

Press Clippings for the period of September 27<sup>th</sup> to October 3<sup>rd</sup> 2016 / Revue de presse pour la période du 27 septembre au 3 octobre 2016

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## **Bureaucrats accused of blaming workers for fouled-up pay system as DND staff get training deadline**

**David Pugliese, The Ottawa Citizen, September 30 2016**

Thousands of civilian employees at the defence department have until next week to complete mandatory training on the controversial Phoenix pay system.

The training is critical to minimize errors affecting the problem-plagued federal government system, noted a message sent to all department workers and obtained by the Ottawa Citizen.

Phoenix pay system foul-ups have left thousands of Canada's public servants unpaid. But senior federal officials have countered that many of the issues with the pay system are not technical but linked to employees failing to properly fill out work-related information.

"It is critical that you complete the mandatory training to minimize errors that will lead to pay issues," the Department of National Defence message pointed out. "Training can help both employees and managers overcome the challenges associated with the transition to the new system."

The training must be completed by Oct. 7 and involves a one-hour course that can be completed online. "The majority of employees who have taken the self-paced course have indicated that the training was beneficial to ensuring that their information was entered correctly," the message said.

Once training is completed, the employee must provide a training co-ordinator with a copy of a certificate of completion. There was no indication what the consequences of failing to complete the course are.

It's embarrassing when we have a manager responsible for the implementation of a new pay system who blames everyone else but the pay system itself

DND employees have been taking the training voluntarily, but as many as 30 per cent of the 24,900 workers have yet to complete the course. "The October 7<sup>th</sup> deadline reflects the fact that resolving

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pay issues is a top priority for the department,” DND spokeswoman Jessica Lamirande said in an email response to the Citizen.

Lamirande said the training is offered by the Canada School of the Public Service to all federal employees. “DND chose to make the training mandatory for those who had not yet taken it,” she said.

Several weeks ago the senior bureaucrat who oversaw the Phoenix project suggested problems could have been avoided if all federal employees were forced to take training on how the system worked.

Rosanna Di Paola, Public Services and Procurement Canada’s associate assistant deputy minister of accounting, banking and compensation, told a labour board hearing that when she looks back at what went wrong she now believes she should have pressed for mandatory training.

“To do it over again, I would have made the argument that training be mandatory for all users,” she testified. “I can’t mandate training, but it’s the one thing, if I could do over, I would do.”

The problems with the Phoenix pay system are at the centre of a labour tribunal hearing into whether the federal government is breaking the law by not paying thousands of public servants properly and on time.

As departments drilled down into the issues, Di Paola said, they found two “root causes” — the information public servants were plugging into the system was wrong or untimely, and the processing times of transactions at the Miramichi, N.B., pay centre were slower than expected.

There are “pieces” of pay administration that are not working, she said, but Phoenix “as a technology is working.”

Di Paola said the 80,000 people backlogged awaiting extra pay are not considered Phoenix problems. They ended up not getting paid what they are owed because information was not put into the system properly.

Her comments, however, have sparked a backlash from federal employees.

Chris Aylward, president of the Public Service Alliance of Canada, said Di Paola was trying to shift blame to the workers.

“We’re talking 80,000 people who didn’t input their information properly?” Aylward asked after her testimony. “I find that hard to believe. And there is no system problem or problem with the pay system? I find that extremely hard to believe.

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"It's embarrassing when we have a manager responsible for the implementation of a new pay system who blames everyone else but the pay system itself ... and (she's saying) 'It's either your HR people or employees themselves who are not inputting data properly,'" Aylward added.

DND employees who provided the Citizen with the internal message about Phoenix training echoed Aylward's criticism.

Military managers of the department's civilian employees do not currently have access to the Phoenix pay system, a situation that has also created problems in the department.

But they are still expected to complete what is called the "Phoenix Self-Service for Military Managers" course, the internal message noted.

Phoenix was designed to integrate payroll and human resources systems. The government bought off-the-shelf software and "reconfigured" and "customized" it to handle the 80,000 pay rules and rates of pay for public servants.

## **Conservatives took payroll training responsibilities away from Phoenix creator IBM**

**Training problems have been pegged as a key cause of Phoenix fiasco**

**Katie Simpson, CBC News, September 29 2016**

As the federal government shaped its plan to modernize the public service payroll system, CBC News has learned that the former Conservative government took training duties away from IBM — the company that created the Phoenix program.

The move raises new questions about what led to the payroll fiasco, as problems with training have been listed as a key cause of Phoenix's troubled rollout.

"Responsibility for training design and execution was transferred to the Crown in March 2014," said IBM spokeswoman Carrie Bendzsa.

The change was made at the request of the former government, Bendzsa confirmed by email.

Conservative MP Diane Finley was the minister of Public Works at the time and responsible for overseeing the modernization project from 2013 to 2015. Her office refused multiple requests for an interview.

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The current Liberal government is accusing the Conservatives of cutting corners on training to save money.

"There was a cost associated with training, and it was made clear to me that the Conservatives opted to go with the train-the-trainer model versus buying the IBM training approach. In this case, savings were prioritized before the project was fully implemented," Judy Foote, the current minister of Public Services and Procurement Canada, said in a statement.

"It appears that when the previous government decided to go with Phoenix, the proper training wasn't done and they tried to implement a system without a sufficient number of employees," she added.

### Liberals should have hit pause, MP says

While the Conservatives did not have an explanation as to why the decision was made, they blame the current government for not slowing down the rollout of Phoenix, which started this past February.

"If they weren't ready and they knew about it ... why would you go ahead and start the system if you're now saying that you knew the training was insufficient?" said Kelly McCauley, the Conservative critic of Public Services and Procurement.

"It goes back to, you knew it wasn't ready to implement, so why would you?"

Since the Phoenix system was fully implemented in April, more than 80,000 public servants have experienced problems with their pay. Most workers have been underpaid, while some have been over paid, or not paid at all.

The Department of Public Services and Procurement Canada has promised to clear the backlog of problems by the end of October. As of Sept. 21, there were still 57,500 public servants waiting for individual cases to be resolved.

The government estimates it will cost [\\$50 million to fix the program](#), which was originally touted as a way to save the federal treasury \$70 million annually.

### Union 'not surprised'

The Public Service Alliance of Canada, the largest union representing federal public servants, expressed frustration over this latest development.

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"I'm very disappointed but not surprised at all," said PSAC National Vice-President Chris Aylward. "[There's] no regard for the employees who have to perform those duties. No regard for the employees going on that new pay system."

At a labour board tribunal hearing earlier this month, a senior bureaucrat explained that training problems are at the root of the Phoenix issue.

"We underestimated the time it took people to adapt to the new technology. The learning curve just seemed to be much longer that we expected," said Rosanna Di Paola, the associate assistant deputy minister of Public Services and Procurement Canada.

## **Registry shows half of buildings where PS works contain asbestos**

**Kathryn May, The Ottawa Citizen, October 3 2016**

A new public registry of federal buildings across Canada that contain asbestos shows more than half of the buildings in Ottawa where public servants work still have the hazardous material.

The registry, promised by Public Services Minister Judy Foote, is hailed as a critical move by labour and health groups pressing the Liberal government to ban asbestos and develop a comprehensive strategy to phase out asbestos.

