Écoute électronique chez leur avocat: deux présumés mafiosis acquittés

Durant une enquête visant à incriminer deux chefs présumés de la mafia montréalaise, les policiers avaient mis sur écoute le bureau d'un criminaliste.

Droit Inc
Delphine Jung
20 février 2018

L'essentiel de la preuve contre Leonardo Rizzuto et Stefano Sollecito, les chefs présumés de la mafia montréalaise, reposait sur une importante conversation qu'ils auraient eu avec un autre individu dans le cabinet de l'ex avocat, Loris Cavaliere.

Or, les deux présumés mafiosis ont été acquittés hier des chefs de gangstérisme et de complot pour trafic de cocaïne auxquels ils faisaient face depuis trois ans.

Le juge Éric Downs a prononcé leur acquittement, à la suggestion de la Poursuite, qui a annoncé ne pas avoir assez de preuve à offrir, rapportent plusieurs médias.
Dans cette affaire, M. Rizzuto et M. Sollecito étaient représentés par Mes Dominique Shoofey et Danièle Roy.

D'après plusieurs médias, le juge Éric Downs a estimé que les enquêteurs ont privilégié leur enquête au détriment du secret professionnel protégeant les conversations privées entre les avocats et leurs clients.

Le cabinet sur écoute
L'ex avocat, Loris Cavaliere Les policiers soupçonnaient Rizzuto et Sollecito d'y tenir des réunions. Ils ont donc décidé d'y installer des micros et des caméras dans la salle de conférence, la réception et le bureau personnel de l'ancien avocat de la défense.

Ce cabinet se situait sur le boulevard Saint-Laurent, à Montréal.

« Il va de soi qu'un cabinet d'avocats ne peut devenir une chambre forte permettant de mettre à l'abri des avocats ou d'autres personnes qui commettent des infractions criminelles », a dit le juge Downs dans son jugement. « En l'espèce, le bureau personnel de Loris Cavaliere était un lieu où pouvaient être interceptées légalement des communications illégitimes non protégées par le secret professionnel. »

Par contre, il a estimé que la salle de réception ou la «salle de conférence» étaient des lieux fréquentés par d'autres avocats et leurs clients.

Eux avaient en revanche le droit d'être protégés de l'intrusion de l'État. À cette époque, Rizzuto était un avocat alors que Sollecito était un client.

Le juge a donc décidé de faire une différence entre les conversations qui ont eu lieu dans le bureau personnel de Loris Cavaliere et celles qui ont eu lieu ailleurs dans le cabinet.

Le juge Downs a également soulevé plusieurs manquements effectués par les policiers avant les interceptions des conversations, durant les opérations d'interception et dans le traitement des conversations une fois interceptées.

De son côté, Loris Cavaliere a plaidé coupable à une accusation de gangstérisme il y a un an et il a été condamné à 34 mois de pénitencier. Il a toutefois obtenu sa libération conditionnelle en novembre dernier.

Amiante : une indemnité contestée de nouveau, malgré une mise en garde ministérielle
Radio-Canada
Julie Dufresne
20 février 2018

Le CIUSSS du Saguenay-Lac-Saint-Jean conteste une nouvelle fois une indemnité de la Commission des normes, de l'équité, de la santé et de la sécurité du travail (CNESST) reconnue à l'un de ses anciens employés, qui souffre d'une maladie respiratoire liée à une exposition à l'amiante. Le CIUSSS refuse de justifier sa démarche, mais ne nie pas avoir en parallèle tenté de régler le dossier à l'amiable.

« Le dossier est entre les mains du service juridique pour être évalué », s'est limitée à dire la porte-parole du CIUSSS, Amélie Gourde. Pourtant, après avoir été saisie de l'histoire de Claude Truchon et d'autres ex-travailleurs par Enquête, la ministre du Travail s'était dite « sensible » au problème de contestation par les employeurs publics.

Sans leur enlever le droit de contester, Dominique Vien convenait qu'ils ont une forme de responsabilité morale, d'autant qu'ils ont recours à des fonds publics pour contester. Elle comptait sensibiliser les membres du gouvernement dont les portefeuilles sont directement touchés.

Au cabinet de Dominique Vien, on confirme que la discussion a bel et bien eu lieu au Conseil des ministres et que le ministre de la Santé, Gaétan Barrette, a été informé du problème.

Le ministre juge-t-il acceptable qu'un centre hospitalier, qui a déjà dépensé en honoraires plus de 30 000 $ de fonds publics afin de contester une première décision de la CNESST, conteste une deuxième fois? La réponse nous a été transmise par courriel par son attachée de presse, Catherine W. Audet : « J'ai été sensibilisé à ce dossier par ma collègue, Mme Dominique Vien. Ceci dit, je n'ai pas de commentaire à faire pour le moment considérant que le dossier est en évaluation par le service des affaires juridiques du CIUSSS du Saguenay-Lac-Saint-Jean. »

Toujours en attente d'une première indemnité

Claude Truchon, un électricien qui a travaillé à l'hôpital de Chicoutimi, souffre de pachypleurite diffuse, une maladie assimilable à l'amiantose. Il est en attente d'une décision de la Cour supérieure pour faire valoir son droit à toucher à la première indemnité de 30 000 $, malgré la contestation du CIUSSS.

Sa deuxième indemnité, qui s'élevait à 32 000 $, a été autorisée après la reconnaissance unanime de six pneumologues de la CNESST, l'automne dernier, puis maintenue en révision administrative à la direction de la CNESST. Ça n'a pas empêché le CIUSSS de porter à nouveau la décision devant le Tribunal administratif du travail.

« C'est totalement inacceptable », s'est indigné le président de l'Association des victimes d'amiante du Québec (AVAQ). « D'un point de vue éthique, c'est totalement aberrant : le processus de la CNESST est très rigoureux. Si le comité de pneumologues a dit, de façon unanime, qu'il fallait indemniser le travailleur, c'est qu'il est réellement malade », a-t-il réagi.

Le président est d'autant plus préoccupé que l'état de santé du retraité, âgé de 73 ans, se dégrade. Comme la plupart des maladies liées à l'exposition à l'amiante, l'amiantose se déclare des dizaines d'années après que les fibres ont pénétré dans les poumons. Elle empêche progressivement la personne atteinte de respirer.

« Je suis allé le rencontrer, M. Truchon : il ne s'améliore pas. C'est le CIUSSS [du Saguenay-Lac-Saint-Jean] qui s'acharne. Il sait que le temps fait son œuvre. »

Une trentaine d'organisations demandent de resserrer la norme sur l'amiante

Un collectif de près d'une trentaine d'organismes, dont l'Ordre des architectes, la Société du cancer – division du Québec, la Fondation David Suzuki, l'École de santé publique de l'Université de Montréal et l'Association des pompiers de Montréal, demandent aux quatre principaux partis politiques de resserrer rapidement la norme provinciale d'exposition à l'amiante.

L'an passé, le gouvernement fédéral a annoncé qu'il resserrait la norme pour tous les établissements qui relèvent de lui : il limite à 0,1 fibre/cm3 ou moins la norme d'exposition à l'amiante, sans quoi les travailleurs exposés doivent revêtir l'équipement de protection.

Mais la nouvelle réglementation ne s'applique pas dans les établissements qui relèvent de la province. Même si la norme québécoise est dix fois plus permissive, la CNESST n'a toujours pas indiqué si elle allait la resserrer aussi, comme le révélait Radio-Canada en août dernier.

La CNESST procède actuellement à l'analyse des informations qui découlent d'une consultation publique qui s'est terminée en octobre, et prévoit publier des recommandations au printemps 2018.

Dans une lettre qu'il a fait parvenir aux chefs de chacun des partis représentés à l'Assemblée nationale (Parti libéral, Parti québécois, Coalition avenir Québec et Québec solidaire) et qu'il rendra publique mardi, le collectif leur demande de mettre de côté la partisanerie et d'aller promptement dans le même sens que le gouvernement fédéral.

« Diminuer au maximum l'exposition de nos travailleurs à l'amiante est assurément une mesure préventive efficace en termes de gains de santé ainsi qu'en gains économiques. Devant cette évidence,

nul besoin d’attendre encore des années avant de passer à l’action », écrivent les cosignataires au premier ministre et aux partis d’opposition.

Canada's government appeals court ruling on solitary confinement
Reuters
Anna Mehler Paperny
February 20th 2018

TORONTO (Reuters) - Canada’s ruling Liberal government said on Monday that it is appealing a decision from a British Columbia judge who determined that current prison practices on solitary confinement violate the constitution.

British Columbia Supreme Court Judge Peter Leask last month found the use of solitary confinement for indefinite periods in federal prisons violates the Charter of Rights and Freedoms and disproportionately harms Indigenous women and people with mental illness. He gave authorities a year to make changes, including introducing an appeals process for prisoners put in extended solitary confinement.

The case is about a type of solitary confinement known as “administrative segregation,” which allows inmates to be confined indefinitely for non-disciplinary reasons, including protecting them from fellow prisoners.

The vast majority of Canadian prisoners in solitary confinement are under administrative segregation, according to data from Correctional Services Canada that was presented in the court case. Canadian law limits disciplinary solitary confinement to 30 days.

The Canadian Civil Liberties Association is appealing a separate ruling from December 2017, in which an Ontario judge found solitary confinement lacked oversight but which plaintiffs said did not go far enough.

“We now have two lower court rulings on administrative segregation from two jurisdictions,” Public Safety Ministry spokesman Scott Bardsley said in a statement emailed to Reuters on Monday. “Given the CCLA has filed a notice of appeal in Ontario it was only prudent for us to file a similar notice in BC as we begin to seek juridical clarity on the issue.”

The British Columbia Civil Liberties Association, or BCCLA, which filed the second lawsuit, said it was surprised that the government was appealing because the Liberals had promised criminal justice reform and restrictions on the use of solitary confinement.

Both lawsuits were filed before the Liberals came to power in late 2015.

The Liberal government has introduced legislation that would set an eventual 15-day time limit on solitary confinement.

The United Nations Committee Against Torture considers over 15 days of solitary confinement to be torture, and has called for its prohibition.

The Canadian government is also “improving conditions of confinement” and investing C$57.8 million ($46 million) to provide more effective mental healthcare to prisoners, Bardsley said.

No criticism needed: Canada’s jury system works
The Globe and Mail
Charles Lugosi
February 20th 2018

The irresponsible conduct of those in positions of power and authority, who have shamelessly exploited the verdict in the Gerald Stanley case, is appalling. Trial procedure is a carefully nuanced balance of accumulated wisdom. The jury is the sole judge of the facts, free from judicial intimidation since Bushel's Case in 1670.

Public figures have suggested that justice was not done because the Stanley jury did not contain any Indigenous people, and therefore they imply that the Stanley jury was racist and incapable of rendering a true verdict of guilt, because the victim, Colten Boushie, was Indigenous.

Prime Minister Justin Trudeau said, following the verdict, "I know Indigenous and non-Indigenous Canadians alike know that we have to do better." Minister of Justice Jody Wilson-Raybould tweeted, "As a country we can and must do better – I am committed to working every day to ensure justice for all Canadians," while Jane Philpott, Minister of Indigenous Services, tweeted, "We all have more to do to improve justice & fairness for Indigenous Canadians." These kinds of statements irresponsibly flame speculation that the Stanley jury was racist and that the entire criminal justice system in Canada is tainted by systemic racism. Comments such as "to do better" cross the line, putting pressure on juries to decide a verdict by adding race as a factor, when considering all the admissible evidence. Political interference with jurors who are impartial judges must be soundly rebuked.

The legally muzzled jury members are unable to defend themselves from the accusation that they are racist, so I will. What if Mr. Stanley were tried for murder by a single judge who was an Indigenous person? What if the judge found him guilty because he was a white man? Would not public denunciation of this judge by politicians put those critics at risk for contempt of court?

What is at stake here is respect for the rule of law, the presumption of innocence, the burden of proof beyond a reasonable doubt and independence of the judiciary. Political criticism of jurors to achieve a "better" result improperly intrudes upon these fundamental principles of justice.

In 1994, a young Indigenous man, John Black, while pumping gas into his car at a gas station in Kelowna, B.C., was confronted by an unarmed white man riding a bicycle, who was taunting and threatening him. Mr. Black, fearing for the safety of his wife and child in his car, calmly took out a tire iron, and struck the head of Dale Anfield. Mr. Black then drove to the police station and turned himself in. He was charged with second-degree murder. I was his defence lawyer. My Indigenous client was judged by what

appeared to be an all-white jury. My client was acquitted. The white judge correctly instructed the jury on the law. The members of the victim's family were outraged at the jury's verdict. No one suggested racism after this verdict.

We need to reject cheap overtures from self-interested persons for reform when no reform is needed. The jury system works well.

On occasion, juries may ignore the instructions of judges and deliver a verdict that is perverse, contrary to the evidence. Jury nullification happens when the personal values of individual jurors reject what the prosecution is attempting to accomplish. Disclosing to jurors the existence of this legal right is not legally permitted, as there is fear public knowledge of this limitation on government power might lead to chaos and disturb the rule of law. This is particularly so in situations when racial prejudice is so strong that a juror may take the view that under no circumstances could that juror ever convict someone of the same race, or conversely, may vote to convict an accused person because the victim is of the same race as the juror.

Raising the issue of race in the wake of the Stanley case does not lead to more justice but smacks of jury tampering by political interference, rendering an expectation that race is a factor in achieving a better or desired verdict. This is a dangerous path that must be soundly rejected by people of principle and integrity. There are other ways to combat the evil of racism. This is not one of them.

William Penn's words to the court in 1670 are still relevant today: "My jury who are my judges, ought not to be menaced; that their verdict should be free, and not compelled … I do desire that justice may be done me, and that the arbitrary resolves of the bench may not be made the measure of my jury's verdict." Justice Howel replied, "Stop that prating fellow's mouth, or put him out of court," and then ordered the jury to be deprived of food, drink, heat and toilet facilities until the desired verdict was reached, which the jury bravely refused to do, and were imprisoned along with the acquitted accused.

Political intimidation is no less wrong than judicial intimidation in a free and democratic society governed by the rule of law.

Pay system of the future: Feds ready to start looking for a Phoenix replacement
iPolitics
Kathryn May
February 19, 2018

The Trudeau government is going to start looking for a 'modern' replacement to the problem-plagued Phoenix system that has fouled-up pay cheques for at least half of Canada's public service for two years.

Public Services Minister Carla Qualtrough said she and cabinet colleague Treasury Board President Scott Brison are starting a process to examine options for "what the next phase of pay for the public service will look like."

Qualtrough said she remains “laser-focused” on stabilizing Phoenix, but a second track will begin to look at alternatives that would be more “sustainable” over the long run than the troubled and patched-up Phoenix.

She is confident that Phoenix can be stabilized — with the backlog eliminated and employees paid properly by the end of the year — but that won’t be the “long term solution; the state-of-the-art pay system that public servants deserve.”

It was two years ago this month that the Liberal government rolled out Phoenix in the first of two waves to pay 300,000 federal employees. Phoenix, an IBM-built pay system, was the second leg of the massive $310-million pay modernization project launched by the former Conservative government in 2008.

Qualtrough said technology has changed dramatically since the project began a decade ago and, as such, it’s worth exploring how a pay system for a large enterprise like the government would be built today, including consideration of new cloud-based solutions.

“When you think this project was scoped almost 10 years ago, technology has advanced … If I was to go out in the market and say: ‘what is the best and most modern way people are paid in a major modern enterprise like ours’? Would it look like this? I don’t even know,” she said.

Brison, the other minister charged with resolving the government’s pay crisis, echoed similar sentiments during a recent appearance at the Commons government operations committee on the supplementary estimates.

He told MPs it’s time to look at fresh approaches to the IBM-built Phoenix without the “tyranny of sunk costs.”

“If we were to look at this with fresh eyes and a fresh team of people using modern digital protocols and technology, you may find there is a new way that can actually address this issue faster,” he said.

Brison said such an examination would require a “two-track approach,” with continuing efforts to stabilize Phoenix while “being open to completely new approaches that reflect modern digital technologies today that were not even around 10 years ago when the system was conceived.”

The two ministers sit on the working group of ministers, appointed by Prime Minister Justin Trudeau to oversee the Phoenix disaster, and play two different roles in managing the Phoenix crisis.

Qualtrough is paymaster, responsible for Phoenix and fixing it and Brison is the employer and general manager responsible for policies managing the workforce.

Brison is also leading the government’s digital strategy, calling for a major rethink of how the government works, provides services and buys technology. Qualtrough, running the department that does the government’s buying, would have to drive any procurement reforms.

And the Phoenix crisis has thrown a spotlight on the culture of a process- and rules-driven public service that many say needs to change to survive in a digital world.

Qualtrough previously signalled she was willing to look at other options, but stabilizing Phoenix was the top priority. And that's where all the energy has gone – accelerated by Auditor-General Michael Ferguson's damning report on the misfires in the rollout and its exploding costs.

Ferguson advised the government to stick with Phoenix because employees had to get paid and a new system might run into all the same problems.

Public Services and Procurement Canada has since launched a major stabilization plan. Many of the 20 measures are aimed at harmonizing pay and human resources operations and modernizing business practices and processes: changes that should have been done before Phoenix was even conceived.

Qualtrough said this plan, which includes cleaning up data and employees files, would lay the groundwork for any new system.

"So many of the lessons we have learned can be applied and ideally expedite the acquisition of anything we might end up going with in the future," she said.

Qualtrough said a working group of ministers is now having preliminary discussions on how a two-track process could unfold. Public servants and unions will be consulted for ideas and she said no staff, money or other resources will be diverted from fixing Phoenix to the second track of looking at new options.

She said it's unclear how much Phoenix will cost to fix, but Finance Minister Bill Morneau, whose next budget will be released Feb. 27, has assured the working group that "money will not be the barrier" to stabilizing Phoenix.

"We are going to spend what we need to spend but we have to invest toward a positive outcome," she said.

So far, the government has spent about $402 million on fixing Phoenix and is seeking Parliament's approval for another $76 million in new funding for this fiscal year to help bring Phoenix to a so-called 'steady state.'

The government's willingness to look at other options couldn't come at a better time for unions, which are facing the heat from frustrated members after two years of Phoenix foul-ups.

Last week, 17 federal unions marked the system's second anniversary by sending a letter to Trudeau with a list of demands, including a plan to rebuild Phoenix.
Senior management and labour leaders have been working together on Phoenix, but Debi Daviau, president of the Professional Institute of the Public Service of Canada (PIPSC), said unions wanted more attention placed on finding a permanent solution and not just managing the crisis.

Daviau said PIPSC is gearing up for a “Nix Phoenix” campaign to replace the “Fix Phoenix” campaign of the previous two years.

In fact, Daviau proposed building a new system to replace Phoenix several months ago. She argued the government’s own IT workers, not the private sector, should build it and would have a new one ready within a year. PIPSC represents the government’s IT workers.

