

Press Clippings for the period of July 26th to August 2nd, 2016 / Revue de presse pour la période du 26 juillet au 2 août 2016

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## **Payday problems for more than 80,000 public servants to be resolved by October**

**The Canadian Press, The Ottawa Citizen, July 28 2016**

Federal officials say they expect to have resolved all of the pay delays created by the government's problematic Phoenix pay system by the end of October — but undoing the damage won't be cheap.

Dealing with the months-long debacle, which has caused serious payday headaches for tens of thousands of public servants, will cost an estimated \$15 to \$20 million, deputy public works minister Marie Lemay told a news conference.

That doesn't include upgrades that will be required to ensure the system runs more smoothly in the future, she added. "There's another portion that we're looking at doing to enhance and that I still don't have a cost to."

Some 1,100 of the more than 80,000 problem files identified last week have been closed, Lemay said.

That includes the 486 government workers who were provided with back pay on Wednesday after having gone for months without compensation.

Another 234 employees listed by officials as "Priority 1" cases will see their paycheques in two weeks, Lemay added.

A second priority group — workers going on maternity leave, long-term disability leave or retiring — will see their files handled within four to six weeks, the deputy minister said.

Another category of public servants that includes employees owed overtime or who have seen their employment terminated will be processed by the end of September, said Lemay. Those who have been overpaid, promoted, are on planned leave without pay or are owed deductions or benefits are at the back of the queue.

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Curiously, 60 people who reported they had not been paid were not in the government's system at all. Lemay would not speculate on why their information was missing but encouraged anyone with outstanding issues to report to the government a second time.

To speed up the process of eliminating reported pay holdups, the government is opening satellite pay offices in Winnipeg, Montreal and Shawinigan, Que., as well as hiring more staff in Gatineau, Que.

"We've hired more people and we're adding more temporary pay offices," said Lemay.

"To accelerate our progress, we are recruiting as many compensation experts as we can to help employees get paid as quickly as possible."

On Wednesday, Public Services and Procurement Minister Judy Foote paid a personal visit to the government's central pay centre in Miramichi, N.B., where officials confirmed that dozens of employees are on stress leave linked to the pay system issues.

The Phoenix system oversees the payment of 300,000 federal public servants. More than 80,000 workers have either been overpaid, underpaid or missed entire paycheques since Phoenix launched in February.

The House of Commons government operations committee is also holding an emergency meeting later today to examine the Phoenix problems.

Last week, the federal privacy commissioner announced a formal investigation into a privacy breach linked to Phoenix earlier this year.

Auditor general Michael Ferguson will also review the planning and implementation of Phoenix; 13 public service unions are asking the Federal Court to rule that the government must pay public servants properly and punctually.

## **Les problèmes du système de paye Phénix coûteront de 15 à 20 millions de dollars**

**La Presse Canadienne, ICI Radio-Canada, le 28 juillet 2016**

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Ce montant ne comprend pas les compensations qui pourraient être payées aux employés qui, n'ayant pas reçu leur salaire depuis des mois, se sont tournés vers les banques, ou ceux qui, incapables de payer leurs factures, ont accumulé les pénalités de retard. Et les fonctionnaires qui ont des soucis avec leur chèque de paie ne sont pas encore au bout de leurs peines, puisque le fédéral ne pense pas que l'ensemble des problèmes seront réglés avant le 31 octobre.

Depuis la mise en place en février dernier du système qui gère la paie de plus de 300 000 employés de la fonction publique, 80 000 ont connu des difficultés, les montants versés étant inférieurs ou supérieurs à leur salaire.

Dans les cas les plus problématiques, les employés n'ont pas touché leur salaire depuis des mois. Mercredi, 486 des 720 employés sans salaire ont enfin reçu leur chèque.

La sous-ministre des Services publics et de l'Approvisionnement, Marie Lemay, a indiqué jeudi que 234 autres devraient recevoir leur salaire à la prochaine période de paie, dans deux semaines.

Mais voilà, depuis la semaine dernière, environ 500 nouveaux cas problématiques ont été signalés, ce qui laisse présager que la situation est encore loin d'être réglée.

## **Why exactly is Phoenix crashing?**

**Union blames myriad software problems for payment debacle**

**Kyle Duggan, iPolitics.ca, July 26 2016**

Officials from Canada's largest public service union say the government needs to acknowledge technology is the main issue in the Phoenix pay saga before the problems will be fixed.

PSAC's national executive vice-president, Chris Aylward, says he has "no doubt" at this point that the problems won't be resolved soon and the union will be addressing pay issues into next year unless the government acknowledges the main culprit is the new Phoenix payment software system, not its own employees, particularly those at the Miramichi, N.B. pay centre.

"They have yet to acknowledge – and this is what pisses me off – Phoenix is the problem here," he said. "It's not the people in Miramichi. They're completely stressed, they're just as fed up as the those that are not getting paid."

The payment system mess has affected the pay of some 80,000 public service employees and officials said they're working "around the clock" to fix it. Roughly 700 employees have not

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received pay. Others have had issues with overtime and salary adjustments, or getting their disability, maternity leave or severance pay. Despite reassurances that civil servants who have gone without proper pay would receive it this week, some who [checked their pay stubs](#) Tuesday have yet to receive it.

The recently implemented Phoenix system was part of a modernization plan for the pay service under the former Conservative government. Miramichi was [chosen](#) for the pay centre location to replace federal jobs lost when the long-gun registry was shut down.

At a July 18 technical briefing, Marie Lemay, the deputy minister of public services, said the volume of issues quickly outstripped the government's capacity to respond, and singled out two major problem areas:

"We accumulated a large backlog of unprocessed payment requests due to the learning curve for Phoenix users as they adjusted to the new process. This is really the central reason why we are where we are. It is clear that we underestimated the amount of time it would take for users to become trained and used to the system."

"Second, close to 40,000 old and back-dated employee cases were in the system and needed to be processed when Phoenix came online. This is the difficult situation we're facing."

Aylward says there are resource and training problems, but contests that the main issue is actually widespread "technological system glitches" within Phoenix that "basically cause Phoenix to spit out a wrong answer."

"When the information is being input into Phoenix, it's simply giving the wrong number – it's not computing properly," he said. "It's like...putting into your calculator 5 + 5 and the calculator does it and the answer is 4."

One large problem he points to: an important text box called "payline security," where employees are supposed to input a security code for a pay file.

He says the software routinely rejects input into that line.

"If that line is not working, then you can't do anything within Phoenix. You have to stop and move onto something else," he said. "I was told last week that payline security is down more often than it's up."

Alyward says the best course of action for the government is to temporarily move back to the old system while changes to the Phoenix software are made.

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“Take it off-line. Fix the glitches. Get it fixed. Do proper testing on it. Then put it back online and – I’m serious about this – only put it online for MPs, deputy ministers, and assistant deputy ministers, and see how well it works. Because if there’s problems with it then, it will be bloody well fixed in a hurry.”

Meanwhile, the clerk of the Privy Council has been [tasked](#) by the Prime Minister with making sure that the pay issues are fixed.

Thursday, the issue becomes a main show in the Parliamentary political arena as the Commons government operations committee begins its study of the issue.

## **‘I’d like to see it fixed tomorrow,’ Foote vows to solve problem-plagued Phoenix payroll system, still can’t say when**

**PSAC national executive vice-president Chris Aylward says only MPs, deputy ministers, and assistant deputy ministers should be paid through the Phoenix system until it's fixed because then 'it's going to be fixed pretty quick.'**

**Rachel Aiello, The Hill Times, July 25 2016**

The federal minister responsible for the government’s new and problem-plagued Phoenix payroll system, which has affected the pay for 82,000 public servants, says she wants the massive problem fixed as soon as possible, but still has no idea when that will happen, and the government’s largest public service union wants the government to use the old pay system until the new one works.

“In terms of time frames, I’d like to see it fixed tomorrow. Will it be two weeks? Will it be a month? I’m hoping as quickly as we possibly can. We are taking every measure,” Public Services and Procurement Minister Judy Foote (Bonavista-Burin-Trinity, Nfld.) said in a phone interview last week with *The Hill Times*. She said the 590 employees at the Phoenix headquarters in Miramichi, N.B., are working overtime to try to address the pay issues.

“I think it’s important to go there and to let them know how much we appreciate the work that they’re doing,” Ms. Foote said, adding that the “totally unacceptable situation,” within her department should not be blamed on the public servants working on Phoenix.

Ms. Foote will visit the Public Service Pay Centre in Miramichi on July 27 to meet with the public servants working on Phoenix, the government’s new computerized pay system that’s causing

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“critical pay problems,” while the timeline to resolve pay issues for nearly one-third of federal employees remains undetermined.

