With Trudeau government past halfway mark, here's what lawmakers in Ottawa are looking to accomplish

Parliamentarians are rolling back into Ottawa this week, knowing that what they accomplish — or fail to — in the next five months will help set the stage for the next federal election

National Post
Marie-Danielle Smith
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OTTAWA — Justin Trudeau's majority Liberal government is now more than halfway through its mandate.

Parliamentarians are rolling back into Ottawa this week after a winter break. They know that what they accomplish — or fail to — in the next five months or so will help set the stage for the next federal election in 2019.

Some of the government's biggest challenges, such as the renegotiation of the North American Free Trade Agreement and the Phoenix pay system disaster, must be met off Parliament Hill. But others, like the legalization of marijuana, are tied to bills still making their way through the legislative process.

In 2018 we will be paying close attention to the Senate, where a new cohort of independents are changing the status quo, and where senators of all political stripes have been more likely to challenge the government's ideas and its timelines. We also await a few promised government bills, as Liberals start to run out of time for their legislative agenda.

Here's where things stand on some key bills going into the spring sitting:

<u>In the Senate</u>

Legal weed and drug-impaired driving (C-45 and C-46)
Liberals have said they expect a recreational marijuana market to be operational by Canada Day this year, but whether that date is realistic depends on the upper chamber. The Senate resumes sitting this Tuesday with the framework for legal weed having just begun second-reading debate. A bill amending impaired driving laws is being studied in committee, with two Liberal ministers appearing as witnesses this week. Even as provinces scramble to legislate ahead of July and draft regulations are reviewed, not all senators will be wed to the government's ideal timeline — many have already said that they won't be pressured into rushing the process.

Transport modernization (C-49)
Senators are being heavily lobbied to make changes to what many are calling an "omnibus" transportation bill, currently at committee stage. It includes major changes to air and rail transportation and a provision to create a "passenger bill of rights." Amendments are anticipated.

Access to information (C-58)

Trudeau has taken some heat from freedom-of-information advocates, journalists and others after his government put forward a bill that watered down many of the promises made during his election campaign — including putting his own office, and those of ministers, under the same level of scrutiny as government departments. The Senate will soon have its first crack at debating this.

Sexual assault training for judges (C-337)
Senators are debating a bill that would require federal judges to receive special training on sexual assault offences. The Commons had passed former interim Conservative leader Rona Ambrose's bill unanimously in May 2017.

National anthem lyrics change (C-210)
After more than a year-and-a-half of languishing in the Senate, there is still no movement on the late Liberal MP Mauril Bélanger's private bill to make our anthem's lyrics more gender neutral (changing the words from "in all thy sons command" to "in all of us command"). A Conservative filibuster continues.

<u>In the House</u>

National security (C-59)
At committee stage is the Liberals' answer to the Conservative anti-terrorism law remembered as Bill C-51. The bill would repeal some of the Tory provisions but keep others. It would also add new oversight for our national security agencies and expand and clarify the role of the Communications Security Establishment and of the Canadian Security and Intelligence Service.

Arms Trade Treaty (C-47)
The foreign affairs committee has taken an unusually long time to decide whether or not to make amendments to a bill that aims to put Canada in compliance with the United Nations Arms Trade Treaty. New Democrats have proposed a number of changes that they say would more strictly implement the treaty and better prevent arms sales to human rights-abusing countries.

Plain packaging for tobacco (S-5)
Because it originated in the Senate, this government bill, currently at second reading debate, need only pass the Liberal-majority House of Commons before becoming law. It would create strict plain-packaging requirements for tobacco companies, who are displeased and worried by the prospect. It would also introduce the first-ever federal rules around vaping.

Prohibition of food and beverage marketing to children (S-228)
A private bill from Conservative Sen. Nancy Greene Raine passed the Senate and is now being debated in the Commons under a Liberal sponsor. It would prohibit companies from specifically targeting advertisements for food and drink towards children. Bye-bye, Happy Meal?

Striking "barbaric cultural practices" from law (S-210)
Another private bill that passed in the Senate and is awaiting first reading in the Commons would remove the phrase "barbaric cultural practices" from a Conservative law that created new criminal offences around forced marriage.

Still to come

Criminal justice reform
The Liberals promised major changes to the criminal justice system but these have not yet been introduced, though by this summer, the government will be running out of time for new bills to make it all the way through the legislative process before the next election. To wit, the government launched an online consultation that will run through to the end of January.

Elections reform
About a year after the Liberals flopped on a promise to implement a new voting system for federal elections, other promised reforms have yet to be introduced. Last summer Democratic Institutions Minister Karina Gould said her office was drafting a bill that would change the rules around third parties' participation in the election process (and address concerns over foreign influence in elections).

Mandatory public service training in Indigenous culture a step in the right direction, says elder
Edmonton Journal
Clare Clancy
January 29, 2018

A mandatory government program to teach public servants about Indigenous culture is a long overdue step in the right direction, says a Métis elder.

"My hopes are high at this point, but time will tell if the results are going to be positive," said Elmer Ghostkeeper Thursday, speaking from Lac La Biche in northeastern Alberta. "It should have happened before the (Truth and Reconciliation Commission of Canada) made the recommendations."

In 2015, the commission passed down 94 recommendations, including one that stipulated federal, provincial, territorial and municipal governments provide education to public servants on Indigenous issues.

"This will require skills-based training in intercultural competency, conflict resolution, human rights and anti-racism," the recommendation noted.

In March 2016, cabinet approved widespread training after Premier Rachel Notley committed to implementing the goals of the United Nations Declaration on Indigenous Rights. Nearly two years later, that training is still under development by a multi-departmental task force led by the Public Service Commission.

Previously, government departments could offer their own training on Indigenous issues.

The province hasn't released details on when the new program will be rolled out.

The training will educate workers about First Nations, Métis and Inuit communities as well as the legacy of residential schools and the sixties scoop, said Ghostkeeper, who consulted with officials.

“A lot of (civil servants) are just unaware of Indigenous culture, Indigenous world view, Indigenous living conditions,” he said.

There were nearly 28,000 public servants in the province on March 31, 2017.

Ghostkeeper emphasized the need for cultural training in departments such as child intervention services — “the system is not working, it’s in dire straits.”

A ministerial panel tasked with improving Alberta’s child intervention system approved its final draft of recommendations Wednesday. Many of the recommendations focused on improving relationships with Indigenous communities.

Opinion: A free press must not undermine fair administration of justice
Vancouver Sun
Christopher E. Hinkson
January 29, 2018

As Chief Justice of the Supreme Court of British Columbia, I am responsible for the administration of the court. In keeping with the principle of judicial independence, a chief justice will rarely comment on the rulings of other judges of the court, and I do not intend to do so in the comments that follow. I do, however, feel compelled to respond to attacks that undermine public confidence in the rule of law and the judicial institution itself. I refer to recent opinion pieces by Ian Mulgrew concerning Cotton v. Berry and Cambie Surgeries Corporation v. British Columbia (Attorney General).

I do not wish to suggest that courts should be immunized from media scrutiny. In R. v. Kopyto, Mr. Justice Cory, then at the Ontario Court of Appeal, stated that judges are to expect criticism, even intemperate criticism, because of their role in democratic society: “Some criticism may be well founded, some suggestions for change worth adopting. But the courts are not fragile flowers that will wither in the hot heat of controversy. … They need not fear criticism nor need they seek to sustain unnecessary barriers to complaints about their operations or decisions.”

Comments critical of the decisions of judges are perfectly acceptable. Those that misconstrue the facts of a case or its procedural history, or that disparage the personal integrity of a judge, in my view overstep the bounds of responsible journalism, mislead the public, and threaten to unfairly bring the administration of justice into disrepute.

In the face of unwarranted criticism about a judge or the court, the legal profession has special responsibilities to uphold the independence and integrity of the courts by speaking out publicly. That is what happened last month, when the Law Society of British Columbia and the B.C. Branch of the Canadian Bar Association responded to the inflammatory column by Mr. Mulgrew concerning the divorce case Cotton v. Berry decided by Justice Gray. I agree with and adopt the comments expressed by member of the profession and retired Chief Judge Carol Baird Ellan regarding Mr. Mulgrew’s commentary on the case and the unforeseen tragic aftermath.

