Deux procureurs québécois honorés

Assignés au plus long procès de l'histoire, ils se sont distingués pour leur excellence professionnelle et leur ténacité hors du commun.

Droit Inc
Delphine Jung
30 octobre 2017

Il s'agit de Mes Matthew Ferguson et Céline Bilodeau, procureurs au Bureau du directeur des poursuites criminelles et pénales du Québec.

«J'ai été très surpris ! Je ne m'y attendais pas du tout ! J'ai aussi été très touché par la reconnaissance du travail accompli », dit Me Ferguson, 39 ans.

« On ne travaille jamais pour les honneurs, mais c'est sûr que ça fait plaisir. Personnellement, ça couronne ma carrière, c'est un honneur très apprécié », réagit de son côté Me Bilodeau, 58 ans.

C'est le Comité fédéral-provincial-territorial des Chefs des poursuites pénales qui a reconnu les réalisations exceptionnelles des procureurs canadiens lors d'une cérémonie tenue jeudi soir, à Toronto.

Ce programme de reconnaissance a été lancé en 2006.

Procès le plus long de l'histoire du Canada

Dans ce cadre-là, les deux avocats québécois, respectivement Barreau 2007 et 1987, ont reçu le prix Courage et persévérance. « La détermination dont ils ont fait preuve pour terminer le procès devant jury le plus long de l'histoire du Canada, qui a signifié de mettre de côté leur vie personnelle et familiale et sacrifier des vacances bien méritées, leur a valu l'admiration de tous », peut-on lire dans le communiqué de presse.

Les deux avocats ont en effet représenté la Couronne dans l'interminable procès de l'affaire Cinar, entamé en mai 2014 et dont le dénouement a eu lieu en juin 2016. Le jury avait alors déclaré coupables de la majorité des chefs d'accusation qui pesaient contre Ronald Weinberg, Lino Matteo et John Xanthoudakis.

Parmi eux, fraude, utilisation de document contrefait ou encore fabrication de faux.

Les deux récipiendaires ont tenu à partager ce prix avec les membres du jury de ce procès-fleuve. « Ils ont mis leur vie entre parenthèses et ont su tenir le coup. Ils ont fait un beau travail », dit Me Ferguson.

Un intérêt développé en ex-Yougoslavie

Diplômé en droit de l'Université de Montréal, Matthew Ferguson a débuté sa carrière à la Cour municipale de la Ville de Montréal, au bureau des affaires criminelles et pénales, avant de se joindre au bureau montréalais du Directeur des poursuites criminelles et pénales en 2008.

Depuis 2016, il exerce au Bureau de la grande criminalité et des affaires spéciales.

« Après un premier bac en arts et sciences obtenu à Concordia, je suis allé en ex-Yougoslavie et j'ai développé un intérêt pour les dossiers criminels qui arrivent au Tribunal pénal international. Je me suis donc lancé dans des études de droit. Certes, ce n'est pas ce que je fais aujourd'hui, mais ma profession n'en demeure pas moins passionnante », dit-il.

Me Ferguson a également été assigné à l'affaire Richard Henry Bain, pour remplacer Éliane Perreault qui avait été nommée juge. Il n'avait en revanche pas pu assister au procès à cause d'un conflit d'horaire avec le procès Cinar.

Il a fait partie des 21 finalistes des Leaders de demain du Jeune Barreau de Montréal en 2014.

« Le plus beau métier du monde »

Céline Bilodeau de son côté a obtenu un bac en sociologie à l'UQAM et un bac en droit à l'Université de Montréal. Elle a effectué son stage à la Couronne fédérale où elle a par la suite travaillé. Après un court passage au Tribunal de la jeunesse, elle est devenue procureur au bureau de Montréal et a intégré l'équipe fraude et corruption.

Me Bilodeau a enseigné à l'École nationale de police du Québec. Elle a donné des cours à des enquêteurs spécialisés, sur tous les articles du Code criminel touchant la criminalité financière.

« À la fin de mon bac en sociologie, je devais choisir des cours hors champ. J'ai alors pris le droit et j'ai eu la piqûre. Depuis, je suis fascinée par le droit pénal. Je trouve que procureur est le plus beau métier du monde. Je suis par ailleurs issue d'une famille où l'on croit beaucoup au service public », raconte-t-elle.

Les autres procureurs honorés sont Maureen Pecknold, procureure adjointe de la Couronne au ministère du Procureur général de l'Ontario et directrice adjointe par intérim des Réserves au sein du Service canadien des poursuites militaires.

Elle est récipiendaire du prix Loyauté envers l'idéal de justice comme Ashley Finalyson, procureur et coordonnateur des poursuites relatives au crime organisé à la direction des poursuites spécialisées du ministère de la Justice de l'Alberta.

Le prix Engagement humanitaire a été remis à Hafeez S. Amarshi, procureur de la Couronne au Bureau régional de l'Ontario, Service des poursuites pénales du Canada.

Justice Lachance named to the Superior Court of Quebec
Lawyer's Daily
Carolyn Gruske
October 30, 2017

Justice Myriam Lachance, a judge of the Court of Quebec, has been named to the Superior Court of Quebec for the district of Montreal.

Lachance, who has been a member of the Special Penal Cases Division of the Court of Quebec since its creation in 2014, has been responsible for judicial education within the division since 2016.

Before her appointment, Lachance practised in the areas of criminal law, disciplinary law and professional ethics, and internal police investigations, acting for both the defence and the prosecution and serving as agent for the Public Prosecution Service of Canada and as a prosecutor for the attorney general of Quebec.

Additionally, she has taught at the Université de Sherbrooke (where she was a constitutional law professor) and the École du Barreau and the programme des Techniques policières at the Cégep de Sherbrooke where she instructed about criminal law. Lachance worked as a bâtonnière of the Barreau de St-François and served on the board of the Association des avocats et avocates de province. She has also been a lecturer at the Barreau du Québec on topics including police powers and duties and constitutional rights.

Lachance's position is a new one, authorized under Bill C-44, the Budget Implementation Act, 2017, No. 1.

Alberta Law Society calls in independent counsel to review complaints over wrongfully convicted Metis man
APTN News
Kenneth Jackson
October 31, 2017

The Law Society of Alberta has called in an independent law firm from Manitoba to review complaints against the Crown and defence lawyers in the wrongful conviction of a Metis man in May.

It's done so because defence lawyer Leighton Grey is an adjudicator with the Law Society, as well as the lawyer for Clayton Boucher, 45, who pleaded guilty to drug charges May 30 even though tests showed they weren't a controlled substance.

Only Boucher didn't know the tests had come back negative.

Boucher filed a complaint against Grey and Crown attorney Erwin Schulz in the summer with the Law Society believing his case wasn't handled properly.

The Law Society said Boucher's complaints, which had been dismissed, are now being reviewed by Allan Fineblit of Thompson Dorfman Sweatman LLP in Winnipeg.

"Mr. Fineblit will review the matter and may be in further contact with you during the review process," said Paule Armeneau, general counsel and senior manager of regulation with the Law Society.

Boucher has maintained he pleaded guilty because he was distraught over losing his wife April 30 in car collision.

He spent 129 days in jail and was forced to attend his wife's funeral in shackles and an orange jail-issued jumpsuit.

The convictions would be overturned in September with consent of the prosecution.

APTN News first reported Boucher's wrongful conviction Oct 24.

Since then more details have emerged, such as conflicting accounts between Grey and Schulz, as well as when the RCMP got the test results back.

Laboratory tests were completed – Feb. 23 and Feb. 24 – on two samples of alleged cocaine according to Health Canada certificates Boucher provided to APTN.

The RCMP has refused to tell APTN when it received the results so Boucher said he called the Health Canada lab in British Columbia and asked them.

Boucher told APTN he received a call back Friday from the lab informing him the Feb. 24 sample was faxed over that same day, while the Feb. 23 results were faxed Mar. 24 from the lab to the RCMP in Lac La Biche.

It is unknown why the Feb. 23 result wasn't faxed to the RCMP sooner.

"I lost more than anyone could imagine," said Boucher. "I am lost."

Boucher said he was told by the RCMP up to five Mounties face discipline, but the RCMP has only told APTN the matter is under an internal investigation.

According to an email from Schulz to the Law Society last month where he defends himself against the complaint filed by Boucher, he wrote the RCMP first informed him the tests came back negative May 3.

Schulz provided the Law Society with a timeline following Boucher's arrest.

"May 3, 2017 – The RCMP confirm the seizures did not analyze as cocaine and in turn were buff (cutting agent used to mix with pure cocaine)," Schulz wrote Sept. 28.

This is after Schulz said his office requested the results two times – after Mar. 24 – from the RCMP only to be told each time the results were not ready.

Also, the Health Canada certificates make no mention of "buff" but rather neither sample was a controlled substance.

"May 4, 2017 – I call defence counsel and advise him that the seizures did not analyze as controlled substance. The Crown and counsel agree to a mutual date to have the matter brought forward to May 30, 2017 for summary disposition," wrote Schulz.

On May 15, Grey – Boucher's Legal Aid-appointed lawyer – contacted Schulz saying Boucher wanted to take a deal and would plead guilty to two counts of simple possession for time served, according to Schulz's email.

However, Grey said Sunday that Schulz informed him the seizures came back with traces of cocaine and that is what he told Boucher.

"That is what I was told on 4 May," wrote Grey to APTN. "The guilty pleas were based upon that."

Boucher confirmed Grey told him the tests found traces.

"(Grey) said they found traces of it in the sample bag," said Boucher recounting the discussion he had with Grey back in May. "He said: 'Take it. The deal is there."

Based on Grey's account, Boucher pleaded guilty to under a gram of powder suspected to have just traces of cocaine, something they called "spitballs".

Only there were no traces, at least according to Schulz's email.

At no point in the email does Schulz mention "traces" of cocaine were found. There is also no mention of traces in the Oct. 4 letter from the Law Society dismissing Boucher's complaint against Schulz.

Schulz wrote he and Grey were of the belief the “spitballs” looked and weighed like cocaine and referred directly to the exhibit list.

“At no time during the criminal proceeding and sentencing did Mr. Boucher raise concerns that what we alleged to be small amounts of cocaine in his residence with numerous drug paraphernalia was in fact not,” wrote Schulz.

However, both Grey and Boucher said he always maintained the so-called drugs were just baking soda.

“That is why he instructed me to send several letters asking the Crown to expedite the lab analysis,” Grey wrote. “Mr. Boucher was wronged, but not by me.”

First Nations leaders, judges meeting to tackle problems with justice system
Judges visiting Norway House Cree Nation on Tuesday to address high number of Indigenous people in system
CBC News
October 31, 2017

A Manitoba First Nation chief hopes a meeting with five judges on Tuesday will produce ideas that will lead to improved outcomes for indigenous people involved with the justice system.

The Manitoba judges, including the chief justice of the Court of Queen's Bench, are heading to Norway House Cree Nation to meet with representatives from 30 Manitoba First Nations to discuss ways to improve the system, and to start acting on recommendations of the 2015 Truth and Reconciliation Commission.

Norway House Cree Nation Chief Ron Evans says many issues contribute to the overrepresentation of Indigenous people involved in the justice system, including problems with child welfare, education, language, culture and the justice system itself.

Evans says there is a backlog of cases and many people, particularly young people, breach their conditions while waiting for their day in court.

"It actually destroys the future of our young people if their issues or charges are not addressed as quickly as possible," he said.

Many people from northern communities also face a language barrier when dealing with the justice system.