Prime Minister Justin Trudeau (Papineau, Que.) said the ongoing problem “is an unacceptable situation” that his government inherited from the Conservative government.

“This is an unacceptable situation and we are trying to fix it,” Mr. Trudeau said in French on Wednesday in an interview with Radio-Canada. “We inherited the system from the previous government.”

Five months after the government’s new enterprise-wide payroll system went online, more than 80,000 Government of Canada employees have reported issues, inconsistencies, or absences of pay. For most of the affected employees, a resolution could still be weeks—or even months—away.

“We have a lot of work to do to get the pay system moving as intended,” Public Services Deputy Minister Marie Lemay told reporters in Ottawa during a technical briefing last Monday.

According to the department, as of July 18, 720 employees reported they had not received any pay since Phoenix went live; another 1,100 employees who are on leave, or going on leave have experienced pay issues, and problems attaining records of employment; and around 80,000 additional cases of other pay issues around overtime pay, extra duty pay, or salary adjustments had been registered. *The Hill Times* has been told some public servants are using their credit cards and lines of credit to pay for their mortgages because they haven’t been paid.

The department says that of the 720 employees who have not been paid, 486 of them will receive their pay and the back pay lump sum they are owed on the next pay period, July 27. The remaining 234 require more information from their departments to complete, but will be the priority. The 1,100 with long-term disability, maternity, paternity, or other leave issues are scheduled to have their cases resolved within the week. However, the department has no timeline yet to work through the large backlog of the other 80,000 cases of pay problems. It depends largely on how many extra staff the department can hire to work on these cases.

Ms. Lemay said the majority of the problems can be attributable to the department underestimating how long it would take to train staff on the new Phoenix computerized pay system. As well, at the time Phoenix went live, there was already a backlog of more than 40,000 files that had to be dealt with and the Public Service Alliance of Canada had warned the government not to move ahead with the second phase.

Ms. Foote said she’s not sure whether this pre-existing backlog was factored into the rollout.

“The consequences of this, the hardships that are being imposed on people as a result of this are totally unacceptable,” she said. “Nobody should work and not get paid for work performed.”

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The new automated payroll program, replacing a 40-year-old payment system for all Government of Canada employees was rolled out in two phases beginning in February and encompassing the total of an estimated 300,000 employees as of May. Back in May, *The Hill Times* reported that about 483 complaints about the pay system had been logged.

In June, Ms. Foote announced plans to hire an additional 100 employees to work in a temporary pay unit in Gatineau. This is where the bulk of backlogged cases are being processed, while the new 590-person Miramichi pay centre is handling the day-to-day and high-priority cases.

As of last week, only 56 employees were working at the emergency office, which will be boosted to 89 employees over the next week or so, said Ms. Lemay. She added that the pay centre will take as many more as it can get—above the initially planned 100, if possible.

In an effort to do so, the Treasury Board has reached an agreement with the Public Service Alliance of Canada—the largest union representing federal public servants—to seek out a number of past pay advisers and compensation specialists to come back and work on this issue who had either been laid off, retired, or moved to a new position within the government as a result of Phoenix.

However, in an interview, PSAC national executive vice-president Chris Aylward said so far there hasn't been much pickup on these openings and said he thinks it will be "tremendously difficult" to fill the roster because not many want to touch the beleaguered system.

He said he would like to see the government revert back to the old pay system until the problems are remedied.

"Once they think they've got it fixed, then put it online, but only put it online for Members of Parliament, deputy ministers, and assistant deputy ministers," he suggested. "Because if there's any problems with it then, you're going to find out, and it's going to be fixed pretty quick." He posed the question, "How difficult is it to get up in the morning, go to work, thinking, 'I might not get paid for today's work?'"

When asked whether she'd be willing to go without pay until the issues with Phoenix are resolved, Ms. Foote said, "this is not about penalties or taking steps to make sure that someone else doesn't get paid."

Earlier this month, PSAC, along with 12 other unions representing government workers, filed a Federal Court notice of application to force the federal government to pay its employees impacted by problems with the new Phoenix pay system. The unions argue in their notice of application that the government is responsible for paying public servants on time under its Financial Administration Act and the Directive on Terms and Conditions of Employment obligations.

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As things stand, Mr. Aylward is skeptical the issues will be resolved in the timelines outlined, and says he fears because this has been going on since February, it could be 2017 before all employees' pay problems are sorted, and could ultimately end up costing the government "tens of millions of dollars."

The department says it is also making technological enhancements so all departments can view its transactions, are increasing the phone capacity for people to call and report issues, and say they're looking into options to allow claims for reimbursing charges accrued as a result of improper payment, like loan payment penalties, fees for withdrawing from RRSPs, or overdraft charges.

Professional Institute of the Public Service Vice President Steve Hindle told *The Hill Times* his union doesn't believe going back to the old system is the solution, but thinks Phoenix highlights the broader danger of contracting out government services. "We see what happens when they implement something without being fully prepared for it... and we're concerned about what else might be lurking out there, where they've gone outside the public service for a quote-unquote solution to a problem without having fully thought through the implications of actually implementing the solution," he said. PIPSC is making sure all its members have kept records of their grievances for non-payment, and is considering advance loans for some of its members that are in financial trouble.

Among the stories from public servants *The Hill Times* has heard, or that the unions have shared, are the realities faced by student hires that have been working away from home for the summer and have not received pay for months, with tuition payment deadlines just around the corner; women on, or shortly heading on, maternity leave whose pay has stopped coming in; and single parents having to resort to food banks or coworkers for groceries.

Mr. Aylward called it "heartbreaking," "appalling," and "demoralizing," to both those without pay, as well as their coworkers who aren't having issues and feel guilty watching them go through this.

Last week Prime Minister Justin Trudeau told reporters he's asked the Privy Council Office to oversee the ongoing work to resolve Phoenix's issues. This came after CBC reported that documents released under the access to information law revealed that in addition to the pay issues, senior departmental officials were aware that the system had a flaw that allowed for a breach of privacy where employees' personal records, including social insurance numbers, could be widely accessed.

Rookie Liberal MP Mark Gerretsen (Kingston and the Islands, Ont.) said he's encouraged by Mr. Trudeau's intervention and is reassured the government is taking it seriously, however, "the people who are affected are not going to be content until they receive their pay and what they're entitled to."



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Last week he sent Ms. Foote a letter urging her to do everything she can to fix the problem because he says he has constituents who can't pay their mortgages or utility bills.

In his riding, he has started 52 case files on constituents who have called him regarding pay issues. He said the majority of the affected people in his area work at the Department of National Defence, specifically CFB Kingston.

He's aware of other MPs in the Ottawa area who are experiencing similar issues. Back in May, he held a town hall to hear from constituents about pay issues, and said it's frustrating because there have been no resolutions so far and that it's been going on for months.

As well, NDP MP Erin Weir (Regina-Lewvan, Sask.), the party's public services critic, has had dozens of constituents call in to say they hadn't been paid properly by the new Phoenix, and his New Democrat caucus colleagues have shared similar experiences.

"Up until recently, the federal Liberals just didn't seem to be taking it seriously...The Phoenix issue is not just about fair treatment for federal employees, it's also about goof stewardship of tax dollars," he told *The Hill Times*.

Mr. Weir and two of his caucus colleagues NDP MP Sheri Benson (Saskatoon West, Sask.) and NDP MP Wayne Stetski (Kootenay-Columbia, B.C.) sent a letter to Mr. Trudeau, Ms. Foote, and Treasury Board President Scott Brison (Kings-Hants, N.S.) on July 4, calling on the government to respect its commitment to a better relationship with the public service by providing a clear timeline to fix the problems and ensure this doesn't happen again.

The decision to go with the new enterprise-wide Phoenix model was made by the Conservative government back in 2009. The program was designed by IBM. The new system is said to have cost \$300-million, and ahead of the widespread pay issues, was expected to save the government \$67.2-million a year, according to the department.

Reacting to the news last week, Conservative MP Steven Blaney (Bellechasse-Les Etchemins-Lévis, Que.), his party's public services critic, and Conservative MP Kelly McCauley (Edmonton West, Alta.), the party's deputy critic, said in a statement that they are disappointed with Ms. Foote's "indifference," to a "boondoggle" that will cost taxpayers.

"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," their joint statement read. "The Liberals are fully responsible for the dramatic results of the early deployment of the Phoenix pay system."

