

Press Clippings for the period of August 9<sup>th</sup> to 15<sup>th</sup> 2016 / Revue de presse pour la période du 9 au 15 août 2016

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## **Phénix: Ottawa étale le recouvrement sur plusieurs périodes de paye**

**Charles-Antoine Gagnon, Le Droit, le 11 août 2016**

Le gouvernement fédéral a annoncé jeudi qu'il échelonnera sur plusieurs périodes de paye le recouvrement des avances de salaire et des montants trop-payés versés aux employés de l'État qui ont été victimes des ratés du système de paye Phénix.

Normalement, lorsque le gouvernement doit récupérer une somme, celle-ci est complètement prélevée sur la prochaine paye. Ce procédé impose un fardeau financier, et sème de l'inquiétude chez plusieurs travailleurs. La décision d'Ottawa d'étaler le recouvrement vise à réduire ce fardeau.

« Nous sommes toujours en discussion sur le nombre de payes, mais ce sera plus de trois », a précisé la sous-ministre des Services publics et de l'Approvisionnement, Marie Lemay, lors d'une mise à jour sur le système de paye Phénix, jeudi.

Larry Rousseau, vice-président à l'Alliance de la fonction publique du Canada, croit qu'il faudrait revenir à un système où le recouvrement des sommes trop-payées s'échelonne sur une période d'un an, surtout lorsqu'on parle de plusieurs milliers de dollars, ou que le montant total à rembourser soit prélevé sur autant de semaines que le nombre de fois où les sommes excédentaires ont été versées.

« Si une personne a reçu des paiements en trop, peut-être qu'elle aurait dû mettre l'argent de côté, en principe. Mais malheureusement, la plupart des gens ne se rendent pas compte que c'était un paiement en trop. Ils pensent que c'était leur paye habituelle ou qu'il y avait eu un ajustement », a expliqué M. Rousseau.

### **274 nouveaux dossiers**

Depuis la dernière mise à jour, le 28 juillet, le gouvernement a reçu 274 nouveaux rapports d'employés qui n'ont pas touché leur paye. Ces cas seront traités dans un délai de deux

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périodes de paye, a-t-on indiqué, pour ceux qui ont fourni toutes leurs informations à l'employeur. Il y aurait une centaine de personnes pour lesquelles le gouvernement n'a pas toutes les informations requises pour verser leur salaire.

Le nombre d'employés affectés par un problème avec leur salaire ou avantages sociaux, est en baisse, a signalé le gouvernement, s'établissant à 76 951 en date du 10 août comparativement à 81 997, le 18 juillet.

Le gouvernement dit avoir réglé 1182 des 2646 dossiers qui lui avaient été rapportés depuis la mi-juillet dans le groupe de priorité 2, qui comprend les employés dont la paye a été perturbée en raison d'un congé de maternité ou de paternité, et les départs à la retraite.

Les autorités fédérales ont aussi tenu à préciser que 296 470 employés ont reçu leur chèque de paye régulier cette semaine, et que plus de 25 000 paiements additionnels, notamment pour des heures supplémentaires ou une nomination intérimaire, ont été traités.

Ottawa espère toujours avoir réglé les dizaines de milliers de dossiers problématiques d'ici le 31 octobre, mais M. Rousseau se montre sceptique en raison de l'ampleur de la situation.

« Je ne demande rien de mieux que d'être confondu », a-t-il réagi.

M. Rousseau s'est abstenu de commenter les conséquences des problèmes de Phénix sur le prélèvement des cotisations syndicales. Pour lui, l'important est de se concentrer sur les problèmes vécus par les employés.

« La priorité est que les gens se fassent payer, et se fassent payer correctement pour le travail qu'ils ont effectué. Que les cotisations aient ou non été prélevées, ce n'est même pas secondaire en ce qui concerne l'Alliance de la fonction publique », a lancé M. Rousseau.

Dans sa mise à jour, Ottawa a aussi signalé que le bureau de paye temporaire de Gatineau comptait 92 employés, et que 37 autres devraient s'y greffer prochainement. L'objectif était d'avoir une centaine d'employés à ce bureau. Les autres bureaux satellites créés pour épauler le Centre des services de paye de Miramichi, au Nouveau-Brunswick, sont à Winnipeg, Shawinigan et Montréal.

Le gouvernement mettra en place au début de septembre un processus de réclamation afin de rembourser les employés qui ont dû engager des dépenses imprévues causées par Phénix.

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## **Phoenix may not be fixed by Oct. 31, bureaucrat warns**

**Kathryn May, The Ottawa Citizen, August 11 2016**

The senior bureaucrat who is overseeing efforts to fix the malfunctioning Phoenix pay system warns it may not be operating in a normal or “steady state” even once the backlog is cleared by the government’s promised October deadline.

Marie Lemay, the deputy minister at Public Services and Procurement Canada, has said the “steady state” when the Phoenix payroll system runs smoothly won’t be reached until employees and managers master the system, the backlog of unpaid files is gone and the new automated fixes are working.

“Will we have reached a steady state at the end of October? I don’t know. My guess would be probably not. We’ll probably want to be sure ... that we really are in a steady state for a certain period before we say, ‘OK, we’re good,” she said Thursday during a briefing about Phoenix.

By then, Lemay said, the department should be better able to assess what the regular flow and volume of transactions will be for Phoenix.

She said the department is focused on finding the “root causes” of the glitches that have left thousands of public servants overpaid, underpaid or not paid at all, to ensure these same problems “don’t reappear down the road.”

“What will the steady state look like? At this point, I’m not sure, but I can tell you that that’s definitely ... what we’re trying to evaluate. We’re starting to turn to the root causes (of problems), and I think that by the end of October then we’ll be able to tell you what that will look like.”

With the fixes and backlog eliminated, Lemay said the department can determine if any extra staff or temporary pay offices that have been created to handle the current backlog will be needed permanently. She said they will remain in place for as long as needed but that the goal is for all pay transactions to be handled by the Miramichi, N.B. pay centre.

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The government has hired 120 extra compensation advisers, recruiting some out of retirement, to work on the backlog in temporary offices in Gatineau, Winnipeg, Montreal and Shawinigan. It also created a call centre in Toronto to help screen calls for Miramichi.

Lemay said she expects the government will continue to face new pay problems until it finds and fixes the root causes of glitches. Wednesday was payday and 274 workers reported they didn't get paid compared to 720 and 589 workers unpaid on the July 18 and 27 paydays, respectively. Getting money to these employees is the department's top priority.

There are about 620 workers who reported pay problems because they left the public service on leave or retirement. The large backlog, which the government has promised to eliminate by Oct. 31, has been whittled to 76,951 cases, compared to nearly 82,000 in mid-July.

The government went to great lengths to ensure workers who aren't paid can apply for and receive emergency salary advances. A big problem is that workers who found themselves overpaid or received salary advances faced clawbacks of the full amount on the next paycheque, which caused financial hardship for many. Lemay said the government will now spread the recovery of those repayments over multiple pay cheques.

The government is also taking steps to cover the out-of-pocket expenses of employees who had to borrow money or credit to pay their bills because of Phoenix problems. Lemay said the government is setting a claims process to compensate employees for such expenses by September.

Public servants have also complained about possible tax implications because of pay problems, and Lemay said Canada Revenue Agency is setting up a 1-800 line to answer questions.

