Former justice department lawyer loses Charter lawsuit against minister

Sean Fine, Globe and Mail, March 2 2016

A federal government lawyer who sued the Justice Minister over his failure to inform Parliament when a proposed law might run afoul of the national rights charter has lost his case.

Under a 1985 law, the Justice Minister is required to tell Parliament if a proposed law is not "consistent" with the Charter. But that has almost never happened.

Edgar Schmidt, a former senior lawyer with the justice department, sued the Justice Minister three years ago, saying the minister was breaking the law by failing to advise Parliament when a proposed law might be unconstitutional. His lawsuit, though it began under a Conservative government, did not specifically target that government's conduct. It applies equally to any government – though it was especially pertinent during the Harper era, when courts struck down several laws dealing with crime and refugees.

But Federal Court Justice Simon Noel ruled that as long as the Justice Minister has a "credible argument" to make in support of a proposed law, the minister does not need to report its constitutional difficulties to Parliament.

Mr. Schmidt, whose job was to examine proposed laws for their consistency with the Charter, said he was told that even if a law had a chance of less than 5 per cent of passing constitutional muster in the courts, it was credible, and therefore consistent.

The federal government argued that passing laws is up to politicians. "Democracy is about who makes the difficult decisions about what a 'right answer' might be," the Justice Department argued in a legal filing. "It is for the Minister alone to decide whether he concludes that he has ascertained that a provision in a bill is inconsistent with guaranteed rights."

It said Mr. Schmidt's approach to examining legislation would harm the principle that the civil service is neutral and supports the government of the day. "Political neutrality calls for an examination standard that supports the Minister in performing his duties, not one which purports to dictate how he should exercise them."

The justice department suspended Mr. Schmidt when he sued and, after six months without pay, he retired.

(To read the full decision, please click here)

Public servant in recent human rights case says he's friendly, neighbourly sort

Andrew Duffy, The Ottawa Citizen, February 29 2016

The public servant at the heart of a recent human rights case, Mr. X, says he considers himself "a friendly and neighbourly sort" who tries hard to get along with his co-workers.

"In an environment where, truth be told, we need to make a bit of an effort to maintain a harmonious, productive atmosphere, I believe that living by this credo is essential and is just good common sense," he wrote in an official harassment report obtained by Postmedia.

Mr. X's harassment complaint was filed in March 2011 as his conflict with co-worker Line Emond came to a head in the Laurier Avenue offices of the Parole Board of Canada.

Earlier this year, Emond won the legal right not to work in the same building as Mr. X due to the disabling stress that she suffered in the wake of those harassment allegations.

Emond was outraged that she was the subject of a harassment claim after enduring years of what she considered offensive, sometimes threatening behaviour from Mr. X. She had complained that Mr. X walked barefoot in the office, washed his feet with vinegar, made loud guttural sounds, farted, swore and cooked smelly food.

Mr. X, however, accused Emond of conducting a harassment campaign against him.

In his official complaint, Mr. X said he tried to make small talk with Emond in the first three months after moving to a cubicle next to her office. But their relationship quickly soured.

Every morning when he sat down at his desk — "I have a tendency to make a noise when I settle into my chair due to a stiff back," he said — Mr. X heard someone yell, "Are you all right?" He couldn't figure out where the comments were coming from until discovering to his "astonishment" that it was Emond.

In April 2010, he said, Emond walked by his cubicle and called him an "espèce de cochon" — a species of pig — then ran into her office.

"As this was clearly directed at me," said Mr. X, a former corrections officer, "and as I didn't know what prompted this insult as I was sitting quietly working away, I gently knocked on her door and opened it a bit, at which point she tried to close it on me.

"She then ran out of her office, down the hall and out the door while shrieking like somebody who was in a significant amount of pain either physical or psychological. Given that I have worked in an environment with people with significant mental health issues, I genuinely thought she was having a psychotic break and, for a while, I worried about my safety and the safety of my colleagues."

Mr. X also alleged that Emond told several co-workers that he "did not know how to live," and that she made loud, strange noises in his presence. Once, as they crossed paths at the front door, "she started to howl and screech," he alleged. Another time, as they passed outside a washroom, she "made a series of strange noises like a feral animal," he said.

"I wasn't sure if I was going to be attacked at any moment," said Mr. X, who insisted that he did his best to avoid and ignore Emond.

Emond admitted to an independent investigator that she called Mr. X a pig. She said the insult was not directed at Mr. X, but "just came out." It was prompted, she explained, by the terrible smell of Mr. X's dill-flavoured popcorn, on which he had melted strong cheese. A pregnant colleague had told her the smell was making her sick to her stomach.

Emond told the investigator that although she knew the comment was wrong, she was unable to apologize to Mr. X because she couldn't bear to be in the same room with him.

Emond later received an oral reprimand for the insult, which was deemed workplace harassment. Mr. X's two other harassment allegations were dismissed.

As Mr. X's harassment case neared its conclusion, Emond filed an official harassment complaint against him. It was dismissed, however, because it had been filed too long after the alleged incident.

At the same time, she launched a grievance in which she alleged that the federal government discriminated against her by failing to accommodate her disabling "emotional stress" by moving her to a separate building from Mr. X. The Public Service Labour Relations and Employment Board recently upheld that grievance and ordered the government to compensate her for wages and benefits lost during the more than two years that she spent on long-term disability.

