Phoenix pay system should be scrapped completely, union tells Liberal government
Designed to streamline the government's pay system, Phoenix has been plagued with problems, paying employees too much, too little or even not at all.
Toronto Star
Terry Pedwell
The Canadian Press
November 14, 2017

OTTAWA—Give us a year, and we'll build a working replacement for the trouble-plagued Phoenix pay system, one of the country's biggest civil service unions told the Trudeau Liberals on Tuesday.

Tired of months of repeated promises that the system's shortcomings would be fixed soon, the Professional Institute of the Public Service of Canada (PIPSC) wants the government to scrap the system and start over almost from scratch — a call the government isn't dismissing out of hand.

"After nearly two years of problems with IBM's Phoenix pay system, our members have lost confidence in the promise of fixing Phoenix," union president Debi Daviau said Tuesday.

"Despite all efforts to fix Phoenix, the number of open cases of pay problems has grown to 330,000 as of October 2017 — with no end in sight," Daviau said.

"Enough is enough."

Her union represents about 50,000 federal employees.

Daviau said the government's own IT professionals are more than capable of building a new system to end the pay crisis that has gripped federal employees since Phoenix was launched in April 2016.

It should take roughly a year to build and properly test a new system, based on Oracle's PeopleSoft human resources management software, Daviau told a news conference, although she could not provide a cost estimate for the project.

"We already have the expertise and the people within the federal public service capable of designing and building it," she said. "They just need the opportunity to do so."

The call was supported by the opposition New Democrats and the Public Service Alliance of Canada, by far the largest civil service union with 180,000 government employees on its rolls.

"We welcome any system that would pay our members," PSAC national president Robyn Benson said in a statement, adding that her union was prepared to work with PIPSC to ensure a new system could be administered smoothly.

“If Phoenix has taught us anything, we know that any system will require thorough consultations and testing,” Benson said.

A spokesperson for the minister responsible for the pay system also appeared to leave the door open to a new approach, saying the government was prepared to work with the unions towards “finding a permanent solution” to the pay problems.

The department “continues to work with all partners including union leadership to find innovative and efficient solutions to the pay issues,” Public Services Minister Carla Qualtrough’s press secretary Ashley Michnowski said in an emailed statement.

Michnowski added that the government was awaiting the findings of an auditor general’s report on the Phoenix debacle, which is to be made public next week.

Over the weekend, Qualtrough said she could not guarantee the ultimate cost of fixing the problems wouldn’t reach $1 billion.

When asked whether the cost to fix the public service pay system could reach that amount, the minister told CTV’s Question Period “I hope not,” but offered no assurances about the ultimate price tag.

Shortly after Phoenix went online, thousands of civil servants began reporting that they had been underpaid, overpaid or not paid at all — and in many cases, the problems extended over months.

The automated system, designed to streamline government’s antiquated pay system, was supposed to save Ottawa about $70 million a year.

Instead, the government has earmarked hundreds of millions of dollars to fix it, even as a backlog of problem cases grows larger.

During the summer, the Treasury Board of Canada issued a notice that it was planning to contract Oracle Canada — the company that produced the software at the core of the Phoenix system — to assess the system in hopes of stabilizing it.

The $2 million sole-source contract was for a period of six months, ending March 31, 2018.

The Senate has already set out to find a replacement system to pay its own employees.

But Daviau said she expected any private-sector solution the Senate comes up with either won’t work or can’t be expanded to handle the often complicated pay files of more than 300,000 civil servants spread over dozens of departments and agencies.

Government of Canada Designates Senior Judges in the Territories as Chief Justices
Newswire
Changes to the Judges Act are about fairness and equal recognition of powers across jurisdictions.

OTTAWA, Nov. 14, 2017 /CNW/ - The Honourable Jody Wilson-Raybould, Minister of Justice and Attorney General of Canada, today highlighted long-awaited amendments to the Judges Act introduced as part of Bill C-63, the Budget Implementation Act, 2017, No. 2. These amendments would change the designation of "Senior Judge," currently in use in the three territories, to "Chief Justice." In addition, future chief justices of the territorial superior courts would be appointed through the same process as their provincial counterparts.

Senior judges of the territorial superior trial courts perform the same functions and receive the same compensation as their provincial counterparts, who are known as chief justices. The change recognizes the critical role that senior judges in the territorial superior trial courts play in delivering justice in the North.

Quote

"The impact of this amendment goes beyond titles – it is about fairness and a recognition that the powers and responsibilities are the same for all heads of courts, regardless of jurisdiction."

The Honourable Jody Wilson-Raybould, P.C., Q.C., M.P.
Minister of Justice and Attorney General of Canada

Quick Facts

The three senior judges fulfil the same duties to the court and to the public as their provincial chief justice counterparts. They also receive the same remuneration for this work. The proposed amendments will harmonize the title of chief justice across all provinces and territories and remove distinctions between otherwise equivalent positions.

The current senior judges will become the first chief justices of their respective courts.

There are no additional costs associated with the proposed changes.
SOURCE Department of Justice Canada

Union wants public service to build Phoenix replacement
iPolitics
Kathryn May
November 14, 2017

A major federal union is calling on the Liberal government to replace the troubled Phoenix pay system with a new one built by Canada's public servants rather than the private sector.

Debi Daviau, president of the Professional Institute of the Public Service of Canada (PIPSC), said after nearly two years of pay errors it's time for the federal government to get a pay system that works. She said the union has lost faith in the government's efforts to stabilize Phoenix, which already have cost $400 million — and the backlog of cases keeps growing.

"Despite all efforts to fix Phoenix, the number of open cases of pay problems has grown … with no end in sight. Enough is enough," Daviau told reporters Tuesday.

"The government needs to stop throwing good money after bad and start investing in a system that works."

Public Services Minister Carla Qualtrough recently admitted that she had no idea how much more taxpayers would have to spend to fix Phoenix — and she could not guarantee that the final price tag would not hit $1 billion.

Daviau proposes the government create a "parallel process" using its own technology workers to develop a new pay system while the government continues to pay employees with Phoenix.

She said the government should hire more staff to clear the backlog and help employees affected by Phoenix. But her long-term solution is a new pay system, built on the latest version of PeopleSoft and adapted for the government, with its 27 collective agreements and 80,000 pay rules.

The government chose PeopleSoft — off-the-shelf software — as the basis for Phoenix and hired technology giant IBM to adapt it for government payroll.

Daviau said she is confident public servants could use the same off-the-shelf software, reconfigure it on new hardware and have it up and running before the government's attempts to stabilize Phoenix bear fruit.

She said the proposal wouldn't mean the government would have to hire more IT workers. It already has a core of about 70 employees who are working on Phoenix and some could be redeployed to building a new pay system.

“We already have the expertise and the people within the federal public service capable of designing and building it. They just need the opportunity to do so,” Daviau said.

“The longer the current government delays investing in a properly designed pay system, the longer it will continue to waste tens of millions of public dollars on private contracts to patch a faulty system that was broken from the start, and the longer federal employees will be made to suffer for a bad system.”

Daviau’s call is in keeping with PIPSC’s push to reduce the amount of federal government work that is being outsourced or contracted out. She has long argued that much of the work being farmed out could be done in-house by existing employees if they were given the opportunity and training.

Daviau earlier appealed to the government to cut its ties with IBM once the company fixes the technical problems currently dogging the system — problems that have seen large numbers of federal public servants overpaid, underpaid or not paid at all — and after the current implementation contact expires in 2019.

The original business case for Phoenix said a new pay system eventually would set the stage for pay operations to be outsourced — a move that appealed to the previous Conservative government as it worked to shrink the public service, but wasn’t pursued because a new system would have to be built first.

The Liberal government, however, has so far been committed to fixing Phoenix rather than launching a second track to build another system.

There isn’t much confidence out there that a second system would succeed where Phoenix failed because of the complexities of the pay system. A separate system also would would divert attention, staff and resources from the work on Phoenix.

PIPSC’s call comes as Treasury Board gets ready to roll out a comprehensive “HR to pay” training plan for all employees.

All departments use Phoenix, but human resources systems and the way they connect to Phoenix vary among departments. The training is tailored to specific departments, as well as managers, human resources personnel and compensation advisers.

PIPSC’s proposal is also at odds with the government’s latest push to change the way it plans and buys IT, which relies more on the private sector.

The big change will be in efforts to simplify the procurement process, get away from big IT projects and tackle more projects in pieces, with the help of industry.

In fact, one of the big lessons from consulting firm Goss Gilroy's study of the pay project was that the government should work more with the private sector, especially in the planning stages of major IT projects.

The study didn't assess the public service's capacity to undertake a big project like Phoenix but concluded the "public service and the private sector together "possess the correct set of capabilities and capacities to successfully manage and implement such initiatives in the future."

Among the biggest problems for Phoenix are the layers of complex rules that have been negotiated in collective agreements with unions over the years.

Many argue the government and unions should have dramatically streamlined those rules before even starting work on Phoenix. Those rules would still be the biggest challenge in building a new system. Unions, however, are unwilling to make concessions that look like they are rolling back hard-won gains for their members.

Retiring Chief Justice Beverley McLachlin to get $270K per year
iPolitics
Amanda Connolly
November 15, 2017

The retiring chief justice of the Supreme Court of Canada will get just over $270,000 per year from the government for the rest of her life.

An order in council posted on October 26 sets out the annuity for Chief Justice Beverley McLachlin, who is set to retire on December 15 after a 36-year judicial career, 17 years of which were spent as the top court's lead judge.

The order "grants to the Right Honourable Beverley M. McLachlin an annuity of $270,266, commencing on December 15, 2017 and continuing during her life."

Under the Judges Act, judges contribute a percentage of their salaries towards their pensions and can retire with an annuity equal to two-thirds of their salary for one of five reasons.

In McLachlin's case, she completed at least 15 years in office and her age, combined with the number of years she served, is equal to or more than 80, which entitles her to the annuity.

Her salary as chief justice is listed as $405,400 per year, according to an index of judicial salaries set out by the Office of the Commissioner for Federal Judicial Affairs Canada.

The base salary for the other Supreme Court justices is $375,300.

McLachlin is Canada's longest-serving chief justice and was the first woman to lead the court.

She announced her retirement earlier this summer.

Over the course of her career, McLachlin has been credited with modernizing the court. She came under fire from Prime Minister Stephen Harper's officials for challenging his pick of Marc Nadon for a spot on the top court. Harper issued an unprecedented verbal attack on McLachlin, while prominent jurists around the world lined up to support the chief justice.

Harper also seethed privately about McLachlin, claiming the Supreme Court had turned into a "sociology seminar" under her leadership, according to an account in the 2015 book Stephen Harper by John Ibbitson.

Last month, McLachlin was criticized for comments she made while accepting a lifetime achievement award from the Criminal Lawyers' Association — which some argued came across as a warning to sexual assault victims to lower their expectations before heading to court.

"Complainants and witnesses need to understand what is required of them in a trial and what they can realistically expect from it," she said in the speech. "No one has a right to a particular verdict but only to a fair trial on the evidence."

Antonio Lamer was the last recipient of the chief justice's annuity granted when he retired from the top court in 1999. The details of that order are not available on the Governor in Council website, which does not detail the amount he received up until his death in 2007.

Security certificate detainee Mohamed Harkat seeks relaxation of monitoring
National Post
The Canadian Press
Jim Bronskill
November 16, 2017

OTTAWA — Federal authorities are balking at terror suspect Mohamed Harkat's desire for more leeway to use the internet and travel freely within Canada, saying he continues to pose a threat almost 15 years after being arrested.

Harkat is asking the Federal Court of Canada to approve his application for less strict monitoring of his everyday activities by the Canada Border Services Agency as he awaits the outcome of his protracted legal saga.

A two-day court hearing begins today to determine whether current restrictions on the Algerian refugee will be eased.

Harkat, 49, was taken into custody in Ottawa in December 2002 on suspicion of being an al-Qaida sleeper agent.

The federal government is trying to deport the former pizza-delivery man to Algeria using a national security certificate — a legal tool for removing non-citizens suspected of ties to extremism or espionage. Harkat denies any involvement with terrorism and fears torture if returned to his homeland.

Following his arrest, Harkat was locked up for more than three years. He was released in June 2006 under stringent conditions that have since been relaxed somewhat.

