Editorial: Phoenix pay system payback time
Business Vancouver
June 11, 2018

The federal government's interminable
Phoenix pay system fiasco reinforces the need to bring meaningful accountability to the ranks of government bureaucracy, especially at its most senior level.

At that altitude, connection with marketplace realities and fiscal discipline too often gets obscured in the cloistered atmosphere of civil service management.

After all, the money and other resources being invested in projects belong to neither the senior bureaucrat nor his or her company. The Canadian taxpayer, as always, is on the hook for any bureaucratic bungling, incompetence and miscalculation.

The soap opera over the initiative to replace the federal government's 40-year-old system to pay its 290,000 employees in 101 government departments and agencies began almost a decade ago.

The recent federal auditor general's report on the inept execution of the initiative involving an annual payroll of roughly $22 billion would be comical were it not so costly for taxpayers – and so potentially financially damaging for many of the employees on the receiving end of another top-down delivery of an ill-advised overhaul that the auditor general's report noted is less efficient and less cost effective than the old system. Fixing it will also take years and require millions more taxpayer dollars.

The inventory of Phoenix implementation ineptitude amassed since 2009 is too long for this small allocation of print. But here's a succinct summation from the auditor general: "the Phoenix project was an incomprehensible failure of project management and oversight."

The details of that failure are contained in the auditor general's Phoenix report, which should be required reading for all citizens who care about how their tax dollars are spent and who is in charge of delivering the services those hard-earned dollars support.

However, in the wake of the report, two key questions remain: who, specifically, is responsible for that incomprehensible failure, and how do taxpayers ensure that it does not happen again?

Un robot conçu afin d'assister les avocats!
Le robot fait partie de la stratégie d'innovation d'un des plus grands cabinets d'avocats au monde
Droit Inc
Émile Bérubé-Lupien
12 juin 2018

Le cabinet d'avocat Baker McKenzie a mis au point l'assistant personnel intelligent Lancelaw, qui devrait permettre aux avocats de la firme de se tenir au courant sur une base hebdomadaire des innovations et des progressions de la pratique juridique.

Le robot a été formé par Magalie Dansac Le Clerc et Thomas Defaux, deux avocats de la branche parisienne du cabinet.

Lancelaw a la capacité d'apprendre par lui-même et devrait améliorer ses sélections au fil du temps, estiment ses «mentors».

«Notre robot est devenu une source d'information très précieuse et ce, dès ses premières semaines d'entrée en fonction», ont-ils souligné. La technologie animant le robot a été développée par l'innovateur Benoît Raphaël.

«C'est un média qui apprend de nos actions et avec lequel nous avons une relation privilégiée : cette interaction permet à la fois de surprendre et d'enrichir les personnes qui l'utilisent. Baker McKenzie est le premier cabinet d'avocats qui s'est lancé dans cette formidable aventure avec nous», soutient le concepteur.

Lancelaw est l'un des composants de la stratégie d'innovation interne de Baker McKenzie, qui vise à «améliorer l'expérience client».

Droit de grève dans le secteur public : la CSN dépose une requête
Droit Inc
Apolline Caron-Ottavi
12 juin 2018

La CSN dépose une requête à la Cour supérieure pour faire invalider des entraves au droit de grève dans le secteur public.

La CSN dépose aujourd'hui une requête à la Cour supérieure, avec pour objectif de faire invalider plusieurs entraves juridiques au droit de grève dans le secteur public, notamment la santé et les services sociaux.

Le contexte actuel des négociations dans les établissements de santé place la Loi sur les services essentiels au coeur de la procédure. Il s'agit pour la CSN de faire déclarer inconstitutionnels certains aspects de la loi qui limitent le droit à la négociation et à la grève durant des négociations locales.

En janvier 2015, la Cour suprême avait reconnu pour la première fois que le droit de grève est protégé par la Charte des droits et libertés. C'est sur cette décision, connue sous le nom de l'arrêt Saskatchewan, que s'appuie la CSN pour appeler à une évolution du cadre législatif.

Pour le président de l'organisation, Jacques Létourneau, il est possible de permettre aux employés syndiqués d'entrer dans un réel rapport de force sans porter atteinte aux services essentiels offerts à la population. Cela passerait par exemple par l'abandon d'un seuil unique des services à rendre lors d'une grève, en adaptant ce seuil selon les différentes fonctions et rôles que peuvent occuper les professionnels de la santé.

La loi 37, ou Loi sur le régime des conventions collectives des secteurs public et parapublic, est également visée par les démarches de la CSN. L'organisation tente d'en invalider certaines dispositions, notamment celles interdisant de faire grève aux syndicats du réseau de la santé qui sont en train de négocier les stipulations locales des conventions collectives, suite aux fusions d'établissement nées de la réforme Barrette. Ces négociations ayant une portée sur des aspects importants des conventions collectives, « on ne peut jouir d'un droit constitutionnel à temps partiel », résume Jacques Létourneau.

Top bureaucrat calls AG's summary on public service culture an 'opinion piece'
Ottawa Citizen
The Canadian Press
June 12, 2018

OTTAWA — The public service's top bureaucrat is taking issue with Auditor General Michael Ferguson's spring report which criticizes the culture in the public service.

Ferguson's message in his report on culture in the public service is an "opinion piece," Privy Council Clerk Michael Wernick said Tuesday.

Wernick was called before the House of Commons Public Accounts committee to address comments Ferguson made about culture in the public service in his latest report.

In Ferguson's spring report, he wrote that the public service has an obedient culture that "fears mistakes and risk" and has to change.

"This culture causes the incomprehensible failures it is trying to avoid," he said, referring to the Pheonix pay system.

Wernick said the public service isn't perfect but he won't accept Ferguson's findings and called them "sweeping generalizations."

Wernick also said he does not agree with Ferguson's characterization of the Phoenix pay system as an 'incomprehensible failure.'

"It's entirely comprehensible, it was avoidable … it's reparable," he said.

NDP MP David Christopherson said the committee needs to decide where they land on the two opposing views of the culture in the public service.

"Either we have a deputy of the Privy Council who has his head buried in the sand and is in complete denial with what the cultural problems are or we've got an auditor general that's off the rails," said Christopherson.

The committee later decided it would invite Ferguson back to testify before the House rises for the summer so he can respond to Wernick's comments.

Wernick reiterated that there are problems in the public service, but not across every department.

“I don’t think we have a broken culture,” he insisted.

Wernick also told members of the committee that they should create a culture where it’s possible to disagree with the auditor general.

He said it should be OK to challenge the auditor general’s analysis and hopes he’s not in too much trouble for disagreeing with his findings.

Les jurés d’Ottawa pour la plupart blancs et riches
Les données de l’étude ont été compilées entre juin 2016 et juillet 2017
Droit Inc
Émile Bérubé-Lupien
12 juin 2018

Selon un rapport rédigé par la juge à la Cour supérieure de l’Ontario Justice Giovanna Toscano Roccamo, la majorité des jurés de la région d’Ottawa et de Belleville proviendraient de quartiers blancs favorisés et seraient relativement âgés.

Mme Roccamo a étudié la composition de jurys ayant délibéré entre les mois de juin 2016 et de juillet 2017.

L’avocat de la défense Solomon Friedman, considère que le rapport met en lumière l’urgence d’agir et de diversifier la composition des jurys ontariens.

«Si vous êtes pauvres, que vous êtes locataires, que vous êtes issus d’une minorité visible ou que vous êtes Autochtones, vous êtes bien moins susceptibles d’être sélectionnés pour être juré que si vous gagnez un salaire supérieur à la moyenne et que vous êtes un propriétaire blanc. C’est un problème. Nous ne voulons pas que les jurés soient ainsi sélectionnés», déplore l’avocat.

Mme Roccamo souligne dans son rapport que les résidents de quartiers comme celui de Heron Gate, dont peu sont propriétaires, étaient dix fois moins susceptibles d’être choisis pour être jurés que ceux de quartiers comme Barrhaven.

