Justice minister says Indigenous judge for Supreme Court coming 'soon'
Lawyer's Daily
Cristin Schmitz
December 5, 2017

An Indigenous jurist will be appointed to the Supreme Court of Canada "soon," maybe even to the next opening, Justice Minister Jody Wilson-Raybould and former Prime Minister Kim Campbell told MPs.

The justice minister and Campbell, chair of the non-partisan advisory committee which shortlisted Supreme Court nominee Sheilah Martin for the top court's impending Western vacancy, appeared jointly at the Commons Justice Committee Dec. 4 to explain the appointment process and why the Alberta Court of Appeal justice was picked by the prime minister.

The pair were also asked to shed light on why the government didn't nominate an Indigenous jurist — particularly given the Liberals' emphasis on reconciling with the first peoples. "Will we one day get to that point, and how was this process involved with potential Indigenous candidates this time around?" asked NDP deputy justice critic Alistair MacGregor.

"I have absolutely no doubt that there will be an Indigenous judge on the Supreme Court of Canada — an outstanding Indigenous judge that will not require any compromise in standards that are applied," Campbell declared. "I have no doubt that this will happen, maybe within the next couple of rounds [of appointments]. It just sort of depends on where we are, where the next appointments are," she explained. "But I see them coming, and I see [the Indigenous jurists] speaking French, and they'll take their place with great dignity and respect, and Canadians will be very excited at the quality they'll bring to the court."

Wilson-Raybould and Campbell declined to say whether an Indigenous jurist was among the eight candidates who were interviewed for the vacancy that opens when Chief Justice Beverley McLachlin retires Dec. 15. However, the justice minister confirmed that "there were Indigenous candidates" among the 14 jurists who applied (six of the applicants were women).

"I whole-heartedly share [Campbell's] perspective that there will be an Indigenous [jurist] on the Supreme Court of Canada soon," Wilson-Raybould told The Lawyer's Daily.

She noted that five per cent of her appointments to the superior courts so far have been Indigenous jurists, and that this will eventually create a larger pool of experienced trial and appellate judges eligible for elevation to the top court.

Campbell pointed out there are only about 300 lawyers in the national Indigenous Bar Association. "It's a tiny pool," she told reporters. However, "the minister has appointed some very interesting Indigenous people to superior courts, some of whom are bilingual and you don't

even know about them. And come the next go-round they may be candidates for the Supreme Court. But my view is that we are not going to have a shortage of those candidates."

Campbell would not confirm that she knows of any bilingual, qualified and eligible Indigenous candidates who could go to the Supreme Court right now.

"I wouldn't say that," she told The Lawyer's Daily. "What I would say is there are people who will be credible candidates in the coming rounds."

Campbell also said she doesn't see Ottawa's requirement that all Supreme Court appointees be functionally bilingual in English and French as a particular stumbling block for Indigenous candidates. "There are Indigenous candidates who speak French. It's no more a barrier than it is to non-Indigenous candidates," she averred.

That view is not shared by Sen. Murray Sinclair, the former chair of the Truth and Reconciliation Commission, and Assembly of First Nations National Chief Perry Bellegarde, who have publicly complained that the requirement to be functional in French creates an unfair barrier for Indigenous candidates, particularly those who have been concentrating on acquiring their own Indigenous languages that the Indian residential schools tried to stamp out for more than a century.

One prominent Indigenous jurist in that category is University of Victoria law professor John Borrows, a member of a First Nation in Ontario, who is studying French, and who is considered to be a strong contender to fill the next vacancy, which could occur when Justice Rosalie Abella of Ontario reaches mandatory retirement in 2021.

Campbell told MPs that the three jurists on the short list her advisory committee gave the prime minister Oct. 23 stood "head and shoulders" above the others. Each could each have "served with distinction" on the top court. "The nominee, Justice Martin, is an extraordinary candidate who kind of hits it out of park on so many different issues," she said.

Wilson-Raybould agreed that the quality of the candidates on the short list was "outstanding." She gave the prime minister her advice, after consulting with the chief justice of Canada, other chief justices familiar with the candidates, provincial attorneys general, the chairs of the Commons and Senate justice committees, and the opposition justice critics.

"I can say that I am convinced that Justice Martin would be an outstanding addition to the court, and would continue to serve Canadians with great distinction in that role."

The justice minister highlighted the judge's many accomplishments, including litigating landmark constitutional cases at the Supreme Court and writing many scholarly articles and several books. "She has truly done it all. A leading academic. A law dean at the University of

Calgary. A gifted constitutional litigator. A hardworking trial judge, and most recently an appellate court judge," she explained.

Two things in particular struck her about Justice Martin's career, Wilson-Raybould said.

"First, the extraordinary breadth and depth of her experience, and second her unshakeable commitment to justice and equality for all."

The justice minister said Justice Martin knows how to cut through tangled legal issues and lay out her reasoning in clear, accessible language. "Her judgments are thorough and compelling."

Moreover, for more than 30 years Justice Martin has coupled her "blazingly brilliant" intellect with a commitment to public service. "As an academic she fearlessly addressed what were, at the time, contentious issues critical to women's equality," Wilson-Raybould explained. "Her doctoral thesis explored how the Charter would impact the laws of sexual assault, contraception, abortion and emerging reproductive technologies. She continued to publish on equality, gender bias and reproductive rights throughout her career."

Wilson-Raybould also cited the judge's work in devising a compensation plan for two men who were wrongfully convicted, David Milgaard and Thomas Sophonow, and her development of a new approach to redress the harms caused by the forced attendance of children at Indian residential schools. As a lawyer in private practice, Justice Martin helped craft the blueprint for the Indian Residential Schools Settlement Agreement.

"Justice Martin's commitment to equality shines through in her work," Wilson-Raybould said.

She also praised a 2016 ruling by Justice Martin which "clearly spotted and called out myths and stereotypes about how 'true' victims of sexual assault should behave. She overturned a provincial court decision which illustrated how quickly such myths and stereotypes can be engaged. She described how historically outdated attitudes about sexual violence have led to unbalanced legal rules and prevent fair trials in sexual offence cases."

The judge also proved her ability to handle "sensitive novel questions of law" on tight time lines, for example, in writing the first judicial decision in Canada to grant a physician-assisted death.

As a professional, people describe Justice Martin as radiating enthusiasm and as "a unifying force," Wilson-Raybould said. "Collegiality is critical on the Supreme Court. Justices must be able to handle disagreements respectfully and build consensus skillfully. This helps the Supreme Court build unified jurisprudence instead of confusing judgments with many diverging opinions. Justice Martin's ability to bring people together will serve her well on the Supreme Court of Canada."

Conservative justice critic Rob Nicholson (who once served as Campbell's parliamentary secretary, and then as a minister in her short-lived government), congratulated both Campbell and Wilson-Raybould for the revised Supreme Court appointment process the Liberals have put in place, which includes a question and answer session in Ottawa between the nominee and MPs and senators Dec. 5.

"I would agree with you, madam justice minister, that [the nominee] appears to have outstanding qualifications in so many different areas — within the judiciary, and litigation and the academic world. It seems very complete," Nicholson enthused.

Conservative MP Ron Liepert of Calgary told the committee that he solicited opinions about Justice Martin from lawyers in his province since he is not himself a lawyer. "I would say all of them would be significantly more conservative than I am," he noted.

He said the reviews from the practising bar were positive: "a wonderful addition"; "she is really smart, loaded with common sense, and most importantly, not a left-wing ideologue"; "she is very intelligent, hardworking, thoughtful and respectful of the law. She is courteous of witnesses, parties to the litigation and their counsel."

"If they're happy, I'm happy," Liepert remarked.

Indeed, Justice Martin's nomination was so uncontentious among the MPs that they ran out of questions, ending what was supposed to be a two-hour meeting after one hour and eight minutes.

Reverse the trend of over-incarceration among Indigenous peoples in Canada
We need a radical change to end systemic discrimination, writes Michael Bryant. One proposal: no Indigenous person should ever be incarcerated except for the most serious crimes.
Toronto Star
Michael Bryant
December 4, 2017

Another day, another Indigenous victim of violence, another Indigenous inmate. Indigenous people are two to three times more likely to be a victim of violence, as compared to the non-Indigenous. The proportion of Indigenous adults in custody is about nine times higher than their representation in the adult population (3 per cent).

The first statistic is a measure of socioeconomic tragedy and Crown depravity. The second, Indigenous over-incarceration, has bedevilled Liberal justice ministers Jean Chretien through Allen Rock to Jody Wilson-Raybould.

It's time for something radical. The number of Indigenous people jailed keeps going up and up, even while the overall number of inmates keeps going down. That's insane. The Justin Trudeau government agrees, at the podium, but nothing to date has arrived in Parliament.

The last time the federal minister of justice amended the Criminal Code to reverse the trend of over-incarceration of Indigenous peoples in Canada, Rock was the minister, Chretien the prime minister, and the Liberal government was determined to end the insanity of systemic discrimination.

Next came the Supreme Court of Canada judgments seeking to put teeth on that Criminal Code provision. The decisions, called Gladue (2002) and Ipeelee (2012), were supposed to repudiate Indigenous over-incarceration.

And then it got worse. Since 2012, the Indigenous inmate population increased by 21.3 per cent, while the non-Indigenous inmate population declined by 11.8 per cent. Today, 27.4 per cent of the prison population in Canada is Indigenous.

Outside jails, they make up 3 per cent of Canada's population. More than one-in-three female inmates in Canada is Indigenous. More than one-in-three prisoners in segregation is Indigenous. Canada is locking up its First Peoples at a rate that is criminal.

Radical change would mean, for example, that no Indigenous person could ever be incarcerated in Canada. That would do it. There would be no Charter rights infringed, because the only constitutional rights holders in our criminal justice system are the defendants.

Ottawa MPs inundated with pleas from Phoenix victims
Pierre Poilievre calling for dedicated unit to respond to Phoenix complaints brought forward by MPs
CBC News
Julie Ireton
December 5, 2017

Susan Skaarup is one of the thousands of federal government workers caught up in the stressful, ugly confusion caused by the failure of the Phoenix pay system.

Skaarup's personal nightmare began in August 2016 when the Department of National Defence employee was overpaid tens of thousands of dollars. Then, thanks to improper tax filings by her department, she was overpaid by the Canada Revenue Agency.

When the Phoenix system attempted to correct the error, she was first underpaid, then stopped receiving her salary altogether.

Skaarup's patience finally ran out when pay centre employees withdrew money directly from her payroll account. That's when she turned to her Member of Parliament in a last in a last-ditch attempt to get her mess resolved.

"It keeps me awake at night," said Skaarup. "I was hoping with the member of Parliament putting pressure on the minister, something might be done."

MPs inundated with pay complaints

Skaarup's not alone in seeking out help from her elected representative.

A large number of public servants, especially in the National Capital Region where the federal government is the biggest employer, are likewise turning to their MPs in the hopes of getting their pay problems resolved.

For Skaarup, it hasn't worked.

'They're still worried, and they have a right to be worried, because they deserve the right pay.'
- MP Karen McCrimmon

"There's been no help from Karen McCrimmon's office," she said.

McCrimmon, the Liberal MP for Kanata-Carleton, said her office is becoming inundated with the broad spectrum of Phoenix complaints pouring in from constituents.

"They're still worried, and they have a right to be worried, because they deserve the right pay," said McCrimmon, who added her office is trying to triage the glut of files to deal with what she calls the "hardship, duress cases" first.

As dire as Skaarup's situation is, it appears she hasn't made that list yet, indicating there are others worse off.

'It's been a disaster'

In Orléans, a suburb densely packed with federal public servants, MP Andrew Leslie said his office has staffers who are now dedicated to sorting out Phoenix calls.

"It's been a disaster. It's been painful progress," said Leslie. "We continue to raise pressure on us, the government, to do all it can to fix it."

That pressure from her caucus colleagues means Minister of Public Services and Procurement Canada Carla Qualtrough is now getting it from all sides.

Conservative MP Pierre Poilievre said his riding office in south Ottawa is also being bombarded with requests from constituents for help with pay issues.

"We're pressuring the government to solve it as soon as possible," said Poilievre. "At any given time we have dozens of active cases. My case worker deals with problems related to Phoenix every day."

Putting politics aside

While it was the previous Conservative government that set the stage for Phoenix and hired the contractors to build it, Poilievre is quick to note it was the Liberals who "pulled the trigger" to mobilize the new pay system before it was ready.

Poilievre said he's willing to put politics aside to work with the government to solve individual cases for his constituents.

"I do congratulate the minister for having a staffer who answers phone calls when we place them. But I'd respectfully suggest we need more support for MPs to solve the problems of constituents related to Phoenix," Poilievre said.

"I would encourage Minister Qualtrough and other ministers to perhaps dedicate a unit of public servants who'll respond to concerns brought forward by Members of Parliament," said Poilievre. "It might be one simple way to expedite some of the problems that public servants are having."

Gatineau MP Steve MacKinnon, parliamentary secretary to the minister of Public Services and Procurement Canada, said he receives a "pretty steady volume" of calls from both constituents and others across Canada who are looking to speak directly to a representative from the department.

MacKinnon said catastrophic or urgent cases are brought to the attention of the department first, but he understands the patience of everyone affected by Phoenix is being tested.

