SCC decision helps those who want public interest standing at tribunals

Ruling reflects 'growing trend' of expanding who's included in proceedings

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Gabrielle Giroday

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A decision by the Supreme Court of Canada reflects a trend toward expanding the circumstances where tribunals will grant public interest standing to people who don't have a direct private interest in the matter, according to a Toronto lawyer.

The SCC ruling in Delta Air Lines Inc. v. Lukács is noteworthy to lawyers who practise administrative law because the decision could be used to persuade tribunals to have a more flexible approach in who is granted standing in their proceedings.

"It's going to be a benefit for those who want to have more access on a public interest basis to tribunal hearings," says Christopher Wirth, partner at Keel Cottrelle LLP.

Wirth says the decision reflects a "growing trend" toward expanding the circumstances when someone can obtain public interest standing before a tribunal.

In the case, a Halifax mathematician, Gábor Lukács, became engaged in a legal battle with Delta Airlines over policies related to obese passengers.

After Lukács — who is not obese — filed a complaint with the Canadian Transportation Agency alleging the airlines' policies were discriminatory and violated Air Transportation Regulations, the complaint was dismissed, and Lukács could not obtain private or public interest standing.

However, the Federal Court of Appeal ruled that "a strict application of the law of standing as applied in courts was inconsistent with the Agency's enabling legislation."

The SCC also stated the agency "did not reasonably exercise its discretion to dismiss [Lukács's] complaint" and did not use a "flexible approach" in determining who could obtain public interest standing.

"[T]he Agency presumed public interest standing is available and then applied a test that can never be met. Any valid complaint against an air carrier would impugn the terms and conditions established by a private company. Such a complaint can never, by its very nature, be a challenge to the constitutionality of legislation or the illegality of administrative action," said the ruling.

The SCC also concluded that "the total denial of public interest standing is inconsistent with a reasonable interpretation of the Agency's legislative scheme."

“Applying the tests for private and public interest standing in the way the Agency did would preclude any public interest group or representative group from ever having standing before the Agency, regardless of the content of its complaint,” said the ruling.

“In effect, only a person who is herself targeted by the impugned policy could bring a complaint. This is contrary to the scheme of the Act.”

For these two reasons, the SCC sent the matter back to the agency to reconsider whether to grant Lukács public standing. However, Wirth says, “they sent it back telling the agency how to properly approach the analysis in making that decision.

“A fair underlying reading of the decision would suggest that the court is providing the agency with guidance that it needs to be more open and be prepared to consider granting public interest to someone in these circumstances,” he says.

Wirth says the decision will provide an even stronger basis for those seeking to expand the circumstances when a person or group can obtain public interest standing.

“What the court has said here is agencies, which are public bodies, shouldn’t strictly take . . . the test that the civil courts have adopted in determining whether or not to grant standing in civil proceedings and, instead, must take a flexible and discretionary approach in determining whether in the particular circumstances it’s appropriate to grant public interest standing to someone seeking it when they don’t have a direct private interest in the matter,” he says.

Aaron Dantowitz, partner at Stockwoods LLP, says the ruling gives important guidance on the issue of achieving standing before administrative decision-makers.

“Mainly, [it says] that the decision-maker has to make sure that the way that it determines standing takes into account the legislative scheme that it operates in, and it’s not necessarily going to be appropriate to use the same tests for standing that have been developed by courts for court proceedings,” says Dantowitz.

Leading in Litigation
Five women litigators talk about the challenges and rewards of being a woman litigator.
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Jennifer Brown
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In November we brought together a cross-section of leading women in litigation, from private practice and in-house, to talk about how they came into the profession they love and the challenges and changes they have observed as they have risen to the positions they hold today. They discussed the importance of mentors and how they are trying to pay it forward. They also spoke candidly about the myths around women in litigation that linger in 2018.

INHOUSE: How did you find your way to being the kind of litigation lawyer you are now?
MELISSA MACKEWN: I thought I was going to be a human rights lawyer all through law school. In fact, the reason I ended up going to Faskens is because I had said I was interested in a secondment to the Human Rights Commission where I went for three months. I did one human rights case in Ontario and decided that it wasn't what I thought it would be and decided to do commercial work. On the securities side, it happened by accident. I thought it would be quite boring, I had never opened the Securities Act — I thought securities law sounded dead dull, but wanted to get on my feet more and not be in a boardroom looking at documents for 12 hours a day.

I decided to go to the OSC [Ontario Securities Commission] and I found I loved the securities work. It's the human element — you are dealing with people's livelihoods and reputations. Even though there is a commercial context to it, there is also someone's reputation at stake.

ANDREA LAING: I think in an odd way I got into class actions because of being a woman and my family situation. When I started, there really weren't securities class actions because we didn't have part 23.1 [of Ontario's Securities Act], which was the legislation that was brought in in Ontario in 2005 to facilitate securities class actions. I was on maternity leave with my daughter in 2005 and came back and thought "there's this new legislation . . ." and I started writing about it and letting everyone in my firm know I knew about it and the cases started coming and they had to use me. That's how I got up to speed in a new area and I've done a lot of work in that [practice area]. I think if I hadn't had time to think about it and ramp back up [after maternity leave], I probably wouldn't have been able to make the investment to get the expertise.

LINDA PLUMPTON: I think all of our stories are about serendipity. When I think about how I got into competition law, I had two mentors earlier in my career — John Laskin and Kent Thomson — both of whom practised in that area. As I started at the firm, there was a criminal trial under s. 45 of the conspiracy provisions of the Competition Act that was ongoing. We also happened to represent the defendants in the first two price-fixing class actions that were commenced at the cusp of a growing, novel area of practice. I spent a lot of time on those matters. I wouldn't have predicted when I started that this is where I would have ended up but it took me to the Supreme Court of Canada.

REENA LALJI: If you're a true litigator, often you don't think in-house is the place to be. But what's interesting — at least I find this at CIBC — is the litigators are heavily involved in the litigation. When I came from private practice, I had a very broad, general litigation practice. I really found it helped a lot when I went in-house. I did zero banking litigation even though CIBC was a client and is a client of Gowlings where I was in private practice; I was just never on any of the banking files. But I didn't find it difficult because it's not really banking litigation — it is class actions, securities work, regulatory work — a mix of everything and so if you know how to do all of that you can do banking litigation. I do find with our group we are very small compared to the other banks and so whatever comes along comes along and we all share in it. I found it surprisingly rewarding. I remember telling people I'm just going to go in-house for three to four years and will go back to private practice and bring the client. Eight years later, I'm still there and still feeling challenged.

CATHERINE BEAGAN FLOOD: I was very interested in public law. I came to Blakes because Peter Hogg is scholar in residence here and Paul Schabas is here, too. I've been very lucky to be able to continue to do some of that work — I still get to write constitutional opinions with Peter Hogg and go to the Supreme Court with him. On the privacy side, when I first started as a litigator, I wasn't sure if I wanted to stay in private practice or become an academic. I clerked at the Supreme Court of Canada, I did a masters degree and Osgoode tried to recruit me when I was at Harvard. I told them I wasn't sure yet that is what I wanted to do, but I taught privacy as an adjunct professor for eight years and started teaching when PIPEDA came into force in 2000 — so, again, that serendipity of learning a new area of law when no one knew anything about it.

More recently, given the growth in data breaches and how important preparing for those and defending those class actions has become for our clients, what had been giving privacy advice on PIPEDA in 2000 has turned into defending data breach class actions and dealing with cyberattacks — something I never anticipated in 2000, but that marries my interest in privacy and class actions.

INHOUSE: What differences do you think women litigators face compared to male litigators?

MACKEWN: I do a lot of work with traders, investment advisors and most of them tend to be men, although there are women. I have had male clients say to me, "Do you think you can be tough enough on this?" And I think to myself — you clearly do not know me if you are asking me that question. They would never ask a man that. The thing I have decided is the difference between men and women in litigation as a practice area is with men there is a presumption of confidence. They walk into a boardroom at a firm and see the male lawyer and assume the man is smart and has had a successful career. I feel as women you have to prove yourself initially and once you do they realize they have someone who will work harder for them and be more available for them, but you don't have the presumption of confidence I think that men get the benefit of in litigation. It's not something I feel I've not been able to overcome, but it's something I'm aware of at the introductory phase of a client relationship.

PLUMPTON: I think there are differences, but I think the balance tips in favour of us in many ways. I think there are more women that you encounter day to day in the litigation practice now, fortunately because of other changes we've seen in the judiciary and the client base opposite us.

LAING: Maybe one of the more distinct pressures we face is that we are outward facing — we go into court and we represent and are a proxy for our client and so profile and how you approach the court is very important. As a junior in a litigation practice, you are asking yourself: "What is my style?" You're looking for role models.

I think one of the changes we're seeing is there is much more diversity of role models now, even if you look around this table there are many more acceptable ways to be a female litigator than there were 15 years ago. We're seeing women on the bench who are women we would like to emulate. I think generally it's getting easier to find your own authentic style without feeling like there are some narrow approaches you have to emulate and that have worked in
the past.

LALJI: I'm a client to external counsel, but I also have internal clients as well and what I find is in our litigation group there are four of us of which three are women so to me that's fantastic and we're all quite senior. One of the things I have found is that with in-house positions, I think generally there have historically been more women at junior levels and the senior levels tend to be men. I'm seeing a shift in that and seeing more women in senior roles in legal but in particular in the business. I'm finding at the bank there are fantastic senior women role models. Our CEO is really committed to having more senior women in executive roles and that's his commitment. I find even with male clients internally, definitely on the trading side, with the investment bankers it's a bit tougher — they apologize for swearing and I have to remind them I'm a litigator, I'm familiar with the f-bomb.
I find now though that we end up being their go-to people; it doesn't matter that I'm a woman.

