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A CASE OF NO RESPECT?

Striking government lawyers in Quebec were forced back to work. Where does that leave them now?

BY MARK CARDWELL

Poor François Desroches-Lapointe. A board member and spokesman for the Quebec civil lawyers' and notaries' union — Les avocats et notaires de l'État québécois, or LANEQ — he tried in vain in May to find members who were willing to share their first-hand experiences on the picket lines during their historic four-month general strike, the longest in Canadian public service history.

"I tried 16 people," says Desroches-Lapointe, whose regular job is doing litigation work for Quebec's public auto insurance crown corporation, called the SAAQ. "But no one has gotten back to me."

That silence is a big change from a few months ago, when the LANEQ's 1,100 members took to the streets, grinding the drafting of provincial bills, the work of tribunals and other government business to a crawl, if not a halt.

Many striking lawyers openly identified themselves and talked with journalists while on the picket lines, many of them carrying signs with hand-written slogans like *Je me souviendrai!* (I'll remember!) at the noisy demonstrations they held in the streets of Montreal and Quebec City between Oct. 24, when the strike began, and Feb. 28, when they were ordered back to work by

legislation after a marathon 24-hour debate in the National Assembly.

But Desroches-Lapointe says his members' post-strike silence is understandable due to the discreet nature and vital importance of the jobs to which they have returned. "State lawyers work in anonymity," he says. "Our work is done mostly in the shadows and always in confidentiality and we don't ask for or get the public merit we deserve."

Though money was the main public focus of the lawyers' contract demands (a pay increase of 10 per cent over four years, the same conditions that an arbitrator awarded Quebec's 450 Crown counsel a year ago), it was that feeling of indignation that triggered the strike and fuelled the lawyers' desire to stay out even after the LANEQ's war chest was emptied and many of its members were in dire personal financial straits.

The seeds of that discontent were sown in the aftermath of another strike that began on Feb. 8, 2011 when both the LANEQ and the Quebec Crown attorney's union (the Association des procureurs aux poursuites criminelles et pénales) took to the streets in protest over wages and working conditions.

It was the first time the lawyers used their legal right to strike, which they were granted in 2003. After just six days, however, the Quebec government ended that Canada-first strike through legislation, much of

which was cut-and-pasted into the 2017 law.

In the fall of 2011, after months of parallel negotiations with the two lawyers' unions, the Quebec government reached a tentative deal with both groups on the issue of wages, which were as much as 40 per cent lower than what provincial lawyers earned in neighbouring barometer-province Ontario.

But the government also granted the province's 450 Crown attorneys the right to binding arbitration process in exchange for the right to strike, creating a major schism between the two lawyer groups.

"At first we were excited and optimistic because we were sure we were going to get the same right, which we were also asking for," says Desroches-Lapointe. "The government initially signalled a willingness to grant it to us, but it never did. "We had the same working conditions as the Crown for 50 years in Quebec, like in every other province," he says. "But the Quebec government changed all that and refused to reconsider. It was very frustrating for our members."

Quebec Treasury Board Minister Pierre Moreau added salt to the civil lawyers' wounds by arguing publicly that they don't require the same level of independence in the determination of their working conditions as Crown attorneys.

"That was a real slap in the face for state lawyers, and the reason why the (2016-17) strike went on for so long," says Dalia Gesualdi-Fecteau, a former government lawyer who teaches labour and employment law at the Université du Québec à Montréal.

According to Gesualdi-Fecteau, the legal

opinions and services that provincial lawyers provide their employer/client with on a daily basis — everything from policy development and legislative drafting to advisory and legal services and litigation — puts them in an awkward negotiating position. “They don’t want to bargain working conditions with their employer while giving legal opinions to their client that might displease them,” she says. “It’s not a normal relationship.”

The desire to change their current negotiation process — not wage parity — became the main demand and rallying cry for LANEQ members after their collective agreement expired in March 2015.

The government’s refusal to grant that right in more than 18 bargaining sessions and five meetings with a mediator resulted in an impasse. It also resulted in the rejections of five government offers and counter-offers, and ultimately an 84-per-cent vote in favour of the strike by LANEQ members on Oct. 12, 2016.

