



Press Clippings for the period of December 13th to 19th 2016 / Revue de presse pour la période du 13 au 19 décembre 2016

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Grève des juristes: huit semaines de conflit plus tard

Les avocats et notaires de l'État québécois doivent décider s'ils poursuivent le débrayage
Marco Bélair-Cirino, Le Devoir, le 17 décembre 2016

Après huit semaines de grève, les avocats et notaires de l'État québécois (LANEQ) détermineront la semaine prochaine s'ils continuent de débrayer en dépit du refus net du gouvernement libéral d'acquiescer à leur principale demande, soit de réviser le mode de négociation de leurs conditions de travail.

L'issue de ce conflit de travail historique paraît bien incertaine. Le président de LANEQ, Jean Denis, se disait toujours « *déterminé à faire la grève pour ne plus jamais avoir à la faire* » vendredi. Il demandera aux quelque 1050 juristes en grève depuis le 24 octobre s'ils sont du même avis à l'occasion d'une assemblée générale extraordinaire mardi prochain. La révision de l'indemnité versée aux grévistes, qui est équivalente actuellement à près de 50 % de leur salaire en moyenne, et un emprunt visant à renflouer le fonds de grève seront vraisemblablement discutés au cours de cette AG extraordinaire.

Celle-ci se tiendra une semaine après que le président du Conseil du trésor, Carlos Leitão, eut publiquement demandé à l'exécutif de LANEQ de dévoiler à ses membres les « *propositions [patronales] non seulement du volet normatif, mais aussi du volet financier, visant à améliorer [leurs] conditions de travail* ».

Négociations

Le Conseil du trésor demeurera ferme sur une chose : il ne modifiera pas le mode de négociation actuel des juristes de l'État, a répété M. Leitão. « *Dans un souci d'équité envers toute la fonction publique, on ne peut pas dévier de cela* », a-t-il martelé cette semaine, jetant la consternation dans les rangs de LANEQ.

M. Leitão se serait dit disposé, notamment devant M. Denis, à engager des négociations « *parallèles* » sur l'octroi d'un statut particulier aux avocats et notaires de



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l'État. « *Je ne l'ai pas inventé. C'est son expression à lui. Il l'a dit devant plusieurs témoins* », a soutenu M. Denis en conférence de presse vendredi.

Du coup, LANEQ s'était résigné à réclamer un mode de négociation de convention collective prévoyant la mise sur pied d'un comité de rémunération chargé de faire des recommandations au Bureau de l'Assemblée nationale en cas d'impasse, plutôt qu'un arbitrage liant les parties patronale et syndicale. Le gouvernement libéral a balayé du revers de la main cette proposition de compromis, s'est désolé M. Denis. Avec une position « *injuste et rigide* », « *le gouvernement nous envoie le message qu'on ne vaut même pas un procureur de la Couronne. [...] Le gouvernement cherche clairement à nous humilier* », a-t-il dit.

D'autre part, le président de LANEQ, Jean Denis, a pris le contre-pied du gouvernement libéral, qui « *prétend que la primauté du droit n'est pas menacée par le mode de négociation actuel* » des juristes de l'État. Selon lui, le nombre de projets de loi, de projets de règlement sur la glace, ainsi que de causes suspendues devant les tribunaux depuis le coup d'envoi du débrayage de plus de 10 000 avocats et notaires de l'État québécois, le 24 octobre dernier, prouve le contraire. « *Le raisonnement est simple : ce mode de négociation mène à la grève, la grève menace la primauté du droit, donc ce mode de négociation menace la primauté du droit* », soutient M. Denis. Bref, « *le gouvernement ment* », a-t-il dit sans détour.

Après près de huit semaines de débrayage, les grévistes sont gonflés à bloc, soutient un membre de l'exécutif de LANEQ. « *De voir le ministre Leitão ne pas respecter sa parole a galvanisé les avocats et les notaires en grève. Il a commis l'impardonnable. Les gens ne sont pas prêts à rentrer la tête entre les jambes* », a-t-il affirmé à micro fermé au Devoir.

À l'évidence, le conflit de travail laissera des « *séquelles* », selon lui. Le « *lien de confiance nécessaire* » entre les juristes de l'État et leur « *client* », l'État, s'est considérablement effrité.

Guerre d'usure? Le gouvernement libéral se refuse à ce moment-ci à recourir à une loi spéciale afin de mettre un terme à la grève générale illimitée de 1050 juristes de l'État, qui perdure depuis plus de 50 jours. « *Notre intention est toujours d'avoir une entente négociée* », indiquait-on dans l'entourage du ministre Carlos Leitão vendredi soir. L'adoption d'une loi spéciale nécessiterait de convoquer l'Assemblée nationale, qui fait normalement relâche jusqu'au 7 février prochain. En 2011, le gouvernement libéral avait forcé les avocats et les notaires de l'État à retourner au travail au moyen d'une loi spéciale après « *dix jours et demi* ». « *Il est dans l'intérêt public que ce conflit de travail se règle à la satisfaction des parties* », a averti le président de LANEQ, Jean Denis, vendredi.

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Grève des avocats et notaires de l'État : le ministre Leitao s'impatiente

La Presse Canadienne, Radio-Canada, le 14 décembre 2016

Interrogé à son entrée à la réunion du conseil des ministres, mercredi à Québec, M. Leitao a indiqué que cette grève des avocats et notaires employés par le gouvernement avait maintenant duré sept semaines et demie et qu'il était temps de bouger.

« Ça fait maintenant sept, huit semaines; c'est le temps d'avancer », s'est-il exclamé. En fait, les avocats et notaires de l'État québécois (LANEQ) ont amorcé leur débrayage le 24 octobre dernier.

À ce jour, leur grève a déjà causé de nombreuses remises devant différents tribunaux, bien qu'ils assurent les services essentiels. De même, leur débrayage a affecté le processus législatif, parce que des juristes rédigent les projets de loi, en plus de dispenser des avis et conseils.

Nous avons mis sur la table des propositions normatives, monétaires qui, je trouve, sont très intéressantes. Je souhaiterais que les membres de LANEQ prennent connaissance de ces offres-là qui sont sur la table.

Carlos Leitao, ministre responsable de l'Administration gouvernementale

Mécanisme d'arbitrage

Leur principale revendication consiste à faire remplacer le mode habituel de négociation des contrats de travail – qui prévoit le droit de grève – par un mécanisme d'arbitrage qui lierait les parties.

Le président du Conseil du trésor s'est dit prêt à reconnaître leur valeur, mais « à l'intérieur du cadre actuel de négociation » des conventions collectives des employés de l'État.

Le ministre Leitao a estimé devoir s'en tenir à son cadre pour être juste envers les autres employés de l'État - surtout que la grande majorité d'entre eux ont déjà conclu et signé leur contrat de travail depuis plusieurs mois déjà.

« Dans un souci d'équité envers toute la fonction publique, on ne peut pas dévier de cela. Il faut qu'on soit équitable avec tous nos 500 000 employés », s'est justifié le ministre Leitao.

Jointe au téléphone, l'association professionnelle des avocats et notaires s'est refusée à commenter les déclarations du ministre Leitao.

