Federal Court chief justice calls for more independence as court faces budget crunch
Justice Paul Crampton says his court needs $25M more a year to deal with technology, translation and staffing
CBC News
Alison Crawford
June 27, 2017

Canada's Federal Court needs more independence from government as it deals with a funding crunch that threatens timely access to justice, says its chief justice.

In an interview with CBC News, Paul Crampton said it is inappropriate that the court, which decides disputes involving federal departments, tribunals and agencies, should have to go "cap in hand" to the government at budget time.

"It is unseemly and it seems wrong for a government that is appearing before the very body that is supposed to be holding it in check or adjudicating its cases, to be able to effectively determine what that other body does through the budget mechanism," Crampton said from his office in downtown Ottawa.

It's time to try something new, he said, where the judicial branch of government won't have to appeal directly to the executive branch.

He points to officers of Parliament, such as the information, privacy and ethics commissioners, who appear before a committee of parliamentarians.

"This parliamentary process that the parliamentary officers avail themselves of — it would be a step in the right direction. Clearly, I feel that some involvement of the legislative branch would be highly desirable."

Federal Court strikes down key provisions of Citizenship Act
Federal Court hearing landmark challenge on indefinite immigration detention
Federal Court orders public safety minister to make decision in immigration case
Crampton said his court is starving for resources.

"We don't have enough staff in the courtrooms. We don't have enough staff at the registries. And this is giving rise to delays. It comes right back to access to justice."

The chief justice said the Federal Court needs at least another $25 million to fill dozens of unfilled jobs, translate decisions and implement a new court records management system.

Over the last few years the chief justice said he's had to cover inflation, salary increases and infrastructure from a stagnant operating budget. Meanwhile, the IT system is just about ready to quit.

"We're facing within the next two or three years the real risk of a complete failure of that system," he said with exasperation. "We are now operating with a system that was created in the late '80s, with software that was programmed at that time, and there's virtually no one left now who can work with that code."

While Justice Minister Jody Wilson-Raybould has been supportive of his pleas for more funding, Crampton said the buck appears to stop at the Treasury Board Secretariat, which oversees government spending.

In response to a request for comment, a spokesperson for the justice minister's office referred to a statement prepared by the justice department that mentioned competing funding priorities, including the need to alleviate the pressure of large criminal caseloads by appointing 28 more judges to provincial superior courts.

"Unfortunately, however, the government was not in a position to also approve all of [Courts Administration Service's] request for funding under Budget 2017," referring to the arm's length office that administers courts at the federal level.

When asked for comment, a spokesperson for the Treasury Board president said "there was no Treasury Board connection" to CBC's inquiry.

Translation can take up to 18 months

In her mandate letter from Prime Minister Justin Trudeau, Wilson-Raybould was asked to work with TBS to "enhance the openness of government."

Crampton explained that must include the simultaneous release of decisions in both official languages. Right now, it can take up to 18 months to have documents translated.

In its most recent budget, the government set aside $2 million over two years to improve translation at the Federal Court. But Crampton said the court needs 10 times that amount.

The chief justice said openness also means electronic access to court records inside and outside the courtroom. He pointed to a recent pilot project where exhibits were accessed electronically and projected onto a screen inside the courtroom for all to see.

"They were saving at least an hour a day if not two hours a day, which is like 15 to 20 per cent per day, which is massive in a 400-day trial. We're talking registry time, judicial time, time people have to pay their lawyers," Crampton said.

Looking ahead, the chief justice is also projecting a significant increase in caseload due to, among other things, intellectual property disputes arising from the Canada-European Union trade agreement and a spike in refugee asylum claims.

$1.6M for private eyes to probe government harassment complaints
Global News
Monique Scotti
June 27, 2017

Since late 2015, the government of Canada has spent at least $1.6 million on outside private investigators to look into allegations of workplace harassment across various departments, Crown corporations and agencies.

Documents tabled last week in the House of Commons reveal that workplace harassment complaints are the most common reason the federal government seeks outside help from private eyes. And there is at least some indication that these contracts are being awarded because departments don't have the internal resources to handle every complaint.

Of the nine bodies that issued contracts for this purpose, the Department of National Defence has easily spent the most money.

Since November 2015, DND's bills for private investigations into harassment came to $526,340, with the largest contract costing $69,722 and the smallest $5,214. At least one contract, awarded this past winter and costing about $6,500, involved sexual harassment allegations that were discovered to be founded.

The department has been making a concerted effort over the last two years to crack down on what has been described as an entrenched culture of harassment, inappropriate workplace behaviour and misogyny.

According to DND spokesperson Daniel Le Bouthillier, Canada's military police still investigate any criminal or service offences involving alleged harassment. But "harassment that does not meet the criminal or service offence threshold is investigated through other means."

In order to ensure a certain standard of service, he explained, "we sometimes contract out such investigative services to third-party organizations."

Asked if this meant that DND's internal resources aren't adequate to handle the volume of complaints, Le Bouthillier said he wouldn't call the resources "inadequate."

"There are several contractors in that list (of private investigator contracts) that are from areas such as Nova Scotia, Edmonton and Toronto. We wouldn't have internal resources in those

places to address these types of issues, so it makes more sense to contract out. It's a bit of a niche area of work so we do it in a way that delivers results while being cost-effective."

Last fall, DND opened the four local Complaint Management Services centres on a trial basis to help handle more complaints internally. Le Bouthillier said they are "yielding positive results." Over the next few years, similar centres are expected to open their doors at military bases across Canada.

After DND, the second biggest spender on private workplace harassment investigations appears to be Health Canada, where the value of contracts totalled $279,874. (The department did not confirm if that amount has actually been spent yet, and some investigations may still be ongoing.)

The third biggest total was at Employment and Social Development Canada (ESDC), where actual spending as of last month sat at $256,911.

Health Canada spokesperson Sindy Souffront said that in accordance with government policy, her department's harassment complaint process is usually managed internally. But, she added, "an external investigator may be engaged to ensure additional perceived impartiality, supplement internal capacity, or both."

