Cut down on court delays in Canadian justice system by supporting victims of crime: ombudsman

Global News
Joanna Smith
The Canadian Press
November 7th, 2017

OTTAWA – Making sure those who experience the biggest impacts of crime have the support they need would do a lot to speed up the wheels of justice, says the federal ombudsman for victims of crime.

"We have to have a criminal justice system that is effective and efficient," Sue O'Sullivan said in an interview ahead of today's release of a set of reports on how the Liberal government could keep victims in mind as they prepare to introduce reforms.

Prime Minister Justin Trudeau gave Justice Minister Jody Wilson-Raybould the mandate to review changes to the criminal justice system and sentencing reforms the previous Conservative government brought in as part of its tough-on-crime agenda, including mandatory minimum penalties.

The need to improve the criminal justice system has been given an increased sense of urgency since last summer, when the Supreme Court released its groundbreaking ruling, R v. Jordan, that came down hard on serious delays that can mean years pass by between the laying of charges and the conclusion of a trial.

The top court imposed strict new ceilings on the amount of time a case could take to make its way through the system – 18 months in provincial courts and 30 months in superior courts. The only remedy for going over the limit is a stay of proceedings, no matter how serious the charge.

The impact that court delays – and having cases tossed as a result – can have on victims of crime was one of the issues that came up over the summer as O'Sullivan held cross-country consultations to gather perspectives from victims and advocacy groups on criminal justice reforms.

"Court delays are typically cast in terms of the rights of the accused but not the rights of victims," said one of the five reports to be released today.

"Yet victims also have an important interest in a criminal justice system that is not delayed," the report said. "Having charges stayed as a result of delays hurts victims. Remedies that emphasize both the rights of the accused and the rights of the victim must be found."

In an interview, O'Sullivan argued that giving victims of crime the resources and information they need can cut down on judicial delays.

She pointed to a pilot program in England and Wales that boosted support for victims and witnesses, including with basic needs such as child care, addressed concerns such as fear of intimidation and provided them with greater communication throughout the process.

“There was an increase in the number of victims and witnesses that could testify,” she said. “There was an increase in early guilty pleas.”

O’Sullivan said those who took part in her engagement process understood systemic root causes of crime often blur the line between victim and perpetrator, but they would like to see a greater balance between their rights and the rights of the accused.

One of the reports focused on bail reform, including the Liberal campaign promise to create a reverse onus on bail for those who have previously been convicted of intimate partner violence. A commitment to toughen bail conditions in domestic assault cases was also in the mandate letter.

The report urges the federal government to act on this, but also recommends ensuring victims are considered in all aspects of bail reform, such as by requiring judges to ask whether a victim has been consulted about their safety and security needs as they decide whether to grant bail.

The mandate letter for Wilson-Raybould said sentencing reform should result in greater use of restorative justice.

Many of those who participated in the consultations expressed apprehension over this, including the concern it could be a way to reduce penalties, or avoid them altogether.

There were also concerns about restorative justice being used for gender-based violence, given the power imbalance these cases can involve.

O’Sullivan said the key is that victims should have a say.

A common theme throughout the reports is that victims need stronger and better enforced rights, but also more information about what those rights are in the first place.

O’Sullivan said could be helped by involving everyone in the justice system, from police officers to the federal government, in doing more to create awareness of the Canadian Victims Bill of Rights.

The federal justice minister said in a statement Monday that she has included victims groups in her consultations on criminal justice system reform, including a roundtable devoted to these issues.

“The minister remains committed to fulfilling all aspects of her mandate letter, including toughening bail conditions in cases domestic assault,” her office said in a statement.

Judicial council committee recommends Quebec judge be removed from office
CTV News
The Canadian Press
November 6, 2017

MONTREAL -- A committee of the Canadian Judicial Council recommended in a report released Monday that Michel Girouard be removed from his position as a Quebec Superior Court justice for misconduct and failing to perform his duties in office.

The report from the council's inquiry committee was the second investigation stemming from allegations from a police informant in 2012 who said Girouard bought drugs from him in 2010, when the judge was still a lawyer.

In April 2016, the judicial council ruled Girouard could return to sit as a judge despite the council's own inquiry committee recommending he be removed from office months earlier.

The federal and provincial justice ministers jointly requested the council conduct a second inquiry into the allegations, primarily into the truthfulness of the judge's testimony under oath and his integrity.

"The committee found that the misconduct particularized in each of those allegations ... is extremely serious, and mandates a recommendation for removal from office," read the report. The council said it would consider its committee's report and give Girouard the chance to make written submissions.

After that, the council said it would make a final recommendation on Girouard's fate to the federal justice minister.

Girouard was named to Superior Court in September 2010 after practising law for a quarter-century in the Abitibi region in northwestern Quebec.

Les victimes de crimes ont besoin de plus d'aide, dit l'ombudsman fédérale
La Presse
La Presse Canadienne
7 novembre, 2017

Les rouages du système judiciaire tourneraient plus rapidement si les victimes d'actes criminels recevaient toute l'aide dont elles ont besoin, prévient l'ombudsman fédérale des victimes d'actes criminels.

Lors d'une entrevue accordée à La Presse canadienne avant la publication de plusieurs rapports par le gouvernement fédéral, Sue O'Sullivan a demandé un «système de justice efficace et efficient (qui) respectera les besoins des victimes».

Mme O'Sullivan a visité le pays cet été pour entendre ce que les victimes et les militants pensent du système judiciaire canadien. Au premier plan des irritants, a-t-elle dit, on retrouve les longs délais qui sont souvent encourus «pour respecter les droits des accusés, mais non les droits des victimes».

Elle croit que ces délais seraient grandement réduits si on offrait aux victimes toutes les ressources et toute l'information dont elles ont besoin.

Mme O'Sullivan a mentionné un programme britannique à l'intention des victimes et des témoins qui, par exemple, offre des services de garde d'enfant, combat la peur de l'intimidation et propose de l'information. Cela a augmenté le nombre de victimes et témoins qui ont pu témoigné, a-t-elle dit, et une hausse du nombre de plaidoyers de culpabilité.

Un autre rapport recommande de consulter la victime avant d'accorder une libération sous caution à un prévenu.

New bill takes aim at harassment in federal workplaces, including Parliament
CTV News
Rachel Aiello
November 7, 2017

OTTAWA -- The federal government is embarking on a regulatory overhaul to crack down on harassment in federal workplaces, from Parliament Hill to local bank branches.

New legislation unveiled Tuesday is aimed at giving workers and their employers a clear course of action to better deal with allegations of bullying, harassment and sexual harassment, exerting more pressure on companies to combat unacceptable behaviour and punish those who don't take it seriously.

The changes will merge separate labour standards for sexual harassment and violence and subject them to the same scrutiny and dispute resolution process, which could include having an outside investigator brought in to review allegations.

The proposed rules would also enforce strict privacy rules to protect the victims of harassment or violence.

Once passed, the legislation would also allow anyone unhappy with how their dispute is being handled to complain to the federal labour minister, who could step in to investigate and order sanctions for employers.

"Smart employers already take action. They already have comprehensive regulations and policies. They already protect their employees from harassment and sexual violence," Labour Minister Patty Hajdu told a news conference.

"What this (legislation) will compel is those other employers that are not taking it as seriously and not putting forward the protections that every person has the right to in the workplace." The rules would, once they come into force, apply to all federally regulated workplaces, such as banks, telecommunications and transport industries, representing about eight per cent of the national labour force.

The Liberals want the rules to apply to politicians, their staff and other Parliament Hill employees, warning of dire repercussions for any MP or senator who flouts the rules. Department officials say it could take a year or more before the rules come into effect, since regulations would have to be crafted once the bill receives parliamentary approval. Hajdu said her officials wouldn't wait that long to help businesses who want to craft their own policies in the interim.

The government launched consultations on dealing with workplace violence in the summer of 2016 to review the existing laws and regulations under the Canada Labour Code.

Last week, a federal survey showed that while three-quarters of respondents said they recently reported harassment, sexual harassment or violence, two-fifths of those complaints were never addressed. The results of the online survey are not representative of the population because it was not a random sampling, officials warned.

But Hajdu said the government wanted to give people confidence that inappropriate office behaviour would not swept under the rug.

"That's an important piece about this legislation that we do combat that very real perception where people say they have come forward, they have taken the chance to speak about their experience, and nothing is done."

Government officials must still consult anew with labour and employer groups to more clearly define what constitutes harassment under the new regime, create a list of third-party investigators who could be recommended to review complaints of harassment or violence, and help workplaces track incidents to better allow federal workplace inspectors to plan spot inspections. Hajdu said the government would launch an awareness campaign, but wouldn't say how much it would cost.

The government's bill doesn't outline sanctions for employees found guilty of harassment. The sanctions are on employers who are ultimately responsible for protecting their workers, Hajdu said.

Federal government changes course on ending sex discrimination in Indian Act
Government amendment would ensure Indigenous women are able to transmit Indian status to family members
CBC News
Kristy Kirkup, The Canadian Press
November 7, 2017

The federal government has decided to change course on its proposed legislation to end sex-based discrimination in the Indian Act.

The government's point man in the Senate, Sen. Peter Harder, told the upper chamber Tuesday that the government is offering to make a change that would restore full legal status to First Nations women and their descendants born prior to 1985 — a measure that moved Indigenous Sen. Lillian Dyck to tears.

"Colleagues, if we pass today's motion, something wonderful will happen," Dyck told the chamber, her voice cracking. "Something that First Nations women have been waiting for for nearly 150 years."

The Indian Act, which dates back to 1876, remains the primary law defining the relationship between the federal government and First Nations across the country. Its original definitions focused primarily on men, denying women many of the same privileges and powers as their male counterparts when it came to their Indian status.