In terms of where I'm the client, in the past I found every time I would go to court as the client I was very aware of the fact of when I'm looking at everyone in the room I'm one of the few, and often one of the only, women in the room, including my own counsel. Over the last eight years, I've seen a shift. I don't select my external counsel because they're women, I select them because they are the best at what they do and think they can do the best for the bank. What I have found is the team I hire tend to be women or led by women. I often think: "I didn't do that on purpose, I just picked the best."

MACKEWN: Do you find they [women] are more prepared for the phone calls and things like that?

LALJI: Generally, yes, but I do it more by email. One thing I find is women are generally much more responsive. The other thing I find dealing with male external counsel is initially they didn't think they needed to keep me up to date — I would hear, "Don't worry, we have it under control." I had one situation where I would follow up with external counsel and they wouldn't give me updates and in the interim of eight months they brought a motion, lost it, appealed, lost that. . . . I'm providing reports to executives saying everything is in abeyance and [they've] been running the file and we haven't even discussed the strategy. That was the last time that happened. I think men don't really think they need to engage their clients as much whereas women are quite a bit different. There is more communication and they are more collaborative. They know when they have an in-house counsel they know what kind of relationship they have with them. They know I'm very involved and have a view on everything.

INHOUSE: Does that perhaps go back to the days when external ran it because in-house would just hand over the file?

PLUMPTON: The old barrister model — give me the brief and let me know when it's over.

LALJI: Yes, back then, businesses wouldn't have had litigators in-house. You had the corporate lawyer who could do everything and then farm out the litigation. That's not happening anymore.

BEAGAN FLOOD: Picking up on something Reena said, I think one thing that has changed since I started is the focus on sponsorship. I was mentored primarily by men who were gender blind who were looking for someone they had confidence in to work on files. I don't think they were deliberately looking to sponsor or advance or thinking about the importance of diversity and what that added to litigation, whereas I think there is a much more conscious effort by leadership within the business and legal

community to ensure that there is sponsorship by men in addition to having a wealth of mentor models, as Andrea mentioned.

LAING: Or senior enough women to be in that wonderful position of being able to be a sponsor for someone. It's been a challenge as someone who mentors, I think, sometimes to realize there's only so much at your particular level of seniority that you can do for one of your mentees, but you realize as you get more senior the possibilities and doors you can open for people. Women can now be sponsors, which hasn't always been the case.

INHOUSE: Has there been enough done at the firms to provide opportunities to mentor?

LAING: I think not only do you have to encourage women to seriously invest in mentoring and relationships and taking the time to really listen to junior women and open doors for them, you have to reward the women for engaging in that activity. That's where eyes are starting to open and recognizing the value of women supporting women not just because it's the right thing to do but also because it's good for business. It might be that it doesn't necessarily reflect on numbers on a page, but over the long run, we are seeing that type of investment is allowing us to recoup the investment we are making in our women because they are staying longer.

PLUMPTON: We've always benefited from having a fairly strong group of women at the partnership level. I remember joining the firm and the lions were many, but the lions of our practice I was focused on in coming to the firm were Sheila Block and Mary Eberts who were both there doing fantastic work. But in my earlier years of practice, those are not the people I worked with the most, but I think their mere presence was empowering for me. I do think there are more systematic things to be done to build those relationships in a formal way rather than making women reach for it — so establish closer relationships with those people you're trying emulate and we try to do that. There is much more focus on having women-centred mentoring opportunities in the firm.

INHOUSE: Melissa, with a smaller firm like yours how do you go about recruiting women?

MACKEWN: My colleagues in my firm and others in different firms see the success you have whether it's an award from Benchmark or Best Lawyers or Lexpert and I think it encourages them to move forward. I try to be approachable and available and try to keep an eye on women in the firm and if there is anything I can help with.

PLUMPTON: It's so important — I think junior women look at us and say, "How do you do it?" Sharing with junior women that it's not always easy — whatever you're seeing externally — we're all under the same pressures, this is how we manage it but don't think we have it all together all the time. I always share my stories about how I don't have it all together all the time.

LAING: In fact, you have to let them see that not only are you succeeding and being recognized for it but at the same time you have to let them see it's not a cake walk and we all have bad days. Initially, I was so busy trying to show everyone I knew what I was doing that I realized I was perhaps

creating a façade that was impeding my ability to be a really effective mentor to junior women and in fact the best relationships form when you talk about your bad days.

INHOUSE: Is it still a challenge to keep women in these high-performance roles?

MACKEWN: Yes, and I struggle with this question all the time because I don't think it will ever change. It is a demanding job. The trick is to know you and your kids will hopefully live a good long life and I say this to the women in my office — my kids are now teenagers and I am so glad I toughed through it. I love my job and find it extremely rewarding and have made wonderful friends in the work I have done. I don't think you'll ever eliminate the push and pull from having a demanding job and having a desire to spend time with your family; you're going to have to make a personal choice.

LAING: I think back when I was going through that crunch period with young children and a busy practice and we just can't deny it for women and men who are parenting there is a confluence of factors. Everything hits you at the same time — the pressure to make partner is hitting generally around the time you're struggling with a young family if you're a parent. I think the challenge for our profession is to find ways to get people through those crunch years. Nothing fazes you once you've gone through that period. When you come out of it you're bullet-proof. And if you have supported them through it they are absolutely unflappable. You can send them to court and they can get yelled at and they don't care because they've been through that period with a client on the phone and a sick baby and husband sick of being home every night with the kids. Sometimes, it's not about leaning in, it's just hang in.

MACKEWN: If a woman has to take time off because the kids have the flu or you have to pick them up, I think it registers with colleagues in a way that if a man had to take an afternoon off to pick up their kids because they have a flu it would not register. I don't think it's intentional, but it's just noticed more.

I had both my kids at Faskens and I was told I was the first associate to have a baby and make partner in 2001. I didn't have any mentors and I didn't feel one way or the other about it and just went through it, but nobody else was in that position to
offer advice.

INHOUSE: Are there any myths associated with women in litigation?

BEAGAN FLOOD: I think the primary one is the one Melissa mentioned about "Are you going to be tough enough to advocate for me?" I think it's just a matter of proving yourself in conversation with clients that you are as tough and capable as the men.

LALJI: I definitely felt this myth in private practice eight years ago. I see it a little since I've been at the bank, but one is that women in litigation that are on big files are the project managers — they are great organizers.

LAING: Yes, it's a positive stereotype that I think can hurt us.

LALJI: In private practice, I was lucky to work on high-profile files with high-profile partners, but to my determent, I was really good at the big document-intensive files so I became the go-to litigator to do that and I wanted to be the litigator who was arguing in court because I was good at that, too, but was not getting recognized for that. So that's one myth. The other one tied to that is when a team of lawyers comes in on one side and if there is a woman there is an assumption the woman is not the lead counsel. The automatic assumption is that the man is. I still see that.

LAING: At a certain point, I just started telling everyone how old I am because I think people don't want to think about it or don't know. There's a phrase used in litigation that gets my back up — it's "grey hair." "We need to put grey hair on it." I think sometimes we have to go around telling people how old we are.

MACKEWN: Someone called me a year ago about a market manipulation case they wanted external counsel on and they asked me questions about it. I think I've done more market manipulation cases than virtually anybody because I worked at IIROC [Investment Industry Regulatory Organization of Canada] and we did that work and at the OSC. At the end of the conversation, this guy said: "I think maybe you're a bit too young because this happened in 1999." I thought, I am 45 years old — you would never say "you're too young" to a 45-year-old man. I know this area and am not unconfident in my skills in this particular area. He wanted grey hair. It didn't matter if they had ever looked at a trading blotter before.

LAING: Sometimes, grey hair is just code for man.

PLUMPTON: The only myth I see that is the inverse of the "You're not tough enough" which is the "You're too tough" myth. For junior women, I think they get a lot of "You're not projecting enough confidence, you're not tough enough. You're uptalking." For senior women, there is a perception you're being too tough or strident and maybe you should smile more and maybe you're not projecting enough warmth, you're scaring people. You're too sharp-edged. A lot of characteristics being described are ones that are commended in men about strength and confidence in leadership. I think women can achieve leadership roles projecting those qualities, but they are still not welcomed. It's the whole likeability factor. Smile more — the judges will want to see more smiling from you. I'm quite sure senior men aren't being told to smile more.

MACKEWN: I think they do equate those things with more emotional language. If you're tough, you're bitchy; if you're enthusiastic, you're histrionic. For example, senior [male] people who are known for being enthusiastic in their arguments; if a woman does that, it's considered shrill or shrieking or impassioned about your argument.

PLUMPTON: I think you want to have lots of tools in your tool belt, but at the end of the day, you have to get personally comfortable with your own style.

International Justice Mission tackling tragic world of human trafficking
Medicine Hat News
Gillian Slade
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Helping to rescue and rehabilitate victims of human trafficking and sex slavery is the goal of International Justice Mission, and a fundraiser event is being held in Medicine Hat.

The event takes place Feb. 10 from 7-11 p.m. at Desert Blume Golf Course, and tickets — $90 each — are available online.

Guests can look forward to an evening of live music from local artists while enjoying a wide range of food and drink pairings, featuring Zucchini Blossom, Moxies, Tsuki, Earls, The Mirage at Desert Blume, Station Coffee and Hell's Basement Brewery. There is also a silent auction with a wide variety of incredible items and unique experiences to bid on, said Gail Holmes.

"Last year we were able to raise over $20,000, said Holmes. "This year we are looking forward to making an even greater financial impact as well as awaken more people to the awful reality of modern day slavery."