Over at ESDC, it was a similar story. A spokesperson confirmed that the majority of the department's private investigations are linked to allegations of harassment, and three were actually related to allegations of workplace violence.

"Where appropriate, ESDC leverages Public Services and Procurement Canada's 'Standing Offer Index' to engage neutral, impartial third-party investigators who are free from any actual or perceived conflicts of interest or the perception of bias," the spokesperson said.

Additional spending?

The documents were tabled last week in response to a written question submitted by Conservative MP John Nater.

They also list a dozen more contracts, across a handful of departments like Justice Canada and the Public Prosecution Service, that don't specifically cite "harassment" as the reason behind the probe. Instead, they describe the work as a "human resources investigation," "administrative investigation" or a "workplace investigation."

Global News did not include any of these contracts in the $1.6 million total. They represent around $187,000 in additional spending.

Still other departments said they weren't able to gather the requested information quickly enough to reply to Nater's question within six weeks.

The RCMP, for example, said its financial filing system "does not capture the requested information at the level of detail requested. As a result, the information requested cannot be obtained without an extensive manual review of financial files. This manual review could not be completed within the established timeline."

Canada Post was by far the least transparent government entity. It acknowledged awarding 18 separate contracts to private investigators, but would not reveal how much was spent, the reason for each contract, or the results of the investigations.

The other departments, corporations and agencies that hired private investigators between November 2015 and June of this year provided at least some of that information in response to Nater's question.

Cost of private investigations into harassment

Department of National Defence (spent as of June 2017): $526,340

Health Canada (contracted as of June 2017): $279,874

Employment/Social Development Canada (spent): $256,911

Global Affairs Canada (spent): $159,493

Canada Revenue Agency (spent): $152,557

Privy Council Office (contracted): $138,953

Canadian Food Inspection Agency (contracted): $46,578

Parole Board of Canada (spent): $35,546

Public Safety Canada (spent): $17,625

Danielle Smith: federal government's Phoenix pay system still a fiasco
News talk 770

When I interviewed Alexandre Blackburn about his experience trying to get paid by the federal government, most of the questions that came in from listeners were, "is this story for real?"

Brace yourself for something straight out of Yes Minister – the British comedy series pillorying bureaucratic incompetence. And yes, it is real.

The fiasco that is the federal government's Phoenix Pay System started making headlines a year ago. I thought the problems were resolved. Turns out they aren't.

Blackburn got hired by the federal government as a summer student processing passport applications in May 2015. From there, it has been a comedy of errors.

It took 16 weeks before he was entered into the system so he could get his first paycheck. The delay was apparently because there was someone else on the payroll with the same name. I asked him why they couldn't sort it out very simply by just comparing SIN numbers? That's a mystery.

The other problem is it appears there is a manual process to get pay adjusted for overtime, or time off. It appears this process is backlogged for months, perhaps even years, if the experience of others is any indication.

Waiting to get the extra pay isn't such a big deal for most workers when they are still on the job – but when they leave, it's a whole other problem.

Blackburn quit his job to go back to school on April 28, 2017. He was owed a cheque from the May 3 pay-period, his final paycheque from May 17 and his Record of Employment. Nearly two months later, he's received none of it.

His case isn't even the most egregious example. Some haven't been paid for over a year; others are facing financial hardship, or may lose their homes as they don't have enough money to pay the bills.

Imagine for a moment, if a private sector company were such scofflaws. Some government official would come down on them like a ton of bricks. Is it too much to ask the federal government to obey the law? Apparently so.

Coalition of Women's Groups to argue for pay equity at the Supreme Court of Canada
Marketwire
June 27, 2017
TORONTO, ONTARIO--(Marketwired - June 27, 2017) - On June 22, 2017 the Supreme Court of Canada granted the Ontario Equal Pay Coalition, the New Brunswick Coalition for Pay Equity and the Women's Leaf Education and Action Fund (LEAF) status to intervene in a pay equity case that is significant for women across Canada. At issue is women's access to pay equity in female-dominated workplaces such as childcare centres.

The constitutional challenge was brought by unions representing childcare workers, and others, in Quebec. The case challenges sections of Quebec's pay equity law that denied women in female-dominated workplaces access to pay equity for a five year period. The law also denied retroactive pay as a remedy for the wage discrimination the women experienced during that five year period. The Quebec unions representing the women workers say the Quebec law violates the right to equality guaranteed in the Canadian Charter of Rights and Freedoms.

The intervener coalition agrees. "This Coalition brings together two well-recognized pay equity expert organizations representing English and French language constituencies at both the provincial and federal levels, along with LEAF with its long-standing equality rights expertise," said Fay Faraday, a lawyer representing the Coalition.

"We want to ensure the Court applies a robust equality analysis that recognizes how systemic discrimination structures women's work," said Faraday. "There is a very direct connection between our gender-segregated labour market and women's lower wages."

"Women's access to pay equity, particularly in female-dominated workplaces, is a question of women's economic justice," said Patty Coates, Secretary-Treasurer of the Ontario Federation of Labour. As an active member of the Equal Pay Coalition, the Ontario Federation of Labour and its affiliates are very pleased by the Court's decision to enable the voices of women to be heard. The Supreme Court of Canada will hear the case on October 31, 2017. Fay Faraday and Jan Borowy are counsel representing the Coalition.

CONTACT INFORMATION
Fay Faraday: 416-389-4399
Jan Borowy: 416-985-2069
or Equal Pay Coalition at equalpaycoalition@gmail.com
www.equalpaycoalition.org

Why clicking ‘I agree’ may no longer mean you agree to everything
The Globe and Mail
Michael Geist
June 27, 2017

Michael Geist holds the Canada Research Chair in Internet and E-commerce Law at the University of Ottawa, Faculty of Law.

Facebook lost a major legal showdown at the Supreme Court of Canada last week, as the court refused to enforce a forum selection clause included in its standard online contract requiring that legal actions against it be brought in California. In doing so, the court paved the way for a privacy class-action lawsuit to proceed in British Columbia under provincial privacy law.