At the time, Daviau said the new system could be built on the latest version of the PeopleSoft, which is the basis for Phoenix. PeopleSoft is the off-the-shelf software that IBM adapted for the government payroll.

Today, Daviau said she only suggested PeopleSoft because the government was so invested in the software, but she is willing to explore any new pay technology.

She said PIPSC, which is opposed to contracting out government work, is willing to work collaboratively with the private sector to “bring new technology into government.”

She also said PSPC should stick with fixing Phoenix and have nothing to do with searching for its replacement. Instead, a new central unit should be set up to examine options.

“Everyone knows we will never have a stable system with Phoenix,” Daviau said. “It is too fragile and a patchwork of band aids that will not be solid enough to sustain going forward. We are doing workarounds and manual processing. That is not sustainable.” said Daviau.

As federal Phoenix payroll fiasco hits 2-year mark, families continue to bear brunt of it
Problem-plagued, IBM-customized pay system remains 'embarrassing,' apologetic minister admits
CBC News
Julie Ireton
February 21, 2018

Two years after the federal government launched Phoenix, public servants and their families across the country continue to suffer under the problem-plagued payroll system, with no fix in sight.

Tens of thousands of workers have been burned by Phoenix since the IBM-customized system went live on Feb. 24, 2016. But that growing list of victims doesn't capture the countless spouses and dependents who have also had to bear the financial — and often emotional — burden.

Steve Baker doesn't work for the government and never has. His wife does, and Baker wants the people in charge to know the toll Phoenix is taking on her, on him, and on their children.
The Edmonton automotive shop manager has been forced to work 12- to 14-hour days, six days a week while his wife went unpaid through her maternity leave due to another Phoenix foul-up.

Just as his wife's maternity leave was coming to an end, she received a large lump-sum payment. That will affect their taxes for both 2016 and 2017, and combined with his forced overtime, leaves the couple looking at a huge bill this spring.

Baker said he and his wife can't even talk about Phoenix anymore because it always leads to an argument.

"My wife was in tears a lot of times, and I was getting angry and frustrated because we were watching our bank account get really small," Baker said. "I'm losing time with my family, time with my wife. It becomes a battle."

Baker said he's lost faith in the government's determination to fix the Phoenix problem, and he wonders whether anyone will ever be held accountable for the fiasco.

Can't afford funeral

But that's exactly what people like Tammy Kuempel, a term employee in Winnipeg, have been forced to do: be accountable.

After her mother died recently, Kuempel said she didn't have the money to pay for a funeral, in part because of Phoenix.

After she was accidentally overpaid, Kuempel said someone at the federal government pay centre decided to claw back her wages without any warning or explanation.

"All I received for one paycheque was $78. Cheques were bouncing, my mortgage bounced," Kuempel recalled. "My mom died and I can't bury her. I can't afford a funeral. My mom deserves better. I deserve better than that.

"Everyone talks about how much the Phoenix system is costing, but there's a human cost."

The lack of proper, efficient communications, along with proper calculations and accurate reconciliation is another common complaint from those affected by Phoenix.

Salma Tmoulik hopes that by the time she's ready to give birth to her second baby this spring, Phoenix will have sorted out her maternity leave pay for her first child, born back in 2016.

Tmoulik, a programs inquiry assistant at Indigenous and Northern Affairs Canada in Ottawa, is still owed about $12,000 from her last mat leave.

She worries the same thing will happen again.

"We should be enjoying our kids, not stressing about this," Tmoulik said. "You have to really budget and decide if you want to put your kids in certain activities or programs. If you're not getting your pay, you can't afford it."

Ongoing problems 'embarrassing,' minister says

Public Services and Procurement Canada Minister Carla Qualtrough said her department empathizes with what workers and their families are going through.

She said she's received "hundreds of thousands of emails" from Canadians telling her how they've been affected by Phoenix.

"It's really important to me to connect to the human side of this, because it really motivates me personally to solve it," Qualtrough said in an interview with CBC News.

"Not getting paid is hardship by definition. You shouldn't have to come to me and say, 'I didn't pay this bill, I didn't make a mortgage payment.' ... That's a real vulnerability to have to come and say that to your manager, to your coworker, to your minister."

But as embarrassing as that may be for workers, Qualtrough wants them to know her government is embarrassed, too.

"It's embarrassing that we're still there, and we are," Qualtrough said.

"The challenge again is, things are compounding each other. You get an overpayment, but at the same time you're not paid for something else, or something else is late, and reconciling those transactions is an extremely difficult technological process."

Impact on hiring, retention

The minister acknowledges Phoenix is "absolutely" having an impact on public service hiring and retention. She said employees aren't striving for promotions, and are discouraging others from joining their ranks.

"They aren't telling their kids, 'This is a great place to work, you too should aspire to work in the public service,'" Qualtrough said. "We are asking people to make mega-leaps of faith here, when we've not proven we deserve that leap of faith."

Qualtrough said she's concerned about the future consequences on the public service 10 or 15 years down the road.

The most recent tally shows the number of transactions the pay centre was trying to resolve in January at 384,000. The target is zero.

"All I can do again is apologize that we've put people in this situation," Qualtrough said.

Ontario judge strikes down mandatory minimum sentence for Indigenous offender
The Globe and Mail
Sean Fine
February 20 2018
An Ontario judge has struck down a two-year mandatory minimum sentence for drug traffickers, calling the penalty a form of "cruel and unusual punishment" for Indigenous offenders caught up in a "tragic history" within the criminal-justice system.

The decision is the third since last February to declare a mandatory minimum unconstitutional in the case of an Indigenous offender and it comes barely a week after Prime Minister Justin Trudeau and Justice Minister Jody Wilson-Raybould told aboriginal peoples that Canada "can do better" in criminal justice. Their comments followed a jury acquittal of Gerald Stanley, a white farmer, in the shooting death of Colten Boushie, a 22-year-old Cree man, in Saskatchewan.

The latest case centres on Cheyenne Sharma, a 22-year-old single mother, who pleaded guilty two years ago to bringing $128,000 worth of cocaine into Canada. Her grandmother went to residential schools and her mother spent some time in foster care. She ran away from home at 13 and, at 15, became a sex worker. She said she was paid $20,000 and accepted the assignment because she was behind in her rent and facing eviction. She was a 20-year-old mother of a two-year-old when she committed the offence. Justice Casey Hill of the Ontario Superior Court in Brampton said that while these circumstances do not provide an excuse for committing a serious crime, they do set out a context for deciding Ms. Sharma's degree of responsibility and what an appropriate sentence should be.

Canadians aware of the "unique history of aboriginal peoples," he wrote in his 98-page judgment on Tuesday, would "conclude that such a sentence would outrage standards of decency." He said that she has taken steps, such as resuming her education, to rehabilitate herself and he sentenced Ms. Sharma to 17 months in prison."The courts are not isolated from the ongoing process of reconciliation and meaningful nation-to-nation dialogue involving Canada's aboriginal peoples," he wrote.

The ruling is part of a trend in which judges, citing the effects of minimums on Indigenous offenders, rule the punishments unconstitutional. Last February, the Northwest Territories Supreme Court did so in a case involving a firearms offence and, last July, the B.C. Court of Appeal did the same in a case involving a sexual offence.

Ms. Wilson-Raybould declined, in an e-mail to The Globe and Mail, to say when the government would act to keep her promise to eliminate some mandatory minimums.

"The Prime Minister has asked me to conduct a broad review of the changes in our criminal justice system and sentencing reforms over the past decade, and the examination of mandatory minimum penalties is included in this review. That work is ongoing," she said.

Jonathan Rudin, program director of Aboriginal Legal Services of Toronto, which intervened in the case, said he worries that the review means a long wait.

"Every day it waits, people go to jail who shouldn't go to jail," he said in an interview. "That should be keeping the Prime Minister and Minister of Justice up at night."

Mr. Trudeau had said in his mandate letter to Ms. Wilson-Raybould that she should seek "to reduce the rate of incarceration amongst Indigenous Canadians." Ms. Wilson-Raybould has promised on multiple occasions to scrap some mandatory minimums.

The Public Prosecution Service, which operates independently from the Justice Minister, said it has 30 days to decide whether to appeal the drug-trafficking ruling, and declined further comment.

Federal prosecutors had sought a sentence of 3 1/2 years, citing Ms. Sharma's Indigenous background and saying it was well below the six to eight years that was standard for the amount of drugs she transported. But after Ms. Sharma's lawyer, Robert Christie, brought a constitutional challenge, prosecutors said her case was "extraordinary" and they would use their discretion to ask for a sentence of 18 months.

"The fact that the Crown thinks it's exceptional speaks to the fact that they don't really understand the circumstances of Indigenous people," Mr. Rudin said.

Mr. Christie had also asked Justice Hill to strike down Conservative-era limits on house arrest for drug traffickers, but the judge declined to do so.

Federal sentencing law passed by the Liberals in 1996 contains a clause telling judges to give particular attention to the circumstances of Indigenous offenders. The Supreme Court has interpreted that clause to mean a new way of looking at sentencing is needed in such cases.

Justice Hill said the Supreme Court and Truth and Reconciliation Commission, which looked at the history of Canada's forced residential-schools experience, recognized the state's contribution to "cultural genocide, the intergenerational effects of colonialism … and a 'tragic history' of the treatment of aboriginal peoples within the Canadian criminal justice system including the 'peculiarly devastating' impact of overincarceration."

He cited statistics showing that Indigenous Canadians made up 27 per cent of prisoners in federal custody in 2016-17, and 26 per cent in provincial custody, but just 5 per cent of the overall population.

The decision was a kind of reprise of a case from 2004, in which Justice Hill sentenced three black, female drug couriers to house arrest. The Ontario Court of Appeal said jail terms should have been imposed, adding that a sentencing proceeding was "not the forum in which to right perceived societal wrongs."

Environmental justice and the law in Canada
Rabble.ca
Scott Neigh
February 20, 2018

Nathalie Chalifour and Angela Lee are scholars in the Faculty of Law at the University of Ottawa whose work focuses on exploring how the law can be used to advance the cause of environmental justice in the Canadian context. Scott Neigh talks with them about that work, including some of its specific relevance to climate change and to the food system, and about some of the ways that legal work and scholarly work can be mobilized in support of frontline communities impacted by environmental injustice.

Environmental justice as a framework for thinking about environmental problems has its origins in grassroots organizing by working-class and poor communities of colour in the United States since at least the 1980s. Though the specifics have varied from place to place, this organizing has refused the practice common to mainstream environmentalism of separating questions of the environment from questions of social justice, and has consistently drawn attention to the ways in which environmental harms tend to be located in places that disproportionately impact communities that are racialized and/or low-income.

As often happens, the impressive grassroots energy of these movements caused ripples of change that went far beyond the original struggles. Their work pushed institutions to begin taking up environmental justice frameworks, including (at least in imperfect and partial ways) in some legal and policy contexts, as well as in some academic contexts. And the ripples have also extended into Canada.

It is interesting that even though Canada has no shortage of environmental racism and other forms of environmental injustice, this way of approaching issues has been less common here. Certainly there are particular struggles on the ground and pockets of scholarly work that have taken it up, and it is becoming more common. But, still, it remains less widespread here than in the United States.

Nathalie Chalifour is an associate professor as well as co-director of the Centre for Environmental Law and Global Sustainability, while Angela Lee is a PhD student. The environmental justice project they talk about in this episode is organized around a number of case studies of specific areas in which an environmental justice framework is relevant.

One, led by Nathalie, focuses on environmental justice as it pertains to climate change, or climate justice. That work involves, in part, studying the legal tools that might be useful to communities that are disproportionately impacted by climate change in their efforts to better understand what is happening and to address it. This includes both developing ways that existing law and policy might be mobilized but also contributing to ongoing discussions about reforms of various sorts, including regarding the need to insert an explicit right to a healthy environment into the Canadian Charter of Rights and Freedoms.

Another of the case studies in the project, and the focus of Angela's work, is food justice, which is concerned with the many overlapping environmental and social justice concerns related to the food system – from sustainable agriculture, to rampant food insecurity, to food safety, to migrant farm

worker organizing, and much more. This case study is happening in the context of the Canadian federal government being in the process of developing the country's first ever national food policy. There are many initiatives happening on the ground related to food justice in Canada, but much of that work is fragmented, so one element of this case study involves contributing to efforts to bring groups and activists working on different aspects of the issue together in order to build robust networks that will allow a range of voices, including grassroots voices, to shape the conversation and hopefully the policy. Angela and others involved in the project are also co-editing a book on food law in Canada, and have developed a new course for law students on the topic.

Canadian Judicial Council recommends Quebec judge be removed from office
Ottawa Citizen
The Canadian Press
February 20, 2018
OTTAWA — The Canadian Judicial Council is recommending that a Quebec Superior Court justice be removed from office.

A committee of the council found in a report last November that Michel Girouard attempted to mislead and conceal the truth during a review of drug-related allegations against him.

That report was the second investigation stemming from allegations from a police informant in 2012 who said Girouard bought drugs from him in 2010, when the judge was still a lawyer.

The council issued a statement Tuesday to say it agreed with last fall’s findings.

It said it concluded that the judge’s integrity has been fatally compromised and that public confidence in the judiciary warrants a recommendation he be removed from office.

The matter is now in the hands of federal Justice Minister Jody Wilson-Raybould.

In April 2016, the judicial council ruled Girouard could return to sit as a judge despite the council’s own inquiry committee recommending he be removed from office months earlier.

The federal and provincial justice ministers jointly requested the council conduct a second inquiry into the allegations, primarily into the truthfulness of the judge’s testimony under oath and his integrity.

Girouard was named to the Superior Court in September 2010 after practising law for a quarter-century in the Abitibi region in northwestern Quebec.

Overall confidence of justice system has declined since 2016: Angus Reid Institute
Global News
Logan Caswell
February 21st 2018

A new poll shows visible minorities have 'less' faith in courts than other Canadians.
The poll by the Angus Reid Institute finds 41 per cent of Canadians surveyed say they have "complete confidence" in their provincial courts, and only 31 per cent of self-identified visible minorities say the same.

Visible minorities also express lower degrees of confidence in the RCMP, local police force and the supreme court of Canada.

Data collected on the poll also shows 13 per cent of Canadians say they have personally been the victim of a crime that involved the police in the last two years.

How much confidence Canadians have in each of the following elements:

- The RCMP – 62 per cent
- Your provincial police force (ON and QC only) – 67 per cent
- Your local municipal police (or local RCMP detachment) – 63 per cent
- Criminal courts in your province – 41 per cent
- The Supreme Court of Canada 51 per cent

More than 62 per cent of Canadians also said the justice system is too soft.
http://angusreid.org/justice-system-confidence/

Irving-owned railway gets disclosure on charges triggered by Lac Megantic probes
New Brunswick Southern Railway gets time to review Crown's evidence related to 24 federal charges
CBC News
Rachel Cave
February 20, 2018

New Brunswick Southern Railway postponed entering pleas Tuesday on 24 charges of violating the Transportation of Dangerous Goods Act.

Prosecutors say the charges arose from a Transport Canada investigation that was triggered by the 2013 derailment that killed 47 people in Lac-Mégantic, Que.

While the charges appear to overlap 34 offences committed by Irving Oil in the eight months prior to the derailment, prosecutors say this is different.

"It's a separate investigation," Denis Lavoie of the Public Prosecution Service of Canada said when reached by phone in Montreal.

"I can't comment on what is behind the charges against NB Southern Railway because we are at the stage where no plea has been entered yet by the defendant company."

"And this will probably come up later … in the course of procedures if we have to go to trial or if there's an agreement on plea later on and argument on sentence."

$4M fine on earlier charges
In October, Irving Oil was was ordered to pay $4 million after pleading guilty to improper classification of dangerous goods for the crude oil it was transporting by train.

It also pleaded guilty to inadequately training its employees in the transportation of dangerous goods.

The offences occurred between November 2012 and July 2013, during which time, Irving Oil imported about 14,000 cars of crude for its Saint John refinery.

New Brunswick Southern Railway is also accused of failure to properly document oil for transport and allowing unqualified personnel to manage that transport.

The alleged offences span from November 2012 to July 2013.

The railway company is part if NBM Railways, a subsidiary of the J.D. Irving Ltd., which also includes Cavendish Farms, Kent Building Supplies and Irving Pulp & Paper.

According to the railway's website, it was founded in 1995 after Canadian Pacific Rail stopped running in the Maritimes.

The railway, along with sister railways the Maine Northern Railway and the Eastern Maine Railway, operates 883 kilometres of railway in New Brunswick and Maine.

Reviewing disclosure
In a brief appearance Tuesday, lawyer Catherine Lahey, representing NB Southern Railway, said she was in the process of receiving some 9,000 disclosure documents from the crown.

Prosecutor Guylaine Basque had requested, in writing, a six-week adjournment to allow the defence to review the disclosure.

Provincial court Judge Kelly Winchester adjourned the matter until April 6.

Lavoie agreed that 9,000 pages of documents probably did provide a "rough idea" of how much information had to be shared.

He said it was provided to the defendant on a hard disk drive.

The Lac-Mégantic disaster unleashed multiple investigations, including one by the Transportation Safety Board, which does not assign blame or civil or criminal liability.

The board identified 18 distinct causes and contributing factors, including insufficient use of hand brakes.

It also pointed out that all 72 tank cars carrying oil from North Dakota to Saint John on that journey were Class 111, manufactured between 1980 and 2012, and lacked the improvements of newer models.

According to the safety board, approximately six million litres of petroleum crude escaped from the derailed and broken cars and fuelled an inferno that destroyed much of the town's core.

Last month in Sherbrooke, Que., a jury acquitted three former Montreal, Maine and Atlantic (MMA) railway employees charged with criminal negligence causing death in Lac-Mégantic.
Two weeks ago, MMA was found guilty of unlawfully dumping crude oil into Mégantic Lake, in violation of the Fisheries Act.

Le juge Girouard doit être démis, dit le Conseil canadien de la magistrature
Le juge est sous enquête depuis 3 ans pour avoir présumément acheté de la cocaïne à un réseau de trafiquants
Radio-Canada
20 février 2018

Le Conseil canadien de la magistrature recommande que le juge abitibien Michel Girouard soit démis de ses fonctions.

Le Conseil suit ainsi la recommandation du comité d'enquête qui avait été chargé de faire la lumière sur les possibles inconduites du juge Girouard.

Dans un rapport remis à la ministre de la Justice, le Conseil de la magistrature recommande donc la révocation du juge.

Il conclut, par une majorité, que l'intégrité du juge a été fatalement compromise et que la confiance du public envers la magistrature a été ébranlée.

Le conseil ajoute que le juge n'a jamais été en mesure de fournir une explication simple, rationnelle, cohérente, exhaustive ou satisfaisante de ses actes au cours d'une transaction suspecte capturée par vidéo.

