Adding to Phoenix problems: Tax season rush and overpayments
iPolitics
Kathryn May
January 15, 2018

The department responsible for the error-ridden Phoenix pay system finished the year with a backlog of outstanding pay cases that hit a record high of 645,000.

Public Services and Procurement Canada (PSPC) released its latest Phoenix update Monday showing a backlog of 616,000 cases at the pay centre in Miramichi, N.B. by the end of December. That compares to 589,000 cases the previous month.

The latest numbers reflect the latest surge in pay requests from thousands of public servants who are racing to meet the Jan. 19 deadline to report any overpayments they received — or think they may have received — in 2017.

Those who meet the deadline will only have to repay the money they received in overpayments and will be issued accurate T4 slips. The pay centre received about 18,000 cases of reported overpayments by the end of December.

The processing of overpayments has shifted to a top priority to ensure public servants receive accurate tax slips by year-end. But it is another distraction for a government that is desperately trying to stabilize the fickle pay system and reduce the mounting backlog.

“We continue to process transactions with financial impact along with these priority overpayment transactions,” said PSPC in its update.

The pay centre handles pay operations for about 45 departments, which employ most federal public servants.

The 616,000 outstanding cases at the pay centre include 447, 000 financial transactions; 94,000 general inquires or ‘non-financial’ transactions; 47,500 collective agreement transactions and 27,500 completed transactions waiting to be closed.

The rest of the departments, which use Phoenix but process their own employees’ pay, face a stockpile of about 29,000 cases — either pay problems or unfinished transactions.

The backlog could have been worse if PSPC had not averted a major Christmas crisis that could have left nearly 50,000 people without some or all their pay on Dec. 27 (the last pay day of the year).

The system is set up to process a normal workload of about 80,000 pay requests per month.

The pay centre received 85,000 pay requests between Nov. 29 and Dec. 27 and processed 53,000 of them. It also manually processed about 6,000 transactions created by new four-year collective agreements for employees.

At the same time, the number of regular pay transactions — excluding collective agreement transactions — processed within the 30-day service standard increased to 58 per cent – compared to 41 per cent in November.

The department, however, said this will also fluctuate as the pay centre juggles the extra workload of processing collective agreements and issuing year-end tax slips.

About half of Canada's public servants have some kind of pay problem.

PSPC has watched the backlog creep up every month since last summer. It braced for a steady increase as it struggled through the unexpected volume of work involved in implementing new collective agreements for public servants — but it now faces a surge in the work to complete by year-end.

The department hopes the pile of transactions will begin to decrease as it gets past the tax season rush and finishes implementing collective agreements.

The collective agreements have thrown the biggest curve for PSPC and increased the volume of outstanding financial cases because they require more time and manual processing than expected.

In fact, the government has missed the legal deadlines for implementing various contracts, and the unions are now demanding damages for those late payments.

For overpayments, PSPC has been unable to say how employees have been overpaid. Earlier this year, a PSPC internal report showed overpayments accounted for the second largest volume of cases in the queue.

The pay call centre has been swamped with higher than normal calls. PSPAC is urging employees who can't get through to report their overpayments online using the Phoenix feedback form.

The Public Service Alliance of Canada has argued much of this current confusion and delay — which has taken its toll on the trust of employee — could have been avoided with its proposal for a blanket exemption so public servants who received overpayments would only have to repay the net amount.

As it stands, employees who receive overpayments can repay the net amount they received if the money is given back in the same tax year. Beyond that, they must repay the gross amount.

Those who don't make the Jan. 19 deadline will have to repay the gross amount. The government, however, has promised to delay collecting repayments until at least July. By that time, the Canada Revenue Agency will have processed tax returns and accounts will have been credited with the difference between the net and gross overpayments.

La Cour suprême pourrait donner un nouveau rôle aux Autochtones
La Cour suprême du Canada commencera à entendre un appel, lundi, qui pourrait forcer les gouvernements du pays à donner un rôle aux Premières Nations dans la rédaction des lois qui toucheraient leurs droits issus de traités.
Le Soleil
La Presse Canadienne
15 janvier 2018

Dwight Newman, professeur de droit à l'Université de la Saskatchewan, souligne qu'il s'agit d'une cause « énormément importante, peu importe ce qui arrive ».

Cet appel pourrait « changer fondamentalement comment les lois sont faites au Canada », mentionne-t-il.

Le plus haut tribunal du pays entendra la contestation judiciaire de la Première Nation crie de Mikisew, qui habite le nord de l'Alberta. Cette communauté demande à la Cour suprême d'étudier les changements apportés par l'ancien gouvernement conservateur de Stephen Harper à plusieurs lois.

La Loi sur les pêches, la Loi sur les espèces en péril, la Loi sur la protection de la navigation et la Loi canadienne sur l'évaluation environnementale seront examinées.

La Première Nation argue qu'en raison des impacts de ces modifications sur ses droits issus de traités, le gouvernement avait le devoir constitutionnel de la consulter avant de passer à l'acte.

Des causes sur le devoir de la Couronne à consulter les Autochtones ont régulièrement été présentées devant les tribunaux, mais elles concernent généralement les décisions prises par des organismes de réglementation. Celle-ci suppose que les législateurs devraient consulter les Autochtones en rédigeant leurs textes de loi.

Consulter avant d'établir les règles

« Plutôt qu'il y ait une consultation sur une décision réglementaire particulière, ce serait une consultation pour établir les règles », a expliqué l'avocat Robert Janes, qui représente les Mikisew.

Me Janes plaide que les Premières Nations sont souvent confinées à discuter de leurs problèmes devant les organismes de réglementation.

« Le moment pour discuter des enjeux plus larges que les Premières Nations veulent soulever est lorsque les statuts sont élaborés. Si on ne traite pas de cela lors de l'élaboration, le (régulateur) n'a pas les outils pour gérer le problème lorsqu'il survient », a-t-il soutenu.

Par exemple, la loi fondatrice de l'organisme de réglementation de l'énergie en Alberta l'empêche de considérer les droits issus de traités, qui contiennent les revendications traditionnelles des Autochtones sur le développement dans la province.

Il faut s'assurer que la voix des Premières Nations soit entendue lorsque les lois sont écrites pour les améliorer, a martelé Me Janes. Le gouvernement voit toutefois les choses autrement.

Le Parlement défend son pouvoir

« À un certain point, la nécessité de consulter de cette manière pourrait surcharger et affecter la capacité à gouverner », a-t-il écrit dans son plaidoyer déposé en Cour suprême.

Ottawa estime que l'autorisation de cet appel empiéterait considérablement sur une branche du gouvernement et qu'il « n'appartient pas aux tribunaux d'imposer des restrictions ou des entraves sur le processus législatif du Parlement ».

Rien n'empêche les gouvernements de consulter les Premières Nations lorsque les lois sont conçues, soulignent les avocats du gouvernement fédéral. Mais selon eux, forcer les législateurs à donner une place aux représentants autochtones lors de l'élaboration des lois diminue l'importance du Parlement, qui est censé être l'institution la plus puissante au pays.

Selon le gouvernement fédéral, cette décision pourrait donner plus de valeurs à certains droits, en plaçant les droits issus des traités devant les droits garantis par la Charte.

La cause est suivie de près au pays. Cinq ministres de la Justice des provinces et onze groupes autochtones se sont inscrits à titre d'intervenants.

Dwight Newman indique que certaines provinces, dont la Saskatchewan, consultent déjà les Premières Nations en écrivant les lois qui les affectent.

Impacts considérables de la décision

Peu importe, ce que la Cour suprême statuera, ce sera « parmi les causes les plus importantes sur le devoir de consulter », selon le spécialiste.

« La transformation du processus parlementaire elle-même renferme des dangers. C'est un processus délicat et équilibré qui s'est développé pendant des centaines d'années et je ne sais pas si on peut prédire les effets d'imposer des exigences judiciaires », a-t-il analysé.

Me Janes croit que l'un des effets pourrait être la réconciliation.

« Si on parle de réconciliation... ça n'a pas beaucoup de sens de dire qu'on va juste laisser une partie établir les règles et qu'on aura une conversation par après », a-t-il conclu.

Judge in Canada Day terror plot wrong to acquit: Crown
Vancouver Sun
Ian Mulgrew
January 15, 2018

Federal lawyers have launched an all-out attack on the factual findings of the B.C. Supreme Court justice who acquitted the 2013 Canada Day terror plot bombers and called the scheme a police-manufactured crime.
In the opening of three days of arguments at the B.C. Court of Appeal in Vancouver Monday, prosecutors insisted Justice Catherine Bruce was wrong on nearly ever count and made "palpable and over-riding" errors that must be overturned.

"The thrust of the submission is the trial judge failed to grapple with the true facts in a critical context in arriving at the conclusion she did," said Chris Greenwood, of the Public Prosecution Service.

Bruce in July 2016 stayed a jury guilty verdict and acquitted of terrorism offences John Nuttall and Amanda Korody, impoverished Surrey residents with addiction issues who had converted to Islam in 2011.

She did not accept the findings of the jurors and concluded the duo had been entrapped by police in a lengthy multimillion-dollar RCMP undercover sting that also involved the Canadian Security Intelligence Service.

The sophisticated, five months-long operation, dubbed Project Souvenir, involved more than 240 officers, who billed $900,000 in overtime alone, and threatened "fundamental beliefs our society holds about human dignity and fairness," Bruce decided.

Its genesis remains murky and hidden behind a national security screen.

Bruce, who retired after a decade on the bench shortly after issuing the decision, said police went too far with their subterfuge.

She ruled they manipulated Nuttall and Korody into the make-believe attempt to blow up the B.C. Legislature and slaughter national-day celebrants by planting inert pressure cooker bombs among the shrubbery.

"Simply put, the world has enough terrorists," she emphasized in her judgment denouncing the Mounties' conduct.

"We do not need the police to create more out of marginalized people who have neither the capacity nor sufficient motivation to do it themselves."

But the Crown adamantly disagreed and urged the province's high court to set aside the pair's acquittal and order a new trial on charges of conspiracy to place explosives with intent to murder or maim and facilitation of terrorist activity.

Greenwood maintained Nuttall and Korody planned the heinous attack not police as Bruce found in saying the RCMP was the driving force behind the plot.

"That's not supported in the record," Greenwood said. "It was the accused that brought this plan to police."

Bruce also overlooked evidence on critical issues and failed to consider other material, he added.

"The facts establish the opposite of what the judge concluded in many instances," Greenwood asserted.

Her ruling is not an accurate account of the evidence, he maintained.

"She looked at this case through the eyes of Ms. Korody and Mr. Nuttall," in his opinion, and she adopted an approach that focused on the accused rather than assessing the objective facts.

"She failed to consider critical parts of the evidence … a fundamental flaw in the findings that were made."

He said the common-law couple was not forced or pressured to do anything against their will even though police supplied them with food, trips out of town, small amounts of money and ensured they had access to methadone.

Instead, Greenwood said, they were inspired by the Boston Marathon bombers and a Jihadi website.

Police acted reasonably, he argued, and Bruce incorrectly characterized their conduct — no ordinary person would have tried to implement the sanguinary plan.

Greenwood explained that Nuttall never indicated he was willing to walk away or abandon his extremist plans in spite of his expressed concerns about killing innocents and that such violence offended Islam.

Most of the trial before the jury was taken up with the Crown playing days upon days of video-and-audio tapes recorded by police.

The high-bench division — Justices Pamela Kirkpatrick, Elizabeth Bennett and David Harris — asked for those recordings so they could review them along with the transcripts.

The appeal continues.

My predictions for federal justice reform in 2018
Canadian Lawyer Magazine
Michael Spratt
January 15, 2018

It is always dangerous to prophesize, particularly, as an old Danish proverb warns, about the future. Unfortunately, the temptation to make an educated guess about the future is irresistible. After all, if the prediction game was like baseball a 30-per-cent success rate would make an all-star. So, here are my top five predictions about criminal justice for 2018.

The Liberals came to power in 2015 on the back of some very big promises. The problem with public election promises is that they are easily measurable and this is especially true when they are reduced to black and white and released as ministerial mandate letters.

The instructions provided by the prime minister to Minister of Justice and Attorney General of Canada Jody Wilson-Raybould were ambitious. Wilson-Raybould was instructed, among other things, to modernize the justice system, increase the use of restorative justice, increase the government's Charter compliance and address gaps in the justice system that allow the most marginalized Canadians to fall through the cracks.

In short, the Liberals promised a necessary and massive reform of the justice system — including reforms to laws on minimum sentences. In early 2017, Wilson-Raybould said legislation would be introduced in the "very near future." Months later, she indicated that the government was set to introduce legislative reform in the spring of 2017. That legislation never came. Then she indicated that the much-anticipated legislation would be introduced in the fall. But then autumn came and went, without any transformational justice legislation.

Prediction: In 2018, Wilson-Raybould will table an omnibus justice bill that promises of transformational criminal justice reform, but the bill will ultimately be viewed as a disappointment.

While the federal government has been sitting on its hands when it comes to the justice file, the same is not true of the provinces and the courts. Courts have continued to strike down unconstitutional laws and Alberta has announced plans to largely decriminalize drunk driving. Provincial intervention is a less than ideal workaround to Wilson-Raybould's inaction as it cuts pretty close to an unconstitutional intrusion on the federal criminal law power. But Alberta says immediate action is needed to cut justice costs.

Prediction: In 2018, the provinces, the Senate and the courts will continue to do what the federal government won't — take action on meaningful criminal justice reform.

In June of 2016, Canada's Supreme Court gave the government guidance on amendments that would be necessary to close the bestiality loophole. You see, in Canada, bestiality is limited to acts involving penetration — everything else is legal.

The government did not take action to close this abhorrent loophole, but Liberal MP Nathaniel Erskine-Smith did, through a private member's bill. Erskine-Smith's bill was defeated with most Liberals and Conservatives voting against it. Interestingly, however, Conservative MP Michelle Rempel broke ranks with her party and supported Erskine-Smith. Rempel has since introduced her own private member's bill to close one of the most disgusting loopholes in the Criminal Code.

Prediction: In 2018, the bestiality loophole will finally be closed, but the government won't let Rempel beat it to the legislative party and will introduce its own bill to steal her thunder.

One of the big legal stories of 2017 was the impact of the Supreme Court's Jordan decision, which imposed strict time limits for the prosecution of criminal cases. In 2017, it was fashionable to predict that the criminal justice sky would fall as a result of Jordan. It did not. The year 2018 will mark the two-year anniversary of the Jordan rules, but there are still predictions of impending legal chaos.

Prediction: This year will be nothing like 1991 when more than 47,000 criminal charges were thrown out of Ontario courts alone because of unconstitutional trial delays. In 2018, the predicted Jordan tidal wave will never come.

One of the biggest justice stories of 2017 was the government's introduction of legislation to (sort of) legalize marijuana in some circumstances. The pot bill attracted some justifiable criticism that it did not go far enough to fulfil the Liberals' election promise. But more troubling was the fact that the proposed legislation contained massive constitutional flaws.

For example, the bill continues to criminalize anyone under 18 who possesses more than five grams of marijuana — an activity that will be perfectly legal for adults. Nowhere else in the Criminal Code is a youth criminalized for an act that is legal for an adult. The disproportionate criminalization of youth is counter-productive, irrational and likely unconstitutional criminal justice policy.

The Liberal pot bill also disadvantages the poor. If an accused is given a marijuana ticket and if they can pay the fine in 30 days, then their court records must be sealed. But if you are poor and can't pay the fine in 30 days, your court records won't be sealed and can be disclosed to almost anyone — including employers, schools and foreign countries.

The simple fact is that the marijuana ticket regime discriminates against the poor and will inevitably be found to violate the Charter.

Prediction: In 2018, marijuana will be legalized and we will see the first constitutional challenge to the new laws.

And one final prediction: I probably got most of this wrong because, by its very nature, the confluence of politics, the law and the courts makes for a very unpredictable beast.

In other words, I would be very happy with a .300 batting average.

Lac-Megantic jurors to deliberate for sixth day Tuesday
CTV News
Giuseppe Valiante
The Canadian Press
January 15, 2018

SHERBROOKE, Que. -- A Quebec judge told the jurors at the Lac-Megantic trial Monday to take all the time they need to reach a verdict for three former railway employees accused in the tragedy that killed 47 people.

Earlier in the day, the jury -- which began deliberating last Thursday -- sent Quebec Superior Court Justice Gaetan Dumas an envelope, sparking excitement at the courthouse in Sherbrooke about a possible verdict.

