Phénix et l'expérience australienne : et si la facture atteignait 5 milliards?
Radio-Canada
Catherine Lanthier
26 février 2018

EXCLUSIF - Une enquête de Radio-Canada en Australie laisse craindre le pire quant à la facture finale qui attend les contribuables en raison du système de paye Phénix. Régler un problème de moindre envergure a coûté plus d'un milliard de dollars à l'État du Queensland, où de nombreux intervenants sont abasourdis de constater que le Canada a répété ses erreurs, pourtant bien documentées.

Le premier d'une série de trois reportages

Un texte de Catherine Lanthier, envoyée spéciale à Brisbane, en Australie

Mars 2010. Le nouveau système de paye qui doit rémunérer tous les employés du ministère de la Santé du Queensland, y compris le personnel de 183 hôpitaux, est enfin lancé. Comme ce sera le cas au Canada six ans plus tard, c'est le géant informatique IBM qui est embauché pour sa mise en oeuvre.

La tâche est complexe, mais moins qu'elle le sera au Canada : payer près de 80 000 infirmières, médecins, dentistes, préposés à l'entretien ménager et fonctionnaires, répartis un peu partout sur le territoire du Queensland, un État de la taille du Québec, situé dans le nord-est de l'Australie.

Or, dès la première paye, les problèmes surgissent de partout. Employés non rémunérés, trop payés ou pas assez : c'était un « désastre », se rappelle la secrétaire principale du Syndicat des infirmières et sages-femmes de l'État du Queensland, Beth Mohle.

Fortement médiatisé, le scandale a attiré l'attention du vérificateur général du Queensland, et aura en partie coûté les élections au Labour Party, alors au pouvoir. Sitôt élu, le Liberal National Party ordonne la tenue d'une commission d'enquête publique, qui blâme sévèrement le gouvernement précédent et ses fonctionnaires pour leur gestion du dossier.

« Je ne peux pas croire qu'une recherche Google n'ait pas été faite avec les mots clés "IBM" et "paye" », s'étonne Mme Mohle, qui n'en revient pas de voir pratiquement le même fiasco survenir quelques années plus tard au Canada.

Le commissaire de l'enquête publique, Richard Chesterman, a la même réflexion. « J'ai fait une petite recherche Google cet après-midi, et en 30 secondes, j'ai trouvé une référence à mon enquête », note-t-il.

En effet, les déboires du Queensland avec son nouveau système de paye mis en oeuvre par IBM étaient largement connus et documentés en 2010. Pourtant, un an plus tard, en 2011, le gouvernement canadien octroie le contrat à IBM pour concevoir, développer et entretenir un système de paye qui doit rémunérer plus de 300 000 fonctionnaires fédéraux.

Selon nos informations, personne au gouvernement du Canada n'a communiqué avec Queensland Health, le ministère touché par cette crise - même si ce fiasco survenait au moment même où le système était mis sur pied à Ottawa.

« Je ne suis pas au courant qu'ils aient contacté le ministère, pas du tout, non », affirme Michael Walsh, le directeur général de Queensland Health, en entrevue à Radio-Canada.

De fait, seul le vérificateur général du Canada a enquêté sur les déboires du système de rémunération du Queensland, après un an de ratés du système Phénix. Après avoir lu ce rapport, M. Walsh déclare avec désolation qu'il a pensé que l'histoire s'était répétée.

« Vous pouvez pratiquement lire le rapport d'un bout à l'autre et constater les mêmes défis et les mêmes choses qui ont mal tourné lors de la mise en oeuvre du projet », affirme M. Walsh.

Des coûts qui explosent

Au Queensland, IBM était – de loin – le plus bas soumissionnaire. Selon le rapport d'enquête, le système livré par la multinationale aura coûté quatre fois plus cher que ce qui avait été convenu dans le contrat initial, passant de 6 à 25 millions de dollars. Et ce n'était que le début d'une longue escalade de coûts.

Au final, la facture totale dont l'État a écopé pour mettre le système en oeuvre, le réparer et embaucher les effectifs supplémentaires nécessaires s'est élevée à 1,2 milliard de dollars.

Le rapport d'enquête du commissaire Richard Chesterman a mis en lumière le manque de vigilance des employés du gouvernement. « L'État aurait dû être conscient de la possibilité que le prix fixé par IBM était anormalement bas », souligne-t-il dans son document de plus de 200 pages.

Au Canada, le système de paye Phénix souffle sa deuxième bougie et le gouvernement fédéral n'a toujours pas trouvé de solution pour mettre fin aux problèmes, qui continuent de s'accumuler.

Or, l'État du Queensland est parvenu à stabiliser son système de paye en quelques mois, à l'aide d'un plan exhaustif et de nombreuses ressources supplémentaires.

Malcolm Thatcher était l'un des témoins importants à la commission d'enquête publique sur le fiasco, puisqu'il avait mis en place un système de paye efficace dans un hôpital privé de la capitale du Queensland, Brisbane.

Informé de la situation au Canada, celui-ci craint que le désastre administratif n'atteigne des proportions bien plus élevées qu'au Queensland.

« Proportionnellement parlant, cela coûtera probablement 5 milliards ou plus aux citoyens canadiens », estime le Dr Thatcher.

De plus, selon cet expert en administration de la paye, ces 5 milliards de dollars ne serviraient peut-être qu'à stabiliser le système, sans « réellement résoudre le problème ».

À titre d'exemple, le milliard de dollars dépensé par l'État du Queensland a notamment servi à embaucher deux fois plus d'employés que prévu à l'origine. À chaque période de paye, ceux-ci ont dû entrer des milliers de données manuellement dans le système, afin que celui-ci rémunère correctement les employés.

Mais le fond du problème demeure : le système de paye du ministère de la Santé du Queensland devra à nouveau être remplacé d'ici cinq ans, puisqu'il sera obsolète.

De telles solutions très coûteuses en main-d'oeuvre sont nécessaires, puisque – comme au Canada – la complexité de la tâche à accomplir avait été sous-estimée. Ainsi, les milliers de règles de paye qui découlent des conventions collectives n'ont pas été adéquatement communiquées au fournisseur.

Or, la grande différence – et c'est ce qui effraie M. Thatcher –, c'est que la paye des fonctionnaires fédéraux au Canada compte 80 000 règles, contre 24 000 pour ceux du ministère de la Santé du Queensland.

De son côté, le vérificateur général du Canada a déjà mis en garde le gouvernement quant au fait que les 540 millions de dollars prévus pour régler la crise seront insuffisants.

En novembre dernier, dans un premier rapport consacré au système Phénix, Michael Ferguson statuait que « le gouvernement doit être conscient qu'il se retrouve peut-être dans la même situation que Queensland Health ».

« Nous sommes donc d'avis qu'il faudra débourser beaucoup plus pour disposer d'un système viable à long terme », avertissait son rapport.

Vers des contrats plus prudents?

L'État du Queensland a tenu IBM en partie responsable du fiasco, en l'empêchant notamment d'obtenir des contrats gouvernementaux par la suite.

Les nombreux rapports consacrés aux leçons du désastre ont cependant jeté le blâme sur le gouvernement pour sa gestion du projet.

Selon l'enquête du commissaire Chesterman, un gouvernement ne peut pas « sous-contracter le risque » et « être passif dans sa supervision des projets dans lesquels des sommes importantes d'argent sont en jeu ».

Comme c'est le cas au Canada, il n'a cependant pas été possible de déterminer précisément au Queensland qui est à blâmer pour l'échec du système de paye.

Michael Walsh a beaucoup appris de cette saga. Le directeur général de Queensland Health estime que pour assurer à l'avenir le succès d'un tel projet, le contrat pour livrer un système de paye devra contenir des clauses détaillées quant à sa portée.

Selon lui, une telle entente doit stipuler « très clairement » qui, du client – le gouvernement – ou de l'entreprise embauchée est responsable si les tâches à accomplir prennent de l'ampleur en cours de route.

La notion de responsabilité est d'ailleurs celle qui est la plus importante à retenir, de l'avis de nombreux experts.

Pour le commissaire Richard Chesterman, le gouvernement du Queensland a attribué les responsabilités à trop de personnes et trop de comités. « Plusieurs représentants du gouvernement n'ont pas fait leur travail », résume-t-il.

« Être responsable, ça ne veut pas dire se présenter à un comité tous les mois. Ça signifie investir son coeur et son âme dans un projet », renchérit avec conviction le Dr Thatcher.

Supreme Court unions case: Three reasons why it matters
BBC World News
February 26th 2018

It's been called one of the most important US Supreme Court case on labour issues so far this century.

The court has met to essentially consider whether to cut off a funding stream to some of the most powerful trade unions in the US.

Their decision will have ramifications for up to five million people - here are three reasons why it matters.

<u>1) It could deal a body blow to trade unions</u>
The case being brought before the Supreme Court focuses on the rights of public sector workers, including teachers, police and firefighters.

Twenty-eight US states have rules that mean that workers in unionised workplaces are not legally bound to join unions as a condition of their employment. Workers there still get the same benefits as unionised workers.

That's not the case with the 20 states and the District of Columbia that went before the Supreme Court on Monday - workers there must either join the union or pay union fees.

The plaintiff in this case is Mark Janus, a child-support specialist in one of those states, Illinois. He chose not to join the union where he works, and says he could lose his job for doing so.

If he wins - as looks possible - it would mean that unions could lose a major source of funding across the country when union fees do not become mandatory.

When Wisconsin changed its rules to make fees or union membership non-mandatory, the percentage of public-sector employees who were union members dropped from 50% in 2011 to 26.1% in 2015.

So if the Supreme Court rules in Mark Janus' favour, it would mean that unions have less bargaining power, and less money to fight their causes.

Unions in New York state think they could lose up to $110m (£79m) a year without mandatory fees from non-members, according to the Empire Center for Public Policy.

"You're basically arguing, do away with unions," Sonia Sotomayor, one of the court's liberal justices, told a lawyer representing Mr Janus on Monday.

2) It could have a major impact on the Democratic Party

Cutting off a major revenue stream for public sector unions does the same to Democrats, and wealthy Republican donors have been bankrolling the case now before the Supreme Court.

In 2016, public sector unions contributed $15.7m to Democrats, compared to $1.7m to Republicans, and one public sector union, the National Education Association, gave 90% of its $2.9m political donation in 2016 to Democrats.

Even larger sums went to outside interest groups and political action committees (PACs).

On top of this, many of the states before the Supreme Court on Monday are ones with a strong Democratic base, including New York and Massachusetts.

It's not the first time this issue has come before the nine-member Supreme Court, but after the death of conservative justice Antonin Scalia in 2016, the court was tied 4-4.

Since then, Donald Trump has appointed another conservative, Neil Gorsuch, to the court. His presence means the court is likely to back Mark Janus' case by five votes to four, but he did not comment on Monday morning.

3) It's an important First Amendment debate

In the middle of the debate about the implications for unions, it's important to note what it could mean for the freedom of expression.

Those are the grounds for this case being brought before the court: Mr Janus says that his being forced to pay fees to unions whose views he may not share violates his right to free speech and free association.

As it is, he says he is not a member of a political party and that his objection is not based on politics.

Unions, for their part, say they are being subject to an attack on organised labour funded by powerful individuals.

"This case is about power," American Federation of Teachers President Randi Weingarten said.

The Supreme Court is expected to issue a ruling by June.

Criminalizing Sex-Work Has Not Saved Indigenous Women
I believe the human trafficking conversation is a distraction from the issue of the harms of criminalizing prostitution.
Huffington Post
Naomi Sayers
THE BLOG

To the Honourable Jody Wilson-Raybould, Minister of Justice and Attorney General of Canada:

In November 2015, I wrote a similar letter to you. At the time, I was in law school and I had hope that you would be open to discussing the realities and concerns of sex workers, including the harms created by criminalization of prostitution as a way to deter, denounce and eradicate human trafficking inside and across Canada's borders.

I understand that you have been meeting with concerned individuals about your predecessor's problematic bill, which is now law. This bill is commonly referred to as C-36, or by its short-title, Protection of Communities and Exploited Persons Act (PCEPA.) Further, I understand you are reviewing this law as part of your review of the criminal justice system, and as part of this review, you are meeting with former and current sex trade workers. I applaud you for your follow through on this part.

Most recently, however, on Feb. 15, 2018, the Standing Committee on Justice and Human Rights announced its launch of a national consultation on human trafficking that was supported by all political parties on the Committee. While I commend this collective effort to examine an important social and legal issue, I have grave concern over this consultation on human trafficking.

In December 2013, Canada's highest court released its formative decision on the harms that three challenged provisions created in the lives of sex workers. These provisions included the communication/solicitation provision, the bawdy-house provision and the living on the avails provision.

Then-Chief Justice McLachlin, in writing for the Supreme Court of Canada, described the harms of these challenged provisions after reviewing over 25,000 pages of evidence in 88 volumes. The evidence she reviewed included not one, but the many missing and murdered from Vancouver's Downtown East Side, who were preyed on by and targeted by Robert Pickton.

McLachlin stated that the harm caused by the challenged provisions was not quantitative but qualitative. In other words, it is not the number of potential victims or people that are protected by the

laws that outweighs the harms of criminalizing prostitution; rather, it is the fact that one person's life and safety is at-risk of being harmed. I echoed and emphasized these same words when I was the only First Nations woman with lived experience in the sex trade to oppose the PCEPA. The PCEPA enacts very similar laws which the Supreme Court of Canada found to be harmful in the lives of prostitutes.

While I also credit your government for showing care and concern over Indigenous women and girls, I believe the human trafficking conversation is a distraction from the issue of the harms of criminalizing prostitution, especially in the realities facing Indigenous women and girls.

Your government acknowledges that Indigenous women and girls are at-risk of being human trafficked. Yet, your government ignores how state apparatuses are set up to create that risk. For instance, in Tina Fontaine's reality, it was the state that trafficked her to a hotel room and did not provide her with adequate support and safety. She was reported missing and eventually found murdered.

Your government even provided financial support to increase police and state surveillance during a major sporting event in an effort to fight sex trafficking. Still, your government fails to provide adequate funding to Indigenous communities to access basic services. In fact, the Canadian Human Rights Tribunal issued a fourth non-compliance order for your government's "incremental approach to equality."

This approach, the Tribunal found, "fostered the discrimination" around the initial complaint. In the initial decision, the Tribunal found that the government, including your government, discriminated and continues to discriminate against First Nations children by failing to provide equal welfare services.

As I stated to the Standing Committee on Justice and Human Rights in July 2014, the PCEPA presumes prostitution to be human trafficking or presumes that there is no difference from human trafficking and prostitution.

The national consultation news release states that it wishes to meet with "survivors of human trafficking, from providers of assistance and support services to victims, and from other community partners." The Committee must also meet with current and former sex trade workers if all prostitution is human trafficking or all prostitution eventually leads to human trafficking. Accordingly, you must urge the Committee to not only meet with current and former sex trade workers, but you must also listen to this same group and their calls for repeal of laws that leave them at-risk for more violence.

Though I asked you to listen to people directly affected by PCEPA in the November letter, I am now hoping that you will repeal this harmful law, and instead meaningfully engage with current and former sex trade workers, including community groups who work directly with these groups. There is no more time for discussions or consultations. The Supreme Court of Canada found such laws to be harmful. And, as I stated previously, criminalizing prostitution has never protected Indigenous women and girls from violence. The PCEPA is still on the books.

With the above being stated, I call attention to what I told you in my initial November letter that even the Supreme Court acknowledged the state's role in making a prostitute more vulnerable to violence.

Then-Chief Justice wrote, "The violence of a john does not diminish the role of the state in making a prostitute more vulnerable to that violence."

And, if your government believes that Indigenous women and girls are at-risk of being human trafficked and all prostitution is human trafficking or eventually leads to human trafficking, then the harm in your government's inactions are already established by the fact that there are still Indigenous women and girls being reported missing and murdered under your government. Besides, if not one or a few more who have been reported missing and murdered under your government, then let it be the 1,200 plus missing and murdered Indigenous women and girls as more evidence that criminalizing prostitution never saved us.

Thank you/miigwetch,

Naomi Sayers is an Indigenous feminist, Anishnaabe kwe, sex work activist and writes at www.kwetoday.com.

How to fix court delays: court-facilitated arbitration
Canadian Lawyer Magazine
Barry Leon
February 26, 2018

For more than a year, prominent Canadian litigators writing for this publication and elsewhere have suggested — wisely — that parties with cases lingering in the courts because of court delays, particularly delays in securing trial dates, should consider moving to arbitration.

They point to the volume of cases and the diversion of judicial resources to meet strict time limits imposed on courts by the Supreme Court of Canada in R. v. Jordan.

As there is little indication that the suggestion has gained traction, one might ask whether this is an idea that is great in theory but unachievable in practice.

The answer is that it is a terrific suggestion and it is easily achievable. The critical challenge is how to get parties stalled in the courts to consider moving to arbitration.

Usually, a party locked in the heat of a contentious dispute will recoil at a suggestion from the other side to consider moving to arbitration, fearing some tactical manoeuvre.

I believe it is possible to get parties embroiled in litigation to consider moving to arbitration, but they need independent assistance.

An effective and efficient court mechanism is needed to cause parties to consider seriously the advantages and disadvantage, work out how their arbitration would work and to settle the specifics of moving.

The answer likely lies in “court-facilitated arbitration.”

Court-facilitated arbitration

Some jurisdictions have what they call court-annexed arbitration. Court-facilitated arbitration is a more accurate term.

Unlike court-annexed mediation, where courts encourage or require mediation at some stage, engaging in arbitration is voluntary. However, the process to get parties to explore moving to arbitration need not be entirely voluntary.

An arbitration and how it is conducted is founded on party agreement. Court-facilitated arbitration would not offend party autonomy or any fundamental aspects of arbitration. Arbitration would occur only if parties agree.

Implementing a process for courts to assist parties to consider moving to arbitration is easy — use case management conferences.

To begin, a court identifies cases in which party interest in arbitration may exist. Then the parties and counsel are invited to attend a case-management conference to consider moving.

An experienced judge who understands arbitration, has strong mediation skills and a commitment to make court-facilitated arbitration work would conduct the conference.

Before the conference, the judge would become familiar with the dispute, its factual and legal issues and its procedural situation.

Parties should be required to attend so that there is a greater opportunity for parties’ true interests to surface.

When the parties are receptive to moving, the judge would assist them and counsel would develop a protocol for the move.

If parties choose or like litigation because of certain of its features, as compared to arbitration, those court litigation features could be preserved in arbitration.

Court litigation features could be the default position for the arbitration, with differences from arbitration’s ordinary features being subject to discussion.

Guided by an experienced judge who understands arbitration’s features and benefits, parties may elect to apply those features to their dispute.

Topics that would be considered and agreed in the conference would include:

Privacy/confidentiality: If desired, the arbitration could be open, just as the court proceedings would have been.

Judgment versus award: If parties want a court judgment, it may be possible for the arbitration to be a reference.

Or parties may prefer an arbitral award, which would be more readily enforceable worldwide under the New York Convention. Additionally, a mechanism for the award to "become" a judgment could be built into the protocol.

Precedent: If parties want a publicly available precedent — for their own purposes or to help develop the law — the protocol could provide for it. Certainly, the reference mechanism could achieve this. Other mechanisms might be possible.

Procedural and evidentiary rules: If parties are wedded to using court procedural and evidentiary rules, they would be able to do so in the arbitration. Or the case management judge might leave parties appreciating the benefits of a more customized and efficient approach.

Costs: The case's costs through the case management conference could be left to the arbitral tribunal. Further, parties could agree that the tribunal will apply the court's approach to costs (including settlement offers).

Arbitral tribunal: Parties would decide whether to engage one or three arbitrators and a process to select the tribunal. Commonly used processes to appoint an arbitral tribunal would be considered, including that the judge serve as "appointing authority" to select the tribunal in the absence of agreement.

Appeals: If parties wish to preserve appeal rights as they would exist following a trial, the reference mechanism could achieve that objective. Or parties could choose an appeal by way of arbitration. Rules exist for such appeals, including the Arbitration Place Arbitration Appeal and Review Rules.

Other topics. Nothing would preclude the case management conference considering other topics, including the use of mediation and other forms of ADR, to take place before arbitration, running either concurrently or sequentially.

Begin pilot projects now!

Court-facilitated arbitration could be implemented under most existing court rules and practices, with minimal disruption to existing ways of doing things.

The main cost of implementation would be a few hours of judicial time devoted to cases that otherwise will have lengthy waits for trial, and ultimately consume many days, if not weeks, of court time and resources.

To succeed, court-facilitated arbitration will need appropriate judicial awareness and commitment. Also, it will need litigation lawyers to seriously consider the advantages to their clients.

Why not begin pilot projects now?

*Barry Leon is presiding Commercial Court judge in the British Virgin Islands, as well as an arbitrator and mediato*r.

This Software Works Just as Accurately as Your Lawyer--Only 200 Times Faster
Artificial intelligence startup LawGeex put its software up against a group of lawyers. The results were pretty eye-opening.
Inc.com
Kevin J. Ryan
February 26th 2018

Watch out, attorneys. The bots are coming--and they're getting good at your job.

For some lawyers, contract review takes up a huge chunk of time and it can be extremely tedious.

That's why the co-founders of LawGeex began their company in 2014. The Tel Aviv-based startup creates software that uses artificial intelligence to study contracts, flagging any language or stipulations that seem out of the ordinary.

LawGeex released its software to the public early last year. Recently, though, the company decided it wanted to truly put it to the test. In a study overseen by attorneys from Duke University and Stanford University, the startup had 20 experienced lawyers separately study five new non-disclosure agreements, while the A.I. did the same.

The results: The lawyers came in at a solid 85 percent accurate. The software? Ninety-four percent. What's more, while the average lawyer took 92 minutes to complete the task, the company's A.I. did it in just 26 seconds--so in addition to being more accurate, it was 200 times faster than its human counterparts.

Noory Bechor, Lawgeex co-founder and CEO, spent six years as an attorney at Israel's largest law firm before deciding to pursue the new venture. "I had a growing frustration with how inefficient the legal world is," he says. "It's very repetitive and mundane, and there was no real technology that helps lawyers do their jobs better and more efficiently."

In his early professional days as a paralegal, Bechor had spent much of his time reviewing documents. "Once you've seen hundreds of examples of a specific contract type," he says, "the concepts keep repeating themselves. I said, if this is so repetitive, it can be automated."

Through an acquaintance, Bechor was introduced to Ilan Admon, a tech industry vet. Together they developed a proof of concept and raised more than $8 million from angel investors and VC firms including Recruit Co. and EverythingMe.

