

Christie Blatchford: A team of guards, an interpreter, two prosecutors, a lawyer and a judge to get one alleged terrorist to court

'You are all infidels. I do not worship what you worship,' said the woman accused of 14 terror-related charges after a bizarre episode at a Canadian Tire store

National Post

Christie Blatchford

August 22nd 2017

Rehab Dughmush appears for all the world to be the face of the modern new (alleged) terrorist – in the jargon of pop psychology, mad, bad, sad or an amalgam of all three.

As a prosecutor remarked Monday at her latest court appearance, “The question is, is she unwilling or is she unable?” to participate in the Canadian justice system.

Put another way, and this is one of the other issues the court may yet determine, is Dughmush mentally fit to stand trial?

The 32-year-old Syrian-Canadian faces 14 terror-related charges after a bizarre episode at a Canadian Tire store in the Toronto suburb of Scarborough on June 3, wherein Dughmush allegedly swung a golf club and wielded a knife at employees and customers while wearing a headband with Islamic State of Iraq and Syria (ISIS) markings and screaming “Allahu Akbar!”

She was eventually subdued by employees.

After several refusals to leave her cell at the Vanier Centre for Women in Milton, Ont., most recently last week, Ontario Court Judge Kimberley Crosbie reluctantly ordered that if necessary, she be forcibly brought to a video room at the prison to make Monday’s appearance.

She was originally charged with assault, assault with a weapon, threatening death and the like, but early last month was also charged by the RCMP with terrorism offences.

According to the Mounties, Dughmush left Canada in April of 2016, intending to join ISIL in Syria but was intercepted in Turkey and sent back.

Earlier that month, court documents show, she separated from her husband.

Dughmush has the increasingly typical background of the modern terrorist — she is alleged to have been at the least inspired by an extremist organization, had limited success in her adopted country and a recent major stress. Against similar backdrops have many lone-wolf terror attacks occurred in Western Europe, Canada and the United States, whether jihadist or white supremacist.

On Monday, Dughmush as usual refused to leave her cell to go to the video room (many routine court appearances are now done this way).

A prison officer, appearing on camera, told the judge “She’s refusing to come in again.”

Crosbie then asked to hear from the lawyer she earlier had appointed to act as a “friend of the court,” Ingrid Grant.

Dughmosh has consistently refused to be represented by a lawyer of her own, despite Crosbie’s repeated pleas. She announced she wants to plead guilty and denounced any law but Allah’s.

Grant said “there is a concern” arising from Dughmosh’s behaviour that “suggests she’s not understanding something about the process.”

It could be, Grant said, that Dughmosh has “a mental disorder” or just simply doesn’t know the ins and outs of the proceeding.

At that point, federal prosecutor Bradley Reitz (there because of the terrorism charges) told the judge “I don’t take unwillingness as a sign of mental illness,” and noted, “It seems to me she has to appear in some fashion at some point.”

Provincial prosecutor Phil Kotenan (there because of the more ordinary charges) said there is a more widespread tendency for accused people “to not want to come to court while in custody,” and that in this case, Dughmosh’s continued absence from the proceedings “adds to nothing but a gap in the evidence” about her mental capacity.

Next, Crosbie quizzed the prison officer about the nature of the extraction team that was on standby: It has five members, the officer said, who have special training to “limit their exposure to risk and hers (Dughmosh’s).”

That officer’s sergeant then popped into view, telling Crosbie that Dughmosh hasn’t been leaving her cell at all. “She doesn’t shower, she doesn’t go to fresh air, she doesn’t like to be on camera... She will never go to court. I’m confident of that.”

A little later, after the lawyers gnawed on that a while, the officer came back on camera to tell the judge that although she doesn’t shower, Dughmosh gets clean clothing every day and “washes in her cell.”

Reassured by the guards that “our goal is to not lay hands on her” and that the team would try negotiation first, Crosbie authorized them to bring Dughmosh to the video room.

The court took a break then, and the judge was replaced by a justice of the peace and a steady succession of more ordinary accused persons, including two people who demanded private chats with lawyers.

That involves the court muting the sound system, and was a complicated process that involved the lawyer calling the inmate on camera, the inmate picking up the line on camera, and the court then trying to turn down the sound before they began speaking.

Several times, the JP, who appears on camera to the inmates, gave the thumbs up sign to show the sound was successfully muted in court, but something was lost in translation, and either the inmate hung up or the call was disconnected.

After about 40 minutes and appearances by half-dozen regular inmates, Crosbie and the lawyers returned to court, with the JP and the other lawyers leaving.

Crosbie then explained the process, speaking slowly so the Arabic interpreter could translate every word for Dughmosh, occasionally asking her questions.

Each time, regardless of the question, Dughmosh replied, “Hey, you are all infidels. I do not worship what you worship.”

Handcuffed, a thick lock of dark hair hanging in her face, she was standing between two heavily protected guards wearing helmets and visors. Each appeared to keep a hand on one of Dughmosh’s arms, and once, she departed from her script long enough to say, “listening. Hurt me. Hurting me.”

At another point, while saying, “You are all infidels. I do not worship what you worship,” Dughmosh cracked a broad smile.

“So, Ms. Dughmosh,” the judge said, “I know you said you were listening. What I’m thinking about ... is whether or not to order an assessment to see if you’re fit — mentally able — to continue with the proceeding.”

“OK,” said Dughmosh, “you are all infidels. I do not worship what you worship.”

The judge ordered her to return to the video room next Monday, at which point she may order a psychiatric assessment under 672.11 (a) of the criminal code.

She also noted that this was the first time Dughmosh had appeared without her niqab, the full face covering, and asked the prison officials to find out if “this was her choice.”

It was, in short, a process remarkably considerate, and excruciatingly careful of Dughmosh’s rights, for a lousy infidel court.

Ottawa's first Indigenous peoples court to be announced Friday

Specialized court to handle cases of Indigenous offenders in Ottawa

CBC News

Joe Lofaro

August 22nd 2017

The provincial government will announce the opening of Ottawa's first court for Indigenous peoples this week, CBC News has confirmed.

A ceremony to make the news official will take place Friday afternoon inside the Ottawa courthouse on Elgin Street, which sits on traditional Algonquin territory.

According to a memo shared with courthouse staff and obtained by CBC News, Ontario Court Justice Celynne Dorval has invited members of the Ottawa Crown Attorney's Office, Legal Aid Ontario, the Public Prosecution Service of Canada, and the Defence Counsel Association of Ottawa to the opening.

Members of the Aboriginal Legal Services, the Odawa Native Friendship Centre, and Tungasuvvingat Inuit are also expected to speak at the ceremony to provide more details about how the new court will operate.

This Indigenous peoples court has been several years in the making, with assistant crown attorneys, defence lawyers, and others working on the project ahead of Friday's announcement.

Indigenous adults make up high percentage of jail populations

The opening of the specialized court is meant to address the overrepresentation of Indigenous people in Canada's criminal justice system.

Ottawa's first Indigenous court, also known as a Gladue court, draws its name from a 1995 court case where a defendant successfully argued the court should consider the lived experience of an Indigenous offender, for example, the trauma associated with the residential schools system.

This ruling is enshrined in Canadian law in section 718 of the Criminal Code, which states alternatives to imprisonment should be considered for all offenders, "with particular attention to the circumstances of Aboriginal offenders."

Indigenous adults accounted for 26 per cent of admissions to provincial and territorial jails from 2015 to 2016, while only representing 3 per cent of the adult population in Canada, according to Statistics Canada. The figure is slightly higher — 28 per cent — for Indigenous adults in federal institutions.

Statistics Canada also reported that most of the incarcerated Indigenous population is female at both the provincial and federal levels.

'Systemic racism'

"There obviously is a problem here," said Claudette Commanda, granddaughter of the renowned late Algonquin elder William Commanda.

"History, as well as even some current issues, do show that there's still racism that is out there. Institutionalized, systemic racism."

Commanda, of the Algonquin Anishinabe First Nation, was invited to perform a purification ceremony at the event on Friday.

She said she believes the new court will provide Indigenous offenders with the resources they need to begin rehabilitation and protect them from future incarceration.

Waiting for action as federal government makes no move to address mandatory minimums

Canadian Lawyer

Michael Spratt

August 21, 2017

Canadians were told that reforming the justice system was a priority for Jody Wilson-Raybould and the Trudeau government.

We were told evidence-based policy is the new order of business when it comes to crime and punishment.

Both Trudeau and Wilson-Raybould identified the use of mandatory minimum sentences and constraints on judicial discretion as priority areas for reform.

And then there was no action.