The subsequent article titled “Medical trial showcases legal complacency” inaccurately and unfairly misconstrues the procedural history and nature of the Cambie Surgeries trial, a complex constitutional case of considerable significance to Canadians and Canadian society. Judges do not enjoy the luxury of defining issues they are asked to hear. Those familiar with our system of justice understand that that is the role of counsel or litigants. Delays in this case have been caused by disputes between the parties over evidentiary issues and their late cancellation of hearing dates that they booked. Justice Steeves has issued 25 rulings on pre-trial matters that the parties have been unable to resolve between themselves. By way of example of the erroneous statements in Mulgrew’s article, Justice Steeves has allowed the submission of Brandeis briefs in this case limited to the social science evidence.

In Canadian Broadcasting Corp. v. Canada (Attorney General), the Supreme Court of Canada warned that “Freedom of the press and the fair administration of justice are essential to the proper functioning of a democratic society and must be harmonized with one another. Each one is just as vital as the other. Freedom of the press cannot foster self-fulfilment, democratic discourse and truth finding if it has a negative impact on the fair administration of justice.”

Public confidence in the justice system of this country is fundamental to a democratic society. That confidence cannot be maintained if the media inaccurately reports or distorts the decisions of the courts.

Christopher E. Hinkson is Chief Justice of the Supreme Court of British Columbia.

Tax facts
Law Times
Editorial Obiter
Gabrielle Giroday
January 29, 2018

Tax issues aren’t always front and centre when it comes to media coverage.

That being said, and, as many sage tax lawyers know, these issues can permeate the lives of everyday Canadians and impact each person in very definitive ways. This week, a set of features in Law Times looks at tax issues, with a variety of findings. One highlights tax changes that have occurred south of the border, which could impact American subsidiaries operating here.

This could hurt Canadian competitiveness, which is especially problematic at a time when Canada is teetering on the edge of the potential end of the North American Free Trade Agreement.

Another piece looks at who might become the Supreme Court of Canada’s next leading voice on tax-related rulings, an area that some lawyers feel is often (sadly) overlooked.

In 2017, lawyers across the country had strong feedback to the federal government’s proposed changes to private incorporation tax rules. Some even threatened to revoke their Canadian Bar Association

membership in protest. While the federal government has now backtracked considerably on these proposals, Law Times reports that lawyers still see considerable issues with the revised approach.

Lawyer Pamela Cross says more consultation should have been done, especially considering “this is the most significant and fundamental change to our tax system in 40 years.” Some are even encouraging a more comprehensive tax overhaul, with lawyer Claire Kennedy noting that, with what’s going on in the U.S., “it would be an opportune time to look at corporate taxation in Canada.”

Taxation issues are complex and usually highly specific. But, as our experts remind us, they could use more scrutiny by most. There are important tax-related rulings anticipated in the months ahead, and all lawyers would be wise to pay attention.

In a 'David and Goliath' disciplinary hearing, Edmonton lawyer says his only crime was being honest
'Are we only allowed to write letters praising judges?,' asked lawyer Naeem Rauf in Monday's hearing.
CBC News
Andrea Huncar
January 29, 2018

A lawyer who is facing disciplinary proceedings for speaking out about the ethics of Queen's Bench appointee says he wasn't breaching conduct, he was just being honest.

Naeem Rauf, who argued he had a duty to the public to report the truth, appeared before a panel of the Law Society of Alberta for a three-day disciplinary hearing that began on Monday.

"Silence is not an option when things are ill done," said Rauf, who is representing himself. "When you are speaking the truth, you are not being abusive."

Rauf is accused of breaching the society's code of conduct by publicly questioning the ethics of Queen's Bench justice Avril Inglis when she was first appointed in September 2016.

"Evidence will show he is that type of person to breach the code of conduct," said lawyer Karl Seidenz in his opening arguments.

But Rauf defended his character, pointing to — among other things — a letter from a client who'd had many lawyers "but none as dedicated as you."

At issue is a letter written by Rauf in 2016, which cited five previous incidents in his criticism of Inglis.

He'd sent the letter to the Edmonton Journal, which did not publish it. Then he left copies at the courthouse cafeteria and distributed it to various lawyers.

On Monday, Rauf told the panel he has also written letters in praise or defence of judges and cited several examples.

"But I also believe in the tradition of fair criticism," said Rauf. "Are we only allowed to write letters praising judges?"

'Stalinist mindset'
Seidenz questioned why Rauf had not filed complaints at the time of the incidents, and noted that when judges are selected, their history of discipline is taken into account.

"Would you agree with me there is a purpose to be served by reporting it at the time?" asked Seidenz.

But Rauf said, unless a client suffered, that would amount to him being a tattletale on a colleague while they are on equal footing, an approach he compared to a "Stalinist mindset."

When asked about the difference between reporting a lawyer or judge, Rauf said a judge acquires "enormous power over people's lives.

"The public has the right to know," he added.

'I'm the David'
The day began with Rauf rolling his beat-up briefcase into the proceedings and announcing, "The headline should be 'David and Goliath.'"

As he was being sworn in, he added, "I'm Naeem Rauf. I'm the David in these proceedings."

The first order of business was to rule on an application to hold the proceedings partially or fully in private. Inglis' counsel, Simon Renouf, made the request, arguing the hearing could turn into a public "soapbox" to repeat criticisms against his client.

That application was denied.

"There is public interest in this issue," Brett Code, hearing committee chair, said following a 10-minute deliberation with co-panelists.

The hearing is scheduled to run until Wednesday, with the panel's ruling expected later this winter or spring.

Trudeau government is falling short on justice reform
Toronto Star - Opinion
Daniel Brown and Michael Lacy
January 30, 2018

When federal Liberals sit down to plan re-election strategy, they may want to think twice about running on a platform of “promises made, promises kept.” For those within the justice system, the sentiment would land with a particularly hollow clunk.

The Trudeau government is more than halfway through its mandate yet court processes remain as sluggish as ever, judicial discretion is no less hamstrung, and the government's reform agenda is stalled in a swamp of lethargy.

For a government that launched its reform mission with such apparent zeal, its failure to deliver is perplexing. Aside from a couple of major initiatives such as the legalization of marijuana, criminal law reforms have amounted to little more than modest housekeeping.

When it ought to have been restructuring the sentencing regime and providing provinces with the funding and inspiration to rescue their faltering legal aid plans, the justice department was instead cleansing the Criminal Code of exotic and rarely charged crimes.

True, soon there will no longer be a law against challenging someone to a duel, and fraudulently pretending to practice witchcraft will be expunged from the Code. But this hardly amounts to the sweeping vision the country anticipated from a government it entrusted to reverse a host of ill-conceived measures rooted in the Harper government's tough-on-crime agenda.

At the head of the list of overt failures is the continuing existence of approximately 60 mandatory minimum sentences, most of which attach to gun, drug and sex offences. Pandering to a mistaken belief that mandatory terms deter crime, the Conservatives were only too happy to bind the hands of sentencing judges who strive to mete out a fit sentence in each, unique case. They remain bound.

Mandatory sentences also rob prosecutors of the flexibility to negotiate plea bargains, thereby adding to the problem of clogged courtrooms. Faced with no alternative, defendants tend to exercise their right to a full trial. And additional trials strain court and police resources at the same time as they deplete the reserves of provincial legal aid programs.

These troubles could be remedied swiftly with a statutory exemption clause that allows judges to depart from minimum sentences in cases where an injustice would result. Instead, Canada remains second only to the United States in its reliance on mandatory minimums.

Phoenix could soon get new PS contracts to process before finishing work on the old ones
iPolitics
Kathryn May
January 29, 2018

The collective agreements that have snarled the Phoenix pay system for months could still be backlogged when federal unions are back at the bargaining table negotiating a new batch of contract changes.
The federal government is steering clear of setting deadlines for when Phoenix will finish processing the pay transactions created by past collective agreements but it won't be before spring.

