

Press Clippings for the period of July 19th to 25th, 2016 / Revue de presse pour la période du 19  
au 25 juillet 2016

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## **Faulty software is main reason for public service pay problems, union says**

**Michelle Zillio, The Globe and Mail, July 22 2016**

The pay problems affecting more than 80,000 public servants appear to be rooted in more than insufficient training, as users complain of problems with the software the government purchased to manage its compensation system.

The union representing nearly 600 employees at the government's centralized pay centre in Miramichi, N.B., is disputing the Liberal government's claim that the problems stem from poor training. In addition to a lack of training and understaffing, the Public Service Alliance of Canada (PSAC) also blames the issues on software problems with Phoenix.

"Workers at the pay centre in Miramichi have been doing their best to pay people accurately and on time. But insufficient staff, training and flaws in the new Phoenix pay system are preventing these workers from doing so," PSAC said in an e-mail. "The software appears to have inherent problems that cannot be easily addressed, especially given the lack of sufficient staffing at the Miramichi pay centre."

More specifically, the union said the system is not equipped to process irregular pay, such as overtime, maternity top-ups and shift pay for workers on Canadian Coast Guard ships.

Another source who regularly uses Phoenix said employee names randomly disappear from the system, meaning there is no record of the public servant.

IBM, the software designer, said it does not comment on the specifics of its client agreements.

Phoenix was introduced as a part of the previous Conservative government's modernization plan for the 40-year-old pay system in an effort to consolidate services; the Liberals were responsible for implementing it. After 15 months of testing on 16,000 pay scenarios, Public Services and Procurement Minister Judy Foote said she was assured Phoenix was ready to launch its first phase across 34 government departments on Feb. 24.

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Ms. Foote said the government underestimated the amount of time it would take for all users to become trained and familiar with the system, and that the Phoenix software is fine.

However, PSAC said the government's description of the pay fiasco as a training problem is oversimplified. The union said it warned the government in 2013 that there could be problems without sufficient training.

PSAC is asking the government to take Phoenix offline and revert back to the old regional pay system while it is fixed.

Of the 300,000 people paid through Phoenix, 81,820 have missed paycheques, or been over or underpaid since the system launch in February.

## **Problèmes de paye des fonctionnaires : Trudeau promet d'agir**

**Terry Pedwell, Le Devoir, le 20 juillet 2016**

Le Bureau du Conseil privé (BCP) se chargera de remédier aux problèmes du système de paye des fonctionnaires, a annoncé Justin Trudeau, mercredi.

Le premier ministre a déclaré qu'il avait demandé au greffier du Conseil privé de prendre en charge la résolution des problèmes du système Phénix qui a connu d'importants ratés, versant notamment les salaires en retard ou de manière erronée.

Le BCP offre un appui au premier ministre et au cabinet quant aux questions opérationnelles du gouvernement fédéral.

M. Trudeau s'est engagé à se pencher personnellement sur la question dans la foulée des révélations de cette semaine selon lesquelles plus de 80 000 employés du gouvernement fédéral éprouvent des problèmes de rémunération.

Parmi ceux-ci, 720 fonctionnaires fédéraux n'ont reçu aucun chèque de paye et dans certains cas, depuis plusieurs mois – ce qui en aurait contraint plusieurs à se rendre à la limite de leur



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carte de crédit ou encore à emprunter de l'argent.

Le premier ministre a qualifié le nombre de fonctionnaires touchés de « *troublant* ». En conférence de presse à Gatineau, mercredi matin, il a assuré, en français, que le gouvernement viendrait en aide à « *ceux dans les situations les plus vulnérables d'abord* ».

La ministre des Services publics et de l'Approvisionnement, Judy Foote, a indiqué à La Presse canadienne, mardi, que tous les employés qui ont dû assumer des frais de cartes de crédit ou d'autres dépenses directement causées par Phénix seraient éventuellement remboursés.

Les syndicats représentant les fonctionnaires fédéraux, pour leur part, réclament que les responsables de l'implantation du système dysfonctionnel répondent de leurs actes. Justin Trudeau les invite à la patience, soutenant que le versement adéquat des salaires passe avant tout.

Selon des informations rapportées par Radio-Canada, un pépin de Phénix avait rendu accessibles les dossiers personnels des fonctionnaires fédéraux, qui comportent notamment leur numéro d'assurance sociale.

Gilles LeVasseur, de l'École de gestion Telfer à l'Université d'Ottawa, est d'avis que le gouvernement pourrait être traduit en justice si des informations confidentielles ont été compromises.

« *Si quelque chose est utilisé à mauvais escient, et c'est une fuite que vous avez étouffée ou que vous avez mal gérée, vous êtes aussi responsable des conséquences* », a-t-il expliqué, soulevant la possibilité d'une action collective.

Le vérificateur général du Canada doit également enquêter sur les défaillances de Phénix.

## **Trudeau promises to fix faulty new pay system that has left more than 700 civil servants, MPs unpaid**

**Jason Fekete, The National Post, July 20 2016**

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Prime Minister Justin Trudeau is trumpeting the new Canada Child Benefit that just landed in parents' bank accounts across the country, but the government's inability to properly pay tens of thousands of federal workers is proving to be a costly distraction for the Liberals.

Speaking at a news conference in Gatineau Wednesday to highlight the CCB payments that have started flowing, Trudeau promised to fix problems with the Phoenix pay system that have resulted in more than 80,000 public servants not being paid what they are owed.

The problems have also extended to members of Parliament, some of who quietly acknowledge they have not been paid in recent weeks.

Federal officials apologized this week for continuing issues with the new pay system, but admit it could take months to completely fix the problem.

Trudeau said the government is taking the situation "very seriously" and he is personally getting involved.

He said he has asked Privy Council Clerk Michael Wernick to oversee getting the Phoenix system functioning properly and to ensure everyone is paid what they are owed.

"We are working right away on helping the most vulnerable, while we make sure that the system functions for everyone, and it's something that I have engaged in personally and tasked the clerk of the Privy Council to oversee. We are making sure that this situation gets fixed for the families who are needing our help," Trudeau said.

"We are taking this very, very seriously and ensuring that people get the support and the pay that they are owed."

The PM noted that retiring workers aren't getting the right benefits, others have not been paid after being promoted, and "a troubling number of families" aren't being paid at all.

Asked whether heads will roll, Trudeau said the government's focus at this point is to fix the situation and get payments first to those who most need them.

The government has brought in more people to catch up on the pay backlog, he said.

"There will be time to talk about lessons learned down the road," Trudeau added.

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Public servants have been complaining for months about problems with their pay stubs, not receiving enough in benefits and even being paid too much. Some have experienced financial hardship.

Ottawa has promised to make emergency payments to some and is looking at ways to compensate others for expenses incurred because of the fiasco, such as missed credit card or mortgage payments.

#### Related

- [It could take Ottawa months to fix the broken payment system that left 80,000 civil servants out-of-pocket](#)
- [Public service payment woes: Government will rely on satellite centre until glitchy pay system is fixed](#)
- [Government expanding new pay system to 67 departments despite fact it's been a disaster so far](#)

Chris Aylward, executive vice-president of the Public Service Alliance of Canada, the country's largest federal public service union, said he's encouraged Trudeau is getting involved.

However, the fact the prime minister is personally engaged — and has tapped the Privy Council clerk — shows the gravity of the problem.

The Liberals made a “gross error in judgment” in trying to implement the new system this year when it was evident there were still significant bugs that needed to be worked out, he said.

“We've got a problem on our hands and that problem is Phoenix,” Aylward added.

“Unfortunately, they're more concerned about making political statements around the (Canada Child Benefit) than paying their own employees.”

Federal officials said this week most of the problems involve about 80,000 public servants who haven't been properly compensated for overtime and other payments.

At least 1,100 employees say they have had problems with payments for maternity and other leaves, while another 720 have received no paycheques, officials said.

Close to 500 workers should receive emergency payments by next week.