It was not to be, however, as jurors instead asked Dumas for a dictionary and for clarification on various judicial matters such as the concept of "reasonable doubt."

It was the first time jurors had emerged since being sequestered.

They must decide the fate of Tom Harding, Richard Labrie and Jean Demaitre. The three are charged with criminal negligence causing the death of 47 people after an oil-laden runaway train derailed and exploded in the small town on July 6, 2013.

Dumas rejected the request for a dictionary, telling the eight men and four women the only evidence they could use had to have been presented in the courtroom.

"No dictionary was filed in evidence," he told jurors. "Use the common sense of the words. Use your daily vocabulary. If there is a term on which you are having particular difficulty, don't hesitate to come back."

Dumas gave the jurors more details about the concept of "reasonable doubt." He also explained to them how the accused's actions must be judged by comparing that conduct to what they thought a reasonable person would do in the same circumstances.

"We have told you many times to be patient," Dumas said. "You have waited patiently through three months of evidence. We know your task isn't simple. Take all the time necessary to complete your task. I don't want you to feel any pressure."

Charles Shearson, one of Harding's lawyers, said the jurors' questions indicate they are taking their job seriously.

"These are concepts that are hard to map out for an individual who is not in the judicial system on a daily basis," he told reporters outside the courtroom.

"It's hard to speculate but it tells us they are taking their task seriously and they are seeking to clearly understand the principles that underlie both the criminal justice system as a whole and that underlie criminal negligence."

Harding was the train's engineer, Labrie the traffic controller and Demaitre the manager of train operations at the time of the tragedy.

The Crown contends Harding failed to perform a proper brake test and didn't apply enough handbrakes after he parked the convoy late on the night of July 5, 2013.

Labrie and Demaitre are accused of failing to ask enough questions to ensure the train was properly secure after a fire broke out on the locomotive and firefighters shut off its engine, compromising the braking system.

All three accused can be found guilty of criminal negligence causing the death of 47 people, while jurors have the option of convicting Harding on one of two other charges: dangerous operation of railway equipment or dangerous operation of railway equipment causing death.

The maximum sentence for a conviction on criminal negligence is life imprisonment; for dangerous operation of railway equipment causing death it is 14 years; and for dangerous operation of railway equipment it is five years.

Language rights
Law Times
Gabrielle Giroday
January 15, 2018

When one is not a French speaker or living or practising inside Quebec or other areas of French-speaking Canada, it might be easy to lose sight of the importance of French-speaking judges and French legal services. A recent report highlights, however, why all Canadians should be concerned with the state of bilingual legal services and appropriately serving the public in our country's two official languages.

A recent report by the Commons Official Languages Committee — "Ensuring Justice is Done in Both Official Languages" — has offered recommendations on how to improve access to legal services in both languages across the country. Bilingual lawyers say that the federal government needs to invest more resources to improve Canadians' access to programs in French outside Quebec. For example, there are noted problems in the area of family law, such as those seeking divorces.

Troublingly, the report also points to other concerning gaps, such as how the language skills of federally appointed judges (who self-report their level of bilingualism) can be assessed.

"All witnesses criticized the fact that the current application process for federally appointed judges allows candidates to assess their own language skills," says the report. This state of affairs has led the Fédération des associations des juristes d'expression française to become "extremely concerned about

the consequences of this subjective process, fearing that candidates may overestimate their language skills." No wonder.

Some progress has been made. In September 2017, for example, federal Justice Minister Jody Wilson-Raybould announced steps to improve bilingualism in superior courts in the Action Plan: Enhancing the Bilingual Capacity of the Superior Courts. These included collecting more information on applications for the bench, as well as recommendations to develop better assessment tools for language skills. Applicants for the Supreme Court of Canada also needed to be functionally bilingual, said the Trudeau government. But there is further to go yet. The report's recommendations should be studied and acted upon.

Phoenix pay centre falls further behind, but end of key bottlenecks in sight
Ottawa Citizen
James Bagnall
January 15, 2018

The federal government's efforts to whittle down a growing backlog of pay transactions failed significantly during the two pay periods ended Dec. 27.

Public Services and Procurement Canada, the department in charge of the troubled Phoenix pay system, reported Monday that its pay centre in New Brunswick processed just 53,000 regular transactions during the four-week stretch. Not only is that down 25 per cent from the pay centre's average performance between late July and late November, it's a reduction of 50 per cent from last June. Meanwhile, the number of normal and unusual transactions kept pouring in.

The net result: 367,000 transactions were awaiting processing on Dec. 27, in addition to 80,000 queries that represent the pay centre's normal workload every four weeks.

PSPC added there was also a backlog of 94,000 queries with no financial impact (up 4,000 from the end of the pay period ended Nov. 29) and 47,500 transactions in the queue involving collective agreements (down from 54,000).

The latter have complicated the pay centre's efforts to normalize. While most pay changes arising from tweaks in recently-negotiated collective agreements have been handled through automated systems, a surprisingly large number have had to be handled by hand. This has reduced the time available for other, more run-of-the-mill pay transactions.

On average, the pay centre receives 84,000 new requests every four weeks. Last June and July it was processing pay transactions at the rate of nearly 100,000, allowing the centre — temporarily, it turned out — to take a small bite out of its backlog.

However, each time a new priority is imposed on the centre, it slips into reverse. First it was the collective agreements. Then, last month, the pay centre handled an extra 18,000 transactions involving the recovery of overpayments — a priority because of approaching tax season.

This, in turn, meant pay centre employees processed far fewer transactions in connection with collective agreements — just 6,000 manually in December compared with 27,000 during the four-week period ended Oct. 18.

The good news is there might actually be reason to hope Phoenix can one day be fixed.

When tax season ends, and if Phoenix can finish incorporating the new collective agreement terms and requirements, the pay centre should have enough capacity to shrink its backlog at a reasonable clip.

Sadly, the history of Phoenix to date suggests there will always be another, unexpected priority to deal with, putting the target of zero backlog forever out of reach. And, for the moment, the department's December dashboard shows it's nowhere near the target yet.

Twitter nuit-il à la justice ?
#MoiAussi est symptomatique d'un système judiciaire qui ne fonctionne pas, et Twitter est devenu une plateforme pour lyncher les gens en public
Radio-Canada
16 janvier 2018

Les propos de Margaret Atwood dans le Globe & Mail samedi continuent de faire couler de l'encre, tout comme le sujet des dénonciations d'agressions sexuelles sur les réseaux sociaux en général.

L'écrivaine y affirmait notamment que le mouvement #MoiAussi est symptomatique d'un système judiciaire qui ne fonctionne pas.

L'avocate ontarienne Breese Davies croit que les mouvements comme #MoiAussi ont véritablement pris leur essor pendant le procès de l'ancien animateur de CBC Jian Ghomeshi. « Ce procès très médiatisé est devenu un exutoire pour les personnes qui pensaient que la justice criminelle n'en faisait pas assez pour les plaignantes ou les victimes et qu'elle n'était pas assez accommodante à leur endroit. »

L'avocate Loretta Merritt est d'accord. « Les crimes à caractère sexuel sont différents, en ce sens que c'est la parole de la victime contre celle de l'accusé, il n'y a en général aucun témoin ni aucune preuve médico-légale, tout repose sur la notion de consentement. » Me Merritt souligne par ailleurs que les victimes ont tendance à se culpabiliser après une agression sexuelle.

« On ne corrige pas une injustice avec une autre injustice »

De son côté, l'avocate criminaliste Danièle Roy pense que Twitter est devenu une plateforme pour lyncher des gens en public. « Cette façon de faire est dangereuse et dommageable pour la présomption d'innocence et l'administration de la justice. »

Elle rappelle que les personnes visées par des allégations de nature sexuelle dans les médias sociaux sont jugées et condamnées sans avoir pu se défendre. « Ça n'a rien à voir avec la sympathie que l'on

peut avoir pour les victimes ou avec le besoin de dénonciation... On est tous d'accord que les agressions sexuelles ne sont pas tolérables. Cependant, on ne corrige pas une injustice avec une autre injustice. »

L'avocat criminaliste Ari Goldkind pense effectivement que Twitter peut ruiner des réputations, des vies et des carrières. « Malheureusement, l'État de droit ne compte plus, alors que nous savons que certaines allégations sur les réseaux sociaux sont fausses. »

Me Goldkind croit que la seule vérité se trouve dans le prétoire d'un tribunal et non sur les réseaux sociaux, et que les juges sont assez vigilants pour ne pas être influencés.

Me Roy pense elle aussi qu'on est en droit d'amender le processus, mais elle rappelle que le système judiciaire au Canada est déjà très rigoureux. Elle explique que les victimes peuvent demander à ne pas témoigner devant leur agresseur, par exemple.

Sa consoeur Me Davies soutient elle aussi qu'il y a lieu d'améliorer le processus judiciaire en comprenant davantage les besoins des plaignantes, mais pas au détriment de la présomption d'innocence, de l'infaillibilité des preuves et de l'indépendance de la magistrature.

Hassan Diab, Canadian university professor once charged with terrorism in France, is back in Canada
French prosecutors had linked Diab to a 1980 synagogue bombing that killed 3 people
CBC News
Evan Dyer
January 16, 2018

Canadian university professor Hassan Diab is back home in Ottawa after a nine-year ordeal that included three years in a French prison on terrorism charges.

Canadian officials in Paris issued Diab travel documents as he did not have a valid Canadian passport.

Diab was extradited from Canada three years ago after a prolonged legal battle against extradition. French prosecutors had linked him to a 1980 synagogue bombing that killed three people. Diab was released from prison after authorities in France dropped terrorism charges against him due to lack of evidence.

Although the French courts produced little evidence to back up the claim he was involved in a bombing, Diab's requests to return to Canada were repeatedly denied.

He is expected to appear at a news conference Wednesday morning at the offices of Amnesty International in Ottawa.

Diab's supporters in Canada have long argued that he should never have been extradited to a foreign country on the basis of evidence that would not have stood up in a Canadian court.

Judges in France ordered Diab's release on at least eight occasions before he was finally set free, but under the French system prosecutors were able to keep him behind bars by appealing those release orders on grounds that Diab was a flight risk and public danger.

He remained imprisoned despite the fact that he did not match a fingerprint left by the perpetrator of the Paris bombing in 1980, and could demonstrate that he was in fact sitting exams in Beirut at the time it occurred. Both university records, and the stamps in Diab's passport, backed his claims.

Flaws of extradition system

But Diab remained in prison even after a judge ruled there was "consistent evidence" he had not been in France at the time of the bombing.

His wife, Rania Tfaily, was seven months pregnant at the time of his extradition. Diab had not met his three-year-old son outside of a prison waiting room until his return to Canada yesterday.

Diab's supporters said the case has exposed the flaws of an extradition system that denies Canadians accused by foreign governments of the rights and protections they would enjoy if accused by their own. "Canadians are liable to be extradited to a foreign country not on sworn evidence," said Diab's lawyer, Don Bayne. "A foreign state need only submit a written document signed by a foreign official claiming 'we have a case against this man.'"

It then becomes the responsibility of the accused person to demonstrate that they should not be extradited.

Reviewing Extradition Act

The Ontario judge who ordered Diab sent to France, Superior Court Justice Robert Maranger, said at the time that France had presented a "weak case" that was "unlikely" to result in a conviction.

But the final decision was taken by Rob Nicholson, then justice minister in the Stephen Harper Conservative government. He could have refused the request, but chose instead to sign off on it, beginning Diab's French prison ordeal.

Today Diab's lawyer thanked Foreign Affairs Minister Chrystia Freeland and other staff at Global Affairs Canada "for their genuine and impressive support to a Canadian who never should have been extradited."

Bayne added that the case should lead to a complete overhaul of Canada's extradition system.

"Now is the time for the justice minister, indeed the prime minister, to order a complete review of the Extradition Act and procedures that led to years of injustice for an innocent Canadian," Bayne said.

"How could Canada have extradited a Canadian to France when France never, never had a case against Dr. Diab fit to go to trial? How? Because of Canada's Extradition Act, of the procedures it enables to strip

Canadians of liberty unjustly. This Canadian was extradited on overwhelmingly unreliable evidence yet every Canadian court allowed this to happen."

Lac-Mégantic trial judge exhorts jurors to try to agree on verdict
After 6 days of deliberations, jurors seek guidance on what to do in event they cannot agree
CBC News
January 16, 2018

A Quebec Superior Court judge has urged the jury in the trial of three former railway workers charged in the Lac-Mégantic rail disaster to continue deliberations and try to reach a unanimous verdict.

"Would you please try once again to reach a verdict?" Justice Gaétan Dumas asked the eight men and four women who have been deliberating for six days now at the courthouse in Sherbrooke, Que.

On Tuesday afternoon, jurors sent a note to the judge seeking guidance on how to proceed.

"We are at an impasse. What happens in the event we cannot agree?" jurors asked.
The jurors are deciding the fate of Tom Harding, Richard Labrie and Jean Demaître. The three men are each charged with criminal negligence causing death, in the July 6, 2013, tragedy in which 47 people were killed when a runaway train carrying crude oil derailed and exploded.

All three men have pleaded not guilty.

Harding was the train's engineer, Labrie the rail traffic controller, and Demaître was the manager of train operations in Quebec.

Sombre jury
Called back to the courtroom, the jurors looked sombre and disappointed once the judge asked them to continue deliberations.

Dumas told them it is not mandatory that they reach a unanimous verdict, but it's the desirable outcome.

"I have the authority to discharge you from giving a verdict where further deliberation is evidently useless in helping you reach a unanimous verdict, however, that right is not to be given lightly or at the first sign of difficulty," he said.

Dumas told them juries are often able to reach a verdict when given more time.

He also reminded them they took an oath promising to render a verdict based on their opinion of the evidence.

"We expect you to pool your views of the evidence, but it does not require you to put aside your own views of the evidence," he said.

"You should not be tempted to change your mind in order to reach a unanimous verdict."

"Failure to reach a unanimous verdict will not reflect badly on you," Dumas added, "provided you have tried to the best of your abilities, based on the evidence."

9 possible verdicts
Prior to calling the jurors back to the courtroom to give them guidance, Dumas told lawyers, reporters and the courtroom audience that it's possible the jury has agreed on a verdict for one or two of the accused but not for the third.

"I don't see any legal problems if there is a unanimous verdict for one and an impasse for the other two," he said.

"If, after a reasonable delay, they come back to us and are still at an impasse, I could remind them that there are three separate trials and it's possible for them to reach verdicts on just one or two," Dumas told the courtroom.

Outside the courtroom, lawyers for the three men said they were reluctant to speculate on the jury's deliberations.

"There are nine possible verdicts," said Charles Shearson, one of the lawyers for Harding, the locomotive engineer.

Each of the three defendants could be found guilty or not guilty of criminal negligence causing 47 deaths. A guilty verdict carries a maximum sentence of life in prison.

However, in his instructions to jurors last Wednesday, Dumas said that if they find Harding not guilty of criminal negligence, they must consider the lesser charges of dangerous operation of railway equipment causing death, and dangerous operation of railway equipment. Those charges carry maximum sentences of 14 years and five years, respectively.

Canadians Have A Duty To Protect Abdoul Abdi
It should be clear that Abdoul Abdi is facing deportation because of the several failures of our systems.
Huffington Post
Dr. Shelly Whitman, Dr. Michael Ungar and Lisa Lachance
January 16, 2018

Abdoul Abdi was 6-year-old boy when he, along with his sister and aunts fleeing a civil war in Somalia, arrived in Nova Scotia and was placed almost immediately into the child welfare system. As a foster child, a young Abdi was bounced between dozens of group homes, at least one abusive foster home, and juvenile justice placements, while the system failed to help him attain Canadian citizenship to which he had a right. Keep in mind, the government of Nova Scotia was in all respects Abdi's guardian during

this time and therefore had all the same obligations as any other guardian to act in the best interests of the child.

Fast forward to Abdi as a young adult, fresh out of prison, having served time for crimes he committed no doubt in part due to the failures of the child welfare system. Sadly, his experience in the system, and his delinquent behaviour, is one of those hidden secrets of the child welfare system. No one tracks just how many children in care wind up incarcerated. Abdi is much like many other children taken into care. The difference is that other children get a second chance. Abdi is instead facing deportation to Somalia.

To a country he has not seen since he was a very young child. Or may never have seen at all. According to his aunt, Abdi might not have been born in Somalia but may have been born in a refugee camp elsewhere.