Selon Friedman, un facteur qui pourrait expliquer cette disparité est que les jurés sont choisis en utilisant notamment les relevés de taxes municipales. Les locataires n’étant pas affichés sur cette liste, ils ont donc moins de chances d’être sélectionnés.

Comme alternative, l’avocat propose d’utiliser les données inhérentes aux cartes d’assurance-maladie, qui ne requièrent pas d’être propriétaire.
La professeure de droit civil à l’Université d’Ottawa Jennifer Quaid soutient la proposition de Friedman, mais précise que ce ne serait pas suffisant, déplorant du même souffle que les Autochtones soient sous-représentés.

«Nous devons faire des efforts afin de leur donner des raisons de vouloir participer.»

La professeure souligne toutefois que si la composition des jurys joue un rôle dans l'attitude déployée par les avocats, il demeure ardu d'établir une corrélation claire entre la constitution des jurys et l'issue des procès auxquels ils participent.

OPINION: Workplace bullying often leaves unions in impossible situation
Chronicle Herald
Judy Haiven and Larry Haiven
June 12, 2018

What is the responsibility of a trade union when its members bully, harass or are racist toward fellow members?

This question arises after a Nova Scotia Human Rights Board of Inquiry recently found the Halifax Regional Municipality responsible for a disturbing racist reign of terror against workers in the Metro Transit garage. There were several victims.

In the Human Rights Commission decision, we learn that in 2001 HRM fired the white perpetrator, Arthur Maddox, for his vile treatment of African Nova Scotian Randy Symonds. The Amalgamated Transit Union (ATU) filed a grievance against Maddox's firing.

Presumably choosing to put the pain behind him, Symonds declined to testify at the arbitration hearing.

Without its key witness, HRM's case for firing was seriously weakened. In a mediated settlement, HRM and the union agreed to a six-month suspension without pay for the perpetrator, followed by a return to work.

This is not the first case where a union has controversially grieved discipline of a member for a dreadful offence. Some ask: How could a union defend the indefensible?

Let's get one thing straight: the primary responsibility for dealing with bad behaviour in the workplace lies with management. Not only does it alone have the power to hire and to discipline, it also has the scope to deal with system-wide problems, which seems to be the case in HRM.

HRM has more than 3,700 employees in various discrete "business units" which are represented by at least five different unions. Members of Equity Watch want an independent public inquiry. We suspect something seriously broken in the culture of personnel management.

Does management's ultimate culpability get unions off the hook? Not at all. But unions are caught between a rock and a hard place.

On the one hand, as leaders of the broad social justice movement, unions are supposed to oppose and campaign against racism, sexism and other forms of harassment. They must defend their members from bullying, whether it comes from management or from other union members.

On the other hand, the ability to challenge discipline is a cornerstone of unionization; non-union workers are subject to completely arbitrary measures. Unions are legislatively bound to give all workers in a bargaining unit "fair representation." Because unions are workers' sole and exclusive representatives, unions cannot act in a manner that is "arbitrary, discriminatory and in bad faith." For example, they cannot refuse to take up a worker's cause because she is a troublemaker or merely because she engaged in misbehaviour offensive to the union. Unionized workers cannot be denied their "day in court," as it were, except under special circumstances.

A Newfoundland case in the mid-1990s illustrates this point. A member of the union, NAPE, had sexually assaulted a fellow employee. The union had a policy against sexual harassment and refused to challenge the dismissal at arbitration. When the offender challenged the union's decision, the Labour Relations Board (later upheld by the province's Supreme Court) ruled the union was wrong. Rather than examine the unique circumstances of the case, the union had, in bad faith, applied a blanket rule.

Still, unions should not be using this as an excuse to abdicate their responsibilities. They could be doing a lot more, especially in cases of member-on-member abuse, which, to unions, is like kryptonite (the metal that robs Superman of his powers). Bold statements by labour central bodies and at union conventions are fine. Unions are good at that. But action at the workplace is where it counts.

Unions at the local level must recognize that white, able-bodied, male workers are often in positions of union power and all too often perpetuate discrimination and bullying against members of equity-seeking groups. Unions must clearly condemn this behaviour and help to stop it. Rather than defending only those disciplined by management, they must also defend those victimized by fellow workers. Even the NAPE case does not completely tie unions' hands in exercising discretion.

Here's an idea: Why don't the various unions representing HRM employees form a joint committee to work with management (and, yes, against management, if necessary) to build a bullying-free workplace?

Judy Haiven and Larry Haiven are retired professors of labour relations at Saint Mary's University and members of Equity Watch.

OPINION: Public servants soldier on despite Phoenix paycheque fiasco
Chronicle Herald
Colleen Coffey
June 12, 2018

National Public Service Week was created in 1992 to "recognize the value of the services rendered by federal public service employees and to acknowledge the contribution of federal public service employees to the federal administration."

While public service workers are still not getting paid correctly, they still show up to work every day to deliver quality public services to Canadians. How will the federal government recognize its workers during the week of June 10-16 when it can't even pay them correctly?

It's been over two years since the Government of Canada implemented the Phoenix pay system, and yet it still can't pay its employees accurately and on time. All of this could have been avoided if only it had listened to the unions when we sounded the alarm prior to, and during, the implementation of the system.

The struggle is real. Some workers have lost their homes because they couldn't pay their mortgages while others had to borrow money from friends and family members in order to pay bills and put food on the table. Everyone can relate and have sympathy for these workers because, after all, when you show up to work and help Canadians access public services, at the very least, you expect to get paid on payday.

Most of these workers are represented by us, the Public Service Alliance of Canada (PSAC). Let's be frank here: the steps taken by the government to alleviate difficulties encountered because of the Phoenix Pay System have happened as a result of the pressures by the PSAC and other unions.

To this day, we've successfully secured compensation for out-of-pocket expenses, forced the government to expand access to emergency pay, negotiated measures to attract and retain compensation advisers (who are needed in both the pay centre and back in the departments), and we keep raising public awareness and lobbying members of Parliament, just to name a few achievements.

On behalf of our union, I wish to thank all public service workers for their continued dedication. They take their jobs and responsibilities seriously and they see first-hand the importance of delivering public services to Canadians. The union recognizes and values the work that they do and we will continue to defend them vigorously.

We will not rest until every federal public service worker is paid correctly, on time, every time.

Colleen Coffey is regional executive vice-president, Atlantic region, Public Service Alliance of Canada.

Top bureaucrat, Auditor-General clash over Phoenix pay-system mess
The Globe and Mail
Michelle Zilio
June 12, 2018

Canada's top public servant went on the offensive against the Auditor-General on Tuesday, saying the Phoenix public-service pay system is not the "incomprehensible failure" it was recently called in a scathing report.

Privy Council Clerk Michael Wernick challenged Auditor-General Michael Ferguson's assertion that the problems with the system, which has failed to pay tens of thousands of federal public servants properly

for more than two years, are indicative of “pervasive cultural problems” in the federal civil service. He said a chapter in Mr. Ferguson’s May report on the cultural issues in the federal government is an “opinion piece.”

“I believe it contains sweeping generalizations, it’s not supported by the evidence and it doesn’t provide you with any particular guidance on what to do to move forward,” Mr. Wernick told a parliamentary committee on Tuesday.

“I also don’t agree that the pay system was an incomprehensible failure. I think it’s entirely comprehensible. It was avoidable, it’s repairable and it gives us all kinds of lessons about how to build a better public service.”

Mr. Wernick’s remarks infuriated NDP MP David Christopherson, who said he was shocked by the clerk’s opposition to the Auditor-General’s report.

“Either we have a deputy of the Privy Council who has his head buried in the sand and is in complete denial with what the cultural problems are, or we’ve got an Auditor-General that’s off the rails,” Mr. Christopherson said.