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Public Services and Procurement Minister Judy Foote asked in June for Auditor General Michael Ferguson to investigate the planning and implementation of the new pay system.

Phoenix, which was initiated by the then-Conservative government to replace a 40-year-old system, has been plagued by glitches since its rollout began in February.

The Liberal government has set up a satellite pay centre in Gatineau and expected to hire 100 new people there to help deal with the growing backlog of problems at the pay centre in Miramichi, N.B.

Phoenix is a new, off-the-shelf automated pay system that was introduced in two phases, starting in February with 34 federal departments.

The government launched the second phase of 67 departments in April, despite the pleas of public-sector unions and workers in Miramichi to delay it.

“There was absolutely no proper insight on this,” Aylward added.

The Phoenix pay system has also breached the privacy of potentially hundreds of thousands of workers, CBC News reported this week.

Records obtained from Public Services and Procurement Canada indicated up to 70,000 public servants had access to personal details of all 300,000 employees covered by the system, the network said.

Canada’s privacy commissioner has been informed of the problem, while Foote has said she only learned of the internal privacy breach this week.

## **Privy Council office takes lead in dealing with pay system catastrophe: Trudeau**

**Terry Pedwell, The Canadian Press, July 20 2016**

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The office that advises the prime minister and his cabinet on government operations is taking over efforts to fix the dysfunctional pay system that has short-changed tens of thousands of civil servants, Justin Trudeau said Wednesday.

The prime minister said it was unacceptable that a "troubling number" of civil servants have not received paycheques as a result of problems with the Phoenix system.

"We are working right away on helping the most vulnerable while we make sure that the system functions for everyone," Trudeau said at a news conference in Gatineau, Que.

"And it's something I have engaged in personally and tasked the clerk of the Privy Council to oversee."

It was revealed this week that more than 80,000 civil servants are impacted by the snafu. Among those affected are 720 government employees who haven't received paycheques at all, in some cases for months, forcing many to borrow money or max out credit cards to pay their bills.

Unions representing federal workers have demanded that those responsible for implementing the new pay system be held accountable for the breakdown, but the prime minister said sorting out whether anyone should face consequences is taking a back seat, for now, to ensuring people get paid.

"There will be time for 'lessons learned' down the road," said Trudeau.

"We're taking this very, very seriously and ensuring that people get the support and the pay that they are owed."

What will also have to wait is sorting out whether government employees were out-of-pocket for credit card charges and other expenses directly linked to the pay problems.

But anyone who incurred expenses that were no fault of their own should be reimbursed eventually, Public Services and Procurement Minister Judy Foote told The Canadian Press Tuesday.

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The CBC also reported Tuesday that a glitch in the new Phoenix system has allowed widespread access to employees' personnel records, including social insurance numbers.

That could result in legal action against the government if it's revealed that anyone's private information was compromised, said Gilles LeVasseur at the University of Ottawa's Telfer School of Management.

"If something is misused for whatever reason, and it's a leak that you have concealed or not properly dealt with, you're also liable for future consequences," he said.

"And that may bring, for example, a possible class-action if there's any damages that people may have suffered from that."

The auditor general has also been asked to investigate how the pay system failed.

## **Phoenix pay system a 'nightmare' come tax season, accountant says**

**Public servants could be bumped into higher bracket**  
**CBC News, July 20 2016**

Next tax season could be especially frustrating for the more than 80,000 government workers affected by the Phoenix pay system, warns an Ottawa accountant.

Government workers in various departments have complained about not being paid, being underpaid, or in some cases being overpaid.

"For people living paycheque to paycheque there's no words for what they're going through," said Charles Ghadban, a chartered professional accountant and certified management accountant.

"More than just the basic problem of putting food on the table and making mortgage payments and paying your bills... When it comes to taxes I could see people being taxed at a much higher rate even though they may not have made that much money."

He said people's T4s will be "thrown out of whack" and that could mean they'll be taxed at 35 to 40 per cent, compared to 20 per cent.



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An incorrect T4 will also have a ripple effect on deductions including employee's CPP contributions, employment insurance contributions and group benefit, explained Ghadban.

"It can be substantial. It's going to be a nightmare for the Canada Revenue Agency," he said. "People are going to be up in arms and revolting."

Ghadban also foresees situations where people will be forced to withdraw chunks from their savings, including RRSPs, to survive. In that case the money will be taxed.

### Track everything

"How is the government going to reimburse them? Are they going to reinstate their RRSP room? Are they going to give them their money back? It's going to be an administrative nightmare for the government," he said.

Ghadban said a few years ago the government issued a special kind of form, a T1198, for federal employees who were paid retroactively.

"So they may have to institute pretty much the same kind of solution," he said.

### Here's some advice to make next April less brow furrowing:

1. **Separate bank accounts:** If you're part of the group being overpaid, Ghadban suggests putting that money in a separate account and prepare to return it.
2. **Note your fines:** If you're being paid or it's inconsistent, keep track of the money you've spent drawing from your RRSP fund, loans and/or interest fees. "I'm sure those people are going to be reimbursed somehow," said Ghadban.
3. **Track how much you're getting paid:** Ghadban recommends keeping a tally of how much you should be receiving each pay period against what you're actually receiving. That way you can tell the Canada Revenue Agency what the discrepancies are.

Phoenix was introduced in early 2016 for some departments. About 720 public servants — mostly new hires and students — have not received pay. Another 1,100 have not received parental, long-term disability or severance payments, while more than 80,000 employees entitled to supplementary pay for extra duties, over-time or pay adjustments have had problems.

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## **Civil servants out of pocket due to pay system should be reimbursed: Foote**

**Terry Pedwell, The Globe and Mail, July 19 2016**

Civil servants who have been forced to max out credit cards or borrow money as a result of problems with the federal government's dysfunctional new pay system can expect to be compensated, the minister responsible for the system said Tuesday.

Public Services and Procurement Canada will review hardship cases one at a time, and make things right for anyone who has been placed in dire financial circumstances, minister Judy Foote told The Canadian Press.

"Nobody should be out-of-pocket as a result of something over which they had no control," Foote said in an interview.

And heads could roll once the dust settles from two separate investigations that have been launched into the new Phoenix pay system, said the minister, who wouldn't immediately point fingers over the malfunctioning paycheque dispensary.

"We are going to do a thorough analysis of what happened here, and find out exactly what went wrong, and let the chips fall where they may," said Foote.

The government acknowledged Monday that nearly 82,000 public servants have had trouble getting the compensation they are owed because of major problems with what is the biggest pay system in the country, serving roughly 300,000 civil servants.

Of those who've experienced problems, 720 government workers haven't been paid at all — some for months — although the government is pledging almost 500 of them will see paycheques by the middle of next week.

Another 1,100 people, including many who have left the public service and have not received compensation such as severance pay, are considered as the next most serious priority.

While her department's main focus now is on ensuring that people who have not received their paycheques have money to pay their bills, Foote said the auditor general has agreed to a request to investigate the pay system from when it was first adopted to its present day problems.

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Already, officials have concluded that part of the problem stems from a lack of training for the people responsible for implementing the system.

But the minister should have seen it coming because she was warned that people weren't ready, say the Opposition Conservatives, who initially contracted creation of the system through IBM.

"Despite the recommendations of senior officials at the Treasury Board Secretariat, the Liberals forced the implementation of a system that was not fully operational, putting in jeopardy the financial stability of thousands of public servants," Conservative public service critic Steven Blaney said in a statement.

"The Liberals are fully responsible for the dramatic results of the early deployment of the Phoenix pay system."

Calling Foote "indifferent," Blaney noted that the minister underestimate the seriousness of the situation during the last parliamentary session by saying that only 77 employees were affected.

Thirteen public service unions are taking the government to Federal Court over the matter, demanding that the government pay public servants properly and punctually.

The Public Service Alliance of Canada has also called on the government to take Phoenix offline and revert to the old system.

That's not possible, said Foote, because most of the employees who worked with the prior system have left government.

