

The other side of Phoenix: Public servants who were overpaid are also hurting

Ottawa Citizen

James Bagnall

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Remarkably, we're approaching the second anniversary of the rollout of the federal government's Phoenix Pay system — with no fix in sight.

By now, Canadians outside the capital region are undoubtedly tired of stories about government workers shortchanged on payday. Everyone wants the problem to go away.

Yet there's another group of government employees wrestling with an entirely different set of Phoenix-related difficulties — and from whom we've heard relatively little. These are the allegedly favoured ones who have received too much pay since Phoenix's February 2016 rollout.

Surprisingly, the problem of overpayments runs deeper in the Phoenix system than the one involving underpayments. Auditor-general Michael Ferguson discovered that, as of last June, 59,000 employees owed a collective \$295 million in back pay to the government, compared with 51,000 workers who were owed \$228 million. There's some double counting here because many employees — it's not clear how many — have encountered under and overpayments simultaneously. Because going without pay is much more serious than being paid too much, Public Services and Procurement Canada, the department in charge of Phoenix, has given higher priority to those who have been shortchanged.

But, believe it or not, those who have received too much pay are also experiencing financial pain, especially at the end of the calendar year when tax issues come into play.

Consider the case of Céline Sicard, a 34-year old government employee who switched jobs between federal departments in mid-2016. For several months into her new job, she received pay from her former position as well. Two paycheques. When Sicard notified Phoenix pay administrators in Miramichi, N.B., she didn't hear back.

Finally, with the help of a pay administrator from her own department, she arranged to return the extra compensation. But she did so too late for the 2016 tax year.

The consequence was that her T4 tax document for 2016 showed the government had paid Sicard considerably more salary than she had actually earned.

Sicard declined to provide her pay details but we can get an idea of the impact on her finances through the example offered by Canada Revenue Agency on its website. It shows that an employee earning \$80,000 per year would normally see \$20,000 deducted for taxes and other payroll items. But if the employee received \$10,000 in overpayment, another \$2,500 would be deducted, leaving additional net pay of \$7,500.

Now, here's the problem that is giving some employees so much angst. To make good their situation, they must first return the full \$10,000 to the government and then re-file their taxes with the correct pay information to reclaim the \$2,500 that had been deducted. Not only is this extra paperwork aggravating, the affected employees usually must wait weeks for the refund that will make them whole again financially.

In theory, government workers can avoid this problem by repaying excess salary before their employer issues their T4s (or amended T4s) in the new year. But this depends on smooth communications between the Phoenix pay centre in New Brunswick and individual federal departments and agencies.

With any luck, the upcoming tax season — filing deadline is next May 1 — will draw on lessons from last year. Public Services and Procurement Canada spokesman Pierre-Alain Bujold noted in an email: “Employees who are in an overpayment situation will be notified and will be given options to repay the government through a lump sum or instalments, by cheque or payroll deduction.”

Further, the Public Services department has informed the Public Service Alliance of Canada — the government's largest union — that as long as employees report their overpayments by Jan. 15, (by calling 1-855-686-4729) they will have to repay only the net amount they received, \$7,500 in the above example. This means no waiting for refunds.

Bujold added that Public Services intends to follow up next summer with employees who have received too much pay, but only after Canada Revenue Agency has processed the 2017 tax returns. “Employees should never have to pay back more than they received,” Bujold concluded.

CRA, for its part, says it has trained its agents in the complexities of Phoenix issues, most notably the tax ramifications of overpayments.

But such are the demands on the Phoenix system that not everything goes as planned.

Sicard discovered this to her great surprise last May and June, when the Phoenix system suddenly began deducting from her paycheques to cover the overpayments she had already returned. Only now, she reports, are Phoenix administrators working on her file in depth.

Sicard's experience doesn't appear unusual. An examination by this newspaper of the “issues” dashboard maintained by Shared Services Canada (SSC), and obtained through access-to-information, shows the problem of overpayments crops up in many ways.

One entry from last summer shows an employee being notified she had been overpaid \$2,600. Next, the pay system started to recover the overpayment by stripping away her entire next pay

cheque of \$2,025. Then Phoenix repeated this step, resulting in the government now owing the employee \$1,450.

Another entry includes the case of an employee who had received two pay cheques for the same pay period. An administrator explains in a side note: “One cheque appears to be to make up for one of the two that Phoenix missed, even though I received a sub-cheque from SSC-human resources and a reduced pay, last payday.”

Multiple other entries note that employees received repeat payments for the same period of overtime. And, of course, there were entries dealing with the surprisingly common issue of payments going to former employees.

Sicard has kept a working spreadsheet of her salary and benefits payments since April 2016, when the flaws of the Phoenix system became widespread. In addition to overpayments, she has also been short changed by raises that failed to register. Her finding: a strong majority of her paycheques contained errors.

Sadly, that sounds about right.

The Phoenix fiasco isn't shocking. Government is just not very good at doing things

Government is notoriously bad about looking after the people it is meant to be serving, so there is a delicious irony about public servants for once being the victims

National Post

John Ivison

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If it weren't the Christmas season, many National Post readers might relish the prospect of so many bureaucrats being strangled by their own red tape as a result of the Phoenix pay system fiasco.

Government is notoriously bad about looking after the people it is meant to be serving, so there is a delicious irony about public servants for once being the victims — in this case, of what was supposed to be an efficient, automated national system to pay federal civil servants.

Except ... there's nothing funny about the single mother of two, with Christmas presents to buy, who on payday earlier this month found just \$89 deposited into her account, as the federal government clawed back an emergency salary advance made because for 16 months Phoenix had underpaid her by \$1,000 a month.