"If I were in some of these situations I would also be impatient," MacKinnon said. "We understand all that, it helps to animate and fuel our motivation to get this problem solved."

While she waits for that to happen, Susan Skaarup has had to put travel and retirement plans on hold. She realizes it could take months or even years for her pay, benefits, pension deductions and taxes to return to normal.

Editorial: No Phoenix rising from these ashes
Business Vancouver
December 4, 2017

The November 21 release of the federal auditor general’s fall 2017 report should be raising taxpayer ire across the land over the lack of competence and accountability uncovered in civil service technology updates, outsourced contract agreements and communications.

Atop the catalogue of disregard for the public purse and operational common sense is the Phoenix payroll system. Consider a few points raised in Michael Ferguson's audit of the technological mess that has been ongoing since the system to handle the federal government's $22 billion payroll was rolled out with the help of IBM in early 2016. More than 150,000 of the federal government's 290,000 employees have been overpaid, underpaid or not paid at all. The initiative to replace the government's 40-year-old pay system was expected to save Canadian taxpayers $70 million per year. Instead, as of June 30, Phoenix has generated more than $520 million in unresolved pay issues and 494,500 requests for outstanding pay. Close to 49,000 employees have been waiting more than a year to have those requests processed. The auditor general now estimates it will take years and much more than the originally projected $540 million to fix the system.

IBM's responsibility in the debacle is unclear, as are the details of the requirements and responsibilities included in the 1,700-page contract drafted to institute Phoenix.

Meanwhile over at the Canada Revenue Agency (CRA) call centre, agents responsible for helping the public with tax questions were found during the auditor general's audit period to have answered only 36% of incoming calls and provided incorrect answers approximately 30% of the time. As part of the CRA's customer service, it blocked 29 million of 53.5 million incoming calls during the audit.

The foregoing is more than a woeful misallocation of funds and tolerance of substandard job performance.

But then this is the public service, where mistakes are made but no one is ever responsible.

Parliamentarians quiz Supreme Court nominee Sheilah Martin in special session
CTV News
Jim Bronskill
The Canadian Press
December 5, 2017

Being a good listener and ensuring people know that they've been heard are keys to earning public confidence as a judge, Supreme Court nominee Sheilah Martin said Tuesday during a question-and-answer session with parliamentarians.

Martin, who was named last week as the Trudeau government's latest high court appointee, stressed the importance of thoughtfully considering all sides as an independent arbiter.
"I think judges need to show respect to get respect," she said. "And it has been my personal goal to be respectful in court, and to listen patiently and to let things unfold."

Martin said she hopes her written judgments make it clear that a losing party's arguments have been fully understood. "I want to write that way, so that somebody would say, 'Oh, OK, I was in good hands.'"

Tuesday's session included members of the House of Commons justice committee and the Senate legal and constitutional affairs committee, as well as representatives of the Bloc Quebecois and the Green party.

Martin was politely peppered with questions about the Charter of Rights and Freedoms, jurors, victims, the environment, terrorism and sexual assault. She carefully phrased her answers to avoid any appearance of bias.

University of Ottawa law professor Francois Larocque, moderator of the session, warned at the outset that Martin could not comment on matters that might come before the Supreme Court, nor cases she has already presided over as a provincial and territorial judge.

Larocque billed it as a chance to get to know Martin better rather than a cross-examination -- an opportunity for MPs and senators to ensure Martin "has the proverbial right stuff" to sit on Canada's highest court.

Martin displayed her comfort in both of Canada's official languages, revealed an abiding love of teaching and showed flashes of wit.

Asked about the legacy she wanted to leave, Martin replied, "I would hope that people said that I listened carefully, and that I was a deep thinker and that I had really nice hair."

Martin grew up in Montreal was trained in both civil and common law before moving to Alberta to pursue her career 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. Martin went on to practise criminal and constitutional law, and became a judge in 2005.

She 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. Martin is also mother to seven children -- proof, she said, that she's capable of multitasking and resolving disputes.

Last year, the Liberal government brought in a new Supreme Court appointment process to encourage more openness and diversity, which also requires justices to be functionally bilingual. In making the appointment, the Prime Minister's Office underscored Martin's emphasis on education, equality rights and increasing the number of under-represented groups in the legal world.

As a lawyer and academic, Martin was part of a team working on redress for harm experienced by tens of thousands of Indigenous children at residential schools. She said delving into the abuse, isolation and loneliness suffered by the pupils reinforced in her mind the responsibility to learn about the lives of others.

Conservative MP Rob Nicholson sought Martin's views on training for judges on the subject of sexual assault.

Martin, who has given presentations on sexual assault laws, said she has "rarely heard a good argument in favour of less education."

But she cautioned that when dealing with the education of judges, it's important to be mindful of judicial independence and who is chosen to lead a seminar.

Martin's answers revealed a deep thinker with humanity and a broad perspective, said Justice Minister Jody Wilson-Raybould, who attended the session.

Martin's nomination to the Supreme Court ensures the nine-member bench will remain at full strength after Chief Justice Beverley McLachlin retires Dec. 15 after 28 years on the court. The prime minister is expected to name a new chief justice soon.

Wilson-Raybould said McLachlin exemplified the qualities a chief justice should have, citing her thorough understanding of the law, ability to foster collegiality among high court judges and leadership as a public representative of the court.

New Supreme Court judge underscores need for judicial independence
Justice Sheila Martin touches on topics from mandatory sex assault training for judges to the role of courts and judges in a wide-ranging appearance to parliamentarians.
Toronto Star
Tonda Maccharles
December 5, 2017

Justice Sheilah Martin, tapped to become Prime Minister Justin Trudeau’s second appointment to the country’s top court, cautioned legislators to respect judicial independence when it comes to mandatory sex assault training or other sensitivity training for judges.

In a wide-ranging appearance that sprawled over two and a half hours Monday, Martin introduced herself in person to parliamentarians and Canadians beyond a lengthy application made public when Trudeau announced her elevation to the Supreme Court of Canada last week.

In what she admitted was rather rusty French and in English, Martin parried questions about her views on the role of courts and judges, and how much deference they owe to Parliament on social policy or public security.

For the most part, she declined to comment on issues that could come before the high court, saying she saw the role of the judge is to be a “neutral arbiter.” And she displayed a sense of humour — “I have seven children, proof I can multi-task, resolve conflict and have zero chance of a swollen head.”

But in the course of separate answers to two Conservative lawmakers, Martin sent a clear signal to parliamentarians to be wary of trampling on judicial independence.

Conservative justice critic Rob Nicholson had raised Bill C-337, also known as the JUST Act, sponsored by former interim leader Rona Ambrose, that would require judicial training in sexual assault law. The bill’s passage has slowed in the senate where some senators have expressed concerns about its impact on the independence of the judiciary.

Martin said she would not comment on any bill before Parliament, even as she quipped “I’m an old law professor and rarely heard a good argument in favour of less education.”

Then Martin adopted a serious cautionary tone.

“When you’re dealing with the education of judges, or, in this case I guess potential judges, one always has to be exceptionally mindful of the countervailing requirement of judicial independence and who leads the education and what its content is.”

She said many provincial and national organizations, particularly the National Judicial Institute, play a role in educating judges and she hailed its expertise.

Conservative Sen. Pierre-Hugues Boisvenue, a longtime victims’ rights advocate since the murder of his daughter by a repeat offender, pressed her on whether courts should give more generous recognition to victims’ rights.

“It’s always a question of reconciliation between laws and rights, we’ll see,” Martin said. “This is exactly the kind of issue that will be in front of the court in the future.”

And when Boisvenue pressed her on the need for greater judicial education “to be more sensitive to violence against women in domestic cases,” because victims were leaving the court “disappointed,” Martin again pointed to the National Judicial Institute which she said offers courses and training on how to assess the facts, evidentiary proof principles and the social context of women “that will help the situation.”

Martin, 60, spoke passionately about work she did as a lawyer with her late husband and noted criminal lawyer Hersh Wolch on redress for David Milgaard, wrongfully convicted of the murder of a Saskatchewan nurse Gail Miller.

“Through David, I also learned about moral courage ... and the capacity of the human heart to forgive,” she said.

On whether judges should defer to the policy choices of governments, Martin said lawmakers have the right to legislate for the greater good or the protection of citizens as long as state and legislative actions, including in the area of anti-terrorism, “conform to the charter.”

She pointedly reminded Conservative MP Michael Cooper that democratically elected legislators enacted the 1982 constitution that gave judges the authority to review and invalidate laws if they limit a charter right, but the government cannot show why the limitation is justifiable.

That same constitution, she acknowledged to Bloc Québécois MP Rheal Fortin, contains an “opt-out” clause that lawmakers could use — although rarely have — to exempt laws from review in certain cases.

Overall, Martin stressed the need for judges to treat litigants with respect and to be “careful” when dealing with sensitive or controversial issues for the first time, like her own handling of one of the first requests for physician-assisted dying before it was legislated.

“You have to show respect in order to get respect,” she said.

She pushed back against the idea that judges’ rulings express their own views.

“The role of judges is a very different one than law professor or advocate. Judges decide based on proof, principle, precedent. We may call it a judicial opinion, but it’s not the personal preference of the judge. It has to be grounded in law, it has to be grounded in principle, there has to be an open, transparent, defensible reasoning, there has to be an explanation to the public, and it has to be clear and intelligible and has to meet the arguments that have been raised.”

Conservative Sen. Denise Batters, who was a lawyer before being named to the senate, later said she had to admit it was “still pretty cool” to question a Supreme Court judge.

The confirmation of Martin’s appointment is just a formality. The ad hoc committee has no say over Trudeau’s nomination.

Justice Minister Jody Wilson-Raybould, who watched the whole proceeding along with dozens of invited law students and faculty from schools across the country, later said Martin displayed her legal chops and her “humanity.”

Martin “had shown moral courage throughout her career as a judge as a lawyer and as an academic, and that came through in her appearance,” the justice minister told reporters.

She said the disappointment of people who had hoped in vain for an Indigenous judge to be named to the bench would be lessened by the obvious qualities Martin displayed. And she echoed Kim Campbell who chaired the advisory board on Martin's appointment, saying "there will be an Indigenous justice on the Supreme Court of Canada."

"We need to foster the pipeline or as Kim Campbell says the farm team of amazing jurists and judges across the country to make sure we have a potpourri of amazing people including Indigenous people to choose from."

Martin portrayed herself as sensitized to the legacy of the residential schools policy. The former head of the Truth and Reconciliation Committee, Sen. Murray Sinclair, asked how her work on the residential schools settlement agreement informed her work as judge. Martin replied she had been "moved and shaken" to learn what had really occurred under a deliberate government policy of "taking the Indian out of the child."

"It behooves us to ensure that everyone understands that history" so it is not repeated, she said, adding that work affected her analysis of Canada and "what reconciliation means."

"What was required was not just compensation in the normal sense, but first truth, and then reconciliation."

No Phoenix civil suits for public servants, but unions filing loads of grievances
Federal unionized public servants have to stick the the grievance process if they want to seek damages linked to the Phoenix pay system.
Hill Times
Emily Haws
December 6, 2017

If you've wondered why federal public servants have not filed a class-action lawsuit against the government over the problem-plagued Phoenix pay system, it's because they can't.

Section 236 of the Federal Public Sector Labour Relations Act, which governs the rules between the federal government and its employees, says unionized workers are not allowed to individually pursue civil action against the employer.

Under the heading No Right of Action, section 236 reads, "The right of an employee to seek redress by way of grievance for any dispute relating to his or her terms or conditions of employment is in lieu of any right of action that the employee may have in relation to any act or omission giving rise to the dispute."

Federal public service unions are continuing to file individual and policy grievances against the Treasury Board—the public service's employer—as well as making unfair-labour-practices

complaints to the Federal Public Sector Labour Relations and Employment Board alleging Phoenix is breaching the act.

Kevin Banks, a Queen's University labour relations law professor, said this provision is common and allows for disputes to be carried out in a timely, more specialized manner than court action.

He added that a group or policy grievance looks very similar to a class-action lawsuit.

"The problems that come out of Phoenix, if you frame them in legal terms, are essentially a breach of an obligation to pay wages," he said, adding this provision is usually set out in a collective agreement for unionized workers.

The Phoenix pay system was meant to streamline the payroll of the government's roughly 300,000 public servants, but since the beginning it has left more than half of them overpaid, underpaid, or not paid at all.

The transformation had two parts: the government contracted IBM to configure software to the government's HR systems, and the pay advisers for 46 government departments were consolidated to the Public Service Pay Centre in Miramichi, N.B. The rest of the government's 101 departments have their own pay advisers.

According to a government tracking website, October had 265,000 open cases with financial impact in Miramichi. The total Miramichi backlog is about 520,000 cases, according to a letter to employees from Public Services and Procurement Minister Carla Qualtrough (Delta, B.C.) including those without financial impact, such as name changes.

The government is blaming the financial backlog of cases on the implementation of 20 collective agreements, which include time-consuming retroactive payments from 2014 that need to be completed manually. There are seven more contracts to be signed.

CBC News reported the total backlog was about 550,000 cases, as there are 31,000 cases in non-Miramichi departments.

Unions waiting on Treasury Board regarding grievances

The two largest federal public service unions are busy filing Phoenix-related individual and policy grievances. Both are also making complaints to the labour board claiming the act has been breached.