## **Phénix exposerait des informations personnelles**

**Le Droit, le 19 juillet 2016**

Selon des informations colligées par CBC, en plus d'éprouver des problèmes avec la rémunération de fonctionnaires, le nouveau système de paie Phénix contiendrait une brèche donnant accès aux informations personnelles de ces mêmes employés.

La brèche permettrait à environ 70 000 employés d'accéder aux dossiers de 300 000 employés couverts par le système. Ces dossiers comprennent des informations personnelles, dont le numéro d'assurance sociale.

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CBC indique que des hauts placés de la fonction publique ont été avisés de cette faille dans Phénix dès le 18 janvier, mais qu'ils ont tout de même pris la décision d'implanter le système au printemps.

Le Commissariat à la protection de la vie privée du Canada aurait été mis au courant de la brèche, tout comme la ministre des Services publics et de l'Approvisionnement, Judy Foote, selon les informations dévoilées par CBC.

La ministre a également indiqué qu'à ce jour, aucune de ces informations n'a été rendue publique.

## **Phoenix pay system also breached federal workers' privacy**

**Newly disclosed documents show troubled federal pay system had a flaw that compromised personal info**

**Dean Beeby, CBC News, July 19 2016**

A dysfunctional compensation system that's withholding paycheques from federal workers has also been breaching their privacy, CBC News has learned.

Newly released documents show senior officials were warned as early as Jan. 18 that the new Phoenix system has a flaw that allows widespread access to employees' personnel records, including social insurance numbers.

- [Shared Services Canada 'can work' says Minister in wake of latest critical incident](#)

Despite the warning, the faulty software was broadly implemented this spring — without alerting the unions or any employees that their private details were no longer secure.

The disclosure of a massive privacy breach appears in documents obtained by CBC News under the Access to Information Act, deepening a crisis that has already touched some 80,000 public servants and triggered a wave of hiring to patch the problems.

The briefing material prepared by Public Services and Procurement Canada indicates that up to 70,000 public servants had access to the personal details of all 300,000 employees covered by the system.

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A spokeswoman for Canada's privacy commissioner confirmed the department "has reported this matter to our office and we have followed up with them." Valerie Lawton said she could provide no further details.

The minister in charge, Judy Foote, said she learned only this week of the internal breach of private information. "I am aware of it, and I've been told that none of the information became public," she said in an interview.

### Over to privacy commissioner

Foote said she has turned the matter over to the privacy commissioner for investigation, and will focus on getting people paid.

An official of a union representing 140,000 federal workers said he learned of the privacy breach on Tuesday from CBC News.

"This is the first time we're hearing about this," Chris Aylward, vice-president of the Public Service Alliance of Canada, said in an interview.

"It's another demonstration of how much of a boondoggle this whole Phoenix system really has become now.... It has just become appalling to us, to say the least."

Unfortunately, this is not an unforeseen situation.- *April 2016 briefing document noting privacy-breach issue was known in January 2016.*

The released documents show that information about the privacy breach was removed from a key accountability document, called a Privacy Impact Assessment, that the department must compile whenever a new program or system like Phoenix is introduced that could affect privacy.

Details about the Phoenix privacy flaw were purged from the report on Jan. 21, after department officials assured that "the issue had been resolved."

In fact, the flaw persisted at least through April and was identified as "material" with the "highest risk impact" because of the potential for identity theft. As one document noted: "Unfortunately, this is not an unforeseen situation."

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The department has been assuring all government employees for months that Phoenix protects their privacy, with one document stating: "Phoenix is secure and will ensure that your personal information is protected."

The Phoenix system was supposed to allow only designated human resource individuals within a department to have access to the personnel records of workers within the same department.

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### Phoenix falling

CBC Ottawa has been collecting stories from civil servants, part-time employees and student workers who have been affected by the Phoenix payroll system problems. Here are some of their stories:

- [Phoenix problems make public servant feel 'penalized'](#)
- [Public servant not getting any health or dental benefits](#)
- [Cancer survivor unpaid since return to work](#)
- [Single mom maxed out after 2 months without pay](#)
- [Without pay, student caught in desperate catch-22](#)

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But the flaw allowed thousands of designated officials to get access to records of every worker in every department.

It was not immediately clear whether the flaw has been corrected. Foote said department officials would provide a briefing about the issue on Thursday.

The documents say that the flaw is in violation of Section 8 of the Privacy Act, which says that personal information shall not be disclosed, without consent, except for the purpose it was obtained or compiled for, or for a use consistent with that purpose. And they warn Ottawa could be subject to legal action.

Foote and Treasury Board President Scott Brison have each blamed the previous government for the Phoenix boondoggle, though the decision to roll out the system occurred earlier this year under the Liberal government's watch.

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## **System glitch leaves 80,000 public servants waiting for pay**

**Michelle Zilio, The Globe and Mail, July 18 2016**

At least 80,000 public servants have had trouble getting the compensation they are owed because of major problems in the government's new pay system, Phoenix, and it will be months before all of the issues are resolved.

Department officials said that of the 300,000 public servants paid through the Phoenix system, 81,820 – nearly a third – have been affected since it went into operation in February. Speaking to reporters in Ottawa on Monday, Public Services and Procurement Canada deputy minister Marie Lemay said departmental staff in Gatineau, Que., and Miramichi, N.B., where the main pay centre is based, are working around the clock to get the problems fixed.

Under the new system, the affected public servants have missed paycheques, been over- or underpaid, or denied health benefits. It is not clear why these workers were affected.

"I am deeply concerned about the pay problems being reported by public servants," said Ms. Lemay, who joined the department April 11. "Ensuring that our staff are paid what they earned is our top priority. This situation is completely unacceptable."

While Ms. Lemay repeatedly expressed disappointment over the pay issues, she refused to say whether those responsible would be disciplined or fired. She said the department will evaluate the process. Public Services and Procurement Minister Judy Foote has asked Auditor-General Michael Ferguson to review the planning and implementation of Phoenix.

The Canadian Taxpayers Federation said accountability is needed for the Phoenix problems.

"Certainly some form of sanction is probably appropriate. At a private company, this sort of incompetence would have consequences, and it should in the public sector as well," said Aaron Wudrick, federal director of CTF.

Of the 300,000 public servants paid by Phoenix, 80,000 have not received supplementary pay such as overtime or pay increments. Another 1,100 public servants leaving the government for reasons such as maternity leave, disability leave or retirement also reported problems, while 720 have missed entire pay cheques.



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Ms. Lemay said the department's priority is paying those 720. On July 27, 486 of them will be fully compensated, and the remaining cases will be dealt with as quickly as possible.

Next up will be the 1,100 people who have left the public service and not received compensation such as severance pay. Ms. Lemay said these cases will be dealt with in a "matter of weeks."

Finally, the 80,000 public servants who are waiting on supplementary pay will be dealt with in the coming months. Ms. Lemay said that timeline is dependent on the number of new workers the government can hire at its temporary pay centre, which was set up in Gatineau last month.

The government had planned to hire 100 for Gatineau, but only 56 are currently working there, according to Ms. Lemay. That number will grow to 89 in the coming weeks. The government has struck a deal with the Public Service Alliance of Canada (PSAC) to hire workers for the Gatineau centre who had been laid off by the Conservative government in cutbacks. Ms. Lemay said they are hoping to have a total of 150.

Ms. Lemay also announced on Monday that the phone line capacity in Miramichi will be increased, and "technical enhancements" will be made to Phoenix to allow departments to view their transactions in the system so they can help resolve pay issues stemming from incomplete or inaccurate information.

However, Phoenix is not the crux of the problem. Ms. Lemay said the government underestimated the time and training needed to move to the new system.

She said the government is also considering compensating public servants for expenses incurred due to improper payment, including late fees – a demand public service unions have made.

Thirteen public service unions are taking the government to Federal Court over the matter, seeking a ruling that the government must pay public servants properly and punctually. After Monday's technical briefing, PSAC vice-president Chris Aylward said his union is considering taking further action against the government as the Phoenix problems continue, but did not expand on the union's specific plans.

