Supreme Court to hear Canadian Human Rights Commission's arguments in historic human rights case

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Canadian Human Rights Commission
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Tomorrow, the Canadian Human Rights Commission (the Commission) will appear before the Supreme Court of Canada to argue on behalf of the people of Canada—that they be allowed to use the human rights system to fight discrimination when it results from a federal law.

"This is a historic case with far-reaching implications for both Indigenous and non-Indigenous peoples," said Chief Commissioner, Marie-Claude Landry. "How the Supreme Court rules in this case will impact access to justice for Canada's most vulnerable people, for generations to come."

This case, based on two groups of human rights complaints known together as Matson and Andrews, seeks to address the sexism and racism embedded in the Indian Act, and how this specifically impacts the attribution of "full Status" for Indigenous persons who descend from people who were stripped of their Status in the past.

This case also challenges the argument that the Canadian Human Rights Act should not apply broadly to a federal law. Arguments presented by the Commission and the Interveners could lead to a significant ruling for people seeking to be registered under the Indian Act, but also other people living in vulnerable circumstances across Canada seeking greater and affordable access to justice:

- grieving families of fallen soldiers who rely on the death benefit provisions of the New Veterans Charter;
- persons seeking access to benefits under the Employment Insurance Act, including sickness, maternity, parental or compassionate care benefits;
- military veterans, both young and old, who rely on disability awards, income support or other benefits under the New Veterans Charter, to support themselves and their families; and anyone else in Canada who relies on a federal benefit program to keep food on their table, or a roof over their children's heads.

"The Commission will argue that when Parliament passed the Canadian Human Rights Act, it wanted to create access to justice that is, at the same time, easy, simple and less expensive," added Marie-Claude Landry. "The Act gives Canadians, especially those living in extremely vulnerable situations, the ability to access a human rights justice system, regardless of their circumstances. It is a law for all, and should be accessible by all."

The Canadian Human Rights Commission will not be alone in making its arguments tomorrow. It has the support of several human rights organizations and individuals that will be intervening in the case. For the full list, see our accompanying Backgrounder.

The date of the Supreme Court's expected ruling is not yet known.

Phoenix Pay: Government got conflicting advice before launching ill-fated system
Ottawa Citizen
James Bagnall
November 27, 2017

So what exactly were government officials being told before they pulled the trigger and launched the Phoenix pay system?

In the wake of last week's damning report by auditor general Michael Ferguson — who concluded the pay system is at risk of chewing up $540 million more than its budgeted $310 million by 2019, with no end in sight — it's worth re-examining some of the independent advice government agencies were getting in early 2016.

Treasury Board, along with Phoenix-sponsor Public Services and Procurement Canada, commissioned at least two reviews that were delivered just days before the February 2016 launch of the new pay system.

One review, by Gartner Inc., offered a number of important warnings, but the second report, by S.i. Systems, was surprisingly upbeat about the Phoenix project's chances for success.

"The (Phoenix) initiative is very likely to achieve its goals and desired outcomes within the first year or two of full operations," S.i. Systems noted in its draft final report dated Jan. 18, 2016. "All in-scope work has been completed, a (software) code freeze has been imposed on Phoenix and the Miramichi pay centre is fully operational."

Ferguson last week gave short shrift to such sentiment, pointing out that roughly one in two federal government employees was experiencing a significant pay issue as of last June — fully 16 months after the launch of Phoenix.

S.i. Systems couched some of its conclusions with caveats, noting that the system was not yet fully automated, with the result some pay transactions were being dealt with manually. However, the consultants viewed this as a "temporary" issue during the transition from dozens of older pay systems to the consolidated Phoenix system.

S.i. Systems nevertheless was clear that Public Services and Procurement Canada — the department in charge of the project — should move ahead with Phoenix. Such a move "will be challenging," the S.i. Systems report noted, "but it is likely that the problems and difficulties will be manageable."

The consultants concluded "The (Phoenix) project team is to be commended for bringing this complex initiative to its current stage."

The Gartner report, dated Feb. 11, 2016, offered a much different view. Not only did Gartner identify a dozen significant risks facing the impending rollout of Phoenix, it offered strategies for minimizing them. Many of the risks proved all too real, while the tips for reducing them were ignored.

Consider this item, offered in a discussion of potential problems associated with testing the new pay system: “End to end testing has not been performed by any department that Gartner has interviewed,” Gartner noted, “Best practice would dictate multiple end-to-end cycles be tested prior to go-live (in February 2016).”

The Gartner document added that its consultants were never provided with “a clearly documented testing strategy and plan.”

Gartner was hired on Dec. 21, 2015, leaving it just enough time to interview eight federal departments. Nevertheless, the sample included some of the largest ones (Health Canada, Employment and Social Development Canada and Public Services).

Other key risks identified by Gartner included training, support and transition.

For instance, Gartner notes that federal departments hadn’t yet implemented their training programs. This meant that if any gaps in training emerged it would be impossible to address these through revised or remedial courses before Phoenix went live. Gartner concluded the training shortfall could result in “unanticipated consequences such as an incorrect pay calculation.”

Gartner also brought attention to what has proved one of Phoenix’s most intractable problems — technical support for government employees using the system, a problem exacerbated by the reduction in the number of pay administrators starting in 2014.

Gartner correctly predicted there would be a very large number of queries facing pay administrators at the central location in Miramichi, N.B. — not least because employees across government had little opportunity beforehand to become familiar with Phoenix’s many quirks.

The consultants offered a number of suggestions for reducing the risks of the Phoenix rollout, including trying a more piecemeal approach. Divide the two main waves of employees into multiple waves, for instance, and start with the least difficult departments — those with relatively few seasonal employees, shift workers and other complicating features when it comes to pay.

Critically, Gartner also suggested running Phoenix in tandem with the older pay system as a contingency in case the new system didn’t perform as advertised.

These and other recommendations were ignored, with the result now all too plain to see. Nearly 350,000 pay transactions are today choking a system designed to accommodate 80,000.

To be fair, S.i. Systems also took note of the potential risks involved in abandoning the old pay system before making sure Phoenix actually worked. “(We) did not see evidence of a fallback or test strategy to mitigate this potentially risky event,” the S.i. Systems report noted in an Annex.

But the consultants downplayed the risk in its summary assessment that declared the Phoenix project was using an “excellent testing strategy” and that “when problems were encountered, appropriate and timely action was taken.”

But no matter the consultants’ advice, the final call about moving ahead with a project this big belonged to government. After nearly a decade in development, Phoenix suffered the flaw of unstoppable bureaucratic momentum. The directors of the project seemed not inclined to pay much attention to last-minute advice unless it happened to line up with where they were going anyway.

jbagnall@postmedia.com

Government won't scrap Phoenix, Commons committee told
Public Services and Procurement Canada must work with Phoenix because there's no plan B, Lemay says
CBC News
The Canadian Press

The federal government says it won't scrap the troubled Phoenix pay system, despite its costly problems and criticisms from the auditor general.

Marie Lemay, the deputy minister responsible for fixing the system, told a Commons committee today her department has no choice but to attempt to stabilize Phoenix — at least in the short term.

Lemay says the Public Services and Procurement Department must work with Phoenix because there is no plan B.

Lemay made the comments as she, other government officials and auditor general Michael Ferguson testified at the House of Commons public accounts committee.

Union wants new system
Ferguson last week issued a blistering report on Phoenix, warning that stabilizing it will take years and cost more than $540 million.

Committee chairman and Conservative MP Kevin Sorenson, who represents a rural Alberta riding with few federal civil servants, says his constituency office has recently received more calls on Phoenix than any other file, including immigration.

One of the biggest federal civil service unions has called on the Liberal government to scrap Phoenix and build an in-house system virtually from scratch.

The auditor general says about 150,000 government employees — about half of the federal workforce — have faced pay problems since Phoenix was launched in April 2016, including being underpaid, overpaid or not paid at all.

Feds have no alternative to Phoenix pay system: Lemay
Ottawa Citizen
The Canadian Press
Terry Pedwell
November 28th, 2017

The federal government won't scrap the troubled Phoenix pay system, despite its costly problems and criticisms from the auditor general, the deputy minister responsible for fixing the system told a Commons committee Tuesday.

"There is no fall-back," Marie Lemay of the Public Services and Procurement Department told the public accounts committee.

"There is no former system to go back to," she said, adding that her department has no choice but to attempt to stabilize Phoenix — at least in the short term.

Lemay made the comments as she, other government officials and auditor general Michael Ferguson testified at the House of Commons public accounts committee.

Lemay's comments echoed those made on the weekend by Liberal MP Steve MacKinnon. The parliamentary secretary to Public Services and Procurement Minister Carla Qualtrough said there is currently no alternative system that can quickly replace Phoenix.

Ferguson last week issued a blistering report on Phoenix, warning that stabilizing it will take years and cost more than $540 million.

On Tuesday, he told the committee the government needs to work in two phases to resolve the pay system fiasco.

"The first priority is to pay people the right amount on time," Ferguson said.

"However, after that is achieved, there will still be work to do to get a system that processes pay efficiently," he said.

"The longer-term solution needs to last and be as efficient as it can be."

Lemay appeared to agree, telling the committee her department will examine alternative options to the Phoenix system over the longer term.

One of the biggest federal civil service unions has called on the Liberal government to scrap Phoenix and build an in-house system virtually from scratch.

The Professional Institute of the Public Service of Canada, which represents government IT professionals, said earlier this month it could build a brand new pay system from scratch based on the latest version of Oracle's PeopleSoft software.

Union president Debi Daviau said she expected the new system could be brought online, after thorough testing, within a year of starting the project.