Mr. Wernick said he realizes the public service is not perfect, noting the need for it to become more nimble and willing to take risks. Rather, he took issue with the Auditor-General’s insinuation that the civil service is broken – something he fears is being used as a “political weapon.”

He said the Phoenix pay debacle was a “perfect storm” of factors, including an incentive structure that put pressure on senior public servants to deliver the pay system within budget.

“I think you have to look very deeply at the incentive structure, which is the one in which human beings act, and culture is shaped by incentives and disincentives. And there are opportunities to create incentives and disincentives which reward innovation, creativity, or that stifle it,” Mr. Wernick said.

In his report last month, Mr. Ferguson blamed three “executives” – senior public servants at Public Services and Procurement Canada (PSPC), which is responsible for Phoenix − for the system’s failure. He said the executives prioritized some aspects of the pay-system rollout, such as schedule and budget, over functionality.

Mr. Wernick declined to say whether the three were fired as a result of their handling of the pay system. More generally, he noted that it is extremely difficult to terminate employees below the deputy-minister level for poor performance, as they are protected by the Public Service Employment Act.

Public Services Minister Carla Qualtrough has said that “measures” were taken against the executives and that they are no longer working in government pay administration. However, it remains unclear if they are still employed by the federal government.

PSPC declined to release the names of the executives, citing “internal matters,” but noted that they did not receive performance pay in the 2015-16 fiscal year, when Phoenix was launched. It said that while the senior executives responsible for the implementation of Phoenix made mistakes, the department does not believe they acted with “ill intent.”

“They failed to properly understand and assess the complexity of the undertaking, the cumulative impact of their decisions and the seriousness of early warning signs,” department spokesperson Jean-François Létourneau said in a statement.

Mr. Wernick’s appearance before the House of Commons committee comes as the federal government marks its annual National Public Service Week, meant to recognize the work of civil servants. The Public Service Alliance of Canada (PSAC), the country’s largest civil-service union, will write to Prime Minister Justin Trudeau this week formally requesting a public inquiry into the Phoenix system.

“If the government truly wants to recognize the value and the work of federal public service workers, then it cannot keep stalling on compensating our members, and Prime Minister Trudeau will launch a public inquiry to ensure a fiasco like Phoenix never happens again,” PSAC national president Chris Aylward said.

The cost of implementing and fixing the ailing pay system has cost Canadian taxpayers more than $1-billion to date. Mr. Ferguson told the Senate finance committee on Tuesday the problems affect almost all federal public servants, including himself.

Les tests psychologiques en prison discriminatoires à l'égard des Autochtones, dit la Cour suprême
Les tests psychologiques menés en prison violent les droits garantis aux prisonniers autochtones par la Charte canadienne des droits et libertés, a tranché la Cour suprême
Radio-Canada
13 juin 2018

Dans une décision rendue mercredi, la plus haute cour du pays a accueilli favorablement les arguments de Jeffrey Ewert, un détenu autochtone qui avait contesté la fiabilité des tests psychologiques menés en prison.

En 2015, il avait argué en cour fédérale que les tests du Service correctionnel du Canada avaient nui à ses chances de libération conditionnelle et affirmait qu'ils n'étaient pas adaptés culturellement aux Autochtones.

La cour lui avait donné raison, mais la décision a été par la suite annulée, incitant l'homme à se rendre jusqu'en Cour suprême.

Né d'une mère métisse et d'un père britannique, Jeffrey Ewert a été adopté par une famille non-autochtone à Surrey, en Colombie-Britannique.

Il écope d'une peine de plus de 30 ans dans des établissements à sécurité moyenne, purgeant deux peines perpétuelles pour meurtre au deuxième degré, tentative de meurtre et évasion.

En 2016, 26 % des détenus dans les prisons fédérales étaient autochtones, alors qu'ils ne représentent que moins de 5 % de la population canadienne.

Correctional Service's psychological tests fail Indigenous prisoners, Supreme Court rules
Globe and Mail
Sean Fine
June 13, 2018

Federal authorities are mistreating Indigenous prisoners by failing to ensure that their psychological assessments are not culturally biased, putting the offenders at risk of being unfairly denied parole or rehabilitation programs, the Supreme Court of Canada says.

In a damning critique, the Supreme Court said the Correctional Service of Canada had known since 2000 that several psychological assessments might be unreliable and inaccurate for Indigenous prisoners, but did not do anything to find out if they were. As a result, it failed to live up to what the court called a "guiding principle" — set out by Parliament in a law passed more than 25 years ago — that prison authorities must meet the special needs of Indigenous offenders.

"Two and a half decades have passed since this principle . . . was incorporated into [federal corrections law]," Chief Justice Richard Wagner wrote for a 7-2 majority. "Nonetheless, there is nothing to suggest that the situation has improved in the realm of corrections."

He cited reports showing "that the gap between Indigenous and non-Indigenous offenders has continued to widen on nearly every indicator of correctional performance," mentioning higher security classifications, more time in segregation and being kept behind bars for longer.

Almost 85 per cent of aboriginal inmates are held until their statutory release date (at two-thirds of their sentence), compared with just less than 70 per cent for non-aboriginal inmates, according to a 2015 report from the Public Safety Ministry. Aboriginals make up 42 per cent of the prisoners who are held until the end of their sentence.

The court issued a declaration that the Correctional Service had breached the rights of Indigenous prisoners. If the service wishes to continue using the psychological tests, it must at a minimum conduct research related to bias and Indigenous offenders. Depending on what it finds, it may have to stop using the tests.

The ruling comes in a court challenge brought by a convicted sex-killer, Jeffrey Ewert, who is Métis. Mr. Ewert, 56, has served more than 30 years in prison for second-degree murder and attempted murder, the majority in maximum security. He has not applied for parole, although he became eligible more than 20 years ago, because he says his risk of reoffending as determined in several psychological tests is too high to permit release. He first challenged the tests in an internal prison process in 2000.

The federal government argued he had failed to show the tests were biased against Indigenous prisoners. Mr. Ewert's position was that the government needed to show the tests were reliable. He won at Federal Court and lost at the Federal Court of Appeal.

The outcome is a bookend to the ruling in a 1999 case called Gladue, in which the Supreme Court directed lower-court judges to give special consideration to aboriginal offenders in sentencing. That case turned on the interpretation of a 1996 law specifying that jail was to be a last resort for all offenders, with particular attention to the circumstances of aboriginals. The Ewert case focused on a 1992 law requiring correctional programs to be responsive to the needs of women, aboriginals, people with mental-health issues and other groups.

"Now, 20 years later, the court is saying to Correctional Services, 'You really have to do something about this. There is an expectation that this is going to be front and centre in all of your work,' " Jonathan Rudin, program director of Aboriginal Legal Services of Toronto, which intervened in the case, said in an interview.

The correctional service said it is reviewing the decision and "will determine next steps," a spokesperson said in an e-mail to The Globe and Mail, adding: "It is important to note that culturally appropriate interventions and reintegration support for First Nations, Métis and Inuit offenders is a priority of CSC."

For Mr. Ewert, the ruling means "more of a fair shake" when he applies for parole, said one of his lawyers, Jason Gratl of Vancouver.

Mr. Gratl said it was hypocritical of the Liberal government, which has made reconciliation with Indigenous peoples a priority, to fight the case. "The Trudeau government has been forced into treating Indigenous inmates equitably," he said in an interview.

But Scott Bardsley, a spokesman for Public Safety Minister Ralph Goodale, said the government actually won on a key point — that prison authorities had not violated Mr. Ewert's constitutional rights.

Mr. Bardsley said Ottawa allocated more than $120-million in last year's budget to support the reintegration of incarcerated Indigenous people and advance restorative justice approaches, and almost $80-million in the previous two budgets to expand mental-health care in correctional facilities.
Mr. Gratl said the ruling could affect more than just Indigenous people — but much depends on the response by prison authorities.

"How it plays out remains to be seen," he said. "The Correctional Service of Canada has historically displayed a remarkable resilience in resisting judicial pronouncements."