Une fonctionnaire mutée pour s'éloigner de son collègue qui «jurait et pétait»

La Presse Canadian, Le 24 février 2016

Une fonctionnaire fédérale a obtenu le droit de travailler à distance... de son collègue bruyant et inconvenant, qui jurait, pétait et se lavait même les pieds avec du vinaigre, au bureau.

La Commission des relations de travail et de l'emploi dans la fonction publique a donné raison à Line Émond, une responsable de la qualité des données au bureau d'Ottawa de la Commission des libérations conditionnelles du Canada. Mme Émond avait porté plainte au tribunal quasi judiciaire de la fonction publique, plaidant que «Monsieur X» la rendait malade et que son employeur ne faisait rien pour l'aider.

«Monsieur X» s'est joint au bureau d'Ottawa à l'automne 2009; Mme Émond a été en congé de maladie puis d'invalidité de longue durée pendant plus d'un an et demi - d'août 2011 à mars 2013.

Des collègues de travail sont venus témoigner du comportement singulier de «Monsieur X», qui faisait des «bruits bizarres, comme des bâillements étranges», se promenait pieds nus au bureau, et se lavait les pieds avec du vinaigre devant ses collègues, «qui trouvaient ça dégoûtant».

L'avocat du gouvernement a plaidé qu'il s'agissait là d'un conflit de personnalités, pas d'une affaire de santé. Par contre, un médecin est venu témoigner que Mme Émond souffrait d'anxiété et se sentait menacée par son collègue.

Le tribunal quasi judiciaire a conclu qu'à l'évidence, le comportement abusif de «Monsieur X» avait eu un effet négatif et nuisible sur la plaignante, d'autant que l'homme en impose physiquement.

L'arbitre Linda Gobeil a conclu que Mme Émond devait être mutée dans un autre édifice et obtenir le remboursement du salaire et des avantages perdus pendant une partie de son congé d'invalidité de longue durée.

L'arbitre Gobeil trouve quand même inouï que l'employeur n'ait pas pu déjà trouver quelque part à Ottawa un bureau à cloisons où Mme Émond pourrait s'installer.

Trudeau makes first shakeup of top PS ranks

Kathryn May, The Ottawa Citizen, March 2 2016

Prime Minister Justin Trudeau put his first and much-anticipated stamp on Canada's public service with a shakeup Wednesday of the top ranks that brought in a wave of new and first-time deputy ministers.

The government that has promised to restore the respect of Canada's public service and bring in new, young blood promoted and moved senior executives around in departments handling some its highest priority files — infrastructure, aboriginal affairs, public safety, and foreign affairs.

Senior bureaucrats are braced for more changes, speculating another shuffle in the coming weeks and another in the summer as a number of key deputy ministers retire.

The Liberals have been big promoters of encouraging millennials into the public service and grooming a new generation of leaders. One senior bureaucrat said the wave of retirements should leave "lots of room to promote and renew."

Two veteran bureaucrats whose retirements opened up vacancies in Wednesday's wave of promotions are François Guimont, deputy minister at Public Safety, and Colleen Swords, deputy minister of Indigenous and Northern Affairs.

Other longtime deputies widely expected to retire shortly are Richard Fadden, the prime minister's national security adviser and right-hand on domestic and international security threats. Matthew King, the deputy minister at Fisheries and Oceans, is also said to be leaving.

In this round of moves, Guimont is being replaced at Public Safety by Malcolm Brown, the deputy minister for International Development who was moved to the Privy Council Office as a special adviser on the Syrian refuge initiative. Now that the Liberals have met their goal of bringing in 25,000 Syrian refugees, the focus of that initiative now shifts to the provinces and municipalities for resettlement.

At Public Safety, however, Guimont takes on another priority for the Liberals with its overhaul of the Conservatives controversial security bill, C-51, and the government's promise to better balance privacy and security.

The biggest change is the appointment of two deputy ministers for Transport and Infrastructure portfolios, which was expected because Trudeau gave those files to two cabinet ministers: Marc Garneau as Transport minister and Amarjett Sohi as minister of Infrastructure and communities.

Jean-François Tremblay, the bureaucrat who oversaw both portfolios as deputy minister Transport Infrastructure and Communities, will handle Infrastructure with Sohi. Infrastructure spending is the main pillar of the Liberal platform, with promises of an extra $60 billion for infrastructure over the next decade, but only $17.4 billion in the next four years.

The Transport portfolio goes to Michael Keenan, now the associate deputy minister at Natural Resources.

Hélène Laurendeau, associate deputy minister at Indigenous and Northern Affairs, moves up to the deputy minister job, handling such thorny issues as the implementation of the truth and reconciliation commission and the inquiry into murdered and missing indigenous women.

The shuffle is the also the first significant shakeup since the Liberals appointed Michael Wernick as clerk of the Privy Council and Canada's top bureaucrat in January. The clerk typically advises the prime minister on deputy minister appointments.

Wernick replaced Janice Charette, who managed the Liberals' transition and is said to be awaiting another posting.

Some say the Liberals have questioned whether the public service's leaders are up to the job of implementing such ambitious activist agenda after a decade under a Conservative government that didn't rely on its public servants for policy advice. Most of the current executive corps was promoted during the Tory-era.

The latest shuffle, however, suggests the face of the public service is changing as baby boomers continue to retire and are replaced by younger executives. Three of the six moves were associate deputy ministers promoted into full deputy positions and another is an assistant deputy minister moving into an associate deputy minister job.