Lemay said her department has worked with civil service unions as it tries to stabilize Phoenix and that officials had met with PIPSC representatives in the last week, although she made no commitments to adopting union proposals for paying government employees.

IBM was contracted by the previous Conservative government to repurpose PeopleSoft to create the Phoenix system.

Daviau said it's not the core software that failed, but the configuration and implementation, which she said involved a lack of proper training of payroll system employees.

Under questioning from New Democrat MP David Christopherson over who is to blame for the Phoenix pay problems, Lemay said IBM had done nothing wrong in carrying out the work to develop the system.

"Throughout the project, IBM has done what we asked them to do," she told the committee.

"It's not IBM that was the project manager," Lemay said.

"It's a bit like hiring a contractor to build a house," and then asking the contractor to make revisions to the original house design, she explained.

In his report to Parliament last week, the auditor general said about 150,000 government employees — about half of the federal workforce — have faced pay problems since Phoenix was launched in early 2016, including being underpaid, overpaid or not paid at all.

The system originally went live in February of that year and was tested on a handful of departments. Despite almost immediate complaints of problems with the system, it was enacted across 46 departments and agencies two months later. Soon afterward, problems were identified with more than 82,000 pay files and the backlog of incorrect transactions quickly ballooned from there.

Committee chairman and Conservative MP Kevin Sorenson, who represents a rural Alberta riding with few federal civil servants, said his constituency office has recently received more calls on Phoenix than any other file, including immigration.

Justin Trudeau apologizes for Canada's program targeting LGBTQ civil servants
From the 50s to the 90s, the government monitored and interrogated civil servants in what the prime minister calls 'state-sponsored, systemic oppression'
The Guardian
Reuters and The Associated Press
November 28, 2017

Justin Trudeau has apologized for a decades-long campaign by previous governments to rid the military and public service of LGBTQ people, calling the cold war crackdown a "collective shame."

From the 1950s to the early 1990s, the Canadian government monitored and interrogated civil servants who were believed to be gay or transgender. Thousands in the public service, military and Royal Canadian Mounted Police were fired or intimidated into leaving their jobs.

Speaking in the House of Commons, the Canadian prime minister said the thinking gay people would be at increased risk of blackmail by Canada's adversaries was nothing short of a witch-hunt.

"This is the devastating story of people who were branded criminals by the government – people who lost their livelihoods, and in some cases, their lives," Trudeau said.

"These aren't distant practices of governments long forgotten. This happened systematically, in Canada, with a timeline more recent than any of us would like to admit."

Trudeau said the public service, the military and the Royal Canadian Mounted Police spied on their own people, inside and outside of the workplaces. He said Canadians were monitored for anything that could be construed as gay behavior, with community groups, bars, parks and even people's homes under watch. He said when the government felt that enough evidence had accumulated, some suspects were taken to secret locations in the dark of night to be interrogated.

He said those who admitted they were gay were fired, discharged, or intimidated into resignation.

“It is with shame and sorrow and deep regret for the things we have done that I stand here today and say: We were wrong. We apologize. I am sorry. We are sorry,” Trudeau said to a standing ovation.

“For state-sponsored, systemic oppression and rejection, we are sorry.”

The apology was the latest in a series of statements by the two-year-old Liberal government seeking to make amends for historical wrongs. Trudeau used a speech to the UN general assembly in September to acknowledge Canada has failed its indigenous people.

The government also introduced legislation that would allow people to apply to have their criminal convictions for consensual sexual activity between same-sex partners erased from public record.

It has also earmarked more than $100m Canadian (US $78m) to compensate members of the military and other federal agencies whose careers were sidelined or ended due to their sexual orientation, part of a class-action settlement with employees who were investigated, sanctioned and sometimes fired as part of the so-called “gay purge”.

“Those arrested and charged were purposefully and vindictively shamed. Their names appeared in newspapers in order to humiliate them, and their families. Lives were destroyed. And tragically, lives were lost,” Trudeau said.

The government earlier on Tuesday also proposed legislation that will allow the criminal records of those convicted of sexual activity with same-sex partners to be permanently destroyed.

RCMP civilians’ move to public service delayed by Phoenix
iPolitics
Kathryn May
November 29, 2017

The federal government is delaying the transfer of thousands of RCMP civilian employees to Canada’s public service until the problems plaguing the Phoenix pay system have been fixed.

Acting RCMP Commissioner Daniel Dubeau notified civilian employees this week that the transfer of about 4,000 civilians to the public service has been put on hold until further notice. The move was to take effect April 26, when the civilians were to be ‘deemed’ public servants and no longer members of the RCMP.

The transfer to the public service will proceed but Treasury Board, the employer for the public service, has yet to determine when the new ‘deeming’ date will be.

Plans for the move have been long underway, but the latest obstacle is Phoenix and the fear that the transfer would dump additional work on the overloaded pay system and saddle the civilian employees with pay errors or missing payments.

In the memo, Dubeau assured members that “we will not move forward with deeming until we resolve ongoing challenges and make sure that the pay centre and pay system are ready.”

With the delay, the Dec. 1 blackout on civilian staffing actions, such as promotions or transfers, has also been lifted and employees will continue to be paid by the RCMP’s pay system. The blackout was imposed to provide enough time for all civilian files to be entered manually into Phoenix before the official transfer.

Civilian staffers are sworn members of the RCMP and consider themselves part of the force, not bureaucrats. They have long resisted plans to join the public service and Phoenix became another reason to stay put.

Treasury Board’s decision to delay the move comes after months of pressure from unions and employees to at least stop the transfer to Phoenix.

The Public Service Alliance of Canada (PSAC) argued the deeming could proceed but urged the RCMP to continue with pay services until Phoenix is sorted out. The Canadian Union of Public Employees (CUPE) went to Federal Court for an injunction to stop the transfer. The hearing was adjourned after the delay was announced.

Last month, MP Daniel Blaikie, the NDP’s Treasury Board critic, all but got a commitment from Treasury Board President Scott Brison during a parliamentary committee hearing to delay the move because of the burden it could put on the overloaded Phoenix.

“We don’t want to add to the burden of Phoenix at a time when we’re still working through the problems and it makes sense, so I would agree with your assessment,” said Brison.

But last week’s auditor-general’s report, which concluded a Phoenix fix is still years away, led to a doubling-down on efforts to stop the move. The next day, Blaikie sponsored a Commons e-petition to delay the move and quickly racked up more than 2,075 signatures.

The RCMP has its own pay system and compensation advisers; unions argue they can easily continue to process the pay of the civilian members after they join the public service. The RCMP paid civilian members the raises public servants recently received in the last round of collective bargaining. Implementing those new contracts has bogged down Phoenix even further.

The eventual move will be biggest employee transfer of its kind — one that has been studied and debated for decades. The government has moved large numbers of employees before but they were transferred to different departments or new agencies.

Civilian members, many of whom are specialists in law enforcement, remain at the RCMP — but once they're deemed, they will be paid like public servants and governed by the same rules, legislation and human resource policies as the rest of the bureaucracy.

In preparation for the move, the government and the RCMP "pay-matched" the jobs of civilian members with those of the unionized public service.

Civilians will become members of unions representing public servants doing the same or similar work.
The only exception are hundreds of telecom operators, such as 911 dispatchers, and intercept or wiretap operators; they became the subjects of a union drive by CUPE.

Phoenix by the numbers: 31,000 more cases revealed
Majority of pay claims found in departments that use central pay centre in Miramichi
CBC News
Julie Ireton
November 30, 2017

New data from 25 federal departments and agencies reveal 31,000 more cases related to the government's Phoenix payroll system than were reported by the Auditor General last week, CBC News has learned.

That brings the total number of outstanding, financial and non-financial Phoenix claims to 551,000.

The new data comes from Treasury Board Secretariat and the newly added claims are for departments that do not use the services of the central pay centre in Miramichi, N.B.

"At this time, we have data from 25 of the reporting organizations, representing approximately 88,000 employees. This represents the vast majority of employees not serviced by the Pay Centre," said a statement from Treasury Board Secretariat.

"For the November 15th pay period, TBS found that there are just under 31,000 transactions greater than 30 days old, for approximately 18,000 employees."

The new figure shows about 20 per cent of workers in the departments that maintained their own compensation advisors are having problems with the Phoenix pay system.

By contrast, 46 other departments and their 212,000 employees are finding that 73 per cent of their workers, who are paid through the centralized pay system in Miramichi, are having issues.

There may yet be other outstanding claims, but Treasury Board officials said "organizations with fewer than 50 employees, along with Institutions, Officers and Agents of Parliament, are not required to report" that data.

Last week, Auditor General Michael Ferguson said the total amount of Phoenix pay claims was more than half a billion dollars and counting. That is for both money owed to the government in overpayments and money owed to workers.

Qualtrough testifies public servants will 'hopefully' be paid properly by December 2018
Senior public servants tell the members of the House Public Accounts Committee Public Services and Procurement won't scrap the Phoenix pay system, shouldering the blame instead of pointing fingers at IBM.
Hill Times
Emily Haws
November 29, 2017

Public Services and Procurement Minister Carla Qualtrough told the House Government Operations and Estimates Committee she is hopeful that all government employees will be paid correctly, and on time by the end of 2018, but did not indicate whether or not she would resign if the deadline is not met.

Ms. Qualtrough (Delta, B.C.) testified Nov. 28 about the Phoenix pay system along with PSPC deputy minister Marie Lemay and associate deputy minister Les Linklater. During the meeting, she reiterated she was fully committed and responsible for getting the pay system stabilized and said she would be looking into resources so that MPs could deal with the onslaught of Phoenix-related complaints at their constituency offices.