Numerous amendments over the years have chipped away at those imbalances, but critics say the document as it currently stands continues to treat women unfairly, particularly when it comes to their Indian status and their ability to pass that status along to their descendants.

Once passed, the government amendment would ensure Indigenous women finally get the same ability to transmit their registered Indian status to family members, Dyck said.

"Your language, your culture, your connection to your family, your connection to your community."

Dyck recently joined forces with Sen. Sandra Lovelace-Nicholas and other advocates as part of an awareness campaign to urge the Liberal government to change the bill.

Ending the standoff

Part of the outreach, supported by the Canadian Feminist Alliance for International Action, included the distribution of a letter last week to women's organizations, academics and human rights groups to drum up support for the "full and final removal" of sex discrimination in the Indian Act.

The government and officials have now found an acceptable solution to a standoff between the Senate and the House of Commons, said Dyck, who urged her fellow senators to pass Harder's proposal by the end of the week.

"Let's move it and urge the members in the (House of Commons) to concur," she said.

First Nations women can breathe a sign of relief, Dyck added. "I know I will."

In June, the Senate unanimously passed a change to the bill designed to ensure Indigenous women and their descendants enjoy the same Indian status under the law as their male counterparts.

The House of Commons, however, did not originally accept the Senate's proposal, with the government saying it needed more time to examine the potential impacts.

Limited scope

The previous Senate amendment would have focused on issues beyond merely the sex-based inequities, creating ambiguities and potential legal problems, Harder said.

The government's original bill would only have addressed discrimination in Indian Act registration since 1951, when a more modern registry was created. The amendment would, among other things, also address inequities created between 1869 and 1951, said the office of Crown-Indigenous Relations Minister Carolyn Bennett.

The Liberal government's bill was in response to a Quebec Superior Court decision that ruled certain sections of the Indian Act related to registration status violated the Canadian Charter of Rights and Freedoms.

The case was brought by Stephane Descheneaux of the Abenaki community of Odanak, about 40 kilometres northwest of Drummondville, Que.

Descheneaux was unable to pass on his Indian status to his three daughters because he got it through his Indigenous grandmother, who lost her status when she married a non-Indigenous man.

The court system’s bumpy road to marijuana legalization

CTV NEWS
November 7th, 2017

According to the Liberal government's plan, the use of marijuana – whether it's for medical use or recreational – will be legal in Canada as of July 2018. But the road to legalization hasn't always been smooth.

Lawyer Kirk Tousaw says since Prime Minister Justin Trudeau's announcement in 2015, about 50,000 Canada have been arrested on cannabis possession charges.

Tousaw represents several of those clients in the Maritimes, and believes the increase in arrests is starting to have a ripple effect.

"When you add in busy courtrooms, judicial time, the Crown prosecutor's time, the sheriffs that have to work in the courtrooms, the expense and impact on the criminal justice system is really staggering," Tousaw says.

One of Tousaw's clients is Chris Enns, who operates a medical cannabis dispensary. After three police raids over four years, he's facing 10 charges relating to possession for trafficking. Some of the charges date back to 2013.

"Not only are we still going through the issues, but we have 30 days of trial booked for February, we have 10 days for constitutional challenge booked in December, and we have over a week of hearings booked for November," Enns says.
Sean Murray was also arrested for cannabis possesion. He says when he first asked for a prescription to treat his post-traumatic stress disorder, his physician refused. So he decided to grow it himself and sell it to a few other people.

That decision resulted in Murray being arrested twice for possession and trafficking.

"I stood up for myself," he says. "I did what had to be done to maintain my mental well-being."
Murray is currently on five months house arrest, but now has legal access to cannabis. Through the court process, an advocate helped him get a medical exemption.

But still, Murray says it's more expensive and not covered under his social assistance.
"There's a lot of people in my situation, but I just happen to be under house arrest now because of what's happened," he says.

Dalhousie University law professor Archie Kaiser says there's the question of whether to continue to prosecute people charged with cannabis crimes under existing legislation.

“We are in kind of a period of evolution. But on the other hand, we still must observe the law as it stands right now,” Kaiser says. “There has to be some serious reflection by the federal government as to what to do with everybody who's basically in the pipeline.”

The Public Prosecution Service of Canada, which handles cannabis offences, denied CTV News’s request for an interview. But a spokesperson did say that public prosecutors can exercise discretion when it comes to initiating and prosecuting cannabis cases. The office also would not speak to the impending legislation.

Archie Kaiser sees a challenge in the fact that the proposed law will still result in criminal convictions.

“There remains a label of criminality for those Canadians, and I think it is highly problematic that that would continue following the legalization of cannabis,” he says.
Under the proposed law, what Sean Murray did would still be a crime.

“Have it decriminalized,” says Murray. “Stop the ridiculous arrests of patients. I don't understand it.”

Murray says he's not sure legalization as it stands now will help him get the access he needs in the situation he's in.

Government ordered to pay lawyers for being on-call
Rabble.ca
Meagan Gillmore
November 7, 2017
The Supreme Court of Canada has ordered that federal lawyers must be paid when they are on standby.

In a 7-2 decision handed down on November 3, the country’s highest court agreed with a previous decision that said it was unreasonable for lawyers not to be paid for their scheduled standby shifts. It ordered the government to pay lawyers when they are on standby.

Ursula Hendel, president of the Association of Justice Counsel (AJC), the union representing lawyers, said the court’s decision affirms the importance of the labour movement.

Hendel, a former terrorism prosecutor, said lawyers are willing to work flexible hours, and understand they need to respond to matters after work hours.

“We just wanted recognition that (standby is) part of work. It’s part of employment and we deserve compensation,” she said, describing the whole case as, “extremely litigious.”

The decision comes seven years after the AJC first filed grievances against the government on behalf of immigration lawyers in Quebec. The union said it was unreasonable that lawyers weren’t being paid for being on standby. It also argued the travel and activity restrictions placed on lawyers while on standby violated their constitutional right to personal liberty.

In the 1990s, the government established a standby shift system so lawyers would be available to respond to urgent matters outside of work hours. Lawyers could volunteer for the shifts, which were from 5 p.m. to 9 p.m. on weeknights, and 9 a.m. to 9 p.m. on weekends. They got 2.5 paid days off for every week of weekday shifts and weekends, with more compensation if they were on standby during holidays. They were paid even if they did not respond to a call during these shifts.

During standby, lawyers had to have government-issued pagers or phones with them and be able to get to their offices within an hour.

In 2010, the lawyers were told they would only be paid if they responded to a call during standby. After this change, not enough lawyers agreed to volunteer for the shifts. Standby became mandatory. All qualified lawyers had to cover weeknight and weekend shifts between one and three weeks a year. They were allowed to switch shifts with each other.

According to evidence presented in court, immigration lawyers in Quebec responded to only six weekend cases in 2010. It was unclear how many calls they responded to during weeknights.

The new rules came after the lawyers and government agreed to a new contract in 2009. It made more lawyers eligible for overtime pay, with some senior lawyers still only eligible for paid leave. The contract or job description did not say anything specific about standby duty. The contract did say employers needed to use their management rights in a reasonable way.

The AJC filed a grievance on behalf of immigration lawyers in Quebec. A federal labour adjudicator agreed the new rules were unreasonable and violated workers’ constitutional rights. The government was ordered to stop the unpaid, mandatory standby.

The government appealed that decision. The Federal Court of Appeal agreed with the government.

On November 3, the Supreme Court of Canada upheld the original decision that not paying lawyers for standby was unreasonable. It’s clear that lawyers need to work outside of regular hours, the decision says, but it’s not clear if a mandatory standby system is the best way to do this. Not paying lawyers for being on standby was especially troublesome because standby was not mentioned in the contract or job description, there were no comparable practices elsewhere in

the federal government, and lawyers had been paid for being on standby in the past, the decision says.

The court also said lawyers' restrictions during standby were "a significant factor." It said work while on standby may not be "taxing or onerous," employers still have control over employees while they're on standby. But it did not agree such restrictions infringed on constitutional rights. Not every activity someone thinks is central to their lifestyle is protected by the Constitution, the decision says. The need for lawyers to have a pager with them during music lessons or training for races for a couple of weeks a year does not infringe on constitutional rights. Not being able to spend as much time with their families for a couple weeks as part of their job requirements also does not affect their ability to make fundamental personal choices, the decision says.

The Treasury Board told rabble.ca in a statement that it respects the court and is carefully reviewing the decision to determine its impact.

Supreme Court sides with federal lawyers to end unpaid mandatory on-call duty
In a 7-2 decision, it said the practice violated the lawyers' contract because it wasn't a reasonable exercise of management's rights.
Hill Times
Emily Haws
November 8th, 2017

The Supreme Court of Canada ruled in favour of federal immigration lawyers on Nov. 3, saying the mandatory unpaid on-call duty Justice Canada imposed on them violated their collective agreement.

Ending a seven-year court battle, the Supreme Court ruled in part for the Association of Justice Counsel, a union that represents about 2,600 federal lawyers. In a 7-2 decision, the court agreed with an earlier Federal Public Sector Labour Relations and Employment Board ruling that found the on-call duty was a violation of the union's collective agreement because it was not a reasonable exercise of management's rights. The court decided to reinstate the labour board adjudicator's order that the employer stop applying the on-call duty directive.

However, the court did not agree with the board's decision that the duty violated section 7 of the Canadian Charter of Rights and Freedoms, which protects the right to liberty.

The decision says it does not violate the charter because the lawyers would only be "potentially less available to their families or…forego certain personal activities for, at most, two to three weeks a year. This incursion into the private, after-work lives of the lawyers does not implicate the type of fundamental personal choices that are protected within the scope of s. 7."

The two dissenting judges also felt that the duty didn't violate the charter, but said the case should be kicked back to another adjudicator to decide on part of whether it violated the union's contract.