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Elle a néanmoins répété que « le mode de négociation traditionnel porte atteinte à la primauté du droit et au lien de confiance nécessaire avec le client de ses membres, l'État ».

L'espoir demeure cependant, puisqu'une rencontre de négociation était prévue entre les parties mercredi.

Les avocats et notaires de l'État québécois représentent plus de 1100 avocats et notaires qui travaillent au sein de différents ministères et organismes gouvernementaux. Tous ne sont pas en grève, toutefois.

Striking Quebec lawyers disturb Monaco prince's visit

Caroline Plante, Montreal Gazette, December 13 2016

Premier Philippe Couillard has apologized to Monaco's Prince Albert II after hundreds of striking government lawyers and notaries disturbed his visit to the National Assembly.

The prince was in Quebec City on Tuesday to attend an Arctic Circle event on sustainable development and sign a partnership agreement with Quebec.

"I'm sorry for this protest, which has nothing to do with your visit," Couillard told the prince, as the two men walked the red carpet and proceeded to sign official documents, with great pomp and circumstance.

Couillard later told reporters: "I find it regrettable to expose a foreign dignitary to this kind of loud protest. I don't think it helps anybody's cause, but it's part of what a democratic society is."

About 1,100 government lawyers and notaries have taken to the streets in recent weeks to demand that an arbitrator — not the government — evaluate their remuneration and working conditions. They argue this type of mechanism, which they say would protect their independence, is in place in other provinces, such as Ontario.

On Tuesday, they blew their horns, banged their drums and nearly blocked the prince's motorcade, the rowdiest they've been since the strike began eight weeks ago.

"What's regrettable is that (Couillard is) not negotiating with his 1,100 lawyers," Jean Denis, president of Les avocats et notaires de l'État québécois (LANEQ), shot back.



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Many protesters, including fiscal lawyer Guy-Henri Desrochers, told the Montreal Gazette Tuesday they feel ignored by the government.

“They’re not listening and now it’s more than bad faith, it’s absolute pettiness,” Desrochers said.

Government lawyers and notaries have been without a collective agreement since March 2015.

Denis said at least 19 bills and 129 government regulations have been put on hold as a result of the strike. But Couillard minimized its impact: “We were still able to table three very significant bills for municipalities, for example, and adopt an important number of legislations,” he said.

“We’re open to discussions ... but we have to be equitable toward the over 400,000 people who have signed an agreement with the government. And second, we’re not going to give a third party any authority on the compensation policy of the government of Quebec.”

Phénix: Ottawa minimisera l'impact sur les T-4

Paul Gaboury, Le Droit, le 14 décembre 2016

Avec la saison des impôts qui approche, le gouvernement fédéral tente de minimiser les impacts des ratés du système de paye Phénix sur les formulaires T-4 que recevront ses employés.

Les montants que les 14 000 employés fédéraux ont reçus en trop en raison des erreurs de Phénix n'apparaîtront pas sur leur T-4 de 2016, ce qui devrait donner le temps de corriger les erreurs de paye en prévision des impôts de 2017, a expliqué Marie Lemay, la sous-ministre des Services publics et de l'Approvisionnement (SPAC).

Un représentant de l'Agence du revenu du Canada, Randy Hewlett, a souligné que les fonctionnaires inquiets peuvent obtenir de l'information sur le site de l'Agence du revenu du Canada, et que diverses mesures sont prises, notamment avec Revenu Québec, pour leur éviter de subir les conséquences fiscales en raison de Phénix.

À la veille de la période des Fêtes, la sous-ministre Lemay a aussi réitéré que les fonctionnaires qui ont besoin d'une avance salariale peuvent en obtenir une dans les « 24 à 48 heures », en faisant une demande à leur gestionnaire ou responsable des ressources humaines de leur ministère. En cas de problème, ils peuvent remplir le formulaire disponible sur le site de SPAC.



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Tout en soulignant le travail accompli jusqu'à maintenant pour résoudre tous les problèmes, la sous-ministre a expliqué qu'il reste encore 10 000 des 82 000 dossiers en arriérés d'avant juin 2016.

À ce chiffre, il faut aussi ajouter environ 230 000 autres transactions accumulées depuis l'été dernier, ce qui représente environ deux mois et demi de travail. Lors de la dernière mise à jour en novembre, il y avait alors deux mois de travail de retard, soit près de 200 000 transactions dans le système.

Les équipes à Miramichi et dans les bureaux satellites tentent toujours de régler les dossiers en arriérés selon les priorités. Les employés travaillent sans relâche, a-t-elle expliqué.

« Les équipes reçoivent entre 83 000 et 88 000 transactions par mois et peuvent en traiter environ 100 000. Notre objectif n'était pas de réduire ce nombre de 200 000 transactions en novembre et décembre, car nos efforts vont surtout sur les cas en arriérés d'avant juin. Nous devrions toutefois voir une nette progression dès le mois de janvier », a expliqué la sous-ministre Lemay.

Tout en soulignant que les employés et bureaux satellites resteront le temps qu'il faudra, M^{me} Lemay n'a pas caché que les 50 millions \$ budgétés pour l'année financière pourraient être dépassés. Elle n'a pas donné plus de précisions à ce sujet.

Centraide

Co-présidente de la Campagne de charité de la fonction publique fédérale, la sous-ministre Lemay n'a pas voulu dire si le système Phénix avait eu un impact sur la récolte, mais a évoqué la possibilité que l'objectif de 19 millions \$ puisse ne pas être atteint cette année.

Sept fonctionnaires sur dix auraient jusqu'à maintenant accepté de verser une contribution par prélèvement automatique pour Centraide, alors qu'il y en avait huit sur dix à pareille date l'an dernier. « La contribution des fonctionnaires fédéraux continue à être très importante, il ne faut surtout pas l'oublier. Nous allons tout faire pour aider les organismes », a-t-elle indiqué. Neuf informaticiens ont répondu à l'appel pour des renforts lancé avec l'Institut professionnel de la fonction publique, pour aider à résoudre les problèmes liés à Phénix. Trois d'entre eux pourraient bientôt se joindre à l'équipe, ce qui de toute évidence, est bien en deçà du nombre de candidats anticipé par le gouvernement.



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10,000 cases remain in Phoenix pay problem backlog, cost could rise above \$50M

**Government still not meeting service standards in responding to pay requests, deputy
minister says**

CBC News, December 14 2016

About 10,000 cases of current and former public servants having problems getting paid properly remain in the federal government's backlog, and the overall cost for fixing the Phoenix pay system this year could rise above \$50 million.

"Our progress remains slow because of the complexity of the various cases, but we're nearing a significant mark," deputy minister Marie Lemay told reporters at a technical briefing held in Ottawa Wednesday morning.

The "vast majority" of cases involving employee terminations and leave without pay have been dealt with, Lemay said, adding that those categories are important because they involve overpayments and could have tax implications. A total of about 14,000 overpayment cases were identified by the government in mid-October.

The remaining backlog is mainly made up of employee transfers, she added.