LawGeex's software compares incoming contracts with a set of standards that can be preset by the user. It then identifies clauses that might need altering before the contract can be approved. The product has already gained traction with in-house legal teams: LawGeex counts Sears, Deloitte, Skyview Capital, and Key Energy among its early clients, and it says that list also includes major banks and insurance companies.

Developing A.I. that can study contracts for uncommon language or clauses isn't quite as straightforward as it might sound--the software wouldn't be very useful if it flagged every uncommon piece of information. Someone signing a lease in Chicago, for example, probably doesn't need to be alerted to the fact that their landlord's address is in Michigan, but they would want to know about a stipulation that charged them five months' rent for breaking the lease.

To solve that, LawGeex used attorneys to help train its A.I. That helped give the software the ability to distinguish between information that's not just uncommon from a quantitative perspective, but from a qualitative perspective as well.

Which raises the question: Did those lawyers just play a part in rendering themselves redundant? Bechor says no. "We really try to focus on the value this solution creates in terms of efficiency, making business move faster, saving money and saving time," he says. Repeating the popular Silicon Valley talking point, he says he sees the software as giving workers time for more interesting, creative tasks. Although, he admits, "If I'm a person that only reviews these simple contracts for a living, I'm going to have to adapt."

Bechor sees the software as useful to businesses, which can often bypass legal review for the sake of speed or cost efficiency. "When they do that," he says, "they end up taking on increased legal risks."

Like with any technology, the software has its limits--so for most lawyers, their jobs are safe for now. "We're not claiming to be more accurate than lawyers all the time and in any type of work," Bechor says. "What we are showing is that on the mundane, repetitive, simple stuff, technology can actually do a better job that humans."

Government workers should get apology, compensation for Phoenix mess: NDP
CTV News
Terry Pedwell
The Canadian Press
February 26, 2018

OTTAWA -- Two years into the Phoenix pay system "fiasco," the federal government needs to apologize to the tens of thousands of civil servants who have been living a paycheque nightmare and compensate them for what they've lost, the opposition New Democrats demanded Monday.

The demands coincided with the second anniversary this week of the launch of the troubled electronic compensation system, and come in advance of Canada-wide protests planned for Wednesday.

It's outrageous that, after 24 months in which civil servants have been underpaid, overpaid or not paid at all, the government still doesn't have a solution, said NDP finance critic Peter Julian.

"We've had public servants, who are working for the people of Canada, who have lost their home," Julian told a news conference in Ottawa. "We've had public servants who have been unable to put food on the table for their families."

An apology won't bring back the cars and homes that some public servants have lost after not being paid, but that doesn't diminish the importance of formally declaring that government employees endured something that should never have happened, he added.

Julian introduced a motion Monday calling for an apology and compensation. A vote on the motion was expected Wednesday.

"The only way, as part of our motion, we think the government can truly atone for what they've done is by a formal apology in the House of Commons."

The Phoenix pay system was meant to centralize and streamline pay systems across several dozen government departments and agencies since being brought online in February 2016.

Instead, it has resulted in endless headaches for civil servants, both working and retired.

While the former Conservative government contracted the Phoenix system, the current Liberal government launched it, and both parties have blamed each other for creating the mess.

Public Services and Procurement Canada Minister Carla Qualtrough did issue an apology of sorts Monday on behalf of the government, much as she has done before. But she defended the decision to launch Phoenix, assigning much of the blame to her Conservative predecessors.

"Of course we sincerely apologize to public servants for everything we've put them through as a government," she said during question period. The government had to choose "between a new system and no system" after coming to power, she continued, because the "previous Conservative government had fired compensation advisers, had decommissioned the former system."

Two years ago, senior officials advised the government that Phoenix was ready to go live, she added.

As of late January this year, the backlog of problem files created by Phoenix had reached 633,000 cases; cost estimates for dealing with the errors now range from $1 billion to as high as $5 billion.

The tally reached nearly $788 million earlier this month after the government asked Parliament to approve $76.3 million in new anticipated spending before the end of the current fiscal year. That was on

top of the initial $309 million used to set up the troubled system and $402 million the government announced last May to bring the Phoenix system to a so-called "steady state."

Unions representing more than 300,000 civil servants have organized protest rallies across the country for Feb. 28 -- the anniversary date of the launch of Phoenix -- under the banner "Burnt by Phoenix" that are expected to include "triage tents" where civil servants facing pay issues can turn for help.

While some government employees have called for work stoppages as part of Wednesday's demonstrations, union leaders have pointed out workers must, under the terms of their collective contracts, report to their jobs as scheduled.

How to fix Phoenix: Put payroll back in local hands, Australian experts say
Queensland Health quickly moved away from a central payroll hub after problems began
CBC News
Catherine Lanthier and Paul Jay
Feb 27, 2018

When faced with a payroll fiasco similar to Canada's situation with the Phoenix system, the Australian state of Queensland chose an expensive strategy, but one observers say was successful: they put payroll back in local hands.

Queensland Health's story of the implementation of an IBM-provided payroll system will sound familiar to those following the saga of Phoenix in Canada. In March 2010, some 78,000 health workers had their pay stubs switched to a new system as payroll operations were centralized into a single workplace, itself with 550 employees.

It was a complex job involving five collective agreements and 24,000 separate pay rules. IBM had the contract to deliver the service.

"As soon as I saw my first pay, I knew I had received a lot more money than I was entitled to," said Veronica Pyke, a union organizer who was then a nurse in a town more than a hundred kilometres from Brisbane, the capital of Queensland.

Pyke, who was trying to understand her pay stub, remembers the helplessness of the employees responsible for pay in her situation.

"They could not do anything," she said.

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.

An Australian task force set up to handle the Queensland problem sought the advice of unions, managers and consultants, and concluded they had underestimated the complexity of the task and could not standardize pay processing.

"What was not understood at the time is that the local knowledge of these people about shifts, schedules and agreements in place are not knowledge that are put on paper," Walsh said.

The result: the department doubled payroll staff from 550 to 1,100 employees, and had them manually enter changes to pay stubs with problems until they had stabilized the systems.

Even now, eight years later, the number of payroll employees stands at 800, with only 150 working in a centralized location.

The department also went back to a system where payroll officers were able to get to know the departments they were charged with handling.

"They have individual relationships, so you have a customer manager and you know that person and you can ring that payroll person," Walsh said.

"There was a really critical change back to that localized payroll."

The solution was expensive. The government estimates it has spent $1.2 billion over the past eight years to keep the system running.

In 2013, the commission of inquiry looking into Queensland's payroll problems found that its initial decision to centralize its payroll operations was "probably the most dramatic example of a failed attempt to impose a standardized solution on an extremely complicated and individualized agency."

As in Queensland, Canada had centralized its payroll operations in the lead-up to the launch of the Phoenix payroll system in 2016.

Some 550 employees at the Public Service Pay Centre in Miramichi, N.B., were tasked with the duties of 1,200 compensation advisers previously distributed across a number of federal departments.

After the Canadian government realized the scope of the problem, it began to recruit more payroll staff and opened satellite offices in other regions. Now, two years later, there are 1,465 payroll staff as well as another 207 people who worked at the client contact centres that connect people with complaints to pay advisers.

But the government continues to favour the centralization of these services, and has shown no intention of going back.

Some, including union leaders in Canada, say that is a mistake. According to internal documents obtained by the CBC, three times more federal public servants have problems with their pay when they are being processed by the Miramichi centre.

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

Problem allowed to worsen
The size and extent of Canada's pay problems is shocking to Malcolm Thatcher, a technology consultant who worked at Queensland Health.

"Not only did the [Canadian] government not take over quickly to stabilize [Phoenix], it allowed it to grow. It's very surprising," he said.

"I think decentralizing the solution will be critical for them to get on top of this," Thatcher said.

"That big mountain becomes harder and harder to climb. I think they've got to accept that until they do something differently, the mountain will continue to grow," he said.

Beth Mohle, the principal secretary of the Queensland Nurses Union, agrees.

"The people need to have people locally they can go to — a face, not just a person at the end of the phone or at the end of a computer. They need to be able to talk through these solutions, because they are incredibly complex," Mohle said.

In his fall report to Parliament, Canada's Auditor-General Michael Ferguson said it would take significantly longer and cost significantly more to repair the problem-plagued Phoenix system and clear the backlog of thousands of claims by public servants who have been underpaid, overpaid or not paid at all.

"A sustainable solution will take years and cost more than the $540 million the government expected to spend to resolve pay problems," the audit concluded.

Victims want justice but police reluctant to investigate financial fraudsters
Vancouver Sun
Gordon Hoekstra
February 26, 2018

Lower Mainland resident Clifford Earl Erickson was handed a criminal conviction in 1998 for defrauding business associates of hundreds of thousands of dollars and another in 2001 for duping a woman who he had promised to marry out of $92,000.

At the time, in articles in The Province (included below this article), his brother said he was a con man who would bilk his own mother. In each case, he was given jail sentences of two years.

Fast forward two decades later and Erickson, now in his late 70s, has again been accused of fraud.

At least five civil suits were launched since 2012 in B.C. Supreme Court against Erickson, alleging he defrauded complainants of more than $2.6 million. The court record also includes claims against Erickson for writing bad cheques and failing to pay a lawyer more than $15,000.

The recent allegations have not been proven in court.

The alleged victims want Erickson investigated by the authorities, too.

But when one complainant tried to get police to investigate, they refused. Another complainant says he was discouraged by police from even filing a complaint.

Others, too, have been frustrated when trying to get the police to investigate serious investment frauds, including a major $30-million Ponzi scheme.

Investment advocates and victims believe the lack of criminal prosecution creates an environment where investment frauds believes they can operate with impunity.

These examples where police have declined to investigate underscore the findings of an Postmedia investigation, first published in November, that showed criminal prosecutions for investment fraud are rare in B.C.

Experts say police are often reluctant to investigate complex investment frauds because their resources are directed at more straightforward cases, such as drug possession.

While police sometimes refer investment-type fraud complaints to the B.C. Securities Commission, less than two per cent of the $510 million in penalties levied by that regulatory body has been collected in the past decade, according to Postmedia's investigation.

"Spending some time in jail, that's where the real deterrent comes in," said Marian Passmore, director of policy for the Canadian Foundation for Advancement of Investor Rights.

Cristie Ford, a UBC law professor, said penalizing or prosecuting financial crime is difficult. It can be the hardest crime to prove, Ford said, because you have to follow the money, often in many different directions.

Ford, the director of UBC's Centre for Business Law, said pursuing investment crimes takes expertise that police forces may not have and may go against a police culture oriented toward solving violent crime.

Ford said there is little co-ordination across investigative, regulatory and enforcement agencies — including police departments and securities commissions — when it comes to investment crime.

“The bottleneck is really around expertise and desire to pursue these very tricky cases,” said Ford, who has made presentations to the B.C. Securities Commission.

Ford believes a possible solution to increased criminal prosecution of investment fraudsters could be found in greater co-ordination between Canada’s police forces and the country’s 13 securities commissions, notwithstanding the fact that Canada does not have a national securities regulator.

Ford suggested the idea of creating an integrated financial fraud unit — combining police forces and securities regulators — with the necessary expertise and resources.

When Robert Lemon considers Erickson’s criminal convictions of nearly two decades ago, he wonders why he couldn’t get the police interested in new allegations of fraud.

Lemon filed a 2014 claim in B.C. Supreme Court against Erickson and a woman named Ritsuko Tsurigida after Lemon’s longtime partner Robert Ledingham died the year before. The claim alleges $1.1 million advanced to Erickson and Tsurigida, which was secured by a promissory note, was not repaid to Ledingham.

Lemon claims Ledingham made payments into an investment, the Panama-based Spanish Endowment Fund, whose directors included Erickson and Tsurigida, and there is no record of repayments or dividends.

Erickson responded to the claim, stating he never received the funds.

But particularly galling to Lemon, and the reason he went to police, was Erickson contacted him after his partner’s death, trying to get him to invest $300,000 in the Spanish Endowment Fund, he said.

Lemon said Erickson pitched investments in internet phone service cards in Cuba and global shipments of oil, and also said he was close to acquiring the rights to McDonald’s restaurants in Cuba. When pressed for evidence of the investments, Erickson did not provide any, said Lemon.

“This to me was the slap in the face. This guy needs to be punished. The audacity to phone again, it’s insulting for a grieving partner,” said Lemon.

He first went to the RCMP, who told him to contact the Vancouver Police Department. The VPD refused to investigate.

In a March 2016 email, Const. Alison Bale told Lemon that frauds are difficult to prove, Panama was out of the VPD’s jurisdiction, generally contracts are a civil matter and it was complicated by the fact that Ledingham had died.

The email said that if his lawyer could find “evidence of fraud, something specific” to let the VPD know.

Lemon was dismayed the VPD was unaware Erickson had criminal convictions for fraud.

According to VPD information supplied at Postmedia's request, the city police department investigated nearly 7,400 fraud files between 2015 and 2017, of which 871 cases were recommended for charges.

Most of these files are lower-level crimes such as credit-card fraud that are investigated by regular patrol officers. The 12-member financial crime unit takes about 50 to 60 cases a year, including large-scale misappropriations that can take years to investigate.

However, investment-type frauds are usually referred to the B.C. Securities Commission, said Sgt. Duane van Beek, who heads the VPD's financial crimes unit.

Van Beek said he could not comment on individual cases.

Van Beek said that in deciding whether to investigate, the VPD will examine several factors: Did the incident take place in Vancouver or have a connection to the city, is it in the public interest, and is it a viable case where evidence can be gathered for a successful prosecution?

"These files are more complex than most people realize," he said.

Lemon went to the B.C. Securities Commission on his own after the VPD declined to investigate the allegations against Erickson. The VPD had not suggested he do so.

In his latest communication with the B.C. Securities Commission in late 2017, he was told that an investigation into Erickson was continuing.

Commission spokeswoman Alison Walker said this week the regulatory body does not confirm or deny the existence of investigations.

Lemon is not the only person who would like to see the police investigate the most recent complaints against Erickson for alleged fraudulent activities.

Saskatchewan resident Suzanne Olaski alleged in a suit filed in B.C. Supreme Court in 2015 — and now taken up by her estate — that Erickson co-ordinated a series of transactions to provide her a loan of hundreds of thousands of dollars to develop a hotel property. Some of the loan money was to be directed into the Spanish Endowment Fund, from which she was promised substantive returns.

She didn't receive the loan money, says her claim.

Erickson has not responded to the Olaski claim.

When Olaski's son Mike Olaski, following her death in 2016 of a heart attack at aged 72, approached the RCMP to investigate, he was discouraged from filing a complaint. "I was told it was really hard to prove and not to bother wasting time," said Olaski.

His mother lost significant equity on a project she had been working on for 20 years, and was under tremendous stress, said Olaski.

Of the alleged scam, he said: “They are taking more than money. They are taking lives and years.”

The individuals who put the loan money up for Olaski — Susan Di Giacomo and Malcolm Fraser — also launched claims in B.C. Supreme Court against Erickson to recoup nearly $900,000.

Erickson did not respond to the claims.

Fraser said he met Erickson through his business partner and lawyer, who had met Erickson through a church group.

Neither he nor Di Giacomo filed a complaint with police but say they would like to see him face a criminal investigation.

“It’s just an ugly, continuing story,” said Fraser.

Like others who had dealings with Erickson two decades ago, Fraser describes Erickson as a smooth operator and very clever.

Postmedia could not reach Erickson for comment. His last lawyer said he no longer represented Erickson and had no contact information. A man who answered the last known telephone number for Erickson said he was not Erickson.

There are other significant fraud claims in B.C. that police have declined to investigate.

The Vancouver police decided in 2012 not to investigate Lynn Rae Nickford (also known as Lynn Rae Zlotnik), accused of using money from 13 investors for personal use, including gambling.

A B.C. Securities Commission tribunal levied a $618,000 penalty against Nickford this month, but as Nickford is bankrupt there is question of whether she will ever pay.

The VPD said it could not comment on the case.

North Vancouver resident Peter Doetsch continues to be frustrated with the lack of a police investigation into a $30-million Ponzi scheme that involved as many as 170 people. He lost more than $4 million, according to court records.

West Vancouver-resident Virginia Tan admitted in a 2017 settlement with the B.C. Securities Commission that she perpetrated the Ponzi scheme and agreed to a $3-million fine.

The Vancouver police opened a file but declined to investigate because the securities commission was investigating.

However, Tan has not paid her fine.

Last December, Doetsch took a new complaint to North Vancouver RCMP. “The police need to take that first step,” said Doetsch. “I wish the system would work.”

This week, Doetsch was sent a letter from North Vancouver RCMP Supt. Chris Kennedy telling him that the matter has already been reviewed and investigated by the B.C. Securities Commission, an “appropriate specialized enforcement unit,” and therefore the RCMP would not be investigating the alleged fraud. ghoekstra@postmedia.com

U of T law prof. believes 'time is now' to talk about jury reform in Canada

Following the not-guilty verdict in the case, hundreds of people across Canada rallied in support of the Boushie family and reforms in the justice system.

Saskatoon Star Phoenix
Morgan Modjeski
February 27, 2018

Is it time for jury reform in Canada?

That’s one of the questions an upcoming lecture at the University of Saskatchewan will focus on in the wake of outcry from the public and Indigenous leaders about the second-degree murder trial of Gerald Stanley, who was acquitted in the shooting death of 22-year-old Colten Boushie by a jury that contained no visibly Indigenous people.

“It brings to light issues about how we select juries in Canada,” said Kent Roach, a law professor and Prichard-Wilson Chair of Law and Public Policy at the University of Toronto.

After the Stanley verdict, hundreds of people across Canada rallied in support of Boushie’s family and called for reforms in the justice system.

Members of the family, who raised concerns about jury selection, met with several ministers, including Indigenous Affairs Minister Carolyn Bennett and Justice Minister Jody Wilson-Raybould, to talk about their lack of faith in the justice system.

Roach will travel to Saskatoon to deliver the lecture at 1 p.m. at the MLT Aikins Lecture Theatre on Wednesday. He said he plans to focus on efforts to ensure more Indigenous people and minorities are part of jury pools and potential changes to the process by which jurors are challenged and agreed upon by lawyers.

He said the “time is now” if people want to get engaged with issues of jury reform. He feels “change is possible,” he said.

"Especially if there is federal leadership on this issue. I also think that jury reform — so that we have juries where there is more public confidence they are selected in a fair and impartial manner — can also respond to some of the unfortunate polarization that we see around these issues."

Following the verdict, Justin Minister Wilson-Raybould said her thoughts were with the Boushie family, noting that the Canadian government is listening.

"I truly feel your pain and I hear all of your voices. As a country we can and must do better," she said in a social media post. "I am committed to working every day to ensure justice for all Canadians."
mmodjeski@postmedia.com

Avocats en détresse !
Heures facturables, relations avec les clients, les collègues, les supérieurs ou même les juges. Les avocats sont-ils au bord de la crise de nerf ?
Droit Inc
Delphine Jung
27 février 2018

Globalement, les avocats « ont l'impression d'être toujours en situation d'urgence », dit Nathalie Cadieux, professeure à l'Université de Sherbrooke. Et c'est pour qualifier et quantifier le phénomène qu'elle travaille avec une équipe de chercheurs, en collaboration avec le Barreau du Québec, sur une étude qui devrait apporter des réponses sur le sujet. Il s'agit d'une première.

Elle s'intitule : « Étude des déterminants de la détresse psychologique et du bien-être dans la profession d'avocat au Québec ». La première phase de cette recherche, de nature qualitative, vient de se terminer.

Mme Cadieux s'est spécialisée en santé mentale au travail chez les professionnels réglementés comme les médecins, les pharmaciens, les ingénieurs et… les avocats.

« Durant mes études doctorales, j'ai remarqué des données préoccupantes concernant les avocats en observant les demandes d'aide adressées au Programme d'aide aux membres du Barreau (PAMBA) qui ont fortement augmenté », raconte la chercheuse.

Une augmentation de 300 % des dossiers

En effet, Mme Cadieux a constaté qu'on est passé de 296 dossiers par an en 2004 à plus de 1000 dossiers par an en 2016. Mais ce ne serait que la pointe de l'iceberg puisque « plusieurs avocats nous ont mentionné avoir recours à une aide extérieure plutôt qu'au PAMBA pour toutes sortes de raisons qui leur appartiennent. »

Une étude de 1998 réalisée par Adrian Hill indique par ailleurs que les avocats seraient six fois plus susceptibles de se suicider que le reste de la population. Des chiffres corroborés par des résultats

d'études plus récentes réalisées à l'extérieur du territoire québécois (Bailly, 2000; Carter, 2006; Kammeyer-Mueller, Simon, & Rich, 2012; Ramos, 2013; Sharp, 2011).

Elle a aussi remarqué que peu d'études ont été faites sur le sujet au Québec comparé au reste du Canada, aux États-Unis ou en Europe. « Or, les conditions de travail des professions réglementées sont très liées à la géographie », ajoute Mme Cadieux.

Alors, elle a décidé de poursuivre une étude pour identifier les stresseurs qui étaient susceptibles d'être à l'origine de cette détresse et les leviers de gestion à mettre en place.

Dans cette démarche, le Barreau du Québec agit comme partenaire et a estimé qu'il était prématuré de donner une entrevue à Droit-inc à ce sujet.

Pire à Montréal ?
La première phase a ainsi commencé en 2014. « Nous avons rencontré 22 avocats de différents barreaux et de différents domaines de droit. Rapidement, on nous a dit que pour les avocats montréalais, c'était pire et que leur réalité était très différente. On a donc décidé d'en interroger aussi. Finalement, on s'est rendu compte que les stresseurs n'étaient pas vraiment différents ».

Parmi eux, les heures facturables, les relations sociales au travail avec les clients, les collègues, les supérieurs ou même les juges. Globalement, les avocats « ont l'impression d'être toujours en situation d'urgence ».

L'équipe de chercheurs a également étudié la problématique du rapport hommes / femmes. « La culture d'entreprise en droit est très masculine et hiérarchique alors que la profession se féminise. On peut se demander si la culture s'est adaptée au même rythme que cette féminisation », dit Mme Cadieux.

Selon elle, l'étude qualitative a permis de réaliser que la moitié des avocates disent avoir vécu de la violence psychologique en cours de carrière.

Mme Cadieux évoque aussi un autre problème : « lorsque certains avocats rencontrent des clients, ces derniers se sont déjà renseignés sur internet, sur des sites francophones, mais souvent de France, ou les lois ne sont pas les mêmes. Les avocats québécois doivent donc rétablir leur crédibilité ».

Étude quantitative en route
Maintenant que la première phase est terminée, la deuxième commence. Elle sera quantitative cette fois. Tous les avocats du Barreau seront donc sollicités pour y participer. « Plus le taux de participation sera élevé, plus on sera en mesure de faire un portrait juste de la situation », précise la professeure qui ajoute que le questionnaire est déjà prêt.

