

Press Clippings for the period of October 12th to 18th 2016 / Revue de presse pour la période du
12 au 18 octobre 2016

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Bureaucrat who led Phoenix project shuffled aside in executive shakeup

Kathryn May, The Ottawa Citizen, October 12 2016

The senior bureaucrat who led the implementation of the ill-fated Phoenix pay system has been moved from the job in a shakeup of the senior ranks at Public Services and Procurement Canada.

Rosanna Di Paola, Public Services' associate assistant deputy minister of accounting, banking and compensation, was shuffled on Wednesday into a job as a senior adviser and will "continue to support the pay modernization project," according to an internal memo sent by PSPC deputy minister Marie Lemay.

She will be replaced by Marc Lemieux, who comes from Canada Economic Development for Quebec Regions, the regional agency Lemay headed before she was catapulted into Public Services in April in the midst of the Phoenix foul-ups that have continued to dog the new public service pay system. Lemieux was the agency's executive director of corporate services, and acting vice-president of operations.

Di Paola's move was among five senior changes in the department as it nears its promised Oct. 31 deadline to clear a backlog that has affected 80,000 employees. That's when the department hopes to start the transition to what it calls the "steady state", when the bugs are worked out and Phoenix runs smoothly.

The department estimates Phoenix fixes will cost \$50 million by the end of the year.

Lemay, six month into the job as deputy minister, announced the changes as part of a 'townhall' with all executives to explain her vision for the department. Other moves include Tammy Labelle as assistant deputy minister of the Integrated Service Branch; Gini Bethell as Chief Information Officer and Donna Achimov, head of the Translation Bureau becomes assistant deputy minister of human resources.

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Di Paola had become the lightning rod for criticism of the Phoenix debacle, which is now the subject of an internal probe and an investigation by Auditor-General Michael Ferguson into how the \$300-million project went off the rails.

Lemay has said she expects the probes will find “multiple points of failure.”

Di Paola, who had led the project since 2013, accompanied Lemay at many of the technical briefings the department held every payday and was among the key departmental witnesses at the parliamentary committee hearing into the fiasco.

She was only senior PSPC bureaucrat who testified at a labour tribunal hearing into whether the federal government is breaking the law by not paying thousands of public servants properly and on time.

Di Paola infuriated unions when she testified that the big problems with Phoenix were training and public servants’ plugging wrong or untimely information into the system. She also said transaction processing times at the Miramichi, N.B., pay centre were slower than expected.

“She is the one person who, by her own self-admission, was responsible for the new pay system but blamed everyone except the very department responsible for implementing the pay system,” said Chris Aylward, vice-president of the Public Service Alliance of Canada. “I wish her all the best in her future endeavours.”

PSAC has been particularly critical of PSPC management responsible for the project for ignoring the union’s pleas to slow down or delay the Phoenix rollout because departments and the new Miramichi pay centre were not ready.

Debi Daviau, president of the Professional Institute of the Public Service of Canada, said Di Paola and other senior bureaucrats failed to fully and properly brief Public Services and Procurement Minister Judy Foote about the risks of implementing Phoenix.

Foote, for example, was never briefed about an independent study by Gartner Consulting, commissioned as Phoenix was about to go live, and the risks it flagged.

“All we hear about is the blame rests with those other than the people who made the decision to go ahead,” said Daviau. “I have said for a while that the department needs to start putting people aside and look inward to other public servants to make this system work.

“The executives in charge of the implementation should be put aside. They are not succeeding.”

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As a government-wide project, Phoenix had many players, and all departments had a role to play to ensure they were ready when Phoenix went live. Many argue the project shines the light on how diffuse accountability has become in the public service, particularly for large projects.

Lemay has said performance pay for executives managing the Phoenix rollout would be on hold until officials finish the internal review into what went wrong. She said no one in the department has received performance pay or bonuses for 2015-16.

However, officials recently learned that the government expects to begin processing performance pay for other executives after Oct. 31 so it can be reflected on their T4 slips.

In fact, the Phoenix teams are now scrambling to deal with all the tax implications created by the Phoenix foul-ups. The department has only six paydays to resolve tax issues by the end of the year.

For employees who have been overpaid, the government has created a repayment plan with several options so they can repay the money before Dec. 31 to avoid any tax implications and possible financial hardship. Employees who have been overpaid by more than 10 per cent of their gross pay can repay in lump sum payments or instalments.

The government has promised to pay out-of-pocket costs caused by Phoenix.

L'AFPC monte le ton envers le gouvernement Trudeau

La Presse Canadienne, La Presse, le 16 octobre 2016

Le plus grand syndicat représentant les fonctionnaires canadiens monte le ton dans sa campagne contre le gouvernement libéral en utilisant les mots du premier ministre Justin Trudeau contre lui.

Les affiches publicitaires et les annonces à la radio de l'Alliance de la fonction publique du Canada (AFPC) visent à mettre en lumière la promesse du premier ministre Trudeau pour une meilleure relation avec les travailleurs de l'État afin d'inciter les libéraux à changer de stratégie dans leur négociation. La campagne sera lancée lundi.

Les affiches imprimées s'adressent directement au premier ministre, lui rappelant qu'il «avait dit qu'il serait différent» et l'intimant à «respecter sa promesse».

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Un exemple d'image que fait circuler l'Alliance de la fonction publique du Canada.

Les publicités présentent aussi des extraits d'une lettre ouverte rédigée par M.Trudeau aux fonctionnaires, dans laquelle il affirmait souhaiter une relation différente avec eux - meilleure qu'avec le précédent gouvernement conservateur.

La présidente nationale de l'AFPC, Robyn Benson, a reconnu que «le ton a changé», mais elle estime qu'il est maintenant le temps de «passer à l'action» un an après l'élection.

Les négociations entre le gouvernement et l'AFPC traînent depuis plus de deux ans, alors que les négociateurs sont retournés à la table à la fin du mois dernier pour la première fois depuis près de trois mois.

Le Conseil du Trésor du Canada, qui négocie au nom du gouvernement, a signalé au mois de juin qu'il n'était pas prêt à reculer sur les congés de maladie qui touchent quelque 90 000 employés.

Le gouvernement veut offrir à ses travailleurs huit jours de congé de maladie par année, avec une possibilité de déborder sur deux jours à compter de l'année prochaine.

Les fonctionnaires bénéficient actuellement de 15 jours de congé de maladie par année, qu'ils peuvent reporter et accumuler d'année en année.