Le dossier a été examiné par 23 membres. Trois d'entre eux ont exprimé leur dissidence.

Le juge Girouard est sous enquête depuis trois ans pour avoir présumément acheté de la cocaïne à un réseau de trafiquants deux semaines avant sa nomination comme juge.

Le Conseil de la magistrature considère que le juge Girouard a menti au comité d'enquête en déclarant ne s'être jamais procuré de stupéfiants. Le magistrat n'aurait jamais fourni une explication rationnelle de ses actes au cours d'une transaction suspecte capturée par vidéo.

It's past time to tackle Ontario's jury problem
Ontario must do more to ensure that juries represent our diversity.
The Toronto Star
Star Editorial Board
February 20th 2018

The case of Gerald Stanley, the white Saskatchewan farmer acquitted by an all-white jury earlier this month in the shooting death of Colten Boushie, a young Cree man, has shone a spotlight on a longstanding failing of Canada's legal system: juries, which are supposed to reflect the diversity of the larger community, far too often do not.

That case has prompted a much-needed and overdue conversation about the urgent problem of Indigenous justice in Saskatchewan and beyond.

But the challenge of unrepresentative juries is not limited to Indigenous communities and certainly not to Saskatchewan.

An investigation by the Star and the Ryerson School of Journalism exposed the daunting dimensions of the challenge here in Ontario. Over the course of two years, reporters analyzed 52 juries in Toronto and Brampton, finding that while so-called visible minorities constitute a majority in both municipalities, 71 per cent of all jurors were white.

This is particularly troubling when you consider who stood accused in the trials. Forty-six per cent of all defendants were Black, yet Black people comprised only 7 per cent of jurors.

This is both a moral and a constitutional problem. That a jury should be as representative as possible of our diversity is a foundational principle of modern justice, which the Supreme Court of Canada ruled more than a quarter-century ago is protected by the Charter.

The modern jury, wrote Justice Claire L'Heureux-Dubé in a 1991 decision, "was envisioned as a representative cross-section of society, honestly and fairly chosen," lest it "be unable to perform many of the functions that make its existence desirable in the first place."

Yet 27 years after that ruling, juries across Canada and in Ontario in particular remain whiter, older and richer than society as a whole.

Part of the problem is the use of so-called peremptory challenges, a controversial tool that allows lawyers to disqualify potential jurors without providing a reason. Gerald Stanley's defence team, which employed the practice to nix anyone who appeared to be Indigenous, provided an object lesson in how peremptory challenges can undermine the representativeness of juries.

In the United States, a country that knows well the costs of all-white juries deciding the fate of racial minorities, the Supreme Court put strict limits on the use of peremptory challenges. In the wake of the Boushie case, the Trudeau government says it is considering finally doing the same here in Canada and, as report after report has recommended, it absolutely should.

But provincial governments, too, have a role to play and Ontario has long been a laggard. Unlike most other provinces, Ontario derives its jury pool from property assessment rolls, which largely exclude students, low-income and Indigenous people, among others.

Because Black, Indigenous, young and low-income people are disproportionately likely to be charged with crimes and disproportionately unlikely to be found on property assessment rolls, defendants too often find themselves being judged by a jury that looks nothing like them.

In his 2013 report on the underrepresentation of Indigenous peoples on juries, former Supreme Court justice Frank Iacobucci recommended that, to address this problem, Ontario follow the lead of several other provinces by using health insurance records, which are far more comprehensive, to determine the jury pool. Iacobucci also suggested that compensation for jury duty be increased so that low-income people are better able to bear the costs.

The consequences "if this report and its recommendations … are put on the shelf," Iacobucci wrote five years ago, "will be very serious."

These include not only the infringement on the right of the accused to a fair trial, but also the imperiling of important social aims of the justice system: to maintain peace in our communities, promote healing and preserve trust in the fairness of our legal institutions.

Yet the shelf is exactly where Iacobucci's report ended up. And in the wake of the Stanley ruling, we are seeing the former justice's warning bear out. The corrosive but entirely understandable mistrust being expressed in protests across the country poses a threat to democracy and the rule of law.

As the prime minister tweeted earlier this month, "Canada can and must do better." In Ontario, in particular, that means finally taking Iacobucci's report off the shelf and ensuring that our juries better reflect our diversity.

Originally slated for 4 days in January, Vikings prelim now pushed to June
Delays due to conflicting schedules and illnesses
CBC News
Ryan Cooke
February 20, 2018

Four men accused of trafficking drugs for the Vikings biker gang in 2016 will have to wait until at least June to see if their case will go to trial.

All their lawyers needed was a couple of hours in court on Tuesday to finish a preliminary hearing, but it was set over when the Crown prosecutor called in sick.

With complicated schedules, the next available date is not until June 4.

All four accused — Vincent Leonard Sr., Wayne Johnson, James Curran and Brendan Hollohan — have previously been released from custody.

Hollohan has returned to his job as a medical doctor, working at a practice in Conception Bay South.

Conflicting schedules lead to delays
The preliminary hearing was originally slated for four days starting on Jan. 2, but required an additional day for the defence to make its submissions.

If the judge decides to take the case to trial after the preliminary hearing, it would be elected to Supreme Court.

They would then have nine months to complete proceedings before the case could be tossed using a precedent set by a controversial Supreme Court of Canada ruling.

Under rules set forth in the Jordan decision, anything taking longer than 18 months in provincial court or 30 months in Supreme Court can be considered an unreasonable delay.

In the first year after the decision, more than 200 cases were tossed out across Canada.

Since Crown prosecutor Trevor Bridger was unable to make it to court on Tuesday, the lawyers were looking for dates in March.

Judge Mark Pike is unavailable in March, however, and then defence lawyer Mike King is tied up for eight weeks with Trent Butt's murder trial.

After the date on June 4, defence lawyer Mark Gruchy said he has a busy slate during the summer with a pair of trials at Supreme Court.

The four accused were picked up on Sept. 28, 2016, as part of a police raid that resulted in a dozen men being arrested.

Only one of the men, Vincent Leonard Jr., has been convicted so far. He was sentenced to 18 months for trafficking cocaine.

Ontario government lawyers being terrorized by 'bully' bosses, secret report reveals
The workplace at the Ministry of the Attorney General is described as a "toxic" cesspool, begging the question: Given the extreme dysfunction, is the work taxpayers are supporting getting done?
The Toronto Star
Kevin Donovan
Chief Investigative Reporter
February 21, 2018

Ontario's Liberal government has kept secret an explosive report that paints some of its most senior bureaucrats — male and female — as bullies who have harassed and discriminated against hundreds of provincial lawyers and administrative assistants for years.

The workplace for 600 government lawyers and several hundred administrative staff at the Ministry of the Attorney General is described as a "toxic" cesspool where fear and retribution rule the day, ironically at an Ontario agency branded with the logo "Better Justice Together."

One high-ranking government boss is described by a complainant in the report as "a classic bully drunk on her own power." Crown lawyers working under another executive said he created "an extremely unhealthy and intolerable environment."

"Many employees work in an atmosphere of constant fear of retribution and a culture of silence prevails," said report author Leslie Macleod, a lawyer and former senior Ontario bureaucrat. The report was concluded in the summer of 2017.

In addition to harassment allegations, the report notes that government lawyers are sometimes forced by senior managers to change their opinions on whether or not to lay charges against individuals or companies — apparently to satisfy the special interests of other provincial ministries.

Code names are used in the report, called "Turning the Ship Around," to describe offending senior bureaucrats. Who they are, the province would not tell the Star.

Shortly after the Star published its story Attorney General Yasir Naqvi issued a statement saying, "Everyone has a right to feel safe and respected in their workplace. Harassment of any kind is completely unacceptable. That's why the ministry decided to bring in an independent consultant to provide recommendations on how to improve the workplace culture."

He said he expects "ministry officials will continue to take steps to address workplace issues to ensure all employees are respected."

Neither Naqvi nor top bureaucrats would answer questions about specifics in the report.

The report was intended to be kept secret forever and it required some clandestine work to get a copy of the document. Each copy is stamped with a unique number across each page, and those who received a copy were warned leakers would be fired.

To get a sense of how concerned Ontario's top government lawyers were about participating in Macleod's investigation — which was sanctioned by the ministry — here is what she writes at the start of the report. "They feared that their immediate manager would sanction them. For this reason, employees often met with me during a lunch break or talked to me after hours. They insisted that their names and any identifying information not be shared."

The language in the 115-page document is stark, many shades different than the grey government-report words that typically issue from Queen's Park.

Highly paid Ontario government lawyers are "fearful" of their bosses. The situation is a "festering sore" that many in the highest echelons of government have ignored for years. Staff frequently felt threatened that some form of "retribution" would befall them if they spoke up.

The lengthy investigative document deals with problems at the Ministry of the Attorney General, a massive government agency that affects the lives of all Ontarians. The ministry employs a small army of lawyers who handle criminal and civil cases. It is the "civil law division" on which this report and its author focus. At this division, hundreds of lawyers work on matters as diverse as health, environment, business, human rights, transportation, labour, coroner's inquests and many other issues. Lawyers and staff in the division prepare cases, prosecute some, mediate others, and provide advice to senior bureaucrats.

It's an important job, dealing with the legal matters of Canada's biggest province, and the civil law division is often thought of as the law firm that represents the province of Ontario. The report, within the first few pages, states that its author found "a deeply embedded dysfunctional culture" at the ministry.

Report author Macleod is a lawyer and mediator in private practice and a former Ontario assistant deputy attorney general. She told the Star she was not authorized to discuss the "confidential document."

Macleod was called in to conduct the investigation in late 2016 after the issue "exploded" and complaints reached the desk of Steve Orsini, Ontario's secretary of cabinet and the head of the Ontario public service. Previous complaints to senior attorney general's officials were ignored, the report notes. Orsini does not comment on specific cases, a spokesperson told the Star.

For her report, Macleod interviewed 250 lawyers and administrative staff, which represents more than a quarter of the affected employees.

Her report does not give specifics, likely to protect the confidentiality of lawyers and other staff who spoke out. Instead, she groups her findings into different areas, and then makes recommendations for change. Sources have told the Star very few, if any, recommendations have been acted on although a ministry spokesperson said an "advisory committee" has been created.

The Macleod report describes a dire situation.

“The descriptions of inappropriate conduct that I heard through the consultations were alarming and the fact that it continued unabated for so long makes it doubly so,” Macleod writes.

“Allegations made during the consultations included various forms of belittling, gossip-mongering, bullying and a tendency to unduly punish employees,” the report states.

One senior, unnamed bureaucrat is singled out repeatedly in the report for negative behaviour. “Other descriptions (of the bureaucrat) alleged unpredictable, volatile, or vindictive behaviour.”
On the issue of complaints of racism, Macleod found all kinds. She said in some cases she heard complaints that the top brass preferred “old white guys” for certain cases. She also heard complaints that “racialized lawyers” were often given good jobs, but then once they arrived in the ministry they were treated by other lawyers as “less able than their white counterparts.” In other cases, lawyers were hired because of who they knew, not what they knew.

Macleod places the blame for the dysfunction squarely on attorney general management at the most senior level, and also with deputy ministers at other government ministries who regularly come in contact with the attorney general’s ministry.

“Deputy ministers (at other ministries) knew that the situation was a festering sore,” the report notes. In an effort to explain why lawyers at the ministry did not speak out sooner, Macleod cites a “near paralyzing degree of fear” that they would be forced out of their jobs for complaining.

“I have received accounts from many employees who have suffered personally and professionally as a result of inappropriate workplace conduct, many of whom still bear scars today.”

Her investigation noted a high level of turnover for lawyers at the ministry, due to the difficult working conditions. She also found turnover at the management level. In one case, a department had five legal directors in seven years.

The report notes bad behaviour at offices across the province, with the epicentre being 720 Bay St. in Toronto, the headquarters for the civil law department.

“Employees shared with me innumerable stories of people being regularly yelled at, sworn at, and belittled privately or in front of others,” the report states.

Fear of reprisals from senior management, who would move lawyers to another department if they spoke up and complained, kept the lid on the problem for years. “Fear permeated every level of the division” and “there was always the fear factor” that if a lawyer said no to something or reported anything negative it would have a damaging effect on his or her career.

Constant turnover, people forced out when they complained to upper management, has been the order of the day, with one complainant noting that top lawyers were “here one day and gone tomorrow.”

Her report is peppered with “Director Y” did this, “Director Z” did that, or “Senior Manager X” did this. Ministry lawyers have played a sort of black humour game, trying to put faces to the code names.

Many employees posed this question in their interviews: “How is it that so many people had their careers and lives damaged, and yet those who should have been held accountable did not?”

And then there is the issue of the law itself. Given the extreme dysfunction, is the work taxpayers are supporting getting done?

Macleod notes that she heard numerous complaints that bureaucrats “doctored” the legal opinions of skilled government lawyers but kept their names on the opinions. Also, complainants say they were ordered to give a certain opinion about the risk of taking an action just to please another government department or to respond to “political sensitivities.” At times, lawyers were told by bosses not to “put things in writing.”

Though no specifics are given, the report notes that other ministries who rely on the attorney general’s legal department were allowed to “exert improper influence” on the laying and withdrawing of charges. Macleod said she heard concerns that this “may be viewed as unlawful interference with Crown discretion and raise concerns of abuse of process by the Crown.”

In her report, Macleod pointed to top brass as the overall problem. “I was told that trust in management generally has drastically eroded and is now perilously low.” One issue is that over the years, effective lawyers were promoted through the ranks, but not given training on how to be a boss.

“You shouldn’t expect to be a lawyer one day and a manager the next” without appropriate training, the report notes.

A total of 136 recommendations on how to improve the situation at the attorney general’s ministry were made by Macleod, including that all employees should be told in writing that they will not be subject to reprisals if they raise issues about inappropriate conduct in the future.

A ministry spokesperson provided a general response to the Star, but would not deal with any specific issues raised in the report.

“The ministry takes its responsibilities towards its staff seriously and like most employers we are constantly working towards improvement,” the spokesperson wrote. More than 300 employees have volunteered to take part in “employee engagement” to “transform their own workplace,” the spokesperson said.

“Though much positive change has already taken place, we know that there is still more work to do. We are committed to continuing this drive toward collaborative and positive change. The Civil Law Division and its staff are working together to build a workplace community that is stronger, more inclusive, and where every employee feels welcome and valued,” said the spokesperson.

Sources within the ministry have told the Star that despite the words of the spokesperson, little has changed and outside help is required.

“Nothing of substance is being done in response to the report,” one source said. “The ministry should bring in an independent third party who understands the wide range of issues.”

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Your Phoenix stories from across Canada
2 years after federal government pay system launched, Canadians from coast to coast to coast still suffering
CBC News
Julie Ireton
February 21, 2018

More than half of the federal government's workforce of 300,000 has been affected by the failed Phoenix pay system, launched Feb. 24, 2016.

They work for every department, and live in every corner of Canada.

CBC reporter Julie Ireton spoke with federal employees from coast to coast to coast about how they and their families are struggling to cope with their own personal Phoenix fiascos.

http://www.cbc.ca/news/canada/ottawa/your-phoenix-stories-from-across-canada-1.4543165

Un juré traumatisé par un procès poursuit le gouvernement
Un homme a reçu un diagnostic de trouble de stress post-traumatique après avoir été membre d'un jury d'un procès pour meurtre
Radio-Canada
21 février 2018

Mark Farrant poursuit les gouvernements de l'Ontario et du Canada pour 100 000 $.

Il souffre de « problèmes de santé mentale continus, y compris, sans s'y limiter, l'ESPT, l'anxiété et la dépression », selon une déclaration de la Cour supérieure de l'Ontario.

Il affirme que les procureurs généraux de l'Ontario et du Canada ont manqué à leur « devoir de diligence » pour le protéger en tant que juré.

M. Farrant parle ouvertement depuis des années de l'impact psychologique qu’il a subi des suites de sa présence sur un jury. Il a également mené une campagne dans le but d’obtenir de l’aide psychologique pour tous les jurés de tels procès.

Suite aux sorties de M. Farrant, le gouvernement de l'Ontario avait annoncé en janvier dernier que des services d'aide gratuits seraient mis à la disposition des jurés.

Mais dans les documents déposés en cour, le demandeur affirme que ces annonces étaient survenues trop tard pour M. Farrant.

Avant la nouvelle loi, seulement un juge pouvait offrir de l'aide offerte par le gouvernement.

« Procès pour meurtre troublant »

M. Farrant était le chef du jury lors du procès de Farshad Badakhshan, qui a été reconnu coupable de meurtre au second degré de sa petite amie, Carina Petrache. M. Farrant affirmait en octobre 2016 avoir été traumatisé par certains détails du procès.

Badakhshan avait égorgé sa petite amie avant de mettre le feu dans l'appartement de leur maison de chambres qu'ils partageaient à Toronto.

Yukon government puts $530k towards Gladue report pilot project
Three-year pilot project will train people to write Gladue reports for Indigenous offenders
Yukon News
Jackie Hong
February 21, 2018

The Yukon government will spend $530,000 over three years to fund a pilot project training people to write Gladue reports, important documents that help shape sentencing decisions for Indigenous offenders in the justice system.

Justice Minister Tracy-Anne McPhee, Council of Yukon First Nations (CYFN) Grand Chief Peter Johnston and the Yukon Legal Services Society's executive director David Christie made the announcement at CYFN headquarters in Whitehorse Feb. 20.

"Despite the fact that these reports are mandatory under the law and that many other jurisdictions have report-writing programs, we in the Yukon here have never had a dedicated, ongoing Gladue program," McPhee told media.

"This will benefit Yukon's justice system both in terms of reducing delays in sentencing of offenders and having a consistent process that will allow the courts to consider the realities of intergenerational trauma stemming from colonialism in respect to Indigenous offenders."

The project is a collaboration between the Yukon government, CYFN, the Yukon Legal Service Society (also known as Legal Aid) and the Public Prosecution Service of Canada.

Gladue reports are named after a 1999 Supreme Court of Canada decision in the case of Cree woman Jamie Tanis Gladue, who pleaded guilty to manslaughter and then appealed her sentence. Her appeal

forced the court to clarify a section of the Criminal Code that states courts must consider all alternatives to jail when sentencing an offender, with "particular attention to the circumstances of Aboriginal offenders."

Through interviews with Indigenous offenders as well as their friends, family and support workers, Gladue reports offer detailed looks into offenders' histories and how they may have contributed to their actions. Common factors include the impact of residential schools, the deaths of family members and abuse. Gladue reports also often suggest alternatives to jail such as rehabilitative and culturally-relevant treatment, although the offender's sentence still ultimately lies in the judge's hands.
While jurisdictions such as Ontario have about 30 paid, full-time Gladue writers, the Yukon currently has three volunteer writers who do the reports in an arrangement commonly described as "off the sides of their desks."