In November last year nine children in the Philippines were rescued from cybersex trafficking. They were rescued by the Philippines National Police in collaboration with local law enforcement agencies and supported by IJM, according to a press release from the organization. Cybersex trafficking, a form of human trafficking, is rampant in the Philippines and is devastating the lives of young and vulnerable Filipino children. The rescued children are now safe in protective custody.

"Cybersex trafficking is a global crime that traverses national borders," Ed Wilson, executive director IJM Canada, said in a press release. "This is a crime that requires a global response from police forces worldwide working together. We are so grateful that a referral from the RCMP helped achieve the rescue of nine children by the Philippine National Police and local authorities."

In addition to the rescued children, a suspected trafficker was also arrested during the operation. If convicted, the suspect could face a mandatory life sentence, according to the organization's website.

Revenu Québec : près de 200 requêtes en arrêt des procédures pour des dossiers de fraude
Radio-Canada
Véronique Prince
23 janvier 2018

EXCLUSIF - L'épée de Damoclès que représente l'arrêt Jordan de la Cour suprême menace des centaines de poursuites pénales intentées par Revenu Québec. Des procès pour fraude prennent du retard, au point où le nombre de requêtes en arrêt des procédures a explosé dans la dernière année, a appris Radio-Canada.

Un texte de Véronique Prince, correspondante parlementaire à Québec

Dans son dernier budget, le ministre des Finances, Carlos Leitao, a annoncé l'embauche de 13 nouveaux enquêteurs chez Revenu Québec. Un ajout qui donne des résultats : près de 13 000 poursuites pénales sont en cours.

Le problème, c'est que les tribunaux peinent à gérer l'afflux de ces nouvelles poursuites, ont constaté divers avocats consultés par Radio-Canada.

Une demande d'accès à l'information révèle qu'au-delà de 1500 de ces causes dépassent les délais judiciaires prescrits. Pas moins de 57 % des dossiers de fraude, 31 % des poursuites liées au tabac et 20 % des causes d'évasion fiscale dans les bars et les restaurants accusent du retard. Les requêtes pour mettre fin aux procès se multiplient : 194 demandes ont été formulées en ce sens.

« Jusqu'à présent, sur les 194 requêtes, il y en a déjà la moitié pour lesquelles des décisions ont été rendues. Dans 80 % de ces cas-là, les requêtes ont été rejetées, annulées ou il y a eu des désistements. Ce n'est pas un automatisme que s'il y a une requête, il y aura un arrêt des procédures », explique la porte-parole de Revenu Québec, Geneviève Laurier.

Aucun procès en lien avec Revenu Québec n'a été abandonné, mais la pression est forte, pense l'avocat fiscaliste Christopher R. Mostovac. « Quand je me fie au nombre d'enquêtes, au nombre d'enquêteurs et de personnes qui travaillent à trouver des preuves et des contrevenants, je ne peux pas concevoir qu'on va avoir moins de dossiers à l'avenir. La solution est relativement simple : il faut plus de juges et d'outils », dit-il.

Plusieurs raisons peuvent expliquer ces délais. Parmi celles-ci, les impacts de la grève des juristes de l'État se font encore sentir, un an plus tard. L'Unité permanente anticorruption (UPAC) peut présenter de nouvelles preuves qui compliquent les dossiers.

« Pour une partie des dossiers, qui sont clairement supposés être straightforward, et dont la preuve est claire, c'est anormal. Je dois dire par contre qu'il y a quand même certains dossiers qui sont assez complexes et qui vont nécessairement prendre du temps », croit Me Mostovac.

« Il y a, de notre part, une volonté de nous attaquer de façon plus musclée à l'évasion fiscale et donc, c'est un peu normal que le nombre de poursuites augmente. Il n'y a pas lieu de sonner l'alarme. Un backlog s'est créé, mais il va diminuer », pense le ministre Leitao. Il est convaincu que les effets de la grève des juristes vont s'estomper et que les nouvelles ressources judiciaires annoncées par Québec seront bientôt pleinement effectives.

Le ministre des Finances et Revenu Québec ne sont pas en mesure de préciser les coûts de ces délais pour l'État.

Women execs in public service report feeling more stressed — but happier
iPolitics
Kathryn May
January 23, 2018

Women have never before held more top jobs in Canada's public service than they do now. And compared to men, they are happier, healthier and more satisfied with their pay and career prospects.

The new health and work study on the country's 6,400 federal executives, conducted by the Association of the Professional Executives of the Public Service of Canada (APEX), also reports that women executives in the public service are thinner, sleep better and drink less than their male counterparts.

On the other hand, female executives also report feeling more stressed, anxious and depressed.

They take more time off work, face more harassment, feel overwhelmed and have trouble separating themselves from the demands of the job. They are more likely than men to be emotionally drained and burned out by their work, to wake up tired and feel "used up at the end of the workday."

APEX has been tracking the health and wellbeing of executives every five years since 1997. The first survey was done amid the stress of the Liberals' historic downsizing in 1997; the last one, in 2012, was conducted as the Harper government — which had a strained relationship with public servants — cut 19,200 jobs, including 500 executive positions.

The latest survey, conducted by Ipsos, examined the work and personal health of executives, their organizations and the bureaucracy's readiness for the future. Some 3,075 executives responded between May 2 and June 19. The survey is considered accurate within plus or minus 2.2 percentage points.

Public servants always rank highly their commitment to and pride in their work; this survey was no different, with 86 per cent saying they are "proud of what they do." But the report flagged "worrisome trends" over the past five years that are chipping away at the personal health of executives and the workplace.

On average, executives are working 50.9 hours a week but the survey revealed that 35 per cent now say they work more than 55 hours — a significant increase over 2012 when they were last surveyed.

About 49 per cent are satisfied with their pay, while 70 per cent have thought about leaving their jobs over the past six months. At the same time, the overall health of executives has slipped over the past five years.

The majority are overweight or obese. The percentage with drinking problems increased to 13 per cent from nine per cent five years ago.

Overall, 45 per cent suffer from back and neck problems and other 'musculoskeletal ailments', up from 28 per cent in 2012. Another 21 per cent now report mental health issues — a percentage that has almost doubled since the last survey — and the percentage reporting gastro-intestinal illness increased from eight per cent to 18 per cent.

Reports of cardiovascular and respiratory disease, however, have declined. And fewer sought counselling for personal or work-related problems.

Executives are also taking more time off — a trend since the first survey 20 years ago. They booked off sick an average of 5.9 days last year and took an average 21.2 vacation days.

Overall, however, about three-quarters say they are satisfied with their work and their job security, and feel they get the respect they deserve from superiors. About 56 per cent are satisfied with the pay "considering (their) efforts and achievements."

The biggest shift in public service job satisfaction over the past five years has had to do with technology. It has increased executives' workload, extended their work day and intruded on their family lives. Technology and the public service's ability to adapt to the digital age are also cited by executives' among their biggest worries about the future.

The survey, for example, found only 11 per cent felt the government has policies in place to keep pace with technology changes; 26 per cent said public servants have the tools and technology to do their jobs properly and only six per thought public servants are well-trained on using social media.

The report also highlighted "consistent differences" between male and female executives. Canada stands out in the world in terms of public sector gender equity: women now account for 55 per cent of the public service and previous studies have shown that Canada's federal bureaucracy is breaking down gender barriers in ways few countries have followed.

Women now hold about 47 per cent of public service executive jobs below deputy minister rank; in the 1990s, women had barely 14 per cent of those jobs. Under the Trudeau government, the number of women in the deputy minister ranks has risen to about 46 per cent.

Female executives are more likely to be younger than the average — aged 45 to 49 — and tend to have been executives for one to five years. Men are more likely to be older than the average and typically have worked as executives for 16 to 20 years.

Compared to men, women are more likely to be satisfied with their salaries and feel their career prospects and chances are promotion are good. Men — especially older men — are more apt to feel their career prospects are poor and report regularly thinking about leaving their jobs over the past six months. Women, however, tend to give much less thought to leaving.

On technology, men are more likely to “intensively” use their cellphones and laptops after hours, which they say increases productivity but disrupts their home lives. Women are more likely to say technology gives them more flexibility in the hours they work and improves their ability to do their jobs.

At work, female executives are more likely than men to feel their colleagues are willing to listen to their personal problems, and to be immersed in and inspired by their work. They feel work obligations have a bigger impact on their personal lives, making it difficult to live up to domestic obligations — and they say they struggle to forget about work in their free time.

Harassment is still an issue. About 19 per cent say they have been verbally harassed at work, most often by a supervisor. Women are more likely to be harassed than men — particularly by a supervisor or subordinate. Men who are harassed are more likely to say it came from a client or stranger.

Women are more likely to say they are healthy and underweight, while men are more likely to claim they are overweight or obese. Fewer executives are obese today than five years ago, but half of male executives are obese and 32 per cent of women are obese.

Female executives tend to be more frequently diagnosed and treated for back and neck pain, gastro-intestinal discomfort, migraines, hypothyroidism, depression, anxiety and other mental health issues.

Men are likely to suffer from cardiovascular problems or diabetes and to take medication for diabetes, blood pressure or cholesterol — or to not take medication at all.

Male executives report drinking more — four to six times a week. About 13 per cent of executives are considered to be at high risk of being problem drinkers — defined as taking more than 15 drinks a week for men, or 10 drinks a week for women.

Executives are exercising more — 3.2 times a week. Men also exercise more frequently, and longer, than their female colleagues.

Executives sleep on average 6.7 hours a night. Half say they have trouble staying awake when they want to; four in 10 find sleep refreshing; three in 10 have trouble sleeping. Women tend to sleep longer — eight hours or more — and men are more likely to have trouble sleeping but find it ‘refreshing’ when they do.