À terme, en plus d'évaluer la situation, l'étude devrait pouvoir mettre le doigt sur les compétences qui protège contre la détresse psychologique.

Ses résultats finaux seront rendus en 2019.

Budget fédéral 2018: de l’argent pour les femmes, les Autochtones et la science
Le Devoir
Guillaume St-Hilaire
27 février 2018

Place des femmes, des Autochtones, de la science: le budget fédéral 2018-2019 présenté mardi après-midi par le ministre des Finances Bill Morneau en est un d’ajustements et de mesures visant à donner plus de place à certains groupes désavantagés.

1. De nouveaux revenus aussitôt réinvestis
Le retour à l’équilibre budgétaire n’est toujours pas à l’horizon du gouvernement Trudeau.

Bien que l’économie canadienne ait pris plus de vigueur que prévu l’an dernier – le ministre s’en félicitait déjà à l’automne dernier, lors de son énoncé économique –, les déficits projetés, eux, bougent peu.

Le déficit sera de 18,1 milliards de dollars en 2018-2019, et ce, bien qu’Ottawa estime maintenant récolter environ 3,6 milliards de dollars de plus que prévu lors de l’exercice financier. La dette fédérale devrait toujours équivaloir à environ 30 % du PIB, comme le vise le gouvernement Trudeau depuis son élection.

Ces revenus supplémentaires seront investis dans une série de mesures taillées sur mesure pour les gens aux revenus plus modestes, dont une bonification de l’allocation canadienne pour le travail – qui sera accordée automatiquement par l’Agence du revenu du Canada dès 2019.

2. Un budget plus égalitaire
Dans le document déposé par le ministre Morneau, un mot est répété comme un mantra près de 679 fois : « femmes ».

Sur ce plan, l’exercice budgétaire inscrit une petite révolution : toutes les mesures ont été examinées sous l’angle de l’égalité des sexes. Le gouvernement s’est ainsi penché sur la manière dont plusieurs sous-groupes – les femmes, mais aussi les jeunes, les aînés, les LGBT +, etc. – seront affectés par les nouvelles politique, une grille d’analyse dénommée ACS +.

Le bureau de la Condition féminine gagne du galon, et devient un ministère à part entière. Une somme de 100 millions sur cinq ans (dont 10 millions en 2018-2019) lui sera d’ailleurs confiée pour mener à bien sa mission en compagnie des organismes communautaires.

Alors que le salaire médian d’une Canadienne est de 31 % inférieur à celui d’un homme, le gouvernement Trudeau imite aussi l’Ontario et le Québec en adoptant une loi sur l’équité salariale. Elle s’appliquera aux secteurs d’activité régis par le fédéral, comme les banques, mais aussi aux appels d’offres d’un million de dollars ou plus.

À cette grande mesure s'ajoute une multitude de programmes plus ciblés, comme la création d'un fonds pour les femmes en construction ou d'une subvention incitative aux apprenties, des mesures qui coûteront près de 20 millions sur cinq ans au fédéral.

3. Des appuis pour les Premières Nations

Les Autochtones ne sont pas en reste dans le budget Morneau, qui s'inscrit en droite ligne dans le changement d'approche du gouvernement Trudeau.

Ottawa propose ainsi d'investir cinq milliards de plus sur cinq ans pour « s'assurer que les enfants et familles autochtones aient une chance égale de réussir », comme l'explique le document.

De ce montant, près de 1,5 milliard sera consacré à la santé des Premières Nations, alors que le gouvernement fédéral reconnaît les écarts importants qui existent avec la majorité blanche, notamment au niveau du taux de suicide dans les communautés.

4. De l'argent pour mieux connaître le monde numérique

Mesure qui pourrait ouvrir la porte à une nouvelle régulation des géants du Web : Ottawa accorde 15,1 millions sur cinq ans à Statistique Canada pour documenter les effets du commerce numérique international.

« Il est apparu que le gouvernement se devait de combler des lacunes quant aux connaissances des nouvelles industries de services transfrontaliers, tel que les services de diffusion de contenu qui sont de plus en plus importants pour l'économie canadienne », indique le budget. Les données recueillies permettront « d'élaborer des politiques fondées sur des éléments probants ».

5. Un coup de pouce pour les médias

Pour éviter justement que le milieu culturel n'étouffe lors de sa transformation numérique, le fédéral investira 172 millions sur cinq ans pour maintenir la valeur actuelle du Fonds des médias du Canada (FMC). La somme est injectée pour compenser la contribution décroissante des câblodistributeurs — et indirectement, pour atténuer l'effet de la migration des habitudes d'écoute vers le Web. En trois ans, la valeur du fonds a fondu de quelque 400 millions à 350,5 millions. C'est ce dernier chiffre que le gouvernement a choisi comme seuil à maintenir — la Coalition pour la culture et les médias espérait plutôt 375 millions.

Ottawa versera aussi 50 millions à des organismes non gouvernementaux indépendants pour qu'ils soutiennent le « journalisme local dans les communautés mal desservies ». Rien dans le budget ne concerne une majoration ou un élargissement du Fonds du Canada des périodiques.

6. Une importante injection de fonds pour la science

Du côté de la science, le fédéral procède à une injection massive de fonds. Le budget 2018-2019 prévoit ainsi l'investissement de près de quatre milliards de dollars dans le système de recherche scientifique du pays.

La part du lion revient aux conseils subventionnaires du Canada, ces organismes qui servent d'intermédiaires entre le gouvernement et les chercheurs, qui récoltent 925 millions à eux seuls. 210 millions iront aux Chaires du recherche du Canada.

Le Conseil national de recherche, qui récolte 540 millions, sera aussi revampé pour servir de coeur à la collaboration scientifique au pays.

Quelque 572,5 millions iront aussi à l'exploitation des nouvelles technologies – le big data, etc. – dans le domaine scientifique.

7. Des précisions sur la réforme fiscale

Ottawa n'augmentera pas le taux d'imposition sur les gains en capital, mais a précisé dans son budget les règles que devront respecter les sociétés privées qui enregistrent d'importants revenus provenant de placements passifs.

Ces règles, qui font partie de la grande réforme fiscale dévoilée l'an dernier, ne toucheront qu'une petite partie des petites entreprises, environ 3 %, mais devraient générer 43 millions en 2018-2019, selon les documents budgétaires du ministre des Finances. Cette somme grimperait à 305 et 650 millions lors des deux années suivantes.

Toujours mal digérée par les regroupements de PME, la mesure cible les sociétés dont les revenus de placements passifs dépassent 50 000$ par année. Les sociétés qui se trouveraient au-dessus de ce seuil verront, en contrepartie, une diminution graduelle du plafond d'affaires de 500 000$ qui donne droit au taux d'imposition réservé aux PME.

8. Fin du système de paie Phénix

Dans une phrase glissée en douce dans la brique de 423 pages du budget fédéral, le ministre des Finances Bill Morneau annonce son intention d'abandonner le système de paie Phénix. Toutefois, d'ici là, il devra encore y engloutir des fonds pour tenter de corriger ses ratés.

« Dans le cadre du budget de 2018, le gouvernement s'engage à aller plus loin et à prendre les mesures requises pour régler les difficultés liées au système de paie Phénix, y compris en annonçant son intention d'éliminer en fin de compte Phénix », est-il mentionné dans le budget.

Le gouvernement parle maintenant d'entreprendre l'élaboration de la prochaine génération du système de paie du gouvernement fédéral qui correspond davantage à la complexité de la structure salariale du gouvernement.

Des milliers de fonctionnaires fédéraux ont été victimes de ce système de paie conçu par l'entreprise privée, mais qui connaît des ratés depuis son application au secteur public fédéral. Le système de paie a entraîné des milliers de cas de trop-payés et d'employés qui ont cessé d'être payés pendant des semaines, voire des mois.

Avec Guillaume Bourgault-Côté, François Desjardins, Guillaume Levasseur et La Presse canadienne

Federal government to scrap Phoenix pay system, invest in better customer service at CRA
Global News
Leslie Young
February 27th 2018

The federal government plans to scrap the beleaguered Phoenix pay system for federal employees, though its death won't come quickly.

In the 2018 federal budget, the government announced that it intended to "eventually move away from Phoenix" and explore the "next generation" of the federal government's pay system. This won't happen anytime soon though. The budget allocates $16 million over the next two years to researching a new pay system.

Not only that, the government is also planning to invest $431.4 million over six years to try to fix the existing Phoenix system.

Added to the hundreds of millions the government has already invested in fixing Phoenix, that puts the total bill at roughly $900 million – on a system that will ultimately be dumped.

"By the time they're done, if this is all the money they put in, they will be out almost a billion dollars in spending just to correct the Phoenix system," said Randall Bartlett, chief economist for the Institute of Fiscal Studies and Democracy at the University of Ottawa. "But then they are planning to abandon the system subsequently and create an entirely new system."

The Phoenix pay system was supposed to save money: $70 million per year, starting in the 2016-17 fiscal year, according to a report from the Auditor General. That same report noted that over half of public servants had experienced some issue with pay – being paid too little, too much, or not at all.

Scrapping Phoenix directly contradicts the Auditor General's recommendations. In its report, the Auditor General noted Phoenix's continued troubles, but said that it would actually be worse to start again from scratch with a new pay system as any new system could face the same difficulties.

Bartlett shares these concerns.

"It's going to be the same departments managing this system that bungled the process in the first place. So it really makes you wonder what sort of process will be put in place to make sure that they don't repeat with the next system the same failures they did this time."

Bartlett said that if he was a public servant, this budget would give him "no confidence" that his pay problems would be fixed in a timely manner.

Not only that, he said, but his students at the University of Ottawa are actually saying that they're less likely to consider jobs in the public service, given the ongoing pay problems.

“You actually dissuade people from actually wanting to enter the public service because they’ll realize that my pay, and potentially servicing my mortgage and saving for my children’s education and all of these things are actually at risk by joining the federal public service.”

Answering tax questions

The federal government is also investing in front line customer service at the Canada Revenue Agency.

It’s been an ongoing problem: the Auditor General noted in November that the CRA’s call centre only picked up the phone about one-third of the time.

“Generally it’s been very difficult, especially for average taxpayers, to get ahold of a live voice at the CRA. Quite often it’s a busy signal,” said Don Carson, national leader of the transaction tax services group for MNP, a financial services company.

Although there have already been some improvements, the federal government is allocating $206 million over five years to improve its telephone service, improve its online services and increase the number of community-based programs that help low-income people prepare their tax forms.

Carson is pleased to see the investment.

“I think that will make people happier to get a live voice because to get nothing but a busy signal can be very frustrating.”

He hopes that the call centre’s hours of operation will be expanded too to allow for more people to call with questions.

Of course, a lot of questions might be avoided if the tax system was less complicated to start with.

“For the average individual to do his or her return, it’s very, very difficult,” he said. “I wouldn’t expect my mom to do her return because it’s too complex for the average individual.”

“I think there are lots of measures that could be done to reduce the complexity of the tax system. I don’t really see anything in this budget that will reduce the complexity.”

Trudeau government appoints former Omar Khadr lawyer as federal judge
Global News
Maham Abedi
February 27, 2018

Prime Minister Justin Trudeau‘s Liberal government has appointed one of Omar Khadr‘s former lawyers as a justice in federal court.

The appointment of Toronto-based lawyer John Norris was announced by Justice Minister Jody Wilson-Raybould Monday. Elizabeth Walker, a lawyer and chairperson of the RCMP External Review Committee, was also appointed to the position.

Norris and Brydie Bethell were Khadr's lawyers from August 2011 until they stepped down in January 2013. They represented him in his legal battle against the government's Ministry of Public Safety in 2011, which ultimately resulted in the former child solder's return to Canada. The criminal and national security lawyer has also indirectly been involved with cases involving Khadr in the past.

The lawyer has taken on several other high-profile criminal cases involving murder, suspected terrorism and sexual assault. According to his website, he has appeared in the Supreme Court of Canada about 20 times.

Norris is also an adjunct professor at the University of Toronto's Faculty of Law and has worked with several legal advocacy organizations over the years.

The Trudeau government's appointment of Norris led to online criticism Tuesday. Several Twitter users expressed surprise that Trudeau — after agreeing to give Khadr a $10.5-million payout — would also appoint his lawyer as a judge.

Lorne Waldman, a Toronto-based lawyer at Waldman & Associates LLP., explained that all criminal lawyers represent controversial figures — and that shouldn't reflect on their personal views.

Norris just doing his job, lawyer says

"A lot of judges who they've appointed to court have represented murderers, does that disqualify them from being judges?" Waldman asked. "That's the nature of our job, we represent people, and sometimes these people we represent are controversial."

He added that representing controversial figures is often emotionally difficult for lawyers, but it comes down to upholding the rule of law in Canada, which promises everyone a fair trial.

Waldman gave the example of John Rosen, who was the defence lawyer for Paul Bernardo, one of Canada's most notorious serial killers. He explained that Rosen stepped up to do the job on the principle of upholding the rule of law, even though the evidence against the now-convicted killer was substantial.

Rosen earned praise from the Criminal Lawyers Association for taking on the job but was also criticized for representing Bernardo.

Government stands by its pick

David Taylor, the communications director for the minister of justice, responded to the criticism of Norris' appointment saying the selection was made after several rounds of evaluations and consultations around the country.

"Our Government is committed to ensuring that the most meritorious candidates are appointed to the bench in order to meet the needs of all Canadians," Taylor wrote in an email statement to Global News Tuesday.

"In making appointments, the Minister considers a candidate's case law and subject-matter expertise, and works closely with Chief Justices, to ensure her appointments meet the needs of the courts."

A press release from the government also highlighted the Liberals' revamped judicial selection process, which is meant to increase "transparency, merit, and diversity."

It added that the appointments of Norris and Walker "meet the highest standards of excellence and integrity."

Editorial: Court access issues are not just about media
Both the Canadian Charter of Rights and Freedoms and the Supreme Court of Canada have made it clear that the media plays a vital, protected role in reporting on the justice system. Without it, there is opportunity for corruption and for the process to become one that members of the general public do not understand or feel works for them.
Saskatoon StarPhoenix Editorial Board
Regina Leader-Post Editorial Board
February 27, 2018

Why should you care that media were blocked from proceedings regarding the La Loche school shooter?

It's not for the sake of the news outlets involved, although reporters were forced to wait in the cold for four hours. No, the public should care because transparency is extremely important to the proper administration of justice.

Both the Canadian Charter of Rights and Freedoms and the Supreme Court of Canada have made it clear that the media plays a vital, protected role in reporting on the justice system. Without it, there is opportunity for corruption and for the process to become one that members of the general public do not understand or feel works for them.

On Friday, a judge announced the high school student who opened fire at the school in La Loche in 2016 will be sentenced as an adult for his crimes. There is much public interest across the country in this case, but the media who showed up to cover the hearing were not even allowed to enter the courthouse, let alone the courtroom. Just how this decision was made is still unclear. At least 90 minutes after proceedings had begun, a single pool reporter was allowed into the small courtroom.

Some are saying journalists should have just attended a feed of the proceedings in Meadow Lake. This was never a real choice for organizations wanting to give full coverage to the public. A feed only shows a very small amount going on at the front of the courtroom — really only what the judge is doing. Reporters need to report on the actions of the accused, the lawyers and people in the gallery. Reporters

knew family members would get priority seating, but had no indication they would have absolutely no access to the proceedings.

Judges do not usually comment publicly on court proceedings, but Judge Janet McIvor later made it clear she had no idea the media had been kept from observing until after her decision was passed down.

Another reason to care about the limited media access to Friday's proceedings lies with the victims of the shooting who could not attend. As shooting victim Charlene Klyne said, "How is that fair to the people who couldn't be there that are victims and stuff? This is ridiculous."

The RCMP have, so far, been unwilling to talk about their part in this situation. A spokesperson simply said the doors were not locked by RCMP, and would not answer reasonable questions, including whether or not the RCMP will review the events that led to the media's exclusion from the courtroom.

When the media are shut out, so are average citizens. This situation must be addressed to keep it from happening again.

Court case highlights concerns about Indigenous representation on juries
The Globe and Mail
Sunny Dhillon
February 27, 2018

When Derek Grose saw the jury summons, he had some concerns. If he was selected to serve, how much time would he spend away from the office? And could he even afford to do so?

But Mr. Grose, who works at a Yukon First Nation, says his colleagues assured him he had nothing to worry about – as an Indigenous person, he would not be chosen for the jury.

He ultimately wasn't, and the exclusion of Mr. Grose and three others would yield an allegation that the Crown had deliberately used its peremptory challenges – which do not have to be explained or justified – to block jurors who appeared Indigenous.

The case highlights concerns about the lack of First Nations representation on juries – and the belief by some that the exclusion has not always been accidental. It also demonstrates the difficulties that can come with challenging a process left to the discretion of the lawyers involved in a case.

The recent case of Gerald Stanley, a white Saskatchewan man acquitted in the shooting death of Colten Boushie, who was Indigenous, has called attention to the use of peremptory challenges by the defence. In Mr. Stanley's case, the approach yielded a jury which did not appear to have any Indigenous members.

In the case for which Mr. Grose was summoned, that of Christopher Cornell, the accused was Indigenous and Mr. Cornell's lawyer would argue the Crown acted improperly.

The Public Prosecution Service denied the charge and in a written statement said it has never purposely blocked Indigenous people from serving. An appeal court overseeing the case ruled in the Crown's favour last August.

David Tarnow, Mr. Cornell's lawyer, said in an interview that he plans to seek leave to appeal to the Supreme Court of Canada.

"It's a matter of national importance, especially at this very moment," he said.

Grand Chief Alvin Fiddler of the Nishnawbe Aski Nation – who co-chaired a committee reviewing First Nations representation on Ontario juries after a 2013 report by former Supreme Court Justice Frank Iacobucci found the situation facing Indigenous people represented a crisis in the provincial justice system – said it is not unusual for Indigenous people to believe they will be blocked.

"Unfortunately, I think that's the reality for many in our community right across the country," he said in an interview. "Any time there's a jury trial of any kind, you hardly ever see a First Nations or Indigenous person on the jury."

Mr. Cornell was convicted on all eight counts he faced in connection with the September, 2011, robbery of a Yukon general store and the subsequent firing of a gun at a police officer. The officer was not directly struck by a bullet fired through his windshield but was injured by flying glass and metal and missed three months of work. Mr. Cornell was sentenced to more than 11 years in prison.

It was during the jury selection process – held in September, 2013, inside a Whitehorse arena – that Mr. Cornell's counsel first raised concerns about the Crown's conduct. Mr. Tarnow asked to speak with the judge after the Crown's fourth peremptory challenge.

In an affidavit later filed with Yukon's Court of Appeal, Mr. Tarnow said it had been his intention to select a few Indigenous people to the jury, given his client's background. Mr. Cornell is a member of the Kwanlin Dun First Nation. The lawyer told court the Crown made "an obvious attempt to keep First Nations people off the jury."

In the affidavit, Mr. Tarnow said the judge did not admonish the Crown and only one of the 14 people selected to the jury appeared Indigenous. That one individual would be an alternate. Mr. Tarnow said his client was ultimately tried by 12 people who were not Indigenous.

Keith Parkkari, the senior Crown prosecutor for the case, in his affidavit disputed Mr. Tarnow's version of events.

"As with any jury I have ever been involved with selecting, the racial origin or background of potential jurors was not a factor I took into account in deciding whether to exercise a peremptory challenge," he said.

Mr. Parkkari said it is not always possible to form an opinion on someone's ancestry from their appearance. He said his goal had been to select jury members who had life experience and were typical members of Yukon society. He said he believed at least three of the 14 people initially selected to the jury were Indigenous.

Coral Brown, the Crown's witness co-ordinator, who is Indigenous, also told the court multiple jury members appeared Indigenous.

However, Christiana Lavidas, the Crown's junior prosecutor on the case, disagreed. Ms. Lavidas in her affidavit said she did not recall any First Nations individuals on the jury, aside from the alternate.

The Court of Appeal of Yukon in its August decision said unless the ethnicity of the jury panel is known "it is impossible to establish that the jury was unfairly constituted as to race." It said Mr. Tarnow offered impressions and suppositions without any concrete facts and "failed to produce any cogent evidence of improper prosecutorial conduct."

The appeal court noted a pretrial application by Mr. Tarnow that 25 per cent of the jury panel be Indigenous to reflect the community was rejected. The judge hearing the application ruled Yukon's system of selecting potential jurors from the medical insurance list was adequate and Mr. Cornell was not entitled to a jury panel whose composition mirrored Whitehorse or Yukon.

Kent Roach, a law professor at the University of Toronto, said Mr. Cornell's case – as well as a 2001 Ontario appeal that also questioned the Crown's use of peremptory challenges and failed – demonstrates that "while there is a potential to challenge discriminatory uses of peremptories by the Crown, it will be very difficult to do so.

Prof. Roach said the abolishing of peremptory challenges, as recommended by the Aboriginal Justice Inquiry in Manitoba in 1991, is urgently needed. The federal government has said it will examine the way juries are chosen, following Mr. Stanley's case.

Mr. Parkkari had in his affidavit said he could not tell if Mr. Grose was Indigenous.

When contacted by The Globe, Mr. Grose confirmed he was Indigenous and recalled the jury selection process. "I remember getting a letter in the mail. I read it and thought, 'Oh, great, jury duty, I don't know if I have time for that.' But as a Canadian citizen, I went," Mr. Grose said in an interview.

A court transcript shows Mr. Tarnow asked Mr. Grose's occupation. After Mr. Grose said he worked for the Carcross/Tagish First Nation, Mr. Parkkari used his challenge. Mr. Grose was excused.

"In some ways, I was a bit relieved," Mr. Grose said, referencing his concerns about work and money. "But in other ways, as I was walking out, I thought, 'Hmm, that's interesting.' It happened exactly how people in my community thought it would go."

Mr. Grose questioned why Indigenous jurors would ever be viewed as biased and other groups of people would not.

Grand Chief Fiddler said progress has been slow across the country when it comes to tackling First Nations representation on juries.

"I hear over and over again that First Nations people are excluded from the justice system, and yet we're the ones that are filling up on the corrections side, the jails. We just find that governments, generally, whether they're provincial governments or the federal government, they're not making that effort to try to begin to reverse what's been happening for many, many years," he said.