The Public Service Alliance of Canada (PSAC) national president Robyn Benson said they are doing everything they can to get members paid.

“We’re fighting for our members in court, through the grievance process, and taking the concerns of our members directly to Members of Parliament,” she said in an emailed statement.

PSAC filed a complaint with the labour relations board in October seeking remedies for federal public service workers after the Treasury Board missed the Nov. 1 deadline to implement the provisions of four new collective agreements.

The missed deadline affected federal educators and librarians, administrators, and maintenance workers, as well as technical workers—those who create maps, inspect cameras, or write machinery manuals.

Treasury Board asked for an implementation extension for the collective agreements until Dec. 14 and was granted until Dec. 7.

“The employer…should have planned for any possible delays due to Phoenix by hiring more compensation advisers,” Ms. Benson said in the statement.

In September 2016, PSAC filed an unfair labour practice complaint with the labour relations board arguing Treasury Board has violated the act by not providing timely and accurate pay to its employees. PSAC said it’s currently awaiting a ruling on the complaint.

Martin Potvin, a Treasury Board spokesperson, confirmed the status of the labour action in an emailed statement.

“The government understands and respects the fact that unions and employees may wish to pursue their rights through legal action,” he said in the statement. “As the matters are still ongoing it would not be appropriate to comment further.”
The Professional Institute of the Public Service of Canada (PIPSC) has more than 57,000 members, including scientists and IT professionals. Isabelle Roy, general counsel and chief of labour relations, said PIPSC has continuously filed both policy and individual grievances, as well as a complaint against the act.

PIPSC’s main policy grievances fall into two categories: that the collective agreement was broken because of the government’s inability to pay employees correctly; and that employees faced discrimination on the basis of prohibited grounds under the Canadian Human Rights Act due to complications from unpaid leave.

“We’ve agreed to place those grievances on hold while we run along with other bargaining agents and the employer on a subcommittee that’s been developed to deal with damages arising from Phoenix issues,” Ms. Roy said, adding those talks are frequent and progressing.

PIPSC has filed five policy grievances for missed collective agreement implementation deadlines. These cover approximately 30,000 employees, but some may have gotten all or partial pay owed.

On Oct. 2, PIPSC filed two policy grievances regarding their Audit, Commerce, and Purchasing group—employees responsible for running external auditing programs and activities dealing with purchasing and supply in the public service—and the Applied Science and Patent Examination group—applied scientists and Canadian patent regulators. The Treasury Board had 90 and 120 days to implement the agreements that were signed on April 28 and May 15, respectively.

The union filed a third policy grievance on Oct. 20 regarding the missed implementation deadline of a contract for federal researchers, and two were filed in November for their computers systems administrator and health services groups.

Currently, Ms. Roy said they are waiting on Treasury Board to respond to the grievances. PIPSC has also made two unfair-labour-practices complaints against to the board about the missed agreement deadlines for the Audit, Commerce and Purchasing group and Applied Science and Patent Examination group. They have indicated they will be filing complaints soon for the other three groups. Ms. Roy said if their complaints are accepted by the board, they would result in different potential remedies than the grievances.

“We feel when it comes to Phoenix we need to be taking all measures available to us to protect our members’ rights,” she said.

Labour board process arose from insensitive courts: Prof. Banks

Having the case heard by the labour board allows the arbitrators to gain a level of specialization, Prof. Banks said. The idea arose from a 1970s notion that the courts were not sensitive to labour relations issues, he added, something that was a fair characterization back then but may not be now.

“The procedures are less formal and generally they can be made to operate more quickly than court proceedings,” he said. “The whole process is thought to be more responsive and sensitive to the workplace context.”

“At the end of the day, the order of an arbitrator or adjudicator can be filed in court and enforced in the same way that a court order would be enforced.”

Prof. Banks said he didn’t see any reason why a former government employee who is no longer a part of the union could not pursue civil action against the government, but said there are usually limitations to it so they “wouldn’t want to sit on [their] rights.”

La juge de la Cour suprême Sheilah Martin semble avoir passé le test
Elle a répondu aux questions des sénateurs et députés, et s'est dite experte du «multitâches»
Radio-Canada
6 décembre 2017

La juge choisie par Justin Trudeau pour siéger à la Cour suprême du Canada (CSC) semble avoir convaincu les parlementaires de ses compétences de juriste, de son bilinguisme et de sa capacité d'écoute - le tout en faisant étalage de son sens de l'humour et de la répartie.

La magistrate Sheilah Martin a passé environ deux heures et demie à répondre aux questions des sénateurs et des députés, mardi, dans une grande salle de l'édifice Sir John A. Macdonald, dont elle est entrée et sortie ovationnée.

Celle qui est née à Montréal et fait ses études de droit à l'Université McGill a commencé son discours en français, langue qu'elle parle avec un petit accent anglais, et dont la maîtrise est à son avis essentielle pour quiconque aspire à siéger au plus haut tribunal au pays.

« Les plaideurs francophones, les avocats qui rédigent les mémoires en français, moi, je dois (leur) accorder le respect de le lire et de comprendre - et bien comprendre - les subtilités en français », a dit Sheilah Martin.

Terrain glissant
Lorsqu'est venu son tour au micro, le bloquiste Rhéal Fortin a tenté de lancer la juge sur un terrain glissant en lui demandant de préciser dans quelles « circonstances et conditions (...) une législature provinciale devrait ou pourrait » invoquer la disposition de dérogation.

Le bloquiste Rhéal Fortin La magistrate de l'Alberta n'a évidemment pas mordu. Tout au plus a-t-elle offert que l'article 33 de la Charte canadienne des droits et libertés, qui permet à une province de se soustraire à un jugement, prouvait que « le législateur, dans tout cas, peut avoir le dernier mot ».

La juge Martin a par ailleurs assuré, en réponse à la question de la sénatrice québécoise Renée Dupuis, qu'elle possédait une connaissance pointue du droit civil, et ce, même si elle n'a pas eu l'occasion de le pratiquer comme avocate au Québec.

Et celle dont la nomination a déçu des groupes autochtones qui espéraient voir un des leurs s'installer enfin dans un siège de la CSC a mentionné, dans son discours de présentation, à quel à quel point elle était sensible aux enjeux autochtones.

La séance s'est déroulée dans une ambiance que la juge a semblé vouloir décontractée. Elle a balancé quelques blagues qui ont fait rire l'assistance, notamment lorsqu'elle a été invitée à dire comment elle voudrait que l'on se souvienne d'elle après 15 ans à la CSC.

« Eh bien, j'espérerais que les gens disent que j'ai écouté attentivement, que j'étais une penseuse profonde, et que j'avais de très beaux cheveux », a lâché la magistrate âgée de 60 ans, une mère de sept enfants qui s'est autoproclamée experte du « multitâches ».

Accueil positif

À l'issue de cette séance où une foule d'autres sujets ont été abordés, la ministre fédérale de la Justice, Jody Wilson-Raybould, rayonnait. Elle a dit avoir hâte de confirmer au premier ministre qu'il avait misé sur la bonne personne. « Elle a été extraordinaire. Je pense qu'elle a su démontrer tout ce qu'elle a appris en 30 ans de carrière en droit. (...) Je suis incroyablement satisfaite », a dit la ministre Wilson-Raybould.

Et aux Autochtones déçus d'avoir vu une autre occasion historique leur échapper, la ministre autochtone a réitéré ce que l'ancienne première ministre Kim Campbell, présidente du comité de sélection, avait affirmé la veille en comité parlementaire.

« Il y aura un juge autochtone à la Cour suprême du Canada. Et j'espère voir cela se produire le plus rapidement possible », a-t-elle tranché.

La juge Sheilah Martin a été sélectionnée à l'issue d'un processus mené par un comité consultatif indépendant chapeauté par Kim Campbell. Elle a été préférée à 13 autres candidats, dont six femmes.

Avec cette désignation, le banc de neuf membres demeurera complet après la retraite de la juge en chef Beverley McLachlin. La magistrate britanno-colombienne accrochera sa toge après 28 années à la Cour suprême du Canada, dont près de 18 ans aux commandes.

Une femme en mission
Cette ancienne juge et avocate a reçu le mandat le plus délicat de sa carrière: convaincre que l'immigration, c'est bon pour tout le monde
Droit Inc
Delphine Jung
5 décembre 2017

Comme avocate, puis juge à la Cour suprême et procureure aux Tribunaux pénaux internationaux, Louise Arbour a dû manier avec dextérité les concepts de droits fondamentaux et de justice. Elle s'en est toujours tirée avec brio.

Lorsque l'ONU lui a offert, en mars, de devenir représentante spéciale du secrétaire général pour les migrations internationales, elle a accepté pour deux raisons: le mandat est court (18 mois) et la cause est juste. Louise Arbour croit profondément que les migrations sont non seulement inévitables, mais que leur impact est positif, tant pour la société d'accueil que de

départ. Sa tâche est désormais d'en convaincre un monde frileux, aux prises avec des solutions faciles et de l'information souvent déformée.
« Nous voulons organiser une migration sûre et ordonnée, car elle aura lieu, peu importe ce que certains disent, les mouvements de population sont inévitables », dit-elle.

Nous avons rencontré Louise Arbour alors qu'elle passait la journée dans les bureaux de BLG, où elle a toujours son bureau, en route pour un week-end entre copines à son chalet des Laurentides, une tradition automnale qui lui tient à coeur.

Depuis sa nomination, son compteur de kilomètres parcourus s'emballe.

De Bangkok à Genève en passant par le Mexique et New York, où elle a son bureau onusien, Me Arbour a à peine le temps de revoir son chien Snoreau resté au Québec. C'est son fils qui s'occupe de cet ex-candidat MIRA, qui n'a pu mener à terme sa formation de chien-guide en raison de sa trop grande taille…

Même si elle avoue que le rythme est effréné, rien n'y paraît. Me Arbour arbore un teint lumineux lors de notre rencontre et une énergie débordante.

L'apogée de ce mandat fou, mais passionnant, sera en décembre 2018, à Marrakech, lors de la 11e édition du Forum mondial de la Migration et du Développement. Après, Louise Arbour redeviendra Me Arbour, toujours chez BLG.

Une « perversion du langage »

Gérer la mobilité, la favoriser et ouvrir des voies d'accès qui seront bénéfiques pour tout le monde, pour réduire la migration irrégulière, car c'est là que tous les abus ont lieu, voici l'objectif qu'elle s'est fixé. Pour la juriste, l'un des principaux moyens pour lutter contre l'immigration irrégulière, c'est d'ouvrir de nouveaux modes d'entrée.

Il s'agit en effet pour Louise Arbour et son équipe d'accompagner le processus de la Déclaration de New York qui vise à se doter d'un pacte mondial sur les migrations.

Les drames qui les accompagnent l'interpellent tout autant. Que ce soit ces migrants qui échouent sur les côtes méditerranéennes après une tentative de traversée ou tous ceux dont le sort a été récemment rapporté par la presse en Libye et qui sont vendus comme esclaves aux enchères.

« Sauf que les uns sont des réfugiés, les autres, des migrants… », précise l'avocate qui dénonce « une terminologie empoisonnée » et « une perversion du langage » qui entoure les problématiques liées à la migration.

« Actuellement, on fait la distinction entre les réfugiés et les migrants. Disant que les réfugiés, ce n'est pas de leur faute, tandis que les autres, ils auraient pu rester chez eux », déplore-t-elle.

L'impact positif des migrations

La Convention relative au statut des réfugiés qui date de 1951 est devenue obsolète pour l'avocate. « L'idéale ce serait de se doter d'une autre convention, mais il n'y a aucun appétit en ce sens de la part des États », explique-t-elle.

Pourtant, « sur une base purement rationnelle, avec des analyses démographiques et économiques, on peut monter un dossier irrésistible pour prouver que les migrations ont du bon. L'Europe par exemple, s'apprête à devoir faire face à une pénurie de main-d'œuvre, notamment dans le domaine de la santé, tandis que les prévisions de croissance démographique en Afrique sont importantes », précise l'experte.

Me Arbour rappelle également que les travailleurs migrants dépensent en moyenne 85% de leur revenu dans le pays d'accueil, et transfèrent le 15 % restant dans leur pays d'origine. L'an dernier, ces transferts valaient 600 milliards de dollars, dont 430 milliards allaient dans les pays en développement », ajoute-t-elle. Dans cette optique, l'une des initiatives de son groupe de travail est de réduire les coûts de ces transferts qui sont présentement beaucoup trop élevés.

La migration comme outil de développement, de réduction des inégalités à l'intérieur des pays et entre les pays, Louise Arbour y croit dur comme fer. Au moins autant qu'elle croit à l'état de droit. « Cela est directement lié à ma volonté de vouloir favoriser les migrations dans leur cadre légal, et de tout mettre en œuvre pour stopper ou du moins réduire, les migrations illégales », dit-elle.

C'est aussi sa formation en droit qui la pousse à privilégier une approche qui « reflète la discipline du droit, une discipline où se rencontrent les défis intellectuels, mais aussi un ancrage moral », poursuit l'avocate.