Michel Vermette, APEX’s chief executive officer, said APEX will be exploring what’s behind the gender differences along with other concerns raised in the survey.

“We will be talking to the executive community about a number of the issues highlighted and on talent management, professional development and our own health and culture.”

Public service needs better data to measure diversity, says task force

A joint union-management task force spent the last year consulting public servants on diversity and inclusion, coming up with 44 recommendations in December that Treasury Board is reviewing for implementation.

Hill Times

Emily Haws

January 24, 2018

Planning the future of diversity in the public service is not possible with out-of-date data, leaving certain groups unintentionally sidelined, a joint task force studying equity initiatives found, after a months-long examination of inclusion and diversity in the public service.

In its final report released Dec. 11—Building a Diverse and Inclusive Public Service—the joint union-management task force on diversity and inclusion made 44 recommendations surrounding four themes: people management, leadership and accountability, education and awareness, and the consideration of diversity and inclusion.

The demographics of Canada's population are drastically shifting, but the workforce availability (WFA) estimates, which compare the percentage of minorities in the Canadian population to their percentage in the public service, use data from the census, which is only completed every five years.

Waheed Khan, a member of the Professional Institute of the Public Service (PIPSC) and a co-chair of the task force's technical committee, said because of the old data, diversity goals could often be drastically skewed.

"Right now, the [estimates say there is] about 12 or 14 per cent visible minorities [in Canada]… but if you look at the current data it is over 22 per cent," he said, adding that this means deputy ministers may think they're doing fine if their department is 13.5 per cent, for example.

Projections say the visible-minority population could reach 37 per cent in the future, he said, meaning suddenly 13.5 per cent doesn't cut it.

The workforce availability estimates also don't track LGBTQ Canadians or permanent residents working as bureaucrats.

Outside studies indicate that between five and 13 per cent of the population identifies as LGBTQ, but 54 per cent prefer not to disclose their sexual orientation in the workplace for fear of retribution or rejection from their colleagues.

Therefore, the report recommends having WFA estimates updated between the censuses, collect census data on LGBTQ people, track the WFA for non-citizen bureaucrats, and prepare demographic and WFA projections to reflect Canada's diversity. Departments should then establish diversity goals based on that data.

The task force was created in November 2016 and included representatives from PIPSC, the Public Service Alliance of Canada (PSAC), the Professional Association of Foreign Service Officers (PAFSO), as well as Treasury Board, Health Canada, and Justice Canada, among others. It had a one-year mandate to study ways to "strengthen diversity and inclusion in the government," according to the Treasury Board's website.

Diversity and inclusion policies "enable the public service to leverage the range of perspectives of our country's people to help address today's complex challenges," reads the report, and creativity, problem solving, and innovation are improved with varied perspectives.

Treasury Board is reviewing the report and determining how it wants to move forward with implementation. It did not respond to requests for comment by deadline.

Put people who understand diversity in top roles: report

Leadership and the way people are managed is the start of the shift, said Mr. Khan. The task force spoke to public servants through 20 focus group interviews, as well as an online survey that garnered over 12,000 responses. It also did research on provincial equity initiatives, as well as the Australian and British bureaucracies. There are about 262,000 public servants in Canada.

Establishing a Centre of Expertise on Diversity and Inclusion will help senior management implement policies to foster a healthier work environment, recommended the task force. It would determine better ways to communicate about equity issues; outline possible challenges or barriers; and work with other related groups to ensure consistency within the bureaucracy.

Mr. Khan said those who can manage diverse teams, such as those consisting of men and women, or different racial groups or cultures, encourages equity and so the bureaucracy needs to value that skill. This could be implemented by making it a job requirement, for example.

Equity groups—which include women, LGBTQ sexual orientations, Indigenous populations, those with disabilities, and visible minorities—are often expected to conform with the majority, he said, but good management can reduce the harassment and discrimination they face, allowing them to speak up more often.

"You should also have this intercultural effectiveness as a competency for people who want to move on to managerial positions," he said, so that power dynamics begin to shift in an office.

Those who are included in the definition of equity groups often face more discrimination, he said.

Along with valuing the management of diverse teams as a skill set, the task force recommended hiring boards and other sources of authority be staffed with people from diverse backgrounds. As well, it recommends the creation of a Commissioner for Employment Equity, Diversity and Inclusion, modelled after the Commissioner of Official Languages. Accountability ensures action, Mr. Khan said.

Hiring practices were a big focus for the task force, said PSAC human rights officer Seema Lamba, who was also on the technical committee, as equity group members often feel they are included or excluded because of their status.

“Respondents don’t necessarily feel that the staffing process that they’ve experienced has been fair or transparent,” she said. “There needs to be more accountability around the staffing process, as well as oversight and monitoring.”

She added that since 2005, Treasury Board has increasingly delegated its authority in overseeing diversity programs, and what PSAC has seen is inconsistency across departments. One department may do a decent job around accommodation, said Ms. Lamba, but others might not.

Blind hiring practices—where any details about a person’s identity are removed—were recommended in the report. The Treasury Board Secretariat began testing name-blind recruitment between April and October in six federal departments, including National Defence and Global Affairs Canada, although 17 departments ended up participating. In a blog post Jan. 23, Treasury Board President Scott Brison (Kings-Hants, N.S.) said the experiment did not uncover bias, but the report notes that participants were aware they were participating in a name-blind recruitment project, which could have affected their assessment.

Diversity and inclusion lens, mandatory training recommended

When someone wants to develop an infrastructure project, such as a bridge, they have to do an environmental impact assessment, said Mr. Khan. It allows stakeholders to understand the effect of their actions and put mitigation strategies in place, if necessary.

A diversity and inclusion lens would do much the same thing for government policies, programs, and people management strategies. That way they can understand how these policies affect different groups.

The lens is an education tool, but the report also recommends mandatory diversity and inclusion training for all new employees and managers, and for equity conversations to be meaningful discussed in other training. Often it’s not that people are trying to be discriminatory toward equity groups, said Mr. Khan, it’s just that they haven’t been educated to understand other perspectives.

Defence lawyers ‘cringe’ at ‘unconstitutional’ new sex-assault case rules in justice bill

As Bill C-51 heads for Senate study, lawyers say part of it could infringe on the rights of the accused.

Hill Times

Charelle Evelyn

January 24, 2018

Some defence lawyers are looking to the Senate to fix a government justice bill they say would make unconstitutional changes to the way courts deal with sexual assault cases.

The wide-ranging Bill C-51 cleared the House of Commons on Dec. 11 and will be in front of the Upper Chamber during the upcoming sitting, which begins Jan. 29. It aims to do a number of things, including cleaning up so-called "zombie laws"—removing from the Criminal Code offences that have long been deemed outdated or unconstitutional, such as challenging someone to a duel—as well as aligning sexual assault laws with existing Supreme Court of Canada decisions.
But some of the proposed changes infringe on the Charter rights of those accused of sexual assault, some lawyers say.

"I kind of cringe at this bill because I feel like it's really reactionary," said Sarah Leamon, a Vancouver-based criminal defence lawyer with Acumen Law Corporation, who appeared before the House Justice Committee during its study of the bill in the fall. "And I don't like the creation of what I see being, basically, a dual justice system based on the class of offence."

The bill's critics dispute the requirement for those accused of sexual assault to proactively disclose, 60 days in advance of a trial, to the court and the complainant any records they have in their possession that relate to their accuser that they want to use as part of their defence. A judge will then rule on whether the evidence is admissible.

In speaking to the bill at third reading in the House of Commons last month, Liberal MP Marco Mendicino (Eglinton-Lawrence, Ont.), the parliamentary secretary to the justice minister, said C-51 "seeks to facilitate the truth-seeking function of the courts by ensuring that evidence that is clearly irrelevant to an issue at trial is not put before the courts, with its potential to obfuscate and distract the trier of fact."

But creating this new disclosure regime for defendants is unconstitutional, said Tonya Kent, an associate with Toronto's Edward H. Royle and Partners LLP. "There's nowhere in our constitution that says that a defendant has to present evidence or has a disclosure obligation to the Crown, and I think that's what this is creating."

It's the job of the Crown to ensure justice is served and prove the accused's guilt, Ms. Kent noted. "So when I say unconstitutional, it's unconstitutional because you're asking an accused person to prove themselves innocent or provide evidence of that innocence, in a manner."
The Charter statement Justice Minister Jody Wilson-Raybould (Vancouver Granville, B.C.) tabled with C-51 says the changes "would preserve the features of the law that allow the accused to present evidence relevant to their defence, while continuing to safeguard the equality, security of the person, and privacy interests of sexual assault complainants."

Under current rules, the defence has to make an application for the admissibility of third-party records relating to the complainant, such as medical records. The bill would capture any records already in the accused's possession "that contains personal information for which there is a reasonable expectation of privacy" about the complainant.

Existing rape-shield laws mean records, such as text messages, of a sexual nature that don't have to do with the accused can't be used in court.

But the proposed changes don't help bring justice to those with legitimate complaints, according to the Criminal Lawyers' Association.

Adam Weisberg, a director with the group, told The Hill Times the disclosure rules create a risk of wrongful conviction.

"Because what happens, it allows the complainant, if they are dishonest, to then adjust their evidence or their trial evidence rather than have their inconsistency or their lie exposed through cross-examination," he said. "Basically, it takes away one of the most important weapons we have in defending accused people against people who aren't telling the truth."

Many of the criminal defence community's concerns fell on deaf ears during the House proceedings. The Justice Committee recommended a handful of amendments to Bill C-51, which were passed by the House, including clarifying language about consent in sexual assault cases, but left the disclosure provisions unchanged.