In his view, the Supreme Court intended that "all decision-making operations of the Correctional Service of Canada require bureaucratic reflection to determine whether they comport with broad, equity-based considerations."

The two dissenters, Justice Malcolm Rowe, the first Trudeau appointee to the Supreme Court, and Justice Suzanne Côté, said the prison authorities had lived up to their obligation to address the needs of aboriginal offenders by keeping accurate records of the tests.

Prison system failed to ensure security tests aren't racially biased against Indigenous inmates
Correctional Service Canada breached its legal obligation to make sure risk assessment tool is appropriate
CBC News
Kathleen Harris
June 13, 2018

Canada's prison service is using security tests that may discriminate against Indigenous offenders and keep them behind bars longer and in more restrictive environments, the Supreme Court of Canada has ruled.

In a 7-2 decision, the court found that Correctional Service of Canada failed to take steps to ensure that risk assessment tests used for deciding such things as penitentiary placement and parole eligibility are valid and accurate for Indigenous offenders.

The case involves Jeffrey Ewert, a Métis inmate who was convicted of the murder and attempted murder of two young women. His lawyer argued the risk assessment tests were unreliable for Indigenous offenders, and that CSC had been aware of concerns about the tests since 2000 but had failed to confirm their validity.

The decision says that if CSC wants to continue to use the "impugned tools," it must conduct research into "whether and to what extent they are subject to cross-cultural variance when applied to Indigenous offenders."

"Any further action the standard requires will depend on the outcome of that research," reads the majority decision, written by Chief Justice Richard Wagner. "Depending on the extent of any cross-cultural variance that is discovered, the CSC may have to cease using the impugned tools in respect of Indigenous inmates, as it has in fact done with other actuarial tools in the past."

While the ruling found CSC breached its legal obligation, it did not find that Ewart's constitutional rights were violated. There was no evidence that the assessment had no rational connection to the government objective of public safety, the decision states.

CSC has not said whether it will stop using the test as a result of the ruling.

"The Correctional Service of Canada (CSC) is reviewing the decision and will determine next steps. It is important to note that culturally appropriate interventions and reintegration support for First Nations, Métis and Inuit offenders is a priority of CSC," spokeswoman Stephanie Stevenson wrote in an email.

Record percentage of Indigenous inmates

The ruling noted the troubled history of Indigenous people in the criminal justice system, saying numerous government commissions and reports have recognized that the discrimination faced by Indigenous people, "whether as a result of overtly racist attitudes or culturally inappropriate practices, extends to all parts of the criminal justice system, including the prison system."

Data from correctional investigator Ivan Zinger's office show that Indigenous offenders are less likely than non-Indigenous inmates to get parole, and spend longer portions of their sentences behind bars.

It also showed that Indigenous offenders' share of the total inmate population reached a record high of 27.4 per cent as of August 2017.

Justice Malcolm Rowe, writing in dissent, said that in his view, CSC only needed to keep complete and accurate records of the results of the assessment tools. He said Ewert should have asked the courts to review the specific decisions that CSC made about him using the results of the tools.

Ewert's case was filed against CSC and the wardens of Kent Institution and Mission Institution, both located in British Columbia.

Addressing high number of Indigenous inmates

A spokesperson for Public Safety Minister Ralph Goodale said the government is taking steps to address the disproportionate number of Indigenous people in prison.

"We take the views of the Supreme Court very seriously and are examining the decision closely," said Scott Bardsley in an email. "More broadly, the overrepresentation of Indigenous people in correctional institutions is an intolerable situation that we're working very hard to address."

The government invested $10 million last fall to help provide safe alternatives to incarceration and promote rehabilitation, part of $120 million set aside in last year's budget to support the reintegration of Indigenous offenders and advance restorative justice.

The British Columbia Civil Liberties Association (BCCLA) and the Union of B.C. Indian Chiefs intervened in the Ewert case. They argued that a bad risk assessment rating can mean an Indigenous prisoner is less likely to get parole, access to programs, or early or temporary release, and is more likely to experience solitary confinement and a maximum security setting.

Today, the BCCLA said meaningful changes to address over-representation of Indigenous people in prisons are long overdue.

"We are hopeful that the court's emphasis on substantive equality in correctional outcomes for Indigenous offenders will assist over time in reducing the numbers of Indigenous people incarcerated," said lawyer Jay Aubrey in a statement.

9 recettes pour retrouver son enthousiasme au bureau

En ce début de période estivale, il peut être ardu de garder son enthousiasme intact. Comment faire pour le retrouver?

Droit Inc

Céline Gobert

13 juin 2018

C'est l'été et la dernière chose dont vous avez envie est d'aller travailler. Comment retrouver la motivation en quelques étapes? Voici quelques conseils, compilés par Chicago Tribune.

1- Retournez au début. On veut dire par là : souvenez-vous de pourquoi vous avez décidé de vous lancer dans le domaine du droit. Rappelez-vous les émotions qui vous habitaient le premier jour.

2- Tournez-vous vers la culture pop. Oui, c'est sérieux. Il n'est pas rare de trouver un élan d'inspiration en regardant un film ou en lisant un livre dans lequel on se retrouve dans les personnages.

3- Rappelez-vous de pourquoi vous travaillez. C'est super d'être passionné par son travail, mais il est tout aussi possible d'être passionné par ce que vous permet d'avoir votre travail, que ce soit une maison, des vacances ou des loisirs. Si votre quotidien ne vous inspire plus, penser à ce que vous allez faire avec votre salaire peut aider.

4- Soyez un mentor. Les jeunes de la relève cherchent toujours des conseils, et vous pourrez trouver dans l'expérience du partage de votre expérience un certain plaisir. Inspirer quelqu'un pourrait vous aider à retrouver l'inspiration.

5- Demandez plus de responsabilités. Si vous sombrez dans l'ennui, pourquoi ne pas demander plus de tâches à faire? Entamez une discussion sérieuse à ce sujet avec votre supérieur. En ayant plus de choses à faire, vous serez forcé de payer plus d'attention à vos actions et donc d'insuffler plus de défis à votre expérience professionnelle quotidienne.

6- Cessez d'en faire trop. C'est la principale raison du surmenage : on veut tout faire. Mais aucune loi ne vous oblige à être disponible pour tout le monde 20 heures par jour, joignable sur une douzaine de modes de communication différents. Pourquoi ne pas éteindre votre cellulaire une fois chez vous?

7- Concentrez-vous sur les gens, pas sur ce que vous faites. La plupart des gens ne réalisent pas que la meilleure chose de leur vie professionnelle est l'équipe avec laquelle ils travaillent. Et ce, bien plus que le travail en soi. Peut-être que vous pourriez retrouver un peu de votre enthousiasme en cultivant des relations plus riches avec vos collègues, ou en réapprenant à les connaître?

8- Cherchez le problème ailleurs. Il est possible que votre manque soudain d'enthousiasme n'ait en fait peu de choses à voir avec votre travail mais soit relié à des problèmes personnels, un manque de confiance en vous, ou bien une dépression latente.

9- Ne soyez pas si dur envers vous-même. Enfin, faites preuve d'indulgence envers le professionnel que vous êtes. Parfois, on a juste besoin d'une pause avant de mieux repartir. Et si votre manque d'enthousiasme perdure plus longtemps que d'ordinaire, il est peut-être temps d'effectuer un changement d'emploi, voire même de carrière!

Senator Richard Neufeld: Ottawa's omnibus justice bill muddies the water on serious crimes
Alaska Highway News
Richard Neufeld
June 13, 2018

Let me ask you this: is participating in, or contributing to, the activities of a terrorist group a serious crime? If you've answered yes, you are in line with Section 83.18(1) of the Criminal Code, which states that such a crime is an indictable offence with a maximum penalty of up to 10 years.

The Trudeau government feels otherwise.