Harkat now lives at home with wife Sophie. He has access to a computer connected to the internet at his residence. He has to report in person to the border services agency every two weeks. And, though Harkat can travel within Canada, he must provide the border agency with five days' notice of his plans as well as a full itinerary when leaving the national capital. He also has to report to the border agency by phone once a day while travelling.

Harkat's submission to the court argues he "presents no threat to Canada or to any person" and that he has diligently complied with conditions for more than a decade. "A continuation of these conditions is not justified."

The couple says the restrictions now in place have caused great stress and hardship, even preventing them from having children.

Harkat wants permission to have a mobile phone, laptop computer and tablet with internet connectivity for use outside the home. He wishes to report to the border agency monthly by phone, through voice verification. And he wants restrictions on his travel lifted, with the exception that he remain in Canada.

Authorities are willing to allow Harkat to travel anywhere in Ontario or Quebec for up to 24 hours without notifying the border agency, and agree to him reporting in person once a month.

But they oppose the idea of Harkat having internet access outside the home, saying it would undermine their ability to keep tabs on his communications.

In a submission to the court, the ministers of public safety and immigration say an October 2016 assessment by the border services agency concluded that any risks are neutralized by Harkat's compliance with the existing terms and conditions.

"The fact that there is no new information linking Mr. Harkat to threat-related information activities does not warrant the variations he is requesting," the federal submission says. "The Ministers have not changed their position that Mr. Harkat remains a threat."

Federal Court Justice Simon Noel ruled in 2010 that there were grounds to believe Harkat is a security threat who maintained ties to Osama bin Laden's terror network after coming to Canada.

Civil libertarians have long criticized the security certificate process as fundamentally unjust because the detainee sees only a summary of the accusations, making it difficult to challenge them.

In a 2014 ruling, the Supreme Court of Canada said the security certificate regime does not violate the person's right to know and contest the allegations they face. However, the high court provided detailed guidance on applying the process to ensure it is fair.

The Supreme Court also concluded Harkat "benefited from a fair process" when Noel reviewed his case.

Harkat's file continues to grind along.

The border agency is in the process of seeking a "danger opinion" as a step toward deportation.

A delegate of the immigration minister will determine whether Harkat poses a danger to national security and, if so, whether the risk to Harkat of removing him outweighs the danger or severity of the acts he allegedly committed.

Many supporters, including Prime Minister Justin Trudeau's brother, Alexandre, have written to the government on Harkat's behalf over the years.

Member of so-called Toronto 18 terror group denied parole
CTV News
The Canadian Press
Paola Loriggio
November 15, 2017

A member of the so-called Toronto 18 terrorist group has been denied parole after a panel found he needed to undergo more counselling for deradicalization.

In a decision released Wednesday, the two-member Parole Board of Canada panel says Saad Khalid has "outstanding needs" that need to be addressed before he can be granted day or full parole. It noted, however, that deradicalization counselling sessions were not readily available for Khalid.

The panel says that while Khalid has shown genuine remorse for his actions, he remains at a medium-security classification and would present an undue risk to society if released now.

Khalid, 31, was among 18 people arrested in the summer of 2006 in what came to be known as the Toronto 18 terrorist group.

The group planned to build and detonate bombs in three locations to protest Canada's military involvement in Afghanistan. Eleven group members were ultimately convicted.

Khalid pleaded guilty and was initially sentenced to 14 years but that was later increased to 20 years after Crown prosecutors appealed, minus seven years credit for pre-sentence custody. The Supreme Court of Canada declined to hear his case and those of two other Toronto 18 members who sought to appeal their sentences.

Khalid had sought to be released on full parole to live with his parents, or on day parole, which would have seen him live in a halfway house and work as an office assistant and apprentice in a mechanic shop.

The parole board acknowledged Khalid showed more insight into his behaviour and motivations during his hearing last week, noting he recalled being angry with Canadian foreign policy in Afghanistan and growing more radicalized through listening to extremists.

"Your presentation at today's hearing was insightful and forthcoming. You did not shy away from your responsibility and you were very articulate. Your remorse was genuine," the panel wrote.

"At the same time, while your criminal history consists only of your index offence, the board views as an aggravating factor the seriousness of your crime and the catastrophic damages that your plot would have caused had your group been successful in moving ahead," it

'Justice shouldn't be decided based on where you live': Report finds unequal access to legal services
Rural residents, Indigenous people, newcomers among underserved: Canadian Centre for Policy Alternatives
CBC News Manitoba
November 15, 2017

Legal services need to be easier to navigate, more community-driven and more co-ordinated with each other in order to reach the many Manitobans who don't have equal access to justice, according to a new report.

"[Something] that I thought really jumped out to us in our research is this idea that justice shouldn't be decided based on where you live, who you are or how much money you have," said Allison Fenske, an attorney with the Public Interest Law Centre.

Fenske is the co-author of the report Justice Starts Here: A One-Stop Shop Approach for Achieving Greater Justice in Manitoba. It was created through a partnership between the law centre and the Canadian Centre for Policy Alternatives, in an effort to generate Manitoba-specific data about inequity in justice.

Fenske and her team used focus groups with the public, interviews with service providers and a literature review of legal aid in Canada to identify gaps in services.

They identified several groups of Manitobans who face barriers to accessing legal services or information. Those groups include people in rural or remote communities, Indigenous people, newcomers and female survivors of family violence, as well as people in precarious employment situations and those with physical or mental disabilities.

It also highlighted the possibility of a "one-stop shop" to make legal services accessible in one place — either in a single physical spot or in a unified online presence. Fenske said it's not clear exactly how that would work, but the idea was popular among participants.

"I think the biggest takeaway would be to recognize the number of different service providers and community organizations that are working really hard to try and meet the needs of vulnerable Manitobans," she said.

"And on top of that, the need to bring things back to a more community-led or community-driven approach, so actually figuring out what communities need and responding to that."

Community-driven fixes

The report found many people don't trust the legal system or have faith they'll get justice.

According to the report, factors like poverty, geographical location, language issues and cultural differences can put up barriers for people hoping to navigate the legal system, even if that doesn't require getting a lawyer.

"There's a lot of things at stake for a lot of people. It's not even necessarily about being able to actually solve particular legal problems. For a lot of people, it starts with even being able to recognize issues as having some sort of legal facet," Fenske said.

"Many people in that way don't even understand their … own legal rights and obligations, and so there can be a lot of consequences that flow from that in terms of vulnerabilities that end up compounded by having [legal] problems."

The report stresses the importance of incorporating Indigenous-led engagement on what justice and access to justice means from the perspective of Indigenous legal traditions, as per the Truth and Reconciliation Commission's calls to action.

Last month, five Manitoba judges announced plans to meet with First Nations leaders in northern Manitoba in keeping with the same calls to action.

The report also recommends fostering a sense of inclusiveness and understanding of other cultures, giving training on how to provide respectful legal services to people with mental health issues, and asking underserved communities how to make legal services accessible to them.

"There didn't appear to be a lot of reaching out directly to affected communities to ask them how their needs could best be met," Fenske said.

"Oftentimes ... approaches were a more kind of top-down, institutional approach. It's really important to have a community-driven or community-led approach."

Co-ordination needed: report

Manitoba is home to several groups providing legal information, advice or aid, Fenske said, but she would like to see the groups work together more to make sure everybody can access their services equally.

"I think it's really important that there be a co-ordinated approach, and there is going to have to be some leadership, whether that's from the government or whether that's from other service organizations, maybe the Law Society of Manitoba as regulating the legal profession," she said.

To fill the gaps, professionals need to know more about what services are offered, where they're available and who they're available to, her report concludes.

It recommends developing partnerships, improving communication and creating standards of training, knowledge and evaluation, plus an overall needs assessment of the Manitoba population as a whole.

"I'm hoping that this report serves as the start to a broader conversation. I don't think that the end is with the publication of this report. I actually think that this is just the beginning," Fenske said.

"Hopefully what it can do is provide a bit of a resource to those that, you know, are able to have these conversations and that are in sort of decision-making places around conversations around access to justice, [and] that this provides a resource to them to help in those decisions."

https://www.policyalternatives.ca/publications/reports/justice-starts-here

Public service pay a 'significant' chunk of new spending ask: Brison
The Treasury Board president is asking Parliament to approve $4.88-billion in additional spending as part of the latest round of supplementary estimates. Parliament has so far approved $262.4-billion in spending in 2017-18.
Hill Times
Samantha Wright Allen
November 15, 2017

More than one-third of the $4.88-billion Parliament will need to approve in its updated budget is connected to public-service employee costs, including new hires and paying up under collective agreements.

That amount is larger than normal, Treasury Board President Scott Brison told a House committee Nov. 9, because it accounts for the fact 90 per cent of employees are covered under new collective agreements and a significant amount of the money owed for years of back pay.

“There’s significant numbers. We went from no public servants having collective agreements to now 90 per cent in a very short period of time… in fact all of them had some level of retroactivity, some going back four years,” Mr. Brison (Kings-Hants, N.S.) told the Standing Committee on Government Operations and Estimates.

All 27 of the core federal public service collective agreements had expired prior to 2015—many in 2014—and so far 20 new agreements have been signed.

The government tabled the third set of spending estimates, known as supplementary estimates ‘B,’ on Nov. 7, with 71 departments or organizations asking Parliament to approve $4.88-billion in additional spending above the main estimates when they were tabled in February. Parliament has so far approved $262.4-billion in spending in 2017-18. The most recent supplementary estimates will put spending at $267.3-billion for the current fiscal year.

Departments can’t spend more money than is allocated in the estimates, so they will often ask for slightly more in spending authority as a cushion. Actual spending for the year is listed in the Public Accounts, which come out every fall.

Other major expenses outlined in the new document include the Department of National Defence, with an additional $1.06-billion, to cover 19 capital projects (like $161.6-million for the fixed-wing search and rescue aircraft replacement) and a pay increase to the Canadian Armed Forces. Four other departments are requesting more than $200-million: including Indigenous and Northern Affairs Canada with $442.7-million; Foreign Affairs ($434.7-million, of which $264.9-million will go to humanitarian assistance connected to natural disasters; and $265.7-million to Health Canada.

Supplementary estimates reveal more Phoenix pay problems

With 90 per cent of all employees now covered by new agreements, MPs at the Government Operations Committee heard the problematic Phoenix payroll system is not responding well to the uptick in retroactive payments that need to be processed.

The payments—about 40 per cent of which are retroactive to before the 2015 general election—wreaked havoc on an already problem-riddled pay system, the committee was told.

"It was, in some ways, a perfect storm of two converging bad situations and so the extra burden of the volume of transactions created by the negotiation of collective bargaining has added to the queue in the Phoenix system," said Mr. Brison, who argued the Liberals "inherited" those problems.

But a recent report found the Liberal government underestimated the complexity of the system, failing to properly test it before it was launched. Bad news was usually buried, the report noted, with concerns mostly ignored and a department culture that prevented people from speaking negatively about the project.

Two unions have filed complaints to the Labour Relations and Employment Board demanding the government pay damages after failing to meet agreed-upon deadlines.

"What risk are taxpayers at for this complaint if they prove successful and why did we not get those agreements honoured?" Conservative MP Kelly McCauley (Edmonton West, Alta.) asked Treasury Board staff.

Phoenix is beyond saving. Kill it.
iPolitics
Jamie Carroll
November 15, 2017

Phoenix is a turkey. And as we all know from WKRP in Cincinnati, a turkey will never fly.

This past weekend, newly-minted Minister of Public Services and Procurement Carla Qualtrough took to CTV's Question Period to admit that the government's fancy-schmancy payroll management system — which turned out to be about as advanced as a dot-matrix printer — isn't about to start working the way it's supposed to any time soon.

In fact, the minister confirmed that it may cost more than $1 billion to fix what was supposed to be a $300 million piece of software.

Let me say at the outset that I'm not an expert, but what I know about software development is that it's a lot like tailoring: everyone wants bespoke, but most folks can only afford to buy off the rack and get a tailor to make adjustments. More often than not, that's good enough.

But in the case of Phoenix, cost is hardly even the issue: for the last two years, huge numbers of public servants — the folks we hire to defend the country and ensure that CPP cheques are delivered on time — have been horribly abused by us, their employers.

Some have not been paid for months at a time. Others have been paid the wrong amounts. The basic premise on which the economy is based — that people work and are paid for their work —

has been turned on its head in the federal public service. And this has been going on for two years now.