Ursula Hendel, the president of the Association of Justice Counsel, said she is happy with the decision. She said there are similar policies at other department offices.

"It's unfortunate that we had to litigate this all the way to the Supreme Court of Canada, but I'm very pleased that the unfairness and the unreasonableness has been recognized," she said. "The employer [now] needs to figure out what it wants to do."

Ms. Hendel said the employer could either find others to do the work or ask the union to agree to doing it. She said the lawyers are dedicated to their work and agreeable to coming in, but they would like to be recognized that they are working and that affects their private lives.

"I think we'd want to have some say over how our private lives get affected," she said.

Beginning in 2010, the Department of Justice forced immigration lawyers in its Quebec regional office to take part in rotating unpaid on-call duty up to about three weekends per year, according to the Federal Court of Appeal decision.

Before 2010, the duty was filled by volunteer lawyers who were compensated with time off. In 2010 the department said it was no longer going to compensate the lawyers for their on-call time, instead only paying them if they are actually called in to work. This made the lawyers refuse to volunteer, making the Department of Justice impose the mandatory duty on a scheduled basis.

Lawyers on standby duty must be available by pager or cellphone and be able to get to the office within an hour of receiving a call. They must be well-rested and in a sound state of mind, said Ms. Hendel, meaning they cannot be consuming alcohol or staying up late.

Immigration calls on the weekend are rare but weeknight work is more frequent. Ms. Hendel said the amount of work during the on-call duty can vary depending on the type of law and the cases lawyers are working on.

The union then filed a grievance to the Federal Public Sector Labour Relations and Employment Board in 2010. Although its collective agreement is silent on the on-call duty, it said the employer retains all management rights and powers that have not been modified or limited by the collective agreement, however, it must "act reasonably, fairly, and in good faith" in administering the contract, according to the Supreme Court ruling.

Stephan Bertrand, an adjudicator with the board, ruled in the group's favour in 2015, saying the unpaid duty violated the collective agreement because it was not a fair exercise of management rights, as well as section 7 of the charter.

The attorney general then filed an appeal for judicial review of the labour board's decision. In March 2016, the three-panel judge of the Federal Court of Appeal granted the application, saying it was unreasonable for Mr. Bertrand to find there was a breach of the collective agreement. It sent the grievance back to the labour relations board.

The union then appealed the case to the Supreme Court.

Federal lawyers are considered one of the 27 groups that make up the core administration of the federal public service, which means they are directed by the Department of Justice but are employed by the Treasury Board.

Alain Belle-Isle said the government respects the court's ruling.

"We are carefully reviewing the decision to determine its impact. We cannot comment further at this time," he said Nov. 3 in an emailed statement.

Ms. Hendel said she expected the decision to affect the parties' ongoing contract negotiations.

The union's collective agreement expired in 2014, but that one is still being used as a new one is being negotiated. The two sides are currently awaiting a binding conciliation ruling.

In a subsequent email on Nov. 6, Mr. Belle-Isle added the Treasury Board is currently assessing the decision and how it will impact its next steps.

"If any changes to the collective agreement are required, they will be negotiated with the bargaining agent," he said in the statement. "The government of Canada is committed to negotiating in good faith with the bargaining agent to come to a solution that is fair for public servants and fair to Canadians."

It's 1984 all over again for Ontario lawyers arguing against compelled speech
The Law Society is forcing its 58,000 members to create a mandatory 'statement of principles' stating their 'obligation to promote equality, diversity and inclusion'
National Post
Christie Blatchford
November 8th 2017

How amusing it is that the case most cited in the current discussion (it is, I grant you, a small discussion) about the Law Society of Upper Canada's egregious foray into compelled speech is a Supreme Court of Canada number from 1984, the very title of George Orwell's creepy novel about "thoughtcrime."

That was a labour law case between the National Bank of Canada and the Retail Clerks' International Union and the Canada Labour Relations Board.

The bank, itself a creation of a merger between the Provincial Bank and the Canadian National Bank, had closed a unionized branch and incorporated it in a non-unionized branch.

The union complained to the Canada Labour Relations Board, which found that the bank had closed the branch for "anti-union reasons," infringed the Canada Labour Code and ordered various remedies.

The board ordered the bank to do a number of things enabling the union to function (such as holding meetings during working hours, having a bulletin board and the like), all of which the Supreme Court found to be reasonable.

But the board also ordered the bank to send a letter that the board drafted and which couldn't be altered, under the signature of the CEO, to all employees, and to pay the union a total of $144,000 over three years for its sins.

The court set aside both these remedies.

The proposed letter would have said the board had found the branch closure "was aimed … at denying the employees … the fundamental right to bargain collectively" and that "it is paramount that for the benefit of all management and staff I clarify, in my capacity as chairman and Chief Executive Officer" that "all management personnel of this bank, regardless of their hierarchical level, have the responsibility of respecting the choice of those employees who opt for free collective bargaining.
"We intend to deposit the sum of $144,000 in a fund over the next three years as a concrete manifestation of our commitment to this principle…"

The bank argued that the letter was humiliating and unreasonable. The Court agreed.

It was then that the late Justice Jean Beetz, writing in agreement with his colleagues, said this:

"…The letter…does not mention that, like the creation of the fund, it was imposed by the board, and the person signing it cannot disclose this coercion without infringing the order…The creation of the fund and the letter are thus open to the interpretation that they result from an initiative taken by the National Bank of Canada, and reflect the views and sentiments of the bank and its president…

"There is nothing to show that such were in fact their views and sentiments," Beetz wrote.

"However admirable the objectives and provisions of the Code may be, no one is obliged to approve of them: anyone may criticize them, like any other statute…

“This type of penalty is totalitarian and as such alien to the tradition of free nations like Canada, even for the repression of the most serious crimes.”

What the Law Society is doing is very similar.

It is forcing its 50,000 lawyer and 8,000 paralegal members to create and adopt a mandatory “statement of principles” acknowledging their “obligation to promote equality, diversity and inclusion.”

In a letter to members last month — the “statement of principles” must be in place by Jan. 1 next year — the LSUC even offers helpful samples.

One is simple: A commitment to the reduction of barriers created by racism, unconscious bias and the like and to better representation of Indigenous and “racialized” lawyers; a commitment to advance reconciliation with Indigenous peoples and to improve the relationship, and an “acknowledgment of my obligation to promote equality, diversity and inclusion generally and in my behaviour towards colleagues, employees, clients and the public.”

(A “racialized” person is an Ontario Human Rights Commission construct, defined as “the process by which societies construct races as real, different and unequal in ways that matter to economic, political and social life.”)

The second suggested template goes on for four pages.

But wait, there’s more: The Law Society will require, from firms with at least 10 lawyers or paralegals, an “inclusion self-assessment” every two years; will then publish “an inclusion index”; will “enact, as appropriate, progressive compliance measures” with companies and lawyers who don’t comply. The compliance measures are undefined, and of course, the society says it will try first to “foster co-operation” and “engage in reactive measures only when necessary.”

It was Queen’s University law professor Bruce Pardy who first publicly blew the whistle on this grotesquerie, and in the pages of the National Post.

“Was I still in Canada, or had someone whisked me away to North Korea, where people must say what officials want to hear?” he asked in a piece last month upon receiving the Law Society advisory that he must get his statement of principles together to show his “personal valuing” of equity, diversity and inclusion.

Since then, one lawyer, Joe Groia, has asked the Law Society to consider an exemption for “conscientious objectors,” and another, Lakehead University law professor Ryan Alford, has filed an application in Ontario Superior Court seeking an injunction to halt the Law Society until

the matter can be fully argued. Alford says the directives compel lawyers "to communicate ideas and in particular…to communicate political expression…. Compelled expression is alien to Canada's political traditions and the traditions of all free states."

I hope Pardy, Groia and Alford are right and that compelled speech, always totalitarian, is still alien in Canada, but my hunch is Jean Beetz was a lot more confident when he wrote that than they are.

MPs, staff have 'a few issues' with Phoenix, but House not scrapping it: Speaker's Office
The House has not yet compiled a list of those affected. The Senate, meanwhile, is looking for a new service provider, after it said more than 350 identified pay errors were generated by the payroll system.
Hill Times
Emily Haws
November 8, 2017

The House of Commons is not looking to opt out of the problem-plagued Phoenix pay system, the Speaker's office says, despite some MPs and their staff reporting problems.

"There have been a few issues with pay but the House administration does not have a record of the total amounts related to underpayment or overpayments resulting from system-generated errors," said Heather Bradley, the director of communications to House Speaker Geoff Regan (Halifax West, N.S.), in an emailed statement Nov. 3.

"The [House of Commons] is not looking to change the current framework or arrangement for the provision of pay services, currently provided by [Public Services and Procurement Canada]," she said.

Last month, the Senate posted a request for proposals for "a service provider to assume responsibility for payroll processing…for all the employees of the Senate of Canada." It closes Nov. 16 and so far there are three interested suppliers.

Several MPs told The Hill Times they had heard of MPs and staff having Phoenix issues, but few could give concrete examples.

Ms. Bradley said the House administration is working closely with the public services department to ensure timely and accurate pay, and a team of House pay advisers is in place to help MPs with pay issues.

The Senate and the House first started having payroll processing done through Phoenix in 2016, along with dozens of federal departments. The new system was supposed to streamline the payroll of the government's approximately 300,000 employees, but last week the government estimated more than half of public servants are experiencing some form of pay issue. Phoenix

was meant to save the government $70-million annually, but the cost to fix the system has been more than $400-million.

Last week, the government reported a backlog of 265,000 Phoenix-related open cases above its pay centre's normal workload, as of Oct. 18. Public Services and Procurement Minister Carla Qualtrough (Delta, B.C.) blamed the increase on the implementation of 19 collective agreements, as pay advisers need to retrieve data by hand from the government's old pay system to process retroactive pay.