Rétablir la vérité

Ce qui l'a aussi poussé à accepter ce mandat aux Nations Unies, c'est la possibilité qui lui est donnée de rétablir certaines vérités. « L'idée que toute l'Afrique s'en vient en Europe c'est une mythologie, la plupart des migrations ont lieu à l'intérieur même des pays puis dans les pays limitrophes », lance-t-elle. « Je n'ai jamais travaillé dans un dossier ou la perception est aussi déconnectée de la réalité », assure-t-elle.

Sa foi en l'ONU en est une autre. « Si on ne l'avait pas, il faudrait l'inventer. Je crois encore à sa mission. C'est le seul forum universel », dit-elle, en concédant qu'il n'est pas non plus parfait.

Une jeune génération impressionnante

Lorsqu'on demande à Louise Arbour quelles sont les personnalités juridiques qui l'ont le plus impressionnée au cours de sa carrière, elle répond: « les jeunes avocats ».
« Je sais que cela va vous surprendre… Mais cette génération m'impressionne. Ils savent plein de choses que je ne sais pas, ils ont des outils de travail avec lesquels je ne suis pas du tout familière. Je les trouve tellement bons! », dit-elle, enthousiaste.

Louise Arbour avoue aussi sa grande admiration pour la juge en chef de la Cour suprême, Beverly McLachlin, qui va bientôt tirer sa révérence.

Quant à ceux qui changeront les choses, notamment au niveau politique, Louise Arbour leur confère une énorme responsabilité. « La situation actuelle demande aux dirigeants politiques de prendre des décisions et de ne pas toujours attendre d'être porté par l'opinion publique. C'est ça, le principe du leadership! »

Louise Arbour, née en 1947 à Montréal, est membre du Barreau du Québec depuis 1971 et du Barreau de l'Ontario depuis 1977. Elle a siégé à la Cour suprême du Canada de 1999 à 2004, à la Cour d'appel de l'Ontario et à la Cour suprême de l'Ontario. Elle a été procureure générale pour les Tribunaux pénaux internationaux pour l'ex-Yougoslavie et le Rwanda de 1996 à 1999, membre de la Cour suprême de l'Ontario (Haute Cour de Justice) de 1987 à 1990 et membre de la Cour d'appel de l'Ontario de 1990 à 1999 (absence autorisée de 1996 à 1999). De 2004 à 2008, elle a été haut-commissaire des Nations Unies aux droits de l'homme. Diplômée en droit de l'Université de Montréal en 1970, elle a reçu aussi un Docteur honoris causa de 40 universités du Canada et de l'étranger. À la fin de son mandat aux Nations Unies, elle retournera exercer au cabinet BLG.

Justice Canada highlights LGBTQ activist as one of its own
Hill Times
Shruti Shekar
December 6 2017

On Nov. 28, Prime Minister Justin Trudeau delivered his historic formal apology to the LGBTQ2 community. That same day Michelle Douglas, the director of international relations at the Justice Department, received a coin of achievement for her work fighting for equal rights. "I had the absolute honour & privilege of witnessing Michelle Douglas receive an Achievement Coin for not only her accomplishments and dedication to the Department but for her continuous battle for equal rights," Justice Minister Jody Wilson-Raybould tweeted Nov. 28. Ms. Douglas sued the Canadian government in 1992 when she faced discrimination for her sexual orientation during her time in the Canadian Armed Forces, which she joined in 1986.

Ms. Douglas re-told her story in a Facebook video posted by the Justice Department the same day Mr. Trudeau gave his apology in the House. "After some really difficult experiences, interrogations, polygraph exams, I was dismissed, honourably, but as being 'not

advantageously employable due to homosexuality,’”she said. “It’s unimaginable that discrimination was so overt, so codified, this idea that you’d be fired on that basis.”

The government settled the case before it went to trial and ordered the military to end its discrimination. “People got their pay raises, they got their ranks restored to proper grade, and I like to think of it as they also got their dignity restored. People who want serve in the military can do so now regardless of their sexual orientation,” she said.

Ms. Douglas has been working for the Justice Department for more than 10 years now. Mr. Trudeau’s apology came with a pledge by the federal government to repay the community. This included bringing in legislation that would help expunge any criminal records of those people convicted of same-sex activity and earmarking $110-million to repay those in the military and federal agencies who have had their careers affected because of their sexual orientation. It also includes putting $250,000 towards projects to eliminate homophobia.

Guilty verdict in hostage-taking trial
Newswire
Public Prosecution Service Canada
December 6, 2017

Ali Omar Ader, 40, was found guilty today in Ontario Superior Court of taking Amanda Lindhout hostage, in the country of Somalia, contrary to s. 279.1(2) of the Criminal Code. The offence carries a maximum penalty of life imprisonment.

Ali Omar Ader was arrested and charged on June 11, 2015, following a lengthy RCMP investigation which involved luring him to Canada. He has been in custody since his arrest.

Throughout much of Ms. Lindhout's captivity from August 23, 2008 to November 25, 2009, Mr. Ader was responsible for communicating ransom demands and conducting negotiations for the hostage-takers.

Sentencing will occur at a later date.

The Public Prosecution Service of Canada is responsible for prosecuting offences under federal jurisdiction in a manner that is free of any improper influence and that respects the public interest. The PPSC is also responsible for providing prosecution-related advice to law enforcement agencies across Canada.

Gift Ideas For Debt-Burdened Lawyers And Law Students

Sometimes, it is best to simply gift something that you can tell the recipient could really use.

Above The Law

Jordan Rothman

December 6, 2017

The holiday season is now fully upon us. Every other commercial on TV has a holiday theme, classic Christmas music is playing all around us, and our homes and businesses are completely decked out in holiday décor. Now is also the time when people need to make decisions about what kinds of holiday presents they wish to provide significant people in their lives.

If you are reading this website, it likely means that you know numerous lawyers and law student whom you wish to provide presents. Many of these individuals are likely burdened with student loans, and this circumstance might influence what kinds of gifts you provide. From my own personal experience, there are certain types of presents that debt-burdened lawyers and law students would appreciate the most.

When I was paying off my student loans, I rarely ate out, and I tried to only spend $10 a day on food. This was hard to do when I was a law student in the District of Columbia and when I was a young lawyer in the New York City area. In order to save money on food, I cooked most of my meals, because preparing food was much cheaper than going to a restaurant or ordering out. Since I only knew how to cook about four dishes, it was a real drag to have to keep eating meals that I prepared.

If you are thinking about providing a debt-burdened lawyer or law student with a gift card, consider making this a gift card to a favorite restaurant. Since people trying to save money usually do not eat out, this will be a great present. I remember when I was in law school, there was a popular chain restaurant nearby that had an all-you-can-eat salad buffet. My grandparents had raised me to take advantage of all kinds of buffets, and whenever I had some spare money, I would head there for a relatively cheap meal out. One of my friends knew that I loved that restaurant because of the buffet, and he gave me a gift card for that restaurant around the holidays. I stretched that gift card as far as I could by only using it on the cheap buffet, and that simple gift card brought me much enjoyment. From my own personal experience, I know that debt-burdened lawyers and law students in your life will also appreciate this type of gift, since eating out alleviates one of the burdens of saving money to pay off student loans

Another good gift idea is to provide debt-burdened law students and lawyers gift certificates to purchase clothes. When I was paying off my student loans, I rarely bought new clothes so that I could save money. Most of the clothes I wore during this period were purchased when I was in high school, and some of my outfits were really worn out. As a result, I really appreciated when people bought me clothes, since I could make good use of this gift.

It is not always safe to purchase specific clothes, since the recipient might not like the gift, and people like me who are 6'8'' tall might not fit into the clothes you buy! However, providing a gift certificate to a popular clothing store is a great present idea for debt-burdened lawyers and law students, since I can tell you from firsthand experience that this gift will go to good use.

It is also a good idea to purchase gifts for debt-burdened law students and lawyers that you can tell they could use. I saved money and cut expenses in unbelievable ways during my student debt repayment saga, and most of my friends and colleagues could tell that I was "penny-pinching" in many aspects of my life. For instance, during my first job after graduating from law school, I was still using the wallet that had been gifted to me when I graduated from high school. This wallet was extremely worn down, and one of my coworkers commented incessantly about my decrepit wallet whenever we would grab lunch or coffee together. For the holidays, that co-worker gifted me a fancy new wallet that I still use to this day. I truly appreciated her consideration, and it is wise to gift items to debt-burdened law students and lawyers that you can see they could really use. If they are like me, they won't spend the money to purchase necessary items themselves, even though having these things would make their lives much better.

All told, many law students and lawyers who are struggling with student debt are likely saving their money to help pay off student loans. As such, debt-burdened lawyers and law students usually appreciate certain types of gifts that help alleviate the burdens of student debt. And sometimes, it is best to simply gift something that you can tell the recipient could really use. On that point, the wallet gifted to me a while back is getting a little old…

Jordan Rothman is the founder of Student Debt Diaries, a personal finance website discussing how he paid off all $197,890.20 of his college and law school student loans over 46 months of his late 20s. You can reach him at Jordan@studentdebtdiaries.com.

Why does Canada spy on its own indigenous communities?

Indigenous nations have emerged as vocal defenders of land and water, but state surveillance of these groups is disproportionate, and speaks of the broad criminalisation of Indigenous peoples.

Open Democracy

Lex Gill and Cara Zwibel

December 6, 2017

This article is part of Right to Protest, a partnership project with human rights organisations CELS and INCLO, with support from the ACLU, examining the power of protest and its fundamental role in democratic society.

Researchers and journalists have begun to reveal the extent to which Indigenous activists and organisations in Canada are subject to surveillance by police, military, national security intelligence agencies and other government bodies. While security agencies have long looked beyond 'traditional' national security threats and set their sights on activists – even in the absence

of evidence linking these individuals or organisations to any violent criminal activity – this reality is increasingly the subject of media and public scrutiny. As Jeffrey Monaghan and Kevin Walby have written, the language of "aboriginal and multi-issue extremists" in security discourse blurs the line between threats to national security, matters of ordinary law enforcement, and lawful, democratic advocacy.

In this piece, we summarise some of what is known about the surveillance practices employed to keep tabs on Indigenous leaders and activists, and describe their impact on Charter-protected and internationally recognised human rights and freedoms.

Indigenous nations and peoples have emerged, worldwide, as vocal defenders of land and water, organising to protect ancestral territories and ways of life. In Canada, while aboriginal and treaty rights are constitutionally recognised and affirmed, the interpretation of those rights is highly contested and a matter frequently before the country's highest court. Indigenous activists and organisations in Canada have led popular resistance to the development of new oil and gas pipelines, hydroelectric dams, mining operations, and other extractive industries that have significant environmental impact and which frequently encroach on Indigenous territories.

This resistance – with tactics ranging from peaceful protest and strategic litigation to the establishment of creative action camps and blockades – has frequently been met with a forceful police response. Through diligent research and investigative reporting, a pattern of extensive surveillance of these activities has also emerged – implicating law enforcement, intelligence agencies and numerous other government bodies.

Both freedom of expression and assembly are guaranteed under the Canadian Charter of Rights and Freedoms, which forms part of the Canadian constitution. The freedom from unreasonable search and seizure – which provides constitutional protection for privacy – is also guaranteed. The law recognises certain limits to these rights, provided they further a compelling government objective and are proportionate to that objective. However, the pattern of surveillance against Indigenous activists and organisations that has emerged in Canada is one that can clearly be characterised as disproportionate and alienating, with no evidence that it is necessary. Though these operations are inherently covert, Indigenous activists, researchers and human rights advocates have begun – largely through access-to-information requests – to piece together a clearer picture of the ways in which this surveillance takes place. Below, we discuss surveillance of individual leaders, surveillance of communities and movements, and how the agencies and departments that gather information use and share it.

Surveillance of Indigenous leaders

Government agencies have engaged in surveillance and information-gathering activities focused on Indigenous leaders and activists. Take for example the case of Dr. Cindy Blackstock, who is a Gitksan activist for child welfare, the Executive Director of the First Nations Child and Family Caring Society of Canada, and a Professor of Social Work at McGill University. Dr. Blackstock's organisation (along with the Assembly of First Nations) had sought justice at Canada's Human

Rights Tribunal regarding the federal government's failure to provide equal funding for services for First Nations children, youth and families living on First Nations reserves. Access to information requests revealed that between 2009 and 2011, Dr. Blackstock was subject to extensive monitoring by Indigenous and Northern Affairs Canada (INAC) – the government department responsible for Indigenous issues — and the Department of Justice. Officials monitored her personal and professional activities on Facebook and attended between 75 and 100 of her public speaking engagements, taking detailed notes and widely distributing reports on her activities. In 2013, Canada's Privacy Commissioner found that by engaging in this personal monitoring – which was unrelated to her professional activities or her organisation's case against the government – the Department of Justice and INAC had violated Dr. Blackstock's privacy rights.

Similarly, Dr. Pamela Palmater is a Mi'kmaq lawyer, member of the Eel River Bar First Nation, and an Associate Professor and Chair in Indigenous Governance at Ryerson University. Following public revelations that Dr. Cindy Blackstock was being monitored by the government, Dr. Palmater made access to information requests to INAC, the Canadian Security Intelligence Service (CSIS - Canada's national spy agency), the Royal Canadian Mounted Police (RCMP – Canada's national police force), and the federal Department of National Defence (DND). While many of the records sought were legally exempt from disclosure, Dr. Palmater noted that some portions of her request to CSIS were exempt under section 15(1)(c) of the Access to Information Act as relating "to the efforts of Canada towards detecting, preventing or suppressing subversive or hostile activities." In a statement to the Public Safety Committee of the House of Commons related to its study of Bill C-51 (Anti-Terrorism Act, 2015) Dr. Palmater stated that INAC also admitted to having 750 pages of documentation on her activities and whereabouts, but had destroyed the files before they had the opportunity to give them to her.