They also want the government to work with the provinces and municipalities to broaden the federal registry to include all public buildings with asbestos and to spearhead the creation an inventory where victims with asbestos-related disease can register.

The federal registry was considered a key step in eventually ridding asbestos from buildings the government owns and leases. Federal unions have had cases of federal workers having no idea they were exposed to asbestos in their workplace until they fell ill with asbestos-related diseases.

"We advocated for the registry for years ... to ensure workers can find out if they are working in a building with asbestos," said Denis St-Jean, the national health and safety officer for the Public Service Alliance of Canada.

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“Having this list made public, makes it easier for workers in exercising their right to know. It also protects future contractors during future renovations, for example, from being exposed without prior knowledge of the presence of asbestos.”

For years, the campaign against asbestos was led by the labour movement but now has the clout of large health groups like the Canadian Cancer Society. More 2,000 people are diagnosed each year with asbestos-related diseases, a rate that is expected to climb because of the long latency period and impact of continued exposure.

The National Capital Region, which includes 458 federal buildings and offices in Gatineau and Ottawa, has the largest concentration both of Crown-owned buildings and buildings that contain asbestos.

The average age of federal buildings in Ottawa is more than 50 years, and many were built when the heat-resistant asbestos was a commonly used in such building materials as shingles, ceiling and floor tiles and concrete products.

The buildings in the NCR with asbestos account for 64 per cent of all the federal buildings managed by Public Services and Procurement Canada (PSPC) across Canada that are known to contain the hazardous fibre.

They include large office towers such as the giant Place du Portage complex and Les Terrasses de la Chaudière in Gatineau, and the Place de Ville, C.D. Howe, and L’Esplanade Laurier complexes in Ottawa — all built in the 1970s in the asbestos heyday and when the public service grew dramatically.

On top of those, the Parliamentary precinct has another 71 buildings, 44 per cent of which have asbestos. They include such prominent landmarks as the old U.S. Embassy, Langevin Block, East Block, Centre Block, the Confederation Building, and the Wellington Building and West Block, which are under construction and having asbestos removed.

PSPC quietly tabled the registry last week, fulfilling a promise made by Foote in April when she also banned the use of asbestos in all new government construction and renovations. That ban took effect April 1 and is considered a critical step toward eliminating asbestos in government buildings.

Prime Minister Justin Trudeau has already said the federal government is moving forward with a ban on asbestos. Hassan Yussuff, president of the Canadian Labour Congress, said Science Minister Kirsty Duncan has given him similar assurances but offered no timeline.

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The government's infrastructure spending plans have added an element of urgency to the campaign. Yussuff said groups promoting the ban want the government to prohibit the use of asbestos in federally funded infrastructure projects.

"I salute the government for the list, it is the right thing to do, and hopefully Kristy Duncan will rise in the House soon and introduce legislation," said Yussuff. "It is 2016 and the science is absolutely clear about the impact of asbestos on human health."

The PSPC is the government's main real estate arm but it only manages about 30 per cent of all federal buildings and leases. Thousands more are run by departments, the biggest being National Defence. Other departments are expected to add their stock of buildings with asbestos to the registry within a year.

Asbestos use is much higher in Crown-owned buildings. About 80 per cent of the 110 Crown-owned buildings in the NCR have asbestos compared with 40 per cent of the space leased from private landlords.

Dean Karakasis, executive director of the Building Owners and Managers Association in Ottawa, said private landlords have largely "dealt with" asbestos and removed it as part of the regular upgrade and maintenance of buildings.

Yussuff said landlords tend to respond faster to getting rid of asbestos so not to deter tenants, but the government is the client in Crown-owned space.

Yussuff said federal leadership in creating the first registry will help to get provinces and municipalities on board for a national registry of all public buildings, from schools and arenas to hospitals.

"We recognize the feds can't tell the provinces to get on board ... but this is clearly a tremendous boost that should make it easier to go to the provinces and municipalities to list their buildings," he said.

Workers in the construction industry have been hardest hit by asbestos-related disease. Plumbers, pipefitters, steam fitters and electricians were most vulnerable, with tradespeople in the shipbuilding and electrical power industries disproportionately hit. Asbestos isn't considered dangerous unless it is disturbed or has deteriorated.

PSAC's St-Jean said many of the cases go back to the 1970s and '80s when buildings underwent major renovations to handle new technology. Technicians who worked at the House of Commons were exposed when the building was rewired for television in the 1970s.

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“Look at the House of Commons. The men and women we elect are put into one of the worst environments to work in. I don’t know why they don’t refuse to work. It’s all over,” said Yussuff.

Under the Canada Labour Code, employers should inform employees of known asbestos hazards in the workplace. Each federal department has a health and safety committee, which is entitled to information about any asbestos inspections. St. Jean said this regime tends to be reactive and employers often don’t share the information until a complaint is filed.

### **Asbestos in Federal Buildings, by the Numbers:**

The federal government recently released its first national registry of buildings it owns or rents that contain asbestos across Canada. The registry also specifies which buildings have asbestos management plans in place.

**2,184:** Properties in registry

**714:** Buildings with asbestos leased or owned

**698:** Affected buildings with an asbestos management plan

**16:** Affected buildings with no management plan

### **National Capital Region**

**458:** Buildings in National Capital Region, including 74 in Gatineau

**231:** Buildings in NCR with asbestos

**89:** Crown-owned buildings in NCR with asbestos

**135:** Leased buildings in NCR with asbestos

### **Parliamentary Precinct**

**71:** Buildings in Parliamentary precinct

**26:** Crown-owned buildings containing asbestos

**5:** Leased buildings with asbestos

### **Number of asbestos buildings by province and territory**

**31:** Alberta

**59:** British Columbia

**44:** Manitoba

**29:** New Brunswick

**18:** Newfoundland and Labrador

**8:** Northwest Territories



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**19:** Nova Scotia  
**0:** Nunavut  
**362:** Ontario  
**2:** Prince Edward Island  
**132:** Quebec  
**7:** Saskatchewan  
**3:** Yukon

## **Charter First: A Blueprint for Prioritizing Rights in Canadian Lawmaking.**

**CCLA, September 20 2016**

On September 20, 2016, CCLA released a comprehensive report, [Charter First: A Blueprint for Prioritizing Rights in Canadian Lawmaking](#). Informed by consultations with experts in political science and constitutional law, the report expands on the important issues raised by the Charter First campaign and presents detailed policy recommendations that we believe would increase transparency and accountability surrounding Charter issues, and raise the standard of Charter compliance of laws passed by Parliament. Here is a brief summary of those recommendations:

1. Parliament should amend the ineffective section 4.1 of the *Department of Justice Act* such that the Minister of Justice is required to issue a detailed statement of Charter compatibility when a government bill is introduced in Parliament. The statement should lay out the government's principled position regarding how, on a balance of probabilities, the bill complies with the purposes and provisions of the Charter. This should include an acknowledgement of which rights, if any, are engaged by the bill; the government's justification for any potential infringements under section 1 of the Charter; the 'tests', factors, or reasonable alternatives considered to reach the conclusion; reference to jurisprudence and relevant judicial precedents; and an acknowledgement if the bill contradicts existing norms or precedents.
2. Parliament should create a position of Charter Rights Officer, with a staff and mandate to provide independent assessments of the Charter compliance of bills, and to serve in an advisory role to parliamentarians and parliamentary committees on Charter issues.
3. The Senate and House of Commons should review and revise their respective amendment admissibility rules to allow committees to debate and vote on amendments that address Charter concerns regardless of whether they go beyond the 'scope and principle' of a bill.