The pilot project hopes to change that by training people to write Gladue reports and then paying them for the reports they produce. The goal is to build a "roster" of Gladue writers to tackle the estimated 25 to 35 Gladue reports needed in the Yukon every year. There will also be evaluations done throughout the project's three-year run to gauge its success.

Legal Aid's Christie said the service was "proud" to be partnering with CYFN on the project.

"Legal Aid sees this as an important part of restorative justice, which focuses on rehabilitation of offenders and reconciliation with victims, but also healing the harm caused by crime in the community. In my mind, Gladue reports are important means to get to that end," he told media. He also added that there was "talk" of possibly compensating writers for past reports.

In an interview following the announcement of the pilot project, CYFN executive director Shadelle Chambers said a Gladue training program in the Yukon has been much-needed and "a long time coming." She sits on the Gladue management committee, which includes representatives from Yukon First Nations as well as the Crown's office and Legal Aid.

"I know CYFN did a Gladue research project almost six years ago, so there's been a lot of work over the years…. I think (the project is happening now because) it was good timing, political will, all those sorts of things," she said.

Chambers said CYFN is hoping to host about one Gladue training session a year, similar to the three-day workshop that CYFN hosted in November 2017 in anticipation of the pilot project's launch. Eleven participants, all First Nations people from around the territory, took part in that training and are now working under the guidance of experienced Gladue writers to produce two reports before they start working on their own.

Ideally, Chambers said, the pilot project will produce a "solid" roster of at least 10 Gladue writers and serve as a launching point for a permanent Gladue program.

“We would (like to) see a dedicated program here in the Yukon that is made up of a roster of First Nations writers and then handed over to a First Nations organization that will administer this project,” she said.

“I think other jurisdictions have Gladue courts with Gladue support workers, and so, ideally, that’s what I would hope to see in the next five to 10 years, but during this three-year pilot project, it’s beginning to really figure out all the kinks and then hand it over to a First Nations organization that will manage that program.”

Canada: Caron: The Supreme Court Reiterates The Employee's Duty To Accommodate
Mondaq.com
Laurence Bourgeois-Hatto and Charles Wagner
Langlois lawyers, LLP
February 21 2018

On February 1, 2018, the Supreme Court of Canada released a much anticipated labour law decision pertaining to the employers' duty of reasonable accommodation when an employee suffers an employment injury. In CNESST v. Caron, 2018 SCC 3, the Supreme Court of Canada upheld the decision of the Quebec Court of Appeal, reiterated that an employer has a duty to accommodate a worker who has suffered an employment injury, and confirmed that the Commission des normes, de l'équité, de la santé et de la sécurité du travail (the "CNESST") and the Administrative Labour Tribunal (the "ALT") have a duty to determine whether a worker has been validly accommodated by the employer.

This decision will definitely have a significant impact on the rehabilitation process and on determination by the principal actors, the CNESST and the ALT, of what constitutes suitable employment.

I. FACTS
In 2004, the worker developed epicondylitis while working as an educator in a residential facility. The employment injury had consolidated by 2006, leaving permanent impairment and functional limitations that prevented him from resuming his pre-injury employment.

It is important to note that throughout that period, the worker held the position of team leader, with light duties.

In 2010, as part of the rehabilitation process provided for in the Act respecting industrial accidents and occupational diseases (the "IAODA" or the "Act") and the determination of the worker's ability to return to work, the employer informed the Commission de la santé et de la sécurité du travail (the "CSST", now replaced by the CNESST) that no suitable employment was available for the worker and terminated his employment. The CSST therefore informed the worker that the rehabilitation process would proceed, but his vocational potential would be evaluated elsewhere in the labour market.

The worker contested the CSST's decision, alleging that the employer had not met the duty of reasonable accommodation imposed on it by the Charter of Human Rights and Freedoms (the "Charter"). Because of his employment injury, the worker, who had a disability, argued that the

employer was required to make every effort to promote his return to work, but without imposing undue hardship on the employer.

II. JUDICIAL HISTORY

A. Commission des lésions professionnelles

In 2012, the Commission des lésions professionnelles (the "CLP") rejected the worker's arguments. It was of the opinion that the consistent decisions of the Court of Appeal ruled out the application of the duty of reasonable accommodation provided in the Charter in rehabilitation cases under the IAODA. The CLP concluded that the provisions of the Act themselves constituted reasonable accommodation. The employer therefore did not have a duty to offer the worker suitable employment and the rehabilitation process could proceed elsewhere in the labour market.

B. Superior Court

In 2014, the Superior Court heard the matter on an application for judicial review and concluded that the CLP had failed to determine whether the worker had been a victim of unlawful discrimination on the basis of his disability, and whether the employer had fulfilled its duty of accommodation before declaring that there was no suitable employment in its enterprise. The Superior Court set aside the CLP's decision and returned the matter to it for it to determine the worker's challenge of the decision, taking into account the right to equality protected by the Charter.

The CSST appealed the decision.

C. Court of Appeal

In 2015, the Court of Appeal pointed out that the right of a worker who has a disability and the employer's duty to accommodate transcend the Act, the employment contract and the collective agreement. A worker who still suffers the effects of an employment injury must be considered to have a handicap within the meaning of the Charter. The worker will therefore be protected against any form of discrimination and may be given the benefit of accommodation by the employer in order to retain his or her employment. Moreover, the Court reiterated that it is up to the employer to take the initiative of seeking a solution that is acceptable to everyone.

In the opinion of the Court of Appeal, even if the IAODA does not explicitly impose a duty on the employer to find suitable employment in its enterprise, the employer must try to find a reasonable accommodation measure. The duty to participate in the worker's rehabilitation effort requires that every employer analyze the possible accommodations and offer a position that is consistent with a worker's functional limitations. The Charter's supralegislative character not only imposes that obligation on the employer, but also requires the CSST and the CLP to determine whether that process was properly followed.

On the question of the time allowed for exercising the right to return to work, the Court of Appeal was of the opinion that the CLP must conduct an individualized assessment of the worker's situation. Under the Charter, the two-year limit provided in the IAODA is a factor to be considered but is not determinative.

The appeal was dismissed, but the CSST obtained leave to appeal to the Supreme Court.

D. Supreme Court of Canada

The Supreme Court of Canada dismissed the appeal by the CSST. The Court reiterated that the duty of reasonable accommodation applies to a worker who has suffered an employment injury, notwithstanding the fact that the IAODA does not expressly address the duty to accommodate.

The Court first noted that all Quebec legislation, including the IAODA, should be interpreted in conformity with the Charter: "Since a core principle of the Quebec Charter is the duty to accommodate, it follows that this duty applies when interpreting and applying the provisions of Quebec's injured worker legislation. There is no reason to deprive someone who becomes disabled as a result of an injury at work of principles available to all disabled persons, namely, the right to be reasonably accommodated."

The compensation scheme for injured workers provides for various types of accommodation, such as reinstatement, equivalent employment, or, where that is not feasible, the most suitable employment. The IAODA therefore already proposes a form of accommodation for the worker's benefit, without necessarily expressly providing the duty to accommodate within the meaning of the Charter.

The Supreme Court has now confirmed that this duty to accommodate is implicit, stating: "The fact that the scheme sets out some type of accommodation does not negate the broader, general accommodation required by the Quebec Charter."

In those circumstances, the Court reiterated that the ALT has exclusive remedial authority in dealing with the right to reinstatement, equivalent employment or suitable employment, to impose measures on the employer to reasonably accommodate the injured worker and the circumstances that flow from the injury.

Accordingly, the matter was returned to the ALT for it to determine Mr. Caron's challenge of the decision, taking into account the employer's duty to take reasonable accommodation measures in accordance with the Charter.

It is also worth noting that Justice Rowe, who wrote separate reasons, was of the opinion that because the CNESST is an administrative rather than adjudicative body, it cannot compel an employer to accommodate an employee. Only the ALT has the power to order that. However, he pointed out that this does not mean that the CNESST cannot discuss with the employer its duty to accommodate, and that "one would hope that the CSST would assist employers to understand not only the rights of workers under the Act, but also those under the Quebec Charter."

III. RECOMMENDATIONS

In light of this decision, we find that the obligations imposed on employers to employees who have suffered an employment injury and who still suffer its effects will now be more onerous.

Based on the analysis done by the higher courts, we would advise that employers will now have to establish to the CNESST, and ultimately the ALT, that a serious analysis of possible accommodation measures was in fact done. Employers will very certainly have to provide objective justification for their decisions when those decisions assert that workers can be offered no employment.

We take this opportunity to remind that the employer's obligations in respect of accommodation are continuing to be expanded, and, once again, the Supreme Court of Canada has affirmed that trend.

The authors wish to thank Francine Legault and Raphaëlle Alimi-Lacroix for their contributions to this article.
The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

British union calls on former Supreme Court judge to respect picket line and cancel speech
Beverley McLachlin helped constitutionalize the right to strike in Canada. British union demands she respect their nationwide strike.
Toronto Star
Tonda MacCharles
February 22nd, 2018

OTTAWA—Striking academic staff at Cambridge University say former chief justice Beverley McLachlin, who recognized a constitutional right to strike in Canada, should respect their picket line and cancel her speech Friday at Cambridge University.

McLachlin is scheduled to give the Sir David Williams lecture at Cambridge University's prestigious law school, an annual event which regularly draws a who's who of the legal community from Cambridge, London and beyond.

McLachlin led the Supreme Court of Canada from 2000 until her Dec. 15, 2017 retirement. She will continue writing judgments until June in cases she has heard. Notably she was chief justice in 2015 when Canada's top court enshrined the right to strike as "an essential part of a meaningful collective bargaining process."

On Friday, she is to deliver a speech entitled "Where Are We Going? Reflections on the Rule of Law in a Dangerous World."

However the British union representing university academic and research staff is now appealing directly to McLachlin to stand up for a principle she espoused while on the bench and not cross their picket line.

Jenny Sherrard, a spokesperson for the University and College Union that represents professors on strike across the United Kingdom, said in an email to the Star the union is taking strike action for 14 days over a four-week period.

“And tomorrow is bang in the middle of our first strikes. Sixty-four universities are affected by the action to defend staff pensions, including Cambridge,” said Sherrard. “We are writing to Justice McLachlin advising her of the action and the message of solidarity we have received from our sister union in Canada, and asking her not to cross the picket line.”

Picket lines are organized on campuses for key business hours. On Thursday, striking law professors were walking the lines in Cambridge.

It isn’t clear whether McLachlin would have to cross a physical or figurative picket line Friday evening. Either way, the British union and its Canadian counterpart, the Canadian Association of University Teachers, hopes she’ll change her mind about her appearance.
“We would encourage her to respect the picket line,” said David Robinson, executive director of the Canadian union. “The McLachlin court ruled on several important labour cases, including one in which the SCC (Supreme Court) ruled that the right to strike was protected by the Charter. I would hope that she now demonstrates this by not crossing the UCU picket line at Cambridge.”

The Canadian union earlier this week sent a message backing the British union’s strike action against proposed pension changes, calling it “a blatant attack on your members’ rights.”

Lawyer Paul Champ, who represented one of the interveners in that seminal 2015 Canadian case that constitutionalized the right to strike in Canada, said in an interview that McLachlin should take the request seriously, that while it “doesn’t necessarily mean that she’s picking sides, it certainly doesn’t send a great message to the Cambridge faculty.”

“Justice McLachlin is being asked to speak at an event in honour of a former eminent professor of Cambridge, yet ironically Cambridge professors are on strike and presumably won’t be able to attend to attend the lecture.”

“There’s no prohibition against anyone from crossing a picket line, but it certainly sends a message when someone does,” he said. “I think when there are really important reasons why you have to cross a picket line, it may be appropriate to do so. But a former chief justice of the Supreme Court of Canada who has ruled on so many landmark trade union rights cases in Canada? I think it would be sending a very questionable message to cross a picket line in these circumstances.”

“I just don’t think it’s an appropriate time to deliver a speech like that, and all things considered, I hope that (former) chief justice McLachlin reconsiders and asks Cambridge to reschedule their lecture.”

The Star began making enquiries about McLachlin’s planned speech Thursday. Requests for comment sent directly to McLachlin, who had already left for the U.K., and sent through the Canadian court had not yet been answered. Nor had Cambridge University administration responded to requests for comment.

The event notice says it will be followed by a drinks reception. And a source speaking for background only said a lavish dinner usually follows.

In January 2015, McLachlin was in the majority of judges who significantly bolstered labour rights in this country in a pair of rulings: the first upheld the right of RCMP members to form a union; and the second constitutionalized the right of Saskatchewan public sector workers to strike as part of "meaningful" collective bargaining.

That ruling, called Saskatchewan Federation of Labour vs Saskatchewan, cited the Charter's guarantee of freedom of association. It said the right to strike is an "indispensable component" of collective bargaining.

"Where good faith negotiations break down, the ability to engage in the collective withdrawal of services is a necessary component of the process through which workers can continue to participate meaningfully in the pursuit of their collective workplace goals. This crucial role in collective bargaining is why the right to strike is constitutionally protected by (the Charter) s. 2 (d)."

Justices Marshall Rothstein, now retired, and Richard Wagner, McLachlin's successor as chief justice, wrote a stinging dissent, saying courts should stay out of it.

"This court should not intrude into the policy development role of elected legislators by constitutionalizing the right to strike under the freedom of association guarantee," they wrote.

"It is not the role of this court to transform all policy choices it deems worthy into constitutional imperatives. The exercise of judicial restraint is essential in ensuring that courts do not upset the balance by usurping the responsibilities of the legislative and executive branches."

Timely justice in Nunavut starts with Ottawa, says lawyer
Lawyer's Daily
Terry Davidson
February 22, 2018

If there is going to be timely justice in Canada's North, Ottawa must open its wallet.

This is the view of at least one criminal lawyer following a Nunavut judge's passionate dressing down of time limits set out by the Supreme Court of Canada when it comes to cutting down delay in criminal proceedings.

It was late last year that Justice Paul Bychok, of the Nunavut Court of Justice, stated during a routine criminal-court proceeding that Nunavut, given its isolation, northern culture and harsh environment, must be considered an exception to the benchmarks set by the SCC's seminal Jordan ruling.

In R. v. Jordan 2016 SCC 27, the Supreme Court found that, barring "exceptional circumstances," proceedings for criminal matters would have a time limit of 18 months from the laying of a charge to the trial's end, and 30 months in superior court. Going beyond these time limits would risk infringing on an accused's Charter rights, the top court ruled.

But Justice Bychok, as part of a decision to send a sex assault case to trial despite the accused's lawyer calling for a stay due to delay, deemed Nunavut an exceptional circumstance due to its vastness, remoteness, Indigenous culture, harsh weather, socioeconomic challenges and high rates of illness and suicide.

Combine this with a lack of legal resources to serve 25 remote communities stretching across more than two million square kilometres, and delays that fly in the face of Jordan are, in some cases, inevitable, stated Justice Bychok.

"In 2016, the [SCC] … changed the way we interpret and apply section 11(b) of the Charter," stated Justice Bychok in R. v. Anugaa 2018 NUCJ 2.

"This new Jordan approach does not account for the exceptional challenges and unique cultural circumstances in delivering justice to [the people of Nunavut]."

Justice Bychok went on to explain that Nunavut has but one court of justice, which is based in Iqaluit, and that "it travels regularly to each one of the other 24 far-flung communities."

"The harsh climate is unforgiving," said Justice Bychok. "Planes go 'mechanical' and flights are delayed or cancelled. The September 2017 circuit to Kimmirut [in eastern Nunavut] was cancelled because of a blizzard … [In] Iqaluit, we had our fist near-blizzard of the season on September 30. Court days … were cancelled during consecutive weeks in November when we had two more storms."

Jordan, said Justice Bychok, also "fails" to consider that court proceedings can grind to a halt if the accused, a witness or a complainant falls ill and has to suddenly travel south for medical treatment.

He also talked of "deaths and suicides."

"Nunavut's communities are small and very closely knit. Deaths and suicides touch everyone. Circuits sometimes are cancelled out of respect for the grieving. The Nunavut Court of Justice stands down for burials and funerals."

Ontario criminal lawyer James Morton, of Morton Barristers, began extending his practice to Nunavut in 2006, when he took a case in Cape Dorset and "fell in love with the North."

"The fact is in the North it is different than practising in the south," said Morton. "Things happen in the North that just don't happen in [places like] Calgary, and that means you have to be somewhat more elastic in the way you approach things, and it certainly does lead to delay issues, no question."

Morton also said many in Nunavut place a high priority on maintaining traditional ways of living, and that the territory's current legal system seeks to balance this with its job of turning the wheels of justice.

“Nunavut is a very traditional society for many people,” he said. “Hunting, fishing, things taking place on the land, do take precedence and people do become unavailable because they are literally on the land, trying to get food.”

Still, Morton doesn’t feel Nunavut should be an exception, but rather brought up to a national standard through an increase in resources from the Canadian government, particularly when it comes to acquiring additional courthouses and judges.

“If we want to have sovereignty in the North, we need to pay for it,” said Morton. “The problems Justice Bychok has spoken about in the North, to some degree they are cultural. To some degree they are inevitable. But a lot of the problems in terms of delay are because the courts aren’t attending to the communities as frequently as they probably should, and part of that is because of the limited number of judges. The Nunavut Court of Justice has been short two judges now for a very long time. … You lose two judges in Calgary, [it’s] no big deal, but you lose two judges out of six, you’re … down by a third.”

Morton went on to say that timely justice in Nunavut would have “to be set up in such a way that the courts are actually open and available” to all.

“I do think that we have to have one basic standard of justice across the country,” Morton said. “The answer to it is to have a properly resourced system. … We need to probably have another courthouse in the territory somewhere. … We need the shortage of judges to be filled, and we probably need a couple more judges on top of that. So perhaps four judges in Iqaluit, four judges in Rankin Inlet, or two in Rankin and two in Cambridge Bay — make sure that there are justice systems in place on an ongoing basis across the territory.”

The case that prompted Justice Bychok's Jordan comments involved Lukasie Anugaa, a man who faced two charges relating to alleged sex offences from the 1970s. Anugaa was acquitted following a trial in January.

His lawyer, Patrick Bruce, declined to comment on the case, other than to confirm that Anugaa was acquitted of the charges.

When asked for comment on Bychok's remarks, Department of Justice Canada had little new to say.

“The Supreme Court of Canada’s 2016 Jordan decision applies nationally and is binding on all lower courts in Canada,” said spokesperson Simon Rivet in an e-mail. “The court revised the long-standing analysis for unreasonable delay under section 11(b) of the [Charter] by setting out presumptive numerical ceilings on the time it should take to bring an accused person to trial. … Should a trial proceed beyond these ceilings, the delay is presumed to be unreasonable and a stay of proceedings will follow. The court however, allowed for the establishment by the Crown of “exceptional circumstances.”