Some of these public servants have been inconvenienced. Others have literally lost homes or cars because they've been unable to make the payments. And the next time you think about making a joke about 'lazy' public servants, remember that these same people are still showing up to work every day. In almost any other country, the Phoenix debacle would trigger widespread civil disobedience.

The whole idea behind the Phoenix turkey was to save money. By spending the $300 million, the Harper government figured it could cut scores of jobs. Before Phoenix, each federal department had its own payroll people in HR departments who took care of pay, benefits, vacation, etc. Rightly, the Tories judged that arrangement to be unnecessarily redundant. Surely those roles could be easily centralized along with the computer systems they used, right?

Wrong.

To be fair to all the participants, this was always going to be a far more complicated endeavour than it sounded at first hearing. With dozens of collective agreements, office locations across the country, differing departmental rules on vacation time, maternity leave and benefits, and almost a half a million employees, the new system would have to be very robust to allow for a range of rule sets and exceptions while still being widely accessible to a large user base.

Over the course of a couple years, an ADM at Public Works (the forerunner to Public Services) was tasked with hiring the appropriate outside expertise and designing a government-wide pay and benefits system. He ended up picking IBM.

A lot of the focus has been on the Phoenix system itself. But Phoenix was only half the problem; implementation also went off the rails, and there's no shortage of blame to go around.

From what one can tell, the implementation process has been a very unfunny comedy of errors. The ADM tasked with setting up this wingless turkey had the good sense to assemble a committee of all ADMs across government departments to meet on what became the Phoenix system on a regular basis. The basic premise was that each department would feed its particular idiosyncratic necessities into the centralized system. And this committee met to discuss issues, problems, deadlines — all the usual things a committee overseeing a large project would discuss.

But ultimately, the purpose of a committee of such senior officials is to sign off on their departments' readiness to move forward with the project. And so they did.

And with that sign-off, Phoenix proceeded. As planned, all those folks who had been slaving away in HR offices across government on their departments' respective payrolls were sacked, simultaneously.

That was error one: there was no significant overlap between the two systems. Once Phoenix was certified as ready to fly, the officials who used to do the work were sent packing (lots just moved to other gigs but their positions ceased to exist). So when problems began to mount, there was no way to hit the reset button — no old system to which the government could default.

The next error was in the response. The system was rolled out in phases, with the first departments coming online just after the current government took office. But even when problems started to appear with those early adopters, the minister's office (now Public Services rather than Public Works) didn't hit the brakes. The department continued rolling out the program to the next set of departments, and the set after that.

As the snowball rolled, it got bigger. The problems continued to mount, the payroll staff continued to be sacked. By the time it became undeniable that Phoenix had crashed and would not be rising from its ashes anytime soon, it was too late. The infection had spread to every department and the staff who ran the old system were all gone. There was no going back.

What role did the unions play in this scandal? None at all, really. Yes, PSAC filed a couple of grievances and made some critical statements, but they and their brothers and sisters seem to have done precious little else.

I've not always been a big fan of unions but in recent years I've changed my tune. The rise of Trumpism and the Harper years here in Canada all made it clear that private-sector unions still have a huge role to play. The gains they fought for and won benefit all of us. Without active unions, the winner-take-all ethos of modern capitalism would claw back those gains one at a time.

But what is the role of public-sector unions if it's not to defend and protect their members from catastrophic failures like Phoenix? Can anyone imagine unions in Europe, for example, taking the ongoing abuse of their members with anything like the sort of casual acquiescence we've seen here in Ottawa? Seems unlikely.

So, contrary to the old adage, in this instance failure has an awful lot of fathers — but it is still a bastard. Senior officials, cabinet ministers, unions and certainly the software vendor all share the blame for in the unfathomable failure that is Phoenix.

There comes a time in every disastrous renovation project where you have to ask yourself if you would be better off just tearing the whole house down and starting over. In business we call it the 'sunk cost' fallacy.

Surely to God Phoenix has now reached that moment.

Ottawa unlikely to send Quebec's face-covering law to top court
iPolitics
Daniel Leblanc
The Canadian Press
November 15, 2017

Ottawa is unlikely to pre-emptively refer Quebec's controversial face-covering law to the Supreme Court, where little evidence could be presented on Bill 62's actual impact on individual Muslim women, federal officials said.

Senior government sources said all options are still on the table, but that Ottawa is likelier to intervene in a coming court challenge than refer the matter to the Supreme Court for an immediate ruling on the law's constitutionality.

Prime Minister Justin Trudeau raised both of these options over the weekend as he continued to denounce the law that calls on Quebeckers to show their face when giving or receiving services in places such as libraries, university classrooms, daycares and on buses. Critics of the legislation have denounced the fact it affects Muslim women who cover their faces, with Mr. Trudeau stating governments shouldn't tell women what to wear.

The quickest way to have a formal ruling on the constitutionality of the law would be to refer the matter directly to the Supreme Court. Still, federal officials and experts said a Supreme Court reference would feature more of a theoretical debate among lawyers on the constitutionality of Bill 62 than an actual exploration of the law's effect on citizens.

"It's difficult to get to the bottom of a question by looking at it in theory. It's much better to look at the case in practical terms," said a senior federal official, who spoke on condition of anonymity to discuss the government's current thinking on the file.

Experts said it would be easier to gauge the impact of the law on individuals through the court challenge that is set to be heard by the Quebec Superior Court, where Muslim women will be appearing as witnesses.

"In a reference [to the Supreme Court], you don't have testimony or evidence on the actual impact on people and any limits to their rights and freedoms," retired Supreme Court justice Louis LeBel, who is now in private practice, said in an interview. "What you get to look at are legal and intellectual issues and the law's overall impact on society."

Supreme Court references have sporadically been used by the federal government over the years to gain clarity on issues such as a province's right to unilateral secession. The Harper government also relied on the process in 2013 to determine the constitutionality of possible reforms to the Senate.

Daniel Proulx, a professor of constitutional law at the University of Sherbrooke, said sending Quebec's face-covering law to the Supreme Court would be seen as an affront to the provincial government.

"A reference would be a frontal attack," he said. "In my view, the federal government will intervene in the court challenge. … It would be less confrontational."

There has been heated debate across Canada in recent weeks on the federal government's proper response to Bill 62, which aims to promote "religious neutrality" in Quebec. The NDP and a number of Liberal MPs have said Ottawa should let the debate play out at the provincial level, while others have argued for a strong federal intervention.

Earlier this month, the National Council of Canadian Muslims and Canadian Civil Liberties Association launched a court challenge in Quebec Superior Court, seeking to suspend the application of the section dealing with uncovering one's face until a full constitutional challenge is heard.

There will be a first hearing on the application for a stay on Friday. A federal observer will be in the room to monitor the process, but federal lawyers will not get involved in the groups' request to suspend the application of the law, sources said.

A federal official said Ottawa has yet to decide whether to intervene in the challenge, and if it does, at which stage of the process federal lawyers would make their case.

"If you decide to intervene, when do you intervene? Right now? At the appeal stage? Or do you wait until you are at the Supreme Court?" the official said. "There is no rule, no magic recipe."

On Saturday, Mr. Trudeau said his government is closely monitoring the application of the law adopted by the Quebec National Assembly last month.

"We're listening to the questions being asked about it and, internally, we're in the process of studying the different processes we could initiate or that we could join," he said.

Gruesome testimony, paltry pay: MPs to study jurors' mental health, financial needs
Justice committee plans to hear from past jury members and PTSD experts in first-of-its kind study
CBC News
Kathleen Harris
November 16, 2017

Jurors are required to hear horrific details of crime and view photos of bloody scenes and dead bodies, sometimes in trials that drag on for weeks, months or even years.

The job comes with little compensation and few supports, and MPs on the justice committee say that needs to change.

Next week, they will begin a groundbreaking study of the impact of jury duty on mental health and post-traumatic stress disorder (PTSD) to determine what specialized services, funding and new policies could be required.

Liberal MP and justice committee chair Anthony Housefather said it's an issue that has gone under the radar too long, and that there is limited understanding of the psychological effects and financial burden.

"The main thing we need to do is make sure people who serve on juries have the proper support that they need afterward; that it doesn't cost them money when they've served Canada and their communities," he told CBC News. "They shouldn't have to go broke to pay for psychiatrists or psychologists after they've served on a jury."

The committee will hear from experts in various fields to get a deeper understanding of the sources of stress at every stage of the juror experience, from being in the selection pool, to hearing complex testimony, to taking part in deliberations and reaching a verdict that may profoundly change people's lives.

Call for participants

To that end, the committee has taken the unusual step of making a public call for past jurors to participate in the hearings that will begin Monday.

Housefather said the committee could recommend ways for Justice Minister Jody Wilson-Raybould to work with her provincial and territorial partners to improve post-trial care for jurors, including greater awareness and recognizing symptoms of post-traumatic stress disorder (PTSD).

"I'm not sure we have recognized mental health issues in as profound a way before. It's possible that these issues existed before, but jurors didn't come forward and people didn't recognize them. So now I think for the first time, we're starting to recognize this might actually be an issue," he said.

Shocking trial underway in Toronto

The parliamentary study comes as a shocking first-degree murder trial unfolds in a Toronto courtroom, with the jury wrestling with a daily feed of graphic testimony and disturbing photos.

Dellen Millard, 32, is accused of killing 23-year-old Laura Babcock along with Mark Smich, 30.

Court has seen photos of a smiling Smich standing in front of the huge animal incinerator the Crown alleges was used to burn the Toronto woman's body in 2012, as well as photos of what is believed to be burning bones inside the machine.

Conservative justice critic Rob Nicholson said along with the trauma of gruesome evidence, jurors must also endure considerable disruption to their daily lives and families, and often suffer significant financial loss.

Compensation for jurors varies from province to province, and supports for child or elder care are limited. In Ontario, for example, jurors receive no payment for the first 10 days of the case, then $40 a day up to day 49. After the 50th day, the payment rises to $100 a day.

Employers are not legally required to pay a salary for employees summoned for jury duty, although some have policies to top up the provincial compensation.

Nicholson said that to date, there has been a "complete gap" in Canadian studies on the crucial role of jurors.

'Upstanding citizens'

"There is no training," he said. "These are just upstanding citizens who are prepared to serve their country and the criminal justice system, and it's time we look into just what the effect that can have on them and what, if anything, can be improved.

"I'm hoping people take a look and then say, OK, are we doing right by these people who are an essential part of our judicial system and is there more that we could be doing?"

Mark Farrant suffered from PTSD after serving as jury foreman in a brutal murder case.

In April 2014, 31-year-old Farshad Badakhshan was found guilty of second-degree murder in the death of his girlfriend, four years after he slit her throat and stabbed her repeatedly before setting their rooming house in Toronto's Annex area on fire.

As part of the trial, Farrant was required to hear graphic testimony and view autopsy and crime scene photos.

Life-altering process

He said it felt like an "abrupt stop" when the trial ended and it was time move on to his regular life.

"For some, depending on the images, it can be incredibly life-altering," he told CBC News. "And what a lot of people have found is that accessing help, if it's required and you need it after the trial has concluded, can be difficult."

NDP MP Alistair MacGregor, who proposed the committee study, said hearings could help close a big knowledge gap on the impacts of jury duty.

"It's very well documented what people in the military go through, what our first responders go through, but I don't think anyone has really made the link between jurors and what they witness in a trial," he said.

Minister issues apology to public servants over Phoenix
Government workers to receive letter from public services minister Thursday, Friday
CBC News
Julie Ireton
November 16, 2017

Federal public servants across the country will receive an apology from the minister of Public Services and Procurement Canada over the disastrous Phoenix pay system as the backlog of cases balloons to 520,000.

Carla Qualtrough says she wants government workers to know she cares, and is assuring them the Phoenix file is the most important one on her desk.

"I am truly sorry that more than half of the public servants continue to experience some form of pay issue. Too many of you have been waiting too long for your pay," states the minister in her letter, which is dated Nov. 16, and is to be distributed to all federal public servants Thursday and Friday.

The backlog of cases includes 265,000 files in which public servants have been underpaid, overpaid or not paid at all, which the minister simply describes as "unacceptable" in the letter. Thousands more unresolved cases include administrative changes, such as missing direct deposit information.

Qualtrough's letter comes five days before an expected report from the Office of the Auditor General that will delve into the Phoenix pay problems, as well as the history of the system's development.

In her letter, Qualtrough promises her department will provide "detailed, regular, reporting on the measures being taken to address pay problems and stabilize the pay system in order to keep you better informed."

