

Press Clippings for the period of February 7<sup>th</sup> to 13<sup>th</sup> 2017 / Revue de presse pour la période du 7 au 13 février 2017

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## **Les juristes de l'État s'adressent au Tribunal administratif du travail**

**ICI Radio-Canada, le 12 février 2017**

C'est ce qu'a déclaré dans un communiqué, dimanche soir, le regroupement qui représente 1100 avocats et notaires, travaillant dans l'ensemble de la fonction publique.

Le président de LANEQ, Me Jean Denis, tiendra une conférence de presse lundi après-midi afin de présenter cette démarche.

Les juristes de l'État, en grève depuis 16 semaines, accusent le gouvernement de tenir un double discours dans le cadre des négociations pour le renouvellement de leur convention collective.

Selon le président de LANEQ, les négociateurs du Secrétariat du Conseil du trésor ignorent volontairement les engagements du ministre Pierre Moreau, notamment pour la création d'un comité qui doit se pencher sur le statut des juristes.

## **«C'était mon devoir de sonner l'alarme»**

**Paul Gaboury, Le Droit, le 10 février 2017**

La présidente du syndicat des traducteurs fédéraux, Emmanuelle Tremblay, est ravie du plan annoncé par la ministre canadienne des Services publics et de l'Approvisionnement, Judy Foote, qui rejette l'idée de privatiser le Bureau de la traduction. Mais celle qui a dénoncé, il y a près d'un an, le découragement des traducteurs restera vigilante pour s'assurer que les engagements du gouvernement se concrétisent.

« En gros, la ministre répond à nos attentes. Le diable sera dans les détails. Il faudra voir comment on va procéder pour mettre en place les mesures, notamment au niveau de l'embauche et du fonctionnement », a réagi la présidente de l'Association canadienne des employés professionnels (ACEP), syndicat représentant près de 800 traducteurs du Bureau de la traduction, qui compte 1197 employés à temps complet.

Press Clippings for the period of February 7<sup>th</sup> to 13<sup>th</sup> 2017 / Revue de presse pour la période du  
7 au 13 février 2017

Au début de l'année 2016, Emmanuelle Tremblay a sonné l'alarme dans les pages du Droit sur la situation au Bureau de la traduction. Elle estime avoir bien fait de dénoncer une situation qui était devenue intenable pour les employés, comme l'avaient démontré deux sondages menés en 2014 et en 2016. À la suite du tollé soulevé, le comité des langues officielles a lancé une étude sur le Bureau de la traduction.

#### Découragement

« Il y a un an, on sentait tellement de découragement parmi nos membres que c'était mon devoir de tirer la sonnette d'alarme, dit-elle. L'outil de traduction Portage a été l'élément déclencheur pour soulever le dossier sur la place publique. Et les autres problèmes ont fait surface par la suite. Je suis très contente de l'avoir fait. »

La semaine dernière, la dirigeante de l'ACEP a rencontré la ministre Foote pour discuter du Bureau de la traduction. Elle soutient que la ministre Foote a été extrêmement surprise d'apprendre l'ampleur des problèmes, ce qui avait aussi été le cas dans le dossier Phénix.

#### Un choc

« C'était notre première rencontre avec la ministre, et l'entretien a été extrêmement fructueux, a raconté Mme Tremblay. Elle a admis que ses collègues l'avaient chicanée pour la réponse qu'elle avait donnée au comité des langues officielles en octobre. C'est comme si la haute gestion avait tenté de dorer la pilule, en lui disant que tout allait. Mais ça lui a explosé en plein visage. Elle a clairement eu un choc en apprenant l'état de la situation. Je lui ai dit que cela ressemblait beaucoup au dossier du système de paye Phénix, où la haute gestion lui avait dit que tout allait bien. »

La ministre Foote a déjà indiqué jeudi qu'il n'était pas dans ses intentions de privatiser le Bureau de la traduction. Mais il est encore trop tôt pour savoir ce qu'il adviendra des 170 autres postes devant être abolis par attrition en 2017-2018.

« Si c'est aussi ambitieux qu'ils le disent, ils n'auront pas le choix d'embaucher de façon significative des traducteurs. Bien sûr, il y aura toujours de la sous-traitance, mais on espère que l'arrivée d'un nouveau dirigeant et un directeur de la qualité fera une différence. Le processus est enclenché et le panel choisi nous donne quand même une impression positive. C'est encourageant », a souligné la présidente de l'ACEP.

Press Clippings for the period of February 7<sup>th</sup> to 13<sup>th</sup> 2017 / Revue de presse pour la période du  
7 au 13 février 2017

L'arrivée de 50 étudiants stagiaires par an, au cours des cinq prochaines années, aidera très certainement. « Mais il faudra aussi s'assurer que le plus grand nombre soit embauché à des postes permanents après leur stage », estime Mme Tremblay.

## **Department reveals there are 290,000 unresolved Phoenix pay cases**

**To address these cases, the department unveiled targets for improving response time for ongoing public service pay issues, starting with parental and disability leave pay. Deputy Minister Marie Lemay calls it a 'turning point.'**  
**Rachel Aiello, The Hill Times, February 8 2017**

There are nearly as many unprocessed public servant pay issues in the queue as there are federal employees who receive their pay through the Phoenix pay system, departmental officials revealed today.

A year after the first of around 300,000 federal employees began receiving their pay through the new payroll system, there are approximately 290,000 “unprocessed transactions” that haven’t been dealt with fast enough, Public Service and Procurement Canada deputy minister Marie Lemay told reporters Feb. 8. Her remarks came during one of the regular departmental briefings on the ongoing attempts to resolve the numerous issues that have sprouted up with the adoption of the new government pay system.

The pay centre’s current capacity is processing 100,000 transactions per month, meaning it could be three months before all the federal employees—who have come forward with pay issues since the extent of the backlog of pay issues was first revealed in July—will have their pay corrected.

Despite this, Ms. Lemay believes the new plan they’ve unveiled to clear these cases signifies a “turning point” in the whole ordeal that has seen thousands of public servants not getting paid, or getting paid the wrong amount. The problems tend to occur when normal pay is disrupted, such as when an employee takes a leave of absence.

Press Clippings for the period of February 7<sup>th</sup> to 13<sup>th</sup> 2017 / Revue de presse pour la période du  
7 au 13 février 2017

Ms. Lemay told reporters that the department has moved a large number of compensation advisers to focus on the incoming cases and service delays faced by federal employees that are continuing to have pay issues pop up.

The department's goal is to have its "service standards" (the number of days it takes to address a pay issue) being met 95 per cent of the time. While the service standard varies for different types of cases—between 20 and 45 business days—right now most categories of pay cases are meeting service standards on average 22 per cent of the time.

In addition to the refocusing of the pay centre staff on these cases and not the backlog (currently around 6,000 cases), Public Services and Procurement Canada is also working with departments to see if more information can be provided by departmental HR personnel from the outset (before it reaches the Phoenix system), and are exploring technological systems to help automate some of the work.

"The vast majority of the issues that employees are facing is really due to the slow processing time, because some of these requests for change have not been processed on time, so for people it's a long time not to get the request that they've asked [for]," said Ms. Lemay.

Pay centre staff are going to first prioritize improving the turnaround on parental leave cases, with a target of the end of March to have 95 per cent of cases dealt with within their 20-day service standard. Now only 22 per cent of cases are dealt with on time. The 290,000 unresolved cases have all been waiting in the queue for more than 20 days.

At the same time they'll be working to get any disability pay cases up to a 20-day service standard by the end of April. Similarly, only 22 per cent of these cases now are dealt with on time.

"Those dates we will meet, and be able to get to steady state," Ms. Lemay said.

