Legal expenses insurance assists with access to justice
Focus on Insurance law: Hasn't become mainstream in Canada yet
Law Times
Michael McKiernan
November 20, 2017

The legal profession should renew its focus on legal expenses insurance as the product slowly but steadily gains traction in Canada, says the former head of the Canadian Bar Association's access to justice committee.

John Sims headed the committee in late 2013 when the CBA announced its aim to have 75 per cent of middle-income Canadians covered by legal insurance by 2030. The ambitious target was unveiled in the committee's "Reaching Equal Justice Report: An Invitation to Envision and Act," which noted the popularity of the product in jurisdictions outside of North America.

Legal expense insurance policyholders, which include businesses and individuals, receive coverage for some or all of the costs associated with certain legal situations. The report said that around 40 per cent of Europeans had some sort of coverage, including virtually all households in Sweden, where carriage was made mandatory in 1997 to offset the impact of falling legal aid funding.

"In principle, it makes a lot of sense. It's not a panacea, but it can bring access to justice to a certain group that wouldn't otherwise be able to meet their legal needs," says Ottawa-based Sims, a former deputy minister of justice and deputy attorney general of Canada.

"I think it may be time for us to come back and have a fresh look," he adds, noting that the concept has yet to hit the mainstream in this country.

At the time of the CBA report, estimates put the total Canadian market for legal expenses insurance at around $11 million to $12 million in annual premiums, with the bulk of that amount paid in Quebec, where the Barreau du Quebec had previously spent $2 million in its drive to promote the idea to consumers.

"That was a massive and very expensive campaign by the Barreau, but even after that, the take-up was still only around 10 per cent of Quebecers," Sims says.

Kevin Le Messurier-Girling, president of legal expenses insurance company Sterlon Underwriting Managers, says the Quebec bar set the gold standard in terms of promotion of the industry.

"There's plenty more the legal profession can do. Outside Quebec, law societies have done some things to raise awareness, but they've never advanced in the same way, which I think was a huge mistake," he says.

“I always thought lawyers should be doing more, because the end result is a client who walks through their door with money to spend on a legitimate case.”

Despite that, Le Messurier-Girling says the industry is finally primed to burst into public consciousness.

“In the last year, we have seen explosive growth. Insurance brokers and [managing general agents] are really embracing and understanding it, so it’s increasingly on everyone’s radar,” he says.

Kent Pitkin, vice-president at insurance wholesalers April Canada, says the market has grown significantly since 2013 to more than $20 million in annual premiums but that it is still not reaching its potential.

He says a lot of his job involves educating potential customers about the idea, since much of the public remains initially skeptical about this type of insurance.

“They think they won’t need it,” Pitkin says. “But once they understand what they’re getting for their money, it’s a no-brainer.”

One group that doesn’t need a hard sell on the benefits of the product, according to Pitkin, are those who have had a legal problem in the past.

“Their eyes are opened to its potential, because they know how much a lawyer costs per hour and what you can spend on a court case. So it becomes quite apparent to them what a good deal they are getting for an extra few hundred dollars of premium,” he says.

“Our society is becoming more litigious, and I think that’s going to help more people grasp the value of legal expenses insurance.”

Julie Macfarlane, a professor at the University of Windsor’s faculty of law who runs the National Self-Represented Litigants Project, agrees that legal expenses insurance would be a good option for the increasing number of Canadians who earn too much to qualify for legal aid but still can’t afford counsel.

“People in the legal profession understand very well that legal problems can come at you from nowhere, but if you’re outside the system, you think it’s not going to happen to you,” she says.

In addition, she says, the poor reputation of lawyers among laypeople doesn’t help matters.

“There’s a really widespread mistrust of lawyers. Almost everyone has heard a story about someone who went to a lawyer with a problem, thinking it would cost them $1,000 to solve, and

they come out of it with a $30,000 bill," she says. "When I run this past people, they always ask why they would want to buy a policy that will give lawyers more money. In their view, it would be like buying hurricane insurance if you thought all the builders in your neighbourhood were corrupt, which is unfortunate, because it has lots of potential."

Alberta judge will allow evidence from RCMP 'Mr. Big' sting in triple murder trial
Jason Klaus and Joshua Frank are accused of killing Klaus's parents. An undercover Mountie who posed as an organized crime boss known as Mr. Big testified how RCMP staged a sting operation in the hope of getting Klaus to confess to killing his own family.
Toronto Star
The Canadian Press
November 20, 2017

A judge has ruled that he will allow evidence from an undercover police operation to be admitted in the trial of two Alberta men charged with killing three people.

Justice Eric Macklin is hearing the first-degree murder trial of Jason Klaus and Joshua Frank, who are accused of killing Klaus's parents, Gordon and Sandra, and his sister, Sandra, at their farm in the Castor area on Dec. 8, 2013.

An undercover Mountie who posed as an organized crime boss known as Mr. Big testified how RCMP staged a sting operation in the hope of getting Klaus to confess to killing his own family.

The court has already heard that Klaus has admitted he helped plan their deaths.

In a taped conversation that was played in court, Frank told the undercover Mountie how he went about shooting each of the three family members twice in the head, then shot the family's dog and lit the house on fire.

Klaus was scheduled to testify today, but after Macklin ruled on the admissibility, Klaus's lawyer asked for time to speak to his client and proceedings were adjourned until Tuesday.

With AG's report, can Phoenix pay system be fixed?
iPolitics
Kathryn May
November 20, 2017

When Auditor General Michael Ferguson tables Tuesday what is expected to be "one really bad report," the question will be whether the star-crossed Phoenix pay system should be put out of its misery.

Phoenix has inflicted financial hardship on thousands of federal workers and bedevilled the Liberal government for nearly two years, and a growing number of public servants feel it needs

to go. Many see no sign of a fix any time soon and they question whether it ever will be repaired. Some have already ditched “Fix Phoenix” buttons and posters for “Forget Phoenix.”

Ferguson is examining whether Public Services and Procurement Canada, along with departments, resolved pay problems in a “sustainable way” to ensure federal workers are paid correctly and on time. With a rising backlog and new problems still cropping up, most would say no.

Others see the report as part of the steady drip that has concluded that Phoenix is one of the government’s biggest public administration failures ever.

“We’re hoping the report will finally identify some of the fundamental causes so next time … they can go back and fix those problems,” said Steve Hindle, vice-president of the Professional Institute of the Public Service of Canada (PIPSC).

“They’ve been more interested in fixing the system, not the cause. That’s like bailing out the boat rather than fixing the leak and then bailing out the boat. The concentration on individual problems allowed them to increase.”

PIPSC is leading the charge to hit the reset button with a proposal to replace Phoenix with a new system that would be built by public servants — and not the private sector. It recently surveyed its members and found 87 per cent don’t believe Phoenix can be fixed.

“It won’t be cheap. It won’t be built overnight. But it will be cheaper, faster and more effective in the long run than forever patching a faulty system that was programmed to fail from the start, said PIPSC President Debi Daviau.

“And most important, it will work.”

The government has so far remained committed to fixing Phoenix.

Last week, Public Services Minister Carla Qualtrough tried to get out in front Ferguson’s report by apologizing for the fiasco and revealing the backlog — including all financial and non-financial cases — had hit 520,000 cases, which is much larger than previously admitted.

She also tried to head off political damage on costs by admitting she had no idea how much higher the cost of fixing Phoenix could go beyond the $400 million already spent. When pressed, she said she couldn’t guarantee that it wouldn’t hit $1 billion.

And $1 billion isn’t out of the realm of possibility, as has been realized in Australia. The Queensland government never dreamed that a $6 million payroll and human resource system — also built by IBM — would have snowballed into a $1.2 billion (AU) bill, a commission of inquiry and a nasty lawsuit.

“We’re committed to finding a permanent solution, but fixing this won’t be easy,” said Qualtrough and Treasury Board President Scott Brison in a joint statement,
“It will take time and there will be costs. We called in the auditor-general in order to help better understand the problems and costs. We look forward to that report. “

The most unexpected opening for a Phoenix reset – which has yet to be explored – came from several union leaders who claimed they are willing to open up collective agreements to streamline the 80,000 rules that have clogged Phoenix from the start.

This apparent willingness to negotiate could open the door for the first major review of federal pay rules in 60 years — a step technology experts have argued is critical to fixing Phoenix or building a replacement.

The complexity of federal pay is the root cause of many problems that even dogged Phoenix from the start. They clogged the old pay system, forcing many transactions to be done manually. Experts argue the number of rules should have be reduced and simplified before the government even started work on Phoenix.

Those rules would still be the biggest challenge for a PIPSC proposal to build a new system. For unions, the big tradeoffs for reducing the rules would be ensuring public servants’ salaries remain the same and pay operations remain in-house and are not outsourced.

The federal workforce includes 22 different employers: the core public service and various separate agencies and Crown corporations. Employees are covered by 80 collective agreements with the 80,000 rules enshrined in those contracts over the years.

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 would divert attention, staff and resources from the work on Phoenix, which would have to keep running to ensure people are paid. Some question whether the government has enough skilled software developers to build a new one.

A new system may also have to conform with Brison’s push to change the way the government plans and buys IT to avoid another Phoenix-like diaster. He wants a simpler procurement process; to get away from big IT projects; to tackle them in smaller pieces and rely more on the private sector.

Former Public Services Minister Judy Foote asked Ferguson in June 2016 to get to the bottom of what went wrong with the $310-million pay transformation project and who was to blame.

The two-part project was launched by the previous Conservative government. The first part was consolidating all pay operations in a new pay centre in Miramichi, N.B. The second was

modernizing the pay system using PeopleSoft, an off-the-shelf software that IBM customized for federal payroll. That second phase is dubbed Phoenix.

Some argue Ferguson tackled the request in the wrong order, examining the performance of Phoenix first and delaying the more important examination of how the project went off the rails until next spring, which will be three years after the crisis began.

Ferguson offered a glimpse into his findings during his recent audit of the government's books. He found errors in "every step of the pay process' and more than 56 per cent of public servants sampled needed to have their pay corrected by the end of March.

For now, Phoenix is the government's priority — pushing other issues off the agenda — with all deputy ministers on high alert and keeping a close eye on what's being done in their departments.

The government took the unprecedented step of appointing a working group of cabinet ministers to oversee Phoenix. It has hired hundreds of additional compensation advisers and set up seven satellite pay offices and call centres and is now pushing out a massive "HR to pay" training program to drive the "culture change" that should have been done two years ago.

Despite this, more than half of all public servants face some kind of pay issue and backlog continues to grow.

The Senate has already backed out and is looking to outsource its pay services. The plan to centralize pay operations in Miramichi and eliminate compensation advisers in departments is being chipped away as more work is sent back to departments, which in turn are trying to hire their own compensation advisers. Relations with IBM and Oracle, the maker of PeopleSoft, are said to be strained with neither firm wanting more damage to their reputation with the release of Ferguson's report.

The report will provide fresh political ammunition for the Opposition to hammer the Liberals for going live with Phoenix in February 2016 despite concerns. The NDP, however, has more political opportunity than the Conservatives, who started the project in the first place.

The Liberals will continue their argument that the Harper government "botched" Phoenix from the get-go. It rushed the design and implementation; cut training; laid off 700 experienced compensation advisors and pulled the plug on the old system before Phoenix was up and running.

"Ultimately, the old pay system was decommissioned by the Conservative government leaving only the broken system we have today, said Brison and Qualtrough in last week's statement.

“Once launched, Phoenix’s problems ran so deep that it took time to understand what was wrong with the system and identify solutions to stabilize it.”