During the meeting, NDP MP and committee vice-chair Erin Weir (Regina-Lewvan, Sask.) asked Ms. Qualtrough for a timeline on when Phoenix would be fixed. She said the definition of "fixed" was difficult, but that she was hopeful that government employees would be paid correctly, on time, by the end of next year. It will take years to have the Phoenix system stabilized as a whole.

Mr. Weir then asked if Ms. Qualtrough would resign if the 2018 deadline is not met, but Ms. Qualtrough would not give a straight answer.

"I would hope that if that goal wasn't achievable it won't come as a surprise by the end of 2018, so I would be forthright and honest and amend my estimation," she said.

The Phoenix pay system was supposed to streamline government payroll, but since its implementation in February 2016, it has left more than half of the government's 300,000 employees either overpaid, underpaid, or not paid at all. The transformation program had IBM configure off-the-shelf payroll software for the government's human resources system, as well as

centralize the compensation advisers of more than 40 government departments to the Public Service Pay Centre in Miramichi, N.B.

The government paid about $310-million to implement the project, which was supposed to save about $70-million annually. So far, the Liberals have sunk in about $400-million trying to fix it.

Ms. Qualtrough committed to providing clear communication lines for resources to MPs who are getting inundated by Phoenix complaints at their constituency offices. Conservative MP Kelly McCauley (Edmonton West, Alta.) noted his office is having problems with the current protocol, stating during the testimony "what we're finding now is this designated person is just saying, 'too bad we can't help you anymore.'"

Ms. Qualtrough said they chose, with the federal public service unions, to put priority on certain kinds of cases, such as maternity leave, but MP complaints were not given priority. She did think it was unacceptable that MPs were not getting the responses they needed, but at this time she could not commit to what the solution would be. Mr. Weir suggested a hotline similar to the one assistants call for immigration questions.

Earlier this year Prime Minister Justin Trudeau (Papineau, Que.) appointed a working group of ministers to solve the Phoenix problem, saying it would take a government-wide approach.The group is headed by Public Safety Minister Ralph Goodale (Regina-Wascana, Sask.) and meets weekly.

Ms. Qualtrough said the oversight is provided by the group, but "the buck stops at me to get this thing resolved." Previously Mr. Weir was concerned responsibility for getting the system stabilized would be diluted by having a working group.

Members of the Government Operations and Estimates Committee have attempted to have Mr. Goodale appear, with Mr. McCauley moving on Oct. 31 that "the Committee invite the Chair of the Working Group of Ministers on Achieving Steady State for the Pay System to provide a briefing on the working group's progress; that the meeting be held outside of the Committee's regular schedule if necessary; and that the meeting be held no later than Tuesday, October 31, 2017," according to committee minutes.

Mr. Weir made an amendment to have Mr. Goodale appear by Nov. 30. According to the minutes, the motion was never resolved, as the meeting was adjourned. When introduced at the next meeting on Nov. 2, it went to an immediate vote. The vote was defeated, with the six Liberal committee members voting the motion down despite the three opposition members voting in favour.

Ms. Lemay and Mr. Linklater appeared earlier Nov. 28 in front of the House Public Accounts Committee, along with Treasury Board secretary Yaprak Baltacioglu and other senior public servants. Auditor general Michael Ferguson was also in attendance.

Conservative MP and committee chair Kevin Sorenson (Battle River-Crowfoot, Alta.) kicked off the meeting saying Phoenix calls to his rural Alberta constituency office now outnumber immigration calls. He said he doesn't have a large number of public servants in his riding, and he said immigration calls usually make up the majority of the calls to his constituency office.

Members of the Public Accounts Committee at times became frustrated with the inability of senior bureaucrats to answer their questions.

"A lot of these answers that we're getting are not sufficient, there's still way too much grey area and unknown and I'm hoping that we stay at this until we get the answers we need," NDP MP and committee vice-chair David Christopherson (Hamilton Centre, Ont.) said during the meeting.

Mr. Christopherson asked how much of the responsibility IBM had in the pay disaster versus PSPC. Ms. Lemay, after elaborating that the contract had a task-based process between the two parties, said PSPC was the project manager and said IBM was doing what they were asked to do.

Liberal MP Chandra Arya (Nepean, Ont.) questioned Ms. Lemay on how many public servants involved in the Phoenix project have been fired, lost their pay for performance bonus, or otherwise faced discipline for the system's failure. Ms. Lemay said she could not say how many have been fired.

"I can tell you that on the performance pay we had this discussion at one of the committee's previously … there are some measures that were taken," she said.

Ms. Lemay noted there was no choice in the short term but to work on fixing the Phoenix system because it is the only one the government has. Professional Institute of the Public Service President Debi Daviau called for an alternative system earlier this month.

The focus of the Public Accounts meeting was the auditor general's report released last week, which stated it will likely take several years and more than the $540-million already allocated by the government to solve the problem. The value of outstanding pay errors of under and overpayment totalled more than half a billion dollars as of June 2017.

Though the Government Operations Committee focused mostly on Phoenix, it also looked more broadly at projects for which PSPC is responsible. Ms. Qualtrough noted the public could expect a plan for Canada Post by the end of the year, and updated more broadly on the government's shipbuilding procurement projects.

Supreme Court of Canada nominee Sheilah Martin an advocate for equality
Globe and Mail
Laura Stone
November 29, 2017

She grew up in a family of modest means, babysitting and working in the fast-food industry to pay for school.

As a young researcher and professor in the mid-1980s, she faced criticism for organizing a conference about judges and equality issues from those who did not think further education on the issue was necessary. With the support of the chief justice of the Alberta Court of Queen's Bench, she went ahead anyway.

Later, she was one of the lawyers who helped craft what would become the Indian Residential Schools Settlement Agreement, which she calls "among the most meaningful and challenging work of my career." In 2016, she granted Canada's first judicially authorized assisted death.

Now, Justice Sheilah Martin, 60, is set to become the country's newest Supreme Court judge, and its second from Alberta. She will fill the vacancy created by the retirement of Chief Justice Beverley McLachlin on Dec. 15. Her nomination will keep the court at five men and four women.

In announcing Justice Martin's nomination to the top court on Wednesday, Prime Minister Justin Trudeau said she has maintained a strong focus on education, equality rights and increasing the number of under-represented groups in law schools and the legal profession, including Indigenous people.

Mr. Trudeau called her "an extraordinary jurist" with a wealth of experience across the country, who would be "a great voice in the Supreme Court."

Justice Martin, who is bilingual, is described by friends and colleagues as hard-working, empathetic, smart and down-to-earth, and concerned, as ever, with equality and human rights.

"You can tick off all the boxes with Sheilah Martin," said her friend of three decades, University of Calgary law professor Kathleen Mahoney.

"I think she'll bring a breath of fresh air to the court, and an energy and vitality that will really be of assistance."
Justice Martin will participate in a question-and-answer session moderated by a law professor with Parliamentarians from all parties next Tuesday.

The announcement was not met with equal enthusiasm from those who hoped to see the country's first Indigenous judge on the top court.

"Of course, we are disappointed not to have a First Nations justice appointee to the Supreme Court of Canada," Assembly of First Nations National Chief Perry Bellegarde, who also congratulated Justice Martin, said in a statement.

"We look forward to continuing appointments of First Nations lawyers to more judicial positions and to the promotion of those already on the bench to more senior levels."

At least one Indigenous potential candidate – University of Victoria law professor John Borrows – was viewed as a contender, and had been studying French. British Columbia's former representative for children and youth, Mary Ellen Turpel-Lafond, was also seen as a possibility. She is bilingual. But a source told The Globe and Mail Ms. Turpel-Lafond was not on the shortlist of three to five candidates an independent committee gave to the Prime Minister.

Vanessa MacDonnell, an associate law professor at the University of Ottawa, said there is no doubt Justice Martin is extremely qualified for the position. But she said an Indigenous judge would have been more significant.

"It would have really set the tone, I think, for the government's overall reconciliation agenda," she said.

Indigenous issues, however, have been front and centre in Justice Martin's career.

First appointed as a judge in 2005, Justice Martin served on the Court of Queen's Bench of Alberta in Calgary until June, 2016, when she was appointed as a judge of the Courts of Appeal of Alberta, the Northwest Territories and Nunavut. Before she was appointed to the bench, Justice Martin worked alongside former AFN national chief Phil Fontaine and others to help redress the harms caused to tens of thousands of children at residential schools.

The experience, she said, had a profound effect.

"Even though I had studied equality rights, I was confronted by how privilege had insulated me from being fully aware of what had truly happened in residential schools," Justice Martin said in response to a questionnaire for Supreme Court applicants released on Wednesday.

"This experience reinforced in me the recognition that everyone has a personal responsibility to learn about the lives of others."

She was also part of a team of lawyers who sought compensation for David Milgaard, who was wrongfully convicted of the rape and murder of Saskatchewan nursing aide Gail Miller. Justice Martin's late husband, lawyer Hersh Wolch, was also known for his tireless advocacy on behalf of wrongfully convicted Canadians, including Mr. Milgaard. Mr. Wolch died of a heart attack in July at the age of 77. The two had seven children, combined, from previous relationships.

Justice Martin was born and raised in Montreal.

"I came from a loving family of modest means and saw the daily stress of trying to make ends meet," she said. "From an early age, I understood that it was up to me to work hard to achieve my goals."

She was trained in both civil and common law before moving to Alberta to pursue work as an educator, lawyer and judge. From 1991 to 1996, she was acting dean and then dean of the University of Calgary's faculty of law.

Chief Justice Mary Moreau of the Court of Queen's Bench said Justice Martin is a collegial judge who seeks points of consensus with her colleagues. "She had a very strong background in many areas of the law, but her particular focus was equality issues," Chief Justice Moreau said.