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4. For all government bills, the Charter Rights Officer should issue an independent assessment of Charter compliance, ideally prior to Second Reading in the House or Senate (depending on where a given bill is introduced). If amendments are made at any subsequent point, the Officer should issue addendums, ideally before final votes on the bill are taken. (If the bill was introduced in the Senate and amendments are made by Senators, then the Minister of Justice should issue an addendum to the government statement of compatibility at First Reading in the House.)
5. For any private members' bill or Senate public bill that passes Second Reading in the House or Senate respectively, the Charter Rights Officer should issue an independent assessment of Charter compliance. If amendments are made at any subsequent point, the Officer should issue addendums, ideally before final votes on the bill are taken.

For more information on the Charter First campaign by the Canadian Civil Liberties Association, please follow the link: <https://ccla.org/campaigns/charterfirst/>

## **Feds failed to assess privacy impact of C-51 info-sharing: Daniel Therrien**

**Jim Bronskill, The Globe and Mail, September 27 2016**

The government hasn't done enough to protect the privacy of "law-abiding Canadians" from new information-sharing powers in the omnibus security legislation known as C-51, says a federal watchdog.

Privacy commissioner Daniel Therrien says he was surprised that many federal agencies did not examine the effect the powers in the controversial Conservative bill would have on people's personal information.

In his annual report Tuesday, Therrien recommends agencies carry out formal privacy impact assessments — a key tool required under government policy when departments set up any new program or activity involving personal information.

The Security of Canada Sharing Information Act, part of C-51, expanded the exchange of federally held information about activity that "undermines the security of Canada."

The former Conservative government, which brought in the legislation, argued the measures were needed because some federal agencies lacked or had unclear legal authority to share information related to national security.

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In his report, Therrien says the law is broadly worded and leaves much discretion to agencies to define what sort of activities fall under the security law. The scale of information-sharing that could occur “is unprecedented,” he adds.

Legal standards for information sharing should ensure that “law-abiding Canadians, ordinary Canadians who should have nothing to fear from surveillance activities of the state, are not caught by the information-sharing regime,” Therrien told a news conference.

In the first six months the law was in force — August 1, 2015, to Jan. 31 of this year — five agencies reported to Therrien’s office that collectively they received information through the law on 52 occasions.

Of the five agencies, three had developed policy and guidance documents, but these “lacked specificity and detail to provide meaningful assistance to employees” to help them determine whether thresholds for sharing had been met.

In addition to formal privacy assessments, Therrien says there should be information-sharing agreements that contain core privacy protections and safeguards against accidental disclosure of personal data.

Public Safety Canada has agreed with the recommendations.

The Liberal government recently issued a discussion paper to kick off a public review of national security policy.

The paper seems more concerned with the dilemmas of police and security officials than issues of personal privacy, Therrien said: “I’m concerned with the tone of the document.”

## **Ottawa doit examiner l’impact de la loi antiterroriste, selon le commissaire à la vie privée**

**Ici Radio-Canada, le 27 septembre 2016**

Dans un rapport déposé mardi matin aux Communes, le commissaire dit s’étonner de voir que la plupart des ministères n’ont pas fait l’exercice, alors que cette loi (Loi sur la communication d’information ayant trait à la sécurité du Canada) a été présentée par le gouvernement fédéral comme « essentielle » pour protéger le public.

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C-51 permet plus facilement l'échange d'information entre les institutions gouvernementales fédérales.

Adoptée sous le gouvernement conservateur de Stephen Harper, cette loi a été dénoncée par ceux qui s'inquiètent des droits individuels et de la protection de la vie privée. Les libéraux avaient promis d'y voir lorsqu'ils seraient au pouvoir.

### **Un projet de loi en guise de réponse**

Le seul geste posé jusqu'à maintenant par le gouvernement de Justin Trudeau a été le dépôt d'une loi pour former un comité de parlementaires qui surveilleront les agissements de la GRC, du SCRS et autres institutions du genre.

Les Communes entamaient l'étude en deuxième lecture de ce projet de loi C-22, mardi après-midi.

En arrivant à la réunion du cabinet mardi matin, le ministre de la Sécurité publique Ralph Goodale insistait sur C-22 comme étant « la pierre angulaire » de la révision de C-51.

Par ailleurs, le commissaire Therrien s'inquiète du ton emprunté par le gouvernement pour les consultations publiques sur la sécurité nationale. Il estime que la portée de ces consultations est « trop restreinte ». Et il reproche au gouvernement de parler surtout des défis posés aux organismes d'application de la loi et de sécurité nationale et de négliger ainsi les droits démocratiques et la vie privée.

## **New Democrat MP Randall Garrison introduces bill to repeal anti-terror C-51**

**Jim Bronskill, National Newswatch, September 26 2016**

A New Democrat MP has followed through on a promise to table a private member's bill to repeal controversial anti-terrorism measures.

NDP public safety critic Randall Garrison says the omnibus security legislation known as Bill C-51 infringes on the liberties of Canadians without making people safer.

The legislation gave the Canadian Security Intelligence Service more power to thwart suspected terrorist plots — not just gather information about them.

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It also expanded the sharing of federal security information, broadened no-fly list powers and created a new criminal offence of encouraging someone to carry out a terrorism attack.

The previous Conservative government introduced the legislation early last year, less than three months after jihadi-inspired attacks that killed Canadian soldiers in St-Jean-sur-Richelieu, Que., and Ottawa just days apart.

The NDP staunchly opposed the bill, but it became law with support from the Liberals, who promised during the subsequent election campaign to change what they call "problematic elements."

The Liberal government recently announced a wide-ranging consultation on national security, saying the Conservatives failed to properly consider public views before rushing ahead with C-51.

Garrison chided the Trudeau government for lack of action.

"They've turned all their promises into discussion points," he said Monday. "And so we're nowhere near actually having something concrete to discuss in the House."

## **Is C-51 necessary? Prove it.**

**Ottawa's security consultation can't succeed unless Canadians have all the facts**  
**Chantal Bernier, iPolitics.ca, September 27 2016**

Reacting to the Government of Canada's national security green paper, ["Our Security, Our Rights"](#), Wesley Wark wrote in *The Globe and Mail* on September 9, 2016 that "wherever it leads, let's applaud consultation on security."

Before that, FBI Director James Comey called for an "adult conversation" on device encryption. And Apple's CEO Tim Cook told his employees that the U.S. government should "form a commission or other panel of experts on intelligence, technology, and civil liberties, to discuss the implications for law enforcement, national security, privacy and personal freedom."

All three agree that we need to talk. Canada deserves to be commended for going one step further and engaging Canadians in what should be a societal debate.

Still, the consultation on C-51 in the green paper will not be conclusive unless two conditions are met. First, Canadians need the facts justifying the policy options. Second, we must assess

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the legitimacy of the policy options in accordance with the constitutional rights enshrined in the Canadian Charter of Rights and Freedoms.