Ms. Foote said that although her government agrees that the new payroll system was the right move, and eventually will be more efficient, the attempt from the past government to capture savings before they were realized meant public servants with the proper skills were shuffled out and ultimately not available for the Phoenix training that was so desperately needed for

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new hires. "It was the responsibility of those who decided that we would go with this system to make sure that all of these public servants received sufficient training so that they could do the job expected of them," she said.

Ms. Foote has asked Auditor General Michael Ferguson to investigate the planning and implementation of the Phoenix and her department is planning its own internal evaluation of what went wrong. When asked who was at the table when the decision was made to go ahead, Ms. Foote avoided the question, saying her and her departmental staff are "completely focused" on getting people paid.

## **L'opposition veut débattre des ratés de Phénix**

**La Presse Canadienne, le Droit, le 25 juillet 2016**

Les deux principaux partis d'opposition à Ottawa unissent leur voix pour réclamer une réunion d'urgence d'un comité des Communes afin de faire le point sur les nombreux ratés du nouveau système de paie dans la fonction publique fédérale.

Les conservateurs et les néo-démocrates souhaitent que les membres du Comité permanent des opérations gouvernementales et des prévisions budgétaires soient rappelés d'urgence à Ottawa afin de comprendre pourquoi des dizaines de milliers de fonctionnaires ont vu leur chèque de paie amputé, en partie ou en totalité.

Le comité permanent des Communes est présidé par un député conservateur, Tom Lukiwski, mais l'opposition n'y dispose pas de la majorité qui lui permettrait de convoquer des audiences même si les libéraux devaient s'y opposer.

Le premier ministre Justin Trudeau a annoncé la semaine dernière que le greffier du Conseil privé, qui conseille le cabinet sur les activités du gouvernement, redoublait d'efforts pour régler les problèmes du système Phénix.

Le gouvernement a admis la semaine dernière que plus de 80 000 fonctionnaires fédéraux avaient été victimes de problèmes causés par le nouveau système de paie. On indiquait notamment que 720 employés du gouvernement n'avaient pas été payés - certains depuis des mois -, ce qui les avait forcés à emprunter ou à surutiliser les cartes de crédit afin de boucler leur budget.

Ottawa a promis que près de 500 d'entre eux recevraient un chèque d'ici mercredi, mais il a admis que les problèmes ne seraient pas complètement réglés avant plusieurs mois.

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## **Liberals accept demands for emergency meeting over Phoenix payroll mess**

**Opposition says Prime Minister Justin Trudeau has shirked responsibility by blaming previous government**

**John Paul Tasker, CBC News, July 25 2016**

MPs will soon get the opportunity to grill senior government officials about the disastrous rollout of the Phoenix payroll system that has left 80,000 federal public servants in Canada with pay problems.

Opposition parties publicly demanded an emergency meeting of the government operations and estimates committee Monday to further study the beleaguered program.

"While the Liberals continue to dodge this serious issue, both opposition parties will work together to find a solution to this problem," Conservative procurement critic Steven Blaney said in a statement. The Tories and the NDP said they have heard from thousands of constituents with pay problems, "while Minister [Judy] Foote and her Liberal colleagues continue to display a lack of concern for the issue."

Four Liberal members came forward late Monday to endorse the opposition motion, paving the way for department officials, federal employees and union representatives to be hauled in front of their committee to get at the source of the problem.

"While we understand that the government is working hard to address the issues with the system, we feel that it is important for committee members to get a fuller understanding of the situation," MPs Yasmin Ratansi, David Graham, Raj Grewal and Nick Whalen said in a letter to committee clerk Leif-Erik Aune.

- [TIMELINE | How the Phoenix pay system rose and fell](#)
- [Miramichi Pay Centre workers feeling Phoenix pain](#)
- [Trudeau calls Phoenix pay problem an 'unacceptable situation'](#)
- [Phoenix pay system mess affects 80,000, government officials say](#)

An emergency meeting can only be called if four members put their request in writing to the committee clerk, which would then force a session within five days. There are only three opposition members on this committee, meaning at least one Liberal MP had to back the call for action.

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### Conservatives spearheaded new pay system

Ratansi, the Liberal vice-chair of the committee, told CBC News that she's "not amused with anybody playing politics with the lives of ordinary Canadians." She said the opposition parties are simply "grandstanding" and that bringing MPs back to Ottawa would be a waste of taxpayers' money when the deputy minister has been providing daily briefings on efforts to fix the payroll system.

Despite her criticism, Ratansi said she is signing off on an emergency meeting to call the opposition's bluff.

"I think it is important that we put it to rest, this is not a political game. I want a solution, I don't want people to suffer."

She said an examination of Phoenix will reveal it is the Conservatives who green-lighted a "buggy" system in 2015 after internal warnings.

"Obviously, it's an extremely serious issue. Public servants should never be going weeks or perhaps months without pay ... it's unconscionable. everyone agrees on that," Tom Lukiwski, the Conservative chair of the government operations committee, told CBC News. "Ultimately, [Phoenix] will be the best way forward. There's just so many kinks."

He said questions need to be answered by Foote, the minister of public services and procurement, but he said he wasn't sure whether reconvening his committee at this time is the best forum.

In an [interview with CBC News](#), Prime Minister Justin Trudeau also blamed the former Harper government for problems with Phoenix. Treasury Board President Scott Brison has also said that the Conservatives allowed the system to deteriorate.

Phoenix was initiated by Stephen Harper's Conservatives and was rolled out in phases under Trudeau's watch earlier this year amid warnings from the largest union representing federal public servants that there would be problems.

The Public Service Alliance of Canada said thousands of its members experienced problems during the first phase of the rollout, which began in late February, and in April the union urged the Liberals not to move ahead with the next phase.

The government said at the time that [only 300 employees had made formal complaints](#) about the system and that "almost all" of the technical issues had been resolved.

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### Trudeau must take responsibility: NDP

The Harper government centralized pay centre operations in Miramichi, N.B., after it shut down the long-gun registry, a move that would have left thousands of public servants in that city without work.

It also cut the number of compensation advisers dramatically from about 2,700 serving 300,000 employees to 442 now working in Miramichi, with the hope that Phoenix would streamline the number of employees needed to complete this work.

"The Conservatives were wrong to imagine that the federal government could effectively replace its payroll systems with off-the-shelf software from IBM operated by a single pay centre, relocated to Miramichi for political reasons," NDP procurement critic Erin Weir said Monday. "The Liberals were wrong to implement Phoenix this year even after employees at Miramichi warned that the system was not ready."

The NDP said the prime minister has shirked responsibility by shifting the blame to the previous government. "After dismissing concerns raised about Phoenix from federal employees, their unions and the NDP for months, the prime minister must now take responsibility for the decisions his government made," Weir said.

Marie Lemay, deputy minister for public services and procurement, told reporters last week that the government grossly underestimated the time and training needed to move to the new system and clear out old cases, outstripping the capacity to respond.

The government will now hire temporary compensation adviser specialists and make technical enhancements to the system.

About 720 public servants — largely new hires and students — have contacted the government about not receiving 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, overtime or pay adjustments have had problems.

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

- [Phoenix problems make public servant feel 'penalized'](#)

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- [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](#)

## «Le tsunami est loin d'être fini»

Paul Gaboury, le Droit, le 21 juillet 2016

Malgré les nombreuses mises en garde des syndicats faites au cours des derniers mois, le gouvernement libéral n'a pas réagi à temps pour freiner l'implantation de Phénix et ainsi prévenir le véritable tsunami de plaintes et de problèmes qui s'accumulent, déplore le vice-président exécutif de l'Alliance de la fonction publique du Canada (AFPC) pour la région de la capitale nationale, Larry Rousseau.

Les causes de cette situation inacceptable sont multiples, croit le dirigeant syndical. En commençant par les conservateurs Stephen Harper et Tony Clement, qui « n'ont jamais écouté les avis des syndicats », en passant par de hauts fonctionnaires qui « ont obéi aux ordres de peur de perdre leur emploi s'ils avaient osé donner l'heure juste », et du gouvernement libéral qui n'a jamais voulu entendre raison « pour freiner l'implantation de la deuxième phase », en avril dernier.

« On ne sait plus vraiment où ce tsunami va se terminer ni combien tout cela coûtera en frais de toutes sortes parce qu'on n'est seulement qu'au début », a commenté M. Rousseau.

À ses yeux, le gouvernement conservateur du premier ministre Stephen Harper est d'abord à blâmer pour avoir mis de l'avant ce projet pour des motifs politiques en disant qu'il ferait passer le nombre d'agents de 2500 à seulement 550. Il a aussi imposé un échancier beaucoup trop serré pour un projet d'une telle envergure.