Seldom does a conversation with a public servant run for five minutes before it turns to Phoenix, a system so faulty that if it administered the weather Canada would have a snow shortage.

A friend recently regaled me with the story of her latest encounter with the system. She went to settle the bill after a trip to the dentist, only to discover Phoenix had cancelled her coverage. The

people in the dentist's office were unfazed — the cancellation of insurance is a new way Phoenix is screwing people over, but it has already become quite common.

The insurance company advised my friend that for help she had to contact Phoenix, the equivalent of descent into the nine circles of bureaucratic hell.

“When you call, you reach a call centre of people who can't help you — human answering machines. How does that make any sense?” she wailed. “The people you call don't have any access to your file, they can't change anything. All they can do is create a 'ticket' so that apparently one of the magical little elves will someday look at your file and decide to fix it.”

There's no secret why no one can help — as public services minister Carla Qualtrough revealed last month, the unresolved pay problems faced by federal civil servants have reached 520,000, with pay corrections taking more than three months on average (the number has since risen to 589,000 according to the government's own website, suggesting things are getting worse, not better).

My friend is typical in that she has four other complaints pending, including that someone who is not her husband is listed as her beneficiary if she dies, and the issuance of pay stubs that suggest she has paid thousands less in taxes — and has been paid thousands more in net pay — than is the case.

“Can you imagine the problems that will cause at tax time? I will owe the government thousands of dollars in tax on money that I did not earn,” she said.

Something that is causing huge resentment in the ranks is the belief that executives in the public service are getting their problems solved first. When workers with issues call in, my friend said, they are asked whether or not they are an executive.

“What does this mean? It means that senior management don't have a Phoenix problem and don't care about fixing the system,” said my friend. For its part, the government says all employees are provided with the same level of service by the call centre. The nature of the pay issue determines how they are prioritized, said Christine Michaud, Qualtrough's director of communications.

Public servants in 46 government departments that saw their pay systems centralized under Phoenix cast back fondly to the days when they had a pay clerk in their own department who could help sort out any problems within a short space of time.

As auditor general Michael Ferguson made clear last month in a damning report on Phoenix, the decision to centralize the way public servants get paid was made by the previous Conservative government, replacing a 40-year old patchwork of paycheque distributors. Fine in theory. The idea was to save taxpayers \$70 million a month by creating a new service centre in Miramichi,

N.B. that would employ 450 pay advisers to do the work of the 1,200 then employed (the Liberals point out the Conservatives even booked the savings in the public accounts).

But a theory that might have worked in a streamlined corporate culture ran up against a bureaucracy that has a natural tendency to resist cooperation and consolidation.

The Liberal government introduced Phoenix in February 2016 and immediately ran into problems. While Ferguson made clear there is plenty of blame to go round, he said the Liberals were slow to recognize there were serious problems and even slower to come up with sustainable solutions.

The upshot is that the estimated cost of stabilizing Phoenix has already exceeded \$600 million and is set to keep on rising.

For many Canadians, the idea that more than half the paycheques issued by Phoenix are too high or too low is shocking. It shouldn't be. Government is often not very good at doing things.

The idea that government is working entirely for the benefits of its citizens is a fallacy — politicians and bureaucrats are hard at work trying to improve their own lives and careers, often interests that compete directly with the public good.

But in this instance, spare a thought for those junior public servants struggling to pay for their Christmas presents, their rent and their taxes.

Instead, throw your coal at the politicians (of both parties) and senior bureaucrats who oversold the savings, underestimated the risks and who have spent the past two years pointing fingers at one another.

Phoenix leads to persistent end-of-year tax questions

Union asking for exemptions for government workers being forced to return gross pay — money they never got

CBC News

Julie Ireton

December 27, 2017

As Michele Charrier gets ready to welcome in 2018, she's still haunted by 2016 income tax nightmares caused by the Phoenix payroll system.

For Charrier, a program manager with Health Canada in Ottawa, her problems started at almost exactly the same time her department switched to the Phoenix system in the spring of 2016.

"I realized I was being paid twice — being paid for my basic salary and my acting salary, and this went on for eight months," said Charrier. "Now we're almost at the end of the tax year again. It's been almost two years. My problem is still not resolved."

Double trouble

At first blush, eight months of double pay might not seem like a big problem, but trying to put a stop to the extra income — and then trying to calculate how to give back the extra money — has resulted in a prolonged, complicated mess.

At one point, the pay centre asked her to repay the gross amount of \$45,000, even though she'd only received less than half that amount in net pay.

She's been told she'll get the money back after her taxes are filed.

"Who's going to pay the amount between what I netted and what I grossed? That's \$25,000 or so. So I'm asking the question: Who is going to recover this money on my behalf? Is it CRA (Canada Revenue Agency)? Is it the government?" asked Charrier.

She said she did file her taxes for 2016, even though she knew the numbers were wrong.

"I never got a revised T4 and I had to submit my taxes using this fictitious amount or gross amount and I ignored my letter from CRA that I had to pay taxes on it, because I'm not going to put money on something I don't really owe," said Charrier.

200 emails, no resolution

A year has passed since her double payments stopped, but nothing has been reconciled and Charrier said the 200 emails between herself, managers, the union, and the pay centre haven't led to a satisfactory resolution.

Charrier's case is not unique.

Executives at the Public Service Alliance of Canada, the biggest public sector union in Canada, are frustrated with the protracted, tax-related, Phoenix problems facing members.

"What we're asking for is that this government, who administers the tax legislation, provide an exemption, because under the income tax act it does say the gross payments must be paid back," said Chris Aylward, the union's national executive vice president.