"That interest and commitment rippled through her judicial career as a trial judge."

She has advocated on behalf of women's issues throughout her academic and legal career. In 2016, she had a role in ordering two new trials in sexual-assault cases, citing stereotypes and unfair assumptions about victims.

In her questionnaire, Justice Martin said her most significant contribution to law has been education, "richly defined."

"My guiding desire has been to use what I have learned to help others gain a greater understanding of the law: its purpose, role and promise."

'Extraordinary jurist': Sheilah Martin named new justice to the Supreme Court of Canada
Appointment will fill vacancy to be left by Chief Justice Beverley McLachlin, who is set to retire Dec. 15
CBC News
Kathleen Harris
November 29, 2017

Prime Minister Justin Trudeau has nominated Alberta-based judge, author and academic Sheilah Martin to the Supreme Court of Canada.

Martin was first appointed as a judge in 2005, and served on the Court of Queen's Bench of Alberta in Calgary until June 2016, when she was appointed as a judge of the Courts of Appeal of Alberta, the Northwest Territories and Nunavut.

She has also served as a deputy judge for the Supreme Court of Yukon since 2009.

Her 30-year legal career has focused on Indigenous issues, education, equality rights and increasing the number of historically underrepresented groups in law schools and the legal profession.

A news release from the Prime Minister's Office also touted her awards, including the Distinguished Service Award for Legal Scholarship, the Law Society of Alberta's Certificate of Merit and the YWCA's Advancement of Women Award.

Trudeau praised Martin's accomplishments as an asset to the top court.

"She has a breadth of experience, is an extraordinary jurist and has experience right across the country, including in the North," he said. "She's going to be a great voice on the Supreme Court."

The appointment retains the gender makeup of the nine-member high court, which now has four women and five men.

Many had expressed hope that an Indigenous person would be nominated. When asked why that didn't happen, Justice Minister Jody Wilson-Raybould called it an "important question," but referred only to the "open, transparent" appointment process with clear criteria on merit, functional bilingualism and diversity.

Indigenous judges

She said Indigenous lawyers are taking up an increasing number of seats on lower court benches across the country.

"Ultimately we will wind up with an Indigenous justice on the Supreme Court," she said.

Born and raised in Montreal, Martin studied common and civil law at McGill University. She devoted much of her life to teaching, and worked as a professor and dean of the Faculty of Law at the University of Calgary.

In a questionnaire for the appointment process that is posted online, Martin cites her role in education as one of her best attributes for the Supreme Court job. She said she knew from her early studies that she wanted to share her "joy of learning" and wrote books to help people understand their legal rights and responsibilities.

Contributions to education

"While my commitment to fairness and equal justice for all spans and unites my entire career, my most significant contribution has been to education, richly defined," she wrote. "My guiding desire has been to use what I have learned to help others gain a greater understanding of the law: its purpose, role and promise."

"I have dedicated much of my life to various forms and types of education: often on equality and diversity, but also spanning many diverse subject areas. Throughout, I sought to create a conversational climate where differences of opinion can be explored fully, openly and with respect. Whatever the topic, and whatever the role I played, clarity, communication and insight have been persistent preoccupations."

She said her early upbringing in Montreal helped shape her commitment to issues of diversity and equality.

"I came from a loving family of modest means and saw the daily stress of trying to make ends meet," she wrote.

Significant cases

Asked to outline past cases she considers the most significant in her career, Martin cited:

Work on the Indian Residential School Settlement, calling it "among the most meaningful and challenging work" of her career.
Work on compensation for wrongfully convicted persons, including the precedent-setting redress case of David Milgaard, who was wrongfully convicted of raping and killing Saskatchewan nurse Gail Miller.
Work on cases involving physician-assisted death, which she said deepened her knowledge of life, law, and what it means to be a trial judge.
Presiding over the criminal trial of Dustin Paxton, who was convicted in February, 2012, of aggravated and sexual assault for the prolonged and brutal abuse of a man who was his friend and roommate.
Asked about the appropriate role of a judge in a constitutional democracy, Martin responded that it is "complex and evolving," but is fundamentally as a defender of constitutional rights.

"Governments as well as private actors are accountable under the law, which should be clear, stable and applied evenly. It falls to the judiciary to ensure that no one is above the law," she wrote.

Martin's appointment fills a vacancy on the bench from the pending departure of Chief Justice Beverley McLachlin, who retires Dec. 15.

Chief justice to be named mid-December

Trudeau has not yet named a new chief justice, but his office said that appointment will be made in mid-December.

Next Monday, members of the House of Commons justice committee will hold a special hearing, where Justice Minister Jody Wilson-Raybould will explain the selection process and provide reasons Martin was nominated.

Another meeting Tuesday that will be moderated by a law professor will give MPs and senators on the respective House and Senate justice committees an opportunity to ask Martin questions.

Assembly of First Nations National Chief Perry Bellegarde expressed disappointment the appointee was not Indigenous, but said he looked forward to more appointments of First Nations lawyers to judicial positions, and to the promotion of those already on the bench to more senior levels.

"As national chief I will continue to advocate for more First Nations people at all tables where decisions are made that affect our people and our rights," he said.

NDP Leader Jagmeet Singh said his party supports the bilingualism requirement in principle, but said there should be "special consideration" when it comes to Indigenous candidates.

"I think there needs to be an understanding of the unique situation that Indigenous communities have faced historically and a recognition of the language of Indigenous communities," he said.

'Judicial temperament'

Conservative deputy justice critic Michael Cooper welcomed the "well-qualified" appointment, saying Martin brings both practical and academic perspectives to the bench.

"She has the judicial temperament. She is someone who brings experience. She is someone who is well-respected," he said.

NDP justice critic Murray Rankin welcomed the appointment of Martin, calling her an "extraordinary jurist." But he expressed disappointment an Indigenous candidate was not picked.

"I think all Canadians are disappointed. Certainly the NDP is disappointed that there wasn't an Indigenous person who was appointed," he said.

Trudeau nominates new lobbying, official languages watchdogs
iPolitics
The Canadian Press
November 30, 2017

Prime Minister Justin Trudeau has nominated an official languages commissioner as well as a lobbying commissioner.

Trudeau's choice for the languages job is Raymond Théberge, who has been president and vice-chancellor of Université de Moncton since 2012.

The Franco-Manitoban's name began circulating last week as the likely successor to Graham Fraser. Madeleine Meilleur withdrew her candidacy earlier this year following accusations from the opposition she was too closely linked to the governing Liberals.

For the lobbying position, Trudeau has gone for Nancy Bélanger, who currently has a high-ranking position at the Office of the Information Commissioner of Canada.

The Prime Minister's Office says Bélanger's legal career with the federal public service spans more than two decades.

Both nominations must be approved by the House of Commons and the Senate.

Feds roll out new mandatory Phoenix training
iPolitics
Kathryn May
December 1, 2017

The federal government shifted its position on new training for the Phoenix pay system and is now making it mandatory for all employees and managers in its bid to stabilize the pay crisis.

Treasury Board Secretary Yaprak Baltacıoğlu notified departments this week that the new training program will be mandatory and that all employees should be given the time to take the required online or in-person courses.

"This training is a critical step in addressing information and skills gaps that have been identified since the launch of the Phoenix pay system, and is part of our collective effort to help stabilize the situation," she wrote.

The courses, considered long-overdue, are the first comprehensive training plan for public servants since Phoenix went live nearly two years ago. They are tailored for the hodge-podge of 32 different human resources systems used by departments and how they work with Phoenix.

The training is built on the "HR-to-pay" approach that is at the centre of the government's action plan to deal with Auditor General Michael Ferguson's scathing report on Phoenix's failure since it was rolled out in February 2016.

The training begins Dec. 4 with an initial rollout of 13 courses on GCPedia, the government's intranet. Courses are aimed at better explaining the pay cycle, pay stubs employees receive and how their department's human resources system interacts with Phoenix.

That will be followed by another 33 courses in mid-January, including instructor-led training for human resource staff and compensation advisers. The Treasury Board expects courses will be completed within a couple of months of being available online.

The Treasury Board will track the take-up of courses and report participation levels to departments.

The training is a key piece of the action plan Public Services and Procurement Canada (PSPC) presented to two parliamentary committees this week on how it plans to stabilize Phoenix.

With the plan, Public Services Minister Carla Qualtrough said Phoenix could be stabilized and paying public servants accurately and on time by the end of 2018. She warned, however, the state-of-the-art pay system the government thought it was getting could take years to come to fruition.

With the training and hiring of 300 more employees to work on compensation, PSPC hopes to speed up processing of pay to reduce wait times and chip away at the backlog of more than 550,000 transactions.

The Treasury Board had previously said the new training was considered ‘essential’ and all employees would be strongly encouraged to take it. It now says it always intended the training to mandatory.

That initial stance infuriated unions and frustrated some opposition MPs who were baffled at why the training wasn’t mandatory despite various reports concluding that poor training and lack of change management were key reasons why Phoenix failed.

“It was beyond comprehension that they would roll out new training plans and not make them mandatory. After all the problems with 150,000 public servants affected … and they keep doing the wrong thing with Phoenix. It is like the gang that can’t shoot straight,” said Conservative MP Kelly McCauley.

One senior bureaucrat said the decision to make the training mandatory was to ensure “consistency across departments and make sure it happens.”

Privy Council Clerk Michael Wernick has since received a pile of reports from all deputy ministers on what their departments have done and what they plan to do to stabilize Phoenix.

Wernick ordered the reports in a letter earlier this month, putting the senior bureaucracy on alert that Phoenix is a priority to be tackled by departments as a “collective.”