« Le gouvernement fédéral, c'est gros et c'est complexe. Mais l'ancien gouvernement Harper s'est fié au secteur privé et s'est entêté à faire miroiter que ce système coûterait moins cher. Il aurait dû y aller graduellement, par petits groupes de ministères à la fois, et mettre en oeuvre un nouveau système, par phase, sur cinq ans, pour voir s'il était possible de le faire. Maintenant, il faudra peut-être revenir en arrière, reprendre le vieux système ou repartir à zéro. Mais le gouvernement libéral se retrouve dans une situation incroyable. Et tout cela va coûter des millions et des millions. »

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## **Opposition parties want committee recalled to probe Phoenix pay 'debacle'**

**The Canadian Press, July 25 2016**

The federal opposition parties have joined forces to call for emergency hearings into the government's faltering new pay system.

Both the Conservatives and New Democrats want the government operations committee recalled to talk about how the so-called Phoenix system has left tens of thousands of civil servants improperly paid or not paid at all.

But even though a Conservative MP heads the committee, the opposition parties are one member shy of forcing a meeting without the help of the Liberals.

House of Commons rules require at least four members to sign off on a formal written request for a meeting, and the committee has three opposition members, not including Conservative MP Tom Lukiwski, who sits as its chairman.

Lukiwski says the Commons clerk has yet to receive a request, let alone one with four signatories.

Prime Minister Justin Trudeau announced last week that the clerk of the Privy Council, which advises him and his cabinet on government operations, was heading up efforts to fix the dysfunctional pay system.

The government revealed last week that more than 80,000 civil servants have been affected by problems with the system.

That includes 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.

The government has promised nearly 500 of those employees that they would receive paycheques by this Wednesday, but that fixing the pay problems for the others could take months.

## **Jody Wilson-Raybould holds private meeting on legal-system reform**

**Sean Fine, The Globe and Mail, July 31 2016**

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Shortly before the assisted-death bill became law, Justice Minister Jody Wilson-Raybould convened a private meeting with a hand-picked group to discuss what should come next on her agenda. There were sitting judges, criminal lawyers, even a former Progressive Conservative prime minister, Kim Campbell.

The group's consensus: The first priority should be to reduce the numbers in Canadian jails. Even as violent crime fell to 50-year lows, the federal prison population spiked over the past 10 years, which participants at the brainstorming session said represented a failure of tough Conservative justice.

"There wasn't one person who felt that what's happened in the last 10 years in criminal justice is healthy," one participant, who asked not to be identified, told *The Globe*. (A confidentiality clause barred participants from revealing what individuals had said. Other participants confirmed the account.)

Over a two-day meeting on May 19 and 20, Ms. Wilson-Raybould prepared to embark on a review of criminal justice mandated by Prime Minister Justin Trudeau.

An official summary, obtained by *The Globe*, stressed the need to help individuals address the problems that bring them into conflict with the law: "The criminal-justice system is rarely the answer and should function as a last resort."

Under the heading "Early Actions," changes that could be put on the table later this year or early next year could mean blowing up much of the Conservative agenda: addressing the use of solitary confinement; cancelling some mandatory minimums; expanding the reach of conditional sentences; cutting back on the victim surcharge (the Conservatives made an existing financial penalty for convicted criminals mandatory, even for impoverished ones); dealing with credit for pretrial custody (the Conservatives tried to reduce routine credit from two days for each day served to one; the Supreme Court allowed one 1/2 days credit to be routinely given); and taking another look at pardons (some spoke about how the long waiting periods introduced by the Conservatives have made it much harder for ex-convicts to succeed).

Who was at the May meeting is as revealing of the changes to come as what was said. There were four judges, including two current currently serving, Chief Judge Thomas Crabtree of the British Columbia Provincial Court and Justice Sanjeev Anand of the Saskatchewan Provincial Court. (The former government reduced judicial discretion in a series of sentencing bills, and at times engaged in public disputes with judges, outside of the country's courtrooms.)

Also, groups that had once been in favour in Ottawa now had little voice. There was just one police representative, no victims' representative and one prosecutor – actually a retired



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prosecutor, Rupert Ross, an author in the area of aboriginal justice. They were easily outnumbered by four criminal lawyers, one of whom, Alan Young of Osgoode Hall Law School in Toronto, has spearheaded successful challenges to marijuana and prostitution laws. The Chief Statistician of Canada, Wayne Smith, made a presentation on evidence-based research, which some legal observers felt was anathema in criminal justice during the Conservative era. And there was a strong indigenous contingent, supplemented by aboriginal-justice reformers such as retired Yukon judge Barry Stuart.

Ms. Wilson-Raybould won more than a few fans at the session.

“I don’t remember the last time I was so awestruck by a minister,” one participant said. “She was that impressive. A very engaging person.”

Some spoke longingly of 1996, when a Liberal justice minister, Allan Rock, introduced conditional sentences (a form of house arrest). The Harper government banned the use of conditional sentences for dozens of crimes, and imposed 60 mandatory minimum jail sentences for a variety of guns, drugs, sex and other offences. As of April 1, 14,865 people were incarcerated in federal prisons, up 17.3 per cent from the 12,671 prisoners in 2006.

“There’s too many people in jail,” another participant told *The Globe*, summarizing the views of others at the meeting. “There’s too many First Nations in jail. There’s too many people with mental-health issues. There’s too many women in jail. There’s too many vulnerable in jail.”

Ms. Campbell told *The Globe* most participants recognized that “deprivation of liberty is a traditional punishment and it is important, but it also has unintended consequences. Very often it means you have cut people off from productive engagement in society.”

Having sitting judges participate in a working session with a justice minister is considered unusual. Judges are limited by guidelines on political activity, but the guidelines do not have a specific prohibition on participating in such direct discussions.

Judges stand to be directly affected by the talks, by regaining discretion over sentencing that they lost when the Conservative government imposed dozens of mandatory minimum sentences.

“This is, I think, quite unusual – at least to do it openly in this way,” University of Calgary law dean Ian Holloway, who was not at the session, told *The Globe*. “Of course, judges take part in conferences and speak on panels, and oftentimes politicians will be in attendance. But to invite them to tea, so to speak, to seek substantive advice on law reform – well, that doesn’t happen that often.”

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The Office of Chief Judge Crabtree explained in an e-mail why he chose to participate: “The Provincial Court of British Columbia deals with approximately 95 per cent of the criminal cases in the province. The Court therefore has a unique perspective from which it can identify issues impacting the criminal-justice system. One of the roles of a Chief Judge is to engage with justice-system leaders as appropriate and to provide factual information that may promote a more effective justice system.”

Joanne Ghiz, a spokeswoman for Ms. Wilson-Raybould, said in an e-mail that “individuals were invited to share their deep experience and vision as it relates to the framing of the review. They participated as individuals, because of their reputations and work, not for the positions they hold. The conversation did not touch on any specific case(s) and participants were under no obligation to attend.”

## **Supreme Court of Canada rules Canada Labour Code prohibits unjust dismissal of non-unionized employees**

**Daniel Wong, Brian Thiessen and Graham Buitenhuis, Lexology, July 25 2016**

Recently, a majority of the Supreme Court of Canada in *Wilson v. Atomic Energy of Canada Ltd.* (*Wilson*) affirmed that the “unjust dismissal” provisions of the *Canada Labour Code* (the Code) prohibit the termination of non-managerial employees of federally regulated employers “without cause.”

The common law allows employers to dismiss non-unionized employees without cause provided that the employer gives reasonable notice of termination or compensation in lieu of notice. The issue in *Wilson* was whether Parliament intended the unjust dismissal provisions of the Code to provide an alternative statutory scheme consisting of expansive protections much like those available to unionized employees. In a 6-3 split decision, the Supreme Court held that the answer was yes — employers cannot avoid an unjust dismissal complaint under the Code simply by providing reasonable notice or compensation in lieu. This decision confirms that the Code provides robust dismissal protections, similar to those under collective agreements, to federally regulated non-unionized employees.

Of most significant concern to most federally regulated employers, the Supreme Court affirmed that non-unionized employees, with some statutory exceptions (e.g., employees who are laid off because of a lack of work, terminated because of the discontinuance of a function, or are managers) can be reinstated by an adjudicator even if they are given reasonable notice, or compensation in lieu of notice, equivalent to what would be required at common law.

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## **Background**

Joseph Wilson worked for Atomic Energy of Canada Ltd. for approximately four years. He was terminated in 2009 without cause and was offered a substantial severance package. Wilson refused to accept the package. Instead, he filed an unjust dismissal complaint, alleging that he was unjustly dismissed contrary to section 240(1) of the Code as a reprisal for filing a complaint about Atomic Energy of Canada's improper procurement practices.