"In these extraordinary circumstances, we're very sure that the government can provide for some kind of an exemption around that."

But Aylward said one of the most unfortunate consequences of the Phoenix debacle is the loss of trust when it comes to the government's accounting systems and ability to get it right.

"It's completely idiotic. I think It's completely unfair for this government to come out and say, 'Just trust us,' when there is absolutely no trust," said Aylward. "There is no confidence in what may happen, come tax-filing season."

'Keeps me awake at night'

At the end of November, the government reported the total number of outstanding financial and non-financial Phoenix claims had reached 551,000 — affecting approximately 156,000 government workers, more than half the public service workforce.

The federal government has set up a web page and infographics to answer Phoenix tax questions.

Susan and Dale Skaarup, both public servants in Ottawa, are still trying to figure out what seem to be never-ending Phoenix tax questions due to Susan's overpayments.

"It's very stressf

ul. It keeps me awake at night if I happen to start thinking about it. I can't pay back \$28,000. I never got it," said Susan, an employee at the department of National Defence.

Dale, who actually works for the Canada Revenue Agency, said they can't get clear answers about their taxes.

"There are a number of things with our income tax that we've been trying religiously to make sure are up to date and accurate," he said. "This is going to put it all sideways for the next year at least into the future until it's been resolved."

Phoenix prevents some public servants from retiring

On-going Phoenix problems include wrong pension deductions and benefits

CBC News

Julie Ireton

December 28, 2017

More than a year-and-a-half into the Phoenix fiasco, Dale and Susan Skaarup are worried that Susan's ongoing problems with her federal government paycheque could hijack their long-awaited retirement.

"Until this gets sorted out, I can't in good faith retire," said Susan Skaarup.

She's not alone. Several federal workers reached out to CBC with concerns over irregular pension calculations due to the failed pay system. And more than 156,000 public servants have received incorrect pay since the Phoenix system launched in February 2016, with many now discovering problems with their pension calculations.

"We're not sure, could you even retire and get paid? These are the kinds of things that are in our mind and have been for a year and a half," said Dale Skaarup who works for the Canada Revenue Agency, and is so far unscathed by Phoenix.

Low priority

The couple said the pay problems are stressful and seemingly unending as their calls to the public service pay centre, to managers, the union and even their MP have not led to any resolution.

In fact, Susan said she's been told her case is a low priority compared to many other files.

"Once you get into financial matters, it's very difficult to get them sorted out with pensions and taxes, and all the other source deductions like employment insurance or disability insurance, these are all things taken off your pay cheque at government," said Skaarup.

As a program manager with Health Canada, Michele Charrier also has retirement within her sights, but she can't confirm a date right now.

"I can't retire until this is settled, because, God forbid, I retire and then two years later and they go, Mrs. Charrier, you owe us X," said Charrier who was paid two salaries for eight months starting in the spring of 2016. "I'd rather take care of it now."

Charrier said she and others have been told to trust that the system will correct itself, but she fears that the calculations the pay centre is working with are all wrong and that no one is prepared to sit down with her to straighten out the problem.

"I don't trust that number right now, because I don't think they have it right. So that will affect my pension amount for sure," she said. "Until this issue is resolved completely, when I've paid back the money, we're all happy, we're all getting along, then I can go off into the sunset and retire."

'Knocking on my coffin lid'

Others affected by Phoenix have opted to retire, regardless of the erroneous calculations.

Deeanna Patterson, who took early retirement last July after 30 years as a seasonal worker with Parks Canada, is still owed money, but considering the Phoenix problems, she's not sure when or if she'll see the money.

"I have a vision of me being long since in my grave and some official digging me up one day, knocking on my coffin lid and asking me if I can fill out some new government form asking me if I still wish to be paid," said Patterson in a newsletter for the Public Service Alliance of Canada.

The union is well aware of the pension concerns and it's encouraging members to reach out to the federal pension centre in Shediac, New Brunswick, if they want to figure out their own personal pension file.

"Nobody should simply say, 'I'm going to retire next Monday,' unless they know for sure that the amount they're going to get is correct," said Chris Aylward, national executive vice president of the Public Service Alliance of Canada. "It could take months for that reconciliation to take place in Phoenix and they won't see a pension cheque until that's done."

'Retire when they choose'

By contrast, the federal government is telling public servants to "retire when they choose".

"Even when employees have outstanding pay issues, they can retire," said the office of the minister of Public Services and Procurement Canada in a statement to CBC. "Pension advisors ensure that data transferred from the pay system is complete and accurate and that it adheres to pension legislation."

The federal government also said it's set up a pay and pension working group.

But after months of inaction on her pay file, Susan Skaarup and her husband are skeptical.

"It is becoming more apparent that there is no way someone could retire until these pay issues are resolved," said Susan. "It is nearly impossible to have anyone look at the problems now. How difficult would it be once you are no longer operating from within the organization?"

ANALYSIS - How the federal government is slowly becoming as diverse as Canada

Hundreds of appointments show some progress on Trudeau's 2015 election promise

CBC News

Aaron Wherry

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Campaigning in 2015, Justin Trudeau's Liberals promised to "build a government as diverse as Canada."

That job might've seemed nearly done on Day One. Of the 31 ministers sworn in on Nov. 4, 2015, 15 were, famously, women. Five ministers were visible minorities and two others were Indigenous.

A cabinet ratio of 48.3 per cent women, 16.1 per cent visible minorities and 6.5 per cent Indigenous comes close to matching a Canadian population that was 50.9 per cent women, 22.3 per cent visible minorities and 4.9 per cent Indigenous.