## **Des ennuis avec la paie d'au moins 80 000 fonctionnaires**

**Julien Paquette, le Droit, le 18 juillet 2016**



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Les témoignages se multipliaient et les différents syndicats de la fonction publique sonnaient l'alarme depuis plusieurs semaines. Lundi, Travaux publics et Services gouvernementaux Canada a confirmé l'ampleur des problèmes liés à l'implantation du système de paie Phénix.

Au total, ce sont plus de 80 000 fonctionnaires qui ont été touchés d'une manière ou d'une autre, a confirmé la sous-ministre Marie Lemay.

«Je suis profondément inquiète de cette situation», affirmait M<sup>me</sup> Lemay d'entrée de jeu lors d'une conférence de presse visant à faire le point sur les ratés de Phénix. «Cette situation est inacceptable et nous allons travailler sans relâche pour résoudre cette situation.»

La majorité des cas, selon Marie Lemay, sont des problèmes d'ajustements liés à une récente augmentation de salaire - une promotion, un remplacement ou des heures supplémentaires.

Il y aurait également des problèmes liés à la rémunération d'employés qui profitent d'un congé sans solde, d'un congé de maternité ou d'un départ prolongé pour invalidité. Ces cas devraient être réglés au cours des prochaines semaines, selon la sous-ministre.

La priorité de Travaux publics et Services gouvernementaux Canada sera toutefois d'assurer la rémunération des travailleurs qui n'ont tout simplement pas reçu de paie. Ils seraient 720 dans cette situation et plus de 480 d'entre eux seront payés lors de la prochaine journée de paye, soit le 27 juillet prochain.

«Tous ceux qui ne reçoivent pas de paye devraient communiquer avec nous le plus rapidement possible», souligne Marie Lemay, en précisant que la meilleure façon de le faire est en remplissant le formulaire de rétroaction en ligne sur le site web du ministère.

Le vice-président exécutif régional de l'Alliance de la fonction publique du Canada, Larry Rousseau, se dit satisfait de voir le gouvernement admettre l'ampleur des problèmes liés à l'implantation de Phénix.

M. Rousseau est toutefois sceptique quant à la capacité de Travaux publics et Services gouvernementaux Canada de rembourser rapidement tous les employés qui n'ont pas été payés à la hauteur de leur travail, malgré l'annonce de l'embauche d'employés supplémentaires à Miramichi et Gatineau pour résoudre la crise.

«D'après moi, ce sera un travail de longue haleine», dit-il.

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Larry Rousseau s'est également réjoui que la sous-ministre Marie Lemay évoque la possibilité que le gouvernement dédommage les employés affectés par cette situation. Il souligne cependant que cela va coûter cher aux contribuables.

«On voit ce qui arrive, on a voulu transférer le système d'une organisation privée à un environnement d'administration publique. Ce n'est pas juste comme installer un logiciel sur son ordinateur.»

Durant son point de presse, Marie Lemay a d'ailleurs reconnu qu'il y avait eu un manque de planification lors du transfert vers le système de paie Phénix.

**- Avec La Presse Canadienne**

*Le précédent gouvernement à blâmer?*

Le vice-président exécutif régional de l'Alliance de la fonction publique du Canada, Larry Rousseau, attend impatiemment la suite des choses dans le dossier du système de paie Phénix. Il espère notamment que toute la lumière soit faite sur ce fiasco par le Bureau du vérificateur général du Canada.

Rappelons que la ministre des Services publics et de l'Approvisionnement, Judy Foote, a indiqué avoir demandé au vérificateur général d'enquêter.

M. Rousseau a déjà sa petite idée de ce qui pourrait se retrouver dans un éventuel rapport.

«Il va falloir remonter jusqu'au début pour savoir qui a pris les décisions, quelles ont été les décisions qui ont été prises. J'ai l'impression que sous le gouvernement précédent, et c'est là que je rejoins le gouvernement actuel [...], aurait pris un peu plus à la légère les problèmes que nous avons actuellement. Je n'ai jamais eu le sentiment, avec le gouvernement précédent, qu'ils étaient prêts à respecter les conventions collectives, ni à prendre au sérieux les congés qu'on peut avoir, les codes qu'on peut avoir.»

## **Officials apologize as more than 80,000 civil servants have pay issues**

**The Canadian Press, The Globe and Mail, July 18 2016**

Government officials say more than 80,000 federal employees have experienced problems getting their proper paycheque.

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Officials apologized today for the magnitude of issues created by a new pay system known as Phoenix.

The majority of problems involve civil servants who didn't receive proper compensation for overtime and other extraneous payments.

But officials say at least 1,100 employees have raised issues surrounding payments for maternity and other leaves.

And more than 700 employees have complained of receiving no paycheque at all.

Officials said about 400 workers should receive emergency payments by next week, but it could take months for the government to fix all the pay problems.

### **PPSC Annual Report Tabled in Parliament**

#### **PPSC, July 21 2016**

The Director of Public Prosecutions, Brian Saunders, today announced the tabling in Parliament of the Public Prosecution Service of Canada Annual Report 2015-2016. The report covers the period from April 1, 2015, to March 31, 2016.

In 2015-2016, the PPSC worked on 72,538 files. This includes 41,661 files opened during the year and 30,877 carried over from previous years. While drug prosecutions continue to represent a significant proportion of its total caseload, the PPSC also conducted prosecutions in a number of areas including environmental, economic, immigration, and terrorism offences.

The report includes a section provided by Commissioner of Canada Elections (CCE), Yves Côté, on the operations of the CCE for the 2015-2016 period.

"The report highlights the significant work undertaken by PPSC employees, in various capacities and across all PPSC offices," said Mr. Saunders. "I would like to thank all PPSC employees for their hard work and dedication throughout the year, which enable the organization to consistently deliver on its mandate. Throughout the year, PPSC employees exemplified our key values of respect, integrity, excellence, and leadership."

The PPSC is responsible for prosecuting offences under federal jurisdiction and provides prosecution-related advice to investigative and law enforcement agencies. As of March, 31, 2016, the organization had 1,053 employees, 536 of whom were lawyers. The PPSC also retained the services of 409 standing agents from 186 private-sector law firms.

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## **DEPOT DU RAPPORT ANNUEL DU SPPC AU PARLEMENT**

### **SPPC, LE 21 JUILLET 2016**

Brian Saunders, directeur des poursuites pénales du Canada, a annoncé aujourd'hui le dépôt au Parlement du *Rapport annuel 2015-2016 du Service des poursuites pénales du Canada*. Le Rapport couvre la période du 1<sup>er</sup> avril 2015 au 31 mars 2016.

En 2015-2016, le SPPC a traité 72 538 dossiers, notamment 41 661 dossiers ouverts au cours de l'année et 30 877 dossiers reportés des années précédentes. Même si les poursuites en matière de stupéfiant continuent de représenter une partie importante de sa charge de travail globale, le SPPC a également mené des poursuites dans de nombreux domaines, y compris des poursuites concernant des infractions environnementales ou économiques, ainsi que celles en matière d'immigration et de terrorisme.

Le Rapport comprend une partie fournie par le commissaire aux élections fédérales (CEF), Yves Côté, sur les activités du CEF pour la période 2015-2016.

Voici les propos de M. Saunders à cet égard : « Ce Rapport souligne les travaux considérables entrepris par les employés du SPPC, à divers titres et dans l'ensemble des bureaux du SPPC. Je souhaiterais remercier tous les employés du SPPC pour leur travail acharné et pour leur dévouement tout au long de l'année, grâce auxquels l'organisation est en mesure de s'acquitter de son mandat. Au cours de l'année, les employés du SPPC ont incarné les valeurs fondamentales de l'organisation, à savoir le respect, l'intégrité, l'excellence et le leadership. »

Le SPPC est chargé d'intenter des poursuites relativement à des infractions de compétence fédérale et fournit des services de consultation en matière de poursuites aux organismes d'enquête et d'application de la loi. Le 31 mars 2016, l'organisation comptait 1 053 employés, dont 536 avocats. Le SPPC a fait également appel aux services de 409 mandataires permanents issus de 186 cabinets d'avocats du secteur privé.

