburg are clearly role models for young female lawyers, but they're also inspirations for anyone who wants to know how to play the long game — although most people's long games are not quite so spectacular.

I saw McLachlin at her crowded book launch at the University of Toronto's Massey College in early May and I was struck by how vibrant she is — fit, elegant and approachable. Above all, self-confident.

She had always wanted to write a book, she said. So while she was still on the bench she began getting up early to craft the juicy story of Jilly Truitt, a thirty-something criminal defence lawyer in Vancouver who defends a powerful rich man accused of murdering his young wife. Truitt uncovers a few secrets about herself along the way.

The fun of the book — which will no doubt beget a sequel — is reading McLachlin's insights about criminal justice — "Sometimes the law doesn't matter a damn" — along with her depictions of the life of a female lawyer — brutally long hours, all consuming cases, and lonely glasses of white wine along with takeout dinner at the end of the day.

McLachlin grew up in a log house with no electricity or running water in Pincher Creek, Alberta, the child of evangelical Lutherans. It was a childhood that bred "fierce independence," as Sean Fine wrote in a comprehensive profile in the Globe and Mail. She was so determined to achieve she ended up studying law and doing a master's degree in philosophy at the same time, winning the University of Alberta law school's gold medal.

She became a law professor, and then began a judicial career that eventually took her to the top, where, as Chief Justice, she reshaped Indigenous rights, strengthened the rights of those accused of crime, and was personally criticized by then Prime Minister Stephen Harper.

Through it all she's remained unflappable, and as far as the public is concerned discreet and unknowable. (No coffee mugs bearing her visage. But there's still time.)

Ginsburg, a decade older than McLachlin, was one of only nine women admitted to Harvard Law School in her year. She aced her first year, even with a baby daughter to attend to, and nursed her young husband through a bout with cancer all the while getting top grades. When she graduated, no law firm in New York would hire her, a Jewish woman, mother, and outstanding law student.

She too became a law professor and was appointed to the U.S. Supreme Court by former president Bill Clinton. At 60, some deemed her "too old."

Apart from each woman having made it to the top courts of their countries, what else do these two trailblazers have in common?

They were both profoundly influenced by mothers who didn't have the opportunities they did. McLachlin's mother had always wanted to write a children's book. Her daughter seized the moment and wrote her novel partly because she didn't want to not have tried.

Ginsberg has said her mother taught her two things: "Be a lady." Which meant not to let yourself be overpowered by useless emotions like anger. And "Be independent." Both women are that in spades.

They work monumentally hard and don't seem to mind it. Ginsberg's husband used to have to show up at the court to remind his wife to come home for dinner.

They are liberal without being radical (although that's radical to some) more interested in getting to the result than in grandstanding along the way.

They can put personal feelings aside. Both women showed up for work right after losing their husbands because that's what you did.

I'd love to see them get together now in a public forum and talk candidly together about their lives and careers.

But when would they find the time?

McLachlin's got a bestseller to promote. Ginsburg is busy issuing fierce dissents and says that with no mandatory retirement she will work as long as she can do the job.

Maybe we could entice them with a coffee mug with both their faces on it.

Editorial: Public service under fire for Phoenix mess
Ottawa Citizen Editorial Board
May 29, 2018

The mind reels, every time there's a new revelation about the Phoenix pay system. What's interesting about Tuesday's auditor general report is that Michael Ferguson re-treads some familiar ground, while also laying out some stern words for the federal public service itself.

"The building and implementation of Phoenix was an incomprehensible failure of project management and oversight," says the report. It's Michael Ferguson's second look at Phoenix in half a year.

And Ferguson says, in his message to Parliament accompanying the report, the public service has become "obedient" and "fears mistakes and risk."

This isn't easy reading in a public service city.

“Its ability to convey hard truths has eroded, as has the willingness of senior levels – including ministers – to hear hard truths,” Ferguson continues. “This culture causes the incomprehensible failures it is trying to avoid.”

In other words, a root cause of the Phoenix failure is the culture within the public service. And, “the bottom line is that a change in the culture of the federal government will be the best hope to prevent incomprehensible failures in the future,” he says.

It’s a tall order. Culture change is tremendously difficult. Incivility has been flagged as a problem within the public service, as has a fear of blowing the whistle on issues. Culture isn’t an exceptionally new issue.

Now, Ferguson does make some technical recommendations that could prevent such a failure in the future. The price tag to fix Phoenix has climbed above the $1-billion mark. And it’s still not fixed: there is a 600,000 transaction backlog at the Miramichi pay centre in New Brunswick.

The details of what went wrong haven’t ceased to shock. For example, in the interest of an on-time project rollout – maybe better phrased as cutting corners – management opted against testing Phoenix, cancelling a pilot in 2015, and it seems likely it would’ve revealed the problems that everyone found out about the hard way.

“Phoenix executives were more focused on meeting the project budget and timeline than on what the system needed to do,” the report says.

Ferguson’s key recommendation is that there be an independent review of such projects well before they go live. That makes sense and the government has said so. Good. That’s a straightforward solution but it’s one that catches mistakes, not prevents them.

Culture change would. While hard, as the adage goes, change comes from within. All levels of the public service must recognize that failure “cannot and should not be eliminated. Failure is a way to learn and improve,” as Ferguson says.

Change requires leadership. The question now, of course, is who’s going to step up and show it?

After Phoenix pay fiasco, auditor general warns 'obedient public service' to stop scoring in own net
National Observer
Carl Meyer
May 29th 2018

Canada's auditor general says "an obedient public service that fears mistakes and risk" has to change before another scandal-plagued program like the Phoenix pay system can be prevented.

Michael Ferguson made the comments in an assessment released alongside his office's May 29 audit of the troubled system.

The audit concluded Phoenix was "an incomprehensible failure of project management and oversight" where those in charge prioritized budgeting over functionality, ignored warning signs and provided an inaccurate picture to higher-ups.

Ferguson said both the Trudeau government and its predecessor, the Harper government, missed opportunities to stop the debacle that Phoenix would become.

He also argued a flawed public service culture that evolved over decades is now resulting in an unbalanced power dynamic between federal workers and their political masters, leading to mistakes and poor oversight.

Phoenix has struggled to deliver pay to public servants since the system — the result of a plan launched by former prime minister Stephen Harper's government in 2009 — was first introduced in 2016 under Prime Minister Justin Trudeau.

Phoenix has so far been costlier and less efficient than the 40-year-old system it was intended to replace, the auditor general found, and has led to incorrect pay for tens of thousands of federal employees.

After years of trying to manage the chaos, the Trudeau government waved the white flag in this spring's federal budget, moving to scrap the program. Taxpayers are facing an incremental cost of more than $1 billion to fix the problems Phoenix has created, Ferguson wrote.

The audit included several recommendations for properly implementing and overseeing government-wide information technology projects like Phoenix, all of which the federal government agreed with.

'Phoenix was a massive own goal'

"In sports, there is a term for the ultimate failure—that term is 'own goal,'" Ferguson wrote in his lengthy assessment. "It's used to describe what happens when a team scores a goal against itself. Phoenix was a massive own goal."

The auditor general said there was no "documented approval" anywhere that the system should have been launched in the first place — an astounding statement about a system that was set up to tackle $22 billion a year in pay for almost 300,000 employees in over 100 departments.

Overall, the audit found that Public Services and Procurement Canada did not properly manage Phoenix. Ferguson's office said this poor management led to a system without critical pay functions or security, that hadn't been fully tested, and with no adequate contingency plan as backup.

The department also did not fully consult other government entities when Phoenix was being developed, the audit stated, to see what was needed before public servants were moved into the system.

"When faced with possible higher costs, the department removed or deferred important system functions," reads the auit. "All of this created many risks—which the department knew about—that the system would not be able to process pay accurately or keep employee information secure."

Ferguson's office found that the department knew about "critical weaknessess," like Phoenix's inability to process retroactive pay requests, before the system was launched. "In our opinion, these weaknesses were serious enough that the system should not have been implemented," the audit stated.

Among other recommendations, the audit says Public Services and Procurement Canada should understand the functioning of systems, consult wider with government entities, keep track of legislative and policy requirements, and develop plans to upgrade software and provide for a backup.

The government's response, included in the audit, is that the department will "integrate the lessons learned from Phoenix into project management practices and training" and support "government-wide" efforts to strengthen processes surrounding project management.

Ferguson's office also said Treasury Board of Canada Secretariat should carry out "mandatory independent reviews" of a project's key decisions, to which the secretariet agreed in a response.

'A large cadre of ministerial political staff'
In his assessment, Ferguson said the Harper government did not put in place an "oversight structure" as Phoenix was being developed.

"I don't understand how anyone could believe that a project with a significant information technology component and a price tag of $300 million would be delivered on budget and would quickly produce savings of $70 million a year," he wrote.

He also said the Trudeau government "obviously didn't ask enough questions" before it launched Phoenix and so didn't understand the risks the project entailed.

"I am not assigning political blame, but my view is that both governments had opportunities to prevent the incomprehensible failure that Phoenix became," wrote Ferguson.

He saved his most stinging commentary for his description of Canada's public service culture that he said had lost sight of the healthy balance between the political and bureaucratic perspectives.

"In the current culture, the two perspectives are out of balance, with the political perspective being dominant," Ferguson wrote. "This is largely because of instant digital communication, which means that politicians are more concerned with message and image management," he said.

That has led to ministers demanding public servants put programs in place without making mistakes that could end up in the news, Ferguson argued. This, in turn, has led to "an erosion" of the influential power of top bureaucrats.

"A large cadre of ministerial political staff give policy advice to the same ministers that deputy ministers are responsible for advising, so it's harder for a deputy minister to be heard," he wrote.

"The result is an obedient public service that tries to eliminate risk and mistakes, which of course is not possible, so it has to try to avoid responsibility for those mistakes."

He said although the Trudeau government didn't create this culture, it had an opportunity to fix it, which he argued starts with admitting that the problem is real and needs to be fixed in the first place.

"How to fix it will be up to the government and the public service," he wrote.

"The government has a choice. It can either perpetuate the current culture and its problems—including the incomprehensible failures—or it can change that culture and reap the benefits of programs that work for people."

Ten cases dropped due to persistent, unnecessary delays in military justice system: auditor
Toronto Star
Lee Berthiaume
The Canadian Press
May 29, 2018

OTTAWA — The federal auditor general fired a rocket at Canada's military justice system Tuesday, citing a failure to deal with persistent and unnecessary delays as the reason several serious cases have had to be abandoned in recent years.

Michael Ferguson assigned blame to all involved for the glacial pace with which military justice is dispensed, including military police, prosecutors, commanding officers and the Judge Advocate General.

Among the problems: lengthy investigations; delays in deciding whether to lay charges; overly long periods of time setting up courts martial; and even issues with regards to letting accused service personnel access defence lawyers.

As a result, 10 court-martial cases have been dropped since January 2016 because they didn't move along fast enough, Ferguson revealed, including one that was already underway and involved a charge of assault causing bodily harm.

"Delays run counter to the principle that an accused has the right to a speedy trial," Ferguson told a news conference after his spring report was tabled in Parliament. "They also leave victims and their families waiting for answers."

The Canadian Forces has known about the problems "for at least a decade," the auditor added, "but has failed to correct them."

The military has been working to stamp out sexual misconduct in the ranks after some victims complained that their cases were not being properly handled.

Tuesday's report comes only a few weeks after the Trudeau government unveiled proposed legislation designed to streamline parts of the military justice system while better supporting the rights of victims, a bill Defence Minister Harjit Sajjan highlighted on Tuesday.

"The auditor general's recommendations will greatly assist us in ensuring that the military justice system continues to serve the best interests of Canadians and the armed forces," Sajjan said.

"There have been unacceptable delays in the military justice system and we have already started to make improvements."

The Defence Department also said it was introducing a new computer system to better track cases and ensure they don't suffer from lengthy delays. It is expected to be up and running in September 2019.

But Ferguson repeatedly lamented what has become a pattern in which ministers and departments say all the right things in response to his reports by agreeing with his findings and promising to address them, only to have them come up again later.

"There were a number of studies done over the last 10 years indicating that the Canadian Armed Forces need to improve the military justice system," he said.

"I don't think there ever is a good explanation for why recommendations like that are not followed up."

In most of the cases reviewed by Ferguson and his staff, officials involved did not provide any justification for the time taken, even though it often exceeded established standards.

The average case that did go to court martial ended up taking 17.7 months from the time charges were laid, the auditor general's report said — just inside the 18-month limit set by the Supreme Court for most cases in 2016.