Pay problems strike 64% of Manitoba federal workers
Winnipeg Free Press
Dylan Robertson
February 22nd, 2018

OTTAWA — Almost two-thirds of federal public servants in Manitoba aren't being paid properly, documents tabled in Parliament show.

Some 6,464 people employed by federal agencies and departments are being underpaid or overpaid, or have had problems with their benefits. That accounts for 64 per cent of the 10,087 civil servants in the province.

The Liberals released the data after Quebec NDP MP Karine Trudel asked how many public servants are affected by the disastrous Phoenix pay system and where they work.

Her colleague, Transcona MP Daniel Blaikie, said the pay issue comes up often in Ottawa, but it's putting immense stress on workers across the country.

"I've had people in my office that are looking at defaulting on their mortgage because they're not being paid properly," Blaikie said. "It's disappointing to think that our federal government can't get its act together to pay its employees."

Phoenix went online in 2016, with the intention of centralizing payments for a quarter-million federal employees. It instead has led to unpaid student workers, overpaid employees who face stiff tax deductions and others grappling to access their benefits.

It's unclear how many agencies and departments are affected in Manitoba. Of the thousands of affected employees in the province, 97 per cent are administered by a central payment centre that serves 55 departments.

That number includes: the Canadian Grain Commission, headquartered on Main Street in Winnipeg; Correctional Services Canada, which operates Stony Mountain Institution; Health Canada, which runs the National Microbiology Laboratory on Arlington Street; and Parks Canada, which is in charge of Riding Mountain National Park. It's unclear whether employees at those specific workplaces are affected.

Other departments specified the number of employees affected: 183 work for Transport Canada (six in Churchill, the rest in Winnipeg), 25 at a branch of Industry Canada, 14 at Statistics Canada, and one each for both the federal archives and Canadian Human Rights Commission.

The Transcona-based Freshwater Fish Marketing Corp. and the Winnipeg branch of the Royal Canadian Mint are not listed.

The former Harper government purchased and launched Phoenix while the Trudeau government expanded it to other departments.

Last November, the auditor general estimated the problem couldn’t be fixed until after the October 2019 election. By that time, Ottawa will have spent $1 billion fixing problems caused by a system that was supposed to make payments more efficient.

Manitoba is among the least-affected provinces. The National Post has compared all regions in the data and found 94 per cent of New Brunswick’s federal civil servants had problems with Phoenix, making it the hardest-hit. Saskatchewan came in second, with 92 per cent of federal employees affected.

Blaikie said he had a civilian employee of the RCMP ask him to make sure members of the force weren’t rolled into the Phoenix program. He raised the issue with Treasury Board president Scott Brison last November. Ottawa eventually decided to delay those plans.

For Blaikie, it illustrates the wasted time spent in Parliament and the bureaucracy trying to rectify Phoenix issues.

"Paying employees in any organization is a bread-and-butter issue that you really need to get right, or you’re not going to be able to focus on what it is you’re doing."

This week, the news website iPolitics reported the federal Liberals were looking at moving to a system other than Phoenix, while they resolve outstanding cases.

"You may find there is a new way that can actually address this issue faster," Public Services Minister Carla Qualtrough said. That conflicts with the auditor general’s assessment that it would be impossible.

Qualtrough’s office did not respond to a request for comment.

Blaikie said it would be "unconscionable" if the Liberals were to switch to the new system without keeping the old one running.

"Phoenix is in disarray by the government’s own admission," he said.

"It just strikes me as really odd that, in the 21st century, that this is a problem for government."

He couldn’t say what the NDP would do if it inherited the problem.

Blaikie noted union groups have offered to help Ottawa sort things out, and executives overseeing the troubled program have received bonuses.

The Public Service Alliance of Canada did not respond to a request for comment.

Government of Canada announces judicial appointment in the province of Alberta
PRESS RELEASE PR Newswire
February 22nd, 2018

The Honourable Jody Wilson-Raybould, Minister of Justice and Attorney General of Canada, today announced the following appointment 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.

Marta E. Burns, senior litigation counsel with the Alberta Ministry of Justice and Solicitor General, is appointed a justice of the Court of Queen's Bench of Alberta in Edmonton. She replaces Madam Justice D.A. Sulyma, who elected to become a supernumerary judge effective January 1, 2018.

Biography

Madam Justice Marta E. Burns holds degrees in commerce (1984) from Queen's University and in law (1988) from the University of Alberta. She articled with the Honourable Justice J.E. Côté at the Alberta Court of Appeal and with (then soon to be) His Honour Judge David J. Tilley at Witten Binder. Justice Burns's legal career has been evenly split between private practice (as a student, associate and partner with Witten LLP) and public practice (at the Department of Justice Canada and Alberta Justice). Her litigation practice included tax, commercial, pension, labour and employment law – including administrative law – and appearances before many tribunals. Justice Burns has litigated at all levels of courts in Alberta, as well as the Tax Court of Canada, the federal courts and the Supreme Court of Canada.

Justice Burns has tirelessly contributed to both the legal profession and the community. She taught bar admission courses and was a guest speaker at the University of Alberta, at the Northern Alberta Institute of Technology, and at various Canadian Bar Association meetings. She was extensively involved in organizations for the various sports in which her children participated, including ski racing and cheerleading. She has been a Big Sister, has tutored prison inmates, and was an agency speaker, account executive and employee campaign chair for the United Way. She has raised funds for causes including Alberta Heart and Stroke, Alberta Juvenile Diabetes and Multiple Sclerosis. For over 20 years, Justice Burns has been dedicated to the WINGS of Providence Society, a second-stage shelter for women and children fleeing family violence, on behalf of which she led two capital campaigns and oversaw construction of two housing complexes. In 2013, she received the Government of Alberta's Inspiration Lifetime Achievement Award for her work to eradicate family violence.

Excerpts from Justice Burns' judicial application will be available shortly.

Quick Facts

In 2017, the Minister of Justice made 100 appointments and elevations – the most a Minister of Justice has made in one year in at least two decades.

Of these appointees, half are women, four are Indigenous, and 16 have self-identified as a member of a visible minority population, LGBTQ2, or a person with a disability.
Budget 2017 includes additional funding of $55 million over five years beginning in 2017-2018 and $15.5 million per year thereafter for 28 new federally appointed judges. Of these new positions, 12 have been allotted to Alberta and one to the Yukon, with the remaining 15 being assigned to a pool for needs in other jurisdictions.
To ensure a judiciary that is responsive, ethical and sensitive to the evolving needs of Canadian society, the Canadian Judicial Council will receive $2.7 million over five years and $0.5 million ongoing thereafter. This will support programming on judicial education, ethics and conduct, including in relation to gender and cultural sensitivity.
Federal judicial appointments are made by the Governor General, acting on the advice of the federal Cabinet and recommendations from the Minister of Justice.
The Judicial Advisory Committees across Canada play a key role in evaluating judicial applications. There are 17 Judicial Advisory Committees, with each province and territory represented.
Significant reforms to the role and structure of the Judicial Advisory Committees, aimed at enhancing the independence and transparency of the process, were announced on October 20, 2016. Sixteen Judicial Advisory Committees have been reconstituted to date.

Judge strikes mandatory minimum sentence in drug case involving Indigenous woman
Cheyenne Sharma was a 23-year-old single mother living in poverty at the time of her crime
Ottawa Citizen
The Canadian Press
February 22, 2018

An Ontario judge has struck down a mandatory minimum sentence for a drug smuggling offence, ruling that two years in prison would be a “grossly disproportionate” punishment for an Indigenous single mother who ran away from home at age 13.

Advocates welcoming the ruling say the case highlights the need to strike down dozens of mandatory minimums that remain in place despite contradicting Supreme Court guidelines for sentencing Indigenous offenders.

Cheyenne Sharma, a 23-year-old single mother living in poverty at the time of her crime, was sentenced to 17 months in jail after pleading guilty to bringing under two kilograms of cocaine into Canada from Surinam in the lining of her suitcase.

The mandatory minimum penalty of two years in prison would have violated Canada’s Charter of Rights and Freedoms, Justice Casey Hill determined.

“Reasonable and right-thinking Canadians fully informed of the offender’s particular circumstances and the nature of the sentencing function including the unique history of the Aboriginal peoples (would) conclude that such a sentence would outrage standards of decency,” Hill wrote in his decision.

The ruling means people convicted of importing more than one kilogram of a "Schedule I" drug — including cocaine and heroin — into Canada will no longer face the mandatory minimum sentence, said Jonathan Rudin, program director for Aboriginal Legal Services, which intervened on Sharma's behalf in the case.

But there are still many other mandatory minimum punishments in Canadian law contributing to the overrepresentation of Indigenous people in prisons, Rudin said, calling on the federal government to act on the issue.

"The answer has to be that the federal government do what they said they were going to do and legislate away these mandatory minimums or legislate in an escape clause (for judges)," he said.

Justice Minister Jody Wilson-Raybould said the prime minister has called for a "broad review" of changes to the criminal justice system that have taken place over the past decade, including mandatory minimums.
"The examination of mandatory minimum penalties is included in this review (and) that work is ongoing," she said in a statement. "The courts have made it clear that mandatory minimum penalties present serious challenges from a constitutional perspective."

The Supreme Court of Canada has ruled that when sentencing Indigenous offenders, judges must take into account that person's individual circumstances and how they may have been affected by societal issues such as racism, poverty, substance abuse and "family or community breakdown."

These guidelines, referred to in law as the Gladue principles, force judges to recognize that Indigenous people do not always have the same access to justice as non-Indigenous Canadians, lawyer Josephine De Whytall said.

In sentencing Sharma, Hill noted that her maternal grandmother was a survivor of the residential school system who became pregnant at age 15 and was involved in bootlegging and prostitution.

When Sharma was five, her father was deported to Trinidad, where he was convicted of murder and sentenced to 12 years in prison, Hill wrote in his decision.

Sharma ran away from home in her early teens and began drinking every day, Hill wrote. She said she was sexually assaulted as a teen, was working as a prostitute by age 15 and gave birth to her daughter at age 17, he wrote. Sharma has attempted suicide more than once, Hill wrote.

Sharma was two months behind on rent and was facing eviction when the man she was dating said she could make $20,000 by picking up a suitcase in Surinam, Hill wrote. She agreed, afraid she and her two-year-old daughter would otherwise end up homeless, the judge noted.

Normally, mandatory minimums don't allow a judge any leeway to take that type of information into consideration, De Whytall said.

“Rather, it’s an arbitrary recognition that anybody who does this (crime) must get this sentence, and that just doesn’t work for Indigenous people because there are so many complex societal issues at play,” she said.

Mandatory sentences can only be eliminated on a case-by-case basis, through a long and costly legal process, Rudin said, noting that judges can only strike them down when a defendant successfully makes a charter challenge arguing the sentence would constitute “cruel and unusual punishment.”

“The reality is that mandatory minimums have been falling fairly regularly across the country when they have been challenged,” he said. “But we can’t solve this by taking on each mandatory minimum one at a time.”
Aboriginal Legal Services helped Sharma’s defence launch its Charter challenge, calling York University sociologist Carmela Murdocca as an expert witness to testify about the historical challenges faced by Indigenous people and the vulnerability and financial hardship experienced by many racialized women convicted of drug crimes.
The entire case took over two years.

Not all offenders can afford the time and resources these challenges require, Rudin said. In some cases, the time it would take to go through the process of challenging the minimum sentence is longer than the sentence itself, he said.

There were 29 offences carrying a mandatory minimum sentence of imprisonment as of 2015, according to the Department of Justice, and several more that carry mandatory minimum punishments that do not include prison time.

Gerald Stanley acquittal yet another guilty verdict for Canada
Canada’s criminal justice system is not broken, it was built this way.
Toronto Star - Opinion
Azeezah Kanji
February 22nd, 2018

With the acquittal of Gerald Stanley, Colten Boushie has joined the shamefully long list of Indigenous lives taken with impunity in Canada.

Boushie, a 22-year-old Cree man, was shot by Stanley at point-blank range in the back of his head, after Boushie and his friends drove onto Stanley’s farm with a flat tire.

Only 3 per cent of homicide cases in Canada end with acquittals, according to recent Statistics Canada data. And yet, a jury comprised entirely of non-Indigenous Canadians managed to find Stanley not-guilty not only of second-degree murder, but of manslaughter too — apparently believing Stanley’s far-fetched excuse that his handgun accidentally fired into Boushie’s head, even though an expert witness testified that the gun was not malfunctioning.

Since the exoneration of Stanley, many commentators have described Canada's criminal justice system as "broken." But the system isn't "broken;" it was built this way.

"Think about everything that First Nations people have survived in this country: the taking of our land, the taking of our children, residential schools, the current criminal justice system," wrote Mohawk legal scholar Patricia Monture-Angus. "How was all of this delivered? The answer is simple: through the law."

In 2015, another all-white jury acquitted Bradley Barton for killing Cindy Gladue, a Cree woman who died from an 11-centimetre-long wound in her vagina that Barton admitted he inflicted.

The acquittal followed a trial process in which Gladue was so dehumanized that she was repeatedly referred to as a "prostitute" and "native girl" instead of by her name, and her vagina was displayed as evidence in the courtroom. (The Supreme Court is currently deciding whether a retrial is necessary.)

As I write this, a jury is deliberating whether to acquit or convict Raymond Cormier, accused of murdering 15-year-old Anishinaabe girl Tina Fontaine; Gladue and Fontaine are two of 4,000 Indigenous women murdered or missing in Canada.

Indigenous communities are simultaneously under-protected and over-criminalized. According to criminal law professor Kent Roach, Indigenous people are more likely to be wrongfully convicted, and less likely to have wrongful convictions remedied.

Canada has been constructed on the devaluation of Indigenous lives. This is how European settlers rationalized the treatment of Turtle Island as terra nullius ("nobody's land"): by pretending that Indigenous peoples were too "savage" to be considered fully human, allowing Europeans to commit inhumane acts of savagery against them.

Mi'kmaq lawyer Pamela Palmater estimates that colonial policies and practices — including deliberate infection, forced sterilization, and mass starvation — have killed as many as two million Indigenous people in Canada. And Indigenous people continue to die from Canadian negligence and racism.

A 2015 Statistics Canada report found that Indigenous people are twice as likely as non-Indigenous people to suffer preventable deaths.

For example, the epidemic of child suicides in Pikangikum First Nation has been so severe that it prompted a 2011 study by the chief coroner of Ontario. It concluded that young people in Pikangikum are "hopeless" and "desperate" because they are denied "basic necessities of life," like food, water, education, and housing.

According to analysis by criminologist Scot Wortley, Indigenous people are six times more likely than white people to be killed or injured by police in Ontario. Cases of Indigenous people dying after being shot, beaten, or dumped in remote areas in the dead of winter and left to freeze by Canadian police are legion.

At Grassy Narrows First Nation, the Ontario government concealed evidence of industrial mercury contamination for almost three decades, while 90 per cent of residents showed signs of mercury poisoning and babies were being born with brain cancer.

In the wake of Stanley's exculpation, many Canadians have opined that Boushie "got what he deserved" for daring to trespass on Stanley's farm — forgetting that settlers were only permitted to farm there in the first place because Indigenous nations made treaties agreeing to share, but not surrender, the land. More than 3,000 people have donated to a GoFundMe campaign for Stanley, raising more than $210,000 in just 10 days.

But the oppression of Indigenous peoples is not sustained solely by such flagrant displays of individual racism. It is also perpetuated by Canadian political leaders, who may express grief for homicide victims like Boushie, yet continue to forcibly dispossess Indigenous nations to build pipelines and dams.
And it is perpetuated by all of us who are non-Indigenous Canadians, when we treat Canada as "our home and native land," while routinely turning a blind eye to the ongoing violence involved in making that home on stolen Indigenous land.
Donations to support Colten Boushie's family can be made here.
Azeezah Kanji is a legal analyst.

Le budget Morneau ouvrira la voie à l'équité salariale au fédéral
Radio-Canada
La Presse Canadienne
23 février 2018

Le prochain budget du gouvernement Trudeau rendra compte des coûts liés aux efforts pour atteindre l'égalité des genres tant au sein de la fonction publique fédérale que dans les milieux de travail réglementés par Ottawa, a appris La Presse canadienne.

Un haut dirigeant du gouvernement a révélé sous le couvert de l'anonymat que le budget du ministre des Finances, Bill Morneau, établirait les bases nécessaires à la réalisation d'objectifs de longue date en matière d'équité salariale au pays.

Même si le montant de la facture demeure inconnu, il risque d'être élevé puisque le nombre de travailleuses et travailleurs concernés avoisine 1,2 million, soit plus de 6 % de l'ensemble de la main-d'oeuvre au Canada.

Le haut dirigeant a refusé de préciser quel montant le budget consacrerait à cette initiative, mais a affirmé qu'il offrirait suffisamment de marge de manoeuvre à Ottawa pour négocier l'égalité salariale dans le cadre du renouvellement de différentes conventions collectives.

Selon cette source, les détails relativement à l'équité salariale seront fournis plus tard dans le cadre d'un projet de loi et non pas dans le budget.

Lors du Forum économique mondial à Davos le mois dernier, le premier ministre Justin Trudeau avait annoncé que son gouvernement présenterait cette année une nouvelle législation afin de s'assurer que le principe du « salaire égal pour un travail égal » soit respecté dans l'ensemble de la fonction publique fédérale.

Le Canada peine depuis longtemps à remédier à l'écart salarial lié au genre, les plus récents chiffres à ce sujet indiquant que les femmes gagnent en moyenne 87 ¢ pour chaque dollar touché par les hommes.

Le gouvernement Trudeau a signalé que le budget de mardi prochain comprendrait des initiatives pour promouvoir l'égalité des genres, améliorer la réussite économique des femmes, assurer une plus grande égalité au sein des conseils d'administration et faciliter l'accès au capital pour les entrepreneures.

Le budget de M. Morneau sera aussi le premier à examiner ses engagements en tenant compte de l'égalité des genres.

New Judges Appointed to the Ontario Court Of Justice
Ministry of the Attorney General
February 23, 2018

Ontario has appointed four new judges to the Ontario Court of Justice effective March 7, 2018.

Justice Hafeez Shahbudin Amarshi was called to the bar in 2002. He has worked as a criminal defense lawyer, and most recently, as Crown counsel for the Public Prosecution Service of Canada. Justice Amarshi also served on the Board of Directors for Flemingdon Community Legal Services and in 2012 was a recipient of the Queen's Diamond Jubilee Medal, which recognizes contributions to Canadian citizenship and public service.

Chief Justice Lise Maisonneuve has assigned Justice Amarshi to preside in Brampton.

Justice Allison Dellandrea was called to the bar in 1998. She most recently served as counsel for the Crown Law Office Criminal where she was the Criminal and Education lead for the Ontario Provincial Strategy on Internet Crimes Against Children. She has been an ambassador for Fight to End Cancer and her work on criminal law has been presented to national and international audiences. Justice Dellandrea has also been the director of summer school programming for the Ontario Crown Attorneys' Association since 2012 and is an active member of the Ontario Justice Education Network.