The estimated breakdown for the other types of cases is as follows:

Press Clippings for the period of February 7<sup>th</sup> to 13<sup>th</sup> 2017 / Revue de presse pour la période du 7 au 13 février 2017

- New-hire cases are to be resolved within 20 days, a timeline the department aims to meet consistently sometime in the spring. Now only 22 per cent of those cases are being addressed on time.
- Termination cases will have their 20-day service standard being met consistently sometime in the spring. Now only 25 per cent of those cases are dealt with on time.
- Return-from-leave cases are to be resolved within 20 days, a timeline the department aims to meet consistently sometime in the spring. Now only 24 per cent of those cases are being addressed on time.
- Acting-pay cases will have their 30-day service standard being met consistently sometime in the spring. Now only seven per cent of those cases are being dealt with on time.
- Employee-transfer cases are to be resolved within 45 days, a timeline the department aims to meet consistently sometime in the spring. Now only 27 per cent of those cases are dealt with on time.
- And, for promotions and other cases like assignment at level, the estimated timeframe to meet the service standard is summer 2017. Now 16 per cent of promotion cases are being dealt with in their 30-day service standard, while 40 per cent of other cases are dealt with in the 20-day service standard.

“The reason why we didn’t want to put months on the others is because we want to make sure when we give a month to employees, we’re going to respect that month,” said Ms. Lemay.

For some categories of cases, like acting pay, the department is working on setting up automated systems that will all at once clear up the queue and drastically improve the department’s record on meeting the service standard. Ms. Lemay said that acting-pay cases currently make up about 25 per cent of those that are past due in the queue.

The new pay system was first rolled out in February 2016 for 46 federal departments. By the summer, 82,000 cases of public servant pay problems had surfaced—many of which the department realized predated the new government-wide payroll software. Initially, the department had pledged to have the backlog resolved by Oct. 31, 2016.

Conservative critic for Public Services and Procurement, Alupa Clarke (Beauport-Limoilou, Que.), placed the blame for the ongoing pay troubles at the feet of Public Services Minister Judy Foote (Bonavista-Burin-Trinity, N.L.) in a press release and Question Period on Feb. 8.

“It is completely unacceptable that the Liberal Phoenix pay fiasco is still unresolved. New cases emerge every day and the minister of Public Services and Procurement still has no plan to

Press Clippings for the period of February 7<sup>th</sup> to 13<sup>th</sup> 2017 / Revue de presse pour la période du 7 au 13 février 2017

address them,” he and deputy critic Kelly McCauley (Edmonton West, Alta.) were quoted as saying in the release.

They pointed out that close to \$70-million has been overpaid to 26,000 employees, according to documents obtained by the CBC, only about a third of which has been recovered.

“We are working very hard to fix the Phoenix pay system. The previous government would know that in 2015, there was \$78-million paid out in overpayments, so while this is not an ongoing acceptable practice, we are working hard to resolve it under the Phoenix pay system,” said Ms. Foote in Question Period.

“First, our priority is to make sure that employees who work get paid for the work performed. We are also making sure we have a system in place so they can make their payments back, in terms of overpayments, in a way that does not cause hardship for those employees.”

## **Parental, disability leave Phoenix issues should be fixed this spring, federal government promises**

**Focus will shift to other pay issues once parental and disability leave cases are resolved  
CBC News, February 8 2017**

The federal government will catch up on Phoenix pay system problems related to parental and disability leave by this spring, says the minister overseeing the service for Canada's public servants, adding that other types of pay issues could be solved by summer.

Marie Lemay, deputy minister of Public Services and Procurement Canada, made the commitment in Ottawa on Wednesday morning while giving an update on the troubled pay system for public service workers.

- [Overpaid workers latest — but likely not last — problem for Phoenix, opposition MPs say](#)
- [Federal government struggles to recoup \\$70M paid in error due to Phoenix issues](#)
- [PHOENIX FALLING | Stories of public service pay problems](#)

Specifically, Lemay said the cases of anyone with parental leave problems in the backlog will be resolved by the end of March and disability leave problems will be resolved by end of April.

Press Clippings for the period of February 7<sup>th</sup> to 13<sup>th</sup> 2017 / Revue de presse pour la période du 7 au 13 février 2017

As of April and May, the government hopes to be able to resolve 95 per cent of any new parental and disability leave claims within 20 working days of being filed, which is the standard.

Once that happens, the focus will shift to other types of pay requests "until steady state is reached across the board," Lemay said.

The computerized Phoenix pay system, rolled out last February, has been at the centre of complaints by tens of thousands of federal employees. Some were underpaid, others were overpaid and some were not paid at all.

### Processing times lengthy, assessment planned

In an effort to be more transparent, the government is now [posting a monthly report online](#) that shows when employees can expect different categories of pay problems to be fixed.

It's the first time since the government missed a [self-imposed Oct. 31 deadline to clear a backlog of problems](#) that it has unveiled any new deadlines.

The biggest problem with Phoenix continues to be slow processing times, Lemay said.

About 290,000 unresolved pay requests have been waiting in the system longer than 20 days.

The pay centre is currently resolving about 100,000 requests per month. Plans are underway to start automating acting pay to speed up the process.

A review of how employees interact with Phoenix is also in the works to find ways to speed up processing times, Lemay said.

"When Phoenix was planned and implemented, there was not enough attention placed on the processes and the practices that people would use to interact with it. We focused on the technology working, not on working with the technology," she said.

"We will be conducting an expert third-party assessment to identify the processes, behaviours and practices that can be adjusted ... to avoid pay delays and increase processing efficiencies."

### Recouping overpayments

[According to documents obtained by CBC/Radio Canada](#), more than 26,000 employees have been mistakenly overpaid a total of nearly \$70 million. Only about a third of the money sent out in error — about \$22.3 million — has been recovered.





Press Clippings for the period of February 7<sup>th</sup> to 13<sup>th</sup> 2017 / Revue de presse pour la période du 7 au 13 février 2017

Lemay says the government will recoup any money paid in error once they get up to speed processing transactions. A system is in place that flags anyone who is overpaid more than \$10,000.

- [Ottawa struggles to recoup \\$70M paid in error due to Phoenix issues](#)
- [Tax time could bring new problems for Phoenix pay system: opposition MP](#)

"All overpayments will be recovered once we process these outstanding transactions," she said.

At least \$18 million in overpayments were given to employees considered inactive, meaning their contracts are completed, or they retired, quit or took an unpaid leave, according to the documents.

### [Backlog down to 6,000 cases](#)

[At the last Phoenix briefing on Jan. 25](#), Lemay said the government was still trying to clear a backlog of 7,000 pay-related cases (down from 82,000), and that the focus was beginning to shift to resolving more recent cases.

The backlog now sits at about 6,000 cases.

But those numbers only represent the backlog of cases filed by the end of June 2016. Federal unions have said more workers have since come forward with pay problems.

### [How to file taxes](#)

Critics have [also voiced concerns](#) that the upcoming tax season could bring forth a fresh crop of Phoenix-related problems. As a result, the government is urging public servants to:

1. Obtain their T4s through the compensation web applications site as of Feb. 13.
2. Consult their final 2016 pay stub using the same website.
3. Compare the T4 to the pay stub to make sure earnings match the tax slip. (Information on how to do this and what to look out for will be posted online next week, Lemay said.)
4. If they match, file taxes as usual. If they don't match, consult an online Q&A that includes a range of tax scenarios.
5. Anyone with further questions should contact the call centre.



Press Clippings for the period of February 7<sup>th</sup> to 13<sup>th</sup> 2017 / Revue de presse pour la période du  
7 au 13 février 2017

## **Phénix : au moins 27 fonctionnaires fédéraux ont reçu plus de 50 000 \$ par erreur**

**ICI Radio-Canada, le 8 février 2017**

Exclusif - Des milliers de fonctionnaires fédéraux doivent des sommes importantes au gouvernement fédéral à la suite d'erreurs majeures du système de paye automatisé Phénix. C'est ce que révèlent des documents internes obtenus par Radio-Canada, qui lèvent le voile sur l'ampleur des ratés du logiciel.