No freedom to remain silent
Law Times
Michael Fenrick
November 20, 2017

The heated debate over the Law Society of Upper Canada’s decision to require licensees to adopt a statement of principles related to diversity and inclusion has become a distraction from the work that needs to be done. While I am in favour of the requirement, the real issue, from my perspective, is not compelled speech; it is that all lawyers, and especially white lawyers like me, do not have the freedom to remain silent on these issues if we hope to maintain the public’s confidence, irrespective of the obligations our regulator establishes. In the legal profession, promoting diversity is not about political speech or belief; rather, the public rightly expects that the justice system reflects our broader community, and so diversity is at the core of what it means to be a lawyer.

We should not rely on or expect people of colour to educate people like me; the onus is on white lawyers to do the work necessary. My hope is that lawyers, especially white lawyers, will become agents advancing these issues rather than spectators. But I believe that many people are uncertain — and, in some cases, uncomfortable — as to how to best approach issues of diversity and inclusion in the profession.

Uncertainty is not a bad thing. In fact, uncertainty in this context can be a good instinct, as long as it does not prevent one from moving on to take action. The mischief is so often caused by claims of certainty (about race, about culture, about individuals).

We would be better served by understanding that truth in this context is a function of debate and discussion among a broad (and broadening) group of speakers, rather than approaching the issue from the perspective that we are trying to discern a single “truth.” Similarly, discomfort can be a signal that a person wants to do the right thing, respectfully, and caution (but not inaction) in these matters can be a sign of such respect.

I do not purport to have the solution to the crisis we as a profession face. However, I hope identifying certain values that I think we can collectively share will help to frame the discussion in a productive way.

The first of these values is humility. To me, humility in the context of diversity and inclusion means a willingness to listen to others (and more particularly to racialized people), to learn and to explore our limits, imperfections and assumptions.

Humility is an active, not a passive value. It requires one to take steps to develop cultural competence, to question assumptions one has about different cultures as well as the manner in which "things are done" in the legal profession or in the workplace and to initiate conversations and change. Humility also means amplifying the voices of people of colour when appropriate to facilitate them being heard.

The second value that I think is vital to this discussion is compassion, which includes respect and appreciation of other people and other experiences. Compassion also includes the understanding that race and culture are not monolithic or homogeneous. Different people will understand their experience and their culture differently, and that difference does not render those experiences invalid.

Under the umbrella of compassion I include not simply compassion for others (which is critical) but also compassion for one's self: One should recognize and affirm the steps that one is taking to address these issues without becoming complacent. No one can ever be an expert on all cultures and differences, so treating one's self with compassion while acknowledging that there is more that can be learned and experienced is important.

Third, solidarity is key. This does not mean ignoring differences, and especially not ignoring the different experiences of racialized people. However, discussions over the statement of principles are marked by unfortunate "we" statements that aim to exclude people who may have legitimate concerns but who do not ascribe to one's preferred absolute values related to free speech, equality or otherwise (e.g. "we" value free speech and this requirement is an assault on our values). Many who oppose the statement of principles most vocally are properly criticized for their inflammatory rhetoric, as are some who defend it.

As Hadiya Roderique — who wrote a thoughtful and well-publicized essay on her experiences in the Toronto legal community as a woman of colour and a person from a less privileged socio-economic background — recently told the CBC: "If you're one of the lawyers who is objecting to this, how do you think all of the people of colour and the women at your firm feel? What kind of a message are you sending to your employees? What kind of people are going to want to join your firm?" I agree.

Similarly, critical comments could be made about some who assert that anyone who objects to the statement of principles is a racist. The value of solidarity is best expressed by trying to expand on who is included in that "we" when we speak, rather than deliberately shutting down debate by casting another person's views as unconscionable; that can be challenging, including for me. As a person who values equality over free speech in the context of a regulated profession that I believe has the authority to pronounce on that profession's core values, I have fallen prey to these same tendencies. They are not helpful.

In practical terms, there are many things one can do to manifest these values. Some small ideas include: embracing as a firm and as an individual some of the changes the law society is making

such as taking a course on cultural competence and establishing appropriate policies robustly; respectfully asking someone how to pronounce their name if it is unfamiliar to you, rather than mispronouncing it; having the courage to acknowledge one's colleagues', clients' and others' experiences and asking about them; and deliberately raising diversity as a value whenever possible, including in discussions about hiring and advancement decisions, but not only in those contexts.

The important thing is that we do something.
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Another lawyer quits MMIWG inquiry as resignations, firings mount
There have been at least 8 resignations and firings in last 2 months
CBC News
Jorge Barrera
November 21, 2017

Another lawyer for the National Inquiry into Murdered and Missing Indigenous Women and Girls has resigned.

Iqaluit lawyer Joseph Murdoch-Flowers sent a short email to reporters on Tuesday morning saying he was no longer with the inquiry.

"I have resigned from the inquiry," said Murdoch-Flowers. "I will not comment further."

Murdoch-Flowers is the third lawyer to leave the inquiry in the last two months. Lawyer Karen Snowshoe tendered her resignation this month and it will take effect at the end of December. Former MMIWG lead lawyer Susan Vella left in October.

The departure of Murdoch-Flowers raised the number of people who have either resigned, quit or have been laid off to at least 22.

Murdoch-Flowers is also the eighth departure that has hit the inquiry following the appointment of Debbie Reid as executive director. Reid is a former adviser to former Assembly of First Nations National Chief Phil Fontaine.

Reid's appointment followed the resignations this summer of former inquiry commissioner Marilyn Poitras and former executive director Michèle Moreau.

The inquiry did not immediately respond to a request for comment.

Staff told to protect commissioners

Shortly after she was hired, Reid sent an email to all staff telling them their top priority was to protect the commissioners from "criticism or surprises."

Reid sent the email on Oct. 12, a little over a week after she was named to the position and made it clear she was brought in to create order within the inquiry and told staff, "I don't mince words."

She said her job was to "protect" the commissioners and it was something all staff should also prioritize.

"All staff are here to work to support four people," said the email obtained by CBC News from a source inside the inquiry. "All focus of staff must be to ensure that our commissioners are not exposed to criticism or surprises and that they are fully confident that we have their backs."

Three fired staffers recently went public with criticism of the inquiry saying they faced a toxic, high-pressure work environment with long hours and little support.

An internal inquiry source, who requested anonymity, said Reid repeatedly tells staff at meetings that their job is to support the commissioners.

"I thought the national inquiry was created to honour and investigate MMIWG," the source told CBC News. "I thought it was going to be a safe space for families and survivors? Instead, it's become about self-image and protecting the commissioners."

Fixing Phoenix pay system will cost over $540 million, says auditor
In all, there were 150,000 employees with pay problems that needed correcting at the start of summer, audit reveals
Macleans
Jordan Press
The Canadian Press
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The federal government’s chronic salary struggles could be on the verge of ballooning into a billion-dollar boondoggle, the auditor general says in a scathing review that hints the entire system should be scrapped.

Michael Ferguson’s review of the disastrous Phoenix pay system reveals just how many and how often public servants are either being overpaid and underpaid, how little headway federal officials have made to correct the mistakes, and how the government under-reported the number of outstanding pay problems even as issues continued to grow.

In all, there were 150,000 employees with pay problems that needed correcting at the start of summer, and a value of over $520 million worth of mistakes – almost as much as the government initially believed it would cost to fix Phoenix.

And that number – $540 million – is likely well below what it will ultimately cost, Ferguson concludes.

The Liberal government can't assure Canadians about when the pay problems will end or how much it will ultimately cost to get a system that "comes close to its original goal," said Ferguson, who makes a point of citing a similar problem in Australia that took seven years and $1.2 billion to resolve.

Canada, he warns, is in the same ballpark.

And while he doesn't say what the government should ultimately do, his auditors recommend the government look at all options, including whether it might be better for the Liberals to ditch the system entirely.

The government has agreed to provide Parliament with a full and detailed cost estimate, but not until next May, with plans to finalize by next month a preliminary roadmap of dozens of projects aimed at fixing Phoenix.

Phoenix was not the only issue Ferguson identified in his latest tranche of audits:
• Callers to the Canada Revenue Agency got the wrong answer to their questions 30 per cent of the time, well above the 6.5 per cent error rate that the agency publicly reports – and that's only when they were able to actually get through to an employee; only 30 per cent of calls placed by auditors were connected.
• Immigration, Refugees and Citizenship Canada didn't monitor whether Syrian refugees were being properly integrated into Canadian society, including basic information such as how many children were enrolled in schools.
• Health Canada couldn't say whether its oral health program for First Nations and Inuit children helped in any way.
• Female offenders weren't getting the rehabilitation they needed, especially those with mental illnesses; some prisoners with severe impairments or at risk of suicide continue to be held for observation in segregation cells, against the advice of experts.
• Cadets at the Royal Military College were being academically challenged, but the school didn't ensure they learned proper military conduct, ethics or adequate leadership skills.

Combined, the audits amount to what Ferguson describes as a bureaucratic focus inward, rather than thinking about the people they are there to serve. It's a message that Ferguson has delivered before, but that the government has yet to hear, he said.

"When I look at these audits together, I find that once again, I'm struck by the fact that departments don't consider the results of their programs and services from the point of view of the citizens they serve," he said in a statement.

That message appeared to ring loudest in Ferguson's review of Phoenix, which the Liberals themselves requested last year. The IBM-designed Phoenix system, a project originally embarked upon by the government's Conservative predecessors, was supposed to save $70 million a year by modernizing, consolidating and centralizing pay processing.

Instead, the government has had to hire hundred of experts to deal with a relentless barrage of pay problems that don't seem to be getting fixed. The Senate has decided to pull out of Phoenix, and departments and agencies have had to implement workarounds to make sure employees get paid.

Statistics Canada, for instance, kept its old pay system in place for the army of temporary workers hired for the 2016 census.

The Liberals expect to spend $540 million to fix the system that cost $310 million, but Ferguson warned that figure is likely to climb even higher, going so far as to warn about similar problems in Australia that have ended up costing the government $1.2 billion over seven years.

Ferguson only looked at what happened since the Liberals took office. An audit about what went wrong in the lead-up will be released in May.

The Liberals green-lighted the new system shortly after coming to office, despite concerns from officials that it wasn't ready to handle the 80,000 different rules overseeing issues like parental leave or compensating those in temporary supervising roles, known as acting pay.

Acting pay makes up one-quarter of all outstanding pay issues – a queue that as of the end of June sat at 494,500, the report says, or about five times what it was when Phoenix launched in early 2016. About 49,000 employees have waited more than a year to have their pay issues resolved.
In the last fiscal year that ended in March, some 62 per cent of employees sampled were paid incorrectly at least once, the report found.

The causes of pay problems were myriad, including pay experts who couldn't enter data into the system half the time to fix errors because doing so would cause further mistakes.

Even as the backlog of cases grew, the report says that the government under-reported the numbers by about 30 per cent because it excluded requests that didn't have a dollar value, or that it didn't believe would take a lot of time to process.

The report says that the government has set aside a lot of time, money and bodies to deal with Phoenix, but it hasn't addressed any of the underlying causes or developed a long-term sustainable solution.

Trudeau facing choice of new chief justice from Quebec or dark-horse candidate, sources say

Globe and Mail
Sean Fine
November 22, 2017

Prime Minister Justin Trudeau is facing a choice between the first francophone chief justice of the Supreme Court in 17 years, or a dark-horse candidate from Ontario who came to Canada as a refugee, but has just three years before retirement, legal observers say.