Clayton Thomas-Muller's case provides another example. Mr. Thomas-Muller is a member of the Mathias Colomb Cree Nation and a former Idle No More organiser. The Aboriginal Peoples Television Network (APTN) National News obtained documents from criminology professor Dr. Jeffrey Monaghan demonstrating that in 2010 and 2011, information about Thomas-Muller (who was at the time a member of the Indigenous Environmental Network (IEN)) had made its way into the RCMP's Suspicious Incidents Report (SIR) despite acknowledgement that there was no specific criminal threat at issue: Thomas-Muller was simply planning a trip to the Wet'suwet'en action camp against the Northern Gateway pipeline. The report was referred for inclusion in the SIR on the basis that IEN was an 'extremist' group, although the basis for this characterisation, or how the group was designated as such, is not known.

Surveillance of communities and movements

The records detailing monitoring of individual activists and leaders speak to a larger pattern of surveillance against non-violent dissent, Indigenous-led social movements and their allies. As APTN reported in relation to the documents referring to Thomas-Muller, RCMP records also listed a number of groups as "involved persons," including "the Defenders of the Land, Direct Action in Canada for Climate Justice, Ontario Public Interest Research Group, Ruckus Society, Global

Justice Ecology Project, Sea to Sands Conservation Alliance, Canadian Youth Climate Coalition, the Indigenous Action Movement and the Wet'suwet'en Direct Action Camp." In 2014, the British Columbia Civil Liberties Association (BCCLA) filed complaints against both the RCMP and CSIS, alleging unlawful surveillance against opponents of Northern Gateway that included many of the same organisations. While the Civilian Review and Complaints Commission for the RCMP launched an independent investigation, the Security Intelligence Review Committee (SIRC) (the body responsible for CSIS oversight) instead held a series of secret hearings. They issued a decision in 2015, but barred the BCCLA from speaking about the outcome. The BCCLA has since applied for judicial review of this decision.

Just last month, documents obtained by VICE News demonstrate that the RCMP surveilled Indigenous activists who constructed a Tipi on Parliament Hill as part of Idle No More's Unsettling Canada 150, a campaign coinciding with 150 years since Canadian confederation. Idle No More has come under government scrutiny on other occasions: in 2015 documents obtained by APTN confirmed that Aboriginal Affairs and Northern Development (AAND, now INAC) shared information about peaceful protests led by the group with Canada's spy agency, the Canadian Security Intelligence Service (CSIS), and passed on information about meetings between government and First Nations leaders to the Integrated Terrorism Assessment Centre (ITAC), the Royal Canadian Mounted Police (RCMP) and others.

In 2013, an RCMP raid on a Mi'kmaq-led anti-fracking camp in Elsipogtog, New Brunswick triggered a heated confrontation and dozens of arrests. Documents revealed that the Canadian Forces National Counter-Intelligence Unit was also involved in monitoring the situation at Elsipogtog. In response to the raid, activists took to social media, calling for peaceful solidarity actions to take place in the following days. APTN revealed that the Government Operations Centre (GOC) called an emergency teleconference with a long list of federal departments and widely circulated a spreadsheet detailing these solidarity events. It included such events as "a jingle-dress healing dance in Kenora, Ont., a prayer ceremony in Edmonton and an Idle No More 'taco fundraiser, raffle and jam session' planned at the Native Friendship Centre in Barrie."

Sharing and using the fruits of surveillance

The surveillance and monitoring of Indigenous communities and movements is in no way confined to the examples noted above. In 2011, the Toronto Star reported that a distinct Joint Intelligence Group (JIG) of the RCMP was formed specifically to monitor the activities of Aboriginal groups in 2007. While the unit was "dismantled" in 2010, the RCMP would not confirm whether the same activities were taking place under another name or program. Documents revealed that as of 2009, their activities focused on 18 "communities of concern," flagged largely for their opposition to logging, mining or pipeline projects.

Journalists noted that the JIG reported on a weekly basis to approximately 450 recipients, including "unnamed 'industry partners' in the energy and private sector," highlighting a potentially troubling information-sharing relationship between government and private corporations. The Dominion

and a summary of these issues by Voices-Voix reported that intelligence sharing between government and private sector actors has regularly taken place through classified briefings, raising concern among Indigenous and environmental activists. As Clayton Thomas-Muller reflected in an interview with APTN National News following revelations that he had been under surveillance:

"We are challenging the most powerful corporate entities on the planet … What we have on our side is endless human resources. We have the power of our ancestors and traditions fueling us. We are intimately aware of the domestic surveillance that is happening as well as the agenda to criminalise Indigenous dissent."

VICE News has also obtained documents demonstrating that Canada's spy agency has taken a keen interest in the movement against the Dakota Access Pipeline, led by the Standing Rock Sioux Tribe at the Oceti Sakowin Camp. In a 2016 CSIS document, the spy agency noted that "there is strong Canadian Aboriginal support for the Standing Rock Sioux Tribe as many see similarities to their own struggles against proposed pipeline construction in Canada (Northern Gateway, Pacific Trails, Energy East, etc.)."

In 2015, the federal government passed legislation (Bill C-51, the Anti-Terrorism Act 2015) that enabled even greater information-sharing practices amongst government agencies about "threats to critical infrastructure" or "the economic and financial stability of Canada", both of which may provide an excuse to share information in a manner that chills and thereby threatens the constitutionally recognised right to protest. The same legislation afforded dramatic new "disruption" powers to CSIS. Over 100 Canadian legal academics wrote a lengthy analysis in opposition to the bill. Melina Laboucan-Massimo described the chilling effects of the legislation for openDemocracy in 2015:

"It is legislation like this that makes it difficult for people to not be scared into silence, and for people like me who believe that we need a just transition to renewable energy and engage in peaceful protests that may be seen as criminal in the eyes of the Canadian government. But this history is not new for us as Indigenous peoples here in Canada. It is the continuation of neo colonialism seen now in the form of resource extraction, environmental and cultural genocide."

Bill C-51 is currently subject to a constitutional challenge led by the Canadian Civil Liberties Association (CCLA) and Canadian Journalists for Free Expression. Despite promises to correct the unconstitutional aspects of Bill C-51, the current government's proposed reform to national security law (Bill C-59) fails to address many of the concerns raised in that Charter challenge. The notion that peaceful resistance – such as opposition to pipeline projects or other private development – constitutes a meaningful threat to "critical infrastructure" encourages the profiling of Indigenous groups by Canada's national security bodies.

The consequences of criminalisation

The Canadian government is only beginning to confront its history of violence and colonialism against Indigenous peoples. As Pam Palmater testified to the House of Commons in 2015:

“Every aspect of our identity has been criminalised, both historically and into the present day. In every single instance, we've had to resist all of these laws, keeping in mind that these were all validly enacted laws. It was legal to take Mi'kmaq scalps; it was legal to confine us to reserves; it was legal to deny us legal representation. All of these things were law in Canada. We had to be criminals, in that we had to break the law in order to preserve our lives, our physical security, and our identities.”

Sixty percent of First Nations children on reserve continue to live in poverty and there are over 70 First Nations communities where drinking water advisories have been in effect for one year or more. A systemic pattern of over-policing and over-incarceration of Indigenous peoples by the Canadian government remains a core feature of our legal system. Though First Nations, Métis and Inuit peoples comprise about 4% of the Canadian population, they make up over 23% of the federal inmate population, leading commentators to describe Canada’s prisons as “the new residential schools.” This pattern of criminalisation means that Indigenous people in Canada are more likely to be disproportionately subject to the kinds of “everyday surveillance” associated with poverty, urbanisation and incarceration, alongside the enhanced surveillance threats faced by those who are active on issues of land and water. The surveillance of Indigenous activists and organisations in Canada must be understood as part of this larger context.

The CCLA is concerned about the long-term impacts of government surveillance of individuals and communities in Canada generally, and of Indigenous activists in particular. While surveillance is most often discussed in terms of privacy rights – and while it is doubtlessly true that many forms of state surveillance are deeply invasive intrusions into the private lives of individuals and communities – privacy is not the only right at stake. In fact, the kind of government surveillance that Indigenous activists and groups have been subject to has the potential to affect a wide range of rights and freedoms protected by the Charter, as well as jeopardise many of our most deeply held democratic values. Pervasive surveillance creates a climate of insecurity, with the potential to discourage legitimate democratic participation, curtail peaceful assembly, and chill freedom of speech, of religious expression and of the press. When these consequences are disproportionately aimed at those engaged with the democratic process through their activism and political work, democracy, and the public interest as a whole, suffer.

Somali man lured to Canada by undercover cops convicted of hostage taking
Vice News
Tamara Khandaker
December 6, 2017

A man involved in the kidnapping of a journalist in Somalia nine years ago, who was lured to Canada by cops with the promise of a fake book deal, has been found guilty of hostage taking.

The court rejected 40-year-old Ali Omer Ader's testimony that he was an unwilling participant in the kidnapping of Canadian freelance reporter Amanda Lindhout, who was tortured, beaten, and raped during her 15 months in captivity.

The judge found Ader's defence, that he himself was kidnapped at gunpoint and coerced into acting as a translator, "completely unbelievable," the CBC reported, quoting Ontario Superior Court Justice Robert Smith's ruling which was released on Wednesday.

The conviction comes after a 5-year investigation in which an undercover RCMP officer posed as a literary agent to build a relationship with Ader, who was hoping to publish a book about the history of Somalia.

Over years of correspondence, including emails, recorded phone calls, and a meeting in Mauritius, Ader confessed to his role — as a negotiator who received $10,000 from the ransom paid to the kidnappers by Lindhout's family.

In 2015, Ader was flown to Canada under the guise of meeting with a "publisher" who was interested in the book — also an undercover cop.

In compliance with a clause in the fake publishing agreement he signed, which required him to divulge anything that could potentially damage the book's publicity or the publishing company's reputation, Ader confessed to being voluntarily involved and to the receiving money from the payout. The entire meeting was captured on video.

In court, however, he claimed he was lying to impress the publisher. His entire defence was dismissed by the Crown as flagrant lies. He admitted under cross-examination that he wasn't much of a prisoner during the kidnapping since he was allowed to come and go as he pleased and bring his family to live with him.

In his ruling, Smith pointed out that Ader never mentioned any threats against him or his family in his correspondence with the undercover officer known as AK.

"If he had assisted the hostage-takers due to threats, this would have reduced his culpability for the hostage-taking and assisted him in obtaining the book contract," Smith said.

"It does not make sense to lie about his involvement to make his conduct appear worse to the publisher and the public who he hoped would buy his book."

Ali Omar Ader found guilty in Amanda Lindhout kidnapping case

Ader, a 40-year-old Somalian national, had pleaded not guilty to a criminal charge of hostage-taking.

Toronto Star
Jim Bronskill
The Canadian Press
December 6, 2017

OTTAWA—Ali Omar Ader has been found guilty in the kidnapping of Amanda Lindhout in Somalia.

The verdict was handed down in a packed courtroom Wednesday by Ontario Superior Court Justice Robert Smith, who presided over Ader's 10-day trial.

In his reasons for the decision, Smith said Ader, a 40-year-old Somalian national, was a "willing participant" in the hostage-taking of Lindhout, who was working as a freelance journalist when seized near Mogadishu nine years ago.

Smith found much of Ader's testimony was unbelievable and did not support his claim that he was forced into serving as a negotiator and translator on behalf of a gang who threatened to harm him and his family.

Ader displayed little emotion after the verdict was announced.

Prosecutor Croft Michaelson said the outcome "sends a message that if you take a Canadian citizen hostage in another country, you're not safe."

"If the law enforcement here can find you and do an investigation, we're going to pursue that."

Lindhout, raised in Red Deer, Alta., and photographer Nigel Brennan of Australia were snatched by armed men in August 2008 while pursuing a story, the beginning of 15 months in captivity. They were released upon payment of a ransom.

But the saga then entered a new phase: a complex, multi-year police investigation involving a scheme to elicit a confession from Ader, the man suspected of making ransom-demand calls.

Ader, who speaks some English, developed a business relationship through phone calls and emails with a man who promised to help publish his book about Somalia.

They met face-to-face in 2013 on the island of Mauritius, where the business agent — actually an undercover Mountie — says Ader freely spoke of helping the hostage-takers in return for $10,000 (U.S.) in ransom money.

A book contract signing came two years later in Ottawa with the officer and a supposed publisher, all secretly captured on a police video. Again, Ader tells the RCMP he was paid to assist the kidnappers. He was arrested the next day.

As the lone defence witness, Ader told the court that he, too, was abducted by the gang and forced to be a negotiator and interpreter.

Ader described being held by the gunmen in an apartment for several months, as well as getting orders from the gang about what to say during calls to Lindhout's mother, Lorinda Stewart. He told of being beaten, escaping and later surrendering when the hostage-takers made serious threats against his family.