## **Canada must boost racial diversity in 'judiciary of whiteness,' advocates urge**

**A report found just 1 per cent of Canada's 2,160 judges in the provincial superior and lower courts are aboriginal, while 3 per cent are racial minorities**

**Michael Tutton, The Toronto Star, July 18 2016**

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A study showing a dearth of minority judges in Canada has advocates suggesting the country must seize a unique opportunity to increase racial diversity in a “judiciary of whiteness.”

“After many years of saying this is an important issue, it’s very disappointing to see how low the numbers are,” said Naiomi Metallic, a 35-year-old Mi’kmaq woman who is the chair of aboriginal law and policy at Dalhousie University.

A May report in the online version of Policy Options magazine estimates just 1 per cent of Canada’s 2,160 judges in the provincial superior and lower courts are aboriginal, while 3 per cent are racial minorities.

Andrew Griffith, a former director general of Citizenship and Multiculturalism and author of the article, says he’s hopeful the Liberal government will follow up on promises of reforms, but he adds, “at the current level, there’s an obvious gap.”

His study was a laborious task of pouring through hundreds of biographies to create a “reasonable picture” of judicial diversity, as neither the federal Office of the Commissioner for Federal Judicial Affairs nor most provinces keep statistics.

“It’s a judiciary of whiteness,” said Metallic, who is also a member of a Nova Scotia Bar Society committee trying to address racial issues in the profession.

“Powerful institutions ought to reflect the societies they serve.”

Last month, the Trudeau government included an aboriginal judge and an Asian Canadian among federal 15 appointments, and Justice Minister Jody Wilson-Raybould has made a general commitment to increase diversity in the judiciary.

But Metallic — who graduated from the Indigenous Blacks and Mi’kmaq program at Dalhousie University over a decade ago — said she and other advocates will be watching carefully over the next year, with more than 41 vacancies currently open among federally appointed positions, and about 40 provincial positions open across the country. There are also openings in the country’s Federal Court and the Supreme Court of Canada.

Several provinces declined to provide estimates on the number of vacant judgeships.

Marilyn Poitras, a Métis lawyer in Saskatoon and professor at the College of Law at the University of Saskatchewan, said having only two indigenous judges out of 101 judges in a province where 16 per cent of the population is aboriginal is unacceptable.

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The country is losing out on the opportunity to gain from Indigenous perspectives on everything from sentencing to the factors that lead to crime, she said.

“When you start to incorporate Indigenous thinking into the justice model, you start talking a lot more about preventative measures and that’s where we should be taking things,” she said in an interview.

Both Poitras and Metallic point to a growing pool of minority graduates to draw from. For example, Dalhousie has graduated 175 black and aboriginal lawyers through a specialized program over the two decades — creating a pool of potential applicants for Nova Scotia’s five upcoming positions.

Griffith found that in the lower courts — where the bulk of the child welfare and criminal justice cases are heard — there were only 52 visible minority judges and 19 indigenous judges among the 1,132 judges.

In Quebec, Griffith noted three visible minority judges out of more than 500, despite bar society figures showing over 1,800 of its roughly 25,000 lawyers identify themselves as being from visible minority groups. The province said it doesn’t keep figures.

In Ontario, one of the few provinces where the judicial advisory body keeps figures on the lower court appointments, there were 24 visible minority judges out of 334 judges, even though one quarter of the province’s overall population identifies as a visible minority.

And in Nova Scotia, where Metallic practices, there are four visible minority lawyers who made it to the bench — two black people, one person of Sri Lankan descent and a Chinese-Canadian — and two indigenous judges, out of 99 judges.

Robert Wright, an African Nova Scotian social worker, says the figures should be higher in a province where the criminal justice sees an over representation of black and aboriginal accused, and child welfare cases frequently require sensitivity to cultural difference.

Wright, who was a civilian representative on the province’s judicial advisory committee, says black candidates were proposed in the past decade, but weren’t chosen.

Then, in 2009 the province amended guidelines on appointments, calling for 15 years of minimum practice — which dramatically reduced the potential list of applicants.

Like Metallic, Wright is hoping for change over the next year.

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“The core issues of today include unrepresented litigants, an over-representation of aboriginal and black accused, a recognition of historical racial discrimination in the courts. These things must be perceived as the most pressing issues in jurisprudence in Canada today,” he said.

“Is the court we currently have tooled to address those issues? The answer that comes back is ‘No.’ ”

## **Juges au Canada: les minorités très peu présentes, révèle une étude**

**Michel Tutton, La Presse, le 18 juillet 2016**

Alors que les libéraux à Ottawa veulent moderniser le mécanisme de nomination des juges, et que les minorités ethniques sont toujours cruellement sous-représentées au sein de la magistrature au Canada, certains estiment que l'occasion est belle de casser ce système judiciaire très «blanc caucasien».

Dans une étude publiée en mai sur le site de l'Institut de recherche en politiques publiques, Andrew Griffith estimait que 1 % des 2160 juges des cours supérieures et de premières instances au pays sont autochtones, et que 3 % sont issus de minorités culturelles. Dans les tribunaux de premières instances, M. Griffith a relevé 52 juges issus de minorités visibles et 19 juges autochtones sur un total de 1132 magistrats.

Au Québec, M. Griffith a déniché trois juges de minorités visibles sur 500 magistrats (0,006 %), alors que selon les chiffres du Barreau, plus de 1800 de ses quelque 25 000 membres (0,07 %) s'identifient eux-mêmes comme faisant partie d'une minorité visible.

M. Griffith a dû accomplir un travail de moine en analysant attentivement des centaines de biographies de juges afin de dresser un «portrait raisonnable» de la diversité au sein de la magistrature, puisque ni le Bureau du commissaire à la magistrature fédérale ni la plupart des provinces ne tiennent de statistiques à ce sujet.

M. Griffith espère que les libéraux de Justin Trudeau tiendront leurs promesses de réformes pour combler cet écart. Le mois dernier, le gouvernement Trudeau a inclus un Autochtone et un Canadien issu de la minorité asiatique dans une liste de 15 nominations à la magistrature, et la ministre de la Justice, Jody Wilson-Raybould, s'est engagée à accroître la diversité culturelle.

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Naiomi Metallic, une Micmaque de 35 ans qui dirige la chaire de droit et de politiques autochtones à l'Université Dalhousie, n'en revient pas de ces statistiques désastreuses, alors que les autorités répètent depuis des années qu'il est important et urgent d'agir.

«Les institutions qui ont beaucoup de pouvoirs doivent être le reflet des sociétés qu'elles servent», estime la professeure Metallic, aussi membre d'un comité du Barreau de la Nouvelle-Écosse qui se penche sur ce problème. Elle suivra avec attention les gestes concrets que posera le gouvernement fédéral, alors qu'il devra pourvoir cette année au moins 41 postes vacants au sein de sa magistrature, et qu'une quarantaine de postes seront vacants dans les provinces. On devrait aussi pourvoir des postes vacants à la Cour fédérale et même à la Cour suprême.

Marilyn Poitras, avocate métisse à Saskatoon et professeure de droit à l'Université de Saskatchewan, déplore que seuls deux juges sur 101 soient autochtones dans cette province où la population autochtone atteint 16 %. Elle rappelle aussi que le système judiciaire rate une belle occasion d'apprendre des points de vue autochtones.

Les professeures Poitras et Metallic notent qu'il ne manquera pas de bons candidats si on veut vraiment résoudre cette sous-représentation: 175 étudiants noirs et autochtones de Dalhousie, par exemple, ont obtenu leur diplôme de droit depuis une vingtaine d'années.

## **StatsCan says government's IT agency providing 'slower, lower quality services'**

**Centralization of government tech support services has failed to deliver  
promised cost savings**

**Alison Crawford, CBC News, July 19 2016**

Setbacks and shortcomings at the federal government's tech support agency could delay Statistics Canada's release of "mission critical" information required by the Bank of Canada, Department of Finance and commercial banks, according to a report.