Conservative Senator Paul McIntyre (New Brunswick), who sits on the Senate's Legal and Constitutional Affairs Committee, which is likely to study the bill, said he worked as defence counsel for many years so he can see where defence lawyers are coming from, but is awaiting proper study of C-51 in the Senate.

"The courts have made it clear, for example, that the defence has to work with facts, and if they start resorting to unproven assumptions and innuendos in an effort to crack the untruthful witness then it's not going to work. But the defence should not be prevented from getting at the facts," he said.

Conservative Senator Raynell Andreychuk (Saskatchewan), a former judge, told The Hill Times through her office that she's just beginning her own study of the bill, but that she's concerned about the reverse-onus sections of the bill because they "may upset the balance between the rights of the accused and the rights of the person putting forward the allegation."

The bill "respects the fair-trial rights of the accused in that it does not prevent relevant evidence from being used in court," Mr. Mendicino said on Dec. 11. "The Supreme Court has already recognized that an accused's right to full answer and defence does not include a right to defence by ambush."

The word "ambush" is dramatic, said Ms. Kent. "It's not that someone's ambushing, it's that you're coming to court and giving your evidence, and if the evidence that you're giving is incorrect or just simply not true, the accused has a right to challenge you on that. The point of a trial is for the accused to challenge the evidence that that Crown is seeking against them in order to have them found guilty."

Sen. Andreychuk said she's "always concerned about unintended consequences when we do piecemeal changes, especially with regards to sexual assault," and that a more general review of laws pertaining to sexual assault has merit.

Sen. McIntyre said the years of legislative reforms that have preceded this bill "were aimed at ensuring women's equality, which is very important—a woman's privacy, a woman's security rights—by

countering myths and stereotypes about sexual assault," he said. "We can't go back to Adam and Eve here; we just can't turn back the clock."

Bill creates extra barrier to accessing justice: defence lawyer

Bill C-51 was introduced in June as a perceived response to the Jian Ghomeshi trial, which saw the former CBC Radio host acquitted of sexual assault charges in March 2016. Since then, the #MeToo hashtag and sex assault allegations against powerful players in Hollywood, the media, and other public positions has captured headlines.

The current conversation about what constitutes consent and what constitutes sexual assault is a positive development, said Ms. Leamon, but that doesn't mean that it's a judicial issue that requires legislative reform.

"I don't think that we can look to the justice system and revamping the justice system, making all of these allowances for just one particular kind of offence, in order to solve the problem that's not a judicial problem; it's a social problem," she said.

Another issue she said she has with the bill is the allowance for sexual assault complainants to have the right to their own legal representation, outside of Crown counsel, for the hearings in which evidence is deemed admissible or not.

This could create a schism between victims of sexual assault, who have this right to counsel, and victims of other types of violent crimes who do not. Additionally, there's nothing in the bill that backstops how people would access their own legal representation, when legal aid is already underfunded.

Unless there's a fund set up specifically for sexual assault victims, people will have to foot the bill for their own lawyers, creating a two-tier system of those who can afford representation and those who cannot, Ms. Leamon said.

"I've had the opportunity to talk to a lot of marginalized women about it because I work with a lot of non-profits in the Downtown Eastside and it's a concern," she said. "They actually don't even want to see that because often marginalized women feel that they already have enough barriers. And if this is just another barrier to access justice, they can't afford to hire a lawyer so it makes it more difficult for them to come forward."

Juristes de l'État: le tribunal évalue la portée du privilège parlementaire

Les juristes de l'État ont perdu une manche devant le tribunal, mais en ont gagné une autre

Droit Inc

Delphine Jung

22 janvier 2018

Les propos du ministre des Finances, Carlos Leitão, tenus dans le cadre de la crise qui a frappé les juristes de l'État ne sont pas protégés par le privilège parlementaire, rapporte La Presse canadienne.

Les avocats et notaires de l'État québécois (LANEQ) souhaitaient assigner le ministre Leitão à témoigner dans le cadre de leur plainte pour négociation de mauvaise foi contre Québec.
Pour rappel, les juristes de l'État sont entrés en grève à l'automne 2016 concernant la négociation de la convention collective. Ils ont alors été forcés de retourner au travail le 28 février 2017.

À la suite de cet événement, LANEQ avait déposé une plainte pour manquement à l'obligation de négocier de bonne foi de la part du gouvernement du Québec et de l'Agence de revenu du Québec et de comportements d'ingérence de la part du gouvernement.

Finalement, le tribunal administratif du travail a considéré que le témoignage du ministre Leitão n'est pas nécessaire, car il existe d'autres façons de prouver ses déclarations.

Le tribunal se réserve toutefois le droit de changer d'idée, « advenant un changement de circonstances dans le déroulement de l'audience ».

En revanche, le tribunal a admis que les déclarations du ministre faites à l'extérieur de l'Assemblée nationale le 21 novembre, le 1er et le 22 décembre 2016 étaient recevables en preuve et qu'elles n'étaient donc pas protégées par le privilège parlementaire.

« Les déclarations privées et publiques du ministre Leitão ont été faites librement en dehors du cadre des délibérations du Parlement et ne sont pas liées à une position gouvernementale annoncée à l'Assemblée nationale », écrit la juge administrative Line Lanseigne.

Sur un autre point, LANEQ voulait également connaître la date à laquelle avait été donné le mandat de rédiger la loi spéciale qui a forcé le retour au travail de ses membres. Le tribunal a jugé « non pertinente pour la solution du présent litige » cette question de la date.

New judge named to the Superior Court of Justice of Ontario
Lawyer's Daily
Carolyn Gruske
January 24, 2018

Sandra Nishikawa, who served as counsel at the Ontario Human Rights Commission, has been named as a judge of the Superior Court of Justice of Ontario in Toronto.

Justice Nishikawa, who is a member of the bar in both Ontario and New York, was a civil litigator before joining the Ontario Human Rights Commission. She worked at a large firm New York, then in the business and regulatory division of the Department of Justice Canada, and later, at the civil remedies for illicit activities office and Crown law office (civil) with the Ministry of the Attorney General of Ontario. The scope of her practice has included commercial, administrative, public and human rights law.

Justice Nishikawa has served as chair of the equity advisory group of the Law Society of Ontario, and has been on the board of directors of the Women's Legal Education and Action Fund (LEAF). She was also

vice-president external (public) of the Federation of Asian Canadian Lawyers. Justice Nishikawa speaks English, French and Japanese.
She replaces Justice Todd L. Archibald, who elected to become a supernumerary judge effective Dec. 1, 2017.

Federal judge loosens some of terror suspect Mohamed Harkat's release conditions
In a judgment made public today, Federal Court Justice Sylvie Roussel says Harkat can travel anywhere in Ontario or Quebec for 72 hours without notifying authorities.

OTTAWA—A judge has granted terror suspect Mohamed Harkat more freedom — though not as much as he asked for.

In a judgment made public today, Federal Court Justice Sylvie Roussel says Harkat can travel anywhere in Ontario or Quebec for 72 hours without notifying authorities.

He can also report to officials in person just once a month, not every two weeks.

But Roussel denied Harkat permission to have a laptop computer with internet capability for personal use outside his home.

Harkat, 49, was taken into custody in Ottawa in December 2002 on suspicion of being an Al Qaeda sleeper agent, an accusation he denies.

He is closely monitored by Canadian border agency officials, and wanted leeway to travel freely within Canada.

First Nations court smart move
Prince George Citizen
Neil Godbout
January 24, 2018

Last year, PBS aired an insightful documentary called Tribal Justice, which followed two female Native American judges working in collaboration with the California legal system to use more traditional ways to deal with Indigenous offenders.

For those wanting an understanding of how the First Nations court opening in Prince George in March might work, visit the film's website at pbs.org/pov/tribaljustice/. Naturally, there are local residents concerned about the special treatment First Nations people supposedly get from the Canadian justice system. "You do the crime, you do the time" is the common refrain, regardless of your racial heritage.

Yet this refrain, with its focus on the crime and not the criminal, exposes what is exactly wrong with the Canadian and American justice systems in their current forms. Crimes are reduced to mathematical formulas, regarding the amount of the fine or the length of time in jail, rather than a focus on the individual and how to keep that person from reoffending.

In both the United States and Canada, the intention of tribal or First Nations courts is not to dodge personal responsibility for crimes but to find ways to change lives and keep people out of jail.

As the Tribal Justice film shows, offenders are brought back in their communities, where they are answerable to numerous individuals, from elders and employers to social workers, addiction councillors and friends and family, for their whereabouts and their activities. Progress monitoring and oversight is extensive and continuous. For those who stray from the path, they are returned to the state penal system.

That's roughly how the First Nations court in Prince George will work, as well, following what's already in practice in five other B.C. cities.

The Anglo-Saxon tradition of justice treats criminals as a form of disease. They are removed from their communities and kept in isolation from the rest of society. The community washes its hands of the problem but then wonders why people coming out of jail have such difficulty reintegrating into society.

Restorative justice programs, which are common in Native American culture, as well as many others around the world, keep their criminals much closer. If it take a village to raise a child, it also takes a village to save a criminal. Along with plenty of professional support, offenders rely on their loved ones to help keep them clean, stay out of trouble and become good people, good parents, good employees and law-abiding citizens.

Last August, The Citizen profiled Kenneth Brian Tylee, a Fort St. James man whose life was changed as the result of a Gladue report, an alternative sentencing opportunity that has been available to First Nations individuals across Canada for more than 15 years.
After spending significant time in and out of jail in Vancouver and Prince George, Tylee returned home to Fort St. James to live with his brother under the terms of his Gladue report. Tylee beat his addictions, reconnected with his extended family and became a councillor and mentor for troubled First Nations youth in the area.