Lesser budget measures cover array of issues, from dead dollars to PTSD
National Post
The Canadian Press
February 27th 2018

OTTAWA — Beyond the usual headline-grabbing, big-ticket items, the federal budget Finance Minister Bill Morneau introduced Tuesday includes a variety of smaller fare, from a plan to phase out obsolete currency to the funds to fight a persistent forest pest. Among them:

The budget offers a tax break for the costs of keeping a psychiatric service dog. There is already a break for service animals like guide dogs for the blind, but the government is extending the benefit to cover dogs specially trained to help people with conditions like post-traumatic stress.

The 15-per-cent, non-refundable tax credit covers costs including food and vet care.

It does not, however, apply to a regular pooch that might provide comfort or emotional support.
The budget does not include any specific details about how much the measure will cost.

Veterans Affairs will get $24.4 million over five years to help finance repairs and restoration work at the gravesites of military veterans.

The department last year reported that about 45,000 such graves needed work, a job that would take 17 years to finish with existing funding.

The new money will do the job in five years, the budget says.

The budget includes an effort to improve the way political leaders engage in televised debates during election campaigns, earmarking $6 million over two years to support a new process.

Leaders' debates have been run in the past by a consortium of broadcasters, but in recent years the process has become inconsistent and controversial, with some leaders being excluded and others opting not to take part.

The budget says the government will offer proposals for debate formats over the coming months and may bring in legislation.

The budget provides funding for six new Superior Court judges in Ontario and a new appeal court judge in Saskatchewan.

As well, the budget allots money to expand unified family courts, providing 39 new judicial positions in Alberta, Ontario, Nova Scotia and Newfoundland and Labrador.

There is also money set aside for additional administrative support to the Supreme Court of Canada and the Federal Court.

Prison farms at Joyceville and Collins Bay, Ont., which were closed down by the previous Conservative government, will be re-opened, the budget says.

It sets aside $4.3 million over five years to restart the operations.

The farms will be run by a Correctional Service rehabilitation agency.

The budget includes up to $74.75 million over five years to fight the forest-threatening spruce budworm in Atlantic Canada.

The destructive pest is one of the greatest threats to spruce forests.

The money will be spent on a 60-40 basis with the federal government taking the larger share and provinces and industry handling the rest.

The Bank of Canada long ago stopped printing a number of paper bills, from the humble $1 note to the rarely seen $1,000 bill, although they remained legal tender.

The federal budget says that will come to an end with new legislation covering $1, $2, $25, $500 and $1,000 bills.

While the notes will no longer be legal tender, the Bank of Canada will continue to honour the bills and exchange them at face value.

The faces of Phoenix: Childbirth, a broken pay system and 'a magical unicorn'
Ottawa Citizen
Bruce Deachman
February 27, 2018

A week prior to the second anniversary of the Phoenix pay system's 2016 rollout, a foil balloon in the shape of a "2" hung in the dining room of Meredith Phillips' Ottawa home.

It was not there as some rueful joke, but rather in celebration of the second birthday of Phillips' daughter, Agnes, who was born, prematurely, on Feb. 8, 2016.

That Agnes arrived early may have been something of a godsend, as Phillips was already on maternity leave when Phoenix was unleashed — also by premature delivery — on the federal public service.

That timing gave Phillips, then 34, nine months to prepare for the problems heading her way.

An entitlement officer with Indigenous and Northern Affairs Canada, she and her partner, Adam Martin, had expected there would be some unforeseen pay problems when she returned to work. Since Phoenix was launched, the pay system has struggled to deal with changes for federal employees, including when it comes to such temporary measures as maternity leaves. Accordingly, the couple saved as much as they could throughout Phillips' leave.

So, when she returned from leave on Nov. 12 and her first subsequent paycheque failed to materialize, she wasn't particularly concerned. She called the pay centre in Miramichi, N.B., and was told there was a backlog and to simply wait another couple of weeks.

Her husband, meanwhile, had just gone on parental leave from his job with the Department of Finance, and the couple feared that his salary, also paid through Phoenix, might be affected.

"I was quite worried," Phillips said. "We'd heard all the stories coming out, and it was definitely a conversation we had. I said, 'Is this a smart move? We need one of our pays to be solid. It's not like I'm trying to be selfish here — I fully support you in taking parental leave, but…'"

Christmas came and went, and still she received no pay. In conversations with her departmental pay adviser, she was told that, as she was receiving no pay at all, her file was a Tier 1 priority. But nothing in anyone's actions made Phillips feel that way, she says.

In early January 2017, getting nowhere with pay centre employees or those in her own department, Phillips contacted the office of her MP, Liberal cabinet minister Catherine McKenna.

"I asked them, 'I'm not getting paid. Can you guys get any information? It's not as much about me getting paid, but can you give me some sort of expectation? I understand that you're behind, but can you give me a date so I can manage the funds?'"

According to Phillips, the pay centre's reply to McKenna's request was fairly swift and decisive: Her pay issues, she was assured, would be fixed by Jan. 25.

"So I was good, I was happy."

Her elation was short-lived.

“Jan. 25 came around and … I didn’t get paid!” she recalls. “I thought, ‘You’ve got to be kidding me!’ That was a big up and down. If my own MP can’t get an accurate response, then what can I do?

“Yeah, Jan. 25 was tough.”

Her husband’s three-month parental leave, meanwhile, was coming to an end. It had gone surprisingly well in terms of pay — he’d had difficulty getting his top-up pay, but that was about it as far as the problems went. In early February, he received a call from someone at the pay centre in Mirimachi to discuss his Record of Employment.

Phillips recalls standing in awe at this development — that someone at Mirimachi had called him, after she had gone to such great efforts for months to speak with anyone there who could help her.

“I thought, ‘Who is this person?’ It was like a magical unicorn.”

Better yet, her husband asked the magical unicorn for help with Phillips’ case. She hadn’t, by then, been paid in 16 weeks.

The magic worked: Her pay returned to normal by the end of February 2017.

“I did get my pay fixed, but only because this woman had contacted Adam to reconcile his stuff. It was a fluke that I got my pay fixed.

“It was an acute period of terribleness, and then it was gone.”

She described her journey through the pratfalls of Phoenix as not unlike stages of grief.

“At the start I was like, ‘OK, it’ll get fixed. Everything has glitches. It’s just getting implemented. It’ll be OK. This is just training wheels. They’ll figure it out.’

“And then it was like a mild concern. ‘OK, I’ll do all these steps they’re telling me to do, and it will get fixed.’

“And then it didn’t, and at one point I felt really angry about it — frustrated and angry at the same time, because I felt I couldn’t talk to anybody because the people that you call don’t have the information, because they’re just working at a call centre. And the people in my department didn’t know a lot — they would just try to contact the pay centre, but the pay centre’s not contacting me back.

“And then at one point I was just so upset. I can only laugh about it now because my pay did get reconciled.”

She may not be laughing for long, however. She recently moved into an acting Policy Officer position, and Phoenix does not adapt well to change.

“Where I am in my career, I’m in some pools for other departments. I don’t know if I wouldn’t move because of Phoenix, but I definitely would be afraid.

“Now with the acting pay, I hope nothing gets super affected, but I have no idea,” she says. “I’m holding my breath for this week.”

Then, last week, Phillips went online to access her most recent pay stub, and discovered three paycheques. Two of them she eventually reconciled, but the third, with a net-zero balance, indicated an overpayment of $18,000. Colleagues of hers who have had similar experiences assured her that this is “normal.” Her opening salvo of questions in a phone call to the pay centre didn’t yield her any satisfactory answers, although she said she was asked by the representative there if she’d be willing to take a client-satisfaction survey.

“I wasn’t necessarily sure how to answer,” she wrote in an email. “While the agent was perfectly friendly, I wouldn’t necessarily say I received a ‘service.’ He wrote down what I told him verbatim and then forwarded that to a (compensation) adviser. I’m not sure if that was a service or if it was more of a method of transference of my issue to a comp adviser. So it was a tad laughable.

(A spokesperson for Public Services and Procurement Canada, the department that is responsible for Phoenix, said privacy legislation prevents the department from discussing details of the employment and pay of individual federal government employees.)

Canada learned from Australian experience, Phoenix minister says
Carla Qualtrough defends efforts to manage Phoenix fallout after CBC/Radio-Canada report
CBC News
February 27, 2018

The minister responsible for the federal government's Phoenix pay system said her government is aware of the problems associated with a similar system launched in Australia, and has learned from the mistakes made Down Under.

Public Services and Procurement Minister Carla Qualtrough was reacting Monday to a CBC/Radio-Canada report which revealed the Canadian government did not consult with the state of Queensland, Australia, after it suffered a "catastrophic" rollout of its IBM-provided payroll system in 2010.

"We did our homework," Qualtrough told Mathieu Nadon, host of Radio-Canada's Téléjournal Ottawa-Gatineau. "We looked at the different payroll projects that IBM created."

She said the government has analyzed and learned from the findings of independent experts who have examined the Australian experience.

"On the governance of the system, Australians have had problems similar to ours. We have set up a different system, we have learned from Australia," the minister said.

The government also looked at the successful experiences of IBM payroll systems in the Alberta and Ontario governments.

Miramichi remains

Qualtrough said Ottawa will not follow the example of Queensland, which had also centralized its payroll department, but quickly decided to decentralize it to correct the problems.

Canada's pay centre in Miramichi, N.B., is here to stay, but the government will increase human resource experts in the 101 departments that use Phoenix, Qualtrough said.

"We are committed [to keeping] Miramichi. We hired experts, we just can't tell these people that they have to go elsewhere in the country," she said.

However, the government still wants to change the pay process.

"We will create clusters of specialists who will be assigned to a particular ministry. We tried the experiment in three departments and we had good results," the minister said.

Qualtrough added that the government still plans to recruit about 100 more people to work at the call centre.

No plans to dump Phoenix

There are no plans to scrap the Phoenix pay system entirely — at least not at the moment.

"We have to pay our people every two weeks, so we can't get rid of it because there are no other pay systems. My priority is to stabilize the system, to ensure that all public servants are paid on time and accurately," Qualtrough said.

However, the minister said the government is looking at a replacement, noting that it could take another two or three years to find one.

"We recognize that Phoenix is not the state-of-the-art system we need. We chose it almost 10 years ago, so while working to stabilize it, we are looking at what other system could possibly replace it," she said.

In the meantime, she could not say how long it will take for the government to fix all the problems with the Phoenix system, nor could she shed any light on how much the bill for this system will be. She maintains, however, that it will not cost $5 billion, a figure floated by Australian payroll technology consultant Malcolm Thatcher, a key witness at Queensland's public inquiry committee.

"We do not know yet how much it will cost," Qualtrough said. "We have invested about $300 million since we formed the government, and it continues."

Correcting Phoenix: Collecting overpayments from workers easier said than done
'It's a very long and complex process,' according to Australia's Queensland Health executive director
CBC News
Catherine Lanthier and Paul Jay
February 28, 2018

Eight years after a payroll fiasco similar to Canada's experience with Phoenix, the Australian state of Queensland is still struggling to recover tens of millions of dollars paid in error to its employees.

Queensland Health embarked on its own payroll modernization plan when it centralized pay operations for 78,000 health care workers in 2010, using an IBM-provided payroll system.

Almost immediately the department discovered many people's pay was incorrect, and over the next two years they moved back to a more localized payroll system to avoid continuous issues with pay stubs.

Getting back the money from overpayments, however, has proven easier said than done.

Canada owed $295M
In the first four years after the 2010 launch, there were about $130 million (Australian) in overpayments, according to Michael Walsh, the executive director of Queensland Health. For smaller claims — those of $200 or less — the government granted an amnesty. But some $45 million still hasn't been recovered.

"It is a challenge," Walsh said. "It's always a challenge when people are being asked to repay an overpayment. It's a very long and complex process."

It's a problem as well for the federal government in Canada.

As of June 2017, some 59,000 employees owed the government a total of $295 million Cdn as a result of overpayments related to the IBM-customized Phoenix pay system, according to a November report from the auditor general.

Another 51,000 employees who were underpaid were owed $228 million at that time, the report said.

(The Phoenix system is different from the payroll product Queensland used, IBM says. 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.)

'Completely incomprehensible'
But overpayments can be contentious, particularly when workers can't understand how the government calculates the amount.

Veronica Pyke was a nurse in a small town in southeastern Queensland in 2010 when she noticed her pay stubs were incorrect, with overpayments for overtime she wasn't entitled to but also underpayments that didn't take into account on-call work she had performed.

She left Queensland Health to join the union representing nurses and midwives later that year with her issues still unresolved, but in 2011 she got a letter from the government telling her she owed $1,800 (Australian) in overpayments.

She chose to have a case manager assigned because she didn't agree with the amount, but she said it was another five years before anyone contacted her again. When they did, she asked for documentation to explain the $1,800 amount.

"I got sent an enormous wad of paperwork that was completely incomprehensible," Pyke said.

"Unless you worked in the pay office, there was no way you could know what all the pluses and minuses meant, and there were no specific dates for it either."

Pyke tried to get a face-to-face meeting before eventually handing the dispute over to the union. She says eight years after she first identified the problem, the issue still hasn't been resolved.

Unions upset over clawbacks
Even money the government has recovered has come at a cost, say workers and union representatives.

In 2012, the ruling Labor Party in Queensland was defeated and the opposition Liberal National Party took power. It introduced legislation that allowed the government to take back money owed from current employees.

John Gunner, a nurse at Queensland Health until 2017, was told he owed about $2,800. When he went through his pay stubs, however, he said couldn't find any evidence that there was anything unusual.

But the government assigned him a case manager, who made the decision to take the amount out of his six weeks of leave balance.

"To this day, I've not been able to make an argument that satisfies them to say I don't believe I owed that. It's very hard to make that argument now that they have the money," he said.

Police involved in fraud investigations
Beth Mohle, the secretary for the Queensland Nurses and Midwives Union, said 88 health-care workers were actually visited by police because of fraud allegations in relation to overpayments.

While some of those cases did involve people who were taking money they weren't entitled to, "a significant number" were falsely accused, Mohle said.

"There have been significant financial impacts for individuals who will never recover from this," Mohle said.

Payroll consultant Malcolm Thatcher said any way an authority collects overpayments will be fraught with challenges.

"Underpayments are easy to fix, overpayments not so easy to fix, because of the very human issues on asking for money back," Thatcher said.

FUREY: Trudeau Liberals just tabled Canada's first full-blown social justice budget
Toronto Sun
Anthony Furey
February 27, 2018

Finance Minister Bill Morneau's third budget released Tuesday is very much a left-wing document and they're not even trying to hide the fact. For a supposedly financial document, it's rife with identity politics — touching upon multiple issues of gender and race.

Prior to the release they were teasing this as the first budget seen through a gender lens. Oh boy, do they deliver on that front.

The word gender appears 358 times. Choose another big issue, say, terrorism — that word doesn't appear once. It tells you something about priorities.

While the first chapter is wisely about bolstering the middle-class, chapter two — so their second priority — is all gender issues. They offer multiple pages to "addressing the gender wage gap", toss in $10 million for a Women in Construction Fund, herald the creation of a new Centre for Gender, Diversity and Inclusion Statistics and pony up $1.8 million for something called Engaging Men and Boys to Promote Gender Equality.

The detailed description for that last one contains this gem of academic nonsense: "At the same time, men and boys also have gendered intersecting identities and experience inequality, and are not all a homogenous group. This work will recognize that gender is not synonymous with women." For a document that's supposed to be about the prudent management of the public purse, that line reads like it's straight out of a first-year gender studies assignment.

The nuttiest of all, though, has to be the extra $173.2 million funding provided under a little section headlined "Irregular Migration: Managing the Border". The word choice of the title, "irregular", is a dead giveaway that this isn't going to be about halting illegal crossings.

The truth is it's pretty much money to further entrench open borders: "Funding would be used to manage the increased number of people seeking asylum in Canada this year, many of whom arrive with their families seeking quick, safe and compassionate processing. Funds would be used to provide short term processing and security decision-making capacity for the Immigration and Refugee Board."

While expedited IRB decisions is very much needed, “short term processing” means more of what we saw in Quebec, with border guards acting like bellhops, just in a more orderly and luxurious fashion.

The Liberals could have successfully stuck to their two marquee creations — extending parental leave and embarking on national pharmacare — without the added social justice shenanigans.

It’s also a bit of a sleight of hand trick to make it look like this is entirely a new and trendy budget, designed for a hip, young economy. The largest increases in the budget remain Old Age Security and the Canada Health Transfer, with healthcare increasingly funding our aging population.

“They dwarf new investments in gender-equality provisions like child care and shared parental leave, for which annual spending will rise about $550 million and $330 million respectively,” writes Paul Kershaw, a professor at the University of British Columbia’s School of Population & Public Health, in his public note on the budget. There’s nothing particularly wrong with this arrangement. It’s just that maybe the Liberals shouldn’t sell their new provisions as if they’re the meat and potatoes of this budget.

Likewise, there are a number of sensible pockets of funding that haven’t been put through the social justice wringer. Like tackling cyber security. Or working to reduce and streamline regulations and simplify the government procurement process. The latter two could end up saving us substantial amounts of money in the years ahead.

Yet the government buries these meaningful and commendable planks behind progressive announcements that could really amount to little more than talk.

At least they’ve managed to do all of this virtue-signalling without blowing past their previous financial projections. The fall economic update from last year predicted that this year’s deficit would be $18.5 billion. It actually clocks in at a more responsible $18.1 billion.

Then again, if you’re looking at the big picture that’s still almost double the $10 billion Justin Trudeau originally campaigned on. There is also no path to balance at all in the long-term projections, leading us to assume we’re still on track for deficits until the 2040s, as a finance report declared, if we keep on this path.

One thing’s for certain, this ain’t your parent’s Liberal Party. It’s a full blown social justice budget, the first of its kind. I asked one former PMO staffer from the Jean Chretien/Paul Martin years if his government would have tabled a budget like this. The answer? “Never in a million years.”

The social justice revolution has taken the law schools. This won't end well

One might expect Justin Trudeau and his ministers to jump on ideological bandwagons, but it is telling when law schools want to ride along too

National Post

Bruce Pardy

February 27th 2018

What is a law school for? According to the University of Windsor, revolution. Earlier this month, Windsor's law school released a statement on the jury verdict that acquitted Saskatchewan farmer Gerald Stanley of the second-degree murder of Coulton Boushie. According to the statement, the Canadian legal system is oppressive. "Canada has used law to perpetuate violence against Indigenous Peoples," it states, "a reinvention of our legal system is necessary."

The statement reveals how legal education has lost its way. One could be forgiven for thinking that the purpose of law schools was to train lawyers to understand legal principles and to think logically and critically. Instead, some law schools portray themselves as political actors working for a cause. At Windsor's law school, "we strive toward social justice. We take that commitment seriously." Indeed they do. So do other law schools in Canada, some more explicitly than others. Social justice means defeating oppression and righting historical wrongs — by favouring or blaming people as members of groups, and by undermining Western legal principles such as the rule of law, equal application of the law, presumption of innocence, and freedom of expression, thought, conscience and religion.

Numerous criticisms have been levied at the all-white jury verdict in the Stanley case. Some have advocated limiting an accused's right to peremptory challenges in jury selection. These objections are short-sighted. All accused have a limited right to dismiss potential jurors. As criminal defence lawyer Sean Robichaud explained to Canadian Lawyer magazine after the verdict, Indigenous people are over-represented as accused persons in the criminal justice system, and curbing peremptory challenges to ensure that juries represent victims would prejudice their interests.

There is an old saying that at any trial there are four versions of the truth: what the prosecution says, what the accused says, what the jury finds, and what actually happened. I have no idea what transpired at that farm in Saskatchewan. But Windsor's law professors seem to know — an impressive feat, since they were neither at the scene nor in the courtroom to hear the evidence. Due process exists, in part, to protect us all from the self-righteousness of mobs.

One might expect Justin Trudeau and his ministers to jump on ideological bandwagons, but it is telling when law schools want to ride along too. Windsor's says that "the law's response to Coulton Boushie's death is tragic, unnecessary and unacceptable." Boushie's death was indeed tragic and unnecessary, but the law's response was not. Even the lawyer for Boushie's family, Chris Murphy, said that "based on the evidence, the submissions made and the charges that the judge gave to the jury, a route of acquittal was a possibility."

Human history is rife with oppression. Women were oppressed when only men could own property, slaves when they had no right to liberty, Indigenous people when they were forced to attend residential

schools. Oppression results when some people do not have the same legal rights as others. But today's law schools resist the idea of equal application of the law and openly advocate progressive policies. For instance, when Trinity Western University, an independent religious institution that receives no government funding beyond its charitable status, proposed to open a law school, the established schools urged provincial law societies to ban TWU's graduates on the grounds that its community covenant did not reflect progressive values. The law societies in Ontario and B.C. obliged. The Supreme Court's decision on TWU's challenge of those decisions is pending.

Law schools may not need to preach revolution much longer. If you haven't noticed, the tipping point is near. Courts and academics are transforming the Charter of Rights and Freedoms from a roster of fundamental liberties into a social-justice charter that justifies curbing individual freedoms instead of protecting them. The words of section 15(1) of the Charter, which guarantee that "every individual is equal before and under the law," suggest that the same rules should apply to everyone. However, the Supreme Court has held that the law can nevertheless treat people differently if doing so produces equal outcomes, and that treating people the same — for instance, requiring the same qualifications from a minority job applicant as from others — might even violate section 15(1) if it produces unequal results.

Section 35(1) of the Constitution Act 1982 entrenches varying rights for different groups of aboriginal people. Courts may impose more lenient penalties on Indigenous accused pursuant to the Criminal Code and the Gladue principles, under which "the circumstances of Aboriginal offenders" may be taken into account. New rules require those accused of sexual assault to disclose information to the prosecution, such as emails sent by the complainant to the accused, so as to limit the ability of the defence to cross-examine (violating the principle that the burden of disclosure lies upon the Crown rather than the defence). The Law Society of Ontario has begun to compel its members to expressly acknowledge an obligation to promote progressive values. Individual liberties are no longer fundamental. Everyone is not subject to the same rules. The legal ground is shifting.

Not all law professors endorse the path that we are on, and fortunately they can still choose what to teach in their own courses. Not all lawyers or judges agree either. Many have kept their heads. Give them credit for thinking for themselves. After all, they probably went to a Canadian law school.

Bruce Pardy is professor of law at Queen's University and a member of the Law Society of Ontario.

Police used trips, booze, hockey tickets in $300K sting against John Buckley

Buckley was target of RCMP's Mr. Big sting during investigation into death of Victoria Rae Brauns-Buckley

CBC News
Blair Rhodes
February 27, 2018

Police used free trips, alcohol, clothing and even tickets to a Montreal Canadiens game in an undercover operation to get a murder suspect to confess to killing his mother.

Victoria Rae Brauns-Buckley was 57 when she was found dead in 2012 in the home she shared with her son, John Buckley, in Chester Basin, N.S.