Federal employees began reporting problems with their pay soon after the Phoenix payroll system was rolled out across the country in the spring. The government has acknowledged that about 82,000 public servants reported trouble, with the majority being underpaid.

On Nov. 29 — about a month after the government's self-imposed deadline to resolve the 82,000 cases of people being underpaid, overpaid or not paid at all — Public Services and Procurement Minister Judy Foote told a House of Commons committee that about **15,000 unsolved cases remained**.

Still not meeting standards

In a given month the Phoenix system gets about 83,000 new pay requests from the 46 departments it serves for things like promotions, creating accounts for new hires and final payments for departing workers. Lemay said Wednesday that the government is not meeting the 20-day standard for processing them.

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Instead, it's taking more than three months.

But processing times are improving as pay centre workers become more familiar with the system and as the backlog is cleared, Lemay said.

Satellite pay centre offices will remain in operation as long as necessary, she added.

- **1,600 student workers paid improperly, memos show**
- **Ottawa seeks dismissal of legal action**
- **PIPSC 'not that confident' members will get back pay**

In September, the government said the Phoenix problems **would cost taxpayers about \$50 million this year.**

Lemay said Wednesday that it could rise above that mark because satellite units might be kept operational longer, among other things.

A review of the Phoenix system could take until the spring of 2017 to complete, Lemay said. A decision about whether to give bonuses to the executives behind Phoenix will be made once the results of the review are in.

PSAC keeps sick leave, wins pay hike in tentative deal with federal government

Kathryn May, The Ottawa Citizen, December 19 2016

The federal government and its largest union have reached a tentative deal that will boost employees' pay more than 5.5 per cent and keeps the existing sick leave regime while a task force tries to negotiate a new one.

The deal, reached with the Public Service Alliance of Canada Saturday after a six-day bargaining session with a mediator, would boost paycheques of 68,000 public servants working in program and administrative services throughout government and give them a \$650 signing bonus once it is ratified by the rank and file.

But the big breakthrough was on sick leave, the hot-button issue that has stalled bargaining for more than two years. The deal only covers the largest of the five bargaining groups represented by PSAC, but sick leave is the big common issue.



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PSAC has stood firm on its refusal to make concessions on sick leave. But some say the agreement protecting the existing regime could divide other unions.

"I am proud of our negotiating teams for standing strong during these two long, difficult years at the table," PSAC president Robyn Benson said in a statement to members.

"I am equally proud of our members for their strength and solidarity. It is because of them that our teams were able to prevent the concessions on sick leave that the employer had been pushing for."

This round of bargaining began with the previous Conservative government wanting to replace the existing sick leave with a short-term-disability plan. The Liberals continued with the same offer but dropped the Tories' plan to impose it by legislation.

Public servants currently get 15 days' sick leave a year. They typically take about 12 days a year and are allowed to carry any unused days from year to year. There are about 15 million unused sick days currently banked, all of which would have disappeared under the Conservatives' plan.

Getting rid of the sick leave banks, once estimated as a \$4-billion liability, and hiring an insurance company to bring in case management for sick employees were seen as big sources of savings for the previous Conservative government.

Treasury Board president Scott Brison said his government promised to restore respect for the public service by negotiating in "good faith" and is pleased another tentative deal was reached.

"We remain committed to reaching agreements with the rest of the public service so that we can all focus on delivering on our progressive agenda of good jobs and growth for the middle class," he said.

Among the 18 unions, PSAC was the most vocal and opposed to any changes to sick leave. It led the charge for a solidarity pact among unions to ensure no concessions would be made in this round of bargaining.

As a result, all eyes were on PSAC in this week's bargaining, especially after the Professional Institute of the Public Service of Canada (PIPSC) recently struck a tentative deal that lays the framework for a new sick leave regime. It was also the first time PIPSC has reached a deal before PSAC.

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Shortly after, the Canadian Association of Professional Employees (CAPE) was offered and put to its members a settlement package for the translators it represents with the same sick leave deal as PIPSC.

All three unions have accepted a memorandum of agreement that takes sick leave off the bargaining table and creates a task force to come up with a new “wellness” plan that would then be negotiated as part of the next round of collective bargaining, which would begin in 18 months.

Until then, the existing sick-leave regime remains in place.

The big difference is that PSAC rejected the guidelines PIPSC accepted for the new “wellness” regime, which are built on some key features of the short-term disability plan originally proposed.

PSAC broadly agreed to consult and study a new plan, but it refused any of the specific changes PIPSC endorsed. If the task force can't reach an agreement, then the existing sick leave regime remains for PSAC members.

The PIPSC memorandum calls for nine days' sick leave and employees would be entitled to 100 per cent of salary for 26 weeks, getting rid of the existing 13-week waiting period. Employees would also carry over no more than three days of unused sick leave to be used the next year. Banking sick leave would stop once a new plan was implemented.

Employees with more than 26 weeks of banked leave can use the excess to top up their salaries to 100 per cent in the event of long illnesses before going on long-term disability.

Under PSAC's deal, its members' sick leave banks are “grandfathered” and would remain in any future plan.

PSAC went into this bargaining session with four sick leave principles that it refused to bend on in whatever wellness plan the task force proposes. Sick leave would be enshrined in all collective agreements and would provide wage replacement, existing sick leave banks would be kept, and there would be no third-party provider hired to manage it.

As the largest union, PSAC's deals with the government have historically set the precedent for the other unions.

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The settlements of the three unions will probably mean that the 1.25-per-cent annual increase in base salary will be the precedent for all unions. As for sick leave, other unions could pick PSAC or PIPSC's approach, or go to arbitration for a decision.

"The recent settlements show there is clearly a difference of opinion on the future of sick leave administration in public service between the unions," said Ron Cochrane, a former co-chair of the joint union-management National Joint Council.

It's unclear whether the government is willing to have different regimes to manage sick leave and disability.

PSAC also negotiated what it calls the "most significant improvements" in the workforce adjustment provisions handling downsizing and layoffs since 1998. They include changes to reduce the number of involuntary layoffs, allowing more employees swap or alternate jobs, and limits on contracting out. It also got increases for education allowances and buyouts.

Other proposed changes include:

- a committee to examine child care needs of employees
- improved leave for "extended family members"
- better working conditions for call centre workers
- language recognizing gender identity and gender expression as prohibited ground of discrimination.
- The memorandum of understanding reached in 2015 to create a task force on mental health in the workplace to be enshrined in collective agreements.

Government reaches deal with public sector union

Canadian Press, December 18 2016

The federal government has reached a tentative contract with a public sector union in a deal that involves 68,000 public servants.

The Public Service Alliance of Canada says it includes a pay hike of 5.5 per cent over the four years of the collective agreement, plus a \$650 signing bonus.

It also includes what the union describes as significant breakthroughs on sick leave and adjustments to the work force.



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The workers covered by this deal include administration and support staff and communications employees.

The union members will vote on whether to accept the agreement sometime next year.

The union must still negotiate contracts for roughly another 30,000 of its members.

Earlier this month, the government reached a tentative deal with the Professional Institute of the Public Service of Canada, which represents more than 18,000 government workers including federal scientists.