Une enquête de Catherine Lanthier et de Valérie Ouellet

Près de 600 directeurs, avocats-conseils, gestionnaires, chercheurs et ex-employés de divers ministères fédéraux ont eu droit à toute une surprise en consultant leurs talons de paye au cours des derniers mois. Ils ont chacun été payés plus de 20 000 \$ en trop par le logiciel Phénix.

En tête du groupe : un ex-chercheur qui a reçu 662 777 \$ par erreur.

Il est loin d'être le seul à avoir reçu des sommes imposantes en raison de failles majeures du système. Près d'une trentaine d'employés ont ainsi obtenu plus de 50 000 \$ en trop chacun, dont une ex-conseillère principale qui a touché 155 167 \$ et un avocat-conseil, 81 714 \$.

Enquêtes de Brigitte Bureau

Selon nos calculs, en décembre dernier, le gouvernement fédéral avait versé près de 70 millions de dollars par erreur à plus de 26 200 employés travaillant partout au pays et même à l'international.

Vers la fin de 2016, le fédéral est parvenu à établir des ententes de recouvrement pour récupérer seulement le tiers de ces sommes, soit environ 22,3 millions de dollars.

Deux syndicats représentant la majorité des fonctionnaires fédéraux estiment que le gouvernement risque de ne jamais revoir la couleur de cet argent.

« Phénix... il n'y a aucun moyen de l'arrêter. »

Une personne est assise en face de notre journaliste.

Alex (nom fictif), employé d'un centre d'appels du gouvernement Photo : Radio-Canada

Press Clippings for the period of February 7<sup>th</sup> to 13<sup>th</sup> 2017 / Revue de presse pour la période du  
7 au 13 février 2017

Alors que le gouvernement fédéral assure que les employés touchés verront bientôt « la lumière au bout du tunnel », les chiffres obtenus par Radio-Canada démontrent que, au contraire, la situation s'aggrave.

Les sommes surpayées rapportées par des employés ou ex-employés ont gonflé de 8 millions de dollars en une seule semaine en décembre dernier, passant de 61 à 69 millions de dollars.

Dans les centres d'appels mis sur pied pour gérer la crise, la croissance du nombre de cas à problèmes est devenue ingérable, selon un employé.

Alex travaille dans l'un de ces centres d'appels avec lesquels le gouvernement fédéral a signé un contrat pour aider les fonctionnaires à rapporter les erreurs commises sur leur paye. (Nous lui accordons ce nom fictif, puisque dévoiler son identité lui coûterait son emploi.)

Au bout du fil, des mères de famille monoparentales en larmes, des pères qui ne sont pas payés pour le travail accompli... Tout cela, alors que des milliers d'autres employés continuent de recevoir des milliers de dollars en trop, par erreur.

De nombreux employés ont été trop payés, des sommes substantielles, et on ne sait pas combien ils nous doivent. Le gouvernement ne sait pas combien et on ne sait pas comment en garder la trace.

Alex (nom fictif), employé d'un centre d'appels du gouvernement  
Selon ce téléphoniste, le problème est que le système de paye Phénix continue de commettre sans cesse des erreurs incompréhensibles. « Je pense que le problème avec Phénix, c'est Phénix. C'est tout le logiciel, tout l'algorithme », avance-t-il.

Comment avons-nous effectué nos calculs?

Radio-Canada a obtenu et analysé les documents liés à plus de 74 000 cas de surpaiement rapportés pendant le mois de décembre 2016, y compris le détail de chaque montant payé en trop, la date à laquelle il a été signalé ainsi que le code du ministère lié au dossier.

Pour masquer l'origine de ces documents et protéger nos sources, nous présentons nos résultats d'analyse en regroupant les cas par ministère et sommes totales.

Un an plus tard, des employés frustrés et mal renseignés

Magali Picard en entrevue à Radio-Canada Ottawa-Gatineau  
Magali Picard, vice-présidente exécutive régionale, Québec, AFPC Photo : Radio-Canada

Press Clippings for the period of February 7<sup>th</sup> to 13<sup>th</sup> 2017 / Revue de presse pour la période du  
7 au 13 février 2017

L'autre non-sens, explique Alex, c'est le manque de formation des téléphonistes. Il affirme avoir reçu une seule journée de formation avant de commencer à répondre aux appels.

« Le problème principal où je travaille, c'est qu'on renseigne mal les clients [...] Ils deviennent confus et ça génère d'autres appels », rapporte-t-il.

« On leur dit qu'ils vont recevoir leur paye dans quatre semaines, puis on leur dit six semaines, et ensuite on leur dit que c'est indéterminé », ajoute Alex.

Selon lui, ses collègues ont dû recevoir du soutien psychologique et certains ont démissionné, excédés par la tension quotidienne.

Autant l'Alliance de la fonction publique du Canada (AFPC) que l'Institut professionnel de la fonction publique du Canada (IPFPC) estiment que cette situation est inacceptable.

Lorsque moi, j'entends que des gens ont été embauchés, on leur donne une journée de formation et on s'attend à que ces gens-là deviennent des sauveurs et soient capables de rétablir la problématique, écoutez, c'est invraisemblable. Il y a un grand grand manque de sérieux.

Magali Picard, vice-présidente exécutive régionale, Québec, AFPC  
Des millions de dollars envolés?

Stéphane Aubry en entrevue à Radio-Canada

Stéphane Aubry, vice-président de l'IPFPC Photo : Radio-Canada

Malgré ses efforts, le fédéral n'arrivera probablement jamais à récupérer la totalité des millions versés par erreur, estiment l'AFPC et l'IPFPC.

« Ils ne pourront pas récupérer l'ensemble. Les employés bougent. Il y en a qui vont peut-être quitter le pays pour en profiter », croit le vice-président de l'IPFPC, Stéphane Aubry.

Depuis l'implantation de Phénix, en février 2016, le gouvernement croule sous les demandes et n'arrive pas à respecter ses propres normes de service.

Pour cette raison, « il est possible que certains trop-payés ne soient pas encore au dossier de l'employé », indique le porte-parole du ministère des Services publics et de l'Approvisionnement, Pierre-Alain Bujold.

Press Clippings for the period of February 7<sup>th</sup> to 13<sup>th</sup> 2017 / Revue de presse pour la période du 7 au 13 février 2017

Le gouvernement encourage donc tous ses employés et ex-employés trop payés à communiquer avec ses centres d'appels, afin que ces dossiers soient traités en priorité.

À lire : Le système de paye Phénix en cinq temps

Autre défi de taille : selon nos documents, au moins 18 millions de dollars - soit plus du quart des sommes payées en trop - ont été versés sans raison à des employés considérés comme « inactifs », c'est-à-dire des personnes ayant terminé leur contrat, pris leur retraite, démissionné ou pris un congé sans solde.

Certains d'entre eux ne travaillent plus pour le fédéral depuis des années et sont donc difficiles à retrouver.

Stéphane Aubry trouve « aberrant » que le gouvernement soit incapable de savoir où se trouvent ces individus trop payés et qu'il faille plutôt se fier à la « bonne volonté des fonctionnaires ».

Nos documents indiquent qu'en décembre dernier, 91 % des cas d'employés considérés comme « inactifs » ne s'étaient pas conclus par une entente de recouvrement avec le gouvernement.

Selon la représentante du Québec pour l'AFPC, Magali Picard, le gouvernement « a perdu le contrôle » et ne « semble même pas être au courant de ces cas problématiques, tellement dépassé par les événements ».

Le nombre le plus élevé d'erreurs... à l'Agence du revenu

L'édifice du quartier général de l'Agence du revenu du Canada, à Ottawa

Le quartier général de l'Agence du revenu du Canada Photo : La Presse canadienne/Sean Kilpatrick

Ironie du sort, c'est à l'Agence du revenu du Canada que le plus grand nombre de sommes payées en trop ont été signalées : plus de 7900 paiements injustifiés totalisant 2,6 millions de dollars.