A majority of the court ruled that the unequal bargaining power between consumers and companies such as Facebook meant that the clause should not be enforced. While the ruling can be narrowly interpreted as an affirmation of the importance of privacy rights and as a rebuke to companies that seek to contract out of those rights through forum selection clauses, the decision could have a far more reaching effect, forcing a re-examination of non-negotiated online contracts.

Courts have typically been reluctant to reject forum selection clauses, citing the importance of contractual certainty. The majority noted that there is another issue at play, however. Justice Rosalie Abella asked the question that many Canadians might ask when asked to click "I agree" on the myriad of Internet sites and services that foist lengthy contracts on their users on a take-it-or-leave-it basis: "What does 'consent' mean when the agreement is said to be made by pressing a computer key? Can it realistically be said that the consumer turned his or her mind to all the terms and gave meaningful consent?"

The court's willingness to question whether it is appropriate to uncritically enforce all the terms contained in online contracts opens the door to rethinking a long-standing e-commerce approach that imposed sophisticated commercial contracting standards on unwary consumers.

In the days before the Internet and digital commerce, consumers rarely entered into formal contracts with large companies when interacting with friends, making copies of photographs to give to family, or purchasing music, videos or other media. The advent of digital technologies did more than just facilitate social media and new online services. It also brought with it Internet companies that mediated these activities governed by contracts that consumers were required to accept as condition for accessing the service.

The enforceability of these contracts has often been assumed, relying on e-commerce laws that confirmed the validity of the electronic contracting as well as traditional notions of offer and acceptance with consumers implicitly aware that their actions would be governed by the site or service terms of use. Yet these contracts were distinctly different from business-to-business commercial contracts that often involve painstaking negotiation and trade-offs that are well-understood by the parties. Consumers now enter into hundreds of online contracts that no one is expected to read from start to finish.

Indeed, with no ability to alter the terms or negotiate any changes, consumers have little incentive to read the fine print. The only alternative is to reject the service altogether, but for students required to use cloud-based services or digital textbooks, entertainment fans searching for legal alternatives to access content and individuals wanting to participate in social networks with their peers, there is no genuine choice.

Canada's highest court has now pulled back the veil on the not-so-secret side of Internet contracting. Far from being limited merely to obscure forum selection clauses, the Facebook ruling could be applied in other circumstances, such as attempts to sideline local consumer

protection laws or override fair-dealing rights by establishing contractual usage restrictions that run counter to the balance found in Canadian copyright law.

As Justice Abella noted, “when online consumer contracts of adhesion contain terms that unduly impede the ability of consumers to vindicate their rights in domestic courts, particularly their quasi-constitutional or constitutional rights, in my view, public policy concerns outweigh those favouring enforceability of a forum selection clause.”

Last week’s ruling rightly recognizes the dangers of uneven bargaining power in online contracts and the reality that consumers regularly click away their rights. By taking a strong stand against non-negotiated terms that place consumers at a significant disadvantage, the court has forced online companies to reconsider whether their agreements are fully enforceable and emboldened consumers to stand up for their rights.

Minister Wilson-Raybould Names New Director of Public Prosecutions
Newswire

OTTAWA, June 27, 2017 /CNW/ - The Honourable Jody Wilson-Raybould, Minister of Justice and Attorney General of Canada, today announced the Government's appointment of **Kathleen Roussel as the next Director of Public Prosecutions**. In accordance with the Director of Public Prosecutions Act, the appointment is for a term of seven years.

After graduating from the University of Ottawa French Common Law Program in 1992, Ms. Roussel practised criminal law in Ottawa. She joined the Department of Justice in 2001, holding various management positions of increasing responsibility, until her appointment as Deputy Director of the Public Prosecution Service of Canada in April 2013. In addition to her duties within the Public Prosecution Service, she is also a member of the Executive of the International Association of Prosecutors.

Ms. Roussel's appointment followed a rigorous selection process as set out in the Director of Public Prosecutions Act, as well as the Government's new open, transparent and merit-based approach to Governor in Council appointments.

Quick Facts

- The Government of Canada is committed to an open, transparent and merit-based selection process for Governor in Council appointments.
- The Public Prosecution Service of Canada (PPSC) was created on December 12, 2006, with the coming into force of the Director of Public Prosecutions Act.
- The PPSC is an independent prosecution service mandated to prosecute offences that are under the jurisdiction of the Attorney General of Canada.

- The PPSC reports to Parliament through the Attorney General of Canada. The relationship between the Attorney General and the Director is premised on respect for the independence of the prosecution function and the need to consult on important matters of general interest.

Canadian government announces judicial appointments in four provinces
Canadian Lawyer Magazine
Alexia Kapralos
June 27, 2017

Canadian Minister of Justice and Attorney General Jody Wilson-Raybould has announced another round of judicial appointments to Federal Courts and for Ontario, Quebec, British Columbia and Alberta.

The announcement was made on June 23 in Ottawa.

John B. Laskin, a partner at Torys LLP, has been appointed a judge of the Federal Court of Appeal, replacing Justice E.R. Dawson. In addition, **William F. Pentney, Deputy Minister of Justice and Deputy Attorney General of Canada, has been appointed a judge of the Federal Court, replacing Justice M.L. Phelan.**

In Ontario, five appointments have been made: Justice Andras Schreck, Markus Koehnen, Darlene Summers, Cynthia Petersen and Sally Gomery.

Schreck, a judge of the Ontario Court of Justice, is now an appointed judge of the Superior Court of Justice and for the Province of Ontario in Toronto. He precedes Justice N.L. Backhouse in this position.

Koehnen, who practised complex commercial litigation at McMillan LLP for 29 years, is replacing Justice F.J.C. Newbould as a Superior Court of Justice judge. He will also be a judge for the Province of Ontario in Toronto.

Summers, a sole practitioner with Thompson Summers Family Law, has been appointed a judge of the Superior Court of Justice, the Province of Ontario as well as a member of the Ottawa Family Court. She succedes Justice V.J. MacKinnon, who was elected as a supernumerary judge starting Sept. 5.