With Bill C-75, the Trudeau government is proposing to reduce the penalties of more than two dozen indictable offences. These crimes include participation in activities of a terrorist group; prison breach; municipal corruption; concealing the body of a child; impaired driving offences causing bodily harm; polygamy; forced marriage; abduction of persons under the age of 16; participation in activities of a criminal organization; and the list goes on.

Essentially, the government is hybridizing serious indictable-only offences, allowing the accused to be prosecuted by summary conviction and subject to far lighter sentences --– generally a maximum of six months, unless otherwise stated.

Summary offences are considered less serious than indictable offences. The Department of Justice states that a person charged with a summary conviction offence is usually not held in custody and is simply given a notice to appear in court at a certain date. On the other hand, a person charged with an indictable offence will be arrested and detained when the police have reasonable grounds to believe that the person has committed or is about to commit a serious offence.

What does all this legal mumbo-jumbo mean in practical terms?

By hybridizing serious offences like the examples listed above, the government is allowing prosecutors to choose between indictable or summary convictions, based on the seriousness of the offence and the harm caused.

The government claims that its omnibus justice bill – with all of its 302 pages – will modernize the criminal justice system and reduce court delays. I can only assume that C-75 is, in part, the Trudeau government's answer to the Senate's emergency call for significant reform in our justice system.

Indeed, the Senate's Legal and Constitutional Committee recently conducted a two-year, in-depth study on the lengthy delays in Canada's court system. It concluded that "delays in criminal proceedings have

become a significant problem as it takes too long for many criminal cases to reach a final disposition," often making it hard on victims and their families, as well as on accused persons.

In defending Bill C-75, the government suggests that Canadians deserve a well-functioning criminal justice system that protects the vulnerable, meets the needs of victims, and keeps our communities safe – all laudable goals that I support.

However, it also argues that the reforms proposed in the bill will make our justice system more efficient by reclassifying offences to allow courts to deal more efficiently with less serious matters, freeing up limited resources for more serious offences.

I do not believe the answer is reducing the punishment for indictable offences. This sends the wrong message to Canadians. The way I see it, the Trudeau government is essentially saying that these horrible crimes are not that severe and our courts should consider lower penalties. They are giving Crown prosecutors much leeway in determining the severity of some of these crimes, rather than allowing judges to determine the fate of those charged and convicted of these serious, indictable offences.

Quite honestly, I am appalled that the government would consider hybridizing these grave offences; although I am not surprised. It is this same soft-on-terror Prime Minister who wants to reduce penalties for participants in terrorist activities who also favours rehabilitation and reintegration of Canadian extremists who return home after being involved with jihadi groups overseas.

The Honourable Richard Neufeld is a Senator for British Columbia. He is a member of three Senate Committees: Energy, the Environment and Natural Resources; National Finance; and Arctic. Prior to his appointment to the Senate in 2009, he served in the British Columbia Legislative Assembly from 1991 to 2008 as MLA for Peace River North. He was Minister of Energy, Mines and Petroleum Resources from 2001 to 2009.

Auditor general defends calling Phoenix pay system an 'incomprehensible failure'
Toronto Star/National Post
The Canadian Press
June 14, 2018

OTTAWA—Auditor general Michael Ferguson is standing by his conclusion that the federal public service's "obedient" culture led to the "incomprehensible failure" of the Phoenix pay system.

Ferguson reiterated his criticisms Thursday before the House of Commons public accounts committee — just two days after the top federal civil servant blasted the auditor general's critique of the public service as "an opinion piece."

Ferguson's audit report last month concluded that the Phoenix system was an "incomprehensible failure" of project management and oversight, which led to green-lighting a system that wasn't ready.

The report said it was unfathomable that no one spoke up to say it wasn't going to work and needed to be stopped; it blamed "an obedient culture" among public servants — a message Ferguson repeated at committee Thursday.

Privy Council Clerk Michael Wernick disputed that conclusion during an appearance before the same committee earlier this week, accusing the auditor of making "sweeping generalizations" about public servants.

The Phoenix system has resulted in thousands of federal civil servants being underpaid, overpaid or not paid at all.

Ferguson is scheduled to appear before the committee again next week, when members said they intend to delve deeper into Wernick's criticism of the auditor general's message.

Canada's senior bureaucrat and top auditor are having an unprecedented feud over the public service
Precedent suggested the clerk would thank the auditor for punching his public servants in the face and promise they would mend their bureaucratic ways. But he did not
National Post
John Ivison
June 14 2018

The office of the auditor general has been deemed infallible since Sheila Fraser almost single-handedly brought down Paul Martin's Liberal government with her report on the sponsorship scandal.

Ministers whose departments have been unfortunate enough to fall foul of a critical audit have genuflected and promised to fix the problem pronto.

That's what made a routine committee meeting this week so compelling. Michael Wernick, the clerk of the Privy Council and Canada's most senior public servant, was at the Public Accounts committee on Tuesday to answer MPs' questions about the opening chapter of the auditor general's spring report.

Michael Ferguson, Fraser's successor, prefaced the regular value-for-money audits with a chapter decrying the "incomprehensible failure" behind the Phoenix pay system debacle and other perceived systemic shortcomings in government.

He concluded there is an imbalance between political perspectives in government, necessarily short-term, and longer term public service perspective. The political side has become dominant over the past decades, as implementation of policy has been subverted to message and image management.

"The culture has created an obedient public service that fears mistakes and risks. Its ability to convey hard truths is eroded, as is the willingness to hear hard truths," he concluded.

Precedent suggested the clerk would thank the auditor for punching his public servants in the face and promise they would mend their bureaucratic ways.

But he did not — setting up the most heated institutional tilt this country's seen since the last prime minister started chirping at the chief justice.

Wernick called Ferguson's opening chapter "an opinion piece" and said he took issue with its "sweeping generalizations."

"It's not supported by the evidence and does not provide any particular guidance on what to do to move forward," he told the committee.

Far from being broken, he said the Canadian public service is "world class" and citizens should have confidence in its ability to deliver the government's agenda.

Wernick is clearly frustrated that the failures of the bureaucracy are placed under a microscope, while its successes are ignored. Public Services and Procurement, the department at the heart of the Phoenix pay mess, is the same one that is delivering the parliamentary precinct renovation on time and on budget, he said.

"The generalization doesn't hold for one department. I certainly don't think it holds up for the entire public service," he said.

Ferguson is due to appear before Public Accounts next Tuesday to offer his own riposte to the clerk's criticism.

It is an unprecedented altercation by two of the most powerful people in the country.

David Christopherson, an NDP MP on the committee, said we either have a clerk of the Privy Council who has his head in the sand, or an auditor general who is "off the rails."

It's all about finding blame
Donald Savoie, the dean of academics covering public administration, said he has never seen anything like it.

But he said it's a positive and constructive airing of the problems facing the bureaucracy.
He sympathized with Wernick's frustration that much of the coverage is unfair.

"It's all about finding blame. Nobody ever says government department X did a great job.

All public servants go to work with a shadow on their shoulder. The blame game permeates the whole system, he said.

Certainly, Canada's public service is better than most in the world when it comes to nepotism, corruption and partisanship, as Wernick said.

But as Savoie pointed out, anyone raving about government efficiency should try calling the Canada Revenue Agency sometime. The feeling among many citizens, far too often, is that public servants aren't there to do, they're there to explain why it can't be done.

While the clerk resented what he saw as the auditor going beyond his mandate to offer a sermon, the two are less diametrically opposed than they might appear at first sight.

At one point in his testimony, Wernick admitted improvements in the culture of the public service are needed.

"I'm not saying we don't have a culture problem. We are risk averse, we are bureaucratic, we do tend to cling to process, we do tend to cling to rules," he said — sentiments with which Ferguson would concur.

Wernick said the bureaucracy has made progress in introducing glasnost, the Gorbachev-era concept of openness in government, and it is now time for perestroika, the freeing up of ministries to be more independent. Savoie agrees with the idea of politicians giving the public service its direction but then providing it space to be flexible and more creative in delivery of services.