But last year at the Criminal Lawyers' Associations annual conference, Wilson-Raybould was crystal clear in saying that restoring judicial discretion was an issue of utmost importance — she told the crowd that justice couldn't be a one-size-fits-all proposition. Specifically, she said that mandatory minimum sentences were a priority for change and promised that reforms were coming.

And then, again, there was no action on minimum sentences. Heck, Wilson-Raybould even introduced legislation to repeal laws that the Supreme Court of Canada has ruled are unconstitutional — except for the minimum sentences.

So what can possibly explain the government's lack of action on minimum sentences?

Well, it seems that the government's resolve on evidence-based decision-making and progressive justice policy may begin and end with public opinion.

Last week Jessica Prince, senior policy advisor to the minister of Justice, tweeted a link out to an EKOS survey commissioned by the Department of Justice. The survey seeks the public's feedback on the use and effectiveness of mandatory minimum sentences. Forget the EKOS questions. The question we should be asking is why?

Let's be frank. The public's opinion on minimum sentences is irrelevant if the goal is genuinely to enact policy based on evidence. Just like the public's opinion on whether global warming is real is irrelevant. Facts are facts and Wilson-Raybould's survey is purely an exercise in delay and political cover.

Setting criminal justice policy based on the compass of public opinion is a dangerous game that risks undermining fairness and the rule of law. Interpreting constitutional rights on the whims of the majority fundamentally misunderstands one of the purposes of Canada's Charter of Rights and Freedoms: to protect the weak from the powerful and minorities from the whims of the majority.

But let's take a step back and review minimum sentences so we can fully understand Wilson-Raybould's lack of principled leadership.

Minimum sentences remove the usual judicial discretion to impose a sentence that takes into account the particular circumstances of the offender and of the offence. The result in many cases — grossly disproportionate sentences that are “so excessive as to outrage standards of decency” and are “abhorrent or intolerable” to society. Those are the Supreme Court's words.

Mandatory minimum sentences also result in the insidious transfer of discretion from judges to the Crown prosecutors — who have the discretion to drop a minimum sentence in exchange for a plea to a lesser charge. This sort of deal, dangled before an incarcerated accused, can result in a perverse inducement for the innocent to plead guilty.

The costs of minimum sentences — both financial and social — come with little benefit. Evidence shows that minimum sentences don't deter crime, reduce recidivism rates or make our communities any safer.

These are not matters up for debate. These are facts confirmed by decades of research. These are facts outlined in hours of evidence presented at parliamentary committee hearings.

In 2007, one of Canada's most respected criminologists, Anthony Doob, testified before the House Justice committee and summed up the state of affairs, saying, "The evidence of [mandatory sentences'] ineffectiveness is clear. Numerous studies have been carried out in various countries demonstrating that mandatory minimum penalties of this kind do not deter crime."

And Wilson-Raybould knows this. In 2016, the Department of Justice commissioned a meta-study of the evidence on the impacts of minimum sentences.

The government's own review found that "harsh penalties — like MMPs — are ineffective at deterring crime" and detailed that "experienced practitioners and social science researchers have long agreed, for practical and policy reasons [. . .], that mandatory penalties are a bad idea."

The 2016 report went on to find that most of the recent academic discussions found that increased reliance on minimum sentences as evidence have "come not from an empirically or evidence-based need for more punitive policy, but from political maneuvering."

The 2016 review found that when minimum sentences are evaluated in terms of their stated substantive objectives, they do not work.

But even in 2016 this information was not a revelation. In 2007, the Library of Parliament clearly set out the potential constitutional difficulties, the lack of utility and the negative impacts of mandatory minimum sentences. The Library of Parliament even quoted a Canadian meta-analysis that found there was "little difference in general recidivism rates, regardless of length of incarceration or whether the offender was given a prison or community sanction. In fact, prison produced slight increases in recidivism."

But this should come as no surprise for those truly motivated by evidence-based policy. After all, a 2005 Justice Department Report found, after a review of the evidence, that "minimum sentences are not an effective sentencing tool: that is, they constrain judicial discretion without offering any increased crime prevention benefits."

So why is the Department of Justice now conducting a public opinion poll that includes questions asking for the subjective opinions on the empirical question of whether mandatory minimum sentences deter crime?

The evidence on the lack of effectiveness and costs of minimum sentence is clear. In 2016, Wilson-Raybould said that minimum sentences were a priority. After almost a year of inaction, that priority is manifest in a concern about public opinion?

But perhaps this should not be a surprise given that in 2016 The Canadian Press reported that the Liberals were eyeing a “politically viable strategy” to bring changes to minimum sentences.

After a decade of ideological criminal justice policy at the hands of the Harper government, swift and principled action is imperative. Inaction means unjust court results, less safe streets, increased court delays and ballooning costs.

Minimum sentences represent the lowest-hanging fruit for meaningful justice reform. Their counterproductive and negative impacts are well documented.

This is not a matter for debate. The solutions are known and uncomplicated.

All we need now is a justice minister with the principle and conviction to take action. Unfortunately, it seems that piece is still missing.

Indigenous people to get their own court in Ottawa

APTN National News

Kenneth Jackson

August 22nd 2017

The government of Ontario is set to announce this week the opening of an Indigenous peoples court, APTN National News has learned.

The announcement is set for Friday at the Ottawa courthouse on Elgin Street, according to a memo sent to lawyers and other stakeholders obtained by APTN.

“Details regarding the functions of this Court will be highlighted at the announcement of the opening of this court,” the memo states.

APTN has been told it appears there will be four judges for the court, also known as a Gladue court, and will operate a few days a week.

People who identify as First Nation, Metis and Inuit are be able to have their cases transferred to that court.

The Supreme Court of Canada ruled in 1999 that courts must take into account Gladue principles, which reach deep into the history of an Indigenous person facing incarceration. Some provinces, like Ontario, do so through Gladue reports.

The objective of the Supreme Court ruling was to curb the number of Indigenous people incarcerated.

The country’s highest court ruled again in 2011 reminding lower courts they had to take Gladue principles into account as the number of Indigenous people in prison continued to soar. It still does to this day.

Courts are supposed to consider alternatives to incarceration when possible, such as addiction treatment programs.

Toronto has Gladue courts but this is the first time Ottawa will have one.

The current system has only allowed lawyers to request a Gladue report but it hasn't been without problems since they were first offered in Ottawa in late 2014.

Lawyers must go through Legal Aid's appointed writer and no other writers who operate out of Ottawa. Reports will also only be approved for people facing more than 90 days incarceration.

In the fiscal year of 2015/16 there were 20 reports completed. There were five reports completed between when the program began in November 2014 to March 2015.

Statistics previously obtained by APTN from the Odawa Native Friendship Centre showed between 2014 to October 2016 there were at least 269 Indigenous offenders facing incarceration.

Of that 269, 196 were on probation, 170 suffered from addictions, 93 went, or had parents that went, to residential schools, 83 were homeless, 79 suffered from mental health issues and nearly half (120) were Inuit.

Lawyers have complained it often takes months to obtain a Gladue report.

Staff from Aboriginal Legal Services, a non-profit in Toronto that has been writing the reports in Ottawa, will be attendance Friday, as well as staff from Odawa, Wabano Aboriginal Health Centre and Tungasuvvingat Inuit.

A committee has been working on the developing the court for several years.

Nova Scotia government imposes wage package on 75,000 civil servants

The Canadian Press

Keith Doucette

August 22nd, 2017

HALIFAX — Nova Scotia's Liberal government finally moved on a contentious piece of labour legislation Tuesday, effectively imposing a wage package on the province's 75,000 public sector employees and drawing a fiery response from the union representing the majority of them.

Premier Stephen McNeil said the proclamation of the Public Services Sustainability Act was being done in the "best interests of Nova Scotians," but the union president called that insulting.

"It's the arrogance of this government that just really cooks my goose," said Jason MacLean, president of the Nova Scotia Government and General Employees Union (NSGEU).

The act was passed in December 2015 to ensure third party arbitrators could not bind the government to wage settlements. At the time, McNeil promised it would not be brought into force until it was needed.

The government's move came two weeks after the Nova Scotia Government and General Employees Union (NSGEU) — the province's largest — filed for arbitration on behalf of nearly 8,000 civil servants after last-ditch conciliation talks broke down. Those workers included corrections, child welfare and court employees.

The new act would also cover thousands of other workers, including those in health care who are yet to reach new deals with the province.

"I've made it very clear that an unelected, unaccountable arbitrator will not determine the taxpayers' ability to pay," McNeil told reporters.

The act doesn't end arbitration but does limit arbitrators from making awards that exceed the wage guidelines.

