Former tax lawyer takes feds to court over pension payout
Judge dismisses claims by self-represented retired lawyer
Canadian Lawyer Magazine
Lisa Cumming
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A retired tax lawyer for the federal government sued his former employer because he alleges the government failed to fulfil its duty of care in regard to giving him complete and accurate information about his pension options.

In McLaughlin v. Canada (Attorney General), John McLaughlin, who represented himself at trial, said that, had it not been for the incorrect information he received, he would have not retired at that time and would have sought different pension payout options. He claimed $2.5 million in compensatory damages and $2 million in punitive damages.

His claims, brought under rule 21.01(1)(a), were dismissed Jan. 22 by justice David Stinson of the Ontario Superior Court of Justice. Rule 21 is a tool used to determine and rule out unsuccessful claims prior to trial. In the decision, Stinson states, "Rather, this motion is tantamount to 'litigating in slices,' a practice that runs counter to the established goals of determining disputes in the most expeditious and least expensive fashion."

However, labour and employment lawyers say this is not the last time the federal government will be in court over this case.

"Provided that the advice provided to him was negligent in some way, I think he has a good cause of action," says Paul Champ, a litigation lawyer from Champ & Associates in Ottawa. "This is just a skirmish in a battle that will go on for a while, obviously."

McLaughlin and the government had three key factual disputes, as described by the judge:

Whether a lump sum payment to settle three grievances, paid to McLaughlin upon termination of his employment, was salary-based and, therefore, pensionable.
Whether a response from a senior employee of the Ontario Regional Office of the Department of Justice — after McLaughlin sent an initial email asking for his pension to be calculated — directing McLaughlin to speak with his compensation adviser, amounted to the government telling McLaughlin that he should rely on the information provided by his compensation adviser when making his decision about which pension option to choose.
Whether McLaughlin had received enough information to make an informed decision when selecting his pension option, upon his resignation on Oct. 23, 2008.
The dispute over the lump-sum amount is what Adrian Ishak, a member of the labour and employment group at Goodmans LLP in Toronto, calls a "live issue."

Some information on what the grievances were about is in the decision, says Ishak. To some extent, they were about McLaughlin not being in the correct job. Ishak says it's unclear what exactly that entails, but

he says what's going to have an impact on the case is to what extent the grievances were about McLaughlin not being in the correct job and if the amount he was paid, as a result of those grievances, is pensionable.

With regards to the disagreement over whether the email from the senior employee relates to the duty of care and fiduciary duty of the government, Toronto labour and employment lawyer Shana French of Sherrard Kuzz LLP says that, because of the size of the federal government, it's a bit different than a private employer telling an employee to contact the accounting department.

"That's a little bit more contained," she says. "But I recognize that an employer does have a duty of care when communicating to an employee about elements of their compensation, whether it's their base compensation or incentive entitlements, benefits or pension that [the employer] is accurate in the representations they make and that if there is some third party who has administrative control over that plan, that the employee is directed" there.

Champ says that, because the government is the pension plan administrator, it is wholly accountable for its actions when directing someone to speak with a compensation adviser.

"In this special circumstance, it's not for all governmental decisions or matters, but here it's about the individual's pension plan and the government is the pension plan administrator," he says. "And in those cases, my view is that clearly if the government is telling you go speak to a compensation adviser, as a plan member, you should absolutely have confidence that that compensation adviser is giving you accurate, fulsome information that you can rely on to make your decisions."

He says that a pension plan administrator should fully disclose any relevant information.

"In my opinion, clearly, if an employee asks a specific question to a pension plan [adviser] to make a certain decision and asks if there are risks, then absolutely a pension plan adviser is to be full and frank and tell them all the information they can and be confident in doing so."

Ishak says he doesn't agree that the email exchange should be taken as the government telling the plaintiff he should rely on the information provided by the compensation adviser to make his decision and, if this goes further, he says that the government would contest this point during trial.

"Essentially, what they're doing is redirecting him to the person who has his information," he says, "not necessarily committing to the fact that the information will be 100-per-cent detailed enough for him to make a decision."

When it comes to informed decisions relating to compensation, French says, there's a standard the employer has to meet when providing employees information related to their compensation or other incentives.

"What's the standard? Well it's going to vary depending on circumstances," she says. "That's why, if there's an underlying entitlement, we always encourage employers to be clear that the entitlement will

be governed according to the terms and the conditions of the plan and put it on the employee to ensure that they're pursuing the appropriate resources by contacting the plan provider or their own tax adviser or their professional financial adviser so the employer isn't held accountable for having made that representation."

Ishak says employers must be absolutely sure that the information they're providing employees is accurate.

"You have to give them enough information to make an informed decision," he says.

Justice Minister Wilson-Raybould concerned about low number of Indigenous people on juries
The Globe and Mail
Joe Friesen
February 4th 2018

Canada's Justice Minister says she is concerned about the under-representation of Indigenous people on Canadian juries.

Justice Minister Jody Wilson-Raybould said that legislated changes to the use of peremptory challenges, which are granted to both Crown and defence to block potential jurors without further explanation and have been cited among the causes of under-representation, would "need to be carefully studied and considered."

"The under-representation of Indigenous jurors is an issue in several provinces and it is a reality I find concerning," Ms. Wilson-Raybould said in a statement.

Ms. Wilson-Raybould said she supports the work being done by the National Judicial Institute, an independent institute focused on educating judges on jury selection.

The issue came into focus last week in the trial of Gerald Stanley, who is accused of killing 22-year-old Cree man Colten Boushie on his Saskatchewan farm in 2016.

Ms. Wilson-Raybould said that she was not commenting on the Boushie case specifically, but was speaking generally.

When the jury in Mr. Stanley's trial was selected, every potential juror who appeared to be Indigenous was challenged by the defence.

This is considered entirely legal and proper in the Canadian system, which has always allowed the use of peremptory challenges in jury selection. In the Boushie case, Crown and defence were given 14 challenges, although the number can rise to 20 depending on the type of offence being prosecuted.

Mr. Boushie's family expressed frustration with the system.

"It was really difficult to sit there today and watch every single visible Indigenous person be challenged by the defence," Jade Tootoosis, Mr. Boushie's cousin, said outside court last week. "It's not surprising, but extremely frustrating."

The issue of Indigenous representation on juries has been raised many times over the years. As long ago as 1991, the Aboriginal Justice Inquiry in Manitoba, led by justices Murray Sinclair and Alvin Hamilton, found that the jury process systematically excluded Indigenous people.

"One of the reasons we have juries is to involve people from the community in the administration of justice," the commissioners wrote.

"If one group is excluded from that jury service, that group is deprived of the opportunity to apply its scrutiny to cases.

"The fact that juries rarely include Aboriginal people means that the testimony of Aboriginal witnesses and accused are not understood by the jury, from the Aboriginal perspective."

The inquiry found that it seemed to be common for some Crown and defence counsel to exclude Indigenous jurors by using peremptory challenges. One of its recommendations was that peremptory challenges be eliminated.

In the United States, the Supreme Court ruled in a case known as Batson v. Kentucky that using peremptory challenges to exclude jurors based on race was unconstitutional. The UK eliminated peremptory challenges in the late 1980s.

The under-representation of Indigenous people on Canadian juries has deep historical roots. The Aboriginal Justice Inquiry noted that from Confederation until 1952 in Manitoba, Indigenous people were not allowed to vote, and therefore did not appear on the voters' lists from which juries were drawn. For two decades after that, the lists of potential jurors who lived on reserves, unlike those in towns and municipalities, were not required to be submitted to the county court judge who assembled the jury rolls. It was not until 1983 in Manitoba, when the province switched to using health registration information (as Saskatchewan now also does), that Indigenous people began to be properly represented in the jury system.

"For a century the legal system made it clear that it did not want or need Aboriginal jurors. It is a message Aboriginal people have not forgotten," Mr. Sinclair and Mr. Hamilton wrote.

This week, Mr. Sinclair, now a member of the Senate and the former chair of the Truth and Reconciliation Commission, addressed his earlier work.

"We should not tolerate discriminatory behaviour that excludes jurors on the basis of race," he wrote on Twitter.

Chris Murphy, lawyer for the Boushie family, said more also needs to be done to ensure that Indigenous people summoned for jury selection can actually take part. The Battleford jury district, for example, stretches all the way to the border with the Northwest Territories. Being asked to travel long distances without compensation (until actually selected for a jury) presents a huge burden.

"The farther you get from the cities, the population is more densely aboriginal and the travel is longer and more expensive," Mr. Murphy said. The system should recognize that and ensure financial barriers are not hindering people from taking part in the justice system, he said.

Comment: Indigenous rights are nothing to fear
Times Columnist
Douglas White
February 4, 2018

In November, in a welcome announcement and demonstration of non-partisan leadership, Jody Wilson-Raybould, minister of justice and attorney general of Canada, announced the government's support for private member's Bill C-262, which had been championed by NDP member of Parliament Romeo Saganash.

Bill C-262 is a short, straightforward piece of legislation that confirms the application of United Nations Declaration on the Rights of Indigenous Peoples — something the government committed to in 2015 — and establishes a mechanism for aligning federal legislation with the standards in UNDRIP. Importantly, Wilson-Raybould was also clear that Bill C-262 was only a starting point and that other legislative change will be needed to affirm the recognition of Indigenous rights.

Bill C-262 directly responds to two of the calls to action of the Truth and Reconciliation Commission:

"43. We call upon federal, provincial, territorial, and municipal governments to fully adopt and implement the United Nations Declaration on the Rights of Indigenous Peoples as the framework for reconciliation.

"44. We call upon the government of Canada to develop a national action plan, strategies and other concrete measures to achieve the goals of the United Nations Declaration on the Rights of Indigenous Peoples."

The announcement by Wilson-Raybould was appropriately met with praise and optimism by Indigenous peoples, human-rights experts, and civil-society leaders and organizations. Indeed, to those of us personally and intimately engaged in the struggle for justice for Indigenous peoples, one can sense that while the work remains fierce and intense, there is momentum building toward potential breakthroughs.

In recent weeks, however, a few voices opposed to Bill C-262 have begun to trickle out. To those well-versed in the struggle for justice for Indigenous peoples, these opposition themes are well-known. The goal — quite clearly — is to instil fear in Canadians.

For example, one argument that is raised is that Bill C-262, and implementing UNDRIP, will upend or distort the jurisprudence that the Supreme Court of Canada has developed over the past three decades in interpreting Section 35 of the Constitution.

This is laughable. Some of the experts raising this point are people who dedicated much of their professional lives to fighting against the development of the application of the Supreme Court's framework — whether as lawyers for government or industry in the courts or as senior government officials. To see them now treating the Supreme Court's jurisprudence as containing a sacredness that must remain untouched has an element of hypocrisy.

More importantly, however, fears about how UNDRIP might relate to Section 35 court decisions ignores the history of why and how the courts got so involved in Indigenous-rights matters in the first place.

Section 35 of the Constitution recognizes and affirms Indigenous rights. However, instead of acting on this recognition after the patriation of our Constitution in 1982, governments maintained the fiction that Indigenous rights do not exist, they need not be recognized and the colonial treatment of Indigenous peoples could carry on as it always had.

That denial resulted in the courts having to be used by generations of Indigenous peoples to painstakingly and incrementally build meaning into Section 35. The cost of this for Indigenous peoples and all Canadians has been disastrous.

While Indigenous peoples have won massive court victories, this pernicious denial has delayed justice, prolonged impoverishment and marginalization, created massive uncertainty for lands and resources, weakened the investment climate, and entrenched even greater conflict and mistrust.

Let's not mince words. This denial has meant that Indigenous children would remain treated as inferior to other children: with less opportunity; less access to education or basic social services; more often taken away from their families and communities; and more exposed to racism and prejudice.

Ever since Section 35 was enacted, governments should have been taking legislative and policy steps with Indigenous peoples to implement the recognition of those rights. This has never happened.

Indeed, only one government has ever made a direct attempt to do this — the B.C. government in 2008-2009 — which proposed along with First Nations leaders a Recognition and Reconciliation Act. That act failed, at least partially because of fear created by experts. Unsurprisingly, some of the voices raising red flags about legislation now are the same ones that spoke out then.

The world has changed a lot in a decade. Canadians are far more aware of our history of colonialism, and the required work of reconciliation. I am hopeful that in 2018, Canadians will not succumb to voices that are intent on looking backward and maintaining what has been. The reality of what has been for Indigenous peoples is nothing to be preserved.

UNDRIP is important because it is a comprehensive framework of recognition and reconciliation — a paradigm we have no domestic tradition of in Canada. Our future must be built on putting in place new foundations — including in legislation and policy. Bill C-262 starts that process and builds that new path, and we all should support it.

Douglas White is a councillor and chief negotiator for the Snuneymuxw First Nation.

