Company behind Phoenix pay system set to get $2M contract to help fix system's epic problems
Global News
Amy Minsky
September 25, 2017

Ottawa is poised to award the company behind the Phoenix payroll fiasco a $2-million contract to help "stabilize" the federal government's pay system so the government can "meet its obligation" to pay its employees the wages they've earned, accurately and on time.

"The continuing delays to implement successful fixes to [the pay system] include risks for many employees who continue to face economic and social hardship," the contract notice reads.

The potential problems also extend to "reputational risks" for the government, the document reads.

The $2-million contract is on top of the $142 million already earmarked to help solve the problem that has, for more than a year and a half, made the financial lives of many federal public servants a nightmare.

The contracted funds are also beyond the $70 million per year over two years Ottawa is leaving for departmental budgets as a nod to the amount the government was slated to save had the new system performed properly.

It's also on top of the $200 each of the affected employees was offered in an effort to help soften the blow of their bungled pay when it came time to file taxes.

And finally, this newest contract is on top of the $50 million the government spent over the last year to bolster support at pay centres across the country.

The $2-million contract, as reported on iPolitics.ca, was posted earlier this month with the stated intention of going directly to Oracle, the company that developed the Phoenix pay system software, without any competition.

The justification for deciding which company gets the contract – as opposed to leaving it open for competition as is often the case with government contracts – is that the company has the "proprietary knowledge," access to and experience with the software in question.

"This access, knowledge and experience are required to mitigate risks and adopt best practices in defining a comprehensive remedial implementation plan," according to the contract notice.

A competing company can raise an objection to the government's decision to pre-select but must do so by Sept. 29. The proposed contract is set to span six months, from the end of this month to March.

The Phoenix system was rolled out in February 2016 and has encountered issues ever since.

Instead of streamlining the payment process, Phoenix threw the entire system into disarray, leaving some public servants without any pay, others without enough pay and still others with too much.

Last week, the federal privacy watchdog raised yet another red flag in the ongoing saga.

In his annual report, privacy commissioner Daniel Therrien said inadequate testing, coding errors and poor monitoring of Phoenix resulted in some public servants having their personal information, such as names and salary information, exposed.

The report flagged at least 11 breaches, most of which Therrien said were “government-wide,” meaning the private information of every employee in the Phoenix system was at risk at the time of the breach.

Therrien also determined there may be lingering vulnerabilities that could lead to future breaches.

Supreme Court Justice Abella named peace prize winner
Lawyer’s daily
Carolyn Gruske
September 25, 2017

Supreme Court of Canada Justice Rosalie Abella has been announced as the recipient of the 2018 Calgary Peace Prize.
The award, which was created by the John de Chastelain Peace Studies Initiative, is given to outstanding individuals from the global community who work toward making the world a more just, safer and less violent place. Justice Abella is being recognized for her long and sustained efforts toward establishing justice, social equality and international human rights throughout her career as lawyer, commissioner, judge and Supreme Court justice.

Justice Abella, who was born in a displaced person's camp in 1946 in Germany, came to Canada in 1950, along with the rest of her family.

After earning her law degree from the University of Toronto, she was called to the Ontario bar in 1972 and practised civil and criminal litigation until 1976 when she was appointed to the Ontario family court. At the time, she was the youngest person (29 years old) appointed to the judiciary in Canada. She joined the Ontario Court of Appeal in 1992. Justice Abella's appointment to the Supreme Court of Canada came in 2004. Justice Abella was the first Jewish woman named to the court.

In addition to serving on the bench, Justice Abella was the sole commissioner of the 1984 federal Royal Commission on Equality in Employment, creating the term and concept of “employment equity.” When the Supreme Court adjudicated its first equality rights case under the Charter, it referred to the concepts Justice Abella wrote about in that report. Not only has the report changed the way Canada thinks about equality rights, the report's content has been adopted by New Zealand, Northern Ireland and South Africa.

Justice Abella also chaired a number of entities and organizations, including the Ontario Labour Relations Board and the Ontario Law Reform Commission. Her list of public service work is long. Justice Abella served as the Boulton visiting professor at the faculty of law of McGill University, a commissioner on the Ontario Human Rights Commission, a member of the Ontario Public Service Labour Relations Tribunal, co-chair of the University of Toronto Academic Discipline Tribunal, a member of the Premier’s Advisory Committee on Confederation and chair of the Study on Access to Legal Services by the Disabled. Justice Abella, who is a classically trained pianist, also has a comprehensive history of being involved in the arts community.

Justice Abella has made judicial education a priority. She organized the first judicial seminar in which all levels of the judiciary participated, the first judicial seminar in which people outside the legal profession were invited to participate, the first national education program for administrative tribunals, and the first national conference for Canada's female judges.

Justice Abella will receive the award on April 8, 2018, during a ceremony in Calgary.

Government of Canada Launches Action Plan to Enhance Bilingual Capacity of Canada's Superior Courts
PR Newswire
September 25, 2017

OTTAWA, Sept. 25, 2017 /CNW/ - The Honourable Jody Wilson-Raybould, Minister of Justice and Attorney General of Canada, is proud to announce the Government's Action Plan for Enhancing the Bilingual Capacity of the Superior Courts (hyperlink). This multi-faceted approach will ensure that people dealing with Canada's court system have improved access to justice in both of Canada's official languages.

The seven-point action plan includes strategies for enhanced tools to verify and assess the bilingual capacity of judicial applicants, examine language training for current members of the judiciary, and confirmation of the Minister's commitment to collaborative consultations with Chief Justices with respect to the bilingual capacity needs of their courts. The Government is also committed to consulting with provinces and territories on relevant bilingualism initiatives,

These measures build on the reforms to the superior courts appointment process introduced in October 2016, which were aimed at reinforcing public confidence through openness, increased transparency and accountability, and by promoting diversity and gender balance on the bench. Among the reforms was a requirement for greater detail regarding applicants' self-identified bilingual capacity, the possibility of language assessments, and a new reporting requirement. The Action Plan announced today builds on those changes and takes important new steps in the areas of information gathering, training, and collaboration for and among many stakeholders. The Minister is pleased that this approach also addresses many of the recommendations made by the Commissioner of Official Languages in his 2013 report.

Quotes

"All Canadians are entitled to have fair and equitable access to the justice system, which should be able to respond to their needs in the official language of their choice. The measures contained in the Action Plan will allow our Government to take stock of where we are in terms of providing equal access to the superior courts in both official languages, and, where we find gaps, taking concrete steps to fill them."

The Honourable Jody Wilson-Raybould
Minister of Justice and Attorney General of Canada

Ontario Superior Court warns federal government it 'desperately' needs more judges
As one lawyer puts it: "Toronto courts have been plagued with too many cases and not enough judges."
Toronto Star
Jacques Gallant
September 26, 2017

The Superior Court of Justice is warning that it "desperately" needs more judges to keep up with an increasingly heavy and complex caseload.

The court, which handles all civil and some family matters, as well as the most serious criminal cases such as murder, has requested that federal Justice Minister Jody Wilson-Raybould immediately add an extra 12 judges to Ontario's judicial complement.

Whether that will actually happen anytime soon remains to be seen, although it doesn't appear that Ontario will get all 12 judges in one round. Wilson-Raybould's office said she is considering the request, as other provinces also put forward business cases for increases in their number of judges.

Courts across the country have been grappling since last year with the effect of a landmark Supreme Court of Canada case known as R v. Jordan, which set strict timelines to bring criminal cases to trial.

The Jordan ruling has left understaffed courthouses, including in Ontario, scrambling to redeploy judges to criminal matters at risk of being tossed due to delay, to the detriment of non-urgent civil and family matters.

"In addition to the court's criminal workload, an immediate addition to Ontario's Superior Court judicial complement is desperately needed to deal with families in crisis and urgent child protection cases," Mohan Sharma, counsel in the office of Ontario Superior Court Chief Justice Heather Smith, told the Star in an emailed statement.

Ontario's population has increased by 3.4 million since 2000, Sharma said, "but over the last 17 years, the Superior Court of Justice has not received a proportionate increase to its judicial complement."

The last time an increase was made to the complement was in 2008, when the court received eight additional judges, Sharma said. There are currently about 330 Superior Court judges allotted to Ontario.

Public Safety Minister Ralph Goodale revamps rules around using information gleaned through torture
Intelligence obtained through mistreatment may still be used if needed to prevent death and significant injury
CBC News
Kathleen Harris
September 26, 2017

The federal government is strengthening safeguards around the use of information derived through torture, but will not issue a blanket ban on receiving intelligence that may have been obtained from abuse or mistreatment.

Public Safety Minister Ralph Goodale said the goal of new directives released today is to protect the security of Canadians while ensuring the government is not complicit in torture by foreign states.

"We were guided by the government's commitment to keep Canadians safe and uphold Canada's commitments to human rights and the rule of law," he said in a statement. "The ministerial directions reflect the government's steadfast commitment to both."

New rules prohibit the use of information that was likely obtained through mistreatment, except when it is necessary to prevent loss of life or significant personal injury. It is also prohibited if it could lead to further abuse or torture.

Information obtained through torture can no longer be used to prevent risks to property.