A number of members of the Somali community were at the first meeting to protest the perceived lack of support for Somali children in Toronto.
And he'll be returning to a country whose language he doesn't speak, and to a place where he has no family. Somalia is a country that our own Canadian government rightly warns us not to travel to, due to a 25-year-old civil war. A country that is known globally for its maltreatment of children, a country that has been named by the UN Special Representative of the Secretary-General on Children and Armed Conflict as one of seven nations that still recruits children as soldiers. How long will it be until Abdi becomes involved in the conflict? As a young man without connections or traditional clan in Somalia, he will be particularly vulnerable to recruitment into armed groups or criminal gangs in order to survive.

His deportation is a death sentence, not justice. This is not what we should aspire to be as Canadians, as people who value ideals of dignity and equality and justice.

Canada is party to the Convention on the Rights of the Child, an international treaty that enshrines in law the rights and protections necessary for children to lead healthy, fulfilling lives. Article 3 of the convention notesthat children cared for by the child welfare system will have their best interests looked after by the state. Article 20 goes further, stating that children not in the care of their parents deserve special protection and assistance from the state.

The government of Nova Scotia failed to give Abdoul the right to have rights.
Surely it is in the best interests of a child refugee who came to Canada at the age of 6 to become a citizen, and have the province of Nova Scotia facilitate the process as his guardian? As his lawyer, Benjamin Perryman has reminded the court, the government of Nova Scotia failed to give Abdoul the right to have rights.

Let's not forget that Canada is also a party to the 1951 Convention Relating to the Status of Refugees, which requires states to take efforts to naturalize refugees it admits, and prevent "refoulement," or the expulsion of a refugee to a territory where their life might be endangered. Clearly, Canada is failing in its obligations on this front as well.

Before we judge Abdoul too harshly, or single him out for special punishment, we must remember that Abdi's path through life is not unique, at least not for an African-Canadian child in the child welfare system where they are vastly overrepresented. That system makes children especially vulnerable to becoming involved in illegal activity when it can only provide an unstable environment.

It should be clear that Abdi is facing deportation because of the failures of our systems: the failure to grant him citizenship, the failure of the child welfare system to protect its wards and now the failure to recognize and attempt to remedy these injustices. The Canadian government should act before it is too late, and halt his deportation. Canada will be reporting to the UN Committee on the Rights of the Child how we as a nation have done in terms of realizing the rights of children. We must be prepared to address our own failures to protect the most vulnerable children in Canada. No doubt this story will provide a vivid example of this national failure.

More from HuffPost Canada:
How Trudeau Should Respond To Trump's Muslim Refugee Ban. It Doesn't Involve Twitter
Canada Can and Must Do Better for the World's Most Vulnerable

It is not enough though to simply right the wrongs committed against one man. We must fix the systems that contributed to them. Fortunately, Nova Scotia is reviewing how it deals with non-citizen children in the child welfare system. The federal government should ensure that future deportation proceedings better take into account the background of people like Abdi, and the situation on the ground in countries where they seek to deport people. And we must change our child welfare systems to ensure that children in our society who do need such protection are not left vulnerable for it.

Canada has demonstrated its willingness to help those who flee conflict zones, especially children, as was displayed in the outpouring of emotion when little Alan Kurdi's body was washed up on the shores after escaping the war in Syria. Children from Somalia, just like children from Syria, have been fleeing for decades brutal war, years of famine and corruption. We have a duty as Canadians to protect these children. That duty includes Abdoul Abdi.

Dr. Shelly Whitman is the Executive Director of the Roméo Dallaire Child Soldiers Initiative. Dr. Michael Ungar is the Canada Research Chair in Child, Family and Community Resilience, and a Professor of Social Work at Dalhousie University. Lisa Lachance is the Executive Director of Wisdom2Action (wisdom2action.org) and is a doctoral student in Health at Dalhousie University.

Crown misleading Appeal Court, acquitted Canada Day terror plotters say
Vancouver Sun
Ian Mulgrew
January 16, 2018

Federal prosecutors are trying to bamboozle the B.C. Court of Appeal to win a new trial against the Surrey couple acquitted of the 2013 Canada Day terror plot, their lawyers insist.

In their response to Crown arguments Tuesday, the legal team for John Nuttall and Amanda Korody said prosecutors were relying on a "cherry-picked basket of tidbits" — facts, phrases and comments — taken out of context, some wrong but "baldly asserted," to indict B.C. Supreme Court Justice Catherine Bruce for committing palpable and over-riding errors in her July 2016 decision.

Bruce rejected an earlier guilty verdict by a jury because of RCMP misconduct, and stayed charges against the impoverished common-law pair who had converted to Islam in 2011.

She called the scheme to murder and maim hundreds of innocent national day celebrants in Victoria a police-manufactured crime.

The Crown appealed and wants the province's high bench to order a new trial for Nuttall and Korody on charges of conspiracy to place explosives with intent and facilitation of terrorist activity.

At the Vancouver proceedings this week, Nuttall's lawyer Marilyn Sandford said the appeal ignored material that disagreed with the prosecution's analysis, got facts wrong, advanced logical fallacies such as straw-man arguments, and misconstrued Bruce's careful and contextual analysis of the evidence. "They are asking the court to re-try the case," Sandford said, on "the flimsiest of grounds."

She said the original trial judge got it right — that her client bounced from one farfetched idea to another and it was the RCMP who entrapped the recovering addicts and pushed them into planting inert pressure-cooker bombs amid the Legislature's landscaping.

Bruce correctly recognized it was her duty not only to consider whether a normal person would have acted in the same way given the circumstances, but also to weigh RCMP conduct, Sandford maintained.

One of the subtleties in the 97,000-word decision, she explained, was that Bruce found police initially had the necessary reasonable suspicions to justify targeting the couple.

But the judge concluded that justification evaporated during the course of the operation as investigators learned more and more about them and the true risk they posed to public safety.

"There was no imminent risk of harm to the public or the need to disrupt ongoing criminal activity," Bruce said in denouncing the massive, five-month investigation dubbed Project Souvenir.

Bruce called Nuttall and Korody "not very intelligent; gullible and quite naive and childlike. To say they were unsophisticated is generous."

Nuttall talked about "grandiose schemes" but "appeared to be incapable of focusing on one plan or idea," she said.

Behind the scenes as well, the judge noted, this dithering and the couple's challenges came more and more to the attention of the Mounties, causing many officers to worry the sophisticated sting was too much of a snare.

Those concerns were overruled by superiors.

Sandford emphasized that Bruce concluded the RCMP manipulation of the pair occurred through inducements, the undercover agent building a close friendship with them, and the exploitation of their vulnerabilities.

The police willingness and ability to finance travel to Victoria, a stay in a hotel, meals, transportation and a private security team, were icing on the cake.

Once she reached that conclusion, Sandford maintained a stay of proceedings was the only remedy.

The three justices on the division were skeptical.

“Didn’t they have to do that?” Justice Pamela Kirkpatrick asked.

Korody’s lawyer Scott Wright explained that Bruce found police went further than was necessary and there was “no need to sell themselves” as murderous jihadis.

“The tipping point,” Justice David Harris mused.

“Exactly,” responded Wright. “But the trial judge was careful to say it was not her job to tell the police how to conduct their operation … but (the investigation) went much further than was needed or was appropriate.”

“It’s the consequence of the conduct, not necessarily their intent,” Harris added.

“There was never an actual threat to kill them, but when you put all these factors together, a reasonable person would have believed they would kill them,” Justice Elizabeth Bennett chimed in.

“Yes,” Wright agreed. “So much was unnecessary and went far beyond what the circumstances required.”

“In what way?” Bennett quizzed. “The undercover operator, Mr. Nuttall loved him …. what is it (police) do that was so over the top? I’m just not clear what the police should have done differently in these circumstances. … I’m struggling with that … without a direct threat or an implied threat just a general sense these were nasty people.”

Wright said what police should have done differently wasn’t the issue — it was Bruce’s reasoning and the evidence she cited.

Submissions in the appeal are expected to end Wednesday, although the panel then plans to review transcripts and weeks of video-and-audio recordings made by police and played for the jury.

Confusion reigns at pay centre as Phoenix deadline looms
Government workers have until Friday to declare overpayments, or risk owing more
CBC News
Julie Ireton
January 17, 2018

Environmental scientist Jerome Marty left his term position with the federal public service in 2016 to take another job in the capital, but the government paycheques kept coming well into 2017.

Yet despite the pile of money sitting in his bank account, Marty is being told he doesn't owe a dime — a discrepancy that under other circumstances might be deemed a stroke of good luck, but that under the growing uncertainty wrought by the problem-plagued Phoenix pay system merely adds another layer of worry.
Marty and thousands of other current and former government employees have until Friday to declare any overpayments to the federal pay centre, either by phone or through an online form.

Failing to meet the looming deadline could mean they'll eventually have to repay the gross amount recorded on their pay stubs rather than the net amount they received after deductions — a difference that for some could amount to tens of thousands of dollars.

According to the government, workers "must do this even if you have previously identified to your manager or department that you have received an overpayment."

But in the rush to register the overpayments, pay centre phone lines have been jammed.

'I cannot walk away'
After trying to contact the call centre more times than he can count, Marty was finally able to get through earlier this week to declare his overpayment.

He was hoping to make things right by paying back the government, sorting out his pension contributions, retrieving back pay — and finally closing the door on his relationship with his former employer and its Phoenix payroll system.

But it turns out Phoenix isn't done with him just yet.

"The person looked into my file and revealed to me that I didn't have any amounts due to the government," Marty said. "As far as I'm concerned that's absolutely incorrect."

According to Marty's calculations and those of his former department, Fisheries and Oceans Canada, he was overpaid about $25,000.

"I cannot walk away. After spending so much time and energy, I will never walk away, because I find it's part of being a good citizen and being honest."

Union seeking exemption
Complicating Marty's situation is the fact that he was overpaid in both 2016 and 2017, straddling two tax years.

"There is also the implication in terms of pension, RSP, my own pension plan," Marty said.

Unions are urging their members to register overpayments and make records of their contact with the call centre.

Meanwhile the Public Service Alliance of Canada continues to lobby for an exemption for government workers being told to repay gross amounts.

According to PSAC's website the union "will continue to push for a full exemption from repaying the gross pay for all employees who received an overpayment due to Phoenix."

Marty believes the agents at the pay centre tasked with helping people like him are not properly equipped to do their jobs because they don't have access to all the files and information they need to process and correct errors.

"Talking to various people who are really trying to help, it seems the tools are not there," he said.

In November the Auditor General of Canada reported that as of June 30, 2017, the amount the government owed to federal workers had reached $228 million, while the amount of overpayments totalled $295 million and affected 59,000 workers.

When asked this week, the department of Public Services and Procurement Canada said it did not have any updated numbers when it comes to overpayments owed.

Consecutive sentencing: do we underpunish or overpunish killers?
Derek Saretzky killed three people separately and drank a toddler's blood. Should he serve 75 years or just 25? The Supreme Court of Canada may be asked to decide, writes Heather Mallick.
Toronto Star
Heather Mallick
January 17, 2018

No one knows why Derek Saretzky, 24, strangled cheerful little Hailey Dunbar-Blanchette, drank her blood, and ate part of her heart. He had killed Hanne Meketech, 69, five days before, went to the home of Terry Blanchette, slit his throat, and took his 2-year-old daughter away with him to a campsite where he eventually burned her body.

In his kill list, the Lethbridge killer had referred to Hailey as "the hideous baby." The 2015 killings were separate and planned. Saretzky's motive remains unknown.

What is to be done with men like Saretzky? Before the Conservative government changed the law in 2011, he would have been sentenced concurrently for the killings, possibly serving 25 years and being released. But he was sentenced consecutively, 25 years for each murder, and will probably die in jail.

So was Douglas Garland of Airdrie, Alta., who in 2014 tortured and killed Alvin and Kathy Liknes and their beautiful 5-year-old grandson, Nathan. So was Justin Bourque, the Moncton man who slaughtered three RCMP officers and wounded two others in 2014.

Concurrent sentences had always seemed like a Get Out of Jail Free card for killers. I've killed one, the second is free, and the toddler is just for fun. I don't know if killers consider the consequences of killing methodically, but perhaps they will now. Why didn't Saretzky spare Hailey? Two-year-olds are not great witnesses. But he wanted to eat her small heart.

Saretsky's lawyer is appealing the conviction and the sentence, basically on all grounds, which seems dubious, but he calls the 75-year sentence "cruel and unusual." A lawyer in a Quebec triple-murder case also hopes to challenge the law in the Supreme Court of Canada.

There are three camps on criminal sentencing: one says jail should rehabilitate; another says it should punish; and a third says it should do both.

Canadians agree that capital punishment is intolerable. All we have left is imprisonment. Were Saretzky, Garland and the six other Canadian men facing similarly long sentences over-punished?

At some point the Supreme Court of Canada may have to deal with this. Remember, hard cases (think of Hailey and Nathan) will make bad law.

For catastrophic over-punishment, we naturally turn to the U.S. where, as the Star's Daniel Dale reports, a Black man was sentenced to "six life sentences plus 118 years for a no-injury holdup at age 15 in which he stole $65, two phones and three joints." The Democratic governor of Virginia has just partially pardoned him. He will stay in jail another two years.

In the U.S., they call it "charge stacking." As an Ohio study from the Center for Prison Reform explains it, prosecutors try to interpret one crime as several. For example, a California man was charged with 170 counts of misdemeanour because 170 of his goats wandered into a neighbour's property. He got 60 years.

This is different from the infamous three strikes and you're out. It's the splitting of one crime into three, which means three separate punishments, no matter how simultaneous and minor those crimes might have been. The American legal system is punitive to a distorting extent; it's like placing the convicted before a funhouse sentencing mirror.

The patchwork of law across the U.S. is chaotic but overwhelmingly punitive. Rehabilitation is not the primary goal. It sometimes seems that American prisons are designed to appall, so that released prisoners will follow the law out of sheer terror. Good luck with that.

But rehabilitation is an absurd question in the cases of these men. Jailing Saretzky and Garland for life is simply a statement that Canada values little children and cannot risk their lives. Justice William Tilleman said he hoped one day Saretzky would gain some insight and an understanding of the value of human life. “A sentence of jail is not a sentence of vengeance.”

In these cases, it becomes apparent neither punishment nor attempts at rehabilitation achieve anything for us, the victims or the killer. The deeds were done, the children remain lifeless and dishonoured, and a regretful killer will still not welcome 75 years of thinking sorrowfully about the child. He does not care. We are frozen.
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CBA warns of court challenge to Bill C-58 if Ottawa persists with ‘incursions’ on privilege
Lawyer’s Daily
Cristin Schmitz
January 17, 2018

The Canadian Bar Association (CBA) says it will “in all likelihood” go to court to challenge incursions on professional secrecy, if Ottawa proceeds to enact proposed measures that would empower the federal privacy and information commissioners to review legal advice and other privileged communications between legal advisers and their federal government clients.

The national 36,000-member association, and the Federation of Law Societies of Canada (FLSC), are both urging the Trudeau government to drop proposed “regressive” amendments to the Access to Information Act and the Privacy Act (Bill C-58) that would expressly authorize the federal commissioners to examine privileged government records as part of their assessment of the validity of claims made by government entities that those records are exempt from disclosure because they are shielded by solicitor-client privilege, litigation privilege (i.e. communications whose dominant purpose is preparation for litigation), or professional secrecy.

The CBA and FLSC argue the government has produced no evidence that the proposed routine piercing of the privileges is “absolutely necessary” — the threshold the Supreme Court of Canada has set for incursions on solicitor-client privilege: Alberta (Information and Privacy Commissioner) v. University of Calgary 2016 SCC 53.

“The sanctity of solicitor-client privilege requires any incursions to minimally impair the privilege, which Bill C-58 fails to do given its sweeping rights of review for both commissioners,” FLSC president Sheila MacPherson of Yellowknife’s Lawson Lundell wrote Dec. 11 to Justice Minister Jody Wilson-Raybould.

“Routine review of documents over which solicitor-client privilege is claimed is neither necessary nor appropriate, particularly given the recourse to the courts provided for in both the existing and proposed legislation,” MacPherson contended.

CBA president Kerry Simmons, of Cook Roberts in Victoria, told The Lawyer’s Daily the bar association, “in all likelihood” will launch a court challenge to Bill C-58 if the government proceeds to enact the

provisions which her group believes unduly trench on privilege. “It’s certainly vulnerable to a court challenge … and all the arguments that would go with that — one of which, as set out in the [University of] Calgary case, would be a constitutional argument,” Simmons explained.