Quebec government has left courthouses unsafe, special constables claim in lawsuit
Suit comes to court after 18-year-old shot last week at Maniwaki, Que., courthouse
CBC News
Amanda Pfeffer,
Feb 05, 2018

A Quebec City court will begin hearing stories Monday about the state of security in courthouses across the province.

The hearing is happening less than a week after a special constable at the Maniwaki, Que., courthouse shot an 18-year-old defendant during a confrontation caught on cellphone video.

As of Sunday afternoon, the male teen remained in a partial coma at a hospital in Gatineau, Que.

Special constables — who are charged by law with the responsibility of protecting court buildings and everyone who enters them — launched the lawsuit last summer.

Their union and several constables are suing the province, alleging cuts motivated by budget concerns have made courthouses and those who visit less safe.

They also allege the government has broken a legal commitment to secure and protect the public in those facilities.

'We warned the province'
"We warned the province," said Franck Perales, president of the Syndicat des constables spéciaux du gouvernement du Québec, noting the union had long been concerned an incident, such as the Maniwaki shooting, was just a matter of time.

Perales is named as one of the plaintiffs in the suit, which details stories of judges fleeing courtrooms in the middle of trials and private security guards neither trained nor equipped to step in.

One story in the suit concerns an incident at a youth court at the Palais de Justice in Valleyfield, Que., just west of Montreal.

In spring 2016, the suit claims, a distraught father lunged from the witness box toward the judge, forcing him to flee the courtroom for his own safety.

An unarmed private security guard who'd been charged with protecting the judge, as well as court employees and members of the audience, remained seated during the entire episode, the suit alleges.

In a 2015 incident detailed in the suit, a judge at the Mont-Laurier, Que., courthouse halted a trial after a security guard failed to intervene during an outburst — and refused to resume until a special constable was assigned to the court.

Judges refuse to sit without armed constables

The suit includes a number of similar incidents involving judges who have put their foot down, concerned over the degree of safety offered by a private security guard.

The suit includes analysis showing the province is increasingly relying on private security, as a cost-saving measure — with private security guards sometimes outnumbering the special constables on duty.

Private security guards are armed only with a radio, the suit alleges, compared to special constables who are issued a firearm and a baton. The special constables also have the powers to make arrests, and have gone through training at the provincial police academy in Nicolet, Que.

The suit also describes how special constables are often forced to leave the protection of the entire courthouse to unarmed guards, while they watch over defendants or make arrests.

In one incident from the spring of 2016 in Sainte-Anne-des-Monts, Que., a special constable had to lock up four people while arresting a fifth person at the same time.

Alone to handle five people without the help of a correctional officer, nor the keys to cells, the special constable used his own handcuffs to lock the cell door.

Maniwaki now double staffed

The timing of Monday's hearing is not lost on Perales.

In Maniwaki, the special constable now being investigated by Quebec's police watchdog was working alone, and can be seen on cellphone video asking unarmed security guards to call for police to help.

Perales said that in the wake of the shooting, the provincial government has now staffed the Maniwaki courthouse with two special constables, and has increased staffing elsewhere, too.

A Monday Alexandra Paré, a spokesperson with Quebec's Ministry of Public Security, confirmed that administrators have decided to increase the number of special constables at locations where an officer had been working alone, following discussions with the union.

Supreme Court chief justice says system to deal with judge misconduct is 'outmoded, slow and opaque'

Richard Wagner took advantage of the presence of Justin Trudeau and the federal justice minister to point out shortcomings in the existing process.

Toronto Star
The Canadian Press
February 5, 2018

The new chief justice of the Supreme Court of Canada says the system for dealing with complaints of serious misconduct by judges needs an overhaul.

As Richard Wagner was officially welcomed to his new position today he took advantage of the presence of Prime Minister Justin Trudeau and the federal justice minister to point out shortcomings in the existing process.

Wagner was named chief justice in mid-December to replace the retiring Beverley McLachlin.

He gave a number of insights into what he expects from his tenure in the position at a ceremony marking his appointment.

As an example, he suggests that courts must more carefully weigh the rights of accused persons against a country's desire to fight terrorism.

But the new chief addressed the prime minister and Justice Minister Judy Wilson-Raybould directly in pointing out the failings of the system used by the Canadian Judicial Council in resolving complaints against judges.

"It has become increasingly evident that our procedures for dealing with serious judicial conduct complaints are outmoded, slow and opaque," Wagner said, without citing specific examples.

Wagner added that the court system, in general, needs to be updated to reflect a desire for increased openness.

"While Canadians expect transparency and accountability, we continue to operate under 1970s models of judicial administration," he said.

Wagner noted that his predecessor, McLachlin, had already begun to talk about the need for change as she approached retirement and said he wanted to carry on the conversation about reforms.

"I look forward to pursuing that important work in partnership with the prime minister and the minister of justice in the very near future," said Wagner.

"This will only make our legal system stronger and more responsive to Canadians' needs."

The new Chief Justice on not taking our judicial institutions for granted
CBA National
Yves Faguy
February 5, 2018

On the occasion of his official welcome ceremony, Chief Justice Richard Wagner remarked how, in today's media environment, there are far fewer reporters assigned to cover the Supreme Court of Canada as their primary beat.

That reality, he says, presents challenges to his court in communicating with Canadians, particularly at a time marked by the explosion of social media, and a growing distrust in institutions.

The Chief Justice has been building up to the theme. Last week speaking at the University of Western Ontario's faculty of law, he promised greater transparency at the Supreme Court, as he announced it will publish plain language case summaries on its website and on Facebook, to help Canadians understand its rulings.

Echoing previous statements made by his predecessor, Beverley McLachlin, he has been warning against taking "our democratic assets" for granted in Canada.

Acknowledging that the Supreme Court building is "an architectural gem," he was quick to point out that "it is no ivory tower," and that it belongs to Canadians. "We just work here for them."

Bankrupt railway and former employees settle, fined $1.25M in Lac-Mégantic case
Montreal Maine and Atlantic Railway as well as several of its former employees were charged with violating parts of the railway safety and fisheries acts in connection with the deadly train explosion that killed 47 people in the small town.
Toronto Star
Stephanie Marin
The Canadian Press
February 5, 2018

The bankrupt railway at the centre of the Lac-Mégantic train explosion as well, as several of its former employees, settled with federal prosecutors on Monday and were ordered to pay fines totalling $1.25 million, while one ex-railway worker was given a conditional jail term.

Montreal Maine and Atlantic Railway (MMA), the company that owned the train that derailed in the small town killing 47 people, was found guilty in Quebec Court of violating the Fisheries Act after crude oil leaked into the Mégantic Lake and Chaudiere River.

The company was ordered to pay the maximum fine of $1 million due to "the seriousness of the infraction," said Josee Pratte, lawyer with the Public Prosecution Service of Canada, which brought the charges.

Six ex-MMA employees pleaded guilty to violating the Railway Safety Act, namely for failing to ensure the convoy was properly secured the night before it moved on its own and derailed into the small town.

Five of them — Michael Horan, Jean Demaitre, Kenneth I. Strout, Lynne Labonte et Robert C. Grindrod — were ordered to pay $50,000 each.

Ex-train engineer Thomas Harding, who improperly parked the train on July 5, 2013, before leaving for the night, was given a conditional sentence of six months in prison, which will be served in the community.

Meanwhile, railway controller Richard Labrie was acquitted.

Harding, Demaitre and Labrie were charged separately in Quebec Superior Court with one count each of criminal negligence causing the death of 47 people, but were acquitted in January.

From the million-dollar fine levelled against MMA, $400,000 is payable immediately and will be put into a fund used to decontaminate the Mégantic Lake and Chaudiere River.

Lawyers for the railway had a cheque for $400,000 in their possession on Monday. The money was set aside during bankruptcy proceedings for the U.S. branch of the railway company.

Pratte said it is uncertain how the court will collect the remaining $600,000, adding the financial status of the defunct and bankrupt railroad is “precarious.”

With regards to the fines charged to the five ex-employees, the money will go to the federal government.

Transport Canada, however, has agreed to hand over $250,000 to Avenir Lac-Mégantic Fund, which was set up by the town to help with the economic recovery and reconstruction of the downtown area, something Pratte said has never happened before.

“To my knowledge, it’s a first in Canada,” she said, regarding Transport Canada’s decision to hand over money collected in fines to a local fund.

Transport Minister Marc Garneau said the redirection of the funds to the community-based, locally run organization is being done on an exceptional basis.

“This closes another chapter in this tragic story,” Garneau said in Ottawa on Monday.

Time limits for criminal trials don't respect Inuit culture, judge says
The Globe and Mail
Sean Fine
February 6th 2018

A Nunavut judge has written a passionate objection to the Supreme Court's time limits for criminal trials, saying they do not respect Inuit culture or the geography of northern Canada.

Judges are usually bound by Supreme Court precedents. But Justice Paul Bychok of the Nunavut Court of Justice found a way around a Supreme Court ruling known as Jordan. In 2016, the Jordan ruling set time limits of 30 months for criminal proceedings in superior courts, but said cases could exceed the maximum in "exceptional circumstances." In a decision last week, Justice Bychok declared the entire territory of Nunavut an exceptional circumstance.

The Jordan ruling, he wrote, fails to consider the fact that judges in Nunavut must travel vast distances to hear cases in remote communities, that the territory's financial resources are limited and that delays related to weather or local cultural are often unavoidable.

"How, then, does one fit the square Jordan peg into the round Nunavut hole while doing justice to Nunavummiut [the people of Nunavut]?" he asked in his ruling on a man's request for his sexual offences case to be thrown out because proceedings had lasted more than 30 months.

"I do not believe the majority in Jordan intended trial judges to re-assert past colonialist attitudes and practices which ran roughshod over the Inuit. We live in a post Truth and Reconciliation Canada."

In July, 2016, the Supreme Court said a culture of complacency and delay dogs the criminal courts. It established time limits of 18 months for criminal proceedings (from charge to trial end) and 30 months in superior courts.

Ever since, judges, defence lawyers, prosecutors and the provincial governments that administer the justice system have scrambled to meet the timelines. And in the next few weeks, the federal government intends to introduce legislation to speed up trial proceedings.

Justice Bychok was conducting the fifth trial of Lukasie Anugaa, who faced two charges of historical sexual offences from the late 1970s. Two jury trials had ended in mistrials and two did not proceed. In November, Justice Bychok rejected the request to throw out the charges over delay, and late last week issued his written reasons for having done so.

The proceedings in the Anugaa case lasted 54 months, and the judge blamed delay by the defence for 23 months of that time, leaving a total just beyond the Jordan ceiling. After subtracting time for exceptional circumstances – Nunavut-specific delay of five and a half months – the judge found no unreasonable delay.

Justice Bychok was a federal prosecutor, originally from Montreal, who moved to Iqaluit in 2003 with his young family. In 2015, the Conservative government appointed him a judge.

In Nunavut, 38,000 people live in 25 remote communities scattered over more than two million square kilometres, he wrote in his ruling. Judges do a "circuit" of these communities. Based in Iqaluit, they travel regularly to each community over immense distances. (The court's travel budget was nearly $2.5-million in 2016-17, and flights can take up to seven hours, Justice Bychok pointed out.) Court dates are not easy to reschedule. Some small communities receive just three court visits a year, and one has just two. A blizzard may stop the four full-time judges from completing their circuit, meaning the next court session in some places could be as much as a year away.

The province has an unwritten rule that each litigant is entitled to one adjournment because travelling south for medical care is commonplace, Justice Bychok said.

Deaths and suicide "touch everyone" and court visits "sometimes are cancelled out of respect for the grieving."

And the territory has no money for new infrastructure or to increase the frequency of court visits, the judge wrote.

Adding an even greater edge to a lower-court judge's critique of the Supreme Court, Justice Boychok was sarcastic at times. Twice he referred to the 30 months as the "magic" ceiling or limit. In a footnote, he went even further, reciting the words of the four Supreme Court judges who dissented on Jordan: "wrong in principle and unwise in practice." Then, to drive home his point that the Supreme Court had ventured beyond its proper role, he quoted a well-known critic of judicial overreaching: the late, maverick judge Antonin Scalia of the U.S. Supreme Court. "'The judge as legislator has … not been good for democracy."

Justice Bychok's ruling – that Nunavut is an exceptional circumstance in Jordan calculations – is to be treated as "persuasive but not binding" by judges of his level, said Marian Bryant, the chief federal prosecutor in the territory.

In a phone interview, she declined to comment directly on the ruling, but said, "certainly this is an exceptional jurisdiction. You never get somewhere until you're there. And once you're in, you don't know if you're going back out."

James Morton, a lawyer who practises in both Toronto and Nunavut, said in a telephone interview from Iqaluit that the principle of Nunavut exceptionalism will one day be appealed in another case. "We can't have a justice system in Nunavut that is radically different than the justice system in the rest of the country. We have one constitution, one country, one criminal law."

Justice Bychok declined, through a court spokesman, to comment when contacted by The Globe and Mail.