Chief Justice Lise Maisonneuve has assigned Justice Dellandrea to preside in Brampton.

Justice Joe Patrick Paul Fiorucci was called to the bar in 1997 and has been a sole practitioner specializing in criminal law. He has been a board member of the John Howard Society of Hamilton, Burlington & Area since 2012, where he held the positions of president, vice-president and treasurer. He also served as the Hamilton director of the Criminal Lawyers' Association and president of the Hamilton Criminal Lawyers' Association.

Chief Justice Lise Maisonneuve has assigned Justice Fiorucci to preside in Hamilton.

Justice Craig Fraser was called to the bar in 1989. After a number of years working in private practice, he became an assistant Crown attorney in 2000. Justice Fraser was the lead mental health assistant Crown in the Hamilton Crown Attorney's office. As a member of both the Human Services & Justice Coordinating Committee and the Hamilton Forensic Network Committee, he has worked to raise awareness of mental health issues.

Chief Justice Lise Maisonneuve has assigned Justice Fraser to preside in Simcoe.

Des avocats à la rencontre des citoyens dans le métro
Droit au logement, aînés floués, pensions alimentaires et testaments… Les préoccupations des citoyens sont variées
Droit Inc
Delphine Jung
23 février 2018

Pour la quatrième année, Juripop a décidé d’aller à la rencontre du public pour apporter aux citoyens des conseils juridiques gratuits et tenter de démystifier la profession d’avocat.

Ainsi, tous les lundis, depuis le 29 janvier et jusqu’au 26 février, de 12h00 à 18h00, cinq à six avocats se rendent dans les couloirs de la station de métro Berri-Uqam pour rencontrer les badauds.

Le grand kiosque est installé à l’entrée, dans le grand hall qui jouxte l’UQAM et les intéressés sont dirigés vers le juriste le plus à même à répondre à leurs questions, dans un cubicule. Ils disposent de 15 minutes.

« Cette activité s’inscrit dans le cadre du mois de la justice. L’objectif est d’offrir de l’information juridique aux gens dans leur milieu de vie », explique Me Sophie Gagnon, directrice générale de Juripop.

Les participants sont des avocats qui viennent de plusieurs organismes comme le Centre de justice de proximité, Éducaloi, la Commission des services juridiques et même, des avocats à leur compte et des notaires.

Des préoccupations juridiques diverses
Me Benjamin Prudhomme participait à l’événement pour la première fois. L’avocat de RSS, spécialisé en droit de la famille et droit de la personne, en a profité pour rencontrer presque une dizaine de personnes qui avaient essentiellement des questions sur les pensions alimentaires et les gardes d’enfants.

« Les questions étaient vraiment très variées. J’ai rencontré un monsieur qui n’habite même pas à Montréal et qui avait fait le déplacement spécialement pour cet événement. Il s’inquiétait de savoir qu’on lui avait mis une contravention, car il avait oublié de renouveler son permis de chasse alors qu’il poursuit des études pour devenir travailleur social », raconte Caroline Braun, avocate en droit criminel.

Me Gagnon a de son côté rencontré un Kenyan qui se posait plein de questions concernant le droit au logement.

« Les problèmes de logement sont récurrentes. J'ai aussi rencontré des personnes âgées qui se sentent flouées par un membre de leur famille », ajoute Marie-Josée Rioux, avocate à son compte en litige civile et commercial et en droit de la famille.

Me Roman Andrei, l'un des cinq notaires participants, s'est surtout vu poser des questions sur les testaments.
Pour Me Gagnon, l'idée de se faire voir dans le métro est un bon moyen d'avoir accès à tous ceux qui n'ont pas forcément internet comme les personnes âgées et les nouveaux arrivants.

« J'ai l'impression qu'être dans le métro, ça rassure les gens, ils se sentent en sécurité », explique Me Rioux.

Essentiel que les avocats s'impliquent
Très impliquée dans la communauté, Marie-Josée Rioux offre une centaine d'heures de services en pro-bono par an. « Je suis vraiment consciente à quel point l'accessibilité à la justice importante. C'est essentiel que les avocats s'impliquent là-dedans. Depuis, j'ai changé ma façon de facturer », dit-elle.

Le notaire Roman Andrei, qui y était pour la troisième année consécutive, trouve que c'est un bon moyen de « faire comprendre aux gens que le notaire est là pour les épauler. Cela brise un peu la glace et permet de gommer l'image qu'ils ont du notaire comme de quelqu'un qui ne pense qu'à l'argent ».

Vulgariser et démystifier
« Je crois beaucoup à l'accessibilité à la justice et dans mon quotidien, j'essaye toujours de vulgariser les grands principes de droit. Je tente aussi de démystifier le travail des avocats de la défense », explique de son côté Caroline Braun.

L'expérience côté juriste a en tout cas été un succès. « C'est une initiative très positive et la prochaine étape, c'est de la faire connaître davantage, car il y a plusieurs personnes qui arrivent par hasard », estime Me Braun.

De son côté, Me Prudhomme, qui assure avoir eu d'excellents retours de la part des citoyens, a trouvé que c'est une belle expérience. « Je trouve que le concept d'aller à la rencontre des gens envoie un message très positif. En plus, cela m'a permis de sortir un peu de ma pratique. L'initiative est bien rodée, même si je trouve que 15 minutes, c'est un peu court », rapporte l'avocat.

L'initiative sera reconduite l'année prochaine.

Budget to cost pay equity in public sector and federally regulated jobs: source

Funding will allow Ottawa to negotiate pay equity through collective bargaining rounds with unions

CBC News

Andy Blatchford, The Canadian Press

February 23, 2018

The Trudeau government's upcoming budget will account for the costs of pursuing gender equality when it comes to workers' pay in both the federal public service and all federally regulated workplaces, The Canadian Press has learned.

A senior government official says Finance Minister Bill Morneau's budget will start laying the foundation for Ottawa to deliver on a long-awaited commitment to achieve proactive pay equity in Canada.

While it's not clear how much the measures will cost, the price tag on closing the gender wage gap in such workplaces will likely be significant, since the public service and federally regulated organizations together employ nearly 1.2 million people — more than six per cent of all workers in Canada.

The official, speaking on condition of anonymity about details not yet made public, declined to provide numbers on how much funding room would be made in the budget — but said it would be in a range that allows Ottawa to negotiate pay equity through various rounds of collective bargaining with unions.

The source also said the pay equity specifics would be released at a later date in proposed legislation, and not in the budget.

The government is looking to improve the existing pay equity system by making it proactive, rather than sticking with the current complaints-based system.

Prime Minister Justin Trudeau told last month's World Economic Forum in Davos, Switzerland, that his government would introduce legislation this year to ensure equal pay for work of equal value in federal jobs.

Trudeau described pay equity as merely a first step toward encouraging more women to enter the workforce. Equal pay doesn't mean equal opportunity, or equal treatment, or equal sacrifice, he said — rather, women continue to face many barriers in the workplace.

Canadian wage gap among the largest in industrialized world

Canada has long struggled to address the wage gap. A recently released briefing note to Finance Minister Bill Morneau laid out just how poorly Canadian women have fared compared to their peers in other parts of the industrialized world.

The document, obtained by The Canadian Press under the Access to Information Act, said when it comes to the wage gap, Canada ranked among the bottom five countries in the OECD. The divide has failed to narrow despite the fact women are increasingly more educated, the memo said.

"Closing the gender earnings gap ... is crucial to achieving an inclusive society and a sustaining economy," the note said.

Statistics Canada released numbers last year showing women on average earned 87 cents for every dollar made by a man.

The Liberal government has signalled that next Tuesday's budget will include initiatives to promote gender equality, improve the economic success of women, ensure more gender equality in boardrooms and ease access to capital for female entrepreneurs.

Budgeting through a gender-parity lens
Morneau's budget will also be the first to scrutinize all its commitments through a gender-equality microscope.

The Canadian Labour Congress is one of many groups that have been pushing the federal government to address the pay equity issue.

"There seems to be a sincere commitment to do that and I'm hoping they would certainly take the steps in the budget," said Hassan Yussuff, the organization's president.

Yussuff said Ottawa likely will choose between the provincial pay equity models in Quebec and Ontario — or create a hybrid of the two.

At the federal level, he argued that the system in place right now doesn't work. He called it too litigious, too time consuming and, more importantly, unfair because it forces women to go through an onerous process to achieve something that men don't have to fight for.

Tina Fontaine's story shows there is no real justice for Indigenous people in Canada
The Globe and Mail
Aimée Craft – Opinion
February 24th, 2018

Aimée Craft is an Anishinaabe/Métis law professor at the University of Ottawa. She was the Director of Research at the National Inquiry into Missing and Murdered Indigenous Women and Girls from February to November 2017.

The slogan "no justice, no peace" echoes across the prairies and fills my ears. Since the last full moon, the Canadian court system has delivered two major blows to Indigenous hopes for justice in Canada – two acquittals of non-Indigenous men following the violent loss of Indigenous youth Tina Fontaine and Colten Boushie. I wonder if we will see justice. Will we ever find peace?

As a lawyer and law professor, I understand the law, but I don't see justice in it. The truth is that there is no real justice for Indigenous people. The systems that purport to bring justice fail us over and over, time and again. Tina's case is a stark illustration of that terrible reality.

While this case will always officially be known as the Crown against Raymond Cormier, it should be remembered in our hearts as the Tina Fontaine case. Why? Because it is a painful example of how systems that are meant to keep us safe, and bring justice in the face of harm, fail us.

I once wrote Tina a letter; I've carried it around with me ever since. It starts: "I'm sorry I failed you. I'm sorry we've failed you."

For only a few short weeks, Tina was embroiled in the ugliness of an underground culture that has been allowed to persist in Winnipeg – one in which young Indigenous women are seen as disposable. Predators assume no one cares, or that the river will keep their secrets submerged.

Her death sank hearts, fuelled rage and inspired action. In Tina's pretty face and fragile body, I saw my nieces, my cousins and my friends' daughters. Even with years of legal training, research, advocacy and prayers, I'm unable to keep them safe. Indigenous women and girls in Canada are devalued by the state, by institutions, by predators and even, in some cases, by the men who are supposed to protect them. How is it that we allow this to continue?

The problem isn't just Mr. Cormier, who devalued Tina by wanting to sleep with a 15-year-old girl. It isn't just a child-welfare system that is broken and places children in unsafe environments. It isn't just a police system that fails to protect the vulnerable. And it isn't just a criminal-justice system that appears to shield wrongdoers more than victims and their families.

We can't blame our sorrow solely on circumstantial evidence or failing systems. We must call to account the angry beasts of racism, sexism, patriarchy, misogyny, capitalism and colonization that have allowed the devaluation of Indigenous women and girls.

These failing systems are rooted in deficiency models, designed around solutions aimed at "fixing" Indigenous "problems." They are not based on the aspirations of Indigenous peoples and what brings wellness to individuals, families, communities and nations.

These systems were not made for Indigenous people. These systems do not reflect Indigenous laws and values. They do not even fulfill the promises of treaties that stand for peace and the ability to live well together on this land.

Indigenous peoples have never agreed to have someone else decide what justice is for us. Nor did we give up our right to attain it for ourselves. Indigenous laws are living within Indigenous nations, all across Canada, and must be revitalized further so that injustice cannot continue to take lives.

I was reminded the other day about the largest mass hanging in Canadian history – at Battleford, Sask., in 1885, where eight Indigenous men were hanged for their participation in the North-West Rebellion. Indigenous children from the nearby Industrial School were forced to watch the hanging so that the power of the state would be burned into their memories. This was part of the overall project of the schools to "kill the Indian in the child." Today, Indigenous children are dying at the hands of people who see them as disposable and systems that are carrying on these colonial legacies.

Feb. 23 is Aboriginal Justice Awareness Day in Manitoba. Many of us will walk in honour of Tina Fontaine. And then, on the next full moon, some of us will stand on the banks the Red River, in this place of muddy water that we call Winnipeg. We will cry, sing and pray, we will make pacts to keep each other safe and we will stand against the terror that knocks at our doors. We will look to our own laws to ensure that Indigenous women and children once again assume places of prominence, honour and respect. We are, after all, the grandmothers, mothers and daughters of this land.

Cambridge University staff strikes force last-minute cancellation of Beverley McLachlin speech
British and Canadian unions had called on the former Supreme Court of Canada chief justice to respect the picket line.
Toronto Star
Tonda Maccharles
Ottawa Bureau
February 24, 2018

OTTAWA — Cambridge University hastily cancelled a speech Friday by Canada's former top judge after the union for striking academic staff called on Justice Beverley McLachlin to respect their picket line.

As pickets were set up at six sites across Cambridge faculties Friday, word came McLachlin — who was part of a 2015 landmark ruling that recognized a constitutional right to strike in Canada — would not deliver a prestigious law lecture on the British campus after all.

The Star reported Thursday that McLachlin, who had already travelled to the United Kingdom, was scheduled to deliver the annual Sir David Williams lecture in honour of an eminent former professor of the University of Cambridge's law school.
Early Friday the University and College Union's Cambridge branch announced the "last-minute cancellation" of McLachlin's speech, which was later confirmed without further comment by the university's administration.

It's not clear whether McLachlin had expressed reservations after being advised of the Star's inquiries and the union's concerns, or whether organizers decided not to put her in the awkward position of having to decide. Neither McLachlin nor the university responded to requests for clarification Friday.

The University and College Union said the cancellation of the event "was a huge disappointment for all involved, but that the blame for the disruption lay firmly with university leaders."

Lawyer Paul Champ, who represented one of the intervenors in the seminal 2015 Canadian case that constitutionalized the right to strike in Canada, said Friday he was glad to hear the lecture was cancelled.

"It would have put the Chief Justice in a very awkward position to cross a picket line of law professors. Given her landmark rulings on labour rights, I am sure it was a spectacle she wanted to avoid."

Waseem Yaqoob, representative of the union's Cambridge branch, said in a press release that it could have been avoided "if the universities' representatives would simply commit to proper negotiations on pensions."

"Nobody wants to take strike action, but staff at Cambridge feel they have been left with no choice," he said.

McLachlin was the invited featured guest at the annual event that regularly draws a who's who of the legal community from Cambridge, London and beyond, and had planned to deliver a speech entitled "Where Are We Going? Reflections on the Rule of Law in a Dangerous World."

But her presence was flagged to the Star Thursday as a concern amid the nationwide strikes. After the Star began making inquiries, the union appealed to McLachlin directly in writing, calling on her to stand up for a principle she espoused while on the bench and not cross their picket line.

Picket sites were set up in Cambridge on Friday and featured mostly younger members of staff who face changes their union says will cost them dearly.

The union represents academic staff including professors, researchers and librarians across Britain. It is in the second day of 14 days of strike action over proposals it says will slash the benefits of the universities' pension scheme. The union says the changes would "leave a typical lecturer almost £10,000 (or nearly $18,000) a year worse off in retirement than under the current setup."

David Robinson, spokesman for the Canadian Association of University Teachers, said Friday the decision to cancel McLachlin's lecture was the "right thing to do . . . given how awkward it would have been to hold an event while faculty were outside on a picket lines."

Cambridge University vice-chancellor Stephen Toope, a Canadian, called for resumption of talks later Friday, calling the nationwide strike actions "deeply regrettable." The BBC reported talks were set to resume Tuesday.

Risks unheeded, journey without end: The seeds of the tortured Phoenix pay project were planted three decades ago
Ottawa Citizen
James Bagnall
February 24, 2018

The warning signs were there all along, but perhaps none was as clear as this.

On Jan. 13, 2016 — barely two months into the new Liberal government of Justin Trudeau — Treasury Board officials prepared a concise memo for their boss and comptroller general, Bill Matthews.

The note, obtained under access-to-information laws, was headlined "readiness assessment of Phoenix" in reference to a pay system that was scheduled to launch in a matter of weeks.

It had been a massive undertaking. Nearly 300,000 federal government employees from 101 federal departments and agencies were about to exchange a clunky, labour-intensive pay apparatus with an automated system that promised quick and accurate results. About 190,000 of these employees were to be served by newly hired pay administrators based out of Miramichi, N.B.

The Treasury Board had summarized the major worries conveyed to Matthews in an earlier meeting with top human resources officials from across government. Taken together, their concerns offer a disturbing glimpse of a project that appeared nowhere near ready for prime time despite years of development.

Officials at Employment and Social Development Canada, for instance, had warned Matthews that Phoenix's "readiness is questionable. Out of 25 outstanding defects, 10 are still critical and not fixed."

The feedback from Correctional Service Canada suggested there had been "no end-to-end testing," and that error rates topped 50 per cent for pay transactions involving shift workers — a particularly egregious failing given that shift employees made up 40 per cent of that department's workforce.

The RCMP and Public Safety department complained about escalating error rates; at Public Safety, these had reached 30 per cent.

Canada Revenue Agency's concerns included a pointed question about Phoenix: "What is the contingency plan if it does not work in February?"

While the Public Services department had developed the government-wide pay system, the individual departments were vitally important.

It was their job to forward information about promotions, transfers, maternity leave and other changes involving personnel to the Phoenix system for processing. If data wasn't entered properly, or was incorrect, the system would spit out errors at a prodigious rate.

The departments' human resources officials were telling Matthews there was a high risk of this occurring, in part because their pay administrators weren't getting the kind of training they needed, but also because Phoenix was, well, complicated.

Yet, just 16 days later, a Treasury Board-led committee of 45 top bureaucrats — deputy ministers and equivalent — determined such concerns would not stand in the way of Phoenix's launch.

Today we all know how much turned on this decision.

THE TWO-YEAR TIRE FIRE

Since the launch of Phoenix, federal government employees have faced a seemingly endless parade of errors.

As recently as Jan. 24 of this year, more than 630,000 transactions were in a queue for processing at the Miramichi pay centre. The vast majority were requests to rectify incorrect pay — employees had received either too much, too little or none at all. A minority had to do with administrative issues — such as requests for forms, information about benefits or explanations about payroll deductions.

The knock-on effects are reverberating with particular force through the capital region, where federal government employees make up nearly one-fifth of the workforce.

When something as basic as pay goes awry, the stresses accumulate.

In the public service, long perceived as a bastion of workplace and career stability, workers have been deferring promotions, refusing overtime and even delaying retirement because they don't trust Phoenix to deposit the proper amounts into their accounts. Multiple technology projects throughout government have been postponed until Phoenix is fixed because managers don't trust the linkages to the pay system.

The burden on taxpayers has escalated sharply. Canadians are now on the hook for at least $500 million in extra costs, the current estimate for repairing the pay system and rehiring hundreds of compensation advisers. Nor does this include the $310 million it cost to build the Phoenix system and centralize much of its operations in Miramichi in the first place.

Among the officials charged with getting this thing fixed — none of them associated with the original project — there's concern the Phoenix system may be beyond repair.