She emphasized, however, that Bill C-58 can still be amended by the Senate. “Am I optimistic about any changes happening? Yes I am,” she said, noting there will be further dialogue in the coming weeks, both with government officials, and with the senators who are poised to study the bill.

Asked whether the FLSC would also go to court if Bill C-58 is passed as is, MacPherson told The Lawyer’s Daily “we will consider whether to take additional steps, and what those steps may look like, as the bill proceeds through the legislative process.”

Both the federation and the CBA have a long and successful track record of fighting incursions on privilege right up to the Supreme Court of Canada.

A spokesperson for the Department of Justice, Ian McLeod, told The Lawyer’s Daily “the government has given careful consideration to the issues raised by the CBA and the FLSC about Bill C-58’s proposals with respect to the powers of the information commissioner and privacy commissioner.” “We are committed to upholding the principles of solicitor-client privilege,” he said. “The government’s position is that Bill C-58 is constitutional.”

The Trudeau government’s overhaul of the federal access to information statute and complementary amendments to the Privacy Act was passed by the majority Liberals in the Commons last December, over the opposition of Conservative, NDP, Bloc Quebecois and Green Party MPs.

The CBA’s written arguments that Bill C-58’s proposed amendments to s. 36(2) of the Access to Information Act and s. 34(2) of the Privacy Act fail to meet the constitutional standard for piercing privilege did not get any traction in the Commons Access to Information, Privacy and Ethics Committee.

However, those arguments, now echoed by the country’s legal regulators, are expected to get a more attentive hearing in the red chamber, where Bill C-58 awaits second reading debate after the Senate resumes at the end of January, and where the Legal and Constitutional Affairs Committee chaired by senior constitutional lawyer Serge Joyal, a Liberal, includes several legal experts, including former judge Murray Sinclair, an Independent.

Under the heading of “Access to Records,” Bill C-58 would replace s. 36(2) of the existing Access to Information Act with language stipulating (in part) that: “despite any other Act of Parliament, any privilege under the law of evidence, solicitor-client privilege or the professional secrecy of advocates and notaries and litigation privilege, and subject to subsection (2.1), the Information Commissioner may, during the investigation of any complaint under this Part, examine any record to which this Part applies that is under the control of a government institution, and no such record may be withheld from the Commissioner on any grounds.”
Bill C-58 accords the privacy commissioner a comparable investigative power under a proposed amendment to s. 34(2) of the Privacy Act.

The proposed amendments were sparked by the Supreme Court's companion decisions in the University of Calgary case, and in Lizotte v. Aviva Insurance Co. of Canada 2016 SCC 52, which held that any demand under a statutory scheme by a regulator or other state authority to produce documents that are subject to a claim for solicitor-client or litigation privilege will not prevail, in the absence of legislation that clearly and expressly allows the officials to pierce the privilege in question.

As a result, privacy and information commissioners across the country jointly called on their respective governments last October to amend access to information and privacy legislation to expressly give regulators the power to compel the production of records as part of their independent review of records over which public bodies claim privilege.

The commissioners stressed that their independent review function "fundamentally depends on their ability to examine responsive records over which public bodies claim exemptions, including the exemption for solicitor-client privilege, in order to determine that such claims have been properly asserted."

They also emphasized that they have practices and procedures in place to ensure the confidentiality and security of information over which public bodies have claimed solicitor-client privilege, and that providing the commissioners with the records for the purposes of independent review "does not constitute waiver of this privilege. The … review of these records is only to confirm whether they are subject to solicitor-client privilege."

The federal information commissioner has said she continues to receive records for which federal government bodies claim solicitor-client and litigation privilege, following a direction to that effect by Treasury Board president Scott Brison. The commissioner has pointed out that the exemption from disclosure for solicitor-client privileged communications is "one of the most-claimed exemptions" (a quarter of complaints in 2016 and 22 per cent of complaints in 2017 are related to the privileges exemption).

Valerie Lawton, a spokesperson for the Office of the Privacy Commissioner, reserved her office's comment on the points made by the CBA and FLSC until those issues are raised before the Senate committee that is assigned to study the bill. Senate study could start as early as next month.

Natalie Bartlett, a spokesperson for the Office of the Information Commissioner, said the commissioner will also make her comments on the privilege issues at that time.

The FLSC and CBA argue that the proposed measures compromise the ability of federal government institutions to give and receive effective legal advice. "In brief, the proposed amendments may have a chilling effect on disclosure by federal institution clients to their legal advisers, which in turn will compromise the quality of legal advice they receive and ultimately compromise the proper working of government institutions," Simmons wrote Wilson-Raybould Dec. 19. "Worse, concerns about disclosure of privileged records may encourage situations where advice is sought and received, but undocumented,

contrary to the open government values underlying the Act and which the CBA supports," Simmons argued.

Moreover, permitting administrative officers to adjudicate disputes about solicitor-client privilege "may also lead to a slippery slope for the protection of privilege more generally," MacPherson warned the government in last month's letter.

"Without a principled approach to solicitor-client privilege it is foreseeable that these review powers could be granted to other administrative offices, thus implicating the interests of Canadian citizens in receiving confidential legal advice from counsel."

The bar association and legal regulators also said there is an incongruity in compelling disclosure of privileged information to the privacy and information commissioners — who may wind up going to Federal Court to challenge the government entity's refusal to disclose based on the claimed privilege. "According to the proposed legislation, if a public body denies access to records on the basis of privilege, the commissioners' ability to order disclosure includes legal advice relating to the public body's conflict with the commissioners. There is no satisfactory way for a public body, which may be adverse to the commissioners on a particular issue, to preserve solicitor-client privilege in protecting their own legal advice on the issue," the FLSC contends.

The bar association and legal regulators emphasized that the Supreme Court's University of Calgary decision established that solicitor-client privilege has evolved into a fundamental substantive principle and is not merely a privilege under the law of evidence.

The Supreme Court has repeatedly ruled that solicitor-client privilege "must remain as close to absolute as possible and should not be interfered with unless absolutely necessary."

The top court has stipulated solicitor-client privilege is subject only to "rare" and strict exceptions in relation to a few categories, including public safety, criminal communications and the right to make full answer and defence.

Procès Lac-Mégantic : le jury « dans une impasse »
Le juge se réserve la possibilité d'encourager le jury à s'entendre sur le sort d'un seul accusé parmi les trois
Radio-Canada
16 janvier 2018

Le jury se trouve dans une impasse au procès des trois ex-employés de la Montreal Maine & Atlantic Railway (MMA) accusés de négligence criminelle ayant causé la mort de 47 personnes le 6 juillet 2013.

Les 12 jurés ont soumis une enveloppe au juge Gaétan Dumas mardi pour lui demander ce qui se produirait s'ils n'étaient « pas capables d'arriver à un verdict unanime ».

« Nous sommes dans l'impasse », a affirmé le jury.

Pour déclarer un accusé coupable, le jury doit conclure que celui-ci a omis de faire quelque chose qu'il était de son devoir d'accomplir et, ce faisant, qu'il a fait preuve d'une insouciance déréglée ou téméraire à l'égard de la vie ou de la sécurité d'autrui, et que ce comportement a causé la mort des 47 victimes de la tragédie.

Le juge Gaétan Dumas n'a pas écarté la possibilité d'encourager le jury à s'entendre sur le sort d'un seul accusé parmi les trois.

« Ma suggestion serait de les exhorter sans leur donner la possibilité tout de suite qu'il y ait des verdicts à la pièce. Et si, après un délai raisonnable, ils nous reviennent avec une impasse, je pourrais leur rappeler que c'est trois procès différents et que c'est possible d'avoir des verdicts pour un, ou deux », a souligné le juge Gaétan Dumas.

Lundi, le jury avait adressé des questions au juge afin d'obtenir des éclaircissements sur des points de droit. Les huit hommes et quatre femmes du jury souhaitent que le juge apporte certaines précisions sur des concepts au coeur de la définition de la négligence criminelle, comme le doute raisonnable ou la personne raisonnable.

Attaque en justice contre les banques
Dans une action collective déposée au palais de justice de Montréal, on en a contre l'augmentation des limites de crédit faites sans le consentement des clients
Droit Inc
Julien Vailles
17 janvier 2018

La représentante du recours, Mélissa Pilon, allègue que les institutions financières ont violé le Règlement sur le crédit, la Loi sur la protection du consommateur et la Loi sur les banques.

« La présente action vise à faire cesser au Canada une pratique illégale et généralisée (...) qui consiste à autoriser des opérations ayant pour effet de dépasser la limite de crédit prévue au contrat de carte de crédit, sans avoir préalablement obtenu le consentement du débiteur de la carte pour le faire ».

Ainsi débute la demande en justice rédigée par l'avocat Charles-Antoine Danis, dirigée contre 15 institutions financières.

« C'est assez dérangeant, déclare Me Danis, joint par Droit-inc. On sait que l'endettement atteint des niveaux sans précédent, et pourtant, on permet aux banques de conduire de telles pratiques, c'est inadmissible », dit-il.

Il illustre le recours par un exemple : « Supposons que votre carte de crédit est pleine; il vous manque un dollar pour acheter un bien. La banque vous laissera quand même acheter le bien en augmentant la limite de crédit et en plus, elle facturera des frais supplémentaires comme c'est parfois le cas, explique-t-il. Or, le consommateur n'a jamais accepté tout ça ».

Recours à travers le Canada

Le recours est multi juridictionnel : il vise des clients à travers le Canada. Le groupe visé par la demande comprend toutes les personnes, physiques comme morales, qui ont vu leur limite de crédit augmenter alors qu'elles détenaient une carte de crédit émise par l'une des banques visées.

Ce groupe est scindé en deux sous-groupes : d'une part, on attaque les banques dites « fédérales », soient la Banque Amex, la Banque Canadian Tire, la Banque Capital One, la Banque Le Choix du Président, Citibanque Canada, la CIBC, la Banque HSBC, la Banque Laurentienne, la BMO, la Banque Nationale, la Banque de Nouvelle-Écosse, la Banque Royale, la Banque Tangerine et la Toronto-Dominion. On se fonde sur une violation au Règlement sur les pratiques commerciales en matière de crédit (Règlement sur le crédit) et à la Loi sur les banques.

D'autre part, au Québec seulement, la Fédération des Caisses Desjardins est poursuivie sous prétexte qu'elle aurait violé le Règlement sur le crédit et la Loi sur la protection du consommateur.

Fait particulier, une ordonnance est également demandée afin que cesse le comportement reproché aux banques.

À titre d'exemple, Mme Pilon, qui dit avoir fait affaires avec Capital One, réclame les frais de crédit payés sur les montants dépassant la limite de crédit à laquelle elle avait souscrit. Elle exige aussi le remboursement des frais de dépassement de 29 $ qu'elle aurait déboursés, en plus de 500 $ de dommages punitifs.

Le recours doit d'abord être autorisé par la Cour, après quoi il pourra être entendu sur le fond.

Canada's use of lengthy solitary confinement in jails is unconstitutional – judge
Campaigners hope the judgment will end the controversial practice under which some inmates have been kept alone for four years
The Guardian
Ashifa Kassam
January 18th, 2018

Canada's use of prolonged or indefinite solitary confinement in federal prisons is unconstitutional, a judge has said in a ruling that could end the controversial practice unless Ottawa appeals the decision.

Canadian law currently allows an inmate to be placed in "administrative segregation", as solitary is known, for an indefinite period of time for non-disciplinary reasons, such as protecting prisoners from fellow inmates.
The result seen some inmates left in solitary for as long as four years. The United Nations considers solitary over 15 days to be torture.

On Wednesday, a British Columbia supreme court judge found that the laws governing administrative segregation in Canada's federal prisons contravene the country's charter of rights and freedoms.

Inmates placed in solitary confinement are at significant risk of psychological harm, as well as increased incidence of self-harm and suicide, Justice Peter Leask said in his ruling. Many are left with permanent harm as a result of their confinement, he added.

The decision was hailed by the British Columbia Civil Liberties Association, who were among the organisations that challenged the practice in court. "This is the most significant trial court decision in the prison context that we've ever seen in Canadian history," said lawyer Jay Aubrey. "It's really transformative."

The ruling gives the federal government one year to bring its laws in line with the charter. Canada's public safety minister, Ralph Goodale, who oversees the federal prison system, said in a statement the government is reviewing the ruling.

Goodale said Ottawa has already introduced legislation aimed at limiting the amount of time someone can be held in solitary confinement.

The ruling is the second judgment in recent months to take aim at Canada's use of solitary confinement. In December, a judge in Ontario ruled that the system lacked proper safeguards and gave Ottawa 12 months to address the issue.

Aubrey said British Columbia ruling went much further than the limited violation of the constitution highlighted in Ontario.

Wednesday's ruling noted that Ottawa's use of solitary discriminated against indigenous and mentally ill inmates. Both are severely over-represented in the prison population and in solitary confinement, said Aubrey.

Between 2005 and 2015, approximately one quarter of non-Aboriginal inmates spent some time in segregation. In the case of Aboriginal inmates, the percentage climbs to a third.

The law currently caps solitary for disciplinary reasons at 30 days. The vast majority of people in solitary confinement in Canada are under administrative, not disciplinary, segregation.

Reconciliation act isn't just 'window dressing,' Metis Federation argues in call for judicial review
Organization asks for review of $650K funding cut to health services in potentially precedent-setting case
CBC News
Kelly Malone
January 18, 2018

The Manitoba Metis Federation says the Manitoba government's Path to Reconciliation Act is a "game changer" that could push the province to reinstate a funding cut to the federation's health department, a Manitoba court heard on Wednesday.

MMF lawyer Murray Trachtenberg told Chief Justice Glenn Joyal at Court of Queen's Bench that for Indigenous people in Manitoba the legislation is not just "feel good commentary that doesn't mean anything" — it is actionable.

In 2016, the federation applied for a judicial review of the province's decision to cut $650,000 in health funding for the MMF, which the organization used to hire five people offering health-care services.

The MMF has said it never received an explanation as to why the funding ended and the government did not give it fair warning that the move was coming.

"To offset health-care costs through false austerity measures such as this, they are instead going to be paying for these cuts with the lives of Métis people," MMF president David Chartrand said in a news release at the time.

"We're going to hold them accountable for this, and we're going to hold Canada accountable for this, because we do matter — and they know full well that there is a health-care crisis for the Métis in the province of Manitoba."

Reviews of budget decisions rare
But it's very rare for a judicial review to be granted when it comes to provincial budget decisions.

In court, the judge explained he had to consider how The Path to Reconciliation Act, as well as the Manitoba Métis Policy — which provides a framework for province's approach to its relationship with Métis people and the MMF — have affected the situation.

"What really does The Path to Reconciliation mean when it comes to Métis?" Joyal asked.

The Path to Reconciliation Act — which passed unanimously in March 2016, with provincial election campaigns imminent — says the Government of Manitoba is committed to reconciliation and will be "guided by the calls to action of the Truth and Reconciliation Commission and the principles set out in the United Nations Declaration on the Rights of Indigenous Peoples."

The Manitoba Metis Federation said the decision to cut the funding without explanation or warning, particularly since it affects health care, doesn't comply with the principals of the act.

"Did they actually look at any of this or is it window dressing?" Trachtenberg asked the court.

Decision could open floodgates: judge
Justice Joyal voiced concerns about how his eventual decision could potentially open the floodgates for judicial review when it comes to budgetary matters involving Indigenous people moving forward.

Government of Manitoba lawyer Sean Boyd said budgetary decisions are not reviewable and it was a decision that was ultimately subject to treasury board approval.

The act is not intended to be used for judicial review, Boyd told the court. Instead, the government completes an end-of-year report that goes before the legislature, and which shows how ministers are moving toward reconciliation goals.

Trachtenberg responded by quoting Health Minister Kelvin Goertzen in the third reading of the act in 2016 — when the New Democrats were in power — saying "it can't just be talk, there has to be action with it. It will be incumbent on future government."

Justice Joyal reserved his decision for a later date.

Federal prosecutors take over Tory nomination case in Ontario
They have been assigned to the case of a Progressive Conservative candidate election under criminal investigation amid allegations of forgery and fraud.
Toronto Star
Robert Benzie
January 18, 2018

Federal prosecutors are on the case of a Progressive Conservative candidate election under criminal investigation amid allegations of forgery and fraud.