He also offered a checklist of actions departments could take, which includes mandatory training so all employees and managers understand their roles and responsibilities in using Phoenix.

Starting in December, departments will be asked to report the percentage of managers and employees who have taken the training. Qualtrough said all cabinet ministers are also demanding Phoenix updates from their deputy ministers.

“Ministers are expected to know numbers in terms of what their department is looking for; whether the numbers are headed in the right direction and if not, why. It adds a level of accountability and awareness that is significant, she told MPs this week.

The “HR-to-pay” approach links the pay and human resource functions in departments. Most human resources transactions trigger payments so they are central to paying employees properly.

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

Technology will make today's government obsolete and that's good
The National Post
The Canadian Press
Sunil Johal, Policy Director, The Mowat Centre, University of Toronto
November 30, 2017

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Artificial intelligence is the hot topic of the moment.

The most valuable firms in the world, including Amazon, Microsoft and Google, are in a race to hire leading AI researchers to advance their efforts on autonomous vehicles, medical diagnostics and a range of other ventures.

At the same time, governments are rushing to support the technology that might drive the next economic paradigm shift with funding and incentives.

Prime Minister Justin Trudeau spoke to the promise of AI at a conference recently, where he focused on the opportunity for Canada to attract investment and create jobs in the burgeoning field.

But are governments inadvertently laying the groundwork for their own irrelevance?

As policy director at the University of Toronto’s Mowat Centre, I focus on the impacts of technology on the labour market, government services and social programs.

Industrial age government, information age world

Already today, the private sector is deploying cutting-edge technology as soon as practicable while the public sector struggles to implement turn-of-the-century solutions to seemingly straightforward tasks.

The federal government's ongoing travails with the Phoenix pay system upgrade, which was designed to save $70 million a year but instead may cost $1 billion to fix, is just the latest example of public sector challenges with large-scale information technology projects.

And the gap between the two worlds is likely to only get wider as technology — whether AI or blockchain — becomes more advanced, complex and disruptive. The private sector's capacity and ability to work with IT is already higher than the government's. As salaries and opportunities continue to draw talent to the private sector, we'll likely see a corresponding increase in the capability gap between the two.

Governments are already facing a crisis of trust. According to a survey by public relations consultancy Edelman, only 43 per cent of Canadians trust government, the lowest among surveyed institutions. Just 26 per cent of Canadians surveyed view government officials and regulators as credible.

Digital transformation crucial

Citizens, increasingly accustomed to living and working digitally, are only going to have higher expectations for government's technological adeptness and capability in the future.

Banks, retailers, manufacturing firms and mines are all transforming themselves into digital organizations.

If our governments remain rooted in the industrial age, their decline in relevance is only likely to accelerate. Most government structures and processes date back earlier than the 1950s.

This relevance gap won't just be about accessing services more easily and effectively. In the near future we will likely see a debate about why public sector employees are relatively immune to job disruptions and precarious work conditions, while technology could accelerate both trends for those in the private sector.

As job quality continues to erode in the private sector, the public sector will appear to be apart from trends in precarious work. This will likely lead private sector workers to question why their taxes are funding well-paying, secure positions while they themselves may be struggling mightily.

Labour disruption and unrest

The future of work for many in the private sector will increasingly involve jumping from gig to part-time role and back again to make ends meet, with little left over to save for retirement or for "benefits" such as mental health services or prescription medications, labour market trends over the past 30 to 40 years suggest.

Part-time work is up 57 per cent over the past 40 years, and now accounts for nearly 20 per cent of jobs in Canada. Temporary work is also up 57 per cent over the past 20 years, and now forms 13.5 per cent of workforce. Across OECD countries, growth in non-standard work accounts for 60 per cent of job growth since the mid-1990s.

Those employment trends are likely to get even worse due to technology and corporate strategies.

In 2014, the public sector unionization rate was 71.3 per cent — nearly five times the private-sector rate of 15.2 per cent, which raises hard questions about who will speak up for the private sector worker in an increasingly lean and fissured labour market.

Mass unemployment

A 2016 study by Deloitte and Oxford University found that up to 850,000 jobs in the United Kingdom's public sector could be lost as a result of automation by 2030, in administrative roles as well as jobs for teachers and police officers.

Merely applying these same projections to the Canadian public sector would mean over 500,000 jobs at risk out of 3.6 million public sector roles. But collective agreements could impede any attempts to pivot away from employees performing routine administrative tasks and towards workers with digital skills.

If the economy at large continues to wring efficiencies out of human labour and substitute technological approaches where possible, it becomes hard to imagine the public sector trundling along as it always has.

Quite simply, the public sector will need to develop a more efficient workforce and adopt more agile structures and strategies in order to maintain relevance in a digital world.

So, what's the right path forward? While it's promising to see governments and other public sector organizations move forward with digital service agendas, we can't expect them to simply overlay digital solutions onto existing processes and reap the real benefits of technology.

Blockchain, AI, virtual government

The public sector, ranging from the core civil service to health care to education, must fundamentally transform how it operates.

Do we need countless contribution agreements, contracts and reimbursements to be physically vetted by clerks in multiple offices when blockchain technology could instantly verify all of those same transactions?

Do policy units need 30 advisers to prepare advice for government ministers, or can much of their work be done automatically with a select few adding high-value insights? Can we employ telepresence to reach students in remote communities with high-quality teachers? Will medical diagnostics be transformed by neural networks that can more accurately detect cancers and other diseases?

Countries like Estonia, widely regarded as the most advanced digital society in the world, demonstrate that it's possible to rethink government as a digital platform.

Whether and how quickly Canada's public sector can leverage technological advancements to radically increase the efficiency and effectiveness of programs and services will be perhaps its greatest challenge in the years to come.

Delays and missteps will only continue to put the public service further behind mainstream business and consumer trends, and risk a continued decline in relevance for our public institutions.

Vice Media fight with RCMP headed to the Supreme Court of Canada
RCMP demanded Ben Makuch background materials on suspected terrorist
CBC News
Colin Perkel, The Canadian Press
November 30, 2017

Canada's top court agreed on Thursday to weigh in on a case in which the ability of journalists to do their work conflicts with the ability of police and prosecutors to do theirs.

The Supreme Court of Canada decision to grant Vice Media leave to appeal follows a ruling by Ontario's highest court that reporter Ben Makuch turn over background materials to the RCMP related to interviews he did with a suspected terrorist.

"Oh, man, very relieved," Makuch said moments after learning of the leave decision. "This is an extremely important matter that our country's highest court needs to hear."

The materials at issue relate to three stories Makuch wrote in 2014 on a Calgary man, Farah Shirdon, 22, charged in absentia with various terrorism-related offences. The articles were largely based on conversations Makuch had with Shirdon, who was said to be in Iraq, via the online instant messaging app Kik Messenger.

With court permission, RCMP sought access to Makuch's screen captures and logs of those chats. Makuch refused to hand them over.

RCMP and the Crown argued successfully at two levels of court that access to the chat logs were essential to the ongoing investigation into Shirdon, who may or may not be dead. They maintained that journalists have no special rights to withhold crucial information.

Backed by alarmed media and free-expression groups, Makuch and Vice Media argued unsuccessfully that the RCMP demand would put a damper on the willingness of sources to speak to journalists.

The conflicting views will now be tested before the Supreme Court.

Unclear if Shirdon is alive or dead

In his initial ruling, Superior Court Justice Ian MacDonnell said the screen shots were important evidence in relation to "very serious allegations." MacDonnell also said the public had a strong interest in the effective investigation and prosecution of such allegations.

The Ontario Court of Appeal agreed, rejecting Vice's arguments that the prosecution should have to prove the requested information is essential to the RCMP case. It also said MacDonnell had been aware of the potential "chill" effect — that sources may not be willing to speak to reporters if they risk exposure.

Chris Ball, a spokesman for Vice said the outlet was "thrilled" by the willingness of the Supreme Court to get involved.

"This has been a long battle so far, not only for our journalist Ben Makuch, but for all journalists and protecting their ability to do their jobs without fear of interference by the state," Ball said.

The legal battle has been playing out against a backdrop of uncertainty as to whether Shirdon is dead or alive. American military officials said over the summer that Shirdon was killed more than two years ago. The statement came just months after the U.S. State Department listed him as a designated terrorist, suggesting he was still alive.

Efforts by The Canadian Press to clear up the confusion foundered when the military stood by its position and the State Department referred queries to the "intelligence community," and then pointed to the U.S. National Counterterrorism Centre, which did not respond.

Vice said recently it would drop the appeal if the RCMP dropped its production order given Shirdon's reported death. RCMP and prosecution, however, citing the confusion, refused.

Makuch, who has said he published all information relevant to the public, said Thursday the ongoing battle has not been easy.

"This has taken a personal toll on me," Makuch said. "This isn't over. I have to keep on fighting this for not just myself, but for other journalists in this country."

Members of a coalition that supported Makuch, including Canadian Journalists for Free Expression, Reporters Without Borders and News Media Canada, have condemned the lower courts for failing to recognize the importance of journalistic source protection.

What counts as workplace sexual harassment in Canada?
The Globe and Mail
Daniel Lublin
November 30, 2017

Partner, Whitten & Lublin, Employment & Labour Lawyers, Toronto In the wake of the Harvey Weinstein story, a successful workplace sexual harassment claim in Canada would not be worth any more money than before, although the claims certainly appear more plentiful now.

The real substantive legal change, however, is that the very boundaries of sexual harassment may be expanding, along with the public's interest in these claims. What are those boundaries and when does workplace sexual harassment arise?