In fact, these are *legal* conditions.

The Charter, as part of the Canadian Constitution, has supremacy over legislation. Sure, there is a “notwithstanding clause” that allows an express override subject to a five-year review — but it’s a political third rail. As Walter Tarnopolsky, former president of the Canadian Civil Liberties Association, said at the time of the clause’s adoption in 1981, “you won’t be able to take away human rights without making it patent that you are doing so.” You can imagine how difficult it would be to manage that message with Canadians.

Second, the Charter protects the right to privacy as the “right to be secure against unreasonable search and seizure.” It is on that basis that the Supreme Court of Canada in *R v. Spencer* (June 2014) decided that law enforcement authorities need a valid warrant to obtain personal subscriber information behind an IP address. It’s also why the Ontario Superior Court in *R. v. Rogers Communications* (January 2016) concluded that a warrant is unconstitutional if it is too broad for the search to be “reasonable”. It added that telcos not only have the right to resist the warrant, but in fact hold a duty to do so — to protect the privacy of their customers.

Third, the Charter does allow restrictions on protected rights — but only “to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.”

These provisions of the Charter are perennial, supreme and flexible enough to preserve freedom and democracy in evolving circumstances and with changing technology. They must guide our analysis of C-51 and of the legitimacy of surveillance powers in general, enabling the integration of privacy with public safety measures. That is their purpose.

The Charter is there to both elevate fundamental rights to their proper level of protection and govern their interaction. The right to security and the right to privacy are both protected by the Charter and their interaction allows restrictions that are justified in a free and democratic society.

The courts have clarified these rules of interaction. In 1986, the Supreme Court of Canada established what is now called the “Oakes test” to determine the legitimacy of restrictions on Charter rights, requiring them to demonstrate “necessity”. Not “convenient”, not “good to have” ... but *necessary*. No restriction on Charter rights can go beyond what is proportionate and effective to meet that necessity.

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Moreover, the government's duty is to "demonstrate" that restrictions on a Charter right are justified — not to "speculate" or "believe". It must gather proof of necessity — and share it with Canadians.

So the first condition for making this welcome consultation legitimate is to provide Canadians with the facts, statistics, analyses and other evidence that will allow them to assess the "necessity" of the proposed restrictions.

Having assessed the necessity, and therefore the legitimacy, of these restrictions, Canadians will have to judge the legality of their implementation. How will the restrictions be kept in check? What mechanisms of oversight will effectively ensure compliance with freedom and democracy? How will the principles of natural justice be protected? And what kind of effective recourse will be in place in the event that something still goes wrong?

How will Charter rights be respected?

Every step of the analysis must be enlightened by the Canadian constitutional framework.

So any valid consultation on C-51 and the green paper has to fulfil at least two conditions:

- It has to demonstrate its objective, with comprehensive and relevant facts to assess the necessity of each restriction to fundamental rights.
- It has to ground that assessment in the established constitutional framework of the Canadian Charter of Rights and Freedoms.

There's a third condition ... not a legal one, yet one that's still vital to this project's success. Canadians need to see the value of this unique public consultation, put their cynicism aside — and participate.

## **Privacy watchdog urges Ottawa to pass 'metadata' legislation**

**Colin Freeze, The Globe and Mail, September 27 2016**

Canada's privacy czar is calling on the Liberals to fulfill a promise to pass laws constraining the federal spies who are allowed to capture records of Canadians' phone and Internet activities.

The Communications Security Establishment needs new legislation because it has not been careful enough in handling such material, says Daniel Therrien, the Privacy Commissioner of Canada. "The National Defence Act should be amended," he said in an interview. "I would want

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some clarity around the standards used to collect and share ‘metadata.’ Right now, the act is completely silent on this.”

“Metadata” is the name federal officials give to phone logs, Internet exchanges and similar activity that spy agencies can electronically intercept in bulk. The substance of the underlying communications and the identities of communicators are not known.

CSE has been tasked with providing intelligence about foreigners to the Canadian cabinet since the 1940s. Mr. Therrien’s call for new laws for CSE was formally made in his office’s annual report on Tuesday. While the Liberals are not obliged to implement his findings, they promised new CSE laws on the campaign trail last year.

Canadian police officers who want access to an individual’s phone records must get a judge to sign a warrant. CSE’s technological analysts, which work with Canada’s closest allies to capture and share communication trails of as many people as possible, operate without warrants and largely through secret edicts signed by the minister of national defence.

A once-classified “metadata ministerial directive” from the Liberal government of 2005 first told CSE it can capture and share as many phone and Internet logs as it can, so long as it does not go after Canadians specifically. Should such metadata turn up in the wider trawl, the minister tells the spy agency to scrub out any known “Canadian identifying information” before sharing with allies.

During the 2015 campaign, the Liberals suggested they would like judges rather than ministers to make these decisions. The party has said almost nothing about constraining CSE since, but a spokeswoman for Defence Minister Harjit Sajjan told The Globe on Tuesday the government still hopes to introduce a law.

Problems with CSE metadata programs were revealed to the public earlier this year by the spy agency’s watchdog, who reviews operations.

Jean-Pierre Plouffe, who is also calling for new laws for the spy agency, unveiled records showing the CSE bought privacy-protecting software that failed. Specifically, it did not remove identifiably Canadian phone logs and Internet Protocol exchanges. So for years, potentially vast amounts of such material was shared in almost its raw form with allied agencies.

Mr. Sajjan played down the privacy implications, telling reporters the members of the intelligence partnership known as the Five Eyes – agencies in the United States, Britain, Australia, Canada and New Zealand – undertake to protect the privacy of one another’s citizens, and not merely their own.



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The privacy commissioner says such remarks cannot be taken at face value. "The privacy risk was minimized, downplayed."

Mr. Therrien said in the interview that the only reason spy agencies such as CSE collect metadata is that it is so very revealing. And he added that no Five Eyes "gentlemen's agreement" overrides anyone's national interest.

When asked what kinds of worst-case scenarios could emerge from all this, Mr. Therrien cited the case of a Canadian software engineer once famously caught in the U.S. Central Intelligence Agency's crosshairs.

In 2001, Canadian officials wrongly red-flagged Maher Arar as a terrorist threat. He was arrested in a New York airport and flown on a CIA-leased jet to the Middle East and spent the next year jailed in his native Syria.

"We only need to think about Arar," Mr. Therrien said, adding that the Syrian-Canadian was tortured. "Arar is a real-life example of where information was shared to a third state. That is the worst-case scenario."

## **Alberta court backlog delays criminal trials by more than a year, chief judge warns senators**

**Civil trials in Alberta needing more than 5 days of court time could be delayed 138 weeks, Neil Wittmann says**  
**CBC News, September 29 2016**

Two of Alberta's top judges have warned senators that more judges must be appointed to ease a growing backlog that is already seeing new criminal trial dates being set for more than 60 weeks away.

"If a murder case dropped on the desk tomorrow, they'd be looking at trial date in 2018 and that's the start of the process," said Senator Bob Runciman, who chairs the committee on legal and constitutional affairs.