Ontario's Ministry of the Attorney General has asked the Public Prosecution Service of Canada to handle the matter that has been investigated by Hamilton Police since last June.

That's to avoid the appearance of any conflict of interest because the Liberal government could be perceived as looking into the rival Progressive sConservatives.

"It is not the practice of the Ministry of the Attorney General to comment on the status of any ongoing investigation, unless and until a charge has been laid," the department's Emilie Smith said in an email.

"In appropriate cases, the ministry may delegate legal authority over a matter to another prosecution service. In this case, the assistant deputy attorney general, criminal law division, has delegated legal authority over this matter to the Public Prosecution Service of Canada," said Smith.

Nathalie Houle, a spokesperson for the PPSC, confirmed Wednesday that "the legal authority of the prosecution function has been delegated" to federal prosecutors, but could not comment on the legal status of the case.

"The PPSC does not discuss which cases it may be reviewing," Houle said from Ottawa.

Hamilton Police said their investigation continues as the clock ticks down toward a provincial election in less than five months.

"We are still working on the case, and there is no further information to provide at this time," said Hamilton Police Const. Lorraine Edwards.

Conservative officials declined to comment on Wednesday.

At issue is a disputed Tory candidate nomination last May in Hamilton West-Ancaster-Dundas.

Following a raucous riding election meeting, Vikram Singh, a Hamilton lawyer and runner-up in the four-candidate contest, launched a civil action against the Progressive Conservative Party of Ontario alleging "wrongful insertion of false ballots."

Singh named Tory leader Patrick Brown, PC president Rick Dykstra, executive director Bob Stanley, and senior Brown aide Logan Bugeja in the suit.

The Conservatives deny any wrongdoing in the case and the allegations have not been proven in court.

Singh also filed a complaint with police and the criminal investigation is separate from the civil action.

Brown has emphasized that the Tories are co-operating with police.

"We've offered full disclosure. Our office disclosed everything that was asked he said last month, referring to two banker's boxes of documents handed over to police by the party on Oct. 27.

But Brown has denied anyone in his inner circle is subject to the police probe.

"No one in my office, no one on my campaign team, no one in our headquarters, is under investigation," he said Dec. 1.

According to court documents filed by Hamilton Police in November, Det. Const. Adam Jefferess obtained an "order of detention" to allow for additional time to examine material obtained from the party's lawyer.

With an election set for June 7, the Tories are anxious for the matter to be resolved sooner rather than later.

Last month, New Democrat MPP Gilles Bisson (Timmins-James Bay) asked Attorney General Yasir Naqvi to move the PC case out of Ontario's jurisdiction by passing it on to federal prosecutors.

That is what happened in the 2015 Sudbury byelection case that resulted in the acquittal of two Liberals and in the deleted documents trial expected to conclude with a verdict Friday in Toronto.

"There are currently two top Liberal operatives waiting to hear the court's verdict . . . ," Bisson said in December.

"In that case, before any charges were laid, the attorney general made the decision to pass the case to the Public Prosecution Service of Canada," he said.

"We believe that was the right thing to do — and we believe it's the right thing to do in the case of the Conservatives as well."

Mark Norman case transferred to Halifax prosecutors as RCMP re-interview government employees
Norman was suspended as second-in-command of the Canadian military after the RCMP alleged he told Davie shipyards the Liberals were going to derail a project
National Post
David Pugliese, Ottawa Citizen
January 18, 2018

RCMP officers are re-interviewing some federal employees regarding the alleged leak of sensitive cabinet information that saw Vice-Admiral Mark Norman suspended a year ago from his role as second-in-command of the Canadian Forces, Postmedia has learned. The Mounties' renewed efforts on the file come as responsibility for making a potential case against Norman has been transferred from the Public Prosecution Service of Canada's Ottawa office to a team in Halifax.

Norman was suspended from his job as vice-chief of the defence staff more than a year ago after the RCMP alleged he informed Davie Shipbuilding that the Liberal government was going to delay a program that would see the Quebec firm convert a commercial ship into a supply vessel for the Royal Canadian Navy.

Sources close to the matter told Postmedia the case has been transferred from Ottawa to the PPSC's Halifax office, but it is unclear why. Nathalie Houle, a spokeswoman for the public prosecution service, told Postmedia the organization cannot discuss any potential investigation or prosecution unless or until charges are laid. "However, in general, it is not unusual for the PPSC to have a litigation team composed of prosecutors from more than one region," she said.

No charges have been laid against anybody involved in the matter, and Norman has denied any wrongdoing.

The RCMP have declined to comment, but sources told Postmedia the police force turned the evidence it had gathered in the matter over to public prosecutors last summer. The Mounties had interviewed

more than 30 individuals in both the defence industry and the federal government, including several cabinet ministers. They have also executed nine search warrants in the course of the investigation, including on Norman's Ottawa-area home, and have seized a number of electronic devices and extensive email correspondence.

Investigators conducted another round of interviews in December. However, Norman himself has still never been interviewed by the RCMP, sources said. Norman declined Postmedia's request for comment.

The case centres around a Nov. 19, 2015 cabinet meeting in which ministers decided to delay Project Resolve. Details about the delay leaked quickly to both Davie and the news media. Amid the fallout, the government backed down on its plans — but, furious about the leak, the government called in the RCMP, who eventually focused on Norman.

Though Norman wasn't at the cabinet meeting, searches of electronic devices and computers at Davie showed he had exchanged emails with a company official.

Based on the RCMP's allegations, which have not been tested in court, Chief of the Defence Staff Gen. Jon Vance suspended Norman in January 2017.

In examining the public release of documents related to the Norman case, Ontario Superior Court Justice Kevin Phillips noted in a 2017 ruling on an application by a group of media outlets — including Postmedia — to unseal the information used to obtain the search warrant for Norman's home that it was not unusual for the vice-admiral to be communicating with the company since it was involved in the ship project.

Ottawa lawyer Michel Drapeau, who is not involved in the Norman case, told Postmedia it is not unusual for responsibility for a case to be transferred to another prosecutor's office. It could be a result of a conflict of interest in the Ottawa office, or due to the presence of prosecutors in the Halifax office with relevant experience or specialization, said Drapeau, a retired colonel in the Canadian Forces.

It is unclear how long the investigation will go on.

Last February, Norman's lawyer Marie Henein issued a statement calling for an "objective investigation" to be concluded quickly. But weeks later Prime Minister Justin Trudeau predicted that Norman was going to trial.

The comments alarmed Norman's supporters who have raised questions about whether the prime minister's office is involved in the prosecution.

Postmedia asked the PMO to explain where Trudeau received his information the case was going to trial, and whether the office had had other interactions on the Norman matter. The PMO would not comment.

There is also concern among some of Norman's supporters that the federal government is dragging out the investigation in the hopes the officer's legal bills will place him under financial pressure, forcing him to resign.

Bonuses, performance pay for government executives rose in Trudeau's 1st year
Increase in bonuses, performance pay double what rest of public service got
CBC News
Elizabeth Thompson
January 18, 2018

Spending on bonuses and other performance pay for top federal government executives increased by more than double the rate of inflation in Prime Minister Justin Trudeau's first year in office, CBC News has learned.

The 3.2 per cent increase in spending for 2015-16, the most recent year available, was also more than twice the 1.25 per cent pay increases the government has negotiated with many of its public sector unions.

Spending on performance pay for top executives increased to $75 million from $72.6 million the year before with wide fluctuations in the percentage increases — or decreases — in many departments.

Spending on performance pay for deputy ministers increased 3.4 per cent to $4.7 million.

The head of Canada's largest public service union questions why spending on performance pay increased by more than the salary increases for public service workers.

"We hope the government isn't handing out an increase to their executives that is out of step with the wage increase it was willing to give our hard-working members. It's the responsibility of the government to explain this increase in executive performance pay spending," said Robyn Benson, national president of the Public Service Alliance of Canada.

Like many corporations, the federal government offers a system of performance pay designed to attract the best and the brightest into the public service.

Those who perform to the level expected get "at-risk" pay, a term that reflects the fact that executives and deputy ministers risk not receiving it if their performance is not satisfactory. Bonuses on top of the maximum at-risk pay go to those who perform above and beyond expectations.

When it comes to doling out performance pay, executives and deputy ministers are evaluated on how successful they have been in running their own departments and in implementing objectives set by the government.

In 2014-15, for example, the objective was successfully implementing the Harper government's cost-cutting plan. The more jobs and costs top executives cut, the more performance pay they got.

In 2015-16 the priority centred on recruiting people with skills needed in the future and improving mental health in the workplace.

Currently, in addition to promoting a healthy workplace, the Trudeau government has made it a priority to increase the social and cultural diversity of the public service and to support efforts to fix the problem-plagued Phoenix pay system.

The numbers are not detailed enough to know, however, whether those at Public Services and Procurement who were responsible for Phoenix received performance pay.

Basic salary ranges for those in the federal government's EX category in 2015 range between $106,900 and $202,500 a year.

Deputy ministers' paycheques that year ran from $192,600 a year to $326,500.

But for those who are judged to be good at their jobs, their base salary was just the start of what they took home in 2015-16.

The biggest increases in performance pay were at Immigration, Refugees and Citizenship Canada (IRCC) and the Canadian Human Rights Commission (CHRC). The number of executives at the latter rose to 15 from 11, and overall spending on executive performance pay was up 22 per cent.

The Public Prosecution Service of Canada was up 17 per cent overall, in part because adding the Commissioner of Elections office created an additional executive position. Two executives also received bonuses that year, compared with none in 2014-15.

At the Canada School of Public Service, the Canadian Environmental Assessment Agency and the Department of National Defence, performance pay was up 14 per cent.

Daniel Lebouthillier, spokesman for National Defence, said the number of executives eligible for performance pay rose in 2015-16 to 190 from 172.

At the other end of the spectrum, executive performance pay spending at the Civilian Review and Complaints Commission for the Royal Canadian Mounted Police dropped 28 per cent, followed closely by the Canadian Northern Economic Development Agency (CanNor) at 27 per cent.

Performance pay spending at the Office of the Commissioner of Official Languages dropped 20 per cent, and dropped 17 per cent at the Public Health Agency of Canada.

Several departments and agencies said the fluctuation in spending on performance pay was the result of an increase or decrease in the number of executives eligible for performance pay. In organizations with fewer executives, small staffing changes sometimes led to double digit percentage changes.
For those who get performance pay, it can translate to thousands of dollars a year.

The Transportation Safety Board had the highest average at-risk pay that year — $18,008 — followed by the Finance department, where executives got an average of $16,530. Executives in the Privy Council Office, which co-ordinates the government's actions and supports the Prime Minister's Office, got an average of $15,866 in at-risk pay while those in the Department of Western Economic Diversification got $15, 440 and Infrastructure Canada executives got $15,399.

The lowest rate for at-risk pay was at the Canadian Northern Economic Development Agency where executives received $9,565 on average, followed by the Public Prosecution Service where executives got an average of $10,937 and the Parole Board at $11,088.

The highest average bonuses — $10,836 — went to executives in the department of Western Economic Diversification, the Immigration and Refugee Board and the Public Service Commission, which oversees hiring and appointments of federal government employees.

Privy Council executives got average bonuses of $7,809 while bonuses for Finance department executives averaged $6,749.

Nine of 56 departments and agencies for which figures were available paid out no bonuses.

Treasury Board president Scott Brison's office declined to comment on the increased spending on performance pay, saying the decision is "the prerogative" of the Clerk of the Privy Council and deputy ministers.

Treasury Board officials said a variety of factors contributed to the increase, including a higher average amount of performance pay per executive, a greater number of executives who received performance pay and the impact of wage adjustments.

Canada's solitary confinement law unconstitutional, B.C. Supreme Court rules
Vancouver Sun
Ian Mulgrew
January 17, 2018

Canada’s use of prolonged solitary confinement in federal prisons is the equivalent of torture, doesn’t work and has been struck down as unconstitutional by the B.C. Supreme Court.

In a landmark decision Wednesday, Justice Peter Leask said the legislation allowing such confinement fails to provide an independent review of segregation placements and deprives inmates of the right to counsel at segregation review hearings.
He concluded the regime violated prisoners’ Charter of Rights and Freedoms’ Section 7 right to life because it placed them at increased risk of self-harm and suicide.

It also breached their right to security of the person, Leask found.

“I find as a fact that administrative segregation as enacted by s. 31 of the CCRA is a form of solitary confinement that places all Canadian federal inmates subject to it at significant risk of serious psychological harm, including mental pain and suffering, and increased incidence of self-harm and suicide,” Leask wrote in his 54,000-word judgment.

Thousands of prisoners have been subjected to solitary segregation over the years — isolated for up to 23 hours a day sometimes for months, sometimes years.

There are about 14,000 inmates in federal institutions — 679 women — and one in four of the incarcerated men during a fiscal year spend some time in segregation and more than 40 per cent of women.

For the past two years, the average stay in administrative segregation has declined from an average of 30 days in September 2015 to 22 days in March 2017.

Leask held that the law also discriminated against the mentally ill, the disabled and First Nations.

“I have no hesitation in concluding that rather than prepare inmates for their return to the general population, prolonged placements in segregation have the opposite effect of making them more dangerous both within the institutions’ walls and in the community outside,” he said.

He invalidated the legislation to the extent that it authorized any period of administrative segregation for the mentally ill or disabled and to the degree that the regime discriminates against Indigenous inmates.

“Just so delighted to announce I have in my hands the most significant trial court decision\on prison law in Canadian history,” said an emotional Jay Aubrey, staff lawyer of the B.C. Civil Liberties Association (BCCLA).

“Friends, we won. We won so much. Such a powerful decision. A stunning decision … Everyone needs to hear these words … (solitary causes) significant risk of serious psychological suffering …

“Listen to this list so carefully. Some of the specific harms include anxiety, withdrawal, hyper-sensitivity, cognitive dysfunction, hallucinations, loss of control, irritability, aggression, rage, paranoia, hopeless, a sense of impending emotional breakdown, self-mutilation and suicide ideation behaviour.”

Her voice cracking and eyes welling, Aubrey added: “That’s what we’re doing to Canadians.”
She could not maintain the dam and tears ran down her cheeks:

“It is a stunning decision that is grounded in four decades of history, and the best social science and medical evidence on the impact on inmates’ health of solitary confinement, and alternatives to solitary confinement.”

During a nine-week trial last year in this case launched by the BCCLA and John Howard Society of Canada (JHSC), Leask heard from experts who said solitary confinement can create mental illness where none previously existed and exacerbate pre-existing illness.

The BCCLA and JHSC argued there are better, more humane alternatives to indefinite solitary confinement that promote rehabilitation and decrease prison violence.

“The practice of (prolonged) solitary confinement is cruel, arbitrary, discriminatory and unconstitutional,” said Catherine Latimer, Executive Director of JHSC.

“The problems with solitary confinement have been obvious for decades, with recommendations for reform coming from all quarters of society, including the Correctional Investigator of Canada and the United Nations Committee Against Torture. After years of government inaction, today’s court decision is a huge, and long overdue, win for prisoners.”

Leask said there should be time limits of 15 days in solitary — longer periods are considered torture by the UN — and the government indicated it could implement that standard.

“In this regard, I am firmly of the view that a time limit on the use of administrative segregation would create the pressure to ensure that decisions about alleviating an inmate’s segregation were made and implemented promptly, while still allowing CSC to use the practice for short periods to address security concerns,” the justice explained.

He suspended the effect of his ruling for a year to give Ottawa time to pass new legislation to reflect the decision without causing an undue safety risk in prisons.

Both organizations celebrated inmates and their families who testified against the system in which they were still enmeshed as well as the families of those who had died in confinement, such as Ashley Smith.

In the fall of 2007, Smith died in her segregation cell after spending more than a year of continuous solitary.

“For every person who spent time in solitary confinement and for all the prisoners watching today, I just have a message I can’t leave off,” Aubrey said.

“They may try to hide you. They may try to hide your pain from the rest of the Canadian population. But we actually see you. The court sees you and we refuse to look away from your pain. Your suffering matters, you matter, you are important. What has been done to you is very, very wrong. Today’s victory belongs to you. It’s yours.”

One last, last chance: accused in honour killing case appeal for clemency
Government argues justice minister had right to whisk pair out of country on last minute rejection
CBC News
Jason Proctor
January 17, 2018

Just how many last chances can an accused killer get?

That's the question at the heart of an unusual set of proceedings which kicked off this week in the B.C. Court of Appeal.