Replacing Justice M. Donohue, Petersen, a partner at Goldblatt Partners LLP, has been appointed a judge of the Superior Court of Justice and for the Province of Ontario in Brampton.

Finally for Ontario, Gomery, a senior partner at Norton Rose Fulbright LLP, has been appointed a judge of the Superior Court of Justice and for the province in Ottawa effective July 1.

For Quebec, six appointments have been made: Étienne Parent, Jean-François Émond, Simon Ruel, Jocelyn F. Rancourt, Peter Kalichman and Marie-France Vincent.

Parent, a judge of the Quebec Court of Appeal, has been appointed a judge of the Superior Court of Quebec for the district of Saint-Maurice (Shawinigan), replacing Justice R.W. Pronovost.

Superior Court of Quebec judge Rancourt has been appointed a judge on the Quebec Court of Appeal in Quebec City, replacing Parent. Émond, replacing Justice Simon Ruel, has also been appointed a judge of the Superior Court of Quebec for Quebec City. Previously, Émond served as a judge of the Quebec Court of Appeal.

Ruel has been elevated from the Quebec Court of Appeal, returning to the Superior Court of Quebec in Shawinigan. Replacing Rancourt is Vincent, a partner at Baribeau Vincent LLP, as a judge of the Superior Court of Quebec in Quebec City.

Lastly, Kalichman, a partner at Irving Mitchell Kalichman LLP, has been appointed a Superior Court of Quebec judge for the district of Montreal, replacing Justice Danielle Mayrand.

On the west coast, British Columbia has three new appointments: Leonard “Len” Marchand, Jr., Palbinder Kaur Shergill and Michael J. Brundrett.

All three judges are appointed to the Supreme Court of British Columbia. Marchand is appointed in Kelowna replacing Justice A.J. Beams; Shergill, a sole practitioner with Shergill & Company, is replacing Justice Elizabeth A. Arnold-Bailey in New Westminister and is the first Sikh judge ever appointed in Canada; and Brundrett is appointed in Vancouver, replacing Justice W.J. Harris, who resigned April 30.

In Alberta, Janice Ashcroft, senior legal counsel with the Alberta Human Rights Commission, was appointed a justice of the Court of Queen’s Bench of Alberta in Calgary.

'It's not right': Federal judge accuses government of chronic underfunding
CTV News
June 27, 2017

Canada’s Federal Court has been repeatedly denied much-needed funding by the federal government, leading to lengthy delays, according to its chief justice.

The main problem, says Federal Court Chief Justice Paul Crampton, is that the court tasked with hearing disputes involving federal bodies is forced to go to the government “cap in hand” for the money it needs.

Year after year, requests for increased funding have been denied, Crampton says.

“They cut our budget. They force us to absorb annual increases in salaries, inflation, and whatnot. So our ability to do what we are required to do under the constitution gets diminished,” Crampton told CTV’s Power Play on Tuesday.

He is now going public with his complaints and calling for more independence between the executive branch and judicial branch when it comes to funding.

Crampton, who was appointed by former Prime Minister Stephen Harper, says he thinks elected officials should help decide how much money the Federal Court receives.

“I think there should be greater involvement of Parliament,” Crampton said.

The Federal Court hears cases that fall under certain areas of federal law. For instance, the court hears claims brought forward against the federal government, reviews issues of national security like warrant requests, and checks the legality of actions taken by most federal offices.

An increase in funding could mean a total modernization of the way the court operates, Crampton said. By turning to technology, he says electronic courtrooms could help cut wait times and decrease expensive legal costs for those involved.

Instead, he says the courts are left scrambling simply to meet demand.

“We have been chronically underfunded now for a number of years, and what that results in is people having to wait much longer for their day in court, they have to wait much longer for their decisions to be issued, they have to spend much more time and money interfacing with the court,” he said.

“And so their confidence in the rule of law and their access to justice gets diminished, and that’s not a good thing.”

Court delays have become a major headache for the Canadian government. Several high-profile criminal cases have been recently thrown out over unreasonable delays. Last July, the Supreme Court ruled that a reasonable time to await trial means 18 months for provincial courts and 30 months for superior courts.

The Federal Court, which oversees legal disputes in the federal domain, is not directly affected by the R. v. Jordan ruling.

Still, Crampton says the Federal Court is being denied the ability to function to the best of its ability because the government doesn’t prioritize it in the budget.

“It seems that every single year there’s another priority that comes out of the blue that gets priority on the courts,” he said.

“And so the courts keep getting relegated to the back seat. But not only are we not getting additional funding, our actual existing funding each year for the last several years has declined.” Crampton says he’s fearful that the underfunding could lead to a weakening of the public’s confidence in the ability of the Federal Court to get its job done.

“I think [people will] start taking the law into their own hands, victims have to wait longer to see justice done, people who are accused of crimes have to wait longer for their day in court. Parties to dispute have to wait longer. Is not right,” he said.

Ottawa spends $1.2M on travel for Phoenix training boot camp
New deputy minister also appointed to oversee troubled public-servant pay system
CBC News
Katie Simpson
June 28, 2017

The federal government spent more than $1 million sending workers to a training boot camp in its ongoing efforts to fix its troubled payroll system, called Phoenix.

Compensation advisers from across the country have travelled to a facility in Gatineau, Que., for sessions described by government officials as mandatory.

"As part of our ongoing efforts to resolve pay issues as quickly as possible, we have been recruiting compensation advisers to work in our Gatineau office as well as our satellite offices," said Nicolas Boucher, a spokesperson for Public Services and Procurement Canada (PSPC).

Minister warns IBM's reputation at risk over Phoenix pay debacle
"New staff in the these locations as well as compensation experts from other government departments and agencies participating in our [boot camps] and helping us process transactions have travelled to Gatineau from various locations across Canada to attend mandatory training sessions."