The document, submitted to Canada's chief statistician Wayne Smith, is one among more than a dozen reports, drafted at Smith's request from all of his directors general. Smith asked for the reports in an effort to fully understand the impact of Shared Services Canada (SSC) on his department.

The memos, obtained by CBC News under access to information laws, detail how yet another federal ministry is embroiled in a dispute with SSC over services standards, red tape, billing and the capacity of IT infrastructure to keep up with departmental demands.



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- [Roll out of new federal government email system halted, again](#)
- [Government tech support putting RCMP, public safety at risk, documents reveal](#)
- [National Defence reports IT headaches over Shared Services support](#)

SSC was created by the previous government to centralize and standardize information technology services in a bid to save money.

At the end of February, in the run-up to the 2016 Census, Smith shared the results of this report with Canada's top civil servant, Privy Council clerk Michael Wernick. The correspondence is entirely redacted except for the subject line, which reads *Heightened Program Risks* at Statistics Canada.

"Numerous challenges in terms of reliability, timeliness, effectiveness and affordability are being experienced, impacting delivery of programs, projects and plans across all program areas," wrote Lise Duquet, director general of the StatsCan informatics branch.

She said the savings expected from consolidating services under SSC have not materialized, pointing to how ongoing support from the IT Help Desk is now more costly than when StatsCan operated the email service.

### [Lack of accountability](#)

Despite "harvesting" \$38 million from Statistics Canada with the promise to upgrade IT infrastructure, Duquet said StatisCan was told it would have to cover the cost of migrating all information to new data centres — something she said the agency cannot afford without putting its programs at risk.

Governance at SSC has been identified as a problem by other departments. Duquet echoed those frustrations, "Governance is very complex and there is a lack of accountability to deliver on expected outcomes that are critical to programs."

Another recurring theme that surfaced in the reports is that SSC can't or won't meet StatsCan's IT requirements because it refuses to upgrade computer infrastructure.

Daniela Rivandra, director general of the industry statistics branch at the agency, warned of the risk of a bottleneck of processing capacity this year. "This will translate into many programs having to delay releases and not meeting legislative requirements for providing the data," she said.

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"Having to delay their release would be unprecedented and will impact the ability of key users (e.g. Bank of Canada, Department of Finance, commercial banks, etc.) of making timely decisions, translating into considerable embarrassment to the government of Canada."

Due to the poor level of service provided by SSC, the corporate services support division decided to self-fund a unit of 3 persons to provide support to our employees and to ensure that some SSC initiatives get done.- *Yves Béland, director general StatsCan operations branch*

The directors general's reports also reveal deep concerns about branches running out of server space. Craig Kunz said the operating system on which the Consumer Price Index depends, is at an elevated risk of failure, yet SSC has frozen procurement with no apparent contingency plans.

### 'Slower and lower quality service'

Telecommunications is another persistent irritant.

"Our relationship and experience with SSC with regards to telecommunications have been quite difficult to say the least," reported Yves Béland, director general of the operations branch. "Due to the poor level of service provided by SSC, the corporate services support division decided to self-fund a unit of three persons to provide support to our employees and to ensure that some SSC initiatives get done."

Assistant chief statistician Connie Graziadei said service is slower and lower quality, especially on the rollout of cellphones to census employees working in the field.

She described how SSC provided cellphones with the wrong area codes or "incorrect cellphone providers were sometimes assigned to a phone, making it unusable in the geography where the phone was intended to be in operation."

In one case, an employee had an unusable phone for more than two months. A StatsCan manager sent the woman a spare phone on the Bell network, instead of Rogers. While the employee was thrilled to finally be able to do her job, a long string of emails shows SSC was more concerned about StatsCan overstepping its authority.

"You are not able to simply "re-assign" devices when there is an issue. We have procedures in place to deal with issues like Dana was having," wrote Todd Mair of SSC on Feb. 2, 2016.

David Kudlovich of StatsCan fired back.

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"Two months without a phone [is] far too long when this is the sole device they receive from SSC. Two weeks is actually far too long. There are occupational health and safety concerns when an employee doesn't have a means of communication and the employee cannot do their job they're hired to do," he said.

Yet the documents show the problems continued for several more months.

### Not paying bills on time

SSC also had trouble paying its bills on time, something the [RCMP](#) and [Department of National Defence](#) have also complained about. Service was cut to several StatsCan aboriginal liaison officers as well as an important set of landlines in the Halifax call centre.

The documents also detail bickering over billing. StatsCan managers reported continually being presented with charges without justification, such as when SSC refused to cover \$136,743 worth of telephone headsets.

In an email to CBC News, a spokesperson for shared services said the agency is committed to increasing efficiency, response times and resolving critical system failures.

"SSC is working to improve its relationship with Statistics Canada through regular communications and bilateral service reviews," said the spokesperson.

## **Liberals to allow self-nominations for Supreme Court vacancy**

**Sean Fine, The Globe and Mail, July 20 2016**

The Liberal government is expected to let people nominate themselves for the Supreme Court job that becomes vacant on Sept. 1, with potential candidates asked to write in on their own behalf and explain why they deserve to be on Canada's highest court.

The government will position the move as an attempt to open up a secretive process and make it less elitist, as it did with self-nominations for the Senate earlier this year, a Liberal source said. The names of the self-nominated will be given to a new selection committee the Liberals will establish to keep Prime Minister Justin Trudeau's promise of greater transparency and public involvement in the appointment process.

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The committee, which will include people from the legal profession and the public, will be described as independent and will winnow down the names to a short list for the Prime Minister, multiple sources told The Globe and Mail.

But behind the scenes, and with no public announcement, the government has already established a small committee of cabinet members, including Justice Minister Jody Wilson-Raybould and Government House Leader Dominic LeBlanc, to come up with a short list of names for the Prime Minister, a source says. It is not clear what the relationship between the two committees will be, or whether one group's recommendations will get priority, or how the two groups' lists will co-exist.

The appointment is Mr. Trudeau's first opportunity to shape the country's highest court and a chance to redefine the appointment process. It comes after the retirement of centrist Justice Thomas Cromwell of Nova Scotia, which takes effect on Sept. 1.

The moves are partly a response to the Nadon affair under the Stephen Harper government, in which the Supreme Court declared in an unprecedented ruling that Mr. Harper's 2013 appointee, Justice Marc Nadon, lacked the legal qualifications to join the top court. The controversy highlighted secret manipulations of the selection process. After The Globe revealed that four of the six people the government asked a Parliamentary committee to review were ineligible, the Conservatives complained of leaks and ended Parliament's involvement.

Putting members of the public on the selection committee will make it similar to the process that existed under the Liberal government of Paul Martin in 2004 and 2005. Mr. Harper modified the selection group, making it a committee of MPs, and he appointed the final three judges of his tenure (Clément Gascon, Suzanne Côté and Russell Brown) with no Parliamentary participation.

Before 2004, Supreme Court judges were appointed after private consultations between government and the legal community. This would be the first time candidates could formally apply for the job.

The Liberal government has been slow in changing the way Supreme Court judges are named. Justice Cromwell publicly announced his retirement in March. The fall session of the Supreme Court begins on Oct. 3. Documents for cases usually arrive two weeks before. According to sources, Chief Justice Beverley McLachlin has told the government she expects a full complement of nine judges, and Ms. Wilson-Raybould has promised a new one in time for the fall session. During and after the failed Nadon appointment under Mr. Harper, the court went 10 months with just eight judges.

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The government's 11th-hour move to change the appointment process mirrors its slow pace on judicial appointments in federal courts (such as top trial and appeal courts in the provinces). Several judicial advisory committees that screen candidates have been without members for months, and the Liberals have named just 15 judges since their election last fall.

The details of the self-nominating process are not clear; for the Senate, organizations could also nominate people.

Richard Devlin, co-author of a forthcoming book on judicial appointment processes in 19 countries, says he is skeptical about whether the government is truly aiming for greater openness.