Ader said that in Mauritius, he tried to tell the man he believed to be his business agent that he was coerced into helping the kidnappers. But the man wasn't interested, so he told him what he wanted to hear.

Michaelson said during the trial that Ader's testimony was "riddled with inconsistencies" and should be rejected.

Ader told the true story of his role in the kidnapping in Mauritius, not in the courtroom, Michaelson said. The prosecutor suggested it simply wouldn't make sense for Ader to confess to something he did not do.

Trevor Brown, one of Ader's lawyers, said it was important to remember the Somalia of 2009 was a chaotic country with no sense of order or security, a place where those with weapons wielded power.

The gang members who kidnapped Lindhout and Brennan were cruel and unpredictable people "eminently capable" of ordering Ader to help them, Brown told the court.

In the judgment Wednesday, Smith noted that Ader never mentioned in emails or phone calls that he or his family had been threatened if he did not help the hostage-takers, a claim that only surfaced during the trial.

"If he had assisted the hostage-takers due to threats, this would have reduced his culpability for the hostage-taking and assisted him in obtaining the book contract," Smith said.

"It does not make sense to lie about his involvement to make his conduct appear worse to the publisher and the public who he hoped would buy his book."

Lindhout sobbed in the witness box as she testified about her ordeal during the trial, just metres away from Ader.

Smith’s judgment acknowledged Lindhout’s “courage and strength” while she was held in deplorable conditions and subjected to extreme physical, sexual and emotional abuse by the hostage-takers.

Stewart did a “superlative job” of acting as a negotiator to save her daughter’s life, and Brennan was “quite heroic” in refusing a chance to be released after a year as hostage because Lindhout would be left behind, the judge added.

McLachlin hears final case, but still has months of work on judgments ahead
CTV News
Jim Bronskill
The Canadian Press
December 7, 2017

Chief Justice Beverley McLachlin fought back tears as she said goodbye Thursday following more than a quarter century on Canada's highest court.

McLachlin is hanging up her robes after hearing more than 2,000 Supreme Court cases, including a final one on interprovincial trade.

She concluded with some emotional remarks, thanking her husband, colleagues, the court staff and the public -- and musing that she will even miss the judicial homework.

"In fact that may be the biggest adjustment that I have to face -- what am I going to do with my evenings?"

McLachlin is stepping down after 28 years on the court, including almost 18 years as chief.

"I know that my time here will always be the centrepiece of my life," she said.

McLachlin spoke of her tenure as a period in which the justice system in Canada emerged as a potent force for good.

"It's been intellectually stimulating, it's been hugely challenging and there's not been a day when I haven't thought I'm the luckiest of people."

Justice Rosalie Abella lauded McLachlin's inspiration and leadership, saying she did everything possible to help the judges.

"We don't know how she did it," Abella said. "She seemed incapable of fatigue."

McLachlin officially retires Dec. 15. However, she will continue to have a say on judgments in cases she has heard, as long as they are released by next June 15.

If any are released after that date, the judgment will note that McLachlin had no input into the decision.

Since the court generally sits with an odd number of judges, it means some cases that McLachlin heard could result in rulings from an even number, posing the possibility of a tie.

As a result, the court is working to identify cases involving differences of opinion among the judges, with the aim of releasing those judgments by mid-June.

McLachlin is the first woman to hold the top job on the high court and is also Canada's longest-serving chief justice.

Justice Minister Jody Wilson-Raybould said this week McLachlin exemplifies the qualities a chief justice should have, citing her thorough understanding of the law and ability to foster a collegial spirit on the court.

Prime Minister Justin Trudeau is expected to name a new chief justice soon.

Some texts considered private, even after they've been sent: Supreme Court
Civil liberties advocates say criminal case ruling has 'broad and important' implications for all Canadians
CBC News
Kathleen Harris
December 8, 2017

An Ontario man convicted of trafficking handguns has been acquitted with a Supreme Court of Canada ruling that finds the text messages used to charge and prosecute him should have been considered private.

In a 5-2 ruling, the majority of justices found Nour Marakah had a reasonable expectation of privacy in the messages sent to his accomplice, and that the texts used as evidence to convict him violate his charter right to be protected against unreasonable search or seizure.

But Chief Justice Beverley McLachlin said that privacy expectation is not automatic, and must be assessed in "the totality of the circumstances."

In this case, Marakah had made several requests for the text messages to be deleted from his accomplice's iPhone.

In a dissenting opinion, Justice Michael Moldaver said Marakah had "no control whatsoever" over the texts sent to and received by his co-accused.

"To say that Mr. Marakah had a reasonable expectation of personal privacy in the text message conversations despite his total lack of control over them severs the interconnected relationship between privacy and control that has long formed part of our Section 8 jurisprudence," he wrote.

While this case focused on the issue of text messaging privacy as it relates to charter protections against unreasonable search and seizure, some see the ruling as a victory for privacy protections for all Canadians.

'Broad and important implications'

Christine Lonsdale, a lawyer representing the Canadian Civil Liberties Association, an intervener in the case, said the ruling has "very broad and important implications" for the public.

She said it means all Canadians can expect that all text messages, when sent or received, are considered private. Without the court ruling, someone who sends an intimate message that is then shared could be "out of luck" in seeking a remedy, she said.

"The court here has taken hold, embraced the challenge of the technology and caused the law to catch up with the technology, in line with Canadians' values," Lonsdale said. "Canadians can expect that their private, one-on-one communications with each other remain ones that they have a reasonable expectation of privacy."

In a factum she had submitted to the court, Lonsdale said new modes of private communication deserve the same privacy protection as more traditional forms.

"In an age of increasingly pervasive use of electronic communication, every person who uses text messages to conduct a private conversation, whether or not they are accused of a crime, is impacted by the court's analysis in this case," she said.

Messages on accomplice's iPhone

In 2014, an Ontario trial judge found Marakah guilty of seven firearms offences related to the trafficking of illegal handguns, ruling that while someone who sends a text message has a reasonable expectation of privacy, it ends when the message reaches the intended recipient.

The messages obtained from Winchester's iPhone were critical to gaining a conviction, because other incriminating evidence, including the same text messages extracted from Marakah's BlackBerry, was deemed inadmissible.

At that point, the text message is no longer under control of the sender, but is under the complete control of the recipient, the judge ruled.

Unreasonable search and seizure

The respondent, the attorney general of Ontario, argued there should be no such expectation of privacy once a text has been sent.

"Having knowingly relinquished control over the messages to a recipient — who, in his or her sole discretion, can retain them, share them, copy them, or post them online — the sender cannot sensibly claim an expectation of privacy over them," its factum reads.

Marakah's lawyers, Mark Sandler and Wayne Cunningham, had argued that interpretation runs counter to the broader public expectations to ensure privacy protection for digital communications.

"This is contrary to societal expectations and norms, and leads to highly problematic consequences," it reads, citing the example of when nude or intimate images have been shared without consent of the sender.

Chief Justice Beverley McLachlin knew how to make Ottawa listen
She brought the Supreme Court harmony, respect, and helped drag it into the 21st century. Though she's retiring Dec. 15, we haven't heard the last of her, writes Susan Delacourt.
Toronto Star
Susan Delacourt
December 8, 2017

The biggest social event in Ottawa this season has nothing to do with the holidays. It will, however, revolve around someone Canadians usually see in red, fur-trimmed attire.

On the eve of her official retirement Dec. 15, Beverley McLachlin, the soon-to-be former chief justice of the Supreme Court of Canada, will be feted at a huge gala Thursday night. It will feature tributes from former prime minister Brian Mulroney and two former governors general, Adrienne Clarkson and David Johnston.

McLachlin's retirement, like her appointment and many of the rulings during her remarkable tenure, is a milestone — not just in the legal realm, but in Canada as a whole. The first woman to serve as chief justice has also been the longest-serving person in that role: nearly 18 years at the head of the top court in the land.

First appointed to the Supreme Court by Mulroney in 1989, then elevated to the chief's job by Jean Chrétien in 2000, McLachlin has seen a lot of change in this country, and helped provoke some of it, too, on everything from assisted death to same-sex marriage, even cameras in the court.

Born in Pincher Creek, Alta., in 1943, McLachlin is stepping down more than nine months before the mandatory retirement age of 75. Sheilah Martin of Alberta is set to join the bench.

She has been a rare figure in Canada, someone whose esteem and reputation have only grown with her years at the top of a national institution. McLachlin — a political force, but not a political player, with a career steeped in controversy without being controversial — has defied being pigeon-holed by gender, geography or politics.

One of her signature achievements, many agree, was bringing a voice of consensus to the judges' rulings; to have the court speak with one voice more than it had in the past — and certainly more than is seen in the highly polarized U.S. Supreme Court.

That achievement probably came about, many also agree, through McLachlin's own skills at keeping the court's interests and legal principles, rather than her own views or personality, at the forefront of her responsibilities.

It was a masterful way to preside over issues that had the potential to divide, not just the court but the country, says Emmett Macfarlane, a professor at the University of Waterloo and author of Governing from the Bench: The Supreme Court of Canada and the Judicial Role.

"When the court's dealing with things from prostitution to assisted dying to those big references on Senate reform, the court's very well aware that it's knee-deep in politics when it's rendering these decisions," Macfarlane says. "The fact that the court is so frequently unanimous on some of these big issues, you have to give her a lot of credit for that."

According to some data published earlier this year, 73 is a signature number for the McLachlin court. It was the annual average of rulings the court issued under her watch in her first 16 years as chief, and 73 per cent is also roughly the proportion of unanimous decisions issued while McLachlin was chief justice. Unanimity rates were lower under her predecessors: roughly 65 per cent when Brian Dickson was chief justice and about 58 per cent under Antonio Lamer.

Former justice Thomas Cromwell served on the Supreme Court from 2008 to 2016. He can't reveal exactly how McLachlin engineered so much consensus without breaking the secrecy of past deliberations, but he does say this: "The first draft of a judgment that gets circulated is rarely the version that's released many weeks later," he says, "and there was never a more constructive colleague than Beverley McLachlin."

Cromwell actually got to see McLachlin through two frames. In the mid-1990s, he was the executive legal officer to former chief justice Antonio Lamer, when McLachlin was a newly appointed judge from B.C.

"You could also see very easily that she was a leader … She was a very independent jurist, producing very high-quality work and I remember Chief Justice Lamer saying to me that he knew who his successor was going to be."

Later, Cromwell would become a colleague on the bench and he would keep marvelling at McLachlin's energy. He'd often wonder when she slept and he still says his most vivid memory of working with her revolves around "her warmth and her infectious laugh."

"She has a fairly raucous laugh; I think the prairie girl comes out," Cromwell says. "Her whole faces sort of explodes with a smile and laughter."

McLachlin is married to Frank McArdle, a lawyer who heads the Canadian Superior Court Judges Association. She has a son, Angus, who she raised for a while as a single mom after her first husband, Rory McLachlin, died of cancer in 1988.

Carissima Mathen, a law professor at the University of Ottawa, credits McLachlin with keeping the court and the Charter of Rights and Freedoms high in public favour over the years — often against prevailing political winds. “The court has not been the site of any disquiet or scandal or gossip about acrimony between the judges,” she said. “The judges disagree on cases, of course, but she’s presided over a court that for the most part seemed to be quite harmonious and worked well.”

Mathen, like other close observers of the court, likes to see McLachlin’s career in terms of two important, bookended judgments. Back in 1993, when she was a new judge on the court, she wrote a dissenting opinion on Sue Rodriguez’s case on assisted dying. Twenty-two years later, as chief justice, McLachlin’s court opened the door for assisted dying in Canada with the so-called Kay Carter ruling. Those two judgments show just how far Canada’s legal culture changed while this far-seeing judge was serving at the Supreme Court of Canada.

Many of McLachlin’s admirers also note how much the retiring chief justice has done in the realm of access to justice, an issue she calls dear to her heart. “It is a fundamental right, not an accessory,” McLachlin told a University of Toronto audience back in 2011. Her arguments for better access to legal representation fit comfortably with her oft-cited principles on social and democratic stability, in speeches and in rulings themselves.

Anne McLellan was the minister of justice when McLachlin was made chief justice — one of Chrétien’s best appointments, she believes. They had much in common — both were high-ranking women in male-dominated worlds, both from the West. Both had been professors of law in their previous lives; both women were and are big dog-lovers.

McLellan, reflecting on McLachlin’s legacy, keeps circling back to words such as “dignity,” “respect” and “stability.”

“She’ll be remembered for becoming chief justice at the time that the Supreme Court needed a collegial, highly regarded, highly respected leader who was strong and determined.”

It is no easy feat for a Supreme Court chief justice to stay simultaneously immersed in the country’s politics but out of the fray, too, says McLellan.

“The relationship has to be one of mutual respect. It is one of balance. Let me put it this way: the minister of justice should not be in the business of calling the chief justice. When the chief justice needs to talk to you, she’ll call you.”

Of course, on this score, McLachlin will be remembered for protecting the court during the tumultuous debates over judicial activism and repeated slams against the court from Conservatives, especially during prime minister Stephen Harper's years in power. Harper had cast the court as laden with Liberal appointees before he became prime minister, but things exploded in 2014 when the Supreme Court itself rejected one of Harper's appointees, Marc Nadon, as unqualified.