Revised rules also come with new reporting requirements, including an annual report and an independent review by the National Security and Intelligence Committee of Parliamentarians and other bodies.

Information obtained through torture cannot be used as evidence in criminal proceedings. It can only be used to "deprive a person of their rights or freedoms in exceptional circumstances to prevent loss of life of serious personal injury," according to government documents on the changes.

Human rights concerns

The new directives replace a 2011 version on information sharing, which had raised serious concerns from human rights groups.

Alex Neve, secretary general of Amnesty International Canada, called the revisions a "welcome advance" on previous rules, but said significant gaps remain.

Assurances from other governments that they will not carry out torture are a "deeply inadequate safeguard," because promises from officials who already break the law are worthless, he said.

"While the ministerial directions do state that such information will not be used in three circumstances, it is not clear whether there is clear recognition of the need to ban the use of such information, because it plays a central role in encouraging more torture and contributing to a global market for torture-derived intelligence," Neve said in a statement to CBC News.

Canadians compensated

Amnesty has also raised concerns that certain intelligence could be retained on file, even if not immediately used.

In July, the federal government paid $10.5 million in compensation to Omar Khadr. The Supreme Court of Canada ruled his rights were violated during his detention at Guantanamo Bay U.S. military prison, and that Canadian officials had not done enough to protect him from abuse.

In March, the government announced it had reached a settlement in a civil case involving Abdullah Almalki, Ahmad Abou-Elmaati and Muayyed Nureddin with compensation for the role Canadian officials played in their torture in Syria and Egypt.

Ottawa limite l'utilisation d'infos obtenues sous la torture, sans l'interdire
La Presse Canadienne
26 septembre 2017

De nouvelles directives fédérales limitent l'utilisation, par les services de sécurité canadiens, d'informations susceptibles d'avoir été obtenues par la torture, sans toutefois l'interdire complètement.

Pour empêcher un éventuel attentat terroriste, la Gendarmerie royale du Canada, le Service canadien du renseignement de sécurité et l'Agence des services frontaliers du Canada pourraient ainsi utiliser des renseignements en sachant qu'ils ont été soutirés par la torture.

Toutefois, les directives annoncées lundi interdisent de dévoiler ou de demander des informations à des agences étrangères lorsqu'il y a un risque important que ce geste entraîne la torture d'un individu.

Elles interdisent aussi l'utilisation d'informations obtenues par la torture si celles-ci ne visent qu'à prévenir des dommages envers des biens matériels.

Cependant, la porte demeure ouverte à l'utilisation d'informations soutirées par la torture qui pourraient permettre de « prévenir la perte de vies humaines ou que des gens soient blessés ».

Ces directives sont une version modifiée des consignes établies par le précédent gouvernement conservateur.

Plusieurs groupes de défense des droits de la personne et le Nouveau Parti démocratique (NPD) ont appelé le gouvernement libéral à abroger ces directives, estimant qu'elles reviennent à cautionner la torture.

Le ministre de la Sécurité publique, Ralph Goodale, avait déclaré l'an dernier que ces mesures soulevaient des questions troublantes.

Pour le porte-parole du NPD en matière de sécurité publique, Matthew Dubé, il ne s'agit que de « modifications sémantiques ».

« Malgré qu'elle dise les bonnes choses, cette directive continue de permettre l'utilisation d'informations obtenues sous la torture dans certains cas avec une très faible obligation de rendre des comptes », a déclaré M. Dubé.

« Cela n'améliore en rien la sécurité du public parce que l'information obtenue par la torture n'est pas fiable », a-t-il ajouté.

Est-ce raisonnable de filmer ses employés au travail ?
Droit Inc
Sébastien Parent
26 septembre 2017

Deux décisions contradictoires de la Cour d'appel sur l'utilisation de caméras de surveillance dans les lieux de travail soulèvent des questions, nous dit cet avocat…

Peut-on filmer en continu un salarié lorsqu'il exécute sa prestation de travail ? Autrement dit, le salarié peut-il être épié quotidiennement dans ses moindres gestes au travers de la lentille d'une caméra braquée sur lui, tel un bougre dans l'une de ces téléréalités tant populaires ?

Dans la récente affaire Sysco Québec, division de Sysco Canada inc. c. Beaulieu, les conclusions auxquelles en arrive la Cour supérieure sont en apparence opposées à l'arrêt Vigi Santé ltée c. Syndicat québécois des employées et employés de service, section locale 298 (FTQ), prononcé par la Cour d'appel du Québec en juin dernier.

Ces deux décisions mettent en jeu le droit au respect de la vie privée consacrée par l'article 5 de la Charte des droits et libertés de la personne de même que le droit à des conditions de travail juste et raisonnable au sens de l'article 46 de cette même Charte.

Non à une caméra sur un camionneur...

Dans la première, il s'agit d'une entreprise de distribution de produits alimentaires, qui avait installé des caméras de surveillance filmant tant à l'extérieur qu'à l'intérieur de l'habitacle de ses camions de livraison. Cette décision de l'employeur reposait sur deux objectifs : bénéficier d'une preuve vidéo en cas d'accident impliquant un chauffeur et utiliser le contenu des caméras à titre d'outil de formation sur les comportements sécuritaires à adopter. Précisions que les images étaient conservées uniquement en cas de freinage brusque ou de collision.

Dans son jugement, l'honorable Benoît Moore confirme le caractère raisonnable de la décision rendue par l'arbitre de grief. D'une part, l'employeur ne possédait pas de motifs raisonnables lui permettant de recourir à un système de surveillance électronique du poste de travail.

D'autre part, le moyen n'était pas le moins intrusif possible puisque la caméra était dirigée directement vers le salarié dans l'habitacle du camion et le filmait continuellement. Pour la Cour, filmer l'intérieur de l'habitacle s'avère plus intrusif qu'une caméra filmant dans son ensemble l'intérieur d'une usine.

Enfin, l'employeur disposait d'autres moyens moins attentatoires à la vie privée pour atteindre les objectifs mentionnés précédemment, entre autres l'installation d'une caméra uniquement orientée vers l'extérieur de la cabine.

Oui à une caméra sur une vieille dame...

Dans la seconde affaire, une caméra permettait de voir en tout temps ce qui se passait dans la chambre qu'occupe une résidente dans un CHSLD privé. Cette fois, la caméra n'est pas installée par l'employeur et seuls les membres de la famille ont accès à son contenu par le biais de leur téléphone portable. De fait,

la caméra avait pour but de permettre aux enfants de maintenir un contact visuel et sonore avec leur mère, certains d'entre eux habitant à l'étranger.

À l'inverse de la décision sur Sysco, la Cour d'appel infirme cette fois la décision arbitrale pour les motifs qui suivent: l'installation de la caméra visait non pas à surveiller les salariés du CHSLD prodiguant des soins à la résidente, mais avait plutôt pour fonction d'assurer le contact entre cette dernière et sa famille. La plus haute cour de la province conclut à l'absence d'atteinte à la vie privée, il ne s'agit pas à proprement parler d'une caméra de surveillance, mais plutôt d'un moyen de communication.

Le fait que l'employeur n'avait aucun contrôle sur le contenu des images captées par la caméra a aussi été déterminant. Qui plus est, cette prémisse empêche de conclure à des conditions de travail injustes et déraisonnables, l'employeur étant étranger au dispositif de communication mis en place par la famille.

Un jugement discutable

Il faut retenir que les motifs raisonnables invoqués par un employeur pour justifier l'installation de caméra au sein d'un poste de travail ne doivent pas être fondés sur des statistiques impressionnistes, encore moins lorsque ces données proviennent de la compagnie vendant le système de caméra, comme ce fut le cas dans l'affaire Sysco.

Par ailleurs, la dichotomie créée par la Cour d'appel entre une caméra de surveillance et une caméra à titre de moyen technologique pour assurer le contact avec une résidente dans un CHSLD peut être discutable. En effet, les images captées par la famille pourraient tout de même, en cas de besoin, être transmises à l'employeur. Cette façon de faire aurait pour résultat que leur captation aurait été effectuée sans l'existence a priori de motif raisonnable, critère pourtant fondamental en jurisprudence.

En outre, ayant conclu à l'absence de violation au droit à la vie privée des salariés, notamment en raison de la nature privée d'une chambre au sein d'un CHSLD, la Cour d'appel n'a pas discuté de la question des moyens les moins intrusifs. L'angle de la caméra ou le système utilisé aurait-il pu avoir une portée moins large ? Pensons à Skype ou Facetime qui permettent d'assurer la communication à distance avec nos proches, sans nécessairement filmer l'entièreté de la pièce dans laquelle on se trouve…

Dans l'intervalle, « souriez, vous êtes filmés ! ».

Me Sébastien Parent est doctorant en droit du travail et libertés publiques à la Faculté de droit de l'Université de Montréal. Il est également chargé de cours à Polytechnique Montréal où il enseigne le droit du travail. Il a complété le baccalauréat ainsi que la maîtrise en droit du travail à la Faculté de droit de l'Université de Montréal. Il est également titulaire d'un baccalauréat en relations industrielles de la même institution. Écrivain dans l'âme et procureur devant la Cour suprême du Canada dès le début de sa carrière, Me Parent commente l'actualité récente en droit du travail, afin que salariés et employeurs connaissent bien leurs droits et obligations respectifs.