That's if all goes to plan. The Phoenix roller-coaster ride of the past two years is a reminder that anything can happen to knock the government off course of stabilizing Phoenix by the end of 2018.

Many of the contracts being processed now will expire in May and unions are already putting together their bargaining teams to start a new round of negotiations.

“There have been no assurances that the outstanding collective agreements now that are causing so many problems will be finished before they will be forced to make more changes with new agreements,” said one senior executive. “So why would we think they will get those done before new ones are in.”

The president of the Professional Institute of the Public Service of Canada said she expects Phoenix will still implementing contracts negotiated in the last round of collective bargaining when new contracts from the next round start coming in.

PIPSC’s contracts expire between May and December and notices to bargain could be issued in March.

”We could finish bargaining the next round before they are done processing the contracts from this round,” said Debi Daviau.

Daviau said unions have not received accurate reports on the status of collective agreements being processed by the pay centre in Miramichi, N.B.

“They don’t know the status or have an accurate report … on how far along they are on implementing collective agreements so who knows how long it will take,” said Daviau.

She said the government is so overwhelmed with meeting the deadline for issuing tax slips that she’s braced for the processing of collective agreements to be put on hold until the tax season rush is over. Thousands of public servants reported the overpayments they received in 2017 so they only had to repay the net amount and had that reflected in their tax slips

Public Services and Procurement Canada had hoped to have contracts, which were signed last year, implemented. But pay operations were hampered by being unable to hire enough compensation advisers; transactions took much longer than expected; unexpected manual processing — and now the end-of-the year rush to get accurate T-4s to employees on time.

Implementing the changes from contracts negotiated in the next round is expected to be easier. The big difference: retroactive payments won’t go back four years and pay records won’t be divided between Phoenix and the defunct regional pay system.
In fact, many argue the government and unions could take some of the pressure of off Phoenix if it negotiated agreements before they expired. That has rarely happened, however, and bargaining typically drags on for months.

Phoenix has been wracked with unexpected problems since it went live in February 2016 but the collective agreements threw a big curve at PSPC and increased the volume of outstanding financial cases because they require more time and manual processing than expected.

PSPC also jettisoned the installation of some Phoenix functions in the run-up to the Phoenix launch to save time and money, confident they could be added later with little problem.

One of those features was Phoenix's ability to automatically handle the massive revisions of collective agreements — including the calculation of retroactive payments.

After more than three years of negotiations, Treasury Board and unions have reached 20 contract settlements which cover 90 per cent of the public service.

The transactions, including raises and retroactive pay, have been so bogged down that the government has missed legal deadlines set to implement some. The unions are filing grievances galore and seeking damages on those late payments.

The most recent deal for the government's 7,500 corrections officers – who have complicated shifts and pay rules – won't be signed until the end of February and the government will have four months to implement it.

There are still another 15,600 employees who haven't reached deals so those contracts have yet to be sent to Phoenix.

Unions representing the lawyers, diplomats and border guards have hit impasses and are in conciliation or arbitration to sort out their differences. The lawyers are expecting the binding decision of a conciliation board this month but the Professional Association of Foreign Services Officers, which represents Canada's diplomats, isn't even scheduled for its arbitration until early March.

Treasury Board is still in negotiations with unions for federal pilots, ships officers and university teachers but those talks have stalled with no dates set for further bargaining.

The government is chugging away in negotiations with separate agencies. It has reached 17 tentative agreements – which is about half of the contracts covering separate agencies.

Bargaining is underway with unions representing employees at the National Research Council, Canadian Food Inspection Agency and Canada Revenue Agency, Canada Revenue Agency and Statistical Survey Operations — with some sessions scheduled into late March.

Agreements have yet to be reached with the following bargaining units.
- 9,600 border guards represented by the Public Service Alliance of Canada (PSAC)
- 2,900 lawyers represented by the Association of Justice Counsel
- 1,300 foreign service officers represented by the Professional Association of Foreign Service Officers
- 1,100 ships officers represented by the Canadian Merchant Services Guild
- 400 pilots belonging to the Canadian Federal Pilots Association
- 270 university teachers represented by the Canadian Military Colleges Faculty.

Canada's financial system is less transparent than Russia's, report says
Canada came in at No. 21 on the Financial Secrecy Index from the Tax Justice Network.
Toronto Star
Fatima Syed
January 30, 2018

Canada has one of the most secretive financial systems in the world, according to a new report, less transparent than Russia and China, and offshore tax havens like Cyprus, Bermuda, and Barbados.

Financial experts say this is an indication Canada is, effectively, one of the world's more attractive "onshore tax havens."

The Tax Justice Network (TJN) — an independent international research and advocacy network focusing on tax evasion and tax havens — released its Financial Secrecy Index on Tuesday.

The index, produced every two years, measures the extent to which a country's legal system facilitates global financial crimes such as money laundering and tax evasion.

Canada is No. 21 on the list, slightly higher than its 2016 ranking at No. 23. The higher the ranking, the more financially secret a country is.

"It's a bad exam grade on the state of the country's financial secrecy laws," said Arthur Cockfield, a tax law scholar and policy consultant at Queen's University. "It means that if you're a crook or a super rich person who wants privacy, then you can use our corporate laws to hide the identity of the ultimate owner of the shares (of your company)."

The report comes two years after the Panama Papers, and two months after the Paradise Papers — two massive document leaks revealing a pervasive network of offshore tax havens that fuels financial corruption and organized crime, and deprives public coffers of $10 to $15 billion each year in Canada alone.

An ongoing Star/CBC investigation into corporate ownership secrecy has detailed how Canada has emerged as a popular destination for international companies and individuals seeking to avoid or evade taxes by using this country's shadowy corporate registration system.

Both Cockfield and Marwah Rizqy, a tax professor at the Université de Sherbrooke, highlight two main reasons why Canada's ranking is this high:

1) Lack of transparency: There is no national public registry naming the real people behind Canadian companies, and no obligation on financial institutions to reveal the beneficial owners of a company.

2) Lack of substance: You can create a corporation in Canada which has no substance, said Rizqy, and functions, essentially, as a shell company.

“While we’re seen as a clean image globally, that clean image sometimes overshadows the secrecy that happens in our own corporate sector,” said James Cohen, director of policy and programs for Transparency International Canada.

Rizqy says the problem has yet to be actively addressed by the Canadian government. “I’m not sure if the current government understands the issue, frankly,” she said. “They’ve never introduced any bill to fight strongly tax havens.”

Part of the problem, Cockfield said, is the benefits of this type of illicit financial activity. The Star/CBC investigation showed how corporate secrecy has led some people from countries such as Russia, Mexico and China — countries less financially secret than Canada, according to the index — to use Canada to “snow wash” money that has either been obtained illicitly or not declared to tax authorities.

“The hypocrisy is that Canada is part of the OECD, forcing countries like the Bahamas, like Panama, to change,” Cockfield said. “We use our power to make them change their laws, but that just makes Canada (a) more attractive place for these crooks. We won’t change our laws.”

“Players like Germany and Canada don’t necessarily get the attention from the international community they deserve for being final resting places for dubious money,” said James Henry, an investigative economist with Yale and Columbia Universities and the TJN.

Henry says that Canada has become more attractive over the years as people turn to it as the destination for their financial capital, because “no one wants to hold their money in Cyprus.”

Western countries like the U.S. and Canada, for example, have rule of law and independent courts, which, said Henry, make it possible for wealthy members of third world countries to hold their money anonymously.

According to the Global Financial Secrecy Index, Switzerland, the U.S. and the Cayman Islands are the biggest tax havens in the world.

Countries are assessed by a criterion that measures whether corporations are required to reveal their true owners, whether annual accounts are made available online and the extent to which countries comply with international anti-money laundering standards.

Another factor is the size of a country’s financial system and the size of its offshore activity.

This year’s index shows that “the global haven industry is alive and well,” Henry said.

“Most people have the preconception of corporate secrecy being some far off tropical island,” Cohen said. “It masks the issue that places like Canada are just as bad and according to this index are worse.”