Travel costs associated with those sessions top $1,224,000, according to the government's response to an order paper question from Conservative MP Deepak Obhrai. Although specifics are not broken down, the document says costs include accommodation, incidentals, and per diems between June 2016 and May 1, 2017.

In an email, Boucher added, "These costs are in accordance with the requirements of the Travel Directive, and are included in the previously announced budgets dedicated to resolving Phoenix issues."

Retired widower's $50k severance stuck in public pay system
"I'm happy something is getting done," said Kelly McCauley, the Conservative critic for Public Services and Procurement.

"Yesterday alone we had 14 calls about Phoenix to my office," McCauley said during a phone interview.

Since the Liberal government rolled out the Phoenix pay system, tens of thousands of government workers have been underpaid, overpaid or not paid at all. While problems first emerged in early 2016, many issues have still not been resolved, causing financial hardship for thousands of families.

So far, Ottawa has put more than $400 million toward fixing the public-servant payroll system.

Price tag for fixing Phoenix pay system now tops original cost
The Liberals have blamed the Phoenix debacle on the previous Conservative government, saying their efforts to cut costs by laying off compensation staffers set the system up to fail. The Tories have fired back that the Liberals rolled out the system when it clearly was not ready.

The federal government has also created a new deputy minister position tasked with overseeing the stabilization of Phoenix.

Les Linklater, who currently serves as associate deputy minister, will take on the role July 4, according to an internal staff memo obtained by CBC News.

"In addition, a new interdepartmental Deputy Minister Committee will be established. Its main role will be to provide direction and oversight to the actions that will be required to stabilize the HR and pay systems," the memo states.

Linklater, who also spent time in the Privy Council Office, will be working with both PSPC and the Treasury Board to ensure the departments are co-ordinating on Phoenix-related issues. He will be reporting directly to PSPC deputy minister Marie Lemay.

CBC News has also learned that earlier this week union leaders spoke with the government's new task force dedicated to resolving Phoenix issues.

In April, Ottawa announced Public Safety Minister Ralph Goodale would lead a new working group to find Phoenix solutions.

Ottawa announces new plan to tackle troubled Phoenix payroll system

Robyn Benson, president of the Public Service Alliance of Canada (PSAC), said that during the meeting she made three clear requests of the working group.

"We went to explain that they need to engage IBM to address the technological problems that there are. There are still problems within the system itself," Benson said during a phone interview.

She also said her union would like to see the satellite offices for compensation advisers, which were set up last year in response to the pay crisis, be kept open. PSAC would also wants more resources invested in the government's permanent pay centre in Miramichi, N.B.

Benson added she would like public servants to be paid by public servants, and called for an end to contracting out work related to Phoenix.

Benson said she was pleasantly surprised the committee seemed receptive to her pitch.

"I really think that they're quite embarrassed and they want to fix it," she said.

Roussel named Canada's new director of public prosecutions
Lawyer's Daily
John Chunn
June 28, 2017

Minister of Justice Jody Wilson-Raybould announced the appointment of Kathleen Roussel as the next director of public prosecutions.

In accordance with the Director of Public Prosecutions Act, the appointment is for a term of seven years.

After graduating from the University of Ottawa French Common Law Program in 1992, Roussel practised criminal law in Ottawa. She joined the Department of Justice in 2001, holding various management positions of increasing responsibility, until her appointment as deputy director of the Public Prosecution Service of Canada in April 2013.

In addition to her duties within the Public Prosecution Service, she is also a member of the executive of the International Association of Prosecutors.

Roussel's appointment followed a rigorous selection process as set out in the Director of Public Prosecutions Act, as well as the government's new open, transparent and merit-based approach to Governor in Council appointments.

Judicial advisory body will kickstart search for Nunavut judges

"For the first time in history, Inuit members make up the majority of Nunavut's Judicial Advisory Committee"

Nunatsiaq News

With the June 28 appointment of members to a Nunavut Judicial Advisory Committee, Nunavut should move closer to seeing new judges in the territory.

As of last October, there were two empty judicial seats out of six in Nunavut.

And over the past years, Nunavut has lost nearly half of its 92 volunteer deputy judges—who take the place of resident judges in many matters—to retirement and health concerns.

Now, the members of this new committee will expedite the process for assessing applicants to the federally-appointed judiciary, said a news release on the appointments.

The new committee, also announced by a news release in Inuktitut, also includes more Inuit than in previous years.

“For the first time in history, Inuit members make up the majority of Nunavut’s Judicial Advisory Committee. Today’s announcement is a milestone towards a stronger, more diverse judiciary,” said Jody Wilson-Raybould, Canada’s justice minister and attorney general.

Those new Inuit members include Iqaluit lawyer Joseph Murdoch-Flowers, John M. Hickes of Rankin Inlet, Eliyah Padluq of Kimmirut and Lena Pedersen of Kugluktuk.

The Justice Advisory Ccommittee is an independent body which provides recommendations to the justice minister on federal judicial appointments.

The members’ recommendations are merit-based but non-binding, the news release noted—and anyone seeking appointment to the bench must apply under a new judicial appointment process.

The committee members will, however, provide lists of “recommended” and “highly recommended” candidates for the minister’s consideration.

Nunavut’s committee members, appointed by the federal government by order-in-council for a two-year term, include:

• Justice Bonnie M. Tulloch, appointed to the Nunavut Court of Justice in 2012;

• Joseph Paul Murdoch-Flowers, a lawyer with the National Inquiry into Missing and Murdered Indigenous Women and Girls, who previously worked as a criminal defence lawyer with the Maliiganik Tukisiiniakvik legal clinic in Iqaluit;

• Kathryn Kellough, a staff criminal lawyer at Maliiganik Tukisiiniakvik;

• John M. Hickes, a former mayor of Rankin Inlet and current negotiator for Inuit organizations on various files who owns and operates two hotels in Rankin Inlet;

• Eliyah Padluq, an Inuktitut-speaking elder living in Kimmirut who helps organize the Elder Food Support Program and develops programming for the Baffin Correctional Centre's Pamiujaq Outpost Camp; and,

• Lena Pedersen of Kugluktuk, the first woman elected to the Northwest Territories Legislative Assembly from 1970-1975, who also, from 2001-2003, served on the Nunavut Law Commission, helping to facilitate public consultations in all Nunavut communities on legislation for the new territory.