"Not really understanding what the charges are or what the options could be for the offenders. There needs to be a process in place that allows for communication that can be better understood on both sides," Evans said.

Once offenders are released, it can be difficult for them to abide by their conditions due the small size and remoteness of many Indigenous communities, he said. "There's only so many places that one can go."

This forces some offenders to leave their communities altogether. "Now you're taking them out of an environment that's the only one that they've known and now they have to go to a different that's all strange and expect them to survive," Evans said.

The Truth and Reconciliation Commission report contained 18 recommendations to improve justice for Indigenous people. One called on the provincial and federal governments to "provide realistic alternatives to imprisonment for Aboriginal offenders and respond to the underlying causes of offending."

Evans says the meeting on Tuesday will include discussion of restorative justice options, as well as preventative measures that could be implemented.

"That's where we need the court to support us there — or at least be able to put recommendations to government — where government needs to maybe amend some of the legislation that allows us to put in place some of the solutions that we seek as leadership in our communities," Evans said.

Chief Justice Glenn Joyal, one of the five judges heading to Norway House Cree Nation, has suggested drop-in clinics could be expanded to provide low-income earners with legal advice.

Fixing the criminal justice system needs to be a co-operative process, Evans said, and Tuesday's meeting is part of that.

"Reconciliation should be more than just a word. It should be backed up by how do we move forward on things that we both agree on," Evans said.

MPs urge Ottawa to create civil legal aid fund
Lawyer's Daily
Cristin Schmitz
October 30, 2017

The Commons Justice Committee has recommended that Ottawa revamp the current amorphous block funding the federal government gives the provinces and territories for legal aid by creating a separate earmarked civil legal aid fund for provinces that is administered under the Department of Justice (DOJ) Canada Legal Aid Program.

The MPs' Oct. 30 recommendation that the unspecified amount of money Ottawa transfers to the provinces and territories each year for civil legal aid be made public as part of a new dedicated

and specialized program addresses the long-standing complaints of legal aid advocates that civil legal aid always ends up getting short shrift as part of the large amorphous Canada Social Transfer (CST) block payment. The federal block transfer leaves it up to the provinces and territories to decide how to divvy up the money among post-secondary education, social assistance and social services, and it does not require the recipients to report to Ottawa how much they spend on civil legal aid.

The reform proposed by MPs is among 10 recommendations made in their unanimous report on legal aid tabled in the Commons — which is part of the Commons Justice Committee's ongoing study of access to justice.

The committee's chair, Montreal lawyer and Liberal MP Anthony Housefather, said legal aid is a service that breathes life into the democratic principle of the rule of law by ensuring that low-income Canadians have access to the courts.

"The report tabled today is the result of all three parties working collaboratively and constructively to identify innovations and recommend concrete changes to the federal government that we believe will increase access to justice," he said in a prepared statement.

Housefather noted the report is based on consultations with 25 experts and stakeholders from across the country, including the Canadian Bar Association which has been pushing for legal aid reform for many years.

The Commons Justice Committee recommended that legal aid funding be ratcheted up, noting that this will save money, as well as make the system fairer to more individuals who are facing criminal charges, applying for legal status in Canada, or trying to resolve family disputes. "The committee agrees with witnesses that legal aid is a sound investment. We learned that up to $6 to $7 could be saved for every dollar spent on legal aid," the committee said.

As well as recommending that funding be specifically earmarked for civil legal aid, MPs urged Ottawa to impose more detailed reporting requirements on the provinces in respect of the spending of federal legal aid funding. "These changes will permit better tracking and evaluation of legal aid funds, ensuring the most efficient and effective use of the money available," they stressed.

In its 52-page report, the committee also recommended that legal aid systems in all provinces and territories could be made more efficient, transparent and accountable by:

maximizing the impact of available funding through technological innovation;
undertaking gender-based analysis of legal aid funding on a regular basis to better understand how funding may affect different groups such as women, individuals with mental illness, minority language community members, Indigenous persons and members of racialized communities;

ensuring that official language minority communities have access to legal aid services in their language;
better use of client contributions to maximize access to justice; and
sharing promising practices, including expanding the role of law schools and specialized clinics.

From last December until May 2017, the committee held seven meetings at which it heard testimony from representatives of the Department of Justice, experts, and organizations involved in the delivery of legal aid services.

Canada's Ontario seeks to curb jail time before trials
Reuters
Anna Mehler Paperny
October 30, 2017

Ontario, Canada's most populous province, gave prosecutors new instructions on Monday to keep people out of jail while they await trial, addressing a system that has put people behind bars for months or years before court dates.

The move to find alternatives to pre-trial detention includes easing onerous bail conditions that disproportionately affect minorities and indigenous people.

A Reuters investigation this month found black people in Ontario spend longer behind bars awaiting trial than white people charged with many of the same crimes.

Black people were also over-represented among those spending more than a year awaiting trial behind bars in every offence category Reuters examined. (Graphic: Racial disparities in pre-trial detention - tmsnrt.rs/2z18vS7)

"People should not be denied bail by the simple virtue of their disadvantage," Ontario Attorney General Yasir Naqvi said at a news conference. In Ontario, people in custody are usually only released if they have a surety - a relative or close friend who pledges assets and supervises the accused while they await trial.

Lawyers, judges and criminologists have said sureties penalize people who are poor or whose communities are heavily policed. Naqvi said Crown prosecutors must use sureties less often and impose bail conditions more judiciously.

In the past year Ontario has expanded "bail bed" programs, which give people a place to stay, and bail verification programs, which require the person to check in with a case worker regularly.

Ontario's previous directive to prosecutors was more focused on risk-aversion, citing high-profile cases where people committed murder while on bail. The new one tells prosecutors that under Canada's Criminal Code an accused person's unconditional release should be the default.

Toronto civil rights lawyer Anthony Morgan said the new directive should more explicitly address the disadvantages faced by black accused people instead of lumping groups together.

"It doesn't address the particularities of the longer stays, of the harsher treatment, of the specific stereotypes and biases against African-Canadians that lead to the outcomes that we are seeing," he said. "Not all...communities are disadvantaged in the same way." Ontario is one of several Canadian provinces reviewing backlogged criminal justice and bail systems in the wake of multiple Supreme Court rulings that have found them too slow to process cases and too restrictive when it comes to releasing them before trial.

The majority of prisoners in Canada's jails are people awaiting their day in court. Reuters found that people are more likely to die behind bars if they are awaiting trial than if they are serving sentences.

News Release

Ontario Unveils New Bail Directive to Reduce Pre-Trial Custody

Province Making the Criminal Justice System Faster and Fairer

October 30, 2017

Ministry of the Attorney General

Ontario is helping make the bail system faster and fairer, while balancing the need to protect the safety of victims and the public.

In December 2016, the Attorney General appointed three prominent bail experts to provide advice on a new Bail Directive. This bail advisory group consulted widely with the legal community, analyzed expert reports, Supreme Court decisions, and travelled to Northern Ontario to hear about the distinct concerns facing Northern and remote Indigenous communities.

With their input, the province has developed a new bail directive that will aim to reduce barriers faced by Indigenous and racialized communities at the bail stage, ensure low-risk and vulnerable individuals have access to the appropriate supports for safe releases, and speed up the bail process by:

- Emphasizing that bail recommendations should start with the least restrictive form of release (the "ladder principle"), and that having an accused person released with a surety while awaiting trial should be an exception

- Reinforcing that recommendations for conditions of release should be connected to both the circumstances of the accused and the facts of the case, while at the same time, meeting public safety concerns

- Suggesting ways to make the bail process more efficient and less time-consuming such as encouraging out-of-court surety approval processes, where sureties are required

- Encouraging the use of the Bail Verification and Supervision Program and Bail Beds Program where vulnerable, low-risk people can be safely released into the community with supervision instead of being detained while awaiting trial

- Highlighting the requirement to take into account the unique circumstances of Indigenous peoples when an accused person self-identifies as Métis, Inuit or First Nation

- Emphasizing the use of community based programs as alternatives to detention for mentally ill accused persons who come in contact with the law

- Recognizing the circumstances and barriers faced at the bail stage by vulnerable and disadvantaged accused, including those who are racialized and socioeconomically marginalized.

The updated Bail Directive is part of Ontario's plan to enhance public safety by making it possible to resolve criminal cases faster and by making more supports and supervision available to vulnerable, low-risk individuals who come in contact with the law.

Improving Ontario's criminal justice system is part of our plan to create fairness, keep communities safe, and help people in their everyday lives.

Quick Facts

Ontario’s Bail Directive is part of the Crown Prosecution Manual which is used to provide support and guidance to Crowns on the exercise of their discretion and reinforces bail principles. The new Crown Prosecution Manual, which includes the new Bail Directive, will be released in the coming weeks.

In its decision in R. v. Jordan, the Supreme Court of Canada set time limits for the completion of criminal cases, where there are no exceptional circumstances: 18 months for cases in the Ontario Court of Justice and 30 months for cases in the Superior Court of Justice.

A criminal prosecution develops in a series of stages, beginning with an arrest of an accused. If held for bail, this represents the first stage of the court process.

In its decision in R. v. Antic, the Supreme Court of Canada highlighted the importance of using the ladder principle and that a person charged with a crime has the right to reasonable bail.

The decision to grant or deny bail is complex and based on the specifics of each individual case. When considering whether to recommend bail, the key factors considered by the Crown are public safety (including the protection of victims), attendance in court, the rights of the accused, and public confidence in the administration of justice.

Background Information
Progress on Ontario's Plan for Faster, Fairer Criminal Justice
Bail Directive - Judicial Interim Release

Quotes

“This directive levels the playing field for those who are disproportionately impacted at the bail stage while ensuring the safety of victims and communities. I want to thank the bail advisors for their thoughtful, and balanced advice on our approach to bail. The new Bail Policy will help to break the cycle of re-offending, reduce barriers faced by racialized and Indigenous communities, and speed up our criminal justice system to ultimately make our communities safer.”

Yasir Naqvi
Attorney General

“The OCAA welcomes the new Crown directive on bail as it will assist our dedicated and hardworking prosecutors to properly exercise their discretion, fulfill their professional obligations, and better serve the public interest through the careful balancing of individual liberty and community safety.”

Laurie Gonet
President, Ontario Crown Attorneys Association

“This past June, the Supreme Court of Canada - in a unanimous decision (R. v. Antic) - remarked that 'It is time to ensure that the bail provisions are applied consistently and fairly. The stakes are too high for anything less.' It is encouraging to see that the Ministry of the Attorney General has now released new guidelines for Crown attorneys that, if followed, would go far in bringing about the changes that the Supreme Court envisioned. Pretrial detention recommendations and decisions are inherently difficult. The new guidelines are designed in an attempt to ensure that decisions are made quickly, sensibly, equitably and in a manner consistent with the presumption of innocence.”

Anthony Doob
Professor Emeritus, Centre for Criminology & Sociolegal Studies, University of Toronto

“We want to thank the Ministry of the Attorney General for recognizing the need for a fairer and more efficient bail system in Ontario. The John Howard Society of Ontario has long been recommending an approach to bail that places greater emphasis on the presumption of release and the presumption of innocence, and moves away from the reliance on sureties as a condition for release. We are very pleased to see these approaches reflected in the new Directive.”