The rollout of Phoenix was the final stage of a massive pay transformation project launched by the previous Conservative government. The Phoenix system, designed by IBM, issues pay for 300,000 public servants.

The problems began immediately but Lemay lays much of the blame on the insufficient training of employees and managers rather than the technology. She said the government is reviewing all its training materials and seeking input from managers and workers on how to improve the approach while developing better user support and tools to target the most common problems.

One big problem the government is racing to fix is that, at the moment, Phoenix couldn't handle the thousands of retroactive payments that will be owed to public servants if Treasury Board and the unions reach a deal in the current round of collective bargaining. Lemay said that will be fixed with "enhancement" being installed in September to handle retroactive payments.

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Lemay said it is important that employees trust the system, seek help for payments owed and not fear reprisal for voicing concerns about pay problems.

“This is very concerning. Your pay is your right, and no one should feel intimidated about voicing concerns. So please contact us to address any pay issues,” she said.

### **Phoenix By Numbers**

*These are the latest numbers on the Phoenix pay system following this week’s Aug. 10 payday, provided by Public Services and Procurement Canada.*

**296,470** — Employees paid with no problems

**274** — New cases of employees who didn’t get paid Aug 10. They are top priority and should be paid within two pay cycles

**620** — Employees going on leave, long-term disability or leaving the public service facing pay problems. They are the second priority and cases will be resolved within four to six weeks.

**76,951** — In the backlog. They are getting regular pay but facing problems with supplementary and extra duty pay from overtime to promotions, acting pay transfers. Last priority. Oct. 31 deadline.

**5,000** — Pay issues resolved since July 18.

**190** — Compensation advisers government is recruiting to help manage backlog.

**120** — New compensation advisers hired so far at new centre in Gatineau and offices in Winnipeg, Montreal and Shawinigan.

**2,100** — Daily calls handled by new call centre in Toronto with no waits.

## **S’attaquer à la source des problèmes**

**Jordan Press, Le Devoir, le 12 août 2016**

La plus haute fonctionnaire du ministère des Services publics et de l’Approvisionnement a révélé, jeudi, que le gouvernement fédéral tentait maintenant de remonter à la source des

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problèmes minant le nouveau système de paie automatisé Phénix afin que ce dernier puisse inspirer confiance aux dizaines de milliers de fonctionnaires ébranlés par ses ratés.

Le fédéral essaie notamment de traiter les cas d'employés n'ayant pas été payés depuis des mois, dont de nouvelles recrues et des étudiants, ainsi que ceux de femmes de retour au travail après un congé de maternité ou de personnes ayant reçu une promotion sans que cela se traduise par une augmentation de leur paie.

Des dossiers de ce genre continuent de faire surface, 274 fonctionnaires ayant récemment rapporté ne pas avoir été payés. Depuis la mi-juillet, 2646 cas d'employés en congé ou tout juste revenus au boulot ayant éprouvé des problèmes avec leur paie ont été signalés. De ce nombre, 1182 ont été réglés.

Marie Lemay, la sous-ministre des Services publics et de l'Approvisionnement, a déclaré qu'après des mois à s'échiner à remédier aux ratés de Phénix, les responsables s'attaquaient maintenant à la racine de ces maux ayant touché plus de 80 000 fonctionnaires.

Certains d'entre eux ayant été surpayés ou ayant reçu des avances ont découvert que l'argent versé en trop avait été entièrement récupéré sur leur paie subséquente, ne laissant presque rien dans leur compte bancaire.

Mme Lemay a indiqué que le gouvernement avait commencé à répartir le remboursement de ces montants sur plusieurs mois afin d'éviter qu'une somme importante soit retenue sur une seule paie et d'apaiser les inquiétudes des employés craignant que ces paiements n'aggravent davantage leur situation financière.

*« Si les employés ne font pas confiance au système, c'est vraiment dommage, a-t-elle soutenu. J'espère qu'avec tous les efforts que nous faisons et avec tous les progrès que nous réalisons ils se sentiront mieux, seront plus à l'aise et auront l'impression qu'ils peuvent faire confiance au système. Mais je ne dis pas que nous avons réglé les problèmes. Nous avons encore beaucoup de travail à faire. »*

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## **Unions owed hundreds of thousands of dollars in Phoenix payroll fiasco**

**Dues not paid properly for months after Ottawa rolled out its computerized pay system**  
**Katie Simpson, CBC News, August 15 2016**

Another costly problem is emerging in the wake of Ottawa's troubled rollout of its new computerized payroll system.

The two largest unions representing federal public servants are owed hundreds of thousands of dollars each in union dues that have not been properly collected since Phoenix was rolled out.

- [Hundreds of workers come forward with new pay problems](#)
- [Public servant pay problems to last until October](#)
- [Worker owed \\$100K in Phoenix pay fiasco](#)

"Our priority continues to be getting our members paid," said Debbie Daviau, president of the Professional Institute of the Public Service of Canada.

But she describes the union's funding hit as "significant" and is worried the union will have trouble representing its members properly if the issue isn't fixed.

"We're already quite tight for money... we're not a business that has a whole bunch of money in reserve that we can access, and therefore we need a timely remittance of dues," Daviau said.

PIPSC, which represents 55,000 federal workers, says it is owed about \$300,000.

The Public Service Alliance of Canada, which represents 170,000 employees, is owed more than PIPSC, but a representative did not have an estimate available.

"We certainly know that our union dues have not been correct since February," said Chris Aylward, the national executive vice president of PSAC.

But Aylward says his organization's operations are still running at full capacity.

"It's certainly not impacting our priority at this point. Our priority at this point is our members getting paid."

Public Services and Procurement Canada confirmed there is a problem with union dues.

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"Public Service and Procurement Canada is aware of the dues remittance issues with certain bargaining agents," said Me'shel Gulliver Bélanger, a spokesperson for the department.

"PSPC and TBS (Treasury Board Secretariat) are currently collaborating with our federal bargaining agents and we are committed to resolving this issue as soon as possible."

Ottawa has been trying to resolve pay issues for more than 80,000 federal workers since implementing a new payroll software system, called Phoenix, earlier this year.

### Formal complaints launched

PIPSC has taken several steps to have this issue addressed.

Policy grievances have been filed against several government departments that employ unionized workers, including the Treasury Board, the Canada Revenue Agency and the Canadian Food Inspection Agency.

An unfair labour practice complaint is also expected to be filed in the coming weeks at the public service labour relations board.

"We're not at the point where our members are at, which is passing the hat around the office in order to survive, and therefore our members continue to be our priority at this point," Daviau said.

### Trifecta of problems halts dues collection

There are three separate factors affecting the unions' ability to collect dues.

The first, and most obvious issue, is that when members are not paid, dues cannot be withheld.

"Members could find themselves, many months in, in arrears in dues and that's totally unfair," Daviau said.

The second problem relates to new hires, who are not being properly processed by the Phoenix system.

PIPSC says it is not being notified about hundreds of new employees and therefore it is unable to collect dues from those new members.

The third, and most complicated factor, is a change to when and how dues are collected.



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For years, Ottawa delivered union dues on a monthly basis.

But the system has been changed to make those payments every two weeks.

This means the union gets half of what it would normally receive when an employee leaves a job half-way through a month.

The issue will likely be addressed when members of both unions meet with Public Works Minister Judy Foote on Aug. 19.