At stake: the futures of Malkit Kaur Sidhu and Surjit Singh Badesha, the B.C. pair accused of masterminding the slaying of Sidhu's daughter, Jaswinder (Jassi) Sidhu.

All that's missing: 'a hood over their heads'
Lawyers for Sidhu and Badesha are hoping for a stay of extradition proceedings against their clients as a remedy for what they claim was an elaborate plan to whisk the pair out of the country last September.

They believe the government wanted to deny them any opportunity for more appeals following what was expected to be a rejection of a plea for clemency to Justice Minister Jodi Wilson-Raybould.

They'll make that case in April. But on Tuesday, Badesha lawyer Michael Klein gave a preview as part of an application for disclosure of government documents he believes could reveal an abuse of process.

"This is the minister of justice. This is the person in charge of the justice system for this country. And it is significant conduct," he argued.

"I thought the minister's behaviour in this regard was scandalous. There was only one thing missing — and that was a hood over their heads."

All the way to the Supreme Court of Canada
The arguments centre around exactly where a person's legal options end after they've been ordered out of the country.

The appeal court proceedings are only the latest twists and turns in an 18-year odyssey that began with the death of Jassi Sidhu, the 25-year-old slain in 2000 for what Indian authorities claim was the sin of defying her family's wishes by marrying a poor Indian rickshaw driver.

Sidhu's throat was slit and her body dumped in a canal when she and her new husband were attacked by a group of armed men in the Punjab.

The young woman's mother and uncle were taken into custody in 2012. The B.C. Supreme Court ruled in favour of extradition in 2014, but the appeal court stayed that finding.

The case climbed all the way to the Supreme Court of Canada where a unanimous ruling last September set the wheels in motion for Badesha and Sidhu's removal.

But before that could happen, Wilson-Raybould had to rule on one final appeal for clemency, filed before the Supreme Court ruling, arguing the pair might face mistreatment and torture in India.

That's when things got complicated.

No right to a judicial review?
According to Klein, a plan was hatched to remove Badesha and Sidhu from pretrial custody in B.C. to the tarmac at Pearson airport on Sept. 20.

They were in the custody of RCMP officers, with Indian police on hand, ready to whisk them back to India when a last-minute filing to the B.C. appeal court forced a dramatic halt to proceedings.

Wilson-Raybould had yet to render her final judgment. But the inference was clear: within minutes of a negative decision coming down, Badesha and Sidhu would have been shipped off to India, denying them any further legal options.

When pushed by the appeal court judges, government lawyer Deborah Strachan didn't argue that interpretation.

"The real complaint here is whether that is correct in law — that the minister could take steps to surrender immediately upon a decision being made, and thereby preclude an opportunity for judicial review," she told the panel.

"It will be our argument that the minister takes the view that the applicants are not allowed another period of 30 days for judicial review."

A 'drastic remedy'?
Strachan faced some tough questions from the judges, who asked if the government deliberately set out to deprive Sidhu and Badesha of the right to counsel.

She put it differently: "The minister's position is that the applicants were not afforded the opportunity to contact counsel and that there was no intention to take positive steps to enable them to do that."

Strachan opposed the application for disclosure, but also said it was important to keep attention on the "main event" — even if the minister's actions were judged to be wrong, would that qualify for a stay to the extradition and an end to an 18-year quest for justice for a young woman allegedly killed for asserting her independence?

Earlier in the day, Klein had argued that a stay was warranted.

"A stay is a drastic remedy," he said. "But a stay also sends a message as to how the minister is to conduct themselves."

Strachan disagreed.

"If these proceedings are stayed, that's it," she told the court. "The court has what it needs to determine whether this conduct was egregious."

'It's a nightmare': MPs push for more help for riding offices flooded with dozens of Phoenix calls
The public services minister promised a plan to boost riding-office support within a couple weeks, but six weeks later MPs say they're still waiting.
Hill Times
Emily Haws
January 17, 2018

Members of Parliament are growing increasingly frustrated with what some see as a lack of government support to their constituency offices to help residents affected by the error-ridden Phoenix pay system, and the opposition Conservatives say Public Services and Procurement Minister Carla Qualtrough has yet to follow through on a commitment to boost resources.

When opposition MPs questioned Ms. Qualtrough (Delta, B.C.) during a House Government Operations and Estimates Committee hearing on Nov. 28 about problems they were having helping constituents get government responses on Phoenix cases, she said would get back to MPs about improving communication with and support for MPs' offices "within a couple of weeks." At the meeting, she added she was hopeful that the Phoenix pay system would be at a steady state—in other words: paying public servants correctly, on time—by the end of 2018.

Conservative MP Kelly McCauley (Edmonton West, Alta.) wrote a letter to Ms. Qualtrough's office on Jan. 8 to see what she had done about that commitment, following up with an email shortly after. A week after sending the letter, her office had yet to respond to either communication, he said.

"You and your deputy minister told the committee you would be getting back to us within two weeks on developing a solution for the gridlock the Members' Offices are facing when seeking guidance on Phoenix issues from constituents," Mr. McCauley's letter reads. "It's now been six weeks and we have yet to hear from your office."

Ms. Qualtrough told the committee at the time she couldn't commit to a specific plan but wanted to look at options. When pressed by NDP MP and committee vice-chair Erin Weir (Regina-Lewvan, Sask.) for a hotline similar to the one MPs' offices use for government help on constituents' immigration cases, she agreed the lines of communication needed to be opened, but wouldn't commit to a hotline. She agreed it was unacceptable that MPs were not getting the support they needed.
"Every resource we pull off the backlog is not addressing the backlog," she said. "We need to methodically deal with the backlog using the priorities and lenses we've created."

Ashley Michnowski, a spokesperson for Ms. Qualtrough, said her department, Public Services and Procurement Canada (PSPC), is finalizing a mechanism for MPs to report and ask about constituents' pay issues.

"[We] will be officially notifying Members of Parliament in the coming weeks," she said in an emailed statement on Jan. 15. "Employees can also get help online, by submitting a feedback form and by calling our contact centre."

The Phoenix pay system was supposed to streamline the pay of the government's roughly 259,000 public servants, but since its launch in February 2016 it has left over half of them overpaid, underpaid, or not paid at all. The backlog is sitting at 589,000 open cases, called transactions, as of Nov. 29.

Constituency staff members currently call Ms. Qualtrough's ministerial office when they have a Phoenix case. Her staff handles the calls, MPs told The Hill Times, but it can be frustrating and time consuming.

Mr. McCauley isn't surprised he hasn't gotten a response to his letter, and said he doesn't expect to get one. "They just don't seem to care," he said, regarding the Phoenix file. The support for MPs was a "simple, nonpartisan" way to solve a problem many MPs are experiencing, he said.

The pay system was supposed to save the government about $70-million annually, but so far the Liberals have spent about $400-million trying to fix it. Auditor general Michael Ferguson said in his fall report on the Phoenix pay system that fixing it would cost far more than the $540-million the government planned to spend.

Cases being resolved, but taking longer than usual

On the same day as Ms. Qualtrough's testimony, senior PSPC officials testified at the House Public Accounts Committee. Conservative MP and committee chair Kevin Sorenson (Battle River-Crowfoot, Alta.) kicked off the meeting by saying Phoenix cases had recently outpaced immigration cases, which usually take up the bulk of staff casework, at his riding office.

Before the fall session of Parliament, Mr. Sorenson has staff members draft a summary of the office's open cases to give him an idea of his constituents' issues. He wasn't sure on the exact number, he said in an interview last week, but was surprised to see the large proportion of Phoenix cases.

He noted that his office has been assigned a Phoenix liaison from Ms. Qualtrough's office "that my staff does have a good working relationship with, and has been able to get some success with."

He added his staff has been persistent, and the success has led to people from outside his constituency calling him after speaking to their coworkers. One staff member has received thankful phone calls and flowers delivered to the office from constituents.

He said he had about 40 open cases at the moment. That sentiment was echoed by NDP MP Wayne Stetski (Kootenay-Columbia, B.C.), who has about 20 active cases, and Mr. Weir, who has 35 open cases. Mr. Weir suggested the hotline both for his staff, but also for the sake of the ministerial staff too.

“I think it certainly puts the minister’s staff in a difficult [position], and that’s why with other federal programs there are dedicated hotlines for MPs’ offices and staff,” he said.

Mr. Weir added the minister’s office “sometimes seems like a black hole to our assistants,” but adds it isn’t their fault, as there are few staff members compared to the number of Phoenix calls. This is why it would be helpful to have the hotline connect directly to PSPC or the Public Service Pay Centre in Miramichi, N.B., which processes the majority of public servants’ pay stubs.

Liberal MP Karen McCrimmon (Kanata-Carleton, Ont.) said her office has about 50 Phoenix cases, with eight coming in since the new year. Being within the National Capital Region, Ms. McCrimmon’s riding is heavily populated with public servants.

Ministerial staff members are responsive if there is a significant underpayment or no payment, she said, but otherwise it is difficult to have cases resolved. One staff member was assigned to Phoenix specifically in September, and if there is a non-critical Phoenix issue, it can be difficult to get updates. For example, instead of having a ministerial staffer call the office back to let them know the case has been closed, it is up to them to follow up.

“It’s not onerous, but it’s something you need to stay on top of,” she said.

Ms. McCrimmon has complained several times to Ms. Qualtrough’s office and Liberal MP Steven MacKinnon (Gatineau, Que.), who is the parliamentary secretary to Ms. Qualtrough. Residents are concerned about how overpayments will affect their 2017 taxes, which she brought forward. On Jan. 15, PSPC released a statement saying it will not collect repayments from overpaid staff until at least July 2018.

Overall, Phoenix isn’t one of her constituents’ major concerns, she said, nor does Phoenix take up the majority of casework in her office.

“Most people with Phoenix kind of go, ‘I get it, but you know, it’s time,’” she said. “They’re patient, but you know, it is time. We need to get this fixed.”

Mr. MacKinnon, a Liberal MP who also represents an Ottawa-area riding with lots of public servants, was contacted to comment on this article, but his office told The Hill Times that he was away and therefore unavailable to comment.

Terry Beech (Burnaby North-Seymour, B.C.), another Liberal MP, said his office is getting Phoenix-related complaints, but is working with local union members. He was not available for an interview, but in an email called it a frustrating and unfortunate situation, also stating, “I have full confidence in Minister Qualtrough to resolve it.”
Mr. Stetski’s staff members have had some success resolving Phoenix cases, he said, but overall they take longer than others. He supports a hotline if it would get results, but said he’s hesitant to think it would.

Mr. Stetski, the NDP Parks Canada critic due to having four national parks in his riding, said many of the Parks Canada employees are having Phoenix problems. They are usually temporary workers, such as students, or seasonal workers who shift their job classification throughout the year, he said. Workers with job changes or varying hours are the ones most affected by the Phoenix pay problems.

“We are aware of significant concerns particularly around the hot springs in the west, where about 70 per cent of the employees are not being paid properly,” he said. “We were given a regional contact from the minister’s office to deal with Phoenix cases, but we’re having no more success in clearing those files than [before].”

“It’s a nightmare, is what it is…there is a fundamental problem with the Phoenix pay system.”

Vote called to unionize members of the RCMP
iPolitics
Kathryn May
January 18, 2018

An upcoming certification vote of the RCMP’s dispatch operators and wiretap monitors could make them the first sworn members of Canada’s national police force to unionize.

The Canadian Union of Public Employees (CUPE), which applied to represent the more than 1,000 employees, said the secret vote will be held between Jan. 22 and Feb. 4. The electronic voting will be conducted by the Federal Public Sector Labour Relations and Employment Board.

If successful, CUPE hopes to be at the bargaining table and negotiating the employees’ first contract by the spring, said Nathalie Stringer, assistant director of CUPE’s organizing and regional services.

CUPE’s organizing drive for these civilian employees has been touted as a dry run for the unionization of the force, set in motion by a Supreme Court of Canada decision that gave the RCMP the right to unionize.

It also marks a major shift in the way RCMP manages its human resources.

The telecommunications operators and wiretap or intercept monitors are among the nearly 4,000 civilian employees that the RCMP is moving to the public service, leaving the force with only two categories of employees: public servants and police.

Today, the force’s 29,190 employees include 3,900 civilians and 6,670 public servants. Under the RCMP Act, civilians are sworn members of the force, just like gun-carrying police officers — except they are not peace officers.
Most of the civilians will become members of unions already representing public servants doing the same or similar work.

The only exception are telecom operators and the intercept, or wiretap, monitors. These employees could not be directly pay-matched with public servants belonging to a union, so they became a target of a union drive.

If certified, CUPE will be the first union to tackle the transition of moving civilian employees into the public service.

The transfer has met much resistance among civilian members. It was originally set for April but indefinitely put on hold until the public service's error-ridden Phoenix pay system can be fixed.

The telecom operators and wiretap, or intercept, monitors are a mix of civilians and public servants and work alongside each other with different terms of conditions of employment.

They also work directly with front-line Mounties who consider them their lifeline when in the field.

Telecom operators work in the more than 20 operational communications centres across the country supporting the RCMP's federal operations, provincial and municipal policing contracts.

Some handle 9-1-1 calls from the public and dispatch police. They monitor security alarms, such as for consulates or people under the witness protection program, and are sent on tactical and emergency teams to man mobile communications centres.

The intercept analysts handle all court-ordered electronic surveillance — monitoring telephones, cellphones, cameras or internet usage of those under surveillance — and report information to investigators.

The civilian members have traditionally had their pay increases and benefits tied to those of their RCMP police colleagues, which are different and often more generous than those of the public service.

The big question hanging over all civilian members is whether they will keep those benefits. Stringer said CUPE intends to negotiate a contract that would protect those benefits, if not improve them.

That resolve was recently played out in a battle over raises. CUPE argued the group should receive the two-year deal that gave Mounties nearly a five-per-cent raise. That included a 1.25 per cent raise for both 2015 and 2016, plus a 2.3 per cent market adjustment.

Treasury Board, however, wanted to pay the group the same five-per-cent raise over four years that it gave most public servants. That included a 1.25 per cent a year raise, retroactive to 2014, and a $650 signing bonus on top of that. Most of those contracts expire in the summer.

CUPE filed an unfair labour practices complaint, alleging the government was changing the employees' terms and conditions of employment by not giving them the deal given to the Mounties.

CUPE said it would accept the 1.25 per cent raises for 2015 and 2016 but wages for 2017 and 2018 should be negotiated if CUPE is certified and not imposed.

Last week, the labour board agreed that employees should only receive raises for 2015 and 2016. It ruled negotiating wages is a central to collective bargaining and CUPE's hands should not be tied by accepting an agreement.

CUPE is still pursuing its unfair labour practices complaint. It is also still seeking the 2.3 per cent wage adjustment that the Mounties received.

The wage issue is just one of the many that will have to be sorted out in moving civilian employees into the public service.

Public servants and civilians also don't have the same terms and conditions of employment. Civilians work a 40-hour week and public servants work 37.5 hours a week.

They have different pension benefits, life insurance, rules for overtime, and civilians have never paid union dues, so they enjoy better vacation entitlements, death and disability benefits. They are entitled to funeral expenses and, like Mounties, they can claim relocation costs if they retire while on posting and want to move.

Another big issue is sick leave. Mounties have unlimited sick leave, while public servants get 15 days a year, which they can bank.

Brian Sauve, co-chair of the National Police Federation, which has applied to be the first union for RCMP officers, said he worries about the morale at the call centres, which he called the "first line of defence" for police officers.

On top of the uncertainty about their jobs and benefits, the operational centres face significant staff shortages. Reports show a national vacancy rate of 27 per cent and more than 50 per cent in some parts of the country.

Sauve said demoralized and overworked employees at these centres could pose health and safety risks for Mounties in the field who rely on them.

Liberal foot-dragging on prostitution law may lead to Charter challenge
For a self-proclaimed progressive government, it is beyond odd that the Liberals have not moved to repeal the hastily-drafted Conservative prostitution law
Ottawa Citizen
John Ivison
January 18, 2018
For a self-proclaimed progressive government, with a declared feminist prime minister, it is beyond odd that the Liberals have not moved to repeal the Conservative prostitution law, drafted hastily after the Supreme Court struck down the existing law in 2013.

Department of Justice sources admit such a law is unlikely to see the light of day before the next election. That has set the Liberals on a collision course with their erstwhile allies in the legal and sex worker communities.