There could be at least dozen top-ranking executives retiring over the year. The numbers are higher than normal because some who could have left earlier stayed for the election and to help manage the transition between governments.

The government has long talked about recruiting more mid-career executives from outside the public service and some say that could happen in the senior ranks in the coming months.

The public service is under a lot of pressure with a new government that wants it to play critical roles in delivering the government's activist agenda during a slow economy.

The Liberals have promised to seek public servants' advice more than the Tories did, but they also expect the bureaucracy to improve operations, delivery of services to Canadians, to ensure the government can live up to its election promises.

WHO MOVES WHERE

Malcolm Brown, special adviser to Clerk of the Privy Council on the Syrian Refugee Initiative becomes deputy minister of Public Safety, effective April 4.

Jean-François Tremblay, deputy minister of Transport Infrastructure and Communities, becomes deputy minister of Infrastructure, effective March 14.

Michael Keenan, associate deputy minister at Natural Resources becomes deputy Minister of Transport, effective March 14.

Hélène Laurendeau, associate deputy minister at Indigenous and Northern Affairs is promoted to deputy minister, effective April 4, 2016.

Peter Boehm, senior associate deputy minister at Foreign Affairs becomes deputy minister at International Development, effective immediately.

Diane Jacovella, assistant deputy minister Global Issues and Development, Global Affairs Canada becomes sssociate deputy minister of Foreign Affairs, effective March 14.

Mentally ill public servant who slapped boss reinstated, handed $25,000

Andrew Duffy, The Ottawa Citizen, March 2 2016

An Ottawa public servant who was fired for slapping his boss across the face has been reinstated and awarded $25,000 in damages for the pain and suffering he endured by having his human rights abridged.

The federal labour relations board said the government discriminated against Naim Rahmani, a Transport Canada engineer, by ignoring evidence that his violence was related to a mental health problem.

That medical evidence was first presented to Transport Canada managers six months after the incident as they weighed a decision about what kind of discipline to impose.

“The employer had laudable concerns, such as ensuring a violence-free workplace,” concluded Marie-Claire Perrault, a member of the Public Service Labour Relations and Employment Board, “but it was obligated to consider the situation’s medical aspect, which it did not.”

Government lawyer Michel Girard had argued that no medical evidence could justify an act of physical violence.

What’s more, he said, discrimination could not have been involved in the firing since all federal employees are subject to the same hard-and-fast rules about violence in the workplace.

But the labour relations board flatly rejected those ideas.

Perrault said the government should have considered mitigating circumstances in the case, such as Rahmani’s laudatory work record, his unblemished discipline file, the spontaneous nature of the act, and “a certain provocation” that led to the slap. She suggested Rahmani was angered by his new supervisor’s decision to “twist the knife” in an old wound.

When those factors are taken into account, she said, Rahmani deserved to be suspended, not fired.

The unjust decision to terminate Rahmani, Perrault said, amounted to an act of discrimination given the government’s wilful refusal to consider evidence about his mental health condition.

The slap occurred on the morning of Feb. 10, 2012.

The tribunal heard that Rahmani, a senior engineer in an office responsible for aircraft certification, had worked alongside another engineer, Patrick Desbiens, for years. Their relationship, harmonious at first, began to deteriorate in 2008.

The men traded insults. Desbiens said Rahmani accused him of incompetence and laziness; Rahmani said Desbiens made “surly and jealous” statements about him.

By 2009, Rahmani's work environment had become so poisonous that he requested a transfer to another section, or a year's unpaid leave. Those requests were refused, and Rahmani's office relationships became more strained. During the next three years, Rahmani took several sick leaves, supported by medical certificates.

In February 2012, he had just returned to work after a three-week sick leave when he received an email, informing him that his longtime adversary, Desbiens, had just been appointed manager of his team. Rahmani took the news badly.

"He (Rahmani) had the impression that the door to the cell in which he found himself confined had been firmly locked," Perrault wrote in recounting his testimony.

Minutes later, Desbiens appeared at Rahmani's office door. Desbiens testified that he wanted to check Rahmani's working hours because he had received an overtime calculation from him for an out-of-town trip.

Rahmani regarded the inquiry as a personal attack, and sought out another manager to complain. Unable to find him, Rahmani went to Desbiens's office to express his displeasure.

According to Desbiens, Rahmani came into his office while he was seated with his back to the door. Desbiens said he twice asked him to leave, and when he didn't, he stood up and turned toward Rahmani, who slapped him across the left side of the face, sending his glasses to the floor.

Desbiens fled the office and ran down two flights of stairs — with Rahmani behind him — to a security desk.

Rahmani told a subsequent internal investigation that he pushed Desbiens back into his chair in a "defensive move" and followed him out of the office to ensure he didn't exaggerate what happened.

Rahmani worked from home while the investigation unfolded; he was denied a request for two months of sick leave.

Transport Canada manager David Turnbull testified that he was irritated by Rahmani's frequent absences: He felt that the engineer used sick leaves as a form of blackmail and threatened to take another whenever he didn't get what he wanted.

The investigation upheld Desbiens's version of events since two of his colleagues had heard the slap. It had also left his cheek red for more than half an hour.

Six months after the incident, in August 2012, Rahmani's union representative presented management with a medical certificate that suggested a health condition or related medication might explain the violence.