Canada's worst price-fixing cartels aren't the bread makers. It's politicians

The bureau's success at prosecuting price fixers is not quite what it claims. Then again, when it comes to cartels, nobody beats the state-mandated schemes

Financial Post

Terence Corcoran

February 7th 2018

The Great Canadian Bread Cartel appears to have instantly and prematurely risen, as bread will, to the status of full conviction. On the basis of the Competition Bureau's 50-odd pages of suggestive allegations of retail price fixing, supported by the Weston food empire's admission of guilt and its bizarre and self-serving accusations against other food companies, it is now settled that the nation's major bread makers and five grocery giants connived for 15 years to rip off consumers.

The cartel is evidence of "capitalism run amok," wrote one columnist. We need regulation more than ever. CBC Radio's grey-bearded lefty, Michael Enright, always alert for signs of capitalism's failures, wondered about "other foodstuffs with rigged prices: Bagels? Cheese dip? Potatoes? Apples? What about my favourite, avocados?"

Well, yes on that cheese dip, cheese being part of the government-backed milk and dairy price-fixing cartel. Chickens, too. Also beer, wine and liquor, which are largely locked down by government-backed cartels. Health care? A government monopoly. And now governments are forming drug cartels, in a collusion called pharmacare, to rig prices. When it comes to cartels, nobody beats the state-mandated schemes.

Now governments are forming drug cartels, in a collusion called pharmacare, to rig prices

But the head of the Competition Bureau, John Pecman, suggests Canada is crawling with non-government cartels, too. "The truth about price-fixing often remains hidden in the shadows," he wrote recently in a Globe and Mail op-ed. "These cartels typically involve secret deals between schemers who are careful to cover their tracks. Neatly written agreements between competitors rarely exist. E-mails get deleted, and meetings to collude on price happen in obscure places."

Pecman claims his bureau is vigilantly protecting us from price fixers and other corporate criminals. Since 2011, he said, the bureau collected more than $118 million in fines and racked up 67 months in jail terms against 50 companies and 34 individuals. Wow, take that cartels! Pecman quoted UBC professor James Brander, who said "Canada's approach to price fixing works well."

Or maybe not. As I wrote here last week, Pecman's bread-cartel claims are based on "somewhat limited but also somewhat convincing evidence from emails and a few unnamed participants who say they witnessed the price-fixing system." Somewhat limited and somewhat convincing hardly proves the companies named actually engaged in criminal cartel activity.

The bread allegations seem to parallel the bureau's disastrous chocolate price-fixing case

Clearly something was going on and clearly members of the Weston corporate empire — which agreed to confess and name other names in exchange for immunity — are covering their butts. That Sobeys and the other grocers whose names Weston handed to the Competition Bureau are up in arms over this is understandable.

Meanwhile, Pecman and his Competition Bureau's claims of great success in fighting cartels are grossly overblown. The bread allegations seem to parallel the bureau's disastrous chocolate price-fixing case, which blew up in 2015 when the Public Prosecution Service of Canada (PPSC) decided not to prosecute based on the bureau's evidence, or lack thereof.

The chocolate investigation ran from 2007 to 2013 after one company, Cadbury, was granted immunity for supplying evidence. Other companies named included Nestlé, Hershey, Mars, a distributor, and several executives. Hershey agreed to a fine of $4 million in 2013. But the others, including some executives, wouldn't settle, forcing the bureau to send the case to the federal prosecutor's office, which in 2015 suddenly dropped the proceedings. Despite the bureau's eight years of evidence gathering, it failed to meet the PPSCs key tests: "Is there is a reasonable prospect of conviction based on evidence that is likely to be available at trial?… If not, and charges have been laid, the charges should be withdrawn or a stay of proceedings entered."

While one company receives immunity, others are dragged through the mud

The bread allegations seem to follow the same pattern as the chocolate case. While one company receives immunity, others are dragged through the mud based on somewhat limited evidence that in the end may be assessed by the prosecutors as inadequate.

In another case, in 2015 the bureau lost its 10-year attempt to convict seven companies and a dozen individuals for allegedly rigging bids for federal government contracts for professional IT services. Some pleaded guilty and paid a fine, but a 2015 jury trial of three companies and seven individuals ended with acquittal, in part because there was no intent to rig bids and the government buyers knew full well the companies were co-operating.

Nine of 10 civil servants in Nova Scotia affected by Phoenix Pay debacle
The Chronicle Herald
Andrea Gunn
February 6, 2018

Nearly two years after the ill-fated Phoenix pay system was first launched, nine out of 10 federal public servants in Nova Scotia have experienced issues with their paycheques.

Last week the federal government provided an answer to a November written order paper question from Quebec NDP MP Karine Trudel enquiring about the number of public employees financially impacted by system issues from just after the Liberals took power to when the question was tabled in parliament.

According to the data, 9,104 employees working for the federal government in Nova Scotia out of a total 10,095 were impacted during that time frame — or 90 per cent.

Nationally, 73 per cent — or 193,039 of 262,696 — of the public servants the government said it had employed nationally in 2017 have experienced issues with their pay, ranging from complete lack of payment and significant pay delays to overpayment, as well as overtime issues, tax errors, benefit errors and other glitches.

The data includes the approximately two-thirds of agencies and departments whose employees are serviced by the public service pay centre in Miramichi, N.B., which has seen the bulk of the issues, as well as those who process their pay internally using the Phoenix system.

The Phoenix system was procured from IBM by the previous Conservative government to replace a decades-old system, and employees began reporting issues with their pay soon after the system launched in early 2016.

Christmas bonus? Try Christmas goose egg

One single mother working for Immigration, Refugees and Citizenship Canada in Halifax, told The Chronicle Herald she lost both of her paycheques immediately before Christmas, thanks to a system error.

The woman, who did not want to be named, said she had taken a week of leave without pay more than a year and a half prior but she was erroneously paid for the time. She said she later filed an agreement to pay the sum back over a number of paycheques, but the agreement wasn't honoured in the system and months later, just before the holidays, it was all taken in a lump sum.

This meant having to scale back Christmas with her children, who she said are older and thankfully understood the situation.

"It made me appreciate definitely having close family and friends to rely on," the woman said.

Several months later, she is still having issues with her pay and said she has stopped making an effort to get answers.

"There's nobody to go to. You can open claims but nobody is getting back to you. I pretty much gave up," she said.

PSAC blowback
Colleen Coffey is the Atlantic Canada executive vice-president with PSAC, the union that represents Canada's public sector employees.

As the representative for the region, Coffey said she has heard hundreds of horror stories from employees across the Atlantic province in the past two years, and she said they keep on coming.

“Unfortunately, we are still getting the same things, we’re still getting people who are not paid,” she said.

One of the worst cases Coffey said she’s dealt with was a woman from Nova Scotia who, just before Christmas, lost her car and her home because she hadn’t been paid for months.

“She lost her vehicle because she couldn’t make her payments, when they auctioned it off they sold it at a lower price so there was still a balance owing on (her loan) of about $6,000 that she had to pay,” she said.

“Then she lost her home.”

Coffey said some departments will give emergency pay to employees who have missed entire paycheques, which she said works out to be about the same amount as their net pay would be, but then when the employee eventually gets placed in the Phoenix system, their pay is automatically clawed back.

“They take back every cent they gave you, you’re not getting ahead,” she said.

Big repair bill

A scathing report by auditor general Michael Ferguson released in November said the bill to fix Phoenix, which he called an “unproven and flawed” system, would be close to $1 billion, nearly double the $540 million allocated by the federal government, and almost three times the original cost to implement the program.

The same report indicated that as of June 2017, 59,000 employees owed the government a total of $295 million as a result of overpayments, while 51,000 employees were owed $228 million due to overpayments.

And for those getting overpaid, the situation isn’t much better — the government is asking employees to pay back their gross pay, not just what ends up in their bank accounts.

“Last year we had one woman who had a paycheque for $26,000 (and) in trying to give it back, the government said ‘you owe us $34,000,’” she said.

PSAC has been pushing the federal government to allow employees to pay back only their net overpayments — the total after taxes and other deductions. Employees who managed to meet the end-of-January deadline to report their 2017 overpayments will only have to pay back the net, but some will be out thousands, which Coffey said may not be completely recouped in their tax returns if they are pushed to a higher bracket.

Others, she said, have missed out on child benefits or other credits due to being disqualified because the overpayments have reflected in their salaries.

Backlog is another major issue, according to Coffey.

“Some people are still owed overtime from 2016,” she said.”

To deal with some of the backlog, Coffey said PSAC has been pushing for the government to hire back the approximately 1,200 pay specialists laid off by the Harper government in order to save money by consolidating their work with the new Miramichi pay centre.

The government has started doing this, investing $142 million to train, hire and recruit employees, but Coffey said it’s going to take a long time to work through the backlog.

“We can hire back a whole bunch of people but compensation specialists really have to understand the collective agreement,” she said. “We think it’s going to take a couple of years.”

According to Public Services and Procurement Canada (PSPC), there were about 367,000 transactions outstanding at the pay centre as of the end of December. This total takes into account pending pay transactions minus the usual transactions that are processed within a single month.

In PSPC’s response to the order paper question, parliamentary secretary Steven MacKinnon said the ongoing public service pay problems are completely unacceptable and the federal government is doing everything it can to resolve pay issues as quickly as possible, including hiring new employees, improving governance, putting in place business processes and training and working with partners, in particular public sector unions.

“We inherited this problem from the previous government but we will fix it,” he said.

In the meantime, Coffey said PSAC will continue to ask members to mobilize.

“We’re asking people to go into their MPs’ offices and to continue to put the pressure on our MPs all across this country to fix this Phoenix system, to add more people, to continually update the system so that it’s working for our members,” she said.

Trudeau intervenes in lawsuit against military because Justice lawyers’ argument ‘does not align’ with beliefs

The $800M lawsuit was brought forward last year by three former service members who say they were harassed or assaulted while in uniform

National Post
Lee Berthiaume
The Canadian Press
February 7, 2018

Prime Minister Justin Trudeau put Justice Department lawyers on notice Wednesday for their response to a proposed class-action lawsuit on military sexual misconduct, saying their arguments are out of line.

The lawsuit was brought forward last year by three former service members who say they were harassed or assaulted while in uniform. They are seeking $800 million for themselves and others in similar situations.

Justice Department lawyers filed documents in late December in which they asked the Federal Court to quash the suit, which comes as military leaders are pushing for a culture change to eliminate all forms of sexual misconduct in uniform.
The documents include a number of arguments for why the lawsuit has no reasonable chance of success and should therefore be dismissed before going to trial.

Officials for Justice Minister Jody Wilson-Raybould and Defence Minister Harjit Sajjan refused last month to comment on the federal lawyer's response because the case was before the courts.

But Trudeau on Wednesday said that the arguments were "of concern to me, and I've asked (Wilson-Raybould) to follow up with the lawyers to make sure that we argue things that are consistent with this government's philosophy.

"Obviously the lawyers' argument does not align with my beliefs or what this government believes."

Trudeau did not say exactly which arguments were of concern, and his office refused to provide further information.

But lawyer Rajinder Sahota, who is representing the three former service members involved in the lawsuit along with lawyers from five other legal firms, cited one statement as being of primary concern.

It says the government does not "owe a private law duty of care to individual members within the CAF to provide a safe and harassment-free work environment, or to create policies to prevent sexual harassment or sexual assault."

That doesn't mean the government is arguing it has absolutely no obligation to create a safe workplace or prevent sexual misconduct, said University of Ottawa law professor Bruce Feldthusen.

"What they're saying is: 'We have an obligation to do it under the Human Rights Act, we have an obligation to do something under the Criminal Code, but we don't have an obligation under negligence law,"' he said.

"'We don't have an obligation to compensate individual victims."'

Feldthusen said it makes sense for federal lawyers to make such an argument as part of their attempt to get the lawsuit tossed out of court, but he didn't believe it had much chance of success.

The lawsuit was front and centre during a heated question period Wednesday on Parliament Hill, where concerns about sexual misconduct and the #MeToo movement have dominated debate for weeks.

With Trudeau having left on tour of the U.S., it fell to Defence Minister Harjit Sajjan to respond to Conservative allegations that the government was arguing it did not have a duty to provide a safe workplace for women in uniform.

“We are committed to making sure that we have a harassment-free workplace within the Canadian Armed Forces,” Sajjan said at one point while noting that dozens of service members had been kicked out for sexual misconduct.
“We are going to stomp this matter out.”

But Sajjan did not respond when NDP House leader Ruth Ellen Brosseau demanded the government to end the “irresponsible and reprehensible” efforts to quash the lawsuit, which she said flew in the face of Trudeau’s promise to support victims of sexual abuse.

“We want to be able to work with the opposition on this issue because this is an important issue that impacts all of us,” Sajjan said.

“We need to make sure that we have a harassment-free workplace, especially in the Canadian Armed Forces.”