But a prime minister and his government are responsible for far more than a few dozen cabinet positions. The cabinet oversees more than 1,500 appointments, including chairs and members of boards, tribunals and Crown corporations, deputy ministers, heads of foreign missions, judges and senators.

On that much larger scale, progress has been made, but the ideal of a government that looks like Canada is still a ways off.

A new appointment process

When the government was sworn in, just 34 per cent of federal appointees were women, 4.5 per cent were visible minorities and 3.9 per cent were Indigenous.

Two years later, according to data from the Privy Council Office, 42.8 per cent of appointees are women, 5.6 per cent are visible minorities and 5.8 per cent are Indigenous.

In February 2016, the Liberal government announced a new appointment process for boards, agencies, tribunals, officers of Parliament and Crown corporations. It specified diversity as a goal and opened applications to the public.

According to the Privy Council Office, 429 appointments were made via that process through Dec. 5, 2017. Of those, 56.6 per cent were women, 11.2 per cent were visible minorities and 9.6 per cent were Indigenous.

A total of 579 appointments — including deputy ministers, heads of mission and appointments for which requirements are specified in law — were made through existing processes. Of those, 43.7 per cent were women, 3.8 per cent were visible minorities and 5.2 per cent were Indigenous.

"Mr. Trudeau has been more intentional on these issues than his predecessors and has made great progress in opening up the process. He has also clearly made great strides on gender," says Wendy Cukier, director of Ryerson University's Diversity Institute.

But, says Cukier, the government's efforts toward transparency and equal opportunity need to be accompanied by "proactive outreach and recruitment as well as retention strategies" in order to "address some of the barriers historically disadvantaged groups have faced."

Eleanore Catenaro, press secretary for the prime minister, says, "Our aim is to identify high-quality candidates who will help to achieve gender parity and truly reflect Canada's diversity."

She says, "We know there is more work to do to achieve these goals, and we continue to do outreach to potential qualified and diverse candidates to encourage them to apply."

Rigorous reporting of demographic data across federal appointments could presumably drive change — or at least give the government something to answer for — but most of these numbers have not been made public.

"It is crucial that the government tracks, measures and reports on diversity in all areas," says Sen. Ratna Omidvar, the founding director of Ryerson's Global Diversity Exchange. "By doing so, we are able to see where we are making progress and where we need to improve."

Beneath those top-line numbers, there are a few other points of reference.

According to Global Affairs Canada, the government made 87 heads-of-mission appointments — ambassadors, consul generals and official representatives — in 2016 and 2017. Forty-eight per cent were women and 13.8 per cent were visible minorities. There were no Indigenous appointees.

Senate and court appointments

Andrew Griffith, a former official at the department of citizenship and immigration who has been tracking diversity in federal appointments, has counted 18 women, six visible minorities and three Indigenous Canadians among Trudeau's 31 Senate appointments.

As a result of an initiative to track judicial appointees, the Office of the Commissioner for Federal Judicial Affairs has published a tally of court appointments from Oct. 21, 2016 through Oct. 27, 2017. Between those dates, 74 judicial appointments were made, of whom 50 per cent were women, 12.1 per cent were visible minorities and four per cent were Indigenous.

But that data also suggested the pool of candidates was limited: of the 997 applications received, just 97 applicants identified as a visible minority and 36 were Indigenous.

At some point, it might be charged that diversity is being inappropriately prioritized ahead of merit or competency — as Kevin O'Leary once alleged of Trudeau's cabinet. But such suggestions assume that achieving diversity must come at the expense of merit.

Ideally, diversity would also amount to more than a numerical value.

3 benefits of diversity

Griffith, for instance, suggests three potential benefits of diversity in appointments: that it allows Canadians to see themselves represented in government institutions, that it brings a range of experience and perspectives to government policies and operations and that it reduces the risk of inappropriate policies (for example, an RCMP interview guide that asked asylum-seekers about their religious practices).

"It has been proven over and over that more diversity in the workplace leads to better outcomes," says Omidvar, who is also pushing to tighten the standards included in a proposed government bill that would require corporate boards to report on diversity.

But the most profound impact could conceivably relate to Griffith's first potential benefit. A nation that values diversity and pluralism might want its institutions to reflect those principles — and institutions that reflect those principles might advance the building of a multicultural society.

"It normalizes diversity," Omidvar said of public appointments. "At this point, diversity is still sort of not the norm, which is why we focus on it."

Manitoba health authority wants to appeal case to Supreme Court of Canada

National Post

The Canadian Press

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WINNIPEG — A Manitoba human rights case involving a former health worker who was fired for drinking alcohol could be heading to the Supreme Court of Canada.

The Northern Regional Health Authority is seeking leave to appeal a Manitoba Court of Appeal ruling on the Linda Horrock's case.

Horrocks was fired from her job at a personal care home in Flin Flon in 2011 over ongoing problems with alcohol.

In 2015, a Manitoba human rights panel found that she had been discriminated against by the health authority, which then won an appeal in Court of Queen's Bench.

In October, the appeal court ruled in favour of the human rights commission, focusing on the question of whether a human rights tribunal can adjudicate a complaint of discrimination in a workplace governed by a collective agreement.

Isha Khan, executive director of the Manitoba Human Rights Commission, says she hopes the Supreme Court will hear the case.

She said there has been growing confusion around Manitoba's Human Rights Code and the jurisdiction of the human rights commission, tribunal and labour arbitrators appointed under the Labour Relations Act.