- [Justice minister promises 'quick process' for selecting judges in bid to end courts backlog](#)

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Alberta Court of Queen's Bench Chief Justice Neil Wittmann and the head of the province's provincial court, Chief Judge Terrence Matchett, spoke about the issue at a hearing in a Calgary hotel on Wednesday.

They said delays are growing in Alberta courthouses and simply filling the current vacancies will not cut into the backlog.

Wittmann told the senate committee new criminal trials are being set for 62 weeks from now, and civil trials needing more than five days of court time could be delayed 138 weeks.

During a break in the hearing, Runciman said the backlog is a problem, given that the Supreme Court has ruled serious criminal cases should be completed in 30 months from the time a charge is laid to end of a trial.

"If you're looking that far down the road, you're looking at three, four, [or] five years for the completion of the case and then you start to run into the challenges of the recent Supreme Court ruling, and then you're going to see cases tossed or stayed and significant numbers of victims lost at sea."

Calgary police Chief Roger Chaffin told the committee he's worried about good police work being wasted because of courthouse delays.

"Lots of tests have to be applied to that still, so we're still hopeful we won't just randomly have things thrown out, but it's a big concern for us right now," he said.

The senate committee will file a report next spring.

## **Judge shortage means some trials taking 2.5 years to be heard**

**Reid Fiest, Global News, September 28 2016**

Court delays are reaching a critical point in Alberta and Canada a Senate committee heard from judges, lawyers and police on Wednesday.

Chief Justice Neil Wittman of the Court of Queen's Bench of Alberta said the lack of judicial resources is getting to a critical juncture.

"There is increasing lead time in our court," he said.

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Wittman testified as a witness at a hearing in Calgary held by the Senate committee studying delays in Canada's criminal justice system.

He said a lack of judicial and non-judicial staff has been a chronic problem for years.

According to Wittman, there are nine vacancies in the Court of Queen's Bench in Alberta.

He told the senators there's currently a 138-week lead time to get a civil trial longer than five days scheduled in an Alberta court.

**READ MORE: [Court doc says shortage leaves Alberta judges 'without requisite time' for cases](#)**

On the criminal side, trials longer than five days are taking up to 63 weeks to schedule.

Those long waits are only for trials to start.

The Supreme Court of Canada recently ruled cases can be thrown out if they're not heard within 30 months in a Superior Court. In Provincial Court, that limit is 18 months.

Chief Judge Terrence Matchett of the Provincial Court of Alberta told the committee a criminal trial used to take two to three weeks to schedule when he was a young lawyer. He said the delay is now five to 10 months or even longer.

Matchett said in many cases, justice delayed is justice denied but conceded there are no magic solutions to fix the problem.

"There are no silver bullets," he said to the committee.

The senators also heard a request from child advocate Sheldon Kennedy to end preliminary hearings for child abuse cases, in part, to speed up the legal process.

The founder of the Sheldon Kennedy Child Advocacy Centre said the preliminary hearings only victimize abuse victims before they head to trial.

There are currently 56 superior court [judge vacancies](#) in Canada. The federal government is reviewing the appointment process of federally appointed courts.

The Senate committee has already posted an [interim report](#).

A full report is expected by the spring of 2017.

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## **Supreme Court of Canada heads into challenging fall session**

**Sean Fine, The Globe and Mail, October 2 2016**

A Supreme Court stocked with newcomers heads into a challenging fall session beginning on Wednesday, featuring major cases on Internet regulation, aboriginal rights and freedom of association.

The court will also tackle a high-profile criminal case in which convicted murderer Dennis Oland seeks to be released on bail while he appeals his conviction. And a case on roadside testing of drug-impaired drivers could help establish some ground rules for the coming era of marijuana legalization.

The court has just two judges with more than five years of experience on the court. Chief Justice Beverley McLachlin joined the court in 1989, and Justice Rosalie Abella was appointed in 2004. Three judges have been named since 2014, and the court is expecting Prime Minister Justin Trudeau to pick a new judge soon to replace Thomas Cromwell, a workhorse on a wide variety of cases since 2008; he retired on Sept. 1. Six of the current eight judges were appointed by former prime minister Stephen Harper.

In *Douez v. Facebook*, a Vancouver woman is seeking to certify a class-action lawsuit against Facebook, saying the social-networking company violates users' privacy by putting users in advertisements without informing them. Facebook argues that a user's privacy settings give it implicit permission. It also says California is the designated jurisdiction for the case, raising the question of whether B.C. courts have the authority to enforce the province's privacy act to protect consumers.

The class action was certified by the B.C. Supreme Court, but Facebook won on appeal at the B.C. Court of Appeal. Deborah Douez's appeal of that ruling will be heard by the Supreme Court of Canada on Nov. 4.

In *Google Inc. v. Equustek Solutions Inc.*, to be heard on Dec. 6, the court will hear the case of a small B.C. company that asked a B.C. court for a worldwide injunction that would block the search engine Google from displaying certain websites. Equustek was suing a company it accuses of selling counterfeits of its product online, and it does not want potential customers finding the counterfeits in Google searches.

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The case raises the question of whether Canadian courts have the authority to block search results outside Canada. Lower courts in B.C. have said they do, and Google appealed.

The court, which has expanded aboriginal rights in groundbreaking rulings in recent years, will hear a novel religious-freedom case called *Ktunaxa Nation v. B.C.*, on Dec. 1. The case involves a ski resort to be built with the province's permission on Crown land that the Ktunaxa Nation calls Qat'muk and says is spiritually important for its people as home of the Grizzly Bear Spirit. (A Ktunaxa Nation website describes their beliefs this way: "Qat'muk is where the Grizzly Bear Spirit was born, goes to heal itself and returns to the spirit world. For Ktunaxa, Grizzly Bear Spirit is a unique and indispensable source of collective as well as individual guidance, strength and protection, and a necessary part of many Ktunaxa spiritual practices and beliefs.") Establishing permanent overnight accommodations on that site would destroy the Ktunaxa's relationship with the spirit, the group says, and render their religious practices meaningless. The Ktunaxa Nation lost in the lower courts. The Crown says there should be no religious veto over development.

The case "represents the first opportunity for the Supreme Court of Canada to consider whether the destruction of an Aboriginal sacred site constitutes a violation of freedom of religion," University of Ottawa law professors Natasha Bakht and Lynda Collins said in an e-mail. "Sacred sites are as necessary to Aboriginal religions as human-made places of worship such as churches, temples and mosques are to other religious traditions."

The court has also given constitutional protection to labour rights in recent years. Now it is being asked to extend those rights further in a dispute between the B.C. teachers' union and the province that goes back more than a decade. A lower court had fined B.C. \$2-million in "Charter damages" for violating union members' rights. At the heart of the dispute is whether the government acted in bad faith when, after consulting with the teachers, it passed parts of a law previously deemed unconstitutional – a law that rewrote a collective bargaining agreement. The case, called *B.C. Teachers Federation v B.C. Attorney General*, will be heard Nov. 10.

Dennis Oland of New Brunswick was convicted of the second-degree murder of his father Richard, with no eligibility for parole for 10 years. He was denied bail by lower courts on the grounds that if he were released, the public's confidence in the justice system would suffer. In *Oland v the Queen* on Oct. 31, he will ask the Supreme Court to set him free while he appeals the guilty verdict.