“It’s harder to get a library card here then to open up a business”

Canada: Can Employers Require Mandatory Unpaid Standby Duty?
Mondaq.com
Michèle Brown-Gellert and Jessica R.W. Bungay
January 30 2018

The recent decision of the Supreme Court of Canada (SCC), Association of Justice Counsel v Canada (Attorney General), 2017 SCC 55, addressed the issue of whether a unionized employer can unilaterally introduce a policy requiring employees to provide unpaid standby duty.

Facts
For two decades, the Immigration Law Directorate in the Quebec Regional Office of the Department of Justice had a voluntary standby system in place to deal with emergency immigration matters. The standby period was from 5:00PM to 9:00PM on weeknights and from 9:00AM to 9:00PM on weekends. While on standby, the lawyers were required to carry an employer-issued pager and cell phone and to report to work within one hour of an emergency call. Lawyers who were on standby were compensated with paid leave. Lawyers received compensation whether or not they actually performed services while on standby.

As a result of budgetary constraints, a change was introduced by the employer as to how employees were compensated for standby duty. The change provided that lawyers on standby would only be paid for work actually performed while on standby. If a lawyer was on standby but was not required to perform any work, they would receive no compensation. Unsurprisingly, most lawyers stopped volunteering for standby duty.

Relying upon the management rights provision in the collective agreement, the employer unilaterally introduced a policy making uncompensated after-hour standby duty mandatory for all lawyers.

Grievance
The union grieved the employer's mandatory unpaid standby duty policy. The arbitrator concluded that the employer's policy was not a reasonable or fair exercise of its management rights and violated the liberty interests of the lawyers protected under section 7 of the Canadian Charter of Rights and Freedoms. The policy was found to be unenforceable.

Judicial Review
The employer applied for judicial review of the arbitrator's decision. The Federal Court of Appeal (FCA) allowed the appeal, set aside the decision of the arbitrator and directed another arbitrator to consider the grievance. The decision of the Federal Court of Appeal was judicially reviewed.

Decision of the Supreme Court of Canada
On judicial review, the majority of the SCC upheld the decision of the arbitrator with respect to the issue of mandatory unpaid after-hour shifts and confirmed that the policy was unfair and unreasonable. The SCC explained that, in a unionized workplace, when determining whether a policy unilaterally introduced by an employer is a reasonable exercise of management rights, arbitrators must adopt the "balancing of interests" approach, otherwise known as the KVP test.1 The "balancing of interests"

approach requires arbitrators to consider the totality of the circumstances and determine whether the employer's policy strikes a reasonable balance between the interests of both the employer and the employees.

In the case at bar, the arbitrator balanced the interests by weighing the benefit of the policy to the employer against the impact of the policy on the private lives of the employees.

The collective agreement was silent on the issue of standby duty. There was also no mention of standby duty in the employment contracts or job descriptions of the employees. The SCC emphasized that this did not grant the employer free reign to impose a policy in relation to standby duty. The SCC highlighted the inherent unfairness of the policy to stop providing compensation for standby duty, when the provision of such compensation had been a long-standing practice of the employer. The directive adversely impacted the private lives of the employees and resulted in the employer controlling their whereabouts and activities during off-hours. For these reasons, the employer's policy violated the requirement of the employer to act reasonably, fairly and in good faith under the collective agreement.

With respect to the constitutional rights of the lawyers, the SCC held that the mandatory unpaid standby duty policy did not limit the ability of the lawyers to make the type of fundamental personal choices guaranteed under section 7 of the Charter. There was no violation of the employees' Charter rights.

What This Means for Employers
This decision reminds employers that management rights must be exercised reasonably and in compliance with the collective agreement. Whether the unilateral imposition of the policy is reasonable and fair will depend on the circumstances and the terms of the particular collective agreement. Employers in unionized environments must be aware of the added difficulty of introducing a policy that attempts to change a long-standing practice of the employer. Employers must also ensure that new workplace policies are the result of a reasonable "balancing of interests". Where policies intrude on the personal lives of employees or restrict their personal interests, those policies are invalid unless the employer demonstrates a competing management interest that overrides the interests of the employees.

Good grievance! Treasury Board wading through more than 4,000 Phoenix-related complaints
The official complaint process doesn't get employees paid faster, says PIPSC head, but it's still 'an important step' in protecting employees' rights.
The Hill Times
Emily Haws
January 31, 2018

The Treasury Board Secretariat has been hit with more than 4,000 individual complaints from government employees related to the Phoenix pay system, an amount that a labour relations expert says could be a slog to wade through.

Kevin Banks, a Queen's University labour relations law professor, said payroll grievances are "pretty straightforward" but the amount will take a while to resolve.

“It is a lot,” he said. “[But] given the size of the workforce and the size of the problem, I’m actually not surprised there are 4,000 grievances.”

Of the 4,043 individual grievances filed as of Jan. 22, 668 have been referred to the Public Sector Labour Relations and Employment Board for resolution.

Forty-two policy grievances have been filed, 14 of which were also referred to the labour board. The numbers fluctuate on a daily basis, said Martin Potvin, a Treasury Board spokesperson.

A grievance is an official complaint between a union and an employer. An individual grievance is filed by an employee, often related to issues with a contract or discipline. In the public service, these grievances may be argued in front of the labour board for a binding decision, but generally are resolved between the parties with help from union representatives, called stewards.

Policy grievances can be filed by the union, known as the “bargaining agent,” or the employer. It alleges a violation of the contract affecting employees as a whole.

“We do not track centrally how long it takes to resolve an individual grievance as these are managed at the department level,” said Mr. Potvin in an emailed statement. Treasury Board also did not track payroll grievances pre-Phoenix, implemented in February 2016, nor could it give a breakdown of the grievances by department.

These grievances are related to the 27 sectors of the core federal public service, of which Treasury Board is the main employer. When the Liberals formed government in 2015, all 27 contracts had expired. So far, 20 have been settled, and another reached a tentative deal in November. The settled contracts involve about 90 per cent of government employees.

The Phoenix pay system was supposed to save the government about $70-million annually, but so far the Liberals have spent $400-million trying to fix it. It is unclear when the problem will be solved, but Public Services and Procurement Minister Carla Qualtrough (Delta, B.C.) said she hopes to have accurate paycheques being issued on time by the end of 2018.

The Professional Institute of the Public Service of Canada (PIPSC) said it has filed 941 individual grievances since the implementation of Phoenix, with 550 of those happening since November when PIPSC ran a grievance education campaign for its 57,000 members. About a third of these grievances have been resolved, said president Debi Daviau.

Meanwhile the Public Service Alliance of Canada (PSAC), with 180,000 members, is unsure of how many individual grievances its employees have filed because they are resolved through its local sections between the employee, the employer, and a steward. The national office only becomes involved if the grievance is sent to the labour board.

PSAC national president Robyn Benson said in an emailed statement that after two years of Phoenix, frustration is growing. She said in most cases filing a grievance will not speed up the process of having a

pay issue corrected, however “filing a grievance is an important step in protecting an employee’s right to have the dispute resolved by the [labour board].”

“It is important to ensure this avenue of recourse remains open, especially to those employees experiencing serious, ongoing pay problems,” she said of the grievances, adding PSAC continues to advocate for Phoenix-affected members by getting programs such as the emergency salary advance in place.

Prof. Banks said the grievance backlog, particularly ones referred to the labour board, will take significant time to resolve, and so the parties could agree to bring in a private adjudicator to speed up the process. It’s possible parties will agree to lump similar grievances together, called a “group grievance,” or have the ruling for one grievance stand for all other similar ones.

Because the government has admitted to Phoenix being problematic, the grievances are likely to be settled quicker, he said. Still, he added it could take anywhere from six weeks to a year to resolve an individual grievance. Ms. Daviau said the process is more complex than “putting people into boxes” because individual grievances have multiple components, making it more “like a Venn diagram.”