C'est toutefois loin d'être le ministère où les employés ont reçu le plus de versements injustifiés en raison du programme Phénix.

Selon nos calculs, c'est à la Défense nationale où les paiements les plus exorbitants ont été notés depuis près d'un an. Le gouvernement doit encore y récupérer une grande partie des 6,6 millions de dollars versés par erreur.



Press Clippings for the period of February 7<sup>th</sup> to 13<sup>th</sup> 2017 / Revue de presse pour la période du  
7 au 13 février 2017

Nos documents révèlent aussi que de nombreux ministères et agences gouvernementales qui offrent des services essentiels aux Canadiens comptent parmi les plus touchés par les ratés du système, dont Santé Canada, Service Correctionnel Canada ainsi qu'Immigration, Réfugiés et Citoyenneté Canada.

## **Phoenix pay system overpaying thousands of public servants: reports**

**Leslie Young, Global News, February 7 2017**

While many federal public servants are facing problems getting their paycheques, thousands more have reportedly had the opposite problem: getting paid too much.

According to [a report by CBC](#), roughly 26,000 public servants were overpaid by almost \$70 million, and the government has only recovered about a third of that money. A [report in the Ottawa Citizen in December](#) came to a similar conclusion: that more than 20,000 public servants were overpaid by about \$56 million as of October.

Public Services and Procurement Minister Judy Foote wouldn't tell reporters Tuesday why the government didn't seem to know how much had been overpaid. "We will know how much money has been overpaid when we get to dealing with those cases," she said.

"Our priority has been on making sure that those who were not getting paid for work performed get paid for work performed, because we want to make sure that any hardship cases out there are dealt with."

The problems stem from the government's new pay administration system, called Phoenix, which has seen thousands of public servants paid incorrectly – too little, or in some cases, too much – since it was implemented in February 2016. The government identified a backlog of about 82,000 cases in July 2016.

Marie Lemay, deputy minister at Public Services and Government Procurement Canada, said there were still 7,000 backlogged cases as of Jan. 25. Another update is expected Wednesday.

**READ MORE: [Phoenix pay troubles – how did we get here?](#)**

It's a problem that's attracted the attention of the federal auditor general. In November, the Auditor General of Canada said that his office [has begun the "planning phase" of a performance audit](#) of the government pay system.

Press Clippings for the period of February 7<sup>th</sup> to 13<sup>th</sup> 2017 / Revue de presse pour la période du 7 au 13 février 2017

“We cannot provide further information on the scope of work while the audit is ongoing,” said spokesperson Celine Bissonnette on Tuesday.

The Professional Institute of the Public Service of Canada, one of the major public service unions, said that overpayment can be a hardship for some public servants.

“People were reporting that [they were being overpaid] for months and months, and then finally sometime in November the government starts to panic and starts clawing back 100 per cent of their paycheque or three paycheques right before Christmas,” said PIPSC president Debi Daviau. “That was an absolute fiasco.”

Many public servants can’t even tell if they’re being overpaid or by how much, she said. And she believes this will lead to problems at tax time.

**READ MORE:** [Phoenix employees to face a new hurdle: tax season](#)

That’s one of the big worries for many public servants – that extra money in their bank account means paying extra taxes – an issue that Foote says her department is working to resolve with the Canada Revenue Agency.

Foote said that employees who have been overpaid should tell the government, and their cases will be processed once those employees who have been underpaid are resolved.

## **Overpaid workers latest — but likely not last — problem for Phoenix pay system, opposition MPs say**

**Documents show federal government overpaid past and present workers a total of \$70M  
CBC News, February 8 2017**

Opposition MPs say overpayment of federal public servants is only the latest issue for the troubled Phoenix pay system — and they worry that the approaching tax season will bring a fresh crop of problems.

Since the government consolidated many separate payroll systems into the Phoenix system last spring, tens of thousands of public servants have been underpaid, overpaid or not paid at all.

Press Clippings for the period of February 7<sup>th</sup> to 13<sup>th</sup> 2017 / Revue de presse pour la période du  
7 au 13 février 2017

According to documents obtained by CBC News/Radio-Canada, more than 26,000 employees have been overpaid a total of about \$68.6 million. Only about a third of the money sent out in error — around \$22.3 million — has been recovered.

Overpaid, then underpaid: New mom fights pay problems in hospital

PHOENIX FALLING | Stories of public service pay problems

Edmonton MP Kelly McCauley, the Conservative deputy critic for public services, said his office has been "flooded" with calls from constituents who say they've been overpaid by the federal government.

"The money is sitting in their accounts, they brought it forward to the government, but it's not getting addressed," McCauley said. "There's no plan from the government."

Erin Weir

NDP public service critic Erin Weir asks whether there may be 'unreported' cases of federal public servants being overpaid. (CBC)

The NDP's public services critic, Erin Weir, said the \$68.6-million figure may not include workers who did not report being overpaid and that could create "a lot of uncertainty" for the public treasury.

"Of course, many federal employees have reported in good faith the fact they received these overpayments," Weir said. "But one wonders whether there may be more overpayments that have gone unreported."

Minister asks overpaid to come forward

According to Public Services and Procurement Minister Judy Foote, the government's first priority is to correct problems for underpaid and unpaid workers, and it will eventually turn to recouping taxpayer money that's been overpaid.

"We will get the money that's owed to the government, money that's been overpaid, when we get to those cases," she said.

"I encourage any employees who are getting more money than they are entitled to, maybe, put that money into a separate bank account."

She added that the government will work out a "respectful" process for overpaid workers to arrange either a lump-sum payment or repayment plan.



Press Clippings for the period of February 7<sup>th</sup> to 13<sup>th</sup> 2017 / Revue de presse pour la période du  
7 au 13 février 2017

Media placeholderPlay Media

Foote urges overpaid civil servants to reach out to government1:09

'It didn't seem fair'

Andrew Caddell was working for the government of Newfoundland and Labrador during what was supposed to be an unpaid leave from his job with the federal government. But he said paycheques continued to be deposited into his bank account over a three-month period, some after he reported the error.

He calculates that he was improperly paid about \$16,000 due the Phoenix pay system. The government has asked him to pay back \$3599.62 — a quarter of the total amount.

"Clearly they don't have a clue as to how much I really do owe," Caddell told CBC News.

Andrew Caddell says he was overpaid because a Phoenix pay system error

Andrew Caddell says he was overpaid \$16,000 due a Phoenix pay system error and he's trying to pay it back. (CBC)

Caddell said he couldn't live with himself if he didn't pay the entire sum back and he's seen the struggles other public servants have been going through because of the pay issues.

"There are people who are having nervous breakdowns, terrible, terrible problems — and meanwhile I was being overpaid. It didn't seem fair."

T4s as the next chapter?

Opposition MPs suggest that the next major issue for the government will be income-tax forms, which may not properly reflect the salaries or pay of public servants due to the Phoenix problems.

"With T4s coming out next week, we're going to see a new disaster coming out," McCauley said. "This is part of the ongoing cycle of incompetence from the minister."

Foote said the government is working to make sure public servants have the right paperwork, and that's another reason to for people to come forward.

Press Clippings for the period of February 7<sup>th</sup> to 13<sup>th</sup> 2017 / Revue de presse pour la période du  
7 au 13 février 2017

"We are working with the Canada Revenue Agency to make sure that they have the right T4s when they file [their taxes]," she said. "So again, it's really important for employees to reach out and let us know if they've been overpaid."