The letter makes no mention of a call this week by one of the country's largest civil service union to build an in-house pay system and to scrap Phoenix altogether.

Backlog of outstanding transactions spikes to 520,000 at federal government's Phoenix pay centre, minister says

Public Services and Procurement Minister Carla Qualtrough says those transactions include non-financial requests from employees, but the number also includes 265,000 cases where government workers have been underpaid, overpaid, or not paid at all

Toronto Star
The Canadian Press
November 16, 2017

OTTAWA—The minister responsible for the problem-plagued Phoenix pay system says a backlog of outstanding transactions being dealt with by the federal pay centre has spiked to 520,000.

In a letter being circulated to federal civil servants over the next couple of days, Public Services and Procurement Minister Carla Qualtrough says those transactions include non-financial requests from employees, such as changing banking or home address information.

The number also includes 265,000 cases where government workers have been underpaid, overpaid, or not paid at all and have waited beyond what the government considers an acceptable period of time for their issues to be resolved.

In the letter, Qualtrough repeats what she and her predecessor in the portfolio have been saying for months — that the situation is "unacceptable."

And she emphasizes that anyone working in government who is experiencing financial hardship as a result of pay problems can request an emergency salary advance.

Qualtrough says dealing with the pay system backlog will continue to be a slow process as the government seeks a "permanent solution" to the Phoenix debacle.

But she makes no mention of a call this week by one of the country's biggest civil service unions to build an in-house pay system and to scrap the system altogether.

The Professional Institute of the Public Service of Canada said earlier this week that IT professionals already working within government can build and thoroughly test a new pay system within a year.

Le procès de Tony Accurso avorte!
Radio-Canada
17 novembre, 2017

Le procès de l'entrepreneur Tony Accurso a avorté, vendredi, au palais de justice de Laval.

Le procès pour fraude et corruption de l'entrepreneur Tony Accurso a avorté, vendredi, au palais de justice de Laval, après que 3 des 11 jurés eurent été contaminés par des informations qui n'avaient pas été présentées en preuve.

Le juge James Brunton de la Cour supérieure du Québec a pris cette décision après que la jury numéro 6 lui eut remis une note indiquant qu'elle avait parlé avec son oncle mardi dernier.

Ce dernier lui aurait indiqué qu'il avait déjà travaillé pour Marc Gendron et qu'il avait vu une valise avec de l'argent. Il aurait fait référence au système de collusion et de corruption à Laval.

Marc Gendron est un important témoin dans cette cause. Il est le seul qui a dit avoir reçu une somme de 200 000 $ de la part de Tony Accurso, dans un stationnement.

Le juge a donc estimé que le jury avait été contaminé, d'autant plus que la jury numéro 6 a admis en avoir parlé à deux autres jurés.

M. Accurso fait face à des accusations de fraude, corruption de fonctionnaires, abus de confiance et complot, dans le cadre d'un système de partage des contrats et de paiement de ristournes sur ces contrats au parti de l'ex-maire de Laval, Gilles Vaillancourt.

Son procès était sur le point de connaître son dénouement; l'avocat de l'entrepreneur avait livré sa plaidoirie jeudi, et le procureur de la Couronne devait faire de même vendredi.

Une fois cette étape terminée, le jury aurait reçu les directives du juge avant d'être séquestré.

L'avortement du procès ne signifie pas que Tony Accurso est blanchi des accusations déposées contre lui.

Le juge Brunton a d'ailleurs réservé la date du 7 janvier pour déterminer la suite des procédures dans son dossier.

La Couronne prise à partie par la Cour d’appel
Droit Inc
Jean-François Parent
17 novembre 2017

La Cour vient de rappeler le ministère public à l'ordre et annule toutes les procédures entreprises contre deux accusés.

Roch Guimont et sa mère, Constance Guimont, bénéficient d'un arrêt des procédures criminelles entamées contre eux pour la vente et l'exportation de lunettes à vision infrarouge.

Dans sa décision rendue le 8 novembre, le banc de trois juges de la Cour d'appel admoneste la poursuite, remettant en question les choix stratégiques de la couronne dans cette affaire.

Ainsi, « la Cour d'appel invite la poursuite à bien choisir le mode d'accusation », commente Me Félix-Antoine T. Doyon, procureur de Constance Guimont.

L'avocat qui pratique chez Labrecque Doyon à Québec vient de faire casser toutes les accusations de possession et d'exportation de matériel contrôlé en invoquant notamment les délais indus qui ont plombé la cause.

En effet, la couronne a décidé de procéder par mise en accusation pour ce crime, alors que tant la cour supérieure que la cour d'appel ont estimé que la voie sommaire aurait suffi pour ce type de crime.

Un homme fâché

C'est en 2007 que Roch Guimont et sa mère Constance commencent à exploiter une petite affaire de commerce électronique, vendant des viseurs infrarouges rachetés de stocks militaires américains et reconditionnés.

En 2008, Roch Guimont est sous enquête du Service de police de la Ville de Québec: dans une envolée lyrique lancée devant un compagnon de boisson, il menace de mort des gens qui lui auraient fait du mal.

De fausses accusations d'agression sexuelle portées contre lui, dont il a été blanchi, l'ont forcé à quitter l'école de police en 2001 et l'ont précipité à l'avant-scène comme le méchant de service pendant plusieurs années, à Québec.

Il fait une dépression et peine à s'en sortir. En 2008, il est donc aigri, et en a contre le système. En plus, il a un fusil de chasse.

Son compagnon de boisson craint l'explosion et informe le SPVQ. Le Groupe tactique du SPVQ débarque chez Roch Guimont un soir de décembre 2008 et saisit du matériel militaire. Dont des lunettes infrarouges.

Parallèlement, la police militaire enquête sur des vols de lunettes infrarouges à la base militaire de Valcartier. Constance Guimont, qui vend avec son fils des lunettes du même type sur internet, est donc ciblée par l'enquête, qui est reprise par la GRC.

Les gendarmes fédéraux apprennent que justement des lunettes, infrarouges ont été saisies chez le fils de Mme Guimont, Roch, et placent donc mère et fils sous surveillance.
Tout cela se conclut par une nouvelle perquisition dans les deux domiciles, en 2010.
Madame Guimont et son fils sont accusés de possession de matériel contrôlé—les lunettes infrarouges—et d'infraction à la loi sur l'exportation du matériel contrôlé.
Ce sont ces accusations qui viennent d'être cassées par la cour d'appel.

Mauvaise stratégie

Le hic, c'est que ce choix d'accusation a causé d'importants retards dans la cause.

Citant les délais et les préjudices subis par les accusés, la cour d'appel estime donc que « à l'instar du juge de première instance, il est permis de se questionner en l'espèce sur l'opportunité pour le ministère public d'avoir choisi de poursuivre par acte d'accusation plutôt que par voie sommaire ».

La couronne a bien tenté de justifier les délais, mais l'essentiel des arguments a été rejeté par la cour d'appel.

Cette dernière avait été saisie d'une requête en arrêt des procédures logée par la famille Guimont en 2015, soit l'année précédent l'arrêt Jordan. Ils invoquent l'alinéa 11b) de la Charte canadienne des droits et libertés qui garantit à tout inculpé le droit d'être jugé dans un délai raisonnable.

À l'époque, la cause traîne déjà depuis 40 mois. Mais la Cour supérieure estime que les délais sont justifiés et rejette la requête en arrêt des procédures.

L'après Jordan

La Cour d'appel reprend le procès à la lumière cette fois de l'arrêt Jordan, selon lequel un délai de plus de 30 mois en matière criminelle justifie une requête en arrêt des procédures.

La Cour fait sienne les propos du juge de première instance, qui à deux reprises, rappelle à l'avocat du ministère public « qu'on est pas dans une cause de meurtre », laissant entendre par là que l'affaire est loin d'être complexe à ses yeux ».

Et il y a bel et bien préjudice pour les accusés : « notamment en raison de la couverture médiatique extrêmement négative dont les appelants ont fait l'objet », d'autant que les longs délais ont ajouté au stress et aux inquiétudes des Guimont.

Ces derniers ont été poursuivis par voie de mise en accusation et qu'ils faisaient face à des peines d'emprisonnement pouvant aller jusqu'à 10 ans ou encore, qu'ils pouvaient être condamnés au paiement d'une amende de 2 millions de dollars.

Une infraction de moindre gravité

Reste à évaluer la gravité de l'infraction. Le matériel contrôlé « des mitrailleuses, mortiers, canons, bombes, torpilles, roquettes, chars d'assaut, navires de guerre, aéronefs de combat, agents biologiques, substances radioactives, etc ».

Dans ce contexte, des lunettes infrarouges peut sembler anodin. De moins, « conviendra que la réponse donnée par le représentant du ministère public, à la lumière du matériel de guerre en tout genre visé par le législateur, permet difficilement de conclure que la possession et l'exportation de lunettes de vision de nuit présentent un degré élevé de gravité », conclut la cour d'appel.

« Ce qu'il faut retenir de ce jugement, soutient Félix-Antoine T. Doyon, c'est qu'il faut qu'on se questionne sur l'utilisation des ressources judiciaires. Et ce, dans un contexte où les besoins sont criants, tout comme le manque de ressources. »

De jeunes plaideurs

Fait à noter, cette victoire en appel a été remportée par un jeune duo d'avocats; Me Doyon, Barreau 2012, a plaidé cette cause avec sa collègue Kamy Pelletier-Khamphinith, Barreau 2013.

Par ailleurs, c'est le second appel remporté par Me Doyon en autant de semaines. Le 1er novembre dernier, la Cour d'appel acquittait une autre cliente de Labrecque Doyon, Ghislaine Desbiens, poursuivie par l'Autorité des marchés financiers.

Cannabis legislation: zero tolerance for THC while driving, growing at home
CTV Montreal
November 16, 2017

Forget about growing your own cannabis at home in Quebec, or driving a car for hours after smoking a spliff.
When cannabis becomes legal in Canada later this year, the only place tokers will be allowed to acquire marijuana will be the SQC -- the Societé Quebecoise du Cannabis -- which will have both storefronts and internet sales.
In tabling legislation regulating cannabis in the province, Public Safety Minister Lucie Charlebois said the government-operated stores will be the only legal place to procure cannabis in the province, similar to the SAQ's monopoly on spirits and the distribution of all alcohol.

"This group will sell, but will not promote the use of cannabis," said Charlebois.

"The goal is not to increase the market. The goal is to move the black market to the legal market."
She said people will finally know exactly what they are buying, and the health impact it will have.

The SQC will be a subsidiary of the SAQ, and while it will sell pipes and other paraphernalia, other stores will be allowed to sell those items.

"We're not trying to boost the Quebec economy by selling cannabis. What we want is for cannabis sales to pay for cannabis expenses," said Charlebois.

Don't smoke and drive
She added that people will not be allowed to grow marijuana at home, and they would immediately have their licence suspended for 90 days if they use cannabis and drive.
"We will have a zero-tolerance policy," when it comes to using marijuana and driving, said Charlebois.

She said that police officers would be using saliva tests for cannabis as soon as they are approved by the federal and provincial governments, and that any detectable amount would result in an immediate arrest.

"It prohibits anyone from driving a vehicle ... if there is any detectable presence of cannabis or any other drug in their saliva,"said Charlebois although not all police officers may have saliva testing kits by next summer.

Transportation Minister Andre Fortin said while some people may be upset with the zero-tolerance policy for marijuana while the same does not apply for alcohol, there was a good reason for it.

"Cannabis is a product that will be newly legal on the market and it has a vastly different impact from one consumer to another," said Fortin.

"We want to be clear about our message: if you consume cannabis you cannot operate a vehicle." Drivers would not be allowed to refuse a saliva test, similar to how they cannot refuse a breathalyzer test for alcohol.

Police across Canada have been experimenting with roadside saliva tests for drug use, and have determined that the THC-based compounds in saliva can be detected up to six hours after smoking.

"When the technology is ready, when it's approved by Justice Canada, when it's approved by Public Security here, it'll be the first roadside test that is given to a driver. As soon as you fail

that test, meaning you have consumed in the past four to six hours, you will be given a 90-day suspension of your driver's licence," said Fortin.

No growing at home

The federal law regarding marijuana allows individuals to grow up to four plants at home, but gives the final say to the provinces.

Charlebois said the majority of Quebecers opposed letting people grow weed in their residence, and she is complying with the demands of the majority.