Canadian Supreme Court strikes twice in one week
Shawn Brown
IAPP
June 30th 2017

The Supreme Court of Canada sent a strong signal to two of the biggest internet companies this past week, first in Douez v. Facebook, then in Google Inc. v. Equustek only five days later. Both of these cases may have far-reaching consequences, and it seems unlikely to be a coincidence that they were published so closely together.

Douez v. Facebook
Douez arises out of a proposed class-action against Facebook over its "Sponsored Stories" advertising program, which was in place from 2011 to 2014. Sponsored Stories turn Facebook user activities into advertisements that appear on other users' Facebook pages. For example, if a user checks in at a restaurant or "likes" an advertiser's page, this may appear in their friend's news feed as a sort of product endorsement.

A class-action was filed in 2012 against Facebook in British Columbia, one of four provinces that creates a statutory tort for invasion of privacy. The lawsuit alleges that Facebook has misappropriated the personality of class members in violation of s. 3(2) of the Privacy Act, which states that:

"It is a tort, actionable without proof of damage, for a person to use the name or portrait of another for the purpose of advertising or promoting the sale of, or other trading in, property or services,

unless that other, or a person entitled to consent on his or her behalf, consents to the use for that purpose."

This decision is about whether a forum selection clause in Facebook's Terms of Service, which states that all claims and disputes are to be resolved in a California Court, should be enforced to dismiss the class action. These types of clauses have been enforced in electronic consumer agreements since 1999, when an Ontario court dismissed a class-action lawsuit against Microsoft by enforcing a clause in the Microsoft Network Member Agreement requiring disputes to be resolved in the state of Washington.

However, in a 4–3 decision, the Supreme Court has decided that it is time to reign in forum selection clauses in consumer “clickwrap” agreements. And by doing so, it introduces a lot of uncertainty about when forum selection clauses will be enforced.

A couple of key factors were highlighted in deciding not to enforce the clause. First, the decision refers extensively to the “the quasi-constitutional privacy rights” implicated in the underlying cause of action. The majority of the court believes that privacy rights are especially important, and we now know that forum selection clauses are less likely to be enforced in privacy cases. However, we have no idea how this analysis applies to other causes of action, such as defamation or negligent misrepresentation.

Another important factor is the “extensive reach” of Facebook, for which there are, in the court’s words, “few comparable alternatives.” The court notes that approximately 40 percent of the province (about 1.8 million people) are Facebook users, and without explicitly saying it, suggests that British Columbians may feel as if they have no choice but to join the site. This only increases the inequality of bargaining power, making the forum selection clause that much more unfair.

Again, the court offers no guidance on the extent to which the relative size and market share of a company will contribute to a refusal to enforce a forum selection clause. For example, it is unclear whether such a clause would be enforced if a privacy claim were brought against a much smaller website.

The class action against Facebook will now proceed in British Columbia. It seems likely that this case will settle for what is a nominal amount of damages for each class member, as did a similar case in California in 2013. Some may believe that is a fair result in the circumstances.

However, the Supreme Court has upended the law on forum selection clauses, offering little guidance on the limits on their enforceability. The bottom line is that forum selection clauses will always be viewed with suspicion when they appear in consumer agreements, making it virtually impossible for businesses to predict when they can be relied upon.

Google Inc. v. Equustek

Google Inc. v. Equustek is a highly anticipated intellectual property decision, also coincidentally originating in British Columbia.

Equustek is a British Columbia technology company that has obtained several court orders aimed at stopping the defendant company (Google is a third party to the original case) from selling counterfeit goods under the plaintiff's name. Initially operating out of British Columbia, the defendant left Canada and continued selling counterfeit goods in defiance of the orders, using websites accessible by searching Google and other search engines. Google was willing to assist Equustek by de-indexing the defendant's websites from searches Google.ca but refused to de-index the sites from searches on Google made outside of Canada. This posed a significant problem for Equustek because most of its sales are to purchasers outside of Canada.

In a 7–2 decision, the Supreme Court agreed that Equustek should be granted a worldwide interlocutory injunction against Google, because "it is the only practical way" to stop the defendant from continuing to sell counterfeit products in defiance of court orders. This decision is obviously a significant concern for Google because it increases the prospect that the company will be drawn into disputes in every jurisdiction around the world, whether having to do with intellectual property or other matters. Further, the injunction requires Google to invest ongoing resources to maintaining the injunction as the defendant continues to launch new websites that must be delisted.

Although Equustek is not a privacy case, it will likely become an important precedent for asserting the jurisdiction of Canadian law on privacy (and other) issues in the future. In fact, the British Columbia Court of Appeals' decision in this case was cited earlier this year by the Federal Court of Canada in support of its decision to apply the Personal Information Protection and Electronic Documents Act to a Romanian-based company in A.T. v. Globe24h.com.

No escaping Canadian law

Douez and Equustek provide a clear signal that Canadian courts are not to shy away from asserting jurisdiction over the internet. Companies that do business in Canada should expect that Canadian law will be applied and enforced, regardless of whether they have any physical presence here, and, in some cases, irrespective of explicit contractual clauses to the contrary.

As the law and society evolve, Canadian judges go back to school
High-profile court cases have put focus on judicial training on issues such as sex assault and domestic violence.
Toronto Star
Alyshah Hasham
Sun., July 2, 2017

The woman in the witness box is defiant and clear as she recounts a litany of abuse to the court, including being sex trafficked, raped and held against her will.

She is an actress. So is the Crown, the judge and the accused men — one played by the son of one of the real judges who helped make this video. The script is taken verbatim from transcripts from a real case and it was made to educate judges about human trafficking, domestic violence and why a victim may not leave an abusive partner, may not call the police and may have an emotional connection to their abuser.