Mais selon la proposition du Conseil du Trésor, les employés verraient leur banque de congés de maladie - ce qui équivaut à environ 15 millions de jours de congé non utilisés -, abolie.

Le syndicat dit avoir suggéré un libellé au contrat qui permettrait un traitement plus équitable des travailleurs.

Il a aussi réclamé une augmentation de salaire représentant neuf pour cent sur trois ans. Plus tôt cette année, le gouvernement a offert une hausse de 0,5 pour cent des salaires chaque année pendant trois ans - une augmentation qu'il avait déjà promise à la direction.

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‘You said you would be different’: Ad campaign signals end to Trudeau-public servants love affair

Kathryn May, Postmedia News, October 17 2016

Justin Trudeau’s honeymoon with Canada’s public servants is over.

The largest federal union is threatening to pull out of deadlocked contract talks, is upset about the botched Phoenix pay system, and is kicking off an ad campaign calling on the prime minister “to make good on his word.”

It’s a far cry from a year ago when the Liberals came to power predicting a new “golden age” for public servants and restoration of the dignity and respect many bureaucrats felt had been trampled by a decade of Conservative cuts and legislation.

The Liberal government has set a new tone with its employees, but the Public Service Alliance of Canada (PSAC) argues the changes are slow and fall short of the “high hopes” created when Trudeau sent an open letter to public servants promising to fix public services and repair the relationship with the workers who deliver them.

“I think Canadians are expecting great things from a Liberal government, and it’s not just public servants who are disappointed but Canadians as a whole are,” said PSAC president Robyn Benson.

This week, the giant PSAC is launching a series of print and radio advertisements aimed at Trudeau, who is still riding huge waves of popularity, featuring slogans “you said you would be different” and “make good on your word.”

The biggest disappointment has been at the table, where the Liberals have so far adopted the bargaining and compensation strategy of the previous Conservative government.

The Conservatives made major changes to public servants’ pay and benefits, killed voluntary severance benefits, forced them to pay for half of their pension contributions, and increased retirement age and retirees’ health-plan costs. The Tories’ next target was sick leave, replacing the existing regime with a new short-term disability plan.

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The Liberals picked up bargaining a year ago and have so far stuck with the same short-term disability proposal the Conservatives made — with some improvements. Treasury Board president Scott Brison said from the start that he wanted to “modernize” sick leave.

“Many of our members voted for the Liberals and were quite enamoured and felt so much better they were elected after spending 10 years with the Harper Conservatives. There were high hopes ... but we’re not seeing what the membership anticipated, and that’s not just at the bargaining table,” said Benson.

Benson said the union hopes the ads targeting Canada’s highly popular prime minister will nudge the Liberals back to the bargaining table with a “Liberal mandate and not that of the Conservatives.”

“The point is, there has been no change, and when Trudeau wrote to public servants he explicitly talked about restoring respect, and that has not happened. To us, he is no different than Stephen Harper — other than he is one of the more popular prime ministers we have ever had.”

The current round of bargaining has dragged on for more than two years with little progress. Benson said PSAC bargaining teams have met five times with Treasury Board negotiators, but won’t be going back unless “signals are sent” that there is room for negotiation.

Unlike the Conservatives, Brison promised to negotiate a new deal rather than unilaterally impose one. He has introduced legislation to strike down the Tory law that allowed the government to impose whatever sick leave deal it wanted.

The Liberal offer, however, still hits the hot-button issues that galvanized all unions into signing an unprecedented solidarity pact to oppose it. It eliminates public servants’ sick-leave banks — a total of 15 million days socked away — and reduces their 15 days of annual sick leave.

Benson said the union hasn’t formally declared the talks at the “impasse,” but she said that’s where talks are headed if the Liberals don’t start negotiating.

“We are prepared to go back, but if they offer nothing then we are prepared to take the next steps.”

But sick leave isn’t the only issue. The unions have made unconventional bargaining demands, such as bringing integrity back to government science, and improving transparency, health and wellness in the workplace.

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They are basically continuing to be equally as tight-fisted as the Conservatives when it comes to spending on the public service

There is also the issue of wages. The Liberals are offering the same raises the Conservatives gave executives — a 0.5-per-cent increase for last year and 0.5 per cent for this year. MPs gave themselves a 2.3-per-cent raise last year and a 1.8-per-cent hike this year. Senators got 2.7 and 2.1.

Some bureaucrats say the advertising gambit to get the Liberals to negotiate is unlikely to resonate with most Canadians.

“I think there was an expectation gulf on what many thought the public service was returning to under the Liberals,” said one executive.

“They are basically continuing to be equally as tight-fisted as the Conservatives when it comes to spending on the public service, but who outside, or even inside, Ottawa isn’t going to accept that?”

The Liberal government quickly took steps to win over public servants when it came to power with moves such as restoring the long-form census, unmuzzling scientists and reversing the \$900-million savings the Conservatives had already booked by replacing the existing sick leave regime with a new short-term disability plan.

There has been big progress on mental health, which is now a management priority, but that push began under the Conservatives, said Benson.

There were promises to reopen closed Veterans Affairs offices within a year and the Kitsilano coast guard base in Vancouver. Legislation was tabled to repeal Conservative changes to labour laws that required unions to disclose how they spend members’ dues and make it more difficult for unions to organize in federally regulated workplaces.

But the Liberals have yet to deal with the controversial Tory-era legislation that completely changed the rules that had governed collective bargaining in the public service for the past 50 years. Brison introduced stopgap measures for the current round that get around the contentious rules, but the Conservative legislation is still law until repealed.

The proactive pay equity legislation PSAC pushed for to put the onus on employers in federally regulated workplaces won’t be introduced until 2018, which Benson says runs the risk of not being passed before the next election in 2019.

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Benson said she had hoped the Liberals would have restored more of the program cuts by the Conservatives.

The Liberals have increased spending, but not much of that is being showered on public servants. In a recent report, the Parliamentary Budget Office found compensation costs fell slightly in the first quarter and pointed to a shift to cheaper term, casual and student employment.

And then there is Phoenix. The Liberals proceeded with the rollout of the new pay system despite protests and appeals from PSAC and other unions to delay or slow it down.

The Phoenix foul-ups, which have left thousands unpaid, overpaid or underpaid, have evoked more sympathy among Canadians for public servants than seen in years. But the ill-fated project has also raised questions about the management of public servants.