Justice Richard Wagner, 60, is widely believed in the country's legal community to be the front-runner to succeed Chief Justice Beverley McLachlin when she retires next month, but Justice Rosalie Abella's name has also been raised, during informal discussions involving advisers in the judicial-appointments process, according to two sources with knowledge of the discussions.

Trudeau's Supreme Court pick tangled in race, gender politics

Justice Abella, appointed in 2004, is the senior judge on the court after Chief Justice McLachlin, and is the daughter of Holocaust survivors who came to Canada from Germany in 1950. Justice Wagner, who joined the court in 2012, is the senior judge from Quebec. Canada has a tradition of alternating between anglophone and francophone chief justices.

Justice Abella, who is 71, would have just 3.5 years to serve as chief justice before reaching the mandatory retirement age of 75. Her appointment would give the Liberals more room to manoeuvre – for instance, to observe Justice Wagner closely over that period. If appointed now, he could serve 15 years in the role.

Or, in a scenario outlined by a Liberal insider who is not one of the two sources on the discussions involving the judicial-appointments advisers, Justice Abella's appointment as chief justice would buy time for an Indigenous judge to succeed her. There is currently no Indigenous judge on the court, and this scenario assumes that the Prime Minister appoints such a judge to fill the vacancy left by the retirement. It also assumes the Liberals are confident that they will still form the government in 3.5 years.

To appoint Justice Abella, Mr. Trudeau would need to risk snubbing Quebec. The tradition of alternating between francophone and anglophone chief justices reflects Canada's bijural nature – a blend of common law (a body of case law and precedent that started in England) and Quebec's civil code. It also reflects the importance of Quebec in Confederation. Quebec is the only province that, by law, has three positions reserved for it on the Supreme Court.

Jean Leclair, a law professor at the Université de Montreal, says the Liberals would be courting danger to the Canadian federation if they do not appoint a Quebecker to succeed Chief Justice McLachlin.

"In these very politically explosive and symbolic issues, not respecting tradition would send an awkward message," he said in an interview.

Quebec Justice Minister Stéphanie Vallée also supports the appointment of a francophone chief justice. "Historically, a Quebec judge has held this position almost once in three, and this historical proportion must be respected," she said in an e-mail to The Globe.

The tradition is far from set in stone. In the Supreme Court's first 69 years, it had one francophone chief justice and seven anglophones. But from 1944-84, the position alternated between anglophone and francophone six times, with three of each. In the first five of those six choices of chief justices, however, the senior judge on the court was appointed, in keeping with another tradition of judicial appointments.

Only in the sixth appointment, when Pierre Trudeau chose Bora Laskin of Ontario, the court's first Jewish chief justice, did a prime minister name someone who was not the senior judge. (In fact, Mr. Laskin was the second most junior, with just three years on the top court.)

When Mr. Laskin retired after 11 years, Mr. Trudeau appointed his second anglophone Chief Justice in a row, Brian Dickson. Between the two men, they held the leadership spot 17 years in a row – the same number of years Chief Justice McLachlin has held the job. And they were followed by a francophone from Quebec, Antonio Lamer, who preceded the current chief justice.

Justice Wagner, 60, was appointed to the court by Stephen Harper, and some see him as a small-c conservative (he dissented when a majority struck down a mandatory minimum sentence created by a Conservative government for illegal gun possession), though he tends to fit into the court's broad centre. His late father, Claude, was a leadership candidate for the Progressive Conservative Party in 1976. But it was a Liberal government that first appointed Justice Wagner to the Quebec Superior Court in 2004, and his father, too, has a bi-partisan past, having been part of the Quebec Liberal cabinet.

The three Quebec judges are relative newcomers to the court. Justice Clément Gascon joined in mid-2014 and Justice Suzanne Côté at the end of 2014. Justice Gascon is highly regarded for his intellect, but he has told friends he is not interested – one friend describes him as monk-like, preferring to research and write than to be out giving speeches. Justice Côté is a former litigator with no judicial experience before her appointment and is a frequent dissenter.

Justice Wagner is seen as a capable leader and consensus builder.

"A very decisive person, well-organized, clear thinking," Pierre Michaud, a former chief justice of the Quebec Court of Appeal, told The Globe. "Richard would be the type who would fit that bill as a leader."

The bilingual Justice Wagner gives talks around the country and says meeting people from a wide variety of groups makes him a better judge. "Gone are the days where the judiciary can hide behind its self-constructed image of moral superiority and unrelenting stoicism," he told the Jewish Federation of Winnipeg last year.

Justice Abella, who is bilingual, is a strong liberal voice on the court who has helped fashion court majorities around such issues as labour rights and refugee rights. She would be the first Jewish female chief justice in Canada. Her appointment would make waves internationally, a jurist with knowledge of the appointment discussions said, and Mr. Trudeau could argue that Canada's traditions as a multiethnic society are now much broader and more inclusive than they used to be.

'A human request for justice:' Lawyer receives award for career dedicated to Mi'kmaq treaty rights

Bruce Wildsmith recognized for cases including landmark Donald Marshall Jr. decision

CBC News
Nic Meloney
November 21, 2017

"Coincidentally, we're overlooking Indian Lake," lawyer Bruce Wildsmith said with a laugh, on his property in Barss Corner, N.S.

Appropriate, one could say, because Wildsmith has been helping oversee the legal pursuits by Atlantic Canada's Indigenous peoples for access to natural resources and the affirmation of their treaty rights for most of his career.

In Halifax on Friday, Wildsmith was awarded the Distinguished Service Award by the Nova Scotia Barristers' Society for his significant contributions to the legal profession and specifically his work with Canada's Indigenous communities.

He was also honoured with an eagle feather and Mi'kmaq medicine bag by Chief P.J. Prosper of Paqtnkek First Nation.

"[The feather] is representative of leadership that a person takes, the vision they hold," said Prosper.

"[Wildsmith] has developed the relationship with the Mi'kmaq people, where a trust has been built. He's a very principled person who believes in doing what's right."

Both decorations made for an "overwhelming and emotional" occasion, said Wildsmith, who is non-Indigenous.

'A human request for justice'

Wildsmith was called to the bar in 1974 and began his career in Indigenous rights "by serendpity" when a fellow Dalhousie Law School graduate asked him to take on the case of Mi'kmaw Stephen Isaac, who had been charged with illegal hunting on Potlotek First Nation. Wildsmith took that case through the Nova Scotia Court of Appeal in 1975 and was successful.

"The rest is history," said Wildsmith.

The Isaac case came before changes to the Constitution in 1982 enshrined Indigenous treaty rights. Wildsmith said cases had to be proven "from scratch," in that era, working out of his kitchen at times and needing to find centuries-old documentation for his cases at government archives.

After successfully proving the treaty rights case of James Simon in the Supreme Court of Canada in 1985, Wildsmith said officials from the Union of Nova Scotia Indians came to him and asked him to continue his work with the region's Indigenous communities.

He agreed, and in the years that followed represented Mi'kmaq in such precedent-setting treaty rights cases as Donald Marshall Jr (1999), Joshua Bernard (2003) and Stephen Marshall (2005). And from 1979 to 2003, he taught law full-time at Dalhousie University.

"I had no strategy or deep-seated decision to take on Aboriginal cases," said Wildsmith.

"It was just a human request for justice — I just thought it was a good fit for me."

Raising eyebrows

Wildsmith said back then he raised a few eyebrows, and systemic racism and a lack of knowledge about Indigenous rights led to some uncomfortable situations. But he added he's still encountering concerning behaviours.

While chatting about some media attention he received on his commentary regarding lobster fishing in St. Mary's Bay, a woman asked him. sharply, if he were Indigenous.

"It was asked in a way that didn't seem benign," Wildsmith said.

"It was assertive and aggressive, like it was a negative thing."

In his experience, Wildsmith said Indigenous peoples live a "difficult" reality in terms of the Canadian justice system.

"They're up against a great power imbalance," he said.

"Some of the legal tests that have been laid down by the Supreme Court are impossible to meet. The costs of mounting and proving a case [regarding treaty rights] convincingly is stupendous."

Current cases, said Wildsmith, like those of Kenneth Francis and Hubert Francis, are examples that the Canadian government still has much work to do on clarifying how treaty rights are applied. He added that 18 years after the Donald Marshall decision, there has been "no positive outcome" in having a livelihood fishery for Indigenous peoples.
Semi-retirement

Wildsmith is now semi-retired, acting as legal counsel for the Assembly of Nova Scotia Mi'kmaq Chiefs and Kwilmu'kaw Maw-klusuquan Negotiation Office. He said he's spending more time with his wife of 47 years, Ardythe. The true value of family, he said, is something that was strengthened by his connection with the Mi'kmaq.

Ardythe said his retirement is part of a deal she and Wildsmith cut, to balance the commitment he has to his career.

"I told him he owes me the last 10 years of his life," she said, adding with a chuckle that he's only semi-retired to ensure his good health.

The couple agreed that Wildsmith's career in Indigenous law has resonated profoundly in their personal lives. Ardythe recalled one particular event that still draws tears from both.

Not long after the Donald Marshall decision, Wildsmith was speaking about his experiences at the University of P.E.I., where a large group of Mi'kmaq, up to 75 people she says, stood quietly at the back of the room and listened to his speech. After the event concluded, the group formed a queue to meet Wildsmith.

"They all wanted to shake my hand and thank me," Wildsmith said. "It was quite amazing. Overwhelming."

Phoenix Down Under: Auditor likens bungled payroll system to 'catastrophic' Australian experience
Ottawa Citizen
Blair Crawford
November 21, 2017

The failure of a Phoenix-like pay system in Australia’s Queensland Health service in 2010 cost taxpayers $1.2 billion and was described by the state’s premier as “possibly … the worst public policy failure in Australia’s history.”

The “catastrophic” experience of Queensland Health’s IBM pay system was referenced Tuesday by auditor general Michael Ferguson in his report on the federal government’s Phoenix fiasco. Ferguson noted the Australians had a comprehensive system in place to deal with the Queensland Health payroll problem within four months, something that Canada has failed to do more than 16 months after the Phoenix problems became known.

The Canadian government has already spent $540 million to fix Phoenix and if the Australian experience is an example, that cost is likely to soar even higher, Ferguson warned.

The Australian saga began in 2006 when Queensland Health decided to upgrade the payroll system for its 78,000 employees. The contract, eventually won by IBM, the same company behind Phoenix, didn't go online until 2008. Almost immediately, Queensland Health employees complained they were overpaid, underpaid or not paid at all.

IBM's bid was for $6 million, but the company was eventually paid more than $30 million for the system, which went into use despite warnings to the government that it wasn't ready.

A 2013 Australian commission of inquiry into the system labelled the system "a catastrophic failure."

"The replacement of the Queensland Health payroll system must take a place in the front row of failures in public administration in this country. It may be the worst," the commission said in its finding.

Though Queensland Health wanted a slick, automated payroll system that would replace its soon-to-be-obsolete system, it ended up with one that required 1,000 employees manually filling out 92,000 forms every two weeks, the commission said.

The Queensland government tried to sue IBM for the lost cost, but the suit was rejected by the court.

Unlike the Australian pay system, which was originally intended for the entire Queensland public service but was scaled back to cover just health employees, Canada's Phoenix system services 260,000 federal employees across 22 departments and 80 collective agreements.

Editorial: Phoenix focus must consider taxpayers
Ottawa Sun
November 21, 2017

Dig up, stupid.