Province invests more than $7M in Ottawa's justice system
Funding will go towards Indigenous programming, courthouse video
CBC News
February 7, 2018

The province has announced it's investing more than $7 million in Ottawa's justice system.

Ontario Attorney General and Ottawa Centre MPP Yasir Naqvi said Wednesday that the money will improve access to justice and reduce delays.

"I will be the first one to admit that the pace of change in our justice system may not be as fast as we all want it to be," said Naqvi at a press conference at the University of Ottawa's law school.

"But together, we have made some truly remarkable progress to reduce trial delays and create a faster, fairer justice system — one that is more culturally responsive and inclusive."

Some of the initiatives covered by this latest investment include:

- Increasing video capability at the Ottawa courthouse to make it easier for people to attend court appearances.

- Developing a new pilot at the Ottawa-Carleton Detention Centre to connect lawyers with their clients in custody over a video link.

- Developing an Indigenous bail verification and supervision program at the Odawa Native Friendship Centre that will provide culturally-appropriate programming.

Naqvi also announced that Justice Paul Rouleau has been appointed as the chair of a new, permanent French-language advisory committee.

The committee will identify and reduce barriers in the justice system faced by French speakers, Naqvi said.

Government of Canada announces judicial appointments in the province of British Columbia
Canadian Newswire
February 7, 2018

The Honourable Jody Wilson-Raybould, Minister of Justice and Attorney General of Canada, today announced the following appointments under the new judicial application process announced on October 20, 2016. The new process emphasizes transparency, merit, and diversity, and will continue to ensure the appointment of jurists who meet the highest standards of excellence and integrity.

The Honourable Susan A. Griffin, a Judge of the Supreme Court of British Columbia, is appointed a Justice of the British Columbia Court of Appeal and a Judge of the Yukon Court of Appeal. She replaces Mr. Justice R.B.T. Goepel, who elected to become a supernumerary judge effective September 30, 2016.

Diane MacDonald, general counsel for the B.C. Teachers' Federation, is appointed a Judge of the Supreme Court of British Columbia in Vancouver. She replaces Mr. Justice P.D. Leask, who retired effective September 18, 2017.

Biographies

Madam Justice Susan A. Griffin has had a distinguished career as a superior court judge. Prior to her elevation to the Court of Appeal, she served for ten years on the Supreme Court of British Columbia, where she heard a full range of criminal, family, constitutional and civil cases. Justice Griffin is known for her work ethic, her thorough attention to the evidence, her ability to resolve complex legal issues, and for having a compassionate approach to vulnerable witnesses.

Prior to being appointed to the bench, Justice Griffin practised in the area of civil litigation for 23 years and was appointed Queen's Counsel in 2005. Throughout her career, she has been engaged in legal education and writing. She is co-author of a leading text entitled The Conduct of Civil Litigation in British Columbia. Recognized for her dedication to mentoring younger lawyers, Justice Griffin has also taught numerous legal advocacy programs. She had a leading hand in developing an award-winning video series on advocacy skills for junior litigators (CLEBC Advocacy Toolkit). She also served on committees supporting the administration of the courts.

Justice Griffin grew up in rural Ontario but moved to Vancouver following graduation from the Faculty of Law, University of Toronto, in 1984. Having obtained her law degree at a young age, she later took a

sabbatical to obtain an LL.M from the London School of Economics and Political Science. There she focused on international law, including human rights, and won two top prizes. Justice Griffin has an ongoing interest in understanding the experiences of historically marginalized persons, and has written and spoken about the importance of recognizing and rejecting implicit assumptions, biases and stereotypes.

Madam Justice Diane MacDonald received her B.A. from Simon Fraser University and her LL.B. from Dalhousie University and began practising law in 1995. After articling with Alexander Holburn Beaudin and Lang, she completed a Ph.D. in law and public policy at Northeastern University. She then practised with Victory Square Law Office and subsequently with the B.C. Teachers' Federation, where she was General Counsel since 2008.

Justice MacDonald's primary focus has been in the areas of labour law, constitutional law and human rights. She has acted as legal counsel before arbitrators, various administrative tribunals, professional disciplinary bodies, and at all levels of court. In 2014, Justice MacDonald acted as co-counsel on a s.15 Charter case, arguing for substantive equality for women claiming pregnancy and parental benefits, in which the Supreme Court of Canada ruled in her client's favour. Justice MacDonald recently acted as co-counsel before the Supreme Court of Canada on a successful s. 2(d) Charter case regarding the duty to consult in good faith.

Justice MacDonald is committed to legal education and lifelong learning. She has published articles and regularly speaks at conferences across Canada for organizations including the Canadian Bar Association (CBA), the Continuing Legal Education Society of B.C., Lancaster House, and the Canadian Association of Labour Lawyers. She is also a mentor through the CBA's Women Lawyers Forum. Justice MacDonald has Métis ancestry and has been an active volunteer in her local community.

Excerpts from Justice MacDonald's judicial application will be available shortly.

Could cloud services signal the end of 'big zombie IT projects' in government?
Ottawa Citizen
James Bagnall
February 7, 2018

As federal government announcements go, this one could have been a real snooze-fest.

Treasury Board President Scott Brison and Carla Qualtrough on Wednesday jointly unveiled a new information technology policy that had been in force for months, involving a once-obscure branch of technology called cloud services.

But their short show-and-tell, delivered on Facebook Live, hinted at something more profound taking place.

Brison in particular has accepted the idea that big government has to change the way it builds and manages its IT infrastructure — and that cloud services, which allow departments to lease computer

capacity a bit at a time from private sector firms such as Amazon Web Services or Microsoft Azure — offer the way to do it.

“We can’t be a Blockbuster government when we’re serving a Netflix citizenry,” he said in comparing a defunct video rental business with a video-streaming company.

Brison appeared to be taking aim in part at Shared Services Canada, the government’s central computer services agency, which reports to Qualtrough. Since its formation in 2011, Shared Services has invested hundreds of millions of dollars in new data centres to house information and software that underpins programs ranging from the Canada Pension Plan to Statistics Canada’s census.

While the data centres are fresh and modern, Shared Services hasn’t impressed many federal departments because it’s been slow and inflexible in setting up new online services and ordering the new hardware.

Over the past year, smaller departments have forced the issue by quietly running their own pilot projects using Azure and other cloud providers. Private contractors now have dozens of cloud-based IT procurements in the works, such as applications designed to make scientific or business data available to the public.

Brison, whose department sets the overall policy for government IT, has reportedly been impressed with what cloud technology can do. On Wednesday he enumerated key benefits, such as how departments using cloud services can experiment with software applications a bit at a time, learning from the inevitable mistakes along the way.

“It’s better to learn the lessons early,” he said in an apparent reference to IT disasters such as the botched rollout of the Phoenix Pay system, “than to have big zombie IT projects rumbling on, trapped under the tyranny of sunk costs.”

How would Phoenix have developed in a cloud-based world? We could actually have an opportunity to find out if Qualtrough opts to restart the entire project. Nothing on that prospect Wednesday, though.

Of course, it’s very early days in the cloud services revolution. Qualtrough, who also seemed very much on board, noted her department had negotiated 22 contracts to date with companies that are selling cloud services to seven government departments and agencies, including Correctional Service Canada.

However, the value of these contracts — which are brokered by Shared Services in exchange for a fee — barely tops $2 million. This is a tiny fraction of Shared Services’ annual budget of more than $1.5 billion.

And there’s the other matter of security. Most of the government’s data is secret (a Protected B or higher classification), and Shared Services still has a monopoly over storing this information. Wednesday’s announcement was for unclassified stuff such as government websites that are to be viewed by the public.

Private contractors are suspicious that Shared Services is relying on security designations to retain its share of the government's IT business.

It's not clear how long its monopoly will last. Qualtrough noted the government is mulling further changes that would allow departments "in the future" to store even secret data in the cloud — one of the reasons tech giants such as Google and Amazon have been adding data centres in Canada.

This much is clear: providers of cloud services have secured their foothold in government. If they deliver as promised, this could be the beginning of the end of monster IT failures. There'll be many small ones, to be sure. But the egregious example of Phoenix Pay has taught us that's a much better way to run.

Phoenix pay issues leading federal workers to give up promotions, parental leave, union says
Government employees are opting out of promotions and benefits due to fear that their paycheques will disappear entirely, PSAC says.
Toronto Star
Terry Pedwell
The Canadian Press
February 8, 2018

OTTAWA—Civil servants who transfer between federal departments or receive promotions can expect to wait more than six months for their paycheques to follow them through the Phoenix pay system, federal officials say, costing some employees tens of thousands of dollars as they wait — and causing confusion across government.

But the problem is far worse than the Liberals are letting on, with many people now refusing to take promotions and parental leave over fears that they'll lose their paycheques entirely, says the union representing a majority of government workers.

The average wait time to process an employee transfer from one department to another was about 136 working days as of mid-January, said Public Services and Procurement Canada, which is responsible for the pay system.

But some government employees have been told it could take up to a year or longer to have their transfers completed.

"We've certainly heard much worse," said Chris Aylward, national executive vice-president of the Public Service Alliance of Canada.

"We've heard of up to a year, especially when people transfer from one department to another."

It is especially frustrating for those who are promoted into higher-paid positions, only to be told they'll have to wait months for pay increases while performing in jobs that are often more stressful.

“We acknowledge that this situation is frustrating and poses challenges,” Public Services said in an email.

“However, employees continue to receive their pay from their former department until the transfer of their pay to their new department is complete,” the department said.

Transfer wait times ballooned over the last year as the government placed a greater priority on ensuring that civil servants who were underpaid — or not paid at all — were receiving the remuneration they were owed.

Between Jan. 1, 2015 and Dec. 31, 2015 — prior to the launch of the Phoenix pay system — the average wait time to process an employee transfer from one department to another was just 17 working days, or less than a month, Public Services and Procurement Canada said in an email.

The following year, while the Phoenix system was being brought online, the average wait time to complete pay transfers nearly tripled, to 45 working days.

Phoenix was launched in two phases in 2016, first across fewer than three dozen departments in late February of that year.

The second phase was unleashed across another 67 departments in April, 2016, even as civil service unions and the government were being flooded with stories of employees with difficulties being paid. By summer of that year, the government acknowledged some 80,000 civil servants were experiencing significant pay issues.

Despite early predictions that the system would be fixed within months, the problems have not only persisted, they have grown substantially, with the overall number of civil servants impacted with pay issues approaching 200,000 by the end of 2017, according to the department.

Public Services said it is now treating employee transfer backlog as a priority and hopes to develop a new regime in place this year to address it.

“Redesigning the employee transfer process is recognized as a priority and is being addressed through the HR-to-Pay initiative in early 2018,” the department said in an email.

Aylward scoffed at the notion.

“They say the overpayments are a priority, doing the T4s are a priority, implementing the collective agreements are priorities and now they’re saying transfers from one department to another is a priority,” he said.

“Everything is a priority, and therefore nothing is a priority. That’s our concern.”

The pay transfer delays have also muddied the books in federal departments that are continuing to count the salaries for employees who have moved on to other jobs.

Department managers are left paying the salaries of employees who no longer work for them and in some instances they are paying two salaries for one position when they hire to replace people who have left. Or, they simply don't hire someone to replace a departed employee until their pay file is finally transferred, Aylward said.

"Their salary budgets are completely out of whack. I don't know how departments are managing."

Union and government officials met the federal Public Service Labour Relations Board Jan. 31, where the Treasury Board Secretariat acknowledged the government failed to meet deadlines for implementing four collective agreements. PSAC has asked the board to award public servants damages for breaching the deadlines spelled out in those agreements, which were signed by the government in June.

The board is now expected to issue a directive forcing Ottawa to fully implement the agreements, although it's unclear what impact, if any, such an order will have on employees.

Union may consider expedited bargaining to reduce Phoenix workload
iPolitics
Kathryn May
February 8, 2018

A major federal union is willing to discuss ways to modernize collective bargaining in Canada's public service and expedite the upcoming round of negotiations to help take pressure off the overloaded Phoenix pay system.

Debi Daviau, president of the Professional Institute of the Public Service of Canada (PIPSC), said the union is open to negotiating new contracts before the existing ones expire — beginning in May.

An early settlement would avoid the thousands of retroactive payments that have snarled the troubled Phoenix pay system since it began processing collective agreements negotiated at the last round of bargaining.

But Daviau said her willingness doesn't come at the expense of the 55,000 professionals working in the public service that the union represents. She said workers' interests take precedence over relieving the pressure on Phoenix but she's willing to explore a round of early talks that could do both.

"If there is a faster way to get there we are open to that, but we aren't going to cut corners on the terms and conditions of employment for our members," she said.

Daviau said she has had some preliminary discussions with Treasury Board and her members, but no decision has been made.

PIPSC is the only union to express a willingness to consider negotiating new deals before the existing ones expire. The current contracts, many of which are still being processed by Phoenix, took four years to negotiate and start expiring in May.