Turnbull asked government doctors to examine Rahmani. In early 2013, a government medical officer concluded that Rahmani was unfit to work because of an unnamed mental health condition, which he said might have played a role in the engineer's erratic office behaviour. He suggested Rahmani could return to work in May after four months of treatment.

In April, however, Transport Canada fired him.

Rahmani grieved the termination, arguing it was an excessive punishment that ignored his mental health condition.

His family physician, Dr. Stanislaw Maziarz, told the labour relations board that he had no doubt that Rahmani's worsening disorder was connected to the office violence. Dr. Maziarz contended that "someone who has such a specialized profession, earns an excellent salary, and is head of a family does not slap his supervisor without a psychiatric explanation behind it."

Government lawyer Michel Girard argued that no direct link was made between Rahmani's mental health issue and the attack on his boss.

In its ruling, the labour relations board called Transport Canada's attitude toward Rahmani's use of sick leave "disconcerting." and said it was indicative of a persistent refusal to acknowledge an employee's legitimate health problems.

Perrault ordered the government to immediately reinstate Rahmani and restore lost seniority and pension benefits. She also awarded him $25,000 in damages under terms of the Canadian Human Rights Act.

She rejected Rahmani's request that his managers undergo specialized human rights awareness training.

Doctors should be named in patient's right-to-die request: media lawyer

Sean Fine, The Globe and Mail, March 3 2016

Lawyers for an 80-year-old man with aggressive lymphoma asked a Toronto judge on Thursday for privacy for him, his family and his doctors as he seeks a court's permission for an assisted death. But a media lawyer argued it may be in the public interest to know the names of the doctors, and said he would like to see evidence that would explain why their identities should remain private.

"There are going to be other applications like this – it may be relevant to the public and the court to hear whether these are always the same doctors … rubber-stamp types," lawyer Peter Jacobsen, representing The Globe and Mail, Postmedia, the CBC and CTV, told Justice Thomas McEwen of the Ontario Superior Court. "And for those who wish to come forward in the future, they may wish to know who these doctors are."

Andrew Faith, a lawyer for the man with lymphoma, replied that putting the doctors' names "on the front page of the newspaper" would make it more difficult for other patients, and perhaps even his own client, to find a doctor willing to provide this medical service.

Mr. Faith also asked Justice McEwen to seal the evidence (such as affidavits from doctors on the man's physical condition and mental health) in the case. He said he would produce a redacted version for the public, blanking out identifying information. Mr. Jacobsen argued that he should first be given a chance to look at the evidence – without showing it to his media clients – so he could argue against any redactions that he feels go too far.

Justice McEwen said he will decide as soon as Friday on how much openness he will allow, though he cautioned that he may not be the judge who hears the application for authorization for an assisted death, which begins on March 17, and that that judge could vary the rules.

The public hearing in front of Justice McEwen contrasted sharply with the process followed last week by Justice Sheilah Martin of the Alberta Court of Queen's Bench, who closed her courtroom to the media and other members of the public when she heard an application for an assisted death from a woman with amyotrophic lateral sclerosis, known as Lou Gehrig's disease, and sealed all evidence from public view.

A Calgary newspaper reporter who was in the courtroom before the hearing began was given a chance to speak against its closing, but there was no opportunity for a media lawyer to make representations. (The woman obtained a court-authorized, medically assisted death in Vancouver; Justice Martin made her written ruling public this week.)

Both cases come as judges are being given a power over life and death, without clear rules on how to exercise that power. There is now a four-month window when doctor-assisted death is banned in the Criminal Code, during which Superior Court judges may authorize it in situations involving a competent adult who is suffering intolerably and irremediably. There are no rules on how many doctors need to support the request, or whether a psychiatrist has to attest to the individual's mental competence.

In Ontario and British Columbia, Superior Court chief justices have issued guidelines; both set out that people may apply to have a publication ban or closed hearing, under broad rules that allow judges to decide whether privacy is in the interests of justice.

In a court filing, the man applying to the Ontario judge said that he is "suffering intolerable pain and distress that cannot be alleviated."

"I wish to spend the remaining days of my life in the privacy of my family." Public attention "would be detrimental to my wish to die with dignity, privately, in the company of my family." His request for anonymity also applies to the two doctors and a consulting psychiatrist who are supporting his application, and to any medical people involved in carrying out the death procedure.

The Supreme Court of Canada ruled last year that the Criminal Code ban on doctor-assisted death is unconstitutional, but it gave the federal government a year to write a framework for a new law before lifting the ban. When the government asked for more time, the Supreme Court granted four extra months, saying that people could apply to Superior Court judges for authorization until June 6.

Ottawa doit autoriser le consentement anticipé, selon deux groupes

La Presse Canadienne, le 5 mars 2016

Deux associations québécoises ont demandé au gouvernement Trudeau, vendredi, d'intégrer à la Loi sur l'aide médicale à mourir la directive médicale anticipée, c'est-à-dire la possibilité pour un patient de donner son consentement à l'avance aux soins de fin de vie.

L'Institut de planification des soins (IPS) et l'Association québécoise pour le droit de mourir dans la dignité (AQDMD) estiment que le Parlement fédéral doit respecter les principes de

l'arrêt Carter de la Cour suprême, qui décriminalisait l'aide médicale à mourir, et donner suite rapidement aux recommandations du comité mixte spécial sur l'aide à mourir.