Quelles sont les nouvelles tendances du milieu juridique ?
Droit Inc.
Delphine Jung
26 septembre 2017

Robot-avocat, avènement des réseaux sociaux, nouvelles tendances marketing… Les enjeux sont nombreux pour les professionnels du droit.

La formation intitulée « Les nouvelles tendances du milieu juridique » se tiendra le 26 octobre, au Palais des congrès de Montréal. L'événement est organisé par l'Association du Barreau canadien (division Québec) et par la Société québécoise d'information juridique (SOQUIJ).

« Cette formation s'inscrit dans le nouveau plan stratégique de la SOQUIJ. Nous sommes à un tournant important pour le milieu juridique, et ce à l'échelle mondiale. La SOQUIJ veut faire sa place dans ce tournant-là », explique Gilles Lajoie, directeur général de la société qui diffuse pour les professionnels, les citoyens et les étudiants, des décisions des tribunaux judiciaires et parfois de certains tribunaux administratifs.

«Nous en sommes à notre deuxième édition de la Journée de formation ABC-Québec – SOQUIJ et nous sommes ravis du programme que nous avons mis sur pied ainsi que de la qualité des conférenciers recrutés», souligne Manon Dulude, directrice générale de l'ABC-Québec.

Changer les mentalités

Il s'agit d'accélérer la transformation numérique du milieu juridique, ajoute M. Lajoie pour qui le principal défi est de changer les mentalités, « ce qui n'est pas propre à ce milieu. Il faut accepter que c'est désormais le consommateur qui dicte les règles», précise-t-il.

Le directeur général fait même le parallèle entre l'industrie des médias qu'il a côtoyée durant de nombreuses années, notamment lorsqu'il était rédacteur en chef adjoint du magazine l'Actualité et au journal Les Affaires. « On aime beaucoup en parler, de cette révolution numérique…mais c'est difficile de changer les choses, surtout lorsqu'elles vont bien », dit-il.

Sa principale crainte est que, comme les médias, les professionnels du droit réagissent trop tard.

Durant cette journée, il présentera une conférence aux côtés d'Alex Shee, d'Element AI, pour parler d'intelligence artificielle et des bouleversements qu'elle va entraîner dans la pratique du droit.

Dominic Jaar, de KPMG, présentera quant à lui une conférence sur la preuve électronique, formalisée par l'avènement du nouveau Code de procédure civile.

Marie-Pier Emery et Justine Laurier du cabinet Borden Ladner Gervais, traiteront quant à elles des questionnements que suscitent les médias sociaux.

Jolaine Choinière, de SOQUIJ, et Luc Valade, huissier de justice chez Valade et associés, aborderont les nouveaux pouvoirs des huissiers, alors qu'Anne-Marie Santorineos, également de SOQUIJ, dressera un portrait des nouvelles tendances en recherche juridique.

Enfin, Marcel Naud, de Robic, Teodora Niculae et Anne-Edma Louis, d'Audax Avocats, de même que Virginie Arbour-Maynard et Pascale Pageau, de Delegatus, parleront de mégadonnées, de stratégies de marketing innovatrices et des possibilités qu'offrent les changements de la pratique.

Who Will Train Tomorrow's Lawyers and How Will They Learn?
Forbes.com
Mark A. Cohen
September 25, 2017

The legal industry is an ecosystem; there's an inter-dependency between and among its elements. So, for example, when clients sneeze, law firms catch a cold; law schools get the flu; and law students contract pneumonia. A recent American Lawyer article, "Pay for Associate Hours? More Companies Say'No Thanks'" underscored the interdependency--and misalignment-- of law's stakeholders. It quoted from a speech by Mark Smolik, the general counsel of DHL Supply Chain Americas, saying he would no longer subsidize on-the-job-training of law firm associates. That's an industry secret everyone knows, but it is newsworthy when the GC of a major corporation says it publicly.

Mr. Smolik's remark extends beyond his department's policy on outsourcing work to young lawyers; it is an indictment of the Academy for its failure to produce practice-ready graduates with required skillsets and a swipe at law firms for their failure to more fully invest in associate training to drive client value. The GC's comment provides context for the vast migration of work from law firms to in-house departments and service providers. It's one reason—together with the failure of law schools and firms to distinguish between legal 'practice' and 'the business of delivering legal services'-- why corporate legal departments—law's largest consumers—are also its leading providers.

A recent ALM Intelligence Report noted that 73% of legal work is now performed in-house—much of it by legal operations ('legal ops') teams that leverage technology and process to strip out—disaggregate—high volume, low value, repetitive 'practice' tasks that were once handled by law firms with a brute force, labor intensive approach that suited their economic model. Now, in the digital age, many of those tasks are automated, delivered as products—not services-- or performed by lower-priced human resources and/or by machines. This is today's legal marketplace. It is foreign to most law school faculty who are detached from the rapidly changing marketplace. Fortunately for law students and those already in the marketplace, there are efficient, accessible, cost-effective, and just-in-time learning tools available to fill knowledge gaps and to teach new skills.

This is the issue that Mark Smolik was talking about: who will train lawyers for today's marketplace? Same question for the number of practicing lawyers in the early and middle stages of their careers caught in law's transition from a labor-intensive 'just lawyers' delivery model to a digitized, interdisciplinary one where lawyers work side-by-side with other professionals and paraprofessionals in a tech and process-enabled delivery model. How will they acquire the 'legal re-education' required to compete? Continuing Legal Education ('CLE') is little more than a box-ticking exercise that falls far short of what's needed. Law schools are too expensive and constrained by antediluvian faculty notions that to change the current pedagogical approach would be to dilute—if not bastardize—the profession.

Most Law Schools are Still Focused on 'Teaching the Law'—That Alone Doesn't Cut It Anymore

Law school curricula, faculties, delivery models, and cost need a reboot. The gap between what the marketplace demands and the competencies most law grads possess—not to mention the amount of their educational debt—is staggering. There are several reasons to explain the delta: (1) the detachment of most law schools from the marketplace; (2) tenured faculty's characteristic absence of practice experience; (3) a 'business as usual' approach to legal education when that no longer cuts it; (4) a widespread misconception—especially among top-tier law schools-- that the conveyor belt that carried a majority of graduates into large firms is balky but not about to break; (5) failure to grasp that legal 'practice' is shrinking while legal operations and the business of law is expanding—law schools teach almost exclusively for practice careers; and (6) failure to provide more full-time faculty positions for those with practice experience and different backgrounds than the pedigree-centric, narrowly tailored Law Review, clerkship, and academic career paths of most tenured faculty.

The legal Academy might look to medical academics where faculty must demonstrate excellence in practice, (relevant) research, and teaching. True, a handful of law schools—Northwestern, Stanford, and Michigan State come to mind—are taking steps to narrow the divide between their curricula and the new marketplace. But most are preparing students for a legal marketplace that is finally witnessing the disruption that other industries—including professional services—have experienced due to the confluence of the global financial crisis, the acceleration of technological advances, and globalization. A new buy-sell dynamic has taken hold, and legal delivery is experiencing a major overhaul involving by whom, how, from what structure, and at what cost 'legal' services are delivered. Most law schools and firms have yet to read the memo, much less to take proactive steps in response.

What Resilient Lawyers Do Differently
Forbes.com
Paula Davis-Laack
September 26, 2017

The legal profession is in the middle of rapid and continuous change. Clients are spread out around the world, and firms must have a global presence and provide a global skillset. Busy lawyers, already maxed out by the general pressure and stress of the profession, are trying to keep up with practice areas that are becoming more specialized and complex. Lawyers must not only be capable legal technicians but also have business fluency, process and project management expertise, an understanding of the role technology plays in legal services delivery and be ready to solve clients' complex problems by collaborating with other professionals in an innovative way.

Being able to adapt to this changing environment is foundational to resilience. Resilience is a person's capacity for stress-related growth, and lawyer personality research reveals that lawyers as a population tend to be quite low in the trait. In fact, many lawyers score in the 30th percentile or lower, revealing thin-skinned tendencies, taking criticism personally, and being overly defensive and resistant to feedback. The reason for these low scores, I believe, is that the two main building blocks that build resilience, (1) thinking flexibly about challenges and framing adversity in an accurate way; and (2) developing high-quality connections with others, are frustrated by lawyers' exceedingly high levels of skepticism (measured in the 90th percentile) and exceedingly low levels of sociability (measured in the 12th percentile).

The National Task Force on Lawyer Well-Being recently recommended that one of the important things law firms and organizations can do to help build lawyer well-being is offering courses, information and

workshops on developing resilience using the Army's own resilience training as a model. I was fortunate to teach resilience skills to soldiers for more than three years, and I have been encouraged by the application of this skillset within the legal profession. Based on my work, here are five key things that resilient lawyers do differently:

They see resilience as a core leadership skill. Law firm talent management consultant Terri Mottershead believes that, "In the new normal, it is critical that law firms place [resilience] high on the list of "must haves" in their leadership job descriptions and support its development in emerging leaders." In addition, Harvard law professors Scott Westfahl and David Wilkins identify resilience and cognitive reframing as important leadership and professional skills lawyers should develop. Separately, research from the Army program showed that officers with higher levels of resilience were promoted ahead of schedule, were assigned tougher tasks, and achieved the rank of a one star general faster than their low-resilience counterparts.