"The Manitoba Human Rights Commission is hopeful that the Supreme Court of Canada will grant leave to appeal in this case," she wrote in an email Thursday.

"The commission will be filing a response to the leave application in the next few weeks agreeing that clarification on the jurisdictional questions is needed to reassure Canadians of the fundamental importance of human rights law and how it protects all workers, unionized or not, from discrimination in the workplace."

Khan said the commission believes the human rights system in Manitoba is designed to work alongside the labour arbitration system.

She said all workers in Manitoba have the right to choose to pursue their complaints discrimination under the Human Rights Code through their union or directly through the commission.

Northern Regional Health Authority officials were not available for comment.

In the 2015 ruling in favour of Horrocks an independent adjudicator said her alcohol addiction qualified as a disability that her employer failed to accommodate.

The ruling awarded Horrocks three years back pay and an additional \$10,000 for injury to her dignity.

Ex-federal cabinet minister Julian Fantino takes aim at judge, cops, lawyers

National Post

Colin Perkel

The Canadian Press

December 29, 2017

Former Conservative cabinet minister and provincial police commissioner Julian Fantino has accused a Canadian judge, lawyers and several police forces of acting improperly and even illegally in the conviction and jailing of a man for contempt of court.

In an extensive affidavit in which he raises the allegations, Fantino describes himself as a member of the Queen's Privy Council and an expert who, in speaking for regular Canadians, can shed light on what he essentially posits as a possible judicial conspiracy involving secret backroom dealings.

Fantino filed the affidavit in an unsuccessful effort to intervene in a recent Federal Court review of whether the Canadian Judicial Council properly dismissed a complaint by Donald Best, a former Toronto police officer and businessman, against Ontario Superior Court Justice Bryan Shaughnessy.

"A more thorough investigation by the (judicial council), now that all the facts are known, may show that the judge was wilfully blind," Fantino asserts. "It may very well be that the record belies the mischief that was being achieved simply because the judge had total control over the process."

In 2013, Shaughnessy found Best in civil contempt. The finding was the culmination of a convoluted battle started in 2007, when Best's corporation unsuccessfully sued 62 defendants and he failed to pay their court-ordered legal costs.

Shaughnessy's rulings were upheld by Ontario's top court and left undisturbed by the Supreme Court of Canada.

Best turned to the Canadian Judicial Council in January 2016 to complain about the judge. Shaughnessy, he asserted, had engaged in "egregious" misconduct by, among other things, "secretly" changing a critical document.

The council's executive director rejected the complaint out of hand, prompting Best to ask Federal Court to review that decision. He named the government and judge as respondents.

Fantino, who could not be immediately reached for comment, explains in his 33-page affidavit filed along with 100 exhibits why he wanted to get involved. The "abuses," he said, could undermine public confidence in the administration of justice.

"I notice that, in this matter, no one represents the people of Canada," Fantino states. "No one speaks for me and other Canadians who believe in and rely upon fairness, courtesy and honourable treatment within the justice system."

In his submission, Fantino maintains that Shaughnessy convicted Best "upon the presentation by lawyers of provably false evidence." He also argues that "disturbing" evidence suggests police resources and personnel were "improperly retained, used and co-opted" to help one side in the private civil dispute.

"The court also convicted Mr. Best based upon affidavit evidence that was the product of illegal actions by a serving officer of the Ontario Provincial Police at the time that I was OPP commissioner," Fantino states. "Had I known about it at the time, I would have immediately ordered an investigation to gather all evidence...with a view to possible provincial and/or criminal charges."

In October, a Federal Court official dismissed Fantino's motion to intervene in the review of how the judicial council handled Best's judge complaint. Fantino, a former minister for veteran's affairs, chief of police, and now an executive with a medical marijuana company, had raised issues that were out of bounds, the official decided.

Fantino appealed his exclusion but the court nevertheless went ahead in the fall with its long-scheduled review of the judicial council's actions.

For his part, Shaughnessy urged the court to defer to the council, arguing in part that Best's complaint was manifestly "without substance" or "an abuse of process." He also argued Best had tried to "impute bad faith into a decision he disagrees with, so as to define it as sanctionable conduct."

This month, Federal Court Judge Keith Boswell agreed with Ottawa and Shaughnessy that the judicial council's decision was reasonable. Boswell dismissed Best's application and ordered him to pay the federal government and the judge \$30,000 in legal costs.

Best did not want to discuss Fantino's involvement when reached on Friday. In a recent statement on his website, he did say Boswell's decision contained "gross errors." He filed notice of appeal this week.

In an unusual decision in June 2016, the Ontario Court of Appeal ordered Best's prominent Toronto lawyer Paul Slansky to pay \$84,000 in legal costs for his client's failed legal fights.

The court found Slansky had wasted time and money unnecessarily by "acting on unreasonable instructions from, or providing unreasonable advice to, his client." The court also ordered Slansky to pay another \$30,000 in costs.

Il y a 25 ans, Charlottetown, l'échec qui ébranla le gouvernement Bourassa

L'Actualité

Patrice Bergeron

La Presse canadienne

30 décembre 2017

QUÉBEC — Au lendemain de sa défaite référendaire de 1992, le gouvernement Bourassa était complètement désarmé: le Parti libéral se retrouvait sans position constitutionnelle et incapable d'en esquisser une.

C'est ce que révèle le mémoire des délibérations du conseil des ministres de l'époque, consulté par La Presse canadienne.

En vertu de la loi, les discussions des cabinets, colligées dans des procès-verbaux, ne peuvent être rendues publiques qu'après 25 ans.