"The Liberals had the opportunity to stop and reflect on all these ideas thought up by the Conservatives before moving forward, and we don't see that happening, not with Phoenix, negotiations, sick leave or pay equity," said Benson.

Federal union targets Trudeau in campaign as contract talks drag on

The Canadian Press, CTV News, October 16 2016

The largest union representing federal workers is ramping up its campaign against the Liberal government, turning the prime minister's words against him.

The print, bus and radio advertisements paid for by the Public Service Alliance of Canada (PSAC) are hoping to use Prime Minister Justin Trudeau's promise of a revamped relationship with civil servants to prod the Liberals to change collective bargaining tactics.

The campaign is scheduled to launch Monday and the print ads are addressed to Trudeau with "you said you'd be different" emblazoned across the top and the words, "make good on your word" at the bottom.

The ads also include wording from Trudeau's open letter to federal bureaucrats telling them that his government wanted a different kind of relationship with the hundreds of thousands

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federal civil servants, many of whom felt under siege with the previous Conservative government.

"It has been a year since the election. The tone has changed, but it's now time for action," said PSAC national president Robyn Benson.

Contract talks with PSAC have dragged on for more than two years, with negotiators returning to the bargaining table late last month for the first time in nearly three months. Treasury Board of Canada, which bargains on behalf of the government, signalled in June that it was not prepared to back away from proposed changes to sick leave for about 80,000 workers.

The government has proposed allowing its employees eight days of sick leave annually, with the ability to carry over two days into the next year.

Public servants currently get 15 days a year of paid sick leave, which they can roll over and bank from year to year.

Treasury Board's plan would see the existing bank, which has about 15 million days of unused sick leave, abolished.

The union said it has proposed contract language that would result in fairer treatment for workers when changes are made to the delivery of government services.

It has also asked for wage increases totalling nine per cent over three years.

Earlier this year the government had offered 0.5 per cent wage increases in each of three years, pay hikes it has already promised its executives.

Public service executives reach out for help dealing with abuse in the workplace

Kathryn May, The Ottawa Citizen, October 11 2016

As the federal government endeavours to make Canada's public service a "healthy and respectful" workplace, a rising number of its executives are seeking help about harassment, bullying and the "toxic" environments they face on the job.

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The Association of Professional Executives in Canada — known as APEX — runs a confidential counselling service for executives, and for the first time complaints about harassment and dismissal — particularly constructive dismissal — topped the list of reasons executives sought help last year.

According to its latest report, the top reasons executives sought advice included: career management, difficult relationship with bosses, harassment, health concerns, retirement, performance management, questions about the terms and conditions of employment, and dismissals.

Harassment complaints largely involved offensive remarks, unfair treatment, incivility, rudeness, being excluded, ignored or isolated. But the report flagged a new troubling trend: “mobbing”. It likened this “extreme form of bullying and psychological violence in the workplace” when employees gang up to get rid of a superior to schoolyard bullying.

A big “anomaly” flagged in the report was five sexual harassment complaints.

The government has about 6,000 executives and last year 316 turned to APEX’s counselling service for help, an increase of 49 per cent over the previous year. The number of sessions needed to deal with them rose 114 per cent. Women made up a larger proportion of those seeking help and thorny issues of dismissal and harassment made the list of top complaints, something that has not happened in previous years.

“We are doing a disservice to the public service if we don’t do something concrete to stem abusive behaviour in the workplace,” the report states. “How we treat our workforce has a direct influence on our capacity to attract and retain talent.”

Michel Vermette, APEX’s chief executive, said he doesn’t think harassment or bullying is any worse than in previous years. Rather, he said, the drive to improve workplace well-being has made it easier for people to raise concerns and talk openly about them. For years, executives facing harassment didn’t speak out, citing fear of professional reprisals.

The government has made rooting out harassment in the federal workplace a priority. Last week, RCMP Commissioner Bob Paulson made history when he apologized and offered \$100 million in compensation to hundreds of female RCMP officers and employees who faced bullying, discrimination and harassment over the past four decades.

Canada’s top bureaucrat, Michael Wernick, made a respectful and healthy workplace a condition for deputy ministers and executives to earn their performance pay. Wernick followed

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the footsteps of his predecessor, Janice Charette, who was the first top-ranking bureaucrat in Canada and abroad to put mental health at the top of the management agenda.

Mental health is a costly issue in the public service, with depression and stress accounting for nearly half of all health claims. A joint union and management task force put together a mental health strategy that is quietly being rolled out and tailored for each department.

The APEX service, launched in 2002, keeps only broad data, which is used in its yearly report. This year's report and recommendations were sent to the clerk and deputy ministers.

The report paints a picture of a workplace that needs major changes to live up to the clerk's call for a "workplace where wellness is nourished and cherished."

The report also flagged the difficulties facing executives who are the subject of harassment complaints. They reported feeling abandoned by their department, did not feel supported, and lacked legal advice. They often ended up on sick leave.

Unlike unionized public servants, executives don't have anyone to represent or accompany them during investigations or hearings.

The report recommends the government reimburse legal fees if executives are exonerated and it also urged that executives and other non-unionized employees be given assistance when attending investigation hearings.

At the same time, the report found senior management — deputy ministers and assistant deputy ministers — don't take "informal" harassment complaints seriously, which it warned could leave them vulnerable. In the private sector, executives have lost their jobs for not taking such complaints seriously.

The report also flagged a growing practice of forcing executives to leave and find new positions because they don't "fit in" the organization.

The report said executives who are being harassed, accused of harassing, pushed to leave, or facing bad relationships with superiors want to "escape" and seek advice on retirement, moving positions, taking sick leave or interchange.

The report recommended executives who are being told to leave should get help finding new jobs.

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“It is understandable that poor performers need to be weeded out, but not everyone falls into that category ... sometimes people don’t do well in one area but could thrive in another,” said the report.

A number of new executives sought advice for demotion to get out of the executive ranks. They found the volume of work, long hours, culture and lifestyle too hard on family life.

The report noted, however, that this could be an “intergenerational anomaly” because many baby boomer executives complained they were forced to carry more of the workload because the younger executives go home early.