Dozens of smaller projects have been launched to isolate the worst problem areas and devise appropriate fixes. The government, with the help of private contractors, is experimenting with SWAT teams of experts to redesign how work is done at the pay centre.
Public Services Minister Carla Qualtrough framed the challenge this way last fall: "The definition of 'fixing' is one that we've struggled with a lot. If by 'fixing' you mean at what point we will have a stable system that pays everybody on time and accurately, it will not take years. If by 'fixing' you mean a state-of-the-art, integrated human resources-to-pay process policy system, that will most likely take years."

For the moment, the goal remains limited to trying to stabilize Phoenix by yearend. But in case that doesn't work, Qualtrough and her cabinet colleagues have said they will simultaneously develop plans for building a full replacement for Phoenix down the road — a remarkable prospect.

Such is the current state of Phoenix the government has adopted something akin to a war footing. The prime minister last April created a working group of senior cabinet ministers to keep close watch on fixes being applied to Phoenix. The key ministers are Qualtrough, whose department is directly responsible for pay systems, and Treasury Board president Scott Brison, who has oversight of government spending and management. Public Services and Treasury Board are jointly responsible for the newly created Pay Stabilization Project, which is directing the effort to fix Phoenix.

Starting last summer, the government established no fewer than three bureaucracies — deputy ministers, assistant deputy ministers and directors-general — to provide oversight on matters of pay across all government departments and agencies.
And, not least, federal government unions are being consulted regularly by senior government bureaucrats.

No one knows yet whether this unprecedented attempt at repair will succeed or merely result in thousands of hours wasted in meetings. What is clear is that the Liberals are increasingly anxious to put the Phoenix debacle behind them. The last thing they want to see in advance of next year's federal election is a retreat to the worst-case scenario — having to rebuild Phoenix from scratch.

BEST OF INTENTIONS
In retrospect, the Phoenix pay failure has acquired the air of inevitability.

Yet the system was built, mostly, on solid concepts. Certainly an upgrade was needed. The pay system Phoenix replaced was more than four decades old. As with any piece of aging technology, administrators responsible for maintaining it were spending too much time on patches, workarounds and other repairs. Pay errors were increasing and weren't being tracked on a consistent basis.

The old system had grown up willy-nilly. Some departments used human resources software from PeopleSoft, a tech pioneer based in California's Silicon Valley. Others relied on products built by SAP, a German software specialist. Most departments and agencies adapted the software for particular requirements.

To work, this setup required a generation of specialists with expertise in near-obsolete versions of software and deep knowledge of thousands of pay rules that conformed to federal legislation and dozens of collective agreements. Many of these same workers were getting ready to retire.
The need to replace the system was obvious as early as 1989, when the Conservative government of Brian Mulroney began studying options. Four years later, during what would prove to be the tail end of the Tories' electoral mandate, Accenture won a $45-million contract to automate much of the work handled by 750 pay and pension administrators.

Sadly, that effort proved a mess. Two difficulties emerged: First, the Accenture effort was a custom-built system — much more difficult technically than the Phoenix pay project. (Phoenix is based on tweaking PeopleSoft's standard technology platform.) Accenture was also modernizing two systems in one go – pay and pensions.

Second, the government had awarded a fixed-price contract, which meant that when glitches emerged in development, Accenture was forced into difficult tradeoffs: To stay within budget, it had to either eliminate certain software features or try to make the case for a revised contract.

Indeed, soon after development of the new pay system began, Public Services and Accenture argued over the proper scope of the work. In 1995, Accenture submitted multiple alternatives — involving different combinations of contract extensions, increased prices and fewer features. Accenture was

confident it could successfully build the combined compensation systems but it required an estimated $10 million more to do it and additional time.

But the negotiations with Public Services came at the worst possible time. In late February 1995, then Liberal Finance Minister Paul Martin delivered his seminal deficit-busting budget that called for dramatic cuts in the budgets of most federal departments.

On April 20 that year, the government terminated the contract with Accenture, triggering a legal battle that would not be settled until 2003. Terms were never disclosed but the cost to the government likely topped $20 million, when measured in today's dollars.

The upshot: The government's 1960s pay system had continued to age and was no closer to renewal.

A TEMPLATE FOR PHOENIX

When the Conservatives returned to power in 2006 under Stephen Harper, they took a fresh look at government operations. They examined in particular the approach adopted by an obscure unit within Public Services called the accounting, banking and compensation branch. The unit, which was directly responsible for government employees' pension services as well as the pay system, had, several years earlier, begun revamping the obsolete pension system that served half a million government employees and retirees. The department had determined it would be more manageable to try this in a separate project, rather than combine the pay and pension systems as attempted in the early 1990s.

This pension project would become a template for Phoenix.

On the surface, the two projects had striking similarities. To modernize the federal government's pension plans, Public Services invested $230 million in technology and new processes, reduced the number of pension administrators and created a new bureaucracy in Shediac, N.B., about 90 minutes up the road from Miramichi.

After 2013, when the initial pension project was complete, the government planned to book savings of nearly $30 million per year — thanks in large part to a reduced head count.

It's not clear whether those savings were actually achieved, but the project is considered a success. By early 2017, the Canadian Forces and RCMP had also joined the pension plan, which now administers 854,000 accounts. The Shediac pension centre consistently meets targeted service standards, ranging from making initial pension payments to providing estimates for annuities.

Indeed, it's little wonder that Public Services officials cited this project as evidence that they knew what they were doing.

However, the Phoenix project was a different beast.

There was just one government-wide pension system to deal with, not dozens of departmental pay systems, as was the case with Phoenix.

The timing was also much better for the pension system, which had been largely rebuilt by 2011. That's when the Conservatives began seeking budget cuts from most departments and agencies.
Indeed, the Phoenix pay project was hit twice. First, some of its capital budget was trimmed during the fiscal year ended March 31, 2013, as part of a government-wide cost-cutting exercise. But, perhaps more importantly, the Conservatives encouraged Phoenix project managers to make achieving savings a priority for the new system.

In 2012, Public Services began shedding the first of 1,200 pay administrators who were to be replaced by 550 new hires at the central pay office in Miramichi. The annual salary savings and greater efficiencies were predicted to save $70 million a year once the new Phoenix system was up and running.

This meant the government was looking to recoup the upfront investment costs of the new pay system in less than four years — or twice as fast as was the case with the pension modernization project.

Such aggressive payback would contribute heavily to Phoenix's undoing. Public Services also appeared to neglect a crucial lesson from the shift of pension administrators from across the country into Shediac nearly four decades ago: it had taken three to four years to fully transfer all the arcane knowledge, according to a retired Public Services manager who was involved with the original pension modernization project. The workers hired from 2012 to 2015 to do pay administration in Miramichi were faced with an even higher learning curve given the complexities of the Phoenix system.

UNDER PRESSURE
At the Place du Portage headquarters of the Phoenix project in downtown Gatineau, the tightness of the timelines would have important consequences.
There were two keys to making the new pay system work.

First, Public Services project managers had to reshape and standardize roughly 80,000 pay rules — definitions of what constitutes overtime or shift work, when employees are eligible for various types of leave, bilingual bonuses, job classifications, traveling time, among many others. Often, these definitions vary by collective agreement or department.

Second, government pay administrators — whether in the departments or Miramichi — were required to enter this data into the Phoenix computer and software system developed by IBM Canada, a subcontractor hired in 2011. The Phoenix system calculates what will appear on employees' pay stubs.

The initial design of Phoenix was finished in June 2014. A summary of tests of the new pay system — dated Jan. 19, 2016 — shows the meticulous interplay between the pay rules and the Phoenix calculator. The summary, obtained through access to information, shows more than 100 errors.

What kind of errors? They can be found in the minutiae of the summary.

- for instance, the Phoenix calculation program "does not refund properly" if a pay administrator generates a benefit request though a General deduction, rather than one specific to the type of deduction.

- In another instance, Phoenix was calculating a pension plan contribution “though no contributions should be taken while on paid leave of absence.”
- One other example is more administrative: pay advisers can’t eliminate an ‘acting’ title for an employee unless the date he or she ceases to have this title “falls on the beginning date of next pay period.”

THE PHOENIX TIME BOMB

Originally, 101 federal departments and agencies were to shift to the Phoenix system in three waves, starting in July 2015. But Public Services and IBM reckoned the schedule wouldn’t allow them to finish and test the system. They delayed the rollout by three months in part by compressing it into just two waves, starting in October 2015 and ending in December of the same year.

It wasn’t enough. Public Services and IBM made two further adjustments, which proved fateful.

In mid-September, a little more than a month before the Liberals would win a majority mandate, the project managers delayed the scheduled launch of Phoenix a second time. Now the first wave would go out in February 2016. The second and final wave would finish two months later.

This gave the project more breathing room to fix software issues and system errors that were still cropping up.

But the delay also represented a complication.

Most federal departments had already hired extra staff to assist with the transition from the old pay system to Phoenix. Top bureaucrats were therefore reluctant to consider a third delay in Phoenix’s launch beyond February because the additional salary costs related to the transition were coming out of their departmental budgets.

The sooner Phoenix got rolling, the better, as far as budgets were concerned. Equally important, Public Services officials were reassuring colleagues in other departments that the errors emerging from tests of the Phoenix system would be dealt with before the February 2016 launch.

The second major adjustment to the project that summer involved software.

A November 2015 briefing note informed new Public Services Minister Judy Foote that IBM Canada “has encountered some delays due to the complexities of the federal pay system but are working diligently to ensure successful delivery.”

An industry official familiar with the project said the source of the delay had been the government’s insistence on adding new features to Phoenix. Just which ones isn’t clear. However, in order to simplify the project in preparation for launch, Public Services agreed to delay several key software enhancements. These included pay requests involving retroactive transactions — particularly when these involved ‘acting’ positions — temporary promotions, in other words — or provisions in a collective agreement.

These were just some of the 200 software patches IBM had developed to adapt federal government pay rules to Phoenix, but their omission would prove crucial. It would, in fact, plant a time bomb within Phoenix.

“Acting pay” issues would haunt the system. The auditor general of Canada determined late last year that roughly 25 per cent of outstanding pay requests that accumulated after Phoenix went live were related to acting pay. Even after IBM added this software feature in March 2017, 40 per cent of requests to put through acting pay still had to be processed manually, Auditor General Michael Ferguson estimated in his report late in 2017.

Finally, there was also an urgency to the Phoenix project, a momentum that seemingly could not be denied.

Before the launch of Phoenix in 2016, even before the Liberals won the election in October 2015, the program to consolidate pay administration in Miramichi was nearly complete: Just 550 employees were to take over the work of 1,400 experienced pay administrators who had been eased out of government in the name of economy.

With the human resources already trimmed and allocated, there was no going back.

There was no Plan B.

THE CAST OF CHARACTERS INVOLVED WITH PHOENIX PAY
Who was in charge when the Phoenix Pay system launched early in 2016?
Judy Foote: Public Services minister, retired Aug. 24, 2017, for genuine family reasons. She was replaced four days later by Carla Qualtrough. Public Services has responsibility for the system that delivers pay to 300,000 government employees.

Public Services bureaucrats who oversaw Phoenix Pay
George Da Pont: deputy minister, retired early April 2016. He was replaced April 11 by Marie Lemay.

Gavin Liddy: associate deputy minister, moved to the privy council office in March 2017, then retired in November. A predecessor of Liddy at Public Services, Renée Jolicoeur, is considered an architect of the Phoenix project. Jolicoeur retired in 2014. Current associate deputy minister is Les Linklater, who is also responsible for the pay stabilization project.

Bureaucrats who ran Phoenix Pay project
Brigitte Fortin: assistant deputy minister of the accounting, banking and compensation branch, the unit in charge of Phoenix Pay project. Fortin retired Jan. 28, 2017.

Rosanna Di Paola: Associate ADM, accounting, banking and compensation branch. She was one of the co-authors of the 2009 business case study that justified the Phoenix Pay project. Di Paola was shifted to a role as special adviser in September 2016, and later moved to Montreal where she serves as ADM of the department’s Quebec Region.

Marc Lemieux took over Di Paola's role in October 2016 and Fortin's role in October 2017. He is responsible for both jobs but shares responsibility for fixing the pay system with Danielle May-Cuconato, who was appointed assistant deputy minister in charge of the new pay stabilization project in September 2017.

EVERYTHING WILL BE FINE. NO, REALLY

Certainly the bureaucrats most closely associated with Phoenix were confident it would all work out.

But why? Part of it was deep experience with the project.

Rosanna Di Paola, the associate assistant deputy minister at Public Services, had been a member of the project team off and on since 2009, when she co-authored the business case study that launched Phoenix. Di Paola was in charge of Phoenix during the launch phase.

Her direct boss, assistant deputy minister Brigitte Fortin, advised Foote in December that Phoenix was ready.

Going up the chain of accountability, associate deputy minister Gavin Liddy, cited the results of a study commissioned by Public Services to assess the project's readiness. The consulting firm S.i. Systems delivered a draft report on Jan. 18, 2016, that concluded the Phoenix project team was to be commended on a job well done. "S.i. Systems recommended that on balance we should proceed," Liddy told a Commons committee Nov. 29, 2016.

Other departments were still doing due diligence. Treasury Board, for instance, hired Gartner, an independent consultant, Dec. 21, 2015, to provide perspective on the potential risks facing Phoenix. Gartner, too, produced a draft report in late January but it was much less sanguine than that of S.i. Systems.

"End-to-end testing has not been performed by any department that Gartner has interviewed," the consultants noted. Gartner was also concerned that the federal departments had yet to put in place training programs — an omission that could lead to "unanticipated consequences such as an incorrect pay calculation."

To mitigate these and other risks, Gartner suggested dividing the two main waves of employees into multiple waves during the crossover to Phoenix, and to begin with the least complicated departments — ones with relatively few seasonal or shift workers, for instance.

Treasury Board forwarded the Gartner conclusions to Liddy on Jan. 29.

Liddy would later testify before a House of Commons committee that he did not show the Gartner report to his boss Judy Foote until the summer.

“We thought we had addressed all of the concerns in the Gartner report when we went live (on Feb. 24),” Liddy told members of Parliament, “and we thought we had a more systematic third-party review (S.i. Systems) which provided us assurances that we were making the right decision to move forward.”

Liddy, who declined an interview request from this newspaper, explained to members of Parliament that when he read the Gartner report he saw that it had been based on interviews with officials in federal departments outside Public Services and Procurement Canada. He said those departments, “weren’t aware of what we had actually done. We ran 16,000 tests. When we went live, we had 124 pay and pension defects remaining, none of which were critical.”

A report later commissioned to isolate what lessons could be learned from Phoenix pointed to a tendency of some Public Services officials to downplay bad news.

“There was a culture at Public Services in particular but also to some extent within the government more broadly that is not open to risk and does not reward speaking truth to power,” concluded the 2017 report by consultants at Goss Gilroy — which had been hired by Treasury Board. “This practice of not providing briefings that contained bad news was exacerbated by a tendency to accord a great deal of leeway to managers with a good track record of managing projects,” the consultants added.

Certainly the top bureaucrats in Public Services’ accounting, banking and compensation branch — the group directly responsible for Phoenix — had an excellent reputation, in large part thanks to their successful piloting of the pension modernization project.
That may have been why they were completely unprepared for the firestorm that awaited them after they pushed the go-live button on Phoenix on Feb. 24, 2016.

TOO SLOW TO REACT
At first, they thought it was successful.

In the first wave, 34 federal departments switched from their old pay systems to Phoenix for 120,000 employees and began dealing with the Miramichi pay centre. The second wave, involving 67 departments and agencies and another 170,000 employees, crossed over on April 21.

The top bureaucrat in Public Services — deputy minister George Da Pont — retired before the second phase of pay system’s rollout began.

“The number of complaints we were getting — and we were monitoring this — was actually very low,” Da Pont’s successor Marie Lemay testified before the Commons committee in July 2016. “We expected to see some (complaints) and that we’d be able to address them.”

“The number of complaints we were getting — and we were monitoring this — was actually very low.”

Lemay added that after they had launched the first wave, it would have taken something extraordinary to prompt a halt before the second wave. “You’re managing two systems, trying to understand and learn one while dealing with the other one,” she added.

The limitations of Phoenix became manifestly more apparent during the second phase of the rollout. Auditor General Michael Ferguson calculated in his most recent report that, prior to Phoenix's launch, about 36,000 employees had nearly 96,000 outstanding pay queries, which could include anything from a request to update banking information to a demand to fix a pay error.

These essentially doubled during the second wave. By mid-2017, about 150,000 employees were awaiting resolution of some half a million pay requests.

Briefing notes for Brigitte Fortin written in advance of conference calls held April 28 and May 4, 2016 offer a view of the bureaucrats' state of mind immediately following the rollout.

"The Phoenix pay system itself is fine," the briefing note asserted. "With any major information technology change time is required for managers and employees to become familiar with it. We have now ironed out many processes, answered many questions and addressed many issues," the briefing continued.

Ferguson, the auditor general, found this perspective troubling.

"Public Services did not have a full understanding of the extent and causes of pay problems," the auditor general said last fall, "Until a year after Phoenix was launched, the department was still responding to pay problems as they arose."
Indeed, Ferguson concluded that Phoenix's project managers blamed departmental managers and pay advisers for "not understanding how and when to enter information into Phoenix."

This is one of several factors that contributed to the failure of Phoenix. Public Services, the monopoly supplier of pay services within government, failed to make sure its clients — the departments — were happy with the system before rolling it out.

A second factor had to do with politics, which were aligned with priorities that had little to do with building a successful pay system.

The Conservatives insisted on the false economy of extracting savings from a project before it was clear it would work. At the same time, the bureaucrats in charge of Phoenix downplayed many of the red flags that kept cropping up during the testing and analysis phases of the project during the months leading to launch.

While IBM had significant experience with building pay systems, Public Services — or, more specifically, its accounting, banking and compensation branch (ABC) — was managing the overall project. This meant the ABC branch gave IBM specific tasks to do such as software patches and modules designed to make the government's pay information flow smoothly and accurately through the Phoenix calculation engine. To date, IBM has been awarded more than $200 million for its efforts. Qualtrough believes the government should have mapped out the end result and left it up to the subcontractors to figure out how to get there.

“With respect to the IBM contract,” Qualtrough said last fall, “as we modernize procurement, we need to focus on outcomes … instead of asking people to do a series of things that will hopefully end up where we want it to go.”

THE ROAD FORWARD
Can the backlog be reduced on current plans?

The latest data isn’t encouraging. Public Services revealed earlier this month the number of pay transactions in the queue at Miramichi had reached an all-time high of 633,000 in late January — affecting more than half the departments’ workforce.

It’s not clear yet whether this epic information technology disaster will trigger real reform in how government manages its big contracts.