The goal was to learn to address these issues "institutionally as judges, individually as judges and individually as people," Alberta Court of Appeal Justice Sheilah Martin told a group of about 45 judges in a conference room at a downtown Toronto hotel.

The Star was given access to the conference as debates continue around what education judges receive about issues such as gender-based violence, how effective it is and whether education in sexual assault law should be mandatory — questions sparked by the inquiry into Alberta judge Robin Camp, who infamously asked a sexual assault complainant why she didn't just keep her knees together, and by a number of high-profile cases, including most recently an Alberta judge's shocking decision to jail an Indigenous sexual assault complainant for the duration of her testimony at a preliminary hearing.

At the conference, after watching two segments of the video, the group was invited to write down one word that describes how they feel about what they saw.

The responses read later by Martin included "horror," "sadness," "disillusionment" and "helpless."

During a break the judges submitted questions to a panel moderated by Martin and including fellow Alberta Court of Appeal Justice Sheila Greckol, U.S. judge Ann Goldstein from the International Association of Women Judges, and Nicole Barrett, an expert on law and human trafficking from the University of British Columbia.

The first question — how common is the woman's explanation for why she did not leave?
Barrett said the story is all too familiar.

"She is isolated from others, she lacks financial independence, she has broken self-esteem, she has a fear of escalated violence, she has a fear of retaliation, that they will tell her family, a psychological bond with her abuser," she said. "Once you start listing the reasons she doesn't leave, it becomes fairly overwhelming."

This particular complainant is somewhat of an outlier because of the clarity and detail of her memory, she noted.

The next question struck at the heart of why judges were in that room on a Thursday morning.

"Until this job and judicial education," the question began, "I had no way to be aware this happens to ordinary folk."

In the wake of the Camp inquiry and other high-profile cases, Ontario made it mandatory for new judges to be trained in sexual assault law. The Canadian Judicial Council, which oversees judicial education, made training for new judges officially mandatory in March.

A fast-tracked federal bill proposed by former Conservative leader Rona Ambrose is now before the Senate. It would require lawyers applying to be judges to have completed sexual assault law and social context education. It would also require the Canadian Judicial Council to report annually on what sexual assault-related education they provide, how many judges take part, and how many judges preside over sexual assault cases but have not taken such a seminar.

“Canadian courts are failing to send the message that sexual assault and all forms of violence against women are unacceptable,” says Lise Martin, executive director of Women's Shelters Canada, in her submission to the Status of Women Committee in support of mandatory and ongoing education for judges in gender-based violence and the impacts of trauma.

“We continue to see our work undermined by Canadian judges, who label domestic violence as a private matter and misunderstand the basic ideas and laws about consent and sexual assault,” Martin says.

This particular conference in June was unusual because it was only for women judges who make up just 38 per cent of the total number of federally appointed judges. The sessions on the topic “Safety and Security of Women,” which included a seminar on the issues presented by sexual assault trials, were organized by the federally-funded National Judicial Institute and the Canadian chapter of the International Association of Women Judges.

In an interview Superior Court Justice Patricia Hennessy, who is based in Sudbury and is currently working on judicial education for Indigenous issues, referred to the human trafficking case discussed earlier.

“The first step is to recognize that is not our reality,” she said, of the woman involved.

“Does it make sense that she would not have left. Does that make sense? That is what the defence would like us to conclude, it makes no sense that she would not have left. But we don't know her reality.”

Hennessey said judges do need ongoing education in various areas of the law and in changing social context — and that the training courses being developed by the National Judicial Institute and taught courts across the country are crucial.

“The criminal laws have changed as societies have changed,” Justice Martin said, adding that it is important for judges to understand how and why those changes happened.

Training for judges has shifted away from “talking heads” and instead is focused on problem-solving and group work, she said. That includes videos and expert analysis as in the Thursday seminar and “experiential learning” such as spending time with Indigenous communities.

“It’s the most effective thing we’ve ever seen,” Martin said. “Can it solve all the issues? No, it can’t.”

The goal of the “social context” education, specifically cited in the federal bill, is to help judges understand diverse life situations of the people that we serve, said Justice Adele Kent, who heads the National Judicial Institute. “Judges have to understand the people they are judging.”

That training examines race, disability, region, poverty, mental illness and gender-based violence and is designed, like the human trafficking seminar, with input from academics and community groups, she said, addressing criticism that the training doesn’t incorporate the experiences of those impacted.

“I think we all carry with us a certain amount of prejudice or stereotypical thinking,” Greckol said. “We all do and it’s defined by race and gender and . . . class, economic class is a big factor. So we come with that baggage and that is obviously going to weigh into our thinking about things. So I think what judicial education is about is disabusing our judges of predispositions to thinking in certain ways and the broadening of the mind to accept there are no predetermined answers to questions.”

She said it has been very useful for judges to have frank and open discussions about their prejudices and have educators explain why it is a myth or stereotype.

Then the question is, when training is given at optional conferences like this one, “are we preaching to the converted?” said Toronto Superior Court Judge Julie Thorburn, the organizer of this conference.

Ongoing training for judges in specific areas is not mandatory by law, but she said the education programs organized at each court twice a year are effectively mandatory. And those education courses are constantly improving, she said.

“At the end of the day I think we are talking about decency and sensitivity to people and situations, and sometimes it is difficult to train people to be decent and to be sensitive to others,” she said. “We try.”

At the conference in Toronto skepticism was expressed by judges about how effective sexual assault law training for applicants would be if it were just offered online to preserve anonymity. A better suggestion they said is requiring applicants to commit to ongoing judicial education. One judge questioned why sexual assault education is being singled out as compulsory, when training in other areas such as Indigenous law may be just as important.

There is an acknowledgement that there is a need for more diversity on the bench.

They said more also needs to be done across the board to tackle sexual assault — from the police and lawyers to alternative models from the criminal justice system.

In the courtroom “we can start from the very basics,” Kent says. “To be polite to people . . . to make sure people feel comfortable. To make people feel they are valued even if it ends up in an acquittal.”

Thorburn said it can be helpful to judges to hear expert evidence in certain cases in order for them to have something to rely on when assessing credibility.