Pivot Legal Society, set up in Vancouver to represent the marginalized and disenfranchised, says it will decide whether to launch a fresh constitutional challenge by the end of next month. The Canadian Alliance for Sex Workers Law Reform says it is “losing patience” with the Liberals.

“It’s not a political winner, but we have a Supreme Court decision that gave sex workers rights and they need to be upheld,” said Jenn Clamen, a co-ordinator at the Alliance.

The problem is that the Conservative prostitution law replicated the criminalized environment the Supreme Court decision blew up.

In the Bedford decision, the court ruled that the existing law infringed on the rights of sex workers under the section of the Charter dealing with security of the person. It struck down provisions of the Criminal Code that made it illegal to communicate for the purposes of prostitution; to run a brothel, and to live off the avails of prostitution.

The court gave the Harper government 12 months to come up with a new law, and it duly rebuilt some of the old laws and introduced a new component — criminalizing the buying of sex.

The criminal prosecution focus shifted – stats suggest prostitution incidents fell from an average of 2,800 a year prior to the new law to just 219 in 2016, while “commodification of sexual activity” incidents (prosecution of pimps and johns) rose to 708.

But crucially, the new law continued to criminalize the industry and drive its workers underground.

“We won, but then victory was immediately taken away,” said Kerry Porth, a former sex worker and a board member of Pivot, which intervened in support of the plaintiffs in the Supreme Court case.

Many advocates of reform placed their hopes in the Liberals to repeal legislation that constitutional experts like Alan Young, an Osgoode Hall law professor who led the charge against the old law, deem “misguided” and unconstitutional.

After all, the Trudeau government has pushed its feminist credentials — this week, it announced $20 million will go to gender-based violence services.

During the 2015 election, Justin Trudeau said the Conservative law has made things worse, “which is why we voted against it.” Yet after one round-table in Vancouver last May, consultations with stakeholders stopped.

The official line is that the Minister of Justice, Jody Wilson-Raybould, is committed to reviewing the Conservative law and responding to all issues raised by the Supreme Court.

But the minister has a full plate — including responding to the Jordan decision over unreasonable court delays. The repeal of the Conservative prostitution law is not in the mandate letter she received from the prime minister and officials are open that legislation will not be forthcoming "in the short term."

The foot-dragging has led Pivot to look at another Charter challenge.

Porth says there are problems – including finding plaintiffs. "The Bedford case took a real toll on the plaintiffs — it took seven years to get to the Supreme Court," she said.

But she said things are not getting better for sex workers and that rates of violence remain the same or have worsened. Clamen said her organization documented the murder of 10 sex workers in 2017.

The simple truth behind the official inactivity is that there are few votes to be won on the issue.

"There's no question people don't like it — it provokes a strong emotional response," said Young. "It's easy to put your head in the sand."

He said he would challenge the law if he had the will. "There are lots of reasons – it was done precipitously; it's not being enforced, and it doesn't commit to equality," he said. If the Liberals are not going to follow through on their own commitment, it would be good if the status quo were challenged.

As Young pointed out, the current law doesn't work and has never fulfilled the Supreme Court's ruling on security of persons. It compounded that oversight by targeting men with its commodification offences.

There's a flimsy public interest excuse in the state interjecting itself into the consensual affairs of grown-ups. It wastes police and court time and the law should be struck down in favour of decriminalization.

Given the controversial nature of the subject matter, a solution may yet emerge from an unlikely source. Last week at a Liberal caucus gathering in London, Ont., MPs voted for a resolution on decriminalization that will be considered at the party's policy convention in Halifax in April. The minister should listen to her colleagues and draw up legislation post haste.

Former commanders urging authorities to charge or exonerate Vice-Admiral Norman
The Globe and Mail
Bob Fife and Steven Chase
January 18, 2018
Two former Royal Canadian Navy commanders are calling on federal authorities to either charge or exonerate Vice-Admiral Mark Norman, who has been under a year-long criminal investigation for allegedly leaking cabinet documents.

Retired vice-admirals Gary Garnett and Ronald Buck say Vice-Adm. Norman has been subjected to a "travesty of justice" and they are urging the RCMP and Public Prosecution Service of Canada to wrap up the investigation.

They suggested in a letter to The Globe and Mail that the Liberal government is determined to charge their colleague, despite a lack of evidence.

"The RCMP and prosecutors continue to investigate Admiral Norman, likely, because the Government does not like the answer – he did the right thing and broke no laws," the two retired vice-admirals wrote in a letter to The Globe on Thursday.

Vice-Adm. Norman was removed from his duties as vice-chief of the defence staff in mid-January, 2017, after his boss, General Jonathan Vance, learned his second-in-command was under RCMP investigation.

Mr. Garnett recalled that Prime Minister Justin Trudeau said last April that he supported this decision and that the Liberal leader also predicted the case would end up in the courts.

"Does that not indicate there is a bit of a commitment here," Mr. Garnett asked in an interview. "So why are they pursuing this case?"

The Prime Minister's Office said it does not get involved in police investigations.

RCMP alleged in court documents made public last year that Vice-Adm. Norman leaked cabinet secrets to an executive with a Quebec-based shipyard and advised the businessman how to use the media to press the Trudeau government to approve a $667-million naval supply-ship contract. The allegations against the naval officer in RCMP affidavits have not been tested in court.

Mr. Buck said he doesn't understand why the investigation has taken so long when "there are probably just a little more than a handful of players" for the RCMP to interview as part of its criminal investigation.
"The investigation would seem to be taking an inordinate amount of time to come to a resolution," Mr. Buck said in an interview. "Meanwhile, the individual and his family are hanging out there in the breeze."

Defence analyst David Perry said foreign allies of Canada are "astounded that someone so senior in the military establishment could be left in limbo for so long."

"We're talking about the second-most senior serving military officer. I find it incredible it can go on this long without any kind of resolution," said Mr. Perry, with the Canadian Global Affairs Institute.

An RCMP spokeswoman said on Thursday night the investigation into Vice-Adm. Norman and the ship contract remains ongoing. The RCMP has a history of lengthy investigations that result in no charges. The Mounties ended a three-year probe of Senator Pamela Wallin's expenses in May, 2016, without laying charges.

In the case of Vice-Adm. Norman, court documents filed by the Mounties have included e-mails he sent to Spencer Fraser, chief executive of Federal Fleet Services, the company in charge of refitting a cargo ship to serve as a naval supply vessel at the Chantier Davie Canada Inc. shipyard in Lévis, Que.

Vice-Adm. Norman was the commander of the navy when the former Harper government awarded the leasing contract, without competition, to Davie in 2015 in a move that was criticized as vote pandering in Quebec.

Soon after taking power in November, 2015, the Trudeau Liberals put the supply-ship project on hold after receiving a letter of complaint from Irving Shipbuilding, which already had a multibillion-dollar contract to build a fleet of warships for the navy.

Vice-Adm. Norman sought to press the Liberals to stick with the Davie contract.

Mr. Garnet and Mr. Buck said there is no evidence in court documents to show their friend leaked cabinet documents. All he did, they argue, was support the ship contract previously agreed to by the former Conservative government in what he believed was in the best interest of the navy.

"In reality, his only offence appears to be having been caught in the crossfire during the transition of one government to the next," they wrote.

The heavily redacted court affidavits provide little idea of what the RCMP allege are Vice-Adm. Norman's motives.

However, Vice-Adm. Norman said publicly in 2016 that delays in shipbuilding programs had hurt the navy. "It's important to keep in mind that [the delays were] completely avoidable," he said.

In 2015, Irving Shipbuilding chief executive James Irving had tried to persuade the Liberals to kill the sole-source contract with Davie, saying his firm had offered a lower-cost option. Another shipbuilder, Vancouver-based Seaspan, also called for an open competition and said it could convert a civilian cargo ship into a military supply ship at a significantly lower cost.

E-mail correspondence with Mr. Fraser, obtained by the RCMP, suggests Vice-Adm. Norman was critical of the four top executives at Irving Shipbuilding, a major player in Canada. In one e-mail, the admiral referred to them as the "four horsemen of the apocalypse," a derogatory reference to malignant forces in the Bible: war, pestilence, famine and death. After the e-mail was made public, Irving said the characterization of its executives offended the company.

"Ethically, some of his e-mail wording raises eyebrows," Mr. Garnett acknowledged, but said it was not criminal.

Marie Heinen, lawyer for Vice-Adm. Norman, has previously said her client is a victim of internecine warfare within the Department of National Defence and was "caught in the bureaucratic crossfire." In August, Ms. Henein said in a statement to The Globe that the RCMP should close its investigation.

Performance Pay For Civil Servants In Ottawa Rises Under Current Liberal Government
BayStreet.ca
Joel Baglole
January 18, 2018

The amount of bonuses and other forms of performance pay for top federal civil servants increased by more than double the rate of inflation during Prime Minister Justin Trudeau's first year in office, according to a report by CBC News.

Spending on performance pay for top executives employed by the federal government rose to $75 million during the fiscal year 2015-16 (the first year that the Liberal Government was in power) from $72.6 million the previous year. That represents a 3.2% year-over-year increase in spending for 2015-16, and more than twice the 1.25% pay increases the federal government has negotiated with many of the public sector unions that represent rank-and-file civil servants.

Spending on performance pay for Deputy Ministers in the federal government increased 3.4% to $4.7 million in fiscal 2015-16. The head of Canada's largest public service union questioned why spending on performance pay for senior government officials increased by more than the salary increases for lower level public service employees.

"We hope the government isn't handing out an increase to their executive that is out of step with the wage increase it was willing to give our hard-working members. It's the responsibility of the government to explain this increase in executive performance pay spending," said Robyn Benson, National President of the Public Service Alliance of Canada (PSAC).

Like many corporations, the federal government offers a system of performance pay designed to attract the best and the brightest into the public service. People who perform to the level expected get "at-risk" pay, a term that reflects the fact that executives and deputy ministers risk not receiving it if their performance is not satisfactory. Bonuses on top of the maximum at-risk pay go to executives who perform above and beyond expectations.

When it comes to doling out performance pay, executives and Deputy Ministers are evaluated on how successful they have been in running their departments and implementing objectives set by the government. Basic salary ranges for those in the federal government's “EX,” or executive, category in 2015 ranged between $106,900 and $202,500. Deputy Ministers' regular paycheques that year ran from $192,600 to as much as $326,500.

But for those who are judged to be good at their jobs, their base salary was just the start of what senior government executives took home in 2015-16. The biggest increases in performance pay occurred at Immigration, Refugees and Citizenship Canada (IRCC) and the Canadian Human Rights Commission

(CHRC). The number of executives at the latter rose to 15 from 11, and overall spending on executive performance pay was up 22% in that department. Performance pay at the Public Prosecution Service of Canada was up 17% overall, and the Department of National Defence saw performance pay rise by 14%.

For those who get performance pay, it can translate into thousands of dollars a year. The Transportation Safety Board had the highest average at-risk pay in fiscal 2015-16 — $18,008 — followed by the Finance Department, where executives got an average of $16,530. Executives in the Privy Council Office, which co-ordinates the government's actions and supports the Prime Minister's Office, got an average of $15,866 in at-risk pay while those in the Department of Western Economic Diversification got $15, 440 and Infrastructure Canada executives received $15,399 in bonuses.

N.S. hires lawyers for sexual assault cases, aims to boost convictions
National Post
Keith Doucette
The Canadian Press
January 18, 2018

HALIFAX — Nova Scotia has hired two new sexual-assault prosecutors, in what the justice minister says is in part an effort to increase the number of convictions.

“What we want to do is be more responsive in the criminal justice system to victims of sexual assault and sexual assault violence,” Justice Minister Mark Furey said Thursday.

Furey said Crown attorneys Constance MacIsaac and Danielle Fostey will work with other prosecutors and with law enforcement with the aim of improving outcomes of cases that make it to court.

He said they would look at the challenges that may have led to the dismissals of previous cases, “and in circumstances going forward ensure that those areas are addressed so that we are seeing a higher conviction rate.”

Denise Smith, deputy director of the Public Prosecution Service, said the pair would also develop sexual assault resources for Crown attorneys and measures for monitoring their performance in prosecuting sexual violence cases.

Smith said they would prosecute cases themselves or with other Crown attorneys, and also advise other lawyers preparing sexual assault cases.

Furey said it’s an important initiative given sexual violence is “rampant” in society.

“Government has to be seen to take these leadership roles … to address and ensure that these matters are getting to the courts, that they are presented in the most appropriate manner, and that we are securing convictions in these types of circumstances,” he said.

MacIsaac graduated from the Schulich School of Law at Dalhousie in 2010 and has a degree in gender and women's studies.

Fostey graduated from Queen's University Law School in 2013 and has focused on prosecuting matters involving sexual violence and vulnerable victims.

Furey said the appointments align with the province's sexual assault strategy announced in 2015.

He said while there is more work to do, the province has already taken "progressive" steps including last fall's announcement of a program offering free legal advice for victims of sexual assault.

As well, he said the province is in the process of completing audits on the handling of sexual assault cases by municipal police forces and the RCMP.

Furey said a second provincial domestic violence court would also be opened next month in the Halifax area. A pilot project in Sydney, N.S., has been made permanent, he said.

"There was a critical element for me that we be able to recreate this and establish it based on the successes of the Sydney pilot project," said Furey.

Procès de Lac-Mégantic : le jury s'adresse au juge
Radio-Canada
19 janvier 2018

Les jurés souhaitent avoir des éclaircissements concernant certaines instructions reçues.

« La tragédie de Lac-Mégantic est un événement unique. Parmi les nombreuses instructions reçues, pour orienter nos délibérations de ce triple procès, nous aimerions avoir plus de précisions à l'égard d'une d'elles. Soit celle nous demandant de juger des écarts, entre les actions, gestes ou décisions qui ont été pris par les trois accusés versus les actions, gestes ou décisions que d'autres employés occupant les mêmes fonctions auraient pris s'ils avaient été placés dans les mêmes circonstances le soir des événements. Donc, si possible, nous aimerions quelques précisions additionnelles pour nous guider dans l'interprétation et l'application de cette directive. »

Les huit hommes et quatre femmes n'ont pas réussi, à ce jour, à s'entendre pour rendre des verdicts unanimes pour Jean Demaître, Thomas Harding et Richard Labrie. Les trois ex-employés de la Montreal, Maine & Atlantic (MMA) sont accusés de négligence criminelle ayant causé la mort des 47 victimes de la tragédie de Lac-Mégantic.

C'est le premier signe de vie des jurés depuis mardi où ils ont avisé le juge qu'ils se trouvaient dans une impasse et n'arrivaient pas à s'entendre. Mercredi et jeudi, le juge Gaétan Dumas n'avait reçu aucune enveloppe de leur part.

Lundi, le jury a adressé des questions au juge afin d'obtenir des éclaircissements sur des points de droit et qu'il apporte certaines précisions sur des concepts centraux de la définition de la négligence criminelle, comme le doute raisonnable ou la personne raisonnable.

Les quatre femmes et huit hommes membres du jury doivent déterminer si Jean Demaître, Thomas Harding et Richard Labrie ont par négligence criminelle causé la mort des 47 victimes de la tragédie de Lac-Mégantic.

Un verdict de conduite dangereuse de matériel ferroviaire causant la mort de 47 personnes ou de conduite dangereuse de matériel ferroviaire est aussi possible dans le cas du mécanicien de locomotive Thomas Harding.

Procès Lac-Mégantic : les trois accusés acquittés
Radio-Canada
19 janvier 2018

Les trois ex-employés de la Montreal Maine & Atlantic Railway (MMA), Thomas Harding, Richard Labrie et Jean Demaître, ont été reconnus non-coupables de négligence criminelle causant la mort de 47 personnes lors de la tragédie ferroviaire de Lac-Mégantic.

Les membres du jury devaient en arriver à trois verdicts distincts, comme s'il s'agissait de trois procès séparés.

Pour déclarer un accusé coupable, le jury devait conclure qu'il a omis de faire quelque chose qu'il était de son devoir d'accomplir et, ce faisant, qu'il a montré une insouciance déréglée ou téméraire à l'égard de la vie ou de la sécurité d'autrui, et que ce comportement a causé la mort des 47 victimes de la tragédie.
Ils étaient passibles d'une peine maximale d'emprisonnement à vie.

Au total, la Couronne a fait entendre 31 témoins pendant les 41 jours qu'a duré le procès. Thomas Harding, Richard Labrie et Jean Demaître n'ont pas témoigné lors du procès.
Ce verdict arrive après de longues années de procédures judiciaires. Les trois accusés avaient été arrêtés en mai 2014 avant d'être remis en liberté moyennant plusieurs conditions.