The immortal words of Chief Clancy Wiggum, The Simpsons' luckless top cop, perfectly describe the scandalous ineptitude, politicking and all-around unbelievability of the Canadian government's strategy (or lack thereof) to fix the Phoenix pay system.

Faced with a problem, at every turn, somehow, it seems to be getting worse.

We're the first to admit we don't know what the fix is.

Now a fairly serious topic of discussion, after auditor general Michael Ferguson's report into Phoenix, is the notion that this bloody system might be scrapped. We're not sure that's the best plan.

Given that the Liberals and Conservatives have botched this since Day 1, we're not sure sending them back to the start does much to avoid future botching.

But now we have a number: $540 million, at least, to fix Phoenix, and more than likely, much more than that, says Ferguson.

This, for a plan the previous government said would save $70 million a year.

Governments see to it that the mail is delivered, that troops are sent to war as needed. Given the complexity — not to mention the world-altering significance of decisions made and executed daily on Parliament Hill — you'd think they'd be able to make sure employees had the right number on their paycheques.

And yet …

They haven't. Since the start of summer, 150,000 public servants have had issues with their pay.

Some are overpaid. Some underpaid. And this isn't new. It's been going on for nearly two years.

Childishly, the Liberals dared blame Stephen Harper's Tories. "The previous government botched the Phoenix pay system from the start," said Public Services Minister Carla Qualtrough.

Well, sure: More than 80,000 cases were in trouble before the new system even launched.

So there's the hole.

But here's the vain attempt to dig up: What the Liberals have tried to do hasn't fixed it, the AG said Tuesday.

So let's stop the blame game, shall we?

That number is a big one. Those are tax dollars, taken from hardworking Canadians each and every day. We sympathize greatly with the public servants who aren't getting the proper pay.

It's completely unacceptable and must be fixed now.

But the cost to the taxpayer, well, that should be a motivating factor for the Liberals in getting this fixed — whatever that might mean in a practical sense.

The Tories started digging. The Liberals kept going. The costs are getting worse.

For the sake of the taxpayer, fix this.

QuickQuotes: just what was said Tuesday about the auditor general's report
The Canadian Press
November 21, 2017

OTTAWA — Auditor general Michael Ferguson released his fall report on Tuesday chiding the government on a variety of issues, including the Phoenix pay system fiasco and the Canada Revenue Agency's call centre. Here are some quotes on the report's findings:

"We have to understand that when the previous government chose to cut government services, particularly through the last years of its mandate, in order to balance the budget at all costs, there are consequences. We are working hard to restore services to Canadians at the level they expect and we have more work to do to fix the Conservatives' messes." — Prime Minister Justin Trudeau.

"The Liberal government did not create this mess, but we are going to fix this mess." — Trudeau, on the Phoenix pay system.

"Justin Trudeau is adding insult to injury when he hikes taxes on middle-class Canadians and then allows his tax collectors to ignore or mislead the very people being forced to pay for his $100 billion in new deficits." — Conservative Leader Andrew Scheer.

"From the start the Liberals have not taken this Phoenix fiasco seriously. They ignored calls from both public servants and unions to delay implementing the pay system and then failed to do anything to solve the problem. The Liberals have no idea of the full extent of the problem and their dithering is just making things worse for our public servants." — NDP MP David Christopherson.

"While Liberals are letting their rich friends avoid paying their fair share and benefit from tax havens, they are failing to help hard-working Canadians who are looking for help." — NDP MP Matthew Dube.

"The auditor general has exposed how this government is totally failing Canadians. CRA has been blocking half the calls and one third that actually make it through get bad or wrong advice. For those looking to avoid paying their taxes, the Liberals have a good answer for them. For Canadians trying to pay their taxes, they put them on hold." — NDP MP Nathan Cullen.

Phoenix could be a big problem for the Liberals in 2019, say critics, union reps
Auditor general Michael Ferguson says the pay system will take years to fix, and observers say frustrated public servants will make it a 2019 election issue if it's still a problem.
Hill Times
Emily Haws
November 22, 2017

The Phoenix pay system mess could prove to be a problem for the Liberals at the ballot box in 2019, says opposition MPs and union representatives, as the auditor general confirmed Tuesday it would take years to solve.

According to auditor general Michael Ferguson's report, the government's $540-million earmarked to fix Phoenix will not be enough. The outstanding over-and-underpayments total about $500-million.

Public Service Alliance of Canada (PSAC) national president Robyn Benson said she was unsurprised by the report. PSAC is the biggest federal public service union, and represents more than 180,000 workers across Canada and in Canadian government offices abroad.

Ms. Benson, a member of the NDP, said she suspects Phoenix will be an election issue.

"Our members are free to vote as they will, but I certainly believe … they will remember this for a very long time," she said, noting that the union reminds them to vote for the candidate who "will ensure [their work] is valued."

Professional Institute of the Public Service (PIPSC) president Debi Daviau echoed the sentiment, saying Phoenix will probably be an election issue in the National Capital Region, which voted overwhelmingly Liberal in the last election in 2015.

"We certainly mobilized enough to protect public servants and [against] the muzzling of scientists during the 2015 election," she said, adding it would be unfortunate if they were forced to organize against the Liberals as they "are enjoying a fairly progressive relationship."

The Liberals have a tricky political calculus to deal with: they need to fix Phoenix as soon as possible to lessen the sting in the memory of public servants come election time. But if they don't take the time to get the pay system right, they risk adding to the problems that have already caused public servants months of hardship. The Phoenix pay system was commissioned by the Conservatives in 2009, but was put in place by the Liberals in February 2016. It was supposed to streamline government payroll, but from the beginning it has left tens of thousands of public servants overpaid, underpaid, or not paid at all.

In an interview with The Hill Times, Mr. Ferguson wouldn't speculate if Phoenix would be an election issue, but doubted the government could pay public servants on time correctly and create an efficient and stable pay system before the next slated federal general election in 2019.

However, he said Phoenix may fade from the public eye if the government addresses paycheque problems and pay changes are processed within a reasonable amount of time, which he said is possible within two years.

"They need to not take on more complexity than they can handle just to try to get the whole thing done in a short period of time," he said. "They need to make sure they get all of these problems resolved the right way."

Opposition MPs aren't so sure it will be fixed by 2019. NDP MP Erin Weir (Regina-Lewvan, Sask.), his party's public services and procurement critic, said both the Conservatives and the Liberals are to blame for Phoenix. His party will likely highlight in the election how it called attention to Phoenix problems and was constructive in posing solutions, he said.

He said public servants throughout the country, not just in the National Capital Region, should consider Phoenix when they go to the ballot box.

"I think it would only be appropriate to remember [the Liberal government's inaction] in 2019," he said, adding he learned about the "boondoggle" from his constituents.

Conservative MP Kelly McCauley (Edmonton West, Alta.) said he finds it frustrating the Liberals have not been upfront about the size of the problem.

"We've had to rely on leaks or access to information requests to get this so-called open-by-default government to release the actual numbers [on the size of the issue]," he said.

Public Services and Procurement Minister Carla Qualtrough (Delta, B.C.) said in a Nov. 21 press release that fixing Phoenix remains one of the government's top priorities. She blamed the previous Conservative government for botching the system's rollout.

"We are looking at longer-term options to ensure we have a sustainable, reliable, and efficient pay system," said the release. "But while we explore other options, we must forge ahead on addressing the Phoenix pay system issues and backlog."

Liberals hold 12 of 13 seats in National Capital Region

The federal public service is Canada's largest employer, with about 259,000 active employees. As of March 2016, it represented less than one per cent of the total Canadian population. About 41.5 per cent of federal public servants are located in the National Capital Region (NCR).

There are 13 ridings in the NCR, according to a PSAC list, and 12 are held by the Liberals. The lone opposition MP is Conservative Pierre Poilievre (Carleton, Ont.).

Two influential Liberals from the NCR are Steven MacKinnon (Gatineau, Que.), parliamentary secretary to the minister of Public Services and Procurement, and Catherine McKenna (Ottawa Centre, Ont.), minister of Environment and Climate Change.

Ms. McKenna won Ottawa Centre with more than 42 per cent of the vote, ousting NDP incumbent Paul Dewar, who finished with 38.5 per cent. Ms. McKenna did not respond to requests for an interview by deadline.

Susan Smith, principal in Bluesky Strategy Group and a Liberal strategist, told The Hill Times on Nov. 20, before the AG's report, it was "too soon to say" if any Liberal seats would be lost because of Phoenix, noting that people vote based on many factors. She said she operates under the assumption Phoenix will be fixed by the October 2019 election, as 23 months is a long time to solve a problem.

Mr. MacKinnon easily won Gatineau over NDP incumbent Françoise Boivin in 2015, garnering about 31,000 votes compared to Ms. Boivin's roughly 15,000. About a quarter of the workers in his riding work for one of the three levels of government, with most being federal, according to a 2015 Ottawa Citizen article.

Mr. MacKinnon said in an interview after the AG's report was released that he remains committed to fixing Phoenix. He didn't directly answer when asked whether he is concerned about the next election. He is focused on helping his constituents, he said, who have voiced their concerns.

"I am the most motivated person in the world to bring the solutions to these problems," he said. "I find that public servants … are highly motivated alongside me to supply ideas and suggestions for how we best go about fixing this, and that's what we're doing."

The government has not released a timeline as to when Phoenix will be fixed, but Ms. Smith said in essence the real timeline is the next election. If employees are still unhappy with how the government is doing on Phoenix then, she said it may factor into their decision at the ballot box.

"Many of the public servants remember what it was like to be under the Harper government and … I think they will be considering that too," she said.

She suggested the Conservatives will have less election runway on Phoenix, because they began the switch to the new pay system. The best strategy is having clear lines of communication regarding the status of fixing it, she said.

Public Services took too long to respond, says AG

Mr. Ferguson found Public Services and Procurement Canada, the department with the lead on the pay system, had failed to address Phoenix-related pay issues sustainably, saying it did not fully involve other departments to establish a plan to solve the issues. The audit was conducted between February 2016 and June 2017.

Sixteen months in, PSPC had yet to implement a comprehensive structure to resolve what was causing the issues. In contrast, Queensland Health, an Australian department experiencing similar problems, implemented a plan within four months of problems arising. Over the last eight years, Queensland Health has spent $1.2-billion Cdn and continues to resolve some problems.

In Canada problems continue to worsen, the report added, saying over half of paycheques issued on April 19 had errors compared to the 30 per cent wrong on April 6, 2016. The auditor general had six recommendations for the Treasury Board and PSPC, which the respective departments agreed with. One suggested PSPC and affiliated departments develop an analysis of possible options for a long-term solution including cost information and a complete plan for implementing the chosen option.

Treasury Board is establishing a cost estimate for fixing Phoenix by the end of May 2018 that will include costs incurred so far and “a framework to track costs for resolving pay problems and implementing a sustainable solution.”

Last week, Ms. Qualtrough issued a letter to public servants stating there were over 520,000 open cases backlogged at the Public Service Pay Centre, about double what was previously reported. This larger number includes non-financial issues such as name changes, as well as the 265,000 cases of workers not being paid, or being paid too much, or too little.

The letter followed Ms. Daviau’s call on the government to scrap Phoenix and use federal IT workers to build a new pay system. She said Tuesday she is disappointed Mr. Ferguson opposed an alternative system.