It sets a wage pattern of three per cent over four years that will allow increases of one per cent in the third year of the contract, followed by 1.5 per cent in the fourth year and 0.5 per cent on the final day of the package.

A retirement allowance is also frozen retroactive to April 1, 2015. The so-called public service award is a lump sum payment for retiring workers with at least 10 years of service.

New employees will no longer be eligible for the payment under the government's change.

MacLean lashed out at the government's move, even though he said he wasn't surprised by it.

"You have Stephen McNeil who I believe is a snake, and then you have (labour relations minister) Mark Furey who is basically the dishonourable middle man. These guys are taking control of where labour goes," MacLean said in an interview.

MacLean pointed out his union members are also taxpayers who will now have less money to spend as the province struggles with a sputtering economy.

"And now he (McNeil) took away their public service award which is adding insult to injury because it is something that was freely and collectively bargained," he said.

McNeil said the act will be referred to the Nova Scotia Court of Appeal under the Constitutional Questions Act to obtain an opinion.

He said the government is confident the law will stand up to constitutional scrutiny.

"We believe the constitution says that everyone is entitled to open and free collective bargaining. We believe we've gone that process. We have been at the table many times with our (bargaining) units," he said.

MacLean said the union would wait to see how the Nova Scotia court rules, adding that the union also stands ready to mount a Charter of Rights challenge before the Supreme Court of Canada.

"The NSGEU will not rest and they will make this government miserable," said MacLean.

The act exempts groups that already have agreements, including judges, doctors, physician residents, teachers, and about 15,000 management and non-union positions.

McNeil was asked whether he believed his party's re-election May 30 was an endorsement of his approach to the labour file.

"This has been an endorsement on the direction of our government. We also know that Nova Scotians wanted our government to live within its means and they believe the approach that we were doing was a positive one."

Progressive Conservative Leader Jamie Baillie said the government's move is part of "an expensive game."

"We are now condemned to years of legal costs," Baillie said. "Millions of dollars that's not going to go to doctors or health care because the government couldn't get the job done in the normal way and has resorted to this kind of gamesmanship."

NDP critic Susan Leblanc said the government's court referral signals a lack of confidence in legislation that she said will further sour labour relations in the province.

"It basically says we don't want to go any further in these negotiations, this is what we want, this is what's going to happen, we're allowed to do this, we are going to push it through. It's a bullying tactic."

Earlier this year the government drew the ire of more than 9,300 public school teachers when it ended a 16-month contract dispute by passing legislation that imposed a contract settlement.

The bill also gave teachers a three per cent wage increase over four years and froze their long service award retroactive to July 2015.

It came after teachers had previously rejected three tentative agreements.

Premier tribunal destiné aux autochtones

Radio-Canada

23 août, 2017

L'ouverture de cette cour spécialisée vise à s'attaquer à la surreprésentation des autochtones au sein du système canadien de justice criminelle...

Le gouvernement de l'Ontario annoncera cette semaine l'ouverture, à Ottawa, du premier tribunal destiné aux peuples autochtones.

Une cérémonie officialisant l'ouverture dudit tribunal aura lieu vendredi après-midi au Palais de justice d'Ottawa, sur la rue Elgin, qui se situe en territoire ancestral algonquin.

Selon une note d'information transmise aux employés du palais de justice et dont CBC News a obtenu copie, la juge ontarienne Celynne Dorval a invité des membres du Bureau du procureur de la Couronne d'Ottawa, du service ontarien d'aide juridique, du Service des poursuites pénales du Canada et de la Defense Counsel Association of Ottawa à assister à l'événement.

Des membres des Aboriginal Legal Services, du Odawa Native Friendship Centre et de l'organisme Tungasuvvingat Inuit devraient également prendre la parole lors de la cérémonie, histoire d'offrir plus d'informations sur la façon de fonctionner de ce nouveau tribunal.

La mise sur pied de celui-ci a débuté il y a plusieurs années; des procureurs adjoints de la Couronne, des avocats de la défense et d'autres personnes y ont travaillé en prévision de l'annonce de vendredi.

Une forte proportion d'adultes autochtones en prison

L'ouverture de cette cour spécialisée vise à s'attaquer à la surreprésentation des peuples autochtones au sein du système canadien de justice criminelle.

Ce premier tribunal pour Autochtones d'Ottawa, également appelé tribunal Gladue, tire son nom d'une affaire remontant à 1995 où la défense avait argué avec succès que la cour devait tenir compte du vécu d'un membre des Premières Nations, comme par exemple s'il avait subi le traumatisme associé au réseau des pensionnats autochtones.

Ce jugement est enchâssé dans la section 718 du Code criminel, qui stipule que des alternatives à l'emprisonnement devraient être envisagées pour tous les accusés, « avec une considération particulière pour les circonstances vécues par les accusés autochtones ».

Entre 2015 et 2016, les adultes membres des Premières Nations ont représenté 26 % des admissions dans les prisons fédérales et provinciales, alors qu'ils ne forment que 3 % de la population adulte au pays, selon Statistique Canada.

Ce taux est légèrement plus élevé - 28 % - pour l'ensemble des adultes membres des Premières Nations incarcérés dans des prisons fédérales.

Statistique Canada a également indiqué que la majorité de ces adultes incarcérés étaient des femmes, et ce autant au niveau fédéral que provincial.

Education Is Failing Lawyers

Changing the delivery of education for lawyers is up to lawyers. No one else has any stake in the game.

Above The Law

Kelly Twigger

August 23, 2017

We are doing a lousy job of teaching lawyers.

Be real — when is the last time you watched or took a CLE course that you came back from and put that material to work in your practice? I'm not critical of folks providing content, I teach a lot of CLEs

myself. I'm suggesting that the format is not conducive to lawyers needing to learn information when they need to learn it, or for us to put to use once we leave the education setting.

Let me be clear: I absolutely believe that lawyers need to continue to learn. With all of the advances in technology, and the way in which those developments affect every area of the law, it's a no-brainer. I just want to see some change in how we deliver new content.

Watching an hour-long CLE online that can be mostly marketing means that I'll be doing at least three other things at the same time. Lots of times I listen with one ear and pay my bills online or catch up on multiple tabs of articles on my browser that I've opened to read. Sound familiar? An hour is a long time too, and let's face it, you can teach more in less time. (Irony hit: I'm participating in a webinar today on digital documents, and it's — wait for it — an hour. It's the norm right now.)

I may take away a nugget or two from a webinar and write those nuggets down in Evernote or heaven forbid on a piece of paper, and then largely forget about it. Sometimes I think — hey, I went to a CLE on this, where are those materials? But they are mostly in paper form and buried somewhere, or I can't remember the sponsor of the webinar who sent me the deck, so it's useless to search for it in my email. The chances of me having saved the deck or the link to the replay to somewhere I know where to look for it is slim to none, and slim just left town. Even if I could watch the replay, I need the answer now — and I don't want to watch the whole thing again.

That's not real learning. You know it and I know it. I've also spoken at CLEs where the organizers tell me five times no sales pitch and then someone stands up and gives an hour-long sales pitch. I love those. Not.

So, here's what I think we should do differently:

Deliver the message in small, bite-size chunks of information. Provide content to help lawyers learn some practical nugget that can be applied that day. Ben Kusmin at Excel Esquire does a great job of giving lawyers some fantastic nuggets on how to use Excel better. I know this format won't qualify for CLE, but adjust to how we learn today. Podcasts and videos are king. (And we'll get to redefining what CLE is later.)

Go to day-long CLE programs for networking and dialogue. Conferences can be fantastic for those two things. Have a different goal for these types of events than an online CLE. Instead of being spoon fed, conferences require active learning — seeking out people to be connected with for new learning opportunities. Have conversations with others in your space that you can't have in your office. Force yourself to talk to people that you have heard from but feel like you don't know enough to talk to — that's not true. Learn what others do to do things better, or how they have a unique way to solve your problem. Young lawyers and legal professionals, GET OUT THERE. It's what matters for your career. In case you missed the memo, it's who you know, not always what you know that matters.

Make materials available on-demand in both paper and electronic format. Or better yet, think of the environment that the current administration doesn't want to protect, and forget the paper. Leave them up on a link that anyone can download at any time. Slideshare is good, but you only get partial credit for it. According to LawLine, 45 states currently allow for CLE on-demand. That's a lot of states. But if I had to pay for a 10-minute video I knew was full of content, I'd be more willing to fork over \$10 than \$59 or \$99 for an hour that I don't know if it's got anything useful (other than fulfilling that CLE hour) and I need the answer NOW.