That limit applies to military tribunals as well.

Better communication between the different parts of the military justice system and case management from the top is what's called for, Ferguson said, adding that a comprehensive review of the system is long overdue.

The Judge Advocate General, which acts as superintendent of the military justice system, did conduct a partial review last year in which some senior commanders voiced their own frustration with system, including how slowly it operates.

But both the JAG and Ferguson said there were problems with the way that review was conducted.

Auditor general says 'cultural' shift needed to prevent another Phoenix
CTV News/National Post
Terry Pedwell
The Canadian Press
May 29, 2018

OTTAWA -- The failed federal public service pay system was the result of a "government culture" that stands in the way of helping people, auditor general Michael Ferguson said Tuesday as he issued his latest report to Parliament.

The problem-plagued Phoenix pay system was mismanaged from the very beginning and is just one of the "incomprehensible failures" of the government over the last decade, Ferguson told a news conference after tabling the report.

Auditors also found flaws in Canada's military justice system; in how government surplus assets are disposed of; and in Ottawa's failure to close socio-economic gaps between on-reserve First Nations people and other Canadians.

"The building and implementation of Phoenix was an incomprehensible failure of project management and oversight," Ferguson said, adding later that the government has reached a critical moment where it needs to reflect on how to change the way it does business.

The report on Phoenix -- the second in six months -- prompted the country's biggest civil service union to call for a wider investigation.

"It is clear a public inquiry is needed," said Chris Aylward, president of the Public Service Alliance of Canada.

"We need to build on what we found out today ... so that we can ensure that nothing like this ever happens again."

The pay system was never properly tested before its launch in February 2016 and Phoenix executives either didn't understand or ignored warnings of problems, choosing to place potential savings targets ahead of system readiness, said Ferguson's spring report.

"Phoenix executives were more focused on meeting the project budget and timeline than on what the system needed to do," the report concluded.

The former Conservative government had projected that Phoenix, conceived in 2009, would save taxpayers about $70 million annually by requiring fewer people to work on pay files.

So far, however, it's estimated that the system could cost $1.2 billion by the time it is stabilized, which could take years.

More than half of the federal government's 290,000 employees have reported being affected by Phoenix over the last two years. Some have been overpaid, some underpaid and others not paid at all -- in some cases for months.

How a system with such glaring shortcomings could be fully launched without raising alarms at the highest levels came down to who was minding the store, said the report.

"Overall, we found that there was no oversight of the Phoenix project, which allowed Phoenix executives to implement the system even though they knew it had significant problems."

It meant the deputy minister in charge of the project didn't receive independent information showing that Phoenix was not ready, auditors concluded.

The report recommended that an oversight mechanism be put in place before any new IT projects are launched.

In response, Treasury Board President Scott Brison said his department will ensure independent reviews are conducted on all such projects in future and that the deputy ministers and senior executives responsible for them are made aware of the findings.

"Some of this needed culture change is simply a matter of unleashing the creativity, energy and enthusiasm of Canada's world-class public service," Brison said, although he cautioned that making such a shift would not happen overnight.

Auditors found that Public Services and Procurement Canada, which is responsible for the pay system, was aware of significant failings even before the launch, but appeared to ignore the warning signs.

Concerns about Phoenix raised by other departments and agencies caused Treasury Board to hire Gartner, an IT consulting firm, in December 2015 to assess the government's readiness for Phoenix.

Gartner identified several risks and recommended Phoenix be launched in a limited number of departments with less complicated pay needs and that Phoenix and the old pay system be run in parallel in case anything went wrong.

Phoenix executives ignored the findings, the auditors concluded.

The Trudeau government has apologized repeatedly for the "suffering" felt by public servants under Phoenix and has pledged to compensate those who have incurred out-of-pocket expenses. It has also tried to distance itself from the debacle, referring to Phoenix as "the Conservative pay system."

Civil service unions, however, blame the Liberals, insisting the current government is responsible for paying its employees.

The Conservatives have also deflected blame; Opposition Leader Andrew Scheer has argued that, ultimately, it was a Liberal government decision "to press the start button."

In its latest report, the auditor general's office was also critical of Canada's military justice system, saying delays have resulted in at least one court martial case being thrown out, with others facing charges never going to trial.

The report also found that the government routinely sells off surplus assets at fire sale prices when goods or equipment could be reused by other federal organizations instead. Based on the government's own accounting, auditors said assets were sold for less than two thirds of their value with almost no consideration given to repurposing.

One department, however, was held out as an example of the benefits of reusing assets. Auditors said the Canada Revenue Agency saved more than $4.5 million over three years by adopting reuse practices.

Ferguson also called for a "fundamental rethink" of how the government provides social services to Indigenous Canadians.

The auditor was particularly critical of Indigenous Services Canada for overstating on-reserve high school graduation rates among First Nations students by up to 29 per cent.

'Bad, bad, bad': Public service culture could lead to another Phoenix, say experts
Officials knew about the problems, and cancelled a test project to meet timelines, says the auditor general's report.
The Hill Times
Emily Haws
May 30, 2018

A culture in the public service that encourages meeting budgets by any means necessary is being blamed as the true root cause of the Phoenix pay system failure, and experts say those cultural elements that have cost the government $1.2-billion and counting are still there.

Former bureaucrat turned Queen's University professor Andrew Graham, who has been tracking government failures, said Phoenix ticked all the boxes for a large-scale government boondoggle, and that it will likely happen again.

"Well probably not [with] the [new] pay system because they might actually be so skittish that they might actually do it right," he said. "But I fully believe that all of the characteristics that [I've identified] are sitting in the culture and it can happen again anytime."

In a scathing report released on Tuesday, Auditor General Michael Ferguson concluded the department responsible for building and implementing the Phoenix pay system knew about all of the expected issues, lacked an adequate contingency plan, and still gave the project the green light.

Calling it an “incomprehensible failure of project management and oversight,” the report said that when Public Services and Procurement Canada (PSPC) was faced with possible higher costs, it removed or deferred critical pay functions, which “were serious enough that the system should not have been implemented.”

Prof. Graham said the project was set up to fail by design under the Tory government in power at the time.

“You underfund it, you add new people, you shut down old systems, you declare the savings,” he said, all of which are characteristics of failed projects on a consistent basis. “What clearly happened under the current government is that all of these things came undone and nobody said ‘stop, we’re reading these signals loud and clear, they’re screaming at us.’”

Independence was a key missing factor, he said, as were ongoing audits throughout the process that were independent from PSPC executives. The auditors should be able to report directly to a governing board, bypassing the executives to ensure bad news is passed along, he said. Those responsible will say they did these audits, Prof. Graham said, but he said it’s clear they haven’t.

“For example, all of their steering committees were chaired by people at [PSPC],” he said, adding they should have been chaired by client departments. “Bad, bad, bad.”

The auditor general’s report—one of seven performance audits of government programs and activities completed by his office and released on May 29—said executives failed to communicate Phoenix problems to the deputy minister.

Culturally, the bureaucracy is risk-averse to the point where policies are followed as check-boxes, but their spirit isn’t implemented, Mr. Ferguson said, adding one can’t be 100 per cent certain a large-scale failure will never happen. The nature of the culture was highlighted throughout his seven reports, he said.

“There needs to be some real attention to making sure that the end outcomes are what were expected, rather than just adherence to a set of rules and steps that are listed in a policy,” he said. “It’s not a competence [issue], it’s a ‘has the culture become so risk-averse, so wanting to avoid blame for mistakes…that these types of things happen?’”

The Phoenix pay system has left almost 75 per cent of bureaucrats with pay issues since it went live in February 2016. The project was supposed to consolidate pay to save the government about $70-million annually, but so far the government has sunk in $1.2-billion and counting. Overall, both the auditor general’s May 29 report and another last fall on Phoenix highlighted that those in charge were more concerned with getting the project done on time and within budget than having a fully functional system.

The report noted that in 2012, IBM, which configured PeopleSoft software to the government’s 32 HR systems, said building and implementing Phoenix would take $274-million, but the Treasury Board had

only approved $155-million for it. Rather than asking Treasury Board for more money, PSPC executives worked within the $155-million budget, delaying or removing critical pay functions, and reducing the number of IBM and PSPC employees working on the file, and then didn't tell Treasury Board.

The report also said the project lacked a large-scale contingency plan, and didn't follow Treasury Board security policies, among others. Executives cancelled a June 2015 pilot project due to "major defects that affected critical functions and outstanding problems with system stability," the report said, adding the department ran out of time to reschedule without delaying implementation. There was also no whole-system test before implementation.

Tories, Grits point fingers after AG report released

In response to the report, Liberals said they had no choice but to implement Phoenix due to the previous Conservative government laying off 700 pay advisers and rendering the old pay system unusable. The Conservatives said the Liberals should have heeded the warnings against implementation, with PSPC critic Tony Clement (Muskoka, Ont.) adding that his party wants the three Phoenix executives responsible for building and implementing the project to testify in front of a parliamentary committee.

Both Treasury Board President Scott Brison (Kings-Hants, N.S.) and Public Services Minister Carla Qualtrough (Delta, B.C.) said they accepted the report's five recommendations, and reiterated their respective commitments to fixing Phoenix and implementing the new pay system.

In particular, Mr. Brison said the Treasury Board has implemented a new policy allowing executive performance pay, or bonuses, to be clawed back if new information comes to light that would change someone's evaluation, in an attempt to curb the notion that Phoenix executives were only concerned with being on budget and on time, in order to get their bonus.

He added that his understanding is that senior executives who implemented Phoenix had their bonuses withheld in 2015 and 2016.

Mr. Brison also discussed implementing new tech project standards to include end-to-end testing and ongoing user testing and agile development, and said he believes the Phoenix problems wouldn't have happened if these standards were in place when it was being built.

Ms. Qualtrough reiterated her government's steps to address Phoenix failures, saying it has worked to overhaul the governance model, ensure rigorous oversight, invest the necessary resources to stabilize the system, and develop the human capacity to work through the pay problems.

Professional Institute of the Public Service (PIPSC) president Debi Daviau said she was pleased with the report, but said she thinks the auditor general should look more closely at how the contract was developed in order to figure out all of the mistakes and ensure they aren't happening again.

She said she wasn't surprised by report's finding that the government had no plan to do software upgrades, as the system didn't even have full functionality. She reiterated that culture was the real reason for the project's failure, and still is, as she said she believes there is a level of protectionism at

PSPC, protecting the bad decision-makers. The Treasury Board, however, is working well as a PIPSC partner, she indicated.

Ms. Daviau also called the years under the Stephen Harper Conservative government the “big chill” for the public service.

“Public servants were not encouraged to speak out about failures, they worried in fact about saying anything at all that might not be in line with the government’s ideology,” she said. That led to people making decisions based on budgets and not based on other values.

She said she doesn’t believe that culture shift away from the chilly years has permeated the ranks, particularly at PSPC because it’s been dealing with Phoenix. The department isn’t ready to work in an open and transparent way that would have to happen so that Phoenix doesn’t repeat itself, she said.

The Public Service Alliance of Canada said in a statement it will be submitting a formal request for public inquiry into the pay fiasco.

Solution is mitigating risk, asking good questions, says ex-assistant PBO
Former assistant parliamentary budget officer Sahir Khan, who is now the executive vice-president of the University of Ottawa’s Institute of Fiscal Studies and Democracy, said that the generational change will take too long, if it happens at all.

In the meantime, the government should focus on three key points: capturing and containing risk at the front end; shrinking the problem; and putting a stop to unnecessary innovation. Governments all over the world have payroll, he said, so Canada should copy them instead of re-inventing the wheel.

“If someone thinks that their project is unique and they need to be first, they likely haven’t done their homework or misunderstand the risk,” he told The Hill Times in an email.

The government is not an enterprise, he added, so there can be more than one solution for a problem. Instead of having one payroll system across government, you could have multiple, for example, so that when one goes down, it doesn’t all go down.

Finally, he said the public sector could give more clout to its chief financial officers, as is done in the private sector. Being the CFO of a company is the main way to eventually lead the company, he said, but rarely does it lead to being a deputy minister. Risk and cost needs to be at the front of the project from the beginning, he said, not an afterthought.

Canada's high extradition rate spurs calls for reform
Extradited Ottawa professor Hassan Diab to call for public inquiry
CBC News
Lisa Laventure & David Cochrane
May 30, 2018

Canada extradites the overwhelming majority of the people it arrests on behalf of foreign states — a figure so high that critics say it points to problems with Canada's extradition laws.