For those who fret about the high cost to taxpayers of keeping criminals in jail, Tylee's Gladue report spared Canadians the expense of a 12-year jail term, along with all of the related court fees for lawyers and judges.

Unfortunately, Gladue reports in Canada are rare due to - what a sad irony - inadequate funding for the relatively low cost of drafting a report that includes a full biography of the individual, a thorough assessment of the personal and professional resources available to aid the offender and a comprehensive action plan going forward, which includes what will happen if the plan fails and the individual must be incarcerated.

Both Mike Morris, the Liberal MLA for Prince George Mackenzie, the former public safety minister and solicitor general, as well as a retired police officer, and Supt. Warren Brown, head of the Prince George detachment, offered unconditional praise for the First Nations court.

Both men have a professional understanding of the social and cultural issues Indigenous individuals face, which contributes to a group that only makes up five per cent of the population taking up 25 per cent of the spaces in provincial jails.

While Brown points out that First Nations courts are not a magic fix for such a deep problem - as the Tribal Justice film shows with a heart-wrenching example involving the nephew of one of the judges - he's certainly open to anything that could help reduce crime and the number of frequent offenders.

Not only does Morris reject the depiction of First Nations courts as special treatment for Indigenous people, he would like to see restorative justice systems expanded to include everyone that shows the potential to turn their life around.

Jails shouldn't be the first option for anyone who has stepped out of line, regardless of their ancestry. Rather, it should be the last resort, reserved for individuals - again regardless of their ancestry - who have exhausted every community rehabilitation effort made on their behalf.

Offenders would still be doing the time for their crimes but if time back in the community instead of time behind bars is the first step on the path to redemption, that's a step everyone should support.

Freed Hassan Diab demands probe over 'terrorism' ordeal
AlJazeera.ca
Mersiha Gadzo
January 25th 2018

"Is it possible?" Ottawa professor Hassan Diab asked himself when he heard the news.
After three years and two months held in solitary confinement in a maximum security prison in a Parisian suburb, Diab - a 64-year-old Canadian - was stunned in disbelief when his lawyer finally delivered the news that he had been dreaming about for so long.

The judge had dismissed the allegations against him and had ordered for his immediate release.

He was freed on January 15.

Just to be sure that the "miracle" was real, Diab asked her to repeat and clarify the news a few times.

"If you don't know English any more, it means we won," she said.

After 10 years of draconian bail conditions and imprisonment, Diab is finally a free man. He arrived back home in Ottawa last week, rejoining his wife and two children, the youngest who was born in his absence.

"It's a different world here," Diab told Al Jazeera. "I'm trying to reintegrate back to ordinary, normal life."

He hadn't stepped outside for two years. For the two hours or so a day that he was brought out of his solitary confinement, he was brought 15 metres away from his cell to "a bigger cage" called "La Promenade".

"You don't see the sky; you just see a part of the ceiling of the cage," Diab explained.

"It's literally a cage. You have a chicken fence on the ceiling and a little window on the side and we were 10 people in [a space of] 20sq metres. Two square metres per person. And they called it a 'promenade'."

Kafkaesque case
Diab, a Lebanese Canadian was wrongly labelled a "terrorist", accused of involvement in the 1980 synagogue bombing in Paris that killed four people.

He was arrested in Canada in 2008 at the request of French authorities and placed under draconian bail conditions before his extradition to France in 2014.

However, a trial was never held. Often described by lawyers, rights groups, and media as a "Kafkaesque case", there was never any credible evidence presented against him.
Diab's handwriting did not match the suspect's, nor his fingerprints, palm print or physical description.

French investigative judges repeatedly stated that there is "consistent evidence" that Diab was in Beirut, writing his exams at the time of the attack in Paris, which Diab has maintained throughout.

Despite an overwhelming evidence of his innocence, Diab was imprisoned for 1,154 days.

According to Canada's extradition law, an individual can be extradited only when the foreign country has credible, reliable evidence to take the case to trial.

However, France never had a credible case against Diab to begin with.

Diab was extradited even though Canadian extradition judge Robert Maranger warned the evidence against him was "illogical, very problematic, convoluted, very confusing, with conclusions that are suspect".

"The prospects of conviction in the context of a fair trial seem unlikely," Maranger predicted.

However, as the extradition judge, Maranger only "committed" Diab for extradition.

Rob Nicholson, Canada's justice minister at the time, held the ultimate veto for extradition.

Nicholson was the only official who had complete discretion and, despite Maranger's warnings, he gave the green light for Diab's extradition.

With his name finally cleared, Diab and his supporters are calling for a public inquiry and to amend the extradition law so that no other Canadian experiences the same injustice.

"The extradition law is above the Canadian criminal law, but it should be the other way around," Diab said.

"What applies to Canadians here should apply to other places … we are trying to say, 'enough is enough.'

"Canadian extradition law stipulates that Canadians can be sent for trial in other countries, but not to languish for years and years without trial without anything, just waiting and in the end, [to say] 'Oh, sorry! It was a mistake.'"

The extradition act places a low threshold for foreign countries to request individuals and a high bar for the accused to prove their innocence. France was not even required to provide sworn testimony against Diab.

"I argue that this was not a case France was ready to try. This was an ongoing investigation," said Diab's Canadian lawyer, Donald Bayne.
"When the current extradition act was passed, in the discussions in parliament that led up to it, the justice minister at the time promised Canadians in parliament that this act was not to enable foreign countries to get their hands on Canadians for the purpose of detaining them for foreign investigation.

"The language he used was - no Canadians will languish in a foreign prison during a foreign investigation pursuant to an extradition. That's exactly what happened in Dr Diab's case. Canadian courts simply ignored that," Bayne said.

Solitary confinement unconstitutional, rules B.C. Supreme Court
Lawyer's Daily
Jeff Buckstein
January 24, 2018

The Supreme Court of British Columbia has delivered a decisive constitutional ruling against unrestricted use of solitary confinement for federal prisoners.

Justice Peter Leask ruled in British Columbia Civil Liberties Association v. Canada (Attorney General) 2018 BCSC 62, that the use of administrative segregation of inmates under certain conditions violates the Canadian Charter of Rights and Freedoms under both s. 7, which protects an individual's life, liberty and security, as well as s. 15, in defence of equality rights.

"The impugned laws are invalid pursuant to s. 7 of the Charter to the extent that: a) the impugned laws authorize and effect prolonged, indefinite administrative segregation for anyone; b) the impugned laws authorize and effect the institutional head to be the judge and prosecutor of his own cause; c) the impugned laws authorize internal review; and d) the impugned laws authorize and effect the deprivation of inmates' right to counsel at segregation hearings and reviews," ruled Leask.

“The impugned laws are invalid pursuant to s. 15 of the Charter: a) to the extent that the impugned laws authorize and effect any period of administrative segregation for the mentally ill and/or disabled; and b) also to the extent that the impugned laws authorize and effect a procedure that results in discrimination against Aboriginal inmates,” Justice Leask said.

“We’re really thrilled at what is a groundbreaking decision in prison law in this country,” said Josh Paterson, executive director of the British Columbia Civil Liberties Association in Vancouver, who noted that the Charter references provide very strong direction to Parliament about constitutionally acceptable standards for solitary confinement in Canada.

Paterson praised Justice Leask for accepting evidence that being placed in solitary confinement increases the likelihood of suicide, creates mental illness where none existed previously, exacerbates existing mental health issues and produces physical harm.

He also highlighted Justice Leask’s observation: “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.”

“It was a very strong repudiation of decades of correctional practice at the federal level in this country,” stressed Paterson, who called on the federal government to use this ruling as a guide to bring substantial and lasting change to Canadian prisons.

“I think it’s an exciting decision,” said Michael Rosenberg, a partner with McCarthy Tetrault LLP in Toronto. “The B.C. Civil Liberties Association and the John Howard Society (co-plaintiffs) deserve real credit for such a terrific result.”

Justice Leask’s ruling followed on the heels of another recent decision, when Canada’s solitary confinement laws were struck down as unconstitutional by Associate Chief Justice Frank Marrocco of the Ontario Superior Court of Justice in Canadian Civil Liberties Association v. Canada (Attorney General) 2017 ONSC 7491.

Rosenberg was one of the counsel for the Canadian Civil Liberties Association (CCLA) in that case. “The use of administrative segregation beyond the fifth working day is ultra vires a Charter compliant interpretation of the current legislative provisions. Any continued use of administrative segregation that relies on the fifth working day review is unconstitutional,” wrote Associate Chief Justice Marrocco, who gave Parliament one year to change the Corrections and Conditional Release Act to reflect his decision, as did Justice Leask in his subsequent ruling.

The federal government is assessing its legal options after the B.C. decision, and has not yet decided whether to appeal, said a spokesperson for the Department of Public Safety and Emergency Preparedness.

“Our government is committed to addressing the needs of the most vulnerable in the federal correctional system,” said Ralph Goodale, Canada’s minister of public safety, who noted that the government has placed Bill C-56, which will impose a presumptive time limit on the use of administrative segregation and implement a system of independent oversight, before Parliament.

“While these matters remain before the court, we are reviewing all recent court judgments; we will identify any further and better ideas that need to be incorporated in our reform package,” added Goodale.

Many of the factual findings that underpin the B.C. decision are very similar to the ones that underpin Associate Chief Justice Marrocco’s ruling. But Justice Leask’s decision is significant because he went further, said Rosenberg. Justice Leask “found that the lack of safeguards in the Corrections and Conditional Release Act was too glaring to be saved by reading in protections. On this score, Justice Leask was willing to consider that the failure to administer the Act in a constitutional manner was evidence that the Act cannot be applied in a constitutional manner,” Rosenberg explained.