But the key to reform is change to the incentives and disincentives required to be more nimble, risk-taking and agile.

I'm not saying we don't have a culture problem. We are risk averse, we are bureaucratic

The problem, as Wernick knows all too well, is that those "disincentives" are marbled into the system and are practically impossible to change.

Below the level of deputy minister, public servants are covered by the Public Service Employment Act, which means they can only be terminated for cause, a legal process that takes around two years.

Bureaucrats cannot be fired for poor performance and, since 80-90 per cent of the public service is unionized, you have a workplace where the normal rules of motivation do not apply.

Savoie said the result is that no public service manager can be as efficient as a private sector manager.

He recalled a conversation with Mulroney-era minister Elmer MacKay (father of Peter), who said in all his years in Parliament, "I never could find the culprit."

Any politician that tried to reform the employment laws to instill some accountability into the process would face a united front of unions and public servants.

As the fictional Sir Humphrey Appelby responded when confronted with a similar threat in the satire, Yes Minister: "We dare not allow politicians to establish the principle that senior civil servants can be removed for incompetence. We cold lose dozens of our chaps. Hundreds maybe. Even thousands."

Canadian Human Rights Tribunal cannot challenge discrimination in Indian Act: Supreme Court
The Globe and Mail
Gloria Galloway
June 14, 2018

The Supreme Court of Canada says the Canadian Human Rights Tribunal was correct in deciding it does not have the jurisdiction to consider whether Canadian laws are discriminatory, a decision that comes as the government launches consultations to remove sexism from the Indian Act.

The top court on Thursday dismissed a challenge of tribunal decisions brought by the Canadian Human Rights Commission on behalf of two families who could not pass their Indian status on to their descendants because of discriminatory policies in the Act.

The Tribunal said in rulings in those cases that it could decide whether government services had been distributed unfairly but does not have the power to consider direct challenges to legislation because legislation is not a service. The decision was later upheld by the Federal Court and the Federal Court of Appeal.

In a decision written by Justice Clément Gascon, the Supreme Court found that the tribunal and the courts were right to dismiss the challenges.

“The adjudicators reasonably concluded that the complaints before them were properly characterized as direct attacks on legislation,” Justice Gascon wrote, “and that legislation in general did not fall within the meaning of ‘services.’”

The Supreme Court did not rule on whether parts of the Indian Act are discriminatory and Justice Gascon made it clear that the original complainants in the case could still challenge the Indian Act under the Charter of Rights and Freedoms, as the Human Rights Tribunal said in its own ruling.

The Canadian Human Rights Commission said it was disappointed in the Supreme Court decision which, it said, limits Canadians’ access to human-rights justice.

“It closes doors for vulnerable people who need to fight for their rights, leaving them to fend for themselves in a civil court system that is increasingly complex and expensive,” Chief Commissioner Marie-Claude Landry said.

The case before the Supreme Court originated with two families, the Matsons and the Andrews, who said the Department of Indian and Northern Affairs Canada (which has since been split into two departments) discriminated against them by not allowing them to pass along Indian status to their children.

The Matson siblings’ grandmother lost her status, and the status of her descendants, when she married a non-status man. Although a subsequent change to the Indian Act allowed them to obtain status, they

could not pass it along to their children. That would not have been the case had their grandmother not lost her status in the first place.

In the case of Roger Andrews, his father voluntarily gave up his status, which meant his children did as well. Although Mr. Andrews eventually gained status after a change in the legislation, he is still not allowed to pass it along to his daughter.

The Matson case is similar to situations that are currently being explored by the government as it begins the process of removing known sex-based discrimination from the Indian Act.

Status under the Act allows a registered Indian to access some government services, such as supplemental medical and dental care.

Earlier this week, the government announced that Claudette Dumont-Smith, a former executive director of the Native Women's Association of Canada, has been appointed by Carolyn Bennett, the Minister of Crown-Indigenous Relations, as a special representative in what is expected to be a multiyear consultation on Indian registration, band membership and First Nations citizenship.

That process became necessary when the Senate refused to pass government legislation, drafted to meet a ruling of a Quebec court, that eliminated some of the sex-based discrimination in the Indian Act but left other sexist elements in place.

After a showdown with senators that lasted several months, the Liberal government promised to eventually take the sexism out of the Act, but only after a consultation with First Nations. Ms. Dumont-Smith has until next June to report back to Parliament.

SCC affirms laws are not a 'service' open to challenge at a federal human rights tribunal
Lawyer's Daily
Cristin Schmitz
June 14, 2018

The Supreme Court of Canada has unanimously upheld a human rights tribunal's dismissal of complaints against the refusal to register certain people as "Indians" because their direct attack on the legislated eligibility requirements for registered Indian status does not amount to a complaint about the discriminatory provision of a "service" under s. 5 of the Canadian Human Rights Act (CHRA).

On June 14, the top court's nine judges agreed to dismiss the appeal of the Canadian Human Rights Commission (CHRC), but they splintered 6-2-1 to write three concurring opinions which differed about the applicable standards of review (reasonableness or correctness): Canada (Canadian Human Rights Commission) v. Canada (Attorney General) 2018 SCC 31.

CHRC Chief Commissioner Marie-Claude Landry warned that, in her view, the impact of the decision could be negative for "anyone in Canada who is seeking justice after being treated unfairly because of the wording of a federal law."

“This is a disappointing ruling for human rights justice in Canada,” Landry argued in a prepared statement. “It closes doors for vulnerable people who need to fight for their rights, leaving them to fend for themselves [to bring a Charter challenge to discriminatory legislation] in a civil court system that is increasingly complex and expensive.”

She added, “when Parliament passed the CHRA, the intention was to create an accessible law for everyone. We believe that today’s ruling undermines that intent, as it prevents people in Canada, particularly those living in very vulnerable situations, from accessing an available avenue for human rights justice. This is especially troubling in cases like these, where the discrimination at issue comes from the laws of our land.”

The judges unanimously rejected the appeal of the CHRC against decisions below from the Federal Court and Federal Court of Appeal which upheld the Canadian Human Rights Tribunal’s dismissal of human rights complaints made by the Mattson and Andrews families, some of whose members are deemed ineligible to be registered as “Indians” under the criteria set out in s. 6 of the Indian Act.

The families contended that the department formerly known as Indian and Northern Affairs Canada engaged in a discriminatory practice in the provision of “services,” contrary to s. 5 of the CHRA, when officials denied a form of registration under the Indian Act that the complainants would have been entitled to if past discriminatory policies, which are now repealed, had not been enacted. The Canadian Human Rights Tribunal determined that these complaints amounted, in substance, to a direct attack on the Indian Act and, moreover, that this law, or any legislation, is not a “service” within the meaning of the CHRA. Thus the complaints were not within the CHRA’s purview and the tribunal’s authority. Both the Federal Court and the Federal Court of Appeal affirmed this as a reasonable conclusion.

On behalf of six Supreme Court judges, Justice Clément Gascon applied the reasonableness standard and upheld the courts below. “In both of its decisions, the Tribunal was called upon to characterize the complaints before it and ascertain whether a discriminatory practice had been made out under the CHRA,” he explained. “This falls squarely within the presumption of deference. The Tribunal clearly had the authority to hear a complaint about a discriminatory practice, and the question of what falls within the meaning of ‘services’ is no more exceptional than questions previously found by the Court not to be true questions of jurisdiction. To find that the Tribunal was faced with a true question of vires here would only risk disinterring the jurisdiction/preliminary question doctrine that was clearly put to rest in Dunsmuir. Plainly, the definition of a service under the CHRA is not a true question of vires.”

Justice Gascon went on to hold that the tribunal’s “adjudicators reasonably concluded that the complaints before them were properly characterized as direct attacks on legislation, and that legislation in general did not fall within the meaning of ‘services’. Although human rights tribunals have taken various approaches to making a distinction between administrative services and legislation, this is a question of mixed fact and law squarely within their expertise, and they are best situated to develop an approach to making such distinctions.”