Ninety per cent of the individuals arrested for extradition in the last decade eventually were surrendered from Canada, according to information provided to CBC News by the Department of Justice following a CBC News report on the efforts made by a senior department lawyer to ensure the extradition of Ottawa sociology professor Hassan Diab in 2014.

At a press conference today, Diab and his lawyer, Donald Bayne — alongside human rights groups Amnesty International and the British Columbia Civil Liberties Association (BCCLA) — are expected to call for a public inquiry into the role played by the Crown in Diab's extradition.

Legal experts say a public inquiry is urgently needed to shed light on the inner workings of Canada's extradition system.

From the 2007/08 to 2017/18 fiscal years, Canada arrested 755 individuals for extradition, and ultimately extradited 681 of them.

"Once you are sought for extradition, your goose is pretty much cooked," said Robert Currie, a professor of law at Dalhousie University.

The Canadian government received 1,210 requests for extradition over that ten year period; only 755 led to arrests.

Currie said the number of requests made, compared to the number of arrests, points to efforts by the specialized division of the Department of Justice responsible for extradition — known as the International Assistance Group (IAG) — to discourage extradition requests from treaty partners that aren't likely to succeed. Such requests often involve alleged crimes that aren't criminal acts in Canada, or crimes with mandatory death penalties attached.

But Currie said the arrest-to-extradition ratio reflects the ferocity with which the Crown pursues extradition requests from treaty partners. He argues that the Extradition Act is heavily stacked against those being sought for extradition.

'Canadians would be very troubled'
"Sometimes it results in dangerous people facing extradition," he said.

"But other times there are cases where I think Canadians would be very troubled to learn that the government put so many resources, and the time of so many expensive lawyers, into extradition cases that should have never gone forward in the first place."

This month, CBC News revealed the efforts the IAG made to ensure the extradition of Diab, the Ottawa university professor who spent more than three years in near-solitary confinement in a French prison while being investigated for terrorism charges that were later dropped.

Confidential documents showed the "smoking gun" evidence used to secure Diab's extradition to France in 2014 was obtained at the direction of a senior IAG lawyer.

Evidence that Diab was in Lebanon at the time of the 1980 Rue Copernic bombing he was accused of committing, and fingerprint comparisons to those found at the scene of the crime that could have helped clear him, were never shared with the Canadian judge that ordered him extradited to France.

Under Canada's extradition laws, the prosecution is not required to present evidence that supports a suspect's innocence.

Diab was returned to Canada in January 2018 after judges in France ordered the case dropped due to lack of evidence. The French government is appealing his release. Canada's Department of Justice is conducting an internal review of the case to assess any "lessons learned."

A 'broken' system

The role the Crown played in bolstering the French case against Diab is "standard practice" and part of a larger culture of extradite-at-all-costs within the Department of Justice in need of urgent review, said Gary Botting, a lawyer who has argued hundreds of extradition cases in Canada.

"Nothing surprised me about the Diab case. It is slimy, the lowest low in terms of qualitative judicial practice," said Botting.

Diab's case clearly demonstrates that the Canadian extradition system is "broken" and in need of review, said Currie.

"The Crown obviously felt compelled not only to press forward ferociously with this extradition, but to try to help the French shore up what was obviously a shoddy case."

More transparency is needed on how the Canadian government provides assistance to foreign states seeking to prosecute Canadian citizens, said Currie.

"The IAG tends to be very secretive about their work, and while some of that is necessary because we're dealing with diplomatic relations, they are arguably overboard with it," he said. "A public inquiry would shine light on what these government officials are doing and let us make decisions as to whether we actually want the system to work the way it does."

Calls for a public inquiry mount

The Canadian Association of University Teachers (CAUT), the Canadian Union of Public Employees (CUPE), the Canadian Union of Postal Workers (CUPW) and the International Civil Liberties Monitoring Group (ICLMG) have joined Amnesty International and the BCCLA in calling for a public inquiry into Diab's extradition.

The coalition is demanding a thorough, independent examination of Canada's Extradition Act with a view to substantial reform. Questions also must be asked about the degree to which racial and religious

profiling played a role in the application of Canadian extradition law in Diab's case, said a press release issued by the coalition on Tuesday.

"We don't have confidence that an internal review will answer those questions," said Tim McSorley, ICLMG's national coordinator.

It remains unclear whether the strategies used by Crown lawyers to ensure Diab's extradition are being used in current extradition cases, said McSorley.

"So if we have a situation where an internal review is being carried out by the same people who agreed with those policies in the first place, that raises serious concerns about independence," he said. "And so, we think what's really needed is a public and independent inquiry."

L'arrêt Jordan a forcé l'AMF à embaucher
L'Autorité a dû embaucher 16 personnes de plus afin d'être en mesure de gérer le travail supplémentaire causé par l'arrêt Jordan
Droit Inc
Céline Gobert
30 mai 2018

Ces ajouts de postes, comme des procureurs et des enquêteurs par exemple, ont fait grossir l'équipe de l'Autorité des Marchés Financiers à 188 personnes, révèle Le Devoir.

Selon le directeur général du contrôle des marchés de l'AMF, Jean-François Fortin, le dépôt des chefs d'accusation entraîne une plus grande quantité de travail dans une période de temps beaucoup plus courte.

« (...) on doit être prêt à procéder, être prêt à faire la divulgation de la preuve, etc. (...) On a embauché des gens pour être en mesure de répondre à ça. »

Un plafond de 18 mois « trop serré »

L'AMF a fait face à 14 requêtes en arrêt de procédures pour délais déraisonnables en 2017, a indiqué M. Fortin au Devoir.

Onze d'entre elles ont été rejetées par les tribunaux, et la majorité reconnaissaient le caractère complexe des dossiers, selon M. Fortin. En outre, trois ont été acceptées et l'AMF en a porté une en appel.

« La mise en application de l'arrêt Jordan permet aux juges d'évaluer la complexité d'une cause, dit M. Fortin, ce qui rend le plafond de 18 mois trop serré dans les circonstances.»

Quelque 44 M$ d'amendes en 2017

Notons que l'organisme a indiqué avoir imposé des amendes et pénalités administratives de 44,2 millions de dollars en 2017, dans son bilan publié mardi.
En 2016, en revanche, les amendes et pénalités s'étaient élevées à 8,8 millions de dollars.

Son dernier rapport annuel indique que son budget 2016-2017 a atteint environ 160 millions.

Des avocats payés sous le salaire minimum à l'aide juridique
Un cas récent fait déborder une coupe déjà pleine… Les tarifs octroyés par Québec nuiraient à l'accès à la justice.
Radio-Canada
30 mai 2018

La grogne prend de l'ampleur parmi les avocats en pratique privée qui acceptent des mandats d'aide juridique. Ces mandats sont réservés aux moins nantis afin de leur permettre de faire valoir leurs droits devant les tribunaux. Les tarifs octroyés par l'État québécois sont jugés « dérisoires » et nuiraient à l'accès à la justice.

La goutte qui a fait déborder le vase, c'est un arrêt que la Cour d'appel du Québec a rendu en mars dans une affaire de bébé secoué. L'accusé est représenté par Me Félix-Antoine T. Doyon, avocat criminaliste dans un cabinet privé payé par l'aide juridique. Les juges ont permis à la défense de présenter une nouvelle preuve même si l'accusé avait déjà été reconnu coupable.

Pourquoi? Parce que l'avocat, écrivent les juges, « a demandé l'assistance d'un collègue vu la complexité de l'affaire; la demande lui a été refusée ». Ils ajoutent : « Il a demandé pas moins de 13 experts avant d'en trouver un qui accepte d'agir sur mandat d'aide juridique. »

Me Doyon a finalement dépêché un expert en Ontario pour analyser le dossier et tout indique qu'il y a un « risque d'erreur judiciaire » dans cette affaire, selon les juges. Un nouveau procès, avec les coûts de plus qui s'imposent, pourrait donc en découler.

« Sans donner des détails du cas pour des raisons évidentes de déontologie, il est l'illustration évidente que le tarif d'aide juridique n'est pas conçu pour qu'un avocat de pratique privée accepte de piloter ce genre de dossier, soit de faire un procès et aller au bout des choses à partir du principe qu'il faut éviter d'envoyer des gens injustement en prison », dit Me Doyon.

Avec la quantité d'heures travaillées sur ce dossier depuis décembre 2015, Me Doyon estime avoir travaillé bien en deçà du salaire minimum. Il entend défendre la cause jusqu'au bout, mais ne cache pas sa désillusion face à la structure tarifaire de l'aide juridique. « Le citoyen moyen doit savoir que s'il est admissible à l'aide juridique, oui, il peut se trouver un avocat qui va le représenter, précise-t-il. Le problème est que l'avocat ne sera pas payé pour se préparer. »

Tarifs « mal adaptés et désuets », selon le Barreau

Dans une récente lettre ouverte aux membres du Barreau du Québec, le bâtonnier Paul-Matthieu Grondin indiquait que « les tarifs actuels incitent les avocats à délaisser ces dossiers (d'aide juridique) en raison du taux horaire dérisoire auquel ils doivent travailler ». Il évoquait un « écart inacceptable » avec la tarification du marché privé qui, ultimement, pénalise les citoyens plus démunis et limite leur accès à la justice.

Me Grondin a refusé nos demandes d'entrevue pour ne pas nuire aux négociations présentement en cours avec le ministère de la Justice, qui a lui aussi refusé de commenter pour les mêmes raisons.

En revanche, l'avocat Félix-Antoine T. Doyon espère que les montants forfaitaires soient mieux modulés en fonction des mandats. « Quand on donne 330 dollars à un avocat pour qu'il fasse un procès d'une journée et qu'il se prépare jusqu'à 30 heures, le problème, c'est que les avocats n'acceptent pas ce genre de dossier », estime-t-il.

De nombreux avocats du privé en mandat d'aide juridique cherchent donc à enregistrer des plaidoyers de culpabilité, ce qui réduit largement la durée des procédures et rend alors le dossier plus payant. « Ce n'est pas parce que le client plaide coupable que justice a été rendue », fait remarquer Me Doyon.

Un enjeu pour les demandeurs d'asile

Les avocats en droit de l'immigration se disent aussi victimes de la tarification actuelle, surtout dans les dossiers de demandes d'asile qui ne cessent de s'accumuler avec les entrées irrégulières au chemin Roxham, près du poste frontalier de Saint-Bernard-de-Lacolle.

Le président de leur association, Jean-Sébastien Boudreault, parle d'une situation « critique ».

« Des avocats abandonnent la pratique, changent de pratique ou choisissent de ne plus faire de dossiers d'aide juridique », déplore-t-il. « Les avocats reçoivent en moyenne par dossier (famille de réfugiés) 600 dollars pour 30 à 40 heures de travail. Là-dedans, il doit payer son bureau, sa secrétaire, son téléphone, son Internet, etc. (…) En Ontario, les avocats reçoivent 2500 dollars. »

Beaucoup de demandeurs d'asile ont recours à un avocat agissant sur un mandat d'aide juridique afin d'obtenir leur statut de réfugié, notamment en raison de la barrière linguistique ou parce qu'ils n'y se retrouvent pas dans les formulaires à remplir et les documents à fournir.

Mais ils ne seraient maintenant qu'une trentaine d'avocats en pratique privée à accepter de tels mandats en droit de l'immigration.

Si les tarifs d'aide juridique actuels sont maintenus, tout indique qu'ils seront de moins en moins nombreux, alors que les demandeurs d'asile, eux, afflux de plus en plus.

En 2016, le Jeune Barreau de Montréal a publié un rapport critique de la situation et dénonçait une « quasi-absence de considérations spéciales pour des dossiers complexes ».

Bilinguisme: le retrait du Barreau ne règlera pas le problème
Le problème démocratique et constitutionnel demeure intact, dit cet avocat : nos lois ne sont pas adoptés en français et en anglais par l'Assemblée nationale
Droit Inc
Edmund Coates
30 mai 2018

La retraite du Barreau du Québec, à l'égard de son recours constitutionnel, n'apporte aucun secours au problème fondamental dans la production des textes de loi en anglais. Le Barreau propose de régler le dossier, en contrepartie de l'embauche de deux juristes, compétent en anglais, par le ministère de la Justice et en contrepartie de la fourniture de ressources additionnelles aux traducteurs de l'Assemblée nationale.