Ce compte-rendu lève le voile sur des heures fatidiques pour le gouvernement libéral en fin de règne, après sept ans au pouvoir, qui encaisse durement l'échec.

Bref, c'est un point tournant, un traumatisme, qui peut expliquer encore aujourd'hui la frilosité des libéraux à vouloir entamer des pourparlers constitutionnels en bonne et due forme.

Le 28 octobre 1992, soit deux jours après la défaite du Oui au référendum pancanadien sur l'Accord de Charlottetown, le premier ministre libéral Robert Bourassa réunit son cabinet.

Il avait fait campagne avec vigueur en faveur de cet accord visant à réintégrer le Québec dans la Constitution canadienne, au côté de son homologue fédéral et partenaire, Brian Mulroney. Ils

voulaient ainsi réparer l'affront du rapatriement de la Constitution de 1982 mené par le premier ministre Pierre Elliott Trudeau, sans l'aval du Québec.

Or l'Accord de Charlottetown avait été rejeté au Québec et dans la majorité des provinces et territoires, les électeurs avaient voté à 56,7 pour cent non, contre 43,3 pour cent qui étaient favorables.

Le camp du Non rassemblait sous son parapluie des alliés improbables, allant des souverainistes mécontents qui jugeaient l'entente en dessous de tout, jusqu'aux fédéralistes orthodoxes encouragés par Pierre Trudeau, lui qui estimait qu'on concédait trop au Québec.

Deux ans après l'échec de l'Accord du lac Meech de 1990, une autre tentative qui avait avorté, le gouvernement Bourassa essayait donc une autre gifle, dont il ne se remettra pas _ les libéraux seront chassés du pouvoir en 1994 par les péquistes de Jacques Parizeau.

Le conseil des ministres se retrouve devant un vide. Que faire?

Ce référendum était «une mission impossible qu'il fallait tout de même réaliser», a concédé Robert Bourassa devant ses collègues, peut-on lire.

Cependant, il demeure «convaincu que l'entente constitutionnelle était acceptable», tout en reconnaissant qu'elle était «difficile à faire accepter par la population».

Pour autant, il assure qu'un référendum sur la souveraineté, comme le demandait plutôt l'opposition péquiste, «aurait affaibli le Québec et aurait rendu la prochaine élection provinciale plus difficile», parce que les «résultats en faveur de la souveraineté n'auraient pas été plus élevés», selon lui.

«Cette solution (la souveraineté) mènerait le Québec dans un cul-de-sac», poursuit le premier ministre plus loin.

À remarquer: le silence du ministre des Affaires intergouvernementales, Gil Rémillard, un des artisans de Charlottetown. Il avait pourtant dit, lors d'une séance précédente du conseil des ministres, que les textes juridiques de l'entente allaient permettre de «battre en brèche» une des stratégies du camp du Non, celle de distribuer un texte annoté de l'entente.

Plusieurs ministres estiment que la campagne a été difficile, les «ennemis nombreux», dira M. Bourassa.

Une campagne référendaire «excessivement dure», commentera la ministre déléguée aux Finances, Louise Robic, tandis que sa collègue aux Affaires culturelles, Liza Frulla, ajoutera «sale», avec des «éléments de chantage».

La titulaire du portefeuille de l'Éducation, Lucienne Robillard, se demande, elle, quelle est la «prospective à moyen terme», puisque le gouvernement devra adopter une nouvelle position constitutionnelle, tandis qu'une élection générale fédérale et une autre provinciale sont en vue.

Son patron, attentiste, préfère patienter après l'issue de ces rendez-vous électoraux.

Le ministre de la Santé et responsable de la réforme électorale, Marc-Yvan Côté _ aujourd'hui accusé de fraude et de corruption _ penche fortement pour une séance du conseil des ministres au cours de laquelle chacun «pourra se vider le coeur», puisque beaucoup de questions se posent au gouvernement et au parti, selon lui.

Il voit déjà venir la prochaine campagne électorale et met en garde son parti contre les conséquences de cet échec. Des «relents de ce que le gouvernement a connu avant la campagne électorale de 1976» se dessinent, a-t-il évoqué.

Lucide, Robert Bourassa constate la force d'un courant de «dissidents» dans son propre parti et dit ne pas connaître «la tangente» qu'ils prendront au prochain scrutin.

Incidentement, le conseil des ministres s'est bel et bien réuni les 19 et 20 novembre suivant, vraisemblablement pour «se vider le coeur».

La rubrique «référendum du 26 octobre» apparaît ainsi au procès-verbal, mais les délibérations sont restées confidentielles, car contrairement au mémoire du 28 octobre où le point de vue de chacun est rapporté en détail, on peut lire seulement cette phrase: «les ministres discutent entre eux des constats et des leçons à tirer des résultats de ce référendum».

Un projet pilote pour régler les problèmes de Phénix

Radio-Canada

La presse canadienne

30 décembre 2017

Une nouvelle Unité des services de paye formée de 22 conseillers en rémunération a été mise sur pied à Service correctionnel Canada (SCC). Ce projet pilote donne de l'espoir à plusieurs fonctionnaires et a déjà permis de régler des dizaines de dossiers.

L'idée de réembaucher des conseillers en rémunération germait depuis longtemps à Service correctionnel Canada, un ministère qui a été durement touché par les problèmes liés au système de paye Phénix. Environ 85 % des fonctionnaires d'établissements carcéraux et de bureaux de libération conditionnelle ont une paye erronée, selon le Syndicat des employés du Solliciteur général (SESG).

Cette unité a donc vu le jour à la suite d'une « vaste campagne de recrutement », a expliqué le vice-président du SESG, Yvon Barrière. Elle est constituée d'anciens employés qui avaient été mis à pied lors du démantèlement de l'ancien système de paye.