Michelle Keast
Director of the Centre of Research, Policy & Program Development, John Howard Society of Ontario

Le sort de l’ex-juge Delisle bientôt fixé?
Ottawa est sur le point de compléter son enquête qui déterminera la suite des choses pour l’ex-juge, condamné à la perpétuité
Droit-Inc
Martine Turenne
31 octobre 2017

Le Groupe de la révision des condamnations criminelles (GRCC) « prépare actuellement » son rapport « provisoire », a confirmé le porte-parole du ministère de la Justice du Canada, Simon Rivet, au Journal de Québec.

L’ex-juge Jacques Delisle a été reconnu coupable en juin 2012 du meurtre prémédité de sa femme, Nicole Rainville, 71 ans, et condamné à l’emprisonnement à vie sans possibilité de libération conditionnelle avant 25 ans.

Il se dit depuis condamné à tort et victime d’une erreur judiciaire.

Jacques Delisle franchira donc une nouvelle étape dans le processus de révision ministérielle. Le processus d’enquête a débuté en août 2016. Au cours de la prochaine semaine, selon Simon Rivest, le document doit être transmis aux avocats de Jacques Delisle ainsi qu’aux procureurs de la Couronne.

L’ex-juge, aujourd’hui âgé de 82 ans, a demandé la révision de son dossier à Ottawa en mars 2015, après que la Cour d’appel et la Cour suprême ont refusé tour à tour d’entendre sa cause.

Le GRCC examine les nouveaux éléments soumis par l’ex-juge. Rappelons que Jacques Delisle n’a pas témoigné lors de son procès.

Une fois le rapport déposé, les parties ont 30 jours pour fournir leurs commentaires et demander une prolongation de ce délai, si nécessaire, a précisé M. Rivet au Journal de Québec.

Ottawa rendra par la suite un rapport final, qui sera remis à la ministre fédérale de la Justice, Jody Wilson-Raybould. Cette dernière pourra ordonner un nouveau procès, renvoyer le dossier à

la Cour d’appel ou encore, rejeter la demande. « Il nous est impossible de confirmer dans quel délai la décision finale sera rendue dans ce dossier », a dit Simon Rivest au Journal.

PSAC wants damages from feds for missing contract deadlines
iPolitics
Kathryn May
October 31st, 2017

This article is subject to a pay wall and cannot be shared in its entirety

Canada’s largest federal union is seeking damages for more than 100,000 public servants after the beleaguered Phoenix pay system missed the 150-day deadline to implement new collective agreements for these employees.

Chris Aylward, vice-president of the Public Service Alliance of Canada, said the government confirmed that it will be unable to successfully implement four major collective agreements by the Nov. 11 deadline that the parties agreed to when the deals were signed.

“We are seeking damages and what they will look like will depend on how long it takes to fully implement the collective agreements,” said Alyward. “Once we know

Les juges ne veulent pas publier leurs dépenses !
Le projet de loi C-58 sur la modification de l'accès à l'information menace l'indépendance judiciaire
Droit-Inc
Jean-Francois Parent
31 octobre 2017

C'est la crainte exprimée par l’Association canadienne des juges des cours supérieures, qui témoignait lundi à Ottawa. Le détail des informations relatives aux dépenses effectuées par les juges a fait sourciller l'ACJCS, selon Me Pierre Bienvenu, cochef mondial de l'arbitrage international et associé principal chez Norton Rose Fulbright.

Il est porte-parole des juges fédéraux dans ce dossier.

Le projet de loi C- 58 pourrait exiger des magistrats fédéraux, qui siègent notamment au tribunal de l'impôt, qu'ils divulguent dans le détail leurs dépenses de fonction. Chaque juge devrait ainsi rendre public le montant, l'endroit et la raison de la dépense engagée.

Selon Pierre Bienvenu, le projet de loi soulève de « graves inquiétudes » pour les juges. Ces derniers le jugent incompatible avec la fonction judiciaire, a-t-il plaidé devant les membres du

Comité permanent de l'accès à l'information, de la protection des renseignements personnels et de l'éthique.

Par ailleurs, les nouvelles obligations feraient double emploi : « Les types de dépenses autorisées pour les juges sont déjà régis par la loi sur les juges, et un commissaire aux affaires judiciaires doit les approuver. »

En outre, le fait que l'on confère à l'exécutif parlementaire la responsabilité de juger si la publication des dépenses des juges peut nuire à leur indépendance, tel que le prévoit le projet de loi, rebute : « D'un point de vue constitutionnel, ce n'est pas à l'exécutif de décider ce qui est constitue un risque à l'indépendance judiciaire », a-t-il dit.

http://www.cscja-acjcs.ca/ propose plutôt que les juges en chef décident de ces questions pour les dépenses de la magistrature.

Les juges ont leurs habitudes...

La publication des dépenses des juges fédéraux est problématique aussi parce que ces dernières sont particulièrement importantes. « Les juges des cours fédérales sont tenus de résider dans la capitale fédérale, ce qui les oblige à voyager fréquemment. C'est pourquoi leurs dépenses pourraient bien se démarquer de celles des élus ou des fonctionnaires », a dit Pierre Bienvenu.

Sans compter que, « au contraire des autres membres du gouvernement soumis à la Loi sur l'accès à l'information, les juges ne peuvent se défendre publiquement », si on devait les prendre à partie pour des dépenses personnelles engagées par l'un ou l'autre des juges.

On propose plutôt de faire cette divulgation dans un cadre plus général, en regroupant par exemple les dépenses de chacune des cours par postes de dépense. On préserverait ainsi l'anonymat des juges, soutient Pierre Bienvenu.

Les informations nominales peuvent être risquées pour les juges, notamment lorsqu'il est question de déplacements.

Les juges ont leurs habitudes quant aux hôtels dans lesquels ils descendent, les conférences auxquelles ils assistent, et leurs habitudes professionnelles en général. Rendre ces détails publics « pose un risque à leur sécurité ».

On craint en outre que les décisions de déplacement soient influencées par l'obligation de divulguer les frais de déplacement. Les juges qui ont moins voyagé seraient privilégiés pour les causes exigeant de longs déplacements, afin de répartir les dépenses entre tous les magistrats.

Ni l'ACJCS, ni Pierre Bienvenu n'ont répondu rapidement à nos demandes de commentaires.

Judiciary says feds' plan to disclose expenses of named judges is 'constitutionally defective'
Lawyer's Daily
Cristin Schmitz
October 31, 2017

The Canadian judiciary is pushing back hard against Bill C-58, warning MPs that the Trudeau government's proposal to publicly disclose the travel and other expenses of named federal judges is "grossly unfair and unacceptable" and violates judicial independence.

Under proposed amendments to the Access to Information Act and Privacy Act (Bill C-58) introduced June 19, the travel and other expenses of all 1,151 federally appointed judges — up to and including Supreme Court of Canada judges — would be made public for the first time after being kept secret for more than a century.

In a strongly worded submission, Montreal lawyer Pierre Bienvenu of Norton Rose Fulbright, counsel for the Canadian Superior Courts Judges Association, threw down the constitutional gauntlet at the Commons Access to Information, Privacy and Ethics Committee Oct. 30.

The senior Quebec litigator urged MPs to drop the proposed new requirements in ss. 90.01 to 90.25 of Bill C-58 to proactively publish quarterly the names, dates and amounts of business expenses reimbursed to each federally appointed judge for travel, attending conferences, representing his or her court and "incidentals" (reimbursement for reasonable incidentals to properly perform the judicial role is capped at $5,000 annually per judge).

Bienvenu vigorously argued that while the government's objectives of bringing more transparency and accountability to public spending are "important," the Constitution does not permit Parliament or the executive branch to treat judges the same way in that regard as elected officials and members of the bureaucracy, some of whose individual expenses have been posted quarterly on government websites for years.

"Bill C-58 is of profound concern to the judiciary," Bienvenu told MPs in oral and written submissions endorsed also by the Canadian Judicial Council (CJC) — the federal judiciary's powerful disciplinary and policy-making body that is chaired by Chief Justice of Canada Beverley McLachlin.

"The publication regime as it would apply to judges is constitutionally defective and it undermines important constitutional principles," Bienvenu stated.

Additionally, he warned, "the potential for mischief in the use of publicly available individualized expense information is enormous and, unlike persons working in other branches of government, judges may not defend themselves publicly when they stand attacked."

Bienvenu also called it “a glaring, fundamental constitutional defect” that s. 90.22 would empower the commissioner for federal judicial affairs, the chief administrator of the Courts Administration Service (for the four national federal courts) and the registrar of the Supreme Court of Canada (for Supreme Court judges) to decide when not to publish judicial expenses, in circumstances where disclosure “could interfere with judicial independence, or could compromise the security of persons, infrastructure or goods or that any information or part of any information is subject to solicitor-client privilege or the professional secrecy of advocates and notaries or to litigation privilege.”

“It is not acceptable from a constitutional perspective to seek to give members of the executive branch final say on the question of whether the principle of judicial independence could be undermined,” Bienvenu explained.

He went on to suggest an alternative and, in the judiciary’s view, constitutionally compliant “way forward” that the judicial branch believes appropriately balances the goals of accountability and transparency with judicial independence. Bienvenu proposed that the commissioner for federal judicial affairs (who reports to the minister of Justice, and who currently vets and approves individual judges’ expenses pursuant to non-public “guidelines” to judges) should instead publish each superior court’s total aggregate expenses in each of the general categories of reimbursable expenses — such as travel — without naming individual judges or revealing specific individual expenses.

“It will be easy for the public, based on that information, to derive per judge, per court, and per expense category figures, which will attain the bill’s transparency objective all the while preserving judicial independence and not compromising the security of individual judges,” Bienvenu argued.

He said it is also constitutionally critical that only the chief justice of each court —and not the federal commissioner or Supreme Court registrar or CAS chief administrator — is empowered to decide when to withhold disclosure of judicial expenses on the basis that judicial independence would be undermined by their publication.

Victoria, B.C., lawyer Murray Rankin, the NDP’s Justice critic, said the questions of some Liberal MPs at the committee gave him the impression that the government may be open to making some adjustments in response to the judiciary’s submissions, during clause by clause approval of Bill C-58 next week.

Bienvenu’s statement to the committee that the judiciary was not consulted on the bill’s provisions affecting judges is both surprising and “disturbing,” Rankin told The Lawyer’s Daily. “I think that’s really problematic.”

At the same time, in the 21st century the judiciary also has to expect to comply with the public’s expectations of transparency and accountability, said Rankin, who helped the Canadian Bar

Association push for the creation of the first Access to Information Act. “Patronizing arguments” to the effect of “trust us,” don’t fly anymore, he noted.

“I found it kind of amusing to hear the arguments about why we cannot have greater transparency and accountability for the judiciary because those are the same arguments [against disclosure] that were being used for the executive way back [at the inception of the Act], and of course we still hear about the House of Commons and why the legislative branch should have very limited transparency, so I had to chuckle a little bit,” he remarked. “In general every institution seeks to cloak itself in secrecy, and it should be no surprise to us that the judicial branch is subject to the same concern.”

Rankin said it is important that the commissioner for federal judicial affairs publicly disclose the specific guidelines he issues to judges on what they can spend for food, accommodation, travel and other expenses.

He noted that under the judiciary’s proposed regime of anonymized aggregate expenses, by court, the public will still not be able to determine whether any individual judges are abusing the spending guidelines, or are otherwise not in proper compliance.

But Rankin also stressed the importance of judicial independence. “If the price of admission” to at least some transparency for judicial expenses is giving chief justices, rather than bureaucrats, the power to decide when to make exemptions from disclosure on the basis of judicial independence, Rankin said he is open to that suggestion.