## **Wilson-Raybould aims to Charter-proof human trafficking law**

**The new legislation, Bill C-38, amends a private member's bill on exploitation and trafficking from the last Parliament. Meanwhile, the CETA bill and legislation addressing the opioid crisis is back atop the House agenda this week.**

**Rachel Aiello, The Hill Times, February 13 2017**

Citing Charter of Rights and Freedoms concerns, federal Justice Minister Jody Wilson-Raybould has tabled a bill killing a portion of a private member's bill passed in the last Parliament aimed at tougher sentencing for human trafficking and exploitation.

On Feb. 9, Ms. Wilson-Raybould (Vancouver Granville, B.C.) tabled Bill C-38, amending former Bloc-turned-Independent MP Maria Mourani's bill that passed in June 2015: Bill C-452, An Act to amend the Criminal Code (exploitation and trafficking in persons). Ms. Mourani ran under the NDP banner in 2015 but lost in the riding of Ahuntsic-Cartierville to Liberal Mélanie Joly, now Heritage minister.

The original bill amended the Criminal Code to: impose consecutive sentences for offenders sentenced for multiple offences related to human trafficking; created a presumption that the accused exercised control or influence over the victim by proving they were habitually in the company of the victim; and added human trafficking to the list of offences for which the forfeiture of proceeds of crime could be applied.

The new bill amends the coming-into-force provisions of Bill C-452 to set in motion the latter two points.

But Ms. Raybould-Wilson said in the House last week that on the basis of "significant concerns under the Charter or Rights and Freedoms," the sentencing section of the bill is being canned until further notice for fear that when combined with other similar legislative changes, like those from the Conservatives' Bill C-36, Protection of Communities and Exploited Persons Act, offenders could receive "disproportionately lengthy sentences."

Press Clippings for the period of February 7<sup>th</sup> to 13<sup>th</sup> 2017 / Revue de presse pour la période du 7 au 13 février 2017

Ms. Wilson-Raybould it may be in violation of Section 12 of the Charter that prevents cruel and unusual punishment.

While the creation of consecutive sentences won't be brought into force in this bill, the minister said it's being looked at as part of her ongoing criminal justice system review.

On the latter two points, the Justice department said putting these rules into practice will make offences easier to prove, could reduce the likelihood of victims having to testify, and put the onus on the offender to prove their property is not the proceeds of crime, making it easier for the police to seize these items.

When Bill C-452 was passed in June 2015, it was not brought into force because, as it was worded, it required "a day to be fixed by order of the Governor in Council," which typically does not take as long as it has for this bill. With the passage of Bill C-38, these new rules will become enacted in law.

Ms. Mourani told the Montreal Gazette in February of last year that "every part of it has already been checked," and she couldn't understand why the formality of setting a date for it hadn't been done.

During the bill's journey through Parliament between 2012 and 2015, the Canadian Bar Association flagged that the bill could face a constitutional challenge for placing the burden of proof on someone who is in proximity to an exploited person. Yet this part of the bill remains intact.

"Today, the Liberals introduced a bill that would give a break to human traffickers who commit multiple crimes. This is unbelievable. ... Why is it that the Liberals are always so worried about giving a break to criminals? Why do they not start sticking up for victims for a change?" Conservative Justice critic and former Justice minister Rob Nicholson (Niagara Falls, Ont.) asked Ms. Wilson-Raybould during Question Period on Feb. 9.

Her response was that Bill C-38 would "give law enforcement and prosecutors additional tools in terms of investigations and prosecutions to assist in combatting" human trafficking and protecting victims.

This new bill has yet to be called for debate and joins a growing number of bills that have not moved from second reading yet this Parliament.

Press Clippings for the period of February 7<sup>th</sup> to 13<sup>th</sup> 2017 / Revue de presse pour la période du  
7 au 13 février 2017

As for what will be moving this week, MPs will debate Bill C-30, the CETA implementation bill, on Monday, Feb. 13, at third reading. Over the next two days, the House is expected to debate Bill C-37, on the opioid overdose crisis and safe-injection sites in Canada, which came back amended from the House Health Committee. Thursday, Feb. 16, will be an opposition day.

Opioid crisis bill amended at committee, will be debated, possibly pass the House this week

The government's safe-injection-site legislation, Bill C-37 passed the committee stage with one clause slightly amended late last week, as the government continues the push to get it passed as soon as possible. Government House Leader Bardish Chagger (Waterloo, Ont.) said it will be debated over a few days this week, expected to begin on Feb. 14. It is now at the report stage and the government could be looking to have it pass through report and third-reading stages in the House before week's end.

Bill C-37, An Act to amend the Controlled Drugs and Substances Act, was introduced by Health Minister Jane Philpott (Markham Stouffville, Ont.) at the end of the 2016 sitting, is part of Health Canada's overall Opioid Action Plan. Bill C-37 seeks to remove regulations around safe-injection sites across the country. It amends the Controlled Drugs and Substances Act, the Customs Act, and the Proceeds of Crime and Terrorist Financing Act, to prohibit the import of unregistered pill presses, remove the exception currently placed on border officers to only open mail weighing more than 30 grams, and make it a crime to possess or transport anything used in the production of controlled substances.

On Feb. 9, members of the House Health Committee sat for two and half hours to go through clause-by-clause consideration of the bill, with the assistance of Health Canada and Canada Border Services Agency senior officials.

Earlier, the committee had agreed, on a motion from Liberal MP John Oliver (Oakville, Ont.), that it would complete the clause-by-clause by the end of that day, and any remaining amendments submitted would be deemed moved, and to submit the report on any legislative amendments back to the House by Feb. 13. The members were able to get through all amendments by 1:30 p.m. on Feb. 9.

"I think all parties at the table certainly feel the urgency with regards to this piece of legislation and want to move it forward," said Conservative MP Rachael Harder (Lethbridge, Alta.) at committee on Feb. 8.

Press Clippings for the period of February 7<sup>th</sup> to 13<sup>th</sup> 2017 / Revue de presse pour la période du  
7 au 13 février 2017

The majority of the bill was agreed to by all sides, but the better part of that committee meeting was spent going over proposed amendments—most unsuccessful—to Clause 42 of the bill. The changes that ended up being approved by the committee—yet to be passed by the House—were to the wording on what’s required for an application for a safe-injection site exemption. Now it states an application will include “information” whereas before it was “evidence,” and “administrative” instead “regulatory” with regard to the structure in place to support the site.

The decision to move through the committee study of the bill so expeditiously was agreed to unanimously by committee members on Jan. 31, a day before the House passed it at second reading after being debated twice.

In the House, the Conservatives unsuccessfully attempted to get support for a motion to divide the bill in two, separating the safe-injection site aspect of the bill from the more customs-based part of the legislation.

The legislation was a priority bill for the governing Liberals when Parliament resumed, with the support of the NDP to have it enacted as soon as possible. The Conservatives wanted to see more community consultation kept in the bill, as Bill C-37 repeals measures around the injection-site application process that the last Harper government introduced under Bill C-2.

## **Liberals looking to eliminate many mandatory minimum sentences, justice minister says**

**Wilson-Raybould says mandatory minimums contribute to backlogs in Canada's courts  
Alison Crawford, CBC News, February 11 2017**

The federal justice minister says the work has already begun to eliminate many of the Criminal Code's mandatory minimum sentences.

In an interview with CBC News, Jody Wilson-Raybould said her department is dissecting every mandatory penalty on the books.

"Certainly we recognize for the most serious crimes, mandatory minimum penalties are entirely appropriate," she said.

"I'm going to be moving forward on revisiting the mandatory minimum penalties in the Criminal Code in a comprehensive way. And that's going to be coming in the very near future."

Press Clippings for the period of February 7<sup>th</sup> to 13<sup>th</sup> 2017 / Revue de presse pour la période du  
7 au 13 février 2017

**Mandatory minimum reforms brought constitutional challenges**

**Top court rejects 2 key Conservative 'tough on crime' reforms**

As a former prosecutor, Wilson-Raybould says judges should determine the appropriate sentence for the individual before them.