By all accounts, the government is interested in settling early — particularly when it is still processing the raises and retroactive pay owed under the latest contract settlements.

Phoenix is so bogged down that the government has said it will take until spring before collective agreements from the previous round are processed. The government is facing complaints and grievances from unions for missing the legal deadlines to implement those agreements.

The Federal Public Service Labour Relations and Employment Board recently found the government breached its legal obligations when it failed to implement new contracts for 100,000 employees represented by the giant Public Service Alliance of Canada within the 150-day deadline

The contracts were signed in June and the government missed the mid-November deadline to implement them.

The government has argued that implementing the changes from contracts negotiated in the next round should be easier. The big difference: retroactive payments won't go back four years and pay records won't be divided between Phoenix and the defunct regional pay system.

Phoenix was unexpectedly overwhelmed by collective agreements for a variety of reasons: unable to hire enough compensation advisers; transactions took much longer than expected; unexpected manual processing — and now the end-of-the year rush to get accurate T-4s to employees on time.

It was also the first time the government had negotiated so many contracts at once.

The last round of bargaining, which began under the previous Conservative government, hit an impasse with 27 bargaining groups over the Tories' controversial plan to scrap the sick leave regime and replace it with a short disability plan.

The Liberals took over the stalled negotiations when elected and within months went live with Phoenix, triggering the pay crisis that has consumed government since.

But IT experts have long argued the complexity of federal pay is a root cause of the calamities that have dogged Phoenix. They argued business processes should have been streamlined and the 80,000 business rules embedded in collective agreements reduced before the government even started work on Phoenix

Unions say they were never approached about a special round of negotiations to simplify the rules that accumulated over 60 years of collective bargaining.

A former bureaucrat involved in the pay overhaul said that's because the previous Conservative government didn't want to dicker about streamlining processes or reducing pay rules in the previous

round of bargaining because it wanted to focus savings by eliminating public servants' severance benefits and reforming sick leave benefits.

Daviau said she has long felt the collective bargaining needs modernizing and rules and processes could be streamlined and the Phoenix debacle has simply moved that issue to the fore. She has said she would consider looking at special allowances and other types of pay and rolling them into base pay to make it simpler.

But Daviau doesn't buy the argument that the complexity of the pay system is at the heart of Phoenix's problems because the old pay system could handle the rules without major problems.

She said PIPSC is willing to look at ways to simplify pay rules and collective bargaining so "reduce the burden on Phoenix but we don't think it is fundamental to fixing the flawed pay system."

It's unclear how Phoenix will figure in the upcoming round of bargaining. Public Services Minister Carla Qualtrough has said she would like a culling of the rules but negotiations are handled by Treasury Board as the employer.

Also, unions have been hesitant about jumping into the next round of bargaining until the Liberals lived up to its promise to repeal Tory-era legislation that diminished the bargaining clout and power of federal unions.

Bill C-62, which would repeal the Tory changes that could affect both sick leave reform and bargaining, recently passed second reading and is now on its way to committee for review. Unions intend to keep pressure on the Liberals to get that bill passed in current parliamentary session.

Union wants compensation advisers put back into departments
iPolitics
Kathryn May
February 8, 2018

The Public Service Alliance of Canada is calling on the federal government to hire more compensation advisers and put them back into departments to help manage pay services as they did before the disastrous rollout of the error-prone Phoenix pay system.

PSAC Vice-President Chris Aylward made an appeal to the Senate national finance committee — which is studying the troubled Phoenix pay system and ways to stabilize or fix it — Wednesday to permanently reinstate in-house compensation advisers.

"The government must also recognize that this cannot just be a temporary fix. For the pay system to work in the long term, a permanent team of well-trained compensation advisers in both the departments and the pay centre is required," said Aylward.

“We know this cannot happen overnight. But we can start now. And to do that we need both a strong commitment and a clear plan from the government.”

PSAC’s request strikes at the heart of the original business case for the $309-million pay modernization plan, which was aimed at streamlining and automating the work of hundreds of compensation advisers. PSAC represents compensation advisers.

The promised $70-million a year in savings was largely built on eliminating the jobs of in-house advisers by centralizing pay operations for all departments at a new pay centre in Miramichi, N.B. The previous Conservative government laid off more than 800 pay advisers in the lead up to the rollout of Phoenix.

But Aylward said he’s not asking to dismantle the pay centre and revert to the way pay was handled before Phoenix when each department had their own in-house pay advisers. He said Phoenix needs both: in-house advisers whom employees can consult at work and those at Miramichi processing pay.

Public Services and Procurement Canada has hired around 1,400 people over the past two years to help with the crisis at the pay centre, the seven satellite offices and the call centre that was opened to take calls and register the pay problems with the centre.

The pay centre, which was supposed to be staffed by around 450 employees, has grown to a workforce of 700 employees.

The pay centre, however, only handles the pay operations of around 45 departments – accounting for roughly two-third of the public service – that had to lay off their compensation advisers.

The remaining 54 departments use Phoenix but they kept their compensation advisers in-house and, by all accounts, their pay problems have not been as bad as the departments relying on the pay centre.

The public service’s three largest unions gave senators a grim assessment of the government’s efforts to fix problems and turn around the pay debacle. When pressed, union leaders said the problems are only getting worse as Phoenix approaches the second anniversary of its rollout.

Aylward said the role of compensation advisers and the skills and knowledge they brought to the job was seriously underestimated from the start – a finding echoed by consultants from Goss Gilroy in their report into what went wrong with Phoenix.

The training for the job that used to take four years to master 80,000 pay rules has now been boiled down to three-months.

But Aylward also pinned responsibility on the senior bureaucrats at PSPC in charge of the pay overhaul project as being so “heavily invested” in the project that they were blind to problems. They wouldn’t heed warnings from departments or unions and sold the deputy minister Marie Lemay and then PSPC minister Judy Foote a “bill of goods” when recommending that Phoenix proceed.

“They were believing what they were being told and they were being lead down the garden path,” he said,

Aylward said PSAC warned the former Conservative government in 2011 that its plans to get rid up to 1,000 experienced compensation advisers would be “disastrous” and said that “sadly, this has proven to be correct.”

He said employees used to be able to take their pay problems or questions to the “fourth floor and speak to compensation advisers.” He said they no longer have that face-to-face service and are forced to call a call centre, which is staffed with temporary workers who know nothing about payroll.

He said this has unfairly shifted the burden to the employee to determine if they are being paid correctly or not.

“This is incredibly frustrating for our members,” said Aylward.

“This is a tremendous burden. The federal public service has a very complex pay system, with over 80,000 pay rules, and to expect each individual to calculate their own pay is both unreasonable and unfair. “

The Liberal government introduced a package of incentives to entice laid-off compensation advisers to return to work, as well as hang onto newly trained recruits.

Aylward said these recruitment and retention incentives will only work if the government “follows through with a robust and properly resourced process for hiring and training compensation advisers.”

The unions also said overpayment is a looming problem because it appears the government can’t handle the volume of employees who reported overpayments by the required deadline so their tax slips could be properly adjusted.

“We have reason to believe the employer will not be able to process all these changes in time to produce accurate T-4s, leaving possibly thousands of workers who did everything right having to repay the gross amount,” said Aylward.

The unions appealed to the Senate to pressure the government to give all public servants who were overpaid by Phoenix an “exemption” so they only have to repay the net amount they received rather than the gross amount.

As it stands, employees who receive overpayments can repay the net amount they received if the money is given back in the same tax year. Beyond that, they must repay the gross amount.

Those who don’t make the deadline would have to repay the gross amount. The government, however, has agreed to delay collecting repayments until after Canada Revenue Agency has processed their tax returns and the employees have received refunds.

3 Indigenous candidates were considered to fill recent Supreme Court vacancy
Ottawa Citizen
The Canadian Press
February 8, 2018

Three out of the 14 candidates considered last fall to fill a vacant Supreme Court of Canada seat were Indigenous, according to a recently released report by the independent advisory committee for judicial appointments.

Among the groups lobbying for a member of the First Nations community to have a seat at the nation's highest judicial body was the Indigenous Bar Association, which expressed disappointment in the government's final choice.

In the end, Sheilah Martin of Alberta was nominated to fill a seat left vacant after the departure of Chief Justice Beverley McLachlin.

The judicial appointment committee's report reveals eight candidates were men compared with six women. Twelve were anglophone while two were francophone.

None of the non-Indigenous candidates declared themselves to be visible minorities.

The selection process was conducted in 2017. In order to maintain regional representation on the bench, only candidates from British Columbia, Alberta, Saskatchewan, Manitoba, as well as the territories were considered.

Kept from the public were the two other names on the shortlist of three names sent to Prime Minister Justin Trudeau, from which he chose Martin.

A representative from Office of the Commissioner for Federal Judicial Affairs Canada confirmed to The Canadian Press the final shortlist would not be made public.

In comparison, the selection process that resulted in Malcolm Rowe's appointment in 2016 was open to candidates across the country.

Thirty-one people were considered for the job, more than twice the number in 2017.

Kim Campbell, Canada's 19th prime minister and the president of the appointment task force, told a legislative committee in December she expects an Indigenous person will one day become a member of the Supreme Court.

"I have no doubt there will be an Aboriginal person at the Supreme Court of Canada — an exceptional Aboriginal judge whose appointment will not require any compromise regarding the applicable criteria," she said.
Campbell noted the current pool of Aboriginal lawyers in Canada is still limited.

Feds closer to settling sexual misconduct lawsuit against Canadian Forces
CTV News
February 8, 2018

The federal government is getting closer to settling a lawsuit with current and former members of the Canadian Forces who allege rampant sexual misconduct and gender discrimination within the military, CTV News has learned.

Prime Minister Justin Trudeau has been criticized for his government's attempts to quash the lawsuit, which alleges systemic sexual harassment, sexual assault and discrimination within the forces.

Justice Minister Jody Wilson-Raybould said Thursday that the government is prepared to settle cases when necessary.

"While I will not comment on the specifics of this case, it is my goal as attorney general to ensure that, when appropriate, we can settle these cases that are in the public interest," Wilson-Raybould said.

Trudeau said Wednesday that arguments presented by government lawyers in the case do not align with his personal views.

The federal government argued in court filings that it does not "owe a private law duty of care to individual members within the CAF to provide a safe and harassment-free work environment, or to create policies to prevent sexual harassment or sexual assault."

Those filings appear to contradict the military's own efforts to stamp out sexual misconduct. In 2017, more than two dozen service members were kicked out, and Chief of Defence Staff Gen. Jonathan Vance committed to eject any members found guilty of sexual crimes.

Earlier this week, Defence Minister Harjit Sajjan insisted that the government supports victims who come forward with allegations.

"We want to encourage people to actually come forward if they have any allegations or any type of concern, and that's very important," Sajjan said.
With files from CTV's Mercedes Stephenson

Un député n'est pas au-dessus des lois, dit un juge
Un député fédéral se fait rappeler que le privilège parlementaire n'existe pas lorsqu'on est poursuivi au civil pour une affaire privée.
Droit Inc
Jean-François Parent
8 février 2018

C'est le juge Steve Guénard, de la Cour du Québec à Gatineau, qui vient de faire ce rappel à l'ordre envers le député d'Etobicoke, en banlieue de Toronto.

Boris Wrzesnewskyj est visé par une poursuite civile lui réclamant des dommages de 70 000 dollars en raison d'allégations que sa résidence de Gatineau, vendue à un médecin en 2012, comportait des vices cachés.

Ainsi, l'état du système septique de l'immeuble laisse à désirer, et Boris Wrzesnewskyj n'a pas respecté son engagement de corriger le problème. La poursuite est déposée en 2015, et en septembre dernier, le procès a été fixé à cette semaine.

À la fixation de la date d'audience, le député a fait valoir qu'il ne pourra se présenter, puisqu'il devra siéger à la Chambre des communes.

Son avocat, Michael Bergman, de Bergman et Associés, soutient ainsi que « le défendeur bénéficie d'une immunité et/ou d'un privilège parlementaire, lui permettant de refuser de témoigner à une date où siège la Chambre des communes », référant la Cour à « diverses décisions jurisprudentielles établissant l'existence d'un tel privilège dans certaines circonstances particulières ».

De plus, puisqu'il est député et que le préjudice de ne pas « représenter ses électeurs à la Chambre des communes » est beaucoup plus important, par rapport au préjudice « minime » que subirait le demandeur, milite en faveur de la remise.

Un argument, plaidé le mois dernier, qui n'émeut guère le juge Guénard.

D'abord, le privilège invoqué « est aboli depuis le 24 juin 1770 par le Parliamentary Privilege Act », peut-on lire dans le jugement refusant la remise.

Ensuite, la jurisprudence invoquée par Me Bergman va plutôt dans le sens contraire : le privilège n'existe pas lorsqu'il s'agit d'un litige purement privé, contractuel et civil.