"Oland argues that being detained as he awaits his appeal is not in the public interest. The Crown argues that allowing those convicted of serious offences such as murder back into the community is not in the public interest. By setting out clear legal parameters for when bail pending appeal should be granted, the Supreme Court's decision will have enormous

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implications for judges, accused persons and Crown lawyers across the country,” University of Ottawa law professor Kyle Kirkup said in an e-mail.

In *Bingley v the Queen* on Oct. 13, the admissibility of roadside testing for drug impairment is at issue.

## **Liberals take first steps to amend mandatory victim surcharge**

**Andrew Seymour, The Ottawa Citizen, September 28 2016**

The federal Liberal government has taken the first steps to amending the previous Conservative government’s controversial mandatory victim surcharge, as one Ottawa judge again criticized the law Wednesday for being unconstitutional and an unreasonable burden for the mentally ill.

The government gave notice last Tuesday that it intends to table a bill that will amend the Criminal Code in relation to the victim surcharge. The exact details of what the government plans to change were not revealed, however, and a spokeswoman for Justice Minister Jody Wilson-Raybould said the minister was not in a position to comment on proposed changes until the legislation is tabled.

The Increasing Offenders Accountability to Victims Act made mandatory a surcharge either \$100 or \$200 per offence, depending on its severity, or 30 per cent of any fine to fund programs supporting victims and to hold offenders accountable and promote reparation for any harm they caused.

The mandatory nature of the surcharge has been a lightning rod for criticism among judges across the country from the moment it came into effect on Oct. 24, 2013, with the intention of holding offenders more accountable for their crimes.

Some judges openly defied the law and refused to impose it; others found it unconstitutional without hearing proper legal argument. Others gave offenders decades to pay the surcharge, or imposed small fines that reduced the amount of the surcharge to mere pocket change.

Constitutional challenges have been launched against the law in the Ontario Court of Justice, but decisions to strike the law down were inevitably overturned on appeal by the Ontario Superior Court, whose decisions are binding on the lower court. Several cases involving findings regarding the constitutionality of the victim surcharge are still waiting to be heard by Ontario’s Court of Appeal.

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The battle between the judiciary and Parliament was particularly acute in Ottawa, where judges at one time were near evenly split on whether they would impose the surcharge or not. While the debate over the law largely centred on balancing the rights of victims against the need for fairness toward impoverished criminals, it was also viewed as a direct attack on the discretion of judges.

Before The Increasing Offenders Accountability to Victims Act made the surcharge mandatory three years ago, judges had the ability to waive it in cases where they felt it would cause undue hardship.

But advocates for victims argued judges were instead routinely waiving the victim surcharges in cases where an offender was sentenced to jail time, with no attempt to determine whether the person could afford to pay. One study showed that surcharges were only being imposed in 15 per cent of cases.

The surcharge was among several Conservative tough-on-crime bills the Liberals were expected to target following their election last November, including mandatory minimum sentencing and tougher restrictions on parole for first-time, non-violent offenders.

In addition to making the imposition of the surcharge mandatory, the new law also doubled the amount of the surcharge to either \$100 or \$200 per offence, depending on its severity, or an amount equal to 30 per cent of any fine imposed by the judge.

Sue O'Sullivan, Canada's federal ombudsman for victims of crime, said she hopes any changes to the surcharge don't result in a significant loss of funding to programs that are essential to supporting victims. It also must still promote accountability for the offender and reparation for harm to victims and the community, she argued.

"I think we need to look more closely at the alternatives available in cases when an offender cannot pay, and ensure that viable reasonable options are available in every province and territory in Canada," said O'Sullivan. "What we don't want to see is that there is a backslide. The conversation has focused around the offender and I think it is kind of unfortunate that we are losing sight of the very good the surcharge was designed around, which is the victims and the impact to them and their families."

But Heidi Illingworth, executive director of the Canadian Resource Centre for Victims of Crime, said she expects the new law will likely give some discretion back to judges. The question will be what they do with it, she said.

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“I think there has to be some discretion, particularly for the most hard-pressed, vulnerable people, who are very poor, very marginalized and just can’t afford to pay the fines,” said Illingworth. “Our problem with it before was that you would see cases that they were just automatically waiving it all the time without any inquiry into whether someone could actually pay such a fine or not.”

But in the meantime, judges are still refusing to impose the surcharge.

On Wednesday, Ontario Court Justice David Paciocco refused to impose the surcharge on a homeless woman with mental health issues. The decision followed an earlier ruling in March that the surcharge violates the equality rights of poor, mentally disabled offenders.

Sunshine Madeley was facing \$200 in victim surcharges after pleading guilty to threatening to kill a store clerk who caught her stealing some makeup and to breaching her probation.

The Crown had attempted to argue the surcharge should still apply, despite the Charter breach, but Paciocco found the surcharge wasn’t a reasonable limitation on Madeley’s equality rights.

“It is my best judgment that the marginalization and pointless harassment of the impoverished disabled with mandatory surcharge levies is a cost that is too heavy to bear in order to remedy distrust of judicial discretion in the collection of funds for victim services,” said Paciocco.

Paciocco’s decision isn’t binding, however, and while it might give defence lawyers with clients in similar circumstances a persuasive tool to fight the surcharge, anyone who hopes to rely on it will still have to bring their own potentially lengthy — and costly — constitutional challenge.

“Amending the surcharge legislation is long overdue,” said Madeley’s defence lawyer Tobias Okada-Phillips.

“This constitutional challenge, as well as the others before it, reflects the dissatisfaction in the current state of the law,” he said. “Defence lawyers deal with clients with mental health and addiction issues every day and have to point out the harsh consequences of fines that may seem trivial to other people.”

Okada-Phillips said the government should consider better defining when exactly the surcharge should — and shouldn’t — apply.

“If Parliament wants to make sure the victim surcharge is imposed more appropriately, then clarifying factors that would cause ‘undue hardship’ makes sense to give judges more guidance,” he said.



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## **Public service payrolls decline as overall spending rises**

**Kathryn May, Ottawa Citizen, September 29 2016**

The federal government is scrimping on payroll costs by hiring cheaper student and casual workers as spending this fiscal year hits a six-year high, says a new report by the budget watchdog.

The report, released by Parliamentary Budget Officer Jean-Denis Frechette, found the Liberal government's expenditures were 5.7 per cent higher — nearly \$3.4 billion — in the first quarter of the 2016-17 fiscal year compared with the same period the previous year.

First-quarter spending reached \$62.9 billion. Over the same three-month period last year, the government paid out about \$59.5 billion, the analysis found.

But that spending wasn't showered on Canada's public servants. Compensation costs — which account for more than two-thirds of operating costs — actually declined 1.3 per cent or \$120 million as other operating costs inched upwards.

The dip is a combination of the impact of the Conservative-era job cuts and operating freezes and a significant shift to cheaper temporary employees. This decrease is the latest in a three-year decline, taking first-quarter employee costs to \$8.55 billion, a level last seen five years ago.

But the PBO argues this decrease has little to do with fewer public servants. The number of public servants has fallen since its peak of 283,000 in 2010 before the Tory cuts to about 257,000 people over the past two years. Rather, the report points to a shift to hiring fewer full-time permanent employees and a growing reliance on term, casual and student employment.