Liberals may be 'idiots' on terrorism but low prosecution rate is not their fault
While one can have some sympathy with the sentiments, in this case the subject matter is too nuanced and too important to indulge in partisan point-scoring
National Post
John Ivison
November 23, 2017

The accusation that Liberal policies are creating a safe haven for returning jihadists seemed to light a fire under the normally unflappable Ralph Goodale.

The public safety minister's eyes blazed like the back end of the Batmobile, as he decried Conservative "innuendo and insinuation" that the government is not protecting Canadians.

"Anyone that needs to be under surveillance is indeed under surveillance," he thundered in response to repeated questioning from the opposition.

There was almost a sense of injustice in Goodale's response, following criticism that the Liberal emphasis on changing the minds of returning ISIL members through de-radicalization counselling constitutes an abdication of responsibility on the government's part.

In response to a column in this space Tuesday, the response of "Lyle Conservative" on Twitter was typical: "The Liberals are all idiots."

While one can have some sympathy with the sentiments, in this case the subject matter is too nuanced and too important to indulge in partisan point-scoring.

We have a problem – the government's public threat report said about 60 extremist travellers had returned to Canada by the end of last year. The government is sticking with those numbers, even as academic Amarnath Amarasingam claims that the true figure is much lower – "no more than 10 at most".

Whatever the number, the existing literature suggests returnees are capable, committed and dangerous (a study by Norwegian academic, Thomas Hegghammer, pegged the recidivism rate at one in nine. His study said those who do return are more effective operators than non-veterans).

Goodale maintains returnees are under "very careful investigation" but that the government's focus is on re-integration.

There will be those returnees who may respond to counselling by the new Canada Centre for Community Engagement and Prevention of Violence, and the anti-radicalization efforts of the Council of Canadian Imams.

But deradicalization programs have been viewed with skepticism because it is all but impossible to say whether or not they have worked.

Phil Gursky, a former CSIS strategic analyst, believes that the working assumption for security agencies must be "once a terrorist, always a terrorist".

But if we are not prepared to hunt down and kill Canadians in Syria, as our allies are doing, and counselling is unlikely to be sufficient, what are the options?

The obvious answer is criminal prosecution. After all, it is a Criminal Code offence to participate in terrorism – a relatively low threshold that does not require proof that jihadists committed acts of rape or murder.

But Canada has only charged two individuals with leaving Canada to participate in the activity of a terrorist group (three others have been charged in absentia) – a rate far lower than the U.S., U.K., Australia or even Norway.

Unfortunately for Lyle Conservative and his ilk, this is not the Liberals' fault.

Decisions on whether to prosecute or not are made by the Public Prosecution Service of Canada, based on whether there is a reasonable prospect of conviction.

That, of course, depends on the evidence supplied by the security agencies.

Craig Forcese, who teaches national security law at University of Ottawa, says it's not yet clear whether the low prosecution rate is because of cautious intelligence agencies, wary prosecutors or both.

He pointed out that in the U.K., police and intelligence services work much more closely than in Canada, where CSIS and the RCMP often carry out parallel investigations.

"It's clunky and it makes me worry about our nimbleness were we confronted with a fast-moving, competent adversary," he said. "Clearly we struggle in bringing intelligence agencies to bear in supplying evidence."

He also pointed out that the U.K. employs specialized terrorism prosecution solicitors in the Crown Prosecution Service, which could increase the willingness to lay charges. "Such specialized expertise was an Air India inquiry recommendation," he said.

The bottom line is that the security challenge is real and the solutions are not simple.

But if the blame does not rest solely with the government, the responsibility to co-ordinate the justice system most certainly does.

Yet there is security legislation currently going through the House of Commons that is more concerned with ensuring CSIS complies with the Charter of Rights, than prosecuting people who broke the law by leaving Canada to join a terror army.

The One Thing Lawyers Should Be Thankful For

The one thing lawyers should be thankful for is their most basic reason for existing -- to help their clients improve their lives.

Above the Law
Shannon Achimalbe
November 22, 2017

Every year around the holidays, I try to reach out to a number of current and former clients. I don't call to demand payment. I just call to see how they are doing and to wish them a happy and safe holiday season. I am particularly interested in knowing how my former clients are doing, mainly to see if my services have improved their lives.

This year, one former client comes to mind. Let's call him Sam. To protect identities, some details have been changed.

Sam was one of my first clients after I went solo. He was a man who today would have been in his late 60s. He lived in a poor part of town. Social security was his only source of income. Sam was also HIV positive.

Many years ago, Sam and others started a business that never turned a profit. After the business folded, he was deep in debt and was hit with multiple lawsuits from creditors and collection agencies. He hired a debt settlement firm that ended up doing nothing for him.

Sam somehow found me. When he called, I asked how he heard about me. He said I was recommended by someone I never heard of. At the time, it seemed odd because he lived very far away from me. The distance was so far that we never met in person. Also, I just started my solo practice so I didn't have a website, or even a business address. I was working out of my house and on the rare occasions that I met with clients, it was at a coffee shop or at a friend's conference room. The only form of advertising was telling friends, family, and a few professionals I met at mixers or in chat rooms.

To make a very long story short, I was able to get a decent settlement with his creditors mostly by using the all-powerful "you can't get blood from a turnip" argument. My guess is that once I told the creditors Sam's age and his medical ailments, they were not eager to meet him in person for a debtor's examination.

A year after our attorney-client relationship ended, I reached out Sam to see how he was doing. On the phone, he sounded very happy to hear from me. While I enjoyed hearing about how his quality of life had improved, he tended to ramble on and on, and as a result, I ended up staying on the phone a lot longer than I anticipated. A few years later, I decided to email him instead. He always sent back an equally long, rambling reply.

At some point, we lost touch, and it's been this way for some years.

A few days ago, I was thinking about traveling to a city to meet other clients and friends. The city just happened to be two subway rides away from the city where Sam lives. So I sent him an email asking if he wanted to meet somewhere for coffee or lunch. I told him that I was looking forward to finally meeting him after all these years.

I didn't get a response.

I tried calling him, but his phone number was disconnected.

I wondered what happened to Sam. Looking him up on the internet revealed nothing. I feared that he may have succumbed to complications from HIV. But since many people today with HIV are living without physical complications, there was an equally good chance that he may have moved. Maybe one day I'll know. Or maybe not.

I looked back at Sam's ramblings. On his final email to me, he said that he was going to get his nephews and nieces expensive holiday presents to make up for not getting them anything for the last few years. He also planned to travel in the near future because he was able to save a few hundred dollars.

As another Thanksgiving comes and goes, I wonder what lawyers have to be thankful for. Of course there are the usual responses: health, family, friends, and members of the military for their service. But today, with growing student loan balances, uncertain career outlooks, the evolution of RoboLawyer, depression, more cost-sensitive clients, and recent news of layoffs, the list of gratitude seems to be getting smaller.

Whenever I feel this way, I think about the people I have helped over the years. In Sam's case, I helped him get out of thousands of dollars in debt. For seasoned lawyers, this might be small potatoes. But to Sam, a elderly man living with HIV, it probably meant a lot. I think sometimes we forget that we have the power and the credentials to make a meaningful difference in peoples' lives in ways that other professionals cannot. So despite the challenges, the one thing lawyers should be thankful for is their most basic reason for existing — to help their clients improve their lives.

AG report doesn't give full scope of Phoenix problem
Unions say these numbers are 'not even the whole picture'
CBC News
November 22, 2017

Canada's auditor general says the $520 million in outstanding Phoenix pay claims revealed in his fall audit on Tuesday does not give the entire scope of the problem, because his team was not given pay information for all the departments using Phoenix.

Michael Ferguson said he did not have access to unresolved pay information from 55 federal departments and agencies who process pay using the Phoenix pay system but not through the Miramichi pay centre.

"There would also be outstanding transactions for the other 55 departments, but those numbers aren't collected by Public Services [and Procurement Canada]," said Ferguson after his fall audit report was presented to parliament on Tuesday.

Ferguson said those additional departments, including the Canada Revenue Agency and Canadian Border Services Agency, represent 30 per cent of the government's workforce.

The auditor general said the Treasury Board Secretariat is currently collecting that information from the missing departments, but a request from CBC News to that department late Tuesday did not produce any further data.

'I think the picture is actually worse'

The unions representing public servants spoke out about the report Tuesday afternoon.

"I think the picture is actually worse," said Robyn Benson, president of the Public Service Alliance of Canada, the largest union representing federal workers.

"We were never able to get the actual figures which is really disconcerting."

The president of the Professional Institute of the Public Service of Canada, Debi Daviau said she was disappointed in the auditor general's report and the missing data.

"The auditor general is really talking quite large numbers and they're not even the whole picture," said Daviau. "And yet he's coming to a very strange conclusion in that we should continue to invest all this time and money into a system that my members tell me is simply not fixable."

Last week, Daviau's union, which represents 15,000 IT specialists, urged the government to scrap Phoenix and go with plan B — a newly built, in-house, pay system.

"I don't think we need more study at this point, I think we've studied this thing to death and that's what's led us to the conclusion that it's simply time to pull the plug," said Daviau.

First priority is stabilizing

Carla Qualtrough, the minister in charge of Public Services and Procurement Canada and the Phoenix file, doesn't discount the professional institute's advice, but she said the first priority is stabilizing the pay situation.

"We're also exploring longer term options that may or may not result in Phoenix being the long-term solution. But to be very clear, we cannot defer any resources away from stabilizing, we have 300,000 people we need to pay every two weeks," said Qualtrough.

She acknowledged that payment issues are still on the rise, and said this is because the federal government recently negotiated 20 collective agreements that had been left to expire. The collective agreements added a significant number of new transactions to the Phoenix pay system, she said.

"Over the past month we've paid $614 million to public servants in retroactive payments related to collective agreements," Qualtrough said in an interview with CBC Radio's Ottawa Morning.

The number of problems would be going down if it wasn't for this bump in transactions, she added.

"Ninety per cent of public servants are covered by these collective agreements, there's a multiplicity of transactions because it's four years of retroactivity in some cases."

Qualtrough also took the opportunity to once again blame the previous Conservative government for deciding to build the new pay system in the first place.

The minister said the government accepts Ferguson's report and all of its recommendations and has already taken steps to fully implement them.

CUPE files injunction application to prevent the transfer of RCMP civilian employees to Phoenix
Marketwired
November 22, 2017

OTTAWA, ONTARIO--() - In light of the federal government's inaction, the Canadian Union of Public Employees (CUPE) filed an injunction application in Federal Court to prevent the transfer of more RCMP civilian employees to the flawed Phoenix pay system.

"On October 18, I wrote to the President of the Treasury Board urging him to stop the transfer of RCMP civilian employees immediately. I explained that some RCMP telecom operators and intercept monitoring analysts who want to join our union are presently affected by the pay system mess. He has the power to make sure that no additional RCMP civilian employees suffer from the Phoenix fiasco. Unfortunately, the minister did not even respond to my letter," said CUPE's National President Mark Hancock.

"According to yesterday's Auditor General report, the problems with Phoenix won't be fixed anytime soon. Since the federal government keeps sitting on its hands, CUPE had no choice but

to ask the Federal Court for an injunction that will protect the interests of our soon-to-be members," added Hancock.

The injunction application should be heard by a judge on Wednesday, November 29. The transfer of the remaining RCMP civilian employees to the Phoenix pay system is scheduled for April 26, 2018. But the so-called blackout period will start December 1, 2017, which means from that date the pay of employees who are promoted, reclassified or transferred won't be adjusted until the remaining RCMP civilian employees are deemed in the public service on April 26, 2018.