La directive médicale anticipée serait réservée aux personnes qui auraient reçu un diagnostic d'une maladie incurable qui les priverait éventuellement de pouvoir donner un consentement libre et éclairé au moment où elles pourraient demander l'aide médicale à mourir.

« On pense toujours tout de suite à l'Alzheimer, mais il y a beaucoup d'autres maladies aussi qui peuvent éventuellement entraîner une perte de capacités mentales, et à ce moment-là, les gens, s'ils sont atteints d'une manière où ils ont des souffrances persistantes et intolérables, ne pourront pas avoir accès à l'aide médicale à mourir », a expliqué la présidente de l'IPS, Danielle Chalifoux.

« On considère qu'il y a une discrimination quant aux caractéristiques mentales d'unepersonne, ce qui équivaut dans notre droit à un handicap mental. Alors juridiquement et humainement, on trouve qu'on devrait pouvoir permettre — dans certaines conditions et avec des critères bien stricts — de pouvoir demander à l'avance [l'aide médicale à mourir] *pour les personnes déjà atteintes »*, a-t-elle ajouté.

Les deux associations demandent également une intervention afin que toutes les institutions qui fonctionnent avec des fonds publics aient l'obligation de fournir l'aide médicale à mourir. Par communiqué, le président de l'AQDMD, le docteur Georges L'Espérance, rappelle que *« la clause de conscience souvent invoquée par les détracteurs de l'aide médicale à mourir s'applique aux individus, pas aux organisations ».*

Au Québec, la Loi concernant les soins de fin de vie interdit expressément de demander l'aide médicale à mourir par directiveanticipée. La loi québécoise reconnaît aussi aux maisons de soins palliatifs le droit de refuser l'accès à l'aide médicale.

« La loi québécoise est très restrictive. Elle a été entérinée avant l'arrêt Carter, qui a élargi les critères pour l'aide médicale à mourir, alors que la loi se cantonnait dans son champ de compétences provinciales et c'est pour ça qu'il y avait des restrictions », a indiqué

Mme Chalifoux, ajoutant que la décision de la Cour suprême fait en sorte que le consentement anticipé pourrait maintenant être permis et que si Ottawa s'y montre favorable, le Parlement québécois se devra d'adapter sa loi sur les soins de fin de vie.

Sex, drugs and dying: You've come a long way Canada

William Thorsell, The Globe and Mail, March 1 2016

William Thorsell is a senior fellow at the Munk School of Global Affairs and a former editor-in-chief of The Globe and Mail

Simply because he was a practising homosexual, George Everett Klippert was designated a dangerous sexual offender and sentenced to indefinite prison in the Northwest Territories in 1965. The Supreme Court of Canada upheld that sentence in 1967 – this morbid story well recounted by John Ibbitson in these pages on Saturday.

It was an interesting time to come of age in Canada: A new generation would reimagine itself and the country.

Year 1963: Teachers led our Grade 12 boys gym class down metal stairs to a basement furnace room of Strathcona Composite High School in Edmonton for a special presentation. Chairs were set out before a screen in the murky space, and a projector came to life.

The first film was about syphilis. It showed a girl and boy making out in a car behind steamy windows. Next we saw the boy with a rash and spots on his skin, and the word Syphilis! appeared big on the screen. The film ended with horrible shots of deformed madmen and women in a prison hospital, clawing at the walls.

The second was *Reefer Madness*, another fright movie, about the terrors of marijuana. We knew nothing about marijuana then, but predictions of impotence and a bulbous nose did not recommend it highly.

We boys emerged into the light with heightened fears of sex and drugs.

Homosexuality was never discussed in school, or anywhere else. The subject arose only via criminal cases like Everett Klippert, which hardened the fatwa on further references. The epithet "homo!" was sometimes hurled at someone acting strange. Period.

Contraception was illegal, as were abortions. Prostitutes were "sluts." Beer parlours were segregated by gender. The social atmosphere was judgmental and strict across the board. (We listened to sermons from the premier of Alberta, Ernest Manning, on the radio most Sunday mornings.)

To realize at 17, then, that you were gay presented a puzzle. To be gay was to be a social pariah, a "criminal sexual psychopath" under the Criminal Code, a cast-out from religion and "psychologically disordered" in medical parlance. Goodness.

While Everett Klippert went to jail for being gay, most of the rest of us went to ground, not knowing whether other gay people existed much at all. If we were to function in society, secrecy, hypocrisy and self-discipline would be necessary: No intimacy, no emotional attachments, no play. This led in my case to reams of poetry, fervent commitments to self-control in a diary, and a capacity to be hardhearted with girls – and boys. It was like living in solitary confinement in full public view.

How remarkable was it then that justice minister Pierre Trudeau announced in 1967 that homosexual acts between consenting adults would be legal – removed from the Criminal Code. It seemed a direct response to the Klippert case, and was revolutionary – also not. Social sanctions remained powerful in confining that life until the Stonewall riots in 1969, and the bursting dam of the 1970s.

Mr. Trudeau's legislation also allowed for the sale of contraceptives, and eased the criminal regulation of abortion. Something stands out about that: Mr. Trudeau went beyond public opinion in liberalizing laws concerning sexuality. Parliament decided through the political process to take the lead. It has hardly happened since.

It was the Supreme Court of Canada that overturned the criminal abortion law in 1988. The Mulroney government tried to restore it, but its bill failed in the Senate and abortion reverted to individuals and the medical system's purview.