"We've hired more compensation advisers. We're training more people. We're improving the technological glitches," she said, adding the government is committed to fixing Phoenix, though she offered no timeline.

Compensation advisers at the Public Service Pay Centre in Miramichi, N.B., and other satellite offices that use the Phoenix software generally administer federal public servants' payroll. Payroll for MPs and their staff is administered through the Phoenix software, but their compensation advisers are in the House of Commons. The payroll for ministers' offices is administered in the same way as their respective departments.

Ashley Michnowski, press secretary to Ms. Qualtrough, confirmed some ministers' office staff are experiencing Phoenix issues. She would not say how many were affected.

"It would be inappropriate to disclose information about specific offices," she said Nov. 3 in an emailed statement.

Anne Marie Keeley, chief of staff to Chief Opposition Whip Conservative MP Mark Strahl (Chilliwack-Hope, B.C.), said in an emailed statement their office had heard from MPs who have experienced pay issues but could not comment on individual cases. She added there have been no staff cases reported.

The whips' offices for the NDP and the Liberals did not respond to requests for comment by deadline.

Nasha Brownridge, president of UFCW Canada Local 232, which represents about 250 NDP House staff, did not have exact numbers because some members go directly to the House's human resources department to sort out their pay. Ms. Brownridge said she experienced problems earlier this year when she had no benefits for several months because she transferred from being an MP staffer to working for NDP caucus services.

"There was a clerical error, which had it not been for Phoenix could have been fixed very easily, but the system kept attempting to terminate the changes that [compensation advisers] were putting in," she said.

She added there is some anxiety amongst members around taking new jobs because of Phoenix.

The Hill Times contacted numerous MPs who have recently experienced pay changes because of shifting roles within committees. The chair of a committee receives $11,165 on top of their MP salary, and vice-chairs receive $5,684.

Karen Vecchio (Elgin-Middlesex-London, Ont.) has not yet received her raise as chair of the House Status of Women Committee. However, she said via email she is more concerned about the pay issues public servants face than her own pay.

“It truly is a recent change, especially since the delay in the election of the chair, so I was not expecting it yet due to the administrative work and current issues,” she said. She started on the job Oct. 3.

In August 2016, The Hill Times reported the staff of at least two MPs—Liberal MP Mark Gerretsen (Kingston and the Islands, Ont.) and NDP MP Erin Weir (Regina-Lewvan, Sask.)—were experiencing pay woes.

It took several months for one of Mr. Gerretsen’s Hill staff to receive their first paycheque, while several of Mr. Weir’s constituency staff members were not paid on time. Mr. Weir gave one of his staff members a personal loan while they waited for it to be sorted out. He was paid back in the fall of 2016.

Mr. Weir, the vice-chair of the House Government Operations Committee, does not think the House should ditch Phoenix.

“A big part of the problem with Phoenix was the idea that we could replace complex federal government payrolls with off-the-shelf software…so I don’t think the solution is even more contracting out,” he said.

“I think what we need to do is rebuild a publicly administered payroll system for all federal employees, and I think the House of Commons should be on the same pay system as the rest of the federal public service.”

Upper Chamber looking to ditch Phoenix

Alison Korn, the issues management and media relations adviser for the Senate, said it chose to leave Phoenix because the program caused a series of overpayments and underpayments for its employees.

She noted all pay problems have been with staff, not Senators. Since Phoenix’s implementation, the Senate has had more than 350 identified pay errors generated by the system, Ms. Korn said in an emailed statement, adding an employee may have more than one.

Ms. Korn said during the first two quarters of 2017-18, the Senate has not observed significant improvement in the system's performance.

"The lack of support, the limited access, and the system issues continue to result in inaccurate pay being issued to a number of employees," said Ms. Korn via email. "During the last two quarters, the system has generated more than 100 over- and underpayments."

Top bureaucrat wants to know what departments are doing to fix Phoenix
iPolitics
Kathryn May
November 8th, 2017

Canada's top bureaucrat is asking all deputy ministers to tell him and their ministers what they're doing to fix the Phoenix pay system and ensure employees are paid correctly and on time.

Privy Council Clerk Michael Wernick sent a letter to deputy ministers and heads of the 100 departments and agencies using Phoenix to report to him by Thursday on what they are doing, or plan to do, to stabilize Phoenix.

Wernick's letter is the latest move to keep up the pressure on senior bureaucrats to resolve the pay crisis that gripped the government for more than 20 months. The letter says resolving pay issues is a "very high priority for us all" and includes a checklist of "practical actions" that departments could take.

One senior bureaucrat said the letter is aimed at putting the public service on a "higher alert" because the backlog of transactions is growing. Wernick wants to make sure departments are working as a "collective," which is seen as the only way Phoenix will be fixed across government.

With the letter, Prime Minister Justin Trudeau has instructed ministers to sit down and discuss with their deputy ministers the situation in each department. One official said that will also drive home the message that resolving Phoenix problem is a top priority.

Departments have been working to fix Phoenix by offering staff, time and resources to help tackle the backlog. It hasn't been enough.

"Despite these ongoing efforts and significant financial investment by the government … the backlog of transactions and other challenges persist.," Wernick wrote.

The letter makes it clear that deputy ministers are accountable for what's happening in their departments and that they should be "engaged and seized" by the problems with Phoenix, said one senior public servant.

It also signals that departments must embrace the "HR-to-pay" approach at the heart of the mandate of the integrated leadership team, which was appointed last June to coordinate the Phoenix fix by bringing together pay and human resources functions in government. Those functions operated separately when Phoenix went live.

The team includes senior management from Treasury Board and Public Services Procurement Canada and is headed by PSPC's associate deputy minister Les Linklater. It is examining all pay and human resources practices and processes to streamline them, reduce errors and delays and improve efficiency.

The HR-to-pay approach recognizes that Phoenix isn't just a pay problem and won't be fixed by simply hiring more people to process pay. Many of the problems dogging Phoenix are rooted in human resource practices and processes. Human resource transactions trigger payments, so they are central to paying people properly.

The checklist Wernick attached to his letter puts the focus on this approach and suggests each department establish a "HR to pay team for government-wide efforts." These teams should include key employees who work in pay, human resources, IT, finance, communications and analytics, he writes.

The checklist includes other steps departments could be taking: sending employees on mandatory training; keeping better track of people on leave; having managers deal promptly with authorizations needed to process pay; and canvassing staff to identify unpaid employees facing financial "hardship" to ensure they receive priority or emergency pay.

It also stresses the importance of employees ensuring they have correct contact information in the pay and human resources systems to avoid any errors or delays in issuing tax slips at the end of the year.

The deputy ministers' responses will not only provide a picture of what's being done across government but will gather ideas and practices that other departments could use.

The responses will be turned over to the integrated team, which reports to the working group of cabinet ministers headed by Public Safety Minister Ralph Goodale.

Phoenix is even more top-of-mind these days as bureaucrats and politicians brace themselves for Auditor-General Michael Ferguson's much-anticipated report on the system later this month. The report is expected to be a major blow for the Liberal government because it examines the pay problems that have gripped the federal workplace since Phoenix went live 20 months ago and what's been done to address them.

Phoenix has become a political hot potato, one that the Liberals and Conservatives have tried to blame on each other.

The massive two-part $300 million pay transformation project was launched by the Conservatives, but the final decision to implement Phoenix in 2016 — the second phase of the project — was made by the Liberals.

Expanded parental leave, new caregiver benefit, to come into effect Dec. 3
Soon-to-be-mothers will be able to claim maternity benefits up to 12 weeks before baby is due
CBC News
The Canadian Press
November 9, 2017

New mothers and fathers planning to begin their parental leave on or after Dec. 3 will be able to spread their federal benefits over a longer period of time.

The federal government's long-promised changes to parental leave rules will go into effect early next month, says Families Minister Jean-Yves Duclos, allowing eligible new parents to take up to 18 months of employment insurance benefits after the birth of a child.

On that same date, new family caregiver benefits will also kick in — one a 15-week leave to care for a critically ill or injured adult, the other a 35-week benefit to care for a critically ill or injured child.

Eligible soon-to-be-mothers will also be able to claim maternity benefits up to 12 weeks before the baby is due.

However, the government won't increase the actual value of employment insurance benefits for anyone who takes the extended parental leave: instead, the Liberals are sticking with their 2015 election promise to spread 12 months' worth of benefits over 18 months.

The change in rules will automatically give more workers in federally regulated workplaces like banks, transport companies, the public service and telecoms the option of taking time off, and are likely to spur calls for provincial changes to allow the other 92 per cent of Canadian workers access to similar leave.

So far, Ontario has publicly said it will amend its legislation to match the new federal rules.

Affected workplaces will have to decide how — or even if — to amend existing leave policies and collective agreements that spell out issues like salary top-ups.

As is, the federal parental leave program offers 15 weeks of EI maternity benefits for new mothers and allows parents to split an additional 35 weeks.

Under the changes first outlined in this year's budget, when new parents apply for employment insurance benefits, they will be able to decide whether to take additional weeks off, which can be split between parents.

Anyone who is already receiving 35 weeks of parental leave before the new measures officially come into effect won't be able to switch and take the extra time.

The eligibility for the cash won't change: A new parent will still need 600 hours of work in the previous 12 months to access benefits, while self-employed workers who have opted in to the EI system will need to have earned at least $6,888 in the last year.

The Liberals budgeted $886 million over the next five years for the new measures, and $204.8 million a year after that.

None of the parental leave changes will impact residents of Quebec, where the province runs its own parental leave program.