John Buckley's confession came through a "Mr. Big" sting — when undercover officers pose as criminals to draw confessions from suspects.

In January, the confession was ruled inadmissible by Nova Scotia Supreme Court Justice Josh Arnold, prompting the Crown to withdraw the first-degree murder charge against Buckley.
The court released Arnold's full decision today, revealing details about the RCMP sting, dubbed Operation Hackman, which ran from 2015 to 2016.

In the days immediately following his mother's death, Buckley was charged with second-degree murder. He was held in custody for nine months before that charge was withdrawn and he was released from jail.

Operation Hackman
At the time of the sting, Buckley was living in Montreal on welfare. He had no fixed address and was working part time in a coffee shop.

According to Arnold's decision, police posing as members of a criminal gang made contact with Buckley 77 times during the sting. Officers accumulated up to 1,000 hours of audio recordings and spent more than $300,000.

Police were eventually able to ensnare Buckley by giving him a job interview with a fictitious company. He was paid $20 per hour and started working in a warehouse. His work soon involved travelling around Quebec and to destinations as far away as the Yukon. The "company" paid all his expenses on these road trips, including nights out drinking and occasionally clothing.

He was even taken to a Montreal Canadiens game, where the company bought him a Habs jersey.

The undercover officers repeatedly stressed to Buckley that the organization was like a family and that loyalty was important. Buckley was introduced to the head of the organization, the so-called Mr. Big.

They gave him a taste of the good life, not only by paying his expenses, but also by letting him see and handle gold and large quantities of cash. They also involved him in what appeared to be non-violent crimes.

Buckley's confession
As the sting progressed, the officers tried to convince Buckley that they could help him with the cloud hanging over him because of his mother's death. He started by telling them that he didn't kill her, but he did discover her body.

The undercover officers told Buckley there was a biker in prison who owed Mr. Big a favour. They said the biker would confess to killing Buckley's mother but that he needed Buckley to provide explicit details of the killing in order to make his confession convincing.

Buckley said he had plenty of information about his mother's killing because he'd been provided with evidence by the Crown when he was charged with second-degree murder. Gang members told Buckley the Crown disclosure wasn't good enough, and that he would have to provide even more information.

Buckley eventually told the officers he snuck up behind his mother and struck her two or three times on the back of her head with a hammer.
In his decision, Arnold quoted this exchange between Buckley and one of the officers:

"John Buckley: I, I was there when it happened.

1: How do you know?

John Buckley: Because I did it.

1: Is, is that the truth?

John Buckley: Yeah."

Limitations on Mr. Big stings
The Crown had requested and was granted a publication ban to protect the identities of the officers involved in this sting because they are still conducting undercover operations.

The Supreme Court of Canada has imposed strict limitations on how confessions obtained through Mr. Big stings can be used. The biggest changes came from the case of Nelson Hart, a Newfoundland man accused of drowning his two daughters. Hart was initially convicted of two murders but those convictions were overturned on appeal.

As a result of that case, the Supreme Court of Canada ruled that the confessions themselves were not sufficient, and that additional corroborative information is needed in order to make the confession relevant.

In his decision on the Buckley case, Arnold said there was no additional evidence beyond the Mr. Big confession, which he ruled was too prejudicial for a jury to see.

Buckley talked about striking his mother with a hammer, but the murder weapon has never been recovered. Buckley even took police back to the scene of the crime to help search for the hammer. Arnold noted that while there, Buckley tried to escape, jumping into the ocean while handcuffed. He had to be rescued by one of the police officers.

In dissecting the evidence against Buckley, Arnold noted: "In his Mr. Big confession Mr. Buckley said that he had snuck up on his mother in sock feet, without shoes. This could not be independently confirmed. Mr. Buckley said he had used a hammer. This could not be independently confirmed. Mr. Buckley said hitting his mother with a hammer made a certain noise. This could not be independently confirmed."

The Crown has already served notice it is appealing Arnold's decision.

Budget 2018 provides millions in new justice funding, expanded Unified Family Courts
Lawyers Daily
Cristin Schmitz
February 27, 2018

The federal budget proposed for the coming fiscal year includes millions in new legal aid funding for sexual harassment and immigration and refugee law cases, support for 46 new federal judgeships — including 39 to expand the Unified Family Courts (UFC) in four provinces — and money to boost staff and services at the Canadian Judicial Council and at the registries of the Federal, Tax and Supreme Courts.

Introduced in the Commons Feb. 27 by federal Finance Minister Bill Morneau, the Trudeau government's Budget 2018 is seen as a social policy-oriented/gender equality budget, with one theme being improving access to justice for Canadians, including women.

Liz Majic, a lawyer with Canada Without Poverty, said her anti-poverty group was "very pleased to see new funding to ensure legal representation for asylum seekers. We were also pleased to see a commitment to funding Unified Family Court. However, what would have been even better is dedicated funding to enhance legal representation, particularly for women fleeing violence in family court, and just generally, a bigger boost to legal aid funding to support the capacity of legal aid and community legal clinics to represent people," she told The Lawyer's Daily.

"Advocates have been calling for years for the federal government to take more leadership on this, and I hope this is just the beginning of even more funding soon."

Dan Kelly, a spokesperson for the Canadian Federation of Independent Business which has been pushing with the Canadian Bar Association to modify the proposed rules for passive investments in private corporations — an issue which affects the private bar — said Budget 2018 is somewhat of an improvement over what the government announced last year in July and October.

"But still the budget will create some new winners and losers," Kelly told The Lawyers Daily. "The worry that we have is that the new proposal for passive investments will apply to those who have had past passive investments, not just those that [have some] going forward. The previous scenario, both in the government's July proposal and in October, was that past passive investments would be grandfathered so they wouldn't be subject to higher taxes. And now if you have past passive investments you will lose the benefit of the lower rate of taxation on small business altogether at $150,000 in annual income. So that's the worry that we have right now. While this is an improvement — it will apply to fewer

businesses on one level — but the big concern for us is that past passive investments will now be captured under the formula, and you will lose some of the small business tax benefits going forward."

Lobbying to improve the tax changes as they affect lawyers and other small businesses will continue during upcoming federal consultations, and in the independent Senate, Kelly stressed.

Budget 2018 will be seen, however, as making positive contributions to reducing court delays and improving access to justice. The government proposes to create in the next fiscal year seven new superior court positions — six new judges for the Ontario Superior Court and one new judge for the Saskatchewan Court of Appeal.

This is at a cost of $17.1 million over five years starting in 2018-2019, and $3.7 million ongoing per year. That follows Budget 2017's $55 million over five years, and $15.5 million per year ongoing, to support 28 new judges on superior trial and appellate courts, including in Alberta and Yukon.

In a boon for family law litigants, the Trudeau government also announced it will create 39 superior court judge posts to start a UFC in Alberta (17 judges), and expand UFC in Ontario (12 judges), Nova Scotia (seven judges) and Newfoundland (three judges). The new posts, which require legislation to be created, will cost $77.2 million over four years, starting in 2019-20, and $20.8 million per year ongoing.

This will help to streamline family law litigation, and reduce expenses, for families experiencing divorce and separation.

This follows on Budget 2017's $16 million ongoing funding to the Canadian Family Justice Fund, which provides support services and programs to complement the UFCs. Currently UFCs are available province wide in Manitoba, New Brunswick and P.E.I., and in parts of Saskatchewan and Ontario. Budget 2018 will allow Nova Scotia and Newfoundland to complete their UFCS province wide and Alberta to establish its first UFC. The expansion will complete the UFC system in Atlantic Canada, extend UFC to more than half the population of Ontario and establish a foundation for further expansion in Alberta.

Budget 2018 also provides funding of up to $12.8 million in 2018-19 to the Department of Justice (DOJ) to address pressures facing immigration and refugee legal aid. Budget 2017 made permanent ongoing funding of $11.5 million per year to renew the immigration and refugee legal aid program, as well as $5.4 million over two years to address an anticipated increase in refugee claims related to the lifting of visa requirements for Mexican citizens.

The new legal aid primarily supports in-Canada asylum seekers during the refugee determination process including providing legal advice, information and representation. Federal funding is provided to six participating provinces that together make up 99 per cent of the national refugee intake and include, in order of volume: Ontario, Quebec, British Columbia, Manitoba and Newfoundland and Labrador.

Budget 2018 also proposes new legal support to victims of sexual harassment in the workplace, including $25.4 million over five years, starting in 2018-19, to boost legal aid funding with a focus on supporting victims of sexual harassment in the workplace. The government says the increased legal aid

funding will help more Canadians pursue civil legal remedies in cases where the workplace processes to address sexual harassment are unavailable, ineffectual, unsuitable or inadequate. The government says it will work in partnership with the provinces and territories but will not require them to match funding.

Budget 2018 proposes as well to provide new funding of $25 million over five years, starting in 2018-19, to develop a pan-Canadian outreach program to better inform workers, particularly those who are most vulnerable, about their rights and how they can access services if they experience harassment.

Budget 2018 also contains substantial funding boosts for courts and judicial institutions which have suffered a series of funding cutbacks in recent years. Notably, the Courts Administration Service (CAS) which serves the Federal Court, Federal Court of Appeal, Tax Court and Court Martial Appeal Court, will receive new funding of $41.9 million over five years and $9.3 million per year ongoing, starting in 2018-2019 to support the smooth functioning of the court. The money will mostly be used to hire front-line registry and administrative staff for the shorthanded courts, especially the Tax and Federal Courts. CAS did not, however, get the millions in funding it has repeatedly requested for years to buy a computer system enabling it to transition from an antiquated, largely paper-based organization.

The government said the new funding is aimed to ensuring that courtrooms are operating at full capacity and to enable the courts to hear and resolve cases more efficiently. Budget 2018 would also provide up to $4 million over two years to the Canadian Judicial Council, and up to $2 million over two years to the Office of the Commissioner for Federal Judicial Affairs, starting in 2018-2019, to support the judicial discipline process through which allegations of misconduct are investigated. Both bodies have been reeling under the millions of dollars in legal costs they have paid in connection with recent formal inquiries into the conduct of a handful of judges, including former judges Lori Douglas, Robin Camp and Paul Cosgrove.

Budget 2018 proposes an additional $9.6 million over five years, starting in 2018-2019, and $1.9 million per year ongoing, for the office of the registrar of the Supreme Court of Canada. The money will go to support the court's operations, legal resources and expanded communications initiatives to disseminate accurate information about the court's work and its role.

Other measures and funding announcements in Budget 2018 include:

$34.9 million over five years, starting in 2018-2019, with $7.4 million ongoing to Employment and Social Development Canada to support Bill C-65, introduced Nov. 7, 2017, to create a single integrated framework to protect federally regulated employees from harassment and violence in the workplace. The money will support the framework with enhanced prevention, response and support measures to ensure that federally regulated workplaces are free from harassment and violence, i.e. it will largely support the hiring of full time employees to implement prevention, response and support measures for Bill C-65. This will include: assisting workplace parties to resolve violence and harassment complaints; enforcing regulatory development and enforcement activities; designing training programs for inspectors; launching awareness campaigns; creating educational materials and tools; establishing an outreach hub that includes a 1-800 call centre and employer support services; administering grants and

contributions funding for initiatives related to harassment and violence in the federally regulated private sector; and carrying out an employee survey.

$10 million over five years starting in 2018-2019, with $2 million per year ongoing, to the RCMP, which has an annual budget of $3.4 billion, to establish a national unit that will co-ordinate the review of sexual assault complaints coded as “unfounded,” including oversight of the development of a curriculum and training, improving accountability across the RCMP for investigations, as well as creating an external advisory committee and supports for victims. The government says it is committed to treating victims of sexual assault with compassion and respect. The funding will be used to establish a national unit to co-ordinate the review of nearly 25,000 sexual assault case files since 2015, that were previously coded as unfounded.

$10 million over five years, starting in 2018-2019, and $2 million ongoing to the DOJ in support of the Access to Justice in both Official Languages Support Fund. The fund currently has a budget of $6.5 million, approximately. The fund was established by the 2003 Action Plan for Official Languages and allocated $45.5 million over five years to the DOJ to support the implementation of various initiatives including to improve access to justice in both official languages. The funding in Budget 2018 will support initiatives such as legal tools, training materials and public education to help improve Canadians access to legal information and services in the official language of their choice. The fund provides contributions to not-for-profit organizations, post-secondary institutions and provincial and territorial entities, including provincial courts, to undertake activities/projects to improve access to justice for members of official language communities. Budget 2018 would expand this program so that more activities and projects can be funded by the support fund in order to improve access to legal information and services in both official languages.

$81.4 million over five years, starting in 2018-2019, and $14 million per year ongoing to the Canada Border Services Agency (CBSA), Public Safety Canada and Transport Canada to improve the Passenger Protect Program. The new funding will establish a “rigorous” government-controlled screening and redress mechanism. Government officials will be enabled to screen airline passenger lists, taking the job away from air carriers. There will also be a new internal government redress mechanism for legitimate air travellers who are affected by the program. Under the new redress system people affected by false positive matches would be able to apply to the existing passenger protect inquiries office for a unique identification number, referred to as a “redress” number. The person would provide the redress number when booking air travel. Redress numbers would also allow for faster resolution of false positives during the passenger manifest screening process.

$327.6 million over five years, starting in 2018-19, and $100 million ongoing would go to Public Safety Canada, the RCMP and the CBSA to establish the Initiative to Take Action Against Guns and Gangs. The government says the initiative will: bring together federal provincial and territorial efforts to support community-level prevention and enforcement efforts; build and leverage unique federal expertise and resources to advance intelligence related to the illegal trafficking of firearms; and invest in border security to interdict illicit goods, including guns and drugs.

Indigenous organizations will also get money to help them build capacity through education, outreach and research.

Starting in 2018-2019, Indigenous participation in modern treaty negotiations will be funded through non-repayable contributions.

Budget 2018 proposes $51.4 million over two years, starting in 2018-2019 to go to Crown Indigenous Relations and Northern Affairs Canada to continue to support the Recognition of Indigenous Rights and Self-determination (RIRSD) discussions tables.

In June 2017 interim funding of $71 million was approved to support federal and Indigenous participation in these discussions.

The government will be moving away from the use of loans to fund Indigenous participation in the negotiation of modern treaties. The government will engage with affected Indigenous groups on how best to address past and present negotiation loans, including forgiveness loans. The Negotiation Support funding program provides loans to Indigenous groups to support their participation in the negotiation of modern treaties. Indigenous groups then repay these loans out of the cash portion of their eventual treaty settlement. Over the years Indigenous groups have accumulated a large amount of loans as modern treaty negotiations drag on.

The government says the move to contribution funding will bring a consistent approach to funding Indigenous participation in modern treaty negotiations, self-government negotiations and RIRSD discussions.

Negotiation loans are not being forgiven in the Budget 2018 because more work is required on the issue, the government says.

« Hacker » pour la justice
Avocats, ingénieurs et étudiants en droit se sont retrouvés pour trouver une résolution créative et techno aux problèmes d'accès à la justice
Droit Inc
Delphine Jung
28 février 2018

Le Global legal hackathon s'est déroulé dans plus de 40 villes des six continents, le week-end du 23 au 25 février. La Faculté de science politique et de droit (FSPD) de l'UQAM était l'épicentre québécois de ce grand événement.

«Juridico: votre coup de main juridique », a remporté la finale montréalaise. L'équipe gagnante de cette compétition a développé un projet de coopérative de solidarité rassemblant justiciables, juristes et travailleurs, pour faciliter le processus juridique grâce à une plateforme internet qui offre une orientation personnalisée au justiciable et un système de référence vers diverses ressources juridiques.

L'équipe était composée de Me Stéfanny Beaudoin et Lucia Flores Echaiz toutes deux candidates à la maîtrise en droit et société (UQAM), Louis Chartrand, doctorant en informatique cognitive (UQAM) et Marc Queudot, candidat à la maîtrise en informatique (UQAM).

En effet, avocats, étudiants, informaticiens, notaires ou encore designer étaient invités à y participer pour former des équipes afin de résoudre des problèmes dans les services juridiques publics et privés.

Trouver des solutions
L'événement se tenait à la salle la Chaufferie du Cœur des sciences.

« La justice est de moins en moins accessible et il faut trouver de nouvelles façons de permettre aux citoyens d'y avoir accès. Le hackathon fait partie de cette solution et offre aussi la possibilité de suivre une expérience d'entreprenariat en accéléré », a expliqué Hugo Cyr, le doyen de la FSPD à l'occasion du lancement de ce sprint de 54 heures.

« Il y a un double défi à relever. Celui de développer des solutions en vue de faire progresser les métiers et la pratique du droit, et celui de développer une solution qui facilite l'accès à la justice », a ajouté Tessa Manuello, fondatrice de Legal Creatives qui rassemble des professionnels du droit, des PDG, des amateurs de nouvelles technologies pour créer de nouvelles façons de faire.

Anaïs Tesser, consultante en solution juridique pour Ricoh Canada était venue participer à cet événement. « J'aime le fait que ce soit mondial et qu'il y ait un aspect créatif pour aider la communauté juridique. C'est l'occasion de partager nos expériences et de voir s'il y a des possibilités d'affaires qui peuvent se développer », expliquait-elle.

Clément Ganemtore, juriste et fondateur de la plateforme La voix du juriste au Burkina Faso, était au rendez-vous. Lui aussi voulait améliorer l'accès à la justice et rencontrer du monde pour collaborer.

Lorsque Droit-inc l'a rencontré, il est en pleine discussion avec Uriel Hollenweger, étudiant à la maîtrise en droit international, qui cherchait justement des gens pour l'aider à monter un projet sur lequel il laisse encore planer le mystère.

Il y avait aussi Louise Desjardins, une consultante en communication qui s'intéresse à l'impact du numérique sur les pratiques d'affaires ou encore Julie Paquin, professeure de droit à l'Université d'Ottawa. Elle était venue à titre d'observatrice car elle estime qu'il faut « être au courant de ce qu'il se passe dans le milieu juridique ».

D'autres sont venus parce qu'ils souhaitaient concrétiser un projet qu'ils ont en tête, comme Nedjma Zennadi et Magdalena Choneva, deux étudiantes qui terminent leur droit à l'UQAM et à l'UdeM. « Nous avons un projet de créer une application juridique qui va utiliser l'intelligence artificielle pour favoriser l'accès à la justice. On cherche donc des gens plus tournés vers les technos », a expliqué Nedjma.

Me Stéphane Duranleau, avocat à son compte cherchait lui aussi des programmeurs. « Je vois un gros potentiel pour les smarts contrats dans la blockchain, il y a des applications intéressantes pour les

cabinets et les fintech. J'offre la volonté d'investir et mon expertise juridique », dit-il en ajoutant qu'il compte bien profiter du hackathon pour réseauter.

Jules Lambert faisait partie de ceux qui cherchent justement des experts en droit. Lui est physicien de formation, en pleine reconversion dans l'informatique, notamment dans les sciences de données et l'apprentissage machine.

Au fil de la soirée, les équipes se sont formées. Il s'est retrouvé avec Hassan Bakrim, un autre physicien en reconversion, Nedjma et Magdalena, Nicolas Mélis, un ingénieur en informatique et Marie Dubuis qui termine son stage de l'école du Barreau.

Retour sur expérience
Contacté par Droit-inc après ce marathon, M. Lambert a raconté : « c'est une expérience que j'ai bien appréciée. Cela m'a permis de comprendre les contraintes inhérentes au droit. Il y avait plusieurs ateliers qui permettaient d'apprendre différentes choses, que ce soit du point de vue d'entreprise ou de droit ».

En effet, la fin de semaine était ponctuée de conférences comme « Comment développer une communauté d'utilisateurs et la faire adhérer à votre vision », donnée par Sara Folladlor, directrice Marketing 2PS, ou encore « Propriété intellectuelle, E-commerce et Droit », par Mes Bruno Bordeleau et Charles Daoust, avocats à YULEX.

Me Duranleau est aussi revenu sur son expérience qu'il a qualifié d'extraordinaire. « Nous avons formé une équipe multidisciplinaire et multiculturelle soudée, brillante, performante et innovante en quelques heures seulement. Notre projet qui vise à résoudre concrètement les pressions juridiques d'envergure qui entreront en vigueur en mai 2018 en matière de protections des données personnelles à travers le monde se matérialise déjà en entreprise. Deux ont déjà manifesté leur intérêt à travailler avec nous », témoigne-t-il.

« Il s'agit d'une première expérience qui sera renouvelée l'année prochaine », a assuré M. Cyr.

D'ici là, l'équipe gagnante montréalaise va participer à la grande finale qui aura lieu à New-York, le 11 mars.

Système de paye Phénix : « On ne voit pas la lumière au bout du tunnel »
Radio-Canada
La Presse Canadienne
28 février 2018

Des syndiqués de la fonction publique du Canada manifestent mercredi en Atlantique comme ailleurs au Canada pour demander au gouvernement Trudeau d'accélérer le pas afin de régler les problèmes du système de paye Phénix, qui subsistent depuis deux ans.

Mardi, lors du dévoilement du budget fédéral, le gouvernement a annoncé son intention de travailler à la mise en place d'un nouveau système de paye pour les employés fédéraux. La somme de 16 millions de dollars sur deux ans, à compter de 2018-2019, est annoncée pour financer un futur système de remplacement.

Des travailleuses du Syndicat des employé-e-s de la Sécurité et de la Justice (SESJ) manifestent leur mécontentement envers les ratés du système de paye Phénix, le 28 février 2018 à Moncton.

D'ici là, il injecte la somme de 431,4 millions de dollars sur six ans, dont l'effet rétroactif couvrira 2017-2018, pour régler les problèmes de Phénix. Des employés supplémentaires seront embauchés pour prêter main-forte à ceux qui travaillent au Centre des services de paye, à Miramichi, au Nouveau-Brunswick, et dans les bureaux satellites. Ottawa recrutera aussi des employés de la paye dans les ministères fédéraux, comme c'était le cas avant l'implantation ratée du système.

« [Ceux] qu'ils embauchent, ce sont des gens pour faire des entrées de données, et non des experts en la matière », dit Shanny Doucet, directrice des membres francophones à l'Alliance de la fonction publique du Canada (AFPC) pour la région de l'Atlantique.

« Ce qu'on voudrait, et ce qu'on demande, c'est d'avoir des conseillers en rémunération rétablis dans les départements de la fonction publique pour aider ces employés-là, qui ont de la difficulté à comprendre leur paye », dit-elle. Mme Doucet ne croit pas que c'est ce que prévoit le budget Morneau.

L'annonce faite en douce mardi dans le budget du ministre des Finances Bill Morneau, au sujet du remplacement éventuel du système Phénix, ne règle guère les problèmes dans l'immédiat, soutient Mme Doucet.