Le pacte est respecté, selon l'IPFPC

Paul Gaboury, Le Droit, le 13 décembre 2016

L'entente sur le nouveau Programme de soutien du mieux-être au travail (PSMET) des employés fédéraux, qui prévoit neuf jours de congé de maladie payés par année, respecte tous les principes du pacte syndical visant à améliorer le régime de congés de maladie actuel, soutient Debi Daviau, la présidente de l'Institut professionnel de la fonction publique du Canada (IPFPC).

« Notre choix se limite à conserver le régime actuel ou à l'améliorer. Au bout du compte, si nous ne pouvons convenir des modifications à apporter à la table des négociations, le régime actuel demeurera en place », a souligné Mme Daviau à la suite des ententes de principe intervenues depuis la semaine dernière pour le renouvellement du contrat de travail de quatre groupes d'employés fédéraux.

Au début de cette ronde de négociations, les syndicats ont décidé de signer un pacte de solidarité pour les congés de maladie, un enjeu prioritaire de l'ancien gouvernement conservateur repris par le gouvernement libéral qui a finalement modifié sa position au cours des dernières semaines avec un nouveau mandat donné à ses équipes de négociations du Conseil du trésor.

« Notre entente respecte les principes convenus avec tous les agents négociateurs de la fonction publique fédérale », a assuré la présidente de l'Institut.

Le protocole d'entente avec l'IPFPC prévoit ainsi le remplacement de la totalité du salaire pendant 26 semaines, une période de qualification de trois jours précédant l'octroi de prestations d'invalidité de courte durée, neuf jours de congé de maladie entièrement rémunérés, le report de trois jours de congé de maladie inutilisés, l'exemption de la période d'attente des maladies chroniques ou épisodiques, la cessation de l'accumulation des crédits de



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congé de maladie actuels à la date de la mise en oeuvre du programme, et la possibilité d'utiliser les crédits de congé de maladie dépassant 26 semaines avant de toucher des prestations d'invalidité long terme. L'employeur devra assumer entièrement les coûts du programme.

L'entente avec l'Institut est intervenue juste avant que ne débute, lundi, la séance de médiation entre l'Alliance de la fonction publique du Canada (AFPC) et le Conseil du Trésor.

L'AFPC a réitéré qu'elle restait ferme sur sa position concernant le régime des congés de maladie, indiquant qu'« il doit être intégré à la convention collective, prévoir le remplacement du salaire, préserver les congés de maladie accumulés et être administré à l'interne ».

« Nous sommes prêts à négocier une nouvelle convention, mais nous ne ferons aucune concession », a affirmé lundi Robyn Benson, la présidente nationale de l'AFPC.

Le droit de parole des scientifiques reconnu

Après en avoir livré une bataille ardue contre le musèlement des scientifiques imposé sous le gouvernement Harper, l'Institut professionnel de la fonction publique du Canada (IPFPC) vient de remporter une victoire importante en faisant reconnaître dans les conventions collectives le droit pour ses membres de parler librement de la science et de leurs recherches.

« C'est une très grande victoire non seulement pour les scientifiques fédéraux, mais aussi pour tous les Canadiens », a fait valoir la présidente de l'Institut, Debi Daviau.

Sous le règne du gouvernement conservateur, les scientifiques avaient été nombreux à dénoncer le fait qu'ils ne pouvaient parler publiquement de la moindre information concernant leurs recherches, en raison de politiques de communication trop restrictives. Un des membres de l'Institut professionnel, Tony Turner, avait d'ailleurs fait les manchettes en composant une chanson, appelée Harperman en signe de protestation, qui lui avait valu une suspension. Il avait décidé de prendre sa retraite pour pouvoir continuer à chanter son message de protestation.

L'IPFPC, un syndicat comptant 15 000 scientifiques sur 55 000 membres, avait d'ailleurs publié un rapport en 2013 dans lequel près de neuf scientifiques fédéraux sur dix estimaient ne pas pouvoir faire part de leurs préoccupations au public ou aux médias sans être censurés ou subir des représailles.



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Full asbestos ban, changed federal building codes, regulations, coming today

Government to prohibit asbestos in new construction and renovations, ban it in imports such as brake pads

Julie Ireton, CBC News, December 15 2016

Four federal cabinet ministers will make a historic announcement today to change Canada's rules and regulations on a deadly material that contaminates tens of thousands of homes and buildings across the country and kills thousands every year.

Asbestos, a known carcinogen, has been condemned by the World Health Organization and is banned in some 50 countries around the world.

- [Key promises in Thursday's asbestos ban announcement](#)

With this announcement, Canada will be committing to its own comprehensive ban — which is supposed to be fulfilled by 2018 — of a product that many Canadians believe was outlawed years ago.

"Irrefutable evidence has led us to take concrete action to ban asbestos," said Science Minister Kirsty Duncan. "Asbestos-related cancers continue to hurt Canadian families and pose a significant burden for our health-care system."

- [CBC's interactive map of buildings with asbestos](#)
- [Canada-wide asbestos inventory 'a positive step'](#)

She will be joined in the announcement Thursday morning by Public Services Minister Judy Foote, Environment Minister Catherine McKenna and Health Minister Jane Philpott.

New rules, building codes

Included in the government's asbestos announcement is the creation of new regulations under the Canadian Environmental Protection Act (CEPA), new workplace health and safety rules intended to limit drastically the risk of people coming into contact with asbestos on the job.

- [Asbestos banned in government construction](#)

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National building codes will be changed to prohibit the use of asbestos in new construction and renovation projects across Canada and "new actions to ban the import of asbestos-containing products such as certain construction materials and brake pads."

Beth and Sharon Porter found out under cruel circumstances the potential effects of asbestos exposure. Beth's husband and Sharon's father, Bob Porter, was diagnosed with mesothelioma in June and the disease caused him to suffocate by August.

At the time of his diagnosis, the Porters didn't know that mesothelioma is a cancer only caused by asbestos.

Porter, who was 65 when he died, was a pipefitter and steamfitter in the Hamilton area and wasn't aware his exposure to asbestos on job sites decades ago could kill him in his retirement.

"I didn't realize it could happen so long after you're exposed, and he didn't really know that either," said Beth Porter, who now understands that asbestos diseases can strike 10 to 40 years after exposure.

Porter was one of more than 2,000 Canadian workers who will die of asbestos-related diseases this year.

Apology wanted

Sharon Porter started a petition campaign earlier this year, calling for an asbestos ban, public building registries, better diagnosis and treatment.

- **Government workers astonished when asbestos found**
- **Contractor exposed to asbestos in BC prison**

The government's announcement will start that process. "We really need more information and resources out there," said Porter.

"As far as I'm concerned, this is the government's responsibility to take care of these people ... and I'm really hoping to hear at the very least a heartfelt apology that it's taken this long."

Right now, Canada continues to import products containing asbestos, and up until last April, **continued to allow those products to be used** in new construction of federal buildings.



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More building registries

Also included in the government's plan is an expansion of the current online list of asbestos-containing buildings owned or leased by Public Services and Procurement Canada to include all federal buildings that have the substance.