Former election candidate accuses federal body of screw-up costing him thousands in pay
A baseless accusation in a document passed around by bureaucrats almost cost him his career, Andrew Caddell alleges, and they did everything possible to 'cover their butts'
National Post
Marie-Danielle Smith
November 10th 2017

A former federal election candidate says he almost lost his job — not to mention thousands of dollars in pay — because of a “total fabrication” by a government agency.

Like a juicy piece of gossip infecting a classroom, a baseless accusation in a document passed around by bureaucrats almost cost him his career, Andrew Caddell alleges — and like kids trying to avoid detention, they did everything possible, he says, to “cover their butts.”

Now retired, the former public servant is sharing details from a whopping 850 pages worth of documents he obtained under access-to-information law.

“They can’t hurt me anymore,” he told the Post.

Caddell was denied pay after exercising his right to stand for election because the Public Service Commission questioned his political impartiality — concerns they didn’t substantiate with any evidence. After a rigmarole that kept him off the payroll for six weeks after his unsuccessful campaign, Caddell tried to plead his case and recuperate his losses. But the commission, which he alluded to as a “cult,” admitted no wrongdoing. With no oversight in place short of the federal court, Caddell’s claim was unsuccessful.

“It was so frustrating,” he said. “Slapped down, told you can’t do certain things, having money taken from you. And there’s no recourse.”

When the Liberals sought Caddell for candidacy in Montmagny-L’Islet-Kamouraska-Rivière-du-loup in 2011, he knew it was a long shot. Ultimately, the Conservative incumbent was ousted by a margin of just nine votes — part of the New Democrats’ “orange wave” that year.

As a trade commissioner embedded with the Canadian forestry industry, Caddell was required to submit an application to the Public Service Commission and abide by its conditions for his candidacy. Usually, candidates are required to take a month of leave without pay during an election campaign, and they can resume their role after an unsuccessful run as long as their responsibilities don’t leave room for partisan influence.

Caddell’s supervisor had no qualms about that, documents show. “Yes, I believe he will be able to provide the same high degree of professionalism if he returns,” she reported in a questionnaire.

But a “values and ethics” division within the foreign affairs department worried, in a one-liner that Caddell rues to this day, that “representatives of the forestry industry in Quebec may perceive a lack of political impartiality should he return to his current duties after the electoral campaign.”

This line, signed off on by the department’s deputy minister, wasn’t run by Caddell, his supervisor, or, apparently, anyone in the forestry industry. But it caused the commission to recommend a one-year leave without pay. With only a couple of days left before the start of the election campaign, Caddell agreed to this condition with the caveat that the commission could revisit it.

That didn’t prove to be a simple process.

There are dozens of pages of exchanges, including between the commission and its lawyers. A week after the election, Caddell still wasn’t back at work. He provided a letter from the president of FPInnovations, where he was embedded. “No one in your department contacted anyone in our organization, or anyone in the Quebec forest industry for that matter, to support this contention,” the letter said. “I can assure you that it is NOT an issue for our organization or our industry. Therefore, I would like to emphasize that this contention is without foundation.”

That wasn’t enough to satisfy the commission, and his election campaign only made matters worse. According to documents, part of the reason the commission wasn’t convinced of Caddell’s impartiality was due to “the increased publicity, visibility and recognition associated with having been a political candidate in a federal election.”

The commission had monitored Caddell's appearances in the media, including a CBC radio interview during which he opined there might be "kind of a chill" on public servants who wanted to engage politically. One email concerned his Twitter bio, which hadn't been updated post-election to remove mention of his candidacy.

Eventually a solution was found. Departmental officials scrambled to produce an altered set of work conditions that had Caddell avoiding public speaking and funding decisions — which emails show he'd already agreed to before the campaign began — and conducting his duties at the headquarters, rather than in the field. The department informed the commission this put the risk of political impartiality "very low and at an acceptable level," and the commission concurred.

That all took six weeks on top of the month he took off during his campaign, however, and Caddell was never reimbursed for his lost pay and benefits. As a matter of fact, Caddell ended up having to reimburse the government because they had overpaid him using the troubled Phoenix pay system.

After deliberating, the department rejected his grievance on the basis it couldn't overturn a commission decision. The commission told Caddell it was satisfied with its own process and felt the matter had been handled promptly.

"Everybody's trying to cover their butts, rather than just admitting that there was a mistake made," he said.

Now Caddell is advocating for reform. The commission's decisions on such matters should be subject to oversight, such as the Federal Public Sector Labour Relations and Employment Board, he said, because, as it stands, hiring a lawyer and going to federal court seems to be the only option for recourse. Caddell said employees, or their representatives, should also be present when decisions about them are being made — and those judgments shouldn't be based on speculation.

There are other issues the commission could tackle instead of using up so many resources on monitoring candidates, he added. Nearly a year after the election, the commission told the department it should keep Caddell from giving what he described as a benign speech to guests at a Rotary Club. Documents show it had even sought legal advice for this purpose.

"I think there's kind of a cult there that people are really obsessed with that whole issue of partisanship," he said. "The PSC has lots of more serious things to be dealing with than to worry, or to be obsessed about, whether a handful of candidates want to make a speech, to a private group of students, one day before their probation is over."

Canadian Institute for the Administration of Justice names new president
Lawyer's Daily
Carolyn Gruske
November 9, 2017

For the first time, a lawyer from Quebec has been named as president of the Canadian Institute for the Administration of Justice (CIAJ).

Patrick A. Molinari, a legal counsel in the health law group at Lavery Lawyers, was elected to serve for a two-year term.

He is a professor emeritus at the Université de Montréal and a former director of the school's Centre de recherche en droit public (Public Law Research Centre). He also served as dean of the faculty of law and vice-principal (administration and finance). Molinari is the founding co-president of the Société de médecine et de droit du Québec. He has also served as an expert adviser to the Law Reform Commission of Canada and to the World Bank.

Molinari has been on the CIAJ board of directors since 2011 and has previously held the role of vice-president.

"A critical first step in improving the administration of justice is education. Educating stakeholders results in a more efficient justice system and ultimately, improves access," said Molinari.

"CIAJ provides a unique type of education that unites all members of the justice system, including judges, lawyers, administrative tribunal members, legislative drafters, police officers, law students and court users."

The CIAJ is an umbrella organization which brings together, and encourages exchanges among, individuals and groups concerned with administration of justice issues.

University of Ottawa professor appointed to Federal Court
Sébastien Grammond taught civil law at university for 13 years
CBC News
November 9, 2017

A University of Ottawa professor has been named Canada's newest Federal Court judge.

The federal justice minister announced Thursday that Sébastien Grammond will replace Justice S.B. Noël, who decided to become a supernumerary judge in September.

Grammond was a civil law professor at the University of Ottawa up until his appointment. He taught there for 13 years and also served as dean of the university's law faculty.

He is well-known for his work with Indigenous communities, and for his child welfare legislation reforms.

The Federal Court hears matters of national importance that have not ascended to the Supreme Court of Canada.

MPs move to keep religious protections in Criminal Code clean-up efforts
National Post
Joanna Smith
The Canadian Press
November 9th 2017

Disrupting a religious service is likely to remain a crime, since MPs on the House of Commons justice committee have agreed to change a controversial part of proposed legislation aimed at modernizing the Criminal Code.

This spring, the Liberal government moved to rid the Criminal Code of sections that are redundant or obsolete, including those which involve challenging someone to a duel or fraudulently pretending to practice witchcraft.

One of the changes proposed in Bill C-51 would have removed Section 176, which makes it a crime to use threat or force to obstruct a clergyman or minister from celebrating a worship service or carrying out any other duty related to his job.

That came under heavy criticism from a number of major religious groups, including the Canadian Conference of Catholic Bishops, the Evangelical Fellowship of Canada and B'nai Brith Canada, who urged MPs on the committee to keep that section in the Code.

The MPs also voted Wednesday to update the language so that it is gender neutral and refers to all religious and spiritual officiants, instead of just Christian clergy.

Liberal MP Anthony Housefather, who chairs the committee, said even though the section is rarely used, it is not without merit.

"It allowed many religious groups to feel recognized within the Criminal Code, to feel that their services had a special recognition and protection and we didn't see the value in removing it," Housefather said Thursday.

"I do think in Canada today, with the number of incidents that happen at churches, synagogues and mosques, with whatever is going on right now across the country, the last thing I want any religious group to feel is they have less protection than they did before," he said.

Faisal Mirza, the chair of the Canadian Muslim Lawyers Association, made that point when he appeared before the committee.

“We cannot be blind that the current climate of increased incidents of hate, specifically at places of worship, supports that religious leaders may be in need of more, not less, focused protection,” Mirza said last month.

Mirza also said that while other areas of criminal law can address the deadly shooting a Quebec City mosque in January, it is important to remember that the attack happened months after someone left a pig’s head at the door of the same mosque.

Rob Nicholson, the Conservative justice critic, said he was thinking about Section 176 when watching news of Sunday’s massacre at a church in Texas.

“It certainly is not the time to be doing it,” Nicholson said of removing religious protections.

Nicholson said he received about 900 emails on the issue last weekend and believes that played a role in bringing the Liberals around.

David Taylor, a spokesman for Justice Minister Jody Wilson-Raybould, said the government will carefully consider the amendments.

La Cour suprême déboute le Barreau du Québec
Droit Inc
Jean-François Parent
10 novembre 2017

La Cour suprême déboute le Barreau du Québec dans sa tentative d'élargir l'étendue des actes réservés aux avocats.

Au cœur du problème, l'apparente contradiction entre deux articles de loi, mise en lumière quand un ministre a fait rédiger sa plaidoirie par un fonctionnaire non-avocat.

L’article 128 de la Loi sur le Barreau précise que certaines activités y compris la préparation et la rédaction des requêtes sont du « ressort exclusif » des avocats.