They build the type of confidence that grows resilience. Successfully navigating challenges gives you a template to manage future adversity; in fact, not experiencing any hardship actually lessens or undermines your resilience. The belief in your ability to overcome adversity and achieve your goals is called self-efficacy, simply a fancy word for the type of confidence that grows resilience. You build self-efficacy by capitalizing on small wins, through observational experiences (watching other people bounce back triggers, "I can do this too") and by getting frequent feedback about what's going right.

They cross-examine their own thinking. Lawyers spend years learning, and then practicing how to "think like a lawyer." Professionally, lawyers are responsible for doing all of the due diligence in a matter, analyzing what could go wrong in a situation and steering their clients away from negative impact. That's important when lawyers are engaged in the practice of law; however, when lawyers practice looking at issues through such a pessimistic, rigid lens 12-14 hours a day, that thinking style becomes harder to turn off when it's not needed. Ultimately, it can undercut leadership capabilities, interactions with clients, staff and family and the way life is viewed generally.

Resilient lawyers cross-examine and reframe their unproductive thinking in the following ways:

1. They seek to quickly understand where they have a measure of control, influence or leverage in the situation instead of wasting their time and energy on things they can't control.

2. They look for measurable and specific evidence to support the accuracy of their thoughts.

3. They look for the middle ground to diffuse black-and-white or all-or-nothing thinking styles.

4. They think about what they would tell a friend in the same situation (we often say things to ourselves that we wouldn't say to a friend or family member).

They cultivate relational energy. Lawyers cultivate high-quality relationships by paying attention to their "relational energy." Relational energy is how much your interactions with others motivate, invigorate and energize, rather than drain or exhaust. Not surprisingly, research showed that a person's relational energy network predicted both job performance and job engagement better than networks based on influence or information. Recently, Microsoft revised how it works with outside law firms hoping to develop deeper relationships with outside counsel that extend beyond the billable hour. One aspect of Microsoft's new

Strategic Partner Program is to establish new networks to connect women and ethnically and racially diverse lawyers who represent the company.

They know the difference between perfectionism and striving for excellence. Psychologists define perfectionism as a "multidimensional personality trait characterized by striving for flawlessness and setting exceedingly high standards of performance accompanied by overly critical evaluations of one's behavior," and it includes a range of dimensions. Perfectionistic strivings are aspects of perfectionism that are self-oriented, internally focused and are associated with having high standards. Perfectionistic concerns are aspects of perfectionism that are outwardly-oriented, other focused and are associated with worries about making mistakes, fear of negative social evaluation and drive the thought, "What will other people think?"

Perfectionism generally can be associated with a number of negative outcomes, but it's perfectionistic concerns that are the bigger problem. Perfectionistic concerns drive higher levels of anxiety, burnout, less healthy coping strategies and a rigid, all or nothing mindset. In addition, perfectionistic concerns are linked to defensiveness (note the link between defensiveness and low resilience mentioned above), finding fault with yourself and others (lawyers jump at the chance to spot misstatements, misspellings or flaws and see it as vitally important to correct people when they make a mistake), inflexibility, excessive need for control and not being able to trust others with your work.

As the profession continues on the path of change and as lawyers continue to try out new products, services and ways of doing business, failure will happen as a natural by-product of innovation. In order to be an impactful lawyer and an effective leader in this era of continuous change, resilience must be part of your toolkit.

Paula Davis-Laack advises law firms and teaches lawyers and law students about preventing burnout and building resilience to stress.

Request for more judges a necessary move for strained system, lawyers say
Lawyer's Daily
Terry Davidson
September 27, 2017

Ontario's Superior Court needs additional judges for a strained system that forces the accused to wait years for trial, makes civil cases the "lesser third cousin" to criminal matters and has children sit in "emotionally charged" homes as parents await divorce proceedings, say lawyers.

These comments come after the Superior Court of Justice's Chief Justice Heather Forster Smith called on Canada's justice minister to add a total of 12 additional judges to a provincial bench being overwhelmed by a never-ending onslaught of cases.

Chief Justice Forster Smith's request comes as resourced-strapped courthouses deal with the fallout from last year's landmark Supreme Court of Canada decision in R. v. Jordan 2016 SCC 27, which put in place precedent-setting rules around unreasonable delays and the need for timely proceedings. The SCC wrote that "the right to be tried within a reasonable time is central to the administration of Canada's system of criminal justice" and that extended delays "undermine public confidence in the system."

Melanie Manchee, president of the Toronto Lawyers Association, says Jordan pushed the issue to the fore.

“Obviously, there has been a lot of press and publicity about the [Jordan] effect on criminal law and the scramble to deal with those cases within the times subscribed by the SCC, so that has drawn a lot of attention and judge’s time,” said Manchee. “But it’s also just drawn awareness to the fact that we have people charged with serious offences who are waiting years for a trial, which is an issue for the accused in terms of their rights and is an issue for society that the trial, which includes witnesses being alive and being available down the road, [could be] years away.”

Manchee, a family and estate lawyer, says the shortage has something of a domino effect when it comes to it impacting civil court, as well as family court proceedings.

“Children’s lives are waiting in those emotionally charged atmospheres of their homes while we wait because we don’t have enough judges,” she said.

Ron Bohm, a personal injury lawyer with SBMB Law and president elect of the Ontario Trial Lawyers Association, said the struggle to conform to the Jordan ruling has meant judges are at times having to be reallocated from civil cases to fill the gaps in criminal court.

“Certainly it is true of the civil cases that are being made, I think, the lesser third cousin by necessity … given the mandate from the [SCC] to deal with Jordan and criminal matters first,” said Bohm. “So what choice do the civil judges often have but to say we have to take someone off the civil list because of a case that is in danger of being dismissed on the criminal side — even sometimes when there is a fixed civil date, which we’ve waited months for, and we get told, ‘Guess what, you don’t have your judge anymore.’ ”

Having an adequate number of judges is akin to ensuring there are enough public schoolteachers for a growing neighbourhood, said Manchee.

“When neighbourhoods get a new influx of families and need more school classrooms, we consider it an obligation of our society to provide spaces and teachers to educate those children,” said Manchee, insisting there is money in federal and provincial government coffers to pay for additional bodies on the bench.

“When you look at the justice budget in comparison with many of our other budgets in our provincial government, as well as our federal government, it is not a significant expense, we don’t think, for our society in general to provide enough judges and enough courthouses and enough staff to keep our justice system running.”

According to information from a Superior Court of Justice spokesperson, Ontario's population "is the largest of all other Canadian jurisdictions." They go on to state that Ontario's population has increased by 3.4 million since 2000, but since then, the Superior Court hasn't received "a proportionate increase to its judicial complement," and that "the appointment of 12 of the 28 new judge positions to Ontario should be viewed nationally as a fair apportionment."

Canada's moment for self-reflection, not just celebration

Canada and its Constitution have earned much praise recently, particularly compared to the U.S., but there are lessons to be learned but it is important to remember the lived experience of many of the peoples of Canada remains one of misgiving, disenchantment and anger for a past that remains unreconciled with the present.

Toronto Star
Richard Albert
September 27, 2017

Five years ago, United States Supreme Court Justice Ruth Bader Ginsburg remarked, "I would not look to the U.S. Constitution, if I were drafting a constitution in the year 2012." Where would she look instead? To Canada and South Africa.

Justice Ginsburg's revelation shocked her fellow Americans but it did not come as a surprise to those of us who study the constitutions of the world. For years, the United States Constitution has declined in its global influence, due in no small part to the limited and in some cases outdated rights and liberties its text protects, namely the unusual right to bear arms.

Canada has displaced the United States as one of the world's great constitutional superpowers, rising to prominence on the strength of our modern Canadian Charter of Rights and Freedoms. The Charter protects all manner of speech and thought, identity and group rights, and even affirmative action rights, which for Americans is a controversial issue that divides the country perhaps more than any other constitutional question except abortion.

Canada's global importance has grown as we have approached and now arrived at the sesquicentennial of Confederation. Since 1867, Canada has evolved into a global economic, cultural and now dominant constitutional force.

By its resilient example, the Constitution of Canada has influenced the design of the South African Bill of Rights, the Israeli Basic Laws, the New Zealand Bill of Rights and the Hong Kong Bill of Rights. Our Constitution was fated to occupy this role in global constitutionalism given that the drafters of the Charter went to great lengths to incorporate international human rights principles.

The 150th anniversary of Confederation in Canada offers an occasion both to reflect and to look ahead. There is of course much to celebrate about Canada and our Constitution but triumphalism is not the right spirit for this moment.

There is risk in celebrating this anniversary without engaging in meaningful and critical self-reflection. We risk being seen as insensitive to the reality that the union of peoples and places that we know today as Canada did not begin in 1867, or worst still complicit in what many decry as an occupation of territory that was illegitimately taken.

In the bicentennial year of the United States Constitution, Supreme Court Justice Thurgood Marshall declined the invitation to join the chorus of good cheer for a document that had been enacted to exclude so many from the rights and privileges of citizenship.