« Ç'a pris plus de dix ans avant l'implémentation de Phénix, et encore aujourd'hui, on ne voit pas la lumière au bout du tunnel. S'ils parlent de faire un autre système pour nos payes, à ce moment-là on sait déjà que ça va prendre au moins dix ans », dit-elle.

Annoncé en 2009 par le gouvernement conservateur de l'ancien premier ministre Stephen Harper, le système fédéral de paye Phénix a été lancé il y a deux ans, sous le gouvernement libéral de Justin Trudeau.

Le budget présenté mardi fait grimper la facture totale du système Phénix à près de 1 milliard de dollars.

L'Alliance de la Fonction publique du Canada (AFPC) fait les demandes suivantes au premier ministre Justin Trudeau :

- cesser immédiatement de forcer les fonctionnaires qui ont été trop payés à rembourser le montant brut, qui est plus élevé que ce qu'ils ont reçu;
- augmenter le nombre de conseillères et conseillers en rémunération dans les ministères et au Centre des services de paye afin d'aider les membres à régler leurs problèmes de paye;

- dédommager les personnes qui ont subi un grand stress en raison des ratés de Phénix et qui ont consacré beaucoup de temps à essayer de régler leurs problèmes de paye.

« Il y a des femmes en congé de maternité qui ont passé 11 de leurs 12 mois de congé de maternité sans paye, à cause du problème de Phénix », affirme Isabelle Forest, présidente du Conseil régional du Grand Moncton (Pêches et Océans) de l'AFPC. « Avec un nouveau bébé à la maison, c'est extrêmement stressant de ne pas savoir si tu vas avoir une paye, ou bien d'être obligée de passer une grosse partie de ton temps au téléphone à essayer de parler à quelqu'un. »

Shanny Doucet juge que l'aide psychologique offerte gratuitement aux employés fédéraux n'est pas suffisante. « Ce qu'on demande, c'est un dédommagement monétaire pour aider ces gens-là. Ça fait deux ans, plus de deux ans, qu'ils ont des problèmes de paye et ils n'ont aucune solution dans le futur proche », dit-elle.

Avec les informations de Nicolas Pelletier et Pierre-Alexandre Bolduc

L'ex-avocat de Khadr nommé juge fédéral
Il l'avait représenté lors de son procès contre le ministère de la Sécurité publique en 2011.
Droit Inc
Delphine Jung
28 février 2018

Me John Norris, un avocat solo de Toronto a été nommé lundi, juge à la Cour fédérale par la ministre de la Justice, Jody Wilson-Raybould. Son poste a été créé à la suite de de l'adoption de la Loi modifiant la Loi sur l'immigration et la protection des réfugiés et la Loi sur les Cours fédérales.

Il a été l'avocat d'Omar Khadr d'août 2011 à janvier 2013. Ce Barreau 1993 est un plaideur en droit criminel, droit constitutionnel et en droit lié à la sécurité nationale.

Il a représenté Omar Khadr dans son procès contre le ministère de la Sécurité publique en 2011. Le Canadien a été détenu pour crimes de guerre au camp de détention militaire américain de Guantanamo Bay, à Cuba.

En 2017, le gouvernement de Justin Trudeau avait décidé de lui verser 10,5 millions de dollars afin de le dédommager pour les sévices qu'il a subis lors des 10 années passées au camp.

Me Lorne Waldman, un avocat du cabinet Waldman and Associates, interrogé par Global news, a expliqué que tous les criminalistes représentent des personnages controversés et que cela ne reflète pas leurs opinions personnelles.

L'avocat donne l'exemple de Me John Rosen qui a été un avocat de la défense et qui a représenté Paul Bernardo, l'un des tueurs en série les plus célèbres du Canada.

Originaire d'Ottawa, Me Norris détient un bac en philosophie obtenu à l'Université Carleton et un bac en droit obtenu à l'Université de Toronto. Il a aussi une maîtrise en philosophie de l'Université de Western Ontario.

En 2008, le juge Norris a été porté à la liste des avocats spéciaux pour les procédures relatives aux certificats de sécurité aux termes de la Loi sur l'immigration et la protection des réfugiés.

Il a comparu devant la Cour suprême du Canada plus de 25 fois, souvent à titre bénévole pour le compte de groupes de défense de l'intérêt public.

Depuis 1996, il était membre-associé de la Faculté de droit de l'Université de Toronto, où il a donné des cours dans les domaines du droit criminel, du droit de la preuve, du droit constitutionnel, du droit lié à la sécurité nationale et de la déontologie juridique. En 2013, il a été l'avocat en résidence au Centre David-Asper pour les droits constitutionnels.

Il était professeur agrégé principal au sein du groupe du droit et de la politique relatif à la lutte contre le terrorisme mondial à l'École Munk des affaires internationales et il était membre du corps professoral de l'Institut Philippe Kirsch.

Dans ses temps libres, le juge Norris est un coureur compétitif sur route et sur sentier, peut-on lire dans le communiqué. Il se passionne aussi pour le jazz et les interprétations historiques de la musique baroque.

Civil servants across Canada hold rallies against Phoenix pay system after Liberals promise replacement
While many workers said they were encouraged that the pay system will be replaced, their unions were determined not to let their guard down until the government delivers on its pledge.
Toronto Star
Terry Pedwell
The Canadian Press
February 28, 2018

OTTAWA—Civil service unions vowed Wednesday to hold the Trudeau government's feet to the fire after the Liberals pledged in their latest budget to replace the troubled Phoenix pay system with a "next-generation" compensation system that works.

Federal employees rallied in at least a dozen cities across the country to mark the second anniversary of the disastrous launch of Phoenix.

Finance Minister Bill Morneau introduced a federal budget that included plans to spend $16 million over two years exploring options for building a new pay system while eventually scrapping the IBM-built Phoenix program.

The system is clearly not delivering as it was supposed to, Morneau said Wednesday in a post-budget event at the Economic Club of Ottawa.

“What we’ve said over the long term is that we need to find a new approach — a new approach that works.”

While many workers said they were encouraged that the pay system will be replaced, their unions were determined not to let their guard down until the government delivers on its pledge.

“I see this as a glimmer of hope in a long two years of constant stress and financial worry for our members,” said Debi Daviau, president of the Professional Institute of the Public Service of Canada, at a rally in Ottawa.

“We need a pay system that works, and we have the people to build it,” Daviau said, pointing to the government’s benefit distribution system, the NetFile tax filing system and border control systems as prime examples of what her members can do.

“These are the same professionals who designed and built virtually every important computer system that the government relies on.”

The Phoenix pay system has been a nightmare for tens of thousands of civil servants since it was formally launched two years ago.

Fixing the problem, which has left many government employees underpaid, overpaid or not paid at all, is expected to cost upwards of at least $1 billion, with estimates that the final tally could go much higher.

Tuesday’s federal budget also provided indications that it could take more than two years to develop, test and ultimately launch a new pay system.

The Public Service Alliance of Canada, which organized the rallies, said it’s still concerned that the Trudeau government didn’t provide an exemption to ensure that employees who were overpaid don’t have to return the gross total of those overpayments.

PSAC said its members complied with government instructions to report overpayments by mid-January or risk having to pay back more money than was deposited into their bank accounts. But thousands of civil servants could still be forced to pay back the gross overpayment amounts because of the government’s inability to process their reports, the union said.

Too little, too late. That’s what I think about the budget,” said PSAC president Robyn Benson.

The government has agreed to consider changing tax laws for the 2018 tax year to allow public servants who were overpaid to repay the net amount, rather than the gross amount.

The budget allocates an additional $431 million over six years to address problems created by Phoenix, plus the $16 million to begin the process of finding a replacement, on top of the $460 million already committed to both implement the pay system and resolve subsequent problems.

And the Canada Revenue Agency will get $5.5 million to conduct income tax reassessments for individuals affected by Phoenix.

But the costs are likely to escalate under a government pledge to also work with the unions on compensating employees for mental and emotional stress caused by the Phoenix foul-ups.

The opposition New Democrats had introduced a motion calling on the government to both compensate and apologize to civil servants, but that motion was defeated Wednesday in the Commons by a margin of 159-135.

When it was approved in 2015 by the previous Conservative government, officials said the Phoenix pay system would save taxpayers about $70 million annually by streamlining and consolidating pay systems across dozens of departments and agencies.

Phoenix: 'How can you ask someone to serve their country when you can't even pay them?'
Ottawa Citizen
Bruce Deachman
February 28, 2018

Every other Monday morning, Jillian Graham plays a game she calls Russian roulette.

The 36-year-old Canada Revenue Agency tax collector arrives at her office in Prince George, B.C., and goes online to see how big or small her paycheque will be that week. It should be somewhere around $1,500, she says, but that's rarely the case. Sometimes it's too much, like the $1,742 she received last November. On other occasions, it's woefully short — her pay immediately before Christmas last year, for example, was only $214, she says.

Graham suffers anxiety/depression, and her bi-weekly adventures in that circle of hell known as the Phoenix pay system do nothing to assuage her uneasiness.

"It will determine what my mood is going to be like for the next two weeks," she says, "which is very important for me because some days I can't get out of bed. That's what depression and anxiety does.

Her entire family has been affected by her Phoenix problems, she adds. "I have a dog and a cat and my sister helps me pay for their food right now because I can't. I've borrowed something like $15,000 from my family to get food, to get medication, to get tires for my car, to pay my rent."

She says she stays awake late into the night worrying about how she'll make it to her next paycheque, and blames at least some of her grey hairs on Phoenix. She's learned to make one-dollar bags of pasta

last as long as possible. She's considered giving up her car. When she visits her parents, they send her home with packages of meat.

"And let's not start on my credit record," she says, "because I've missed payments. I've had to decide what to pay this time and what not to pay, so my credit record is screwed. I was hoping to buy a house by 2020, but it's going to be 2023 at least, because I need five years at least to get my credit history improved.

"I'm already on pretty much the maximum dosage of my medication. I should be living here in this little haze of happiness. I should be like an automaton. But I'm not."

Exasperated, she sent a lengthy handwritten letter to Prime Minister Justin Trudeau, describing her situation.

"I'm done," she explained. "I don't know what else to do."

Graham has multiple issues that affect her pay, difficulties that sometimes exacerbate one another, like a pinball game in multi-ball mode. She describes herself as a "poster child" for what Phoenix can and cannot do. Handling leave without pay is one of the things, she says, it is seemingly not designed to do.

She had just returned from a five-month medical leave in October 2016. Her four-day work week included 4½ hours of unpaid leave, which, between December 2016 and August 2017, Phoenix wasn't processing properly, usually generating overpayments.

In March 2017, she went on a four-week unpaid leave related to her anxiety. Her pay was only stopped when she returned from leave, and then only for two weeks. She had applied through EI for medical benefits for the four weeks, for which she needed to produce her Record of Employment, or ROE, which employers are required to produce within five calendar days of the end of the first pay period affected. CRA issued hers at the end of May.

Graham got her MP involved, printed her pay stubs from the previous six months, and had Service Canada create a manual ROE, which indicated that she had worked more than the 600 hours required for $1,600 in medical benefits. The ROE she finally received from CRA at the end of May confirmed this.

Meanwhile, and almost unrelated, her Union of Taxation Employees had agreed in October 2016 to relinquish its right to voluntary severance, to be replaced instead by a buyout. Having worked for about a decade, Graham was entitled to roughly $12,000, which she requested at the end of January.

"Instead, I got about $4,000. They went through my account and said, 'Oh, all these little $250 overpayments' from my 4-1/2 hours every week, 'that we never clawed back. We have to claw them back now.'"

"Fine," she thought, "just get it all sorted." She took the $4,000 and went to Disney World.

In August, CRA issued her a new ROE that indicated she'd only worked 590 hours, not 600. The $1,600 in medical benefits would have to be returned. She asked Service Canada to reconsider, but her request was denied. She's had to get an emergency salary advance just to make ends meet, and says there are still clawbacks on her pay stubs that she doesn't recognize. As things stand, she's not sure if she owes money or is owed.

"I don't even know if they've screwed up my pay. I don't know. I live in constant fear every time I think I've sat down and reconciled it, I'm wrong. And how can you fight it? They push a button and they get a report, and I'm like, 'Well, it's based off my time sheets. I guess I'll just go with what Goliath says, because I'm not exactly David here; I don't have the story behind me. I'm just that little person trying to do her job."

She estimates she's spent two hours a week for the past 18 months, or roughly 150 hours, trying to sort it all out. If you add in the loss of morale, she guesses her productivity is down by about 10 hours a week. And she has little hope that anything is going to change anytime soon.

"I'm at the point where I just don't think it's going to get fixed. I have no faith in it. I love my job and I've always advocated for people to work in the federal government, but right now I tell them, 'It's still a great place to work; just make sure you've got money, just in case you're one of the ones.'

"I'm theoretically 19 years from retirement," she adds. "I'm hoping that maybe they'll have it sorted out by then."

(A spokesperson for Public Services, which is responsible for Phoenix, said privacy legislation prevents the department from discussing details of the employment and pay of individual federal government employees.)

Accused Ottawa killer again seeks 'Jordan decision' stay in long-running murder case
Ottawa Citizen
Gary Dimmock
February 28, 2018

Accused killer Adam Picard is expected to file a fresh application for another stay of his first-degree murder case on grounds that it took too long to get to trial.

Picard, 34, in fact, had won a stay back in 2016 for unreasonable delay after spending four years in jail awaiting trial for the June 2012 killing of Fouad Nayel, 28.

The stunning decision that saw Picard walk out of court a free man devastated Nayel's family. Even the judge said the justice system had failed everyone. But Ontario's appeal court disagreed with the trial judge's interpretation of the Jordan decision and reinstated the murder charge against Picard. The former military man surrendered in September, was sent back to jail and scheduled for trial in April.

But now there's another delay in a case once stayed for too many delays.

The so-called Jordan decision was issued in July 2016, when the Supreme Court of Canada, in a 5-4 ruling, said unreasonable delay was to be presumed if proceedings topped 18 months in provincial court or 30 months in Superior Court.

Picard's legal team, now led by Michael Crystal, has been granted an adjournment for more time to prepare. So the first-degree murder case scheduled for April will now unfold in September.

Picard's defence team believes he is innocent an intends to vigorously defend him.

It is unclear if Picard will pursue his notice for leave to appeal the reinstatement of his murder charge.

Picard's murder charge was reinstated after the appeal court said the case deserved more latitude since charges were laid well before the Jordan ruling, and that the delays would have been acceptable under the previous legal regime.

The appeal court also said Justice Julianne Parfett made mistakes in her trial delay calculations.

The appeal court found that, properly analyzed, the Crown could be held responsible for only 14 months of the four-year delay, which would keep the case well within the bounds of previous Supreme Court guidelines.

On the day the trial judge set Picard free, she told court:

"I cannot but emphasize that the more serious the charges, the more the justice system has to work to ensure that the matter is tried within a reasonable time … the thread that runs through the present case is the culture of complacency that the Supreme Court condemned in Jordan."

Nayel, a 28-year-old construction worker, had been missing for five months when his decomposed remains were discovered in the woods near Calabogie in 2012.

Police say Nayel knew his accused killer through drug deals.

Assistant Crown attorneys Dallas Mack and Louise Tansey declined to comment on their long-awaited prosecution of Adam Picard.
Picard's defence lawyer also declined to comment.

Budget 2018: What's in it for justice
CBA National
Justin Ling
February 28, 2018

In the Trudeau government's 2018 budget, the penultimate for its first mandate, the government has pledged new money for Canada's court system, access to justice, and fighting sexual assault and harassment in the workforce.

The new funding comes in a budget that has been heavily marketed to address gender inequality and systemic failures in outcomes for Indigenous peoples. Here are some highlights.

Money for the courts: Amid longstanding concerns that Canada's court system is underfunded to address the volume of cases it currently faces — a concern exacerbated by the 2016 Supreme Court ruling in R. v. Jordan, which set strict timelines on trial delays — this year's budget does offer some new money to help the courts cope.

The budget allocates $75 million for the courts themselves, as well as additional $77 million to expand family courts, as well as another $13 million for access to justice programs and legal aid for immigrants and refugees, all over the next five years.

The money for the family courts will allow for 39 new judicial positions in a handful of provinces, and six new spots on the Ontario Superior Court and the Saskatchewan Court of Appeal.

Beyond that details are relatively scant about what, precisely, the government plans to do to address the strain on the courts and access to justice.

Tax avoidance: The budget sets aside more than $40 million in new funding for the Tax Court of Canada, to handle its caseload, but also envisions a more aggressive fight against tax avoidance and evasion. The budget is proposing new measures to keep tabs on Canadians' investment in offshore corporations or trusts, although the details of those new measures have yet to be fully sketched out.

FIghting harassment: Given the focus of the budget was on fighting gender inequality, it comes as no surprise that a big section of the document focuses on harassment.

One tranche of money, nearly $35 million over five years, will go towards funding Bill C-65, government legislation that seeks to create a framework on how to deal with sexual harassment in federally-regulated workplaces.

There is another $25 million in new funding for legal aid services across the country to help victims of workplace sexual harassment.

The unfounded: Following a 2017 Globe & Mail investigation into cases of sexaul assault that were reported to police but determined to be "unfounded," the budget is dedicating $10 million in funding to an RCMP review into thousands of cases that have garnered this designation. The funding will create a dedicated unit, which will oversee these cases and develop new training for sexual assault investigations.

No-fly upgrades: After years of criticism that the no-fly list has unfairly targeted innocent Canadians — including children — who have had incredibly difficult times getting off the list, Ottawa is now proposing more than $80 million in new funding for the Passenger Protect Program, aimed at developing a "rigorous centralized screening model" that will come with a "redress mechanism for legitimate air travellers who are affected by the program.

Christie Blatchford: Messing with jury selection won't fix Indigenous alienation from justice system
The notion that you can get justice only when the correct number of jurors looking back at you are the precise shade of your own skin colour is nonsense
National Post
February 28th 2018

It's heartening that some individual lawyers, and those speaking for the Saskatchewan Trial Lawyers Association and Criminal Lawyers Association, have pushed back against recent comments by Prime Minister Justin Trudeau, Justice Minister Jody Wilson-Raybould and federal NDP Leader Jagmeet Singh.

All three politicians suggested – respectively in a scrum and on Twitter — that the jury verdict in the Colten Boushie case was wrong and that the Canadian justice system had failed the Boushie family and yet again, more broadly, Indigenous Canadians.

These comments, especially from the justice minister, were outrageous, given the separation that is meant to exist between the legislative and judicial branches and which is the very foundation of judicial independence.

When government signals its unhappiness with particular verdicts, as this one did unmistakably, judges are but a step or two away from being at the mercy of politicians. Surely no one wants judges looking over their shoulders, fretful about pleasing or displeasing their political partners.

Such remarks can also have the corrosive effect, as criminal lawyer Sean Robichaud said about them, "upon the confidence that is necessary for our democratic institutions to survive, let alone thrive."

As a measure of the lawyers' collective success in pointing out this serious departure from the Canadian convention of politicians not commenting upon particular court decisions, when the verdict in the Tina Fontaine case came less than two weeks later, only the NDP leader was at it again on social media. The PM and Wilson-Raybould were silent, and thus far, they haven't met with the Fontaine family as they did with Boushie's, a meeting correctly described by journalist Evan Solomon as "a very specific act of solidarity".

What few seem to have defended (I say "seem" because I was in South Korea when all this unfolded and while I've caught up on my reading, I may have missed the odd remark on radio and TV) are the verdicts in the two cases, the two juries and the jury system itself.

Instead, much of the commentary was about the lack of Indigenous representation on the Boushie jury, where defence lawyer Scott Spencer used some of his peremptory challenges (both prosecutors and defence got 14 such challenges, meaning they could each "challenge" 14 prospective jurors without explanation as to why, in other words, simply because they didn't like the cut of their jibs) to disqualify a handful of Indigenous-appearing candidates.

Wilson-Raybould has promised the government will look into reforming that aspect of the system; she ought to be careful, because defence lawyers representing black defendants use those challenges as Spencer is said to have done for his client Gerald Stanley.

In truth, jury selection in this country is a guessing game. Even where jurors are "challenged for cause" – it means asked specific questions about their biases or the like – it's hardly infallible.

As for the notion that you can get justice only when the correct number of jurors looking back at you are the precise shade of your own skin colour – that only those of your race or culture are your true "peers" – that's nonsense.

Besides, as Supreme Court of Canada Justice Michael Moldaver wrote in a 2015 decision on this very subject, how on earth would that work?

Before long, he said, "the jury selection process would become a public inquiry into the historical and cultural wrongs and damaged relationships between particular societal groups and our criminal justice system and the failings of the state to take adequate steps to address them."

The result would be…chaos, with defence lawyers combing jury rolls at the start of every trial, arguing that the roll is unrepresentative "if any group's rate of inclusion does not approximate its percentage of the broader population – assuming we could somehow solve the impenetrable problem of what groups we are talking about."

This is not to say – and Moldaver took pains to point this out – that government shouldn't try to repair Indigenous, or any other, estrangement from the justice system, only that messing with the jury trial isn't the right vehicle.

And the strange thing is, for all its failings, the jury system works awfully well most of the time. The blather judges repeat ad nauseum – about the collective wisdom of 12 people – is mostly true.

Most of the time, against all odds and reason, and sometimes with only a fraction of the available evidence before them (the rest kicked out so as not to unduly prejudice the accused person), juries manage to muddle their way to the right verdict.

That verdict sometimes isn't the one the victim, or the victim's family, wants. (Or, for that matter, what the accused person wants.) But justice isn't about healing a victim or bringing closure to a family or honouring a murdered person. It's a much colder thing than that.

It's about proof beyond a reasonable doubt (the judge in the Boushie/Stanley case said those last four words 38 times in his charge to the jury). That's a very high standard indeed, as it should be, as you would want were it you shakily getting to your feet in a prisoner's box somewhere to hear the jury foreman pronounce the verdict.

Another Phoenix glitch results up to 86,000 incorrect PS tax slips
iPolitics
Kathryn May
March 1, 2018

Public Services and Procurement Canada is trying to get to the bottom of another Phoenix glitch that has resulted in incorrect T4 slips issued to as many as 86,000 federal public servants.

PSPC officials confirmed the error, which is the latest in a litany of blunders and mistakes by the troubled pay system that the Liberals have finally decided to replace.

The error will affect the calculation of RRSP contributions for the 2018 tax year, but won't prevent employees from filing their taxes or getting refunds for the 2017 tax year. It will also have no impact on taxes owed for 2017.

In an email, the department said it is looking for the cause of the error which it said has affected many employees who received retroactive salary payments last year.