Par contre, l’article 102 de la Loi sur la justice administrative accorde au ministre le droit de « se faire représenter par une personne de son choix devant la section des affaires sociales » du Tribunal administratif du Québec.

Dans un jugement subordonnant l'article 102 de la LJA à l'article 128 de la LB, la Cour d'appel du Québec donnait raison au ministère de l'Emploi et de la sécurité sociale en 2016, qui insistait sur son droit de se faire représenter par un non-avocat pour rédiger des procédures.

C'est cette décision qui vient d'être maintenue par la Cour suprême, qui a débouté le Barreau.

Ce dernier, par l'entremise de Mes Michel Paradis, Sylvie Champagne et Gaston Gauthier, plaidait que seuls des avocats peuvent rédiger des requêtes. Une prétention rejetée dans une décision à 8 contre 1 motivée par le juge par Russell Brown. Me Alexandre Ouellet représentait la Procureure générale du Québec.

Tout commence à l'aide sociale

Le chassé-croisé juridique débute avec un couple de bénéficiaires qui conteste une décision du ministère de l'Emploi et de la Solidarité, en 2011.

Le couple fait appel, a gain de cause, et le Tribunal administratif du Québec rappelle le ministre à l'ordre. C'est pour contester cette décision que le ministre de l'Emploi et de la Solidarité sociale a recours à ses fonctionnaires pour rédiger sa requête.

Le couple de bénéficiaires conteste, alléguant que le ministre ne pouvait préparer sa cause sans faire appel à des avocats inscrits au tableau de l'Ordre.

Le TAQ rejette cette prétention, en 2012.

Le ministère conteste, et le tout se retrouve en Cour supérieure, qui annule tout et renvoie tout ce beau monde à la case départ : « Les procédures entreprises (du TAQ) le 4 mars et le 31 mai 2011 sont viciées ab initio » écrit la cour, qui donne gain de cause aux deux bénéficiaires de l'aide sociale.

Le ministère fait appel, et obtient cette fois une victoire en Cour d'appel, en mars 2016.

« D'une façon ou d'une autre, il est clair que le juge de la Cour supérieure a erré en substituant son interprétation à celle du TAQ (...). Peu importe la décision qu'on choisit d'appliquer, le résultat est le même : le représentant non-avocat du ministre a le pouvoir de préparer, rédiger et signer des actes de procédure destinés à servir devant la section des affaires sociales du TAQ », écrivent les juges Bich, Morin et Bouchard.

Prétention rejetée

Pour la Cour suprême, l'article 102 de la LJA, « bien qu'il autorise un non-avocat à représenter par écrit le ministre, ne contredit pas l'art. 128(1) de la Loi sur le Barreau, qui accorde exclusivement aux avocats en exercice et aux conseillers en loi le droit de préparer et de rédiger des documents destinés aux tribunaux ».

Une contradiction « écartée par l'art. 129b) (…) qui précise que l'art. 128 de cette loi ne limite ou ne restreint pas les droits spécifiquement définis et donnés à toute personne par toute loi d'ordre public ou privé » écrit le juge Brown.

L'ordre professionnel soutenait pour l'essentiel que la décision prise par le TAQ d'accepter qu'un non-avocat rédige une procédure n'était pas la bonne décision.

Une prétention rejetée par la Cour suprême, qui estime que l'article 102 confère au ministre de se faire représenter devant le TAQ « tant aux fins de préparation et de rédaction de requêtes et autres actes de procédure qu'aux fins de représentation de vive voix ».

La Cour suprême tient compte du « contexte plus large de la loi et l'intention du législateur, notamment sa volonté de promouvoir la déjudiciarisation de la justice administrative ».

À l'opposé de la conception plus rigoureuse du Barreau quant à ce qui constitue une représentation et pourquoi elle serait réservée aux avocats, le juge Brown écrit que son « rôle dans la réglementation de la représentation d'autrui devant les tribunaux est d'une importance évidente, mais cela ne signifie pas que toutes les questions qui effleurent ce domaine deviennent automatiquement des questions d'importance capitale pour le système juridique dans son ensemble ».

Du côté du Barreau du Québec, « on ne commentera pas. On prend connaissance du jugement et on en respecte la finalité », a dit la porte-parole Martine Meilleur.

Pay workers complain of pressure to close Phoenix cases
Compensation staff say they're pressured to quickly close pay files, even when problems aren't fully resolved
CBC News
Julie Ireton
November 10, 2017

In an attempt to deal with the growing backlog of flawed pay files, federal compensation advisors working to address issues related to the Phoenix pay system tell CBC News they're under intense pressure to quickly close complaints over incorrect pay, even when the problems haven't been fully resolved.

The union that represents the pay centre employees said pressures do exist.

"The working environment in our view is really toxic," said Randy Howard, the newly elected president of the Government Services Union.

The Phoenix payroll program was first introduced in February 2016 and is now being used by 100 federal departments and agencies, but since the system's roll-out, hundreds of thousands of government workers have been improperly paid, and these issues continue.

After the government acknowledged the technology didn't work as expected, more compensation advisors and satellite pay centres had to be established. But the backlog of cases has persisted.

"I will say, there is pressure to have files completed," Howard said. "But the reality of it is the system doesn't allow them to do the functions properly. They're trying to get through the files so quickly to get an employee paid that they might not have time to go through the file and look at it."

Earlier this week, Howard visited the workers his union represents at the Public Service Pay Centre in Miramichi, N.B., and talked to some of the 716 compensation employees now charged with trying to work with the system. Several compensation workers also reached out to CBC News about the pressures they face.

Quality more important than quantity, says deputy minister

This week compensation workers received a statement from Marc Lemieux, the assistant deputy minister of pay administration at Public Services and Procurement Canada, saying management was aware of allegations "that some employees feel under pressure to close cases that have not been processed."

"We trust that our employees processing pay are following proper procedures…. While the volume of cases processed is measured, the quality of the work done is even more important and a key factor for us in achieving client service excellence," Lemieux said in his statement.

Quality assurance is important to the department and extra training has been provided, Lemieux said.

But the union said training has been reduced significantly since Phoenix was first introduced and as more compensation workers are hired to help manage the growing tangle of cases.

"When the pay centre first opened they had an 18-month training period and then they reduced it to 12 months and now they've abolished it all together," said Howard. Until the entire pay system works properly, it's almost impossible to train workers and get the right outcomes, notes Howard.

"The whole problem is the whole pay system, even though they want to say it's functioning the way it's supposed to, we know that it's not," said Howard, who said workers expressed their frustration during his visit.

"They're at a point now that they don't want to even trust the employer. There's been numerous attempts at trying to change process to make it better, but every time they step it forward, it's two steps back."

Indigenous MP opposes fellow New Democrats on official bilingualism for Supreme Court
Saganash takes a narrow perspective in criticizing a bilingualism requirement for the Supreme Court. But the wider perspective is as valid: it's a dumb, discriminatory idea
National Post
Chris Selley
November 10, 2017

If the federal NDP caucus splits over the issue of official bilingualism, of all things, it might look inevitable in hindsight. For now, though, it's a rather novel objection born of a private member's bill that went down to defeat last month. NDP MP François Choquette's bill would have mandated that Supreme Court judges be fluently bilingual. (Former NDP MP Yvon Godin introduced a similar bill in 2011.) But NDP MP Roméo Saganash, a Cree who represents the riding of Abitibi-Baie-James-Nunavik-Eeyou, isn't on board.

"The ability to speak several languages, that's good, there's merit there, but with this bill we're only talking about English and French," he told Hélène Buzzetti of Le Devoir this week. "Why aren't we talking about Indigenous languages that have existed for 5,000, 7,000, 10,000 years? We are perpetuating colonialism with this bill."

"All Indigenous people in Canada speak one official language or the other, English or French," Saganash argued. "To exclude that part of the population from the possibility of sitting on the Supreme Court has always seemed unacceptable to me."

Saganash seems to be an army of one, at this point. Fourteen NDP MPs did not vote on Choquette's bill; but four of them voted on the previous and subsequent items on the agenda, the sharp-eyed Buzzetti noted. Her attempts to chase them down for an explanation — almost literally in some cases, by the sounds of it — were fruitless. And one can understand why. Keeping the NDP's fascinating coalition of champagne socialists, the working poor, prairie populists, trade unionists and Quebec nationalists happy is like a plate-spinning act. Rock-ribbed support for official bilingualism was NDP doctrine long before the 2005 Sherbrooke Declaration — the party's direct appeal to soft nationalist voters who had been parked with the Bloc Québécois. Bilingualism is bloody serious business in Quebec. If Saganash's opinions took hold, one of those plates could be in serious jeopardy.

But, well, what can you say? When you're right, you're right. Whether or not it offends you, there's not much that's more literally colonialist than privileging the languages of Wolfe and Montcalm over those of the people who were here before us — and privileging fluency in both even more. And there's no question whatsoever that the bilingualism requirement would make it

more difficult to achieve another long-stated goal of many progressives in Ottawa: to appoint the most outstanding Indigenous jurist on offer to the Supreme Court of Canada.

The 2011 National Household Survey found 17.9 per cent of Canadians who self-identified as non-Aboriginal claimed to speak both of Canada's official languages. Among those who self-identified as Aboriginal, the figure was 10.5 per cent: 17.3 per cent among those who self-identify as Métis, 7.0 per cent among First Nations, 6.2 per cent among Inuit. That's a significant narrowing of the potential talent pool along purely linguistic lines. And with a government committed to enacting all of the Truth and Reconciliation Commission's recommendations, several of which concern respect and increased resources for aboriginal languages, that could conceivably get very awkward.