The public service has always been notoriously hard on executives recruited from the private sector. They are typically thrown into leadership jobs with little preparation and support and no “networks to help them avoid the minefields.” They often fail and are asked to leave because they don’t fit in. The report said most of the mid-career recruits who sought APEX’s help ended up leaving the public service

By the Numbers: Executives seeking help

APEX provides a confidential counselling service for the 6,000 executives in Canada’s public service. Last year, 316 came for help in 820 sessions, often seeking advice on more than one issue. The report cited the top eight reasons executives sought help last year, as well as recommendations to help deal with them.

152: Number of executives who sought help for career management. That includes everything from help writing resumes and networking to whether to leave a difficult work situation.

Recommendations

- Create a central database of available positions for executives
- Bosses wanting executives to leave should share responsibility for finding them a new position.
- Executives hired from the private sector should be given mentors or coaches and help show them the ropes of decision-making process in the public service.

99: Number of executives needing help managing difficult superiors, often because of disrespect, incivility, personality conflicts, or a clash of values.

Recommendations:

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- Improve a boss's self-awareness with 360-degree feedback from the people who work around them, managers, peers, and direct reports.
- Reduce micro-management by adopting a practice of letting executives decide how to deliver on their job with periodic check-ins with bosses.

94: Number of executives complaining about harassment. Bad behaviour included: offensive remarks, yelling, rudeness, abuse of authority, being ignored, excluded or isolated.

Recommendation:

- Reimburse executives' legal fees if harassment accusations are unfounded.
- Provide support to executives to accompany them to harassment investigations and hearings.
- Impose consequences for those who falsely accuse or spearhead a group complaint to get rid of a superior

71: Number of executives seeking advice about a mental or physical health issue. They tended to be high performers and perfectionists with successful careers who found themselves in a toxic work environment and show signs of depression and burnout.

Recommendations:

- A more "humane" and supportive approach to integrating people coming back to work after long periods on medical leave.

68: Number of executives wanting advice about retirement. Many didn't want to retire but felt they were being pushed out or were considering retirement as a way out of difficult work situations.

Recommendations:

- Consider changing pension penalties for those between 50 and 59 if the goal is to encourage more people to retire.

58: Number of executives seeking information about performance management. Most concerned poor or "substandard" ratings that came as "complete shock" with no prior warning or feedback that performances were lacking. Some complained of performance management being used as way to get rid of those who "don't fit."

Recommendations:

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- Develop action plans that will help executives meet expectations.

56: Number of executives seeking information about the terms and conditions of employment. They ranged from questions relating to performance management, compensation, interchange, retirement and leave. Last year saw an increase in dismissal cases with executives wanting to know if what was happening to them met the conditions of employment.

No recommendation

46: Number of executives seeking help relating to dismissals — mostly ‘informal’ or “constructive’ dismissals”, which seemed to be on the rise. These include executives told to find another position because they don’t “fit in” or have lost the confidence of senior managers.

Recommendations:

- Wrong fits should be openly and honestly discussed and help provided to help them find jobs where fit into the culture better.

Fonction publique (Quebec) Les avocats et les notaires votent pour la grève générale illimitée

À moins d’un revirement, la menace sera mise à exécution le 24 octobre prochain

Philippe Orfali, Le Devoir, le 13 octobre 2016

Incapables de s’entendre avec Québec, les avocats et notaires de l’État haussent le ton : si des progrès majeurs ne sont pas effectués dans les négociations au cours des prochains jours, ils déclencheront une grève générale illimitée qui pourrait paralyser de nombreux ministères et les travaux de l’Assemblée nationale, ont-ils mis en garde mercredi, à l’issue d’un vote où 84 % d’entre eux se sont prononcés pour le débrayage.

La menace sera mise à exécution le 24 octobre prochain à moins d’un revirement, a confirmé le président du syndicat Les avocats et notaires de l’État québécois (LANEQ), Me Jean Denis. Les juristes sont sans contrat de travail depuis le 31 mars 2015.

LANEQ réclame la mise sur pied d’un processus d’arbitrage, appelé à remplacer le processus de médiation actuel. Les négociations par médiation avaient achoppé au début du mois de juillet,



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l'écart entre les deux parties étant jugé trop important. Selon le syndicat, la nomination d'un arbitre choisi par les deux parties et en mesure de trancher en cas de différend permettrait d'éviter que les conflits de travail non réglés mènent à des grèves, qui peuvent ensuite être stoppées en ayant recours à des lois spéciales. C'est d'ailleurs pourquoi les membres du syndicat ne souhaitent pas déclencher la grève, selon Me Denis. « *Mais il s'agit de la seule manière de faire entendre raison à l'employeur.* »

« *La grève est devenue le seul moyen de ramener Québec à la table. Pourtant, notre demande de revoir le mode de négociation ne coûtera rien [de plus] au gouvernement* », a estimé le président du syndicat.

L'Ontario, la Colombie-Britannique, le Manitoba et la Nouvelle-Écosse ont déjà adopté ce mode de négociation, a-t-il ajouté. Mais Québec le rejette dans le cas des syndiqués LANEQ, jugeant cette demande déraisonnable.

Cette grève des avocats et notaires de la fonction publique, de l'Autorité des marchés financiers, de la Régie de l'énergie, d'Investissement Québec et de l'Agence du revenu — tous membres du syndicat LANEQ — mènera par le fait même à la suspension des travaux de rédaction des projets de loi, de règlements et des avis juridiques. Idem pour la représentation des intérêts du gouvernement devant les tribunaux. De plus, elle coïncide avec la date limite pour le dépôt des projets de loi à l'Assemblée nationale, le 4 novembre.

En réponse à la menace de grève brandie par le syndicat, le cabinet du ministre des Finances et président du Conseil du trésor Carlos Leitão a insisté mercredi soir pour affirmer que les « *canaux de communication* » demeureraient ouverts, quoi qu'en disent les juristes.

Bien que les négociations en tant que telles soient rompues, les deux parties continuent à échanger, indique-t-on en coulisse. « *Nous demeurons disponibles, mais il faut savoir que les échanges risquent de demeurer limités, car LANEQ ne veut discuter que de sa demande de régime alors que nous avons clairement fait connaître notre refus à cet égard* », dit-on.

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Appeal court rejects federal government's bid to deport man accused of terror links

Jim Bronskill, The Globe and Mail, October 11 2016

An appeal court has rejected the federal government's latest legal salvo in a long-standing bid to deport a Toronto man over alleged terrorist ties.