Au Québec, la rédaction des projets de lois est décentralisée. Elle s'effectue individuellement dans chacun des ministères et des organismes du gouvernement (contrairement au gouvernement fédéral et les autres provinces, qui centralisent la préparation des lois, au sein de leurs ministères de la Justice). Les juristes logés au ministère de la Justice du Québec ne sont les auteurs que des projets de loi dont leur ministre est responsable. Ainsi la grande majorité des projets de lois sont rédigés dans les autres ministères et organismes. L'embauche par le ministère de la Justice de deux juristes ne changera rien à cela. En outre, les textes anglais pour les projets de loi continueront d'être préparés par des non-juristes, au département de traduction à l'Assemblée nationale.

Certes, les projets de loi sont soumis à la surveillance bienveillante du Comité de législation, relevant du Conseil exécutif. Mais ce petit groupe de ministres n'a pas nécessairement de grandes connaissances en anglais. D'ailleurs les ministres ont une charge de travail immense. Il y a une limite sévère au temps qu'un ministre peut consacrer à l'approfondissement du dossier d'un de ses collègues ou à scruter un texte proposé.
Une fois qu'ils sont envoyés à l'Assemblée nationale, les projets de loi reçoivent souvent une foule d'amendements, assurés par le comité de l'Assemblée auquel l'étude a été confiée. Tous ces amendements seront encore traduits en anglais dans une précipitation de fin de processus, par des traducteurs non juristes et dans l'isolement inévitable d'une course contre la montre. Que luxueuses que soient les ressources technologiques fournies aux traducteurs, si brillants que soient les traducteurs, ces conditions de travail continueront de produire des textes de loi anglais médiocres.

Une main à la Maison du Barreau a remis aux journalistes un avis juridique signé par le prof Stéphane Beaulac, selon lequel il n'y avait pas de problèmes significatif avec le traitement de l'anglais à l'Assemblée nationale. Il s'agirait d'un phénomène « assez mineur », même « minimal ». Il n'est guère surprenant que l'on puisse dénicher un avis de cette nature.

Par exemple, Me Marie-José Longtin pourrait sans aucun doute être présentée comme grande experte en rédaction législative, puisqu'elle a siégé au comité de rédaction du Code civil du Québec de 1994 et celui du Code de procédure civile de 2016. Quel était l'avis de Me Longtin quant à la qualité du texte anglais du Code civil du Québec? Elle écrivait en 2005 : « Le texte anglais a suscité chez certains de l'étonnement et plusieurs commentaires. Toutefois, les discordances y sont apparues peu nombreuses

». (M. J. Longtin, « La réforme du Code civil: la gestion d'un projet » dans Du Code civil du Québec, Montréal, Thémis, 2005, 163, p. 173.)

Cependant, la vérité était bien différente. Après vingt ans d'efforts du Barreau du Québec et de la Chambre des notaires du Québec, s'appuyant sur le dévouement d'avocats et de notaires bénévoles, le gouvernement du Québec a finalement introduit des milliers de corrections au texte anglais du Code civil. D'ailleurs, il ne faut peut-être pas laisser pour compte les constatations fréquentes d'avocats anglophones, quant à la qualité déficiente du texte anglais d'autres lois du Québec, par exemple le Code du travail.

Enfin, le problème démocratique et constitutionnel demeura intact : nos lois ne sont pas adoptés en français et en anglais par l'Assemblée nationale (comme l'exige aussi l'article 7(1) de la Charte de la langue française). Les membres de l'Assemblée nationale ne peuvent pas avoir accès aux textes anglais, même s'ils en font la demande. Ils votent à l'aveuglette.

Diplômé en droit de McGill, Edmund Coates suit la question des textes anglais depuis son stage au Service de recherche et législation du Barreau du Québec, sous la direction de Suzanne Vadboncœur et Marc Sauvé, et depuis son mandat en tant que conseiller législatif auprès du Comité conjoint du Barreau du Québec et de la Chambre des notaires du Québec sur le texte anglais du Code civil.

BONOKOSKI: As simple as 'unleashing Canada's world-class public service?'
The Province
Mark Bonokoski
May 30, 2018

Our nation's capital, which would be nearly a ghost town if not for its collective of civil servants beavering away in their cubbyholes, the latest scathing report by federal Auditor General Michael Ferguson would have normally drawn little more than apathetic yawns.

But not this time.

No, when one of the disasters being outlined by our tax-dollar guardian had federal paycheques put in jeopardy, or forgotten, or lost, or totally out of whack with their pay grade, well, the great grey masses of our country's public service suddenly got some angry colour in their cheeks.

Ferguson has documented a long list of failures under the Trudeau Liberals, of course, although no one can remember the last time there was an auditor general's report that wasn't headlined "damning," or "scathing."

And this one was no exception.

Like how our military justice system—which has been getting grief on the issue for more than a decade—is so ponderously slow, for example, that at least 10 court martial cases had to be kicked to the curb.

Like how the educational gap between on-reserve First Nations and the rest of Canadians hadn't improved an iota in the last 15 years, and that drop-out rates were jimmied by the government to make that look less appalling.

Like how the government routinely sells off multi-millions in surplus assets at bargain-basement prices—often at two-thirds of their value—instead of having them circulated to other departments,

And, like how our consular officials take up to seven months to determine whether a Canadian being held in a foreign jail might have some validity to a claim of torture.

None of these would normally create a ripple in the federal civil service, so accustomed as it is to criticism, and because their unions are paid to do the hard back-room work of publicly defending the work of their members.

But screw up their pay system?

While it may seem like inside baseball to someone who doesn't live in Ottawa, talk radio in the capital has expelled a lot of air talking about the problem-plagued Phoenix pay system which was put into play two years ago with no beta-testing and no backup system.

The old system was simply unplugged, and the switch was flipped on the brand-spanking-new Phoenix platform.

Naturally it short-circuited.

"The building and implementation of Phoenix was an incomprehensible failure of project management and oversight," said Ferguson.

It was the Harper Conservatives who projected Phoenix would save $70 million a year by requiring fewer bodies, but it was the Trudeau crowd who determined the time was right to go live.

That led to almost 300,000 public servants being under-paid, over-paid, or not paid at all, with the tab to fix the glitch now honing in on $1.2 billion.

If there is a definition for cockup, it's Phoenix.

When Ferguson recommended—wisely in reflection—that an oversight mechanism be in place before any new IT projects are launched, Treasury Board President Scott Brison—Justin Trudeau's point man on this—came up with a purple-prosaic answer bordering on poetry.

He said change in the culture could be accomplished by simply "unleashing the creativity, energy and enthusiasm of Canada's world-class public service."

Such “creativity, energy and enthusiasm” will come in handy, of course, now that the Trudeau Liberals are going to build the Trans Mountain pipeline on their own, having just given Kinder Morgan some $4.5 billion to take the project off its hands.

Strange how no one had thought of this “unleashing” before.

This pipeline thing should now be a piece of cake.

What could possibly go wrong?

EDITORIAL: Ottawa’s Phoenix payroll scandal merits a deeper inquiry
The Globe and mail
May 30, 2018

It’s been clear for some time that the federal government’s botched payroll-system upgrade, dubbed Phoenix, is a fiasco of operatic proportions. Auditor-General Michael Ferguson’s report on the disaster, released this week, has now shed light on how this came to be.

The bottom line, in Mr. Ferguson’s opinion, is that Ottawa suffers from “pervasive cultural problems” that “stand in the way of achieving truly successful results for people.”

That is a damning accusation. Mr. Ferguson’s words conjure the image of a dysfunctional bureaucracy in which public service employees are unable to work in the best interests of Canadians.

Phoenix is certainly an example of just such a dysfunction. Mr. Ferguson calls it an “incomprehensible failure”; in other words, there was no inherent reason for it to go so wrong. To screw it up, you actually had to work at it.

Launched by the Conservative government of Stephen Harper in 2009, the goal was to spend $310-million to modernize a 40-year-old system responsible for paying 290,000 people across 101 departments and agencies. The Tories said the upgrade would reduce payroll staff by 1,200 people and save $70-million a year once it went into service in 2016.

Instead, it was a train wreck from Day 1. By last July, one out two federal paycheques had errors on them, and the system was faced with 500,000 requests for back wages. The cost to taxpayers since has ballooned to $1-billion; some federal employees are going unpaid and struggling to get by.

According to Mr. Ferguson, the problems arose because the project was centralized in the hands of just three executives at Public Services and Procurement Canada. The trio – so far unidentified – rushed the system out the door in order to meet deadline and budget targets set by the government.

In doing so, they neglected to fully test the system, ignored those tests that came back showing problems, eliminated key functions (such as the ability to handle back pay), failed to protect the system against data breaches, and didn’t bother to have a contingency plan in place.

All this happened with zero meaningful oversight. No one – no deputy minister, minister, cabinet committee or external consultant – supervised or otherwise assessed their work.

That meant that, when it came time to report to the deputy minister of Public Services and Procurement about the launch of the project, the three executives were able to pretend everything was fine. At a fateful meeting on Feb. 18, 2016, they didn't mention any of the problems they knew about. And the deputy minister didn't follow up with independent advice, because there was essentially none to be had.

The incompetence of the three executives, and their failure to disclose the serious problems they were aware of, are firing offences. The government says "measures" have been taken and that the three no longer work in payroll.

That's small comfort. But the real issue, at least according to Mr. Ferguson, is not so much the trio's performance as it is why they felt compelled to act the way they did.

The lack of oversight was certainly a factor. But so too may have been a politicized workplace that made it difficult for public servants to deliver bad news to their bosses.

In 2015, then-Parliamentary Budget Officer Kevin Page issued a report warning about the increasing politicization of the senior ranks of Canada's public service.

It was one of many similar warnings against the centralization of power in the Privy Council and Prime Minister's Office at the expense of career policy experts. It is telling that, over the seven years that Phoenix was developed, three different people served as deputy minister of Public Services and Procurement Canada.

Mr. Ferguson is over-dramatic when he invokes a culture unable of achieving "truly successful results." Governments at all levels, and the people who work in them, routinely accomplish the task of keeping this country running.

But the Phoenix case is a quintessential example of a government project going off the rails. It would be helpful to have a deeper understanding of what happened: of why the department cycled through so many deputy ministers, what kind of pressure was coming from the PMO, who the three executives were and, above all, why they behaved as they did.

Canadians have the right to know what happened when things go as badly as the Phoenix project did. Mr. Ferguson has exposed the mechanics of that failure, but not the forces at play. A public inquiry could bring that out.

EDITORIAL: Phoenix pay debacle highlights need for change
Postmedia News/ Toronto Sun
May 30, 2018

"An incomprehensible failure." Those were the words used to describe the federal government's handling of the Phoenix pay system.

They weren't words spoken by their partisan opponents in the House of Commons. No, they came from Auditor General Michael Ferguson.

It's not the type of language he regularly uses in his regular reports that hone in on specific deficiencies in government. This is an exceptional circumstance.

As Mark Bonokoski explained in a recent column: "It was the Harper Conservatives who projected Phoenix would save $70 million a year by requiring fewer bodies, but it was the Trudeau crowd who determined the time was right to go live.

Because of this, there were cases of "public servants being under-paid, over-paid, or not paid at all, with the tab to fix the glitch now honing in on $1.2 billion."

These were workers from all pay scales. Stories have emerged over the past year of public servants taking out loans and going into debt to simply pay the rent or buy groceries. It's just not right.

What could lead to such a boondoggle? It's easy, concluded Ferguson. There was nobody keeping watch.

"Overall, we found that there was no oversight of the Phoenix project, which allowed Phoenix executives to implement the system even though they knew it had significant problems," reads the executive summary from the Office of the Auditor General of Canada.

No oversight? It's a crazy notion given that there are public servants, contractors and politicians all thrown into the mix here. But none of them stepped forward to press pause on this project before it went live.

The report notes that "several departments and agencies, along with third-party assessments, identified significant problems with the system. Phoenix executives did not understand the importance of these warnings and went ahead with implementing Phoenix." It's a damning conclusion.

Ferguson recommends things like actually testing such systems on one or two departments before the whole thing goes live.

But there's a bigger problem. "There's something in the culture that makes people believe they can't bring forward those problems," Ferguson told the media.

The senior levels of the public service need to work to change this culture if they're committed to delivering excellence for Canadians.

Ottawa must fix its culture to avoid more costly debacles like Phoenix pay system
Toronto Star Editorial Board
May 30, 2018

Paying workers is one of the most basic tasks that any organization, from the family-owned corner store to the biggest multinational corporation, has to get right. And it's one that the Canadian government has, almost unbelievably, been unable to do properly for more than two years.

The culprit is the Phoenix pay system — and the pervasive culture of fear and obedience in the federal civil service that let this lemon of a system see the light of day.