Ensuite, l'idée qu'une hiérarchie des préjudices subis puisse s'établir laisse le juge Guénard perplexe.

D'abord, le demandeur est médecin, et ses avocats - Lanise Hayes et Stéphane Sérafin, de Nelligan O'Brien Payne - soumettent que leur client a également eu à réorganiser son propre horaire.

Le juge Guénard abonde dans le même sens : « Le Tribunal ne considère pas approprié de minimiser les inconvénients subis par les demandeurs, et ce, sous prétexte que les inconvénients subis par le défendeur seraient plus importants vu son statut de député. (…) Les élus ne sont pas, non plus, au-dessus des lois. »

La demande de remise est d'autant plus irritante qu'elle a été faite à quelques jours du procès, pourtant fixé il y a plusieurs mois déjà.

« Il est temps, (…) que le présent dossier, institué il y a plus de 2 ans–quant à une trame factuelle qui remonte (…) à près de 6 ans—puisse être entendu par un Juge afin d'en permettre la bonne résolution,

quelle qu'elle soit. (…) La fixation des dossiers ne se fait pas à la légère. Le report de ceux-ci non plus », conclut le juge Guénard en refusant la requête et en ordonnant la tenue du procès.

Inquiry into how Indigenous people are treated by the public service gets 10-month extension
The Viens Commission was supposed to submit its report in November, but now has until September 2019
CBC News
February 9, 2018

The Quebec government has approved a request to extend an inquiry looking into how Indigenous people are treated by the public service system by 10 months.

The Viens Commission was originally supposed to submit its report at the end of November. It has now been given until September 2019 to do so.

"The commission's task is delicate, and the government must give each witness the time it takes to share their story," a news release announcing the extension reads.

So far, the commission has spoken with leaders, experts, and officials. It has also gathered 350 files from citizens, but has only heard from 10 of them so far.

For Nakuset, the executive director of the Montreal Native Women's Shelter, the extension is good news because people who were hesitant to step forward with stories of racism and abuse may need more time.

"It kind of plants the seed, … [watching] other people stand up and do something courageous," Nakuset said, adding that she hopes the report leads to action.

"It's very nice they're collecting all this information, but…they need to do something with this report."

How laughter, ceremony helped Quebec Innu share painful memories
The Viens Commission has not asked for an increase to its $9-million budget.

The inquiry has been travelling to Indigenous communities in order to build trust. Hearings are scheduled to start in Montreal next week.

A Murder Trial Stirs Emotions About Canada's Relations With Indigenous Population
The New York Times
Ian Austen
February 9, 2018

BATTLEFORD, Saskatchewan — Prime Minister Justin Trudeau's push for reconciliation of Canada's troubled history with its Indigenous people particularly resonates here in the town of Battleford, in the central part of Saskatchewan Province.

A pass system, similar to South Africa's under apartheid, once required Indigenous people to get a government official's written permission to step off their reserves. A public hanging in 1885 of six Cree and two Assiniboine men on murder charges that have since been questioned remains the largest mass execution in Canada's history.

And now there is the verdict in the Gerald Stanley trial.

Mr. Stanley, a local farmer, had been charged with second-degree murder in the death of Colten Boushie, a 22-year-old Cree man from the nearby Red Pheasant Cree Nation.

In August 2016, Mr. Boushie and four other Indigenous people drove onto Mr. Stanley's property. Mr. Stanley, 56, testified at trial that he believed their goal was robbery, which he and his son tried to prevent.

In what the farmer called an unintended accident, Mr. Boushie was killed by a bullet to the back of his head that came from a semiautomatic handgun Mr. Stanley fired during a confrontation with the group.

On Friday night, after a week of testimony and a day and half of deliberations, a jury found Mr. Stanley not guilty, setting off cries of anguish from Mr. Boushie's relatives and supporters.

For the past 17 months, the case had been hotly debated in Battleford, stirring deep feelings here about the treatment — both past and present — of the province's Indigenous population.

Mr. Stanley's supporters have used the episode to call for American-style "stand your ground" self-protection laws. Meanwhile, online vitriol has exposed the province's divide between the Indigenous and non-Native communities with a torrent of overtly racist comments that led to a call from the province's premier for everyone to "rise above intolerance."

Ben Kautz, a member of the municipal council in Browning, Saskatchewan, wrote, under his full name, in a Facebook page for farmers, now defunct, that Mr. Stanley's "only mistake was leaving three witnesses." He has since stepped down from the council.

At the same time, many non-Indigenous people in Saskatchewan view Mr. Boushie's death as an injustice, including a group that stood in front of the courthouse on Thursday in bone-chilling cold holding signs and banners calling for justice.

Mr. Boushie's family and their supporters were angry about the police inquiry, which they called flawed and inadequate, contending that it initially focused more on the actions of the five young Indigenous people than on the killing of Mr. Boushie. They also said the case exposed a lack of progress in Mr. Trudeau's reconciliation effort.

"If we are making progress why would it have exploded so much when he got shot?" Jade Tootoosis, Mr. Boushie's cousin, asked the other day in the living room of their grandmother's house at Red Pheasant. "I pity them because I don't understand why they feel so much hate for someone they don't know."

Eleanore Sunchild grew up in the Thunderchild Cree First Nation north of Battleford. Now she runs a legal practice in town that specializes in resolving claims by former pupils of mandatory boarding, or residential, schools the federal government established in the 19th century.

In 2015 a national truth and reconciliation commission found the program to be “cultural genocide” against Indigenous people. Saskatchewan had more of the notorious schools than any other province, which both the commission and Ms. Sunchild blame for destroying Indigenous families for generations.

Ms. Sunchild, 45, said her home province was the national laggard on reconciliation.

“Saskatchewan is just beginning, I don’t even know if we have really started on reconciliation,” she said. “I’m not saying that Indian people deserve a break because we’ve been victimized. I’m saying that both sides have to take accountability and responsibility for what got us into this situation in the first place.”

The area is also an outlier on crime. Using data from Statistics Canada, a government agency, Maclean’s magazine found that North Battleford, Battleford’s sister community across the North Saskatchewan River, is the most dangerous place in Canada.

Car theft is common, and farmers in the sparsely settled region complain about agonizingly slow wait times for the Royal Canadian Mounted Police to arrive. A Facebook group, Farmers With Firearms, appeared after Mr. Boushie’s death to call for allowing citizens to arm themselves, and also to support Mr. Stanley’s actions on that fateful day.

Last year, an association of rural municipalities in Saskatchewan passed a resolution asking the federal government to expand self-defense laws.

Both groups say their efforts are directed against criminals, not Indigenous people.

Alvin Baptiste, Mr. Boushie’s uncle, gave a tour of Red Pheasant to visitors this week. He acknowledged that some of the reserve’s young people, along with white youths in the area, passed too much of their time with drinking, drugs and petty crime. For that he blamed the lack of job opportunities since the decline in oil prices, the lingering effects of the residential schools on families and the general dysfunction of the reserve.

A relatively new and well-maintained school is an exception in the area. No footprints lead through the snow to a hockey arena seemingly too large for the 500 or so people who live there. Money and energy to keep it operating ran out some time ago.

Pointing to the community center across the street, Mr. Baptiste said that its basketball programs had stopped and that the building was used only for wakes and ceremonial occasions. Next to it are the abandoned gas pumps and building of what had been Red Pheasant’s only store.

“There’s nothing much to do on this reserve, there’s nothing for them,” he said, referring to young people.

Evidence presented at the trial showed that the group in the car, while driving on a flat tire, had tried to steal a car at another farm before going to the Stanleys. In court, Mr. Stanley's lawyer acknowledged that a toxicology report showed that Mr. Boushie was "so impaired it's hard to believe that he could function at all."

Chris Murphy, a lawyer retained by the Boushie family, said that a junior constable was initially put in charge of the investigation, forensic experts were not brought in and the car in which Mr. Boushie died was left uncovered, its doors open, for two rainy days, washing away evidence.

The police force declined to comment.

Mr. Stanley testified at trial that he grabbed his semiautomatic pistol to fire two warning shots. He said he was trying to turn off the engine of the car the men were driving while holding the pistol when the fatal bullet fired in what he testified was a complete surprise.

Experts brought in by Mr. Stanley's lawyer said that on rare occasions, bullets can briefly linger inside guns and rifles after a trigger is pulled — although neither those experts nor ones with the police were able to recreate the flaw using Mr. Stanley's gun and ammunition.

For Ms. Tootoosis, the social media hatred prompted by the killing of her cousin may also prove to be his legacy.

"Ultimately Coco's death needs to have a purpose," she said using the family's nickname for Mr. Boushie. "It's brought to light such a divide, and the question now isn't what is the government do about it, what are the courts going to do about it? It's, 'What am I going to do about it?' "

L'obligation de diversité chez les juristes crée des remous

« Depuis que je suis au pays, c'est la première que j'éprouve un malaise en tant que femme, en tant que minorité visible, et en tant qu'avocate »

Droit inc

Jean-François Parent

9 février, 2018

L'obligation de promouvoir la diversité chez les avocats, en Ontario, pourrait faire plus de tort que de bien.

La règle édictée par le Barreau de l'Ontario obligeant tous les juristes « à adopter une déclaration de principes reconnaissant leur obligation de promouvoir l'égalité, la diversité et l'inclusion en général ainsi que dans leur comportement envers leurs collègues, les employés, les clients et le public » est probablement ce qui pouvait arriver de pire pour les avocats issus des minorités, estime la juriste irano-canadienne Sadie Etemad.

La règle, entrée en vigueur en décembre dernier, ne contre pas le racisme. Tout au plus fait-elle en sorte que ceux qui professent leurs préjugés le fassent en cachette, écrit l'avocate basée à Toronto dans une récente chronique publiée dans le Canadian Lawyer.

Avec cette règle, « le Barreau de l'Ontario dit non seulement qu'il est une institution raciste, mais instaure en plus une catégorie d'avocats racisés. Comme avocate membre d'une minorité visible, je trouve cela très troublant », poursuit Sadie Etemad.

La nouvelle obligation n'est pas que vague, elle mène à une inéluctable conclusion : « quiconque a été admis au barreau avant cette année est raciste, simplement parce qu'il est membre d'une institution raciste », et ce racisme devra être purgé. Par l'entremise de la formation continue.

Il y a plus : tous les juristes racisés, issus de communautés minoritaires, sont eux-mêmes victimes de racisme, en même temps qu'ils appartiennent à une organisation raciste.

Sadie Etemad déplore que même si les avocats pratiquent dans un système où l'équité et l'égalité ont force de loi—et doivent être défendues par les juristes—voilà qu'on leur demande en plus « de jouer les missionnaires de la lutte au racisme », en plus de servir les justiciables.

Et ce, alors qu'il n'est pas certain du tout que les avocats ontariens soient « racistes ».
« Depuis que je suis au pays, c'est la première que j'éprouve un malaise en tant que femme, en tant que minorité visible, et en tant qu'avocate. »

En effet, voilà qu'elle se demande, dans sa chronique, si elle avait travaillé si fort pour devenir membre d'un club raciste. Et si c'est le cas, « étais-je déjà raciste? Ou le suis-je devenue de par mon admission au barreau? »

Pis, « je pensais être une personne ayant du succès, ayant travaillé fort pour mes privilèges, qui a réussi à devenir avocate au Canada. Est-ce que je suis plutôt victime de mes origines raciales? »

L'un des problèmes de cette règle, c'est que le racisme ne s'endigue pas avec un interrupteur qu'on peut fermer au besoin. C'est ce que semble vouloir faire le barreau ontarien, pense Sadie Etemad, qui y voit un danger. Celui qu'on « remette en question les compétences des avocats racisés », qui ne sont pas arrivés là où ils sont par la force de leur travail, mais parce qu'ils ont bénéficié de mesures spéciales.

Tout cela, plutôt que de régler un problème, pourrait bien servir à renforcer les préjugés.

B.C. Supreme Court chief justice calls on Ottawa to appoint more judges
Christopher Hinkson says judge shortage leading to case delays up to 1 year
February 9, 2018

The chief justice of British Columbia's Supreme Court says he is frustrated by the federal government's "failure" to appoint judges, and he is calling on Ottawa to urgently fill at least nine vacancies in the province.

Christopher Hinkson says he is speaking out because softer approaches with Justice Minister Jody Wilson-Raybould have not worked and the public is not getting access to justice.

He says he meets every Monday morning with litigants whose cases have to be delayed — sometimes for up to a year — because judges are not available.

Hinkson says B.C.'s judicial advisory committee has approved more than nine candidates but many have been rejected by the minister because they are not "suitable," although he doesn't know what criteria she is using.
Wilson-Raybould did not immediately respond to a request for comment but on Wednesday she appointed one new justice to the B.C. Supreme Court and moved a judge to the Appeal Court.

The federal government has committed to increasing diversity in the judiciary, but Hinkson says while he supports that goal, if people from diverse backgrounds are not applying or do not meet the requirements to be a judge the positions shouldn't be left vacant.