In their joint concurrence, Justices Suzanne Côté and Malcolm Rowe agreed that since the interpretation of s. 5 of the CHRA was in issue, the review standard of reasonableness presumptively applied.

"However, and without deciding on whether the nature of the question at issue falls within a category of correctness, the relevant contextual factors listed in Dunsmuir lead to the conclusion that the presumption of reasonableness has been rebutted in this case, such that the appropriate standard of review is correctness," the pair held.

They went on to conclude that the tribunal was correct in dismissing the complaints due to the lack of an underlying discriminatory practice.

In his lone concurrence, Justice Russell Brown held that the tribunal's decision was both reasonable and correct. He also expressed several reservations about the majority's intimation that correctness review for the murky category of vires (true questions of jurisdiction) might be eliminated in future.

"Deciding whether and how any 'euthanizing' the category of true questions of jurisdiction is to proceed will require a measure of circumspection," Justice Brown emphasized. "Abolition of that category will necessitate a concomitant shift towards a more flexible, rather than a strictly binary standard of review framework."

Cambridge University law professor Paul Daly, an expert on Canadian administrative law, told The Lawyer's Daily the CHRC's reaction to the outcome "aptly captures the stakes in the deference debate: whether courts or administrative agencies answer questions of law with nationwide policy significance."

On the core question of whether to favour administrative agencies or courts, the splits within the court have come into increasingly sharper focus over the last year, he pointed out.

"Justices Côté and Rowe clearly see the resolution of legal issues as a vital feature of the judicial role," he elaborated. "But it seems as if a majority of the judges believe that administrative agencies' interpretations of law are deserving of respect, and also that it is valuable to adhere to a firm rule in favour of deference, with contextual factors playing a secondary role. Meanwhile, Justice Brown has emerged as a champion of a context-sensitive approach, seemingly reluctant to ally himself with either of the two camps."

Daly said the judges' views may further develop in the lead-up to a scheduled blockbuster hearing in December on a trilogy of standard of review cases, but in the meantime "my money is on Justice Brown's middle ground becoming increasingly crowded."

For the majority, Justice Gascon wrote that "the difficult distinction between simple questions of jurisdiction (i.e., questions that determine the scope of one's authority) and true questions of vires (i.e., questions that determine whether one has authority to enter into the inquiry) has … tempted litigants and judges alike to return to a broad understanding of jurisdiction as justification for correctness review. The elusive search for true questions of vires may thus both threaten certainty for litigants and undermine legislative supremacy. While some have advocated for the conceptual necessity of correctness review for jurisdiction, reasonableness review is often more than sufficient to fulfil the courts' supervisory role with regard to the jurisdiction of the executive," he suggested. "Absent full

submissions by the parties on this issue it will be for future litigants to establish whether or not this category remains necessary."

The human rights case was triggered by complaints from members of two families who had Indian status they could not pass on to their children, or who were not eligible for status as a result of discriminatory policies they argued the government has not fully rectified.

The grandmother of the Matson siblings lost her Indian status when she married someone without Indian status. Later reforms gave the siblings status under s. s 6(2) of the Indian Act, but they can't pass that status on to any children they have with a non-status person. They urged that if their grandmother had never lost her status, they would have had s. 6(1) status — which would have allowed them to pass status on to their children in any event.

The complaints of the Andrews family were sparked by the negative fallout from a decision by one of its members to become a fully enfranchised Canadian citizen —which at the time required the man to give up his registered Indian status. Later reforms did not fully ameliorate the harm to his descendants, leaving his son with Indian status that could not be passed on to the next generation, and his granddaughter without any type of Indian status.

Le Barreau de l'austérité
Les baisses de cotisations coûteront 1,9 M$ au Barreau, qui propose néanmoins un budget équilibré
Droit Inc
Jean-François Parent
15 juin 2018

Un déficit de cotisations prévu de 1,87 million de dollars, inscrit dans les prévisions financières du Fonds général pour l'année 2019-2020, permet au Barreau du Québec de baisser les cotisations d'autant pour l'an prochain.

C'était là l'une des résolutions votées en Assemblée générale annuelle, laquelle s'est tenue le jeudi 14 juin.

Cette ponction dans les revenus n'empêche cependant par l'ordre des avocats de prévoir un budget équilibré pour cette même période, avec des prévisions de dépenses et de revenus équivalentes, chacune s'établissant à 31 millions de dollars.

Le Fonds général compte pour environ 83% des revenus et 87% des dépenses du Barreau. Les autres postes budgétaires sont répartis entre les fonds d'indemnisation, d'études juridiques, d'aide parentale et d'opération de l'immeuble, pour lesquels aucune prévision n'est offerte.

« Pour l'année 2018-2019, la cotisation au Barreau du Québec totalisera 855,25$ par membre. C'est une baisse de 29 % depuis quatre ans, et de 12 % cette année », explique le Barreau dans son plus récent rapport annuel. La cotisation du Barreau était de 1 209 dollars en 2015-16.

Les prévisions financières ont été présentées en même temps que les plus récents états financiers du Barreau lors de la dernière AGA des membres.

Une bonne année 2018

Les nouvelles financières sont bonnes pour l'exercice qui vient de se terminer. Au 31 mars 2018, le Barreau affiche un excédent total de 4,8 millions de dollars. L'excédent du fonds général est quant à lui de 2,1 millions de dollars.

Ce sont notamment les intérêts sur les comptes en fidéicommis, dont l'excédent est de 2,6 millions de dollars, qui alimentent l'important surplus soumis par le Barreau à ses quelque 26 000 membres.

Ces excédents ont été réalisés alors que le Barreau affiche des réductions de revenus de 1 million de dollars, et des réductions de dépenses de 1,7 million de dollars par rapport à 2017.

« Ces efforts sont non seulement ceux du conseil d'administration actuel, mais de ceux des dernières années aussi, qui ont fait de l'assainissement de nos finances une priorité », a indiqué le bâtonnier Paul-Matthieu Grondin dans sa présentation des états financiers de 2018.
Le fonds général, qui sert aux financer les activités du Barreau, affiche quant à lui un surplus cumulé, non affecté, de 12,28 millions de dollars.

Le salaire du bâtonnier

Les membres ont également voté sur le nouveau salaire de Paul-Matthieu Grondin. Important enjeu électoral des dernières campagnes au bâtonnat, ce salaire amputé de presque 100 000 dollars. « À compter de l'exercice 2018-2019, la rémunération du bâtonnier sera fixée à 235 575$, soit une baisse pérenne de 25 % du montant actuel », explique le Barreau.

Plus tôt cette année, le bâtonnier Grondin expliquait à Droit-Inc qu'il avait tenu la promesse faite en campagne de diminuer son salaire, qui était de 314 000 dollars. Il disait espérer que les membres appuieront eux aussi la décision lors de l'AGA du 14 juin.

La nouvelle rémunération du bâtonnier fera en sorte qu'il sera moins bien payé que la directrice générale pour l'exercice 2018-2019. Elle gagne de son côté 298 000 dollars.

Les administrateurs écopent un peu

Un comité se penchait cet hiver sur la rémunération des administrateurs élus. Les membres se sont aussi prononcés sur le traitement des administrateurs.

De ce côté aussi, on a coupé, en abolissant certains jetons de présence consentis aux administrateurs pour des séances imposées par la loi. « Le Comité est d'avis qu'il faut revoir la rémunération pour la formation offerte annuellement aux administrateurs et leur présence à l'assemblée générale annuelle

des membres (AGAM). Présentement, un jeton de présence de $800.00 (sic) est versé pour chacune de ces rencontres. »

Ce jeton est aboli, puisque ce « sont des obligations inhérentes au statut d'administrateur : - Pour la journée de formation : Il s'agit d'une activité obligatoire prévue à l'article 62.0.1 (4) du Code des professions. De plus, le Barreau paie pour cette formation et les membres obtiennent des heures de formation reconnues pour leur obligation professionnelle. - Pour l'AGAM : Il s'agit d'une activité obligatoire prévue à l'article 102 du Code des professions. Ils ont droit de parole, mais sans droit de vote. C'est le bâtonnier qui présente la reddition de compte aux membres.