It was the courts of eight provinces and one territory that struck down prohibitions on gay marriage between 2003 and 2005, forcing Parliament to ratify it in the Civil Marriage Act of 2005 (bottom-up court action).

It was the Supreme Court of Canada that struck down our Gothic prostitution laws in 2013, provoking the Harper government to seek another route to criminalization, whose legal status is not yet clear.

It was the Supreme Court of Canada that unanimously struck down criminal laws against assisted suicide in 2015 – not the politicians now tasked to regulate it, unless they defer to the medical fraternity again, as they did with abortion.

While politicians decriminalized homosexuality on their own initiative in 1969, the courts have taken the lead on major social files since the Charter of Rights and Freedoms prevailed on them to do so after 1982.

And here is a stunning point of continuity: Pierre Trudeau was responsible for the 1969 legislation, and also for the Charter that would force the hands of much less forgiving politicians 20 and 40 years later. Pierre Trudeau is potent, still, on the evolution of social norms and policy in Canada, if not from the mortal front bench in Parliament, from the eternal legal bench down the street.

So it is notable that his son has reverted to political means to address another vexing issue: marijuana.

Some of us were wary of life in prison for being gay in the 1960s, and many more feared seven years in jail then for possession of small amounts of marijuana. So we wedged wet towels against the bottoms of doors and windows to prevent the weed scent from escaping to nosy police during our weekend house parties in Edmonton.

Justin Trudeau is not waiting for courts to force his hand on marijuana. The Prime Minister took the initiative on this file, and is planning to pardon Everett Klippert posthumously for being un-dangerously the man he was – and is. It is very much in the spirit of his father.

Sex and death are looking up in Canada since that high-school basement in 1963, and reefer madness has now earned its name. Rational life feels better.

Gay fired Canadian public servants want more than pardons

Arshy Mann, DailyXrtra, March 4 2016

The Canadian government is considering pardons for people convicted of gay sex before its partial decriminalization in 1969 — but one group says that's not enough.

"What we're saying is that a pardon needs to be extended beyond 1969 to include all consensual homosexual activity, and it clearly must include an official state apology to people who were purged from the public service and the military," says Gary Kinsman, a spokesperson for the We Demand an Apology network and a professor of sociology at Laurentian University.

The network, formed in March 2015, is an alliance of people who were purged from the public service and the military, as well as researchers and allies.

"The Canadian state has never apologized for this at all," Kinsman says. "People's careers were destroyed, their lives were destroyed, and nothing's ever happened in terms of even an official apology to them."

The federal government agreed to consider pardons following a *Globe and Mail* piece that investigated the life of Everett George Klippert, who was labelled a dangerous offender for consensual sex. Klippert's case prompted the federal government to amend the Criminal Code in 1969 to decriminalize sex between two men, as long as they were both over 21 and the acts were taking place in private.

Despite the Criminal Code changes, Klippert remained imprisoned until 1971. And many gay people were still charged and convicted for a variety of offences related to consensual sex, such as gross indecency.

Alongside this continued criminalization, Kinsman estimates that thousands of gay men and lesbians were kicked out of public service jobs and the military between the 1950s and the 1990s.

There's also a direct link, he says, between the criminalization of consensual homosexual activities and the national security campaigns against lesbians and gay men.

"This was one of the fundamental ways in which they got information on who was gay or lesbian in the public service and the military," he says. Kinsman says people he's spoken to claim the RCMP would threaten people with a Criminal Code offence unless they provided names of their lesbian and gay friends.

If any of the people named were in the military or worked as a public servant, that information would be used against them, he says.

"The other linkage is, of course, if someone in the public service and the military during that period of time was convicted or even charged with an offence for consensual homosexual activity they would also lose their position," Kinsman continues.

The RMCP employed a variety of methods to root out gay people, he says, including the infamous "fruit machine," a device that attempted to identify gay people by measuring their physiological responses while watching pornography.

Kinsman says an apology would be an important first step in addressing the many wrongs done by Canada to queer people.

"It will mean that the Canadian state will take responsibility for what it did during what I describe as the Canadian war on queers," he says.

Crown lawyers say no new trials needed for Shafia parents and son

Mohammad Shafia, his wife Tooba Yahya and their son Hamed were convicted in 2012 of four counts of first-degree murder.
Diana Mehta The Canadian Press, March 24 2016

The evidence against a father, mother and son convicted of murdering the couple's three daughters and another woman was so "overwhelming" that it could only have led to guilty verdicts, Crown lawyers argued Friday as they sought to block the trio's attempts at new trials.

Mohammad Shafia, his wife Tooba Yahya and their son Hamed claim the trial judge made several errors that include allowing "highly prejudicial" expert evidence on so-called honour killings, and made improper instructions to the jury.

But those alleged errors — if they were to be accepted — were minor, the Crown suggested to the panel of three Ontario Court of Appeal judges.

"The evidence against the appellants in this case was overwhelming," said Jocelyn Speyer. "Given the nature of errors that have been alleged and their relative insignificance in the context of this very large trial, the verdict would necessarily have been the same."

The Shafia trial captivated the country and made international headlines.

The family was originally from Afghanistan and eventually immigrated to Canada, settling in Montreal.

In June 2009, the bodies of Shafia and Yahya's daughters — Zainab, 19, Sahar, 17, and Geeti, 13 — and Shafia's first wife in a polygamous marriage, 52-year-old Rona Amir Mohammad, were found in a car at the bottom of the Rideau Canal in Kingston, Ont.