The adjudicator held that the "unjust dismissal" provisions of the Code prohibit employers from dismissing employees "without cause" even where the employer has satisfied or exceeded the Code's notice and severance requirements. Thus, the adjudicator allowed Wilson's complaint.

On appeal by the employer, both the Federal Court and the Federal Court of Appeal disagreed with the adjudicator. Justice Stratas, on behalf of the Federal Court of Appeal, held that dismissal without cause is "not automatically 'unjust' under Part III of the Code." He held that as a matter of statutory interpretation, the Code had not displaced the common law ability of federally regulated employers to dismiss an employee without cause if reasonable notice or compensation in lieu of notice is given. He also found that sections 230 and 235 of the Code expressly allowed employers to terminate employment without cause provided that notice or compensation are provided. He stated that there was no evidence that Parliament intended to provide non-unionized employees with the same rights as unionized employees or oust the application of the common law. Justice Stratas maintained that even where notice and severance were provided, the Code allowed the adjudicator to determine whether the dismissal was "unjust," thus giving rise to the remedies provided in section 240.

## **The Supreme Court decision**

Justice Abella, writing for the majority of the Court, restored the adjudicator's decision and overturned the decision of the Federal Court of Appeal. The majority decided that the text of the Code, the context, the statements of the Minister of Labour, and the decisions of the "overwhelming majority" of adjudicators and scholars demonstrated that Parliament's purpose in adding the unjust dismissal provisions to the Code was to provide non-unionized employees with protection from dismissal "without cause."

The majority wrote that Parliament intended to "expand the dismissal rights of non-unionized federal employees in a way that, if not identically, then certainly analogously matched those held by unionized employees." Justice Abella pointed to the definition of "unjust dismissal" in the collective bargaining context, where employees can only be dismissed for "just cause." She held that the employer's ability at common law to dismiss an employee without cause if reasonable notice or compensation in lieu of notice is given had been displaced by the Code, which requires reasons for dismissal amounting to "just cause." Further, she held that ss. 230 and 235 are not an "alternative" to the unjust dismissal provisions, and apply *only* to employees who do not avail themselves of those provisions.

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She argued that allowing employers to dismiss employees without cause would undermine and render redundant the remedies available to employees under the Code. She argued that these statutory remedies, such as the entitlement to reasons, reinstatement, and other equitable relief, cannot be displaced by the traditional common law requirement of reasonable notice upon a without-cause termination. Again, she pointed to the comparable remedies available to employees in the collective bargaining context. To allow employers to avoid the operation of the “unjust dismissal” provisions would “deprive employees of the full remedial package Parliament created for them.”

For the reasons above, Justice Abella held that the proper interpretation of the Code does not allow employers to avoid a determination of unjust dismissal by providing reasonable notice or compensation in lieu. Buttressing these arguments, she pointed out that of over 1,700 adjudications based on the “unjust dismissal” scheme in the Code, only 28 decisions had not followed the “consensus approach” adopted by the Court, and 10 of these decisions came out *after* the Federal Court’s decision in this case.

#### **Implications for federally regulated employers**

As a result of the Supreme Court’s decision in *Wilson*, the higher bar for federally regulated employers seeking to terminate employees has been restored, as “just cause” must be established. This increases the importance for federally regulated employers to document employee misconduct, engage in progressive discipline, and consult with counsel to ensure that standards set by the Code can be met. Employers who dismiss non-unionized employees without cause risk liability under the Code for remedies that can include reinstatement, compensation for lost remuneration attributable to the dismissal, and anything else that the adjudicator determines would be equitable for the employer to do to remedy or counteract any consequence of the dismissal.

It is important to note that the “unjust dismissal” provisions in the Code do not apply to managerial employees or employees who have worked with the employer for under 12 months. In addition, complaints will not be considered if the employee was terminated due to a lack of work, the discontinuance of a function, or a procedure for redress is provided elsewhere in the Code or any other Act of Parliament. Further, there is robust case law that considers the circumstances in which reinstatement may, or may not, be warranted by an adjudicator. Accordingly, federally regulated employers may want to review policies and procedures to provide for a robust review of employees’ performance and suitability for employment within their first year of employment, consider in advance whether a dismissal falls within the exemptions outlined in the Code, and consider whether the circumstances of a dismissal may or may not warrant reinstatement (even if such circumstances do not meet the high standard of just cause). Good human resource practices, aligned with legal advice, have become more critical in the wake of *Wilson*.

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## Ottawa garde le cap, malgré le contexte européen

Marie Vastel, *Le Devoir*, le 28 juillet 2016

L'Europe a beau resserrer sa sécurité dans la foulée des récents attentats qu'elle a subis, le gouvernement Trudeau n'a pas l'intention de son côté de retarder ses modifications promises à la loi antiterroriste adoptée par les conservateurs. Un expert estime cependant que le contexte des derniers mois devrait convaincre les libéraux de reculer. Car si leurs amendements manquent à prévenir un incident, ce sera à eux d'en porter le blâme.

Le bureau du ministre de la Sécurité publique Ralph Goodale assure que les événements des dernières semaines ne changent rien à la promesse électorale des libéraux de modifier la loi qui a découlé du fameux projet de loi C-51. Le gouvernement compte toujours aller de l'avant afin d'équilibrer sécurité et libertés des Canadiens, et ce, dès cet automne a indiqué le directeur des communications du ministre Dan Brien au *Devoir*.

Mais entre-temps, le NPD s'impatiente. « *En l'absence de quelque mesure que ce soit de la part des libéraux, je suggère que l'on commence par abolir la loi* », a proposé mercredi le néodémocrate Randall Garrison en promettant de déposer un projet de loi en ce sens « *à la première occasion* » cet automne. « *Les Canadiens s'attendent toujours à ce que les libéraux agissent pour protéger nos libertés fondamentales* », a fait valoir M. Garrison. Le député figure au 234<sup>e</sup> rang de la liste d'attente pour déposer un projet de loi d'initiative parlementaire... sur 240 députés.

Les libéraux comptent cependant entamer leur travail d'ici là. Le ministre Goodale lancera « *bientôt* » des consultations sur la sécurité nationale. « [Le ministre] *est très déterminé à faire ces consultations pour s'assurer que le programme de sécurité nationale respecte à la fois les besoins de sécurité des Canadiens et les droits dans la Charte* », a affirmé Dan Brien.

Le projet de loi C-51 a permis plus d'échange d'informations entre les ministères et le Service canadien du renseignement de sécurité (SCRS) ; a facilité les arrestations préventives ; a élargi l'interdiction de vol aux personnes soupçonnées de voyager pour s'adonner à des activités de terrorisme ; a et accordé au SCRS un nouveau pouvoir de « perturbation » et même celui de poser des gestes illégaux si un juge y consent. Les libéraux ont promis dans leur plateforme électorale de clarifier « *les définitions trop vagues de "propagande terroriste"* » et de « *garantir que tous les mandats du [SCRS] respectent la Charte canadienne des droits et libertés* ». « *Ça, ça ne change pas* », a certifié M. Brien.

### Trop risqué ?



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Le politologue Christian Leuprecht estime cependant que le ministre devrait y penser à deux fois. « *Le contexte actuel n'offre pas de raison très convaincante de reculer sur cette loi* », fait valoir ce professeur au Collège militaire royal de Kingston et à l'Université Queen's. « *Le gouvernement veut-il vraiment se retrouver dans une situation où s'il se passe quelque chose au Canada, et que l'enquête après coup démontre que s'ils avaient laissé ces mesures en place, l'incident aurait eu peu de chances de se produire ?* » Un pari risqué, selon lui, puisque les libéraux risquent d'être au pouvoir — et tenus responsables de leurs changements — pendant plusieurs années.

M. Leuprecht souligne que pour user de ses pouvoirs de perturbation, le SCRS doit obtenir l'aval d'un juge et donc justifier sa demande. Si de telles mesures peuvent réduire les risques, bien qu'elles enfreignent les droits et libertés, « *c'est un compromis raisonnable* », a-t-il défendu.

Le patron du SCRS, Michel Coulombe, révélait en mars que l'agence avait utilisé ses nouveaux pouvoirs près de deux douzaines de fois. Le SCRS n'avait pas obtenu de mandat d'un juge, avait-il indiqué, suggérant que l'agence n'avait donc pas estimé contrevenir aux droits des individus impliqués.

Or, l'analyste en sécurité nationale Stephanie Carvin rétorque qu'une « *loi qui permet au service de renseignement de violer les libertés fondamentales de votre pays, telles qu'enchâssées dans la loi, c'est dangereux. C'est le moins qu'on puisse dire* ». Et plaider le contraire en citant en exemple la situation en Europe est « *erroné* », selon cette professeure adjointe à l'Université Carleton. Car bien que la menace existe au Canada, elle est exponentiellement plus grande en France, où près de 2000 personnes sont parties combattre à l'étranger contre environ 170 ressortissants canadiens.