“The signal from our members is clear,” the union’s president, Jean Denis, wrote in a statement following the vote. “The strike has become the only way to bring (government) back to the negotiating table.”

In interviews, union officials acknowledged that the timing of the strike was part of a strategy aimed at pressuring the government by paralyzing the preparation of legislation during the busy fall session when dozens of measures were on the books.

As it turned out, however, the strike was neither easy nor successful for LANEQ’s members. Regrouped mostly in Quebec City and Montreal, they held several demonstrations in front of government buildings. In January, at their fourth general assembly meeting since the summer, the striking lawyers voted to reject the government’s final take-it-or-leave-it offer by a whopping 97 per cent. Sixty-three per cent also voted to continue the strike even though the LANEQ had entirely depleted its \$8-million war chest (half of it loans that are being repaid through an already-activated increase in union dues to three per cent from 0.75 per cent of members’ salaries) and strike pay was reduced to zero from a high of 60 per cent of members’ weekly salaries at the start of the strike.

Some senior voices in Quebec’s legal

community spoke out in favour of the striking lawyers. In addition to the president of the Quebec Bar, the managing partners of eight major Quebec law firms called for a negotiated settlement to the strike in an open letter to Couillard in late February.

“We want to officially express our support to our government colleagues and reiterate the importance of their role and function within government,” wrote the principals of Langlois lawyers, Robinson Sheppard Shapiro, Blake Cassels & Graydon LLP, Jolicœur Lacasse Avocats, Thérien Couture avocats, Dentons Canada, Dufresne Hébert Comeau and BCF.

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“Our professional activities require us to work regularly with (them) in various spheres of activity. We would like to see their tremendous competence, intellectual rigour and unwavering loyalty to the proper functioning of the state’s business recognized.”

A week later, the government tabled its back-to-work legislation. The special law notably imposed a 105-day negotiating and mediation period on both sides. If they fail to reach an agreement, the government will impose the first and lowest of the formal offers it made — a 5.25-per-cent increase over five years.

According to one Quebec City labour lawyer, the failure of government lawyers to win widespread public support for their cause enabled the government to bludgeon them back to work. “Government lawyers are relatively small in number and they work in obscurity,” says Laval Dallaire, a partner in the Quebec City firm of Gagné Letarte avocats and a specialist in the negotiation of collective agreements.

Unlike the nearly 50,000 Quebec nurses

who were similarly forced back to work after an illegal strike in 1999 — but who enjoyed widespread public support for their wage demands, which convinced the Parti Québécois government of former Quebec Premier Lucien Bouchard to forego fines and reach a higher-paying settlement — Dallaire said the lawyers were unable to garner sympathy for the negotiation process discrepancies with Crown attorneys. “It was really quite astute on the lawyers’ part, because it looked like their battle was based on principle rather than money,” he says. “But if you don’t have public support for your position or are able to distinguish yourself from comparable groups, you will be dealt with according to the salary models that governments build with the help of specialists, and that their negotiators stick to.”

For his part, Desroches-Lapointe held out little hope for a negotiated settlement before the deadline. “The outcome is already dictated by law, so the government has little incentive to be generous,” he says. That back-to-work legislation, he added, “clearly states” the mediator cannot address nor does he have jurisdiction over the crucial issue of the negotiation process. “The government is holding the big end of the bat — no, the whole bat,” says Desroches-Lapointe.

He says the LANEQ is still hoping for positive outcomes to a legal challenge it launched against the government’s back-to-work law, as well as an action filed with Quebec’s labour relations board, accusing the government of bargaining in bad faith. One positive thing to come out of the strike, says Desroches-Lapointe, is the strong sense of solidarity that was forged among lawyers. That has also provided some solace, he adds, to the difficulties many members have expressed about returning to the relative anonymity of their workplaces within the government apparatus. “It’s really frustrating for our people to carry on with all the professionalism that is required after everything that’s been said and done — but we can’t do otherwise,” says Desroches-Lapointe. “We remain among the lowest-paid lawyers in the country. Being in the spotlight, however, has raised our profile and helped people to understand the really important and rewarding work we do.” ■