The CBC developed the only national listing and **interactive map of federal buildings** earlier this year.

Jesse Todd, chair of the Saskatchewan Asbestos Awareness Organization, wants to see the federal government put pressure on provinces and municipalities to also track contaminated public buildings, including hospitals, schools, and hockey arenas.

"We haven't seen a lot of progress yet from other provincial governments, and we hope that with the federal government leading the way, others will fall in line," said Todd, whose stepfather, Howard Willems, died of mesothelioma after being unknowingly exposed in a federal building, **then lobbied for a registry.**

Saskatchewan is currently the only jurisdiction with a **searchable, user-friendly database** of public buildings that contain asbestos, which can be used by contractors, labourers, workers or members of the public who may be working in those buildings.

Call to track victims

The Canadian Labour Congress would also like to see the federal government track victims and potential victims of asbestos exposure through a different kind of registry.

- **Labour's day of mourning focuses on asbestos**

CLC president Hassan Yussuff was himself exposed to asbestos during years of work on brakes and clutches in a General Motors facility.

"So somebody like myself could go and register," said Yussuff. "There are thousands and thousands of Canadians exposed to asbestos, some are dying of it right now, and I think it would be very useful for developing public policy."

Asbestos mines operated in Canada from the late 1800s until 2011.

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Those facilities created jobs and economic development that seemed to make the scientific evidence about the deadly fibre easy to ignore.

Canada's slow response to bring in new asbestos rules and regulations angers others who've been exposed, including former NDP member of Parliament Pat Martin, who worked in an asbestos mine.

"I'm not sure I'm ready to award any gold stars just for doing the right thing," said Martin who wants to see more federal money go into health research and treatment.

"If we were a world leader in the production and the export and even the promotion of asbestos, we have a moral obligation to be a world leader in diagnosis and treatment of asbestos-related disease."

Ottawa veut faciliter l'ouverture de sites d'injection supervisée

**Une nouveau projet de loi fait de la lutte contre les drogues un enjeu de santé publique
Fannie Olivier, Le Devoir, le 12 décembre 2016**

Ottawa annonce qu'il facilitera la mise sur pied de centres d'injection supervisée à travers le pays, tout en s'attaquant à la production et l'importation des opioïdes.

Le gouvernement Trudeau veut ainsi changer l'approche conservatrice en matière de lutte contre les drogues en en faisant un enjeu de santé publique plutôt que de criminalité.

La ministre de la Santé, Jane Philpott, a annoncé lundi une nouvelle « Stratégie canadienne sur les drogues et autres substances », remplaçant la stratégie « antidrogue » du gouvernement précédent.

Lorsqu'il sera adopté, le projet de loi C-37 simplifiera la vie aux communautés qui souhaitent que des sites d'injection soient implantés. Au lieu de se plier aux 26 conditions obligatoires qui prévalaient par le passé, les villes auront à remplir cinq grands critères. Elles devront prouver qu'il existe un réel besoin pour ce site, que des consultations ont été menées, qu'elles ont évalué l'impact sur la criminalité et qu'elles disposent des ressources nécessaires pour gérer un tel site et d'une structure réglementaire pour l'encadrer.



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Le maire de Montréal, Denis Coderre, s'est réjoui de l'annonce d'Ottawa, soulignant que l'implantation de trois sites d'injection supervisée figure dans le Plan d'action montréalais en itinérance depuis plus de deux ans. Jusqu'à l'an dernier, il s'était heurté aux conservateurs de Stephen Harper.

Dans un communiqué, il s'est dit « *heureux* » du dépôt du projet de loi, mais « *impatient* » que celui-ci soit adopté. Il a souligné l'ampleur de la crise des surdoses aux opioïdes que traverse le Canada, et qui n'a pas épargné Montréal.

Montréal compte quelque 4000 consommateurs de drogues par injection, « *dont le quart fait partie de la population itinérante* », relève-t-on dans le communiqué.

« *Dans ce contexte, la présence de SIS [sites d'injection supervisée] contribue également à réduire le nombre de seringues à la traîne et à améliorer la cohabitation sociale dans les espaces publics* », a-t-il dit dans le communiqué.

Il existe présentement deux sites d'injection supervisée au Canada, tous les deux à Vancouver.

Ouverture de colis

La loi C-37 permettra aussi aux douaniers d'ouvrir sans préavis tous les colis qu'ils jugent suspects, quel que soit leur poids. En ce moment, si un paquet pèse 30 grammes ou moins, les agents doivent obtenir l'autorisation de l'expéditeur ou du destinataire pour l'ouvrir. Or, un colis de 30 grammes de fentanyl contient 15 000 doses mortelles, a fait valoir le ministre de la Sécurité publique, Ralph Goodale.

Il interdira par ailleurs l'importation des presses à comprimés et les instruments d'encapsulation qui peuvent être utilisés dans la production de stupéfiants s'ils ne sont pas enregistrés.

Grave crise

La crise des opioïdes frappe durement la Colombie-Britannique, qui a compté 622 décès par overdose entre janvier et octobre, dont 60 % attribuables à l'utilisation du fentanyl.

Compte tenu de l'urgence d'agir, la ministre Philpott espère que la législation sera adoptée rapidement, car « *des gens meurent chaque jour* » de cette situation, a-t-elle insisté.

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« J'espère que ce projet de loi va passer assez vite à la Chambre des communes et dans le processus législatif. Mais [entretemps], moi, dans mon ministère, je vais donner plus de ressources pour aider les communautés qui veulent ces sites », a-t-elle souligné.

Pour juguler la crise, le gouvernement propose un plan d'action, qui comprend notamment de mettre à la disposition des citoyens plus d'informations sur les risques liés aux opioïdes.

Ottawa veut aussi améliorer les pratiques d'ordonnance et l'accès aux traitements, ainsi que réinvestir en santé mentale.

Le Nouveau Parti démocratique (NPD) juge toutefois ces actions « *timides* » et propose la déclaration d'une urgence nationale de santé publique sur la question.

Feds ease rules on supervised drug injection sites

Kristy Kirkup, The Canadian Press, December 12 2016

The federal government is adopting a public-health approach to its drug control strategy, Health Minister Jane Philpott said Monday as she unveiled proposed new measures that would open the door to more supervised injection sites in Canada.

Newly tabled legislation would, if passed, eliminate 26 strict requirements for new "consumption" sites put in place by the previous Conservative government, all within parameters set out by the Supreme Court, Philpott said.

"We need to take swift action on the opioid crisis to save lives," she told a news conference in the foyer of the House of Commons, describing the current fentanyl crisis as national in scope.

"We must confront the fact there will be no quick reversal of the current situation."

Currently, applicants for new injection sites must provide medical and scientific evidence of benefit, along with stakeholder letters from provincial health ministers, local police and regional health officials -- stringent criteria that advocates say made it all but impossible to establish new sites.

A number of applications for sites are currently under review, and the government intends to provide updates to make it clear in those cases what needs to be done to win approval, Philpott said.

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"The circumstances of every community will be different," she said. "That's why it's important that communities work together in their locations to be able to address their unique circumstances."