"It's deplorable that we have to go to court when stopping the spread of the Phoenix catastrophe should be plain common sense for a government whose supposed objective is reducing the number of federal employees affected by the pay system. We hope that the injunction application will be a wake-up call for the Liberals. But if they don't act now, we are ready to go to pursue all legal avenues to protect RCMP telecom operators and intercept monitoring analysts who put their trust in us by signing CUPE membership cards in huge numbers," said CUPE's National Secretary-Treasurer Charles Fleury.

CUPE has filed applications for certification of RCMP telecom operators and intercept monitoring analysts with the Federal Public Service Labour Relations and Employment Board (FPSLREB).

Ontario lawyers now face their own free-speech battle
Ottawa Citizen
Jay Cameron
November 23, 2017

Apparently, it’s no longer enough for lawyers in Ontario to know the law and their ethical obligations. Starting this year, the Law Society of Upper Canada requires every lawyer in the province to “create and abide by an individual Statement of Principles that acknowledges (their) obligation to promote equality, diversity and inclusion generally” – and to do so as part of their 2017 Annual Statement.

The Annual Statement is a licensing requirement.

Many lawyers have publicly rebelled at the Law Society’s attempts to coerce both their speech and their behaviour. And given the current debate about free speech in our universities, the measure bears examination.

In following the story, I reviewed the Law Society’s Barrister’s Oath (bylaw 4, section 21). The language is fairly typical, including pledges to act ethically, not promote lawsuits on frivolous pretences, conduct all cases faithfully, etc. One line of the oath stood out to me, however: “I shall champion the rule of law and safeguard the rights and freedoms of all persons.”

It would certainly seem that the Law Society cannot require lawyers to waive their constitutional rights to freedom of thought, belief, opinion and expression by signing a "personal" inclusivity statement against their will, and at the same time require them to take a solemn oath to "champion the rule of law" (what about the Canadian Charter of Rights and Freedoms?) or "safeguard the rights and freedoms of all persons" (what about the rights and freedoms of lawyers?).

The statement creates a new paradigm, and a new work reality for every lawyer, and it would seem that the Lawyer's Oath needs to be re-written, and re-sworn by every lawyer to reflect new obligations. The year 2017 is nearly over, and the annual statements are due soon. Any lawyer who intends to conform under duress and create an "individual" statement, should also be willing to swear to the following:

1. I pledge to renounce my own ideas (which I suddenly realize are bad, now that my licence may be at stake) and embrace those of the Law Society (which I never realized were so good until I realized I may have a hard time feeding my family if I don't agree with them);

2. I pledge to embrace insincerity, and say things I don't mean, and mean things I don't say, and do so in a manner that sounds convincing and compelling to all around me;

3. I pledge to promptly call the practice adviser if I go off-script in regard to the promotion of inclusivity, or if I lose the leaflets that say what I'm supposed to think that is;

4. I pledge to seek counselling if I begin to suffer depression from mouthing platitudes that aren't mine – but solemnly recognize and agree that I would rather eat and be a hypocrite than not eat at all;

5. I pledge to retweet whatever the Law Society of Upper Canada tweets within eight hours (three hours if it has to do with inclusivity), and pledge to neither fondly remember nor yearn for any of my former freedoms; they are shadows that I have already forgotten.

The coerced signing away of one's rights and individuality as a condition of practising law in Ontario is profound. Alexis de Tocqueville famously warned us about the tyranny of the majority, and its obsession not with liberty, but with the god of equality that it pursues above all else. Coerced worship of the idol is a sign of the death of a "free and democratic society," which the charter establishes as Canada's ideal.

The current oath includes a pledge to uphold the freedoms of all persons. That includes lawyers. It's time for every lawyer in Ontario to consider carefully this: If they can't determine to stand for their own rights, how will they stand for anyone else's?

Calgary lawyer Jay Cameron is Litigation Manager with the Justice Centre for Constitutional Freedoms (www.jccf.ca). Twitter: @Juriscameron

MP wants answers on why Ottawa suppressed residential school's police files

Justice Canada held thousands of police files proving abuse at St. Anne's, but kept them from survivors

CBC News
Jorge Barrera
November 23, 2017

NDP MP Charlie Angus wants to know what Justice Canada has to hide over its decision to suppress thousands of police files from an investigation into abuse allegations at one of the country's most notorious residential schools.

Angus, the member of Parliament for Timmins-James Bay, has been battling Justice Canada for years trying to obtain information under the Access to Information and Privacy Act.

He wants to know why the department kept the police investigation files away from Indian residential school survivors who needed to prove claims of abuse suffered at St. Anne's Indian residential school, which operated in Fort Albany, Ont., along the James Bay coast.

The Ontario Provincial Police files included allegations about the use of a homemade electric chair, sexual and physical assaults, and accounts of school officials using snare wire to whip students.

Angus said the federal information watchdog is again investigating the department over the release of heavily redacted documents related to the department's suppression of the files.

New investigation

Angus said he met with officials from the Office of the Information Commissioner on Wednesday and he was told they would be launching another investigation.

"The pattern of obstruction is so clear from the department of Justice," said Angus.

"The question has be to asked: What is it about St. Anne's residential school that the Justice department has taken such a brass-knuckles approach to undermining their legal obligations, suppressing evidence and defying the information commissioner? What is it they are trying to protect?"

The Office of the Information Commissioner did not provide a comment, despite repeated requests.

Justice Canada said in a statement it always complies with the Access to Information Act.

"Where a complaint is lodged with the Information Commissioner, the department is committed to resolving the complaint in a timely and effective manner," said the statement.

Documents released heavily redacted

The Office of the Information Commissioner first launched an investigation in 2014 into Justice Canada's "unreasonable" delay in responding to Angus' initial request — which was amended several times — under the Access to Information Act.

Angus was seeking documents related to Ottawa's decision to withhold thousands of police files during Indian residential school settlement hearings known as the Independent Assessment Process. The files were from an OPP investigation launched in the 1990s into abuse allegations at St. Anne's.

Justice Canada eventually agreed to release the documents in several batches between March 2017 and April 2018. The department has so far released thousands of pages, but the information in almost every document, except for a handful of scattered sentences and email addresses, is completely redacted.

"We have been dealing with the information commissioner for well over three years, trying to find any documents that explain why the justice department opted to suppress thousands of pages of police testimony, witness statements, regarding the rapes, the torture and the abuse of children at St. Anne's," said Angus.

"We have been stonewalled at every level."

OPP files needed for compensation hearings

In 2014, an Ontario judge had ordered Justice Canada to turn over the OPP files to St. Anne's residential school survivors who were involved in settlement hearings created by the multi-billion dollar Indian residential school settlement agreement.

Justice Canada held the OPP documents within in its archives but never disclosed them to survivors who were seeking compensation for the abuse.

Survivors in the hearings relied on Justice Canada and Indigenous Affairs, which held historical residential school files, to disclose documents to prove they attended the schools and also to support their abuse claims.

Several instances emerged where Justice Canada lawyers at settlement hearings denied abuse allegations despite the OPP investigative files — which led to several convictions — proving abuse was rampant at the school.

The use of the electric chair as punishment and sport was described by St. Anne's survivor Edmund Metatawabin in his book, Up Ghost River.

Ottawa continues to face litigation over St. Anne's residential school cases.

Federal government not tracking interventions with returning ISIS fighters
Public Safety pays for interventions, but doesn't know how many
CBC News
Evan Dyer
November 23, 2017

Turning radicalized individuals away from extreme ideologies and helping them rejoin Canadian society is a key goal of the federal government, but it has little data on how well that fight is going.

The new Canada Centre for Community Engagement and Prevention of Violence is supposed to be on the front line of this fight. It funds research and programs that "aim to prevent and counter radicalization to violence at the individual level."

But the government doesn't know how many radicalized people are actually being spoken to, or who they are. Public Safety Canada says it can't provide statistics because the centre does not directly intervene with radicalized individuals.

Moreover, the groups the centre funds tend to focus on research over action.

"My fear is that we're almost researching this thing to death," said former CSIS officer Phil Gurski, author of the book Western Foreign Fighters.

Six projects are paid for by a public safety fund through the Canada Centre under the heading "action-oriented research." None carry out interventions with radicalized individuals.

Four more projects fall under the heading of "direct intervention/prevention programming," but it remains unclear why they are categorized as such.

Two offer training programs for the Ontario Provincial Police; a third backs a series of expert roundtables on the use of social media, and a fourth, Project SOMEONE at Montreal's Concordia University, "promotes the use of social media and art in schools to build awareness and resilience, combat online hate speech and create space for dialogue."

In September, Public Safety Canada gave Project SOMEONE $367,000.

Deradicalization through poetry, podcasts

Gurski said he is troubled by the mixing of counter-terrorism and deradicalization with efforts to fight discrimination and hate speech.

"The vast majority of hateful people — and there's lots of hateful people online and lots of hateful people in Canada — are not terrorists. I think it's wrong to treat those things as the same even for research purposes."

Vivek Venkatesh, Project SOMEONE's director, told CBC News that his work does relate to jihadi-inspired terrorism.

"What we're doing with the analysis that we've conducted is, in fact, build a series of podcasts and counter-narratives through art-based pedagogy and poetry to empower the broader population in understanding how [ISIS] is using and abusing religious interpretations."

But Venkatesh has an unconventional outlook on the problem of terrorism, telling CBC that jihadi terrorism is not the main terrorist threat facing the West — although he didn't say which groups or ideologies are.

"Go to the Global Terrorism Index and look through the major terrorist organizations and which countries are affected by terrorism in the worst ways and whether jihadism, as you're calling it, is in fact the biggest plague that the western world is perceiving right now."

The GTI, based on data collected at the University of Maryland, lists 19 of the world's 20 most deadly global terror acts in 2016 as having been carried out by groups inspired by Islamic fundamentalist ideologies, and the four groups it lists as the deadliest in the world are all jihadi groups (ISIS, Boko Haram, al-Qaeda and the Taliban). It says three-quarters of all western terrorism victims since 2014 were killed by people directed or inspired by just one jihadi group: Islamic State in Iraq and Syria.

Quebec approach more effective?

Unlike the federal government, Quebec does collect statistics on the interventions it finances, through its Centre for the Prevention of Radicalization Leading to Violence.

In its 2016 report, Quebec's Centre listed 119 interventions in cases of "politico-religious radicalization" — typically Islamist — as opposed to 11 in cases of extreme right-wing indoctrination.

But far-right radicals are increasing in number according to research director Benjamin Ducol, who wrote his thesis on the paths to radicalization taken by jihadis in Canada, France and Belgium.
Ducol says that, while his centre has dealt with people arrested at the airport on their way to Syria, it hasn't been involved with returnees and, as far as he knows, no-one else is either.

Research suggests extremists have lower rates of recidivism than common criminals, if counselled effectively, he says, but reaching the most dangerous ones remains an issue. "All the interventions that we do are on a voluntary basis," he told CBC News. "If they don't want to engage with us, we have no means to constrain them to have any contact with us."

How many are here?

Complicating the problem is an ongoing disagreement over how many jihadi returnees are in Canada.

Public Safety Minister Ralph Goodale told the House this week that "the number of returnees is in the order of 60." Others question why that number has remained the same for 18 months, rather than increasing as ISIS sinks and its foreign recruits jump ship.

There are two things most experts can agree on however: There are too many people involved in jihadi ideology for all of them to be surveilled round the clock; and the government has been unable to piece together evidence for prosecutions in more than a fraction of cases.

"You have to find an alternative," says Ducol. "You're not going to just leave these people wandering the streets. If you don't do anything, for sure you are going to have people who re-engage into violent extremism."