La responsabilité de la compagnie MMA dans les événements doit être déterminée dans un procès séparé.

L'avocat qui a fait libérer l'accusé de terrorisme
Droit Inc
Delphine Jung
19 janvier 2018

« Même dans mes rêves les plus fous je n'avais pas imaginé un tel verdict », dit celui qui a fait acquitter, contre toute attente, le cégépien accusé de terrorisme.

Il cite Pierre Desproges et Descartes, adore Georges Brassens et aurait aimé être philosophe… Avocat anarchiste, il est sorti vainqueur de ce qu'il qualifie déjà comme l'un des procès les plus durs de sa carrière…

Quelques semaines après le verdict rendu dans le procès de Sabrine Djermane et El Mahdi Jamali, c'est un dimanche après-midi qu'on rencontre Me Tiago Murias, Barreau 2012 et diplômé de l'UQÀM.

Le couple était accusé d'avoir tenté de quitter le Canada en vue de commettre un acte terroriste à l'étranger, avoir eu en leur possession une substance explosive dans un dessein dangereux, et avoir commis un acte au profit ou sous la direction d'un groupe terroriste.

L'avocat de 28 ans originaire de Porto, au Portugal, est passé sous le feu des projecteurs alors qu'il représentait El Mahdi Jamali avec son confrère, Me Benoît Demchuck. Il travaille depuis 2014 au cabinet Ameur Murias avocat, sur Saint-Laurent.

Sabrine Djermane était défendue par Me Charles Benmouyal. « Je me suis bien entendu avec lui… il aime Georges Brassens aussi, donc... », lance Me Murias entre deux gorgées de thé que nous prenons dans une pâtisserie du Plateau.

Faire preuve d'inventivité juridique

Avec cinq ans de pratique derrière la cravate, Tiago Murias s'est engagé dans un cas exceptionnel. Il a dû être « imaginatif » pour défendre El Mahdi Jamali. « Il fallait être capable de voir nos forces et nos faiblesses et d'essayer de tout ramener vers nos forces. Parmi elles, l'improvisation et ne pas se prendre au sérieux. J'aime aussi aller là où l'on pense qu'il ne faut pas aller. Il fallait faire preuve d'une certaine forme d'inventivité juridique », explique Me Murias.

À l'heure où le verdict devait être rendu, « on savait qu'on avait fait ce qui était humainement possible de faire ».
Pour lui, ce n'était pas les faits bruts qui étaient complexes, mais tout le reste: le contexte, la question de l'extraction des documents informatiques, celle du terrorisme islamiste… « Ç'a été l'un de mes dossiers les plus difficiles. »

Du 5 septembre au 19 décembre, il fallait mener à bien un procès hautement médiatisé. « On a ressenti du stress, on s'est beaucoup remis en question. J'avais la chance d'avoir un partenaire qui était très optimiste. Plus que moi. À la fin, on ressentait surtout la fatigue », raconte-t-il.

Pas étonnant qu'une fois le verdict rendu, Me Murias a dormi 16 heures…

Ce sommeil réparateur avait le goût de la victoire. Un seul chef d'accusation, revu à la baisse, a été retenu contre El Mahdi Jamali : possession d'une substance explosive sans excuse légitime.

Sabrine Djermane a été acquittée. On apprenait cependant cette semaine que la Couronne a décidé de porter en appel le verdict sur l'un des chefs.

Ils doivent cependant tous les deux respecter certaines conditions de remise en liberté.

« Même dans mes rêves les plus fous je n'avais pas imaginé un tel verdict. Tout au long du procès, on a essayé de s'adapter, de soulever le doute, d'amener le jury vers la trame narrative qu'on pensait être la bonne », raconte le plaideur.

À son annonce, Me Murias a dû contenir son émotion, avant de retrouver son client dans un endroit plus intimiste. Les premiers mots d'El Mahdi : « je crois qu'il a dit wouah ! », se souvient l'avocat. Lui est ensuite allé prendre une bière avec son confrère.

Si certains ont évoqué dans les médias un éventuel suivi des jeunes, notamment par le centre de déradicalisation de Montréal, Me Murias a plutôt conseillé à son client de retourner à l'école et ajoute qu'il a de toute façon en horreur le terme « radicalisation », qui pour lui est « une insulte l'intelligence ».

Aujourd'hui, ses nouveaux dossiers concernent deux meurtres impliquant encore une fois des jeunes… « J'aime bien m'occuper d'eux… J'ai fait mon stage là-dedans chez Benamor avocats, ils sont cool, ils me font rire et sont attachants. Il y a moyen de faire quelque chose avec eux pour les réhabiliter, pour leur permettre d'éviter la récidive », explique-t-il.

Le droit par hasard

Pourtant avant d'être avocat, il voulait devenir professeur de philo. Il explique qu'au lieu de lire la charia dans le cadre de sa défense d'El Mahdi Jamali, il aurait préféré se plonger dans les écrits d'Aristote.

Finalement, il dit avoir choisi le droit par hasard. « Parce je me suis dit que ça peut être cool d'être avocat. Encore aujourd'hui, je ne sais pas trop pourquoi j'ai choisi de faire du droit à l'époque », confie-t-il.
« Quand on y pense, on ne peut pas dire qu'on fait un travail extrêmement utile. Les gens qui disent qu'ils s'en vont en droit par altruisme, c'est de la bullshit. Je n'y crois pas une seule seconde. Par contre, quand j'obtiens un acquittement, là ça me rassure par rapport à mon rôle dans l'appareil répressif de l'État », explique le plaideur.

Il défend aujourd'hui des citoyens dans le but d'obtenir la seule chose qui lui importe dans cette profession: l'acquittement ou l'arrêt des procédures. Ni le défi intellectuel, ni pour le titre de maître et encore moins la gloire.

Personne n'est coupable

Pour appuyer son propos, Tiago Murias renvoie à une scène du film “L’Abolition”. On y voit Gérard Depardieu dans son rôle qui dit: « la défense est une totalité. Je veux dire par là que tu dois t’engager totalement. D’évidence pour un avocat il ne doit y en avoir qu’une, c’est que personne n’est coupable ».

L’avocat ajoute: «Je ne sais jamais vraiment si X ou Y a tué W ou Z. Et même si je le savais, la défense ne s'arrête pas aux faits bruts. L'intention, les moyens de défense, la Charte, continuent de s'appliquer. Et puis s'ils sont coupables, alors là oui, se pose la question de la peine ».

L’avocat est libéral. Dans le sens « réel » du terme. « Libertaire en fait, quasi anarchiste », précise-t-il en ajoutant qu’il y a une tradition communiste dans la famille, même si lui « ne l’est pas du tout ».

Concrètement, il pense que les gens pourraient faire ce qu’ils veulent avec leur corps tant que cela ne nuit pas à autrui. « L’État a criminalisé beaucoup trop de choses comme l’usage de stupéfiants, l’inconduite contre les bonnes mœurs… Tout ce qui est du domaine de l’éthique ne devrait pas être dans le Code criminel », précise-t-il.

Linking Youth Funding to Abortion Rights Spawns Backlash in Canada and Beyond
New York Times
Dan Bilefskyjan
January 19, 2018

MONTREAL — A Canadian government requirement that groups seeking federal grants for student jobs must support abortion rights is inflaming a cultural battle and angering religious groups, opposition politicians and even American conservatives.

Under new guidelines announced in December, groups applying for a federal grant program, which provides roughly $113 million in annual funding for about 70,000 student jobs, must check a box on an electronic form acknowledging that they respect “individual human rights in Canada.”

Those rights encompass women’s reproductive rights, including “the right to access safe and legal abortions.”

In what some critics are calling an “ideological purity test,” the application guidelines, for the Canada Summer Jobs program, have not only offended leading conservatives in Canada, but have also led to anger spilling across the border to religious groups and right-wing ideologues in the United States.

Many critics of the policy have railed against Prime Minister Justin Trudeau of Canada, while even advocates of abortion rights have expressed concerns that the guidelines had sown confusion.

The guidelines partly reflect efforts by the Trudeau government to fashion Canada as a liberal progressive model on issues including immigration and health care policy. Mr. Trudeau has been an outspoken proponent of women and their reproductive rights.

The Liberal government's stance is a marked contrast to that of the Trump administration, which last year cut off federal funding to Planned Parenthood and other groups that perform abortions, a move that conservatives applauded. In the same year, the Trudeau government pledged to spend $650 million on sexual and reproductive health and rights.

On Friday, the Toronto Right to Life Association said it had applied to the Calgary offices of the Canadian Federal Court for an order to at least temporarily invalidate the job-application guidelines.

The group said Friday that it had sued the Ministry of Employment in the same court earlier this month, asserting that the guidelines violated the Canadian Charter of Rights and Freedoms, which, the group said, guarantees freedom of expression, conscience and religion.

Blaise Alleyne, the organization's president, said by phone from Toronto that he was shocked that the Canadian government had imposed its views on Canadians and penalized groups for upholding their religious beliefs.

He warned that the policy could lead to staff shortages at soup kitchens, shelters, summer camps and small businesses that had received funding from the program, while denying young people work experience.

"Trudeau has politicized a program that up to now was just supposed to be about summer jobs," Mr. Alleyne said. "In a free and democratic society, you should be able to disagree with the government and not be disqualified because you don't share Justin Trudeau's beliefs."

The policy also was rebuked by a former Trump White House staff member, Sebastian Gorka, a far-right conservative who has described Mr. Trudeau as "reprehensible" on Twitter.

Earlier this week, on "Fox and Friends," Rachel Campos-Duffy said the policy appeared calculated to "silence pro-lifers" in Canada.

"This is a sign of intolerance," she said. "If you have a pro-life view you're not welcome to share it or else you're kicked out of this program."

Groups that support abortion rights suggested that conservatives had twisted the intent of the policy, but acknowledged that the wording was unclear.

On Friday, Joyce Arthur, executive director of the Abortion Rights Coalition of Canada, said the policy had been meant to ensure that the government would not be funding groups that undermine human rights. But she said the lack of clarity had allowed the policy to be hijacked by conservative groups pressing their own ideological agendas.

"It was a no-brainer requirement," she said by phone from Vancouver. "But the wording needs clarification so the issue doesn't get misunderstood. Unfortunately, it has become a big distraction."

The Conservative opposition leader Andrew Scheer accused Mr. Trudeau this month of using the requirement to impose his own views on Canadians. Speaking at a meeting hosted by the Mississauga Board of Trade, he said community groups were expressing alarm that they would be unable to employ youths and provide services because of their beliefs. Among the groups affected was the Southern Alberta Bible Camp, which told CBC News, the Canadian broadcaster, that it would lose about $40,000 for six summer counselor positions.

Mr. Trudeau, who has sought to balance his own Roman Catholic religious views with his commitment to abortion rights, has called the reaction to the policy a “kerfuffle.”

Both he and the employment minister, Patty Hajdu, have stressed that the policy was not intended to target religious groups.

Speaking at a town-hall meeting in Hamilton, Ontario, last week, Mr. Trudeau affirmed that Canadians were entitled to their beliefs. But he added: “When those beliefs lead to actions determined to restrict a woman’s right to control her own body, that’s where I, and I think we, draw the line as a country. And that’s where we stand on that.”

In 1988, Canada’s Supreme Court struck down the country’s then restrictive abortion law, which allowed only abortions approved by hospital committees. It said the law was unconstitutional and interfered with a woman’s right to control her own body.

The decision came after an abortion clinic operator, Dr. Henry Morgentaler, had asked the Supreme Court to overturn an Ontario appeals court’s ruling that he undergo a trial on charges of conspiring to perform illegal abortions.

David Millard Haskell, an associate professor of religion and culture at Wilfrid Laurier University in Waterloo, Ontario, said the Supreme Court had left it for the federal government to introduce new legislation on the issue but successive governments on both sides of the ideological spectrum had avoided it, fearing they would polarize the country.

Because no replacement law was introduced, legal experts and human rights advocates said, Canada has no legal restriction against abortion, which, they said, was at the discretion of patients and their doctors. Since the Morgentaler decision, abortions have been publicly funded under the Canada Health Act, for both hospitals and clinics.

Government of Canada announces judicial appointment in the province of British Columbia
Newswire
January 19, 2018

The Honourable Jody Wilson-Raybould, Minister of Justice and Attorney General of Canada, today announced the following appointment under the new judicial application process announced on October 20, 2016. The new process emphasizes transparency, merit, and diversity, and will continue to ensure the appointment of jurists who meet the highest standards of excellence and integrity.

Jasvinder S. (Bill) Basran, Regional Director General and Senior General Counsel with Justice Canada, is appointed a judge of the Supreme Court of British Columbia in Vancouver. He replaces Madam Justice B. Fisher, who was appointed to the Court of Appeal of British Columbia on September 14, 2017.

Biography

Justice Jasvinder S. (Bill) Basranholds degrees in commerce (1989) and law (1994) from the University of Saskatchewan. After articling with Campney & Murphy in Vancouver, he was admitted to the British Columbia bar in 1995. He then joined the Department of Justice Canada in Vancouver, where he practised primarily in the area of tax litigation and appeared before the Tax Court of Canada, the Federal Court, and the Federal Court of Appeal.

In 2004, Justice Basran became General Counsel and Director of the B.C. Tax Law Section of the Department of Justice. In this capacity, he was responsible for federal civil tax litigation in British Columbia and managed a group of over 60 lawyers and staff. He was also a member of the National Tax Board of Directors.

In 2007, Justice Basran was appointed Regional Director General of the B.C. Regional Office of the Department of Justice. He was responsible for more than 400 employees who provided litigation and advisory services. From 2007 to 2016, he was a member of the Department of Justice Executive Committee, and he was a member of the National Litigation Sector's Board of Directors from 2016 until his appointment.

Justice Basran helped launch the Department's National Mentoring Program and was the Department's Champion for Visible Minorities for almost a decade. He was also instrumental in creating and developing the first Pro Bono Program at the Department of Justice, which currently consists of nine legal clinics in eight cities across Canada. In 2012, he received the Queen Elizabeth II Diamond Jubilee Medal for his work on this initiative. Since 2003, Justice Basran has volunteered with various amateur sports organizations as a coach and board member, and he has been a Director of the Access Pro Bono Society of British Columbia since 2014.
Justice Basran travels extensively, plays golf badly, and enjoys time with close family and friends.
Excerpts from Justice Basran's judicial application will be available shortly.

Une nouvelle juge à la Cour supérieure
Il s'agit d'une spécialiste du droit familial, qui pratiquait au sein d'un cabinet d'une centaine d'avocats
Droit Inc
Martine Turenne
22 janvier 2018

La ministre de la Justice et procureur général du Canada, Jody Wilson-Raybould, annonce la nomination de Pascale Nolin comme nouvelle juge de la Cour supérieure du Québec pour le district de Montréal. Elle remplace le juge L. Lacoursière, qui a choisi de devenir juge surnuméraire à compter du 12 décembre 2017.

Pascale Nolin était jusqu'à sa nomination associée au sein du cabinet Robinson Sheppard Shapiro.

Détentrice d'un baccalauréat en droit de l'Université de Montréal, la nouvelle juge a été reçue au Barreau du Québec en 1990. Au sein du cabinet Robinson Sheppard Shapiro, elle pratiquait le droit de la famille et le droit de la personne depuis 1996. Avant de se joindre à RSS, la juge Nolin a pratiqué pendant six ans au sein du cabinet Byers Casgrain (aujourd'hui Dentons Canada), où elle se spécialisait en litige civil et commercial.

La juge Nolin a fréquemment plaidé devant la Cour supérieure du Québec et la Cour d'appel du Québec. Elle a choisi la pratique du droit familial « en raison de la complexité de ses enjeux, de l'importance qu'y occupent les modes alternatifs de résolution des conflits et, surtout, de son volet profondément humain », peut-on lire dans le communiqué du ministère fédérale de la Justice. Elle est la présidente sortante du Comité de liaison avec la Cour supérieure en matière familiale du Barreau de Montréal.

La juge Nolin a donné de nombreuses conférences en matière de droit familial, notamment à l'Association du Barreau canadien, au Barreau du Québec et à l'Institut national de la magistrature. Elle a également agi à titre d'administratrice et de trésorière de la Fondation Charles-Coderre, organisme dont la mission est l'avancement du droit social et familial au Québec.