The number of full-time employees dipped 1.4 per cent between March 2014 and March 2015. At the same time, the hiring of term workers jumped 9.3 per cent. Casuals increased 8.3 per cent and students rose 6.0 per cent. This hiring shift comes at a time when the government has turned up the pressure for baby boomers to retire so a new generation of millennials can be hired.

Hiring temporary workers gives departments more flexibility and saves money on pensions and benefits and the annual increments permanent employees receive every year. Every job in the public service has a pay range. Newcomers start at the bottom and work their way up that range, each year getting an increment worth between 3.5 per cent to four per cent of salary.

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The \$45-billion compensation bill is one of the government's biggest single costs. Wages and salaries account for about \$32 billion. A 2012 PBO report on compensation estimated the average federal employee costs taxpayers \$114,100 when pensions and benefits are rolled in.

The government and 18 unions have been locked in a contentious round of collective bargaining for two years, stalled by the government's push to replace the existing sick-leave regime with a short-term disability plan.

The largest union, the Public Service Alliance of Canada, has tabled a proposal seeking a more than nine-per-cent raise over three years. The Liberals haven't made an offer since taking over the reins for collective bargaining, but the 1.5-per-cent increase the Tories offered over three years is still on the table.

A one-per-cent-a-year wage hike would increase the wage bill by \$300 million a year.

The unions had high hopes when the Liberals promised to bring back fair collective bargaining that the Tories' sick leave proposal would be taken off the table or significantly improved. The Liberals have improved that proposal, but it remains on the table.

The Liberals also plan to continue the Tory policy that departments will have to retroactively fund any wage increase out of existing budgets for 2014-15 and 2015-16, when the last operating freeze was in place.

## **Residential-school rulings raise concerns about denied compensation claims**

**Gloria Galloway, The Globe and Mail, September 26 2016**

Three recent court rulings have overturned adjudicators' decisions to deny compensation to people who were abused at Indian residential schools, raising questions about how many other former students have been unfairly refused redress.

As the process created by the Indian Residential Schools Settlement Agreement to provide compensation for the abuse nears the end of its work, the court rulings – two in Ontario and one in Manitoba – suggest that problems with decisions made by adjudicators are not always caught in the reviews and re-reviews to which applicants are entitled.

Bill Erasmus, the regional chief of the Northwest Territories for the Assembly of First Nations, who is responsible for the AFN's residential schools file, said many people who were abused at

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the schools are intimidated by the complexity of the Independent Assessment Process (IAP) and distraught at reliving the memories. For those reasons, he said, they often do not pursue claims that were unfairly denied.

“Many people didn’t get the money that they ought to have,” Mr. Erasmus said, “and they just give up.”

In July, Justice Paul Perell of the Ontario Superior Court determined that an adjudicator made a “glaring and crucial error” when she relied on her own knowledge of how the Catholic church operates to deny compensation to a claimant who said a priest raped him at a residential school in Spanish, Ont. Her assumptions, which incorrectly led her to conclude the assault must have happened after the school was closed, should not have influenced her findings, the judge said, but neither the review nor the re-review corrected the error. He ordered that the man be compensated.

In another Ontario case, it was agreed that the federal government did not produce important information about the abuse of students at the notorious St. Anne’s School in Fort Albany. Without that information, the adjudicator denied the claim of a man who said he was sexually abused by a priest at that institution, and a reviewer upheld the decision. When the government told Justice Perell it would produce the documents in question, the judge sent the case back for re-review.

In a third case, a Manitoba adjudicator called a claimant who said he was fondled by a nun a “credible witness,” but denied him compensation, saying she was “not satisfied the act had a sexual purpose.” Justice James Edmond of the Manitoba Court of Queen’s Bench ruled in August that it is not necessary to prove intent to find a sexual assault has occurred, and ordered the case sent back to an adjudicator for reconsideration.

After the Manitoba ruling, Perry Bellegarde, the National Chief of the Assembly of First Nations, wrote to Dan Shapiro, the chief adjudicator of the IAP, to ask that all cases in which the same error could have occurred be re-examined.

“Where IAP claimants were wrongly denied compensation, we have requested that the individual be informed of the discrepancy and provided with an option to have their claim reviewed,” Mr. Bellegarde wrote. “It is quite possible, that a number of IAP claimants across Canada have been adversely impacted and denied compensation as a result of the misinterpretation of the Settlement Agreement.”

But Mr. Shapiro said in response to questions from The Globe and Mail that such a review is not possible.

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“As the neutral administrator of the IAP, neither I nor the Indian Residential Schools Adjudication Secretariat (which provides administrative support for the IAP) is in a position to conduct a review of claims in this manner,” Mr. Shapiro said in an e-mail. “Doing so could potentially compromise the essential neutrality of the decision-making process, particularly where claims may be returned to their original decision maker for re-determination.”

The federal Liberal government is appealing the decision in the Spanish case, saying the judge erred by interfering in the findings of the adjudicator, the reviewer and the re-reviewer, and that he had no jurisdiction to order compensation awarded.

Meanwhile, numbers the Indigenous Affairs Department released recently in response to questions from NDP MP Charlie Angus suggest it is not easy to get an adjudicator’s decision overturned on review. Of the 1,249 claimants who requested a review of their IAP decision as of May 12 of this year, 230 were given a new decision and 50 were granted a new hearing. And, of the 316 that went to re-review, just 19 got a new decision and three were given a new hearing.

“What I read into these numbers is that the IAP is very favourable to the government,” Mr. Angus said, “very favourable to cases being thrown out, and we still haven’t seen any real mechanisms within the IAP to address the injustices that have happened.”

## **Tories engaging in wedge politics over Bill C246, The Modernising Animal Protections Act**

**Jonathan Scott, Loonie Politics, September 26 2016**

There are few things in politics that bother me more than foolish wedge politics standing in the way of meaningful progress.

This week, the House of Commons votes at second reading on Bill C246, The Modernising Animal Protections Act, proposed by east-end Toronto MP Nathaniel Erskine-Smith. It’s a simple and sensible bill, but some Conservative MPs see the chance to make a political issue to rile up their base.

Erskine-Smith’s bill proposes to make essentially three changes to Canadian law on animal protections. First, the bill proposes to finally ban shark finning, something various Canadian cities have done already. Secondly, the bill proposes to ban the sale of dog and cat fur, something any pet owner would be surprised to know isn’t already banned. And, thirdly,

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Erskine-Smith's bill seeks to ensure animals are protected from harm by their owners' negligence.

This is common-sense type stuff, the sort of longstanding issues that simple, sensible reforms can tackle. Erskine-Smith points out that animals would remain a person's property, but obviously not in the same sense as a chair. You can dispose of a chair on a campfire. No Canadian would say the same of the family dog.

But rather than debating the merits of the bill at committee, some Conservative MPs are seeking to stir up trouble. With little more than "slippery slope" rhetorical fallacies, some Conservatives are attempting to say that protections for animals from negligence could lead to crackdowns on hunting, angling and farming. This is utter nonsense, but is symptomatic of the kind of mindless politicking we see too often.