Recognize the need to LEARN, not just meet your CLE requirements. Look, about 1% of you are in this gig for the hoards of money you rake in. Most of us want to help our clients and have relationships. We want to add value to the world. Lawyers are important — it's why Willie Nelson and Wayland Jennings sang "make them be doctors and lawyers or such." To continue to represent clients in this ever changing world, you have to learn. You need to know social media, you need to understand how Congress is thinking about (or NOT thinking about) the Stored Communications Act. Whatever you need to learn, seek it out. If you don't find it, learn it and then teach it to others.

Provide real, useful materials that lawyers can put to use in their practices. Stop pretending that if you don't give out that form, someone will call you for it. They will call you because you gave them the form, not because you didn't. Good lawyers know forms are not the final version — a form is a chance for a lawyer to see how someone who's credible (maybe) thought about and organized a document. If you are using forms out of the box for your clients, shame on you. But we all need help getting started. There is a perpetuating myth that many firms share loads of forms. Most of the lawyers I talk to dispute that notion — they are reinventing the wheel everyday. That's a shame, but coming from someone who has worked on committees to create brief banks, it was hard 10 years ago. But it's easier with technology today. Heck, now that I think about it, I could use a review platform to create a brief bank easily. So go do it at your firm.

Changing the delivery of education for lawyers is up to lawyers. No one else has any stake in the game. We have to be the impetus for change — to demand it and make it happen. There are a lot of us out there. But we have to want change, we have to want to do better than we are doing. We are working on it with our software, so I'll let you know how it goes.

A Judge Wants a Bigger Role for Female Lawyers. So He Made a Rule.

New York Times

Alan Feuer

August 23, 2017

It is common for judges to publish guidance for lawyers who appear in their courtrooms on how to conduct themselves with regard to minor matters like how and when to file motions. But on Wednesday, Jack B. Weinstein, a senior federal judge in Brooklyn, used this typically mundane process to address an issue of growing concern to many in the legal profession: the lack of female lawyers in leading roles at trials and other court proceedings.

Following the lead of a handful of other federal judges, Judge Weinstein issued a court rule urging a more visible and substantive role for young female lawyers working on cases he is hearing.

The issuance of the rule was just one jurist's effort to chip away at the traditional old-boy network that has dominated the legal profession for decades. While some women have, of course, ascended to the top of the legal field, serving on the United States Supreme Court, many still face challenges getting heard in court.

Judge Weinstein has informally encouraged young women and minorities to participate in court more actively over the years, but in an interview on Wednesday he said he decided to codify the guidance after a recent New York State Bar Association report found that female lawyers appear in court less frequently and that when they do, they are less likely to have a prominent role.

At least one other federal judge in Brooklyn, Ann M. Donnelly, has an analogous rule in place, but that sort of guidance is rare. Of the hundreds of other federal judges around the country, only about 20 have established similar provisions, according to the bar association.

“I’ve been doing this on my own for some time, but not in a systematic way,” Judge Weinstein, who is 96, said. “It’s particularly important because we have so few trials these days so some of the youngsters don’t get the same training they used to. It’s important for everyone, and for the litigation process, that the upcoming generation understands the fundamentals and just gets up on their feet.”

While acknowledging that lawyers, not judges, should be the ultimate arbiters of who stands up to speak on behalf of a client, Judge Weinstein’s revised rule sheet now says that “junior members of legal teams” are “invited to argue motions they have helped prepare and to question witnesses with whom they have worked.”

The rule sheet notes that the decision was taken after the release of “studies of underrepresentation of female attorneys and minorities.” It adds that Judge Weinstein is “amenable to permitting a number of lawyers to argue for one party if this creates an opportunity for a junior lawyer to participate.”

In the interview, Judge Weinstein said that he had been influenced by the report’s findings that showed, among other gaps, that women were the lead lawyers about 25 percent of the time at trials and court hearings across New York State last year. “The low percentage of women attorneys appearing in a speaking role in courts was found at every level and in every type of court: upstate and downstate, federal and state, trial and appellate, criminal and civil, ex parte applications and multiparty matters,” according to the report.

Among the authors of the report was a former federal judge in Manhattan, Shira A. Scheindlin, whom Judge Weinstein credited with pushing him to issue his rule. Earlier this month, Judge Scheindlin, who is now in private practice, wrote an opinion article for The New York Times, saying she had served on the bench for more than 20 years and that the gender dynamics in her courtroom had barely changed in that time.

“The talking was almost always done by white men,” Judge Scheindlin wrote. “Women often sat at counsel table, but were usually junior and silent. It was a rare day when a woman had a lead role — even though women have made up about half of law school graduates since the early 1990s.”

A few weeks ago, Judge Scheindlin said, she had lunch with Judge Weinstein who asked her, as he always does when they meet, “What good are you doing in the world these days?” When Judge Scheindlin mentioned the bar association report, Judge Weinstein asked what he could do to help. “I said, if you’re so inclined,” Judge Scheindlin recalled, “you could amend your individual rules. He said, ‘I’m going to do it!’ and started taking notes.”

Judge Weinstein is “such an icon and so respected,” Judge Scheindlin added, “that maybe other judges will follow. I’m hoping his choosing to do this will jump-start others to do the same.”

Judge Weinstein’s new rule has been praised by female lawyers all around New York.

“There isn’t, and hasn’t been, a great deal of representation in federal court with respect to women lawyers, so it’s great that Judge Weinstein has embarked on doing something that will increase the role of women in federal court,” said Sara J. Gozo, the immediate past president of the Brooklyn Women’s Bar Association.

Ms. Gozo added that she had recently discussed the issue of women in the law at a lunch she hosted with Dora L. Irizarry, the chief judge of the Federal District Court in Brooklyn, where Judge Weinstein serves.

“There are just pockets of different practice areas in certain courts where, for some reason, women aren’t there,” Ms. Gozo said. “It’s nice to see that some people are now doing their part.”

Nearly half of public servants paid by Phoenix have reported problems

Data obtained by Radio-Canada gives 1st public glimpse into number of people affected

CBC News

August 24th, 2017

Nearly one in every two federal public servants paid through the problem-plagued Phoenix system has opened a file seeking redress for a pay issue, CBC News has learned.

As of Aug. 8, there were 156,035 employees who had been waiting at least 30 days to have their pay complaint dealt with, according to data released to Radio-Canada by a government source.

That number represents nearly one-half of the 313,734 public servants paid through Phoenix. It's also the first instance in which the scope of the Phoenix payroll issues has been laid clear in terms of people affected, rather than in terms of "transactions" or "cases."

The documents show the government has been tracking the numbers of individuals affected by Phoenix since at least June 26.

"It's shocking that we've just learned that they were hiding those numbers, because they didn't want to show how big that catastrophe is for our public servants," said Alexandre Boulerice, the NDP's finance critic.

Different take on earlier data

The data obtained by Radio-Canada offers a different take on the numbers that Public Services and Procurement Canada (PSPC) has been releasing, first through regular in-person technical briefings and later through an online "dashboard."

For example, in its most recent dashboard update, PSPC said last month there were still roughly 228,000 outstanding Phoenix "cases" requiring resolution, without noting how many federal employees that number represented.

"The idea that the government has withheld this information, said that they couldn't produce it, and now it's very clear that it's available ... that's so frustrating," said Greg McGillis, regional executive vice-president for the Public Service Alliance of Canada (PSAC).

Both PSAC and the Professional Institute of the Public Service of Canada (PIPSC) said they'd been trying to get that data from the government for more than a year — without any luck.

"We have been asking for those numbers for a while. Not just the numbers of transactions, but the actual numbers of employees, of people affected by the system," said PIPSC national vice-president Stéphane Aubry.

"We are worried with the numbers we have seen, and the pace at which the cases are resolved, that the situation will last for a long time."

Both unions also called on PSPC to return to holding public Phoenix briefings before the media.

'It's utterly disappointing'

Alupa Clarke, the Conservatives' public services critic, said the fact that so many public servants were facing pay problems under Phoenix was simply "unbelievable."

"It's utterly disappointing. I feel deceived, as most Canadians should feel, and as most public workers should feel also," Clarke said.

In an email statement, Steven MacKinnon, parliamentary secretary to the minister of public services and procurement, said the government was currently working to "collect and refine information on an employee-by-employee basis."

In an interview with CBC News Thursday morning, MacKinnon acknowledged at least 100,000 public servants are still experiencing pay problems, but would not discuss the specifics in the document.

MacKinnon would not commit to releasing the number of employee affected and instead referred to the department's practice of tracking the number of "transactions" that need to be addressed.