Unions respond to Phoenix pay system
Rabble.ca
Meagan Gillmore
September 28, 2017

Thousands of federal government employees, from summer students to managers, have been underpaid, overpaid or not paid at all since the government began using the Phoenix pay system in 2016. Justin Trudeau's Liberals implemented the payroll system introduced by Stephen Harper's Conservatives, despite warnings about potential problems.

Past and current federal employees rabble has spoken to in recent weeks all express deep conviction for their work. They feel betrayed by an employer who does not pay them properly or, in their view, admit responsibility for the problem. Some expressed frustration with the unions that represent them and wonder what more could be done to solve the situation.

In this series, rabble.ca takes a broader look at Phoenix: the background of the problem; the people affected by it; the responses from unions, and what solutions may be possible.

Federal employees who have not been paid properly since the government started using the Phoenix pay system in February 2016 aren't just mad at their employer. Some are also frustrated at the unions that represent them. They think the unions should be more aggressive in pressuring the government to fix the growing problems and provide more clarity to their members about what's happening. They say information from unions has been slow and vague, at times. Some want the unions to pursue legal action; others suggest strikes.

Union leaders appreciate members' frustrations -- representatives are often federal employees themselves. But they say their options are limited. At times, filing grievances on behalf of members may be all they can do.

"We're in a Catch-22," said Vanessa Miller, national vice-president for CEIU BC, a member of the Public Service Alliance of Canada (PSAC). She's been overpaid herself, and although she's never received a paycheque for $0, she did get one for $3.50. "We're filing grievances because it's important to say that, 'This isn't OK,' but we're also having to manage members' expectations that this isn’t likely to be resolved through the grievance process."

"It's a balancing act," said Emmanuelle Tremblay, president of the Canadian Association of Professional Employees, the union representing many policy analysts and economists. Filing more grievances may be helpful, but it could also be harmful, she said. Members want to know that the union is working for them, and it is, but "some of those actions are not so visible because it’s ongoing communication with the employer," she said.

The unions were critical about Phoenix before the government implemented the system. They're still raising their concerns, union leaders says.
Unions have been assisting members affected by Phoenix in various ways. Union leaders participate in a committee with government officials devoted solely to finding solutions to the problem. Last December, several unions secured a court order requiring the government to maintain a team of employees dedicated solely to helping federal employees who are beginning paternity, maternity or disability leave.

Government updates on Phoenix say 95 per cent of transactions related to paternity, maternity and disability leaves are resolved within the service standard time of 20 days.

Unions have also been instrumental in making sure more compensation officers have been hired to help people harmed by Phoenix; ensuring members are reimbursed for out-of-pocket expenses and helping workers access help with their taxes.

Chris Aylward, PSAC's national executive vice-president, said the union recently helped negotiate a memorandum of understanding with the Treasury Board that would see compensation advisors receive more overtime pay and a recruitment and attention bonus, as well as have the Treasury Board review their job classification and job descriptions.

The union is doing the best it can to communicate with members, although he said it could have posted more regular updates at the beginning.

"Everything (workers) got so far is because unions were at the table asking for it," said Debi Daviau, president of the Professional Institute of the Public Service of Canada (PIPSC), the union representing scientists and professionals in several government departments. PIPSC was not involved in last year's court order.

Unions have organized demonstrations across the country, and encouraged members to contact their Members of Parliament with their problems. But members need to be active. Tremblay said she thinks doing demonstrations during workdays could be helpful, but with approximately 13,000 members, the union isn't very large. At times, only a few dozen people show up to demonstrations.

"People are so fed up that they don't even have energy to go to the streets," she said.

Even if workers did show up, strikes would be illegal. Unions aren't in a position to strike because of signed collective agreements. Not all government departments had signed agreements when problems with Phoenix began. But even for those workers, strikes would be illegal because issues related to the pay system aren't things to be negotiated at the bargaining table, said Aylward.

Phoenix has already made its way into negotiations for at least one union. Earlier this month, the Canadian Merchant Service Guild presented its latest offer, on behalf of Government Ships' Officers. The offer includes payroll audit reconciliation to address issues for officers affected by Phoenix.

The government rejected the offer and the union is being to prepare for arbitration, a September 14 update says.

Strike action may not be possible for other reasons. Government employees are extremely dedicated. People who work in the military or on border patrol can't stop doing their jobs. Earlier this month, CAPE released a survey of its members' experiences with Phoenix. Forty-seven per cent of respondents said their mental well-being had been affected by Phoenix, and fewer than 10 per cent of respondents said they'd sought medical assistance for it.

This doesn't surprise Tremblay; she said workers hesitate to take time off when they're sick, regardless of the pay problems.

Aylward agrees.

He said he doesn't know of any other group of employees who would continue to show up to work even if they weren't getting paid.

"Our members simply won't walk off the job over this," he said.

Un nouveau lobby pour les avocats !
Droit Inc
Jean-François Parent
29 septembre 2017
Les bases d'une nouvelle fédération des avocats seront jetées cette fin de semaine à Chicoutimi...

La dissolution de l'Association des avocats et avocates de province (AAP) au bénéfice d'une fédération nationale est presque chose faite.

Réunis en fin de semaine à Chicoutimi pour leur dernier congrès, les membres de l'AAP mettent la touche finale à une nouvelle fédération regroupant les instances de tous les barreaux de section, des trois barreaux jeunesse et des avocats anglophones.

L'an dernier, lors de leur congrès tenu à Magog à pareille date, les membres de l'AAP avaient voté à l'unanimité pour la création d'un nouveau lobby représentant tous les barreaux québécois.

Prendre le relais du Barreau du Québec

L'actuel président de l'AAP, le criminaliste Maxime Bernatchez, explique que la nouvelle fédération - dont on ne connaît pas encore le nom- verra le jour en avril prochain. On voulait lancer le tout au congrès annuel des avocats et avocates de province, tenu en fin de semaine, « mais avec les congés et les nombreux détails à peaufiner, on a plutôt décidé de discuter des modalités et de finaliser les structures », explique Maxime Bernatchez.

Cette nouvelle fédération vise une meilleure représentation des avocats, afin de prendre le relais du Barreau du Québec dont la mission première est la protection du public. Pour le bâtonnier Paul-Matthieu Grondin, la mise sur pied d'une association vouée à la défense des intérêts des avocats est nécessaire. S'il estime que « ce n'est pas au Barreau de réaliser un tel projet », il se dit néanmoins prêt « à discuter avec toute association crédible qui voudra lancer l'initiative ».

« Nous allons discuter de la structure et de la mission. Notre objectif c'est que tous les travaux soient terminés en novembre et que la nouvelle structure soit fonctionnelle en avril », poursuit Maxime Bernatchez.

Vingt sièges au CA

Dans l'immédiat, la structure prévoit un conseil d'administration comptant 20 sièges : 15 pour chacun des barreaux de section, trois sièges pour chacun des Jeunes Barreaux de Québec, Montréal et Régions, un siège pour un représentant anglophone et un dernier siège pour le président.

Chacune des 15 sections élira son représentant au CA de la fédération, et les Jeunes Barreaux feront de même. Le président et le représentant anglophone seront élus au suffrage universel.

Montréal vs les régions

Par ailleurs, le dernier congrès à vie de l'AAP serait l'occasion de répondre aux inquiétudes des membres. « Par exemple, certains se demandent si la déontologie permet aux avocats de faire cela, d'autres s'inquiètent de la prise en compte des réalités régionales », dit Me Bernatchez.

N'a-t-on pas peur que la représentation des avocats pratiquant en région se dilue dans les intérêts de Montréal et de Québec ? « Les statistiques démontrent que les avocats qui pratiquent en solo ou dans les petits bureaux se trouvent surtout à Montréal ; les intérêts des régions et des grands centres ne sont donc pas aussi divergents qu'il y a 20 ans », rétorquait Maxime Bernatchez l'an dernier, à l'annonce de la création d'une nouvelle structure.

L'idée de dissoudre l'AAP est survenue dans la foulée de l'implantation de la nouvelle gouvernance, en 2015, laquelle faisait perdre à l'AAP les deux sièges qu'elle détenait au sein du conseil exécutif du Barreau.

L'organisme s'en était trouvé affaibli, suscitant la grogne. Le Barreau de l'Outaouais s'était d'ailleurs désaffilié, estimant que l'AAP n'aura plus la même influence auprès du Barreau et que les avocats de province serait mal représentés.

D'où l'intérêt, et la nécessité, de doter les avocats d'un lobby qui défende leurs intérêts sociaux, professionnels et économiques. « Jusqu'ici, 10 des 15 barreaux de section ont voté en faveur de la nouvelle fédération, et nous avons bon espoir que les cinq autres barreaux, dont l'Outaouais, se rallieront dans les prochaines semaines », conclut Maxime Bernatchez.

La fin du Barreau du Haut-Canada !
Droit Inc.
Delphine Jung
29 septembre 2017

Le Barreau du Haut-Canada va changer de nom sous peu…

Entre le rapport sur les états financiers et les modifications au Code de déontologie, on pouvait lire « Renommer le Barreau du Haut-Canada » dans l'ordre du jour du conseil du Barreau du Haut-Canada qui s'est tenu le 28 septembre, à 8h30.