"I think the idea of a subcommittee of the cabinet having a heavy hand in this process would be problematic," said Mr. Devlin, a professor at the Schulich School of Law in Halifax. "The government is only one of the legitimate stakeholders in the pursuit of an inclusive and representative judiciary. I think this is just a shell game. It's smoke and mirrors. It would be the Liberal government saying we're changing the process but more symbolically than functionally."

Joanne Ghiz, a spokeswoman for Ms. Wilson-Raybould, said the government has not announced a process yet, "so you'll have to stay tuned."

## **'Groundbreaking' labour ruling highlights Canada's lack of progress for worker rights**

Teuila Fuatai, [rabble.ca](http://rabble.ca), July 18 2016

Canada's Supreme Court ruling, issued on July 14, in favour of fired nuclear energy worker Joseph Wilson has been rightly revered by labour movement representatives.

The Canadian Labour Congress threw its might behind Wilson's case when the former Atomic Energy of Canada Ltd (AECL) non-unionized employee was fired in 2009 after nearly five years with the Crown corporation. During his time at AECL, Wilson was promoted from his original position of buyer/order administrator to procurement supervisor. He also maintained a clean disciplinary record.

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Wilson's legal dispute with the energy giant began when he filed an "unjust dismissal" complaint at the end of 2009 to a labour inspector, claiming he had been fired for raising concerns around corrupt procurement practises at AECL.

The corporation hit back, justifying its action by citing legislation in the Canada Labour Code that states employers can dismiss non-unionized employees as long as two weeks' notice, or two weeks' pay in lieu of that notice is given -- even if there is no just cause for termination.

As Wilson's case progressed, AECL refused to accept a preliminary ruling from a labour adjudicator that found the corporation could not resort to severance payments, however generous, to show its dismissal had not been unjust.

For Wilson, who may have left a good job to join AECL, this was his first hurdle overcome. Importantly, for about 500,000 federal employees and the wider labour movement, this preliminary decision signalled to federal employers that the practise of buying workers' acceptance of dodgy terminations was not invulnerable.

Despite this, the next stages of Wilson's case were wins for AECL -- with both an application judge and the Federal Court of Appeal agreeing that nothing in the Canada Labour Code prevented employers from firing non-unionized employees on a non-cause basis. However, his case was escalated to the top court when the Federal Court of Appeal agreed it should to be reviewed on a standard of correctness.

Thursday's decision, delivered by Justice Rosalie Abella, highlighted important lessons for labour in Canada. While it found in favour of the worker, and vindicated Wilson's battle of more than five years against AECL, it was not a unanimous decision.

Justices Suzanne Côté, Russell Brown and Michael Moldaver, sided against Abella and five of their bench peers. The arguments made by the trio relating to the rights of non-unionized workers' under the Canada Labour Code are testament to the major attitudes and problems that continue to face workers, both unionized and non-unionized.

The pertinent legislation being debated in Wilson's case was implemented in 1978, and designed -- as outlined by Abella in her written decision -- to further the rights of non-unionized

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workers, so they might be afforded similar protections under the Canadian Labour Code as their unionized counterparts.

Côté, Brown and Moldaver fundamentally disagreed with this.

"Applying correctness review, we are of the opinion that a federally regulated employer can dismiss an employee without cause, so long as appropriate notice and severance pay are provided," Côté and Brown wrote in the trio's rebuttal.

As there is nothing in the law that "guarantees lifelong job tenure to employees of federally regulated businesses," dismissing an employer by giving notice or compensation in accordance with the Canada Labour Code is just, the pair reasoned.

Furthermore, Côté and Brown rejected their bench peers' assessment of the original intent of the legislation, and claimed they had misinterpreted comments made by then Labour Minister John Munro in 1977:

"It is our hope that [the amendments] will give at least to the unorganized workers some of the minimum standards which have been won by the organized workers and which are now embodied in their collective agreements. We are not alleging for one moment that they match the standards set out in collective agreements, but we provide here a minimum standard," Munro said of the changes.

Côté and Brown wrote: "[This] record weakens the majority's conclusion that Parliament intended to expand the rights of non-unionized employees in a manner that identically matched those held by unionized employees, since the minister expressly disclaimed any intent to do so".

While the significance of Wilson's legal victory should not be understated, Côté, Brown and Moldaver's voices must be given weighty consideration.

In this case, labour won because the Supreme Court vote came down six to three in favour of the worker. But, 10 years ago, the result may have turned a very different tally.

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To ensure we progress in the fight for fair rights in the workplace, all workers -- unionized and non-unionized -- must continue to confront the attitudes and beliefs expressed by the three dissenting justices -- inside and outside the courtroom.

Because, while the legislation at the heart of Wilson's case was implemented in 1978, nearly 40 years later, his legal challenge is being touted as "potentially groundbreaking" for essentially ensuring the law was followed.

*Teuila Fuatai is a recent transplant to Canada from Auckland, New Zealand. She settled in Toronto in September following a five-month travel stint around the United States. In New Zealand, she worked as a general news reporter for the New Zealand Herald and APNZ News Service for four years after studying accounting, communication and politics at the University of Otago. As a student, she had her own radio show on the local university station and wrote for the student magazine. She is rabble's labour beat reporter this year.*

## **Wilson-Raybould not backing away from bolstering indigenous rights in Canada**

**Kristy Kirkup, Global News, July 20 2016**

Justice Minister Jody Wilson-Raybould has a message for critics who suggest she is backtracking on the government's pledge to bolster indigenous rights in Canada: she isn't.

The lawyer and former Assembly of First Nations B.C. regional chief says she has spent her career working on indigenous legal issues and she is not "turning away" now.

Wilson-Raybould became the subject of news coverage last week after she delivered a speech at the AFN annual meeting in Niagara Falls, Ont.

During the remarks, she noted "simplistic approaches" like adopting the United Nations Declaration on the Rights of Indigenous Peoples into Canadian law are "unworkable."

The comment raised the eyebrows of some observers, who wondered if this was a sign the government was shying away from its pledge to implement the UN declaration, which enshrines indigenous rights to self-determination.

That's far from the case, Wilson-Raybould said in an interview with The Canadian Press.



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She also went further, saying the government supports all articles of the declaration “without reservation.”

UNDRIP – a document adopted by the United Nations in September 2007, after more than two decades of deliberation – spells out rights that constitute the minimum standards for “the survival, dignity and well-being of the indigenous peoples of the world.”

One central article recognizes the right to self-determination and notes indigenous peoples have the right to the lands, territories and natural resources which they traditionally owned or occupied.

The challenge for the government is implementing the declaration, Wilson-Raybould said, adding that this could take different shapes and that must be done in partnership.

“It is no longer a question of if we are going to do it. We certainly are, it is more a question of how we are going to implement it here in Canada,” she said.

Specific articles from the declaration need to be implemented differently based on solutions from communities themselves, she added.

“We can, as a federal government, facilitate that transition by creating the mechanisms that are required, whether it be through law, (or) various pieces of legislation that implement particular articles in the declaration,” Wilson-Raybould said.

“Other articles might be implemented through modern-day treaties or other constructive mechanisms.”

The government needs to assist communities as they move away from a “ward-like” relationship with the federal government established under the Indian Act, she added.

“We (the government) have a fiduciary obligation and responsibility to indigenous peoples to provide programs and services and that’s not going to change,” she said.

“How that will change ... is, when communities are ready and willing and able, and not every community is, that we support those communities in transitioning out from the Indian Act.”

The work needed to accomplish this goal will be challenging and controversial, Wilson-Raybould conceded, but she is happy it is being discussed.

“I hope people turn their mind to, I have to as the minister of justice ... about how we are going to implement the declaration here in Canada,” she said.

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Adopting and implementing the UN declaration are also among the 94 calls to action presented last year by the Truth and Reconciliation Commission.

The Liberal government committed to implementing all recommendations from the commission, which spent six years probing Canada's dark residential school legacy.