A common failing in federal government IT projects has been an unhealthy emphasis on achieving savingss over that of building systems that actually work. Certainly that was a principal cause of the flawed launch in 2011 of Shared Services Canada, the central agency in charge of building and running the government’s electronic backbone.

Qualtrough has been refreshingly blunt discussing the Phoenix file. “While we didn’t create this problem, it’s ours to fix,” she told members of a Commons committee in late November. “Once launched, Phoenix’s problems ran so deep that it took time to understand what was wrong and to identify solutions to stabilize the system.”

One of the lingering questions in the Phoenix debacle has inevitably been about blame. With a project so crucial to the everyday functioning of government going off the rails, who should bear responsibility?

The answer is, many share the blame — the Conservative government for booking savings before these were realized, the Liberals for not paying close enough attention to all the warning signs in advance of Phoenix’s launch, the bureaucracy for a failure to properly exercise oversight, for taking at face value the assurances of the Public Services managers who had been pushing Phoenix for years.

There’s a popular saying in the tech industry. “Good information technology costs a lot but bad IT costs a fortune.” That’s because fixing a broken system is so much more difficult than doing it right the first time.

That hard-learned insight could be what pushes the Liberals later this year to rebuild Phoenix from scratch.
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Editorial: Start from scratch on Phoenix
The Province
Ottawa Citizen Editorial Board
February 24th 2018

Two years later, it still seems astonishing that any government could have allowed the Phoenix pay system calamity to occur. There were myriad warning signs -– studies, interim reports, memos to senior officials – that the massive public service compensation project wasn't ready for prime time. Yet a perfect storm of bureaucratic and political hubris pushed it out of the nest before it was anywhere near ready for flight. Now the federal government is in imminent danger of having to just kill it and start over.

If so, it must say so soon, or bear this deep wound into the 2019 election. As reporter James Bagnall explains in today's Observer, both the Liberals and Conservatives share blame for the boondoggle. But it is the Liberals who are in power and who must act. So what's the plan?

Most Canadians outside the Ottawa bubble don't care. They should, if only for the impact this disaster has had on their pocketbooks. Taxpayers have already parcelled out more than $500 million in unanticipated costs to keep Phoenix fluttering (aside from the $310 million spent to introduce it in the first place). Both politicians and the federal auditor general have said the spending could top $1 billion.

Canadians should care for another reason too. Love or hate government, it must function competently, and there are several signs the pay chaos is undercutting its ability. Public servants, for instance, are declining or deferring promotions and overtime, and even delaying retirement, because Phoenix might fuddle up changes to their compensation. How do you bring new blood into the public service when people actively fear leaving? This trend to the safety of inertia cannot be good for either policy or bureaucratic culture in general.

If you're a public servant, the relevance of the Phoenix failure is more acute: It may ravage your paystub at any time. In January, more than 630,000 pay transactions were mired at the Miramichi pay centre, with staff struggling to fix a plethora of payroll mistakes.

Lessons are being learned, to be sure: Don't introduce an ambitious project and insist on saving wads of cash at the same time; don't assume you will succeed on one project because a previous task (in this case, modernizing pension services) went well; don't let political expediency override common sense; don't neglect the all-important training of people who must actual run the system.

The federal government has learned all this, of course. Now it must decide whether to start rebuilding from scratch. Frankly, we don't think it has a choice.

Israel agrees to halt deportations of Canada-bound asylum-seekers
Ottawa has reached a deal with Israel to suspend removals of asylum seekers waiting for resettlement to Canada.
Toronto Star
Nicholas Keung
February 24, 2018

Ottawa has reached a last-minute deal with Israel to suspend the deportation of asylum-seekers who currently are waiting for resettlement to Canada.

Israel is set to begin deporting some 37,000 asylum-seekers, the majority of them Sudanese and Eritreans, in April after Prime Minister Benjamin Netanyahu's government issued them expulsion notices.

The asylum-seekers, most of them deemed by Israel to be economic migrants rather than refugees in need of protection, can either leave voluntarily for a "safe" African country and receive $3,500 and a plane ticket, or face imprisonment.

The Canadian government is under the gun to resettle 1,845 of the African refugees whose sponsorship applications are currently in process, some for years.

"Canada does not support policies of mass deportations of asylum-seekers. The rights of asylum-seekers and refugees are laid out in the Geneva Convention on the Status of Refugees, of which Israel is a signatory," said Adam Austen, press secretary for Foreign Affairs Minister Chrystia Freeland.

"As the country that resettles the highest number of African asylum-seekers from Israel, we are in direct contact with the Government of Israel to convey Canada's concerns about the situation."

A spokesperson for Immigration Canada confirmed it has reached an agreement with Israeli authorities to allow the Canada-bound asylum-seekers to remain in the country and not be jailed until their sponsorships are finalized.

"We ask that sponsors advise the department should any of their applicants be issued deportation or detention notices," said Faith St. John. "Our office in Tel Aviv has dedicated resources to deal with the applications."

Italy Tavor, a spokesperson for the Israeli Embassy in Ottawa, said the country recognizes the significance of the current "migration situation" and has allocated dozens of new staff positions to streamline and expedite the asylum determination process.

"Israel does not hesitate to grant refugee status when required, and follows a procedure consistent with the criteria and standards of international law, laid down by the Convention Relating to the Status of Refugees," said Tavor in an email to the Star.

“With that said, the data about the migrants who have entered Israel illegally indicates that 70 to 80 per cent of the migrants are of working age (19-40 years old) and that there are about five times more men than women. These numbers are consistent with a population that is composed mostly of economic migrants.”

Jenny Miedema of the Dufferin County’s Compass Community Church, which is sponsoring 14 African refugees through Tel Aviv, said sending asylum-seekers to third countries — namely Rwanda and Uganda, according to Israeli media reports — remains an issue of concern.

“They will be dropped off at a brand new country, with a brand new language, with no legal status,” said Miedema. “These countries are no safe haven. By sending them there, it becomes somebody else’s problem.”

Joanne Beach, director of justice and compassion for the Christian and Missionary Alliance in Canada, which has a sponsorship agreement with Ottawa, said Canada must do its utmost to expedite the resettlement of refugees.

“The alliance is still concerned for the welfare of those at risk of deportation in Israel who do not have applications currently in process. We are appealing to churches to consider entering into a sponsorship agreement or partnering with a Canadian Jewish organization to help those at imminent risk of deportation from Israel,” said Beach.

“We pray that sufficient resources are put in place (by Ottawa) to reduce backlogs and processing times.”

Judge tosses drug case, rips Brampton Crown office for delays
Lags in disclosing evidence in heroin-importing case cross the Supreme Court’s line, Ontario Court Justice Paul O’Marra has ruled.
Toronto Star
Jacques Gallant
February 25th 2018

A Brampton judge blasted the federal agency that prosecutes drug crimes for taking far too long to disclose its evidence to the defence, in a heroin-importing case that was then tossed due to delay.

In a decision released last month, Ontario Court Justice Paul O’Marra criticized the Public Prosecution Service of Canada, also known as the federal Crown, for its “dilatory efforts in providing timely, crucial disclosure” and “the lack of urgency in moving the matter forward despite repeated warnings.”

He then stayed heroin-related drug offences against Lumabar Vitalis, who had been arrested in September 2016. He was set to stand trial in June of this year.

Two months before Vitalis's arrest, in July 2016, the Supreme Court of Canada had released a landmark decision, R v. Jordan, which set strict timelines for bringing criminal matters to trial: 18 months in provincial court and 30 months in Superior Court.

If the presumptive ceiling is breached, it falls on the Crown to prove that there were exceptional circumstances for the delay.

After deducting the delays attributed to the defence, O'Marra found the delay in Vitalis's case to be 18 months and 13 days, barely over the limit for provincial court. The Crown acknowledged there were no exceptional circumstances, but argued the delay was closer to 16 months.

O'Marra pointed out that the PPSC office at the Brampton courthouse has been criticized by other judges about the period of time it has taken federal Crown attorneys to disclose evidence to the defence in non-complex importing cases, resulting in a stay of proceedings.

"I join that chorus of condemnation," O'Marra wrote. "The period of time that it took to provide disclosure to counsel in this case was unacceptable."

Vitalis's lawyer, Adele Monaco, said it was a "fantastic ruling" in an interview with the Star.

"It was really on the line, it could have gone either way," she said, "but it will have a resounding effect with other defence lawyers as well."

A spokesperson for the PPSC said the agency "is dedicated to ensuring that disclosure is collected and presented in a timely fashion and consistent with the timelines set by the recent jurisprudence."

According to O'Marra's ruling, while the Crown did make some disclosure in the months following Vitalis's arrest, there were frequent requests from the defence to the Crown for outstanding material, which the Crown is constitutionally obligated to turn over. The material included video surveillance, cellphone analysis and police officers' notes.

"It is important to note that as of November 2016, all of the disclosure was in the hands of the police and without any explanation was not disclosed until May 10, 2017," O'Marra wrote.

The lags in the disclosure process made it difficult to schedule a judicial pretrial and then set trial dates, as the defence still needed to have a full picture of the Crown's case against Vitalis.

"Would counsel be in a position to make strategic decisions about the case? I cannot see how counsel could have made those decisions without crucial disclosure and conducted a meaningful (judicial pretrial). It would be irresponsible for counsel to set a date for a (judicial pretrial) without critical disclosure," O'Marra said.

Had O'Marra found that the delay was 16 months, as the Crown had argued and which would be below the presumptive ceiling set by the Supreme Court, the judge said he would have still tossed the case due to delay, which the top court said in R v. Jordan is possible in some circumstances.

"Based on the foregoing circumstances, including the Crown's dilatory efforts in providing timely, crucial disclosure, the lack of urgency in moving the matter forward despite repeated warnings, (defence) counsel's sustained effort to expedite an uncomplicated case, I would still issue a stay of proceedings despite the fact that the delay falls below the presumptive ceiling," O'Marra wrote.

Australian payroll fiasco foreshadowed Phoenix's failed launch in Canada
'I can't believe that a Google search wasn't done on 'IBM' and 'payroll',' says union head
CBC News
Catherine Lanthier and Paul Jay
February 26, 2018

Government and union officials in Australia who studied their own failed implementation of an IBM-provided payroll system say Canada would have benefited from their hard-earned lessons before launching Phoenix for federal public servants six years later.

In March 2010, the Australian state of Queensland's department of health launched a payroll system for its 78,000 nurses, doctors, dentists and other health care workers.

It was a complex job involving five collective agreements and 24,000 separate pay rules. IBM had the contract to deliver the service. The rollout was, in the words of the commissioner appointed to study what went wrong, "a catastrophic failure."

Thousands of workers were not paid properly after the switch. It took months before the government could get a handle on the problem.

"The first six months were just crazy," said Beth Mohle, the state secretary for the Queensland Nurses & Midwives' Union. Workers told the union they didn't know where to go to have their issues resolved. The government also seemed confused about how to resolve the issues, she said.

"It was just chaos," Mohle said.

No consultation with Queensland before launch
By November of that year, the state's auditor general issued the first of two reports outlining the system's failures.

Yet the following year, the Canadian federal government — under then prime minister Stephen Harper — awarded IBM a contract to design, develop and maintain a pay system for an even larger workforce: more than 300,000 public employees governed by 105 collective agreements and some 80,000 separate pay rules and exceptions.

By 2013, three years before Phoenix rolled out, a commission into the Queensland's payroll procurement fiasco also issued a damning report.

But in the lead-up to the launch of Phoenix in 2016, no one at the Canadian government contacted Queensland's government about its experience, according to Pierre-Alain Bujold, a spokesperson for Public Services and Procurement Canada.

"I can't believe that a Google search wasn't done on 'IBM' and 'payroll,'" Mohle said.

A familiar story

The Phoenix system is different from the payroll product Queensland used. In a statement to CBC/Radio-Canada, IBM said the situations "are not comparable," noting that in the case of Phoenix, IBM was hired to install and customize third-party commercial payroll software that the federal government had selected.

But some observers, including Canada's Auditor General Michael Ferguson, who studied both situations as part of his fall 2017 report, and Queensland Health executive director Michael Walsh, who was in charge of fixing his state's payroll crisis, say they see similarities in how a government's decision to consolidate payroll and hire an outside vendor can backfire.

After reading about Canada's issues with Phoenix, Walsh said it is all too familiar.

"You could almost read the report side by side and see the same challenges and same things that went wrong in terms of implementing the project," Walsh said.

Cost to fix Queensland payroll more than $1.2B

In Queensland, IBM was the lowest bidder in a procurement process to select an outside company to centralize the state's shared IT services, but in the end they were tasked only with providing a new payroll system for the state's department of health.

Though the original cost estimate for the payroll system was just $6 million, it ended up being delivered for closer to $25 million.

The real costs, however, came after Queensland Health realized the extent of the problem. Their solution was to double their staff, in the end employing some 1,000 people to process data manually to ensure proper pay for its employees.

It worked, but it was expensive. The state estimates that keeping payroll functioning and stable over the next eight years will cost more than $1.2 billion.

Phoenix likely to cost $5B: expert

That cost increase caught Canada's auditor general's attention when he looked at the costs to fix Phoenix.

Michael Ferguson suggested in his fall report it would take years and "much more" than the original projected $540 million over three years to fix the chronic and ongoing problems with the Phoenix public service pay system, and warned the government may be "in a similar situation" to Australia.

Australian payroll technology consultant Malcolm Thatcher, a key witness at Queensland's public inquiry committee, said if Queensland's experience is any guide, the cost to fix Phoenix will be much more.

"If you scale it at the same rate … you're looking at maybe $5 billion or more that it's going to cost the citizens of Canada," Thatcher said.

Government to blame, say observers
The state of Queensland held IBM partly responsible for the fiasco and moved to prevent it from obtaining government contracts afterwards. Though the two sides settled in 2010, the state unsuccessfully tried to sue IBM years later.

In a written statement, IBM put the blame on the Queensland government for having "itself caused the cost overruns and the errors."

In contrast, the company says in Canada they continue "to work in close partnership with the federal government on the Phoenix project."

In his 2013 report about Queensland's payroll experience, Public Inquiry Commissioner Richard Chesterman put the blame for the failed rollout on an "unwarranted urgency and a lack of diligence on the part of State officials."

That lack of diligence led to poor decisions in their governance of the project and their attempts to come up with an interim solution, and also showed up in the government "failing to hold IBM to account to deliver a functional payroll system," he wrote.

A government, Chesterman wrote, cannot "sub-contract the risk" and "be passive in its supervision of projects in which large sums of money are at stake."

Mohle agrees, saying the problem was a failure of governance.

"Try as they might, governments cannot outsource the risk to a private provider," she said. "The governments have got skin in the game, and they have to take responsibility."

Phoenix turns two: Pay problems continue as government scrambles to find a fix
Ottawa Citizen
Jacquie Miller
February 25, 2018

Comedian Rick Mercer probably nailed the feeling of public servants across the nation with his assessment of the Phoenix computer and software system that issues their paycheques.

“As far as payroll systems go,” said Mercer in one of his popular TV rants, “it’s about as effective as a Grade 10 dropout with nine fingers and a serious buzz on.”

Mercer offered a rare note of levity in the discussion about Phoenix, the automated pay system that has become a sinkhole of woe for public servants.

As the second anniversary of the Phoenix rollout is marked this week, public servants interviewed by this newspaper offered their own descriptions.

Ludicrous. A boondoggle. A monster. A black hole. And a source of stress as they deal with the fallout of being underpaid, overpaid or not paid at all.

Many can’t believe the government could so badly fail at the most basic responsibility of any employer. As Mercer acidly noted, “What has happened to us? We’re not talking about colonizing Mars here. This is a payroll system.”

Anyone who accepts a job, whether it’s at a hotdog stand or a high-tech company, has a simple expectation: you do the work and get paid in return.

Phoenix has broken that basic contract. The numbers are staggering: half of Canada’s 300,000 public servants have been affected by problems with Phoenix. Many employees report multiple mistakes.

In the coming days, this paper will bring you some of their stories: A woman who didn’t get paid for several months after returning from maternity leave. A woman with depression and anxiety facing the added stress of paycheques that are not correct. A scientist who has been trying for more than a year to give back the $25,000 he was paid after leaving his government job.

There’s no end or simple solution in sight.

The total number of complaints continues to rise. By late January 2018, the number of transactions in the queue at the Phoenix pay centre in Miramichi, N.B., had reached an all-time high of 633,000.

The federal government is frantically hiring “compensation advisers,” offering a $4,000 signing bonus and higher overtime pay to those willing to do the job, and has set up satellite offices to field calls and resolve complaints. Public Services Minister Carla Qualtrough has apologized, repeatedly, and promised that fixing Phoenix is a priority. She has suggested it will be the end of 2018 or early 2019 before Phoenix is “stabilized.”

Even those whose pay is intact have not been spared. Fear of Phoenix is widespread, according to union officials and public servants interviewed by this newspaper.

Some employees are reluctant to seek a transfer to another department, apply for a promotion or an acting position, or even file for overtime, since any changes to their pay could trigger a Phoenix malfunction.
“A lot of people like me are hunkering down,” says Sherry Oake, an engineer at the Department of National Defence who tests explosives. “You don’t want to do anything that would cause the system to look at your pay.

“I am not looking for any sort of promotion or change or lateral transfer at this time. It’s just not worth the hassle, the effort, the risk of having it messed up. Down at the work level, you pretty much have everyone in a state of paranoia, wondering what is going to happen next.”

Many public servants value the secure, stable workplace offered by the federal government, says Oake. They are shaken by the inability of the nation’s largest employer to pay its employees correctly. “They are feeling betrayed and not supported.”

Jacqueline Gillis-Pygiel, an official with the union local that represents about 300 Coast Guard radio operators, says all her members have experienced problems with Phoenix.

“People are stressed,” she says. “It’s like Russian roulette on payday: ‘What am I getting? Am I getting paid more, am I getting paid less, am I getting paid properly?’ People are getting scared to open their bank account.

“This is two years into it. When is the end date?” she wonders. “When will people be able to say, ‘Yes, this is my payday and I know that I’m getting paid.’ Salaried employees are supposed to know they are getting paid every two weeks.

“This is your mortgage payment, this is your car payment, this is your children’s education money.”

The Phoenix story: by the numbers

300,000: Number of people who work for federal departments and agencies

150,000: Approximate number of employees who had an outstanding pay request in the queue at the Phoenix compensation centre in Miramichi, N.B., in June 2017

265,000: The number of individual pay transactions that had financial implications, above and beyond the normal workload, in the queue at Miramichi on June 1, 2017

384,000: The number of individual pay transactions that had financial implications, above and beyond the normal workload, in the queue at Miramichi on Jan. 24, 2017

$309 million: Amount the federal government spent to create Phoenix, which was supposed to be more efficient and save $70 million a year in payroll costs

$478 million: The cost so far of fixing Phoenix, which includes setting up satellite offices and hiring more payroll administrators as well as the annual savings that were never realized