But of course, the push for fluently bilingual Supreme Court judges is an equity nightmare across the board. Except in Quebec, bilingualism rates are markedly lower among immigrants: in the rest of Canada just six per cent of foreign-born Canadians reported French-English bilingualism, compared to 11 per cent among those born in Canada, again according to the 2011 NHS. Considerably fewer visible minority Canadians are bilingual, according to a 2007 report from the Office of the Commissioner of Official Languages. The 2016 Census found that 86 per cent of bilingual Canadians live in Quebec, Ontario and New Brunswick, versus just 64 per cent of the total population.

Saganash takes a narrow, specific perspective in criticizing a bilingualism requirement for the Supreme Court. But the wider, general perspective is just as valid: it's a dumb, discriminatory, pointless idea. There is no compelling evidence at all that a lack of French-English bilingualism has negatively impacted the court's decision-making. There is no earthly reason to impose such an artificial barrier to a more diverse and representative Supreme Court except as a symbolic gesture of a very specific kind of inclusivity. Saganash has usefully highlighted one of the many ways it could in fact hamper many other kinds of inclusivity. And if it makes life a bit difficult for his fellow MPs in Ottawa, all the better.

Membership in Quebec bar not a prerequisite for preparing proceedings in social welfare cases: SCC
Canadian Lawyer's Magazine
Elizabeth Raymer
November 10, 2017

The Supreme Court of Canada has ruled that Quebec's Minister of Employment and Social Solidarity had the right to employ a non-lawyer to prepare and sign written proceedings in social aid cases before a tribunal.

In Barreau du Québec v. Quebec (Attorney General), the majority of the Supreme Court dismissed the appeal of the Barreau du Québec against the Attorney General of Quebec. The appeal concerned two social welfare cases for which the Minister of Employment and Social

Solidarity had applied for a review of decisions rendered by the Administrative Tribunal of Québec, and presented motions for review that had been prepared, drawn up, signed and filed by someone who was not a member of the bar.

In both cases, the individuals in question brought a motion to dismiss on the ground that the minister's written proceedings had not been prepared and drawn up by a member of the Quebec bar, pursuant to an Act respecting the Barreau du Québec. Section 128 of the act provides that certain activities, including preparing and drawing up motions and other written proceedings, are the "exclusive prerogative" of advocates and solicitors, notably "plead[ing] or act[ing]" before courts or tribunals.

Quebec's Court of Appeal upheld the ATQ's decision. The minister was represented by the Attorney General of Quebec in the Supreme Court and the courts below.

In an 8-1 decision, the high court found that "the Act respecting the Barreau du Québec establishes certain exceptions to the monopoly on practice of advocates and gives the Minister the right 'to be represented to plead or act in his . . . name'," Justice Russell Brown wrote for the majority.

"The issue to be resolved in this case is not a question that is of central importance to the legal system as a whole and lies outside the ATQ's specialized area of expertise," Brown wrote. "[I]f it were, that would rebut the presumption in favour of the reasonableness standard. The Barreau's role in regulating the representation of others before a court or tribunal is of obvious importance, but this does not mean that every question touching on this subject is automatically one of central importance to the legal system as a whole.

"The right to represent others before a court or tribunal is generally reserved to lawyers," Brown wrote. However, he added, "Section 102 of the Act respecting administrative justice grants the Minister the right to 'be represented by the person of his . . . choice before the social affairs division' of the ATQ."

The ATQ dismissed the individual litigants' motions to dismiss, Justice Brown noted, "concluding that under s. 102 of the Act respecting administrative justice, a person who is not an advocate may do everything that is needed for the representation of the Minister, both oral and written, before that tribunal's social affairs division and that this power is not in conflict with the Act respecting the Barreau du Québec."

In dissenting, Justice Suzanne Côté wrote that "[B]ecause the question before the ATQ necessarily involved the interpretation of the Act respecting the Barreau du Québec, the presumption in favour of the reasonableness standard does not apply."

Rather, she wrote, "It is the correctness standard that must be applied." Regarding the scope of the minister's right to be represented before the ATQ by a person of their choice (and not

necessarily a member of the bar), Côté concluded that "only an advocate or a solicitor may prepare and draw up a notice, motion, proceeding or other similar document intended for use in a case before the ATQ's social affairs division. In my opinion, s. 102 of the Act respecting administrative justice does not grant the Minister the right to have recourse for that purpose to the services of a person who is neither an advocate nor a solicitor."

Michel Paradis of JoliCoeur Lacasse Avocats in Quebec was lead counsel for the Barreau du Québec before the Supreme Court. In an emailed statement, his firm said that the "Barreau du Québec acknowledges the judgment of the Supreme Court of Canada and respects its purpose."

Alexandre Ouellet of Lavoie Rousseau in Quebec acted for Justice-Québec and was not available for comment at press time.

No plans to create civilian body to investigate missing and murdered Indigenous women
'They all protect themselves,' lawyer Pamela Palmater said of law enforcement agencies.
Toronto Star
Martha Troian - Special to the Star
November 10, 2017

Public Safety Canada will review a recommendation from the national inquiry mandated to examine violence against Indigenous women and girls to create an independent civilian-led body that could reopen cases or review investigations.

On Nov. 1, the National Inquiry into Missing and Murdered Indigenous Women and Girls released its highly anticipated 119-page interim report. One of the 10 recommendations asked the federal government to work with provinces and territories to create a national police task force that could assess, reopen cases or review investigations.

The next day, Public Safety Canada said it would look at the inquiry's recommendations.

In an earlier statement a Public Safety Canada spokesperson said that processes are already in place to deal with the cases of missing and murdered women and girls.

Karine Martel said the MMIWG inquiry is mandated to refer families to provincial or territorial police authorities if and when a family might want information about an ongoing or past investigation, prosecution or inquest. Martel also noted that Justice Canada supplemented its victim fund to provide culturally responsive services to family members.

When asked about creating a national cold case unit that could prioritize cases, Martel said that unsolved cases are not considered "cold" and that homicide and missing persons units work closely with one another to solve unsolved cases. The RCMP has established special units across the country to review these files.

Public Safety Canada, a federal department that, according to its website, deals with issues including national security, border strategies and emergency management, oversees the RCMP.

In a statement, the RCMP said while policing is within its purview, “the creation/implementation/funding of a multi-jurisdictional, multi-agency, pan-Canadian task force is not the RCMP’s decision to make.”

But many families and advocates of missing women have pleaded for years that a lack of trust and confidence in officials, such as police and coroner’s or medical examiners, means an oversight civilian body is needed.

“There are historical pieces that have created this mistrust or created the divide,” said Jennifer Lord, director of Violence Prevention and Safety at the Native Women’s Association of Canada, referring to the high incarceration rate of Indigenous people, racial profiling or simply being followed around in stores by security guards.

Ideally, advocates and family members say, this civilian body would be independent of the police and could investigate or re-examine solved, unsolved, unresolved or missing persons cases for family members. It would be an investigative agency and an avenue for family members to take their loved one’s case to, other than a police authority.

“They all protect themselves,” says Pamela Palmater, a Mi’kmaw lawyer and associate professor in the Department of Politics and Public Administration at Ryerson University about Public Safety Canada’s statement about not creating an independent civilian body for family members.

“Public Safety protects police and national security agencies, and police unions protect the police officers. The last thing they want exposed is significant problems in police investigations and police conduct.”

In May 2014, the RCMP reported 1,181 of missing and murdered Indigenous women and girls and 225 unsolved cases of missing or murdered Indigenous females. Advocates and family members say the number of the missing and murdered is as high as 4,000.

Advocates point to Ontario’s Special Investigations Unit (SUI) as one example of an oversight body. The SIU investigates serious injury, death or allegations of sexual assault involving a police officer and has the power to lay charges against officers.

An independent civilian body for missing and murdered cases could have similar powers, advocates say, and it could also identify any faulty investigations by officials and hold them to account. In its interim report the inquiry recommended Indigenous people be part of any police oversight bodies.

Wilfred Catcheway of Portage la Prairie is the father to Jennifer, 18, from Skownan First Nation, Man., who went missing in 2008. The family claims the police did not take their daughter's disappearance seriously.

"Something has to be in place where the RCMP are doing their job, especially when a person goes missing, that is a crucial time," says Catcheway. "The way the system is in place now, it hasn't worked and that's why there's so many missing Aboriginal women."

This past summer, the inquiry said they will look into police conduct, refer information about cases to police authorities for police to re-examine and set up a forensic team to review police files.

Quand le travail rend malade
Radio-Canada
Michel Marsolais
10 Novembre 2017

Les Québécois sont les champions de l'absentéisme au pays, un phénomène qui coûterait des milliards de dollars aux entreprises. Mais les causes de ces absences seraient souvent davantage liées aux conditions de travail et à l'organisation de celui-ci plutôt qu'à des motifs personnels.

Avec presque 12 jours d'absence par année, les travailleurs québécois sont ceux qui s'absentent de leur emploi le plus souvent au pays (la moyenne canadienne est de 9,5). Mais ce n'est pas parce qu'ils ont davantage la grippe.

Angelo Soares, de l'UQAM, montre du doigt les milieux de travail. Selon lui, les exigences de performance et le contrôle excessif des employés sont des facteurs directement liés à la hausse de l'absentéisme.

« L'absentéisme au Québec est plus important, mais on ne doit pas voir ça comme un problème de personnes qui ne veulent pas travailler. C'est plutôt les conditions de travail, l'organisation du travail qui sont plus stressantes. Faire plus avec moins n'a aucun sens! Et ça amène les gens à s'absenter plus du travail », affirme Angelo Soares du Département d'organisation et de ressources humaines à l'École des sciences de la gestion de l'UQAM.

Le Conseil du patronat du Québec (CPQ) reconnaît que les motifs d'absence changent.

« Aujourd'hui, on est dans une économie plus tertiaire. On fait plus appel à des besoins intellectuels. C'est aussi là où on va voir des impacts au niveau de la santé mentale ou ces choses-là. Donc, le marché du travail se transforme et les impacts sur la main-d'oeuvre vont changer également », note Yves-Thomas Dorval, président directeur général du Conseil du patronat du Québec.