Justice Leask ruled that under s. 52 of the Constitution Act, 1982 ss. 31 to 37, inclusively, of the Corrections and Conditional Release Act, which authorize administrative segregation, were of no force or effect because they breached ss. 7 and 15 of the Charter, said Rosenberg.

Associate Chief Justice Marrocco, in his decision, noted that s. 87 of the Corrections and Conditional Release Act, which requires Corrections Canada staff to take the health of an inmate into account before making a decision involving that inmate, including placement, limits the application of administrative segregation under ss. 31 to 37, inclusive.

“However, he was willing to accept that insofar as those sections are applied in a manner consistent with the health care needs of the inmate, they could be constitutional. Justice Leask reached a similar conclusion, but his ruling goes beyond that of Associate Chief Justice Marrocco to say that when a practice has been manifestly deficient, as he found administrative segregation to be, it should not be left to Corrections to try to apply it in a constitutional manner,” Rosenberg said.

“The courts are grappling with whether the appropriate remedy is to strike down a statute that is so broad and sweeping in the treatment that it authorizes, or alternatively, whether the approach should be to read in safeguards. Justice Leask took the former approach, and Associate Chief Justice Marrocco took the latter,” he elaborated.

The CCLA claim in Ontario did not advance a s. 15 Charter argument. There was overlap between the Ontario and B.C. cases in having the s. 7 breach as a common theme, as was the call for a hard cap on the time that an inmate can spend in administrative segregation.

“Unfortunately, that remains elusive. Justice Leask commented on the testimony of some of Canada’s own witnesses with respect to a 15-day limit, but he declined to order such a hard cap,” said Rosenberg. Bibhas Vaze, a principal with Bibhas Vaze Law in Vancouver, was also bullish on Justice Leask’s ruling.

“I think the decision certainly is a landmark decision so far as dismantling this awful system of administrative segregation that we’ve got in federal prisons,” said Vaze, who was the lawyer for provincial inmate Teresa Charlie in Charlie v. British Columbia 2016 BCSC 2292, another ruling from B.C.’s Supreme Court.

The most recent decision by that court with respect to administrative segregation “paves the way for us to make changes. But it’s going to require a lot of work for a long time, with lawyers in the trenches in the prisons making sure that whatever new legislation gets crafted by the government is ultimately made effective so that it operates humanely,” said Vaze.

Civil servants ‘exasperated’ by Phoenix pay woes mobilizing before election
The Globe and Mail
Lia Levesque
The Canadian Press

Frustrated by the Liberal government's inability to fix the Phoenix pay system, federal civil servants are mobilizing ahead of the 2019 election.

"In Quebec, the mobilization is starting," Magali Picard of the Public Service Alliance of Canada said Wednesday.

"If the government wants to maintain 40 seats in Quebec, they better fix Phoenix because our people are going to be serious in the upcoming election campaign."

About 180,000 workers – or one-half of all federal civil servants – have reported being overpaid, underpaid or not paid at all since Phoenix went live nearly two years ago.

A report by the auditor general in November indicated that, as of June 2017, 59,000 employees owed the government a total of $295-million as a result of overpayments. Another 51,000 employees who were underpaid were owed $228-million at that time, the report said.

The union is collecting signatures for a petition demanding the federal government fix the problems.

Of the 6,200 signatures already collected, 60 per cent are from Quebec.

"We, the undersigned, residents of Canada, call upon the government of Canada to take immediate and drastic measures to ensure all federal government employees be paid as per their work contracts and collective agreements," part of the petition reads.

Eighty per cent of federal employees from Quebec have had issues with their pay, Picard said, adding she regularly hears from members across the province who are ready to mobilize against the government during the next election.

"Our people are exasperated," she said. "They don't see the light at the end of the tunnel."

She gave the example of one federal employee who mistakenly received $30,000 in his bank account. When he called his employer to say he would write a cheque for that amount, he was told he had to reimburse $39,000 – the gross amount.

"We're telling the government, 'It's unacceptable that workers are advancing you money,"' Picard said.

The union has already taken the government to court for moral damages caused by the problems in the Phoenix pay system. The case has not yet been heard.

Treasury Board's top bureaucrat leaving public service
iPolitics
Kathryn May
January 24, 2018

Treasury Board Secretary Yaprak Baltacıoğlu is leaving the public service after 29 years — more than half of them as a deputy minister.

Baltacıoğlu announced her retirement at a deputy ministers retreat on Wednesday and later sent a poignant email to Treasury Board staff to say goodbye and start what she called "a new phase in my life."

"Public service became about falling in love every day, with every policy issue, every operational challenge, every interaction with a dedicated public servant," she wrote.

"So now, 29 years later, I am leaving the public service with a heart full of love, and a brain filled with knowledge, wisdom and friendships that will last me a lifetime."

She officially leaves April 3. A new secretary will be appointed within a few weeks and many say there are no obvious contenders to fill her shoes.

Baltacıoğlu is one the government's most seasoned deputy ministers and her departure leaves a big management gap for the government to fill as it races to clean up the Phoenix pay crisis, continue the drive to digital government and gears up for the next round of collective bargaining.

She was also widely considered a leading contender for the public service's top job as clerk of the Privy Council Office when Michael Wernick leaves.

"I guess her departure will end that speculation," said one senior bureaucrat.

"She has been there for a long time and very successful. There isn't anyone of her stature to replace her."

Colleagues say her time in central agencies and line department gave her a combination of policy, program delivery and management skills. Wernick said she has an eye for talent and helped develop up to 20 of the current deputy minister cadre as a coach and mentor.

“I feel like a coach whose star player is leaving at the top of her game and I will miss seeing a good friend every week,” Wernick said.

Baltacıoğlu has headed Treasury Board for more than five years beginning under the Conservative’s Treasury Board President Tony Clement who alienated much of the public service with his comments that bureaucrats are pampered and overpaid compared to workers in the private sector.

Clement took on the unions with legislation that watered down much of their bargaining power and wanted to impose a plan to replace the existing sick leave regime with a short-term disability plan.

Ron Cochrane, a union executive widely considered the dean of the federal labour movement, said Baltacioglu was central to restoring the eroding trust of unions and establishing “one of the best periods in labour relations” in decades.

He said she was an skilled negotiator, bringing a warmth and resolve that made the most hardened union negotiators believe they won something.

“She was a good messenger. She towed the party line when she had to and had a gift for delivering any bad news in a polite and non-adversarial way,” he said.

“She was key to a lot of things … and I see no one with the same skill set as hers in dealing with unions.”

Baltacioglu has always said her story was like so many immigrants who came to Canada for a new life.

She was born in Turkey, came to Canada at age 21 with a young child and a law degree at Istanbul University that wasn’t recognized here. She went to Carleton University, studied public administration and graduated with a masters’ degree.

She joined the public service “happy to have a job” as an AS-2 in the Public Service Commission and moved to Environment Canada where she started her executive career and rose through ranks with her first deputy minister appointment at Privy Council Office as deputy secretary to cabinet for operations.

“Love is riches that cannot be measured in dollars. And that is what Canada has been for me,” Baltacıoğlu said in her message to employees. “For countless immigrants before and after me, Canada has been a love story – a place of refuge. A place of welcome. A place to raise our children.

“If Canada is my love story, then the public service is what has fed and nourished that love. And the public service has been the entity through which I reciprocated my love for Canada for more than a generation.”

Baltacıoğlu was promoted to deputy minister of Agriculture and Agri-Food Canada under the Tories and then onto Transport, Infrastructure and Communities as deputy minister where she oversaw the Conservatives' troubled infrastructure program.

Last year, she was one of the honorees at the Public Policy Forum's annual dinner where Prime Minister Justin Trudeau called her one of Canada's "most distinguished, most respected, public servants." The award was given to to recognize Canadians' work in policy and social justice who "helped bring Canada to the world and the world to Canada."

Le juge Gascon pédale pour la justice

Une journée de spinning est organisée par un cabinet montréalais pour récolter des fonds pour sa clinique juridique

Droit Inc
Delphine Jung
25 janvier 2018

L'événement, qui se déroulera le 3 février, est organisé par NOVAlex, un cabinet qui a développé une clinique juridique pour ses clients moins bien nantis.

Afin de récolter des fonds, Me Ryan Hillier, le fondateur, a décidé d'organiser une journée de spinning au B.cycle, au 601 rue de la Gauchetière. Cela se fera en présence du juge à la Cour suprême Clément Gascon, ambassadeur de la journée, qui fera également une petite allocution.

« J'ai rencontré par hasard le juge Clément Gascon au b.cycle. Comme moi, il est un adepte du spining », raconte Me Hillier qui donnera les cours offerts de 12 h 30 à 17 heures. Chacun sera de 45 minutes pour un coût de 50 $ chaque et le maximum d'inscrits par cours est de 47 personnes.

« Ce sera une ambiance de party, il faudra pédaler au son de la musique et il y a aura aussi possibilité de faire quelques exercices musculaires », détaille Me Hillier.

Tous les fonds seront récoltés seront versés à la clinique de NOVAlex. « Les services juridiques sont offerts, mais les citoyens doivent tout de même prendre une charge une partie des frais comme les frais de dossier, de sténographie, d'huissiers, les timbres judiciaires, etc. », détaille l'avocat.

Ceux qui bénéficient des services de la clinique juridique sont des entrepreneurs en démarrage ou des particuliers à revenu modeste.

Il est possible de s'inscrire à la séance de son choix sur Facebook via ce lien.