Ainsi, la décision de bannir le terme « Haut-Canada » a été prise par 38 voix contre 11.

La motion prévoit que de nouveaux noms seront formulés et proposés à la prochaine réunion du Conseil.

« Le changement de nom prévu pour le 2 novembre fait partie d'une solide initiative de communications », a noté le trésorier Paul Schabas.« Le Conseil va étudier la possibilité de lancer une campagne complète de communication », peut-on lire dans un communiqué.

Va-t-on assister à la naissance du Barreau de l'Ontario ?

Un nom « archaïque »

Le nom de Barreau du Haut-Canada, remonte à 1797. Les partisans du changement ont évoqué, d'après le Canadian Lawyer, un terme archaïque. En effet, la désignation « Haut-Canada » ne décrit plus la zone géographique qu'il réglemente.

Pour eux, un tel changement serait conforme aux engagements de la société de droit envers les appels à l'action de la Commission de la vérité et de la réconciliation du Canada.

« Ce n'est pas un secret que le terme « Haut-Canada » comporte une connotation négative pour de nombreux peuples autochtones », dit Julian Falconer, président du groupe de pilotage.

Ceux qui s'opposent au changement ont de leur côté évoqué le caractère « historique » du nom et ont pointé la confusion qui pourrait s'en suivre auprès du public.

Il faudra bien sûr mettre donc à jour le site internet, les panneaux, les cartes de visite, etc. Une opération qui aura sûrement un certain coût.

Et vous, avez-vous des idées de noms pour le Barreau de vos confrères voisins ?

Ce vétéran du droit pénal international part enquêter en RDC
Droit Inc.
Delphine Jung
29 septembre 2017
Il a notamment enquêté au Rwanda, au Sierra Leone et dans d'autres pays où les droits de la personne sont bafoués...

Me Luc Côté a été nommé expert international par le Haut-Commissaire des Nations Unies aux droits de l'Homme. Son mandat porte sur une enquête concernant de graves violations des droits de la personne commises en République démocratique du Congo.

Membre du Barreau depuis 1984, Luc Côté a reçu le titre d'Avocat émérite du Barreau du Québec en 2010. Il est diplômé de l'Université de Montréal, où il a obtenu son bac en 1982. Il a par la suite travaillé pendant 10 ans à l'aide juridique de Montréal, division criminelle et pénale.

C'est en 1994, au lendemain du génocide rwandais, que les activités de Me Côté se sont concentrés en droit pénal international.

Il est d'abord parti au Rwanda, où il a séjourné pendant cinq ans, menant des enquêtes sur le génocide avec le Haut-Commissariat des Nations Unies aux droits de l'Homme, avant de se joindre au bureau du Procureur du Tribunal pénal international pour le Rwanda.

Me Côté s'est ensuite joint à la section des crimes de guerre et des crimes contre l'humanité du ministère de la Justice du Canada. En tant qu'avocat-conseil, il a participé aux enquêtes et aux analyses juridiques qui ont abouti notamment au premier procès en sol canadien d'un Rwandais accusé de génocide.

En 2001, il a fait des études supérieures en droit international à l'Institut des hautes études internationales de Genève, en Suisse.

Dans une entrevue à Avocats hors Québec, il explique son intérêt pour le droit international : « j'ai toujours eu un grand intérêt pour la découverte de nouvelles cultures. J'ai vite réalisé que le travail à l'international m'offrait des défis et des opportunités que j'avais peu de chances d'avoir en restant à Montréal. Mon champ de pratique s'est élargi, tant d'un point de vue géographique que professionnel ».

De 2002 à 2006, il a été nommé Chef des poursuites à la Cour Spéciale pour la Sierra Leone. Il a été associé à la mise en accusation du Président du Liberia, Charles Taylor, dont le procès est en cours à La Haye.

Par la suite, il a dirigé des enquêtes internationales pour les Nations Unies au Timor-Leste (2006) et en RDC (2008). Récemment il a dirigé une commission d'enquête internationale au Kyrgyzstan à la suite des violences interethniques de 2010.

Le natif de Montréal a également été consultant pour les Nations Unies et pour le Centre international de justice transitionnelle. Il a travaillé entre autres sur des questions de justice transitionnelle en Haïti, en Côte d'Ivoire, au Liban, en Tunisie et en Libye.

Provinces must prioritize legal aid to meet top court's time limits: lawyers
National Post
The Canadian Press
September 28, 2017

VANCOUVER — Provinces have mostly ignored legal aid as they increase resources to meet strict time limits imposed in a landmark Supreme Court of Canada ruling, the head of the Criminal Lawyers Association says.

Anthony Moustacalis said while the so-called Jordan decision of July 2016 has forced provinces to make changes ensuring delays don't exceed 18 months in provincial courts and 30 months in superior courts, defence lawyers who take on legal aid cases have been left behind.

"In Ontario, the provincial government has appointed more provincial judges and (Crown counsel). And instead of funding legal aid to cover more of the work of private counsel they've funded legal aid to put duty counsel in the jails to make sure that people who are arrested get their bail hearings organized a bit faster."

Judges are now requiring defence lawyers to submit more detailed written arguments before starting a trial to accelerate proceedings but the extra workload isn't matched with more legal aid, he said.

“You get a limited number of hours per file and that was based on the average demands on a file in the 1980s” but more disclosure and meetings with judges and the Crown, along with increasingly complex scientific evidence, already chew up valuable court time, Moustacalis said.

Legal aid covers about 55 to 60 per cent of all cases in Ontario, far below what’s required for people too poor to afford basic necessities let alone a lawyer, he said.

“If legal aid was properly funded it would be more like 80 per cent of all cases. Eighty per cent of people who are charged have either mental health or drug or alcohol dependency issues or a combination thereof.”

About 10 to 15 per cent of Moustacalis’s cases involve legal aid, he said.

Moustacalis said his association has been lobbying the federal Justice Department on legal aid funding and other issues in keeping with timelines established in the Jordan ruling, which set aside the drug convictions of British Columbia resident Barrett Jordan over unreasonable court delays.

Issues stemming from delays were on top of the agenda at a recent meeting in Vancouver of Canada’s justice ministers.

The Justice Department said in an email statement that it could not comment on communication with the Criminal Lawyers Association but it is working with provinces and territories to reform the system and make it as efficient as possible.

“At the September meeting of federal, provincial and territorial ministers responsible for justice, ministers reinforced this commitment, agreeing on the need for urgent and bold reforms to reduce delays in the criminal justice system.”

British Columbia Attorney General David Eby said justice ministers at the meeting were troubled by court delays, especially because over 200 cases have already been tossed since the Jordan decision.

“The concern is universal across the country about the impact that this Supreme Court of Canada decision has in really raising the disturbing possibility of people who have allegedly committed serous offences walking free,” Eby said.

He said legal aid is one of several issues leading to delays in B.C. courts.

“We have a lot of people showing up in court self represented who are taking up a lot of court time and bogging things down because they don’t know what to do.”

British Columbia’s former Liberal government slashed legal aid in 2002 and continued cuts that had lawyers protesting while numerous studies concluded lack of access to justice caused backlogs.

Eby said the provincial budget next February would provide some money for legal aid and other reforms.

Vancouver criminal lawyer Richard Fowler, a member of the board of governors of the Trial Lawyers Association of B.C., said legal aid cuts have meant senior lawyers can't take on junior lawyers who need training in court so their cases don't get thrown out over mistakes due to inexperience.

"It's the only way you can learn," Fowler said. "It's an apprenticeship system. The Crown does it, police officers sometimes come and watch other officers testify.

"There has to be an injection of capital into legal aid to encourage and to facilitate senior counsel, experienced counsel doing legal aid cases like murder cases, manslaughter cases and sexual assault cases," said Fowler.

"The immediate response to Jordan is we need more judges and we need more prosecutors," Fowler said. "Everybody's response is to do that and they did that in Ontario and Quebec. You can have all the judges in the world, you can have all the prosecutors in the world. But if you don't have defence counsel that are properly trained, properly skilled, those cases are not going to run smoothly."

B.C. woman files lawsuit against federal government over terrorist label
The Globe and Mail
Canadian Press
September 29th 2017

A B.C. Supreme Court lawsuit accuses the federal government of maliciously supplying false information about terrorist-related activity to the U.S. Federal Bureau of Investigation in order to secure lucrative military contracts for Canada's defence industry.

Perienne de Jaray's lawsuit claims her life, reputation, fortune and future were critically damaged by the actions of Canadian government officials in an investigation that resulted in criminal charges, which were later dismissed.

Her statement of claim filed in August says federal officials acted deliberately and maliciously in order to make an example of de Jaray because of pressure coming from the U.S. State Department to crack down on terrorist activity and create more prosecutions related to illegal exports.

A court in the United States granted the British Columbia woman's application to dismiss a similar legal action in the United States before she filed the lawsuit in Canada.

A statement issued by de Jaray through her lawyer says she and her family suffered years of fear and anxiety over accusations that were baseless.

The Canadian government has not filed a response to the civil claim.

The lawsuit names the Attorney General of Canada as the defendant. The Justice Department referred requests for comment to the Canada Border Services Agency, which could not immediately be reached.

None of the allegations contained in the statement of claim have been proven in court.