PSPC holding up a policy grievance resolution: Daviau

Some of the 42 policy grievances are in regards to government not being able to implement collective agreements within the allotted time, which is a minimum of 90 days but was negotiated to be longer—usually about 120 days, depending on the contract—because of Phoenix.

The negotiated contracts generally cover between 2014 and 2018, but because all were settled in the last two years, pay advisers must process time-consuming retroactive payments. The processing mainly needs to be handled manually, with advisers working at the Public Service Pay Centre in Miramichi, N.B., retrieving data from the government’s old system.

PIPSC has filed five of these grievances for its bargaining units last fall, including federal researchers, computer systems administrators and health services groups, among others. The grievances argue the contracts have been violated because the extended implementation deadline wasn’t met. Its sixth contract implementation date is coming up in the spring, and Ms. Daviau expects to file another late implementation policy grievance. Currently the five grievances are in the process of figuring out what is the best compensation for members.

Ms. Daviau said the biggest hold-up to a resolution for the other five grievances is that Public Services and Procurement Canada, which controls payroll for the majority of the government’s 262,000 employees, has not provided a statement of how many employees are affected, which is needed to determine how long it will take to remedy the situation and assess damages.

“PSPC has been unable to produce an accurate report as to how many people are affected by late implementation and so of course, it’s been difficult for the Treasury Board to figure out or agree to a monetary settlement, not even knowing what the ultimate cost will be,” she said.

“[Talks are] not stalled out per se, but we’ve been unable to come to any final agreements because we don’t know how many people and who’s affected.”

Treasury Board spokesperson Alain Belle-Isle said in an emailed statement that a dedicated group of pay advisers remain committed to processing payments related to the new contracts, adding “this work is being completed as quickly as possible” and that it remains committed to working with bargaining agents to resolve the multiple issues raised in the Phoenix-related complaints and grievances. He added the PSAC and PIPSC complaints made with the labour board remain active.

PSAC has filed four late-implementation policy grievances, affecting groups including federal program administrators, librarians, photographers, engineering and scientific support employees, among others. It’s asking the labour board to agree the government has violated the contract, then order the government to provide a timeline for the implementation of the contracts, and negotiate damages for those affected.

“If, after two months, these negotiations do not yield an agreement on damages, PSAC is asking the Board to intervene,” Ms. Benson said in an emailed statement.

A hearing between the parties is scheduled for Jan. 31. PSAC could not comment on its arguments for that meeting.

Both unions have simultaneously filed unfair labour practices complaints with the labour board, arguing the late implementation violates the Federal Public Service Labour Relations Act. The dispute resolution process is much the same as a policy grievance and is ongoing, but potential remedies could differ.

Fintrac's money-laundering penalties in limbo after court ruling
Federal Court of Appeal ruling in May 2016 has left watchdog agency toothless, unable to levy fines
CBC News
Dean Beeby
February 01, 2018

Canada's watchdog against terror financing and money laundering has been partially neutered after losing a landmark court case over the way it penalizes offending businesses.

Since May 2016, the federal agency known as Fintrac has been unable to levy fines on firms that violate tough financing regulations — and will remain toothless until at least the summer when a review of its penalty program is completed.

That two-year hiatus in Fintrac's ability to do its basic enforcement job began when the Federal Court of Appeal ruled on May 6, 2016, that the way the agency calculates fines against financial institutions is opaque and needs to be more transparent.

The ruling knocked the legs out from under the so-called Administrative Monetary Penalties program, or AMP, launched in January 2009 to hit firms with fines for breaking the rules on reporting financial transactions.

In addition to tipping police to potential criminal cases, Fintrac also acts as a regulator to ensure the 31,000 Canadian businesses covered by the Proceeds of Crime (Money Laundering) and Terrorist Financing Act follow proper reporting rules over money transfers.

But the fines system has been repeatedly challenged in Federal Court. A three-justice panel of the appeal division finally quashed a $6,000 fine against Kabul Farms Inc., and effectively put the entire penalty program on hiatus.

The justices ruled that the way fines are calculated is nowhere clearly stated, leaving businesses in the dark, unable to effectively challenge the amounts. (The court accepted Fintrac's ruling that Kabul Farms had indeed violated the regulations.)

In response, Fintrac — short for the Financial Transactions and Reports Analysis Centre of Canada — launched a wide-ranging review of the penalty program, expected to be completed this summer — or more than two years after the adverse appeal court ruling.

Penalty review requires 'thorough analysis'
Agency officials defend the long wait, saying the review process is "complex and requires a thorough analysis" as well as "extensive research and consultations with legal experts and stakeholders."

In the meantime, the agency has repealed six notices of violation that had been in process against firms facing penalties; has not been able to fine any new firms since May 2016; and has worked to conclude eight Federal Court cases that are now in jeopardy after the legal setback in the appeal court.

The effect has been to suspend the agency's own enforcement mechanism even as new violations of the regulations pile up.

A spokesperson for Fintrac told CBC News the agency's work continues, despite the blow to the penalty program.

"Fintrac continues to monitor and assess the compliance of businesses," Erica Constant said in an email, "… including observation letters, reporting entity validations, reports monitoring, compliance meetings, compliance assessment reports, examinations, follow-up examinations and non-compliance disclosures to police."

She suggested that once the penalty review is finished, likely this summer, companies identified as breaking the rules over the last two years could still be fined, and the six repealed notices of violation could be reinstated.

"Once Fintrac completes the review of the Administrative Monetary Penalties program's policies and methodologies, the repealed Notices of Violations will be reassessed and actioned as appropriate," Constant said.

"Administrative Monetary Penalties for which proceedings had already concluded prior to the Federal Court of Appeal's decision will not be reassessed," she added.

The head of Transparency International Canada, a branch of the global anti-corruption group, said timely penalties are essential to the agency's work.

First bank ever fined granted anonymity
"A transparent administrative monetary penalty system and other sanctions need to be applied when non-compliance occurs," said executive director Alesia Nahirny.

"TI Canada looks forward to seeing how Fintrac will improve the penalty regime system in a timely manner."

Fintrac made headlines after it announced in April 2016 that it had fined a Canadian bank $1.15 million under the AMP for breaking the rules — but then granted the institution anonymity.

CBC News later reported the offending institution was Manulife Bank, and questions were raised about why Gérald Cossette, then Fintrac's director, protected the bank's name.

Cossette said he made the anonymity deal with Manulife to avoid the bank taking court action, with the aim of sending a strong signal to the banking community about the consequences of failing to follow the rules. Manulife was the first bank ever fined under the program, and the penalty was the largest ever levied on any firm, bank or otherwise.

But the Manulife case turned out to be a prelude to a much wider problem, with the entire penalty system itself called into question. Fines under the AMP can range up to $500,000 for each transaction not reported to Fintrac.

The agency is already struggling with what it calls a "significant gap" in its ability to track money launderers and terrorist financing.

A landmark February 2015 ruling from the Supreme Court of Canada said lawyers are not required to report the transactions of their clients under the Proceeds of Crime (Money Laundering) and Terrorist Financing Act, a decision that effectively drew a dark curtain across many deals, including real estate transactions.

"This means that large cash transactions and suspicious transactions tied to a real estate transaction are not being reported to Fintrac by lawyers," says an internal document obtained by CBC News under the Access to Information Act.

Chief Justice Richard Wagner promises new era of transparency for Supreme Court
The Globe and Mail
Sean Fine
February 1, 2018

The Richard Wagner era at the Supreme Court of Canada is beginning with a promise: The court will do its best to make itself understood.

And not just to lawyers and law professors, the new chief justice says.

"We have to explain to the population who we are, what we do, why we do it and how we do it," the 60-year-old Quebecker, who succeeded Beverley McLachlin in December, told 250 students in a packed lecture hall at the University of Western Ontario's faculty of law in London, Ont., on Wednesday.

Transparency, he said, is a necessary adaptation in a world losing faith in democratic norms.

"When you see what's going on outside our country, it's a bit scary," he said, referring – without specifying any countries – to a loss of respect for democratic institutions, minority rights and judicial independence.

He praised the state of affairs in Canada – but warned against complacency.