At the committee, Bienvenu asserted that Bill C-58 is “duplicative” because there are “robust measures already in place to ensure that judicial expenses are legitimate, reasonable and subject to independent verification” — namely the commissioner for federal judicial affairs who vets judicial expenses and (for Supreme Court judges) the Supreme Court’s registrar.

Bienvenu told Conservative MP Tony Clement he did not have information as to how many expense claims the federal commissioner rejects as invalid.

“That’s probably a better answer than saying all of them are 100 per cent perfect, but it still begs the question whether there is a serial judicial officer whose claims are being rejected or what have you,” said Clement, a former Treasury Board president. “I’m still trying to connect the dots between how, if you have greater public accountability … that infringes on the independence of the judge,” Clement advised.

Bienvenu rejected Clement’s premise that Canadians are in the dark about judicial expenses. The lawyer stressed that judges’ expenses must fall into the categories set by the Judges Act and expenses are vetted by the federal commissioner for compliance with spending “guidelines” issued to the judges.

Moreover travel and conference expenses are generally not discretionary, in that the chief justice of each court decides whether, when, and where a judge travels for judicial duties, and preapproves attendance at judicial conferences and educational session, Bienvenu said.

If Bill C-58 proceeds as introduced, Canadians will learn for the first time, for example, how often, where, when, for how long and why Chief Justice McLachlin travels domestically and internationally — something the chief justice's office has repeatedly refused to disclose for years.

The bill also contains a significant and unexplained exception for chief justices and associate chief justices in respect of their travel and other expenses that are "related to the activities of the Canadian Judicial Council."

Judges of the Supreme Court of Canada all enjoy representational allowances (which includes covering the travel claims for accompanying spouses or common law partners) for which they have never had to account publicly. The judges are also entitled to incidental expenses, travel allowances and conference allowances.

Bill C-58 would require the registrar of the top court to publish electronically 30 days after each quarter the travel or other expenses reimbursed to a Supreme Court judge (i.e. expense claims that are rejected would not be published), including: the judge's name, a description of the expenses, the dates on which the expenses were incurred and the total amount of the expenses.

In the same way, the other 1,100 superior court judges below the Supreme Court level would also have to proactively disclose through the commissioner for federal judicial affairs details of their travel, incidental expenses, representational allowances and conferences allowances.

Bienvenu argued that "there are real concerns about the security of individual judges if it were publicly disclosed where they stay and eat while travelling on judicial duties, or where they gather for judicial education conferences."

He said publishing specific expenses amounts linked to individual named judges "raises profound concerns for all judges," and particularly for the four national itinerant courts, the Federal Court, the Federal Court of Appeal, the Tax Court and the Court Martial Appeal Court who must travel much more than judges of the other superior courts. "The reason for the difference in levels of expense will not be obvious when looking at the published information on expenses," he said.

Moreover, one judge in an itinerant court may be assigned to more travel by his or her chief justice than another judge, for reasons of availability to travel, or expertise, or other reason.

"It is grossly unfair, indeed it is unacceptable, that the burden of standing out from the lot by reason of high travelling expenses be borne by an individual judge, as opposed to the court to

which he or she belongs," Bienvenu asserted. He suggested the public disclosure of expenses to attend judicial education programs will be used to criticize some judges for failing to take such courses, while others will be seen as admitting that they don't have enough expertise in a certain area of the law.

Moreover, unhappy litigants in cases involving criminal sentencing, child custody, wills and estates disputes and other emotionally fraught issues could use the published expense to attack the presiding judge — with the latter having no recourse or ability to defend themselves, Bienvenu suggested.

"The potential for mischief in the use of publicly available individualized expense information is enormous," he warned.

Osgoode Hall Law School professor Trevor Farrow told The Lawyer's Daily "increased transparency and accountability are very important principles for all public officials, including judges. And I think for the public to have confidence in public institutions those institutions not only need to function, but need to be seen to function, within appropriate guidelines. But having said that, there is a balance that needs to be struck when it comes to judges in the court, and while judges and courts are not immune from the importance of appropriate transparency, competing principles of independence need to be taken into account. In this case I think it would be a mistake to require the reporting of individual judicial expenses, however I do think a robust process of aggregated expenses, combined with appropriate independence safeguards, are what's needed — which is what I understand the [judges'] association to be proposing."

Les requêtes Jordan touchent un dossier sur 200
Le nombre de requêtes en arrêt de procédures ne surcharge pas le DPCP
Droit-Inc
Jean-Francois Parent
1 novembre 2017

C'est du moins ce qu'on constate des données divulguées par le DPCP, qui recense le nombre total de requêtes Jordan par rapport au nombre de dossiers totaux.

Ainsi, de juillet 2016 à octobre 2017, les parties dans 641 causes criminelles ont déposé une requête en arrêt des procédures.

Pendant la même période, 140 845 dossiers criminels ont été ouverts par le DPCP. Il s'agit d'une charge de travail représentant 0,46 % des dossiers en matière criminelle. Environ un dossier sur 200 traités dans les 15 derniers mois constitue une requête Jordan, révèle des données obtenues par Droit-Inc en vertu d'une demande d'accès à l'information.

Dans l'ensemble, environ 75 requêtes Jordan—tant en matière criminelle que pénale—sont déposées chaque mois devant les tribunaux du Québec, pour un total de 907 par année.

Pour l'année 2016-2017, 671 000 dossiers criminels et pénaux ont été ouverts par le DPCP, soit un dossier sur 700.

Des districts occupés

Sans surprise, c'est le district judiciaire de Montréal qui traite le plus de requêtes Jordan au Québec. Un peu plus du quart de toutes les requêtes déposées dans les 15 derniers mois le sont au greffe numéro 500.

Par contre, le district de Beauharnois arrive bon deuxième quant au nombre de requêtes traitées. Le district où se situent Châteauguay, Valleyfield et Vaudreuil-Dorion a reçu 157 requêtes, soit 14 % du total québécois.

Vient ensuite l'Abitibi, avec 10 % de toutes les requêtes québécoises qui y sont traitées. Les données pertinentes à l'Abitibi excluent Rouyn-Noranda, où les 10 requêtes reçues depuis 15 mois comptent pour à peine 1 % du total québécois.

Puis, on est de retour dans la grande région métropolitaine, alors que Longueuil et Laval suivent, avec 7 et 6 % des requêtes respectivement.

Les districts de Saint François Terrebonne et Joliette ferment la marche, avec chacun recevant environ 5 % des requêtes, pour un total de 14 %.

Réduction des dossiers

Notons cependant que l'impact de l'arrêt Jordan sur la charge de travail du système de justice ne se limite pas qu'au nombre de requêtes. « Le nombre de requêtes en arrêt des procédures pour délais déraisonnables doit plutôt être apprécié à la lumière des dossiers judiciaires actifs et ouverts antérieurement au prononcé du jugement de la Cour suprême le 8 juillet 2016, dans l’arrêt R. c. Jordan 2016 1 RCS 631 », insiste Jean Pascal Boucher, porte-parole du DPCP.

Ainsi, dans la dernière année financière, le DPCP a réduit de quelque 100 000 le nombre de dossiers actifs au début de l'année, par rapport à l'année précédente.

C'est du moins ce qu'on constate en comparant le nombre de dossiers actifs en matière criminelle adulte au début des années 2015-2016 et 2016-2017.

Au 31 mars 2017, le DPCP comptait 108 235 dossiers actifs au début de l’année, c'est-à-dire le nombre de dossiers qui avaient été ouverts l'année précédente.

Cependant, au 31 mars 2016, le DPCP comptait près de 220 000 dossiers actifs en matière criminelle adulte, soit 102 000 de plus.

La CSN en Cour suprême pour l'équité salariale
Près de 30 000 travailleuses en service de garde sont concernées
Droit-Inc
Delphine Jung
1 novembre 2017

La CSN a été entendue en Cour suprême aujourd'hui dans le cadre d'un recours intenté en octobre 2006 pour que les travailleuses des centres de la petite enfance (CPE) aient droit à l'équité salariale rétroactivement au 21 novembre 2001.

Le syndicat estime qu'il s'agit là d'une « énorme injustice commise notamment à l'encontre de près de 30 000 travailleuses en service de garde au Québec », peut-on lire dans le communiqué de presse.

« Non seulement les travailleuses concernées par la requête ont été discriminées en tant que personnes qui occupaient leur emploi dans un secteur majoritairement féminin, mais celles qui évoluaient dans les milieux exclusivement féminins, comme les éducatrices en CPE, ont bénéficié d'ajustements salariaux six ans après toutes les autres travailleuses québécoises envers qui les employeurs avaient l'obligation d'accorder l'équité en 2001 », explique-t-on.

La CSN et la CSQ sont à l'origine de cette procédure judiciaire. Ils estiment que l'article 38 de la Loi sur l'équité salariale est inconstitutionnel.

Cet article autorise les employeurs, œuvrant dans des organisations dépourvues de comparateurs masculins, à attendre 2007 pour ajuster les salaires plutôt que de le faire à partir du 21 novembre 2001.

« Le gouvernement a contraint ces femmes à devoir attendre près de six ans pour que leurs droits aux ajustements salariaux se concrétisent. C'est une situation profondément choquante », a conclu la vice-présidente de la Fédération de la santé et des services sociaux (FSSS-CSN) Josée Marcotte.

PSAC blames Phoenix for Ottawa's missed collective agreement deadline
Union to file a complaint Wednesday and ask for additional compensation for members
CBC News
October 31, 2017

The largest union representing federal public service workers is filing a complaint against the government for missing a collective agreement deadline, likely because of ongoing issues with the Phoenix pay system.

The Public Service Alliance of Canada says it will file the complaint with the Public Service Labour Relations and Employment Board Wednesday. The Treasury Board has already admitted it will not meet the latest deadline to pay three years worth of back pay under four collective agreements as well as increase wages.

The new agreements were signed June 14, 2017 with a 150-day implementation deadline.

The last pay day before that deadline was Tuesday, said Greg McGillis, PSAC's regional executive vice-president for the National Capital Region

McGillis believes the deadline wasn't met because of ongoing problems with the Phoenix pay system.

"From the beginning, [the government has] been very close-mouthed about exactly what the cause is. I think we can just assume it's Phoenix," he told CBC News.

The failure to implement the wage adjustments even comes after the government had two extra months to implement the agreements, which usually have a 90-day deadline, McGillis said.

PSAC is looking for compensation for both the persistent problems with Phoenix and the failure to implement these new agreements.

Just how much they ask for in damages will depend on how long it takes before the issue is resolved, McGillis said.

Some people are living paycheque to paycheque and have been racking up interest payments or late payments and were depending on this back pay, he said.

The government had said in October that pay centres across the country were making the collective agreement changes a priority — ahead of other Phoenix issues.

"Of course there are problems with Phoenix, and of course it's unconscionable what's happened and it's terrible and our members still aren't getting paid. This adds insult to injury," said McGillis.

No timeline for Phoenix fixes

In Question Period Tuesday, NDP public services and procurement critic Erin Weir asked whether the government would rebuild a publicly administered payroll system to fix the Phoenix "boondoggle."

Public Services and Procurement Minister Carla Qualtrough responded that the problems are her department's top priority.

"While we did not create this problem, we are fixing it," she said.

On Tuesday, Treasury Board President Scott Brison also acknowledged the frustrations public servants face, but wouldn't give a timeline as to when collective agreements would be implemented.

"It's just totally unacceptable that we are not able to pay our public servants on time, or accurately in many cases," he said.

"This is a frustrating and unacceptable situation that we're being totally transparent on and we're working hard to fix," said Brison, adding the complexity of the agreements that need to be implemented has burdened the pay system.