PSPC officials said it is still confirming the full extent of the error but sources say it could have affected up to a third of the nearly 300,000 employees paid by the error-prone Phoenix pay system.

For affected employees, the error shows up in Box 52 on their T4 slips. This box states employee pension adjustments — the amount deducted from their RRSP contribution limits for the 2018 tax year.

The error means the maximum contribution limits that employees can make to their RRSPs for 2018 will be lower than they should be when employees receive their notice of assessment from CRA for 2017. Notices of assessment let people know if they are getting a refund or owe money. They also confirm the maximum contribution limits they can make to their 2018 RRSP.

PSPC said it is issuing amended T4 slips which will be sent directly to Canada Revenue Agency, which in return will send employees a revised assessment indicating the correct contribution limit they can make to their RRSP for the 2018 tax year.

CRA and Revenue Quebec will reassess returns without employees having to refile.

Although this doesn't have a financial impact on employees, it is another embarrassment for the government and may further erode confidence in the fickle Phoenix system. Errors connected to the two-year-old system have cost the government close to $1 billion so far to fix.

The government issues hundreds of thousands of T4 slips to federal employees each year and PSPC said there is always a potential for human and technical errors with such massive volumes. Incorrect slips are always fixed with amended slips.

The latest gaffe comes as the Liberals formally announced its plans to scrap Phoenix and start the process to look for a replacement — while pumping in another $453 million into fixing the disastrous Phoenix pay system.

The budget also gave Canada Revenue Agency $5.5 million to handle the thousands of tax reassessments that have to be done for public servants affected by Phoenix – and manage the deluge of calls it receives from disgruntled bureaucrats.

The budget earmarked $16 million toward the search for a new pay system to replace Phoenix over the next two years. The money will launch a search for a replacement while PSPC continues its push to fix the system so public servants can be paid on time and accurately.

PSPC has put in a lot of effort over the past year to ensure T-4 slips were issued accurately and on time.

The action plan it drafted in response to Auditor-General Michael Ferguson's damning report on the Phoenix rollout made working with Canada Revenue agency a priority to "minimize issues with tax slips." The two departments also prepared a communication plan to explain to public servants who have faced pay problems how to file their taxes or get incorrect T4s adjusted.

The government had problems with T4 slips last year when Phoenix affected the accuracy of 50,000 tax slips for public servants working in British Columbia and Quebec.

The big flashpoint about this year's T4 slips was over the overpayments Phoenix paid to thousands of employees.

Employees and their unions were furious that workers have to repay the gross amount of the overpayments rather than the net amount they received and then wait for Revenue Canada to refund the difference between gross and net pay.

The government has promised to delay collecting repayments until July. By that time, the tax agency will have processed tax returns and employees will have been credited with the difference between the net and gross overpayments.

Unions held a national day of protest this week to mark the second anniversary of Phoenix and a blanket exception for employees who received overpayments was a top demand.

Instead of exemptions, the government set a Jan. 19 deadline for public servants to report overpayments. Those who met the deadline would only have to pay the net amount and not the gross — which includes taxes and other deductions taken off on their behalf.

With the deluge of claims, PSPC was unable to process all the claims of public servants who reported overpayments by the deadline, so their tax slips could not be properly adjusted – further adding to union frustrations. About 8,000 employees who reported overpayments by the deadline were not processed in time and will have to repay gross amounts.

The government didn't provide the exemption unions sought in this week's budget but it agreed to review the "feasibility" of changing legislation for the 2018 tax year, which would allow public servants who were overpaid to pay the net amount rather than the gross amount.

Canada to Scrap IBM Payroll Plan Gone Awry Costing C$1 Billion
Bloomberg.com
Gerrit De Vynck
March 1, 2018

Canada plans to scrap a major IBM federal payroll plan that created chaos for thousands of government workers and will have cost the government almost C$1 billion ($780 million) by the time it's over.

The Phoenix project was originally chosen by Prime Minister Justin Trudeau's Conservative predecessors 10 years ago to centralize the government payroll. International Business Machines Corp. won the contract to install and help run the system, which uses Oracle Corp. software.

It went live in 2016, just months after Trudeau won office. From the beginning, it didn't work like it was supposed to. Some people were paid too much, others not at all. Those issues snowballed with the deluge of requests to fix incorrect paychecks. The fear of not getting paid still hangs over the country's more than 260,000 federal public servants. Some put off major financial decisions. Others declined promotions or retirement, fearing any change in their pay could cause more trouble.

Two years later, some employees are still having problems. The latest data showed a backlog of 384,000 cases linked to the program.

IBM said it's "fulfilling its obligations on the Phoenix contract, and the software is functioning as intended." The company "continues to work in partnership with the government's efforts to resolve the project's issues, and remains committed to the project's overall success," it said in a statement.

An Oracle representative declined to comment.

Debi Daviau, president of one of the main unions representing government workers, said the blame falls mostly on the senior government officials who ran the project and opened it even though there were glaring warning signs it wasn't ready. But she also questions why IBM went ahead when it was clear there would be problems, and why the company benefits from a project that never worked as promised.

"They should have known better," Daviau said in an interview. When the company's warnings that more testing was needed went unheeded, IBM didn't put its foot down and hold up the project until it was ready, she said.

"IBM got into a contract with the government that was very beneficial to IBM, which meant that the contract -- despite non-delivery -- could continue to be extended and IBM could continue to come back to the pot for money," she said.

Treasury Board President Scott Brison has said IBM has a responsibility to help the government fix the program.

“IBM, as a sophisticated global company, needs to recognize that we as the government of Canada are not just an important client for IBM but there is reputational risk for IBM in not helping us fix this,” Brison said last June during an appearance at the Senate’s finance committee.

The fiasco illustrates how difficult it is to bring governments into the 21st century when it comes to technology, and the risks and limitations faced by companies like IBM, who get a large amount of their business from governments. IBM, based in Armonk, New York, doesn’t disclose how much of its revenue comes from government contracts.

It’s not the first time IBM has been embroiled in a payroll system disaster. The Australian state of Queensland scrapped a similar project after an initial contract went off the rails and ended up costing the government around A$1 billion ($772 million) to fix. A public inquiry mostly blamed government officials, but determined IBM shouldn’t have been chosen for the job. IBM disputed some of the inquiry’s findings in 2013.

Canadian Finance Minister Bill Morneau said Wednesday that the previous government made mistakes in dismissing staff needed to implement Phoenix but that, “it’s not about seeking blame, it’s about trying to get it right.”

Canada announced Tuesday it would start moving away from Phoenix and set aside money to find a new solution. The government will spend C$431 million to keep the program running in the near term, on top of C$460 million already spent to put Phoenix in place and fix the problems it generated.

The project was meant to save costs by firing 1,200 employees handling payroll at various departments around the country and replacing them with about 500 people in a centralized location using Phoenix to handle most of the government’s payroll needs.

An inquiry from Canada’s auditor general, a position similar to the U.S. Government Accountability Office, found many of the new employees were poorly trained and overworked. The software platform itself, a heavily modified version of Oracle’s PeopleSoft program, had yet to be encoded with many of the payroll complexities faced by a massive and diverse public service, such as unique shift rules for Coast Guard officers or prison guards.

Phoenix is a classic example of a government wanting to save money on an expensive new technology project by cutting the number of employees working on it, only to discover later that those people were essential to seeing it through, said Nigel Wallis, a vice president with research firm IDC Canada. Other companies considered the project and decided against bidding because it looked too complex, but IBM went ahead, Wallis said.

“The promise of short term savings are often illusory,” Wallis said “That’s a real issue not just for government but also for a lot of large scale technology transformations. You need to approach them with a level of seriousness that I don’t think necessarily was done in this instance.”

Most major technology change-over projects -- for the private and public sectors -- either fail or face significant challenges, according to researcher Standish Group, which tracks thousands of projects every year.

On Wednesday, a New Democratic Party representative stood up in Parliament to ask Trudeau what he was doing for one of her constituents who was out C$40,000.

“We didn’t create this mess,” the prime minister said. “But we are going to fix it.”

— With assistance by Josh Wingrove, and Nico Grant

Ontario judge blasts 'frustrating' lack of resources as trial delayed for year
National Post
The Canadian Press
Peter Goffin
March 1, 2018

TORONTO — An Ontario judge blasted the legal system’s lack of resources on Thursday while postponing for nearly a year the trial of five men accused of running a multimillion-dollar financial scam.

No judge in the Toronto area has time to try the men until at least January 2019, nearly five years after they were arrested, Superior Court Justice John McMahon told a Toronto courtroom Thursday.

“This case is very important, the gentlemen are presumed innocent, the public interest in a $14 million alleged fraud is important but the only way this case goes ahead before January is if there’s another case the Crown wants to pull (to free up a judge),” McMahon said.

“It is frustrating, but we can only deal with what we have.”

McMahon added that he had tried to find judges in neighbouring jurisdictions who would be available before January but had been unsuccessful.

The case involves Vincent Villanti, Revendra Chaudhary, Andrew Lloyd, Shane Smith and David Prentice, all charged with fraud over $5,000 and conspiracy to commit a crime in connection with an alleged investment and tax avoidance scheme. All have maintained their innocence.

The matter has already exceeded the 30 month time limit for criminal trials, established by the Supreme Court in 2016, and the accused applied last year to have their charges stayed on the basis they have been denied their right to be tried within a reasonable period.

A judge denied their application in September, ruling the case fit certain exceptions built into the rules due to its complexity and the fact that prosecutors "mitigated" delays by making evidence more accessible and working with one defence lawyer's illness.

But all five accused, who are out on bail, indicated in court Thursday they would ask for stays in light of the new delay, Crown lawyer Michael Lockner said.

"Facing a potentially additional 11 months … I think there's really extreme jeopardy for this case," Lockner told the court.

The Ontario Superior Court, which handles all civil cases and serious criminal offences, has over 330 judges, of whom about 90 are assigned to Toronto.

The court's Chief Justice, Heather Smith, has made repeated calls for the federal government to increase the number of judges in Ontario and more quickly fill vacancies on the bench.

The federal government's recently-released budget for 2018 pledges to create six new judge positions for the Ontario Superior Court over the next fiscal year, though it remains to be seen how many of those positions will be in Toronto.

Toronto, in particular, is in need of more judges, said Criminal Lawyers Association president Michael Lacy said.

"The most serious cases get priority because of the requirement that cases be tried within 30 months in Superior Court, and then cases like a fraud case — which also raise serious issues — tend to get put on the back burner because there's not enough judges," Lacy said.

McMahon noted that in Toronto, there are 44 murder trials scheduled this year.

After Thursday's court hearing, one of the accused noted that he was now representing himself to save money.

"The financial resources don't allow you to continue, when you're looking at half a million dollars for a lawyer to step up and just be here to do this," Shane Smith said. "I've lost two houses and had a heart attack or two."

The Crown claims Smith and his co-accused ran an investment program through two companies, raising over $13 million from approximately 5,000 people. Investors were allegedly told their money would be used as start-up capital for small businesses, and that they could claim any resulting business losses on their personal income taxes, the Crown said.

The men allegedly used most or all of the investment money to pay their own salaries, expenses and company expenses, leading them to claim deductions on their taxes that were ultimately disallowed by the Canada Revenue Agency, the Crown said.

A sixth man charged in connection with the alleged scheme pleaded guilty last year.

Back to the Future: Way out of Phoenix fiasco runs through pay advisers in departments
iPolitics
Kathryn May
March 2, 2018

The Phoenix pay initiative that was intended to save millions by consolidating services in one place and getting rid of hundreds of in-house compensation staffers has come apart in the chaos of the federal pay crisis.

And now the Trudeau government is examining whether the model is even viable.

Government officials say the search for a Phoenix replacement will examine centralized pay operations and whether in-house compensation advisers should be permanently returned to departments to serve employees.

This week's federal budget gave Treasury Board President Scott Brison $16 million to begin the process of replacing Phoenix, which will include whether pay operations will be centralized, decentralized or managed via a hybrid solution.

Meanwhile, Brison's cabinet colleague, Minister of Public Services and Procurement Carla Qualtrough, says her top priority is to stabilize Phoenix and "rebuild capacity" in departments.

Public Services and Procurement Canada (PSPC) received $330 million of the $431 million the budget earmarked on Tuesday to bring Phoenix to 'steady state.' Most of that money will be spent by PSPC in the upcoming fiscal year.

Qualtrough told iPolitics that departments are experimenting with a re-organization of the pay centre, dividing compensation advisers into pods or teams aligned with departments.

A pilot project is underway with Veterans Affairs, Innovation, Science and Economic Development and the Federal Economic Development Agency for Southern Ontario, working with pods dedicated to them. The budget also gave departments $25 million to shore up their human resources.

"When you don't get paid, it is a personal crisis and I don't think anyone should have to prove hardship. …They should be able to walk down the hall and talk to someone," said Qualtrough.

It's been two years since the calamitous rollout of the Phoenix pay system, built by IBM using PeopleSoft software.

Today, half of Canada's public service faces some kind of pay problem. And the 46 departments forced to lay off 1,200 pay advisers and move pay operations to a central pay centre in Miramichi, N.B. are saddled with a staggering backlog of 633,000 cases.

Politics put the pay centre in Miramichi when the Harper government decided to build it there as a political trade-off for jobs that disappeared when it closed the gun registry in the small New Brunswick town. Many say politics will keep it there.

Qualtrough said Miramichi will stay. But now, the largest federal union – which represents a growing army of compensation advisers — is pressuring the government to keep Miramichi and return compensation advisers to departments. The Public Service Alliance of Canada (PSAC) wants a permanent, full-trained cadre of advisers.

Chris Aylward, PSAC vice-president, says the original centralization plan has failed. Now he believes the government needs a 'hybrid' solution: keeping centralized pay operations in Miramichi, while letting departments bring back in-house pay advisers. Others argue not all departments really need compensation advisers.

Debi Daviau, president of the Professional Association of the Public Service of Canada (PIPSC), has for months pushed to scrap Phoenix and replace it with a system built by public servants. She stresses that engaging people who know the needs of the individual departments and can help employees is what's important, not where they are located.

"It's a virtual world, " she said. "It is less important where they are located and what model they work under."

PSAC says in-house compensation advisers will ensure transactions are properly entered into Phoenix on time. Most pay errors begin when information is entered late or incorrectly into human resource systems, creating a cascade of Phoenix problems.

To do that, PSPC would have to open up access to Phoenix to departments — which now have limited 'read-only' privileges — to allow in-house staff to enter data.

As it stands, PSAC says employees have no one to turn to with their problems, resulting in them shouldering the burden of determining whether they are paid correctly.

"For the pay system to work in the long term – no matter what the system – we will need a permanent team of well-trained compensation advisers in both the departments and at the pay centre," said Aylward.

In terms of public perception, such a commitment would represent a major climb down for PSPC, but it's actually been happening since the Liberals first threw the switch for Phoenix in February 2016.
In fact, the business case for the two-part $309 million pay initiative that PSPC bureaucrats drafted for the Harper government nearly decade ago has largely unraveled.

It was built on moving pay operations out of 101 departments and consolidating them at a central pay centre in Miramichi, N.B. The second phase envisioned Phoenix replacing a creaky 40-year-old pay system.

The first wave of 46 departments moved to Miramichi before rollout, but plans to move the rest have been put on hold.

The thinking behind consolidation was to automate “back office” jobs – those mundane tasks computers can do. The money saved could be better spent on big policy challenges.

But Phoenix just couldn’t fly, thanks in part to the federal pay regime’s complexity and understaffing. The system couldn’t be configured to handle the 105 collective agreements and 80,000 pay rules that many compensation advisers carried in their heads.

“Those compensation advisers were human computers and owned the intellectual property of how to calculate people’s pay. That is not a sustainable model over time,” said one technology expert. “What the government was trying to do with Phoenix made sense, but they missed on how to do it.”

The PSPC bureaucrats who wrote the business plan for the previous Conservative government figured the new system would save Canadians $690 million by 2023.

Off the bat, the government booked savings of $70 million in the first year alone. The largest share of those savings – more than 90 per cent – would come by automating the work of compensation advisers and boosting productivity so they could handle more accounts.

Advisers in departments who were managing an average of 150 accounts could, with automation, easily handle 400 accounts each, it was thought.

None of this came to pass.
When Phoenix floundered, the government changed course, hired more compensation advisers and opened satellite pay centres all within months of the rollout. There are now eight satellite pay centres.

PSPC has since hired an additional 1,400 compensation staff — more than it originally laid off. The pay centre, which was supposed to have 450 employees, grew to 700 employees. The budget’s funding is expected to shore up the number of pay advisers to 1,500. And Phoenix, which was supposed to save money, is now projected to cost more than $900 million and rising.

The consolidation plan was further watered down as departments, swamped with employees who were underpaid, overpaid or not paid at all, quietly hired back pay advisers to help them sort out the mess.

The biggest testament to the value of pay advisers has come from the 54 departments which kept them. They have access to Phoenix and can enter data and, as a result, have a fraction of the pay problems compared to departments that rely on Miriamichi for pay services.

In its post-mortem, consultants Goss Gilroy said PSPC grossly underestimated the scope of the change they were bringing to the government. The project team saw compensation advisers as “lower-ranking employees” and the project as little more than “replacing a giant calculator.”

As a result, the new pay regime was managed like a giant IT project with relocation of personnel rather than as a fundamental transformation of the way pay and human resources are managed.

"While staff cuts may have been motivated by urgency in achieving planned initiative savings, in hindsight there was overconfidence in the abilities of the new pay IT solution, and a serious underestimation of the necessary role of the compensation advisers in ensuring employees are paid accurately and on time," the Gilroy report states.

The government has hired steadily since the Phoenix crisis began: an additional 325 compensation advisers were hired in January. They've also offered incentive packages, retention allowances, generous overtime, extra training and flexible work arrangements.

Departments officials say they will continue to hire until the current backlog is eliminated.

The government is also setting up special units to ensure hardship cases don't fall through the cracks and are resolved quickly. PSPC is further revamping the call centre, replacing contract employees with 100 new bureaucrats who will now have access to Phoenix and employee pay files when fielding calls.

Today, a new leadership team, headed by PSPC associate deputy minister Les Linklater, is stickhandling the stabilization of Phoenix. It is implementing an ambitious action plan to integrate pay and human resources – to try and drive the culture change that was abandoned when IBM's planned training was dropped during the Tory era to save money.

Before Phoenix, the federal government ran its pay and human resources systems separately.

With new technology, most other large employers linked their human resource and payroll systems over the years. That didn't happen in the public service.

The government further complicated its pay and human resource management by letting departments pick their own HR systems, leaving the government with a patchwork of 34 different human resources systems linked to a single pay system.

As one IT expert said, the compensation advisers were the "glue;" the only ones who could navigate these two separate worlds of pay and HR. (More than 200 custom-built programs were added to Phoenix to handle the interface between pay and human resources.)

Every department had its own compensation advisers and each had a roster of clients. They knew the pay rules and collective agreements affecting their departments inside and out and manually connected the separate human resource and payroll systems.

If a department promoted people or assigned them to acting positions, that information was entered twice into different systems. It went into the human resource system while compensation advisers quite independently plugged the information into the payroll system.

But Phoenix changed all that.

Managers and employees who used to have little to no involvement in their pay transactions were suddenly responsible with a self-serve system they weren't really trained on.

And for the first time, managers, supervisors, and employees had to report their pay and HR transactions in real time.

This meant managers had to approve hours worked before the end of the two-week pay period. For years, the public service ran on reporting hours long after they worked and adjusting files and pay cheques after the fact.

But Phoenix wasn't built for retroactivity. It works best when HR transactions are entered before they take place. Delays in entering or approving pay information resulted in a massive tangle of inaccuracies and errors.

Getting the public service to start thinking in real time about pay was a massive culture shift and required changes at all levels. Goss Gilroy found departments, especially managers, were oblivious to that fact.

When Phoenix went live, thousands of acting pay transactions, for example, that were typically claimed after the fact had to be manually processed, eating up the time of new compensation advisers and adding to the backlog of files. The same was the case with transfers, overtime, new hires, terminations and most other HR transactions.

On top of that, no one really knew what the pay procedures were. The user manual wasn't ready and pay advisers were guessing as they went along creating more errors and backlog.
If that wasn't enough, 700 fewer pay advisers and a neophyte pay staff at Miramichi were still learning the ropes with no system backup. It was decommissioned during rollout because there weren't enough pay advisers left to run it.

But the catastrophic setback came with the deluge of collective agreements that required retroactive payments going back at least two years. These new contracts forced new compensation advisers to manually process pay with data retrieved from the old system they never worked on.

The old system did need replacing. It was cobbled together by decades of workarounds and temporary fixes that only the people running it really understood. The 2008 business case portrayed those experts as big a risk as the old technology. Many of the IT and pay experts were approaching retirement and their expertise and knowledge would leave with them.

A failure to replace aging technology and deal with the "instability" of retiring compensation advisers would risk "critical system failure" undermining the government's duty to pay its employees.

The government was also having trouble finding new recruits. Young compensation advisers found the work tedious and time consuming, taking 18 months to learn the system and five years to master the job. Most were on the lookout for new jobs.

The solution to stop the turnover was to put all compensation advisers together in one spot — outside the National Capital Region — where there wouldn't be other well-paying government jobs to go to.

That turned out to be a politically expedient solution for the Harper government when closing the gun registry. The up-front savings were also a made-in-heaven solution for the cost-cutting Conservatives.

Compensation advisers started getting pink slips in 2014. Few were interested in moving to Miramichi and started look for other jobs in government, creating a shortage of pay staff that saddled Liberals with a backlog of 80,000 cases before Phoenix even went live.

The Goss Gilroy report, which has become the 'how-to' guide for large projects, offered this advice among its recommendations for the next incarnation of Phoenix .

"The experience … highlights the imperative of considering and planning for sufficient numbers and skilled capacity to support change processes, in particular when the change is major and complex and relies on subject matter experts, such as compensation advisers, and a high number of users, including managers and employees."

Jody Wilson-Raybould's vision to save Canada
Inside Wilson-Raybould's push to rebuild this country's relationship with Indigenous people
Macleans
John Geddes
March 2, 2018

On social media, where she recently sparked serious controversy, Jody Wilson-Raybould is known by her Twitter handle, @Puglaas. That's the federal justice minister's name in Kwak'wala, the language of the First Nations who live at the north end of Vancouver Island, a few smaller islands and the nearby mainland. When she was a little girl, Wilson-Raybould's paternal grandmother named her at a ceremony in the "Big House" on Gilford Island, a communal cedar building that is the centrepiece of a historic shoreline village.