In the leading decision of the Supreme Court of Canada, workplace sexual harassment was defined as "unwelcome conduct of a sexual nature that detrimentally affects the work environment or leads to adverse job-related consequences for the victims of the harassment."

This is an extremely broad definition and deliberately so. Virtually any form of behaviour can amount to sexual harassment, provided that it is sexualized in nature and unwelcome. In that same case, the Supreme Court explained that workplace sexual harassment could take on a variety of different forms and that employees need not suffer an identifiable economic loss, such as termination, in order to be a victim.

A connection to the workplace

For sexual harassment to amount to workplace sexual harassment, there must be a connection to the workplace. However, this is now mostly a superficial qualification. Few workplaces still have traditional borders. If two co-workers agree to go for dinner after work and an incident occurs, the fact this incident was after hours and away from the workplace is ultimately of little legal relevance. Similarly, a co-worker who sends unwelcome and suggestive text messages to another on a weekend is not immune from a workplace harassment claim and neither is the employer. In either scenario, once an employer is made aware of a complaint, it is required to investigate and ensure that the workplace, broadly defined, is free from harassment. This is the main objective of

workplace sexual harassment laws – employers are made responsible to govern the conduct of their employees, including conduct that technically arises outside of the office.

Reprisal

In one of my first human rights cases, I was consulted by a woman who had a sexual relationship with her boss. The problem was that, once the relationship ended, her boss began a very subtle campaign of retaliation. He criticized my client at meetings, gave her more difficult tasks and he made sure to tell others that the quality of my client's work was lacking. To an untrained eye, it could be hard to spot sexual harassment. Both their relationship and their breakup were completely consensual. But this was a classic case. Why? Treating a work colleague poorly because he or she won't have sex with you is just as bad as demanding that a colleague have sex with you.

A "course" of conduct

Once upon a time, there was a debate about whether workplace sexual harassment required a recurring pattern of behaviour or a series of incidents in order to make out a successful claim. But now, a majority of the human rights complaints I field concern only a single incident of unwanted behaviour. An unwelcome comment, a hug, an inappropriate remark or even gawking could, in certain circumstances, lead to a successful human rights claim. Although human rights tribunals assess the quantum of damages based on the seriousness of the misconduct, there are countless nominal human rights awards where tribunals take the opportunity to set an example of how not to behave in the workplace.

Changing legislation

The federal government has proposed new legislation, which if passed, will impose heightened obligations on federally regulated employers (banks, airlines, radio and television) to investigate complaints of workplace sexual harassment. If these employers fail to do so, they could be fined or publicly named, which would represent the first time that any Canadian statute would specifically seek to expose corporations who do not take their human rights obligations seriously.

Changing perspectives

In the past several months, there has been a seismic shift in how the public views sexual harassment such that complainants are viewed far more credibly than ever before. In this context, it can be difficult for the public, and even some judges, not to become predisposed to side with alleged victims. In my experience, the court of public opinion is often far more powerful and damaging to a company and its executives than a court of law. The threat of negative media exposure is causing many companies to rewrite their workplace sexual harassment policies, making them zero-tolerant. In some cases, employers are considering banning office relationships altogether, especially between subordinates and managers. Although this can be

difficult for employers to police, they may be far less vulnerable to liability if their policies forbid workplace relationships from the outset.

Executives, educators and human resources experts contribute to the continuing Leadership Lab series.

Neutralité religieuse : un juge suspend l'application de l'article clé de la loi
Radio-Canada
1 décembre 2017

Un juge de la Cour supérieure du Québec a ordonné de suspendre temporairement l'application de l'article central de la loi controversée sur la neutralité religieuse, celui sur la prestation et la réception de services à visage découvert, le temps notamment que les critères d'évaluation des demandes d'accommodement soient bien établis en fonction des lignes directrices du ministère.

Le juge Babak Barin rendait sa décision sur une contestation de la part du Conseil canadien des musulmans, de l'Association des libertés civiles du Canada et de Marie-Michelle Lacoste, une femme portant le niqab.

L'article 10 de la « Loi favorisant le respect de la neutralité religieuse de l'État et visant notamment à encadrer les demandes d'accommodements pour un motif religieux dans certains organismes » prévoit qu'« une personne qui se présente pour recevoir un service par un membre du personnel d'un organisme visé au présent chapitre doit avoir le visage découvert lors de la prestation du service ».

New Supreme Court judge checks most of the political boxes, but so what?
The Globe and Mail
Philip Slayton
December 1, 2017

Philip Slayton's latest book is How to Be Good: The Struggle Between Law and Ethics.

Prime Minister Justin Trudeau checked three of four important political boxes when he appointed Justice Sheilah Martin earlier this week to fill the Supreme Court of Canada vacancy created by the impending retirement of Chief Justice Beverley McLachlin. Justice Martin was a safe but uninspiring choice; a triple, but hardly a home run.

Female? Check. It would have been politically dangerous to replace a female justice with a man. At least half the country would have been aggrieved. And it would fly in the face of the Prime Minister's famous feminism. To do that, less than two years before an election? Not likely.

From Western Canada? Check. It was politically expedient to replace a Western judge (Beverley McLachlin is from British Columbia) with another Westerner. Failure to do so would have

ruffled a lot of feathers on the far side of the Manitoba/Saskatchewan border. A weak historical convention requires that three Supreme Court judges come from Ontario, two from the Western provinces and one from Atlantic Canada (the Supreme Court Act requires that three justices come from Quebec). Justice Martin, although born and raised in Montreal, has been a judge of the Alberta Court of Appeal and has been "Alberta-based" for many years.

Bilingual? Check. We are officially told that Justice Martin is bilingual. For a long time there was a debate about whether Supreme Court judges needed to be proficient in both official languages. Some used to argue that it was better to have a really good unilingual judge than a mediocre bilingual one. Mercifully, that silly debate is over, and every sensible person agrees that a Supreme Court judge must really speak French (it's about French, of course, not English). Although, notice how this requirement can easily clash with the geographic imperative. How many Newfoundland lawyers speak fluent French?

So far, so good. A bilingual woman from the West. But there was a fourth box. Indigenous person? No check mark there. That's a surprise and a disappointment. A lot of people expected that the new Governor-General, appointed this past summer, would be an Indigenous person. It was time, past time, many Canadians thought. The symbolism would be powerful. It didn't happen. The next highly visible federal appointment was to the Supreme Court, which deals with many difficult issues affecting Indigenous peoples. It was time, past time, many Canadians thought, to appoint an Indigenous person to the Court, particularly given disappointment over the governor-generalship. Qualified candidates were available. It didn't happen. Why not?

The problem is the checklist approach to Supreme Court appointments, an approach that stifles initiative and imagination. If the Prime Minister couldn't find a bilingual Indigenous woman from Western Canada whom he liked, why didn't he appoint a male justice, or someone not from the West, in order to put the first Indigenous justice on the Supreme Court of Canada, and thus serve the greater good? Was he too persuaded by political expediency, too attracted to the easy choice?

Once upon a time, appointments to the Supreme Court were a lot simpler. Once, it was perfectly all right to be a unilingual white male (the first female justice was not appointed to the Court until 1982). It helped a lot to be a stalwart supporter of the political party in power. In the old days, no one gave a moment's thought to Indigenous representation in the judiciary. Of course, geography mattered: You had to be from the right region.

Things are obviously much better now. The new politics is better than the old politics. We care about the gender composition of the Court. We accept that judges should be bilingual. Indigenous representation has become a compelling issue. We still worry about regional representation far too much. These are worthy concerns (apart from geography). But these concerns have turned into a checklist that traps us.

In our system, the Prime Minister can pick just about anyone he likes to fill a Supreme Court vacancy (there is some advisory window dressing, but that's all it is: window dressing). The Prime Minister can do whatever he wants. Some criticize his great executive power and compare our situation unfavourably to that of other countries, Britain for example. It's odd that Justin Trudeau hasn't used his freedom to appoint with a dash of daring.

Soon, another shoe will drop. Shortly, a new chief justice will be appointed. The safe, conventional choice would be the senior Quebec judge, Richard Wagner. A much more interesting choice would be Justice Rosalie Abella. Who will the Prime Minister pick? Will he take the easy way out? Or will he surprise us, the way his father did in 1973, when he appointed Bora Laskin to the top job?

L'ABC honore Pierre Marc Johnson

Plusieurs juristes ont été récompensés durant le cocktail de l'ABC, au cours duquel un juge s'est enflammé pour le droit public.

Droit Inc
Delphine Jung
1 décembre 2017

Le temps des fêtes approche et ses mondanités aussi... Mardi, l'ABC-Division Québec organisait un cocktail lors duquel plusieurs prix ont été remis, dont l'un à l'ancien premier ministre du Québec et ancien ministre de la Justice, Me Pierre Marc Johnson.

L'avocat-conseil au cabinet Lavery a ainsi reçu la Médaille Paul-André-Crépeau, remise chaque année à un juriste canadien qui a contribué à l'avancement de la dimension internationale du droit privé et du droit commercial du Canada. Pierre Marc Johnson a été impliqué dans de nombreuses négociations internationales dont tout récemment, celles du projet d'Accord économique et commercial global (AECG) entre le Canada et l'Union européenne. Il a agi à titre de négociateur en chef pour le Québec.

Il a d'ailleurs souligné qu'il passait plus de temps en avion qu'au chalet, en compagnie de sa compagne, Hélène de Kovachich. La directrice de la clinique de médiation de l'Université de Montréal assistait d'ailleurs à l'événement. Me Johnson s'est dit très honoré de recevoir cette médaille, avant d'assurer aux 75 personnes réunies: « ma meute, c'est vous ! ».