## **Hundreds more public servants come forward with Phoenix pay problems, government says**

**The remaining backlog of cases sits at 77,000, down from 82,000 in mid-July  
CBC News, August 11 2016**

Hundreds of new cases of public servants going entirely without pay or without some pay are continuing to surface as the federal government continues to work its way through a backlog of tens of thousands of cases.

At a technical briefing on Thursday, Public Services and Procurement Canada announced that 274 more public servants have come forward in the last two weeks to say they're not being paid at all.

There are also 620 new cases of workers getting partial pay, Deputy Minister Marie Lemay said.

As of Thursday, the remaining backlog of cases sits at 77,000, down from 82,000 in mid-July. The government hopes to have them paid or resolved by Oct. 31.

### **Overpayment clawbacks eased**

Ottawa introduced its new Phoenix payroll system, designed by IBM, in February, but ongoing problems have meant some federal workers are now facing financial difficulties.

Some workers entitled to supplementary pay for extra duties, overtime or pay adjustments have had problems getting it, while other workers haven't been paid at all. Others have received pay they weren't entitled to.

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For anyone with overpayments that need to be clawed back, Lemay said the government will do so over multiple pay periods instead of taking the full amount out of one pay cheque.

And anyone with questions about the tax implications of their payment issues can get answers through an information line being set up by the Canada Revenue Agency, Lemay said.

A claims process for the out-of-pocket expenses incurred by workers with pay issues will hopefully be in place by early September, according to Lemay.

### **'No one should feel intimidated'**

Some workers have told CBC News they fear reprisal for coming forward about the problems they're having, something Lemay said Thursday was "very concerning" to her.

"No one should feel intimidated" about coming forward about their basic right to payment, Lemay said.

She asked anyone with issues to confront the government about them.

"We can't help if we don't know who you are," Lemay said.

## **Système de paie Phénix: le fédéral remboursera les employés touchés**

**La Presse Canadienne, le 11 août 2016**

Le gouvernement fédéral prévoit rembourser les dépenses encourues par certains de ses employés en raison des problèmes suscités par le nouveau système de paie automatisé Phénix.

Des milliers de fonctionnaires qui n'ont pas été payés depuis des mois ont été forcés d'emprunter de l'argent ou d'utiliser au maximum leur carte de crédit afin de régler leurs factures le temps que le gouvernement remédie à la situation.

Les employés devront présenter leur demande de remboursement par le biais d'un processus de règlement qui sera probablement lancé en septembre. Les représentants du gouvernement n'ont pas dit à combien s'élèveraient les coûts liés à cette démarche.



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Les fonctionnaires qui ont été surpayés et doivent remettre l'excédent pourront étaler leurs paiements sur plusieurs mois afin d'éviter qu'une somme importante soit retenue sur une seule paie.

Phénix supervise la paie de 300 000 employés de la fonction publique fédérale. Sur ce lot, plus de 80 000 fonctionnaires ont été surpayés, sous-payés ou impayés depuis le lancement du système en février.

Mercredi était jour de paie pour les employés du gouvernement fédéral et ce dernier a assuré que 296 470 fonctionnaires avaient reçu leur paie régulière et que des milliers d'autres versements, notamment pour des heures supplémentaires, avaient également été effectués.

## **Feds will reimburse public servants caught by pay system glitches**

**The Canadian Press, August 11 2016**

The federal government plans to cover out-of-pocket expenses its workers have incurred as a result of problems linked to the troubled Phoenix payroll system.

Thousands of workers who haven't been paid in months have been forced to borrow money or max out their credit cards to pay their bills while the government sorts out problems with the new pay system.

Workers will have to apply through a claims process likely starting in September to have the government cover these expenses, but officials didn't estimate how much this will cost. Federal workers who have been overpaid and need to repay the government, will have the repayments spread out over the coming months to avoid a lump sum coming off one pay cheque.

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

Wednesday was payday for federal workers and officials say 296,470 workers received their regular paycheques and thousands more payments were made for things such as overtime.

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## **Liberals accused of playing politics with national security as they consult on changes to Bill C-51**

**The government will live up to its commitments to protect charter rights and offer appeals to people on no-fly lists as a 'minimum,' says a spokesperson for the public safety minister.**

**Marco Vigliotti, The Hill Times, Aug 10 2016**

The Trudeau government is stalling on introducing promised reforms to controversial anti-terror legislation because it sees the value of the new law, says a former Conservative cabinet minister.

The Anti-terrorism Act, also known as Bill C-51, offers helpful new tools for authorities combatting the ever-evolving extremist threat, said Erin O'Toole (Durham, Ont.), who now serves as the Conservative critic for public safety and emergency preparedness.

Despite its proven benefits, the Liberals are continuing to promise changes to the law to avoid losing support from left-leaning critics of the legislation who backed them in the 2015 election, he said.

"It's clear they are trying to hedge by suggesting to the people that thought C-51 was overly broad that they are going to change it, but at the same time they're talking to security and intelligence officials and realizing C-51 is likely a response to the changing threat environment and we can't change it," he said in an interview.

Bill C-51 was introduced by the Conservative government in the winter of 2015, months after two Canadian soldiers were killed in separate attacks perpetrated by suspected radical Islamists.

Warrant Officer Patrice Vincent was killed in October 2014 after he and another Canadian Armed Forces member were struck by a car in a parking lot in St-Jean-sur-Richelieu, Que.

Two days later, Cpl. Nathan Cirillo was shot dead as he stood guard at the National War Memorial in Ottawa. His killer, Michael Zehaf-Bibeau, then charged the halls of Parliament before being fatally wounded in the ensuing gunfight with security and police personnel.

The Conservative bill expanded the powers of Canada's security agencies, created a new criminal offence for promoting terrorism, allowed government institutions to disclose personal information to authorities and provided the Canadian Security Intelligence Service with the

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authority to “disrupt” terror plots through tactics that violate the Charter of Rights and Freedoms if granted approval by a judge, among other provisions.

It was criticized by privacy and civil liberties advocates who bemoaned what they viewed as an unjustifiable expansion of state power and an erosion of constitutional protections. The NDP, Bloc Québécois, and Green Party voted against it, though the Liberals offered measured support and voted for its passage.

After heated debate in the House, Bill C-51 became law in June 2015.

The Liberals promised during the election campaign last year to introduce reforms to the legislation that would strike a better balance between security and rights and freedoms, and bolster oversight by establishing an all-party parliamentary committee to monitor Canada’s national security agencies.

Public Safety Minister Ralph Goodale (Regina-Wascana, Sask.) told *The Hill Times* in May that he hoped to see legislation introduced that would change and repeal parts of C-51 “later on this year.”

The following month the government tabled legislation to create an all-party parliamentary security committee, while Mr. Goodale has initiated a public consultation about Bill C-51 and broader national security considerations.

Scott Bardsley, the minister’s press secretary, said Mr. Goodale has “reaffirmed the government’s commitment” to make a number of key changes to C-51 as promised in the Liberals’ election platform, including ensuring charter compliance, full protection for advocacy and protest, the “correction” of appeal procedures for no-fly lists, a more precise definition of terrorist propaganda, and a full review of all anti-terrorism laws after three years.

He also cited the establishment of the parliamentary committee, the launch of the Passenger Protect Inquiries Office to assist travellers who have experienced difficulties related to aviation security lists, and the allocation of funding in the 2016 budget to establish a national office for counter-radicalization as efforts to improve the legislation.