Feds can't process all Phoenix overpayment claims in time for tax deadline
iPolitics
Kathryn May
February 9, 2018

About 8,000 federal employees who reported overpayments issued by the problem-plagued Phoenix pay system by the deadline will be on the hook to pay back more money than they received.

Public Services and Procurement Canada (PSPC) officials say the department was unable to process all the claims of public servants who reported overpayments by the Jan. 19 deadline, so their tax slips could not be properly adjusted.

Employees raced to meet the Jan. 19 deadline with assurances they would only have to repay the net amounts of overpayments that they actually received and not the gross amount – which includes taxes and other deductions taken off on their behalf.

The Public Service Alliance of Canada feared this would happen and blasted the government for again "short-changing" public servants. Federal unions had pressed the government for a blanket exemption so no one had to repay the gross amount of overpayments, whether they met the deadline or not.

"It's outrageous that federal public service workers are getting short-changed yet again," said PSAC President Robyn Benson. "We had serious doubts that the government would be able to process the information to meet their deadline … Forcing any of our members to pay back more than they received is unfair."

As it stands, employees who receive overpayments can repay the net amount they received if the money is given back in the same tax year. Beyond that, they must repay the gross amount.

Benson said the unions asked the government to exempt workers from paying back the gross amounts because they questioned whether PSPC could handle the volume of overpayment claims and get them into the overworked Phoenix pay system on time to issue correct tax slips.

The government, however, refused and instead came up with a compromise. Those who reported overpayments by Jan. 19 would only have to pay the net amount and their tax slips would be adjusted.

PSPC had about 18,000 reported overpayments by the end of December. It was then swamped with another 8,000 when it announced the Jan. 19 deadline. The department was able to process 18,000 of the of 26,000 claims it received in time for the issuing of T-4 slips.

PSAC has asked Treasury Board President Scott Brison to seek a remission order from cabinet colleague Revenue Minister Diane Lebouthillier to exempt those with overpayments in 2017 of tax liability. Lebouthillier has the power to issue a remission order if a tax liability or penalty is considered unreasonable, unjust or not in the public interest to collect.

“They have the power to do it, instead they promised our members a half-measure, and then couldn’t even deliver on that,” said Benson.

But PSPC, the federal pay master, gave itself wiggle room from the start. The department issued a pay advisory that warned those racing to meet the Jan. 19 deadline that “every effort will be made to ensure that you will only have to pay the net overpayment rather than the gross.”

The government argues employees won’t have to pay more than they receive because PSPC will only start recovering overpayments – for the gross amount – in July. By then, the Canada Revenue Agency will have processed 2017 tax returns and employees will be credited with difference between the net and gross amount and won’t be out of pocket.

Debi Daviau, president of the Professional Institute of the Public Service of Canada, fired off a letter to Brison earlier this week when she got wind that the department wasn’t able to process all the overpayment claims.

She asked him to “immediately take every measure necessary to clear this backlog and to ensure that no public service employee should have to pay more than they received in overpayment. “

Daviau said it was unfair and “unacceptable” that public servants who submitted their claims by the deadline won’t have their T4 slips adjusted for the 2017 tax year.

“I can’t emphasize enough how disappointed, if not angry, I am with the situation,” Daviau wrote.

“While I appreciate that your government has taken a number of steps to address the seemingly innumerable problems caused by Phoenix, the reality is that we are no closer to solving the systems’ problems than we were a year ago – and public servants are literally paying the price of its failures. “

The government, however, shows no signs of changing its position on exemptions.

Jean-Luc Ferland, a spokesman for Brison, said PSPC is processing overpayments as quickly as it can and encouraged public servants to continue to report any overpayments as soon as possible.

He said the employees won't have to pay back more money than they received because the government won't start collecting overpayments until the summer after they have received their tax refunds. Employees who report overpayments will be issued revised tax slips and only have to pay the gross amount after the tax agency has refunded them.

"The problems faced by government employees as a result of the Phoenix pay system are totally unacceptable and our government is doing everything it can to resolve pay issues as quickly as possible," he said in an email.

"We continue to work closely and collaboratively with public sector unions, and we take any suggestions that might limit the financial hardship faced by our employees very seriously."

Tracking Phoenix: Study will follow the escalating price tag
iPolitics
Kathryn May
Febraury 9, 2018

The federal government is conducting a major cost review of the disastrous Phoenix pay system — including a price tag for what it would take to make the erratic system "sustainable" over the long run.

The Office of the Comptroller-General, the government's chief financial officer, is leading the "comprehensive" spending review to get a full picture of what the accident-prone pay system has cost — and estimate what it could cost in the future. It is expected to be completed by May.

So far, the cost is anyone's guess. The government has spent more than $400 million on fixes, hiring more staff and opening satellite pay offices and a call centre.

Last fall, Public Services Minister Carla Qualtrough said she could not guarantee that Phoenix won't end up costing taxpayers $1 billion to fix.

Shortly after, Auditor-General Michael Ferguson delivered his scathing report on the Phoenix roll-out and warned it will cost more than the $540 million departments he found that departments had earmarked over the next several years. He pointed to the failure of a similar pay system at Queensland Health in Australia, which hit $1.2 billion and is still not working as planned.

The ongoing costing review came out of Ferguson's report, which recommended then the government track and report on the cost of resolving pay problems, as well as the implementation cost of a "sustainable solution."

Assistant Comptroller Tom Scrimger told a Senate committee earlier this week that the office is putting together a "global picture of all costs in and around the Phoenix question."

He said the “cost estimation project” is focused on three areas: cost to build and implement; how much will be spent ‘stabilizing’ Phoenix and future costs to get it working efficiently. Some say those future costs will shape whether the government keeps or replaces Phoenix.

“The third area, which is the one that we approach with a great deal of caution, because we don’t know all the answers yet, is what might the future cost of the solution be,” Scrimger said.

Scrimger also said the costing team that reports to him is working with departments and agencies now. They are gathering data, which will have to be checked for its quality, and then used to build costing models.

The plan is to report by spring to the working group of ministers appointed by Prime Minister Justin Trudeau to oversee management of the Phoenix crisis.

Ferguson told the same Senate committee that fixing Phoenix means more than stabilizing the system so public servants are paid correctly and on time.

He said the government must also continue to pay people “efficiently” and will have to figure out what that will cost. The pay system, for example, was built to save money and reduce staff and now employs more people in pay operations than before Phoenix was launched.

Ferguson said that means identifying the “root causes” of Phoenix errors, address and monitor them to come up with a “workable solution. “

“This system has been procured to delivery efficiencies. This system was supposed to pay more easily. Right now, they have a system that is more efficient than the 40-year-old system that it replaced, but it is less efficient than the 40-year-old system that it replaced,” Ferguson told senators.

“Once they get the errors down to the point, they can process them in a reasonable manner, they will then need to turn their attention to making the system efficient.”

Public Services and Procurement Canada, the paymaster, is currently implementing an action plan with more than 20 measures to ‘stabilize’ Phoenix by 2018. At last count, the backlog of files waiting to be processed reached 645,000.

The action plan revolves around a ‘HR to pay’ approach that is at the centre of a new training program and a review of all pay policies and processes.

The approach recognizes that pay and human resources are linked. Human resource transactions trigger payments, so they are central to paying employees properly.

Months into the pay crisis, the government realized the extent of the errors and problems caused by data being entered improperly — largely because no one had been trained on how to use Phoenix with the more than 30 separate HR systems used by departments.

But Ferguson flagged his concerns that the 'HR to pay' approach could mean the government is taking on more complexity and risks when it should be focusing on fixing the pay problems.

"I think it indicates some risk because they're not just talking about fixing pay problems and fixing the pay system. They're talking about this whole integrated HR information to pay information and that could in fact complicate the whole project," he told Senators.

Scrimger recapped some of the costs for senators.

The government spent $309 million on the two-part pay modernization project. The first phase consolidated pay operations, moving pay services from 45 departments to a new central pay centre in Miramichi, N.B.

About 800 compensation advisers working in those departments were laid off. Departments had to transfer about $217 million to the Miramichi project.

The second phase was the roll-out of Phoenix, a pay system that was built by IBM using Oracle's PeopleSoft software.

Scrimger said PSPC received an additional $50 million when problems mushroomed after the second roll-out and departments were allowed to keep the $210 million in savings that Phoenix was supposed to generate over the next several years. The ministers' working group then approved an additional $142 million last year.

"If I very quickly do the math, there is approximately $400 million in funding that's been approved to address the challenges that have come out since the implementation of Phoenix, almost evenly split between not harvesting savings from departments and new monies invested to address the Phoenix implementation issues," said Scrimger.

But some senators were frustrated that the review doesn't yet have a handle on how much departments are spending to fix the problems and deal with the backlog.

"Why is it always "will"? Why wouldn't some of it be done? Why couldn't it be done now? Why isn't it done now," said Conservative Senator Elizabeth Marshall.

'We have to do better': Trudeau reacts to Gerald Stanley verdict
CTV News
Bill Graveland
The Canadian Press
February 10, 2018

BATTLEFORD, Sask. -- The federal justice minister has said the country "can and must do better" after a white farmer was acquitted in the shooting death of a young Indigenous man -- a verdict that sparked a firestorm of criticism from First Nations groups across Canada.

A jury in Battleford, Sask., deliberated 13 hours before finding Gerald Stanley not guilty of second degree murder Friday in the 2016 death of Colten Boushie, a resident of the Red Pheasant First Nation. Red Pheasant First Nation Chief Clint Wuttunee called the ruling "absolutely perverse."

"Colten Boushie was shot in the back of the head at point blank range. Nevertheless an all white jury formed the twisted view of that obvious truth and found Stanley not guilty," he said, adding that the verdict "crushed the spirit" of the community.

Justice Minister Jody Wilson-Raybould tweeted her sympathy for Boushie's family, and said she is "committed to working everyday to ensure justice for all Canadians."

Boushie's family had previously expressed concern that the deck was stacked against them during the court process.

Following the verdict, his uncle Alvin Baptiste called for change.

"Something has to be done about this. The government, Justin Trudeau, we ask you to give us Indigenous people justice," Baptiste said.

Trudeau addressed the call at a news conference in Los Angeles.

"I'm not going to comment on the process that led us to this point today, but I am going to say we have come to this point as a country far too many times," he said.

"Indigenous people across this country are angry, they're heartbroken, and I know Indigenous and non-Indigenous Canadians alike know that we have to do better."

Meanwhile, the head of the Federation of Sovereign Indigenous Nations, Chief Bobby Cameron, said that Wilson-Raybould agreed to meet with Boushie's family "to make some serious, positive change to meet the recommendations of the family."

Federal Conservative Leader Andrew Scheer called Boushie's death "tragic," but said the independent judicial process must run its course without political intervention.

"It's appropriate to show concern and support ΓÇª for the family of the victim, but I think it is important that we remember that politicians don't decide these types of things," Scheer told reporters in Halifax, noting that he didn't know the nature of Wilson-Raybould's meetings.

He also said that the situation warranted a discussion about challenges faced by young First Nations people.

Saskatchewan Premier Scott Moe released a statement saying he has met with Indigenous leaders and is listening to concerns from across the province.

"I would like to acknowledge the pain felt by the Boushie family and all First Nations communities due to the tragic death of Colten Boushie and I understand their deep disappointment following yesterday's decision," Moe said in the statement, which noted he would be speaking to reporters on Monday.

He said that over the coming days he will meet with Indigenous leaders, and that he will also be speaking with Trudeau.

Perry Bellegarde, Chief of the Assembly of First Nations, held a news conference on Saturday saying that there needs to be lasting, system-wide change.

"We have to call on governments to work with us and develop (an) anti-racism plan and strategy," he said, adding that there should be a complete overhaul of the justice system, which he said is rife with systemic racism.

The Indigenous Joint Action Coalition called for a day of action Saturday to show "solidarity and support" for the Boushie and Baptiste family.

Rallies were scheduled across the country -- in Battleford, Edmonton, Vancouver, Toronto and on Parliament Hill.

The trial heard that Boushie was shot in the head while he was sitting in an SUV that had been driven onto Stanley's farm near Biggar, Sask.

The SUV driver testified the group had been drinking during the day and tried to break into a truck on a neighbouring farm, but went to the Stanley property in search of help with a flat tire.

Stanley, 56 testified that he fired warning shots to scare the group off. He said the fatal shot occurred when he reached into the SUV to grab the keys out of the ignition and his gun "just went off."

There were sobs of despair and cries of "murderer" in the courtroom Friday night when the not guilty verdict was read.

Protesters demand justice for teen shot at Maniwaki courthouse
18-year-old recovering after being shot by special constable, mother says
CBC News
February 10, 2018

A few dozen people rallied outside the Maniwaki, Que., courthouse Saturday afternoon, demanding justice for the 18-year-old man who was shot in the head last week by a special constable.