"We know with absolute certainty that the transaction number is the correct number, and we also know with certainty that it is the number we use best as a management tool to eliminate this problem."

MacKinnon said implementing new collective agreements for unionized workers has also been a significant challenge for the pay system.

"That represents an enormous spike, if you will, in the volume of transactions that we need to work on," MacKinnon said. "We do have a hump to get over."

Federal workers, retirees, students and employees on leave have all reported serious errors with their paycheques since the consolidated pay system was launched in February 2016. Complaints have included workers being overpaid, underpaid and not paid at all.

The government has estimated it will cost more than \$400 million to fix the system.

Federal employees protest at MP's office over Phoenix pay issues

Elisha Dacey

CBC News

August 23, 2017

About a dozen federal employees gathered in front of a Winnipeg MP's office on Wednesday to demand an update on why they have yet to be paid their wages.

Members of the Public Service Alliance of Canada staged the protest in the rain on Wednesday in front of Winnipeg South Centre MP Jim Carr's constituency office, saying they want a concrete update on the problems plaguing the government's Phoenix pay system.

"We came to Minister Jim Carr's office to ask him questions since he's the minister in charge of the public service and procurement and we know that he sits with other MPs as well, on the committee that is supposed to be fixing Phoenix," Gus Mardli, union rep for PSAC, told CBC News.

"So Phoenix's problems [have been going on for] longer than a year and a half," Mardli said. "We have members who have been affected — not getting paid, returning to work from maternity leave and they have no money. They're not getting paid.

"I know about myself. If I don't get one paycheque I'll be in trouble. I don't know how the MPs who are sitting, what they would do if they didn't get paid."

The former federal government brought in the new pay system as a way to standardize how federal employees are paid across the country. However, the system has been plagued with problems, leaving tens of thousands without pay, mistakes in their pay or mistakes in their benefits, sometimes for months or longer.

According to numbers released in July by Public Services and Procurement Canada (PSPC), its pay centre in Miramichi, N.B., processed 89,000 cases between June 29 and July 26.

However, the pay centre also received 71,000 new cases during that period — so the net reduction of cases related to the civil servant pay system was only about 18,000.

That means that as of July 26, there were still roughly 228,000 outstanding Phoenix cases requiring resolution, PSPC said in its update. The government has estimated it will cost more than \$400 million to fix the troubled pay system.

Lauren Davenport said she has been waiting for owed money for more than a year.

"I retired in June of 2016 and I'm still awaiting my severance pay, which is 14-15 months after the fact," she said.

"I haven't heard anything one way or another, when I might expect it, or do I have to put something in my will? You don't get any feedback other than they'll put a note in your file. It's very frustrating."

Protesters said they were told Carr was in Ottawa and unavailable to talk with them today. However, Mardli said, they have made an appointment to talk with the minister.

Phoenix faces another test — delivering raises and bonuses to 80,000 staffers

Feds, union brace for complaints from government's largest bargaining group

Kathryn May

iPolitics

August 23, 2017

This article cannot be shared in its entirety as it is subject to a pay wall. Free trial subscriptions to iPolitics are available and will permit you to read the full article.

About 80,000 federal public servants will be checking their pay stubs today to see if they got their long-awaited raises and signing bonuses without a glitch.

Its payday — the latest test for the troubled Phoenix pay system, which is supposed to deliver 5.5 per cent raises to thousands of program and administrative employees, the backbone of the public service and the largest bargaining group in government.

The test runs were successful and, if all goes to plan, the 80,000 employees will receive their raises and \$650 signing bonuses on today's paycheques. They include staffers represented by the giant Public Service Alliance of Canada who work in administrative services, information services, program administration, welfare programs, communications, data processing, clerical and regulatory, office equipment and secretarial jobs.

Phoenix glitches and malfunctions have loomed so large over the operations of the government and management of staff over the past 18 months that Treasury Board added a section to the public service employee survey launched this week to gauge the impact on employees' morale.

Treasury Board officials say the Phoenix blunders have had such an impact on employees' 'engagement' and well-being that the survey will include five questions aimed at those who have been overpaid, underpaid or not paid at all by Phoenix. The survey closes Sept. 29.

The administrative group represents the largest single batch of employees Phoenix will have to handle as it implements the various contracts negotiated in the last round of collective bargaining. PSAC contracts are among the most complex in the federal sphere, with an array of pay rules, allowances, overtime and shift premiums — all of which will have to be adjusted when the new contracts come into force.

Under the four-year deal, these employees are getting raises of 1.25 per cent year, dating back to 2014, in addition to the signing bonus and a 0.5 per cent raise — effective in 2016 — that covers all groups and levels of employees. The current contract expires next summer.

They will not start collecting the back pay owed to them until Sept. 6. Those payments will be staggered over the 150 days the government negotiated with PSAC to implement the new contract. The government has until Nov. 11 to implement the contract and give employees the retroactive pay owed to them.

(...)

Next Public Services minister may see Phoenix Pay fire extinguished

James Bagnall
Ottawa Citizen
August 24, 2017

With the departure Thursday of Judy Foote due to health and family concerns, the Liberal government must now choose a new minister to stickhandle one of its more complicated departments.

Foote's two-year-long tenure as the minister in charge of Public Services and Procurement Canada was unexpectedly rough. There appears to be reason to hope, however, that the worst is now behind the department on several information-technology fronts.

By the fall of 2018, for instance, it's possible the government could finally see the back end of the Phoenix Pay fiasco. Phoenix is shorthand for the \$310-million project that was to have consolidated and modernized pay systems used by more than 100 departments and agencies — thereby saving the government \$70 million annually.

The transformation was to have been complete by early 2016. But when project administrators sacked hundreds of pay administrators in advance of the initial rollout, the backlog of pay transactions ballooned out of control — creating misery for government employees who had to go without a salary for weeks on end.

Several of the key project managers have since retired or been re-assigned, leaving the heavy lifting for Marie Lemay, the University of Ottawa engineering grad who took over as deputy minister just as the Phoenix rollout was underway.

Under Lemay, the Accounting, Banking & Compensation branch — one of a dozen in the department and the one responsible for the Phoenix project — has been pressed into a triage centre, dealing with hundreds of thousands of pay complaints while trying to fix the broken process that produced them.

A breakthrough appears to have occurred last May, thanks to \$142 million in emergency funding and the hiring of 150 pay advisers. From June 2 to July 26, the backlog of pay transactions slimmed from 265,000 to 228,000. That's exceptionally high by normal standards but the significance is that on current pace, the backlog can be cleaned up by October 2018.

There's no guarantee Lemay's bureaucrats will maintain their current pace but the Liberals have every incentive to finance the effort aggressively if necessary. The Liberals are keen to have the Phoenix problem solved well before the next general election, scheduled for the fall of 2019.

Efforts to solve the Phoenix troubles have consumed an inordinate amount of time at the department, which is at the centre of a much larger transformation of government technologies.

Fortunately, there are signs the government may be able to avoid another information technology disaster on the scale of Phoenix.

Consider the program to consolidate nearly 800 aging data centres into a handful of modern ones. The effort is being spearheaded by Shared Services Canada, an information technology agency that also reports to the public services minister.

Construction of a giant new data centre at Canadian Forces Base Borden appears on schedule and should be ready to accept computer gear later this autumn. Shared Services is already operating modern data centres in east Gatineau and Barrie and is procuring facilities in Montreal to handle the government's science applications and data.

The idea is to shift some 14,000 software applications — ranging from pensions to weather forecasting programs — from older facilities to more efficient ones.

The original target for all this was 2020 but that will almost certainly be missed by two or three years. On the surface, that looks bad. But government managers — and this includes cabinet — have learned much from the troubles at Phoenix, which was rushed into service in order to book savings.

Much the same was true of the \$400-million program to consolidate dozens of email systems into one. Shared Services outsourced that job to Bell Canada and CGI, expecting the new system would be in place by March 31, 2015. The project has been plagued by design and equipment flaws and is currently expected to wrap up by March 31, 2018 at the earliest.

The Phoenix and Single Email projects have taught government managers it's OK to be sure of their ground before moving onto the next step. Even if this means delays, it's still cheaper than trying to fix a disaster with emergency funds.

A number of projects — including one involving the upgrade of the military pay system — have simply been halted, rather than risk a catastrophic rollout. A year ago, this sort of tactic would have meant keeping the pay system software in older data centres at serious risk of outages.

Thanks in part to an emergency \$463-million injection last year, Shared Services has been able to replace the part of its legacy infrastructure considered most vulnerable to unscheduled shutdowns.