“This is the minimum that we will do to correct the previous government’s mistakes,” he said in an emailed statement.

Meanwhile, the consultations on the public safety national framework will ask Canadians “what else they believe is necessary to keep them safe and to safeguard our democratic way of life,”

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while providing Canadians with the “full opportunity to be heard” after being denied the opportunity two years ago, according to Mr. Bardsley.

He promised that a “green paper” will be published shortly describing the laws and procedures which currently exist to protect Canadians against terrorist threats and how they evolved over the past 15 years since September 11, including the impact of C-51.

“This record clearly demonstrates that Minister Goodale is steadily advancing our election commitments on national security, just as Canadians were promised,” Mr. Bardsley added. Mr. O’Toole, though, expressed disappointment about the lack of clarity about potential reforms, accusing the government of playing politics with national security by tactfully delaying action.

Now in government, the Liberals cannot continue to play both ends of this issue and have a “responsibility to either implement reform or justify the status quo,” he said.

“It’s unfortunate that they’re trying to do this election approach: keep the NDP support that they gained in the election happy by saying we’re going to make big changes, they’re coming, but really keeping the status quo,” Mr. O’Toole argued.

He said he believes Bill C-51 is necessary to address the growing radicalization threat that has seen terror groups effectively inspire devastating attacks in Western countries by encouraging sympathizers through the Internet and social media.

He also pointed out that security agencies were asking for the expanded powers provided in the Act, citing CSIS director Michel Coulombe’s comments before a Senate committee in March that the spy agency had used its disruption powers just less than two dozen times since the fall of 2015.

Mr. O’Toole said he was disappointed with how the bill was “torqued” and misrepresented by opponents, calling it a balanced piece of legislation that provided needed powers for authorities without drastically curtailing rights.

“[If] you start breaking out the elements of C-51 and describing how and why law enforcement were asking for them, you then realize that the big ominous C-51 isn’t quite as draconian as people were portraying it,” he said.

Mr. O’Toole, however, offered his support for the establishment of an oversight committee, saying it was a concept the Conservatives had previously supported but were unable to introduce during their volatile stretch of minority governance from 2006 to 2011.

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He acknowledged that the Conservative government likely should have introduced the committee after winning a majority in the 2011 vote.

The Liberals, however, have botched the establishment of the committee by refusing to allow the opposition parties to participate in the formation of the non-partisan body, Mr. O'Toole added.

On the other side of the aisle, the NDP is attempting to push the Liberals into action by announcing plans to introduce a private member's bill abolishing the Anti-terrorism Act.

Randall Garrison (Esquimalt-Saanich-Sooke, B.C.), the party's public safety and defence critic, has promised to introduce legislation to repeal the bill, which he described during a press conference late last month as a "creature of the Conservative government supported by the Liberals."

However, Stephanie Carvin, a security expert and international relations professor at Carleton University, said she believes the Liberals are correct in moving ahead cautiously with reforms to Bill C-51 because of lingering question marks.

The huge piece of legislation has only been in place for just over a year, making it difficult to assess its efficacy, she said.

"The legislation only came [into effect] in mid-June 2015. In some cases, we may not actually know how things are working or not working," she said in an interview.

"It's been over a year now, do we have the data as to how these provisions are actually working, or areas where we need to scale it back, or areas where we need to clarify things?"

Ms. Carvin also said the Conservatives failed to conduct proper consultations about the bill prior to its introduction, saying it could have used a "little bit more public input."

"If they maybe had a bit more of a public process, we wouldn't be in the situation that we are in today," she said.

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## **Wilson-Raybould hires assisted-dying critic**

**Justice minister brings in academic critical of Supreme Court ruling on assisted dying  
Joan Bryden, iPolitics.ca, August 8 2016**

Justice Minister Jody Wilson-Raybould has hired a new legal affairs adviser who once argued that the Supreme Court over-stepped its bounds when it struck down the ban on medically assisted dying.

Gregoire Webber is touted as a brilliant and highly respected legal scholar by fellow academics but his appointment has nevertheless raised some eyebrows given his past criticism of last year's landmark decision.

Shanaaz Gokool, president of Dying with Dignity Canada, says it raises another flag about the kind of advice Wilson-Raybould is relying upon when it comes to crafting laws governing the right of Canadians to seek medical help to end intolerable suffering.

Even before Webber's recent appointment, advocates of a permissive approach to assisted dying had complained that Wilson-Raybould was relying too heavily on advice from Justice Department officials who had spent years arguing in court against legalization of medically assisted death.

The minister introduced a restrictive new law last spring that allows assisted dying only for adults who are already near death.

The new law was enacted in June but it already faces legal challenges and, within a year, Wilson-Raybould will have to deal with issues that weren't addressed in the legislation: advance directives, mature minors, people suffering solely from mental illness.

Critics believe the new law will eventually be struck down because it doesn't comply with the Charter of Rights or the Supreme Court ruling.

The Supreme Court did not confine the right to medical assistance in dying to the terminally ill. It directed that the right should apply to all competent adults with "grievous and irremediable" medical conditions that are causing enduring suffering that they find intolerable.

In a posting last year to the U.K. Constitutional Law Association's blog, Webber, the Canada research chair in public law and philosophy of law at Queen's University, wrote that the top court's reasoning was "unimpressive." He accused the court of "failing to engage with the evidence before it" and said it erred in deciding that the criminal law prohibition on assisted dying was aimed strictly at protecting vulnerable people, not the preservation of life.



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The ruling known as the Carter decision was one of three cases Webber cited in the blog post to argue more broadly that the Supreme Court is effectively rewriting Canada's Constitution, circumventing the formal amendment process that would require the approval of Parliament and at least seven provinces.

In doing so, he said, "the court is not only opposing legislative measures introduced by the government, but it is also proposing and enacting new measures. It is legislating."

While that's not necessarily a violation of the court's role, Webber wrote, "the point is rather this: if the court legislates in introducing new constitutional rights and duties, it is doing some of the governing, to which the question presents itself — who stands as the opposition to this governing?"

Given those views, Gokool said she'd like clarification about what role Webber will play on the assisted dying file in future.

"It just raises a flag of who's being relied upon to provide legal advice to the justice minister," Gokool said. "It doesn't seem from our perspective that the justice minister has gotten well-balanced legal advice."

Joanne Ghiz, a spokeswoman for Wilson-Raybould, said Webber is "a qualified legal expert and he will help the minister deliver on her mandate letter."

"We are very proud of the calibre and diversity of experience and expertise in the individuals joining our team across government," she added.

University of Ottawa law professor Errol Mendes said Webber's past writings suggest a more conservative approach to judicial interpretation of the Constitution than the prevailing theory that it should be interpreted as "a living tree" that constantly evolves. But he said it would be unfair to lump Webber in with anti-court conservatives who rant against judge-made law; his views are "far more complex" and, in any event, more recent writings suggest his thinking has evolved.

"He is undoubtedly a brilliant and highly capable individual," Mendes said.

Similarly, University of Waterloo political scientist Emmett Macfarlane, who specializes in the impact of the Supreme Court and charter of rights on public policy, called Webber "an excellent choice" and "a well respected scholar."

"I think his record of critical analysis might demonstrate an openness on the part of the justice minister to consider different perspectives on various issues," Macfarlane said.