De Jaray is a former co-owner and executive of Apex USA, once a multimillion-dollar subsidiary of electronics maker Apex Canada, which her father founded.

She has alleged she suffered years of baseless investigation on both sides of the border after the Canadian government told the Federal Bureau of Investigation in 2009 that it had intercepted a shipment of illegal, weapons-grade electronics from Apex – a claim later revealed to be false.

All criminal charges against de Jaray and her father were stayed in 2011. The charges were eventually dismissed.

De Jaray's written statement says there has been no repercussions for the federal government over her treatment, the loss of her home in the United States, or the loss of confidence to pursue her career.

"I have been left for dead," she says.

"I suffer from debilitating flashbacks and severe emotional trauma that I have and will continue to spend years in an arduous attempt to manage."

The statement of claim argues the federal government is liable for damages for violating her charter rights, malicious prosecution and infliction of nervous shock.

Phoenix pay system backlog increased by 20,000 cases this month
The number of backlogged cases rose from 237,000 in August to 257,000 this month, as the processing of new contracts proved to be 'more complex and time consuming than initially anticipated.' But the government says it's increased staff to deal with the problem.
Hill Times
Emily Haws
September 30, 2017

The backlog of cases carried out through the Phoenix pay system rose 20,000 in the last month because processing pay changes from new collective agreements proved to be “more complex and time consuming than initially anticipated,” according to a Sept. 29 government update.

The number of pay changes waiting to be processed grew from 237,000 on Aug. 23 to 257,000 as of Sept. 20, according to the government’s latest monthly update on how it’s tackling the problem-plagued system that issues paycheques to federal public servants.

One person may have more than one open case, but Radio-Canada recently reported that as of Aug. 8 nearly half of the 313,734 federal public servants paid through Phoenix had been waiting at least a month to have their complaints dealt with.

It’s the second time in as many months that the backlog has grown, after it started out this summer getting smaller. Between June and the end of July, the backlog had been pared back by 37,000 cases to 228,000, but the number crept up again starting in August.

This month’s increase is a “result of our current focus on processing collective agreement payments, which has proven more complex and time consuming than initially anticipated,” said an explanatory note

accompanying the Sept. 29 update to the government's online "dashboard" showing the status of Phoenix cases (what the government calls "transactions").

The problem-plagued Phoenix pay system was launched in February 2016 as a way to standardize the way public servants are paid. Since then it has caused many public servants to be overpaid, underpaid, or not paid at all. The system was supposed to save the government $7-million annually, but so far the Liberals have sunk in $400-million trying to fix it.

In the last several months, 19 new collective agreements between the federal government and public service unions have been signed, with eight more to go within core federal departments and agencies. When collective agreements are signed, the government must follow through on them by paying out signing bonuses, salary increases, and retroactive payments within a given timeframe.

To date, another government webpage explained, about 184,000 employees have received about $615-million through these payments. But putting in place some of the pay changes from the new collective agreements has also proven to be tough.
"Retroactive payments associated with collective agreements date back several years and require that data be extracted from the government's former pay system. To address this, we have had to nearly triple the number of compensation advisers dedicated to collective agreements, which means we have fewer staff working on new and existing transactions at the Public Service Pay Centre," said the explanatory note.

The Public Service Pay Centre can normally process about 80,000 cases per month. The pay centre received 88,000 cases between Aug. 23 and Sept. 20, and processed 68,000, according to the updated dashboard. The month before, from July 26 to Aug. 23, it took in 80,000 cases and processed 71,000.

But also in the last month, Phoenix automatically processed 114,000 collective agreement cases and pay centre staff manually processed 11,000 collective agreement cases. This means in total 193,000 cases were processed in September.

"While some retroactive payments are issued automatically, complex and time-consuming manual processing is required in certain situations," such as for employees on maternity or paternal leave, or on pre-retirement leave, according to the government's online explanatory note about the collective agreements.

Not all the news is bad, though. The Sept. 29 update says the percentage of transactions processed within acceptable time standards increased from 49 per cent in August to 62 per cent in September. The target is 95 per cent. This is largely because there are more staff processing the implementation of collective agreements.

"We expect the percentage of transactions that meet service standards to continue to fluctuate as the implementation of collective agreements continues," said the update.

The government is in the process of hiring more compensation advisers.

In May, the government announced it would spend $142-million over two years in part to help fill in training and human resources gaps in the system. Most recently, the government announced it is moving

29 information technology experts to help fix what one union representative said was the 1,000 Phoenix system bugs. They will work alongside 30 current federal IT professionals and IBM contractors to get Phoenix back on track.

As well, the Public Service Alliance of Canada, which represents the compensation advisers processing the Phoenix cases, and the government agreed to a memorandum of understanding that gives incentives to current and future compensation advisers.

The advisers will now get a one-time payment of $4,000, a temporary increase in overtime compensation from time and a half to double time, as well as the ability to carry over vacation and compensatory leave. The $142-million cash infusion in May was meant in part to hire 200 temporary compensation advisers on top of the 300 already hired to fix the issues.

Letters To The Editor
Ottawa Sun
September 30, 2017

Wrong On Phoenix
Rick Gibbons's comments about the Miramichi pay centre were insensitive and ill-informed.
We know firsthand that our pay centre employees are skilled and competent workers who have done their very best under impossible circumstances.
None of the disastrous results of implementing the Phoenix pay system are their fault.
In fact, their work has helped resolve thousands of problems and resulted in getting people the pay they need to look after their families.
The government's rollout of the Phoenix pay centre was a botched disaster, and now workers at Miramichi are forced to bear the brunt of the burden.
The loss of more than 1,000 highly trained compensation advisers before Phoenix was rolled out was a foolish decision that set up Miramichi workers for failure.
Despite the odds set against them, pay centre workers have continued to do exemplary work resolving pay issues for public servants.
The government must learn from Phoenix — they need to listen to the people doing the work and not try to "save money" by replacing experienced staff with untested technology.
Robyn Benson
National president
Public Service Alliance of Canada
(There's plenty of blame to go around when it comes to botching public service pay — and everyone must come together to fix it.)

University launches center to train lawyers on outer space
The Associated Press
October 1, 2017

CLEVELAND (AP) — An Ohio university is developing a new center to train future lawyers to become experts in space law.
Cleveland.com reports Cleveland State University has created the Global Space Law Center at the Cleveland-Marshall College of Law. The university says the center is a response to the growth of the private space industry.

University officials say the center will focus on international and domestic space laws and policies that promote the peaceful use of outer space.

Mark Sundahl will lead the new center. Cleveland-Marshall Dean Lee Fisher says Sundahl is one of the leading experts in space law in the U.S.

The center's first course, Space Law: A Global View, will be taught next summer. Enrollment information will be released next spring.

Union head warns of bullying 'epidemic' in public service, asks Trudeau to strike committee to investigate

The latest Treasury Board study shows more than one-in-five bureaucrats felt they had been harassed in the past two years.

Hill Times
Peter Mazereeuw
October 2nd, 2017

The head of a federal public service union has called on the government to strike a committee to examine bullying and harassment in the ranks of its workers, a move the NDP's labour critic says he would support.

Todd Panas, the national president of the Union of Health and Environment Workers, made the request in a letter to Prime Minister Justin Trudeau (Papineau, Que.) in January, though the PMO has since delegated the matter to Treasury Board President Scott Brison (Kings-Hants, N.S.), who is responsible for the public service.

A pair of public service harassment cases made headlines last week, with Public Sector Integrity Commissioner Joe Friday issuing a report that called out a vice-president at the Canadian Food Inspection Agency, Geneviève Desjardins, for "gross mismanagement," after interviewing several CFIA employees who said they and others at the agency were verbally abused and mistreated by Ms. Desjardins.

A prison guard working for the Correctional Service of Canada also went public with her complaint after a fellow guard harassed her, and was caught on camera doing so, last year, saying CSC had a "culture of bullying."

Mr. Panas, who represents 10,000 federal workers, says bullying and harassment is an "epidemic" in the public service, and is rooted in a culture where rank and title mean everything, and managerial positions aren't always awarded to those who are best suited to manage people.

He said a parliamentary study would be a way to investigate, gather data, and take action on the problem.

"Outside of that, writing letters, they're falling on deaf ears," he said.

The House of Commons is responsible for deciding when and whether to launch new special committees to study individual issues, such as the special Committee on Electoral Reform.

A spokesperson for Mr. Brison, Jean-Luc Ferland, wrote in an emailed statement that the government was "committed to promoting a respectful public sector culture and fostering a positive and safe environment." The statement outlined numerous government projects, some in collaboration with public service unions, designed to help create that sort of environment, including a Federal Public Service Workplace Mental Health Strategy, a Joint Union-Management Task Force on Diversity and Inclusion, and a virtual Centre of Expertise on Mental Health.

The 2017 annual public service survey shows 22 per cent of federal bureaucrats who participated said they believed they had been harassed in the past two years. That's up from 19 per cent in the last survey in 2014.

NDP MP Daniel Blaikie (Elmwood-Transcona, Man.), his party's Treasury Board critic, said he would support Mr. Panas' call for a parliamentary study on the issue, whether through the creation of a special committee or assigning the matter to one of the existing standing committees in the House.