« Les conseillers vont s'occuper principalement du backlog, des éléments qui traînent depuis des mois au niveau des manquements de paye des employés de Service correctionnel », a expliqué M.Barrière. « Ce sont des employés qui avaient de l'expérience et qui avaient été mis de côté lors de l'implantation [de Phénix]. »

La nouveauté de ce projet pilote est que les conseillers auront un accès complet à Phénix. Il s'agit d'une grande avancée, selon le syndicat.

« Une conseillère qui va récupérer un cas problématique avec deux ou trois problèmes, au lieu de travailler en silo, va pouvoir s'occuper des problèmes du même fonctionnaire avec tous les accès nécessaires de cette personne-là », a souligné M. Barrière.

Un projet pilote à exporter?

M. Barrière espère maintenant que le projet pilote de Service correctionnel Canada sera adapté aux réalités d'autres ministères.

« Il va falloir que chaque ministère ait son propre bureau de rémunération pour apporter les corrections nécessaires, sinon on n'en viendra jamais à bout », a déclaré le syndicaliste, qui estime que le centre de paye Miramichi est trop centralisé pour être en mesure de traiter efficacement tous les dossiers.

Le vice-président régional de l'Alliance de la fonction publique du Canada pour la région de la capitale nationale, Greg McGillis, se dit également optimiste face aux résultats du projet pilote.

« On croit que ce serait bien de considérer le faire ailleurs, surtout les autres ministères où il y a des aspects de compensations difficiles », a-t-il fait valoir.

M. McGillis croit tout de même qu'il sera nécessaire de continuer à embaucher plus de conseillers en rémunération à Miramichi, pour régler « le grand problème des fonctionnaires qui ne sont pas bien payés, la chose la plus importante pour nous ».

Pas de service direct

Par ailleurs, cette nouvelle unité n'offrira pas de service direct aux employés. SCC leur demande de continuer à faire appel aux « processus existants » pour acheminer leurs demandes et leurs questions, ce que déplore le professeur de gestion et de droit Gilles Levasseur, de l'Université d'Ottawa.

« Quelle est la capacité du fonctionnaire de pouvoir faire appel à un service qui va lui permettre de résoudre son cas individuellement? On a ici un système proactif qui va essayer de faire une démarche administrative pour l'organisation. Mais pour l'employé, qu'est-ce qu'il va retirer de cela, à court terme? » s'interroge M. Levasseur.

Avec les informations de Florence Ngué-No

Stephen Harper left the Supreme Court much as he found it — unfortunately for conservatives

The list of Conservative losses at the Supreme Court is long and famous: Nadon, assisted suicide, prostitution, mandatory minimum sentences for gun crimes, Senate reform

National Post

Chris Selley

December 30, 2017

When Stephen Harper appointed Richard Wagner to the Supreme Court in 2012, the media described him as a “small-C conservative.” He was the son of Claude Wagner, they noted, who was at one time Quebec premier Robert Bourassa’s “tough ... law-and-order attorney general,” and at another time a Tory MP who narrowly lost the party’s 1976 leadership race to Joe Clark. (They also noted he is a man, which temporarily threw the nine-member court’s gender parity out of whack.)

At Wagner’s hearing before MPs, the Toronto Star reported, he “drew a clear line between the work of judges, which he said is to interpret laws, and that of parliamentarians, which is to make laws” — something for conservatives to cheer, perhaps, and perhaps something for liberals to fear. Progressive Canadians place much stock in the courts’ guidance on Charter issues, and in recent years that guidance has been music to their ears — on same-sex marriage, prostitution and many other issues. But Wagner also made clear that, like most Canadian jurists, he sees the Charter of Rights and Freedoms as a living, breathing document, not one frozen in amber.

That wasn’t such good news for conservatives. There hasn’t been much good news for conservatives at the Supreme Court in a long time.

Unlike in the United States, “constitutional originalists” are a rare breed in Canada’s legal community. The “living tree” view of the Charter, as a document to be interpreted and reinterpreted as times change, is dominant. “Harper did not have much of an opportunity to appoint conservatives in the vein of Antonin Scalia to the Supreme Court because they don’t really exist in Canada’s legal community,” said University of Waterloo political scientist Emmett Macfarlane, an expert on the Supreme Court.

In fact, with the exception of Marc Nadon — whom the court ruled ineligible to represent Quebec — Harper barely even rocked the boat. He could hardly pass wind without his opponents shrieking in horror, but there were always plenty of mainstream voices willing to praise his

choices for the high court. In Wagner, Trudeau has appointed a Chief Justice who might serve for 15 years. Many Canadians would surely have been happier with the more obviously progressive Rosalie Abella; but everyone seems perfectly content with Wagner — even those who wouldn't pour a drink on Harper if he were on fire.

In short, after nearly a decade of work, it's not clear Harper made much of a difference at all.

Ted Morton, the University of Calgary political scientist and former Alberta Tory cabinet minister, concedes there isn't a deep pool of conservative judges in Canada from which to pick. Nevertheless he argues Harper "underperformed" on his appointments "from a conservative perspective." He thinks Harper and his justice ministers failed to realize the extent to which the court might stand athwart their governments' parliamentary agendas.