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**La ministre de la Justice embauche un conseiller opposé à l'aide à mourir  
Joan Bryden, Le Devoir, le 9 août 2016**

La ministre fédérale de la Justice, Jody Wilson-Raybould, a engagé un conseiller s'étant opposé à la décision de la Cour suprême de lever l'interdit sur l'aide médicale à mourir.

L'embauche de Gregoire Webber comme conseiller en matière d'affaires juridiques en a fait sourciller plus d'un après qu'il eut écorché le jugement historique de l'an dernier.

La présidente de Dying With Dignity Canada, Shanaaz Gokool, réclame des précisions quant au rôle que jouera M. Webber dans le dossier de l'aide médicale à mourir. L'organisation affirme que la ministre de la Justice ne semble pas compter sur des « conseils juridiques bien équilibrés ».

Au printemps dernier, la ministre a présenté une loi contraignante, limitant l'accès à l'aide médicale à mourir aux adultes en fin de vie. Quelques mois après son entrée en vigueur, la loi fait déjà face à des défis juridiques. Ses opposants s'attendent même à ce qu'elle soit abrogée puisqu'elle contreviendrait à la Charte des droits et libertés ainsi qu'à l'arrêt de la Cour suprême.

Le plus haut tribunal a déterminé que le droit à l'aide médicale à mourir devrait s'appliquer à tous les adultes capables atteints de « problèmes de santé graves et irrémédiables » causant des souffrances persistantes et intolérables.

En tant que président de la Chaire de recherche du Canada en droit public et philosophie du droit à l'Université Queen's, M. Webber avait écrit, l'an dernier, que la Cour suprême faisait erreur en estimant que l'interdiction sur l'aide à mourir visait seulement à protéger les gens vulnérables, et non à préserver la vie. Il avait ensuite avancé que la Cour suprême légiférait, et contournait même le Parlement en révisant la Constitution.

Le professeur de droit à l'Université d'Ottawa, Errol Mendes, estime que cette position traduit une approche conservatrice de l'interprétation judiciaire de la Constitution, comparativement à la théorie plus répandue qu'il s'agit d'un « arbre vivant ». Cependant, il souligne que les opinions de M. Webber sont « bien plus complexes » que celles des conservateurs antitribunaux qui se lancent dans des diatribes contre les lois jurisprudentielles.

Par ailleurs, le politologue Emmett Macfarlane, de l'Université de Waterloo, qualifie Gregoire Webber d'« excellent choix » et d'« érudit respecté ».

« Je pense que son dossier d'analyse critique pourrait démontrer une ouverture de la ministre de la Justice à considérer différents points de vue sur plusieurs enjeux », a ajouté le spécialiste de l'influence politique de la Cour suprême et de la Charte des droits et libertés.

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## **Les édifices du fédéral en mauvais état**

**La Presse Canadienne, La Presse, le 9 août 2016**

La ministre des Services publics Judy Foote a été avertie à la fin de l'année dernière que sans un financement accru pour les réparations des édifices gouvernementaux, certains d'entre eux pourraient menacer la santé et la sécurité des travailleurs.

Selon des notes d'informations rédigées pour M<sup>me</sup> Foote, le ministère est si à court d'argent qu'il ne peut plus payer pour des inspections visant à recenser les endroits représentant des risques et à déterminer les réparations nécessaires.

La situation pourrait même contraindre le gouvernement fédéral à interrompre certains services.

Selon des fonctionnaires, environ le tiers des édifices gouvernementaux seraient en mauvais état.

Des services publics pourraient cesser d'être offerts s'il n'y a pas de financement additionnel, indiquent les documents, dont *La Presse canadienne* a obtenu copie en vertu de la Loi d'accès à l'information.

Dans le plus récent exercice fiscal, les responsables ont évalué qu'ils avaient besoin d'au moins 200 millions \$ pour couvrir un manque à gagner budgétaire et pour assurer des services minimaux.

Pour la suite des choses, les fonctionnaires disent qu'il faudra prévoir une somme annuelle de 350 millions \$ pour les rénovations les plus urgentes et les travaux d'entretien qui ont pris du retard à cause des coupes du gouvernement fédéral précédent.

Le gouvernement Trudeau a prévu de dépenser 248 millions \$ pour des réparations et des travaux d'entretien au cours de l'exercice financier en cours, environ 100 millions \$ de moins que la somme nécessaire estimée par les fonctionnaires pour entretenir des immeubles vieillissants.

Une porte-parole de M<sup>me</sup> Foote a indiqué que le ministère n'avait pas recommandé que les libéraux dépensent 350 millions \$ dans le budget 2016, faisant valoir que ces chiffres représentaient une «prévision préliminaire» des besoins.

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Jessica Turner a dit par courriel que le gouvernement demeurait investi à fournir des environnements de travail sécuritaires et productifs pour les employés fédéraux et les occupants des édifices dont il est le propriétaire et administrateur.

## **What the stats say about Canada's newest crimes**

**How many people were actually charged with spreading of intimate photos? How about new terrorism charges?**

**Patricia Treble, Maclean's, August 7 2016**

Some crimes have been around for millennia, such as murder. Others were introduced when societal norms changed, as with impaired driving. Recently, several new offences have been added to Statistics Canada's crime data.

The spreading of intimate photos without permission became illegal in March 2015. Officially called "nonconsensual transmission of intimate images," it is a response to several high-profile suicides of teens—including those of Amanda Todd and Rehtaeh Parsons, after explicit images of them had been shared online and through phones.

Over the 10 months the law was in force in 2015, 46 of the country's 100 largest police forces recorded incidents, led by those in Quebec's Pierre-de Saurel Region and North Bay, Ont.

As well, in 2013, the federal government beefed up the terrorism sections of the Criminal Code to deal with a phenomenon occurring around the world: residents committing terrorist acts domestically or leaving the country to join ISIS or other banned organizations. While four of the seven new categories have no statistics for 2014 and 2015, the others do. There were seven police-reported incidents of "Leaving Canada to participate in activity of terrorist group" in 2014, and another 28 in 2015. There was one "Leaving Canada to facilitate terrorist activity" in 2014 and three in 2015, while "Leaving Canada to commit offence that is terrorist activity" had one police-reported incident in 2015.

Statistics Canada warns users about the erratic nature of this type of data: it can take considerable time to determine whether an incident is terrorism-related or not, and so annual counts of terrorism offenses may be revised downwards in the future. In other words, use with caution.

It was only in December 2015, in fact, that the first Canadian was convicted of trying to leave the country to participate in a terrorist group. According to the Quebec Crown, the teenager, who was interested in ISIS and Syria, tried to buy a one-way ticket to Turkey with his parents'

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credit card. (His father turned him into authorities.) In January, the teenager was handed a three-year sentence.

## **Employers now responsible for protecting their workers on social media**

**TTC arbitration sets precedent for workers who are harassed on Twitter**  
**Avneet Dhillon, CBC News, July 30, 2016**

A recent labour ruling is setting a precedent for companies that use social media to respond to customer complaints.

Ontario arbitrator Robert D. Howe ruled on July 5 that the Toronto Transit Commission did not effectively protect its workers from harassment on its [@TTChelps](#) Twitter account. The account is used to respond to customer service questions and concerns.