"I think we are very lucky in Canada to have strong institutions, compared to other countries where some basic principles are under attack." But, he continued, Canadians should not take their democratic "assets" for granted. "I think we have to protect those assets. I think we have to work for it on a daily basis."

Which is why this month the "headnote" – the legalistic summary that sits atop Supreme Court rulings – will be supplemented by an actual summary written for regular folks and posted on the court's website and Facebook page. And more, still unspecified, changes are on the way, Chief Justice Wagner said.

"That's the new reality," he told the students. "You have to make sure there are clear decisions accessible in clear language."

Part of the need for more transparency stems from the declining presence of traditional news media, he said. Twenty years ago, the court's decisions were "received, understood and explained to the citizens by the traditional media. It's not the case anymore. There are very few media attached to the coverage of the Supreme Court and its decisions." Instead, he added, the public receives much of its information from social media and the internet. (The court has had a small presence on Twitter since July, 2015, and has 20,000 followers.)

Chief Justice Wagner called on judges to come out of their institutions and address the public more directly than they have in the past.

"I think that those days are gone when people could hide themselves. I'm not saying that judges must be on a talk show every week to answer questions, but they have to take the opportunity to talk to the population directly."

Transparency, he said, is an "essential ingredient" for maintaining the public's faith in the legal system.

"Because when we lose that, people will settle their litigation on the street."

The issue is not new for Chief Justice Wagner. At his nomination hearing before a parliamentary committee in 2012, he called for public hearings for all new federally appointed judges, including those who serve on provincial superior courts, the Federal Court and the Tax Court.

David Sterns, a Toronto lawyer and past president of the Ontario Bar Association, praised the idea of creating a plain-language summary.

"It's a great idea. Anything that makes the law more open and accessible is a move in the right direction."

Eugene Meehan, a former executive legal officer for the late chief justice Antonio Lamer, said finding the right balance between openness and monastic silence is tricky for judges.

"If judges take a position contrary to government (which they are often required to do in judgments)," he said in an e-mail, "then talk about it, might some consider that descending into the political arena?"

In today's world, judges face even more dangers, added Mr. Meehan, now a partner in an Ottawa law firm specializing in the Supreme Court. "In a time where anything said publicly can be recorded and shared with millions in an instant, does encouraging judges to be more social on social media have its risks?"

Chief justice Lamer, he said, used to tell judges who were considering speaking out: "Advice from mother whale to baby whale – if you hadn't gone to the surface and spouted, you wouldn't have gotten harpooned."

Supreme Court rules band in B.C. can claim compensation for land theft during 1860s gold rush
The Globe and Mail
Sean Fine
February 2, 2018

In a major victory for Indigenous peoples, the Supreme Court of Canada has ruled that a band in British Columbia can claim financial compensation for the theft of its lands during gold-rush times in 1860.

The court took an expansive view of Canada's obligations to Indigenous peoples under a process set up in 2008 to settle historical disputes. The court said Canada can be held legally responsible for pre-Confederation wrongs.

The ruling was cheered by advocates for Indigenous peoples. "We're on a path of reconciliation, as of today," Leah Pence, a lawyer representing the Williams Lake Indian Band, said in an interview.

The new Chief Justice, Richard Wagner, wrote the majority ruling in a kind of passing of the torch. Canada had not met "the standard of conduct" expected of it in its dealings with the First Nations, he wrote. His predecessor, Beverley McLachlin – who retired in December – also sat on the case and, although she has often led the way in expanding Indigenous rights, she dissented from the majority.

The office of Carolyn Bennett, Minister of Crown-Indigenous Relations, said in a statement that the government is reviewing the decision and is committed to "renewed relationships with Indigenous Peoples based on recognition of rights, respect, cooperation and partnership." The statement added: "We also believe that negotiation over litigation is the best way to right historical wrongs and settle past grievances."

That last statement prompted a burst of laughter when The Globe and Mail read it to Ms. Pence and other lawyers on the band's legal team. The band first made the claim to the government, seeking a negotiated solution, in 1993, Ms. Pence said.

At stake was a claim by the Williams Lake band that the Colony of British Columbia allowed settlers to push band members off their land, nearly causing them to starve to death, and that when British Columbia joined Confederation in 1871, the federal government did not return the land. It did, however, give a larger tract to the group on what Ottawa described in a filing at the Supreme Court as prime farmland.

But the case's importance goes beyond the band. Canada introduced legislation to create an independent tribunal to rule on historical Indigenous grievances in the 1960s. It took 50 years to set up the body, known as the Specific Claims Tribunal. And when it ruled in favour of the Williams Lake band in 2014, Ottawa appealed to the Federal Court of Appeal, which threw out the ruling. The band appealed that decision to the Supreme Court.

Ms. Pence said the ruling puts the tribunal on solid ground for Indigenous peoples, with a message that the courts should take a "hands-off" approach to its decisions.

The tribunal is a specialized court of reconciliation – an alternative to the slow and expensive justice system that is not bound by statutes of limitations that restrict the ability to sue. Its website says its purpose is to accelerate the resolution of claims to "provide justice for First Nations claimants and certainty for government, industry and all Canadians."
It consists of up to six judges from the federally appointed superior courts of provinces. It cannot give bands back their lands – which in the current case include the downtown of Williams Lake, a town of 11,000 people 550 kilometres north of Vancouver – but it can award compensation of up to $150-million. (The tribunal has not yet discussed an amount in this case.)

The tribunal members travelled to the traditional territory of the Williams Lake band. The three judges of the Federal Court of Appeal who ruled unanimously against them did not. The appeal court said

Ottawa had made up for the wrong committed before Confederation by giving other lands as compensation.

"If you look at what reconciliation is," said Scott Robertson, president of the Indigenous Bar Association, which intervened in the case, "it's reconciling past grievances between First Nations, Inuit and Métis people and the Crown and not getting locked in on technicalities."

One of those "technicalities" was whether the Canadian government should be held responsible for wrongs committed by colonial officials before Confederation. "The court is saying, 'the Crown is the Crown,'" Ms. Pence said.

All nine judges on the Supreme Court agreed colonial officials had wronged the Williams Lake band. Two dissented from part of the ruling, and two others, including Justice McLachlin, dissented on the main point at issue, saying that the tribunal had been unreasonable in finding that Canada had violated its obligations to the Williams Lake band.

Tax evasion doesn't seem like provinces' priority, finance ministry source says
Canada lags behind the U.K. and EU in combating financial crime, but there has been little progress on the file. A senior source in the federal finance ministry blames the provinces.
Toronto Star
Marco Chown Oved
Investigative Reporter
February 2, 2018

Canada’s provinces are not resisting Ottawa’s efforts crack down on international money launderers and tax evaders. They just don’t appear to care, according to a senior source in the federal finance ministry.

Ever since the Panama Papers and Paradise Papers leaks detailed how dirty money from abroad is “snow washed” through anonymous companies in Canada, the federal government has been working with the provinces to tighten up their corporate registries that lack any information on a corporation’s true “beneficial” owners. But there has been little progress on the file.

Each time the finance ministers get together for their biannual meet, they’re more interested in talking about issues like public pensions than corporate disclosure rules, said the source who was present at the meetings and spoke to the Star about the confidential proceedings on the condition that they were not named.

There is so little urgency around the issue that when the conversation turns to collecting beneficial ownership information, provincial ministers take bathroom breaks, the source said.

In Canada it’s possible to register a corporation, open a bank account, and send and receive money overseas all without disclosing your name. It’s the same kind of legal shroud offered by traditional tax havens that facilitates financial crime, money laundering and corruption.

Federal Finance Minister Bill Morneau pledged to improve corporate transparency in last year's budget.

"We've got to do this in concert with the provinces if we want to be effective," Morneau told the Star in an interview.

Morneau needs the provinces to buy in to his plan because 93 per cent of all companies in Canada are registered at the provincial level.

In December, the ministers struck a deal requiring companies to keep records of their beneficial owners on hand, which will enable police and tax follow illicit funds during an investigation.

Morneau said he was pleased with the agreement.