Conceived of by Stephen Harper's Conservative government in 2009, it was projected to save $70 million annually by replacing hundreds of administrative staff with computer software. Instead, it's now estimated that it could cost taxpayers $1.2 billion by the time it's fixed, which is still years away.

Governments have a terrible track record when it comes to implementing new technology. This one, though, is particularly egregious: the senior public servants in charge actually managed to create something that was less efficient and more costly than the 40-year-old system it replaced.

Even more troubling than that — because it affects every aspect of the federal government — is the civil service culture that allowed this debacle to happen. That was outlined in clear and depressing detail by auditor general Michael Ferguson in his latest report to Parliament this week.

Plenty of problems cropped up as the pay system was being developed, but the bureaucrats who knew about it were afraid to tell their political masters. Instead, they continued on to deliver what they were told to and bulled ahead with a product that was on time and on budget over one that would actually work.

The result is a financial and emotional nightmare for tens of thousands of federal civil servants who have been overpaid, underpaid or not paid at all.

Ferguson's report has plenty of worthy recommendations to improve project management and oversight stemming from this mess. But it's his broader message that Justin Trudeau's Liberal government needs to act on as well.

The halls of government are filled with "an obedient public service that fears mistakes and risk," and has lost its ability to "convey hard truths" to senior levels including political ministers, Ferguson writes. "It's easier for a deputy minister to just implement the will of the minister without question rather than provide fearless advice on the pitfalls that could arise and how to avoid them."

That's something that has developed over decades and was pushed to ever more troubling heights under Harper. He often saw the public service as an adversary; centralized power within his inner circle; insisted everyone be "on message"; and muzzled anyone who might not be, including government scientists. It amounted to a culture of fear that will take time to change.
But it's important work that must be done. The public service needs to be revived so it can, once again, confidently provide expert advice to its political bosses.

While some politicians may like the idea of a public sector that does their bidding without question, bureaucrats who follow orders unthinkingly don't produce the good government Canadians deserve.

Justice minister Wilson-Raybould orders independent review of Hassan Diab extradition case
France suspects Diab was involved in the 1980 bombing of a Paris synagogue that killed four, an accusation he has always denied
Vancouver Sun
The Canadian Press
May 30, 2018

OTTAWA — Justice Minister Jody Wilson-Raybould has asked for an independent review of an extradition that resulted in Ottawa professor Hassan Diab spending three years in a French jail, only to be suddenly released.

The external review — which has not started — is in addition to an internal "lessons learned" examination already underway, a spokesman for Wilson-Raybould said Wednesday.

French authorities suspected Diab, 64, was involved in the 1980 bombing of a Paris synagogue that killed four people and injured dozens of others, an accusation he has always denied.

The sociology professor and his supporters have been urging the federal government to hold a full public inquiry into the case and to reform the Extradition Act to ensure individual rights are respected.

In a letter Tuesday to Amnesty International Canada and the British Columbia Civil Liberties Association, Wilson-Raybould said Diab was afforded "all of the procedural safeguards" under the Extradition Act and that his charter rights were considered during Canadian court proceedings.

"Nonetheless, due to the three-year-period that Dr. Diab spent in custody in France, I have been reflecting carefully on this case," said her letter, made available to the The Canadian Press by the two rights organizations.

"As you know, Department of Justice Canada officials have undertaken a 'lessons learned' review of the Diab extradition proceedings. I have also asked for an independent external review of this matter."

Josh Paterson, executive director of the B.C. association, said Wednesday he is seeking answers from the minister about the independent review, including whether the findings will be made public.

“Who will be or has been appointed? What is the scope of the review? Will they have the power to require the department to co-operate with them?”

No other information was immediately available from Wilson-Raybould’s office.
The RCMP arrested Diab, a Canadian of Lebanese descent, in November 2008 in response to a request by France.

In June 2011, Ontario Superior Court Justice Robert Maranger committed Diab for extradition despite acknowledging the case against him was weak.

The following year, then-justice minister Rob Nicholson signed an extradition order surrendering Diab to France.

The Ontario Court of Appeal upheld the decisions of the lower court and the minister, and the Supreme Court of Canada declined to review the matter.

Diab’s supporters have long argued he was in Beirut — not Paris — when the attack took place and that his fingerprints, palm prints, physical description and age did not match those of the suspect identified in 1980.

In November 2014, Diab was sent to France, where he was held in solitary confinement up to 22 hours a day.

In January, French judges dismissed the allegations against Diab and ordered his immediate release.

Diab is back in Canada with his wife and children. However, French prosecuting authorities have appealed his release, and a decision is expected July 6.

Foreign Affairs Minister Chrystia Freeland said she and the prime minister had advocated “very energetically” for Diab’s return to Canada.

“I think that it is very important for there to be an external review of why he was sent from Canada in the first place and let me point out it was the previous Harper government which made those decisions.”

Barreau du Québec: un pas dans la bonne direction, mais ...
Le désistement doit suivre dans l’affaire du bilinguisme, dit cet avocat
Droit Inc
François Côté
31 mai 2018

Lundi soir, le Barreau du Québec faisait officiellement suite à l’Assemblée générale extraordinaire du 24 mai 2018, au sein de laquelle les avocats du Québec ont formellement désavoué les procédures

instituées par leur ordre cherchant l'invalidation des lois québécoises pour motifs linguistiques et l'imposition d'une obligation judiciaire d'utilisation de l'anglais à l'Assemblée nationale.

Cette nouvelle était suivie d'une révélation-choc publiée par Le Devoir, où on apprenait que, depuis mars 2017, le Barreau de Montréal, codemandeur, aurait commandé puis ignoré un avis juridique très défavorable à l'institution du recours rédigé par le réputé constitutionnaliste Stéphane Beaulac, professeur de droit à l'Université de Montréal.

Par lettre adressée au ministère de la Justice, accompagnée d'un communiqué du Barreau du Québec à tous ses membres et de déclarations dans divers médias, on apprenait hier que la position de l'ordre professionnel des avocats se résumait ainsi :

1. Le Barreau du Québec suspend immédiatement le recours entrepris pour chercher à obtenir un arrangement à l'amiable avec le ministère de la Justice ;

2. Les paramètres de l'arrangement à l'amiable contemplé sont les suivants, cités verbatim :

i. Dans une première étape, l'embauche de deux juristes civilistes ayant une parfaite maîtrise de la langue anglaise, dans le respect des règles applicables en vertu de la Loi sur la fonction publique ;
ii. Dans une seconde étape, l'embauche de traducteurs supplémentaires en fonction de besoins identifiés ;
iii. L'accroissement de la collaboration et de la proximité des traducteurs, réviseurs et légistes, notamment des juristes anglophones tout au long du processus ;
iv. Dans le cas de réformes majeures en matière civile (Code civil et Code de procédure civile), évaluation de l'opportunité d'ajouter des ressources consacrées à ces réformes ;

3. Le Barreau du Québec demande également à ce que soient apportées diverses modifications législatives au Code des professions pour favoriser la participation et le vote par Internet aux assemblées générales des ordres professionnels.

D'emblée, nous ne pouvons que saluer la troisième demande de l'Ordre à la recherche d'une modernisation des processus d'assemblées délibérantes dans le domaine professionnel pour y permettre l'assistance et la participation par Internet. Tous en conviennent, cette démarche est nécessaire et nous nous rangeons intégralement aux côtés du Barreau sur ce point.

Par contre, en ce qui concerne le coeur de l'affaire et la proposition d'arrangement à l'amiable déposée par le Barreau du Québec, nous estimons que celle-ci, si elle constitue un beau premier pas que nous devons remarquer, ne saurait en rester là et être considérée comme suffisante au regard de l'A.G.E. du 24 mai 2018.

Premièrement, nous saluons bien sûr le désir du Barreau de vouloir régler cette affaire à l'amiable, mais la simple suspension du recours est insuffisante. Ce n'est pas ce qui a été voté en assemblée. En outre, une suspension laisse toute grande ouverte la porte à une réinstitution des procédures advenant que les négociations pour règlement n'aboutissent pas à satisfaction du Barreau. La parole des avocats du

Québec réunis en A.G.E. a été on ne peut plus claire sur cette question : le recours ne doit pas être simplement suspendu, il doit être intégralement retiré. Une simple suspension du recours serait contraire à la volonté démocratique exprimée sans équivoque par les avocats du Québec à leur ordre si elle ne se trouve pas suivie, à très court terme, d'un désistement intégral et sans réserve.

Deuxièmement, si nous saluons l'esprit de l'offre de règlement du Barreau, elle n'est pas sans soulever des inquiétudes quant à sa forme, tout particulièrement au point iii. Celui-ci pourrait être interprété comme un retour à la position initiale du Barreau d'imposer l'anglais à toutes les étapes du processus parlementaire. Nous nous interrogeons aussi à première vue sur la légalité du point i. par rapport à la Charte de la langue française et à la Charte des droits et libertés de la personne en ce qu'il pourrait être source de possible discrimination interdite en fonction de la langue. Quant au point ii. quand il parle de « besoins identifiés », on se pose la question « par qui ? ». À tout événement, la discussion et le règlement sont toujours souhaitables, mais des précisions seront nécessaires.

Finalement, nous avons été choqués par les révélations concernant le Barreau de Montréal, qui sont de nature à gravement compromettre le rapport de confiance du public et des avocats envers cette section de l'Ordre si elles se vérifient.

Malgré les divergences d'opinions, les échanges entre partisans et opposants au recours se sont effectués de manière civile et transparente dans les discussions avec le Barreau du Québec. Sans dire que le Barreau de Montréal fait preuve de mauvaise foi, nous ne pouvons supprimer notre désarroi en apprenant que ces informations critiques, changeant radicalement la donne au dossier, n'aient pas été révélées pendant plus d'un an, ni avant ni pendant le recours, ni même avant l'A.G.E du 24 mai, et que nous n'en ayons appris l'existence que par une enquête journalistique.

A minima, le Barreau de Montréal doit retirer immédiatement son propre volet du recours et présenter sans délai des excuses et des explications au public ainsi qu'à ses membres pour cette maladresse grave.

Ultimement, toute cette affaire n'a que trop duré. Il est temps de rétablir la confiance et la dignité du Barreau du Québec et du Barreau de Montréal envers tant ses membres que le public qu'ils ont pour mission de protéger — ce qui ne pourra se matérialiser qu'avec un désistement effectif, à très court terme, des procédures du 13 avril.

François Côté, (LL.B., LL.M., M.II., M.Sc.), est avocat et doctorant en droit - Université de Sherbrooke

Ottawa ordonne une enquête indépendante sur l'extradition de Diab
Le citoyen canadien a passé 38 mois en détention après avoir été extradé vers la France. Il n'a jamais été inculpé
Radio-Canada
31 mai 2018

La ministre fédérale de la Justice, Jody Wilson-Raybould, a demandé une enquête indépendante sur l'extradition de Hassan Diab, ex-professeur de l'Université d'Ottawa, accusé d'activités terroristes et libéré récemment par la justice française faute de preuves contre lui, après trois ans de prison.

Mme Wilson-Raybould en a fait l'annonce dans une lettre adressée à Amnistie internationale Canada et à l'Association des libertés civiles de la Colombie-Britannique (ALCCB), dont CBC a obtenu une copie.

« Comme vous le savez, les représentants du ministère de la Justice du Canada ont entrepris un examen des "leçons apprises" des procédures d'extradition de M. Diab », écrit la ministre. « J'ai aussi demandé une enquête indépendante sur ce sujet. »

Un porte-parole du ministère de la Justice a confirmé mercredi matin la mise sur pied d'une enquête indépendante, qui n'a toutefois pas encore débuté.
Il s'agit d'une étape importante pour le ministère, mais qui ne correspond pas aux attentes des groupes de défenses des droits de la personne qui souhaitaient une enquête publique.

Hassan Diab, né au Liban, mais de nationalité canadienne depuis 1987, a passé 38 mois en détention après avoir été extradé vers la France. Il n'a jamais été inculpé et n'a jamais été traduit en justice.

Lorsque M. Diab a été libéré et qu'il est revenu au Canada en janvier, le ministère de la Justice a fait un examen des « leçons apprises » dans cette affaire.

Malgré cela, Hassan Diab et son avocat Donald Bayne ont fait part de leurs doutes quant au fait qu'ils aient les réponses qu'ils cherchent sans qu'une enquête publique soit menée.

Une liste de soutien à M. Diab demandant ce type d'enquête n'a fait que croître ces derniers mois.