Shafia, Yahya and Hamed argued the deaths were the result of a tragic accident.

Crown prosecutors contended the murders were committed after the girls “shamed” the family by dating and acting out, and Amir Mohammad was simply disposed of.

The most important evidence in the case, Speyer argued, lay at the scene, where the car carrying the dead females was found.

The Shafia trial heard that the car, a Nissan Sentra, could not have entered the canal on its own and must have been pushed.

Speyer recalled that the Nissan and Shafia's other car, a Lexis, were both damaged and debris at the scene supported a suggestion that one pushed the other into the canal. She also noted that the Nissan's seats were all fully reclined and the ignition was off.

“The evidence at the scene was completely inconsistent with the accident theory,” she said.

There was also significant evidence of planning and deliberation, Speyer said, pointing to evidence about Internet searches on the family laptop about “where to commit a murder.” The trial also heard from teachers, child protection workers and police about reports from Shafia's daughters that they were afraid of their father and brother and wanted to leave the family home, she noted.

Also significant was evidence on motive — that the deaths were so-called honour killings, a concept introduced through the words of the family patriarch himself, Speyer noted.

Speyer cited several wiretapped conversations played at Shafia's trial where he was heard talking about the importance of his honour, and how it had been threatened by his westernized daughters.

In particular she recalled how Shafia cursed his daughters as “treacherous” and “whores” and was heard saying “may the devil (defecate) on their graves.”

"An abundance of evidence for motive in this case comes from the mouth of Mohammad Shafia himself," Speyer said.

To help the jury at Shafia's trial assess his conversations, the Crown called an expert witness to explain the concept of honour killings, Speyer said.

"This is not cultural profiling," Speyer said. "This was equipping the jury to understand an issue in the trial."

Speyer noted that the expert witness was careful to note at the original trial that honour killings are rare events, and also made sure there was no generalizations about citizens of Afghanistan or the Middle East in her testimony.

"She is not stigmatizing or seeking to generalize or profile an entire nation," Speyer said. "She didn't offer any opinion that this case was a case of honour killing."

But lawyers for Shafia, Yahya and Hamed argued that the expert should not have been allowed to tell the jury how honour killings are typically carried out, nor should she have been allowed to read out denunciations on honour killings.

They argued the expert's evidence encouraged prejudice, invited the jury to extrapolate from the facts of other unrelated murders, and encouraged a more generalized "cultural stereotyping."

The judges reserved their decision on the matter.

Calgary woman becomes first non-Quebecer to legally end life with doctor's assistance

Tristin Hopper, The National Post, March 2 2016

A Calgary woman with ALS became the first non-Quebecer to legally die with the aid of a doctor on Canadian soil, after a precedent-setting ruling by Alberta's Court of Queen's Bench.

The woman, who cannot be identified because of a court-ordered publication ban, died on Monday with her family at her side.

"My colleague and I were grateful and honoured to be able to help her," Dr. Ellen Wiebe, a clinical professor at the University of British Columbia, said in an email to The Canadian Press, adding the woman made the trip from Calgary to Vancouver the same day.

Cleared by the court to seek a "physician-assisted death if she so chooses," the woman sought a medication-induced.

"I do not wish to have continued suffering and to die of this illness by choking. I feel that my time has come to go in peace," said the woman, identified in court documents only as H.S.

Wiebe is one of a group of doctors who have formed an organization called Hemlock AID to provide B.C. patients with information about and access to assisted death.

She has said she has no qualms about helping patients fulfill their final wish.

"I don't consider giving someone a good death to be causing harm," she said late last year.

"That's the main aim of helping somebody at the end of life, to help them have a good death…. If what they want is to die sooner rather than later and do it comfortably, then that's a good death for them."

Related

- Andrew Coyne: Canada is making suicide a public service. Have we lost our way as a society?
- Catholic hospital, the biggest palliative care centre in Ottawa, says it won't offer doctor-assisted death
- Assisted dying should be widely available with few restrictions, parliamentary committee says

Although the Supreme Court of Canada first struck down a longstanding ban on physician-assisted dying in 2015, the ban remains in place until the federal government can draw up appropriate legislation by June.

In the meantime Canadians with a "grievous and irremediable medical condition" were granted a special exemption to seek an expedited end. As the Supreme Court explained in its written decision, the measure was meant to "unfairly prolong the suffering" of terminally ill Canadians as the legislation wended its way through Parliament.

According to court documents, H.S. was a former healthcare worker who led a healthy and active life before she developed a sudden speech impairment in 2013 that turned out to be the first stages of ALS.

Also known as Lou Gehrig's Disease, ALS is a neurodegenerative disease that inspired the ice bucket challenge in 2014.

A rare, slow-moving form of the disease is what paralyzed famed theoretical physicist Stephen Hawking. But for many ALS patients the disease involves a rapid loss of muscle strength, leading quickly to paralysis and difficulties with breathing or swallowing.

H.S. reported that she often woke up choking due to saliva and mucus in her throat that needed to be suctioned out.

Court documents noted that before her death she was almost completely paralyzed, could not speak and was rapidly losing her ability to communicate via a handheld text-to-speech device.

The disease had caused her "significant pain," but H.S.'s lawyers told the court that she eschewed potent pain medication because she preferred to be alert.

With H.S. in the final stags of ALS, doctors estimated in late February that she had no more than six months to live. As with other ALS patients, cause of death would most likely be respiratory failure.