"The authorization to plant at home, we put none because that is what most people asked us," said Charlebois.

"We are more in prevention and more restrictive as a start for a new law, with a new bill, but I think we've responded to what the people have asked for."

Finance Minister Carlos Leitao said it would be very difficult for the government to enforce a limit if it allowed marijuana to be grown at home.

"It would constitute a nightmare of enforcement. One plant, two plants, how big, how small, which apartment which house, are you a renter, are you a homeowner? The enforcement of that in other provinces is going to be quite problematic," said Leitao.

Smoking marijuana will be prohibited everywhere smoking tobacco is forbidden, and just like tobacco, the legal age to use marijuana will be 18.

Impact will be evaluated in three years

While the governments of several provinces including Quebec feel they are being rushed by the federal government's July 1 date, ministers said the province would be ready to sell and control cannabis.

"Frankly we've tried the repressive model for the past 30 years and obviously it has not worked," said Leitao.

Parti Quebecois leader Jean-Francois Lisée said the federal government has plunged the province into a "rushed timeline" for legalizing marijuana.

Charlebois said provinces were doing their best to protect the population and not turn cannabis into a free-for-all.

"After all the consultations that we made with the experts but also with the municipalities, with the indigenous population, with young people, and we also consulted all the population and organizations in the field and what you see in the bill is what most of the people asked for, and what the experts told us to do as a first bill. It's going to evolve in time," said Charlebois.

She said the provincial government would evaluate the impact of cannabis on the province in three years and determine what changes could be made.

"I'm sure there are going to be changes after three years. I'm sure of that. It's a new product that we're making and nobody here knows how it's going to go because it's a new legal thing and organized crime is not telling us how they're doing their business," said Charlebois.

Scrap the Phoenix pay system
Ottawa Citizen
Letters
November 17, 2017

Union’s right: Cancel Phoenix right now
Re: Scrap disastrous Phoenix pay system, union head urges Trudeau government, Nov. 14.

Kudos to PIPSC union head Debi Daviau for saying out loud what most government employees are thinking: The Phoenix pay system should be scrapped now.

After almost two years of ongoing and worsening snafus, the system is demonstrably beyond repair. It is critical that the government exercise appropriate control over the massive drainage of taxpayer dollars and plug the hole once and for all. Everybody in Ottawa knows people who have been negatively affected by Phoenix. The financial burden and grief caused to tens of thousands of innocent people are often not just inconvenient, but unconscionable.

During the 1990s, the federal government spent a fortune over many years getting public servants to redraft their job descriptions to correspond to some new standard in order to implement a “Universal Classification System” (UCS). Those of us who were around remember the constant drumming of “next steps” and deadlines, only to find that after several frustrating years, all the worry was for nothing as the government suddenly dropped the project and pretended that it had never existed in the first place.

The pay system was the one thing the government used to previously handle that was beyond reproach. Now this historically sacrosanct function has been bungled. Don’t drag it on and on like the USC fiasco. Cancel it now and cut the losses.

Frank Leclair, Ottawa

Union warns feds: Fix Phoenix or face a wave of grievances
iPolitics
Kathryn May
November 17, 2017

The union representing professional workers in Canada's public service is threatening to swamp the federal government with grievances about pay problems until the Phoenix pay system is fixed.

Debi Daviau, president of the Professional Institute of the Public Service of Canada (PIPSC), encouraged members at the union's annual meeting today to flood their departments with grievances if more employees aren't hired to address the pay problems that have affected more than half of all federal public servants.

"Either hire more staff to assist our members or face more grievances," Daviau told delegates.

"Until a new system that works can actually be built by our members, our only hope for real solutions to these ongoing problems is through hiring more staff or the threat of more grievances."

PIPSC has called on the government to replace Phoenix with a new system built by public servants and not the private sector. Daviau argued the government's own IT workers could build a new system within a year. The government would have to keep Phoenix to continue paying employees until they could migrate to the new system.

PIPSC is the second largest federal union and represents more than 57,000 professionals working in government, including 13,000 IT workers who work on federal computer systems.

But hiring new employees who know about compensation has proven to be a major challenge for paymaster Public Services and Procurement Canada.

Some of the departments that were forced to lay off their compensation advisers and move their pay operations to the pay centre in Miramich, N.B. are quietly hiring their own compensation advisers. That's undermining PSPC's recruitment drive for additional pay staff for Miramichi and the seven other satellite pay offices set up to deal with the crisis, said PIPSC vice-president Steve Hindle.

"The departments are now competing with PSCP for compensation expertise while PSPC is trying to hire them for Miramichi," said Hindle.

The union already has filed five sweeping policy grievances but it's now calling for employees to inundate the government with individual grievances — which could be significant, given

Public Services Minister Carla Qualtrough's admission this week that the backlog of cases — including all financial, non-financial and queries — has hit 520,000.

The union also has created a Phoenix 'grievance kit' that will be available online. It includes a step-by-step guide to help employees file more grievances. The kits will go online Monday.

"They could get thousands of grievances and frankly, they deserve thousands … And we are prepared to do it," said Hindle.

The union also is poised to file two more sweeping policy grievances after Phoenix missed the deadline to implement new collective agreements for thousands of computer specialists and health services employees.

The issue of Phoenix dominated the debate in the opening session of the union's annual meeting in Gatineau today. Delegate after delegate stood up and complained about pay problems and spoke of how they don't trust Phoenix to pay people properly. PIPSC recently did a survey of its members and found 87 per cent said they don't think Phoenix can be fixed.

"No one I know likes Phoenix. I mean no one. Our members don't like it. We don't like it. Taxpayers don't like it … I'm sure the ministerial working group set up to fix it doesn't like it either. So why defend it?" said Daviau.

Qualtrough also recently admitted that she has no idea how much more taxpayers might have to spend to fix Phoenix; when pressed, she could not guarantee that the final price tag would not hit $1 billion.

Terror Suspect Mohamed Harkat Unlikely To Commit Violent Acts, Psychiatrist Says
Mohamed Harkat is asking for authorities to loosen his restrictions.
Huffington Post
November 17, 2017

A psychiatrist who has treated terror suspect Mohamed Harkat for the last eight years says the refugee from Algeria is unlikely to commit violent acts.

Dr. Colin Cameron told a Federal Court of Canada hearing Friday on Harkat's release conditions that his patient supports democracy and expresses revulsion about terrorist attacks.

"I'm trained to be very skeptical of people," Cameron told the court. "I've asked a lot of pointed questions to him."

Harkat, who is closely monitored by Canadian border agency officials, wants general permission to use the internet outside his family home and to travel freely within Canada.

Authorities are asking the court to deny the requests and make only minor modifications to existing conditions, saying Harkat continues to pose a threat almost 15 years after being arrested.

As the two-day hearing wrapped up Friday, Justice Sylvie Roussel said she planned to issue a decision soon on whether to relax current restrictions.

Denies involvement in terrorism

Harkat, 49, was taken into custody in Ottawa in December 2002 on suspicion of being an al-Qaida sleeper agent but he denies any involvement in terrorism.

The federal government is trying to deport the former pizza-delivery man using a national security certificate — a legal tool for removing non-citizens suspected of ties to extremism or espionage.

He fears he will be tortured if returned to his Algerian homeland, something Cameron says Harkat has frequent nightmares about.

Federal Court Justice Simon Noel ruled in 2010 that there were grounds to believe Harkat is a security threat who maintained ties to Osama bin Laden's terror network after coming to Canada.

Federal lawyer David Tyndale repeatedly cited Noel's findings as justification for vigilance concerning Harkat.

Lives under specific conditions

Harkat was released from custody in June 2006 under stringent conditions that have since been loosened to a degree.

He now lives at home with his wife, Sophie, and has access to a computer connected to the internet at their residence. He has to report in person to the Canada Border Services Agency every two weeks.

Although Harkat can travel within Canada, he must provide the border agency with five days' notice of his plans as well as a full itinerary when leaving the national capital region. He also has to report to the border agency by phone once a day while travelling.

Border services officers have followed the couple on trips to a cottage and to the funeral of Sophie's grandmother.

Wants level of supervision reassessed

Barb Jackman, Harkat's lawyer, objected to the level of scrutiny and said there was nothing to indicate Harkat poses an actual danger.

"I think there's got to be some evidence of a threat to the security of Canada," she said during Friday's hearing.

"Over time, we have to look at things again, in an objective way."

Roussel asked Tyndale if there was a way to avoid intrusive surveillance of family outings, or if there were no exceptions to the monitoring routine.

Tyndale suggested that tracking Harkat to the out-of-town funeral was not beyond the scope of the border agency's duties.

When someone is flagged by a security certificate as inadmissible to Canada, "some upsetting things are going to happen in your life," he added.

Officials willing to allow some concessions

Harkat wants permission to have a laptop computer and tablet with internet connectivity for use outside the home, including for work purposes. He wishes to report to the border agency monthly by phone, through voice verification. And he wants restrictions on his travel lifted, with the exception that he remain in Canada.

Authorities are willing to allow Harkat to travel anywhere in Ontario or Quebec for up to 24 hours without notifying the border agency, and agree to him reporting in person once a month.

But they oppose the idea of Harkat having general internet access outside the home, saying it would hinder their ability to keep tabs on his communications. They say requests to use communications technology for work purposes should be dealt with on a case-by-case basis.

Quebec judge hears first arguments against province's face-covering bill
The justice heard arguments on a challenge of the legislation, known as Bill 62, which forces people to remove face coverings when receiving or giving a public service.
Toronto Star
Stephanie Marin
The Canadian Press
November 17, 2017

MONTREAL—A Quebec Superior Court justice promised on Friday to deliver a ruling as soon as possible regarding a request for a temporary suspension of Quebec's controversial face-covering law.

Justice Babak Barin heard arguments on a challenge of the legislation, known as Bill 62, which forces people to remove face coverings when receiving or giving a public service.

Marie-Michelle Lacoste, a Quebec woman who wears the veil, as well as the National Council of Canadian Muslims and the Canadian Civil Liberties Association launched the challenge last week.

Lawyer Catherine McKenzie asked the court for a temporary suspension of the section of the law that forces public sector employees and private citizens to have their face uncovered when giving or receiving public services.

McKenzie argued the article in question violates the right to equality and freedom of religion, which are guaranteed by the Quebec and Canadian charters, and should be declared invalid.

She said the matter is urgent, given the significant impact on Muslim women who wear the veil on a daily basis.

McKenzie added the damages to those women would be irreparable.

The ban took effect in October and extends to attending class in Quebec's public educational institutions or boarding public transit in the province, although people can don the face coverings again once they have shown identification on the bus or subway.

Two women who wear the full veil said in sworn statements submitted to Barin they fear having to remove the veil to receive government services.

One said she only uses the subway to get around because she dreads how bus drivers will react. She also only attends classes at McGill University because the institution said it wouldn't force anyone to remove their veil.

Both say aggressive behaviour and insults have increased since the law took effect.

While the law calls for accommodation in certain cases, those provisions aren't in force like the rest of the legislation.

Eric Cantin, lawyer for the province, argued there is a presumption that when a government passes a law, it is in the public interest. He said the plaintiffs didn't provide enough evidence to show that wasn't the case.

Cantin said the arguments made in the statements of the two Muslim women were weak and represented only "concerns" of possible discrimination.

He said according to their declarations, the women are able to receive the same services as they did before the law went into effect.

Lacoste told reporters after the hearing that Cantin is wrong with regards to his claim that the plaintiffs didn't face actual discrimination.

"He doesn't know what he's talking about," she said. "I invite him to walk in my shoes for one week."

Canadians need an Indigenous Supreme Court Judge
Queen's Journal
Jasnit Pabla
November 17, 2017

On Dec. 15, Prime Minister Justin Trudeau has the opportunity to choose an Indigenous judge for the Supreme Court of Canada. Unfortunately, the likelihood of such a historic appointment remains uncertain because of a bilingual language requirement still in place.

The bilingual requirement for Supreme Court of Canada (SCC) judges to speak both French and English is a barrier for Indigenous jurists who are fluent in English and their Indigenous languages in order to serve their communities. This requirement should be overlooked in consideration of the crisis of overrepresentation of Indigenous people in Canadian prisons.

Although Indigenous people represent approximately three per cent of the population of Canada, they currently account for over a quarter of the country's incarcerated population.