Amnistie internationale et l'Association des libertés civiles de la Colombie-Britannique ont été les premières à réclamer une enquête dans une lettre ouverte adressée à Mme Wilson-Raybould et à la ministre des Affaires étrangères, Chrystia Freeland.

« Étant donné les révélations selon lesquelles les avocats du gouvernement du Canada pourraient être directement impliqués dans les actes répréhensibles qui ont mené à son extradition, une véritable enquête publique en conformité avec la Loi sur les enquêtes est nécessaire », peut-on lire dans la lettre ouverte.

La lettre interpelle également le gouvernement afin qu'il envisage des formes de réparation appropriées pour M. Diab et sa famille, dont des excuses officielles et une compensation financière pour ce que les deux groupes appellent une erreur judiciaire.

Un dîner présidentiel sous le signe de l'engagement
L'ABC-Québec honore les contributions exceptionnelles de deux juristes et d'une aspirante avocate
Droit Inc
Jean-François Parent
31 mai 2018

Quelque 200 convives étaient rassemblés dans le Vieux-Montréal, le 28 mai, lors du banquet annuel de l'Association du Barreau canadien, section Québec.

Le gotha de la profession juridique a profité du temps doux qui s'est tant fait attendre pour badiner et échanger sur les plus récents développements du milieu juridique.

La magistrature y était bien représentée, avec notamment le juge en chef de la Cour suprême, le très honorable Richard Wagner, le juge en chef de la Cour supérieure, l'honorable Jacques R. Fournier, et le juge en chef de la Cour fédérale, l'honorable Paul Crampton.

Plusieurs associés de renom issus des grands cabinets étaient également présents, tels Me Solomon Sananes de Norton Rose Fulbright ou encore Me Pierre Lefebvre de Langlois.

Le Barreau du Québec était également représenté, notamment avec les présence du Bâtonnier Paul-Matthieu Grondin, de Mes Stéphane Duranleau, Antoine Aylwin et Catherine Claveau.

L'ex-ministre libéral Raymond Bachand était également de la partie.

Après le cocktail d'usage, sur la terrasse de l'hôtel Intercontinental, surplombant le Vieux-Montréal, les convives prenaient place pour le traditionnel dîner présidentiel. Le coup d'envoi de la soirée était donné par la présidente de l'ABC-Québec, Me Marie-Christine Hivon.

La présidence d'honneur de la soirée était confiée à la chef de cabinet du premier ministre canadien Justin Trudeau, Katie Telford, qui livrait la conférence principale sous le thème « Les femmes au coeur des décisions ». Elle a expliqué les démarches du gouvernement Trudeau afin d'augmenter le nombre de femmes occupant des postes de direction et faire la promotion de la diversité et de l'inclusion au pays.

Et les honneurs vont à...

Mais le clou de la soirée était sans conteste la reconnaissance de l'engagement de trois personnes et d'une section de l'ABC-Québec, tant envers la communauté civile que juridique.

D'abord, le prix Jules-Deschênes, consacrant l'implication d'un juriste au sein de l'ABC-Québec, a été remis à Me Antoine Leduc, Ad. E., associé au cabinet Lapointe Rosenstein Marchand Melançon. Président de l'ABC-Québec en 2014-2015, Me Leduc s'y implique depuis ses tous débuts comme avocat, en 1998.

« C'est important de s'impliquer dans la profession pour aider la profession, développer des prises de position et participer au débat public », a-t-il dit. Estimant que l'ABC lui a apporté davantage qu'il n'en a reçu, Me Leduc se dit reconnaissant d'avoir côtoyé tous ceux et celles qui s'y impliquent depuis 20 ans. « J'y ai appris le leadership, j'ai pris de l'expérience, j'ai suivi des formations », en plus d'avoir eu un accès privilégié à plusieurs personnalités du monde juridique.

C'est l'étudiante de troisième année à la faculté de droit de McGill, Nigah Awj, qui a remporté le Prix étudiant – Engagement social, accompagné d'une bourse de 300 dollars. Pour la jeune Montréalaise d'origine afghane, « il est important de redonner à ceux qui en ont besoin, en favorisant l'accès à la justice pour les personnes réfugiées notamment ».

Ses projets? Solidarité sans frontières, Action Réfugiés Montréal, International Refugee Assistance Projet, l'Association canadienne des avocats et avocates en droit des réfugiés et l'Association des aides familiales du Québec.

Elle a même fondé l'Association des jeunes Afghans de Montréal! « C'est un privilège de pouvoir rencontrer autant de gens qui m'inspirent », s'est-elle félicitée.

Le Prix pro bono Rajpattie-Persaud, visant la reconnaissance d'un engagement dans la communauté, a été remis à avocat principal aux affaires juridiques mondiales du CN, Me Gilles B. Legault. C'est notamment en reconnaissance de son implication depuis 10 ans à la Société de leucémie et lymphome du Canada (SLLC), que le prix lui a été remis. Il siège également sur le CA de Pro Bono Québec.

Enfin, le Prix d'excellence - Sections de droit a été remis à la section de droit Testaments, successions et fiducies. Présidée par Me Julie Loranger, de BCF, la section a été particulièrement active ces derniers temps. La section offre « des formations de grande qualité, couvrant un vaste éventail de sujets et animées par des conférenciers de renom ».

Depuis deux ans, le Comité exécutif de la section a organisé 9 activités de formation et accueilli près de 400 participants.

Federal government looks to AI in addressing issues with immigration system
The Globe and Mail
Justin Ling
May 31, 2018

The Canadian government is hoping to use artificial intelligence to inform how it mounts legal challenges to immigration and refugee claims as part of a new pilot program, set to move ahead in June.

Ottawa plans on using the emerging technology to reduce government lawyers' need to perform their own legal research, a costly and time-consuming process. But there are already concerns that the nuanced and difficult nature of many refugee and immigration claims may be lost on those government computer systems, leading to massive human-rights implications.

And the government admits that it hopes to use artificial intelligence and machine learning, eventually, to help determine refugee applications themselves.

The plan is all laid out in a request for information submitted to industry in April.

The request for information asks industry to submit their own technological solutions for a joint pilot project, run by Citizenship and Immigration Canada and Justice Canada, to "support case law and legal research, facilitate trend analysis in litigation, predict litigation outcomes, and help develop legal advice and assessments," according to a government spokesperson.

The government hopes that, if the pilot is a success, front-line immigration officials in Canada and abroad could use this technology "to aid in their assessment of the merits of an application before decisions are finalized."

Petra Molnar, a researcher at the University of Toronto's International Human Rights Program who specializes in immigration law, told The Globe and Mail there is a large, outstanding question regarding what, exactly, the point of this program is. "Is it money saved? Time saved? Applications accepted or denied?" she said.

Lex Gill, a research fellow with the Citizen Lab at the Munk School of Global Affairs who specializes in artificial intelligence and public policy, said replacing human work with algorithms, especially if the data that goes into them is itself flawed, will always pose potential human-rights concerns. "There is the risk that instead of improving the situation, these technologies may just entrench or encourage unfair or discriminatory practices," she said.

But while the debate around those risks continues, Ottawa is already getting set to roll out the pilot project, which will apply specifically to those applying for pre-removal risk assessments and for immigration status based on humanitarian and compassionate grounds – two types of immigration claims that are designed to protect those with strong ties to Canada and those who could face risks to their lives, should they be deported.

"These applications are often the very last resort for extremely deserving cases," Ms. Molnar said. "Errors can have serious consequences for their lives, including deportations back to danger, prolonged family separation and serious safety concerns."

She added that these systems may further the "asymmetry" of a legal system that is already largely stacked against refugee claimants. There is growing worry that legal aid and support for refugees isn't keeping pace with the influx of requests, with the Canadian Bar Association calling the current situation a "crisis" in a 2017 letter to the federal Justice Minister.

A spokesperson for Immigration, Refugees and Citizenship Minister Ahmed Hussen said the new tool being sought by his department would provide "new insights" and promote efficiency.

He stressed that the department is "only gathering information at this stage" and that "any tool the department acquires or develops would be tested and piloted before implementation to ensure it is working as intended."

The spokesperson did not answer specific questions as to whether the government has conducted analysis thus far of the risks of this technology, or whether specific regulations or guidelines were being produced to govern how it would be used.

Ms. Gill did see positive signs in the documents, noting that the request for information asks potential partners on the project how the algorithms can "be developed to ensure biases or potential biases are not introduced," and how they could ensure transparency in the algorithms.

The government set a deadline of June 7 for its request for information, and contracts for the technology may be awarded from there.

Edmonton man accused of robbing jewelry store to fund terrorists ordered extradited to U.S.
Toronto Star /Metro Edmonton
Claire Theobald
May 31, 2018

EDMONTON—An alleged Edmonton jewelry store thief who is accused of trying to pawn stolen loot to fund his friends and cousins to fight with Daesh is one step closer to extradition to the United States.

On Thursday, Justice John Little ordered that Abdullahi Ahmed Abdullahi, 33, be committed for extradition, meaning he will be held in custody until the federal justice minister makes a final decision.

“You know damn well I don’t support ISIS,” Abdullahi shouted, along with a series of expletives, after Little delivered his decision in court in Edmonton.

Abdullahi was ordered to be committed for extradition to the U.S. to face charges of providing and conspiring to provide material support for terrorists, which would most closely correspond to a charge of facilitating terrorist activity under the Canadian Criminal Code.

While an extradition hearing is not a trial and the arguments presented have not been proven, court heard how the Federal Bureau of Investigation (FBI) obtained email drafts from an account allegedly shared by Abdullahi and his alleged co-conspirators — cousins and friends who either had travelled to Syria to fight with Daesh or expressed interest in doing so — where the accused described robbing a jewelry store in Edmonton to fund their efforts.

A witness named only as “John Doe” in court files, who is said to be a cousin of Abdullahi’s and who pledged allegiance to Daesh in 2014 with other Somali youth in Minneapolis, Minn., is said to have identified Abdullahi from surveillance images showing three suspects robbing Vj Jewellers near 92 Street and 34 Avenue with a gun on Jan. 9, 2014.

The email drafts supposedly written by Abdullahi using the nickname “Phish” reportedly describe how Adbullahi robbed the store so he could help pay for Hanad Mohallim, Douglas McCain and Hamsa Kariye — who have since all died — to travel to Syria to fight with Daesh, but was having trouble pawning the loot.

He had done so after being encouraged by a co-conspirator to rob the “kuffar,” a word for non-Muslims, to fund their efforts.

Other messages allegedly described Abdullahi sending $2,800 to Kariye using Kariye’s credit card after Kariye had left to join Daesh, and how he sent $3,000 to McCain to pay for McCain and Mohallim to fly to Turkey before crossing the border into Syria, among other transactions.

The FBI has allegedly obtained 50 such messages, some reported to describe killing enemies, heated battles and their skill at using firearms.

These emails were also said to be verified by McCain's widow.

American investigators also plan to present records from Western Union that are said to show wire transfers between Abdullahi and his alleged co-conspirators, and records from Turkish Airlines that allegedly include flight itineraries for some of his supposed associates.

Akram Attia argued on behalf of Abdullahi that the evidence was unreliable as "John Doe" faced "extreme jeopardy" as an alleged co-conspirator caught up in the FBI's investigation and that a statement from McCain's widow amounted to something "worse" than hearsay and would be inadmissible under Canadian law.

However, Justice Little said in his decision that for the purposes of an extradition hearing, the threshold is simply whether there is enough evidence on which a jury could convict, not whether or not a jury should convict based on the evidence.

"Even if the evidence of 'John Doe' and Mrs. McCain alone could and should be rejected, I find the evidence as a whole, including the Western Union money transfer records, could be used by a properly instructed jury to conclude that the mental element of the offence had been proven," said Little, adding he believes prosecution would be justified.

Little ordered Abdullahi be committed into custody to await surrender. Abdullahi, who is currently being held, will have 30 days to surrender and can appeal the decision in that time and also apply to be released from custody in the interim.

The federal justice minister is responsible for implementing extradition agreements, and Abdullahi could submit further arguments to the minister before being sent to face a trial in the United States.

Federal government looks to AI in addressing issues with immigration system
Globe and Mail
Justin Ling
June 1, 2018

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The government hopes that, if the pilot is a success, front-line immigration officials in Canada and abroad could use this technology "to aid in their assessment of the merits of an application before decisions are finalized."

Petra Molnar, a researcher at the University of Toronto's International Human Rights Program who specializes in immigration law, told The Globe and Mail there is a large, outstanding question regarding what, exactly, the point of this program is. "Is it money saved? Time saved? Applications accepted or denied?" she said.