None of this means the government's grand plan to transform its IT backbone will soon feature positively in the Harvard Business Review. The transformation is, after all, still seriously late and over budget, but it at least appears to be shifting out of crisis mode. That's not a bad situation for a new public services minister to take over.

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DND employees block base entrance in protest against contracting out, Phoenix pay problems

David Pugliese
Ottawa Citizen
August 24, 2017

Department of National Defence employees blocked one of the entrances to CFB Esquimalt on Thursday to denounce a Liberal government deal with a French company and ongoing problems with the Phoenix pay system.

Around 150 members of the Union of National Defence Employees (UNDE) blocked the road leading to the main entrance of the base for about an hour.

They were protesting against the Liberal government's recently announced a \$5.2-billion deal to privatize maintenance of the Arctic Offshore Patrol Ships and the Joint Support Ships.

Subsidiaries of the French defence firm, Thales, were awarded the contract.

The Union of National Defence Employees say the deal is a risk since it could jeopardize national security and could mean a loss of jobs for public servants who now maintain government ships.

John MacLennan, who whose last day as UNDE president was Thursday, said the union expects the Liberals to try to contract out more federal jobs. He accused the Trudeau government of continuing the privatization agenda started by the previous Conservative government.

Defence Minister Harjit Sajjan has said no public service jobs will be lost because of the privatization of ship maintenance.

Protesters were also angry at the continuing Phoenix pay fiasco. Thousands of federal public servants are still dealing with pay problems despite claims by the Liberal government that the pay system problems are being dealt with. "You can't eat an IOU," the crowd chanted.

UNDE is holding its national convention in Victoria, BC and many of the protesters were delegates from that event.

The crowd was boisterous but peaceful.

Reimbursed fees to fix employer error not taxable, CRA says

Eligible employees include those who were either underpaid or overpaid in the 2016 or 2017 calendar years or who had incorrect tax slips for either tax year

Jamie Golombek

Financial Post

August 24, 2017

Employees are taxable on pretty much everything they receive, whether it be cash remuneration in the form of a salary or bonus, deferred compensation through stock incentive programs or even fringe benefits, such as a free fitness membership at the local gym.

Indeed, the wording in the Income Tax Act regarding the taxation of employment income and benefits is extremely broad: "The value of ... benefits of any kind whatever received or enjoyed ... in respect of, in the course of, or by virtue of an office or employment" must be included in an employee's income.

That said, there are some notable exceptions and one of them relates to employer-provided counselling services.

The term “counselling services” is not actually defined in the Tax Act, but the Canada Revenue Agency has said it refers to “guidance and assistance provided by a trained person on a professional basis.” Under the tax rules, employee counselling services are not taxable if they fit into one of three categories: an employee’s re-employment, retirement or mental or physical health (other than a benefit for using a recreational facility or club) such as counselling for tobacco, drug, or alcohol abuse, stress management or various employee assistance programs.

But not all employer-paid counselling services can be received tax free.

For example, the CRA’s position is that the value of employer-paid legal and financial counselling services is generally not excluded from an employee’s income and is considered to be a taxable benefit.

The CRA has also stated that fees an employer pays for an employee’s income tax preparation are usually considered a taxable benefit. But this may not always be the case.

The CRA this week released a technical interpretation letter discussing whether federal employees, affected by the government’s troubled Phoenix payroll system, have to pay tax on the value of government-reimbursed fees paid for financial advice and tax preparation services to sort out their tax situation.

Since the launch of the government’s consolidated payroll system in early 2016, tens of thousands of current, former and retired government employees have reported being either underpaid, overpaid or, in some cases, simply not paid at all.

According to the Government of Canada’s website, all employees who had pay issues related to the Phoenix system and who required assistance from an accountant or another qualified tax professional may seek up to \$200 (including tax) in reimbursement for tax advisory services for their 2016 or 2017 income taxes.

Eligible employees include those who were either underpaid or overpaid in the 2016 or 2017 calendar years or who had incorrect tax slips for either tax year.

For the purposes of submitting a claim, tax advisory services include qualified professional advice that helps an individual understand the impact of overpayments or underpayments as they relate to their 2016 or 2017 income taxes. It also includes income tax preparation fees and reconciliation fees for an individual’s 2016 or 2017 tax slips against income amounts employees actually received.

Affected employees who have already filed their 2016 income taxes but are uncertain about the potential current and future income tax issues related to Phoenix can still seek advice from an accountant or a qualified tax professional and be reimbursed.

Costs for tax advisory services related to an employee’s small business activities or investment activities are not eligible for reimbursement. Similarly, the cost of tax software and online services are not eligible,

since the intent of reimbursement is to encourage employees who are uncertain about the Phoenix pay issues to seek professional advice.

In typical bureaucratic style, the government has designed a specific form for such claims, which must be accompanied by a receipt from an accredited professional accountant, tax preparation firm or individual tax preparer.

The CRA reiterated that the value of all benefits must generally be included in an employee's income and then cited its "Benefits and Allowances Received from Employment" folio, which explains the federal income tax treatment of various benefits and allowances received from employment.

The folio discusses when a benefit may or may not be included in an employee's income and cites a two-decades-old case in which the Federal Court of Appeal confirmed that, generally, the value of a benefit will be included in an employee's income where the employee "receives an economic advantage measurable in monetary terms and is the primary beneficiary of the benefit."

An employee generally receives an economic advantage when an employer pays or provides a reimbursement for their personal or living expenses or the employer reimburses the cost of an employee-owned asset, but "(t)here is generally no economic advantage if the employee is simply restored to a previous economic position."

As a result, the CRA concluded that compensation paid to an employee by an employer for financial loss incurred due directly to the employer's error is not included in income since the employee is being restored to a previous economic position.

Therefore, reasonable employer reimbursements for the cost of tax advisory services incurred as a direct result of Phoenix pay system errors will not be included in the employee's income and won't be reported on the employee's T4.

Jamie Golombek, CPA, CA, CFP, CLU, TEP is the managing director, Tax & Estate Planning at CIBC Wealth Strategies Group in Toronto.

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Foreign service union says Sarkar pay could impact future salary negotiations

Rachel Aiello

CTV News

August 25, 2017

OTTAWA -- The union representing more than 1,500 Canadian diplomats says given Prime Minister Justin Trudeau is willing to pay nearly double to appoint a diplomat with ties to the Liberal party, the government better keep in mind the current pay scale of foreign service officers next time they're at the bargaining table.

Rana Sarkar, a former Liberal candidate, was named consul-general to San Francisco as part of a round of U.S. diplomatic appointments the federal government announced on Aug. 2. According to the Privy

Council office, his salary is within the \$221,300 to \$260,300 range. The official pay scale for the posting is in the range of \$119,600 to \$140,700. The salary level makes Sarkar one of Canada's highest paid diplomats.

The Professional Association of Foreign Service Officers (PAFSO) said while it recognizes the government's right to appoint who they see fit for these positions, it should keep in mind that there are hundreds of professional foreign service officers already doing their jobs on behalf of Canada for often much less pay.

"We do however hope that the employer will bear in mind this salary scale in its negotiations with the professional foreign service, both FS and EX [foreign service and executive level], who are already performing these functions on behalf of Canada in missions around the world," PAFSO President Pamela Isfeld said in an emailed statement to CTV News.

Sarkar, the former president of the Canada-India Business Council and national director for high growth markets at KPMG, has close ties to the Liberal Party of Canada, including running unsuccessfully for the 2015 nomination in the Don Valley North riding, and as a candidate in Scarborough-Rouge River in 2011.

The posting was part of a round of diplomatic shuffles the government said is about boosting Canada's diplomatic efforts in the United States, ahead of NAFTA renegotiations.

The Prime Minister's Office said the salary range is in line with other top diplomatic posts, reflective of his qualifications, and considering the location of the appointment -- Silicon Valley.

For example:

- Canada's High Commissioner to the U.K. Janice Charette is making between \$277,600 and \$326,500 position while the official salary range for her position is \$172,200 to \$202,500;
- Canada's Ambassador to the U.S. David MacNaughton is making between \$247,900 and \$291,600, though the official salary range is between \$172,200 and \$202,500; and
- Kevin Vickers, Canada's Ambassador to Ireland, is making between \$171,200 and \$201,300 though the position salary is between \$119,600 and \$140,700.

Sarkar's responsibilities in the new post will include tapping into the tens of billions of annual trade dollars spent in the region to expand Canadian markets, attract investment and boost Canadian business, according to the PMO.

"Mr. Sarkar's mandate is far greater than what the position has traditionally entailed," Cameron Ahmed, spokesperson for the prime minister, wrote in an email to CTV News earlier this week.