Amalgamated Transit Union Local 113, which represents TTC employees, was attempting to shut down the Twitter account after calling attention to the barrage of hateful tweets directed at particular employees.

There were 38 exhibits entered as evidence, including photos of TTC workers taken by disgruntled riders that were posted to Twitter with criticism of their conduct.

- [Video captures suspect tossing coffee at TTC driver](#)

The arbitrator did not rule the account should be closed, accepting the TTC's argument that it provides a valuable service to the public.

However, Howe said the TTC failed to adequately protect employees and recommended dealing with the harassment by having the TTC "request the tweeters to immediately delete the offensive tweets" and "advise them that if they do not do so they will be blocked."

Although laws have been evolving to address the increasing concern of online abuse, this appears to be the first case where an employer is held responsible for posts directed at employees.

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## Canadian companies tweeting

Many Canadian businesses, including [Rogers](#), [Shaw](#), and [Royal Bank](#), have set up Twitter accounts to handle customer queries.

Others, including [Air Canada](#), [VIA Rail](#), and [BC Ferries](#), use their primary business accounts to interact with customers.

While the majority of interactions appear to be civil — questions about schedule changes or reasons for service delays — occasionally customers vent their frustrations using abrasive language.

Metrolinx spokeswoman Anne Marie Aikins says some level of anger is understandable when unexpected issues arise with a service like GO Transit.

"We are very accepting of the fact that people will be passionate, as long as that passion comes out in a respectful way," Aikins said.

Angela Mah, a spokeswoman for Air Canada, echoes similar sentiments. The airline faces its fair share of passionate customers on its Twitter account.

"We find the vast majority of people understand the rules of social media engagement, and we will not allow posts with inappropriate content to be viewed," Mah wrote in an email to CBC News.

Depending on the type of service provided, negative comments on social media may be directed at the company as a whole, rather than individual employees. Darin Guenette, who manages public affairs at British Columbia Ferry Services, says this is the case for their @BCFerries Twitter account.

"If harassing comments are made, but they do not pertain to the issue or conversation, they are generally ignored," Guenette wrote in an email to CBC News. "If anything personal comes up, the conversation is taken off-line if possible."

The customer service representatives and employees behind these Twitter accounts bear the brunt of any abuse.

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"When we're going through service disruptions, they go through a lot," Aikins said. "We don't expect employees to tolerate anything different than what they should tolerate in person."

Now that this promise has extended to social media, companies may be held to account for online attacks against their employees if they fail to address the abuse.

## **Evolving standards**

David Mangan, a professor at Osgoode Hall Law School who studies how Canadian employment law relates to social media, told CBC News most of the existing case law has dealt with disciplining workers for what they have posted on their own social media accounts. This recent ruling has turned the tables to focus on the employers.

"The decision demonstrates a responsibility that can place employers, especially service-oriented businesses, in a position of policing what we might call more extreme speech; that is racist, sexist, homophobic speech," Mangan said.

These were the types of tweets provided as evidence in Howe's decision, and what prompted union executive Rocco Signorile to file the grievance in the first place.

"It crossed so many lines," Signorile told CBC News. "There were death threats."

## **Appropriate response**

In his decision, Howe recognized that many of the responses by @TTC helps were "inadequate" and urged the organization to explicitly state that it will block users who fail to delete "abusive, profane, derogatory or offensive" content.

TTC spokesman Brad Ross says this is already part of the organization's social media policy. Ross told CBC News that "every tweet needs to be treated differently" but there are certain courses of action "if a tweet is abusive or threatening in any way."

"Somebody sent me quite a vile tweet about an employee that had coffee thrown at him. I blocked him," Ross said.

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Another one of Howe's recommendations is contacting Twitter to request an offensive tweet be deleted when a user fails to remove it.

- [Woman calls out Twitter 'creepshot' accounts](#)

CBC News asked Twitter Canada for comment, but the company said it does not comment on specific cases or about individual accounts.

Twitter's terms of service stipulate that users "may not publish or post direct, specific threats of violence against others" and that they "may not engage in targeted abuse or harassment."

The company recently ignited debate after Breitbart writer Milo Yiannopoulos was [banned from Twitter](#) for "abusive behaviour."

Ross says shutting down customer service accounts isn't the answer, especially for organizations that serve the public. "The TTC as a public transit provider has broken a lot of ground," he says.

"Social media is here to stay."

## **Pay Equity Legislation: Feds Prefer Proactive Approach, Memo Suggests**

**Joanna Smith and Jordan Press, Huffington post, August 8 2016**

The federal government would prefer a proactive approach to ensuring that men and women get equal pay for work of equal value, a newly released memo suggests, but officials expressed some caution over how much it could accomplish.

"The proactive approach is generally considered to be more effective at addressing systemic wage discrimination," said a backgrounder on pay equity legislation provided to Labour Minister MaryAnn Mihychuk on Feb. 1.

"It is less adversarial than a complaints-based approach, with the focus being on assisting employers to comply with the law rather than placing the burden on a complainant to build a case of discrimination," said the memo from the deputy minister.



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"However, a proactive approach can only bring about minor change unless compliance levels are high."

The Canadian Press obtained the document through access-to-information legislation.

The document was prepared ahead of an NDP motion that called on the House of Commons to strike a special committee on pay equity to come up with a plan to adopt a proactive pay equity regime, rather than leaving individual women who believe they are being treated unfairly to file complaints.

The motion passed with support from the Liberals and the committee released its report in June.

The report recommended doing away with the controversial Public Sector Equitable Compensation Act brought in by the previous Conservative government.

It also called on the government draft proactive pay equity legislation within 18 months — with the NDP asking for it by the end of this year.

It also urged the government to accept the overall direction — and majority of recommendations — from the 2004 report of the federal Pay Equity Task Force.

'Our government's goal is to stop this discrimination'

Neither Mihychuk nor anyone from the Department of Employment and Social Development was available Monday for an interview.

In an emailed statement, departmental spokesman Josh Bueckert pointed to what the minister said during her May 3 appearance before the committee: "Our government's goal is to stop this discrimination related to the undervaluation of work traditionally performed by women."

As for how it plans to do that, the statement said the government will table a comprehensive response to the committee report by Oct. 7.

The briefing note mentions that employers can be taken to task by the Canadian Human Rights Commission without employees or their unions having to file a complaint.

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"If an inspector has reasonable grounds to believe that there is gender-based wage discrimination in an establishment, he or she may notify the commission, which can then initiate an investigation. However, there are no known cases of this occurring," it said.

NDP MP Sheila Malcolmson is shown in the House of Commons in 2016. (Photo: Twitter)

Barbara Byers, secretary-treasurer of the Canadian Labour Congress, said that should not deter the government from taking a proactive approach.

"Human rights commissions don't necessarily go out and look for that work, because they've got other things they are dealing with as well and they are already understaffed for that," said Byers.

"If complaint-based was going to work, then quite frankly it would have worked by now," she said.

New Democrat MP Sheila Malcolmson, who put forward the motion on pay equity, said she hopes the Liberals follow through quickly.

"This is a policy that they can bring in which actually puts some action to their words on gender equality," said Malcolmson, the status of women critic for her party.

"If complaint-based was going to work, then quite frankly it would have worked by now."

"If they don't leave a legislative record like this, they will have failed in their commitment around this being the gender parity Parliament," she said.

Conservative MP Marilyn Gladu, who sat on the special committee, supports proactive legislation.