According to an official press release from the Canadian Government, Prime Minister Justin Trudeau has asked his advisory committee to recommend three to five "jurists of the highest caliber, functionally bilingual, and representative of the diversity of our great country."

While the candidates presented to Trudeau has yet to be revealed, the possible presence of either Indigenous jurists Mary Ellen Turpel-Lafond of the Muskeg Cree Lake Nation or John Borrows, member of Chippewa of the Nawash First Nations, on this list is an exciting possibility expressed by major media outlets (link is external)across the country.

Both candidates work in Indigenous law and have personal experiences as Indigenous youth that would provide a long overdue understanding of the lives of Indigenous people in this country to the SCC and how colonial history has translated to overrepresentation in Canada's prisons.

We can't forget judges appointed to the SCC preside over the highest court in the country. Their decisions greatly impact courts of lower levels and often set a precedent that's difficult to override.

While neither jurist has expressed that they're bilingual, they could make an equally significant contribution to the SCC if chosen.

Both Borrow and Turpel-Lafond have demonstrated dedication to the cause of Indigenous justice in Canada and are exactly the candidates Trudeau should be looking for as pressures to meet Truth and Reconciliation recommendations continue.

In Canada's present, a jurist of the "highest caliber" who has experienced the effects of cultural genocide and has a deep connection with Indigenous history is invaluable to the Canadian legal system. If the SCC needs a more diverse bench, representation needs to extend to those who are put behind bars too.

Jasnit is one of The Journal's Assistant News Editors. She's a second-year Political Studies Major.

Judge blasts Ottawa police for failing to shut down illegal marijuana shops
Ottawa Citizen
Jacquie Miller
November 17, 2017

An Ottawa judge has blasted the police force for failing to shut down the city's illegal marijuana dispensaries.

Justice Norman Boxall said Friday he cannot understand why it's so difficult to close shops that operate openly on major streets.

"I just don't understand how the police cannot shut down a dispensary where the person has a big sign up, as I drive down Rideau Street, that says 'marijuana dispensary.' They brag about it on the internet that they are selling it.

"Yet I expect those same police officers to be able to arrest drug dealers who use encrypted BlackBerrys and coded language. How are they ever going to arrest most types of criminals if they can't (shut down the shops)?" he asked.

Boxall had before him a 21-year-old woman who was charged with drug trafficking when police raided the Rideau Street dispensary where she worked as a clerk. The former "budtender," who suffers from severe anxiety, was shaking and crying. "I just want to apologize and just say I've learned my lesson," said Selena Holder, who pleaded guilty. "I just want to continue with my life and save animals."

Boxall spoke to Holder gently, assuring her the court did not want to dash her dreams of taking a vet technician course. "You can't change what you did, but you do have control over your future." Her sentencing was put over until January.

Holder, in a previous interview with this newspaper, said she took the $12-an-hour job because she was struggling to pay her rent and believed the pot shop was operating in a legal “grey area.”

A spokesperson for Ottawa police said the force would not comment on Justice Boxall’s remarks.

Police have conducted multiple raids on dispensaries, but many just re-open. In previous interviews, police officials have said they have limited resources, and drug investigations take time — points that were made in court Friday by the Crown prosecutor.

Boxall was skeptical. “What does that show about the respect for the law when the police say, ‘I don’t have the resources to shut down organized criminals who can afford companies and so on …

“I’d like to hear a police officer come in front (of me) and explain to me why the Ottawa police doesn’t have the resources, out of their big squad, to arrest people (when) they say it’s a serious problem, people selling kilos of marijuana for profit?”

Boxall said if someone set up a shop selling cocaine, or illegal cigarettes or alcohol, it would be shut down immediately.

Boxall also questioned why police don’t go after landlords. “Why don’t they just look at the (name) on title and say, ‘Mr. Jones, you own this building. We are going to charge you with possession of the proceeds of crime and we’re going to seize your building. If you want to rent to people who are drug dealers, you are party to the offence.

“Why don’t we go after the big guys?”

While many of the arrests in Ottawa have been of budtenders in their 20s, the Public Prosecution Service of Canada says some owners and managers have also been charged.

Police have said it’s often difficult to figure out who runs the shops, which can be “fly by night.”

Ottawa police have sent letters to landlords warning them against allowing illegal activity on their premises, with limited success. There are now about 20 dispensaries in the city.

At one point in the court proceeding, Boxall asked the Crown prosecutor if it was illegal for customers to buy pot from the shops. Yes, said the prosecutor.

Why not station a police officer at the door of each shop to inform customers that purchasing weed there is illegal? Boxall suggested.

Closing the Gap: Indigenous Injustice Parallels in Australia and Canada
McGill International Review
Edited by Luca Loggia
November 18, 2017

It's strange that the country ranked second-best in the world for quality of life is, at the same time, becoming infamous for the justice gap between its non-Indigenous and Indigenous populations. Life for Australia's Indigenous peoples is far from the world's second-best; widespread gaps exist across domains like education, health, and security.

On 26 October, the Australian government rejected a referendum proposal, named the Uluru statement, to form a body for Indigenous voice in parliament. This is especially concerning since it not only silences any discussion towards successful reconciliation and policy changes, but also shows an alarming restriction on the country's public debate and participation.

Prime Minister Malcolm Turnbull and Indigenous Affairs Minister Nigel Scullion claimed to have refused looking into to proposal further under the premise that the Australian public would never have supported it, and that its success would be highly unlikely. There was also a fear that a constitutionalized Indigenous voice to advise lawmakers would create a "third chamber" in Parliament.

Contradictory to these claims, results from a new survey study have showed that over 60% of respondents are in favour of the changes. Prominent lawyers, referendum council members, and senators have also come forward with criticisms that explain how the view of the "third chamber" is misleading for the Australian public, and only exacerbates the stagnant situation for reforms. They emphasized the Prime Minister's deliberate misinformation of the public, and labelled political tension as a main cause for the government's inability to undergo a proper legal and political analysis before the decision was made.

This is not the first instance that the Australian government has taken a backward move in its Indigenous affairs. To date, it is the only Commonwealth state in which no treaty has been signed with its Indigenous population, prolonging the 200-year cycle of the federal government's intransigence with the Aboriginal and Torres Strait Islander peoples.

The government's primary strategy for tackling the disparity is Closing the Gap: a formal commitment monitored by the Council of Australian Governments (COAG) to achieve health equality by the year 2030. Targets include reducing child mortality, increasing literacy and access to education, increasing employment, and prolonging life expectancy.

Progress on this strategy has been meager. The lack of success in improving health, education, and employment has led to distressing rates of child incarceration and violence against women. Further, the UN has described it as unacceptable that, despite two years of economic growth, Australia still has not managed to mitigate the social disadvantages of the Indigenous peoples.

A fundamental factor enforcing the cycle of missed targets is the lack of coordination among all levels of government and Indigenous leaders. Without appropriate representation and power, it's difficult to make federal or municipal officials develop methods for carrying out the strategy in a community-driven way; the Indigenous communities are the ones facing the outcomes of any strategy. This is crucial for preserving both their identity and well-being.

Another important factor includes inadequacies in media attention – news outlets typically do not interest themselves with minute policy changes, especially relating to Indigenous affairs. While this is understandable as a selling tactic for any issue, there has been less emphasis on the context of native news overall and more on highlighting the pessimistic statistics. For the public to hold its decision-makers accountable for the near stagnant progress on Closing the Gap, there needs to be a strong scope of information available. Of course, the education system also plays a significant role in this.

These fallbacks are not unlike those of the Canadian Truth and Reconciliation Commission (TRC). Its 94 'calls to action' were clear and concise but insufficient in their enforcement and ability to evoke policy change. Indigenous communities in Canada continue to face impoverishment, inadequate housing, poor health, food insecurity, and unsafe drinking water. Not to mention, the country initially voted against the UN Declaration on the Rights of Indigenous Peoples.

Vital projects such as social assistance and housing infrastructure continue to be underfunded, which have led to the heightened rates of crime and substance abuse. In Canada, the intergenerational trauma from residential schools affects crime rates as well. Much of the resource development has also taken place without the proper consent of the First Nations' whose land is concerned. Take the construction of the Site-C dam in British Columbia for example; the only way for the Indigenous peoples to object to projects like these is through long and costly litigation, which should not be the case.

Most recently, on November 3, the Canadian Supreme Court approved a proposal to build a ski resort on land considered sacred for the Ktunaxa Indigenous community in BC. This was a blow to both the community's religious freedom, and again the country's apparent progress in recognizing its historical mistreatment of such groups.

Over the years, Canada has moved slowly in ameliorating its gap between non-Indigenous and Indigenous populations. It's becoming more and more acknowledged that the country's racism and colonialism towards Indigenous groups in history still somewhat exists today, from human rights campaigns to politicians' statements. The increasing discussion and level of understanding arising is an immense and necessary accomplishment, but not a sufficient one.

The case of missing and murdered Indigenous women depicts this perfectly; after much effort from lobbyists, public outcry, and Indigenous groups themselves, the government finally agreed to launch a national inquiry in September of last year. Advances have been little, as the

conflicted process faces the absence of organized structure, long term commission plans, and public reports.

Unlike Australia, there are in fact a number of treaties and agreements binding the Canadian government and Indigenous peoples. Nonetheless, the degree to which these treaties have been upheld is below par, as previously described with land violations.

Why have some of the most developed and liberal countries been so ineffective and untimely in their efforts to fix injustices to their Indigenous peoples? A key idea to enforce is that "reconciliation is more than words, it's action". The leaders who have the power to incite action are often too dismissive or "stalling" of actual Indigenous interests, applying a slightly paternalistic approach to work that should include the main stakeholders themselves.

It says a lot about the two states in question when their strategies have not only been unsuccessful in reducing gaps in equality, but more importantly have failed to include and take into account Indigenous opinion and advice. Indigenous voices are also the voices of the public. When these voices are repressed, it is indicative of strain on national freedom. Achieving complete reconciliation will continue to be an exacting process, but when achieved, it will benefit not only Indigenous peoples but Australia as a whole; making it a global norm for others to follow.

With AG's report on Phoenix pay system looming, has government actually learned any lessons?
Ottawa Citizen
James Bagnall
November 18, 2017

When Auditor General Michael Ferguson tables his latest report this Tuesday, much attention will focus on his analysis of the Phoenix pay system — in particular, whether the fixes being applied to this epic information technology disaster will actually work.

On recent evidence, the answer seems likely to be "no." The federal government's pay system was struggling last month with a backlog of some 265,000 transactions, not counting a nearly equivalent number of administrative queries. The upshot: There's been zero progress since spring.

This, despite millions of dollars in overtime expenses for private-sector contractors, and the hiring of more than 200 additional pay advisers at satellite offices in Winnipeg, Shawinigan, Montreal and Gatineau. The $310-million project to modernize and consolidate multiple pay systems across the federal government is now nearly $200 million over budget with no end in sight to the repair bills.

Debi Daviau, president of the Professional Institute of the Public Service of Canada, earlier this week suggested it will take at least three more years to get Phoenix to steady state. The current approach, she added, may never succeed.

Daviau's prescription: "We need a pay system that works, and we have the people to build it," she said.

Daviau made clear in a followup interview that she was not proposing that her union take over the job of fixing Phoenix. While PIPSC has 57,000 members, many of them experts in information technology, fewer than 30 are directly involved in the Phoenix project.

Daviau says she merely wants the managers at Public Services to consult with the experts on the ground — in her union's case, the software jocks. These are the folks who understand the PeopleSoft technology that underpins most of the government's pay transactions. And they are telling Daviau that building a new pay system on the foundation of PeopleSoft's latest technology platform (version 9.2) can be done in as little as a year.

There's much more to it, of course, and Daviau understands that. The underlying technology merely captures the pay data. Processing it requires hundreds of employees trained on a system with more than 80,000 rules governing the application of pay in all its variants, from maternity leave to overtime, across 27 collective agreements. Members of the Public Service Alliance of Canada, the largest federal government union, do much of the processing at a centralized pay centre in Miramichi, N.B.

No matter the complexity, designing a pay system isn't rocket science. What's required is careful testing from the ground up, bargaining unit by bargaining unit, department by department.

Managers need to pay attention to how the changes are affecting those on the front lines. In the case of Phoenix, those in charge simply did not listen, a number of government-commissioned studies have suggested. A key consideration for Ferguson is whether this attitude has changed and, if not, what should be done about it.