In a new ruling, the Federal Court of Appeal says there are no grounds to contest a judge's decision to strike down a national security certificate against Egyptian-born Mahmoud Jaballah.

"The appeal cannot proceed and I would order that the court file be closed," Justice Johanne Gauthier wrote on behalf of a unanimous court.

As a result, Jaballah, 54, is a step closer to remaining in Canada permanently.

The government alleges the former teacher is a member of terrorist group al-Jihad, an accusation he denies.

It has been trying to deport him through a security certificate — a tool for removing suspected terrorists and spies from abroad — but the case has plodded through the legal system for 17 years.

Security certificates were long the government's tool of choice for dealing with foreign-born terror suspects, but it has proven very difficult to deport several individuals and other cases have fallen apart in court.

Many civil libertarians say certificates are an affront to justice because the subject is given only an unclassified summary of the case — unlike a criminal trial in which there must be full disclosure. However, a special security-cleared lawyer is appointed to protect the interests of the person named in the certificate.

The Supreme Court of Canada has upheld the process as constitutional.

There was no immediate word on whether the government would appeal the latest ruling.

Jaballah arrived with his family in Canada in 1996 using a false Saudi passport. He sought refugee status on the basis he was wanted by Egyptian authorities on charges of inciting violence and that he would be killed if sent back.

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A Canadian Security Intelligence Service investigation led to the first of three security certificates being issued against him, the most recent dating from early 2008.

In May, Federal Court Justice Dolores Hansen ruled the government had not established reasonable grounds to believe that Jaballah is a danger to Canadian security.

She also rejected the assertion he was ever a member of al-Jihad or provided support to the group, which advocates violence against the Egyptian government.

The government asked the Federal Court of Appeal to overturn her ruling and uphold the certificate. Failing that, the government said, the case should be sent back to the Federal Court for another look.

Federal lawyers argued that Hansen had made several errors, including reliance on a higher standard of proof than necessary in weighing the evidence. They also said she undermined the rule of law by failing to provide reasons for her April 2014 decision to disallow introduction of additional evidence.

However, the Court of Appeal ruled that the reasons did not fall within the narrow, permissible grounds for appeal.

Trudeau names Malcolm Rowe as first Newfoundland judge on Supreme Court of Canada

Appointment of bilingual jurist cools controversy over Prime Minister Justin Trudeau's decision to conduct a national search to fill the vacant seat from Atlantic Canada.

Tonda MacCharles, The Toronto Star, October 17 2016

Malcolm Rowe, a Newfoundland appeals judge and an avid kayaker and sailor, is used to weathering stormy seas.

The 63-year-old sometimes takes risks. His paddling companions say he advises caution when doing so.

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Now Rowe's surprise nomination Monday to the Supreme Court of Canada — Newfoundland's first appointee to the top court — will calm troubled waters for Prime Minister Justin Trudeau.

By naming Rowe, an expert in constitutional and public law and a bilingual jurist with deep roots in his province, Trudeau ends the controversy over his decision to conduct a national search to fill a judicial seat usually reserved for an Atlantic Canadian. Rowe will occupy the seat left vacant by Justice Thomas Cromwell of Nova Scotia, who retired in September.

For his first pick for the top court, Trudeau had said he wanted more "diverse" candidates and had imposed bilingualism as a new job requirement. He angered aboriginal critics who said this ruled out an indigenous candidate and prompted outrage in legal and government circles in Atlantic Canada, where many demanded Trudeau retain "regional representation" on the country's final court of appeal.

The Atlantic Provinces Trial Lawyers Association went to court, arguing Trudeau was attempting a unilateral and unconstitutional change to one of Canada's foundational institutions. Association president Cynthia Taylor said Monday the challenge would be dropped once Rowe's nomination is finalized — after he fields questions from MPs and senators on Oct. 25 — "because there is no need for it" anymore.

With his choice, Trudeau defied predictions he would name a woman, visible minority or indigenous person to the job and instead opted for a white male. However, Justice Minister Jody Wilson-Raybould shrugged off questions about the lack of diversity, calling Rowe "a highly qualified jurist" and the first Newfoundland appointment "absolutely historic."

Rowe is a man of formidable intellect with experience on appeal and trial courts, a track record in policy-making at the federal and provincial levels, and ties to past Liberal and Conservative federal governments.

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As an advisor in the federal government, he helped Canada win a challenge by France over the maritime boundary near the islands of St-Pierre and Miquelon, off Newfoundland, and won changes to the international Law of the Sea treaty after the collapse of east coast fisheries spurred the 1993-94 “turbot war” with Spain and Portugal.

Rowe’s appointment won plaudits from both Conservatives and New Democrats on Monday.

A native of St. John’s, Rowe learned to speak French in Ottawa where he practiced at the Gowlings firm, focusing on constitutional law, foreign relations, arbitration of maritime boundaries and the negotiation of conventional law through the United Nations.

When Rowe became an adviser to former Conservative fisheries minister John Crosbie, he counselled him on how to strategically manage noisy and effective Opposition attacks from then Liberal MP Brian Tobin, a member of the “Rat Pack.”

In an interview with the Star, Tobin said when he succeeded Crosbie in the job, he demanded Rowe be brought into his office to explain the brief he wrote for Crosbie.

Tobin says Rowe dispassionately did so, then offered his resignation. Tobin instead offered him a job.

“He is an incredibly tireless worker. He hasn’t got a partisan bone in his body,” said Tobin. “He is most at home either with a substantive body of work/challenge in front of him or ... with a challenge in front of him in a kayak or canoe.”

Tobin said that within the department, Rowe was a strong defender of the right of First Nations people to have access to a food and ceremonial fishery. Rowe followed Tobin to Newfoundland when Tobin became premier, and worked as Tobin’s cabinet clerk. He helped to untangle the province’s constitutionally entrenched religious denominational school system in the mid-1990s, enshrine human rights protection for gays and lesbians, and extend full health funding to the Morgentaler abortion clinic.

Appointed as a trial judge in 1999 by prime minister Jean Chrétien, Rowe was elevated to the Newfoundland Court of Appeal in 2001.

The father of a grown daughter, Rowe loves adventurous, sometimes risky outdoor pursuits, including ocean kayaking, sailing and back-country skiing.

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In a written statement on Monday, Trudeau wrote: “I am greatly excited to announce the nomination of Mr. Justice Malcolm Rowe, whose remarkable depth of legal experience in criminal, constitutional, and public law will complement the extensive knowledge of the other Supreme Court justices.”