"Where there was the most success in getting equitable pay, it was legislated," she said.

## **Lawyers want to expand assisted dying, feds say Carter decision doesn't apply**

**Federal response to court challenge argues Supreme Court decision applied only while ban existed**

**Joan Bryden, CBC News, August 12 2016**

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The Canadian Bar Association is urging the federal government to expand its restrictive new law on assisted dying, allowing mature minors, people suffering strictly from psychological illnesses and those diagnosed with competence-eroding conditions like dementia to get medical help to end their suffering.

But even as the country's lawyers seek to extend the right to medical assistance in dying, the government is digging in its heels, maintaining that the facts on which the Supreme Court decided to strike down the ban on assisted dying are no longer applicable.

- [Justice minister hires academic who thinks Supreme Court erred](#)
- [Liberals' assisted-dying bill is now law after clearing final hurdles](#)

In a response to a court challenge of the new law, the government argues that the top court's findings of fact in the landmark Carter case last year applied only in the context of the absolute ban on physician-assisted dying that existed at the time.

Now that there is a new law — which allows assisted dying only for incurably ill adults who are already close to a natural death — the government says those findings are no longer necessarily true.

"The defendant does not admit that these findings remain true today or that they are applicable in the present case," the government argues in a document filed in the Supreme Court of British Columbia.

Among the facts that the government suggests are no longer true are the top court's findings that:

- Denying assistance in dying for people with grievous and irremediable medical conditions may condemn them to a life of severe and intolerable suffering.
- Such a person faces a "cruel choice": take his or her own life prematurely or suffer until natural death.
- A permissive approach to assisted dying would not put Canada on a "slippery slope" in which disabled and other vulnerable Canadians are pressured to end their lives.

### ['Near death' requirement at issue](#)

The government's argument is in response to a court challenge launched by the B.C. Civil Liberties Association and Julia Lamb, a wheelchair-bound 25-year-old who suffers from spinal

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muscular atrophy, a degenerative disease that she fears will eventually consign her to years of intolerable suffering.

Lamb and the BCCLA contend the new law is unconstitutional and not compliant with the Carter decision because it would not allow an assisted death for people, like Lamb, who are suffering but not near death.

- [Assisted-dying legislation faces new legal challenge in BC](#)

In a terse reply to the government's document, Joseph Arvai, lawyer for the plaintiffs, says the government "is estopped from disputing the factual findings made in Carter ... and to do so is an abuse of process."

Julia Lamb, who has a degenerative muscle disease, leaves a news conference in Vancouver, B.C., Monday, June, 27, 2016. Lamb is challenging Canada's physician-assisted dying law just days after it came into force. (Jonathan Hayward/Canadian Press)

Grace Pastine, the BCCLA's litigation director, said the government is essentially saying, "'We've crafted a brand new law and so now this is a brand new issue and you have to re-litigate and re-argue every issue related to physician-assisted dying all over again.'"

The legal fight that culminated in the Carter ruling took four years and cost millions, she noted, adding that the government is creating "a real barrier to justice" by maintaining that battle must be fought all over again.

"If ordinary Canadians and public interest groups and pro-bono lawyers have to recreate the wheel every time they challenge an unconstitutional law, they're seriously disadvantaged against the bottomless pockets of the federal government," Pastine said in an interview.

But even as the government digs in, the CBA is urging it to adopt a more permissive approach to assisted dying.

At its annual meeting Thursday, the bar association's council unanimously passed three resolutions, urging the government to extend the right to assisted dying to people suffering strictly from psychiatric illnesses and to mature minors and to allow people diagnosed with conditions that will eventually cause loss of competence to make advance requests for an assisted death while they're still able to give informed consent.

The government has promised independent studies of those three issues, starting within six months and reporting back by the end of 2018.

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## **Urgent need for judicial vacancies to be filled promptly: Beverley McLachlin**

**Supreme Court of Canada Chief Justice Beverley McLachlin linked the number of empty seats on federally appointed court benches across the country — 44 at the moment — to unacceptable trial delays, especially in the criminal courts.**

**Tonda MacCharles, Toronto Star, August 11 2016**

Canada's top judge says the Liberal government could look to the shortlists of judges vetted under the former Conservative government to address a long-standing problem with judicial vacancies.

In an exclusive interview with the Star, Supreme Court of Canada Chief Justice Beverley McLachlin linked the number of empty seats on federally appointed court benches across the country — 44 at the moment — to unacceptable trial delays, especially in the criminal courts.

McLachlin said she has no argument with the Liberal government's effort to overhaul judicial appointment processes across the country, but said "I hope we can find a way to bridge the gap while we're perfecting the processes — but that's in the government's hands, properly, under our Constitution."

Asked what options might bridge that gap, McLachlin emphasized "it's not for me to tell the government how to appoint judges. That's not my business. But there are names, I understand, that are in the system from the previous (judicial advisory) committees."

She said it is the current government's "prerogative to appoint in accordance with their processes" but added there is a pressing need for vacancies "be filled in a prompt manner."

McLachlin made clear there is a lot at stake for the justice system, saying the vacancies are "a huge difficulty. It's more than a challenge. It makes it very, very difficult to comply with the constitutional requirement that people be tried within a reasonable time," she said in an interview at her office west of Parliament Hill.

McLachlin pointed to the Supreme Court's July ruling in a case called R. vs. Jordan, a split 5-4 decision in which she dissented.

In the interview, she said the court addressed the "lamentable delays" in criminal trials. She said the decision was clear that "we have to have strict compliance with the constitutional right

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of people to be tried within a reasonable time,” adding that “this is going to be a challenge for the justice system in the years to come.”

The majority ruling warned past approaches to how the courts considered delays — based in part on the high court’s own rulings on issues of procedural fairness — have created a “culture of delay and complacency.”

It set out a new framework that set limits on how long the justice system should reasonably take from the laying of a criminal charge to the actual or anticipated end of a trial. Otherwise criminal charges may be stayed under an accused person’s charter guarantee of a trial within a reasonable time. Only under “exceptional circumstances” should trials be prolonged, it ruled. At most, the Supreme Court said provincial court cases should take 18 months, and for cases in superior trial courts (including those heard in provincial court after a preliminary inquiry) the outside limit is 30 months. Delay caused by or waived by the defence doesn’t count. But the Supreme Court says trial delays beyond these times will be presumed to be unreasonable unless there are “exceptional” reasons that were unforeseen and couldn’t be prevented or remedied by Crown action.

“I can tell you because I talk to the chief justices who are trying to get the cases tried within reasonable time that they need more judges,” said McLachlin, who chairs the Canadian Judicial Council of chief trial and appellate judges.

McLachlin said she first started expressing concern about empty seats on Canada’s courts in 2006 when “I think there were 35 vacancies and I said that was unacceptable at the time, and today there are — how many? — 41?”

In fact, the Office of the Commissioner for Federal Judicial Affairs said as of Aug. 1 there are 44 vacancies on the federally appointed benches across Canada. The Conservative government was often accused of dragging its feet to replace judges. But since its election last October, the federal Liberal government has moved very slowly to fill gaps.

Joanne Ghiz, spokesperson for Justice Minister Jody Wilson-Raybould, said the minister was unavailable for an interview but in an email she pointed to 15 judicial appointments made in June.

Only eight of those appointments were new judges; seven of them were sitting judges who shifted from one bench to another.