She says there's enough evidence to show mandatory minimums have contributed to the backlogs in Canada's courts.

Exhaustive study

Ottawa defence lawyer Michael Spratt has seen it first-hand. He recalled how one client who was charged with impaired driving, which carries a minimum penalty of a one-year licence suspension, felt he had no option but to go to trial because his wife was seriously ill.

"If there was a mechanism for him to plead guilty and retain his licence for the specific purpose of driving his wife to cancer treatment, that case likely wouldn't have gone to trial," Spratt said.

Michael Spratt lawyer

Defence lawyer Michael Spratt says he's seen first-hand how mandatory minimum sentences have created backlogs in the court system. (Hillary Johnstone/CBC)

Mandatory minimum sentences are also in the sights of a Senate committee conducting an exhaustive study on court delays.

"We are going to touch on that. We're not going to ignore it. It's a concern and it is a concern in some situations," said committee chair Bob Runciman, a Conservative senator from Ontario.

There's a sense of urgency among lawmakers, lawyers and judges to speed up the court system following last summer's Supreme Court decision in the case of Barrett Richard Jordan, whose drug charges were stayed after a 49-month wait for trial. The top court's ruling set limits for criminal trials: 18 months for proceedings at provincial court and 30 months for cases at Superior Court.

## **Bill C-4: Restoring Balance Between Employers And Unions**

**Diane Bellemare, The Huffington Post, February 9 2017**

Press Clippings for the period of February 7<sup>th</sup> to 13<sup>th</sup> 2017 / Revue de presse pour la période du 7 au 13 février 2017

The Senate will soon consider a government bill (C-4) that seeks to restore balance between federally regulated employers and unions. It repeals two acts (formerly bills C-377 and C-525) introduced by two Conservative MPs who received support in their crusade from organizations that were clearly against unions.

These two bills made significant changes to the legal framework for unions, and yet unions and employers were not consulted before the bills were drafted. The bills were not even reviewed by the Department of Justice. In fact, they were adopted because they had the tacit approval of the government, which imposed the party line on its MPs and senators. This approach is highly questionable. It was strongly criticized not only by unions, but also by FETCO, the largest association of federally regulated employers, which asked to not be subject to this process.

These two bills became bad legislation. During the last election campaign, both the Liberals and the NDP promised to repeal them. Bill C-377, which forces unions to disclose a variety of personal financial information online, is likely unconstitutional. Seven provinces have opposed it, seeing it as intruding on their labour relations jurisdiction. Their position was supported by the vast majority of legal experts who have appeared before the Senate since 2013. In their opinion, this bill is unconstitutional and violates privacy rights.

Bill C-525, which came into force in June 2015, made significant amendments to the union certification system. It makes secret ballots mandatory and relaxes the conditions to revoke union certification. The main argument to support it was that mandatory secret ballots were more democratic than the system it would be replacing.

This argument is very simplistic. The system it replaces, known as the card-check certification system, also provides for secret ballots. This system, which will be restored if the current Bill C-4 is enacted, provides that a secret ballot is mandatory when 35 per cent to 50 per cent of employees sign a membership card. It also provides for a secret ballot vote if, after verifying with the cardholders, the Labour Relations Board deems it appropriate.

In everyone's mind, a secret ballot vote is synonymous with democracy. But the conditions in which it takes place must also be taken into account. In some countries, a secret ballot vote during an election is not necessarily synonymous with democracy. Bill C-525 did not include any safeguards against ways the employer could pressure employees. This bill would have been different if the changes to the union certification system had been negotiated between the parties.

**Unionization leads to a more equitable distribution of employment earnings and promotes a growing middle class.**



Press Clippings for the period of February 7<sup>th</sup> to 13<sup>th</sup> 2017 / Revue de presse pour la période du 7 au 13 février 2017

It is also important to note that Bill C-525 contains technical errors, due to the fact that it was not reviewed by the Department of Justice, unlike government bills.

Going forward, senators will have to decide, not which certification system is better, but how to recognize the paramountcy of the tripartite labour relations system when the time comes to amend the Labour Code. If the Senate decides to defeat Bill C-4, it will be confirming the validity of a dubious process, thereby undermining the stability of the current tripartite federal labour relations system.

In addition, the Senate must consider the unintended consequences of the legislation that Bill C-4 will repeal. First, Bill C-525 may reduce unionization rates, primarily in the private sector. A study carried out by the Department of Employment in 2013 concluded that making secret ballot voting mandatory in some provinces led to a decrease in union coverage in the private sector, dropping from 23 per cent in 1997 to 19 per cent in 2012.

Second, many studies show that, in addition to globalization and technological change, a lower unionization rate is strongly associated with higher income inequality. According to a study by researchers at the International Monetary Fund, in developed countries, 40 per cent of the increase in revenue share for the richest 10 per cent is attributable to lower unionization rates. Unionization leads to a more equitable distribution of employment earnings and promotes a growing middle class. It also establishes a public voice that can call on governments to provide better social programs, increased minimum salaries and a progressive tax system.

The Organisation for Economic Co-operation and Development determined that, on average in OECD member countries, increased inequality is responsible for a cumulative loss of 8.5 per cent of GDP over a period of just more than 20 years.

In short, passing Bill C-4 is not only a way to ensure an election promise is fulfilled, but also a way to recognize the importance of the tripartite federal labour relations system and to take a step in favour of the middle class and shared prosperity.

## **Ottawa financera à nouveau les contestations judiciaires**

**Hélène Buzzetti, Le Devoir, le 8 février 2017**

Press Clippings for the period of February 7<sup>th</sup> to 13<sup>th</sup> 2017 / Revue de presse pour la période du  
7 au 13 février 2017

Vous n'avez pas été capables de vous faire servir un Pepsi en français à bord d'un wagon de VIA Rail ou d'un avion d'Air Canada ? Le Programme de contestation judiciaire restauré mardi par le gouvernement de Justin Trudeau permettra désormais de financer ce genre de poursuites, Ottawa ayant décidé d'en élargir la portée.

« Le Programme de contestation judiciaire fait partie des outils qui nous permettent de mieux définir nos droits, a lancé la ministre du Patrimoine, Mélanie Joly. Nos lois ne sont pas parfaites, et c'est pourquoi il est important de donner la chance aux Canadiens de faire valoir leurs droits. »

Le Programme de contestation judiciaire (PCJ) avait été créé en 1978 pour offrir un soutien financier aux personnes voulant s'adresser aux tribunaux parce qu'estimant leurs droits lésés par les gouvernements fédéral ou provinciaux. Le programme a par exemple financé S.O.S. Montfort pour forcer l'Ontario à garder l'hôpital universitaire francophone ouvert et Egale Canada pour étendre aux homosexuels le droit au mariage.

Il avait été aboli par le gouvernement de Stephen Harper en 2006 au motif qu'il usurpait le pouvoir des élus de rédiger les lois. Les conservateurs jugeaient qu'Ottawa n'avait pas à financer ses adversaires. Devant le tollé, ils avaient restauré la partie du programme destinée aux minorités linguistiques.

Le programme restauré est maintenant élargi. Il financera comme avant les causes s'appuyant sur le droit à l'égalité ou les droits linguistiques garantis dans la Charte des droits et libertés. Mais il financera aussi les causes invoquant d'autres droits garantis par la Charte (liberté religieuse, liberté d'expression, droit à la vie, la liberté et la sécurité) ainsi que celles s'appuyant sur la Loi sur les langues officielles.

Cette Loi, plus prescriptive, prescrit que « le public a, au Canada, le droit de communiquer avec les institutions fédérales et d'en recevoir les services » dans les deux langues officielles. Par institutions, on entend aussi Air Canada et les sociétés de la Couronne telles que VIA Rail. Cette Loi garantit aussi le droit de travailler dans sa langue de prédilection au sein de la fonction publique. La Loi commande enfin aux institutions fédérales de prendre des « mesures positives » pour « favoriser l'épanouissement des minorités » linguistiques. Ces droits existent déjà et une personne s'estimant lésée peut s'adresser aux instances judiciaires pour obtenir réparation. La nouveauté, c'est que cette personne pourra désormais faire financer sa cause par Ottawa.