"I am not suffering from anxiety or depression or fear of death," H.S. said in an affidavit.

"As I look back upon my life prior to this illness which began three years ago, I feel happy, as I have had a very healthy, productive and fulfilled life."

The exact method of H.S.'s death was not specified, but in jurisdictions with legal doctor-assisted death, such as Oregon or Belgium, the preferred method has been a lethal dose of barbituates. The method is effectively a medically administered overdose of sleeping pills.

Quebec brought its own assisted dying law into effect in December, 2015, and by January a Quebec City woman had become the first in Canadian history to die with the legal assistance of a doctor.

More cases may exist, but Quebec health agencies have cited patient confidentiality in not releasing details.

Unlike other degenerative diseases such as Alzheimer's, ALS destroys the physical strength of patients while leaving their cognitive ability unscathed. It's this aspect that has often put ALS patients at the center of battles to legalize assisted dying.

In the early 1990s, ALS patient Sue Rodriguez launched an unsuccessful Supreme Court case to legalize assisted dying, and ultimately ended her life illegally.

Another ALS patient, Gloria Taylor, was one of the plaintiffs in Carter v. Canada, the Supreme Court case that ultimately deemed Canada's ban on physician-assisted dying to be a violation of the Charter right to "life, liberty and security of the person."

Documents reveal CSIS wary of Bill C-51 reforms

Colin Freeze, The Globe and Mail, March 3 2016

Prime Minister Justin Trudeau arrived in Ottawa promising to rein in Canada's spies. But the bosses at the Canadian Security Intelligence Service want the Liberals to know that "robust" rules already govern their expanding operations – including their controversial, and newly legalized, disruption campaigns.

Transition materials that CSIS provided to Public Safety Minister Ralph Goodale highlight some of the challenges from the Bill C-51 controversy last year, when Canadian spying became a political issue. The documents, which were released to The Globe and Mail, show polite CSIS pushback against some of the Liberals' campaign pledges.

During the election, the governing Conservatives vowed to empower CSIS to fight terrorism, and cited Bill C-51, a new law that vastly increased the agency's freedom to operate and share information, as proof that they could do it.

The NDP vowed to repeal the law, and the Liberals promised a middle course. On Nov. 4, Mr. Trudeau told Mr. Goodale in a mandate letter he should "work to repeal … the problematic elements of C-51 and introduce new legislation that strengthens accountability."

A week later, CSIS director Michel Coulombe sent a letter of introduction, and arranged a briefing, telling Mr. Goodale his spy service operates on tight strictures, not arbitrary whims.

"Recent legislation, including an expansion of the Service's mandate, has of course led to many changes of our policies," Mr. Coulombe wrote. "Most recently, a robust new framework was established to govern the conduct of threat-reduction activities."

The letter and related briefing materials were released under the Access to Information Act. On Monday, Mr. Coulombe is to testify before a Parliamentary commitee.

"Threat reduction" refers to the most controversial clauses of C-51, which give CSIS disruptive powers to "take measures, within or outside Canada, to reduce the threat" of any forces felt to be dangerous to national security. The law says CSIS intelligence officers cannot harm, kill or sexually assault anyone, but use of the power is otherwise open-ended.

The transition materials show CSIS officials view threat reduction as a large part of their jobs now. They assured Mr. Goodale they do not take their new responsibilities lightly. "Every effort has been made to ensure the responsible exercise … each time the Service exercises its authority."

CSIS officials said the service lives up to its legal obligations to consult Federal Court judges, or the public-safety minister and his written directives guiding the use of disruptive powers. Internal policies, they added, require further consultation with Mounties, diplomats and the Communications Security Establishment.

"Though CSIS's authority to investigate and respond is rooted in its own legislation, its actions are not taken in isolation and demand close collaboration with the national-security community," the documents say. (They do not make clear if CSIS is apprising the federal partners of planned disruptions, or enlisting their help.)

The CSIS Act passed in 1984 reflected a relatively passive federal intelligence-collection agency. Agents had no powers to arrest anyone, or carry guns. Nothing explicitly enabled CSIS officers to interpose themselves in suspects' lives beyond tapping phones or conducting interviews.

But that began to change, especially after the Sept. 11, 2001, attacks. CSIS operatives started going to places such as Afghanistan and carrying guns. Its leaders testified they started working more closely with police, and doing things that could help prevent terrorism. Some suspects began publicly complaining about CSIS officers aggressively following them or showing up to conduct interviews at workplaces.

C-51 allows CSIS officers to do all this and more. Mr. Coulombe last year told Parliament the bill could facilitate hacking operations – such as meddling with suspects' smartphones, money movements or travel. The law does not contemplate CSIS ever disclosing such operations to suspects.

The Liberals have never spelled out how they plan to overhaul the C-51 powers. Scott Bardsley, a staffer for Mr. Goodale, said the minister is consulting with security experts for national-security reforms.

The federal government has also promised to create a Parliamentary committee where select MPs would be allowed insights into classified CSIS operations. Most Canadian lawmakers currently know nothing about the specifics of CSIS operations.

Mr. Coulombe says he is aware of a growing political appetite to shine some light on CSIS.

“The Service recognizes the current environment of heightened public interest in national security,” he said in his November letter to Mr. Goodale. He added that as “trust underpins the Service’s ability to be effective, the opportunity to contribute to this discussion is most welcome.”