In places like downtown Vancouver, which is on the front line of the fentanyl problem, people are dying every day, she added.

"The evidence is very clear that when they are well established and well maintained in communities that want and need the, supervised consumption sites save lives and do not have a negative impact on crime rates in the community," she said.

"We will encourage everyone to have that public health approach, to recognize this is a health crisis and we need to provide the appropriate resources."

There are currently two drug injection sites in Canada -- both in Vancouver.

The new legislation would, if passed, lift a restriction that prevents border guards from inspecting packages that are under 30 grams in weight -- even if they have reason to believe the packages contain illegal drugs.

It would also place new restrictions on the import of pill presses and encapsulators, two machines commonly used in the production of illicit drugs.

NDP justice critic Murray Rankin, who represents the riding of Victoria, said he's pleased to see the new changes -- but disappointed it has taken more than a year since the Liberals took power for them to come to the fore.

"Listen, I had -- in one week -- five people in the city of Victoria die," Rankin said.

"This government taking these steps now is appreciated ... but it is hardly adequate and in the time it is going to take to debate these changes ... dozens of people are going to die."

In British Columbia alone, officials say there have been 622 drug overdose deaths between January and October, about 60 per cent of them involve fentanyl.

"It's very clear that British Columbia is facing extraordinary circumstances," Philpott said.

Health officials and political leaders have sounded the alarm about a dramatic spike in opioid deaths across Canada. The issue was the focus of a national summit held in Ottawa last month that brought together experts from across the country.

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Last month, the federal government also announced plans to more closely regulate six chemicals that are principal ingredients in the making of fentanyl. The RCMP are also working with China to stanch the flow of fentanyl from across the Pacific Ocean.

RCMP Commissioner Bob Paulson and Chen Zhimin, the vice-minister of China's public security ministry, agreed to boost efforts to disrupt the flow of the drug and other opioids.

Fentanyl and other opioids pose a grave threat to community safety in Canada, Paulson said at the time.

Justice tracking more than 100 constitutional challenges to mandatory penalties

Jim Bronskill, The Canadian Press, December 13 2016

Justice reforms brought in by the previous Conservative government in the name of getting tough on criminals "compounded pressures" on the system — a litigation-fuelled backlash that will figure in a comprehensive Liberal review of penalties and sentencing, say internal federal notes.

As part of the review, Justice Department officials were tracking more than 100 constitutional challenges to mandatory minimum penalties alone, the notes say.

Prime Minister Justin Trudeau has asked Justice Minister Jody Wilson-Raybould to review changes to the criminal justice system over the last decade with the aim of ensuring the safety of communities, obtaining value for public money and filling any gaps.

The last general overhaul of criminal sentencing provisions took place 20 years ago. Many recent reforms focused on particular issues and were implemented through a piecemeal — rather than a comprehensive, long-term strategic — approach, says an internal memo to Wilson-Raybould.

Changes under the Conservatives, who took office in 2006, had two main objectives: "holding offenders accountable" to address the public's perceived leniency of sentencing outcomes in some cases, and "truth in sentencing" — meant to bring greater transparency to the sentencing process, says the March memo.

"The reforms have compounded pressures on the criminal justice system and have led to an increase in challenges pursuant to the Canadian Charter of Rights and Freedoms."



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It has resulted in court cases testing the constitutionality of mandatory minimum penalties, credit for time in pre-sentence custody, victim surcharge provisions and reduced judicial discretion to impose appropriate sentences — including for indigenous offenders, the mentally ill and other vulnerable people, the memo adds.

The Canadian Press obtained the memo to Wilson-Raybould and other records on the federal review of litigation through the Access to Information Act.

The memo notes there were 64 mandatory minimum penalties in the Criminal Code and nine mandatory minimums in the Controlled Drugs and Substances Act. Since 2005, 51 code offences were amended to either increase existing mandatory penalties or introduce a new one.

As of Nov. 30, 2015, the Justice Department was tracking 102 charter challenges to mandatory minimums in trial and appeal courts, the memo says.

Wilson-Raybould told the House of Commons on Monday she was "committed to modernizing and improving the efficiencies and effectiveness of the criminal justice system."

A report prepared for her department by B.C. law professor Yvon Dandurand says "a politically viable strategy" is to craft exemptions to mandatory minimums that apply when certain criteria are met, as seen in several other countries. Such relief could be granted in the case of a juvenile offender, an early guilty plea or when an accused provides substantial help to the state.

Another option would be a general "judicial discretion clause" that would allow the courts to overlook a mandatory sentence that would be "contrary to the interests of justice," says a study for the Justice Department by Julian Roberts, a criminologist at the University of Oxford in England.

Conservative justice critic Rob Nicholson has already warned that his party would challenge any attempt by the Liberals to water down mandatory sentence provisions.

The March memo to Wilson-Raybould suggests other priorities for review include the federal bail regime, which was last reformed 44 years ago, as well as the laws on impaired driving, a serious crime that takes up considerable court time.

Alberta judge rejects trial delay argument in Calgary swarming death case

Carrie Tait and Sean Fine, Globe and Mail, December 15 2016

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A Calgary judge has sent a message to defence lawyers that throwing out murder charges and other serious accusations over long court delays should be a rare event.

Justice Glen Poelman of the Alberta Court of Queen's Bench upheld murder and manslaughter convictions for three men who had argued that the charges should be thrown out because it took 31 months from the time they were charged in 2013 until they were convicted this past June. The Supreme Court, in a ruling in July, set 30 months as the deadline for trial completion from the time a charge is laid in superior court (after deducting for delay caused by the defence).

This fall, lower-court judges threw out charges of first-degree murder in two cases, one in Alberta and one in Ontario, over excessive delay. But in refusing to do the same in the killing of an 18-year-old in a vicious "swarming" death, Justice Poelman said the Supreme Court ruling allows for broad exceptions for cases already in the system before the 30-month deadline was set.

These exceptions, he said, exist for serious offences, such as murder, for cases of moderate complexity in jurisdictions where courts are lacking in resources, and for those cases in which a prosecutor reasonably relied on the rules as they were.

"The offences tried in this case were very serious," he wrote, adding, "there was no time to adapt ... because the period measured by the ceiling (charge to verdict) had already expired when the decision came out."

The ruling could help reduce the pressure on prosecutors in Alberta and other provinces scrambling to meet the deadlines imposed by the Supreme Court for timely justice.

In June, a jury found Franz Emir Cabrera and Assmar Ryiad Shlah guilty of second-degree murder while Joch Pouk was convicted of manslaughter. The three men killed an 18-year-old, Lukas Strasser-Hird, in November, 2013, outside a Calgary bar.

Lisa Silver, a criminal-law specialist at the University of Calgary law school, said the ruling affirms that cases already in the system may be assessed under somewhat different rules, depending on the circumstances. She also said it recognizes that Alberta "continues to work with limited resources. This is an important message for the federal government who, as yet, still has not appointed the full complement of justices for Alberta."

Justice Poelman pointed to a shortage of judges in Alberta as part of the reason for allowing the convictions to stand. "Alberta is notorious as suffering from inadequate judicial resources for its population," he wrote.