Lex Gill, a research fellow with the Citizen Lab at the Munk School of Global Affairs who specializes in artificial intelligence and public policy, said replacing human work with algorithms, especially if the data that goes into them is itself flawed, will always pose potential human-rights concerns. "There is the risk that instead of improving the situation, these technologies may just entrench or encourage unfair or discriminatory practices," she said.

But while the debate around those risks continues, Ottawa is already getting set to roll out the pilot project, which will apply specifically to those applying for pre-removal risk assessments and for immigration status based on humanitarian and compassionate grounds – two types of immigration claims that are designed to protect those with strong ties to Canada and those who could face risks to their lives, should they be deported.

"These applications are often the very last resort for extremely deserving cases," Ms. Molnar said. "Errors can have serious consequences for their lives, including deportations back to danger, prolonged family separation and serious safety concerns."

She added that these systems may further the "asymmetry" of a legal system that is already largely stacked against refugee claimants. There is growing worry that legal aid and support for refugees isn't keeping pace with the influx of requests, with the Canadian Bar Association calling the current situation a "crisis" in a 2017 letter to the federal Justice Minister.

A spokesperson for Immigration, Refugees and Citizenship Minister Ahmed Hussen said the new tool being sought by his department would provide "new insights" and promote efficiency.

He stressed that the department is “only gathering information at this stage” and that “any tool the department acquires or develops would be tested and piloted before implementation to ensure it is working as intended.”

The spokesperson did not answer specific questions as to whether the government has conducted analysis thus far of the risks of this technology, or whether specific regulations or guidelines were being produced to govern how it would be used.

Ms. Gill did see positive signs in the documents, noting that the request for information asks potential partners on the project how the algorithms can “be developed to ensure biases or potential biases are not introduced,” and how they could ensure transparency in the algorithms.

The government set a deadline of June 7 for its request for information, and contracts for the technology may be awarded from there.

Auditor general to public service: stop ignoring my reports
'It's almost is like the departments are trying to make our recommendations and our reports go away,' AG says
CBC News
Elise von Scheel
June 1, 2018

Canada's auditor general says he's getting tired of filing annual reports recommending reforms to the way the government does business — only to see those recommendations disappear down the memory hole afterward.

Michael Ferguson released his spring audits on Tuesday. They included scathing criticisms of the government's performance on the Phoenix pay system, Indigenous services and military justice.

Many of these problems have been highlighted in Ferguson's reports in the past. And that, he told CBC News, is the problem.

"We always get the department agreeing to our recommendation but then somehow we come back five years later, 10 years later and we find the same problems," he told host Chris Hall on CBC Radio's The House on Wednesday.

"It almost is like the departments are trying to make our recommendations and our reports go away by saying they agree with our recommendations."

His work has made one thing clear, he said: the federal government has a culture problem that makes meaningful change difficult.

"They need to do things to make the results better."

Part of the problem stems from political pressure on the public service, said Ferguson.

Politicians tend to think from election to election, he said, which can undermine public servants' efforts to bring in a longer-term plan.

"It seems like the political side of things ends up having more weight in the conversation."

In Parliament, he said — and particularly with respect to Indigenous Services — progress tends to be measured on the basis of how much money the government spends on a particular policy file, and not on measurable outcomes.

Civil service needs to take responsibility
Within individual departments, he said, a tendency among public servants to evade responsibility is preventing government from acting on his recommendations.

He cited as an example the Phoenix pay system, a massive public policy failure made worse by a lack of external oversight. The problems with the trouble-prone pay service, he said, were rooted in part in the fact that the people directly involved in the project were the only ones providing analysis of its flaws.

The Phoenix system was supposed to streamline pay services across the federal government, saving money in the process. Instead, it has failed to pay tens of thousands of public servants accurately and on time since its launch in 2016, costing Canadian taxpayers more than $1 billion so far.

Ferguson's audit also found that public service executives in charge of its implementation failed to heed warnings that it wasn't ready, and that the executives' decision to implement the system was "unreasonable."

In addition to Phoenix, Ferguson pointed to the decades-long struggle to improve education for First Nations children as another issue that illustrates perfectly what he calls challenges with the inner workings of government.

"[It's] not just because of a policy breakdown," he said. "There's something in the culture of government that's causing that."

Ferguson also found that Indigenous Services isn't adequately measuring or reporting on progress in reducing socio-economic gaps on First Nations reserves, and isn't using the small amount of data it has to improve education on reserves.

"There was no indication that the gap had gotten any better over almost the last 20 years. That's a whole generation of people."

It doesn't matter if the government adopts all of his suggestions, or does something completely different, Ferguson said. What matters, he added, is that the government concentrate on demonstrable results and take his reports seriously.

"I think it is time for me to say ... OK, we need to have better responses to our recommendations," he said.

Supreme Court overturns misconduct conviction in defence of lawyers' right to advocate strongly for clients
The Globe and Mail
Sean Fine
June 1, 2018

In a victory for strong courtroom advocacy, the Supreme Court of Canada has ruled that punishing lawyers for "incivility" in defence of their clients should be done only in exceptional cases for fear of limiting their independence.

Only when lawyers act in bad faith or have no factual underpinning for their arguments should they be at risk of punishment for incivility, the court said in 6-3 decision on Friday.

The ruling came in the case of Joseph Groia, a veteran securities litigator in Toronto who, in 2004, successfully defended a man charged in one of Canada's biggest stock-market frauds − only to be prosecuted by Ontario's law society for professional misconduct over his repeated criticism of a prosecutor from the Ontario Securities Commission.

"Trials are not − nor are they meant to be − tea parties," Justice Michael Moldaver, a former criminal lawyer and the court's leading criminal-law expert, wrote for the majority in the ruling. "Criminal defence lawyers are the final frontier between the accused and the power of the state." And Canada's legal system depends on lawyers' freedom to raise unpopular questions. "Fearless advocacy extends beyond ethical obligations into the realm of constitutional imperatives."
The Supreme Court threw out Mr. Groia's conviction, $200,000 fine and month-long suspension and dismissed all misconduct charges against him. Adding an exclamation point, it ordered the law society to pay him his costs from the beginning. (In an interview, Mr. Groia estimated those costs at $2-million, but said he expected to be able to collect only part of that.)

Mr. Groia's decade-long battle brought the obligation of lawyers to be civil, as set out in their professional codes of conduct, into conflict with their requirement to advocate fearlessly.

It began with his defence of John Felderhof, a senior officer with Bre-X Minerals Ltd., who was charged with insider trading and authorizing misleading news releases. Mr. Felderhof was acquitted in 2004. Mr. Groia said he received a warning from the law society during the trial that it was keeping an eye on his defence tactics. Charged in 2009 with professional misconduct, he lost at the law society, which said he made repeated personal attacks on prosecutors without a reasonable basis for doing so and he lost again at Ontario's Divisional Court and Court of Appeal.

Mr. Groia — who was elected by his fellow lawyers to the law society's board of directors in 2015 — said the Supreme Court ruling set an important precedent. "It's a very good day for clients who count on lawyers, and defence lawyers especially, to represent their interests in a courtroom."

The acts arose initially over the prosecution's failure, as Mr. Groia saw it, to fully disclose its case against Mr. Felderhof. He accused prosecutors of adopting a win-at-all-costs mentality and of lacking integrity. He was partly mistaken about the prosecutors' legal duties, the Supreme Court said. But the prosecutors' own comments had provided some factual foundation to Mr. Groia's claims and even the law society acknowledged that he had acted in good faith, the court said. And when the judge presiding at the Felderhof trial eventually sought to curb Mr. Groia's criticism of the prosecutor, Mr. Groia mostly complied, the court said.

Mr. Groia told The Globe and Mail that his firm had defended Mr. Felderhof when he could not afford to pay "because we believed in his innocence. For me to then be confronted with a 17-year battle with the law society for doing my job for John, I found very disheartening. It was incredibly stressful."

In some ways, he said, the long fight changed him for the better. "I'm now a much more empathetic lawyer than I was before. And although I certainly don't wish this on anybody, you learn a lot about being sensitive to clients' needs when you're the one who's having the sleepless nights wondering what your future has in it."

The law society said in a statement after the ruling that the Supreme Court had "reaffirmed the important role of the Law Society of Ontario in regulating in-court conduct and the importance of both civility and resolute advocacy."

Trevor Farrow, a professor and associate dean at Osgoode Hall Law School, said the public and lawyers might view the ruling as a license for bad behaviour. "My big worry is that this decision will be seen as promoting a notion of zealous advocacy that I don't think necessarily benefits the overall administration of justice."

Lessons from Phoenix: Does public service culture need to be fixed?
Auditor general's report urges government to fix the culture of public service
CBC News
Julie Ireton ·
June 2, 2018

Federal compensation adviser Maria Mancini remembers when she first heard details about a new, payroll system called Phoenix several years ago and she raised her hand in meetings, expressing concerns.

"We had these really horrible misgivings about this whole idea," recalls Mancini, now retired and living in Ottawa. "We were saying this doesn't sound good. I was told I wasn't being a team player and to this day I still shake my head and say, what does that even mean?"

Mancini knows a lot about how federal government employees get paid considering she worked with the former, 40-year-old system for most of its lifespan.

Along with hundreds of her colleagues who were pushed out, laid off or retired, Mancini left in 2014 as the promise of a new, more technologically advanced, more efficient system was being developed.

This week, Auditor General Michael Ferguson called the Phoenix pay system an "incomprehensible failure," blaming in part an "obedient" public service culture.

Speaking truth to power

But clearly, Ferguson wasn't the first person to raise concerns about the public service culture during the development of the Phoenix project.

Last fall, the Goss Gilroy report found that, while there were people inside the government who knew the project had serious problems, bureaucrats feared to speak truth to power.

It appears the warnings about Phoenix didn't make it up to the highest levels of bureaucracy or to the politicians in charge.

"I don't have a set of instructions to fix a broken government culture," said Ferguson. "The culture problem is real and it urgently needs to be fixed."

Sharing blame

The cultural problems inside the public service didn't just happen during the Phoenix fiasco according to Donald Savoie, professor of public administration at the University of Moncton.

Savoie says, for some bureaucrats, being good at camouflaging problems and figuring out how to manage the blame game is the best way to advance.

"The whole culture of obedience is we try to protect politicians, we try to protect ministers. I think we have to redefine the relationship between public servants who are out in the field managing programs; they should be given far more leeway. We should let them manage in a way to camouflage them from the political pressure, from the blame game."

When it comes to Phoenix, the auditor general said there is plenty of blame to go around, pointing to both the current and former governments' shared responsibility for the failure.

The former Treasury Board president, Conservative MP Tony Clement, wasn't afraid to weigh in on what he thinks about the workplace culture he used to oversee.

"We have a culture in Ottawa, where elements of the bureaucracy are not truly accountable and not truly transparent," he said.

"The bureaucracy was the tail that was wagging the dog, that is the responsibility of the Liberals."

In turn, the current president of the Treasury Board, Scott Brison, blamed the Conservatives for creating a culture of fear and intimidation that reduced the ability of public servants to be guided by evidence rather than ideology.

"We're driving a cultural shift away from risk aversion, towards experimentation and innovation," said Brison in a news conference on Tuesday.

Since the auditor general's report came out, many have pointed to the bureaucracy's penchant for being risk averse, but former parliamentary budget officer and current professor at the University of Ottawa, Kevin Page, says launching Phoenix without proper testing and backup was "incredibly risky."

"It depends on how we look at the word 'risk,'" said Page. "I think this is really a failure of leadership at central agencies and project administrators… there's no way any oversight was done. When you read the report, nobody was really doing their job."

Cultural shift
As someone who served the public for decades from her lower perch in compensation, Mancini has ideas on how the culture should be fixed.

"I think they should start listening to the people who are invested in doing the work," said Mancini. "There's a big disconnect between people who do the work and the people who make the decisions."

About 1,000 compensation advisers in government departments across the country lost their positions as the government created the centralized pay centre in Miramichi, N.B., and prepared to bring in the new Phoenix system. Mancini recalls the attitudes of government executives at the time.

"The management bought into this and you were supposed to buy into it. Nobody listened to anything," said Mancini. "A lot of us were middle-aged women so, it's like, who was going to listen to us?"

For Mancini, Ferguson's report was validation; "confirmation of things that we had felt for a long time."

"It wasn't just a bunch of powerless compensation advisers that nobody listened to."

OPINIONS: Phoenix a symptom of the kiss-up-kick-down mentality of public service
iPolitics
Alan Freeman
June 2, 2018

The auditor general is right. Something is rotten in the upper ranks of the federal bureaucracy where careerism too often triumphs over expertise and knowing how to manage up and please the minister and the government in power as the primary way of getting ahead.