L'importance du droit public

L'événement s'est déroulé à l'hôtel InterContinental, dans la salle des Voûtes. Entre deux bouchées et un verre de vin, les discussions allaient bon train concernant la prochaine nomination du juge en chef de la Cour suprême ou encore, du manque de représentativité des avocats de région.

« Je constate qu'il y a un vrai déséquilibre en ce qui concerne la représentation des avocats de région et de Montréal. Il y a place à l'amélioration », dit Me André Komlosy, avocat de Drummondville.
En face de lui, assis sur sa chaise, le juge à la retraite Michel Robert observait les va-et- vient tout en discutant avec Jeanne Ollivier-Gobeil. La jeune femme de 27 ans a gagné le prix Michel-Robert pour son mémoire de maîtrise. « Il porte sur les droits des travailleurs agricoles migrants et leur restriction à la mobilité sur le marché du travail. Je suis vraiment contente et surprise de recevoir ce prix », dit la future avocate, détentrice d'un bac en anthropologie et qui termine son bac en droit après avoir obtenu sa maîtrise à l'UQÀM.

« J'y ai découvert une certaine manière de faire du droit, des avocats engagés pour la justice sociale. Le droit des affaires, ce n'est vraiment pas mon truc », assure-t-elle, sous le regard bienveillant de sa tante venue la soutenir.

Le deuxième prix Michel-Robert a été remis à Claude Boulay, pour sa thèse de doctorat qui portait sur les relations changeantes entre la société civile et les tribunaux. Détenteur d'un bac en droit (1983) et d'une maîtrise (2005) obtenus à l'Université de Montréal, l'avocat, qui exerce à son compte s'est dit fier. « Je suis honoré de voir mon nom associé à celui du juge Robert devant qui j'ai déjà plaidé », dit-il.

Avant la remise des prix officielle, le juge Robert a pris la parole pour déclarer sa flamme au droit public. « Je suis ravi de voir que le droit public et constitutionnel connaît un tel engouement, c'est très encourageant pour moi. J'ai toujours cru que les jeunes se dirigeaient de plus en plus vers le droit privé, mais en fait le droit public suscite encore des vocations », a-t-il dit.

Ottawa interpellé pour freiner la déportation d'immigrants «exemplaires»
Puisqu'il revient aux services frontaliers d'exécuter la déportation, L'avocat des Lawrence, Stéphane Handfield, interpelle le ministre canadien de la Sécurité publique, Ralph Goodale.
La Presse
Roxanne Ocampo
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Des députés néo-démocrate, solidaire et péquiste ainsi que la présidente de la Commission scolaire de Montréal ont interpellé le gouvernement fédéral pour une dernière fois, samedi, afin de freiner la déportation de la famille Lawrence vers son Sri Lanka natal.

Ces immigrants présentés comme exemplaires doivent être expulsés dimanche après-midi, cinq ans après leur arrivée au pays.

Une des soeurs Lawrence a fait la manchette cette semaine en raison de son brillant parcours académique. La présidente de la CSDM, Catherine Harel-Bourdon, présente Leony Pavithra

Lawrence comme une «élève exceptionnelle» qui a d'ailleurs été récompensée pour sa persévérance.

Elle devra quitter le pays avec ses proches en raison du refus de leur demande d'asile, alors qu'elle s'apprêtait à entrer au cégep avec un permis d'études en poche.

Le ministre québécois de l'Immigration, David Heurtel, leur a même accordé vendredi des certificats de sélection du Québec pour des considérations humanitaires, ce qui s'inscrit dans une démarche vers l'obtention de la résidence permanente.

M. Heurtel a écrit sur Twitter que Leony Pavithra Lawrence «est un exemple d'intégration et représente le genre d'immigration que nous voulons accueillir».

La jeune femme a pour ambition de devenir médecin.

«Pour devenir oncologiste, je ne peux pas le faire au Sri Lanka, a-t-elle expliqué en conférence de presse, samedi. Parce que j'ai commencé tout en français, il faut que je le finisse en français.»

En entrevue avec La Presse canadienne, l'avocat des Lawrence, Stéphane Handfield, a affirmé qu'il garderait espoir jusqu'à ce que leur avion décolle, à 17 h 30 dimanche.

«Le fédéral devrait respecter cette décision-là (de délivrer des certificats de sélection du Québec), suspendre le renvoi et finaliser l'étude du dossier, a-t-il exposé. Tout ce qui reste à faire, ce sont des formalités du côté fédéral pour que la famille puisse obtenir la résidence permanente pour des considérations humanitaires.»

Puisqu'il revient aux services frontaliers d'exécuter la déportation, il interpelle le ministre canadien de la Sécurité publique, Ralph Goodale.

Les Lawrence craignent de retourner dans leur pays d'origine, indique Me Hanfield, d'autant plus que le frère aîné de Leony Pavithra, Léon, a eu un enfant en sol québécois il y a à peine quelques mois. Sa femme fait également l'objet d'une mesure de renvoi.

«On va faire quoi avec l'enfant demain lorsqu'on devra se présenter à l'aéroport? Il faudra se poser la question parce que si l'enfant ne peut pas rentrer au Sri Lanka parce qu'il n'a pas de statut dans ce pays, il va être remis à qui? Aux services sociaux?» a soulevé Me Handfield.

Le député néo-démocrate Alexandre Boulerice dénonce quant à lui «un manque de respect envers la vie» de ces immigrants sans statut, qui ont appris le français, entamé des études et qui se sont déniché des emplois.

«Une bonne partie de l'absurdité de la situation dans laquelle on se trouve aujourd'hui, c'est les délais de traitement de dossiers du gouvernement fédéral», a-t-il lancé.

Il a rappelé que le ministre Goodale a déjà usé de ce pouvoir discrétionnaire par le passé.

Pour la députée péquiste Carole Poirier, cette affaire met en lumière la limite des pouvoirs du gouvernement québécois en matière d'immigration.

Le député solidaire de Mercier, Amir Khadir, a pour sa part relevé que les Lawrence ont fait la démonstration de leur «capacité à prendre racine».

«Je pense que M. Goodale a toutes les bonnes raisons de considérer que cette famille ne représente aucun risque pour la sécurité du Canada, a-t-il martelé. Je suis sûr que ceux et celles à Ottawa qui sont responsables d'examiner le dossier d'immigration de cette famille vont se rendre compte que nous avons toutes les raisons de les accueillir au Québec, à Montréal.»

L'organisme de défense des droits de la personne Amnistie internationale a par ailleurs joint sa voix aux leurs pour réclamer un sursis du gouvernement fédéral.

How bail court is being reformed for the first time in decades
The Star spent a day with four duty counsel lawyers on the day a new provincial bail directive went into effect.
Toronto Star
Fatima Syed
December 2, 2017

It’s the morning after the Remembrance Day weekend, and five of the eight duty counsel lawyers who operate out of a windowless room at 1000 Finch Ave. W are sick or absent.
The courthouse was closed for three days to account for the government holiday, and the four police precincts in the north Toronto district have had a busy weekend. Seventeen cases for bail court have already arrived at duty counsel’s office when it opened at 9 a.m., with seven more on the way.

Many of the accused have been in jail for a month. Their crimes are varying levels of serious: a 19-year-old charged with impaired driving, petty theft charges, two more with domestic assault charges.

Every one of these individuals is legally innocent.

Two courts have been set up for the first time in preparation for the large case load, but by 11 a.m. everything is still being processed. One accused person has just arrived in the police wagon. Two more are on the road. Another’s family member has been left a voicemail to appear in court. One needs a Dari interpreter that still hasn’t shown up.

While the courtrooms remain mostly silent, and empty, Anat Cole, one of the few duty counsels working this busy morning, is walking back and forth in the halls. She’s trying to find someone

to be the surety for a 40-year-old man who turned himself in after a series of arguments, which became physical, with his wife. A surety is someone who will guarantee to the court his good behaviour, someone who Cole defines as a “civilian jailer.”

Cole is one of 396 legal aid-funded lawyers in the province, 65 per cent of whom are female, who represent accused persons who don’t have their own lawyer, or can’t afford one. Her job, she explains, is an integral part of a legal system that focuses, too often, on incarceration, and that has forgotten “At this stage of proceedings, they’re all presumed innocent.”

This morning (Nov. 14) a new policy to make the bail system “fairer and faster” came into effect. The new bail directive follows the June Supreme Court of Canada decision R v. Antic, which recommends a return to the principle of law — that all accused persons are legally innocent, and, unless the charges are severe, the first consideration of any court should be to grant them an unconditional release.

“Ontario’s new bail directive clearly states that bail recommendations should start with the least restrictive form of release,” said Yasir Naqvi, Ontario’s Attorney General, in an emailed statement to the Star, “and that having an accused person released with a surety should be the exception, not the rule.”

This hasn’t been practiced for decades, said Chad Skinner, Cole’s colleague. “The law is not being applied consistently across the province,” he said. “I would say the law has not been applied fairly for quite a long time.”

Ontario has the second-highest population of adults held in remand, awaiting trial or sentencing, according to 2015/2016 Statistics Canada reports, with 67 per cent of this population waiting for their day in bail court. Studies show that the system has become increasingly risk-averse, releasing less people, less quickly, with more conditions and an overreliance on sureties.

It has also shifted the onus on the accused to prove why they should be released — this is complicated when the accused are members of, what Cole calls, “the most vulnerable part of society:” The mentally ill, drug addicts, the poor, the homeless, the racialized, the disenfranchised, the forgotten.

“We’re in an adversarial system,” said Skinner. ‘But the court is supposed to be a neutral decision maker who hears arguments, applies the law and makes fair and appropriate decisions. The status of bail right now doesn’t feel like that.”