It's easy to see why some Conservative MPs see the chance to spin a yarn to their hunting, farming and fishing constituents. Most Canadians don't pay attention to politics in general, much less to private members' bills. But tell a micro-targeted population — such as a hunting club or farming associations — that a vegan, Toronto MP wants to extend protections to animals and maybe it might just someday lead to infringing on hunting or farming, so please help out by donating \$50 to fight back, and you've got yourself a potentially powerful fundraising campaign.

The Conservatives are masters of this simplistic exploitation of the low-information voter. Indeed, their fundraising apparatus is based on this "Liberals are doing something you won't believe so donate now" approach. Often, facts are irrelevant or are glossed over in the interests of the broader narrative. Lest people think I'm unfairly picking on the Conservatives, I will readily stipulate that Liberals and NDPers do it too, in their own way.

Ultimately, one can only hope that the Liberal government, rather than cowing to this Conservative slippery slope simplicity, will vote for Erskine-Smith's reasonable bill. If some Conservatives can succeed in scaring the Liberals off of doing the right thing with such a puerile argument, our democracy is weaker than we like to think.

The bill in question is one worth defending, and it is in the defence of principles that we can correct such mischaracterisations and push back on the attempt to dumb down our national discourse. Canadian politics is, fortunately, not yet as polarised as American politics, where conservatives are willing to vote for a bigoted, misogynistic, philandering, wannabe despot simply because they cannot countenance voting for a Democrat.

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Indeed, the last federal election campaign in Canada was one of Justin Trudeau putting his unique political talents towards persuading Canadians certain sacred cows are worth slaying (apologies for that metaphor in the context of a discussion of animal protection, but I couldn't resist the idiom).

Just because some Conservative MPs can spin yarns about a bill does not mean the government should fear supporting the bill. If anything, this bill represents a chance to say—to urban and rural Canadians alike—we will ensure fair, prudent protections for animals in this country, and those Conservative MPs who would trivialise this debate are unworthy of the type of discourse we expect in our democracy.

The Liberal government should get behind Erskine-Smith's bill C246. It's the right thing to do, and it would show that our politics can still allow for a full legislative debate despite political efforts to dumb it down to the hundred-word fundraising pitch.

## **In defence of Shared Services Canada**

Maryantonett Flumian, iPolitics.ca, September 27 2016

Wayne Smith is a life-long public servant. He has dedicated his life to serving the people of Canada through a distinguished career at Statistics Canada. We can celebrate his good work and the accomplishments of the world-class organization that he used to run. The excellent institution that Canadians are so proud of was built through the hard work of generations of StatsCan employees and leaders.

Smith used the announcement of his recent retirement to castigate the government for its implementation of Shared Services Canada, arguing in a CBC interview that its inefficiency has "compromised Statistics Canada's independence."

StatsCan is the product of a broader Canadian governance ecosystem that is the envy of the world. This connected institutional infrastructure reflects the collective search for "peace, order and good government" that has resulted in a series of institutions that manage different areas of public policy. Our success depends on a shared understanding of how to exercise policy and program leadership, administrative efficiency and effectiveness in an interdependent governance ecosystem.

In 1918, the Canadian government created the Dominion Bureau of Statistics in order to "provide statistical information and analysis about Canada's economic and social structure" and "to promote sound standards and practices". It was created as a shared service for all the Canadian government. The organization has flourished because it is a product of an entire

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system that values the sustainable nature of its contribution to an evidence-based public policy and program environment. Its legal authorities reflect this reality and its operational culture supports it. And it is part of a broader portfolio of government since in the Westminster ecosystem all departments and agencies must function under the paramount behaviors associated with ministerial accountability.

But in the space of just a few decades, the governance ecosystem in Canada has experienced rapid shifts in the face of a digitally transforming culture and strong pressures that are reshaping the state, civil society and the public at large. These enormous changes in our social fabric have not been adequately reflected in the structures and modes of most governing institutions. The pace of change is so rapid that governments are having difficulty adapting to this transforming environment.

Many elected officials and public servants recognize the need for change but it's a matter for argument whether sustained effort has been invested in overhauling government and modernizing the governance ecosystem. It is not always clear what the specific issues are or what the required changes might be. The disruption of traditional relationships, their replacement by new ones, and the constantly shifting context mean that governing institutions are having trouble understanding and adapting to realities that are shifting more quickly than those institutions can respond. What we do know is that the substantial distribution of information combined, with near-instantaneous global connectedness, means that no one institutional organization or government can any longer hold the monopoly on information, or even on convening capacity.

So the value proposition for the modernization of government operations is clear. But it will not happen without an unrelenting focus on adapting governance, institutions and systems and their connections to policy and programs in this interconnected world. Good governance is about steering the ship of government so that all oars of the boat row in the same direction to reach a new destination more effectively. Steering comes in the form of accountability processes required to review and to make investment decisions based on business cases, implementation plans, and evaluation of outcomes.

In this new, networked world, governments must learn to balance accountability between multiple partner organizations with these new outcomes in mind. As more stakeholders emerge from their silos and organizations partner to deploy and align their resources to a common objective, the proper delegation of power and decision-making authority is an inevitable question that will need to be resolved. Not all organizations will need to restructure or reorganize. Effective governance should make existing structures work towards the new common purpose. The work, in spelling out these arrangements, must be highly focused and

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relentless. Cooperation, coordination and collaborative relationships are key to meeting these challenges.

Which brings us to Shared Services Canada. The modernization effort that is overhauling government is sorely needed. Having forty-three departments and agencies with one hundred largely incompatible email systems, well over three hundred major data centres, and hundreds of overlapping telecommunications networks is not sustainable. The ongoing funding for maintaining (but not improving) this fragmented, old, costly infrastructure cannot continue. Years ago, the Auditor General called for a government-wide plan to address the inefficiencies and risks posed by this situation. These are unique and particular risks in a world where information and data ecosystems are the new currency. In an age where governments have declared themselves open-by-default and digital-by-default, hermetically sealed silos in government cannot be the order of the day.

Shared Services Canada has seen more than its share of implementation problems. At its heart, this initiative is about tackling cultural barriers within institutions and moving the focus from the department and agency to inter-departmental and inter-governmental initiatives. In this cultural war, the residual emphasis on the vertical dimension of government jeopardizes whole-of-government initiatives like Shared Services Canada.

Insisting too strongly on the vertical nature of funding, budgetary, and process requirements, especially when these do not threaten policy or program authorities of individual organizations, puts whole-of-government modernization at risk. Inhibiting the use of sharing platforms and IT infrastructure across the system diminishes the medium and longer-term effectiveness and efficiency of the entire modernization effort. The government historically has under-invested in turning IT professionals into senior public service executives. It would be wise to learn from the circumstances playing out before us and invest more significantly in growing IT professionals into broader, more effective government managers who can overcome the siloed cultural barriers to build a new, whole-of-government approach and culture.

Which brings us back to Statistics Canada, and the remarks of Wayne Smith about Shared Services Canada. The government of Canada's much needed modernization depends on the success of Shared Services Canada in ensuring that Statistics Canada has the capacity to do its job within the new governance ecosystem. This means a resolute focus on fixing the issues at Shared Services Canada and a collaborative approach between it and Statistics Canada to serve the modernization efforts of the government. The effectiveness of our interdependent governance ecosystem depends on it.