NDP intergovernmental indigenous affairs critic Romeo Saganash – a residential school survivor who worked for two decades on an international effort to craft the declaration – has been pressing the government to support his private member's bill calling for a legislative framework for UNDRIP's application in Canadian law.

The proposed legislation has been endorsed by several members of the indigenous community including former TRC chairman Murray Sinclair, now a senator.

## **Trudeau faces diversity challenge in Supreme Court judge selection**

**Sean Fine, The Globe and Mail, July 20 2016**

In Prime Minister Justin Trudeau's first chance to name a judge to the Supreme Court of Canada, the search for diversity is bumping up against the reality of limited choices – raising the odds that a government that chose just three white males in its first 15 judicial appointments will pick one for the country's most powerful court.

Mr. Trudeau has an opportunity to make a historic mark. If he names a woman for the job that comes open in September, he would give the court the first female majority in its 141-year history. If he names a member of a visible minority or an indigenous judge, that, too, would be a first for the court.

His Liberal government has left little doubt that it would like to find a well-qualified candidate from one of those groups.

"If it's possible, they're going to give it to a female, bilingual, visible minority – if they can find that person," a Liberal party insider said.

But the search is proving to be a challenge. The opening comes with the upcoming retirement of Justice Thomas Cromwell of Nova Scotia and convention dictates that his successor must come from Atlantic Canada. The Prime Minister's insistence that new appointees to the country's highest court be functionally bilingual limits his choices further.

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And there are no obvious bilingual stars among women on the region's appeal courts (the most frequent source of Supreme Court judges) and in its law firms, more than a dozen legal observers in Atlantic Canada said in interviews. As for visible minority or indigenous judges, the pipeline was left largely empty by the former Conservative government.

And so Mr. Trudeau's attention may yet turn to white males. Among the leading candidates in that category are Justice Marc Richard of the New Brunswick Court of Appeal and Chief Justice Michael MacDonald of the Nova Scotia Court of Appeal.

Justice Richard is an Acadian – a descendant of the French colonists expelled from the Maritimes in the 18th century – which works in his favour. He is also described as the province's most respected judge (along with Chief Justice Ernest Drapeau, who has told people he isn't interested in the position). A former prosecutor and defence lawyer, Justice Richard is described as a strong proponent of Charter rights.

He wouldn't be the first Acadian to reach the Supreme Court (Michel Bastarache and Gérard La Forest, the last two appointees from New Brunswick, were both Acadians), but it could still work in his favour.

"I would think it would still be an important consideration," a second insider said. "To the extent that the Acadian population is a recognized group – a very vibrant group that fought long and hard to secure equality in New Brunswick, and is now enshrined in the Constitution – it is a very important factor in the diversity dialogue." (Section 16 of the Charter of Rights and Freedoms protects English and French as the official languages of the province.)

Chief Justice Drapeau has recommended Justice Richard as his first choice for the Supreme Court, according to two sources. The chief justice made his recommendation to Government House Leader Dominic LeBlanc, who is part of a cabinet committee asked to come up with a short list of candidates from which the Prime Minister can choose. The two men have a long-time relationship: Mr. LeBlanc's wife, Jolène Richard, articulated at Mr. Drapeau's law firm in Moncton, stayed on as a lawyer and they remain close friends. (Today she is Justice Richard of the New Brunswick Provincial Court.)

"Jolène Richard is blind loyal to Drapeau, and Dominic is blind loyal to Jolène," a Liberal insider said.

That doesn't make Justice Marc Richard a shoo-in – retired chief justices have told The Globe and Mail that their recommendations were often the "kiss of death" for judges. But in the small intersecting worlds of New Brunswick law and politics, personal relationships and trust count for something.

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Justice Lucie LaVigne of the New Brunswick Court of Queen's Bench is well respected, but it is rare for a trial court judge to move straight to the Supreme Court. And she was an appointee of the Conservative government, which may work against her. Appeal court Justice Kathleen Quigg, who was fast-tracked by the Tory government, is another judge whose name is mentioned by some as a possibility.

One name being floated by some legal observers is Premier Wade MacLauchlan of Prince Edward Island, a former law dean at the University of New Brunswick. But his office told The Globe in an e-mail that he is committed to continuing as Premier.

In Nova Scotia, there are at least two potential female candidates who come from non-traditional sources, including Justice Anne Derrick of the Provincial Court, a former social activist who represented abortion doctor Henry Morgentaler and Donald Marshall Jr., who was wrongly convicted of murder; and Dawn Russell, a former law dean at Dalhousie University's law faculty and now president of St. Thomas University in Fredericton.

The strongest indigenous candidates are outside of Atlantic Canada – including Mary Ellen Turpel-Lafond, B.C.'s Representative for Children and Youth. She was once a law professor at Dalhousie University, but legal observers say that connection is too tenuous for her to qualify as an Atlantic appointment. And the Atlantic provinces, whose political power is reflected in the fact that the Speakers of the House of Commons and the Senate come from there, are unlikely to accept an outside candidate, even an indigenous one, observers said.

## **Premiers broadly support leaked terms for MMIW inquiry, but not quite ready to sign on**

**AFN Chief Perry Bellegarde says provinces can act now to improve First Nations services**  
**Janyce McGregor, CBC News, July 20 2016**

Canada's premiers are reacting cautiously, but supportively, to the federal government's proposed terms of reference for a federal inquiry into murdered and missing Indigenous women.

But speaking to reporters during a meeting with Canada's five national Aboriginal organizations in Whitehorse Wednesday, some expressed concern at the slow pace of progress on the file, the possibility of duplicating earlier inquiries or slowing work already underway to prevent more women from becoming victims.

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"Canada's premiers have supported this call [for an inquiry] now for a number of years," said Yukon Premier Darrell Pasloski, chair of the meeting. "We're all together in calling for an inclusive and transparent process that's trusted and respected by everybody."

"We want to make sure that this inquiry builds on the work that has already been done in various parts of the country and as a result of that we will produce deliverables," he said.

The terms of reference aren't finished yet.

But a [draft of the terms of reference obtained by CBC News](#) this week says commissioners would focus on the prevention of violence, but not necessarily probe police conduct — something families had been asking for.

The commission would focus on identifying systemic causes of violence and recommend "concrete action" to help end violence against Indigenous women and girls.

### Timeframe called 'too ambitious'

Several provincial officials confirmed the federal government had shared the terms of reference with them, or expressed familiarity with its intentions.

The two-year time frame proposed by the federal government might be "too ambitious," B.C. Premier Christy Clark told APTN, noting that B.C.'s inquiry into women who disappeared from Vancouver's downtown eastside took 26 months.

"We're certainly concerned about ensuring that the scope of the inquiry is established with a view to, among other things, effectiveness," Alberta Premier Rachel Notley said. "We don't want to scope ourselves out of the ability to make the inquiry worthwhile."

Notley said Alberta hasn't signed off yet. Her cabinet needs to discuss it first.

But: "Generally speaking we're very supportive... we'll certainly not be the province holding things up on it."

Notley characterized the premiers' work on the inquiry as "awfully close," with a "pretty high level of consensus."

But she also said the inquiry shouldn't delay the work provinces were already doing on the file.

"Making progress on solutions is as important as identifying the problem," she said.

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### Make changes now, AFN chief urges

Quebec Premier Philippe Couillard said his province wants to keep a commitment he made to First Nations in Quebec to investigate recent cases in Val D'Or, Que., where dozens of Aboriginal women have complained about [abuse at the hands of police](#).

One federal commission, rather than both a federal and provincial inquiry, may be better than two parallel processes, he said.

Couillard also said he also needed to make sure the inquiry would include enough French before he approved the proposed format.

Assembly of First Nations Chief Perry Bellegarde told reporters after the meeting that governments don't have to wait for the outcome of the inquiry to start making things better.

"Governments can make investments to end violence amongst our people, amongst Indigenous women and girls," he said, mentioning housing, health, education and other public services.

"We all have a role to play as Indigenous governments as well."