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In October, the Court of Queen's Bench had seven vacancies and 59 full-time judges. The time to book a court for a trial of five days or more was 138 weeks. The federal government has since appointed five judges to that court, while promoting two to the Court of Appeal, for a net gain of three.

Mr. Shlah's lawyer, Balfour Der, took issue with the judge's comments on an exception for serious cases. "We don't get to cut out somebody's rights because it is a murder charge as opposed to a speeding ticket. These rules apply to everybody," he told reporters.

He said he will challenge Thursday's ruling on the basis that there was no preliminary inquiry, and that the time limit should therefore have been the same as in provincial court – 18 months, instead of 30. "We're saying the 18-month ceiling that the Supreme Court of Canada came up with for one-step proceedings should have applied in our case."

But Justice Poelman rejected that argument in his ruling, saying the Supreme Court "sought to avoid unpredictability, confusion and complexity" with its deadlines.

Prosecutor Ken McCaffrey said he was pleased by the ruling. "Now we can get on to the business of deciding the fate of these three men who committed this crime." For second-degree murder, a lifetime sentence is automatic, with parole eligibility to be set at anywhere from 10 to 25 years. For manslaughter, the maximum penalty is life in prison.

The three convicted men appeared before a full courtroom and were detained after the judge's ruling. Sentencing submissions, including victim impact statements, will be presented in court in January. Ten people will file statements, including the deceased's mother and grandmother. Their statements will be delivered via video link from Bolivia.

Federal government's Canada.ca project 'off the rails'

Initiative to merge 1,500 federal websites into one is behind schedule and over budget
Karina Roman, CBC News, December 13 2016

The federal government's bid to merge 1,500 departmental and agency websites into a single site, Canada.ca, is a year behind schedule and almost 10 times over budget. And experts warn it is on track to be another failed government IT project, like the Phoenix pay system.

"It's gone off the rails. It's a disaster," said one government source with knowledge of the project who spoke on condition of anonymity.

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CBC spoke with a number of government workers who are also familiar with the project in different departments and they all expressed similar evaluations.

The Canada.ca initiative was launched in 2013 with the goal of making it easier for people to find and use government information online. A \$1.54-million contract for a new content management system, where all government websites would be moved, was awarded to Adobe in 2015.

- [15,000 cases remain in Phoenix pay system backlog](#)
- [Roll out of new government-wide email system halted again](#)

The original deadline to have all active web content moved to the single portal was this month. But in June, it was pushed back to December 2017, which was the initial deadline for the migration of all archived content.

The contract with Adobe is now above \$9.4 million, according to government figures.

The actual migration of the websites is up to the departments themselves and is to be done within existing budgets and staffing. Since 2015, eight of the largest departments have budgeted or spent more than \$28 million on this project.

Those departments include: Employment and Social Development; Immigration, Refugees and Citizenship; Health; Environment; Canada Revenue Agency; National Defence; Fisheries and Oceans; and Global Affairs.

'We're talking about it ultimately costing hundreds of millions of dollars. It's not a small price ticket.'
Mike Gifford, CEO, Open Concept

According to the government, only 10,000 web pages have been moved to date. There are more than 17 million Government of Canada web pages in total.

"If it's cost them already 10 times their existing budget to migrate only 0.05 per cent of the content for the Government of Canada, we're talking about it ultimately costing hundreds of millions of dollars. It's not a small price ticket," said Mike Gifford, CEO of Ottawa-based web development company Open Concept, who [has written articles criticizing](#) the government's approach to Canada.ca.

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New deadline 'impossible'

Based on the current timeline, Gifford said he thinks the December 2017 deadline is unrealistic. He's not alone.

"Absolutely impossible to achieve," said Timothy Lethbridge, who teaches software engineering and computer science at the University of Ottawa. "And I'm sure many people inside the project know it."

There's also a good chance of the project failing altogether, Lethbridge said, because large IT projects are exponentially more complex. "As a project of this size gets bigger, the probability of failure goes up."

If the government spread the work out over a number of years and spent a billion dollars, it might be able to make the migration a success, Lethbridge said. But he questioned whether taxpayers would be getting value for money at that point.

This is not the first large government IT project to run into problems.

The government will spend at least \$50 million this year to try to fix problems with [the new Phoenix pay system](#), which has seen thousands of public servants underpaid, overpaid or not paid at all.

The initiative to [transform the government's email system](#) has been stalled for months because of problems with new software.

And Shared Services Canada, the agency created in 2011 to modernize IT-related services in government, [has been slammed for its many missteps](#), particularly by the auditor general.

"There's a trend," said Robin Galipeau, managing partner of OpenPlus, a content architecture company. "There's definitely something going on there. Large renewal projects in IT are failing in government."

OpenPlus, along with Dell and Microsoft, submitted a bid to create the new CMS for Canada.ca.

Ministers refuse to comment

According to OpenPlus Chief Technology Officer Joel Brockbank, the federal government continues to erroneously believe there are one-size-fits-all software solutions for its IT goals.

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"There never is," he said. "It's like your cross-trainer running shoes. It's not good for anything that you do."

The key to not having large IT projects fail, Brockbank said, is to simply not do them. Instead, such projects should be done in stages or "bite-size chunks."

None of the ministers whose departments are involved in the Canada.ca migration project were willing to comment when contacted by CBC News.

Treasury Board President Scott Brison, Social Development Minister Yves Duclos and Public Services and Procurement Minister Judy Foote all declined requests. As did Michel Laviolette, the director general of Service Canada, and John Messina, the federal government's chief information officer.

"That tells me they have something to hide," said Debi Daviau, president of the Professional Institute of the Public Service of Canada, the union representing many of the government's IT workers.

"If they're unwilling to be transparent about the decisions they make, that calls those decisions into question."

Federal study touts indigenous sentencing regime to address prison numbers

Prime Minister Justin Trudeau has asked Justice Minister Jody Wilson-Raybould to review changes to the criminal justice system over the last decade with an eye to ensuring safety of communities

Jim Bronskill, iPolitics.ca, December 12 2016

A separate system for sentencing aboriginal offenders might be the key to dealing with the disproportionate number of indigenous people behind bars, suggests a federally commissioned study.

A stand-alone code for meting out penalties to indigenous offenders could flow from a newly created national sentencing commission with a mandate to issue legally binding guidelines, says the research study prepared for Justice Canada.

Given the failure of past attempts to address the swelling number of incarcerated indigenous people, "a more radical approach is clearly necessary" – especially in light of the federal Truth

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and Reconciliation Commission's call to eliminate overrepresentation over the next decade, says the study.

The Canadian Press used the Access to Information law to recently obtain a draft version of the August 2015 study, *Sentencing Reform: Lessons from Foreign Jurisdictions and Options for Canada*. It was written by Julian Roberts, a criminology professor at the University of Oxford in England and a member of the Sentencing Council of England and Wales.

Prime Minister Justin Trudeau has asked Justice Minister Jody Wilson-Raybould to review changes to the criminal justice system over the last decade with an eye to ensuring safety of communities, getting value for public money and filling any gaps.