« *On parle ici d'améliorer les outils, pas de les détruire* », a argué Mme Carvin. La loi antiterroriste n'est pas pour autant parfaite. Les gestes du SCRS devraient être soumis à davantage de surveillance à son avis.

Les libéraux ont déposé un projet de loi en juin proposant la création d'un comité parlementaire chargé de surveiller les opérations des agences de sécurité. Les rapports seront cependant soumis au premier ministre et le gouvernement pourra refuser de fournir certaines informations ou la tenue d'une enquête s'il y a menace à la sécurité nationale. Ce qui fait dire à Randall Garrison que ce comité manquera d'indépendance.

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## Trudeau's deafening silence on C-51

**The law is still an affront to the Charter. Does anyone care?**

**Michael Harris, iPolitics.ca, July 26 2016**

Thursday, June 21 passed with the usual run of crime, chaos and political lies we've come to know as "the news". But it was an important anniversary — and it went almost unnoticed.

A year ago, the Canadian Journalists for Free Expression (CJFE), in partnership with the Canadian Civil Liberties Association, launched a Charter of Rights challenge of Stephen Harper's police state anti-terrorism act, Bill C-51.

And not a moment too soon. C-51 handed Canada's spy service grotesque new powers that are unconstitutional, indefensible and unnecessary. Short of killing or sexually assaulting 'persons of interest' in its quest to disrupt activities deemed to be 'dangerous' to national security, CSIS was handed *carte blanche* by the Harper government. Not a good situation when, at the time, Canada — unlike the United States, Great Britain, Australia and New Zealand — had no parliamentary oversight of the activities of the country's spies.

As far as civilian oversight went, Harper starved the Security and Intelligence Review Committee of funding and never even bothered to fill a vacancy (the committee only has five members to begin with). Harper didn't *want* oversight — he wanted a rubber stamp and zombie appointees. And if Arthur Porter hadn't been accused in a kickback scheme in a Montreal hospital project, Harper's personal choice to head up SIRC would have continued his oversight of SIRC. (As it happened, he died a fugitive from Canadian justice in a Panamanian jail.)

Basic civil rights went on the chopping block when the bill received Royal Assent in June 2015. The spy service could infringe on free speech because "promoting" terrorism was now a jailing offence. CSIS could make more arrests without warrants, even in cases where all the authorities had was the suspicion that an individual "may" carry out a terrorist act. The spy agency was no longer restricted to simply gathering intelligence, but now had the power to "disrupt" suspected terror plots. CSIS could even siphon personal information about an individual from 100 government departments, including the Canada Revenue Agency and Health Canada. And if the spooks planned to break the law or violate the Constitution, they could go before a judge in secret to get pre-approval of their illegal acts.

A lot of things in Harper's governing record demonstrated his contempt for the Charter of Rights and due process. Nothing showed it better than C-51.

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The Liberals, meanwhile, also have a checkered history with this iniquitous piece of legislation. When C-51, with all its warts and red flags, was being rammed through the House of Commons by the Harper majority, Team Trudeau voted with the government. Emotions were running high in October 2014 after Warrant Officer Patrice Vincent and Cpl. Nathan Cirillo were killed by lone-wolf extremists. Harper fast-tracked anti-terror legislation and in just two months came up with C-51.

(Ironically, Vincent's killer, who made two well-documented attempts to leave the country to join ISIS, could have been arrested under existing pre-C-51 legislation. For some reason, he wasn't.)

**“***The reason for this collective amnesia on the perils of unleashing unconstitutional forces isn't hard to nail down. It has something to do with the spate of mass killings — sometimes directly, often loosely, attributed to terrorism — washing across our TV screens.*

With an election in the offing, the Liberals did not want their young leader to be tarred as 'soft on terror' — hence their support for C-51. It was still a stunning abdication of the Charter principles Pierre Trudeau bestowed on the country, coming as it did from his own son. The NDP, by comparison, *did* their jobs — voting against C-51 and attacking it as one of the worst instances of Harper's abuse of power.

Justin Trudeau did not offer blanket approval. Despite having helped to pass the bill, the Liberals vowed that they would amend it to ensure that it was Charter-compliant. Included in Minister of Public Safety Ralph Goodale's mandate letter are explicit instructions to deal with the offensive sections of C-51. The Liberals promised to protect the rights of Canadians to lawful protest and advocacy, to require that government review all appeals by Canadians on the no-fly list, to rein in the Communications Security Establishment (CSE) by requiring a warrant to engage in surveillance of Canadians, and to hold a statutory review of the entire law after three years.

When the new government came to power after the October 2015 election, party officials assured the public that this deeply flawed “security bill” would be “overhauled without delay.”

A critical part of the Liberals' promise to amend C-51 was a pledge to hold public meetings to get citizen and expert input on what needed to be changed. Though the government announced the meetings, none have been held — and C-51 remains in force. While it's true that Goodale has a full plate in front of him — from prison reform to a broad-ranging national security review — critics of C-51 find the government's inaction disquieting and unacceptable.





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And they're not taking it sitting down. With their court case in abeyance, the CJFE is renewing its campaign to repeal five offensive sections of the anti-terror legislation.

"We're encouraging Canadians to make their voices heard through [a new Parliamentary e-petition](#) that calls upon the government to fully commit to a review of Bill C-51 and remove the aspects that violate Canadian Charter rights," said CJFE Advocacy Director Duncan Pike. "This is a new system that allows citizens to digitally participate in the federal policy process. The petition needs 500 signatures to be presented in the House of Commons and compel a government response. Right now it has 370."

That low number of petitioners should alarm every Canadian. According to the CJFE, the two most successful petitions out there right now have 35,000 and 25,000 signatures: The first calls on the Government of Canada to vocally defend the oil and gas industry, while the second demands an end to sales restrictions on the AR-15 semi-automatic rifle. When gun enthusiasts can so completely out-organize the people defending our civil liberties, you know something is badly wrong.

It's as if Canadians have forgotten the woefully bad job the Standing Committee on Public Safety did under Harper when holding its clause-by-clause review of Bill C-51 back in March 2015. Green Party Leader Elizabeth May rightly called those deliberations a "sham." Not a single major amendment of this police state legislation came out of those hopelessly partisan hearings.

It's as if Canadians have forgotten that both CSIS and CSE were found guilty earlier this year of *breaking* this country's surveillance laws. CSE unlawfully shared data on Canadians with foreign allies, while CSIS violated court orders by retaining communications intercepts it was supposed to destroy.

The reason for this collective amnesia on the perils of unleashing unconstitutional forces in the security establishment isn't hard to nail down. It has something to do with the spate of mass killings — sometimes directly, often loosely, attributed to terrorism — washing across our TV screens recently. From Orlando to Dallas, from Nice to Munich, the maniacs appear to be on the loose. C-51 itself was the illegitimate child of fear and the promise of protection in the wake of similar events in this country.

That is what Donald Trump offers — a world of terror and scapegoats, of doomsday and denunciations. Trump's America would be a land of bollards and security checks at every corner, of Uzi-toting police in every public square. I prefer the wise words German Interior Minister Thomas de Maiziere gave to *Der Spiegel*:



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“No constitutional state in the world is in a position to prevent every crime, every massacre, or every terrorist act with absolute certainty.”

But every democracy in the world can refuse to barter away foundational civil rights for the illusion of protection. It's time for Team Trudeau to get going on the hearings to amend C-51.

The old RCMP Security Service merely burned barns. The new CSIS, armed with C-51, could burn down a democracy.

## **Le NPD promet un projet de loi pour abroger la loi antiterroriste C-51**

**La Presse canadienne, Le Devoir, le 27 juillet 2016**

Le Nouveau Parti démocratique (NPD) piaffe devant le manque d'empressement des libéraux à s'attaquer comme promis à certaines dispositions de la loi antiterroriste C-51.

Le porte-parole néodémocrate en matière de sécurité publique, Randall Garrison, affirme qu'il déposera à la première occasion un projet de loi pour abroger C-51 lors de la reprise des travaux parlementaires cet automne.

En point de presse à Ottawa mercredi, il a rappelé que les troupes de Justin Trudeau avaient voté en faveur de cette législation controversée mise de l'avant par les conservateurs, tout en promettant d'en annuler les dispositions jugées « *problématiques* ».