A year after Phoenix was to be fixed, more than half of public servants still having pay problems
CTV News
Rachel Aiello
November 1, 2017

The number of backlogged public servant pay cases due to issues with the Phoenix pay system has grown from last month, with 265,000 pay transactions now past due.

Yesterday marked the one year anniversary of when the federal government promised to have Phoenix system fixed. The government now says more than half of public servants are still experiencing “some form of pay issue.”

Wednesday’s update to Public Services “pay dashboard,” which is tracking the progress on fixing the problem-plagued payroll system for federal workers, shows an increase of 8,000 cases from September.

As of Sept. 20, there were 257,000 cases of employee pay issues left to be resolved.
The initial promise from the department was to have the backlog of problematic pay cases resolved by Oct. 31, 2016.

The government says the increase is the result of continuing to deal with the influx of collective agreements, which has been "more complex and time consuming than initially anticipated," the update on the website reads.

"It's not going to be resolved overnight," Public Services and Procurement Minister Carla Qualtrough told reporters Wednesday after question period. "We have to stabilize this system. I'm very hopeful that in the new year the numbers will go down," she said.

The Phoenix system, initiated by the previous Conservative government in 2009, was meant to streamline the payroll of public servants and save more than $70-million annually. Already, the government has planned to spend $400-million over two years trying to fix it, including setting up hiring more staff and setting up satellite pay centres to try to chip away at the pile of remaining cases.

Qualtrough said she is "absolutely committed" to the Phoenix pay system, and still believes the problems within it are fixable.

"It's not like there's another option waiting out there…There will come a time in the future where people will be paid promptly, accurately, and on time."

Unions file complaints, want Treasury Board to pay up for not acting on new contracts on time

PIPSC and PSAC are asking the Labour Relations Board to order the government to pay damages to up to 130,000 public servants who may not have been paid what they're due from new contracts by agreed-upon deadlines.

Hill Times
Emily Haws
November 1, 2017

Two of the largest federal public service unions are set to file complaints this week against the government for missing deadlines to implement new collective agreements affecting up to 130,000 workers.

The Professional Institute of the Public Service and the Public Service Alliance of Canada are going to the Federal Public Sector Labour Relations and Employment Board, seeking compensation from their employer, which admits it won't meet the deadlines.

Chris Aylward, PSAC's national executive vice president, and Debi Daviau, PIPSC's national president, say their members' collective agreements have not been fully implemented on time due to ongoing issues with the problem-plagued Phoenix pay system. They said the Treasury Board admitted in a meeting last week it would not meet deadlines for at least six bargaining units from the two unions.

The unions are asking the Federal Public Sector Labour Relations and Employment Board to order the Treasury Board to pay damages to those affected, and to take all necessary steps to immediately implement the terms of the agreements.

Meanwhile, PSAC continues to pressure the government for more compensation advisers to fix the Phoenix backlog, and is working on a joint proposal with other unions to ask the government for damages related to Phoenix.

Though work on the new pay system began under the previous Conservative government, the Liberals launched it in February 2016. It was supposed to consolidate the payroll of over 300,000 public service employees, but instead it has left many of them overpaid, underpaid, or not paid at all. Radio-Canada recently reported that as of Aug. 8 nearly half of the 313,734 federal public servants paid through Phoenix had been waiting at least a month to have their complaints dealt with.

Feds failing to make retroactive payments: unions

Public Services and Procurement Minister Carla Qualtrough (Delta, B.C.) said last month payroll problems were expected to worsen because of the implementation of 20 collective agreements, with seven more to come. When the Liberals won the 2015 election, all 27 of the core federal public service collective agreements for public servants employed by the Treasury Board had expired.

Most unions have recently hammered out new contracts, but acting on those new contracts often involves retroactive pay and signing bonuses.

In some cases, compensation advisers must retrieve data from an old pay system, a time-consuming process that has added to the already-backlogged Phoenix pay system.

Jean-Luc Ferland, a spokesperson for Treasury Board President Scott Brison (Kings-Hants, N.S.), said the government would continue to make implementing the agreements a priority.

“Not all collective agreements have or will be fully implemented within the agreed-upon timelines. Every effort is being made to process these outstanding payments as quickly as possible,” he said by email on Oct. 31.

The employer normally has a minimum of 90 days to implement a collective agreement after it is signed, according to the Federal Public Sector Labour Relations Act. Mr. Aylward said PSAC and the Treasury Board negotiated 150 days this time because they both knew the Phoenix pay system was already under stress, and the changes resulting from putting in place these new contracts would cause further strain.

The Treasury Board will officially miss the deadline for four PSAC collective agreement implementations on Nov. 11. Usually unions cannot file complaints until the deadline has passed, however PSAC said it is possible this time because the Treasury Board admitted it wouldn't make the deadline.

Within PSAC, federal educators and librarians, administrators, and maintenance workers are affected, as well as technical workers—those who create maps, inspect cameras, or write machinery manuals. This means these people haven't received all the pay-rate changes promised to them in their new contracts.

Mr. Aylward is looking for financial compensation for more than 100,000 members, although the specific amount is not defined, and depends on when the contacts are fully put in place. The union's complaint argues the Federal Public Sector Labour Relations Act was breached.

Because the Treasury Board has admitted it would not make the deadline, Mr. Aylward hopes the complaint will be resolved soon, with the board declaring the act has been breached.

"Our members want their proper pay and they want their retroactive pay as well," he said.

Collective agreements usually span four years from the last time it expired—in this case, most expired in 2014—and must be retroactively implemented.

The number of pay changes waiting to be processed grew from 237,000 on Aug. 23 to 257,000 as of Sept. 20, according to the government's monthly update on how it's dealing with the Phoenix backlog. This is due to the focus on implementing collective agreements, which has proven more complex and time consuming than initially anticipated, the government has said.

To put in place the new contracts, the government has had to nearly triple the number of compensation advisers dedicated to collective agreements.

PIPSC is about to file two more policy grievances due to missed collective agreement implementation deadlines for its Computer Systems Administrators unit, due Wednesday, and their Health Services unit, due Friday.

Whereas PSAC's complaint argues the labour relations act has been breached, a policy grievance argues a contract has been breached. After a policy grievance is filed and the employer responds, the parties generally negotiate to see if they can work out compensation. A party may request the process goes to adjudication, where a hearing is set and heard by the labour relations board. The board resolves the matter.

Emily Watkins, PIPSC special assistant to Ms. Daviau, said they weren't yet sure on an exact date they were filing the grievances, but it would be after Thursday.

On Oct. 2, PIPSC filed two policy grievances regarding their Audit, Commerce and Purchasing group—employees responsible for running external auditing programs and activities dealing with purchasing and supply in the public service—and the Applied Science and Patent Examination group—applied scientists, such as biologists, or chemists, as well as Canadian patent regulators. The Treasury Board had 90 and 120 days to implement the agreements that were signed on April 28 and May 15, respectively. As well, the union filed a third policy grievance on Oct. 20 regarding the missed implementation deadline of a contract for federal researchers. Ms. Watkins said PIPSC has not heard back from the Treasury Board on any of the grievances.

The five agreements cover approximately 30,000 employees, said Ms. Watkins in an emailed statement, adding they "don't know how many of these members are directly impacted—in that they are not in receipt of their [retroactive] pay or received the correct amount."

PSAC drafting proposal to seek Phoenix damages

In April, Prime Minister Justin Trudeau (Papineau, Que.) announced a working group of ministers, headed by Public Safety Minister Ralph Goodale (Regina-Wascana, Sask.) to solve the Phoenix problems. The group meets weekly, according PSPC media relations.

Last month, consultants released a report on the "lessons learned," stating the government underestimated the complexity of the pay transformation project.

In June, the Senate started down the road of ditching Phoenix when it issued a request for information from potential payroll service providers before considering a call for proposals, in order to obtain more information on the variety of payroll outsourcing services available on the market.

Last week, it posted a request for proposals on the government's procurement website seeking a company to "assume responsibility for payroll processing…for all the employees of the Senate of Canada." So far there are two interested suppliers.

As well last week, the fall fiscal update showed the government budgeted an additional $93-million to be spent on Phoenix this fiscal year, and another $6-million per year in each year until the 2022-23 fiscal year. This funding was not included in the 2017 budget, but has been previously announced, according to Mr. Aylward.

PSAC is continuing to pressure the government to increase the number of pay advisers, said Mr. Aylward, to clear up the backlog.

Jean-François Létourneau, a Public Services and Procurement Canada spokesperson, said that since April the government has hired 380 employees to resolve pay issues and recruitment is ongoing.

PSAC is putting together a joint proposal with other unions to request the government pay damages to Phoenix-affected employees. It will be proposed to the government in mid-November, he said, but could not give details on how much or what kind of compensation they were looking for. PSAC could not name any other unions involved.

“It’s absolutely atrocious when the week before pay week you don’t even know if you’re going to get paid properly or not,” he said, emphasizing the mental anguish. “That’s a tremendous amount of stress on anybody and especially when you work for the government of Canada it is totally unacceptable.”

'It breaks the law': Justice minister slams bill to train judicial justices of the peace
'It violates judicial independence, which is a central principle in our constitutional democracy'
CBC News
November 1, 2017

Manitoba's minister of justice has denounced a suggestion that the province mandate domestic violence training for judicial justices of the peace.

Heather Stefanson says the government cannot get involved in matters that fall under the jurisdiction of the chief justice.

"I will not direct the chief judge where to go, that violates judicial independence," she said. "And that's the problem with the bill that is before the House right now."

Earlier this month, NDP MLA Nahanni Fontaine introduced a private member's bill that would require all new judicial justices of the peace to be trained and well-versed in Manitoba's Domestic Violence and Stalking Act before they are allowed to hear applications for protection orders.

The Opposition justice critic said too many women are being refused those orders when they are in risky situations.

This week, she pointed to the case of a Manitoba woman whose request was denied because the JJP did not consider it an emergency, even though the estranged husband was threatening her and had access to weapons.

The JJP acknowledged the woman had taken steps with respect to safety planning and urged her to continue along that path. Protection orders are "not to be granted to alleviate an unhappy situation or improve a less-than-ideal family situation. It's to be used to provide protection in a real emergency," the JJP ruled in denying the request.

The comments make the woman's situation seem "as if it's just a normal, everyday spouses' fight," Fontaine said. "But here is an individual that has access to a gun. Certainly, that elevates almost immediately the level of protection that we need to offer."

That case alone illustrates the need for additional training and awareness, Fontaine said. Her bill is set to be debated in the legislature on Thursday

While Stefanson said Fontaine's initiative is "good," the approach to addressing the issue is problematic.

"It violates judicial independence, which is a central principle in our constitutional democracy," Stefanson said. "Essentially, it breaks the law. So we need to find other ways to deal with [addressing domestic violence and protection for women]."

Blame laid on previous government

Stefanson acknowledged Manitoba has "some of the highest rates of domestic violence in Canada," and blamed the previous NDP government letting it get worse through inaction.

"We recognize what we inherited from the previous government. It's significant," she said. "It's an incredibly important issue and we take it very seriously."

However, Stefanson had few details on how her government would address it, short of promising to "work with law enforcement and with organizations like RESOLVE" — a tri-provincial research network on interpersonal violence through the universities of Manitoba, Regina and Calgary.

"We'll find ways of doing it within the law, not by violating the law," she said, adding she has had discussion with the minister responsible for the status of women. "We're working on ways that we can deal with this."