Remembering that day in a recent interview, Wilson-Raybould, 46, paints quite a picture. An open-beamed room with four big posts. Men seated along one side, drumming. At the front, the chief and her grandmother, who is hosting the potlatch. Women wearing their button blankets (Wilson-Raybould's features an eagle, her clan crest). Carved masks on display, along with "coppers," the engraved copper bracelets and pendants that are traditional symbols of family status. Jody, who is five years old, and her sister, who is six, dance for their names. Puglaas is a good one, translating as "woman born of noble people."

Set against that timeless tableau, the Twitter uproar @Puglaas set off, together with @JustinTrudeau, on Feb. 9 seems to come from a different life and maybe planet. That evening, a Saskatchewan jury found Gerald Stanley, a 56-year-old white farmer, not guilty in the death of Colten Boushie, a 22-year-old Cree man. Stanley had testified that his handgun fired accidentally, shooting Boushie in the head at close range, after Boushie and four friends from the Red Pheasant Cree Nation drove onto Stanley's farm near Biggar, Sask., in August 2016.

Wilson-Raybould and her husband were out to dinner in Ottawa when the verdict came down. They got back to their condo, just west of Parliament Hill, to find the story all over the TV news. She talked on the phone with the Prime Minister, who was in Los Angeles at the end of a U.S. speaking tour. "Just spoke with @Puglaas," Trudeau quickly tweeted. "I can't imagine the grief and sorrow the Boushie family is feeling tonight."

And Wilson-Raybould, from her smartphone in her bedroom, with zero input from her aides, responded: "Thank you PM @JustinTrudeau . . . As a country we can and must do better—I am committed to working every day to ensure justice for all Canadians."

The backlash was fierce and stern. Opposition politicians and many legal experts, including the Canadian Council of Criminal Defence Lawyers, slammed Trudeau and Wilson-Raybould for undermining the justice system by signalling that they thought the jury got it wrong.

For her part, Wilson-Raybould insists she was commenting broadly on how Indigenous people fare with police and in the courts, not narrowly on the Stanley verdict. She met later with Boushie's family. "Their only ask, if you can call it an ask, was to build relationships," Wilson-Raybould says.

Still, she had drawn her first barrage of serious criticism as justice minister, after sustaining no discernible political damage while managing policies as sensitive as marijuana legalization and physician-assisted death over the past two years. Perhaps it was inevitable that Wilson-Raybould would be plunged into rougher political waters over her unique position on First Nations issues, where she has so much more riding than on any other policy file.

More than just a burnished memory, her account of getting her name is part of a life story in which the personal underpins the political. Her childhood immersion in potlatch culture blended into year-round family discussion of B.C.'s volatile Indigenous politics. An early stint as a courtroom lawyer in Vancouver, then several years of intensive work on treaty negotiations, laid the foundations for her rise as a breakthrough Indigenous politician.

Before Trudeau recruited her as a star federal Liberal candidate, Wilson-Raybould co-authored an ambitious, exhaustive blueprint for how Indigenous communities might take control of their own affairs. And now, the fully formed vision she brought to Ottawa is proving instrumental in shaping Trudeau's bid to succeed where past prime ministers have failed so miserably—in transforming the relationship between the federal government and First Nations.

Wilson-Raybould was born in Vancouver in 1971. Her mother, Sandra Wilson, a non-Indigenous teacher, separated from her father, the fiery First Nations leader Bill Wilson, before she can remember. Wilson-Raybould was raised by her mother, largely in Comox, B.C., on Vancouver Island, not far from the villages of her father's Kwakwaka'wakw people. She says her parents stayed on good terms. Every spring and summer, along with her older sister, she would go on what she calls "the potlatch circuit."

Wilson-Raybould describes potlatches as a combination of party, ceremony and gift-giving by the host. (Her grandmother, Ethel Pearson, hosted five in her life, including the one during which Wilson-Raybould was named.) There's more to them even than that, though. "It's our system of government," she says. "And it's where people get married. It's where territory is transferred by virtue of the passage of names. It's where men become chiefs. It's where people atone for wrongdoings. So going to potlatch, it's incredibly cultural and spiritual."

But Wilson-Raybould's grounding in tradition came alongside an education in the less ceremonial, more contemporary side of First Nations politics. Bill Wilson, now 73, graduated from the University of British Columbia's law school in 1973, becoming only the province's second Indigenous lawyer. Established as a B.C. First Nations leader by the early 1980s, Wilson vaulted to national significance by helping prod then-prime minister Pierre Trudeau into enshrining "Aboriginal and treaty rights" in his 1982 constitutional reforms.

There's a CBC video clip from a 1983 conference on what were then called "native issues" in Ottawa, in which Wilson tells Trudeau he has two daughters at home on Vancouver Island, and both aspire to be lawyers and prime minister. "Tell them I'll stick around till they're ready," Trudeau says. He and Wilson look to be thoroughly enjoying each other's showmanship.

And, like Pierre Trudeau, Wilson had edge. In fact, he still does. Last spring, he took to Facebook to denounce the troubled National Inquiry Into Missing and Murdered Indigenous Women and Girls as "a bloody farce," telling the commissioners, "It's time for you all to resign." Wilson-Raybould had to put out a statement saying she hadn't spoken with him about the inquiry, which has the Trudeau government's backing.

"I would say I'm a bit more diplomatic than my father is," she says. "He has been incredibly provocative. I think the way he engages and creates stirs actually promotes conversation." She says they "share the same values and beliefs," but part company on style. "My dad loved the spotlight, loved talking to reporters, particularly when there were cameras there. I'm the exact opposite."

Any reticence, though, shouldn't be mistaken for lack of drive. After following her father's path by graduating from UBC's law school in 1999, Wilson-Raybould worked for a few years as a Crown prosecutor on Vancouver's infamously drug-plagued Downtown Eastside. She prosecuted a lot of young, urban Indigenous defendants, some for stealing food from grocery stores. Addiction treatment was inadequate, affordable housing scarce. "There was nothing that, as a prosecutor, we could substantively do," she says.

She relished the courtroom atmosphere, but never lost sight of her plan to eventually move on into First Nations politics. Her entry point was the B.C. Treaty Commission, which oversees negotiation of modern treaties between First Nations and the federal and provincial governments. She arrived as a staff adviser, was quickly elected a commissioner, and ended up serving as acting chief commissioner.

Insiders soon realized that Bill Wilson's daughter wasn't a typical novice. "She knew all the chiefs and leadership and knew a lot of the issues," recalls Robert Phillips, who overlapped with her at the treaty commission and is now an elected member of an umbrella group called the First Nations Summit. "So I saw her right away as a born leader, sort of a take-charge kind of person."

In 2008, she married Tim Raybould, who is non-Indigenous but has worked for decades as a consultant to First Nations groups, notably as the Westbank First Nation's chief negotiator when the band, in B.C.'s Okanagan region, was hammering out a landmark self-government deal that took effect in 2005. Born in Vancouver but raised in England, Raybould has a doctorate from the University of Cambridge in social anthropology and is now a professor at the McGill Institute for the Study of Canada in Montreal.

In 2009, Wilson-Raybould took two key steps. She was elected councillor of We Wai Kai, the First Nation at Cape Mudge on Vancouver Island, where she's a member and owns a home, and as regional chief of the B.C. Assembly of First Nations. It took her three ballots to capture the BCAFN's top job in a tight vote, but she was re-elected with a landslide margin in 2012.

By then, she had made her mark, partly by easing strains among the province's often-fractious 200-plus bands. She was also willing to take on jobs that didn't obviously raise her public profile, like chairing an innovative body called the First Nations Finance Authority, which offers First Nations access to long-term loans at lower interest rates. Most importantly, she co-authored, with Raybould, a doorstop of a document called the BCAFN Governance Toolkit: A Guide to Nation Building.

Weighing in at an intimidating 805 pages in its most recent edition, the Toolkit isn't easy to summarize. Its starting point is dissatisfaction with the way B.C. First Nations—like about 400 other reserve communities across Canada—must operate under the outdated rules of the old federal Indian Act. The Toolkit methodically surveys the options for any First Nation that wants to negotiate self-government, including taking over jurisdictions, setting up a new administration and conducting community consultations.

Debate about next steps for First Nations is often littered with sweeping generalizations and purely rhetorical declarations. With the Toolkit, Wilson-Raybould armed herself with precision. It didn't go unnoticed.

In late June 2011, Wilson-Raybould was speaking on governance at a BCAFN assembly in Richmond, B.C., when Paul Martin, the former Liberal prime minister and finance minister, slipped into a chair at the back. Martin has devoted himself since retiring from politics largely to promoting better First Nations education, and was scheduled to speak later.

He was glad he got there early. “I mean, it was a brilliant exposition,” Martin says. “The best talk on governance I’ve ever heard.” Later, he and Wilson-Raybould spoke at length. Martin says he mostly asked questions and listened. He left with a copy of the Toolkit, which he describes as “thick as a brick, a stupendous thing,” for reading on his flight home to Montreal.

After that, Wilson-Raybould says Martin’s mentorship grew to become an important factor in her life. He admires her systematic way of framing a policy challenge and proposing a solution. “When you sit down with Jody to talk about the issues—and Tim Raybould is, by the way, the same—she comes right to the point,” Martin says. “She’s thought it through, and basically says, ‘This is what I think we should do.’ ”

Martin began raising her name in Liberal circles, including with Justin Trudeau. After Trudeau won the party’s leadership in the spring of 2013, he launched a recruitment push that brought political newcomers—and future top cabinet ministers like Bill Morneau and Jane Philpott—into the fold. That summer, he travelled to Whitehorse, where the Assembly of First Nations was meeting, mainly to reach out personally to the B.C. regional chief who had so impressed Martin.

At Whitehorse’s modest conference centre, Trudeau listened to Wilson-Raybould speak at an AFN session on land claims. Then they retreated, just the two of them, to a small room in the adjacent hotel. Wilson-Raybould says they discussed values, vision, and how their fathers had productively butted heads in the early ’80s. “We talked about it, that this is an interesting world, how things have come full circle, and now we’re having this conversation that our fathers started,” she says. “And he asked me if I would run, and I didn’t say yes. I was, of course, flattered.”

Within a few months, Wilson-Raybould was being showcased as a top draft pick in Trudeau’s rebuild of the Liberal team. Before even signing a party membership card, she co-chaired a key Liberal policy conference in Montreal in 2014. That summer, nobody challenged her for the Liberal nomination in the newly created Vancouver Granville riding. She won the seat handily in the 2015 election.

After Trudeau’s election triumph, speculation swirled that he might name her the first Indigenous minister of Indigenous affairs. Instead, he made Wilson-Raybould minister of justice and attorney general of Canada—traditionally ranked around Ottawa, along with Finance and Foreign Affairs, as among the most prestigious cabinet portfolios. No Indigenous politician had ever risen that high in federal politics.

There would be no easing into the job. Working to a deadline set by the Supreme Court of Canada in its 2015 decision striking down the law against doctors helping their patients die, Wilson-Raybould had to fill the gap fast. She tabled legislation in the spring of 2016 to limit medically assisted suicide to competent adults suffering “grievous and irremediable” sickness and whose death was “reasonably foreseeable.” The compromise remains controversial.

As well, much of the burden of making good on Trudeau’s signature campaign pledge to legalize and regulate marijuana fell to Wilson-Raybould. Last spring, she introduced a bill that offsets legalization with get-tough measures, such as creating a new offence, with a penalty of up to 14 years in prison, for

using a youth to commit a cannabis-related crime. Through much of 2017, she led consultations aimed at key criminal law reforms, expected to be unveiled as early as this month.

In its final weeks, that reform push was overshadowed by Stanley's acquittal, and then, on Feb. 22, the not-guilty verdict handed down in Winnipeg in the second-degree murder trial of Raymond Cormier, who was charged in the death of Tina Fontaine, a 15-year-old Indigenous girl whose body, wrapped in a duvet cover, was found in Winnipeg's Red River in 2014. Outrage among First Nations leaders over those two cases has put intense pressure on Wilson-Raybould to deliver changes to the way Indigenous people are treated in the justice system. She is taking a hard look, for instance, at the so-called "peremptory challenge" rule that allowed defence lawyers to reject all potential jurors who looked Indigenous from serving on the jury in Stanley's trial.

All that adds up to a daunting workload for Wilson-Raybould, and potentially a major policy legacy. But her influence on Trudeau's high-stakes Indigenous rights recognition agenda, if it pans out, is arguably even more significant. Even though Trudeau has Crown-Indigenous Relations and Northern Affairs Minister Carolyn Bennett and Indigenous Services Minister Jane Philpott on the job, Wilson-Raybould's role is central.

Last summer, it was the justice minister who released a list of the 10 principles that will guide the Liberal government's attempt to reboot Ottawa's relationships with First Nations, Inuit and Métis. The first principle: "All relations with Indigenous peoples need to be based on the recognition and implementation of their right to self-determination, including the inherent right of self-government." For those who knew about the Toolkit, the detailed, systematic approach behind the 10 principles was more than familiar.

Then, in February, Trudeau gave a major speech in the House announcing the start of consultations toward passing into law what he called a "framework" for recognizing Indigenous rights. Again, the approach and language seemed to come straight from the Toolkit, where Wilson-Raybould had emphasized in the preface the need to "establish the legal and political framework for implementing First Nations governance."

But "framework" isn't exactly a self-explanatory word. The problem it aims to solve is how First Nations that are fed up with being governed under the reviled Indian Act must embark on lengthy negotiations with Ottawa, and often end up going to court to settle disputes that arise in the bargaining. In the end, the federal cabinet must separately approve each deal.

The framework would, in theory, speed up and clarify the process. For example, Wilson-Raybould says it will probably set out that a First Nation can decide who its citizens are and devise its own governing institutions, while in other areas—likely including policing and education—discussions with the federal government will still be needed.

Not all First Nations leaders like the sound of the extensive consultations Trudeau said must go into finalizing the framework. Grand Chief Arlen Dumas, head of the Assembly of Manitoba Chiefs, said, "We've been down this path before," citing past efforts to shake up the status quo, from the 1996 Royal

Commission on Aboriginal Peoples report to the 2015 Truth and Reconciliation Commission recommendations. “We need a government that will not impose any more of their ideas,” Dumas said, “but will support First Nations to direct our own futures.”

If there’s an underexamined essential element in Trudeau’s approach, it’s that First Nations must reorganize themselves to take on more powers under his proposed framework. There are more than 600 bands in Canada, limited in what they can and can’t do by the Indian Act. But most are too small for full self-government to be practical. “I actually think this is the most important thing,” Wilson-Raybould says, describing the prospect of bands across Canada reorganizing themselves into larger groupings, better able to run everything from education to economic development, as “pretty powerful.”

She points to her own Kwak’wala-speaking people, broken up by the Indian Act for federal administrative purposes into 15 separate, small bands. “In order to fully exercise our rights over the lands and resources,” Wilson-Raybould says, “we’re going to—and this is where the hard work is—have to reconstitute ourselves.” It’s a vision rooted in the Toolkit author’s study of governance, but also in a little girl’s summers on the potlatch circuit, where she learned what still binds those separate communities together.

That mix of lawyerly expertise and lived experience could be crucial if talk of reconciliation between the federal government and Indigenous peoples is to be turned into tangible progress. Wilson-Raybould’s place in the history of First Nations politics is secured already by how far she’s come to reach the office she holds. What’s left to discover is how far she can go in using it to usher in change.

Judge shortage puts fraud trial in jeopardy
Toronto Sun
Michele Mandel
March 1, 2018

Kiss a $14-million fraud case goodbye.

The frustration in the downtown Toronto courtroom was palpable. A scheme that allegedly defrauded 5,000 investors across Canada is now in “extreme jeopardy” after a judge shortage forced Superior Court Justice John McMahon to postpone the trial until January 2019. That will make it 60 months from the date of arrest to get to trial, double the 30-month maximum set out in the Supreme Court case known as R v. Jordan.

It’s not often that a Superior Court judge publicly decries the state of the judicial system, but Thursday morning, McMahon made his dismay known.

“The frustration of this court is with not having sufficient resources to do the job despite everybody’s best efforts,” McMahon said. “I apologize to you. I apologize to the Crown. I just don’t have a judge to do a 12-week trial.”

The Toronto courthouse has 44 scheduled homicide trials this year alone, he said, and when he reached out to colleagues in neighbouring regions , neither Newmarket nor Brampton had judges they could spare to conduct a three-month trial.

“It’s frustrating, but we can only do what we can do,” he said. “I’ve exhausted every remedy I have.”

Does this mean open season for white collar criminals because there’s no room for complicated trials in Toronto’s courts?

At stake is a complicated fraud case against five men accused of operating a sophisticated tax shelter scheme between 2009 and 2014 that promised investors generous refunds from the Canada Revenue Agency. Integrated Business Consultants Association (IBCA), and a related company, Synergy, raised over $13 million from investors on the promise their investment would provide small businesses with start-up capital and they could then claim any business losses against their personal income taxes.

The RCMP alleged the investment money didn’t go to small businesses but to pay commissions, salaries and expenses of the accused and the companies. When investors tried to claim the “losses” on their tax return, CRA disallowed the deductions and reassessed them.

Charged with fraud are Vincent Villanti, 70, Shane Smith, 50, David Prentice, 56, Ravendra Chaudhary, 69, and Andrew Lloyd, 46. The men have been on bail since their arrest in March 2014.

Lawyers on both sides predict the case will ultimately be tossed for unreasonable delay.

“It’s been four years and now you’ve just heard it’ll be another year before this goes to trial and there’s no crime here,” insisted Paul Riley, lawyer for Villanti. “That’s way too long when you’re presumed innocent. This has to be thrown out down the road, it has to be.”

The defence lawyer argues this case isn’t a criminal matter. “The court doesn’t have room for this. A 12-week trial over something where there’s no victim of crime, these guys are not alleged to have committed a violent act, none of them have a criminal charge against them in their whole history, and you want to tie up an overflowing court system with this? No.”

Smith suffered a heart attack while the charges have been hanging over him. “It’s been devastating,” said the Peterborough man, who is representing himself because he can’t afford a lawyer for a three-month trial. “I’ve had a heart attack, I’ve lost my home, I’ve lost my job.”

The federal government has just promised six new judges for the Ontario Superior Court, but they won’t be in place in time to help with this case. So prosecutors walked out of court knowing their years of preparation may all be for naught. “I think it’s tragic,” said assistant Crown attorney Michael Luckner. “It’s frustrating for all the victims in this case. For everybody really.”

"We're in great jeopardy of losing the case," added co-prosecutor Helen Song. "It's frustrating for (the complainants). We've had them waiting on stand by, we've made travel arrangements for them, and then all to have everything cancelled, it's upsetting."

Now chances are that their allegations will never come to trial at all. "Some of their lives have been devastated from this," Song said, "and to not have a forum to explain what happened is upsetting."

Not all crimes are violent ones. And its victims still deserve their day in court.

mmandel@postmedia.com

RCMP officer who used pepper spray on inmate says force was necessary, court hears
Paul Marenchuk charged with using excessive force in pepper spraying prisoner in Pond Inlet
CBC News
Thomas Rohner
March 2, 2018

The four-day trial of a former Nunavut RCMP officer charged with assaulting a prisoner with a weapon in Pond Inlet in 2015 wrapped up Thursday at the Nunavut Court of Justice.

Lawyers presented closing arguments before Justice Sue Cooper in Paul Marenchuk's judge-alone trial, which began with the accused facing two assault charges but ended with only one charge remaining.

"The issue here is whether my client was in compliance with section 25 [of the Criminal Code of Canada]," said defence lawyer Alison Crowe.

Marenchuk, a 30-year veteran of the force, sat beside Crowe at the defence table, wearing a dark grey suit and thick square glasses.

Section 25, often used in defence of police charged with assaulting prisoners, states peace officers are justified in using "as much force as is necessary" while carrying out their duties.

Use of pepper spray in question
The force Marenchuk used when he pepper sprayed Lanny Kippomee in the Pond Inlet detachment on Sept. 10, 2015 was necessary and proper, argued Crowe.

But Manon Lapointe, Crown counsel from Ottawa, argued the force was excessive: Kippomee had not been combative and was lying on the cell floor when Marenchuk pepper sprayed him.

According to the court record, Marenchuk was detachment commander in Pond Inlet from 2012 until October 2015.

On the night of the alleged assault, two other officers were called to Kippomee's home, who Crowe said was "intoxicated, angry, suicidal and potentially homicidal."

At the detachment, the arresting officers placed Kippomee in a cell and removed his outer clothing because they deemed him a suicide risk, the court heard.

When Marenchuk arrived at the detachment, he became "extremely concerned" that Kippomee was still wearing his underwear.

Crowe said her client feared the underwear could be a safety risk to a suicidal inmate, and could hide contraband.

"The two other officers tried to gain compliance and remove Mr. Kippomee's underwear for a good 30 minutes. When force isn't effective, greater force is allowed," she said.

Marenchuk used a "short burst" of pepper spray, added the defence lawyer.

One charge dropped on first day of trial
Crowe called the investigation into Marenchuk's alleged misconduct "very, very sloppy."

The second assault with a weapon charge Marenchuk faced was dropped on the first day of trial, because another officer came forward to take responsibility.

Marenchuk had been charged for allegedly using pepper spray unnecessarily on Joshua Enookolo on Aug. 31, 2015.

But Const. Patrick Higgins, the sole arresting officer of Enookolo, testified that he used pepper spray on Enookolo, and Marenchuk was not involved.

"In light of the evidence ... the Crown would like to enter a stay of proceedings on count number one," said Lapointe.

"How did the Crown not know about this?" asked Crowe during her closing arguments.

'Emotionally upset'
The prosecutor painted a different picture of Marenchuk's involvement with Kippomee.

The arresting officers testified that Kippomee was "never aggressive or combative towards them" and instead was "emotionally upset," said Lapointe.

There was no need to quickly remove Kippomee's clothes, and no other calls coming into the detachment, said the prosecutor.

When one arresting officer, Greg Sutherland, left the cell area to get a suicide-proof gown, he left the cell door open — proof that Kippomee was not a threat to anyone, said Lapointe.

But when Marenchuk arrived, the commanding officer admitted to being "irritated" and made "derogatory comments about Kippomee and his family," the court heard.

"Mr. Marenchuk took matters into his own hands because he thought Mr. Kippomee was not being compliant, and he wanted to make him compliant," said Lapointe.

Even though Kippomee was lying "incapacitated" on the floor, Marenchuk used the pepper spray, which Lapointe argued was neither reasonable nor proportionate.

In reviewing relevant cases, Lapointe said she has not heard of a case where pepper spray was used in cells to gain compliance in the removal of clothes.

In the cases she reviewd, she said pepper spray is usually used during "dynamic arrests."

Justice Cooper scheduled a decision to be delivered in Iqaluit on April 26 at 9:30 a.m.