Martin too stressed the importance of social science research. “Judges should not rely on untested assumptions about human behaviour,” she said.

There is no one way for people who have been traumatized to react. Victims of sexual assault do not have to have screamed or resisted to be credible.

But, she said, attitudes may not have changed with the law.

“We can work on those kind of underlying assumptions that may undercut credibility in a manner that isn’t fair and equal,” she said.

Un nouveau commissaire à la magistrature fédérale
Droit Inc
Martine Turenne
3 juillet 2017
La nomination de ce diplômé de l’Université d’Ottawa, qui s’occupera des juges, en activité et pensionnés, entre en vigueur immédiatement...

La ministre de la Justice et procureure général du Canada, Jody Wilson-Raybould, annonce la nomination de **Marc A. Giroux** à titre de commissaire à la magistrature fédérale.

Le commissaire relève directement de la ministre de la Justice. Le poste a été créé en 1978 en vertu d'une loi du Parlement du Canada pour protéger l'indépendance de la magistrature et pour lui assurer toute l'autonomie nécessaire vis-à-vis le ministère de la Justice.

Marc A. Giroux a obtenu des diplômes de la Faculté des arts de l'Université d'Ottawa en 1989 et de la Faculté de droit de cette même université en 1992. Il est devenu membre du Barreau du Haut-Canada en 1994. Ces douze dernières années, il a travaillé au Commissariat à la magistrature

fédérale occupant à la fois les postes de sous-commissaire et de commissaire intérimaire. Il est parfaitement bilingue.

La nomination de M. Giroux, qui entre en vigueur immédiatement, « a été faite selon un processus de sélection rigoureux partiellement énoncé dans la Loi sur les juges, écrit-on dans le communiqué, de même que selon la nouvelle approche ouverte, transparente et axée sur le mérite qu'a adoptée le gouvernement pour toute nomination du gouverneur en conseil ».

Pour mener à bien toutes ses activités (dont les services requis à plus de 1100 juges et 850 juges pensionnés et à leurs survivants au Canada), le commissaire compte sur une équipe composée d'un sous-commissaire, de sept directeurs et de quelque 70 autres employés.

Les neuf causes dont on parlera cet été
Radio-Canada
3 juillet 2017
Comme les avocats le savent, les palais de justice ne connaissent pas de répit l'été. Voici les causes d'intérêt à surveiller d'ici septembre...

Michel Cadotte L'accusé doit être de retour en cour le 7 juillet pour savoir s'il peut être remis en liberté en attendant son procès. Michel Cadotte, 55 ans, est accusé du meurtre non prémédité de sa conjointe, Jocelyne Lizotte, atteinte d'un niveau très avancé de la maladie d'Alzheimer. Au moment de son enquête sur remise en liberté, il avait affirmé avoir agi par compassion, pour mettre fin aux souffrances de sa femme qui n'avait plus de qualité de vie, selon lui.

Frédérick Gingras Frédérick Gingras, qui souffre de schizophrénie, doit subir son enquête préliminaire les 18 et 19 juillet prochains. Il fait face à quatre chefs d'accusation, soit deux de meurtre au premier degré et deux de tentatives de meurtre. L'homme a été arrêté dans la foulée de la cavale meurtrière qui avait eu lieu cet hiver entre Pointes-aux-Trembles et Brossard, et lors de laquelle une mère de famille, Chantal Cyr, avait notamment trouvé la mort.

Ismaël Habib Les observations sur la peine doivent avoir lieu le 17 août dans cette cause. Ismaël Habib vient tout juste d'être reconnu coupable d'avoir voulu quitter le Canada pour rejoindre une organisation terroriste. Il risque maximum 10 ans d'emprisonnement sur le chef lié au terrorisme et 2 ans pour le chef d'avoir eu en sa possession un faux passeport.

Bertrand Charest L'ex-entraîneur de ski a été reconnu coupable de 37 chefs d'accusation de nature sexuelle dans cette cause qui réunit neuf plaignantes. Il doit être de retour en cour le 23 août pour les observations sur la peine. Il risque un maximum de 14 ans de prison. Son avocat étudie toujours la possibilité de porter le jugement en appel.

Randy Tshilumba L'individu est accusé du meurtre au premier degré de Clémence Beaulieu-Patry, cette jeune fille de 20 ans qui avait été assassinée le 10 avril 2016 tandis qu'elle travaillait dans un magasin Maxi de l'île de Montréal. Le procès devant jury doit commencer dès le retour des vacances, en septembre.

Luck Mervil Le chanteur de 49 ans est accusé d'agression sexuelle. L'événement aurait fait une seule victime et se serait produit il y a plus de 20 ans. La victime alléguée était adolescente à l'époque. Son procès doit s'ouvrir au mois de septembre et devrait durer près de deux semaines.

El Mahdi Jamali et Sabrine Djermane Ce couple de jeunes étudiants du collège Maisonneuve est accusé d'avoir voulu quitter le Canada pour rejoindre une organisation terroriste et d'avoir eu en sa possession du matériel explosif. Leur procès conjoint, qui se déroulera devant jury, doit s'ouvrir en septembre et pourrait durer jusqu'à trois mois.

Alexandre Bissonnette L'homme de 27 ans, qui est l'auteur présumé de l'attentat dans une mosquée de Québec, est accusé de six meurtres prémédités. De nouveaux éléments de preuve avaient été déposés, forçant le report de son dossier. Il doit être de retour en cour le 8 septembre prochain.

Trois accusés dans la tragédie de Lac-Mégantic

Tom Harding Quatre ans après la tragédie de Lac-Mégantic, le procès de trois des accusés doit s'ouvrir à Sherbrooke. Parmi eux se trouve Tom Harding, le conducteur du train de la Montreal, Maine & Atlantic qui s'est emballé et a explosé au centre-ville de Lac-Mégantic, faisant 47 morts. Il est accusé de négligence criminelle ayant causé la mort. Le procès devrait se dérouler jusqu'en décembre.