Trudeau said the appointment highlights “the value of our new Supreme Court Justice selection process; one that will help ensure that those chosen to render critical judgments for the good of our citizens are qualified, non-partisan, and reflective of Canadian society.”

The nomination of Rowe is the first step in the appointment process — which Trudeau’s government revamped — but the outcome is all but certain.

Members of the House of Commons committee on justice and human rights will have a week to prepare for a special committee hearing, where Wilson-Raybould and Kim Campbell, chair of the independent advisory board, will explain the selection process and why Rowe was picked.

Rowe himself will take part in a question and answer session with a joint committee from the House of Commons and Senate, which will also include representatives from the Bloc Québécois and Green party, on Oct. 25. That session is largely a polite and tame affair, with questions related to political views or contentious issues considered off-limits.

Rowe holds undergraduate degrees from Memorial University of Newfoundland in science and political science, and has a law degree from Osgoode Hall.

He lectured in public and constitutional law at the University of Ottawa for two years, and has been involved in several judicial advisory committees for federal appointments to Newfoundland and Labrador.

Wilson-Raybould, asked about the government’s push for diversity, defended the process as “very open and transparent, with one of the main objectives to achieve diversity. I know that across the country, there are many indigenous jurists, lawyers that could fit the criteria to be on the highest court. There is with the retirement of Madam Chief Justice (Beverley) McLachlin, an opportunity to go through this process in 2018.”

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Canada's justice minister pledges to appoint more judges in 'near future'

Michael MacDonald, Global News, October 15 2016

Canada's justice minister says she's poised to appoint a number of new judges to the bench following criticism from Alberta, where a first-degree murder charge was stayed because of an unreasonable delay in getting an accused to trial.

Jody Wilson-Raybould made the commitment Friday at the conclusion of a two-day meeting in Halifax with her provincial and territorial counterparts.

Raybould said she plans to announce more appointments in the "near future," saying the federal government is reviewing the appointment process and the rate of vacancies in every jurisdiction.

Speaking after the meeting, Alberta Justice Minister Kathleen Ganley said the province has the country's lowest number of superior court justices on a per capita basis. The problem has been in the making for decades, she said, but the minister stressed that both levels of government understand the urgency of the situation.

"I'm confident that moves will be made expeditiously and they understand the seriousness of the concern on this issue," Ganley told a news conference. "It's really troubling to see the family of a victim who is not able to get justice.

"This is not an issue that arose overnight. This has been building up for years, for decades."

A jury trial was to begin next week in Edmonton for a 29-year-old man accused of fatally stabbing a fellow inmate in August 2011, but a judge with the provincial Court of Queen's Bench stayed the murder charge last Friday, citing a 62-month delay.

Earlier this year, a Supreme Court of Canada ruling — dubbed the Jordan decision — concluded that such delays must not exceed 30 months in superior courts. The decision also said cases at the provincial level should take not longer than 18 months.

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Meanwhile, the Opposition federal Conservatives have taken aim at Raybould, accusing her of dithering on an important file. Critic Michael Cooper, an Alberta MP, has said the dozens of vacancies across the country could lead to thousands of cases being thrown out.

Raybould said the federal government's comprehensive review of the criminal justice system will include a look at the way judges are appointed.

She said recent court delays have been caused by more than a shortage of judges, but she did not elaborate.

"We have been engaged in looking at the vacancy rates in every jurisdiction and have taken a very concerted approach to our appointments," she said.

In a mild-mannered statement released after the meeting, the justice ministers specifically cited their desire to end "delays in the completion of criminal cases."

The statement also confirmed that the ministers spoke about another hot topic: the pending legalization of marijuana for non-medical use.

Raybould said she and her colleagues also discussed issues around public safety, cybercrime, radicalization, violence against indigenous women and girls, Ottawa's national security consultation, policing services in indigenous communities, and the response to the Truth and Reconciliation Commission on residential schools.

Calls mounting for federal government to speed up judicial appointments

'Thousands of cases across Canada could be thrown out due to delay'

Lauren Krugel, CBC News, October 12 2016

Calls are mounting for Ottawa to swiftly appoint more judges after [a first-degree murder charge was stayed in Edmonton](#) because of unreasonable delay in getting an accused to trial.

Alberta MP Michael Cooper, the Conservative deputy justice critic, is urging Liberal Justice Minister Jody Wilson-Raybould to immediately fill dozens of vacancies across the country, including [at least nine on Alberta's Court of Queen's Bench](#).

"It's time for the minister to stop talking about appointing judges and actually get around to appointing judges," Cooper said.

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"Otherwise, thousands of cases across Canada could be thrown out due to delay."

A jury trial was to begin next week for 29-year-old Lance Matthew Regan, who was accused of stabbing to death fellow inmate Mason Tex Montgrand at Edmonton Institution in August 2011.

But on Friday a Court of Queen's Bench judge stayed the murder charge due to the long delay.

That wait — more than 62 months — was more than twice as long as what a Supreme Court ruling this summer deemed reasonable.

- [First-degree murder charge in prison slaying stayed due to lengthy delay](#)
- [Alberta court backlog delays criminal trials by more than a year, chief judge warns senators](#)

In setting aside drug convictions in B.C. for Barrett Richard Jordan, the top court laid out a new framework for determining whether a person's right to a timely trial had been infringed.

It said an unreasonable delay should be found in cases that take 18 months in provincial court or 30 months in a superior court to get to trial from the time an accused is charged.

Wilson-Raybould said the government is working to modernize Canada's criminal justice system and address delays.

"This week I am meeting with provincial and territorial ministers of justice and public safety to address this very important question," she said in a statement issued by her office.

"In June, we filled pressing judicial vacancies at the federal level by drawing on existing lists of recommended candidates.

Additional appointments will be announced in the near future.

"However, a concerted effort is required to tackle the many factors that contribute to delays in our courts."

Ian Savage, president of the Calgary-based Criminal Defence Lawyers' Association, figures there are 12 to 15 fewer judges than what Alberta's Court of Queen's Bench needs to handle its volume of cases in a timely manner.

- [Alberta gets new Court of Queen's Bench judges amid 'breaking point' shortage](#)
- [Alberta judge shortage at 'breaking point,' causing trial delays](#)

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He adds that resources are also tight at the provincial court level. And it's the worst possible time for there to be delays in Alberta's justice system, Savage said.