Les femmes plus touchées

Au Québec, les femmes s'absentent quatre jours de plus que les hommes (14 contre 10), mais selon Angelo Soares, ce n'est pas parce qu'elles assument une plus grande part des obligations familiales.

« Les femmes sont concentrées dans les ghettos traditionnellement féminins qui ont des conditions de travail plus difficiles, qui sont plus dures », ajoute Angelo Soares en évoquant le harcèlement sexuel et psychologique dont elles sont souvent victimes dans leur environnement professionnel.

Le Conseil du patronat du Québec assure que dans un marché où les travailleurs se font rares, les employeurs ont tout intérêt à élaborer des stratégies pour les conserver. Mais certaines choses ne changent pas.

« On est effectivement dans des enjeux de compétitivité et de productivité. Ça amène de la pression – ça l'a toujours fait, mais c'est plus exacerbé aujourd'hui. »

Des pays comme la France ou l'Allemagne ont des taux d'absentéisme beaucoup plus élevés que le Québec (environ 16 jours), mais ils affichent malgré tout une excellente productivité.

Unions celebrate Ontario government's support for paid domestic leave
Canadian Labour Congress
Market Wired
November 10, 2017

OTTAWA, ONTARIO--(Marketwired - Nov. 10, 2017) - The Canadian Labour Congress is celebrating news that Ontario labour legislation is being amended to provide victims of domestic and sexual violence five paid days off work.

"Unions have been advocating for this for years because we know that designated, paid domestic violence leave means it is easier for survivors to keep their jobs and escape violent and abusive relationships. And sometimes, that can mean the difference between life and death," said CLC President Hassan Yussuff.

"Dedicated paid leave means people experiencing violence can do what's needed to keep themselves, their children and family members safe, such as going to counselling, opening a new bank account, or meeting with lawyers or police - all things that have to happen during the standard workday," he added.

The Ontario legislation, part of Bill 148, makes the province the second in Canada to offer workers five days of paid domestic violence leave. Manitoba was the first to introduce legislation

giving all workers the right to five paid days, plus an additional ten unpaid and if necessary, up to 17 weeks of unpaid leave.

The federal government has yet to follow suit, proposing only unpaid leave in its budget implementation bill, C-63. Yussuff appeared before the finance committee on November 9 to urge the government to amend its proposal so that it offers paid domestic violence leave instead.

In 2014 the CLC partnered with the University of Western Ontario on a groundbreaking national study that found one in three workers has experienced domestic violence, and the violence often follows people to work, putting safety and jobs at risk.

Since then, unions across the country have been working to negotiate domestic violence supports into collective agreements, train union representatives to recognize and respond to domestic violence at work, and change legislation to support non-union workers who face domestic violence.

Minister: Fixing Phoenix pay system could cost $1B
Rachelle Aiello
CTV News
November 12, 2017

OTTAWA – The minister responsible for the problem-plagued Phoenix pay system can't guarantee that the tab to get things under control won't hit a billion dollars.

Public Services and Procurement Minister Carla Qualtrough says she can't promise that taxpayers won't be on the hook for a sky high bill to tame the payroll program that's been smouldering for years.

On CTV's Question Period, host Evan Solomon asked Qualtrough if the cost to fix the public service pay system could hit a billion dollars. Her response was: "I hope not."

"I can't guarantee that, no," she continued.

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 trying to fix it, including hiring more staff and setting up satellite pay centres in Gatineau, Montreal, Winnipeg, and Shawinigan, to try to chip away at the pile of remaining cases. It cost $309.5 million to implement the system.

The initial promise from the department was to have the backlog of problematic pay cases resolved by Oct. 31, 2016.

As of Oct. 18, there were 265,000 cases of employee pay issues left to be resolved, and the department says more than half of public servants who get paid through the system are still experiencing "some form of pay issue."

Qualtrough couldn't say when the system—created by IBM—will be paying public servants correctly and on time, though she anticipates the number of cases left to be triaged will go down in the New Year.

"I just feel horribly that we're not able to pay our public servants promptly and accurately every two weeks, and it keeps me awake at night to tell you the truth," the minister said.

'There was really no choice'

Though the previous government got the ball rolling on the new pay program, the Liberal government has taken considerable heat from the opposition and the public service unions for making the call to forge ahead with its rollout, even though an independent consulting group's report found that concerns about the success of rollout were ignored.

Qualtrough said, when it came time for her government to make the call on whether to give the go-ahead, "there was really no choice," but refuted that they knowingly implemented a system that would cause so much suffering for thousands of federal workers.

"The choice wasn't between the new system and an old system, the choice was between the new system and no system. We didn't have pay compensation advisers, they had all been fired. The Conservatives had de-commissioned the old system… at that point the choice had been made. We had to keep going. We had to pay people," she said.

Qualtrough said the system as it is does have "bugs" and highlighted the complexity of customizing the software for the intricacies of federal pay, but said they're working it out. "It's just taking too long," she said.

New Phoenix training program isn't mandatory
iPolitics
Kathryn May
November 13, 2017

Nearly 20 months into the federal pay crisis, the federal government is poised to roll out its first comprehensive training program for using the Phoenix pay system — which will be "essential" for all employees to take but not mandatory.

The decision infuriates the giant Public Service Alliance of Canada, which argues that if the long-overdue training program isn't mandatory public servants may not take it — or might be forced to complete it on their own time.

“This is the kind of training that should be provided before rolling out a new pay system, not two years after the fact,” said PSAC President Robyn Benson. “Now that it is finally available, the employer must act to ensure all employees are given the time and resources to do the training.”

The training program, led by Treasury Board, has been in the works for months and is widely seen as the kind of comprehensive training that should have been offered before Phoenix was launched in February 2016.

The government acknowledges poor training and lack of change management are key reasons why Phoenix failed. It’s now considered a critical step in fixing Phoenix, which already has cost $400 million. On the weekend, Public Services Minister Carla Qualtrough said she could not guarantee that costs won’t rise and hit the $1 billion mark.

The 13 online and in-person courses are aimed at reducing errors and delays so Phoenix can be finally stabilized and the backlog reduced.

The courses are the first to integrate the patchwork of human resources systems with Phoenix and have been tailored for all employees. Special courses are also being offered for managers, human resource personnel and compensation advisers.

Training is in the pilot stage now and will roll out in departments in coming weeks. Courses will be offered as modules on GCpedia, the government’s intranet. The more in-depth courses for compensation advisers and managers are being scheduled now to be completed in the coming months.

Treasury Board officials say the training is “essential” but not mandatory. The level of participation, however, will be closely tracked. They also insist employees will be given time to complete the courses during work hours and most will have completed training within a month of getting access to the courses.

“This training is considered to be essential and all employees will be strongly encouraged to complete the training relevant to them,” said Treasury Board spokesman Martin Potvin in an email. “TBS will track and report on the completion of training by departments.”

Deputy ministers are accountable for the day-to-management of their departments and matters such as training. The government sets policies, but is reluctant to give orders to deputy ministers and heads of agencies on matters for which they are responsible.

But PSAC argues that if fixing Phoenix is a top priority, then training should be mandatory. If not, managers and supervisors, who are already under the gun to deliver on their day-to-day operations, may not give employees time at work to complete the courses. Benson said the union wants all employees to take the training — but not on their own time.

“While this comes two years too late, we nevertheless encourage all of our members to take the training,” said Benson. “But the employer must ensure all employees timely access to the training and that they are given sufficient time to complete the training at work.”

Many say it’s highly unlikely that deputy ministers won’t make the new “HR to pay” training mandatory for their employees — especially when their boss, Privy Council Clerk Michael Wernick, recently sent them letters asking for a full accounting of what they have done and what they plan to do to stabilize Phoenix.

“I think any deputy minister who reports on training levels below 100 per cent will be asking for a meeting with the boss,” said one senior bureaucrat.

Wernick’s letter makes clear that Phoenix is a priority; deputy ministers are responsible for what’s being done in their departments, he says, and they should work as a “collective.”

He also offered a checklist of actions departments could take, including mandatory training so all employees and managers understand their roles and responsibilities in using Phoenix. He said departments will be asked, starting in December, to report the percentage of managers and employees who have taken the training.

Wernick’s letter also drives home that departments must embrace the “HR-to-pay” approach the training is designed around — linking the pay and human resource functions in departments. Most human resources transactions trigger payments so they are central to paying employees properly.

Phoenix is the system that IBM customized for the government out of Oracle’s off-the-shelf PeopleSoft software. All employees are now paid by Phoenix — but the way pay is processed is a mixed bag.

Phoenix brought massive changes to the way pay was done for decades and handled by compensation advisers who were highly-skilled and knowledgeable. For years, for example, people in acting assignments would file for the extra pay after they completed the assignment — which created all sorts of problems for Phoenix, which works in real time and can’t handle retroactive transactions.

The system also was designed for a standard human resource system, not the hodge-podge of systems used by departments, so problems cropped up immediately. The various HR systems feed Phoenix but departments never fully understood that the information in those systems — such as whether employees are on leave or worked overtime — are key to whether people receive the correct pay or not.

Most departments don’t use the pay centre in Miramichi, N.B. and have their own in-house compensation advisors.

With all these differences, the step-by-step courses are designed to teach employees what data, in what sequence, they must load into the pay or human resource systems in their specific departments so pay can be processed properly.

There are three online courses — taking about 2.5 hours — all employees should take. The system will then guide employees to the next courses they should take, such as those tailored to how the pay process works in their specific departments.

Employees will be notified by their departments when the courses are ready online. They can be taken at any time. There will be all specialized in-person training that builds on what was taught in the online courses.