The peculiar deafness of federal managers was captured neatly in the "lessons learned" study published earlier this year by Treasury Board. Management consultants at Goss Gilroy Inc. spent nearly five months interviewing key players involved in the development and rollout of Phoenix, which began in February 2016.

"We heard that, given that pay transactions were carried out by compensation advisers who are lower-ranking employees," the consultants noted in their final report, "decision-makers may have underestimated their role and undervalued their expertise."

Gartner Inc., the consulting group hired in 2015 to assess the risks associated with Phoenix, discovered a profound communications gap between the pay system's project managers (who

operated out of the department of Public Services) and the other federal departments being asked to join the Phoenix pay system.

Gartner noted the testing of the Phoenix system by project managers produced a 90 per cent pass rate while testing by their counterparts in the departments maintained it was closer to 50 per cent. “This is resulting in departmental stakeholders having a low level of confidence in the Phoenix system quality,” Gartner concluded.

This was just days before launch.

Goss Gilroy consultants, who examined the pre-launch testing of the Phoenix system, confirmed Gartner’s assessment. Just weeks before Phoenix went live for 120,000 federal employees, tests of the system revealed four types of defects, including some related to poor integration between old and new pay systems. “There were a large number of defects that were major,” the consultants reported, “and a large number of defects that had no planned fix date.”

The pay advisers, who had been given ‘workarounds’ for each of the problems, knew very well the risks being assumed. Some voiced their concerns to management.

Yet the project went ahead anyway. Gartner concluded the top bureaucrats were anxious to get going. “Although most departments expressed uncertainty as to whether the (Phoenix) system has been thoroughly tested,” the Gartner report noted, “most also felt it will be substantially correct. Almost all expressed the opinion they are as prepared as possible for the go-live.”

Gartner did not address the question of appropriate skills in a bureaucracy where only a small minority have experience managing large information technology projects. This may have been a factor in downplaying risks.

Budgets were also an issue. The government was anxious to book savings for the pay system as a whole. Automating the process was expected to save $70 million plus annually. Hundreds of pay advisers across government were trimmed starting in 2014 to make way for what was expected to be a super-efficient operation at the newly centralized pay centre in Miramichi.

Above all, the Phoenix project highlights the danger of a top-down approach typical of large government projects.

“An important driver for the (Phoenix) project management team was meeting established launch dates,” the report by Goss Gilroy noted, “hence any feedback that might slow down or delay progress was unwelcome and resisted.”

During nearly two years of crisis management has anything changed?

Let’s hope Ferguson offers some useful insight into that this Tuesday.

How should Canada handle criminals cloaked as refugees?
Globe and Mail
Mark Kersten
November 20, 2017

Two crises define the world today: the perpetration of mass atrocities against civilians, and the movement of peoples, often in direct response to those very same atrocities. This poses a distinct challenge for countries such as Canada that welcome refugees, some of whom may carry with them criminal pasts.

It is not uncommon for perpetrators of atrocities to cloak themselves among refugees. Due to effective screening procedures, the number of war criminals amongst refugees is tiny. But they do sometimes slip through. When they do, they present an opportunity to achieve justice – and shouldn't be used to cast a pall of criminality over migrants. But how should governments approach this dilemma?

Last month, and for the first time since the brutal civil war in Syria erupted six years ago, a Syrian soldier was convicted of war crimes. The trial occurred in Sweden. With no prospects of justice from an international tribunal and the increasing likelihood that Syrian President Bashar al-Assad will remain in power for the foreseeable future, the best chance to achieve accountability for the regime's litany of atrocities lies in the courtrooms of distant states such as Sweden, Germany and Spain. These prosecutions could not take place if these very same countries didn't open their borders to the millions of Syrian refugees fleeing crime and terror.

According to the Canadian Crimes Against Humanity and War Crimes Program, whose staff works tirelessly with limited resources to achieve remedies for international crimes, 200 perpetrators may currently reside in Canada. But unlike its European counterparts, the Canadian government's preference is to deport alleged war criminals for the simple reason that it is the cheapest option at their disposal.

This approach first gained notoriety under the Stephen Harper government when it published a "Most-Wanted"-style list of alleged war criminals to be "rounded up and kicked out of Canada." The United Nations Committee Against Torture responded by stating that if alleged perpetrators "are apprehended and deported, they may escape justice and remain unpunished." But the current government continues to do nothing to ensure that individuals deported from Canada will be prosecuted and receive a fair trial in their original countries.

Earlier this year, the Canadian government sought to strip Jorge Vinicio Sosa Orantes of his citizenship for his alleged responsibility for a 1982 massacre by the Guatemala military in Las Dos Erres. A decade after the atrocity, he was made a Canadian citizen. But if the government has its way, Mr. Sosa Orantes, who is now toiling in a U.S. prison, will never set foot in Canada again. That may be comforting to many Canadians, but it does little-to-nothing to ensure that he is held accountable for the types of crimes he is alleged to have committed.

On very rare occasions, the government has prosecuted perpetrators in Canada for atrocities committed abroad under its Crimes Against Humanity and War Crimes Act. Trials involving international crimes are complex and resource-intensive. The high cost of such prosecutions has led to a general moratorium on similar trials and a renewed focus on blending justice for mass atrocities and immigration regulation.

Everything should be done to convince the Trudeau government to allocate resources to prosecute war criminals on Canadian soil. In the meantime, a creative and cost-efficient approach to getting out of the "prosecute or expel dilemma" would be to link efforts to achieve accountability for international crimes with aid and development projects in partner countries.

For example, the government could peg foreign aid allocated to Guatemala to the prosecution of the likes of Mr. Sosa Orantes. Not only would this ensure that justice is served, it would do so closer to the victims and survivors of mass atrocities. It would fit directly with Global Affairs' stated goal of supporting good governance and human rights, as well as fostering the rule of law in conflict-affected states. Such an initiative would be an ideal mandate for a potential International Justice Ambassador to espouse and could result in unique partnerships between Canadian officials and their counterparts in Guatemala, thus setting a model to promote bilateral relations and global justice.
As long as there are mass atrocities, there will be refugees seeking to escape them. Among their numbers may be criminals taking advantage of the generosity of states like Canada. But the government mustn't blur the lines between immigration and accountability. For years, there have been concerns that Canada's leadership on international justice has been waning. It's time to restore its once widely celebrated leadership. Victims and survivors need more than a hug at the airport from the Prime Minister. They need this government's commitment to justice.

Mark Kersten is a fellow at the Munk School of Global Affairs at the University of Toronto and the deputy director of the Wayamo Foundation.

Law society initiative to improve diversity is about justice not politics, lawyers say
In recent weeks there has been a flurry of open letters and op-eds in newspapers decrying an initiative from the law society to improve diversity and inclusion in the Ontario legal profession.
Toronto Star
Jacques Gallant- Legal Affairs Reporter
November 20, 2017

It was just one of 13 recommendations from a working group looking to address systemic racism in the legal profession.

It’s proving to be one of the most divisive topics in that profession this year, and appears to be sparking even more debate at Ontario’s legal regulator than when its board wrangled over changing the institution’s name. (The Law Society of Upper Canada will become the Law Society of Ontario on Jan. 1.)

It’s the statement of principles.

In September, the law society sent an email to Ontario’s nearly 60,000 lawyers and paralegals reminding them of the requirement to come up with a statement that “acknowledges (their) obligation to promote equality, diversity and inclusion generally, and in (their) behaviour towards colleagues, employees, clients and the public.”

The statement of principles was a recommendation from the law society working group, Challenges Faced by Racialized Licensees, which spent four years looking into those challenges. All the recommendations were adopted unanimously by the law society’s board last December, with three abstentions.

Licensees can either choose a statement template provided by the law society or come up with their own, but they must indicate on their annual report to the regulator that it’s been done.

There has since been a flurry of open letters to the law society and op-eds in newspapers — mostly from white men — since the law society’s September email went out, decrying the statement of principles as a violation of freedom of expression.

The requirement will be challenged at the law society’s next board meeting in December, while a law professor has gone to court seeking an injunction to stop the law society from enforcing it.

A number of racialized licensees — the very people the statement of principles and other recommendations were crafted to aid — are speaking out, urging the law society not to backtrack on the issue.

Some see the requirement as an important step in improving the makeup of the legal profession and the judiciary, amid criticism that they don’t accurately reflect Canada’s diverse population.

“People seem to consider the promotion of equality, diversity and inclusion as being an issue of political belief or political speech. I don’t see it that way,” said Tina Lie, a Toronto lawyer.

“I actually think it goes to the core of the administration of justice. If we want to improve the administration of justice, we absolutely need to advance the diversity goal that the law society has put out there. The reality is, when you look at it, the legal profession, the justice system and the judiciary, they don’t actually reflect the communities they are supposed to serve.”

The law society’s working group found that challenges faced by racialized licensees were both “long-standing and significant.” They said change in the profession was needed now more than ever, as the number of racialized lawyers in Ontario has doubled — from 9 per cent of the profession in 2001, to 18 per cent in 2014.

“It is clear from the working group’s engagement and consultation processes that discrimination based on race is a daily reality for many racialized licensees,” said the working group’s report.

“It’s a sad state of affairs for our profession if lawyers cannot even acknowledge that they have an obligation to treat clients and peers as equals,” Avvy Go, a member of the working group and clinic director of the Metro Toronto Chinese and Southeast Asian Legal Clinic, told the Star.

She said since talk of challenging the statement requirement emerged this fall, she’s heard from young racialized lawyers experiencing uneasiness at work.

“They’re hearing from their colleagues, people they consider as friends, who are now making statements in opposition to the statement of principles, but they’re putting the statement in such a way that make racialized licensees feel like they are unwelcome in the workplace.”

Lawyer Raj Anand, who co-chaired the working group, wrote the statement of principles recommendation, describing it to the Star as “not a burdensome requirement.” He said it’s an important part of changing a culture that too often is driving away good lawyers and paralegals.

“The first goal is culture change, and that’s what the statement of principles is about,” he said.

“It’s simply to force people to recognize that there are barriers and that they are creating difficulties which affect them because they don’t get the best people, or the people leave, and needless to say it’s harming the people who don’t get good jobs because they don’t find the working environment in certain firms to be hospitable.”

Anand said he’s witnessed overt racism, and then there are the more subtle acts: women being cut off in the boardroom, asking a Muslim lawyer if it’s OK to drink in front of them at a staff party, making an inappropriate joke in front of a racialized person, only to apologize and say no offence was intended.

“I know an extremely smart, skilled lawyer who is a Muslim woman . . . She went to her first associate interview, and she was asked in the interview for hiring whether she advocated for the destruction of Israel. And she has never gone to a law firm again,” Anand said.

“That’s lost potential. Those are clients who aren’t served by a very good lawyer.”

A number of organizations representing Indigenous and racialized licensees have sent letters to the law society urging the regulator to maintain the statement requirement, including the Indigenous Bar Association and the Canadian Association of Black Lawyers.

“The statement of principles proposed by the law society is necessary in order to address the systemic historical disadvantages suffered by Indigenous peoples at the hands of the legal

profession," said Indigenous Bar Association president Scott Robertson in a letter to the law society.

"Indigenous peoples and licensees face complicated challenges as a result of the impacts of colonialism, such as legislated assimilationist policies like residential schools, for example. Further to this, Indigenous licensees also encounter systemic discrimination within the legal system because the status quo is being perpetuated."

The advocacy committee of the Canadian Association of Black Lawyers pressed the regulator in their letter not to move away from the recommendation for the statement of principles, or any other recommendation from the working group.

"While the working group's recommendations, including the statement of principles, are not going to be popular amongst all licensees, they are essential, as the bar must come to grips with the reality that a lack of equality, diversity and inclusion in our profession has been, and continues to be, a widespread problem," said the letter.

Lawyer Anthony Morgan said the statement of principles does not require lawyers to do anything more than what they already have to do as a legal professional.

"It's just an outward expression that I think is more about consciousness raising and moving the profession forward," he said.

"One of the important things to consider in this, I think, is compare the difficulties of the experiences of racialized people on one hand, to the relative ease of making this statement about diversifying and supporting diverse colleagues in the profession. There's simply no comparison."

Those who advocate strongly against the statement of principles say they believe in the ideals of diversity and inclusion in the legal profession, but that the requirement infringes on their constitutional rights.

Toronto lawyer Joe Groia, a board member of the law society, is bringing a motion at the December board meeting to allow an exemption to the requirement for "conscientious objectors."