Brandon Lee, the former consul general in the San Francisco post joined the Foreign Service in 2004 and has a background in innovation, online banking, telecommunications, and IT. The day Sarkar was appointed, the government shuffled Lee to Seattle.

Prime Minister Justin Trudeau's top aide Gerald Butts said in a series of tweets that paying one of Canada's newest diplomatic appointees nearly double what the going-rate is "completely in line" with other federal appointments from the private sector.

However, NDP foreign affairs critic H  l  ne Laverdi  re thinks the appointment sends the wrong message to civil servants.

“It’s pure patronage and feeling of entitlement,” she told reporters outside the House National Defence Committee’s emergency Aug. 22 meeting on ballistic missile defence.

Laverdi  re, who was a Canadian diplomat before being elected as an MP in 2011, said she took a 40 per cent pay cut when she joined the Foreign Service, a process she described as “very selective.”

“The people who are in foreign affairs are people who are just like me, they went through very stringent selection process, they have expertise, they have experience, and now they’re being told that they’re worth less, half less than friends of advisers in the Prime Minister’s Office. I find that terrible,” said Laverdi  re.

Ottawa's first Indigenous Peoples Court opens Sept. 11

Kelly Egan

Ottawa Citizen

August 25, 2017

Ottawa’s first Indigenous Peoples Court will launch on Sept. 11, an attempt to fix a criminal system that, for decades, has too often worked terribly for native populations.

The sober atmosphere at the Elgin Street courthouse was interrupted Friday afternoon by native singing, drumming and praying in the atrium, part of an hour-long ceremony to mark the milestone. As the smell of burning sage and sweetgrass wafted through the heart of the building, curious court staffers leaned on railings in the upper floors to catch a glimpse of the event.

The court is the culmination of five years of work by a committee of judges, lawyers and advocates to try to reverse the trend that has seen hugely disproportionate numbers of Indigenous people land in court and prison.

“Absolutely,” responded Ontario Court Justice Celynne Dorval, who will sit on the court, and is a leading supporter. “We do believe this will reduce recidivism.”

The Supreme Court of Canada has established principles for sentencing Indigenous offenders in the landmark Gladue case, which require lower courts to investigate and take into account a person’s background, especially involvement in residential schools or other cultural trauma.

“The court’s objective is simple,” Dorval told dozens of people filling the atrium, including police Chief Charles Bordeleau.

“To create a process that is culturally meaningful to Indigenous peoples and to provide culturally appropriate information gathering and support services in order to implement the principles established by the Supreme Court of Canada at the bail stage and the sentencing stage.”

Any time the court sits, she added, it will feature an eagle feather and satchels of four sacred medicines. Sentencing circles may also be involved.

“The need for the Indigenous Peoples Court is obvious and undeniable,” said deputy Crown attorney Brian Holowka.

“Everyone here is aware of the shocking numbers. Indigenous people make up 4.3 per cent of the population, yet they represent more than 20 per cent of inmates.”

He also pointed out that Ottawa has a sizeable and growing native population and the largest number of urban Inuit outside the North. “There remains a world of work to go, but this court will put us on the right track.”

At sentencing, a person who identifies as Indigenous is entitled to ask for a Gladue report, which requires a worker to delve into their background to look for systemic factors such as forced re-settlement, the trauma of residential schools and resulting broken families, addiction and mental health issues.

This new court will have dedicated workers who will help offenders during the bail process, at sentencing and in connecting with resources in the community.

“Tremendous, tremendous,” was the reaction from Frank Horn, a Mohawk and lawyer who has practised for 35 years.

“When an Aboriginal confronts the white man’s judicial system, he’s broken because they don’t understand him. He gets relegated to the sidelines. This is an attempt to make him whole again.”

The court will begin by sitting half-days, twice a week. It will deal with bail hearings and sentencing on guilty pleas, but not take on trials. Court time may expand as the need arises. A number of judges are expected to rotate through the court. Much of the struggle since 2012 has been lining up enough resources to make the court function.

“Seeing this day finally arrive in Ottawa is very satisfying,” said Anne London-Weinstein, president of the Defence Counsel Association of Ottawa.

“It’s a day to celebrate. It’s a day to be happy.”

Le Centre de paye de Miramichi au coeur du problème Phénix

Catherine Lanthier

Radio-Canada

28 aout 2017

EXCLUSIF - Des documents internes obtenus par Radio-Canada révèlent que trois fois plus de fonctionnaires fédéraux ont des problèmes avec leur paye lorsqu'elle est traitée par le Centre des services de paye de la fonction publique, situé au Nouveau-Brunswick.

Le Centre des services de paye de Miramichi gère la paye des deux tiers des employés de l'État, soit un peu plus de 210 000 personnes. Cependant, le salaire d'un peu plus de 100 000 fonctionnaires n'est pas traité par ce centre, mais à l'interne.

Cette façon de faire génère visiblement beaucoup moins de difficultés, même si le système de paye Phénix y est aussi utilisé.

En date du 8 août dernier, 64 % des employés dont la paye est administrée à Miramichi attendaient depuis plus d'un mois que leur dossier soit traité. Ceci dépasse, dans la majorité des cas, les normes de service établies par le gouvernement fédéral.

En contrepartie, les fonctionnaires travaillant pour des organisations qui gèrent leur rémunération à l'interne ont beaucoup moins de soucis. À la même date, seulement 21 % des employés fédéraux se trouvaient dans cette situation.

Ces données obtenues en exclusivité par Radio-Canada ont été générées par le Secrétariat du Conseil du Trésor du Canada.

Ces chiffres révèlent également que les ministères et les agences dont la paye passe par Miramichi cumulaient 307 542 cas non traités depuis plus d'un mois (moyenne de 1,5 cas par personne) contre 28 874 pour ceux dont la paye est gérée à l'interne (moyenne de 0,25 cas par personne).

Sur un total de 101 ministères et organismes fédéraux, le Centre des services de paye de la fonction publique en dessert maintenant 46. Le projet d'y ajouter d'autres ministères et organismes est mis en veilleuse.

D'autres employés seront nécessaires

Le gouvernement fédéral tente toujours de recruter des spécialistes de la paye, pourtant mis à la porte dans le passé.

« Ces efforts sont en cours », explique en entrevue à Radio-Canada le député de Gatineau, Steven MacKinnon.

Si ceux-ci portent « un certain fruit, nous n'avons pas la conclusion de cet exercice-là encore, donc, avis aux intéressés », lance le secrétaire parlementaire du ministre des Services publics et de l'Approvisionnement, devenu le visage gouvernemental de Phénix.

Nous avons hérité d'un système que nous devons régler maintenant.

Le ministère des Services publics et de l'Approvisionnement est parvenu à recruter 286 employés supplémentaires. L'objectif était de 200. Cependant, le ministère n'est pas en mesure de nous dire combien, de ce nombre, sont des spécialistes de la rémunération.

Malgré les investissements de plusieurs millions de dollars et les embauches, ces ressources ne semblent pas suffire.

« Des conseillers en rémunération d'autres ministères et organismes ont accepté de travailler des heures supplémentaires en soirée », indique de son côté par écrit le porte-parole du ministère, Nicolas Boucher.

Nous continuerons à lancer des appels dans l'ensemble de la fonction publique, afin de tirer profit de l'expertise qui s'y trouve et d'accroître notre capacité.

Nicolas Boucher, porte-parole, Services publics et Approvisionnement Canada
De plus, un certain nombre d'employés récemment embauchés sont actuellement affectés au traitement des conventions collectives, ce qui représente une importante charge de travail.

Les augmentations salariales et les paiements rétroactifs doivent en effet être traités en fonction d'un échéancier fixe.

Ce flot de dossiers à traiter était cependant « prévisible », déplore le vice-président de l'Institut professionnel de la fonction publique du Canada, Stéphane Aubry. Selon lui, le fédéral aurait dû être mieux préparé à y faire face.

Radio-Canada révélait la semaine dernière que 156 000 fonctionnaires fédéraux étaient touchés par les ratés du système, soit environ la moitié des effectifs au pays, un an et demi après le début de la crise du système Phénix.

As Phoenix pay system backlog increases, officials blame new collective agreements

The backlog of pay transactions carried out through the Phoenix pay system that went beyond normal processing times increased by 9,000 from July to 237,000.

Terry Pedwell
The Canadian Press
August 28, 2017

OTTAWA—Repairing the federal government's public service pay system is a top priority, the newly minted minister responsible for the Phoenix payroll service insisted Monday, just hours after her department revealed that a backlog of problem pay files has grown over the last several weeks.