"Everyone knows that when the economy goes sour, crime rates — especially petty crime, property crime — go up because more and more people are out of work. More and more people are desperate to support themselves and their families and will turn to petty crimes to do that," he said.

"More and more people will turn to substance abuse, and mental health issues will increase. And all of that leads to an increase in crime, and the system is becoming overwhelmed with the volume as well."

Ottawa behind schedule in redressing past persecution of homosexuals

John Ibbitson, The Globe and Mail, October 12 2016

In a few short months, Canada has gone from leader to laggard in the movement to redress the past persecution of homosexuals.

And with no good reason. A senior government official said there are no Justice Department lawyers warning about liability, no strategists fearful of political fallout.

Instead, the government has been dragging its feet for months for the simple reason that Prime Minister Justin Trudeau and his advisers can't find the time to meet and agree on how to proceed.

Human rights are not a casual matter, to be gotten around to after everything else has been taken care of. This government considers protecting the rights of minorities a core priority. It's astonishing that a prime minister who takes such pride in marching at Pride can't find the time to actually act on his commitments.

Just to remind: Earlier this year, based on a series of stories in The Globe and Mail, the government committed to reviewing the cases of men who were convicted of gross indecency simply because they were homosexual.

It also promised to examine the many cases of men and women who were purged from the public service because of their sexuality.

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And this summer, it welcomed a report by Egale, a national organization that advocates for sexual minorities, that called for action to redress laws and practices that still discriminate against Canada's LGBT community.

But since then the file has lain dormant, with Mr. Trudeau often on the road, and other items – important ones, granted, such as action on climate change – filling the agenda.

Meanwhile, others have acted. As [Dylan Robertson reports](#), the German government has decided to pardon 50,000 men who were criminally convicted for being gay after the war, and to offer redress where appropriate. The government expects about 5,000 men to submit a claim.

Since Canada's population is about 40 per cent that of Germany's, the equivalent numbers here could be 20,000 men pardoned and 2,000 compensated.

Germany is not acting alone. British Prime Minister Theresa May will introduce a bill called the Alan Turing Law, named after the famed mathematician, that will posthumously exonerate all those who, like Mr. Turing, were criminally convicted of being homosexual.

Earlier this year, a British government official apologized for policies that, until the 1990s, prohibited homosexuals from working in the intelligence services.

The Canadian government intends to go much further. Not only would there be an apology and compensation for those criminally convicted, there would be similar redress for those in the public service and military who lost their jobs because of their sexuality. There would be legislation to, among other things, establish a common age of consent for heterosexual and homosexual acts. Mr. Trudeau is also committed to a bill that would prohibit discrimination against transgender Canadians.

This is what the government intends. As for what it has done – crickets.

There are two arguments against offering retroactive justice for homosexuals who were persecuted or prosecuted. One is that the present should not be held responsible for the sins of the past. The other is that the money could be better spent elsewhere.

But the sums are nominal: The Germans will be spending about \$45-million (Canadian) on compensation; the Canadian equivalent would be about \$18-million.

And apologies matter. In our ahistorical age, had the Canadian government not apologized for the internment of Japanese prisoners or for abuses against First Nations children at residential

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schools, this generation of Canadians might not even know such abuses ever took place. Bringing the past into the present reminds both young and old of wrongs that were committed that we vow never to commit again.

Mr. Trudeau is reportedly determined to right the wrongs committed against sexual minorities. But nothing can be done until he agrees to launch a process of review and reconciliation. That process will take several years to complete. Why is he taking so long to get it started?

Alberta's lack of judges means long delays -- and sometimes abandoned charges

Graham Slaughter, CTV News, October 13 2016

An Edmonton man accused of first-degree murder in a prison stabbing had his case thrown out earlier this week because a judge ruled that it took Alberta's court system too long to start the trial.

Lance Matthew Regan, 29, was set to stand trial next week for the stabbing death of fellow inmate Mason Tex Montgrand, who died in 2011. But Justice Stephen Hillier found that Regan's right to a trial within a reasonable timeframe had "been violated," and so the charge was stayed.

It took more than five years for the case to reach trial. The Supreme Court of Canada determined in July that a reasonable delay is 18 months for provincial cases and 30 months for cases before the superior court.

Legal analysts say the unusual Edmonton case is indicative of a major insufficiency in Alberta's justice system: a critical lack of judges, who can't keep up with the demand for trials.

"The judges we presently have are overloaded and we can't do trials unless we have judges. So without more judges, we just can't get trials any sooner," said trial lawyer Allan Fay.

The reason for the delays is fairly simple, Fay said.

"In my experience, for anything that's going to take more than a day for trial, we are setting into the spring of 2018."

There are currently 61 judicial vacancies across Canada. Nine of those are in Alberta, which has the fewest judges per capita of any province.

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The Senate has taken steps to address the problem. In August, the Senate released an interim report called "Delaying Justice is Denying Justice: An Urgent Need to Address Lengthy Court Delays in Canada." The report included alarming statistics, such as:

- For homicide cases, the median time from laying a charge to a case's conclusion is 451 days
- For sexual assault, the median time from laying a charge to a case's conclusion is 321 days

In its summary, the Standing Senate Committee on Legal and Constitutional Affairs wrote: "This situation is critical. Canadians deserve a system that is far more accessible and efficient."

Alberta's justice minister says the problem "didn't occur overnight."

"It's been building up over the course of several decades. So, as a result, Alberta has gotten significantly behind on the number of justices," said NDP minister Kathleen Ganley.

The issue is expected to be on the table at an upcoming meeting in Halifax of justice and public safety ministers.

Federal justice minister Jody Wilson-Raybould said in a statement that judicial vacancies are one aspect of the ongoing court delays, but there are other factors at play as well. She said the government is "undertaking modernization efforts" to improve the criminal justice system and make it more efficient.

"Additional appointments will be announced in the near future," Wilson-Raybould said in a statement.

A Conservative justice critic says that the longer the government waits, the more opportunities there are for cases like Regan's to be dismissed.

"If the minister doesn't get out in front of it by stop talking and (starting to) appoint judges, thousands of cases right across Canada could be thrown out," said Alberta MP Michael Cooper.

Upcoming Supreme Court case could force Ottawa to overhaul consultation with Indigenous communities

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Kenneth Jackson, APTN National News, October 12 2016

The Supreme Court of Canada is set to hear arguments next month in a case that could lead to a major overhaul of the way the federal government consults Indigenous communities on energy projects.