It wasn’t the best of weeks for Ottawa’s senior bureaucrats.
In a scathing report, Auditor General Michael Ferguson laid much of the blame for the Phoenix pay system fiasco on officials at Public Services and Procurement Canada. And more broadly, Ferguson stated that “pervasive cultural problems” in the public service were standing in the way of delivering the kind of successful results that Canadians have a right to expect.

Ferguson noted that the bureaucrats in charge of Phoenix failed to understand the warnings that made it clear the system wasn't ready to be launched in early 2016, didn't conduct adequate testing of the system and chose to ignore the fact that the new centralized pay centre in New Brunswick was unable to do the job assigned to it.

"We found that there was no oversight of the Phoenix project, which allowed Phoenix executives to implement the system even though it had significant problems," the report said.

The auditor general is right. Something is rotten in the upper ranks of the federal bureaucracy where careerism too often triumphs over expertise and knowing how to manage up and please the minister and the government in power as the primary way of getting ahead.

What the bureaucrats in charge of Phoenix were doing blindly was following their political masters, for whom operating an efficient pay system was the lowest of priorities.

Though it may seem to have been the most mundane of back-office functions of little political interest, Phoenix was handled from the start by the Harper government as an intensely politicized project.

There were two goals. First and foremost, the Conservatives were intent on saving their political bacon in northern New Brunswick, particularly after they scrapped the Firearms Registry and eliminated the 240 jobs that were located at an administrative centre in Miramichi.

So the key was to deliver a big federal office in Miramichi with lots of jobs, which is why Harper went there four times. Centralization of payroll was essential, even if it made no sense in a public service with thousands of arcane, department-specific rules where decentralized expertise was essential. (We still don't know how and why the decision to centralize was taken.)

Second of all, Harper promised that the new system would save $70 million a year, part of the Tories' deficit-cutting mantra. So when the top bureaucrats found out that Phoenix would cost tens of millions of dollars more, they preferred to please the boss, stick to the budget, and cut essential functions, like the ability to handle retroactive pay.

What's more disturbing is that when the Tories were booted out of office in late 2015, those same bureaucrats didn't have the smarts or the guts to tell the incoming Liberal government that Phoenix was heading for a big fall and they would wear it politically if the bugs weren't fixed.

And Ferguson points out another problem: the churn that took place among the upper echelons of the Department, including three deputy ministers over the seven years of Phoenix's implementation.
The churn is an essential part of a culture in the bureaucracy that rewards careerism over competence. If you want to get ahead in the senior bureaucracy, subject matter expertise is not really important. What counts is learning how to "manage." So if you're an expert in aviation at Transport Canada, for example, don't think you can build up your expertise in that area, learn more about marine transportation or rail safety and after 15 or 20 years, aspire to become the deputy minister of transport.

It doesn't work that way. If you're ambitious, the way to get ahead is to rise quickly in Transport, then jump to Canadian Border Services, do a stint at Veterans Affairs, maybe fill in for 12 months at Industry Canada, get a coveted position at PCO or Finance, then become an ADM at Parks Canada, then an Associate at National Defence, before ending up as CEO at the Food Inspection Agency.

Of course, you're an aviation expert who knows a thing about food safety or never visited an abattoir in your life, but you will have learned to write a fabulous memorandum to cabinet, build a cadre of loyal underlings and know how to deal with difficult ministers. And above all, you will have spent half of your time at work figuring out how to manage your own relentless climb up the greasy pole.

Looking at the biographies of some recent top-level appointments at the federal government points out this kind of career path. Recently, the prime minister named a new head of the FinTrac, the head of the agency that's supposed to track and stop money-laundering and hasn't been doing a particularly good job at it.

You would think that the government would be looking for somebody with experience in banking or a lawyer with the smarts to go after bad actors and the financial institutions which are failing to stop these nefarious activities.

Not a chance. The new head of the agency has a B.A. in psychology and has never been near a regulatory or financial-services job. In 20 years in the federal public service, her bio shows that she has held 12 positions, with the longest tenure at three years, in a dizzying variety of departments, from Social Development to Canadian Heritage, from Canadian Border Services to Agriculture Canada.

All of this churn is visible all the way through the executive ranks of the public service. A few years back, the Public Policy Forum studied the average tenure of deputy ministers in the period from 1997-2007 and discovered it was just 2.7 years. And when it took a snapshot of heads of agencies at the end of 2010, it found the heads had been in power for 19.4 months, shorter than the average stint of an NHL coach. I doubt it's got better since.

The forum noted with this was particularly disturbing since it takes about two years for a new deputy to get up to speed with the department of which they're in charge. So by the time a deputy gets a handle on the job, he or she is often gone.

Of course, successful bureaucrats have learned to spin this churn to their advantage. Come in, launch a major reform, take credit for doing it and get out of Dodge before its failings become apparent.

Unfortunately in the case of Phoenix, it didn't work.

Ottawa looks at regulating imitation guns after police shootings
Justice Canada considering restrictions on pellet guns, paintball guns
CBC News
Dean Beeby
June 3, 2018

The Trudeau government is looking into whether it should regulate imitation firearms following three Toronto incidents which saw police shoot and kill men brandishing relatively harmless guns.

Dr. Dirk Huyer, Ontario's chief coroner, alerted federal Justice Minister Jody Wilson-Raybould and her officials to the cases, which led three coroner juries to recommend Ottawa revise the Criminal Code to help prevent such fatalities.

The minister confirmed in a letter last month to Huyer that the department is reviewing proposals to tighten controls on look-alike weapons that police often have no choice but to treat as genuine.

A spokesman for the minister, Simon Rivet, told CBC News that officials are "examining the recommendations" and consulting on them with Public Safety Canada, which also helps set Ottawa's gun policies.

Ian Pryce was a Toronto resident who suffered from paranoia. He died in November 2013, when officers shot him as he brandished a look-alike weapon. (Heather Thompson)
The review follows years' of pressure from police groups which have warned that free access to unregulated imitation weapons poses grave risks to the public.

As far back as 1994, the Canadian Association of Chiefs of Police has been calling for bans and regulations on such faux weapons.

The Canadian Medical Association also has called for curbs on unregulated low-velocity firearms – such as pellet and paintball guns – after research showed several hundred children and youths were injured by them over a five-year period.

Some municipalities, such as Edmonton and Whitby, Ont., have passed bylaws regulating fake weapons. The Edmonton Police Service said officers responded to 1,598 incidents in 2015 involving imitation guns.

"Low-velocity firearms, replica firearms, or any toy gun that resembles a firearm can pose a risk to the public because they are often mistaken by police as real firearms and can be used to commit crimes and intimidate members of the public," says internal briefing material prepared for Wilson-Raybould.

Toy guns
"Such firearm lookalikes are a serious concern for law enforcement. Possession of these guns has resulted in fatal shootings by police in a number of incidents across Canada.

"Toy guns that look similar to real guns can also pose a risk to the individuals possessing them."

CBC News obtained Justice Canada briefing notes and related documents dating from January this year under the Access to Information Act.

Huyer alerted the minister specifically to a Nov. 13, 2013, incident in downtown Toronto in which police shot and killed Ian Glendon Pryce, 31.

Pryce, suffering from paranoia, pointed a pellet gun at police, who fired back at him in response.

"The jury felt that both replica handguns and unregulated firearms … such as the one possessed by Mr. Pryce, should be more closely regulated and that possession and sale of such weapons should be regulated in Canada so that they would be less likely to come into the possession of persons with mental-health challenges," says a summary of the inquest findings.

Jury recommendations from two other 2016 inquests involving imitation, unregulated weapons – the Dec. 31, 2014 police shooting of Daniel Nickolas Clause, and the April 13, 2014, police shooting of John Caleb Ross – were strikingly similar.

Daniel Clause, 33, brandished an imitation weapon and was fatally shot by police on Dec. 31, 2014. (Facebook)
The Criminal Code says replica firearms — designed to look like the real thing but unable to fire — cannot be purchased or imported, but can be possessed legally.

"As there is no requirement to register replica firearms, it is unknown how many exist in Canada," says the briefing material.

Imitation firearms – which include replica guns, pellet guns and other low-velocity firearms, as well as fake guns carved from wood – are also legal to possess. But it's illegal to use an imitation firearm to commit any offence.

Police reaction
"So long as it is possible to purchase these imitation guns in Canada without any permit process, consumers should be made aware that if such a weapon is seen by police they may have no alternative but to react to the weapon as if it were a real gun," says a summary of the Bryce inquest.

"… children have been shot by police after brandishing such imitation guns."

Among the possible solutions raised by the Bryce inquest was mandatory package labelling for imitation guns, which would warn the purchaser of the dangers of police action.

A spokesperson for Huyer, Cheryl Mahyr, declined to answer questions about the issue, saying the coroner was simply conveying the findings of the inquest juries and was not registering a personal opinion.

The Liberal government's Bill C-71, to amend gun-control law, is being studied by the House of Commons' public safety and national security committee. The reforms, which do not include curbs on imitation guns, have drawn criticisms from all sides of the gun-control debate.

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Unions are too vital to democracy to be allowed to gentrify and die
As strikes fade away and memberships fall, too many workers are being left vulnerable
The Guardian
Kenan Malik
June 3 2018

Two reports last week exposed both the changing character of the labour market and the degree to which the power of the organised working class has eroded.

The Office for National Statistics revealed that there were just 79 strikes (or, more specifically, stoppages) last year, the lowest figure since records began in 1891. Just 33,000 workers were involved in labour disputes, the lowest number since 1893. Victorian conditions have returned in more ways than one.

It's not just the number of strikes that has fallen. Trade union membership has too. The latest figures from the Department for Business, Energy and Industrial Strategy show that just 23.2% of employees were unionised in 2017, a half that of the late 1970s.

The fall has been greatest among the young. The proportion of union members under 50 has fallen over the past 20 years, while that above 50 has increased.

Strikingly, too, unions have increasingly become clubs for professionals. One in five employees works in professional jobs, but they make up almost 40% of union members. These days, you are twice as likely to be unionised if you have a degree than if you have no qualifications. It's a far cry from the old image of the trade unionist as an industrial worker. Unions have not just shrunk – their very character has changed. Like politics, trade unionism has become more professional and technocratic.

The evisceration of the meaning of trade unionism was perhaps best expressed in a series of bizarre events at the annual congress of the University and College Union. The UCU has been involved in recent months in a bitter dispute with universities over pension rights. Many members have been critical of the handling of the dispute by the union's leadership and, in particular, by the general secretary, Sally Hunt. At the congress were two motions, one censuring Hunt for her actions during the strike, the other calling for her resignation. The UCU leadership walked out before the motions could be heard and shut down the congress on the grounds that the motions undermined their rights as union members (UCU full-timers are members not of the UCU but of Unite) and because of "concerns about their health and safety". Union leaders refused, in other words, to be held accountable by the members who had originally voted them into office on the grounds that such accountability is contrary to their interests as union members and detrimental to their health and safety.

There is, of course, a long history of union leaders protecting their own positions and acting against the wishes of their members. But many of today's unions seem disinclined to pay even lip service to the idea of unions as organisations of solidarity, belonging to their members and working on behalf of their interests.

While some union leaders are inventing "health and safety" reasons for refusing to be held accountable by their members, workers facing real health and safety concerns often have little support. Almost a third of British workers comprise what the economist Guy Standing has called the "precariat" – workers lacking job security and benefits, often shifting from one short-term position to another, often self-employed or working in the gig economy.

An investigation published last week by the GMB discovered that ambulances had been called to Amazon's UK warehouses at least 600 times in the last three years – more than four times every week. On more than half of these occasions, patients had to be taken to hospital. According to the GMB's national officer, Mick Rix: "Pregnant women [are] telling us they are forced to stand for 10 hours a day, pick, stow, stretch and bend, pull heavy carts and walk miles – even miscarriages and pregnancy issues at work."

Not only have unions been drained of much of their power, but the workers that most need help are the least likely to be organised. The very character of the new, fragmented labour market makes organisation more difficult. The state of traditional trade unionism only compounds the problem.

Much has been written about the crisis of social democratic parties throughout Europe that have abandoned their old working-class constituencies and as a result have largely imploded. Much less thought has been given to similar trends within traditional trade unionism.

Yet, the crisis of trade unionism is as great as that of social democratic politics. The two are inextricably linked. To address the crisis of working-class politics, we need to address questions of working-class organisation and solidarity, too.