Press Clippings for the period of February 7<sup>th</sup> to 13<sup>th</sup> 2017 / Revue de presse pour la période du 7 au 13 février 2017

La Fédération des communautés francophones et acadiennes du Canada (FCFA) se réjouit de ce développement. La présidente Sylviane Lanthier a toutefois une légère inquiétude : le nouveau programme sera géré par un organisme choisi par Ottawa, alors qu'auparavant il était géré par une organisation créée à cette fin et composée des divers organismes comme la FCFA susceptibles de se prévaloir du PCJ. La FCFA espère que l'organisme choisi sera sensible aux besoins des minorités linguistiques.

Par ailleurs, deux panels indépendants du gouvernement seront constitués pour choisir quelles causes seront financées. Un panel s'occupera exclusivement des causes linguistiques et sera doté d'un fonds minimal de 1,5 million de dollars. Le second évaluera toutes les autres demandes. Au total, le PCJ disposera d'un budget de 5 millions de dollars. Au moment de son abolition il y a 11 ans, il gérait 2,8 millions.

## **Liberals restore court challenges program for equality fights**

**The financial support program has been instrumental in major constitutional challenges, including the fight for same-sex marriage**

**Joanna Smith, The Canadian Press, February 7, 2017**

The Liberal government is restoring and modernizing a program that gives financial support to those mounting expensive legal battles to clarify and protect their language and equality rights in court.

The reworked court challenges program is also expanding to include other sections of the Canadian Charter of Rights and Freedoms, including religion and freedom of expression, democratic participation and the right to life, liberty and security of the person.

It is also expanding its scope to include parts of the Official Languages Act, including communications and services to the public, proceedings of Parliament, language of work within federal jurisdiction and the promotion of both English and French.

“No matter how conscientious a government is when it proposes legislation, or how thoroughly a government studies a piece of legislation before it becomes law, there may still be unforeseen impacts on guaranteed rights,” federal Justice Minister Jody Wilson-Raybould said Tuesday in Ottawa.

The program was established in 1978 and has played an instrumental role in many major constitutional challenges, including the fight for same-sex marriage, before it was abolished by the previous Conservative government shortly after coming to power.

Press Clippings for the period of February 7<sup>th</sup> to 13<sup>th</sup> 2017 / Revue de presse pour la période du 7 au 13 février 2017

“Protecting against these unintended consequences and ensuring that more vulnerable groups within society have the means to challenge the legislation under the constitution and under the Official Languages Act is the right thing for government to do,” Wilson-Raybould said.

The court challenges program will receive \$5 million in annual funding to support individuals and groups for developing and litigating test cases, as well as funding for legal interventions.

At least \$1.5 million of that will be allocated for clarifying language rights.

As much as 20 per cent of the annual total could be spent on administrative costs, but an official said the government aims to reduce that amount in subsequent years as the program gets underway.

An independent body will now oversee the new version of the program, which the government says will help ensure that decisions over who gets funding — and who doesn’t — remain impartial.

Those interested in the job have until Mar. 6 to apply.

That independent body will also manage two separate panels of experts — one for official language rights and the other for human rights — also chosen through an “open, transparent and merit-based process.”

The new program is slated to be up and running by the fall.

Last fall, the House of Commons justice committee urged the Liberal government to go further, recommending the program become independent and enshrined in legislation to protect it from the whims of future governments.

Heritage Minister Melanie Joly did not rule that out as a possibility later down the road.

The Liberals promised to fully reinstate the program during the 2015 election, and then committed about \$5 million in annual funding in last year’s federal budget.

## **Lawyers at Ottawa airport, offering free legal advice for those affected by Trump travel ban**

**Joanne Schnurr, CTV News Ottawa, February 7 2017**

Lawyers across North America, including right here in Ottawa, are mobilizing to help those who might be stranded by the ban.

The Canadian effort is being led by Refugee Hub and an Ottawa lawyer and professor who is the managing director of Refugee Hub.

Press Clippings for the period of February 7<sup>th</sup> to 13<sup>th</sup> 2017 / Revue de presse pour la période du 7 au 13 février 2017

It was a scene throughout airports in the United States today as Americans greeted their loved ones from one of those seven countries affected by Trump's travel ban. They had taken this narrow window of opportunity to legally come in to the United States.

"I don't know what to say," says one woman in Colorado, as she hugged her mother who had just travelled from Iran, "We've been waiting for this moment for years."

In a corner of the departure area at the Ottawa Macdonald-Cartier International airport, two Ottawa lawyers were hoping to continue to make those reunions happen. Alison Reed and Ania Kwadrans are

offering free legal advice to those travelling through Ottawa to the U.S. who might be impacted by the travel ban.

"There was a call out to members of the bar saying we need lawyers at the airports," explains Reed, "It's something I responded to as soon as I could and this is my first morning here."

Ania Kwadrans has volunteered three days in a row since the temporary restraining order was imposed on the ban.

"I went to law school and became a lawyer so I could assist people in need," she says, "to promote justice. I see a huge injustice going on now with Trump's travel ban, barring people on the basis of their country of origin."

Lawyers are stationed in four airports across this country: Toronto, Montreal, Vancouver and here in Ottawa. It is a fluid situation as the travel ban works its way through the U.S. court system.

The lawyers call themselves the Canadian Cross Border Legal Coalition and include between three and four hundred who have signed up on a roster, working with travellers, airlines and ticket agents to ensure those with valid documents are not banned from the U.S. They have had few requests for help at the Ottawa airport so far.

"As far as we know, everything has been going smoothly and airlines have been issuing tickets to those who might be affected by travel ban," says Kwadrans.

But that can quickly change. The Trump administration is trying to restore the ban and the legal challenge is ongoing.

Jennifer Bond is the managing director of Refugee Hub, the organization leading the coalition,

Press Clippings for the period of February 7<sup>th</sup> to 13<sup>th</sup> 2017 / Revue de presse pour la période du 7 au 13 février 2017

“Right now, we know people can travel throughout the day today,” she explains, “if you are someone with a valid document and you are considering re-entering the U.S., we would encourage you do that today.”

Bond says if Trump wins the appeal, the coalition will just re-focus its work, offering support and references to those caught in the ban. The lawyers donating their time know they are in this for the long haul.

“In challenging times, I’m heartened by the widespread response,” Bond says, “it is amazing but not inconsistent that we have hundreds of lawyers volunteering their time across the country.”

The lawyers in Canada say they are ready to ramp up their mobilization efforts. Their next stop, depending on what happens with this ban, will likely be to expand their services at the land border crossings.

## **Liberals to table legislation this winter to apply access-to-information regime to ministers’ offices**

**The changes could just push partisan work 'underground' onto personal phones and email accounts, says a former Conservative PMO staffer.**

**Peter Mazereeuw, The Hill Times, February 8 2017**

The Liberal government’s promise to open the offices of Prime Minister Justin Trudeau and the rest of his cabinet to access to information requests is on track, according to a spokesperson for Treasury Board President Scott Brison.

Legislation to make that change and check off other promises in the Liberal campaign platform will be introduced before the winter’s end, according to Jean-Luc Ferland, Mr. Brison’s press secretary.

Mr. Brison had promised to bring in those changes in late 2016 or early 2017 during an appearance in front of the House Access to Information, Privacy, and Ethics Committee in May of last year.