She wouldn't elaborate on what those ways are, other than repeating that law enforcement and other agencies are being consulted.

Asked twice whether she thinks training of JJPs needs to be strengthened, Stefanson would not comment.

"What I will say is that we are working together, all of us, to try and deal with this situation."

MPs' recommendations for legal aid give hope to stakeholders fighting for reform
Lawyer's Daily
Amanda Jerome
November 1, 2017
The Commons Justice Committee report containing 10 recommendations to change the legal aid system in Canada is being called a "good first step" by legal clinic stakeholders who have been earnest in their calls for improvement of a system in peril.

The report, titled "Access to Justice Part 2: Legal Aid," and announced by committee chair Anthony Housefather Oct. 30, outlined the issues with the legal aid system and noted the country has a "patchwork of services of varying reach" that depends on the jurisdiction a person is in. This has created inequality in access to justice, not only across the country, but also between different areas of law.

"Our whole democracy was based on justice and fairness," said Doug Ferguson, a member of the Canadian Bar Association's (CBA) Access to Justice Committee and the director of the student legal clinic at Western University.

"It's a foundation of our democracy and if people cannot get justice then they lose faith in our system. I think that's why it should be such a high priority," he added.

Ferguson was one of the 25 stakeholders consulted by the committee before creating its report. His submissions were given on behalf of the CBA and he said he was pleased with how engaged the MPs were with the issue. He said he's happy with the report, but noted that this is only the beginning.

"This report is a good start, but there's so much that needs to be done. The justice system in Canada needs some fundamental reforms," he said, adding that the "Reaching Equal Justice" report the CBA released in 2013 had more than 30 recommendations to improve access to justice, while the Commons Justice Committee report outlines only 10.

The proposals contained in the committee's report range from ensuring legal aid services are available in both French and English to improving national data collection and enhancing the number of people eligible for legal aid by establishing a sliding scale for access based on income.

Ferguson said the recommendation calling for legal aid funds in the Canada Social Transfer (CST) block payment to be set aside specifically for a civil legal aid fund will have the most impact.

"That's a basic fundamental change. It will result in more provincial spending on civil legal aid and in more people being eligible," he said. He added that although he likes all of the proposals,

he finds the one encouraging the use of technology is a positive step that must be handled carefully.

“We have to keep in mind that not everyone has access to technology. Low income people often don’t have access to the Internet and they don’t have a cell phone. We have to be mindful of that when we talk about technology,” he said.

Another recommendation Ferguson applauds is the facilitation of greater information sharing between provinces and territories regarding best practices.

“We think that there should be some common aspirational goals that we set ourselves for legal aid among the provinces,” he said, adding that data collection, another recommendation in the report, is another must-have to improve access to justice.

“We don’t do a very good job in Canada on data collection when it comes to justice. We need to set some common definitions and metrics. For example, when we’re talking about legal aid among the provinces, shouldn’t we be defining the key areas of legal aid that should be covered? Criminal is obviously one, family is probably another one. There may be others, like refugee, but we should have common definitions of this, so that we have more equality and coverage among Canadians,” Ferguson noted.

Legal Aid Ontario (LAO) was also consulted by the committee. CEO David Field said the proposals are positive ones for legal aid clinics across the country.

“It [the report] does suggest that more funding be provided to legal aid plans across Canada. That is a big issue,” he said, adding that the scope of services provided by legal aid is also something that needs to be addressed.

“It’s quite a variation between provinces in terms of what services are provided. For the federal government to get information in terms of what their funds are being spent on, I think that’s all positive. The recommendation about taking the legal aid investments out of the CST is certainly something that would be a good idea in terms of determining exactly how much money the federal government is providing to the provinces for legal aid,” he added.

Field believes the biggest issue facing legal aid programs is the issue of eligibility, which the report tackles in recommendation number four.

“Eligibility in all the provinces is just so low that there’s a lot of people in the court system that do not have representation. They’re making more money than the legal aid plans can provide, but on the other hand they don’t have enough money to pay for a lawyer. I think that whole access to justice and increasing eligibility levels is certainly something that is important,” he said.

Field noted that even after a significant investment from the government of Ontario, LAO is still just barely able to help people at the low income threshold, which he added leads to unrepresented people in the justice system.

" 'Access to justice' is the title of the whole report and increasing eligibility is certainly a way to increase access to justice. That's going to require, I think, significant resources. Not just the federal government, but also the province as well," he explained.

Field appreciates the timing of this report as he said this is the time of year that the federal government is considering its budget for next year. He hopes the report will bring to the government's attention what needs to be done, so it can incorporate funding into its budgeting process.

Ferguson also hopes Ottawa, as well as the provincial governments, will take these recommendations seriously. He noted that both levels of government need to come together to create a national plan for legal aid under the federal government's leadership.

"Thirty years ago the federal government paid half of legal aid and that's no longer the case. It hasn't been that way for decades, but the federal government used to have a much more substantial role. I think they need to reclaim that role in order to ensure that Canadians have equal coverage across the country," he said.

Field and Ferguson both said the report neglected some issues that they would like to see addressed.

"One of the things it didn't talk about was the social impact. We have legal aid clinics who make sure that people have income so that they don't end up on the street because they'll get evicted. That kind of social impact, I think, is something that could be expanded in future discussions about the impact of legal aid on society in terms of making sure people have access to services, not just in the justice system, but also social services. Those have major impacts on income and clients, so it's quite an important thing to consider about legal aid," said Field.

Ferguson said he'd like to see a triage system implemented at courthouses. Similar to the setup at a hospital emergency room, citizens would come to the courthouse and go through a triage system first. If their issues are simple then they will be directed to mediation; if they're dealing with something more severe they will be sent to a judge.

"For such an important matter it should be a higher priority for both levels of government," he added.

The pressure for more funding for refugee and immigration services is ever on the horizon for legal aid clinics in various provinces, but especially for LAO and the B.C. Legal Services Society.

“One of the things the report didn’t really talk about was how the federal government has already provided us with money this fiscal year, $7 million, to address our short-term pressures on refugees. I think there’s recognition in the report that something needs to be done on an ongoing basis to address issues related to refugee services. This just confirms the concern that people in Ottawa have about issues related to refugee funding in the future,” said Field.

The committee’s report concludes with a call to the federal government to implement the recommendations provided as action needs to be taken now to assist a system in crisis.

“The committee is convinced that making investments in legal aid will pay off elsewhere, in decreased court delays and overall costs to the justice system and in reduced use of other services such as health care and social assistance. As the committee heard repeatedly from witnesses, action is needed now,” read the last lines of the report.

Un témoin protégé réclame 2,6 M $ au SPVM et aux Procureurs
Alors qu’il avait signé un contrat de délateur avec le SPVM, cet ancien membre des Rock Machines s’est senti abandonné par la police et l’État
Droit-Inc
Delphine Jung
1 novembre 2017

Sylvain Beaudry réclame 2,5 millions de dollars à la Ville de Montréal et au Procureur général du Québec (PGQ) ainsi que 100 000 dollars au Procureur général du Canada (PGC).

L’homme, qui vit sous une fausse identité, leur reproche d’avoir dû renoncer à sa libération conditionnelle pour 377 jours et vivre dans l’angoisse de se faire tuer. Le centre de détention fédéral où il a été détenu lui a également refusé l’accès à l’aile adaptée et sécuritaire pour les témoins repentis, le gardant plutôt au trou.

Il est défendu par l’avocat plaideur, Philippe Larochelle, du cabinet Roy Larochelle.

« Son processus de réadaptation est bloqué par l’incapacité du SPVM et du PGQ d’assurer sa protection », explique l’avocat très impliqué dans le dossier.

Retour sur les faits

Sylvain Beaudry est un ancien membre des Rock Machines qui a été arrêté en 2001 pour enlèvement et séquestration. Après avoir plaidé coupable, il a signé une entente de témoin repenti avec le Procureur général du Québec et le Service de police de la Ville de Montréal (SPVM) en 2003.

Il sort de prison en avril 2004.

En 2013, l'enquêteur du SPVM, Benoît Roberge, qui avait poussé M. Beaudry à devenir délateur, est lui-même accusé d'avoir vendu des informations au crime organisé. Le policier est arrêté et plaide coupable. M. Roberge a lui-même été impliqué dans le recrutement de M. Beaudry comme délateur.

C'est à ce moment-là que M. Beaudry commence à s'inquiéter pour sa sécurité. « L'arrestation de Roberge et les comportements de ses contrôleurs et des enquêteurs du SPVM à cette époque font craindre à Beaudry pour sa sécurité et doute de la sincérité et de l'efficacité des mesures mises en place par le SPVM pour assurer sa sécurité », peut-on lire dans la demande introductive d'instance déposée au Palais de justice de Montréal hier.

Depuis M. Beaudry n'aurait jamais réussi à savoir si sa nouvelle identité était compromise et si elle faisait partie des fuites dont Roberge était à l'origine.

« En effet, compte tenu qu'il avait témoigné contre plusieurs criminels notoirement dangereux, Beaudry craignait à juste titre pour sa sécurité et sa vie », peut-on encore lire dans la demande.

Ne faisant plus confiance au SPVM, estimant même que les policiers manipulent les preuves, M. Beaudry décide de faire une sortie dans les médias. « C'est une réaction désespérée, qui répond au fait que personne ne lui répond malgré ses nombreuses demandes par rapport à sa protection », ajoute son avocat très impliqué dans ce dossier..

Un gilet pare-balle pour se protéger

« Par la suite, ses contrôleurs prétendent qu'il n'a pas respecté son contrat en s'adressant aux médias. Pourtant, ils avaient dit à son agent de probation qu'il n'avait pas violé son contrat pour le même épisode. Ils se sont contredits. Il a finalement demandé lui-même d'être réincarcéré », détaille son avocat qui évoque même « un jeu de pervers. »

Craignant pour sa sécurité, Sylvain Beaudry est donc réincarcéré le 27 mai 2014. « C'est donc uniquement en raison de l'attitude du SPVM et du PGQ que Beaudry a dû rester en prison pendant 377 jours, et perdre tout le bénéfice de sa fragile réinsertion sociale, dans laquelle il s'était investi avec succès depuis 10 ans », peut-on lire dans la requête.

« On peut imaginer que ce n'est pas facile de refaire sa vie lorsqu'on est délateur et qu'on a témoigné contre ses anciens camarades. Lorsqu'il vient me voir, il porte un gilet pare-balle », ajoute Me Larochelle.

Détenu alors dans une prison provinciale, il devait être libéré cinq mois plus tard, le 1er novembre. Deux jours avant, on lui demande de signer un document par lequel il manifeste son accord de se retirer volontairement du module de protection des témoins. Il refuse.

C’est ainsi que le ministère de la Sécurité publique l’informe qu’il ne fait plus partie du programme de protection des témoins et que son entente de témoin repenti était résiliée. « On a donc pris cette décision de manière unilatérale », ajoute Me Larochelle.

Il est alors transféré dans un pénitencier fédéral et placé en isolement. Après le dépôt d’un Habeas Corpus, il obtient finalement sa libération conditionnelle le 9 juin 2015, mais « ne bénéficie d’aucune mesure de protection », dit-on dans le document.

C’est ainsi que « le mélange de laxisme, de négligence, de mauvaise foi, d’incompétence et de désinvolture qui a caractérisé les agissements du PGQ et SPVM à l’égard de M. Beaudry militent pour l’attribution de ces dommages punitifs », conclut la requête.