"By the end of this year, the (Canada Revenue Agency) will have the ability to actually follow through and find out if people are hiding stuff," Morneau said. "It will make a big difference."

Critics, however, said the deal was too timid and pointed to the U.K., where beneficial ownership information for all corporations, big and small, is posted in a free searchable online database. The EU recently committed to establishing a public registry in the next 18 months.

"Canada stands out as the laggard," said James Cohen, director of policy at Transparency International Canada. "No doubt the finance minister is feeling pressure at the international level. He needs to make it felt at the domestic level."

While the Canadian federal corporate registry is currently available free online, it contains only the most rudimentary data. Many of the provinces are even less transparent.

Ontario, for example, requires a paid subscription to access basic company information and charges $24.05 per search. In this province, beneficial owners are not required to divulge their identity to government, let alone the public.

Canada committed to greater transparency at the G20 summit in Australia in 2014. Since then, Canada and Japan are the only countries in the G7 that have not changed their business laws to follow through on the commitment, according to a Library of Congress report.

"The Government of Canada should lead by example, as the EU member states have done, and have public beneficial ownership registries, which can be used as a model for all the provinces and territories," said Richard LeBlanc, a professor of corporate governance at York and Harvard Universities.

Last year, a Star/CBC investigation chronicled how dozens of websites around the world offer to register companies in Canada to avoid tax.

Documents in the Panama Papers revealed how Peruvian lawyers used an anonymous company in Quebec to evade taxes on more than $3 million.

The reports also revealed how one woman in Scarborough was listed as the director of over 200 companies. She didn't know who was behind any of them because she was paid $100 per year to sign legal documents, no questions asked.

In 2016, Canada was identified as at high risk for money laundering by the Financial Action Task Force, an international body that evaluates risk in individual country's financial systems. The anonymity provided by numbered companies in Canada has attracted international money launderers, the FATF report stated, and authorities are underestimating "the risk emanating from tax crimes and foreign corruption."

"Law enforcement agencies generally suffer from insufficient resources and expertise to pursue complex money laundering cases," states the international evaluation. "Criminal sanctions applied are not sufficiently dissuasive," with sentences of one month to two years imprisonment "even in cases involving professional money launderers."

This week, Canada was ranked 21st in the world for financial secrecy, two spots worse than its last ranking in 2016, before the release of the Panama Papers.

By looking at the amount of money that flows through a country and the ease with which its true owner can be disguised, the Tax Justice Network ranked Canada worse than both Russia and China. Even traditional tax havens like Cyprus, Bermuda, and Barbados provide less cover for money laundering and corruption, according to the group of international accountants, academics and researchers.

This repeated raising of red flags hasn't reached all the provinces, which remain unaware of the pressing need for reform, said Sasha Caldera, a member of Canadians For Tax Fairness who has been meeting with provincial and federal politicians on the issue of beneficial ownership.

"There isn't a good understanding of why a registry is needed and how it works to curb money laundering," Caldera said.

"We just have to boost the knowledge and bring the issue of beneficial ownership down to earth so government officials understand it and commit to getting it to work."

While optimistic that progress could be made with the provinces, Ottawa expects Canada will not be able to implement a national beneficial ownership registry like the UK.

Because the provinces have jurisdiction over business registration and are unlikely to give up that power, Ottawa is pushing for a national standard for transparency the provinces will all agree to abide by, the source said.

Federal government urged to set guidelines on hate crimes

During two months of public hearing, witnesses raised concerns over the prevalence of hateful speech online as well as campaigns of misinformation and distribution of fake news over the internet.

Toronto Star
Nicholas Keung
Immigration Reporter
February 3, 2018

A parliamentary report is urging Ottawa to establish uniform guidelines and standards for the collection and handling of hate crime data to standardize the definition and interpretation of hate crimes by enforcement agencies.

The standing committee on Canadian heritage study also recommends the federal government create a directorate to oversee a national action plan against racism, plus increased funding for law enforcement and security agencies to probe hate speech on the internet and to enforce existing laws.

“Systemic racism and religious discrimination affect Canadians in different ways. For a country as diverse as Canada, it became apparent that there cannot be a one-size-fits-all solution to these issues,” said the 130-page report, titled “Taking Action Against Systemic Racism and Religious Discrimination Including Islamophobia.”

“Delivering credibly on combating racism and religious discrimination requires not only leadership, but meaningful co-operation and comprehensive action.”

The bipartisan committee initiated the study last April in response to the “increasing public climate of hate and fear” after the Quebec City mosque shooting that killed six while injuring 19 others.

The report reviewed Canada’s approach to reducing and eliminating systemic racism and religious discrimination, highlighting Islamophobia, through 14 public hearings from 77 witnesses including representatives from national organizations, racial and religious groups, as well as officials, academics and experts.

Throughout the process, witnesses raised concerns over the prevalence of hateful speech online as well as misinformation and the distribution of fake news over the internet.

Some proposed the collection of disaggregated data across the federal public service to improve monitoring and evaluation of policies that eliminate racial discrimination and inequality, with a national action plan to help prevent hate crimes, facilitate reporting by victims and provide mandatory training for law enforcement on recognition and registration of hate crimes.

“When devising policies and programs, it is important to understand the needs of the population served. Systemic racism occurs when government actions fail to address the needs of certain racialized groups within the population, resulting in unfair discriminatory practices and outcomes,” said the parliamentary

report, which also recommends the government designate Jan. 29 as the National Day of Remembrance and Action on Islamophobia and other religious discrimination.

“To ensure that a national action plan is effective, sustainable and accountable, it must include clearly defined targets, deadlines and reporting mechanisms.”

The recommendations are now before the House of Commons.

L’avocat qui a fait acquitter Tom Harding
Pour le jeune plaideur, la Couronne a davantage cherché à condamner son client qu’à lever le voile sur la vérité
Droit Inc
Delphine Jung
5 février 2018

Presque quatre mois de procès, neuf jours de délibérés, un drame à l’échelle nationale… Le procès de la tragédie de Lac-Mégantic, qui a fait 47 morts en 2013, s’est déroulé du 11 septembre 2017 au 19 janvier 2018, et a été suivi par un bataillon de médias.

Sur le banc des accusés, trois hommes. Dont la figure la plus connue, devenue le bouc émissaire de la tragédie, Thomas Harding, 57 ans. Un homme à la vie plutôt banale : employé de la Montreal, Maine & Atlantic (MMA) depuis 10 ans, père de famille, dévoué à sa mère malade…

Il a été accusé de négligence criminelle causant la mort, de conduite dangereuse d’un équipement ferroviaire causant la mort et de conduite dangereuse d’un équipement ferroviaire.

Pour le défendre, Me Charles Shearson, jeune avocat de 34 ans. « Le lendemain de la tragédie en 2013, lorsque j’ai allumé mon poste de télévision pour suivre les nouvelles, j’étais loin de me douter que quelques années plus tard, j’allais connaître le déroulé des faits minute après minute », dit-il, alors que nous le rencontrons au Café Crew de Montréal.

De la plomberie à la toge

À l’époque, il n’est encore qu’étudiant à l’Université de Sherbrooke et suit le programme de droit et MBA. Une reconversion à 180 degrés pour lui, puisqu’il a été plombier avant de reprendre des études à 23 ans, à l’Université Bishop d’où il détient un bac en neuroscience.

« J’ai poursuivi avec une maîtrise à McGill, mais en même temps, j’avais postulé pour le bac en droit », raconte-t-il.

Une décision qu’il a prise parce qu’il « tolère difficilement l’injustice » et parce qu’il est « attaché à la vérité ».

Après son bac, Me Shearson fait son stage auprès de Me Thomas Walsh, criminaliste bien connu en Estrie. Une première pour l'avocat senior. « J'ai réussi à gagner sa confiance peu à peu », soutient Me Shearson.

Tellement, que c'est à lui que Me Walsh confiera la plaidoirie du dossier Harding devant la cour et le jury composé de 14 personnes.