A quick survey of the kind of cases the eight duty counsel lawyers in this north Toronto courthouse have dealt with paints a similar picture. An 86-year-old man with dementia was arrested after exhibiting physical behaviour against staff at his psychiatric hospital. Someone threw an orange at their partner and got arrested. An empty water bottle was considered assault with a weapon. So were slippers, a grape, a Samsung S4.

“There are blood vessels popping in my head when I have to take these people to bail court,” said Evan Flewelling, a duty counsel who has worked at this courthouse for over four years.

“So often the human side of our clients gets ignored and reduced to the charges in their criminal record and these kind of incidental matters about them,” said Georgia Koulis, the manager of the duty counsel office. “But, nobody says as a six year old I want to be a criminal.”

In the nine years she’s been at 1000 Finch Ave. W, she has yet to see a client of hers receive an unconditional release, as the Antic decision now dictates. “It’s such a unicorn,” she says.

For the past year and a half, Koulis has been leading the office in their own “bail directive” policy, which guides duty counsels to practice the principles of law as best they can. The Antic decision has emboldened their cause, as has the Attorney General’s decision to provide updated and extensive training to Crown attorneys province-wide.

But there’s more work to be done. Skinner believes that public education is crucial to changing the bail court system. And, Flewelling would like to see police officers taught to consider more automatic releases from the police station for cases involving minor charges.

“Aside from life or death, there is nothing more important in someone’s life than their liberties,” said Koulis.

Do we appreciate our Supreme Court justices enough?
This moment of transition provides a unique opportunity to reflect on the joys and pressures of the position, Penny Collenette writes.
Toronto Star
Penny Collenette
December 3, 2017

The Supreme Court, an opaque fortress of law, gives the impression of great strength, not easily amenable to change. But after 17 years of extraordinary and steady leadership by Chief Justice Beverley McLachlin, transition and transparency are high on the court’s agenda as they bid farewell to one justice, welcome another, and anticipate the name of a new chief justice.

The nine justices, accustomed to headlines for their collective decisions (unanimous or not), rarely feel the glare of an individual spotlight. But transition affords us a unique moment to reflect on the long road to a Supreme Court appointment and the pressures of the position.

Somehow Beverley McLachlin made it look effortless.

Brilliantly balancing her personal sphere while maintaining an international and community-based public profile, she radiates intelligence and poise. Both cautious and courageous, she is known for her consensus-building skills as well as her leadership abilities.

Spending her formative years in Pincher Creek, Alta., she was later called to the bar in both Alberta and British Columbia, becoming chief justice of the B.C. Supreme Court in 1988. Seven months later, she was elevated to the Supreme Court by Brian Mulroney.

Her learning curve on the court was 11 years before Jean Chrétien appointed her as chief justice, making her the first female in that position. Not only did McLachlin's appointment shatter the Canadian legal glass ceiling, she also managed to shatter the record for the longest-serving chief justice. Under her leadership, the court was known for its professionalism and discretion in spite of an unprecedented disagreement with Stephen Harper over his nominee to the Court in 2014. Filling her shoes is clearly a very tall order, especially as her departure creates two judicial vacuums.

Her position as the "western/northern" justice was filled this week by Alberta Justice Sheilah Martin. A transparent and non-partisan appointment process headed by former Prime Minister Kim Campbell, had given the PM a short list of three candidates.

Justice Martin's application for her appointment is on line. It reveals not only her stellar qualifications, her bilingualism and her extensive legal and academic experience, as well as her "joy of learning."

Further information about her selection is still to come.

The Minister of Justice and Kim Campbell will appear before a House of Commons Standing Committee tomorrow to explain the rationale for the appointment. Justice Martin will then participate in a question-and-answer forum with members of other committees, while law students observe the proceedings. This is the second time for an open dialogue with an appointee, which is a popular technique. It helps to illuminate a traditionally shrouded process.

The prime minister has a second chance at shaping the court by naming a chief justice from among the nine justices. The internal process of the appointment will understandably be less transparent but nevertheless highly consultative.

Due diligence is crucial because appointments are made until the age of 75. However, it is not uncommon for justices to retire from the bench before their retirement date. The case load and the isolation of the position can be wearing. Working intensely with eight colleagues from different backgrounds and different regions of the country in an austere setting can cause friction.

A recently published book by Prof. Constance Backhouse, A Life, brilliantly describes life on the court — the exhilaration and exhaustion as well as the stresses and strains. Backhouse meticulously chronicles the life of 90-year-old Claire L'Heureux Dubé, the second woman appointed to the Supreme Court in 1987 and the first from Quebec.

When L'Heureux Dubé entered the legal profession in 1952, there were very few female lawyers. Far from feeling discouraged, she used her formidable intellect, legendary work ethic and irrepressible personality to overcome professional obstacles and personal tragedies. Like McLachlin and Martin, she already had an impressive judicial career before she reached the Supreme Court.

Especially interesting is her description of early days on the court, where she felt as if she were living a "monk's existence." The work, however, trumped the existence. She "loved the challenge of the cases and jurisprudence." Massive social and political issues of the day, such as the Quebec secession case, wind their way through the book, masterfully blending jurisprudence with history.

Whether through transparency or recollection, the life of any Supreme Court justice is inspirational and educational. Let's take this unique moment to say thank you before they disappear back into their fortress.

Penny Collenette is an adjunct professor of law at the University of Ottawa and was a senior director of the Prime Minister's Office for Jean Chrétien.

Des juges « sous-payés » sont dédommagés
Au total, 27 juges de paix magistrats recevront 80 230 $ chacun et six juges de paix à pouvoirs étendus obtiendront 40 115 $.
Droit Inc
Delphine Jung
4 décembre 2017

Il s'agit pour le gouvernement québécois de régler un conflit de plusieurs années, rapporte le Journal de Montréal.

En 2016, la Cour suprême du Canada avait rendu un jugement qui dénonçait une décision du gouvernement du Québec. Ce dernier avait en effet décidé de fixer unilatéralement le salaire des juges en 2004.

À ce moment, Québec avait décidé que les émoluments de ces nouveaux juges seraient de 90 000 $, mais les anciens juges de paix à pouvoir étendu ont conservé leur cachet qui dépassait les 137 000 $.

La Cour suprême a estimé que, dans sa manière de procéder, le gouvernement avait « porté atteinte de manière non justifiée à la garantie constitutionnelle de l'indépendance judiciaire ».

À la suite du jugement, le gouvernement Couillard a créé un comité sur la rémunération des juges et a accepté, jeudi, les recommandations de ce comité, présidé par le juge à la retraite Pierre Blais, à qui s'est joint l'ex-juge Louis Lebel.

Louis Lebel Pour réparer une « violation constitutionnelle » faite par l'entremise d'un traitement salarial trop chiche offert aux juges de paix magistrats (JPM), le Comité sur la rémunération des juges « recommandait alors qu'un montant forfaitaire de 80 230 $ soit versé à chaque JPM nommé le 5 mai 2005 ».

Pour établir le montant forfaitaire de 80 230 $, le comité estimait que le traitement des juges de paix magistrats « aurait dû être de 110 000 $ en 2004, de 120 000 $ en 2005 et de 130 000 $ en 2006 ».

Cette augmentation avait pour but de « réduire l'écart entre le traitement des juges de paix magistrats et celui des anciens juges de paix à pouvoir étendu, dont le traitement était de 137 280 $ » en 2004.

Québec remet en doute cette méthode de calcul, mais accepte néanmoins de verser ces larges compensations.

Rappelons que la fonction de JPM a été créée en 2004, à la suite de la modification de la Loi sur les tribunaux judiciaires. Ils peuvent notamment instruire des enquêtes et autoriser des perquisitions, tâches pour lesquelles ils doivent bénéficier de l'indépendance judiciaire.

Sauf qu'à l'époque de leur arrivée dans la magistrature, le gouvernement du Québec a plutôt choisi de leur accorder l'échelon salarial d'un fonctionnaire de classe IV.

Résultat : alors que les juges de paix, sous l'ancien régime, bénéficiaient d'un traitement équivalent à 72 % de celui d'un juge de la cour du Québec, la révision de la fonction faisait passer leur salaire à seulement la moitié.

Décès du professeur John W. Durnford
Droit Inc
Martine Turenne
4 décembre 2017

La Faculté de droit de l'Université McGill est en deuil: le professeur émérite, John W. Durnford, doyen au début des années 70, est décédé.

Dans un communiqué, l'université rappelle que le décanat de John Durnford a correspondu « avec une période décisive de l'histoire de la Faculté», notamment avec l'adoption de «l'audacieux Programme national » en 1967. Il s'agissait du premier programme combinant le droit civil et la common law. « John Durnford a joué un rôle crucial pour veiller à l'adoption réussie de ce nouveau programme bilingue innovateur. »

Né à Montréal, John Durnford a obtenu deux diplômes de McGill. Admis au Barreau en 1953, il a pratiqué le droit à Montréal pendant plusieurs années avant de revenir à McGill à titre de professeur adjoint en 1959. Il a tenu le rôle de doyen de la Faculté de 1969 à 1974.

John Durnford a été « un professeur adoré», expert en fiscalité et en contrats spéciaux. « La Faculté de droit présente ses sincères condoléances à la famille Durnford », a déclaré le doyen Robert Leckey. « Les discussions que j'ai eues avec notre communauté diplômée partout au monde ne laissent planer nul doute quant à la marque profonde qu'a laissée le professeur Durnford dans les esprits de ses étudiants et étudiantes. »

À la fin des années 1990, l'Association étudiante a renommé son prix d'enseignement le Prix d'excellence en enseignement John W. Durnford. Et cette année, une salle de classe a été baptisée la Salle de classe John W. Durnford.