Gurski, the former intelligence operative, is skeptical about the effectiveness of deradicalization programs in the first place.

He says he'd like to see the government make greater efforts to hold returnees to account for their crimes.

"I want to know: What did you do while you were over there? And if I have to run a human source against you" — meaning, put an agent on your case — "to get that evidence then so be it.

"Because the mere fact that you left the country to join ISIS is a criminal offence."

An arm of the state should not be forcing lawyers to declare their values
I am challenging the Law Society's requirement that licensees submit a statement of principles
CBC News
Ryan Alford
November 25, 2017

Over the past couple of weeks I've become Canada's most notorious law professor. I filed an application requesting the Superior Court of Ontario review the legality and constitutionality of

the new requirement imposed by the Law Society of Upper Canada (LSUC) that lawyers and paralegals "demonstrate a personal valuing of diversity, equality, and inclusion."

My application has left some legal commentators positively perplexed. How can I oppose something as trivial as affirming my support for diversity? As Shawn Richard, one of the architects of the Law Society's policy, asked: "What are you conscientiously objecting to?"

More than anyone else, I have a responsibility to answer that question.

A coerced statement

I am not against the Law Society's efforts to promote equity, diversity and inclusion. More importantly, I'll happily take action voluntarily to promote these goals. Note it well: actions, not words.

My problem is not with the Law Society's policy, but with its methodology. The LSUC can and should promote these values in the context of regulating lawyers' conduct. But as an arm of the state, the Law Society cannot coerce me or any lawyer to say what my values are.

The late Justice Jean Beetz provided the pithiest explanation why the regulation of thoughts, values and beliefs is considerably more intrusive than the regulation of conduct. He noted that if the government requires us to do something that we disagree with, we can always do it under protest. But forcing us to state our agreement with a statement made by the government deprives us of the power to say or do otherwise. For that reason, Beetz concluded that forced speech was "totalitarian and as such alien to the tradition of free nations like Canada."

For similar reasons, in the United States, Justice Robert Jackson wrote in West Virginia v. Barnette that "if there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion, or force citizens to confess by word or act their faith therein." And, as Justices Black and Douglas noted in their concurrence: "Words uttered under coercion are proof of loyalty to nothing but self-interest," and are therefore pointless.

That decision allowed children who belonged to the Jehovah's Witnesses to return to school without having to salute the flag. In Canada, governments continued to persecute them for refusing to sing O Canada – which they believed would endorse bellicose nationalism – until the Supreme Court of Canada put a stop to it in 1959.

In the decades that followed, Canadians have done much better, especially in the legal profession. I applaud the Law Society for being careful not to coerce those entering the legal profession to swear an Oath of Allegiance, for fear of violating their rights.

It's easy to forget that decades of progress can be wiped out in an instant. Citizens who belong to religious groups subjected to significant persecution — especially those who have recently arrived as refugees from totalitarian states — can easily imagine the dangerous consequences of a values test compelled by forced speech.
Speaking out against forced speech

I have received many expressions of support recently from members of these groups. Some of these have come from racialized licensees. As you might imagine, those who have best reasons to be afraid of the consequences of forced speech are often the least likely to speak out against it.

I hope that as a cranky old white man I can make myself useful by defending their rights. I'm honour bound to do it in any event, as the Law Society made me promise to take action against injustice when I swore the required oath at my call ceremony. I promised then to defend the rights of everyone.

Of all the measures taken up by the Law Society to address discrimination — including those addressing the hiring practices of law firms — this requirement does the least, while at the same time casting a pall over the freedom of conscience and expression of every licensee. We shouldn't settle for empty words and expressions of self-interest when real action is possible.

This column is part of CBC's Opinion section.

Phoenix pay system issues making it impossible to track hiring of veterans in public service
Vets with PTSD working in federal public service not being paid because of Phoenix: Union
CBC News
David McKie
November 24, 2017

Problems with the federal government's Phoenix pay system are making it impossible for a program designed to facilitate the integration of veterans in the federal public service to collect hiring statistics.

The finding is contained in a document from Veterans Affairs Canada that CBC News has obtained through the Access to Information Act.

The Dec. 2016 report entitled Veteran Appointments to the Federal Public Service, warns that "...new coding and data formatting has negatively impacted the ability to collect hiring data…It is anticipated that these numbers will be available in January 2017."

That deadline came and went. There is still no data, and without it, it's become impossible to find out how well the program is working.

MPs to demand government put interests of citizens 1st after auditor's report

Phoenix payroll mess will take several years and more than $540M to fix, spending watchdog says

This has become a problem for Alex Grant, a 30-year navy veteran who is in charge of a new program within Veterans Affairs called the Veterans in the Public Service unit.

Though he stresses that the absence of statistics has no effect on the program's ability to promote the hiring of veterans within the federal civil service, he concedes that the Phoenix problems are making his life difficult.

"In my tactical world…I want to know whether I'm having a positive impact… And I would obviously like to see an uptick in…hires so I can validate my business model."

'Scary for veterans'

The Veterans Affairs internal document explains that hiring data comes from the government's pay system, which means that the Public Service Commission, the federal agency responsible for collecting these statistics, has no data to work with.

The problem affects veterans who are given so-called preferential treatment under the Veterans Hiring Act, which came into force July 1, 2015. The act includes two groups: veterans who are given priority treatment because they have been released due to medical conditions such as PTSD. And veterans who are given a favourable, but lower status on the hiring scale. Members in this group have retired under more normal circumstances, or who are still in the force and thinking about switching careers.

The Phoenix pay system problem affects the veterans who fall in this second group.

"I most certainly have heard of this problem," Carl Gannon, National President of the Union of Veterans' Affairs Employees, told CBC News "And it's a very real problem. It's really scary for veterans who are trying to go through the system."

Haven't 'heard' anything

The Public Service Commission's Tanya Perlman says she hopes to have the statistics available "in the New Year."

However, Gannon, whose union is an outspoken critic of the pay system, said he doesn't see the problems being fixed "anytime soon."

He said the Phoenix problem is also having another effect. It's causing a lot of stress for veterans working for departments such as Veterans Affairs and National Defence — the two departments that hire the most vets — who don't know if they're getting paid this month, or the next.

"We're talking about people not getting their paycheques. They're coming to work…and sometimes going a month, two months without getting paid. That's hard to deal with if you have PTSD…It's a catastrophic situation."

A statement from Veterans Affairs Minister Seamus O'Regan's office sent to CBC by email said "Veterans Affairs has not heard that any Veterans have quit because of Phoenix."

On the issue of a lack of hiring statistics for veterans O'Regan's office said:

"Our government is committed to supporting Canadian Veterans. We have invested in their education, training and leadership development and we recognize that these skills create a very talented labour pool. That is why we are increasing the (number) of Veterans hired by the Federal Public Service."

OPINION
Canada needs a new model for resolving public-sector labour disputes
Globe and Mail
Ake Blomqvist
November 25, 2017

Ake Blomqvist is an adjunct research professor at Carleton University and a fellow-in-residence at the C.D. Howe Institute

The Ontario Legislature's vote to send striking community-college teachers back to work has been highly controversial and has been described as high-handed and "anti-labour."

It is neither of these things, but draws attention to a dilemma that is becoming increasingly difficult to deal with in liberal democracies such as Canada: how to avoid disruptive labour disputes in the public sector.

Like nurses, teachers, the police and LCBO employees, community-college teachers are paid largely out of public funds, or by government-sanctioned institutions that are the only legal providers of the goods or services they supply.

When labour unions representing these groups go on strike for higher pay, they are not targeting wealthy owners of private firms. Instead, they are trying to get more money from taxpayers or from the buyers of the goods and services they supply, such as buyers of liquor, beer and wine – or students who have to pay higher tuition fees if the taxpayers refuse to raise their subsidies to community colleges.

Provincial labour laws, supported by Supreme Court decisions in Charter of Rights cases, affirm the rights of workers in these categories, such as those in the private sector, to bargain collectively about their pay and other working conditions, and to strike if they are not willing to

accept what employer representatives (read "the government") offer. If this were the end of the story, taxpayers, students, and LCBO customers would be faced with the choice of either paying what the unions are asking, or doing without the goods and services these workers supply. That is, our labour laws would essentially have given these unions the right to collect a tax from any citizen who wanted these goods and services.

Provincial governments have tried to address this problem in various ways, such as designating certain workers as providing "essential services" and taking away their right to strike, or passing ad-hoc legislation as in the Ontario community-college case. However, when doing so, they typically have agreed that workers in sectors in which such measures had been used would have the right to demand settlement of unresolved disputes through binding third-party arbitration. A recent instance of this approach is the Ontario government's agreement that the Ontario Medical Association now has the right to call for binding arbitration in case it cannot reach a negotiated settlement with the government about physician compensation. Although the OMA technically is not a labour union, it effectively functions as one, and the model is similar to that used in negotiations with those representing the police, firefighters or teachers.

Relying on third-party arbitration, however, simply means that decisions about how much citizens will have to pay for the services of public-sector workers, as taxpayers, students or liquor buyers, have been delegated to unelected arbitrators. Arbitrators' decisions, in turn, are governed by legal rules that do not take an explicit societal perspective. For example, one of the main factors arbitrators are supposed to take into account is the employer's "ability to pay." If the employer is the taxpayer, or an institution such as the LCBO that has a government-sanctioned monopoly, this principle doesn't seem helpful as a tool for reaching a reasonable compromise between the interests of the workers and the citizenry.

In markets for most goods and services, competition policy decrees that it is illegal for sellers to enter into agreements to fix prices. Buyers and low-cost suppliers benefit from this rule; buyers because they can bargain for lower prices, and low-cost suppliers because they will get more sales. Competition laws contain an exemption for collective bargaining, but should this exemption automatically apply to bargaining in which the union represents employees of monopolistic providers of key services to the public?

Wage increases negotiated by unions were easy to defend in an earlier era when the employers were wealthy capitalists in local markets where workers had low pay and few outside options. They are harder to justify when they are gained on behalf of workers who are relatively well paid to begin with, when the costs are borne by taxpayers at large or the buyers of publicly funded goods and services who have little choice other than to pay up, and when they block entry into the market of young job seekers.

The Ontario community-college strike and back-to-work legislation are only the latest example of why Canada badly needs a more forthright and active debate about how to create a better model for public-sector labour relations than what we have now, including by allowing more

competition for jobs or in activities monopolized by the public sector, or revised rules for arbitration in disputes involving public-sector workers.

We need to strengthen sex assault shield law
Andre Marin
Toronto Sun
November 25, 2017

Amid the thousands of women around the world who have come forward to disclose they were victims of sexual assault by powerful men and following the more than 50 women who have accused Hollywood producer Harvey Weinstein of everything from sexual harassment to outright rape, there exists a small clique of men enabled by anti-feminists who strangely feel they are the real victims in all of this.

It has been recognized by the Supreme Court of Canada that sexual assaults are vastly underreported and the successful prosecution of these cases is often undermined by entrenched stereotypes and myths. A Globe and Mail investigative report called “Unfounded” concluded that, of the women complaining of sexual assault to the police, many were disbelieved by the authorities on the flimsiest of grounds and no charges were laid.

As a result of Unfounded, police services across Canada are now taking a closer look at the closed cases.