Enfin, tous les autres membres du Barreau du Québec qui assistent à l'AGAM ne reçoivent aucune rémunération » se justifie le comité pour abolir ces rémunérations.
On réduit par ailleurs le jeton de 50 $, pour un paiement de 750 $ pour les séances régulières. On y inclut « temps de préparation, le temps de déplacement et le temps alloué à la séance ».

Les vice-présidents conservent cependant leur cachet annuel de 25 000 dollars, vu l'importance de la fonction et surtout la grande disponibilité requise d'eux.

Le recours contre Québec
On a enfin fait de la place dans l'ordre du jour pour discuter « de la demande introductive d'instance devant la Cour supérieure du Québec pour faire respecter les exigences constitutionnelles de la corédaction des lois ».

Le 24 mai dernier, une assemblée générale extraordinaire rassemblant plus de 750 avocats avait voté contre le projet du Barreau. On exigeait qu'il retire ses procédures demandant l'invalidation de toutes les lois du Québec.

Au lendemain de l'AG extraordinaire, le Barreau proposait à Québec de négocier le différend. « Le Barreau adopte une position qu'on veut raisonnable. On propose une suspension des procédures pendant qu'il y a négociation avec le gouvernement », expliquait à Droit-inc le bâtonnier Paul-Matthieu Grondin.

« L'assemblée générale nous a appris quelques leçons. » Dans une lettre également envoyée à la ministre de la Justice Stéphanie Vallée, le Barreau proposait donc de régler le dossier à l'amiable et « hors cour ».

Union calls for public inquiry into Phoenix pay debacle
Toronto Star
Alex Ballingall
June 15, 2018

OTTAWA — The head of Canada's largest federal public service union is calling on Prime Minister Justin Trudeau to launch a full-scale public inquiry into the Phoenix pay system debacle.

Tens of thousands of government workers have been paid incorrectly since the government switched to a new pay system in 2016, a decision that Auditor General Michael Ferguson lambasted in a recent report as an “incomprehensible failure” that exposed dysfunction in Ottawa’s bureaucratic culture.

Chris Aylward, national president of the Public Service Alliance of Canada, which represents 180,000 workers, called for the public inquiry Thursday night in a letter to Trudeau. He wrote that the government failed to consult the union about the changes under Phoenix, and argued those responsible for managing the system need to be held accountable.

“There is an absolute requirement to find a way to expose and overturn this kind of damaging culture in the federal public service,” Aylward wrote. “We cannot let such a disaster repeat itself.”

Ashley Michnowski, spokesperson for Public Services and Procurement Minister Carla Qualtrough, did not say whether the government would consider an inquiry. In an emailed statement, she blamed the previous Conservative government for “choosing a high-risk, cost-cutting route” for the Phoenix pay system, and said the government has a “clear path forward towards stabilization.”

While silent on the call for an inquiry, the government announced Friday that it will begin working with the Professional Institute of the Public Service of Canada (PIPSC), the second-largest government workers’ union, to develop a new pay system to replace Phoenix — a move that was promised with $16 million in funding in the 2018 budget.

“These pay problems are completely unacceptable. The Government of Canada is working on solutions to stabilize the existing pay system as quickly as possible and to develop options leading to the next generation system,” read a statement from PIPSC and the Treasury Board.

Phoenix was conceived under the previous Conservative government and came into effect in 2016, when the Liberals were in power. Officials from Public Services and Procurement Canada have explained the new system had trouble registering changes to employees’ regular pay, such as when someone received a promotion or went on parental leave. This created a situation in which thousands of workers have been overpaid, underpaid or, in some cases, not paid at all.

In a report on Phoenix tabled in Parliament on May 29, Ferguson concluded the system was mismanaged from the very beginning. The auditor general said there was a lack of oversight “which allowed Phoenix executives to implement the system even though they knew it had significant problems.” Instead of saving money, it has created problems and has cost Ottawa hundreds of millions of dollars so far, Ferguson concluded.

Canada’s top bureaucrat, Privy Council Clerk Michael Wernick, rejected Ferguson’s report at Parliament’s public accounts committee earlier this week. He said the report contains “sweeping generalizations,” and defended PSPC and the wider culture in the bureaucracy.

“That shows absolutely no respect for federal public sector workers in this country,” Aylward said of Wernick’s dismissal. “We want to get to get to the bottom of it, to ensure this never happens again.”

Ottawa pay mess shows how hard it is to fire anyone in this town
Ottawa Citizen
Barrie McKenna
June 17, 2018

It is one of the lamest whodunits in Canadian history.

We know that three senior bureaucrats badly botched the creation and roll-out of a new pay system for nearly 300,000 federal workers. The trio left behind a trail of misery, including a relentless stream of pay errors, disrupted lives and hundreds of millions of dollars in cost overruns.

But Ottawa won't say who the three are or how they were disciplined. We do know that no one was fired. And two of the three officials still work for the department that runs the pay system, Public Services and Procurement Canada; the other retired.

The identity of the trio − including an assistant deputy minister and an associate assistant deputy minister − must be the worst-kept secret inside the bureaucracy. Auditor-General Michael Ferguson laid out exactly what happened in a scathing report, calling the new Phoenix payroll system an "incomprehensible failure of project management and oversight." Anxious to stick to a schedule and stay on budget, the three officials launched the system in early 2016 even though they knew it was not working properly and had dangerous security holes, the report found.

The department of Public Services isn't naming names, citing "internal matters."

Nor is Privy Council Clerk Michael Wernick, the government's top civil servant and the de facto chief operating officer of the bureaucracy. Appearing last week before a parliamentary committee that is investigating the failed system, Mr. Wernick was more interested in taking swipes at Mr. Ferguson for smearing the integrity of the public service than laying blame.

Surely, the buck-passing has to stop somewhere. How can Canadians have faith in their government if no one is ever held accountable for the biggest mess ups?

Absent that, Mr. Ferguson is right. The culture inside the federal government is broken.

The mysterious Phoenix trio ignored dire warnings from outside consultants and officials in other departments that they were hurtling toward disaster. They failed to do a pilot test and had no back-up plan in place if anything went wrong. And they stripped the system of 100 key functions, such as paying employees who switch jobs or who file for back pay. They knew the system would not work properly and then apparently kept their own bosses in the dark about these problems as the system went live. All of this was done in the name of expediency and saving money, according to the Auditor-General.

Paying its employees is one of the most basic functions of any organization, and the federal government failed miserably. A system that was to have cost $310-million has soared to more than $1-billion, and the price is still rising as the government struggles to make the system do what it's supposed to do – pay

people what they are owed. Virtually every government worker has been touched in some way by the resulting mess, including tens of thousands of workers not paid for months and others paid too much (and then were overtaxed).

Given all that, you might expect heads to roll. Not in Ottawa. Public Services and Procurement Canada says only that the performance of senior officials was “assessed and appropriate measures taken.” The department did confirm that the officials involved did not get their bonuses in the year Phoenix was launched.

But what about the years before, when they made a series of fatal errors that condemned the launch to failure?

In the private sector, these would almost certainly be firing offences. Federal government leaders want to be paid on par with executives in the private sector, and many are. But they also enjoy a lot more job and pension security.

Mr. Wernick, the Clerk of the Privy Council, acknowledged that it’s extremely hard to fire anyone below the deputy minister rank for poor performance, citing protections provided by Public Service Employment Act. And he suggested that the government’s bonus and incentive system for senior managers may cause some to focus too much on cost over function.

That’s hardly confidence-inspiring for most of us who work in the private sector, where bonuses are rare and people frequently get fired when they mess up.