Conservative MP Steven Blaney (Bellechasse-Les Etchemins-Lévis, Que.), his party's shadow minister for labour, said he believed the House Human Resources Committee—of which he is now a vice-chair—was well-suited to study the issue. He said it was "troubling" that one-in-five public servants said they had been harassed, and that the Human Resources Committee should consider studying the issue when it finished with its current work on inclusion and quality of life for seniors.

Liberal MP Bryan May (Cambridge, Ont.), the Human Resources Committee chair, said the committee wouldn't be ready to take on a new study until at least a few months from now, and that as chair he would not propose topics for it to study.

"I know that harassment and bullying has been raised as an issue in the public service, but I'm not sure it's an epidemic," he wrote in an emailed statement to The Hill Times. "I know there are some awful cases which have been very public, and I know there are thousands of public servants who struggle with the issue everyday. I'm not sure it's an issue that's entirely in the public service—I know of issues with horrible bosses and harassment from peers in the private sector as well.

"We need to remember that bullying isn't just an issue for children, and I would say that if HUMA studies this issue, I would like to see us review the working conditions and bullying/harassment for all Canadians in order to encourage all workplaces in Canada to have strong policies to prevent harassment."

Mr. Friday told The Hill Times in an emailed statement he would support "any measures that the government takes" to ensure the public service is a "healthy and respectful workplace."

In an interview, Mr. Friday said the culture in the public service had to change, particularly when it came to whistleblowing.

"What really is required is a collective will that manifests itself in change at all different levels," he said.

Mr. Panas, Mr. Friday, and Seema Lamba, who studies harassment and human resource issues for the Public Service Alliance of Canada, all said there was still a lot of fear among public servants about reprisals against whistleblowers.

The “workforce adjustment” through which thousands of public servants have been laid off in the past decade may be a contributing factor to harassment in the public service, by creating more stress and bigger workloads on federal employees, said Ms. Lamba.

Mr. Friday said bullying and harassment in the public service was likely the result of a combination of human nature, organizational culture, and the sheer size and complexity of the government.

Rewarding workers for delivering on an objective, rather than the way they go about doing so, or managing the people who do so, could also be part of the issue, he said.

In his report on the CFIA case, Mr. Friday wrote that he did not “believe that the type of behaviour by senior management identified in this case report is systemic in the federal public sector.” However, he told The Hill Times that he did so only because he had not studied whether in fact it was spread through the public service in general.

The House Government Operations Committee issued a unanimous report in June calling for a major overhaul to laws and policies protecting whistleblowers in the federal government, including reversing the onus of proof from employee to employer in cases of alleged reprisals against whistleblowers. The government has not yet responded to the report, but has until mid-October to do so.

Mr. Ferland, writing on behalf of Mr. Brison, said the government was reviewing the report.

‘A lot of employees don’t bounce back’

Mr. Panas said he was bullied on two occasions during his time in the public service, first at Library and Archives Canada in 2002, then at Environment Canada in 2005. He said he went to a “dark place,” and contemplated self-harm. Eventually, he went through mediation, and had the issues resolved.

“I was fortunate enough to bounce out of it … on my own,” he said.

“A lot of employees don’t bounce back. They’re off on mental stress or mental illness [leave], and they can’t be reintegrated into the workplace.”

Mr. Panas said he receives hundreds of complaints each year from his members related to workplace bullying.

Harassment complaints often finger a boss as the culprit, including in 64 per cent of cases documented in this year’s public service survey, for example. But it isn’t only front-line employees who report being bullied.

Twenty-two per cent of public service executives who participated in a 2012 survey by the Association of Professional Executives of the Public Service (APEX)—which represents government employees between the director and assistant deputy minister ranks—said they had been verbally harassed at work in the past year. More than 60 per cent indicated the harasser was a superior, meaning another APEX member or a deputy minister, the top-ranking bureaucrats in the public service.

APEX is working on another survey of its members now, and expects to release it in October, said Michel Vermette, the organization's CEO.

Phoenix pay fiasco burns Miramichi and public servants alike
Ottawa Sun
Rick Gibbons
October 2nd, 2017

Suggesting the Phoenix pay fiasco can only be fixed by hauling the whole mess back to the experts in Ottawa didn't exactly earn me any new friends last week in the otherwise neighbourly New Brunswick berg of Miramichi (pop: 7,500).

Claims to the contrary, I'm really not an Upper Canada twit (debatable) and I really wasn't suggesting at all that Miramichians weren't any more or less capable than other Canadians when it comes to sorting out a disaster that has left tens of thousands of public servants with significant recurring pay headaches.

I was simply stating the obvious – that downsizing hundreds of pay experts across the country in order to relocate a new federal payment centre equipped with inexperienced staff and untested software in Miramichi was ripe for failure and that no other community with little resident technical expertise and virtually no institutional memory would have fared any better.

Don't take my word for it. Here's some insight from a former government compensation manager who was in the trenches during implementation of Phoenix and the associated move to new digs in Miramichi. I don't identify him so that he can continue to enjoy his well-earned retirement.

"The real issue in the initial transfer came to light early in the process. The government of the day truly believed that pay was simply a transaction-based process requiring little expertise.

"Seasoned pay advisers were scattered throughout the country and offered the opportunity to transfer to Miramichi but very few did actually relocate. In any event, that was not really what the government of the day wanted, since job opportunities in Miramichi were the ultimate goal.

"So, initially they hired 100 or so people off the street to begin the process. They were unskilled in pay but accepted a lucrative government job with good salary and benefits and were promised learning opportunities. I heard their stories of working in restaurants and other minimum pay jobs and now they had won the lottery.

"Early on we knew that complex cases were not being handled in a timely basis but simply set aside. Without the expertise, they were not handled for months and a backlog began, which is probably not clear today."

The now retired compensation manager explained that the new Phoenix pay system added another level of complexity to the equation and threw the Pay Centre in Miramichi into chaos.

"The director there begged not to take on any new client departments but the government insisted they had to meet the targets and the workload became overwhelming. Employees were struggling to keep up

with the Regional Pay system and now had to try to re-learn with a new problem-plagued system – Phoenix.

“The system had not been fully tested prior to implementation, yet, by this time, government departments had retired or reassigned compensation advisers so the expertise in Ottawa had diminished completely.”

As for employees of the Pay Centre in Miramichi: “Several employees at the Pay Centre are on stress leave and with good reason - nobody ever calls and says ‘Wow, you got my pay right.’ They must deal with hostile callers at every turn.”

Recently, the government began setting up satellite pay offices in several parts of the country, the largest in Gatineau. But retired compensation advisers have been slow to return despite healthy incentives, including one-time $4,000 bonuses and promises of double-pay for overtime

“They felt ignored when they were let go, and had warned the government that a transaction-based pay system would fail with a lack of expertise in the field. And it has.”

Recently, Radio Canada reported that pay processed in Miramichi was three times more likely to include errors than if processed elsewhere.

Miramichi Mayor Adam Lordan offered a spirited defence of his town and the payments centre during a debate with me on CBC Moncton last week, noting it had changed the face of the community with good jobs and greater diversity.

No doubt. But these gains were made at the expense of real pay experts elsewhere who lost their jobs and the thousands of public servants who continue to suffer the indignity of pay screw-ups that, in many instances, have created severe financial problems.

Again, this is not the fault of the people of Miramichi, it’s the fault of a shortsighted government that created the mess and the seeming inability of a Liberal government to make it right.

One government director told me last week that every single employee under his responsibility had some kind of pay problem, including himself. He predicted that, while the system will be sorted out eventually, the problems left in its wake will never be fully repaired.

The problem isn’t getting any better. In some respects it’s getting worse. It’s time to cut bait.

Fédéral : le français des juges sera testé
Droit Inc
Jean François Parent
2 octobre 2017
Le ministère fédéral de la Justice veut s'assurer que le français des candidats à un poste dans une cour supérieure soit valable...

Disant vouloir améliorer la capacité bilingue des tribunaux de nomination fédérale, la ministre Jody Wilson-Raybould annonce un train de mesures.

Le ministère annonce ainsi que l'évaluation des candidatures pour une nomination à une cour supérieure sera améliorée de deux façons.

D'abord, le questionnaire soumis aux candidats comportera deux nouvelles questions auxquelles ceux qui se disent bilingues devront répondre. On ne précise pas la nature des questions.

Ensuite, le commissaire à la magistrature fédérale devra contre-vérifier les réponses à ces questions, « afin d'assurer qu'elles s'alignent aux (sic) habiletés linguistiques déclarées par les candidats ».

Quant au bilinguisme actuel des cours supérieures, « le commissaire à la magistrature fédérale (CMF) sera autorisé et encouragé d'effectuer (sic) des évaluations linguistiques et/ou des vérifications ponctuelles ».

Le CMF, justement, aura quant à lui à proposer un outil d'évaluation objective du bilinguisme des candidats.

On veut aussi examiner la prestation des programmes de formation existants, en mettant l'accent sur les compétences en salle d'audience. Des formations sur les droits linguistiques des justiciables sont prévues pour les juges nommés par le fédéral.

Enfin, le ministère se dit prêt à soutenir les juridictions intéressées qui voudraient évaluer la capacité bilingue existante de leurs cours supérieures.