Les heures facturables sont-elles devenues ridicules?

Évaluer la productivité d'un cabinet en calculant les heures facturées est la pire chose à faire pour déterminer la valeur ajoutée offert aux clients

Droit Inc
Jean-François Parent
25 janvier 2018

« La mesure traditionnelle de la productivité dans les cabinets d'avocats est particulièrement inepte », écrit le consultant Jordan Furlong, de Law21 à Ottawa.

Dans le magazine Lawyerist, le spécialiste du développement d'affaires juridique prend pour cible la dernière livraison du rapport annuel sur l'État du droit, publié par Thomson Reuters.

Dans l'État du droit 2018, on définit la productivité par le ratio entre le nombre d'heures facturées par un bureau et le nombre d'avocats dans ce même bureau.

C'est clairement erroné, analyse Jordan Furlong. « Disons que, comme avocat de première année, je mette 10 heures à accomplir une tâche. L'année suivante, j'en mets cinq. N'importe quelle mesure traditionnelle montrera que j'ai doublé ma productivité. Pas dans un cabinet, où l'on observera plutôt que je l'ai réduite de moitié. »

Gagner en productivité

Plusieurs clients s'inscrivent en faux contre cette mesure. Ils veulent payer la valeur de ce qu'on leur offre, pas les heures qui y sont consacrées. Surtout si cela signifie qu'une tâche accomplie rapidement signale une baisse de productivité.

Même que si les cabinets revoyaient la façon de mesurer la productivité, ils gagneraient en efficacité et cesseraient de facturer les gens pour leurs efforts, au profit des résultats pour les clients.

En règle générale, pour une activité économique normale, on mesure les intrants par rapport aux extrants. Ainsi, dans n'importe quelle industrie, les unités vendues par l'entreprise et achetées par le client—les extrants—sont les mêmes : des planches, des téléphones, des canapés.

Dans l'industrie légale, la donne change : « Les clients considèrent que le bien acheté est un résultat, que ce soit un jugement obtenu, une action déposée, voire un conseil juridique. Les firmes estiment plutôt que le service rendu réside dans les heures nécessaires à ce service; on facture non pas pour une tâche, mais pour le temps qu'il faut à accomplir la tâche. »

C'est là une définition de la productivité qui désavantage le client, puisque ce sont les associés d'un cabinet qui bénéficient des heures facturées, pas les clients. La productivité devrait donc se mesurer résultats finaux, et non en heures facturées.

Les clients n’ont guère le choix

Ce n'est pourtant pas ce qui se passe puisque les cabinets utilisent les heures facturées comme critère de mesure pour le service client. « Et les clients sont obligés d'accepter cet état de fait parce que si un client et son avocat ne peuvent s'entendre sur la façon de définir le service acheté, si le bien produit a deux définitions différentes, ils ne pourront faire affaire ensemble », observe Jordan Furlong.

Ainsi, par la force des choses, les clients doivent se faire à l'idée et accepter, en faisant un chèque, que le service sera rendu sous la forme d'heures facturables.

Le client peut bien dire qu'il refuse d'acheter des heures alors que ce dont il a besoin, c'est une convention d'actionnaire. Ce à quoi l'avocat répond, « je ne peux pas établir un prix pour une convention d'actionnaire, car je ne sais pas combien ça vaut, pas plus que vous d'ailleurs; je vais donc vous facturer le temps que ça me prend », et c'est ainsi que le temps passé à travailler fait figure d'extrant.

C'est une problème de taille : les cabinets ne savent pas vraiment combien valent réellement les services qu'ils proposent aux clients. Pas plus qu'eux-mêmes par ailleurs.

« Mesurer la valeur offerte au client par l'entremise des heures facturables est ridicule. C'est pourtant ce qu'on mesure et qu'on refile aux clients, et c'est ce pour quoi ils paient, car ils n'ont rien de mieux à proposer, soutient Jordan Furlong. À moins que les cabinets et leurs clients ne s'entendent sur une valeur donnée pour un produit précis, des heures seront facturées. »

Et le monde juridique continuera d'éviter de calculer sa productivité selon des critères utilisés par le monde des affaires en général.

More Phoenix woes: “Capacity” problems mean overpayments won’t get processed on time, union head says
iPolitics
Kathryn May
January 26, 2018

The besieged Phoenix pay system can’t handle all the overpayments that Canada’s public servants scrambled to report by last week’s deadline before tax time, say union leaders.

Debi Daviau, president of the Professional Institute of the Public Service of Canada (PIPSC), said the union was informed that Public Services and Procurement Canada has “capacity” problems.

She said the department dedicated 200 people to process the flood of overpayments reported by Jan. 19 but “many won’t get done” by the end of the month.

“They have 200 people processing overpayments to get as many processed … but they are not even going to get the ones filed by Jan. 19 processed on time,” she said.

It's another frustration on a pile of problems for public servants, who are increasingly becoming fed up with pay woes that never seem to get fixed.

A growing number already had little faith that reporting their overpayments, whether by phone or online, would be properly recorded by the fickle system and overworked compensation advisers to meet the Jan. 31 deadline.

It's all raised much speculation whether the government will even make the March 1 deadline for T-4 slips and, if it does, whether they will be riddled with errors.

Reported cases that get processed will only have to repay the money or net pay they received in overpayments and will be issued accurate T4 slips.

Those whose overpayments aren't processed won't have their T4 slips adjusted and they will have to pay the gross amount of the overpayment – which includes deductions made at source on their behalf such as CPP and EI.

What's infuriating, says Daviau, is the government proposed this process of having employees report their overpayments by Jan. 19 to ensure they would be recorded on time for tax purposes.

She argued employees who met the deadline shouldn't be penalized because the government can't make its deadline.

"This is not what was promised to us," said Daviau. "The intent was a promise that if you reported your overpayment by the deadline it would be processed on time and you would pay the net amount and not the gross."

"We had people scrambling to get these in by the deadline. … They spent hours calling the call centre many times a day, jumping through fiery hoops to get recorded on time. It was just wrong to let people believe this would solve their problems."

The unions opposed public servants having to re-pay the gross amount of the overpayments from the start. They pressed for a blanket exemption from tax rules so employees would only have to pay 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.

The government, however, refused and instead came up with a compromise. Those who reported overpayments by Jan. 19 would only have to pay the net amount and their tax slips would ne adjusted. The overpayments could be reported by calling the Phoenix call centre or online using a Phoenix feedback form.

The Public Service Alliance of Canada (PSAC) is doubling down on the call for blanket exemption. PSAC President Robyn Benson appealed to Treasury Board President Scott Brison to "stop gouging public servants" and seek a remission order from his cabinet colleague, Revenue Minister Diane Lebouthillier, to exempt those with overpayments in 2017 of tax liability.

Lebouthillier has the power to issue a remission order if a tax liability or penalty is considered unreasonable, unjust or not in the public interest to collect.

"A complete exemption – through a remission order – is the only way forward … in this fight to stop the unfair recovery of gross pay," said Benson.

"We have been clear that, under no circumstances, should our members be forced to hand over more money than they received in overpayment. The minister has within his power the ability to solve this problem and that is what we are asking him to do.

Brison did not comment on the remission order request. His office said PSPC is processing overpayments as fast as possible and urged employees to continue reporting overpayments as quickly as they can.

"We continue to work closely and collaboratively with public sector unions, and we take any suggestion that might help limit the financial hardship faced by our employees very seriously," said Jean-Luc Ferland, a spokesman for Brison, in an email.

But PSPC, the federal pay master, gave itself wiggle room from the start. The department issued a pay advisory that warned those racing to meet the Jan. 19 deadline that "every effort will be made to ensure that you will only have to pay the net overpayment rather than the gross."

The government argues employees won't have to pay more than they receive because PSPC will only recover overpayments – for the gross amount -in the summer of 2018, after Canada Revenue Agency has processed 2017 tax returns. By then, CRA will have reassessed and credited their tax accounts and sent tax refunds.

So far, PSPC is not commenting. It has been unable to say how much money has been issued in overpayments or how many people reported overpayments by the Jan. 19 deadline.

At its last Phoenix update, the department reported receiving about 18,000 reported overpayments by the end of December.

Last August, a PSPC internal report was circulated that showed overpayments accounted for the second largest volume of cases in the backlog and at that time there was about 31,900 reported cases.

The most common overpayment situations are employees moving to a new job and getting paid twice or continuing to get paid after they quit, retire or finish a contract.

RCMP Sentenced in Labour Code Trial
Canadian Newswire
January 26th 2018

MONCTON, NB, Jan. 26, 2018 /CNW/ - Today in New Brunswick Provincial Court, Her Majesty the Queen in Right of Canada, as represented by the Commissioner of the Royal Canadian Mounted Police (RCMP), was sentenced to pay a total of $550,000, including a fine of $100,000, for committing an offence contrary to s. 124 of the Canada Labour Code.

The $450,000 in donations includes $300,000 for scholarships at the University of Moncton, $60,000 towards an educational trust fund, $75,000 to The Threads of Life, which supports families after workplace tragedy, and $15,000 to the Valour Place Society, which supports injured soldiers, RCMP, veterans, and their families.

The RCMP was found guilty on September 29, 2017, of failing to ensure the health and safety of its officers by not providing its members with appropriate use of force equipment and related user training when responding to an active threat or active shooter event.

The charges were laid in 2015 following an investigation into a shooting where three officers were killed and two others wounded while responding to an active shooter situation.

The Public Prosecution Service of Canada is responsible for prosecuting offences under federal jurisdiction in a manner that is free of any improper influence and that respects the public interest. The PPSC is also responsible for providing prosecution-related advice to law enforcement agencies across Canada.