The list of Conservative losses at the Supreme Court is long and famous: Nadon, assisted suicide, prostitution, mandatory minimum sentences for gun crimes, Senate reform, credit upon conviction for time served pre-trial. In some cases Harper appointees have dissented along conservative-friendly lines: Justice Michael Moldaver (by himself) on Nadon, and with Justices Wagner and Marshall Rothstein on mandatory minimums, for example. Moldaver and fellow Harper appointee Suzanne Côté recently took very trenchant issue with the majority's baffling reasoning in the *Ktunaxa* case — a potential landmark case on religious freedom in general, and Indigenous religious freedom specifically.

"It is not the role of this Court to transform all policy choices it deems worthy into constitutional imperatives," Rothstein and Wagner argued in a dissent in *Saskatchewan Federation of Labour v. Saskatchewan*, where the majority ruled in favour of public employees' right to strike.

But on other highly contentious issues — prostitution, assisted suicide, Harper's Senate reform plan, and pre-trial custody — the justices were unanimous. "Some of the cases are quite astonishing if one thought that there was going to be an impact on the court from (Harper's) appointments," remarked University of Saskatchewan law professor Dwight Newman.

A quarter of a century ago, Morton and his University of Calgary poli-sci colleague Rainer Knopff coined "the Court Party" to describe an insidious system that ostensibly developed after the Charter came into force to ensure courts would interpret the law precisely this sort of way. As Morton defined it in a 1992 paper in the *Osgoode Hall Law Journal*, the Court Party consists of "the new citizens' interest groups that have spring up around 'their' sections of the Charter" — women's groups, Indigenous groups, environmentalists groups, and so on — and a taxpayer-funded apparatus to ensure their interests are maximized in the courts regardless of what the Parliament or the voters of the day might think.

"Just as the state is present in the Court Party, so the Court Party can be found within the administrative state," Morton wrote: "public funding of Charter litigation (through the Court

Challenges Program); providing the institutional playing field and personnel in the form of courts and human rights commissions; engaging in a Charter clearance process within government prior to the introduction of new policy; and indirectly through the public funding of universities, providing the home base of constitutional experts and policy intellectuals.”

This situation was an important animating grievance for the Reform movement of which Harper was a significant part. There is no evidence Harper’s antipathy toward the court, which in 1997 he famously called “increasingly arbitrary and important,” or his less-than-unconditional love of the Charter, diminished over his time in office. And yet Morton argues Harper left office, and Wagner takes his, with nothing much having changed. It certainly would have been worse for conservatives, at least symbolically, had Trudeau chosen conspicuously liberal Justice Abella over Wagner. But what that difference might actually mean in real life remains to be seen.

“While the Court would look quite a bit different if Justin Trudeau had been making appointments since 2006, I’m not sure the outcomes necessarily would,” said Macfarlane, citing the cases Harper’s government lost at the hands of its own appointees. “I think appointments of even ‘moderate’ justices in our legal culture result in a Court that’s very comfortable asserting a particular set of values under the Charter.”

It’s true that Harper’s Conservatives cancelled the Court Challenges Program, just as Brian Mulroney’s Progressive Conservatives did before. A Conservative government might thereby slow the pace of Charter litigation, Newman suggests (though you would hardly know it from the court’s decisions during Harper’s prime ministership). But then Justin Trudeau’s Liberals reinstated the Court Challenges Program just as Jean Chrétien’s Liberals did before them.

Some legal observers suggest some of Harper’s appointees to lower courts might eventually come good from a conservative perspective in years to come, especially if they ever filter up to the Supreme Court. But if conservatives desire a more deferential judiciary, it seems they will have to win an argument that their elected officials seem hesitant even to broach these days: that Parliament is indeed the proper place for the big decisions to be made; that justices are not infallible or above reproach; indeed, that they are fallible human beings who sometimes get things totally, bizarrely wrong, to the detriment of us all.

The Court Party is still set up to ensure such ideas remain on the fringe, Morton argues. But if they are to be anything other than an animating grievance for Canadian conservatives, their proponents will have to up their game.

Corrections Canada rehires workers to tackle Phoenix pay issues

Memo says federal department is trying to prevent future problems

CBC News

December 31, 2017

One federal department has rehired 22 workers in an attempt to prevent future payroll issues with the much-maligned Phoenix pay system.

According to a memo obtained by Radio-Canada, Correctional Service Canada (CSC) has created a new "pay services unit" made up of former compensation workers laid off during the dismantling of the old pay system.

The unit will focus on ensuring the pay of CSC workers is "complete and accurate going forward," the memo says.

It will also be correcting "system information that is holding up the processing of a large number of regular pay and corrective actions."

'We welcome that'

The new unit is sorely needed, said Greg McGillis, regional executive vice-president of the Public Service Alliance of Canada union.

That's in part because correctional employee work schedules are more complex than other government workers, which he said has led to greater pay irregularities.

"The specific needs and the complex pay environment requires specialized people. That's what the government's doing and we welcome that," he said.

"But at the same time, they shouldn't take their eye off the main problem which is we need more people at Miramichi."

Miramichi, N.B., is home to the central pay centre dedicated to fixing payroll errors caused by Phoenix.

Workers at Miramichi and other pay centres have told CBC News about using Google, Excel spreadsheets and even pens and paper to deal with Phoenix's litany of glitches.

According to Yvon Barrière, vice-president of the Union of Solicitor General Employees, roughly 85 per cent of all CSC employees have dealt with some form of irregularity.

Barrière told Radio-Canada he hoped the CSC pilot project would be adapted to the needs of other departments.

"It will take every department having its own pay office to make the necessary corrections. Otherwise [the work] will never be finished," he said in a French-language interview.

According to the memo, the new CSC unit will not be providing "direct employee support."

Workers with outstanding pay issues must still go through the existing complaint system, the memo says.

With files from Kimberley Molina and Radio-Canada