The incident set off an incredible public spat between the PMO and the chief justice, in which McLachlin was credited for keeping her cool and resisting getting herself and the court dragged into a political mess. In the larger scheme of things, it was an unpleasant blip in McLachlin's long tenure, but one that few others who have held the job have had to endure.

Political tumult aside, McLachlin also had to steer the court through the information revolution of this early 21st century; through public demands to know more and see more about previously secretive institutions like the Crown or the court.

One of the hosts for the Thursday night gala is Don Newman, the former CBC host, one of the journalists who got to know McLachlin through efforts to open up the court to journalists. He gives her a lot of credit for bringing new openness to the Supreme Court.

So does Emmett Macfarlane:

"She has had to help modernize the court and really bring it into the 21st century," Macfarlane said. "We have live webcasts of hearings, we have an increasing willingness of judges to do interviews and to make public appearances and give speeches."

McLachlin is due to make one of those speeches on Thursday night at the big gala in the capital. It won't be the last Canadians hear from her — McLachlin has many more speeches to give and even a novel in the works. But she will definitely have everyone's attention — McLachlin has a way of making Ottawa listen.

Wernick ties DMs' performance pay to stabilizing Phoenix
iPolitics
Kathryn May
December 7, 2017

Canada's top bureaucrat is raising the stakes in the federal government's Phoenix crisis by linking deputy ministers' performance pay and bonuses to progress in stabilizing the system.

Privy Council Clerk Michael Wernick notified deputy ministers this week that he is making the stabilization of the malfunctioning Phoenix pay system and "well-being" of federal employees a top management priority in their performance contracts for this year and next.

“I want to reiterate that the pay system, as well as the well-being of our employees, is a collective responsibility,” he wrote in a letter.

“I expect that you will assure that within your organization all employees know where they can go for help, that their concerns are being heard and that they will be addressed without delay.”

In the letter, Wernick said he was troubled by media reports suggesting some employees are still confused about where to turn for help if they are short of pay or face other pay problems.

Performance agreements are drawn up between the clerk and deputy ministers every year, laying out what is expected of the senior management team. Deputy ministers will now have to report on their progress in managing the Phoenix crisis during their annual performance reviews in the spring.

Wernick’s letter said stabilizing Phoenix will also be a “corporate” commitment in performance agreements with deputy ministers for 2018-19.

Every year, the clerk selects a corporate priority. Wernick has added the pay crisis to his previous goals of improving mental health in the workplace and promoting diversity.

There are four levels of deputy ministers, earning between a minimum of $192,000 and a maximum of $326,500 per year. Depending on their level, they can make between 26 per cent and 39 per cent more if they exceed all expectations in their performance agreements.

There has been much debate over what fixing Phoenix means; Wernick’s letter steers clear of using the word “fixed.”

Last week, Public Services Minister Carla Qualtrough said she was hopeful Phoenix would be “stabilized” and paying people on time by the end of 2018. She warned, however, that the state-of-the-art payroll system the government expected when the $309 million project was first approved could be years away.

The pay crisis has consumed the public service for the past 20 months, particularly Public Service and Procurement Canada, which is responsible for the pay system.

It rolled out last year as the new pay system for 101 departments and their 300,000 employees. Problems quickly escalated, with thousands of public servants going underpaid, overpaid or not paid at all. More than half of all public servants have had some kind of pay problems and that number is expected to grow.

Wernick’s most recent letter was a follow-up to one he sent to deputy ministers last month asking for summaries on what they are doing or plan to do help stabilize Phoenix. Cabinet ministers have also asked for regular updates from their deputy ministers.

Wernick has since received responses, which have also been given to the ministers' working group appointed by Prime Minister Justin Trudeau to oversee Phoenix. A committee of deputy ministers also went through them to pluck out ideas that could be implemented by other departments.

Wernick summarized some of the actions that have been taken, but urged deputy ministers to implement four "best practices" in their departments that will "have a positive impact on the health of the pay system."

At the top of Wernick's list is mandatory Phoenix training for all employees and managers.

This week, Treasury Board began rolling out the first comprehensive and mandatory training program since Phoenix went live. Many courses will be offered online and Treasury Board will be tracking who completes the training and update departments on their employees' participation levels every pay day.

"I am confident that the secretary (of Treasury Board) can count on your support to promptly implement this important initiative," Wernick said in the letter.

Several reports, including a recent one by Auditor-General Michael Ferguson, flagged poor training as a key reason for Phoenix's failure. Training plans were cut by the previous Conservative government, a decision which proved disastrous because public servants were not prepared for massive changes in how they work and process pay.

Wernick also urged deputy ministers to "blitz" their departments, between now and the end of the year, to ensure employees update their personal contact information — name and mailing addresses — in both the pay and human resources systems so tax slips can be issued properly. Last year, thousands of tax slips had to be reissued.

Wernick said the government also plans to beef up internal communications to "do a better job of meeting our employees' information needs." All departments are expected to attend a major meeting of heads of human resources and director-generals of communication called for January to identify ways to improve communications on pay. Communications' staff have already been asked to propose better links on departmental and intranet sites.

Finally, Wernick said departments will have to comply by June 2018 with service standards and performance measures for approving human resource transactions that trigger payments.

One of the big bottlenecks for Phoenix is that the managers, who have the authority to approve transactions, don't always do it on time, which means they can't be processed when they arrive at the pay centre, creating delays.

Wernick said Treasury Board and PSPC are monitoring to see what actions departments take that have the “greatest positive impact” on speeding up and smoothing out the pay process and will share their findings.

Wernick said the responses he received from deputy ministers show departments have taken plenty of steps to improve the problems faced by their employees — especially by ensuring emergency payments get to those who have been underpaid or not paid at all.

Depsite this, Wernick said it’s not clear that all employees are aware that emergency and priority payments are available to them.

He noted departments have hired more people to cope with the work created by Phoenix foul-ups or have sent staff to help the pay centre in Miramichi, N.B. and its various satellite offices. Many say departments that laid off their compensation advisers to generate Phoenix’s promised savings have rebuilt the compensation units they had before.

Les textos peuvent être considérés comme privés, et leur saisie peut être abusive
Radio Canada
La Presse Canadienne
8 décembre 2017

On peut raisonnablement s'attendre à ce qu'un échange de textos demeure privé. Et des policiers qui se saisissent d'une conversation peuvent, dans certains contextes, violer le droit constitutionnel à la protection contre les fouilles abusives.

C'est ce qu'a déterminé vendredi la Cour suprême du Canada dans une décision partagée de cinq juges contre deux, dans laquelle la dissidence entre la majorité et la minorité est très nette.

La cause sur laquelle s'est penché le plus haut tribunal au pays concerne un homme qui avait été reconnu coupable d'opérations illégales avec utilisation d'armes à feu. À son procès, des textos incriminants saisis dans le téléphone de son complice avaient été présentés.

La présentation de ces éléments de preuve avait été contestée en vertu de l'article 8 de la Charte canadienne des droits et libertés, qui garantit que « chacun a droit à la protection contre les fouilles, les perquisitions ou les saisies abusives ».

La Cour suprême a tranché en sa faveur, car « il s'attendait subjectivement à ce que cette conversation électronique demeure privée », peut-on lire dans un arrêt signé par la juge en chef Beverley McLachlin, au nom de la majorité.

Et comme cette attente « était objectivement raisonnable », la fouille ayant permis d'obtenir l'échange de textos était donc « abusive » en vertu de la Charte, ont statué les juges de la majorité, mentionnant cependant que ce raisonnement ne s'appliquait pas dans tous les cas.

Les deux juges dissidents, Suzanne Côté et Michael Moldaver, ne partagent aucunement cette lecture du « contrôle » qu'exerçait l'appelant, un Ontarien nommé Nour Marakah, sur les textos enregistrés dans le téléphone de son complice.

« Ce dernier jouissait d'une liberté complète vis-à-vis de ces conversations. Il était libre de les divulguer à qui bon lui semblait, en tout temps et à toute fin », lit-on sous la plume du magistrat Moldaver.

Cette interprétation « très large » de l'article 8 « comporte son lot de conséquences prévisibles qui compliqueront et prolongeront les procès criminels, en plus d'exercer des pressions encore plus fortes sur un système de justice pénale déjà surchargé », craint-il.

Le plus haut tribunal du pays a également rendu vendredi une décision dans une autre cause concernant le caractère privé des textos, celle-là impliquant le réseau Telus.

Dans cette décision partagée de six juges contre un, la Cour suprême a déterminé que l'on pouvait aussi avoir une attente raisonnable au droit à la vie privée, mais que la saisie n'avait pas été déraisonnable dans ce cas et ne contrevenait pas à l'article 8.

Canada's next chief justice will likely be from Quebec
Quebec justice Richard Wagner was appointed to the Supreme Court by Stephen Harper in 2012.
Toronto Star
Chantal Hébert
December 8, 2017

The leading candidate to replace the formidable Beverley McLachlin as she takes her leave as Canada’s chief justice this month was appointed to the Supreme Court by Stephen Harper in 2012.

Over the three years that followed the accession of Quebec justice Richard Wagner to the top bench, the number of Harper appointees to the Court grew to a majority.

Over the same period, the proportion of split rulings on major decisions increased.

That at least is the finding of the MacDonald-Laurier Institute, an Ottawa public policy think tank. Based on a sampling of 10 high-profile rulings a year, the review conducted by Benjamin Perrin, a law professor at the University of British Columbia and a former legal adviser to Harper, found that from 2014 to 2015, the proportion of unanimous decisions on major cases declined from 80 per cent to 50 per cent.

Under McLachlin the court did speak with one voice on some of the most contentious issues that came its way. It was unanimous in giving the green light to medically assisted suicide. And there was no dissent on the decision to send Harper’s senate reform plan back to the drawing board. A 2014 landmark ruling that extended Indigenous land-title rights was also unanimous.

But in the last few years, Perrin notes that “a vocal cadre” of judges has come to increasingly argue that the court is infringing on the policy-making role of Parliament.

Among that group, Wagner has been one of the more constant defenders of Harper’s law-and order legacy, dissenting with the court’s majority decision to strike down mandatory minimum penalties for repeat drug traffickers and for gun crimes.

He also disagreed with the Court’s constitutional recognition of the right to strike.

Whether those opinions signal a more deferential approach to the elected branch of government is debatable.

On issues that happen to be a matter of strong consensus in Quebec, Wagner has tended to go against the federal government.

He was on side with the court’s consensus to nix both the Conservative bid to bypass the constitutional route to reform the Senate and the attempt to expand the eligibility criteria for the selection of Quebec appointees to the top court.

Wagner also joined his two Quebec colleagues in dissent when the court turned down Quebec’s request to force Harper to hand it the provincial data of the defunct federal gun registry.

By any measure, the choice of McLachlin’s successor is one of the most significant appointments Trudeau will make as prime minister and one he will likely have to live with for the duration of his political tenure.

McLachlin was Canada’s longest serving chief justice. Over her 29 years as a Supreme Court judge — 18 of those as chief justice — she outlived five prime ministers. The decisions she presided over impacted just about every public policy area. If appointed, Wagner, 60, would be looking at 15 years in the leading role.

The chief justice was, if not the most powerful, certainly the most influential woman in Canada’s public life for the better part of two decades. She leaves her successor an institution that is held in significantly higher regard by the public than Parliament and those who inhabit it.

As the uneasy cohabitation between the Supreme Court and Harper demonstrated, the former can act as a major counterweight to the power of a majority prime minister.

It has usually been the practice to alternate between a civil code jurist (i.e. one from Quebec) and a common-law one. Based on that, Wagner has always been considered the prohibitive favourite for the position.

The Prime Minister has surprised observers in the recent past. Trudeau had been widely expected to select at least one Indigenous appointee for either the post of governor-general or the most recent Supreme Court vacancy. That did not happen.

But in this case, the Prime Minister would only venture off the beaten path at the risk of a serious backlash in his home province. Both the Quebec legal community and the National Assembly expect the next chief justice to be a Quebecer. And with contentious challenges to the province's secularism policies in the legal pipeline, this is not a good time to alienate Quebec from the Supreme Court.

If, as most expect, Wagner does get the nod from the Prime Minister later this month, Trudeau will be following his head albeit not necessarily his heart.

Quebec seeks to address backlog in judicial system
New judge positions for northern Quebec, more legal aid services among proposed measures in Bill 168
CBC News
December 8, 2017

The Quebec government introduced a sweeping bill on Friday aimed at improving access to the province's justice system and speeding up the judicial process.

"Our justice [system] needs to be more accessible, more efficient and has to be adapted to the reality of society," said Justice Minister Stéphanie Vallée.

Bill 168, tabled on the last day of the fall session at the National Assembly, proposes nearly 40 measures.

If passed, the bill would create two extra positions for judges to oversee judicial cases in northern Quebec, where Vallée said there is backlog of cases.

The province also wants to help Quebecers in the regions who wish to file an appeal. As it stands, citizens can only file an appeal in either Quebec City or Montreal.

Under the changes, citizens would be able to file an appeal at regional courthouses.

The bill also includes expanding legal aid to include more services and resources so that certain cases don't have to go before the courts.

Vallée said the proposed measures are meant to ease delays in the province's judicial system, a much-needed "cultural shift" in a system plagued by delays for years — even before the Supreme Court of Canada handed down the Jordan ruling in 2016.