Murray Klippenstein, perhaps best known as the lawyer for people suing Toronto police in a class-action lawsuit for wrongful arrest during the 2010 G20 summit, sent an 11-page open letter to the law society this month voicing his stance.

"It looks like what started out as a laudable effort by the law society to address racism has morphed, at least in Rec. 3 (1), into something else — into me and thousands of other lawyers in Ontario being forced to adopt what sounds like someone else's political ideology," he wrote.

Phoenix is a disaster. And we don't need the auditor general to know it
Ottawa Sun
Rick Gibbons
November 19, 2017

It's a safe bet FUBAR doesn't actually appear in Tuesday's auditor general's report into the Phoenix pay system, which is a pity, because the slang term captures perfectly the issue at hand — a government pay system so, well, screwed up that it has now reached a point Beyond All Recognition.

The alternative slang term TARFU would equally apply here for a bureaucratic nightmare so Totally And Royally mucked up that AG Michael Ferguson might actually find himself at a loss for ordinary words to fully capture the magnitude of the mess he has discovered.

In that event, I'd further suggest SNAFU, SUSFU, FUBU. (you'll have to look 'em up, folks) as equally worthy substitutes when no real words adequately describe how a system designed to save the government money got so far off the rails that it will now likely take $1 billion or more to fix.

Assuming it even can be fixed. Even that has become debatable.

It's got so bad the federal minister responsible for repairing Phoenix rushed out a letter of apology to all public servants Friday in a bid to pre-empt Tuesday's AG report that will likely only further fuel the anger and growing frustration of public servants.

"I am truly sorry that more than half of public servants continue to experience some form of pay issue,'' wrote Public Services Minister Carla Qualtrough. "Too many of you have been waiting too long for your pay."

That apology and a toonie might get you a cup of coffee, minister, but it's unlikely to buy you or the government any more patience from its employees who are sick to death of a system that can't seem to get even basic compensation issues resolved in a timely manner.

And, after nearly two years, the situation is only getting worse. The latest tally of unresolved issues to be addressed by Phoenix pay clerks now surpasses half a million, outnumbering the entire public service workforce.

A Facebook group dedicated to the issue of how public servants are dealing with the nightmare of short pay or even not getting paid at all gives some pretty good insight into the rising level of PS anger out there. It makes for some tough reading for a government already worried about poor morale in the ranks of the public service even before Phoenix entered the picture.

“An apology doesn’t mean much and stop blaming the previous government,” one poster writes on the site. “I am beyond frustrated and angry that we seem to have resigned ourselves to this total mayhem.”

Another writes: “I am beyond frustrated and pissed!”

Still another: “In three months it will be two years since this $hit show shambles pay system was rolled out and our lives have never been the same.”

Public servants I have spoken with tell of cheques arriving for no apparent reason and no explanation, sometimes for as little as $20. Some are afraid to take maternity leave, knowing their pay will be messed up along the way. Absolutely no public servant I have spoken with is satisfied with the quality of the system or happy with the mess they have inherited.

Little wonder. Their patience is being tested at every turn, it seems, most recently by word of another round of management bonuses for those who are supposed to be fixing the system.

And then there is the Senate, which has already announced it will withdraw from the Phoenix mess and work to create its own pay system, leaving public servants to further question whether they’re being left adrift while the political bosses man the lifeboats to save themselves.

Last week the head of the public service union that includes IT professionals finally called on the government to scrap the system entirely and give her members a year to come up with a system that actually works.

“After nearly two years of problems, our members have lost confidence in the promise of fixing Phoenix,” said Debi Daviau, president of the Professional Institute of the Public Service of Canada.

Her criticisms were echoed by other public service union chiefs, including Robyn Benson of PSAC who, only a few weeks ago, called me “insensitive and ill-informed” for proposing virtually the same thing.

Actually, I’d also suggested it was time to close the Miramichi pay centre and return the entire mess to Ottawa for a complete overhaul by longtime public service compensation professionals, a move that will likely have to be done in order to create a new system from scratch.

Public servants can only hope the Auditor General comes to the same conclusion.

Gibbons is former publisher of the Ottawa Sun. He can be heard weekdays, 1:00-3:00 p.m. on 1310 News, beginning Nov. 27

Jusqu'où les avocats peuvent-ils manquer de civisme ?
Droit Inc
Jean-François Parent
20 novembre, 2017

La Cour suprême devra établir les limites à respecter dans la défense d'un client.
Gaspillage de temps et de ressources ou débat essentiel pour la démocratie?

Les juristes ne s'entendent pas sur l'affaire qui se retrouve devant le plus haut tribunal du pays.

Ce dernier doit statuer sur les limites à ne pas dépasser lorsqu'on attaque l'adversaire dans une salle d'audience.

L'affaire oppose l'avocat de la défense Joseph Groia au barreau ontarien. Son conseil de discipline, jugeant que le plaideur avait dépassé les limites de la bienséance dans la défense de son client, l'ex-vice-président de la minière Bre-X, John Felderhof, et architecte allégué de la fraude aurifère de six milliards de dollars.

Bre-X, c'est la société junior de Calgary qui avait prétendu avoir découvert le plus riche gisement aurifère de la planète en Indonésie, en 1997. Ce n'était que du vent, et les six milliards de dollars de valeur boursière se sont envolés avec l'argent des investisseurs.

Un avocat virulent

À l'automne 2000 commence à Toronto le procès du seul inculpé de l'affaire, le géologue Felderhorf. Dès les premiers jours, l'affaire dérape : la preuve, documentée par la Commission des valeurs mobilières de l'Ontario, souffre de graves lacunes, selon la défense.

Arguties sans fin, délais, multiplication des requêtes, divulgation incomplète de la preuve, rapidement Joseph Groia perd patience.

Il invective la poursuite, allègue que le procureur chargé d'instruire l'affaire est incompétent, hausse le ton jusqu'à l'excès. Pendant les 70 jours d'audience que dure l'affaire, le caractère virulent -et carrément insultant, selon la poursuite- de Joseph Groia incite la CVMO à demander le désistement du juge, sous le prétexte qu'il est incapable de sévir contre l'avocat Groia.

Cela lui est refusé, et le procès s'échoue sur les rivages procéduraux pour finalement aboutir en 2007 avec l'acquittement de John Felderhof.

Groia gagne

Mais dans son rejet de la requête pour désistement du juge dans l'affaire Bre-X, la cour remarque cependant que Joseph Groia n'y est pas allé de main morte : ses attaques contre la poursuite sont

« virulentes » et « cinglantes », ses soumissions à la cour sont empreintes « de rhétorique ronflante et de sarcasme inapproprié », et il soutient que la couronne « veut gagner à tout prix » et l'accuse de « manquements graves ».

Ces observations du juge incitent le Barreau du Haut-Canada, tel qu'on l'appelait alors, à sévir contre Joseph Groia : après deux années de procédures, le conseil de discipline inflige deux mois de suspension et 200 000 dollars d'amende à M. Groia pour avoir manqué à son devoir de civisme et avoir eu une conduite indigne d'un avocat.

Au Comité d'appel, Groia remporte quelques points : les conclusions de manquements professionnels ont été maintenues, mais la sentence a été réduite à 1 mois de suspension.

La Cour divisionnaire a refusé d'entendre l'appel de Joseph Groia, qui a par la suite été débouté par la Cour d'appel de l'Ontario, avec dissidence.

Si elle concède que le « zèle excessif » d'un avocat de la défense peut l'amener à rougir les oreilles de ses adversaires et à ne pas avoir à en pâtir, la Cour d'appel maintient toutefois la décision disciplinaire, qui estime que l'avocat a dépassé les bornes.

Joseph Groia a porté le tout devant la Cour suprême, qui entendait l'affaire le 6 novembre.

Liberté d'expression ou coups bas?

Pour l'intéressé, il s'agit de défendre la liberté d'expression des avocats de la défense, de protéger le droit de ceux-ci à faire de l'excès de zèle pour défendre leurs clients, et de remettre en question le droit de l'ordre professionnel de réglementer la conduite des avocats dans un tribunal.

Ce dernier point constitue une ingérence de la réglementation dans les affaires judiciaires, soutient Joseph Groia. Il estime, dans son mémoire d'appel, que c'eût été au juge de le réprimander s'il avait vraiment dépassé les bornes.

« Si la sanction est maintenue, les Canadiens devront conclure que c'est l'État -et son agent le Barreau- et non pas le juge qui décide de comment il faut mener un procès. » Il plaide en outre que si un avocat est susceptible d'être sanctionné pour la façon dont il présente ses arguments à la cour, cela refroidira les ardeurs de la défense, ce qui est dangereux.

La Cour d'appel estime pourtant que l'absence d'intervention du juge envers Groia s'explique par soucis de préserver son image d'impartialité, poursuit le Canadian Lawyer dans un long papier consacré à l'affaire.

Le Barreau ontarien persiste et signe : les attaques menées Groia pendant le procès étaient des coups bas et ne méritent pas d'être protégées, d'autant que « le fait que des paroles soient

prononcées par un avocat ne leur confèrent pas une plus grande protection constitutionnelle », rapporte le Canadian Lawyer.

Gaspillage de temps et avocasseries

Certains s'élèvent contre les attaques trop virulentes et les avocasseries qui font perdre leur temps à tout le monde. Le vice-président des procureurs de la Couronne, Robin Flumerfelt, exhorte tout ce beau monde, notamment Joseph Groia, à tempérer leurs ardeurs.

« La profession doit reconnaître que le temps disponible dans les tribunaux est une denrée rare, et qu'il faut donc que les parties s'entendent et coopèrent », dit-il au Canadian Lawyer. Sans compter qu'il est loin d'être certain que des tactiques comme celles reprochées à Joseph Groia soient efficaces.

Flumerflet compare le dossier de la poursuite à une voiture attaquée par la défense avec une batte de baseball, pour en défoncer le pare-brise et les phares. Dans ce cas, la voiture démarre quand même... « Les vrais bons avocats iront sans bruit sous la voiture, briseront l'alimentation en huile; la voiture ne démarrera pas. »

À l'opposé, le professeur en éthique juridique de l'Université d'Ottawa, Adam Dodek, juge sévèrement le dossier et prend le parti de Joseph Groia. « Quand nous écrirons l'histoire de la justice canadienne, on risque de dire que tout ce temps passé à gérer le civisme nous a empêchés de s'attaquer au problème de l'accès à la justice. »

À ses yeux, la décision du Barreau de l'Ontario est « une perte de temps colossale et un gaspillage de ressources qui auraient été plus utiles pour protéger et promouvoir l'intérêt public ».

Une étudiante invite le juge Wagner… et il accepte!
Droit Inc
Julien Vailles
17 novembre, 2017

À la demande spéciale d’une audacieuse étudiante, le juge de la Cour suprême du Canada a accepté de venir discourir sur l’identité canadienne.

L’Honorable Richard Wagner, qui siège au plus haut tribunal du pays, sera présent le 21 novembre à la Faculté de droit de l’Université d’Ottawa, celle-là même qui lui a décerné son diplôme.

De 11h30 à 13h, il viendra aborder l’évolution de l’identité canadienne au travers d’arrêts clés de la Cour suprême du Canada.

C’est la demande audacieuse d’une étudiante qui l’a convaincu de se présenter sur son ancien campus. Chantal Bellavance, ancienne comédienne aujourd’hui étudiante en droit, avait rencontré le magistrat lors d’un concours de plaidoirie universitaire dont il était l’un des juges, et avait depuis tissé un contact avec celui-ci.

« Comme je suis membre de l’Association de droit constitutionnel de l’Université d’Ottawa, j’ai songé à quel point il serait intéressant de recevoir le juge Wagner », explique-t-elle à Droit-inc. « Quand je l’ai contacté, j’ai insisté sur le désir des étudiants d’avoir non pas uniquement une conférence technique, mais bien son avis personnel de juriste sur des questions fondamentales! D’où la thématique d’identité de la conférence », ajoute-t-elle.

Rappelons que la juge en chef de la Cour suprême, la Très Honorable Beverley McLachlin, prendra sa retraite le mois prochain. Dans ce contexte, un de ses collègues devra la remplacer. La coutume veut qu’on nomme un juge anglophone et un francophone en alternance.

Le juge Wagner étant le plus ancien des trois juges québécois à la Cour suprême, plusieurs juristes le pressentent devenir le prochain juge en chef.