*« Les Canadiens s'attendent toujours à ce que libéraux agissent pour protéger nos libertés fondamentales, a soutenu M. Garrison. Et ils savent que cela peut être fait tout en restant en sécurité. »*

Près de neuf mois après l'arrivée au pouvoir des libéraux à Ottawa, rien n'a vraiment bougé dans ce dossier.

La loi C-51 permet notamment plus d'échange d'informations entre les ministères, les agences et le Service canadien du renseignement de sécurité (SCRS). Elle facilite par ailleurs les arrestations préventives et élargit l'interdiction de vol pour les personnes représentant une menace terroriste.

### **Agence d'espionnage canadienne**

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Les pouvoirs de l'agence d'espionnage canadienne sont également accrus. Tant le NPD que le Parti libéral du Canada (PLC) s'étaient inquiétés de la faiblesse de l'agence chargée de superviser les actions du SCRC, le Comité de surveillance des activités de renseignement de sécurité (CSARS).

*« L'une de nos principales préoccupations était que C-51 élargissait tellement la définition de menace à la sécurité nationale que cela pouvait potentiellement toucher plusieurs formes de dissidence légitime », a souligné M. Garrison.*

Dans leur plateforme électorale, les libéraux se sont engagés à garantir que tous les mandats du SCRS respectent la Charte canadienne des droits et libertés. Ils ont également promis de clarifier les définitions trop vagues du projet de loi, incluant celle de « *propagande terroriste* ».

Ils entendaient également créer un comité de surveillance de la sécurité nationale qui rassemblerait tous les partis. Le gouvernement a bien déposé un projet de loi pour mettre sur pied ce comité, mais M. Garrison ne le juge pas assez indépendant, puisqu'il se rapporte au premier ministre et non à la Chambre des communes.

M. Garrison a signalé vouloir des programmes de contre-radicalisation efficaces et souhaiter que les forces policières disposent de toutes les ressources nécessaires pour mener leurs activités.

## **Pas de consensus sur un système idéal**

**Marie Vastel, Le Devoir, le 26 juillet 2016**

Le gouvernement Trudeau a beau espérer que la réforme électorale fasse consensus, les premiers experts invités à offrir leur avis sur les possibles changements envisageables ne l'ont pas aidé. Car aucun des trois politologues ne s'est entendu quant au mécanisme de vote idéal.

En lançant le bal des témoignages au comité parlementaire sur la réforme électorale, la ministre des Institutions démocratiques, Maryam Monsef, avait invité les députés à faire preuve de compromis afin de s'entendre sur une recommandation. Seul constat partagé par les trois politologues invités à ce même comité : le système actuel uninominal à un tour n'est pas parfait, mais aucune des autres options ne l'est.

Le professeur de sciences politiques de l'Université Wilfrid Laurier à Waterloo, Brian Tanguay, préconise le système proportionnel mixte. Un tel changement permettrait l'élection de députés locaux — respectant l'importance accordée par l'électeur à une représentativité locale — et de



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députés régionaux pigés dans une liste de candidats des partis — ce qui permettrait d'atteindre une proportionnalité entre le nombre de votes exprimés et le nombre de sièges obtenus au Parlement. Davantage de gouvernements de coalition s'ensuivraient.

Certaines études suggèrent qu'un système proportionnel permet de hausser la participation électorale de six à sept points de pourcentage, a noté M. Tanguay. Mais en Nouvelle-Zélande, bien que la participation ait augmenté à la suite de l'adoption de ce modèle, elle a rediminué par la suite, a rectifié Nelson Wiseman de l'Université de Toronto.

Ce second politologue estime qu'un système proportionnel mènerait à la création de toutes sortes de partis politiques défendant des intérêts particuliers — comme un parti pour les retraités créé en Israël. Le Canada verrait peut-être même la création de partis d'intérêts provinciaux, défendant les préoccupations précises des citoyens de chaque région, s'inquiète M. Wiseman.

Kenneth Carty, de l'Université de Colombie-Britannique, partage ses craintes, prédisant que la proportionnelle morcellerait carrément les partis nationaux qui se fractionneraient en vertu de préoccupations pointues. « *Et comme Humpty Dumpty, ce ne serait pas facile de recoller les morceaux* », a-t-il illustré aux députés réunis exceptionnellement fin juillet pour causer réforme électorale.

M. Carty n'a pas pour autant émis de préférence. « *Il n'y a pas de système parfait, pas plus que de meilleur système électoral. C'est pour ça qu'aucun pays du monde démocratique n'a exactement le même système.* » Nelson Wiseman est du même avis. Mais s'il faut en choisir un, il suggérerait un système à vote unique transférable dans des circonscriptions de tailles variables — plus grosses pour les grandes villes dont les électeurs partagent les mêmes préoccupations, plus petites pour les régions rurales aux priorités plus variées.

### **Nul besoin de référendum**

Les politologues ont toutefois été unanimes à rejeter l'indispensabilité d'un référendum. Ce qui a mené à quelques échanges musclés avec les conservateurs, qui en réclament un à tout prix.

« *Ce n'est pas nécessaire, c'est un gaspillage d'argent et ça va presque certainement échouer* », a fait valoir M. Wiseman, qui estime que les électeurs s'adapteront à quelque système électoral que ce soit. En 2004, la Colombie-Britannique a sondé sa population sur une possible réforme. « *La grande majorité des gens qui ont voté au référendum ne savaient vraiment rien de l'enjeu sur lequel ils votaient* », a relaté M. Carty.

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Les conservateurs ont malgré tout continué de marteler qu'une réforme aussi « *radicale* » ne pouvait se faire sans consulter la population. « *C'est pour ça que vous êtes élus ! Vous êtes élus pour élaborer des politiques publiques, pas pour tenir votre doigt en l'air et voir de quel côté souffle le vent* », leur a scandé Nelson Wiseman.

## **Electoral reform without tears**

**We're getting hung up on the referendum question. There's a better way.**

**Mark Crawford, iPolitics.ca, July 27 2016**

The heated debate over whether the Trudeau government's electoral reform process should end with a referendum vote shows no signs of cooling off. Supporters of the idea argue (correctly) that the government, despite receiving a general mandate to change the electoral system in the 2015 election, lacks a specific mandate because it's in a conflict of interest — that it should not be trusted to design the rules by which the House of Commons is elected.

The Liberals' belated decision to relinquish their majority on the Commons Committee on Electoral Reform, and their commitment to having a free vote in the House on the final bill, went only part of the way toward alleviating this concern.

That free vote, by the way, will still be based on the very distortion of representation that electoral reform is supposed to correct. Individual Liberal MPs will still have 54 per cent of the seats on the strength of 39.5 per cent of the popular vote, while one Green MP will have 0.3 per cent of the votes cast, despite representing 3.4 per cent of the electorate. Even if these problems could be addressed so as to assure fairness between political parties, there might still be a conflict of interest. Politicians as a class will still frame the question, and ultimately decide its answer, without due consideration of how much Canadians living outside the Ottawa bubble might not wish to affirm or support political parties as the primary organizations that mediate the popular will.

Opponents of a referendum on electoral reform have some solid arguments of their own. Referendums don't forge consensus — they polarize opinion. We saw this at work in both the Quebec referendum campaigns and the recent U.K. vote to leave the European Union. The value of representative democracy, on the other hand, is that it can examine all sides of an issue and fashion solutions that serve the interests of the majority while still being acceptable to minorities.

The debate over Brexit showed how misinformation and errors of fact (concerning Turkey's membership and money saved for health care, for example) could not be corrected in time for the vote — with incalculable consequences for the future of the U.K. and Europe. (To those

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who think governments in recent decades have established a binding constitutional convention requiring a referendum, there's a simple answer: You're probably wrong, but you're free to recommend a Supreme Court Reference or to take the matter to court yourself.)

The ideal solution, therefore, is one that fully addresses the problems of legitimacy and conflict-of-interest that a referendum is supposed to solve — while avoiding, if possible, all the problems of polarization and prevarication that referendums tend to create.

Such sound deliberation, suitably scrubbed of partisan self-interest, was the both the purpose and the effect of citizens' assemblies on electoral reform in British Columbia and Ontario, and the Citizens' Committee in Quebec.

Where those processes went wrong (particularly in B.C. and in Ontario) was in maintaining the assemblies as islands of deliberative democracy in splendid isolation from the great majority of voters — while letting legislatures completely off the hook for the decision. The referendum results reflected both the electorates' lack of identification with the citizens' assemblies and the ability of ruling parties to tilt the playing field away from change. Legislators (often displaying a decided lack of enthusiasm for systems other than the one that put them into office) relied too little on democratic persuasion and too much on 60 per cent voter thresholds and inflexible "take-it-or leave-it" ground rules.