"The prime minister has given me, made this a priority for me, in our discussions already and I look forward to being briefed and working to remedy this as soon as possible for public servants who have been waiting so long to get this fixed," Carla Qualtrough said shortly after being named by Justin Trudeau as public services and procurement minister.

Qualtrough's appointment came just hours after the department revealed the pay system's problems worsened since the backlog of improper pay cases was last tabulated July 26, as employees struggled to process changes to civil service contracts.

The number of pay transactions carried out through the Phoenix pay system that went beyond normal processing times increased by 9,000 from that date to 237,000 after two months of decline, according to the newly released figures.

As part of a small cabinet shuffle Monday, Trudeau announced Qualtrough would replace Judy Foote, who resigned from the public services portfolio last week for family health reasons.

Foote had been on temporary leave from the cabinet post since April and the role of overseeing Phoenix had been handled temporarily by Natural Resources Minister Jim Carr.

Qualtrough's new department had been whittling the backlog down since June, when it had reached 265,000 pay transactions that went beyond the normal monthly workload of approximately 80,000.

The number of problem files dropped to 228,000 by late July before rising again over the last four weeks.

Officials blamed the increase on the need to shift pay system employees to handling pay changes resulting from the ratification of several big public service contracts, many of which went into effect in late June.

"This increase was expected as we focused our efforts on ensuring employees are paid what they are owed as a result of recent collective agreements and within legislated timelines," said a statement from the department.

The 19 collective agreements signed so far — with another eight to come — require the government to make retroactive payments, enact salary increases and pay other allowances negotiated as part of the new contracts, all within legislated timelines.

"To meet these timelines, we dedicated a number of compensation advisers to work almost exclusively on these payments," the department said.

"This shifting of resources affected our ability to reduce the number of pay transactions at the Public Service Pay Centre."

The department said it expected the situation to continue into the fall, suggesting the backlog could get worse before it gets better.

The former Conservative government introduced the new pay system as a way to standardize how federal employees are paid across the country.

Phoenix was also expected to save millions of dollars as the electronic system was supposed to streamline transactions.

However, the system has been plagued with problems, leaving tens of thousands of federal employees underpaid, overpaid or in some cases not paid at all — sometimes for months.

The government earlier in the summer estimated that fixing the problems and eliminating the backlog could cost \$400 million over at least two years.

The department also revealed Monday that it had increased the percentage of pay transactions carried out within the government's service standard of between 20 and 45 days, to 49 per cent as of Aug. 23, compared with 35 per cent a month earlier.

And it noted that pay transactions for employees on maternity or parental leave, as well as disability transactions, were being processed within 20 days, 95 per cent of the time.

Still, the government acknowledged Monday that more needed to be done to resolve the problems.

“The pay issues currently being experienced by public servants are unacceptable and we are working collaboratively at all levels to resolve them,” said an emailed statement from a department official.

“Ensuring all employees are paid the money that they have earned remains our priority. We are making all necessary efforts to reach a steady state as quickly as possible.”

Miramichi pay centre at heart of Phoenix problems

Revelation comes in wake of union leader saying pay centre should have never been moved to Miramichi

Gabrielle Fahmy

CBC News

August 28, 2017

Public service employees are three times more likely to see delays receiving their pay if it is processed through the pay centre in Miramichi than at federal offices or institutions elsewhere in the country.

The Miramichi centre faces a higher rate of delayed processing, according to documents obtained by Radio-Canada.

The revelation comes in the wake of a union leader's suggestion that the pay centre should not have been put in Miramichi in the first place.

Last week, during an interview with the CBC's Harry Forestell, Greg McGillis, executive vice-president of the Public Service Alliance of Canada, said it was a mistake to move the centre to the small New Brunswick city.

The statement provoked a demand for an apology from Miramichi Mayor Adam Lordon — an apology he received in a phone call Monday.

"This afternoon the president of the national PSAC union called me personally to apologize to say that Mr. McGillis's comments do not reflect the views of the union, that they have supported and will continue to support the centre in Miramichi and all the hardworking Miramichiers who work there," Lordon told CBC.

The mayor said he heard reaction to the comment from many city residents and people who worked at the centre.

Three times more delays

But as of Aug. 8, according to numbers from Treasury Board, 64 per cent of employees whose pay goes through the Miramichi centre were dealing with delays of more than a month.

This doesn't meet the government's recently established standards.

In contrast, in places where pay is processed internally, only 21 per cent of employees are seeing the same delays.

The Miramichi centre deals with the pay of two-thirds of public servants, or about 210,000 people.

It processes paycheques for 46 federal departments or agencies, including Parks Canada, Veterans Affairs and Correctional Services Canada.

The other federal public service employees, about 100,000, have their salary processed internally.

Regardless of where the paycheques are processed, the Phoenix pay system is used.

More employees needed

The decision to centralize public function pay processing in Miramichi was taken in 2010 by the Harper government, which then cut 700 pay workers.

The current federal government said it has hired some pay specialists since the cuts, but it is still looking to hire more.

"Efforts are ongoing," Steven MacKinnon, parliamentary secretary to the minister of public services and procurement, said in an interview with Radio-Canada.

"We inherited a system we now have to fix," he said.

A year and a half after the Phoenix system went live, in February 2016, about 156,000 federal public servants, or about half, were still affected by the failures of the system

Hard to understand

Area politicians have a hard time understanding why the finger is being pointed at the Miramichi centre.

"I can't actually see why — why it would be different if you have a centre in Miramichi, or if it's located in Gatineau or anywhere else," said Pat Finnigan, the MP for Miramichi—Grand Lake.

"I speak to the workers very often. We visited the centre four times with the minister, and they are hard-working people, they are smart people and they as much as anybody else want to fix the issues that Phoenix is having."

London, the mayor, said the numbers are cause for concern, but he doesn't think they tell the whole story.

"You could have the most qualified people in the world, the most intelligent people in the world, if they haven't been trained properly, then perhaps they're not going to have the level of success that we'd all hope for," he said.

Since the Phoenix system was launched in February 2016, tens of thousands of public servants have been underpaid, overpaid or not paid at all.

London said he hopes to see the federal government committed to finding a solution.

He said the continuing problems at the pay centre involve the software.

"They are not people issues."

Qu'est-ce que LexisNexis Newsdesk?

Julien Vailles

Droit Inc

28 aout 2017

Un outil vous donne la possibilité de vérifier les nouvelles dans le monde juridique, et d'assurer un suivi au moyen d'une Newsletter personnalisée, selon vos critères...

En effet, LexisNexis Newsdesk se pose, en quelque sorte, en « complément » juridique, parce que ce n'est pas un outil juridique en tant que tel. Il s'agit de suivre l'actualité selon des termes spécifiques, regroupée à un même endroit.

Quel intérêt? Par exemple, lorsqu'on cherche à approcher une entreprise pour la solliciter comme cliente, taper son nom dans Newsdesk permettra de connaître toute l'actualité la concernant. Si les médias traditionnels sont bien évidemment inclus, la recherche ne s'y limite pas, loin de là. On fouille également dans les forums de discussions, le « mur » Facebook de l'entreprise en question, les blogs ainsi que les commentaires sur les blogs. Il s'agit donc d'avoir l'information la plus exhaustive possible sur un sujet précis.

Fait à noter, Newsdesk, dans sa recherche, passe outre les « paywalls » qui limitent l'accès à certains médias. Par exemple, le Devoir limite présentement le nombre d'articles pouvant être lus gratuitement sur son site. Newsdesk a un accès illimité à ces articles; une recherche pourrait donc recommander un article du Devoir même si le passage pertinent de celui-ci est protégé par un paywall. L'utilisateur choisira alors s'il souhaite voir ou non l'article en question, moyennant parfois abonnement.

Cette fonctionnalité peut également être utilisée pour chercher, par exemple, sur un domaine de droit pointu. Ainsi, Newsdesk donnera accès à toutes les ressources médiatiques – et non judiciaires – qui traitent de ce domaine de droit.

Mais surtout, l'intérêt principal est la possibilité de créer une « Newsletter » personnalisée selon les termes choisis. Cette Newsletter sera constituée des nouvelles concernant les éléments recherchés, et pourra être reçue à la fréquence choisie par l'utilisateur. L'idée est de pouvoir faire un suivi, une « veille courante » sur un sujet déterminé.

En somme, le but de cette fonctionnalité n'est pas d'effectuer un travail juridique, mais d'en charpenter les contours. Newsdesk permet en effet de s'informer extensivement sur un client, sur un dossier ou sur un domaine de droit, et d'en connaître le traitement médiatique.