The group gathered in front of the courthouse where the teen was shot on Jan. 31, 2018, shortly after being sentenced in Quebec's youth court system for a matter predating his 18th birthday.

They then marched through the streets of Maniwaki, carrying signs emblazoned with the teen's name and slogans demanding justice.

"He could have killed him. It's a miracle that he's still alive," said a friend of the teen who attended Saturday's rally in a French-language interview with Radio-Canada.

The teen cannot be identified because of protections afforded him by the Youth Criminal Justice Act.

Recovering from coma

The Jan. 31 shooting happened shortly after the teen asked to step outside the courthouse for a cigarette before being taken to jail.

The request was denied. For reasons that remain unclear, a scuffle broke out at around 1 p.m. ET between the teen and the courthouse's lone special constable.

Quebec's police watchdog, the Bureau des Enquêtes Indépendantes (BEI), has said the 18-year-old took a baton off the special constable during the altercation and began hitting him with it.

The special constable then fired his gun, shooting the teen in the head, according to a BEI news release.

His mother told CBC News after the shooting that the bullet entered his skull near his nose and ended up lodged in the side of his neck.

The teen was in a coma and is now recovering, his mother said Saturday. He suffered a severe concussion, she said, and will likely remain in hospital for a few more weeks.

She also said she would be taking legal action against the constable involved in the shooting.

Saturday's protesters also called for more security at the Maniwaki courthouse as well as better training of security personnel.

Protester Fernand Gagnon told Radio-Canada that the shooting is a sign there either isn't enough security at the courthouse, or that those who work there aren't properly trained.

"When it turns out that a young man armed with a lighter and a pack of cigarettes is shot because he wants to go smoking ... I don't know what is missing, but it is not normal that we come to [this]," Gagnon said in French.

'Too much violence'

Special constables are peace officers, and they have the authority to use force while making arrests. In Quebec they're equipped with handcuffs, a retractable baton, pepper spray and a handgun.

Saturday's protest also included family members of Brandon Maurice, a 17-year-old who was shot to death following a pursuit involving a Sûreté du Québec officer in nearby Messines, Que.

"Violence like that, we want [it to end], said Lise Maurice, the dead teen's grandmother.

"There is too much violence on the part of the police. It's not fair."

A coroner's inquest into Maurice's death is expected to take place from April 9-13 at the Gatineau, Que., courthouse.

'Justice for Colten' rally draws protesters to Parliament Hill
Ottawa Citizen
Blair Crawford
February 11, 2018

In the shadow of the Peace Tower, battling both her own sobs and the peals of Parliament's carillon, Charlotte Overvold struggled to make her voice heard.

"I am a survivor of an attempted murder. My birth mother is a survivor of an attempted murder. Neither of us had justice," Overvold told a crowd of about 200 people at a rally in support of Colten Boushie.

"And when I hear about this, it makes me so enraged."

The hastily arranged noon-hour "Justice for Colten" rally was one of many across Canada in response to Friday's not guilty verdict in the second-degree murder trial of Saskatchewan farmer Gerald Stanley. An all-white jury acquitted Stanley, who fatally shot 22-year-old Boushie in the head in August 2016. Stanley's lawyer argued that Stanley's handgun went off accidentally when he confronted a group of Indigenous youth who had driven onto his farm after a day of swimming and drinking at a nearby beach.

Overvold was one of many speakers who came to show support for the Boushie family and share their outrage over the acquittal.

"They're killing kids, and raping women, and leaving us like we're trash," Overvold said. "That isn't right. That's why it's really important that we get together across Canada (so that) our future kids, can hopefully say: 'That's how it used to be. It's not like that no more.

"That's the way we treated each other in the past. It isn't the way we treat each other now'."

Lorna Martin told the crowd how her husband, James, died 20 years ago in Thornhill, Ont., in what she said was a racially motivated killing. As in Boushie's death, the accused also went free.

"It's appropriate that the bells from this building are drowning out our words," said Martin, who also struggled to be heard as the carillon as it played a version of Alanis Morissette's You Learn.

"We're used to that. That's just how it goes," Martin said.

Marissa Mills, who spoke and drummed at the rally, said she was in shock when she heard Stanley had been acquitted — shocked but not surprised.
"We can't be surprised that it was a not guilty verdict because this is still the reality we're facing with the justice system in Canada … There was no mistakes in (Stanley's) actions," Mills said.

She said she was pleased to see the turnout on the Hill at such short notice and hoped that Canadians would hear the rally's message.

"The message is to think about how this affects our communities. This is another layer of fear for our children that some of us have now," Mills said.

"Think about that and change the racist views we see in all parts of the country."

After Stanley verdict, lawyers say political commentary risks justice system independence
Michael Lacy of law group Brauti Thorning Zibarras LLP in Toronto said politicians 'have no business at all' in commenting on trial outcomes
The Province
The Canadian Press
February 11, 2018

VANCOUVER — The public perception of political interference in criminal trials places the independence of Canada's judiciary system at risk, lawyers say.

Concerns have been raised following federal Justice Minister Jody Wilson-Raybould's comments on the acquittal of a white farmer charged in the death of an Indigenous man in Saskatchewan.

Edmonton-based criminal lawyer Tom Engel said when politicians, especially the justice minister, appear to criticize verdicts, the public may believe that future decisions by the courts are influenced by the remarks.

Wilson-Raybould said in a tweet that Canada "can and must do better," after a jury found Gerald Stanley not guilty of second-degree murder in the shooting death of Colten Boushie.

Prime Minister Justin Trudeau also weighed in at a news conference Saturday, saying Canada has "come to this point as a country far too many times."

Engel said if the case is appealed, he doesn't believe the politicians' comments would colour the decisions made by the appeal courts or Supreme Court of Canada.
The problem, he said, is that the public may perceive that there is an influence.
"You can't have even that kind of appearance in our justice system," he said.

Michael Lacy, a partner in the criminal law group Brauti Thorning Zibarras LLP in Toronto, also said politicians "have no business at all" in commenting on the outcome of a trial.

“It undermines the independence of the judicial branch,” he said in an email.

“Saying anything that amounts to commenting on the correctness of the verdict, to improve your public image or ensure an appropriate approval rating, should be criticized in Canada,” Lacy said, adding public figures should stick to offering sympathies over the tragic loss of life.

Rallies were held across the country Saturday to show support for, and solidarity with, the Boushie family.

The trial heard that Boushie was shot in the head while he was sitting in an SUV that had been driven onto Stanley’s farm near Biggar, Sask. Stanley testified that he was trying to scare off Boushie and the others in the vehicle. He said the fatal shot occurred when he reached into the SUV to grab the keys out of the ignition and his gun “just went off.”

The Federation of Sovereign Indigenous Nations and Boushie’s family have raised concerns about the trial because there were no visibly Indigenous jurors selected.

Perry Bellegarde, national chief of the Assembly of First Nations, said Saturday that the courts are rife with systemic racism and the justice system is in need of an overhaul.

Engel said the case does raise questions about the diversity of a jury and how members are selected. He said politicians could use this an opportunity to look at how legislative changes can improve those processes, while steering clear of discussing the verdict.

The use of peremptory challenges to eliminate certain people from juries is a procedure that needs to be reconsidered, he said, adding it’s understandable that people are questioning the apparent whiteness of the jury in this case.

“You can’t go from that fact to say the verdict was wrong. Nobody knows that,” Engel said. “I think the perception that’s been created here is just awful in terms of the integrity of that trial and whether racism played a part.”

Canada to launch new border security app that could go global
The Known Traveller Digital Identity will use personal mobile devices to share detailed personal information
CBC News
Blair Sanderson
February 11, 2018

The federal government is embarking on a new pilot program that will allow people to cross borders faster if they create a digital profile filled with their personal information on their mobile devices.

The Known Traveller Digital Identity is a joint venture between the governments of Canada and the Netherlands, and will be tested first on travellers going between those countries. The plan is to have it ready for a wider global rollout by 2020.

The project announcement was made at the Davos World Economic Forum last month but has mostly flown under the radar.

According to the World Economic Forum document outlining the program, international traveller arrivals are expected to jump from 1.2 billion in 2016 to 1.8 billion by 2030. This will increase risk and security requirements for the aviation and travel and tourism sectors.

Much like other trusted-traveller programs — such as Nexus, which allows people quicker movement between Canada and the U.S. — the Known Traveller Digital Identity program will ask travellers for detailed personal information for pre-screening, including university education, bank statements and vaccination records.

Border expert Bill Anderson said security officials are keen to get people screened well before they pack their bags for a trip.

"The prevailing paradigm in border management is that we need to have risk assessment, and we need to identify those people who are very, very low risk so that you can focus your resources on the ones that you haven't identified as low risk," said the head of the Cross-Border Institute at the University of Windsor.

The pilot program will also make use of biometrics like retina and facial recognition for quicker traveller identification.

Technology company Accenture is helping develop the program. It said user information will be safeguarded and users will be able to decide whom they want to share their information with, and when, on a case-by-case basis.

Data would be protected, says Accenture
Accenture said keeping users in control of their data will be critical.

"No personal information is stored on the ledger itself, ensuring that personal information is not consolidated in one system, which would make it a high value target for subversion," the company said in a statement to CBC News.

In addition to providing personal information before travelling, user profiles would be automatically updated as they move around the world. The more borders they cross, the more trusted they will become, said Anderson.
In some ways, the program takes a page from private tech companies such as Google and Facebook that have become experts in creating profiles about their users.

"It's a crazy world where, you know, Google is able to provide information to people in e-commerce that's more detailed about you than what these security agencies have," said Anderson.

Two-tiered travel?
Anderson says critics argue the advanced screening programs create a two-tiered travel system, with those not signed up ending up in longer lines and getting poorer service.

Nina Brooks is the director of security for Airports Council International, which represents nearly 2,000 airports.

Her organization supports the development of these new technologies, but also wants a system that creates a similar experience for all travellers.

"In the long term, I think we're looking for the use of some of those concepts for the broader audience, for all travellers, and actually expediting travel for everybody, rather than a specific group of trusted travellers," she said.

Les agents de Maniwaki ont-ils failli à leur devoir ?
La question se pose après qu'un prévenu a reçu une balle dans la tête en plein palais de justice.
Droit inc
Delphine Jung
12 février 2018

Alors qu'une empoignade tournait mal au palais de justice de Maniwaki, au moins trois des quatre agents de sécurité présents étaient tenus de s'interposer physiquement et de prêter assistance au constable, rapporte La Presse.

Le 31 janvier, Steven Bertrand a été atteint d'une balle à la tête au terme d'une altercation avec un constable spécial.

Le drame a été filmé par un témoin et publié sur les réseaux sociaux. On y voit une violente empoignade entre M. Bertrand et le constable spécial, devant plusieurs agents de sécurité de la société Garda et de l'entreprise Sécurité Outaouais.

Il semblerait que le mandat confié à Garda prévoyait que les agents devaient « assurer l'encadrement physique (des prévenus) à tous les niveaux ».

De son côté, le ministère de la Sécurité publique, qui a embauché l'agent de la société Sécurité Outaouais, s'est contenté de souligner qu'« aucune directive n'interdit aux agents d'intervenir lors d'une altercation ».
« Il arrive que des clients disent avoir fait la demande, mais que les tâches ne soient pas inscrites au contrat. Pour nous, si ce n'est pas demandé sur papier, ce n'est pas viable », a dit à La Presse Patrick Pellerin, président du Syndicat des agentes et agents de sécurité du Québec (affilié au Syndicat des Métallos, section locale 8922).

Un agent de sécurité n'est pas investi des mêmes pouvoirs qu'un constable spécial. Par exemple, l'agent de sécurité ne peut pas passer les menottes à un prévenu. Ses droits, rappelle M. Pellerin, sont ceux d'un citoyen ordinaire, et sa mission reste de rapporter les événements aux forces de l'ordre.

« C'est sûr que quand on voit quelqu'un se faire agresser, je ne peux pas être en accord si les agents ne bougent pas du tout, nuance-t-il. Mais je veux bien comprendre la situation avant de lancer la pierre », a poursuivi M. Pellerin.

Pour Franck Perales, président du Syndicat des constables spéciaux du gouvernement du Québec (SCSGQ), il n'y a pas de confusion : « Comme tous les citoyens, un agent de sécurité doit porter assistance à quelqu'un qui lui demande de l'aide si ça ne met pas sa vie en danger. Si un agent de la paix a besoin d'aide, un agent de sécurité a le pouvoir de l'aider. »

Il estime que les agents de sécurité ont failli à leur tâche.

Depuis des années, le SCSGQ réclame davantage de constables spéciaux dans les palais de justice de la province. Les agents de sécurité, argue-t-il, n'ont pas la formation suffisante pour les assister dans leur travail.

Les agents doivent normalement recevoir une formation additionnelle, mais le journal n'a pas été en mesure de savoir si ces derniers disposaient de la formation nécessaire pour une intervention physique.