Right now, ministers’ offices and the Prime Minister’s Office are exempt from access to information requests, one of many exemptions that allows the government to withhold information from the public. Other exemptions include anything related to national security; advice to a minister from the public service; plans not yet put into practice; drafts of internal audits; sensitive information related to Canada’s economic prospects; confidential information

Press Clippings for the period of February 7<sup>th</sup> to 13<sup>th</sup> 2017 / Revue de presse pour la période du  
7 au 13 février 2017

from other levels of government, aboriginal governments, or foreign governments; information that could be “injurious” to federal-provincial affairs, or foreign affairs; and many subjects related to policing or law enforcement.

The government’s legislation will implement all of the targets related to access to information in Mr. Brison’s mandate letter, apart from a promised review of the Access to Information Act expected in 2018, said Mr. Ferland. That includes ensuring that the federal information commissioner is “empowered to order government information to be released,” and ensuring that the act applies “appropriately” to the PMO and ministers’ offices, as well as courts and other administrative bodies that support Parliament.

What “appropriately” means is not yet clear. Mr. Ferland said the government had not yet determined that. He could not confirm whether the act would be applied any differently to the PMO or ministers’ offices than it is to federal departments or other bodies already covered. The word “appropriately” was not included in the Liberal Party campaign platform promise.

Canada’s information commissioner, Suzanne Legault, had called for ministers’ offices and the PMO to be open to access to information requests in a report to Parliament in March 2015, before the pre-election campaigning had begun.

However, a staffer in former Conservative prime minister Stephen Harper’s PMO warned that doing so could simply push sensitive political communications “underground,” into personal emails or cell phones that aren’t covered by access requests.

“Your personal phone would become essentially your political phone,” said the ex-staffer.

#### IRCC top target

The Access to Information Act allows Canadian citizens, permanent residents, and businesses to request copies of government documents, including emails, briefing notes, reports, and more. The documents are typically provided by the government weeks or months later, and may be heavily redacted under one or more of the exemption clauses in the act.

More than 75,000 requests were made to the government under the act in 2015-2016, with more than 41,000 going to Immigration, Refugees, and Citizenship Canada, according to an annual government report on the act. The Canada Border Services Agency received 5,532, the second most among government departments and agencies.



Press Clippings for the period of February 7<sup>th</sup> to 13<sup>th</sup> 2017 / Revue de presse pour la période du 7 au 13 février 2017

More than 40 per cent of access requests came from businesses last year, while 35 per cent came from the general public, and nine per cent from members of the media.

Exemptions for material related to the operations of government, including advice to a minister, deliberations between government employees, negotiations, and plans for the future, were used 9,533 times by the government last year.

The Liberals have also pledged full and regular reviews of the Access to Information Act, although Mr. Brison said last year the government won't begin its first major review until 2018.

Ms. Legault criticized that delay, and the government's slow movement on living up to the rest of its commitments on access to information, in October.

"I'm not sure reading that timeline that we're going to see a substantive review before the next election," Ms. Legault said on the CBC's The House radio program.

#### Fees reduced

Mr. Brison led a government consultation on access to information between May and July of last year, and the House Access to Information, Privacy, and Ethics Committee also studied possible reforms to the act last year. Any changes to come out of the feedback from those studies, beyond what was promised in Mr. Brison's mandate letter, will be included in the 2018 review, said Mr. Ferland.

Mr. Brison did take a first step towards improving the access to information process in May, however, instructing government departments and agencies to abide by the intent of the Access to Information Act and its goal of government transparency when evaluating access requests, to waive all fees for requested information beyond the initial \$5 application fee, and to release data in user-friendly formats.

The directive also made clear that political staff were not to be involved with processing access requests. Ms. Legault found in 2014 that three staffers working for the previous Conservative government had systematically interfered with the processing of access requests by public servants.

The government also added \$3-million to the budget of Ms. Legault's office over the summer.

Press Clippings for the period of February 7<sup>th</sup> to 13<sup>th</sup> 2017 / Revue de presse pour la période du  
7 au 13 février 2017

## **Federal court slaps down website posting embarrassing court decisions**

**Site was charging fees to take down humiliating court documents**  
**Leslie MacKinnon, iPolitics.ca, February 8 2017**

The Federal Court has ordered a website run from Romania that republishes Canadian court decisions to stop copying the material from legal websites in this country.

On January 30, Justice Richard Mosley issued an order for the website Globe24h.com, operated from Constanta, Romania by Sebastian Radulescu, to remove all content downloaded from Canadian courts and tribunals.

Decisions from Canadian courts and tribunals are available publicly on sites such as CanLII.org, or on the sites of federal and provincial courts. However, anyone searching those sites needs to know the names of the parties or the case number. The sites are not indexed for a Google search.

What Globe24h.com did was open its content up to search engines — so that typing in a person's name would link to a court decision that might be potentially embarrassing.

The Office of the Privacy Commissioner of Canada received almost 50 complaints from people who reported that a simple search of their names revealed details of divorces, abuse cases or personal bankruptcies containing information they wished to keep private.

When they complained to the Globe24h.com, they were told they could have the material taken down for a fee of 19 euros, but the process would take at least 180 days. If they wanted an immediate takedown, the fee increased to 120 euros or more.

The Privacy Commissioner took Radulescu to Federal Court and was joined by an applicant identified by the court as A.B. who had been engaged in a dispute with his employer before the Alberta Labour Board. A.B. discovered that by Googling his own name he could find the board's decision on Radulescu's website.

Justice Mosley issued an order to Radulescu to take down all Canadian court records and awarded \$5,000 in damages to A.B. Mosley also noted his ruling could allow complainants to submit a request to Google and other search engines to remove links to decisions on Globe24h.com.

Press Clippings for the period of February 7<sup>th</sup> to 13<sup>th</sup> 2017 / Revue de presse pour la période du 7 au 13 février 2017

In the meantime, Globe24h.com has disappeared.

Micheal Geist, an Ottawa University law professor specializing in internet privacy, thinks Mosley's ruling is a step towards Canadians gaining "a right to be forgotten" on the internet similar to laws in Europe.

In an email to *iPolitics*, Geist writes that "if Google complies with the request based on the declaratory order, this will provide a roadmap for obtaining similar orders in the future."

David Fraser, a privacy lawyer based in Halifax, is uncomfortable with the idea of the Mosley decision setting a precedent, because neither Radulescu nor a lawyer representing him appeared in court. Courts are supposed to be adversarial, not one-sided, Fraser said in a phone interview, and if Radulescu were present he might have provided arguments about freedom of expression and the right to access information.

Fraser added there's no doubt Radulescu was a "bad actor" whose business model was to extort people to pay money to have content removed, but the judge's order told him to take down all Canadian court records, something Fraser says is not against privacy laws.

"The court seems to be saying, 'OK we'll grant this order because that will be persuasive to get Google to take down the content voluntarily,'" he said. "If there is going to be a right to be forgotten it has to go after the source documents rather than an intermediary like Google or Bing who are simply indexing."

In Europe, people can ask Google and other search engines to remove content if it is no longer "relevant." Fraser, in his privacy law blog, asks what happens if the content becomes relevant again — citing as an example an old online video that resurfaced during the last election featuring a Conservative candidate peeing in a cup in a house where he was fixing the plumbing. The incident took place a few years earlier during his full-time job as a plumber, but he ended up resigning as a candidate.

"One can readily imagine scenarios in which someone with political ambitions will seek to have content suppressed before seeking a nomination. If successful, relevant information about the candidate's history and character may be indelibly lost," Fraser said.

The issue likely will be clarified later this year when the Supreme Court of Canada issues a ruling in which it might reverse a B.C. Court of Appeals' decision ordering Google to take down world-wide links to an offshore company accused of stealing proprietary software from a Burnaby, B.C. company called Equustek.



Press Clippings for the period of February 7<sup>th</sup> to 13<sup>th</sup> 2017 / Revue de presse pour la période du  
7 au 13 février 2017

Google is fighting the order; it notes it took down hyperlinks to the offending company on  
google.ca but argues Canada has no jurisdiction to tell it what to do in other countries.