I was a panelist last Thursday at an event hosted by the University of Toronto Men’s Issues Awareness Society. Yes, there is such a thing. One of my co-panelists was lightweight, loudmouth, self-described “civil rights activist” Diana Davison who revelled in her shtick of propagating the prevalence of men unjustly accused of sexual assault relying on “data” and “lots of stuff out there,” without any reference whatsoever to specific statistics or literature. Don’t let the evidence get in the way of whipping up an already wound-up audience of about 150 mostly angry white men.

The panel was oddly titled “Prosecuting sexual assault: should we hear it all?” I say oddly because it is recognized as a basic rule of evidence that the party seeking to introduce evidence must be prepared to satisfy the court that it is relevant and admissible. That applies to all criminal cases, including sexual assaults. So, the answer to the question is a simple no.

The panel was pitched as a “robust dialogue and debate” surrounding Bill C-51, which imposes a duty on the defence to follow a set procedures in order to use records in the possession of the accused, such as emails and text messages from the complainant, to ensure that they are not improperly used at trial to reinforce sexual stereotypes. Defence counsel, predictably, are in an uproar, dramatically calling it a “catastrophe.”

Opponents of C-51 see it as a knee jerk reaction to the acquittal of Jian Ghomeshi. A closer scrutiny of the emails used by defence counsel and how the trial judge treated them would most likely have been allowed even if C-51 had been law. The emails were used to prove the complainants made inconsistent statements at various times and suggested collusion among them. This is fair game in a criminal trial and will be fair game when C-51 becomes law.

Passion for justice: Public Interest Law Centre looks back on 35 years of fighting for the voiceless

'The groups [the centre] was speaking up for were ones that you don't always hear in public debates': director

CBC News
Nov 25, 2017

Whether it was getting internationally-trained doctors into Manitoba hospitals during a shortage or making sure people with disabilities get support, the Public Interest Law Centre has had a major impact on the province over the last three and a half decades, says one of the lawyers who's worked with the centre since its early days.

The centre turned 35 on Saturday.

"The groups [the centre] was speaking up for were ones that you don't always hear in public debates," said Byron Williams, the director of the centre, in an interview with CBC Radio's Weekend Morning Show.

"Whether it's consumers fighting against large monopolies, whether it was persons with intellectual disabilities, whether it was groups that certainly are not popular — prisoners — [the centre] was always there. They were also speaking not only with passion but based on evidence."

The law centre, an independent office of Legal Aid Manitoba, works with clients including people with low incomes, those with mental and physical disabilities, immigrants, prisoners and seniors. The centre takes on individual cases around residential tenancies and government benefits, and group cases that will affect a cross-section of Manitobans, such as those involving environmental or human rights issues.

Williams has been with the Public Interest Law Centre for 25 years. In the late 1980s he was working for the provincial government and, at the time, a lot of people at the legislature did not particularly like the Public Interest Law Centre, Williams said.

"I found myself sympathizing not with the government but with the voices, the individuals and the community groups that were trying to speak up for less-empowered communities," he said.

Victory for Manitobans with intellectual disabilities

Williams' career turned in a new direction. He went to law school and ended up articling with the Public Interest Law Centre. He's stayed with the centre ever since.
Williams said a lot of cases the Public Law Centre has taken on over the years have had a large impact, but one that stands out involved a human rights complaint for Community Living Manitoba about 10 years ago. The case challenged the segregation and institutionalization of people with intellectual disabilities at the Manitoba Developmental Centre.

"We launched what I think was a pretty novel high-risk human rights complaint and we helped bring 49 people out of a very large institution and into well-financed, well-supported, good community homes," Williams said.

A different case in 1992 had a more disappointing outcome, Williams said. It related to whether low-income people could make charter arguments during the social services appeal board. At the time, the court said no.

However, the centre recently worked with a private lawyer and this month, the court ruled the Charter of Rights and Freedoms can be argued in front of the social services appeal board, Williams said.

"It was a sad story. It bugged me for 25 years but now it's opened the door for a lot of individuals," he said.

PS union agrees to contract changes to help fix Phoenix pay problems
Ottawa Citizen
James Bagnall
November 25, 2017

This is how serious the federal government’s Phoenix pay mess has become.

Public Services Minister Carla Qualtrough earlier this month asked federal unions to help expedite a fix by simplifying contract language in dozens of collective agreements.

Debi Daviau, president of the 57,000-member Professional Institute of the Public Service of Canada, revealed Friday that she agreed.

In doing so, however, she offered one important caveat — that any revisions to PIPSC’s collective agreements “not result in any loss of pay.” Her statement is posted on the union’s website.

Daviau also wanted to make it clear that the 80,000 or so pay rules negotiated over the years by a multitude of federal public service unions aren’t to blame for the botched rollout of the new Phoenix pay system. (This is also the position of the government’s largest union, the Public

Service Alliance of Canada, which has yet to weigh in on whether to open its negotiated contracts).

“It is frankly absurd and offensive to accuse collective agreements of confounding the current pay system,” Daviau noted. “The old pay system, built in-house by our members and still used in a few workplaces, managed such changes for 40 years without this kind of catastrophic failure.”

Indeed, several independent assessments of the $310-million Phoenix pay project — including one earlier this week by Auditor General Michael Ferguson — concluded that while government pay rules are many and complicated, that is not what triggered the avalanche of delayed and erroneous pay transactions now clogging the system. Rather, these reports noted, the fault lay with inadequate testing combined with the decision to trim the number of pay advisers even before Phoenix was launched early in 2016.

So why bother reopening the collective agreements now? At this point, nearly two years into the new system with no end in sight to the problems, union leaders can’t afford to just point fingers at the government.

Streamlining contract language should be a relatively painless fix, financially speaking. This is because the collective agreements are riddled with different definitions for a wide variety of pay and benefit items — standardizing on common terms could reduce the likelihood of mishandled transactions, perhaps significantly. It would also go some distance toward Daviau’s longer-term mission, which is to push government into building an entirely new pay system down the road, thus severing all links with the egregious experiment called Phoenix.

EDITORIAL: A black hole of pay errors
The Chronicle Herald
November 25, 2017

Unlike its legendary namesake, the federal government’s Phoenix pay system shows no signs of rising from its ashes.

Indeed, this bird is an unbelievably costly Dodo. It will remain a wasteful burden for taxpayers and a nightmare for federal employees for years to come.

Anyone who hoped Auditor-General Michael Ferguson could provide a more hopeful outlook than this in his audit of Phoenix problems will be disappointed.

The findings Mr. Ferguson released this week are grim.

His audit concludes Public Services and Procurement Canada was slow to identify the nature, causes and extent of the software and systems problems that have led to widespread pay errors in

46 federal departments and agencies since their payrolls were centralized through Phoenix in early 2016.

Auditing the first 18-months of Phoenix, Mr. Ferguson found the total value of unresolved pay errors — both underpayments and overpayments — had topped $520 million by last June 30.

He believes a sustainable fix — getting the system to a state where pay is accurate and on time — will take a lot more than the three years and the $540 million Ottawa has estimated it will need.

He warns Ottawa "needs to be aware that it may be in a similar situation to Queensland Health, a department in the Australian State of Queensland, which after eight years has spent over CAN$1.2 billion and continues to resolve problems with its pay system."

And Queensland got a grip on its fiasco sooner than Ottawa did. The audit says 16 months after Phoenix problems arose, Ottawa still had "no comprehensive governance structure to resolve the underlying causes." Queensland put this in place within four months of the breakdown.

Since the launch of Phoenix, the number of public employees waiting for a pay correction has quadrupled to more than 150,000. Nearly 49,000 have been waiting for more than a year.

The error rate is growing. About 51 per cent of employees had errors in the pay issued on April 19, 2017, compared with 30 per cent in the April 6, 2016 pay.

Not surprisingly, the Miramichi Pay Centre that manages the centralized system is not keeping ahead of the avalanche of error. In only two months have its 550 employees processed more error claims than they took in. So the backlog has grown.

And that's in spite of Ottawa adding some 1,400 positions, government-wide, to take temporary measures to address the problem. This more than offsets the 1,200 jobs eliminated after 2012, when the Conservative government began setting up the supposedly efficient central system.

The audit also found Public Services has been significantly under-reporting the outstanding pay errors by not reporting some types of requests. The total outstanding pay requests exceeded 495,000 in the audit period.

The Liberals blame the Tories for hatching the Phoenix project and the Conservatives blame the Liberals for implementing it too soon. Both helped make the mess.

It was clearly ill-conceived, the Queensland experience was ignored and it was bizarre to keep adding departments when problems arose. That was like bringing passengers to a sinking ship. But know one yet knows the solution or the eventual cost of this black hole, not even the auditor general.

Lawyer for sanctioned LGBTQ military, public service workers hails settlement
Global News
The Canadian Press
November 26, 2017

OTTAWA – A lawyer for members of the military and other federal agencies who were investigated and sanctioned because of their sexual orientation says a hellish week of hard-fought negotiations led to a legal settlement.

In an interview today, Doug Elliott calls the agreement in principle a "fair and reasonable settlement."

Elliott says the Liberal government's plan to deliver a formal apology this Tuesday for wrongs perpetrated on the LGBTQ community put a lot of pressure on both sides to settle the lawsuit.

But Elliott adds he wasn't prepared to take a bad deal, and the lead plaintiffs in the case are satisfied with the outcome – details of which will be announced at a news conference following the apology.

The federal government is also set to introduce legislation on Tuesday to expunge the criminal records of people convicted of consensual sexual activity with same-sex partners.

The overall scope of the government apology is expected to surpass what other countries have done to make amends to LGBTQ communities.

Dubious forensic evidence? That's what happens when we sell off public services
The recent mass review of 10,000 criminal case samples shows what can happen when commercial demands get in the way of vital public services
The Guardian
Steve Thomas (Prospect Union, Principal Secretary)
November 27, 2017

The mass review of 10,000 criminal cases because of concerns over forensic evidence is shocking – it's the biggest recall of samples in British criminal justice history. But it comes as little surprise to our union.

Forensic data handled by Randox Testing's laboratory in Manchester is being questioned as it may have been manipulated.

The implications of this mass recall are wide-ranging. The data in question includes evidence used in sex cases, violent crimes, driving cases and unexplained deaths across England and Wales.

This is about public trust in the criminal justice system. Without confidence in forensics – the fundamental evidence prosecutors rely on – convictions are open to serious scrutiny. The potential human impact could be devastating, both for victims and for people who are wrongly convicted.

Since 2010, when proposals to close the Forensic Science Service – the publicly owned organisation that provided forensic analysis to the police – were first floated, professionals working in forensics, including many members of our union, have warned that it could lead to miscarriages of justice.

Prospect members were shocked by the closure of the service. There were huge concerns about the wider implications, including the loss of experienced forensic scientists, the loss of impartiality of forensic evidence – and concerns that the private market lacked the capacity to deal with demand. The latest developments highlight what all those issues mean in reality.

There is clear evidence elsewhere that the private market isn't working. The UK's largest provider of forensics, LGC, recently sold its forensics security division to European company Eurofins, and there are rumours of other providers also looking to get out of the industry.

Prospect has consistently warned that the pressure to provide services and deliver profit is a hard balance to strike. Forensics requires maintaining high levels of control, which is expensive. Individual private companies dealing with commercial demands can lose sight of why they are doing this work: they are delivering an essential part of the criminal justice system.

There are already more reports emerging of child protection and family cases being affected by potential forensic manipulation.

As well as the truly scary implications for individuals in the criminal justice system, this is one of the clearest examples of the damage of privatising public services. Rather than overlooking this and taking it as an isolated incident, the government must pay attention. This is a symptom of a sustained attack on public services.