Le jeune avocat avait déjà eu l'occasion de s'occuper du chef de train. Alors étudiant, il avait travaillé sur une requête en arrêt de procédure pour arrestation abusive. Mais la tâche qui l'attendait avec le procès de Lac-Mégantic était autrement ardue.

Lors de ces longs mois de procès, Me Shearson est sous pression. « Je ne peux pas dire que j'étais serein, c'était éprouvant. C'est un poids énorme quand quelqu'un place sa confiance en nous. On a peur de ne pas être à la hauteur. Mais d'un autre côté, c'est cette peur qui nous pousse à travailler tous les soirs et les fins de semaine, Noel et le jour de l'an », raconte l'avocat.

Pas de témoignages

Comme lors du procès pour terrorisme contre les deux jeunes cégépiens de Maisonneuve, Shearson et Walsh décident de ne pas présenter de témoignages. « Avec les enregistrements téléphoniques, on avait déjà tout dit, on avait aussi la boîte noire du train qui pouvait nous dire tout ce que Harding avait fait ce jour-là », poursuit Me Shearson.

L'idée était aussi d'insister sur le fait que la responsabilité du drame devrait être partagée, le tout en attaquant la fiabilité de la preuve.

Sans témoignage, l'avocat avait l'avantage de pouvoir plaider en dernier. Ses arguments étaient donc les derniers entendus par le jury. Face à eux, il a choisi de présenter sa plaidoirie sous la forme d'un PowerPoint. Original diront certains. « J'ai vu qu'un des jurés prenait en note tout ce qu'il y avait sur le document. J'attendais qu'elle termine pour passer à la diapo suivante », raconte-t-il.

Une aubaine, puisqu'il n'a pas le droit de transmettre ce document aux membres du jury.

Puis l'attente du verdict a été interminable. Neuf jours durant lesquels l'avocat n'a pas pu se consacrer vraiment à une autre cause. Neuf jours durant lesquels il a ruminé et pas vraiment bien dormi.

À son annonce, Me Shearson ferme les yeux. Non coupable pour le premier chef d'accusation, « le plus inquiétant pour Harding car il risquait entre trois et dix ans de prison », non coupable pour le deuxième et pour le troisième.

« J'ai failli pleurer. La greffière m'a tendu un mouchoir », se souvient l'avocat. Mais il garde aussi une certaine amertume sur le procès. « J'ai eu l'impression qu'on a fait un procès pour faire condamner Thomas Harding et pas pour chercher la vérité. La MMA disait qu'il était responsable, les deux autres co-accusés aussi… » explique le plaideur.

« Pour la preuve, tout allait bien dans l'industrie ferroviaire. Pourtant, le rapport du BST évoquait d'importantes lacunes à tous les échelons. Pourquoi faire un procès qui n'est pas un reflet de la réalité ? », se demande-t-il.

Les dirigeants de la MMA jamais inquiétés

Il considère d'ailleurs que la justice ne sera jamais entièrement rendue, tant qu'il n'y aura pas une commission d'enquête. « Le BST avait bien dit que l'accident n'était pas la responsabilité d'un seul homme. Ils ont fait plusieurs recommandations pour prévenir d'autres tragédies et Transport Canada ne les a toujours pas mises en œuvre », dit-il, excédé, en rappelant que la voie de contournement n'a toujours pas été faite à Lac-Mégantic.

Pour l'opinion publique et surtout les familles des victimes non plus, justice n'a pas été faite. La plupart auraient aimé voir les dirigeants de la MMA sur le banc des accusés. Pourquoi n'ont-ils pas été inquiétés ?

« Tout d'abord, il y a des limites territoriales, les dirigeants étant Américains », évoque l'avocat.

Mais surtout, les règlements de MMA ont été faits pour donner une énorme responsabilité aux employés sans leur donner les moyens de travailler de manière sécuritaire.

« Les règlements sont faits pour mettre la responsabilité sur l'employé. C'est contre toutes les valeurs de la CSST. Mettre un règlement parapluie, ça ne donne pas de la formation ni les connaissances pour travailler de façon sécuritaire. C'est comme si l'employeur enlevait des mécanismes de protection à l'employé. La MMA a préféré réglementer de façon à couper ses coûts plutôt qu'augmenter la sécurité », poursuit-il.

Une distraction

Dans cette histoire, Me Shearson assure que l'expert appelé par la Couronne a été son meilleur atout. « Il a décrit la conduite de Thomas Harding ce soir-là comme une conduite qui était généralisée dans l'industrie et tolérée par les employeurs et Transport Canada », dit-il.

Surtout, pour le plaideur, Thomas Harding, malgré le verdict de non culpabilité, n'a « rien gagné ». « Il avait une femme, une maison… Aujourd'hui il n'est pas apte à travailler. Dans le fond, ce procès a créé une distraction, au lieu de se concentrer sur l'enjeu principal qui devrait être amélioré l'industrie ferroviaire, il y a des millions qui ont été dépensés pour faire le procès de Tom Harding. Il y a eu quatre procureurs de la Couronne à temps plein sur ce dossier ! », détaille l'avocat.

Le calvaire de son client n'est pourtant pas encore terminé, puisqu'un procès au fédéral se déroule aujourd'hui. Il va plaider coupable pour non respect d'un article de la loi ferroviaire sur la sécurité. « Il risque une amende de 50 000 dollars et six mois de prison. Nous allons demander des heures de travail communautaire ».

Tragédie de Lac-Mégantic : la MMA plaide coupable
L'audience visait à finaliser une entente de gré à gré conclue en décembre, afin d'éviter la tenue d'un procès
Radio-Canada
5 février 2018

Ottawa a réglé ses dossiers en lien avec des accusations pénales déposées le 22 juin 2015 contre la Montreal, Maine & Atlantic Canada (MMA), la MMA américaine, trois anciens dirigeants américains et quatre ex-employés, dont le mécanicien de locomotive Thomas Harding.

Dans un premier temps, la division canadienne de la MMA a reconnu ses torts en plaidant coupable à un chef d'accusation en lien avec la Loi sur les pêches lundi matin au palais de justice de Lac-Mégantic. L'entreprise a été condamnée à l'amende maximale fixée à 1 million de dollars, dont 400 000 $ seront versés dans un fonds visant la préservation du lac Mégantic et de la rivière Chaudière.

Tous les autres accusés ont été acquittés « d'avoir illégalement rejeté ou permis l'immersion ou le rejet d'une substance nocive à savoir du pétrole brut dans des eaux où vivent des poissons, soit le lac Mégantic et/ou la rivière Chaudière ».

Sept employés ont également plaidé coupables d'avoir omis de « vérifier la résistance au déplacement pour s'assurer que les freins serrés produisent un effort de freinage suffisant pour immobiliser le matériel en question » lorsque le convoi était stationné à Nantes le 5 juillet 2013.

Tous les accusés ont écopé d'une amende de 50 000 $, sauf Thomas Harding, qui a écopé d'une peine d'emprisonnement de six mois à purger dans la collectivité. Transport Canada s'est engagé à verser les sommes de ces amendes au Fonds avenir Lac-Mégantic

Cette audience visait à finaliser une entente de gré à gré conclue en décembre entre les accusés et les autorités fédérales, et ce, afin d'éviter la tenue d'un procès dans ce dossier.

Culture de négligence

Si ce n'est pas uniquement le conducteur du train, Thomas Harding, qui est accusé concernant la sécurisation du train, c'est que la Couronne a prouvé qu'il y avait une « culture de négligence au sein de cette entreprise », que « chacun de ces individus sont considérés comme des maillons d'une chaîne » et qu'il y « avait aussi des lacunes dans la supervision et la formation des employés ».

Ces accusations d'ordre fédéral découlent d'une enquête menée par Environnement Canada et Transport Canada.

Plusieurs citoyens assistent à l'audience, dont le porte-parole de la Coalition des citoyens engagés pour la sécurité ferroviaire de Lac-Mégantic, Robert Bellefleur. « Ce n'est pas uniquement des employés qui doivent être mis en cause dans cette tragédie. On reconnaît que la direction de la MMA a un rôle important », a-t-il dit.