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Ghiz said the government moved to fill “urgent judicial vacancies by drawing on existing lists of recommended candidates” but is still “considering ways” to significantly reform the judicial appointments process.

She offered no indication of when the vacancies would be filled. Ghiz said significant reforms will “take time, and require appropriate consultations, including with the judiciary, the legal community and the general public.”

McLachlin said while she respects the desire of the new government to revise appointment procedures, “We have Canadians who have a constitutional right to a trial within a reasonable time and we don’t have enough judges in place in some parts of the country to deliver that. So my hope is that we can have both things, that it’s not either a new, revised or better process *or* denying Canadians their constitutional rights.”

The Liberal government’s overhaul of all federal order-in-council appointments includes judicial appointments not only at the trial and appellate level in provincial courts, but at the very top.

It unveiled a new process to pick a new judge for the Supreme Court of Canada week to fill a vacancy it has known about since March. That’s when Justice Thomas Cromwell, of Nova Scotia, announced he would retire at the end of August. A new advisory board charged with coming up with a shortlist has until Sept. 24 to deliver candidate names to Prime Minister Justin Trudeau. The high court’s fall session starts in October.

“Ideally, the (Supreme) court should have all nine people and the court functions best when it has nine people,” McLachlin said, adding it has operated at less than the full nine-member bench before.

But in those cases, appeals involving legal issues of national interest and scope are heard with seven instead of nine judges. “Some judges may not be able to participate in all the cases they’d like to,” she said. “I have a rule that if you really want to sit on it you can, but if we sit eight and we divide evenly, then there are other problems.”

A “couple of times” the court has ordered a rehearing of an appeal or when a new judge is appointed he or she participates “after the fact via video” with the consent of the parties.

“There are ways of working around it. The bottom line is that it’s very important to have nine judges in place. I’m sure the government appreciates this and that they are committed to making an appointment at the very earliest possible time.”

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Trudeau's government has tossed aside a convention that would see Cromwell's replacement chosen from Atlantic Canada, and invited applicants from across the country, while introducing a requirement that top court applicants be "functionally bilingual." That requirement has irked judges and the legal community in Newfoundland and Labrador, which had been expecting the province's turn had come for a Supreme Court appointment. At least seven senior judges in that province have French-language training with varying degrees of proficiency, contrary to reports that none speak French.

On Wednesday, the Canadian Bar Association, which represents 36,000 lawyers, judges, law teachers and students, released a letter it wrote to Trudeau calling on the government to change its mind.

It said the Atlantic Canada vacancy on the high court should be "filled by a meritorious candidate from that region" and future vacancies should respect the custom of allotting seats on the high court on a regional basis.

By law, three of the Supreme Court's nine seats are reserved for Quebec, and by tradition, the federal government appoints three judges from Ontario, two from the West, and one from Atlantic Canada.

## **The Supreme Court's long road to transparency and inclusiveness**

**There needs to be a full public discussion of the concepts of merit and diversity in Supreme Court appointments.**

**Lorne Sossin, Policy Options, August 9 2016**

Prime Minister Justin Trudeau has hailed the new approach to Supreme Court appointments unveiled last week as "open, transparent and...a higher standard for accountability." While devils may lurk in some details, the proposals promise a more transparent and inclusive appointments process, and for this reason alone they are significant and welcome. The changes are also intended to create a more diverse and inclusive Supreme Court. The focus on diversity as an important characteristic of the Court (and its justices) deserves more attention, as it engages the complicated relationship between geographic representation, professional accomplishment, knowledge and analytic ability, demographic background, bilingual capacities, personal attributes and temperament, and experience.

Under the new appointments process candidates may nominate themselves, or they might be tapped by an appointed advisory board. Either way, all candidates will fill out a lengthy



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questionnaire (including essay questions!) and submit writing samples. While the government retains exclusive discretion to select the justices, it will do so on the basis of a short list provided by the advisory board — a new entity for which the government selects only three of the seven members. The Advisory Board will provide the “nonbinding, merit-based” recommendations of three to five qualified and “functionally bilingual” candidates to the prime minister for consideration. The board also will explain how each short-listed candidate meets the publicly available criteria. Parliamentarians (through the House of Commons Standing Committee on Justice and Human Rights) will have opportunities to question the Minister of Justice and the chair of the Advisory Board on the candidate who is ultimately selected, and to get to know the candidate in a session moderated by a legal academic.

Despite recent attempts at reform, increased scrutiny of candidates and the introduction of various advisory committees, the Supreme Court has remained remarkably homogeneous. Canada has never had Supreme Court justice who is Indigenous, who is from a visible minority, who has a religious background that is not Christian or Jewish, or who self-identifies as other than heterosexual. Suffice it to say, the Supreme Court of 2016 simply does not reflect the Canada of 2016 — not even approximately.

The proposed approach is clearly intended to remedy this lack of diversity, but that approach is nevertheless selective. It assumes (without justification) that a candidate who speaks English and French should be preferred over a candidate who speaks English and one of Canada’s Indigenous languages, and that a candidate who is bilingual and White should be preferred over a one who is unilingual but reflects an ethnic community that is otherwise under-represented on the Court. While parties may make submissions to the Court in either official language, which makes bilingual justices a clear asset, mandating that only functionally bilingual candidates will be considered is new. Privileging one vision of diversity over others is a challenging prospect in the Canada of 2016.

*The Supreme Court appointment process is a microcosm of Canada’s ongoing search for national identity and its desire for unifying national institutions.*

Regional representation is even murkier. Apart from the statutory requirement of three justices from Quebec, regional representation is a convention. Traditionally, the West receives two seats, Ontario and Quebec three each, and Atlantic Canada one. While it is not legally enforceable, this convention has existed since the founding of the Supreme Court. Regional identities are a significant part of Canada’s past, but will they resonate in Canada’s future (as opposed, for instance, to urban/rural identities, or northern/southern identities)? To take just one example, when Canada appoints its first Indigenous Supreme Court justice, the significant

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territory for that individual may well be the ancestral territory of an Indigenous nation, and not the province or provinces where that territory is located. The Supreme Court appointment process is (and has always been) a microcosm of Canada's ongoing search for national identity and its desire for unifying national institutions. As Canada evolves, so must its notions of diversity and inclusion.

The place of diversity and inclusion in a merit-based appointment process also is in flux. While almost all agree Supreme Court appointments should be made based on merit, the concept of merit signifies different things to different people. For some, it can be measured objectively (for example, academic degrees, career achievements, and demonstrated legal expertise). For others, it can also encompass more holistic aspects of a potential jurist, such as empathy, imagination, humility, resilience and interpersonal/intercultural skills. But where do gender, race, ethnicity, age, sexual orientation, religion, culture and life experience fit into these understandings of merit? I hope the new appointment process facilitates a discussion of these questions.

Undoubtedly, the Advisory Board, which is working on the public criteria for appointments under the new model, will cite many of these and other factors. Identifying which qualities are salient, however, can be an elusive (and potentially divisive) process. While public discussion will be important in this regard, the process should be judged on its results. There needs to be more transparency in the appointment process, and achieving this will be a big step forward. But it may side-step some of the hardest and most important questions of all: whose idea of inclusion should come first, and whose should come second, and how long should those on the outside wait to be welcomed in? Perhaps this should be part of the public discussion too.