Among the primary goals: reduce the rate of incarceration of indigenous Canadians.

The federal auditor general recently noted that while indigenous people make up about three per cent of Canada's adult population, indigenous offenders accounted for 26 per cent of all people in federal custody in 2015-16.

Roberts cites additional problems with Canadian sentencing, including overreliance on custody relative to other western nations, variation in sentencing outcomes, limited guidance on the role and use of victim impact statements, lack of gender-specific considerations, and increased tension between the legislature and judiciary as a result of recent mandatory sentencing provisions.

In an era in which most countries are moving towards more structured sentencing, Canada is becoming "increasingly anomalous," the study says.

It highlights the option of a national sentencing commission – possibly a version of the system in England – whose guidelines would be applicable across the country, but with flexibility to accommodate differences among provinces and territories. The commission would be a primarily judicial body with representatives including prosecutors, defence counsel, and victims and offenders advocacy groups.

"A guideline system may be the only effective way of addressing Canada's most intractable sentencing problem, namely the disproportionate numbers of aboriginals in provincial and federal correctional institutions," the study says.

Among the specific options:

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- Offer guidance regarding application of guidelines to indigenous defendants;
- Have Parliament legislate criteria that must be fulfilled before an indigenous offender could be imprisoned;
- Craft aboriginal-relevant sentencing principles and avenues tailored to indigenous communities and cultures;
- Create a separate, standalone sentencing code for indigenous offenders.

A spokeswoman for Wilson-Raybould said while the minister is consulting widely on possible reforms, she has no position at the moment on the need for a sentencing commission.

Involving judges in the development and evolution of sentencing guidelines can help ensure success by allaying fears the scheme would compromise the courts' independence, the study stresses. "It is unlikely that substantive sentencing reform could be implemented without the active co-operation of the judiciary."

Some parliamentarians may see a sentencing commission as an erosion of their power to legislate sentencing policy, the study acknowledges. But it says in all countries where a commission exists, the parliament has continued to legislate reforms.

The existence of an independent, primarily judicial and statutory sentencing authority might help to depoliticize the debate about sentencing policy in Canada by insulating the courts and the policy-making process from populist pressure, the study adds.

"Penal populism is a well-documented threat to informed, evidence-based sentencing reform."

Federal government launch review of issues left out of assisted dying law

The Canadian Press, December 13 2016

The federal government has initiated the promised review of its restrictive new law on medically assisted dying to determine if it should be expanded to include Canadians suffering strictly from mental illnesses, mature minors and those with competence eroding conditions who want to make advance requests.

It announced Tuesday that it has engaged the Council of Canadian Academies to conduct independent reviews on each group and report back by December 2018.

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However, Dying with Dignity Canada expressed alarm that the council is to report only a summary of its findings, with no specific policy recommendations. The advocacy group's CEO, Shanaaz Gokool, said that suggests the federal government has no intention of expanding the law.

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- [Ontario legislation updates regulations for medically assisted death](#)
- [Patients demand 'right to try' experimental treatment](#)
- [Struggle of compassion versus doctrine for Catholics who choose assisted death](#)

"Our supporters were looking to Ottawa to encourage a 'can-do' approach to respecting Canadians' right to assisted dying," Gokool said in a statement.

"Unfortunately, today's announcement suggests the government may be content with an assisted dying framework that violates' Canadians' charter rights and the Supreme Court's decision in Carter v. Canada."

The law allows assisted dying only for consenting adults "in an advanced stage of irreversible decline" from a serious and "incurable" disease, illness or disability and for whom natural death is "reasonably foreseeable."

It does not allow for advance requests for an assisted death by those suffering from dementia or other competence-eroding conditions and it does not apply to mature minors or to anyone who is suffering strictly from mental illness.

Those three issues were not specifically addressed in the Supreme Court's landmark ruling in 2015, which struck down the absolute ban on assisted dying. The government promised to initiate reviews of each of the three issues within 180 days of its new law going into effect last June.

The new law's near-death proviso is more restrictive than the top court's directive that medical assistance in dying should be available to clearly consenting, competent adults with "grievous and irremediable" medical conditions that are causing enduring suffering that they find intolerable. The law is already facing a constitutional challenge.

The Council of Canadian Academies, created in 2005 with an endowment from the federal government, bills itself as an independent, not-for-profit organization that performs expert assessments of the science that's relevant to the development of public policy in Canada.

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Canada: Supreme Court Of Canada – The Solicitor-Client Privilege Not Far From Absolute

Natalie David, Clyde and Co, December 12 2016

In a recent ruling, the Supreme Court of Canada has defined the scope of powers of administrative officials in adjudicating privilege issues. In *Alberta (Info. and Priv. Comm.) v. Univ. of Calgary*, the top court emphasized the substantive nature of the solicitor-client privilege, and held that it can be set aside only by a law that is clear, explicit and unequivocal.

In 2008, during a civil action, an employee of the University of Calgary, alleging wrongful dismissal, made a request to access information under section 7 of *Freedom of Information and Protection of Privacy Act*, regarding certain documents and correspondence about her. After the university asserted solicitor-client privilege over some of the records, a delegate of the Commissioner issued a notice to produce documents, under Section 56(3) of the Act, to determine whether privilege was being properly claimed. The university refused to acquiesce claiming solicitor-client privilege. The university ultimately sought judicial review of the Commissioner's order.

The lower court confirmed the order, but Alberta's Court of Appeal later reversed the decision. Reaffirming the standard of review to correctness, it cited the *Blood Tribe* ruling, which established that "solicitor-client privilege cannot be set aside by inference" but only clear legislative language¹.

In its ruling, the Supreme Court of Canada has reaffirmed the central importance of solicitor-client privilege to the legal system and as a whole, writing that solicitor-client privilege is one "that has acquired constitutional dimensions as both a principle of fundamental justice and a part of a client's fundamental right to privacy"². It did acknowledge the importance of access to records for regulators in a modern democratic society, but that requests for such access must be "subject to certain exceptions."

In the case at hand, there was no clear intent in the law to set aside solicitor-client privilege. For starters, under section 27(1) of FOIPP, a public body may refuse to disclose information subject to legal privilege. What's more, section 56(3) says that the Commissioner can ask for records to be produced "and may examine any information" despite "any other enactment or any privilege of the law of evidence." "The Act does not mention solicitor-client privilege specifically.

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The court emphasized this language because in its early days, the solicitor-client rule was one of evidence. It has since evolved to become a substantive rule that must remain as close to absolute as possible without interference, unless absolutely necessary. It is why, the court writes, the expression "privilege[s] of the law of evidence" does not cover the solicitor-client privilege.

The legislature could have used clear, explicit and unequivocal language to ensure the Commissioner's power to compel a public body to produce documents protected by such privilege. But it was not explicit in revoking that privilege.

In the end, the court found that the Commissioner did not have the power to review records over which solicitor-client privilege is claimed. By weighing in on how explicit legislation must be to empower administrative officials to review and adjudicate claims of solicitor-client privilege, the Supreme Court has set a high bar to challenge those claims.

Footnotes

1 Par. 13.

2 Par. 20.

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