Autant de juges hommes que femmes nommés en cour fédérale
La parité est atteinte en 2017. On compte aussi un juge affichant une déficience, et 4 issus de la communauté LGBTQ2
Droit Inc
Jean-François Parent
2 novembre 2017

Les résultats viennent tout juste d'être publiés : 37 femmes et 37 hommes ont été nommés aux cours supérieures d'octobre 2016 à octobre 2017.

Sous la catégorie genre, on remarque en outre l'ajout d'une catégorie « Autre ». Aucune nomination n’y est cependant recensée...

Cette parité fait suite aux réformes annoncées par le fédéral dans le processus de nomination des juges des cours supérieures, indique le Commissariat à la magistrature fédérale en introduction des données publiées le 27 octobre.

On remarque en outre que trois autochtones ont été nommés, de même que 15 membres des communautés culturelles. Neuf juges issus des minorités visibles font également partie des candidats sélectionnés.

On compte enfin un juge affichant une déficience, et quatre issus de la communauté LGBTQ2, selon le tableau disponible sur le site du commissariat.

On a également mesuré les aptitudes linguistiques des nouveaux juges : ainsi, 34 des candidats peuvent lire des documents dans les deux langues officielles, et le tiers environ des juges nouvellement nommés peuvent converser avec un avocat, comprendre les observations orales et discuter d'affaires juridiques, en français et en anglais. Enfin, 24 juges disent posséder ces quatre aptitudes dans les deux langues.

Le fédéral nomme des juges aux cours supérieures de chaque province et territoire, aux cours d'appel, à la Cour d'appel fédérale, à la Cour fédérale et de la Cour canadienne de l'impôt. C'est « pour accroître la transparence et la rigueur du processus » que le gouvernement a demandé à ce qu'on recueille des renseignements statistiques et démographiques sur les candidats et les nominations à la magistrature fédérale.
Les questionnaires soumis aux quelque 1000 candidats à la magistrature fédérale misent sur l'auto-identification.

De ces candidats, 570 hommes et 427 femmes, les responsables ont évalué 256 hommes et 185 femmes. Le Commissariat a recommandé 122 hommes, soit 47 % des candidats évalués. Il a également recommandé 85 femmes, soit 48 % des candidates évaluées.

La ministre fédérale de la Justice Jody Wilson-Raybould dit saluer « le travail effectué par le CMF », soutenant que son « gouvernement a entrepris d'importantes réformes du processus de nomination des magistrats de la Cour supérieure afin de le rendre plus ouvert, transparent et imputable».

Depuis son entrée en fonction, 120 juristes, dont 54 % de femmes, ont été nommés.

Querelle entre Ottawa et ses juristes: la Cour suprême tranche
La Presse
La Presse Canadienne
3 novembre, 2017

Le gouvernement fédéral ne pourra plus imposer des gardes obligatoires à ses juristes sans les rémunérer, a indiqué la Cour suprême vendredi.

«C'était un manque de respect», a affirmé la présidente de l'Association des juristes de justice, Ursula Hendel, tout en se réjouissant d'avoir obtenu gain de cause.

Ces juristes, à l'emploi de la Direction du droit de l'immigration du Bureau régional du Québec du ministère de la Justice du Canada, réclamaient que les périodes de garde qu'ils devaient faire les soirs et les week-ends pour traiter des demandes de sursis urgentes leur soient payées comme c'était le cas jusqu'en 2010.

Une nouvelle directive émise par leur employeur précisait alors qu'ils ne recevraient plus de congés payés en guise de compensation. Le gouvernement fédéral mettait ainsi fin à une pratique qui avait cours depuis le début des années 1990 pour la remplacer par une rémunération moins avantageuse. Les juristes de garde étaient compensés seulement lorsqu'ils étaient appelés au travail pour traiter une demande urgente même s'ils devaient s'assurer d'être disponibles après les heures normales de travail.

Cette nouvelle politique avait eu pour effet de réduire le bassin de volontaires pour assurer les périodes de garde, ce qui avait poussé l'employeur à les rendre obligatoires.

«Dans le cas soumis à la cour, cela représentait deux ou trois fins de semaine par année, mais il n'y avait rien pour empêcher cette pratique d'être appliquée plus souvent et de toucher certains secteurs de façon disproportionnée», a souligné Mme Hendel.

L'Association des juristes de justice avait alors déposé un grief et un arbitre lui avait donné raison. La Cour d'appel fédérale s'était plutôt rangée du côté de l'employeur, ordonnant qu'un autre arbitre revoie le grief.

Sept des neuf juges de la Cour suprême maintiennent en partie la décision de l'arbitre en droit du travail qui estimait que la directive de l'employeur n'était ni raisonnable ni équitable.

Le jugement écrit par la juge Andromache Karatkasanis souligne qu'une «directive qui supprime unilatéralement la rémunération accordée en contrepartie d'une obligation de disponibilité crée une iniquité apparente lorsqu'une telle rémunération constituait une pratique de longue date». Elle appelle le gouvernement fédéral à trouver d'autres moyens pour répondre à ses besoins organisationnels.

Elle écrit toutefois que cette directive ne porte pas atteinte au droit à la liberté garanti par la Charte canadienne des droits et libertés puisqu'elle ne touche pas des choix fondamentaux.

Tous les juges de la Cour suprême s'entendent sur ce point. C'est la raison pour laquelle les deux juges dissidents Suzanne Côté et Michael Moldaver auraient plutôt renvoyé le litige devant l'arbitre en droit du travail.

La balle est maintenant dans le camp du Conseil du trésor qui n'a pas indiqué vendredi comment il entend respecter la décision de la Cour suprême.

SCC paves way for ‘standby’ pay for federal Crowns
Lawyer’s Daily
Cristin Schmitz
November 3rd, 2017

This article is behind a pay wall and cannot be shared in its entirety

The union for 2,600 federal lawyers now awaiting the results of their “binding conciliation” with Treasury Board has had a big boost from the Supreme Court for the union’s ongoing fight against Crowns being required to “stand by” for free to do emergency legal work....

Mandate letter results so far: Justice Minister Jody Wilson-Raybould
The Chronicle Herald
The Canadian Press
November 3, 2017

Accomplished

Justice Minister Jody Wilson-Raybould helped introduce legislation on doctor-assisted dying and develop the mandate for the national inquiry into missing and murdered Indigenous women and girls. She also restored the Court Challenges program, brought in legislation to legalize marijuana for recreational use, introduced new national security legislation, brought in an independent process for recommending nominees to the Supreme Court, including a way to ensure they are functionally bilingual, and added gender identity as a prohibited grounds for discrimination under the Canadian Human Rights Act.

Working on it

Prime Minister Justin Trudeau tasked her with reviewing the sentencing reforms the Conservatives brought in as part of their tough-on-crime agenda, a mandate that Wilson-Raybould seized upon as an opportunity to reform the criminal justice system writ large. After raising expectations among advocates, she has yet to introduce legislation on mandatory minimums or other major reforms.

Not at all, or at least not yet

The Liberals promised during the election campaign to toughen criminal laws and bail conditions in domestic assault cases, a commitment that was repeated in the mandate letter, but no laws have been brought in. The same goes for a promise to repeal key elements of Bill C-42, which the Conservatives brought in to relax some requirements around transporting firearms, and bring in laws to reduce the number of handguns and assault weapons on the streets.

Will it matter?

The justice minister was given an ambitious mandate and last year's Supreme Court decision on unreasonable delays, known as R. v. Jordan, has both complicated the file and increased its urgency. Some of those advocating for justice reform have been willing to give her some time to make sure she gets things right. Still, advocates said earlier this year they were running out of patience. As the 2019 election draws nearer, it could become difficult to bring in changes that political opponents could spin as being soft on crime.

Joanna Smith, The Canadian Press

Who should control a lawyer's courtroom behaviour?
The Supreme Court decision on defence lawyer Joe Groia's behaviour will have a significant impact on lawyers and judicial independence
Toronto Star
Arthur Cockfield
November 5, 2017

On Monday, the Supreme Court of Canada will hear a case that will determine who gets to regulate a lawyer's courtroom behaviour, which has important implications for our justice system.

At the centre of the storm is a Toronto litigator named Joe Groia, who has been convicted of being "rude" — that is, in engaging in uncivil courtroom conduct — by the Law Society, the body that regulates Ontario lawyers. As a result of his conviction, Joe has been sentenced to a one month suspension and a fine of $200,000, which he will only have to serve and pay if he loses at the Supreme Court.

The case plays out the final chapter of the decades-long saga of the greatest mining scandal in history, which involved Bre-X, a Calgary-based public company. Bre-X owned Indonesian lands thought to hold $6 billion in gold before the company imploded in 1997 when the claim turned out to be false.

In the wake of Bre-X's stock collapse, civil lawsuits and criminal investigations were launched all around the world. Groia was hired to defend John Felderhof, one of Bre-X's directors and senior officers who was charged with fraudulently trading in Bre-X stock.

One of the strangest aspects of the case is that Groia is the only person ever convicted of anything. Stranger still: Groia won a full acquittal for his client Felderhof.

What did Groia do that was so bad during the Felderhof trial? With the public howling for the head of his client, Groia fought hard and used every legal means available to protect his client's rights. During the trial, the judge cautioned Groia for some his courtroom tactics, including accusing government prosecutors of misconduct. The judge also corrected the prosecutors. Both sides complied with the judge's direction.

Then the trial took a strange turn. The prosecutors halted the proceedings and accused the judge of being biased against the prosecution. The prosecutors were denied by other independent judges in all of their efforts to have the trial judge removed from the bench.

Then things got even weirder once the trial was over. Although there was no complaint by the public, the trial judge, the prosecutors, trial witnesses or any clients, the Law Society self-initiated an investigation and then pursued charges against Groia for his courtroom conduct.

The Law Society sanctioned Groia after he was found by a hearing panel of his fellow lawyers to have displayed a "consistent pattern of rude, improper or disruptive conduct." His conviction was upheld by a Law Society appeal panel as well as the Divisional Court and the majority of the Ontario Court of Appeal, which characterized Joe's conduct as "unprofessional" and "extreme."

In his dissent, however, Ontario Court of Appeal Justice David Brown identified the main problem with the case against Groia: this lawyer should go free because he complied with the trial judge's directions. In Justice Brown's view, the decision to sanction Groia unduly interferes with judicial independence.

Our justice system is set up to protect judges from improper outside influences. These judges are kept separate from other branches of government as well as regulators like the Law Society.

The fact that the Law Society stepped in to sanction Groia will have a broad and insidious chilling effect on how Canadian lawyers defend client interests in the courtroom — and will be particularly damaging in criminal matters.

Most lawyers would agree that polite and civil courtroom behaviour should be the norm. But sometimes litigation devolves into brutal combat, especially when a client's liberty is at stake against the enormous resources of the state. Only a trial judge is close enough to the action to discipline lawyers for their behaviour.

By usurping a judge's authority to regulate courtroom behaviour, the Law Society tarnished the reputation of the judiciary and harmed our system of justice.

Arthur Cockfield is a professor with Queen's University Faculty of Law. He is the author of Introduction to Legal Ethics.

Latest Shared Services Canada outages disrupt border traffic
Computer network designed to assure security at Canada-U.S. border crashes 200-plus times
CBC News
Dean Beeby
November 5, 2017

A border-security computer system has been crashing repeatedly, disrupting truck traffic into Canada, in the latest technical foul-up by Shared Services Canada, the beleaguered federal IT agency.

The so-called Advance Commercial Information (ACI) system, which requires all truckers to transmit digital information about their imports before arriving at the border, has suffered more than 200 outages since 2015, CBC News has learned.