Under that ruling, trials involving less serious offences must now be wrapped up within 18 months, and those involving more serious charges, including murder, face a 30-month deadline.

Trudeau to name new top judge for Supreme Court next week
"It's been a great ride," outgoing Chief Justice Beverley McLachlin said Thursday, last sitting day on the country's top court.
Toronto Star
Tonda MacCharles
December 9th, 2017

For once, Chief Justice Beverley McLachlin's famous composure crumpled.

As Canada's top judge bade a public farewell Thursday from her centre perch on the bench of the Supreme Court of Canada, she struggled to steady her voice and stop the tears.

Although McLachlin will still write and sign rulings in appeals she's heard for another six months, it was her last sitting day.

Looking back on a judicial career that has spanned nearly three decades, the advent of the Charter, the childhood, adolescence and adulthood of her son, and a second marriage after the death of her first husband, McLachlin said she felt "great sadness . . . and enormous gratitude."

The most powerful woman in Canada who leads the judicial branch of government paused at length as she tried to contain her emotions.

"Whatever lies ahead, I know that my time here will always be the centrepiece of my life," McLachlin said.

She thanked her fellow judges, court staff, lawyers, her husband Frank McArdle, and her son Angus, who was 13 when she first moved to Ottawa "and put up with mom as a judge." She gave heartfelt thanks to the Canadian public for the trust they put in the court.

"It's been," she said, "a great ride."

And then her famous reserve returned as she reflected briefly on her work as a judge, from 1981, a year before the Charter of Rights and Freedoms was adopted, to now.

"It's been intellectually stimulating; it's been hugely challenging; and there's not been a day when I haven't thought I am the luckiest of people."

With that, McLachlin said "thank you," nearly forgetting to adjourn court as a roomful of the country's top judges, lawyers and observers rose to their feet and gave her a standing ovation.

A past critic of government foot-dragging on judicial appointments, McLachlin had given plenty of notice in June she intended to retire on Dec. 15. It gave the prime minister lots of time to pick a new judge for the western seat McLachlin vacates — he named Alberta appeal judge Sheilah Martin last week. And he's had months to ponder who should have the top job.

It's a big one.

The chief justice of the Supreme Court of Canada is first among equals on the court. McLachlin once said "my vote counts for the same as anyone else's." But the chief decides who gets to write judgments, sets schedules, and can take the lead pen on unanimous ones. He or she sets the tone of the working environment for eight other strong-minded jurists, all with healthy egos.

The chief justice also heads the Canadian Judicial Council, which governs and disciplines judges in Canada; chairs the governors of the National Judicial Institute responsible for judicial education; steps up as deputy governor-general occasionally, and chairs the advisory committee for the Order of Canada.

Justice Minister Jody Wilson-Raybould said the Supreme Court of Canada "helps determine direction of country" in many different ways.

"I think Chief Justice McLachlin is amazing and exemplifies what it means to be a chief justice, to ensure that they have a deep knowledge and understanding of the law and its application, to ensure that you can build collegiality between and among all the justices on the Supreme Court, to represent the Supreme Court both domestically and internationally, and to be a leader in that regard. Justice McLachlin is entirely reflective of that"

"The next chief justice is going to have big shoes, really nice shoes, to fill," she quipped.

Prime Minister Justin Trudeau, who has set out bilingualism as a key consideration for his court and other senior appointments, says he will announce his choice by mid-December.

There are some traditional expectations around the post: that it should go to the judge with the most seniority, and alternate between judges trained in Canada's common law and those trained in Quebec's civil law, the upshot of which is an alternation between English and French-speaking judges.

Legal observers have pointed out a strict rotation has not been followed throughout the court's history.

Trudeau's father ditched the practice in 1973 when he elevated Bora Laskin, the first Jewish judge on the Supreme Court, to chief justice after just three years on the bench, and then promoted Brian Dickson in 1984 as his successor. Neither was bilingual. (For that matter, McLachlin was not fluent in French when she first came to Ottawa, but became fluent over time.)

And so a campaign is on to ensure Trudeau, fils, doesn't do as his father did.

First the Bar of Montreal wrote the prime minister to urge him to respect tradition and pick the next chief from the ranks of the three Quebec judges on the bench: Richard Wagner, Clément Gascon, or Suzanne Côté.

Upping the pressure, the Quebec provincial legislature just passed a unanimous motion demanding that the next chief justice be a judge from Quebec.

All three Quebec judges were appointed to the Supreme Court of Canada by the previous Conservative government under Stephen Harper. Côté was plucked straight from the Quebec bar, never having worked as a judge before. Wagner and Gascon were both first appointed to the Quebec Superior Court by previous Liberal governments, but later elevated by Harper.

Yet by the measures set out by Wilson-Raybould, it appears Trudeau could be set to appoint Rosalie Abella, who is now the senior bilingual judge with 13 years on the bench, eight more than the senior Quebec judge Richard Wagner, named in 2012.

Abella's contributions to defining the concepts of equality, discrimination and employment equity in Canadian law have earned her international recognition. Among 37 honorary degrees she holds, Yale University has recognized her, Chicago's Northwestern Pritzker School of Law named her Global Jurist of the Year, and she was invited to give the commencement address at Brandeis University last spring. Quebec's Université Laval just conferred an honorary doctorate of law degree on her, which she accepted in French, in recognition of her "undeniable" contribution to the understanding of human rights in Canadian and international law.

The knock against Abella, 71, is that she is required by law to retire within four years, when she turns 75 on July 1, 2021. Trudeau may want to make an enduring appointment like McLachlin.

Wagner, the senior Quebec judge, is 60. Several observers have suggested he might be Trudeau's safe choice as it would meet expectations in Quebec.

The knock against Wagner at this time may be his lack of experience and the fact he was a Harper appointment to the top court just five years ago. Also, he recently stumbled when he decided to exclude all LGBTQ groups from participating in two appeals that dealt with discrimination claims based on sexual orientation — and was reversed by order of McLachlin.

Wagner is the son of Claude Wagner, who once lost the leadership of the federal Progressive Conservative party to Joe Clark and the leadership of Quebec's Liberals to Robert Bourassa. The senior Wagner was later appointed to the Senate by Pierre Trudeau, and died at age 54.

The other two Quebec judges, Clément Gascon and Suzanne Côté, appointed by Harper in 2014, are seen as too junior. Neither has established any real profile on the court yet. Côté later made

headlines for claiming tax deductions for about $50,000 a year in clothing expenses over three years, from 2004 to 2006, a dispute with Quebec's tax agency that led to an undisclosed settlement.

McLachlin was once asked what is the most important skill needed for her job.

In 2009, she told TVO host Steve Paikin "the basic one is you have to be a good judge, be a good jurist, that's the most important thing."

Added to that, she said, you need "that elusive quality" of having good judgment, clear writing ability, people and communication skills.

Measured by that, perhaps Abella again emerges as the lead contender.

A decision is expected in the coming days.

Ottawa tech consortium pitching alternative to Phoenix
Ottawa entrepreneurs plan to show proposal to federal government officials Tuesday
CBC News
Julie Ireton
December 11, 2017

When federal government officials visit the innovation hub at Bayview Yards in Ottawa Tuesday, a consortium of local companies plans to pitch an alternative solution to the failed Phoenix payroll system.

Civic Innovation Consortium is a collection of established companies and startups that have benefited from federal funds, including the Build Canada Innovation Program.

Consortium member Guy de Montigny, CEO of Solution Xplus, said he plans to "pull the ears of the decision makers" during the visit.

The group's expertise includes artificial intelligence, integrative human resources programs and data analytics, all included in the pitch.

"I expect them to give us a phone call after the presentation," de Montigny said.

Scrap Phoenix, innovators say
IBM Canada defined, developed, implemented and is now trying to fix the government's Phoenix payroll system that started to roll out in the winter of 2016.

Since then, more than 156,000 public servants have been improperly paid, the auditor general continues to investigate and the federal government has failed to give any indication that it has a clear solution for fixing Phoenix.

IBM was the only bidder on the contract to create the pay program that cost more than $310 million to build, but is on track to cost much more than that to fix.

Smaller tech firms like the ones that are part of the Civic Innovation Consortium deserve a chance to come up with a better solution, de Montigny said.

"That's one of the hurdles we have working with the federal government, they prefer to sit down with the VP of IBM," said de Montigny. "Sorry to say, but IBM is making their money by building software that doesn't work, so they keep on supplying consultants over and over. That's a reality."

In a statement to CBC News, IBM said "it was hired to install and customize third-party commercial payroll software the government had selected" and it delivered its scope of work.

The smaller, more agile Canadian firms he's working with are "solution companies," he said, and their formulas would require scrapping the failed Phoenix system.

'Legacy systems can be dangerous'

Jason Reinert, a former public servant and co-founder and CEO of data management startup Pillr, is also part of the group of companies hoping to replace Phoenix.

"Legacy systems can be dangerous, I think. The idea is that you're going to save time and money by maintaining the old systems has shown to not be true all the time, and sometimes starting from scratch is not a bad idea. Sometimes reinventing the wheel actually is needed," said Reinert.

On Tuesday afternoon the department of Innovation, Science and Economic Development Canada (ISED) will hold the pop-up session at Bayview Yards, called "Applying Disruptive Tech to Modernize the Public Service."

An advisory for the event urges media to "come and see what Ottawa's innovation ecosystem is doing to help modernize our public service and enact ISED's Innovation and Skills Plan."

The advisory doesn't mention the Phoenix fiasco by name, but that's exactly what the consortium wants the chance to talk about.

Reinert said it can be hard capturing the attention of the government when you're an emerging firm, so he's glad they'll have an audience.

"We're not sitting here and waiting, we're going to push the edge. Whether it works out with the government or not, our solutions are global, are universal," Reinert said.

The bigger they are...

Alex Benay, Canada's chief information officer, has said when it comes to harnessing new technology, the government has to do things differently, and that means not always turning to the same suppliers.

"We have kind of created an environment for ourselves where we like big projects," Benay said in a recent interview with CBC. "You used to hear a lot of technology conversations [like], 'Well, that company is too small to work with us because they don't have the scale.' But the big things fail big. So maybe there's a better way of doing things."

Reinert said both he and the group are inspired by what they've heard from Benay.

"We're going to push it to the farthest edge it can go, and that's all that we can do," said Reinert. "We have a lot of solutions already ready."

De Montigny said their ideas have been proven and better yet they are made in Canada.

"They're going to provide you with a solution, not with two, three, four buses filled with consultants that are just waiting to charge time and time and time again," said de Montigny.

Un avocat devient conseiller sénatorial en éthique
Sa nomination, annoncée par le premier ministre, doit encore être approuvée par le Sénat
Droit Inc.
Martine Turenne
11 décembre 2017

Le premier ministre Justin Trudeau propose la nomination de Me Pierre Legault au poste de prochain conseiller sénatorial en éthique. Depuis juin, cet ancien sous-ministre délégué au ministère de la Justice occupait cette fonction par intérim.

C’est lui qui devient ainsi responsable de l'administration, de l'interprétation et de l'application du Code régissant l'éthique et les conflits d'intérêts des sénateurs. Plusieurs dossiers litigieux concernant l’éthique des sénateurs et leurs dépenses inappropriées se sont retrouvés devant les tribunaux ces dernières années. Le sénateur Mike Duffy a finalement été déclaré non coupable de toutes les accusations contre lui, ce qui a poussé la Couronne à abandonner celles contre le sénateur Patrick Brazeau.

La chambre haute du Parlement canadien doit encore approuvé la nomination de Me Legault, qui remplace Lyse Ricard.

Justin Trudeau s’est dit « heureux » de cette nomination. « Grâce à sa vaste expérience d'avocat au sein du gouvernement fédéral et à ses récentes fonctions de conseiller sénatorial en éthique par intérim, je suis certain que Me Legault contribuera à maintenir et à accroître la confiance du public à l'égard du Sénat du Canada », a-t-il dit.

Une longue feuille de route

Pierre Legault détient un baccalauréat en droit civil et un baccalauréat en droit de l'Université d'Ottawa et il est membre du Barreau du Québec. Il a mené une carrière de plus de 34 ans comme avocat et membre de la haute direction au sein du gouvernement fédéral. De 2012 jusqu'à sa retraite en 2016, il a occupé le poste de sous-ministre délégué au ministère de la Justice, l'échelon le plus élevé pouvant être atteint par un avocat civiliste au sein du gouvernement.

Me Legault a occupé le poste d'avocat principal et de gestionnaire des Services juridiques de la Commission de la capitale nationale durant deux ans, avant de devenir secrétaire général ainsi qu'avocat principal et gestionnaire des Services juridiques d'Investissement Canada de 1990 à 1993.

Il a occupé divers postes de direction au cours de son mandat de 15 ans aux Services juridiques d'Industrie Canada: avocat principal et gestionnaire de la Division du droit commercial, avocat général et gestionnaire de cette même division, avant de s'y voir confier le poste d'avocat général principal et de gestionnaire, qu'il a occupé jusqu'en 2002. Il a ensuite occupé les fonctions d'avocat général principal et de gestionnaire des Services juridiques jusqu'en 2008.

De 2008 à 2012, il a servi en tant que sous-ministre adjoint, Portefeuille du droit des affaires et du droit réglementaire.