Two cases are to be heard together beginning Nov. 30 to essentially settle an argument: Does the National Energy Board (NEB) execute the Crown's duty to consultation with Indigenous communities through its public consultation process?

A First Nation in Ontario and an Inuit community in Nunavut argue it doesn't.

"No Crown actor, including a tribunal exercising delegated authority, can make a decision that ignores or is contrary to the Crown's constitutional obligations to Aboriginal Peoples," the Chippewas of the Thames First Nation state in their statement of facts filed with Canada's highest court.

The NEB is not a Crown agent, but part of the executive branch of the federal government, and makes recommendations to Ottawa on whether energy projects should proceed. The federal cabinet then gives final approval.

In the case of the Chippewas, located near London, Ont., they opposed Enbridge's interest in expanding and reversing the flow on a large portion of an existing oil pipeline that stretches approximately 830 km from Sarnia, Ont. to Montreal, Que. The section of pipeline in question is known as Line 9B, and was constructed in 1975.

The Chippewas assert treaty and title rights to the land the pipeline crosses. They feared, in part, the project could disrupt their hunting rights if there was a pipeline leak.

The NEB gave its approval of the project on March 6, 2014, with 36 conditions, and found any potential damage to Indigenous land was "likely minimal and would be appropriately mitigated."

In doing so, the NEB urged the federal government to approve the project.

The board also ruled its consultation process was, in fact, the same as though the Crown had been doing it. Ottawa agrees with this and is filed documents in the Supreme Court stating so.

"The adjudication carried out by the Board is open, transparent, expert and effective in addressing the concerns of Aboriginal people," the Crown says. "The process and decisions of tribunals such as the Board appropriately uphold the honour of the Crown and give effect to the constitutional recognition of Aboriginal rights in section 35."

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The Chippewas wanted the federal government involved all along and requested a dual consultation process, and say the entire process failed to have what they describe as meaningful consultation.

“In fact, the Crown did not participate in the (NEB’s) proceeding, notwithstanding repeated requests by the Chippewas First Nation for the Crown to engage in consultation regarding the Proposed Project,” said the First Nation’s filing. “Neither the Crown nor the (NEB) at any time engaged in meaningful consultation with the Chippewas First Nation regarding the nature of their asserted Aboriginal rights and interests or the potential impact of the (NEB’s) decision on those rights and interests.”

Shortly after the NEB’s approval, on April 8, 2014, the Chippewas asked the Federal Court of Appeal to reject the decision based on the premise that the NEB’s consultation did not meet the standard of consultation.

The appellate court ruled against them, but it wasn’t a majority ruling.

Justice Donald Rennie believed the NEB was obligated to decide whether “a second independent Crown consultation had occurred, and was obligated to withhold its regulatory approval if it had not.”

The board simply didn’t “express an opinion” on the issue, believing its consultation was suffice.

In Nunavut, a similar situation was unfolding at the same time.

On June 26, 2014, the NEB approved Petroleum Geo-Services to conduct seismic testing in the waters of Baffin Bay and Davis Strait off the coast of Baffin Island in Nunavut.

The testing would happen 24 hours a day, five months per year for five years, something the Hamlet of Clyde River and other interested parties oppose.

They feel the testing is harmful to marine mammals, including narwhal, ringed seal and the bowhead whale – something the Inuit rely on for their food and culture.

“At stake in this appeal is not only the health of Arctic marine animals and their ecosystem, but the continued survival and centuries-old way of life of an entire people,” the Hamlet of Clyde River states in its appeal to the Supreme Court.

They, too, sought a judicial review at the Federal Court of Appeal, arguing the NEB didn’t properly consult and there was no talks between the Ottawa and the affected Inuit communities.

Like the Chippewas, the appellate court ruled against them.

The Hamlet of Clyde River is asking the Supreme Court to “quash” the NEB ruling.

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For the Chippewas, they're now developing what they call a protocol to deal with future projects that may come across their land.

"We know of the damaging impacts of the tar sands, fracking, and other extractive industries have on our earth yet these developments continue with government protection," said band Coun. Myeengun Henry in a press release issued Wednesday. "We believe that protecting the water and land, requiring sustainable development, adapting to climate change, and ensuring a safe home for future generations must be central to this protocol."

APTN was unable to reach Henry.

Henry said in the release the pipeline was first put in during the era of Indian residential schools and the community was never consulted.

"When there was a process that brought this pipeline through our traditional territory, we were never consulted at all. So they just built this pipeline without any acknowledgement of the First Nations in the area," Henry said.

Henry added they are struggling to pay for the legal costs expected for their fight next month. They've raised \$50,000 of the \$500,000 they say is needed.

Supreme Court agrees to hear pre-Confederation B.C. native land case

The band is not seeking aboriginal title to the disputed lands at Williams Lake, B.C., but it does want compensation

The Canadian Press, October 13 2016

A British Columbia land-claims case that predates Confederation will be heard in the Supreme Court of Canada.

The court agreed Thursday to hear the case of the Williams Lake Indian Band, which claims the pre-Confederation colony of British Columbia and later the government of Canada failed in their legal obligations to prevent settlers from occupying village lands.

Williams Lake, with a population of about 11,000, is in central B.C., about 550 kilometres north of Vancouver.

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The band is claiming village lands at the foot of Williams Lake, which includes the city's downtown core and its stampede grounds, where a major rodeo has been held for more than 90 years.

The band is not seeking aboriginal title to the disputed lands, but it does want compensation.

It has argued the colony failed to protect the bands land from being overtaken by settlers, and failed to recover the land that was unlawfully taken.

Band Chief Ann Louie said Thursday that Canada continued to allow settlers to build on the village lands after B.C. joined Confederation in 1871.

Louie said successive band leaders and chiefs sought to resolve the land issue, arguing the colony of B.C. and Canada failed to enforce policies and laws when it came to protecting the band's village lands.

The band won a victory at the federal Specific Claims Tribunal in 2014.

The tribunal was created in 2008 and consists of judges. It cannot award land to First Nations but it can award compensation up to \$150 million per claim.

The issue of compensation was not resolved in the tribunal decision on Williams Lake.

Earlier this year, the Federal Court of Appeal overturned the tribunal decision, saying it used a flawed principle and reached an unreasonable conclusion.