Ottawa made pre-arrival electronic submission of truck-cargo data mandatory on May 6, 2015, a security measure partly intended to safeguard against threats to Canadians' health and safety from dangerous imports.

Typically, a truck operator in the United States transmits data about a load at least an hour before arriving at the Canada-U.S. border, on threat of penalties of up to $40,000 for failure to do so.

The advance data is then reviewed by the national targeting centre, created in 2012 to alert border officers to potentially risky shipments.

But the ACI system used to input the data to the Canada Border Services Agency (CBSA), a network maintained by Shared Services Canada, has been notoriously unreliable.

"The CBSA has been experiencing an increased number of system outages and performance degradation issues (January 2017-May 2017)," says a May presentation for Public Safety Minister Ralph Goodale.

Outages increase

"During this period, the CBSA experienced 23 incidents that resulted in a total of 151 hours of systems outage time, representing a 142-per-cent increase over the same period last year."

"Trucking sector shareholders have been vocal about the frequency, disruption and communication gaps surrounding these outages."

CBC News obtained the document under the Access to Information Act.

The increase in system crashes follows 79 such outages in 2015, and 101 last year. A spokesperson for CBSA, Jayden Robertson, declined to provide numbers recorded since May this year, but said the "frequency of ACI outages has decreased." He said the agency does not track the costs of outages.

"The main issues were caused by a need to fine-tune new systems and changes in the operating procedures of certain importers," Robertson said in an email.

"Outages require the stakeholders and the CBSA to manage border clearance processes using alternative procedures that include the physical presentation of paperwork."

Even so, many truckers have been caught by outages while in transit, unable to transmit the required data and then getting stuck at the border while CBSA assesses the "undeclared" shipment — and sometimes imposes a penalty, even though the trucker was not to blame.

The Toronto-based Canadian Trucking Alliance sounded the alarm earlier this year, noting that some truckers get trapped at border points and hit with hefty fines because of outages, unable to even turn around and clear up the paperwork problem for a second attempt to cross in Canada.

CBSA officials "recognize there are some issues they have to address at their end," said alliance spokesman Lak Shoan.

The agency has agreed to refund some of those penalties, Shoan said. And until Dec. 31 this year, the CBSA has temporarily agreed to allow trucks arriving at the border without electronic paperwork to turn around and try again later.

The import system foul-ups mirror recent outages in a separate export system, operated for CBSA by Statistics Canada but — like the ACI — maintained by Shared Services Canada.

Beginning on the morning of June 9 this year, the so-called Canadian Automated Export Declaration (CAED) system was down for more than 30 hours, preventing exporters from pre-filing cargo data prior to crossing into the United States.

"Some trucks can't cross the border," Statistics Canada reported in an internal assessment at the time.

StatsCan spokesman Peter Frayne said there have been a dozen CAED incidents since October 2016. "Certain software issues, software updates, permissions and anti-virus programs have prevented the program from working correctly," he said in an email, noting a replacement is not scheduled until 2019.

The repeated trade disruptions are only the latest evidence of continuing failures at Shared Services Canada, the troubled federal IT provider created in 2011 to manage Ottawa's assets efficiently.

'Arguably criminal'

Numerous departments and agencies have complained about SSC's shoddy support and management of hardware, software and networks, among the latest the RCMP.

In March, then-commissioner Bob Paulson told the agency it would be "reckless and arguably criminal" for the Mounties to renew a contract with Shared Services Canada, given the poor service.

And an independent consultants' report earlier this year confirmed SSC has been badly managed and under-resourced from the start, leaving major projects in limbo or severely delayed, including a government-wide email transformation.

Those findings are buttressed in an internal SSC audit from June, which concluded: "We found gaps in the accuracy and sufficiency of the information available to support and monitor the management of IT assets."

"We found no systematic monitoring taking place in relation to the overall management of IT assets at SSC."

Ex-Gitmo captive set to sue Canada for $50 million for alleged complicity in torture
CTV News
Colin Perkel
The Canadian Press
November 5, 2017

TORONTO -- An Algerian man is set to sue the federal government for the abuses he says he suffered at the hands of American security forces after he left Canada 15 years ago.
The unproven allegations by Djamel Ameziane, who was never charged or prosecuted, raise further questions about Canada's complicity in the abuse of detainees at Guantanamo Bay -- a topic his lawyer said demands a full-scale public inquiry.

"My current situation is really bad, I am struggling to survive," Ameziane, 50, said from near Algiers. "I was repatriated from Guantanamo and left like almost homeless. I couldn't find a job because of the Guantanamo stigma and my age, so a settlement would be very helpful to me to get my life back together."

In a draft statement of claim obtained by The Canadian Press, Ameziane seeks damages of $50 million on the grounds that Canada's security services co-operated with their U.S. counterparts even though they knew the Americans were abusing him.
"The Crown's conduct constituted acquiescence and tacit consent to the torture inflicted upon the plaintiff," the lawsuit alleges.

Canadian intelligence, the suit alleges, began sharing information with the Americans after failing to pick up on the 1999 "Millennium plot" in which Ahmed Ressam, another Algerian who had been living in Montreal, aimed to blow up the Los Angeles airport. After 9/11, Canadian agents interrogated Ameziane at the infamous American prison in Cuba, as they did Canada's Omar Khadr, according to the claim.

Ameziane's Edmonton-based lawyer, Nate Whitling, said the government's recent out-of-court settlement -- worth a reported $10.5 million -- with Khadr over violation of his rights has prevented scrutiny of Canada's alleged complicity in abuses at Guantanamo Bay. A judicial inquiry is needed, Whitling said.

"Only then can the Canadian public come to understand the extent to which Canada is responsible for the torture of innocent detainees in the aftermath of 9/11," Whitling said.

The lawyer, who said he planned to file the lawsuit in Court of Queen's Bench in Edmonton on Monday, said Ameziane would be prepared to put the claim on hold in exchange for an inquiry. Whitling also said two other people planned similar suits that name the federal government, RCMP and Canadian Security and Intelligence Service.

Public Safety Minister Ralph Goodale had no comment given the pending legal proceedings. The U.S. detained Ameziane at Guantanamo Bay for more than 11 years until his release in December 2013.

"For many years, I had the idea of suing the Canadian government but didn't know how and honestly didn't know it was possible until I read the news about the settlement of Omar Khadr, who was my fellow inmate in Guantanamo Bay," Ameziane said. "The action I am taking may also make (Canadian officials) think twice before acting against the interests of Canada and Canada's human values."

According to his claim, Ameziane left Algeria in the 1990s to escape rising violence there. After working as a chef in Austria, he came to Canada in December 1995 and asked for refugee status. He lived in Montreal for five years, attending mosques where the Americans said members of al-Qaida prayed.

When Canada rejected his request for asylum, Ameziane opted to go to Afghanistan rather than Algeria, where he feared abuse. He left Afghanistan for Pakistan in October 2001 when fighting erupted, but was captured and turned over to American forces in exchange for a bounty, his claim states.

The Americans first took him to a detention facility in Kandahar, where he alleges guards brutalized him, then sent him to Guantanamo Bay based partly on information provided by Canadian intelligence, according to his claim.

Ameziane, who denies any terrorism links, says Canadian agents interviewed him in Guantanamo in February and May 2003 and turned over recordings of the interrogations to the Americans. They did so, he claims, despite widespread allegations that U.S. forces were abusing detainees and even though they knew he faced no charges and had no access to a lawyer or the courts.

Ameziane alleged American officials interrogated him hundreds of times and abused him when they decided he wasn't co-operating. The abuse, he alleges, included sleep-deprivation, intrusive genital searches, pepper-spraying, waterboarding, being left in freezing conditions, and having his head slammed against walls and the floor, dislocating his jaw.

"Canadian officials came to interview me on two occasions (and) they not only shared information about me with my American torturers but even tried to get information out of me

that had nothing to do with Canada in order to help my American torturers," Ameziane said. "I refused to answer questions, after that I was subjected to a worse treatment by the Americans."

What to do about the overrepresentation of Indigenous people in prisons: Editorial
Indigenous people make up less than 5 per cent of the country's population but account for more than a quarter of federal inmates.
Toronto Star
November 6, 2017

For decades watchdogs and researchers have attempted to draw attention to the disturbing overrepresentation of Indigenous people in the country's prison systems.

Yet despite urgent warnings from domestic and international organizations, the latest report from federal prisons watchdog Ivan Zinger makes clear the situation continues to get worse.

Between 2007 and 2016, while the overall federal prison population increased by less than 5 per cent, the number of Indigenous prisoners rose by 39 per cent, Zinger reports.

In fact, for the last three decades, there has been an increase every single year in the federal incarceration rates for Indigenous people. While they make up less than 5 per cent of the Canadian population, today they represent 26.4 per cent of all federal inmates. And for Indigenous women the situation is even worse. They comprise 37.6 per cent of the federal female prison population.

As Zinger writes, "The over-incarceration of First Nations, Métis, and Inuit people in corrections is among the most pressing social justice and human rights issues in Canada today."

So what can be done?

The overabundance of Indigenous people in Canadian prisons no doubt reflects larger socioeconomic disadvantages for which there are no simple solutions. Clearly, until governments start taking more aggressive steps to address the poverty, mental health issues and other intergenerational scars of failed colonial policies past and present, the problem will persist.

But in the shorter term, there are a number of simple, long-overdue changes to the court and prison systems that could begin to redress this persistent injustice.

The first is to ensure that the Gladue principle, in place since a 1999 Supreme Court decision, is consistently followed. Under this principle, judges must take into account information, contained in so-called Gladue reports, about an Indigenous person's background, such as their history with residential schools, child welfare removals, physical or sexual abuse, and health issues such as Fetal Alcohol Syndrome.

Research has shown these reports do affect sentencing, but as legal aid across much of the country shrinks so, too, does the ability of many Indigenous offenders to make courts aware of their particular circumstances. Governments must ensure resources are in place to allow the court system to truly abide by this important principle.

The Zinger report contains other valuable suggestions. For one, it recommends that Corrections Canada finally implement proposals from the 2016 federal auditor general's report to more quickly get Indigenous offenders out of jail and reintegrated into society.

The auditor general found that in 2015-16 most Indigenous offenders weren't released from custody until their statutory release date, after serving two-thirds of their sentence. Of those, 79 per cent were released into the community directly from a maximum or medium security institution "without benefit of a graduated and structured return to the community."

Nor was Corrections Canada effectively getting Indigenous prisoners into programs within jails that could help them upon their release. Only 20 per cent were able to complete their programs by the time they were eligible for parole.

In response to the AG's report, Corrections Canada promised to expand programs tailored to the needs of Indigenous offenders, including preparing them for early release. Yet Zinger found that Indigenous prisoners continue to be released just as late, likely in part because the parole board remains unsatisfied that applicants have in fact been adequately prepared to reenter the community.

This lack of preparation partly explains, too, why Indigenous offenders are so much more likely to be returned to prison due to the suspension or revocation of their parole. And once inside, Indigenous prisoners suffer more than others: they are over-represented in segregation cells, use-of-force interventions, maximum-security institutions and incidents of self-injury.

Canada's shameful history of Indigenous injustice continues to play out graphically and painfully in our courts and prisons, which both reflect and reinforce these communities' disadvantage. But the justice system need not deepen these inequalities; indeed, it can play a role in healing Indigenous communities and Canada's relationship with them. Reversing the overrepresentation of Indigenous people in our prison population is an important measure of reconciliation.