Provinces are supposed to be Canada's laboratories for policy. By applying the lessons learned from failed (or partially successful) provincial experiments to the current referendum debate, we should create a structure for institutional dialogue between a citizens' committee on electoral reform and Parliament. Such a structure could force politicians to justify their rejection of, or amendments to, a citizens' initiative, thereby improving the legitimacy and deliberative quality of the bill.

The result would be either to reduce the perceived need for a referendum (if the process went well and a double majority of politicians and informed citizens could reach consensus) or to better prepare and inform the electorate in the event a referendum turns out to be necessary to settle a fundamental dispute between parliamentarians and citizens. Even many advocates of proportional representation — who fear that the rights of all to have their votes counted equally in Parliament will be trampled by a majority — would be more receptive to a referendum if it were needed to resolve such a conflict.

The upshot is that a referendum is necessary *only* as a last resort. A citizens' committee should be struck to conduct parallel deliberations with the House of Commons. If the Commons and the committee can't agree, then that impasse can be resolved by a referendum. But if they *can* agree, then a referendum becomes unnecessary.

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## **Un comité indépendant recommandera les candidats à la Cour suprême**

**La Presse Canadienne, Radio Canada, le 2 août 2016**

Le premier ministre fera ensuite son choix parmi les candidats proposés.

Le processus « ouvert et transparent, et qui relèvera la barre en matière de reddition de comptes », prévoit aussi que tous les juges nommés à la Cour suprême soient bilingues, écrit le premier ministre Justin Trudeau dans une lettre publiée mardi par divers médias d'information. Son gouvernement s'était d'ailleurs engagé à ne nommer à la Cour suprême que des juges bilingues.

L'époque où les gouvernements, tant libéraux que conservateurs, nommaient des juges à la Cour suprême en coulisses et en secret est révolue. Les Canadiens méritent mieux.

Justin Trudeau, dans une lettre ouverte

Le processus, inspiré de celui encadrant la nomination des sénateurs, entrera en vigueur bientôt, car le juge Thomas Cromwell, de la Nouvelle-Écosse, prendra sa retraite le 1er septembre prochain. Son départ imminent a d'ailleurs précipité un peu les choses pour le gouvernement Trudeau. Les intéressés devront soumettre leurs candidatures d'ici le 24 août.

### **Kim Campbell à la barre du comité**

Le comité consultatif sera dirigé par l'ex-première ministre progressiste-conservatrice du Canada, Kim Campbell, qui avait été préalablement ministre de la Justice de 1990 à 1993. La seule personne issue du Québec qui devrait en faire partie est Lili-Anna Peresa, ingénieure en génie électrique diplômée de l'École Polytechnique de Montréal et présidente et directrice générale de Centraide du Grand Montréal depuis 2013. Mme Peresa détient aussi un diplôme d'études supérieures en gestion de l'Université McGill, ainsi qu'une maîtrise en sciences politiques de l'Université de la Sorbonne, à Paris.

Le précédent processus de nomination prévoyait qu'un comité formé de députés des principaux partis soumette une liste de noms au premier ministre. C'est le gouvernement libéral de Paul Martin qui l'avait mis en place en 2004. Les conservateurs de Stephen Harper l'avaient conservé.

Ce processus était « opaque et désuet », et requérait « une révision complète », écrit Justin Trudeau.

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La nomination d'un juge à la Cour suprême est l'une des plus importantes décisions que prend un premier ministre. Le temps est venu de prendre cette décision ensemble.

Le premier ministre Justin Trudeau

## **Ottawa overhauls process for selecting Supreme Court justices**

**Steven Chase, The Globe and Mail, Aug 2 2016**

The Liberal government has confirmed it will overhaul the way Canada picks a Supreme Court justice, opening up a process that has been criticized as partisan and unaccountable.

Prime Minister Justin Trudeau will announce Tuesday that former prime minister Kim Campbell has been selected to chair a new seven-member advisory board that will be tasked with recommending candidates to replace Supreme Court Justice Thomas Cromwell, who is due to retire on Sept. 1.

The Globe and Mail [revealed last month](#) that the government was planning to change the selection process and would position the move as an attempt to make it less elitist. The Globe also reported that the government was expected to allow people to nominate themselves for the Supreme Court job, which Ottawa will also announce Tuesday.

### **[INVESTIGATION: The secret short list that provoked the rift between Chief Justice and PMO](#)**

Any qualified Canadian lawyer or judge will be able to put forward their name for consideration and the government will take applications for the job in Canada's highest court until the end of the day on Aug. 24. The board will review all applications and their recommendations will be based only on the pool of applicants.

"From now on, an independent and non-partisan advisory board will be given the task of identifying suitable candidates," Mr. Trudeau wrote in a [column](#) published in The Globe Tuesday. "Gone are the days of governments – Liberal and Conservative alike – nominating Supreme Court justices through a secretive backroom process. Canadians deserve better," he said.



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Since Justice Cromwell comes from Nova Scotia, convention dictates that his successor should come from Atlantic Canada. Ottawa is not limiting the search process to Atlantic Canada, however, and the board will accept nominations from across the country.

Four members of the advisory board – a retired judge, two lawyers and a legal scholar – were nominated by the legal community. Groups that had a say include the Canadian Judicial Council, the Canadian Bar Association, the Federation of Law Societies of Canada and the Council of Canadian Law Deans. Three members, including Ms. Campbell, were appointed by the government.

The board will draw up a list with three to five names by late September and Mr. Trudeau is expected to commit to choosing a replacement for Justice Cromwell from this list even though the recommendations will be non-binding and the Prime Minister retains unfettered authority to appoint whomever he wants. The appointment will be made during the fall session of the Supreme Court, which begins in October and runs into December.

There are no sitting MPs on the panel, a departure from the way things ran under the Stephen Harper government, which selected some justices after review by a committee of MPs and at least one where the Prime Minister's Office sidestepped MPs. 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.

**[GLOBE ARCHIVES: Stephen Harper's courts: How the judiciary has been remade](#)**

The moves are partly a response to the Nadon affair, 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 in selecting justices.

Members of the new advisory board nominated by the legal community include: Susan Ursel, a senior partner with a Toronto law firm who has been recognized for her support of the lesbian, gay, bisexual, transgendered and two-spirited (LGBTT) communities in Canada; Jeff Hirsch, president of the Federation of Law Societies of Canada and partner with a Winnipeg law firm; Richard Jamieson Scott, a former chief justice of the Manitoba Court of Appeal and counsel, arbitrator and mediator at a Winnipeg law firm, and Camille Cameron, dean of the Schulich School of Law at Dalhousie University and Chair of the Canadian Council of Law Deans.

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The Prime Minister said opening up the process helps reassure Canadians “that all members of the Supreme Court are both fully qualified and fully accountable to those they serve” across the country.

“The appointment of a Supreme Court justice is one of the most important decisions a Prime Minister makes. It is time we made that decision together.”

All candidates must be functionally bilingual, the government says.

The three members of the advisory board appointed by the Trudeau government include: Ms. Campbell, who served as prime minister in 1993 when she led the Progressive Conservative Party, former Northwest Territories premier Stephen Kakfwi and Lili-Anna Peresa, president of Centraide of Greater Montreal. Centraide is the Quebec presence of United Way Canada.

The government will mandate the advisory board to support the goal of a gender-balanced Supreme Court that also reflects Canada’s diverse society. With Justice Cromwell’s departure, the bench is equally split between men and woman and so a new ninth judge will tilt the balance one way or another.

“A diverse bench brings different and valuable perspectives to the decision-making process, whether informed by gender, ethnicity, personal history, or the myriad other things that make us who we are,” Mr. Trudeau wrote.

The government is restoring a measure of accountability to the process, promising to consult widely on the shortlist of candidates with the Chief Justice of Canada, with provinces and territories as necessary and with relevant members of cabinet, as well as opposition justice critics and the Commons and Senate justice and legal-affairs committees.

They’re also pledging to hold a question-and-answer session where MPs and senators can ask the nominated justice, before he or she joins the bench, to explain how they meet the criteria of the job. This will be open to members of the Commons Standing Committee on Justice and Human Rights, the Senate committee on legal and constitutional affairs, as well as representatives of the Bloc Québécois and Green Party.

“To further meet our commitment to transparency, we will invite the members of the House and Senate Committees, and representatives of all parties with seats in the House, to take part in a Q&A session with the nominee, moderated by a law professor,” Mr. Trudeau wrote.



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Finally, all applicants will be required to complete a questionnaire when they seek the job and the answers they provide will be made public, except for responses to what are deemed personal questions such as references.